

IN THE MISSISSIPPI ETHICS COMMISSION

**THE MISSISSIPPI FREE PRESS AND
NICK JUDIN**

COMPLAINANTS

v.

CAUSE NO. M-22-004

**SPEAKER PHILIP GUNN AND
THE HOUSE REPUBLICAN CAUCUS
OF THE MISSISSIPPI HOUSE OF
REPRESENTATIVES**

RESPONDENTS

**SUPPLEMENTAL COMPLAINT REGARDING
VIOLATION OF THE OPEN MEETINGS ACT**

On March 14, 2022, the House Republican Caucus, and specifically House Speaker Philip Gunn, refused to allow Mississippi Free Press reporter Nick Judin to attend the Caucus's meeting, claiming that the meeting is not subject to the Open Meetings Act and the press and public are prohibited from attending. However, the Caucus's membership is composed of a majority of the members of the Mississippi House of Representatives, which is a public body, and these meetings contain a quorum of the House. The meetings include discussions and deliberations regarding legislation coming before the Mississippi House of Representatives. Despite the statutory language and case law demonstrating that these Caucus meetings are covered by the Open Meetings Act, the House Republican Caucus for several years has kept them closed. This is in marked contrast to the Republican Caucus of the Mississippi Senate, which does not conduct its meetings in secret because of its concern that doing so would violate the Act.

Mr. Judin previously filed a complaint with the Commission, which is charged by law with enforcing the Open Meetings Act. This supplemental complaint is submitted in order to inform the Commission that the news outlet for whom Mr. Judin reports, the Mississippi Free Press, is joining him in this complaint and also to discuss the Open Meetings Act and the relevant case law.

FACTUAL BACKGROUND

Mr. Judin’s account of his exclusion of the meeting, and related background, is set forth in the story he wrote for the Mississippi Free Press. As he states in the article, “[i]t is open knowledge at the Mississippi Capitol that the Republican caucuses are the source of marching orders for the House agenda in the late days of a contentious session—but outside public view with no press, or other interested observers, allowed to watch or listen.”¹ This is consistent with other published reports about the House Caucus meetings going back as far as 2017, one of which notes that “[d]ebate inside closed caucus meetings helps maintain [a] united front” when legislation is later discussed publicly.² Another report notes: “The weekly closed-door Republican caucus meetings are usually the first place rank-and-file House Republicans are informed of details about major

¹ Nick Judin, Mississippi Free Press, “House Republicans Deny Mississippi Free Press Access to GOP Caucus Meeting” (Mar. 21, 2022), available at <https://www.mississippifreepress.org/22139/house-republicans-deny-mississippi-free-press-access-to-gop-caucus-meeting/> (last accessed Apr. 12, 2022).

² Jeff Amy, Associated Press, “Analysis: House GOP Maintains Unity Through Caucus Meetings” (Jan. 2, 2017), available at <https://cdispatch.com/news/2017-01-02/analysis-house-gop-maintains-unity-through-caucus-meetings> (last viewed Apr. 12, 2022).

policies that Gunn and a handful of other House leaders determine privately. In the caucus meetings, Gunn asks the group of Republicans for support.”³

THE OPEN MEETINGS ACT AND THE CASE LAW

The Open Meetings Act provides that “[a]ll official meetings of any public body, unless otherwise provided . . . , are declared to be public meetings and shall be open to the public at all times unless declared an executive session.”⁴ The Act defines “public body” to include “any . . . policymaking entity, or committee thereof, of the State of Mississippi.”⁵ The Act defines “meeting” to mean “an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power.”⁶ More broadly, the Act requires “that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and *the deliberations and decisions that go into the making of public policy.*”⁷ The Act further provides that “the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.”⁸ When a quorum of the members of a public body are gathered and public business is conducted, the meeting is covered by the Act.⁹

³ Adam Ganuchea, Mississippi Today, “Speaker Philip Gunn Uses Secret Capitol Meetings to Pass His Bills and Restrict Public Debate. Is It Legal?” (Mar. 21, 2022), available at <https://mississippitoday.org/2022/03/21/philip-gunn-closed-door-caucus-meeting/> (last viewed Apr. 12, 2022).

⁴ Miss. Code Ann. § 25-41-5(1).

⁵ Miss. Code Ann. § 25-41-3(a).

⁶ Miss. Code Ann. § 25-41-3(b).

⁷ Miss. Code Ann. § 25-41-1 (emphasis added).

⁸ *Id.*

⁹ *ACLU of Mississippi v. Standing Joint Leg. Comm. On Reapportionment, et al.*, Order of Dismissal, Open Meetings Case No. M-21-014 (Feb. 4, 2022).

The language of the Act covers the House Republican Caucus meetings, which contain a majority of the House and therefore a quorum.¹⁰ Even though the passage of legislation occurs on the House floor and not at the Caucus meetings, the Mississippi Supreme Court has made it clear that such gatherings meet the “official acts” definition of a “meeting” under Miss. Code 25-41-3(b). “[O]fficial acts’ includes action relating to formation and determination of public policy.”¹¹ The Court has further explained that “[t]he philosophy of the Open Meetings Act is that all deliberations, decisions, and business of all governmental boards and commissions, unless specifically excluded by the Act, shall be open to the public.”¹² It thus has interpreted the Act to provide that “[a]ll the deliberative stages of the decision-making process *that lead to* formation and determination of public policy are required to be open to the public.”¹³ In other words, “[i]f deliberations that ‘go into making’ or ‘lead to’ public policy occur at a gathering of [a quorum of a public body’s] members, the Act unequivocally states that those gatherings are ‘public business and shall be conducted at open meetings.’”¹⁴ As this Commission has stated, a violation of the Act has occurred when a quorum of a public body “discussed a matter under its authority outside of a properly noticed public meeting.”¹⁵

¹⁰ “A majority of each House shall constitute a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each shall provide.” Miss. Const. art. IV, § 54.

¹¹ *Gannett River States Publ'g Corp. v. City of Jackson*, 866 So. 2d 462, 466 (Miss. 2004).

¹² *Mayor of City of Columbus v. Commercial Dispatch*, 234 So. 3d 1236, 1239 (Miss. 2017) (quoting *Hinds Cty. Bd. of Supervisors v. Common Cause of Mississippi*, 551 So. 2d 107, 110 (Miss. 1989)).

¹³ *Gannett River States*, 866 So. 2d at 469.

¹⁴ *City of Columbus*, 234 So. 3d at 240 (quoting Miss. Code Ann. § 25-41-1)).

¹⁵ *ACLU of Mississippi v. Standing Joint Leg. Comm. On Reapportionment, et al.*, Order of Dismissal, Open Meetings Case No. M-21-014 (Feb. 4, 2022).

Accordingly, the Mississippi Supreme Court held that a gathering of six of the seven Jackson City Council members was a “meeting” under the Act and “should have been conducted as such, following the requirements of the Open Meetings Act for allowing the public access” even though it was held outside of City Hall and no votes were taken.¹⁶ Similarly, the Court held that when the six members of the Columbus City Council broke up into two separate subquorum groups, each of three members, to meet with the Mayor, these also were meetings subject to the Act because “[t]he gatherings were for the express goal of discussing city business” even though no votes were taken.¹⁷ And the Court held that a meeting between members of the Board of Trustees for the State Institutions for Higher Learning with student body presidents was subject to the Act because “items of business were discussed” that pertained to “the formation of public policy.”¹⁸

Courts in other states have reached similar conclusions. The Wisconsin Supreme Court has held that meetings must be open under that state’s open meetings act if the conveners have “a purpose to engage in governmental business, be it discussion, decision or information gathering,” and if “the number of members present [is] sufficient to determine the parent body’s course of action regarding the proposal discussed.”¹⁹ The Illinois Supreme Court held that open meetings requirements applied to an informal

¹⁶*Gannett River States*, 866 So. 2d at 469-470.

¹⁷ *City of Columbus*, 234 So. 3d at 1241. Moreover, the Court and the Commission have made it clear that a public body cannot evade the Open Meetings Act by breaking up into two or more coordinated subquorum groups. *Id* at 1240; *ACLU of Mississippi v. Standing Joint Leg. Comm. On Reapportionment, et al.*, Order of Dismissal, Open Meetings Case No. M-21-014 (Feb. 4, 2022).

¹⁸ *Board of Trustees v. Mississippi Publishers’ Corp.*, 478 So. 2d 269, 278 (Miss. 1985).

¹⁹ *State ex rel. Newspapers, Inc. v. Showers*, 398 N.W. 2d 154, 165 (Wis. 1987).

meeting attended by a quorum of councilmembers where “public business was deliberated and it appears that a consensus on at least one issue was reached outside of public view.”²⁰ And in a Colorado case, the Colorado Supreme Court held that legislative party caucuses are covered by that state’s open meetings act, noting that “[w]hile a legislative caucus is not an official policy-making body of the General Assembly, it is, nonetheless, a ‘de facto’ policy-making body which formulates legislative policy that is of governing importance to the citizens of this state.”²¹

All of this clearly demonstrates that under the law, the House Republican Caucus was required to open its meetings to the public. But Speaker Gunn and the Caucus have continued to meet in secret for years without any regard for the Open Meetings Act or the rights of the public.

REQUEST FOR RELIEF

Because of this blatant violation of the law, the Commission should issue an order requiring Speaker Gunn and the House Republican Caucus to comply with the Open Meetings Act and open its meetings to the press and the public.

²⁰ *People ex rel. Difanis v. Barr*, 414 N.E. 2d 731, 734 (Ill. 1980).

²¹ *Cole v. State*, 673 P.2d 345, 348-49 (Colo. 1983).

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have emailed a copy of the foregoing to Ronny Frith and Gwennetta Tatum, counsel for the Respondents, on this 12th day of April, 2022.

s/ Robert B. McDuff
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