

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

STATE OF MISSOURI ex rel.	)	
ERIC S. SCHMITT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
MISSOURI SCHOOL BOARDS'	)	
ASSOCIATION,	)	
	)	
Defendant.	)	

**PETITION**

1. The Missouri School Boards' Association has repeatedly violated Missouri's Sunshine Law by failing to respond to requests seeking records relating to the effort by the Biden Administration and the National School Boards Association to investigate parents as domestic terrorists, as well as records relating to MSBA's guidance to Missouri schools about critical race theory, mask mandates, and IEP meeting policies.

2. MSBA is subject to Missouri's Sunshine Law because it operates almost entirely with public tax dollars and carries out a public function.

3. MSBA has known it is subject to the Sunshine Law for more than 30 years.

4. MSBA must follow the Sunshine Law to provide needed transparency into critical issues surrounding public education.

## Parties

5. Eric S. Schmitt is the duly elected Attorney General of Missouri.
6. Section 27.060 grants the Attorney General authority to:

institute, in the name and on the 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.

7. In addition, under § 610.027.1, RSMo, the Attorney General has authority to seek judicial enforcement of §§ 610.010 through 610.026, RSMo.

8. Defendant Missouri School Boards' Association ("MSBA") is a public governmental body under § 610.010(4), RSMo.

9. As a public governmental body, MSBA's records are subject to the provisions of Missouri's Sunshine Law.

## Jurisdiction and Venue

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

11. This Court has personal jurisdiction over MSBA because MSBA's principal place of business is in Boone County, Missouri.

12. Venue is proper in this Court under § 610.027.1, RSMo, as MSBA's principal place of business is in Boone County, Missouri.

### Missouri's Sunshine Law

13. The Missouri Sunshine Law establishes the State's public policy in favor of and commitment to open and transparent government. The Sunshine Law is codified at §§ 610.010 to 610.225, RSMo.

14. The Missouri Sunshine Law provides the public with critical tools to ensure that government remains transparent, honest, and efficient.

15. The Sunshine Law declares that it is the State of Missouri's public policy that "meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public[.]" § 610.011.1, RSMo.

16. Pursuant to that clear public policy, "all public records of public government bodies shall be open to the public for inspection and copying[.]" § 610.011.2, RSMo.

### **MSBA has been considered subject to Missouri's Sunshine Law for more than 30 years**

17. More than 30 years ago, the Missouri Attorney General's Office issued an Attorney General Opinion concluding, "It is the opinion of this office that the Missouri School Boards' Association is a 'quasi-public governmental body' as defined in Section 610.010(2), RSMo Supp. 1988, and subject to the provisions of Chapter 610, RSMo, the Sunshine Law." Mo. Att'y Gen. Op. 103-88 (Dec. 22, 1988), p. 6, attached as Exhibit A.

18. Every subsequent attorney general has adopted the opinion that MSBA is subject to the Sunshine Law. *See, e.g.*, Missouri Sunshine Law Handbook, p. 27 (2019) ("The following are examples of 'quasi-public governmental bodies,' and

required to abide by the Sunshine Law: . . . The Missouri School Boards Association.”), attached as Exhibit B; Missouri Sunshine Law Handbook, p. 12 (2009) (“Examples of organizations covered by the Sunshine Law are area agencies on aging (*Attorney General’s Opinion No. 27-87*), Missouri School Boards Association (*Attorney General’s Opinion No. 103-88*), . . .”), attached as Exhibit C; Missouri Sunshine Law Handbook, p. 22 (2004) (“The Missouri School Boards Association is a ‘quasi-public governmental body’ and subject to provisions of Chapter 610, RSMo, the Sunshine Law.”), attached as Exhibit D.

**MSBA is a quasi-public governmental body under the Sunshine Law**

19. The Sunshine Law defines a “public governmental body” to include any “quasi-public governmental body”:

As used in this chapter, unless the context otherwise indicates, the following terms mean:

(4) “**Public governmental body**”, any legislative, administrative or governmental entity created by the Constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:

(f) Any quasi-public governmental body. The term “**quasi-public governmental body**” means any person, corporation or partnership organized or authorized to do business in this state pursuant to the provisions of chapter 352, 353, or 355, or unincorporated association which either:

a. Has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or

b. Performs a public function as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation;

§ 610.010(4)(f), RSMo.

20. MSBA is a public governmental body under the Sunshine Law because it meets the Sunshine Law's definition of a quasi-public governmental body.

**MSBA's corporate structure satisfies the definition of a quasi-public governmental body**

21. MSBA's corporate structure is within the definition of a quasi-public governmental body in § 610.010(4)(f), RSMo.

22. MSBA was a corporation originally organized pursuant to the provisions of Chapter 352. *See* Missouri School Boards Association Articles of Agreement, Dec. 12, 1957, Art. I, p. 1, attached as Exhibit E.

23. MSBA currently is a corporation organized pursuant to the provisions of Chapter 355. *See* Missouri School Boards Association Decree Approving Articles of Acceptance, filed Nov. 25, 1958, attached as Exhibit F.

**MSBA's primary purpose satisfies the definition of a quasi-public governmental body**

24. MSBA's primary purpose is to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an

agreement or agreements with public governmental bodies, within the definition of a quasi-public governmental body in § 610.010(4)(f), RSMo.

25. According to its formation documents, MSBA's purpose is to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies:

The purpose of the Missouri School Boards Association shall be the constant improvement of public school education for all the children of Missouri. To that end it shall cooperate to the fullest extent with public officials, school administrators, teachers and all other interested individuals and organizations; study educational problems and inform school boards of the results of such studies and studies made by others, and in particular, act as an agency to enable individual school districts to cooperate with each other for services which can be provided as a common service but which would not be practical to provide in each school district.

Ex. E, Articles of Agreement, Art. III, p. 1; Ex. F, Articles of Acceptance, III.6, p. 4.

26. At the time of Attorney General Opinion 103-88, MSBA's Constitution defined MSBA's purpose as follows:

The purpose of the Association shall be to aid and assist Boards of Education in performing their lawful functions, and to promote, support, and advance the interests of public education in Missouri.

Ex. A, Mo. Att'y Gen. Op. 103-88 (Dec. 22, 1988), p. 3.

27. In its federal tax filings, MSBA describes its mission as follows:

MSBA helps public schools succeed through leadership, school board training and advocacy. MSBA also provides services and programs designed to help public schools make the most effective and efficient use of their resources.

MSBA Form 990, Tax Year 2019, p. 1, attached as Exhibit G; MSBA Form 990, Tax Year 2018, p. 1, attached as Exhibit H; MSBA Form 990, Tax Year 2017, p. 1, attached as Exhibit I; MSBA Form 990, Tax Year 2016, p. 1, attached as Exhibit J.

28. MSBA’s bylaws define MSBA’s purposes as “Helping School Boards Ensure All Students Succeed.” MSBA Bylaws (rev. June 19, 2020), Art. I, Sec. 2, p. 2, attached as Exhibit K.

29. On its website, MSBA describes its activities as follows:

MSBA serves as the unified voice of school board members throughout the state and provides board member training, comprehensive policy support, legal assistance, superintendent search guidance, and other services designed to allow school boards to put maximum resources in the classroom. MSBA’s Center for Education Safety is the only organization in Missouri supporting school safety and security.

School boards remain an essential institution to ensure that local communities are connected to their public schools. MSBA is the only organization in Missouri established by and governed by local school board members.

About MSBA, <https://www.mosba.org/about-msba/>.

30. MSBA enters into contracts with public school districts, including for “full maintenance” service agreements and superintendent search services. *See, e.g.*, Proposed “Full Maintenance” Service Agreement between MSBA and Raytown C-2 School District, approved Sept. 14, 2020 (“Raytown Full Maintenance Service Agreement”, attached as Exhibit L; Proposed Superintendent Search Agreement between MSBA and Wentzville R-IV School District, approved Feb. 7, 2022 (“Wentzville Superintendent Search Agreement”), attached as Exhibit M.

31. As part of its “Full Maintenance” Service Agreement, MSBA agrees to:
  1. Monitor changes in state and federal law and, within a reasonable time, customize applicable district policies and procedures to incorporate changes. . . .
  2. Review submitted monthly Board minutes for actions that may warrant a new or revised policy or procedure.
  3. Review and edit district-originated revisions and additions to policies and procedures and provide written recommendations.
  4. Provide data entry, editing, coding and formatting of draft copies of recommendations of policies and procedures, revisions or additions resulting from services provided in items 1 through 3 of this section.
  5. Provide School District with sample policies, procedures and forms upon request.
  6. Advise School District on policy-related topics and organization.
  7. Maintain a current copy of School District’s Board policies and administrative procedures on a continuous basis, including maintenance of an online version of policies and procedures. . . .
  8. Provide legal review of forms at the request of the district. . . .

Ex. L, Raytown Full Maintenance Service Agreement, II.A, pp. 1-2.

32. MSBA is compensated by the public school district for work performed under the Full Maintenance Service Agreement, which lasts for one year. *Id.* at III, p. 3.

33. As part of its Superintendent Search Agreement, MSBA assists a school board with developing criteria and qualifications for superintendent candidates,

recruits candidates, assists the school board with evaluating the candidates, recommends a candidate to the school board, and conducts a seminar for the school board to prepare it for candidate interviews. *See* Ex. M, Wentzville Superintendent Search Agreement, ¶¶ 1-5,

34. MSBA is compensated by the public school district for work performed under the Superintendent Search Agreement. MSBA’s fee is based on a percentage of the first year’s contracted salary of the new superintendent. *See id.* at ¶ 6 (8% fee).

**MSBA performs a public function and thus satisfies the definition of a quasi-public governmental body**

35. MSBA performs a public function within the definition of quasi-public governmental body in § 610.010(4)(f), RSMo.

36. MSBA advocates for and advises hundreds of Missouri public school districts.

37. Although MSBA has claimed to represent more than 500 Missouri school districts, other reports identify MSBA’s membership at just under 400 school districts. *Compare* MSBA Application to Intervene and Motion to Suspend Partial Stipulation and Agreement, PSC Case No. GR-2014-0324 (Mar. 13, 2017), ¶ 1 (“MSBA is a 501(c)(6) Missouri not-for-profit corporation representing over 500 elementary and secondary school districts in the State of Missouri as a trade association.”) *with* Dissertation, *Training Needs of School Board Members in the State of Missouri*, 2013, abstract available at <https://www.proquest.com/docview/1426825654> (“Of the 520 school districts in Missouri, 382 are members of the Missouri School Board Association (MSBA).”).

38. MSBA is comprised of, and governed by, public officials.

39. According to its website, MSBA “is governed by a Board of Directors made up of local school board members from districts throughout the state.” MSBA, How We Are Governed, <https://www.mosba.org/board-training-governance-team/>.

40. Public school district school board members are public officials.

41. Only dues-paying Missouri public school district school boards are eligible for active membership in MSBA. Ex. K, MSBA Bylaws, Art. II, Sec. 2, p. 2.

42. Only active members are entitled to hold elective MSBA office and vote in MSBA. *Id.*

43. All members of the MSBA Board of Directors are school board members from dues-paying Missouri public school districts who have served at least two years on their school board. *Id.* at Art. IV, Sec. 1, p. 5.

44. All MSBA officers are school board members from dues-paying Missouri public school districts. *Id.* at Art. V, Sec. 2, p. 7.

**MSBA’s funding comes almost entirely from public funds**

45. Upon information and belief, virtually all of MSBA’s revenue comes from public funds.

46. MSBA receives revenue from public funds in the form of membership dues paid by public school districts.

47. Public school districts have statutory authority to pay MSBA membership dues with public funds:

Any school board of the state of Missouri, when it deems it a matter of public interest, may by two-thirds vote of its

members join the Missouri School Boards' Association and appoint one or more of its members to attend meetings called by the association within the state of Missouri. The school board may direct payment of the membership dues of the association and of the actual and necessary expenses incurred by members in attending the meetings called by the association from the incidental fund of the district.

§ 162.011, RSMo.

48. MSBA receives revenue from public funds in the form of school board services paid by public school districts.

49. Upon information and belief, school board service revenue includes revenue from paid services covered by "Full Maintenance" Service Agreements and Superintendent Search Agreements.

50. MSBA receives revenue from public funds in the form of government grants.

51. MSBA may receive revenue from public funds in the form of the MO Nutrition Service.

52. MSBA receives indirect revenue from public funds in the form of investment income generated from public funds.

53. Based on MSBA's tax filings with the IRS, 99% of MSBA's revenue each of the past four years came from public funds, as demonstrated by the table below:

<b>Revenue</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>Membership Dues</b>	\$2,347,337	\$2,242,378	\$2,233,770	\$2,162,074
<b>School Board Services</b>	\$4,228,049	\$3,975,901	\$3,647,533	\$4,620,224
<b>Government Grants</b>	\$416,413	\$112,704	\$328,157	\$0

<b>Total revenue from public funds</b>	\$6,991,799	\$6,330,983	\$6,209,460	\$6,782,298
<b>Total revenue reported</b>	\$7,086,847	\$6,397,740	\$6,256,772	\$6,828,155
<b>Percent of total revenue from public funds</b>	99%	99%	99%	99%

Ex. G, MSBA Form 990, Tax Year 2019, p. 9; Ex. H, MSBA Form 990, Tax Year 2018, p. 9, Ex. I, MSBA Form 990, Tax Year 2017, p. 9, Ex. J, MSBA Form 990, Tax Year 2016, p. 9.

54. MSBA’s total revenue generated from public funds would be higher for each year if it includes revenue from MO Nutrition Service and investment income.

**MSBA provides training required by Missouri law**

55. State law requires all new public school board members to complete at least 18.5 hours of training within their first year. § 162.203.1, RSMo.

56. State law requires all public school board members to complete at least one hour of refresher training each year of any term in office except for the year in which the initial training is completed. § 162.203.3, RSMo.

57. According to the statute requiring board member training, “All programs providing the orientation and training required under the provisions of this section shall be offered by a statewide association organized for the benefit of members of boards of education or be approved by the state board of education.” § 162.203.4, RSMo.

58. Section 162.203.4’s reference to “a statewide association organized for the benefit of members of boards of education” is a reference to MSBA.

59. According to MSBA, “MSBA is approved by the State Board of Education to provide the training and is the only association that was founded by school board members for school board members and has provided quality board training for decades.” MSBA, Board Member Refresher Training, <https://www.mosba.org/refresher-training/>.

60. MSBA offers the new board member training for free. MSBA, New Board Members, <https://www.mosba.org/new-board-members/>.

61. MSBA offers in-district training at \$300 for up to two hours, and \$150 per additional hour. MSBA, In District Board Training, <https://www.mosba.org/in-district-board-training/>.

62. MSBA offers some online training for \$75 and other topics for free to dues-paying members. MSBA, Online Board Training, <https://www.mosba.org/online-board-training/>.

### **Missouri law empowers MSBA with important public functions**

63. By statute, MSBA selects one member of the work group convened whenever the State Board of Education develops or revises academic performance standards or learning standards. § 160.514.3(4), RSMo.

64. By statute, one member of the Missouri Charter Public School Commission is selected by the governor from a slate of three nominees recommended by MSBA. § 160.425.3(5), RSMo.

65. By statute, MSBA selects one member of the Legislative Task Force on Dyslexia. § 633.420.3(19), RSMo.

66. By statute, MSBA appointed one member of the Career Readiness Course Task Force. § 167.910.1(9), RSMo.

67. By statute, the Missouri Department of Health and Senior Services was directed to work with MSBA and other organizations to promulgate rules under the Interscholastic Youth Sports Brain Injury Prevention Act. § 167.765.1, RSMo.

68. By statute, the Missouri Department of Elementary and Secondary Education was directed, “in cooperation with any appropriate professional association,” to develop a model policy or policies for allergy prevention and response. § 167.208.2, RSMo.

69. DESE reported that it collaborated with MSBA to develop the model policy for allergy prevention and response, and the policy “was crafted in MSBA format.” DESE, Food Allergy Information, <https://dese.mo.gov/financial-admin-services/food-nutrition-services/food-allergy-information>.

70. By executive order, MSBA selected one member to serve on the Missouri School Safety Task Force. Exec. Order 19-04, ¶ 1.e.

71. MSBA’s Center for Education Safety “is the only statewide school safety organization in Missouri and is supported and operated solely by MSBA.” About MSBA’s Center for Education Safety, <https://www.mosba.org/ces/>.

72. The Center for Education Safety “was launched on September 1, 2010 and was originally a partnership of MSBA, the Missouri Department of Public Safety and the Missouri Office of Homeland Security. MSBA assumed full support of CES in 2017 when state funding for school safety was no longer available.” *Id.*

73. As demonstrated by publicly available information collected to date, MSBA is subject to the Sunshine Law because it is a quasi-public governmental body.

**MSBA's hidden role in the Biden Administration's and NSBA's effort to investigate parents as "domestic terrorists"**

74. The Attorney General's Office submitted a Sunshine Law request to MSBA in October 2021 to understand MSBA's role in the effort by the Biden Administration and National School Boards Association ("NSBA") effort to investigate parents as "domestic terrorists," and MSBA's advice to Missouri public school districts on critical race theory, mask mandates, and IEP meeting policies.

75. Upon information and belief, MSBA has hidden its full knowledge of, and support for, the effort by the Biden Administration and NSBA to investigate parents as "domestic terrorists."

76. Publicly available information suggests that the Biden Administration colluded with NSBA to weaponize the Department of Justice against parents who speak up for their children at school board meetings. *See, e.g.,* Tyler O'Neil, *NSBA Coordinated with White House, DOJ Before Sending Notorious 'Domestic Terrorists' Letter: Emails*, FOX NEWS (Nov. 12, 2021), available at <https://www.foxnews.com/politics/nsba-coordinated-with-white-house-doj-before-sending-notorious-domestic-terrorists-letter-emails>; Peter Hasson, *Education Secretary Cardona Solicited NSBA Letter Comparing Protesting Parents to Domestic Terrorists: Email*, FOX NEWS (Jan. 11, 2022), available at <https://www.foxnews.com/politics/education-secretary-cardona-solicited-nsba-letter-comparing-parents-domestic-terrorists-email>.

77. Multiple federal agencies are unlawfully refusing to respond to records requests by attorneys general relating to the effort by the Biden Administration and NSBA to investigate parents as “domestic terrorists.” *See* Compl., *State of Indiana et al. v. Biden*, Case No. 1:22-cv-430 (S.D. Ind. Mar. 4, 2022).

78. MSBA was a member of NSBA at the time that NSBA asked the Biden Administration to investigate parents as domestic terrorists, and at the time the Biden Administration granted NSBA’s request in a memorandum from Attorney General Merrick Garland. *See* Letter from the National School Boards Association to President Biden, Sept. 29, 2021, p. 2 (“As these acts of malice, violence, and threats against public school officials have increased, the classification of these heinous actions could be the equivalent to a form of domestic terrorism and hate crimes. . . . “the PATRIOT Act in regards to domestic terrorism, . . .”) (emphasis added), attached as Exhibit N; Memorandum from the Attorney General to the FBI Director, U.S. Attorneys, et al., Oct. 4, 2021, attached as Exhibit O.

79. Upon information and belief, MSBA was aware weeks in advance of the NSBA’s plans to send a letter to President Biden.

80. Upon information and belief, MSBA initially agreed with NSBA’s letter.

81. MSBA retweeted NSBA’s announcement that it asked the Biden Administration for “federal assistance”:

↻ MSBA Retweeted



**National School Boards Associa...** · 6d ...

We sent a letter to President Biden this morning asking for federal assistance to stop threats and acts of violence against public schoolchildren, public school board members, and other public school district officials and educators:



National School Boards Association Asks for Feder...  
nsba.org

💬 938

↻ 246

❤️ 136



82. Upon information and belief, MSBA retweeted NSBA’s letter on or about September 30, 2021, the day after NSBA sent its letter.

83. Upon information and belief, MSBA deleted the retweet in October 2021, but only after an uproar from parents and others regarding the action by NSBA and the Biden Administration.

84. The day after the Biden Administration released its memorandum granting NSBA’s request to investigate parents, the MSBA executive director indicated support for the NSBA’s request: “[MSBA’s executive director] also said MSBA values local control, and that includes local law enforcement. She said the organization wouldn’t have embraced calling for federal assistance unless local law enforcement wanted the help.” Jonathan Shorman et al., *As Missouri School Boards*

*Face Threats, Republicans Attack Effort to Fight Harassment*, KANSAS CITY STAR (Oct. 5, 2021), available at <https://www.kansascity.com/news/politics-government/article254784407.html>.

85. The Attorney General’s Office sent MSBA its first Sunshine Law request on October 8, 2021.

86. After MSBA received the Sunshine Law request from the Attorney General’s Office, but before its first response to the Attorney General’s Office, MSBA for the first time publicly distanced itself from NSBA. *See* MSBA statement, Oct. 11, 2021, available at <https://ams.embr.mobi/Documents/DocumentAttachment.aspx?C=ZfON&DID=GKHFI>.

87. Upon information and belief, MSBA has public records in its possession relating to the NSBA and Biden Administration’s effort to investigate parents as “domestic terrorists.”

**MSBA’s hidden involvement with critical race theory**

88. MSBA also is concealing its involvement with critical race theory in Missouri public schools.

89. For example, from at least 2014 until November 2020, Educational Equity Consultants’ website listed MSBA as a client.

90. Educational Equity Consultants “specializes in diversity training that identifies and eradicates systems of oppression that damage our schools. Though not always perceivable or understood, issues with racism exist within ourselves and our

institutions. By way of effective communication techniques, EEC teaches educators how to promote respect and empowerment among students and staff. As educators, it is up to us to eliminate the oppressive attitudes, behaviors and policies that sabotage a student's right to learn." Educational Equity Consultants, "Three warning signs that your school has a problem with diversity: Taking a closer look," <http://eec4justice.com/just-resources/three-warning-signs-that-your-school-has-a-problem-with-diversity-taking-a-closer-look/>.

91. Educational Equity Consultants provides a list of resources for staff and students, including the 1619 Project, "An Antiracist Reading List" by Ibram X. Kendi, links to the Southern Poverty Law Center's "Teaching Tolerance" and Zinn Education Project websites, and many more books and articles. EEC Resources 4 Justice, <https://www.eecresources4justice.com/resources/>.

92. Upon information and belief, between November 2020 and April 2021, MSBA's name was removed from the client list on Educational Equity Consultants' website.

**MSBA's hidden advice to Missouri schools on mask mandates for children**

93. MSBA also is concealing its advice to Missouri public school districts relating to mask mandates of children.

94. For example, upon information and belief, on or about August 13, 2021, MSBA notified its members that House Bill 271 and its limitations on public health orders might apply to Missouri public school districts.

95. Upon information and belief, in the August 13, 2021 bulletin, MSBA labeled any parent or leader seeking to apply the new law to school district mask mandates as “anti-public school forces looking for headlines” and advised school districts as follows:

**What should your district do?** Once again, it is not certain that this statute applies to school districts. But given the political landscape, the conservative approach would be to simply readopt any opening plan once a month (or every 21 days if the emergency declaration expires). Alternatively, MSBA encourages discussion with the district’s private attorney. A patron or politician that believes the law applies could sue to invalidate the district’s opening plan. But the real consequence would be the cost and political turmoil generated by such a lawsuit.

96. Transparency is needed to understand MSBA’s role in the effort by the Biden Administration and NSBA to investigate parents as “domestic terrorists,” and MSBA’s advice to Missouri public school districts on critical race theory, mask mandates, and IEP meeting policies.

97. MSBA has refused to be transparent by failing to respond to multiple Sunshine Law requests.

98. A court order is needed to force MSBA to comply with the Sunshine Law.

**Count I**

**MSBA violated Sections 610.011 and 610.023, RSMo, when it failed to produce responsive public records regarding the effort to silence parents by labeling them domestic terrorists**

99. All preceding paragraphs are incorporated by reference.

100. MSBA is subject to the Sunshine Law as a quasi-public governmental body, which is included within the definition of public governmental body. § 610.010(4), RSMo.

101. All public records of public governmental bodies are open to the public for inspection and copying as set forth in sections 610.023 to 610.026. § 610.011.2, RSMo.

102. “Each public governmental body shall make available for inspection and copying by the public of that body’s public records.” § 610.023.2, RSMo.

103. On October 8, 2021, the Attorney General’s Office submitted a Sunshine Law request to MSBA. Letter from the Attorney General’s Office to MSBA, Oct. 8, 2021 (“AGO Sunshine Request #1”), attached as Exhibit P.

104. The Sunshine Law request included requests for the following records:

2. All email communications (including emails, email attachments, complete email chains, and calendar invitations) and text messages related to the September 29, 2021 letter from the National School Boards Association to President Joe Biden regarding “Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators.”

*Id.* at p. 1.

105. Counsel for MSBA reported to the Attorney General’s Office that MSBA did not have any records responsive to this request: “I advised that the Association was not involved with the National School Boards Association letter to President Biden and we don’t believe we have any documents that would be responsive to those requests.”

106. Upon information and belief, MSBA has responsive public records in its possession.

107. Upon information and belief, on or around September 17, 2021, MSBA's executive director received an email from NSBA staff indicating that the NSBA intended to send a letter to the President and the federal government asking for assistance responding to threats from parents.

108. Upon information and belief, the email sent from NSBA to MSBA's executive director on or around September 17, 2021 is a public record responsive to the Attorney General's Office's October 8, 2021 Sunshine Law request and was retained by MSBA.

109. Upon information and belief, on or around September 29, 2021, MSBA's executive director received an email from NSBA staff containing a copy of the letter that NSBA sent to the President accusing parents of "domestic terrorism" for advocating for their children.

110. Upon information and belief, the email sent from NSBA to MSBA's executive director on or around September 29, 2021 is a public record responsive to the Attorney General's Office's October 8, 2021 Sunshine Law request and was retained by MSBA.

111. Upon information and belief, other public records responsive to the Attorney General's Office's October 8, 2021 Sunshine Law request are retained by MSBA.

112. MSBA knew of its Sunshine Law obligation to produce copies of responsive public records in response to a public records request.

113. MSBA was aware of the probable consequences of failure to provide responsive records, including potential fines.

114. Upon information and belief, MSBA knowingly and purposefully violated § 610.023 by denying that it had responsive public records and thus failed to produce any responsive public records to the Attorney General's Office's request.

115. Upon information and belief, MSBA inaccurately denied it had responsive public records in violation of the Sunshine Law in order to deny access to public records.

WHEREFORE, the Attorney General's Office requests that this Court enter a judgment in favor of the Attorney General's Office: (a) declaring that MSBA violated § 610.023 by denying that it had responsive public records and thus failed to produce any responsive public records; (b) ordering appropriate injunctive relief by requiring MSBA to immediately disclose all records requested by the Attorney General's Office; (c) ordering \$1,000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.027.3; (d) ordering \$5,000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (e) for such further relief as the Court deems just and appropriate.

**Count II**  
**MSBA violated Section 610.023, RSMo, when it failed to respond to numerous Sunshine Law requests**

116. All preceding paragraphs are incorporated by reference.

117. MSBA is subject to the Sunshine Law as a quasi-public governmental body, which is included within the definition of public governmental body. § 610.010(4), RSMo.

118. “Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. . . . If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.” § 610.023.3, RSMo.

119. MSBA has failed to respond to at least three Sunshine Law requests in the past year.

120. On November 4, 2021, the Attorney General’s Office submitted a Sunshine Law request to MSBA seeking records of MSBA’s executive director. Letter from the Attorney General’s Office to MSBA, Nov. 4, 2021, attached as Exhibit Q.

121. On the third business day following receipt of the Sunshine Law request, MSBA’s counsel responded to the Attorney General’s Office. Counsel informed the Attorney General’s Office that investigation into the request was on-going and further information was expected in less than a week.

122. MSBA provided no further information to the Attorney General’s Office in response to the November 4, 2021 Sunshine Law request.

123. The Attorney General’s Office submitted the November 4, 2021 Sunshine Law request after MSBA responded to the Attorney General’s Office’s

October 8, 2021 Sunshine Law request by reporting it would have to hire an outside vendor at a cost of more than \$4,000 to determine how many records were responsive and about \$20,000 to actually retrieve the documents.

124. On November 5, 2021, the Attorney General's Office received a Sunshine Law complaint from a Missourian about MSBA.

125. The complainant reported, "I submitted a sunshine request to the Missouri School Board Association, and received no response."

126. The complainant provided the Attorney General's Office with a November 2, 2021 Sunshine Law request sent by email to MSBA. The request sought all records that related to the following two topics:

All emails to/from email addresses ending @mosba.org regarding policy KKB, HB228, SB134, HB432, and/or references to recording policy from January 1, 2021 to current date.

All recommendation, guidance and information documents created by Missouri School Board Association (MSBA) referencing policy KKB, HB228, SB134, HB432, and/or recording policy from January 1, 2021 to current date.

127. Policy KKB, HB228, SB134, and HB432 relate to school district IEP meetings and the recording of those meetings.

128. As part of its investigation into the Sunshine Law complaint against MSBA, the Attorney General's Office asked MSBA to respond to the complaint. Letter from the Attorney General's Office to MSBA, Nov. 18, 2021, attached as Exhibit R.

129. The Attorney General's Office also included a Sunshine Law request to MSBA seeking "any public records related to the allegations in the complaint; including, but not limited to the Association's correspondence with the complainant, regarding her public records request." *Id.* at p. 1.

130. The Attorney General's Office did not receive a response from MSBA to its Sunshine Law request or to its letter.

131. MSBA knew of its Sunshine Law obligation to produce copies of responsive public records in response to a public records request.

132. MSBA intended to hinder access to its public records.

133. MSBA was aware of the probable consequences of failure to provide responsive records, including potential fines.

134. Upon information and belief, MSBA knowingly and purposefully violated § 610.023 by failing to respond to Sunshine Law requests submitted by the Attorney General's Office and at least one member of the public.

135. Upon information and belief, MSBA knowingly and purposely failed to respond to Sunshine Law requests submitted by the Attorney General's Office and at least one member of the public in order to conceal public records relating to the effort by the Biden Administration and NSBA to investigate parents as domestic terrorists, and MSBA's guidance to Missouri schools about critical race theory, mask mandates, and IEP meeting policies..

WHEREFORE, the Attorney General's Office requests that this Court enter a judgment in favor of the Attorney General's Office: (a) declaring that MSBA violated

§ 610.023 by failing to respond to Sunshine Law requests for public records; (b) ordering appropriate injunctive relief by requiring MSBA to immediately disclose all records requested by the Attorney General’s Office and the Missourian who submitted a November 2, 2021 request; (c) ordering \$1,000 in civil penalties based on any knowing violation of the Sunshine Law under § 610.027.3; (d) ordering \$5,000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (e) for such further relief as the Court deems just and appropriate.

**Count III**  
**MSBA violated Section 610.023, RSMo, when it failed to appoint a custodian of records**

136. All preceding paragraphs are incorporated by reference.

137. MSBA is subject to the Sunshine Law as a quasi-public governmental body, which is included within the definition of public governmental body. § 610.010(4), RSMo.

138. “Each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body’s records. The identity and location of a public governmental body’s custodian is to be made available upon request.” § 610.023.1, RSMo.

139. The Attorney General’s Office asked MSBA to identify its custodian of records. Ex. P, AGO Sunshine Law Request #1, p. 2.

140. MSBA did not identify its custodian of records in any correspondence to the Attorney General’s Office.

141. Upon information and belief, MSBA did not have a custodian of records at the time of the Attorney General's Office's October 8, 2021 Sunshine Law request.

142. Upon information and belief, since 1988, MSBA had knowledge of Attorney General Opinion 103-88 in which the Attorney General's Office concluded that MSBA was subject to the Sunshine Law.

143. MSBA knew of its Sunshine Law obligation to appoint a custodian of records.

144. MSBA intended to hinder the Attorney General's Office's access to a custodian of records.

145. MSBA was aware of probable consequences of failure to appoint or identify a custodian of records, including potential fines.

146. Upon information and belief, MSBA knowingly and purposefully violated § 610.023 by failing to identify its custodian when requested by the Attorney General's Office.

147. Upon information and belief, MSBA knowingly and purposefully violated § 610.023 by failing to appoint a custodian of records to be responsible for the maintenance of MSBA's records.

148. WHEREFORE, the Attorney General's Office requests that this Court enter a judgment in favor of the Attorney General's Office: (a) declaring that MSBA violated § 610.023 by failing to appoint a custodian of records and by failing to identify its custodian when requested by the Attorney General's Office; (b) ordering \$1,000 in civil penalties based on any knowing violation of the Sunshine Law under

§ 610.027.3; (c) ordering \$5,000 in civil penalties based on any purposeful violation of the Sunshine Law under § 610.027.4; and (d) for such further relief as the Court deems just and appropriate.

March 15, 2022

Respectfully submitted,

**ERIC S. SCHMITT**  
Attorney General

*/s/ Justin D. Smith*

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Justin D. Smith, #63253

James S. Atkins, #61214

Missouri Attorney General's Office

Post Office Box 899

Jefferson City, MO 65102

Tel: (573) 751-3321

Fax: (573) 751-0774

Email: [Justin.Smith@ago.mo.gov](mailto:Justin.Smith@ago.mo.gov)

Email: [Jay.Atkins@ago.mo.gov](mailto:Jay.Atkins@ago.mo.gov)

Attorneys for the State of Missouri