

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

LAURIE SULLIVAN,)
)
 Petitioner,)
)
 v.)
)
 STATE BOARD OF EDUCATION,)
)
 Respondent.)

No. 17AC-CC00595

**ORDER DENYING PETITIONER’S
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Petitioner Laurie Sullivan filed her petition requesting that the Court grant declaratory and injunctive relief against the State Board of Education (“Board”) based on alleged violations of the Missouri Sunshine Law. Petitioner now seeks a temporary restraining order barring the Board from taking any action to recognize a State Board member representing the 7th Congressional District unless a majority of the Board first votes in open session to recognize such a member. For the reasons set forth herein, Petitioner’s application for a temporary restraining order is DENIED.

BACKGROUND

Petitioner is a school teacher in the Springfield Public School District, and resides in Greene County, Missouri. She does not allege to be a member of the Board. Nor does she claim to hold an appointment to the Board.

The Board, in turn, consists of eight members appointed by the Governor for the purpose of supervising and overseeing instruction in the State's public schools. Mo. Const. art. IX, § 2(a). When vacancies on the Board arise and the General Assembly is not in session, the Governor "shall make a temporary appointment." § 161.022.1, RSMo.

On July 31, the Governor appointed Melissa Gelner to a temporary position on the Board as the representative for the Seventh Congressional District. The Governor subsequently removed Gelner from the position and appointed John Sumners to the same position as the representative for the Seventh Congressional District. Like Gelner, the Governor then removed Sumners and appointed Jennifer Edwards as Sumners' successor as the representative for the Seventh Congressional District. The Board received notice from the Governor's office that Mr. Sumner's appointment had been withdrawn, and that Ms. Edwards had been appointed in his place

Notice was given on November 14, 2017, that a closed Board meeting would be held on November 21, 2017, and that the matters to be addressed at the closed session included personnel matters. The notice did not indicate that the Board would take action to determine which of Ms. Gelner, Mr. Edwards, or Ms. Edwards would be permitted to vote as the member occupying the Board seat for the 7th Congressional District.

Petitioner complains that, at the November 21 meeting, the Board inquired of Ms. Edwards whether she had taken the oath necessary to sit as a temporary appointee. Petitioner complains that the Board then conducted business in closed session after excluding Ms. Gelner and Mr. Sumners from the meeting. Petitioner asserts that these actions were taken in violation of the Sunshine Law because they occurred in closed session and because the November 14 notice did not indicate that the Board would take action to determine which of Ms. Gelner, Mr. Sumners, and Ms. Edwards would be allowed to participate.

Petitioner also argues that the decision to exclude Ms. Gelner and Mr. Sumners was not taken by a majority of the Board. Petitioner seeks a temporary restraining order barring the Board from taking any action to recognize a State Board member representing the 7th Congressional District unless a majority of the Board first votes in open session to recognize such a member.

CONCLUSIONS OF LAW

“The court shall not grant a temporary restraining order unless the party seeking relief demonstrates that immediate and irreparable injury, loss, or damage will result in the absence of relief.” Rule 92.02(a)(1). There are four factors to be considered in determining whether to issue a preliminary injunction: “[1] the movant’s probability of success on the merits, [2] the threat

of irreparable harm to the movant absent the injunction, [3] the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and [4] the public interest." *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996). The sole purpose of a restraining order is to preserve the status quo and is only appropriate when it appears the defendant will commit some act during the litigation producing injury to the plaintiff. *Worlledge v. City of Greenwood*, 627 S.W.2d 328, 330 (Mo. Ct. App. W.D. 1982); § 526.050, RSMo.

This order addresses the request for a temporary restraining order. Claims for declaratory, preliminary and permanent injunctive relief are not resolved in this order.

The Court finds that injunctive relief sought by Petitioner is not justified by the alleged violation of the Sunshine Law. Even if the recognition of Ms. Edwards, in the manner alleged on November 21, violated the Sunshine Law, further recognition of her as the 7th Congressional District board member, in and of itself, violate the Sunshine Law.

What Petitioner is really asking is that the Court to enjoin the Board to "recognize" the proper appointee to the Board seat for the 7th Congressional District by a majority vote. Section 161.082.2, RSMo, provides: "At all meetings of the board five members are necessary to constitute a quorum for

the transaction of business, but no official actions may be taken unless a majority of the whole board votes therefor.”

Petitioner lacks standing to enforce the voting requirements of section 161.082. To have standing, a petitioner must have a personal stake in the outcome of the litigation. *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. 2013). Specifically, she must be directly and adversely affected by the alleged bad acts or omissions of the respondent. *St. Louis County v. State of Missouri*, 424 S.W.3d 450, 453 (Mo. 2014). There is nothing in Chapter 161 that would confer a statutory right on Petitioner to enforce the majority voting requirements of that Chapter.

Nor does Petitioner have a personal stake in enforcing those requirements because she has pointed to no decision by the Board that may or will be taken in which Petitioner has a personal interest that would be adversely affected. At most, she has a mere “generalized grievance” that she potentially shares with other members of the public as a whole, which cannot support standing as a matter of law. *See Hinton v. City of St. Joseph*, 889 S.W.2d 854, 859 (Mo. App. WD 1994) (holding that a plaintiff lacks standing “unless the claimant has a substantial special injury”); *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2662 (2013) (“[A] ‘generalized grievance,’ no matter how sincere, is insufficient to confer standing.”).

Petitioner can point to no future risk of immediate or irreparable harm that would warrant the “follow-the-law” injunction she seeks. She has pointed to no evidence showing that the Board is at risk of taking action at its next scheduled Board meeting in violation of section 161.082’s voting requirement. Nor should this Court reach to enjoin a public body to follow the law, especially when there is no evidence that a future violation of the law is certain to occur. *See State ex rel. George v. Mitchell*, 230 S.W.2d 116, 122 (Mo. App. 1950).

CONCLUSION

For the reasons stated, Petitioner’s request for a temporary restraining order is hereby DENIED.

The Court reaches no other issues raised by the parties and nothing in this order should not be construed or interpreted as validating the propriety of the actions of the State Board of Education or reaching the merits of Plaintiff’s other claims, pending a final judgment in this cause.

Cause is placed on the December 15, 2017 law day at 9:00 am for scheduling of further proceedings.

SO ORDERED this 30th day of November, 2017.

A handwritten signature in black ink, appearing to read "Jon E. Beetem". The signature is written in a cursive, flowing style.

Jon E. Beetem – Circuit Judge