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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

ROBERT E. KING,

Petitioner,

v.

Case No. 21-P-198  
*Jalbit*

THE WEST VIRGINIA HOUSE OF DELEGATES, and  
THE WEST VIRGINIA HOUSE GOVERNMENT  
ORGANIZATION COMMITTEE,

Respondents,

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action seeking relief for the failure of the West Virginia House of Delegates to comply with the requirements of the West Virginia Open Governmental Proceedings Act (“the Open Meetings Act”), W. Va. Code § 6-9A-1, *et. seq.* Petitioner Robert E. King seeks declaratory and injunctive relief pursuant to West Virginia Code Section 6-9A-6.

**THE PARTIES**

1. Petitioner Robert E. King is a West Virginia resident and the sole proprietor of R & R Transit, a Morgantown-based limited liability company that provides luxury limousine transportation services.

2. Respondent West Virginia House of Delegates is one of two houses in the West Virginia legislature and is a “governing body” subject to the Open Meetings Act within the definition of West Virginia Code Section 6-9A-2(4). The West Virginia House of Delegates regularly

convenes in the State Capitol Complex in Charleston, the county seat of Kanawha County, West Virginia.

3. Respondent West Virginia House Government Organization Committee (“Government Organization Committee”) is a standing committee within the West Virginia House of Delegates. The Government Organization Committee is a “governing body” subject to the Open Meetings Act within the definition of West Virginia Code Section 6-9A-2(4). The Government Organization Committee regularly convenes in the State Capitol Complex in Charleston, the county seat of Kanawha County, West Virginia.

#### JURISDICTION AND VENUE

4. This is an action brought pursuant to the West Virginia Open Governmental Proceedings Act, which provides in relevant part, “the court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article.” W. Va. Code § 6-9A-6.

5. Kanawha County Circuit Court is the appropriate venue because “the circuit court in the county where the public agency regularly meets has jurisdiction and is a proper venue to enforce this article upon civil action.” W. Va. Code § 6-9A-6.

#### FACTS

##### *The West Virginia 2021 Legislative Session*

6. The West Virginia House of Delegates and the West Virginia Senate convened for the legislature’s regular session on February 10, 2021.

7. During the legislative session, the House of Delegates and the Senate convene to consider proposed legislation, or bills.

8. Bills are typically “introduced” on the floor of the chamber in which the bill originates.

9. The presiding officer of the chamber then refers the bill to one or more committees for consideration.

10. During committee meetings, committee members deliberate on the bills assigned to the committee and decide, by majority vote, whether to recommend passage of the bill to the full membership of the chamber to which the committee belongs.

11. Bills may be amended in committee meetings.

12. Although the public is typically able to attend floor debates and committee meetings in person in the chamber galleries or committee rooms, as a result of the COVID-19 pandemic and pursuant to a March 2020 Executive Order by Governor Jim Justice, public access to the Capitol was severely restricted during the 2021 legislative session.

13. A press release issued by the Office of West Virginia House of Delegates Speaker Roger Hanshaw on February 8, 2021, stated, “Gov. Jim Justice’s March 2020 Executive Order prohibiting visitors to the Capitol unless they have appointments remains in place . . .”. *See* Member’s Press Release, attached as Exhibit A.

14. The press release provided for limited access for the media on a “first come, first served” basis, including six seats in House committee meetings. *Id.*

15. The press release further provided that “[a]ll floor sessions will be live-streamed with audio and video,” and that “[a]ll Committee meetings will be audio streamed.” *Id.*

16. The legislature’s website provides links to video and audio streaming of floor sessions and committee meetings via the legislature’s website.<sup>1</sup>

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<sup>1</sup>*West Virginia Legislature Live*, House of Delegates Chamber, <http://www.wvlegislature.gov/live.cfm> (last visited June 9, 2021).

House Bill 2890 and the House Government Organization Committee Meeting

17. As a West Virginia resident and business owner, Mr. King has a general interest in how bills before the legislature would impact the state or his business.
18. In or around the beginning of March 2021, Mr. King was made aware of a bill that would potentially affect his business, R & R Transit.
19. The bill, HB 2890, relating to “clarifying the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services,” if passed and signed into law, would result in the exemption of limousine companies from the regulatory authority of the West Virginia Public Service Commission.
20. The bill was assigned to the House Government Organization Committee, and placed on the agenda for the March 23, 2021, committee meeting. *See* Agenda, attached as Exhibit B.
21. Because of the COVID-19 pandemic and the fact that protocol provided for severely restricted, appointment-only public access to the Capitol, Mr. King believed that the only meaningful access to committee deliberations would be via audio streaming.
22. Mr. King relied on the House of Delegates’ assertion that all committee meetings would be available to the public via audio streaming.
23. On March 23, 2021, Mr. King sought to observe the House Government Committee meeting via the only avenue for attendance made available to the general public—via audio streaming.
24. If it were not for the COVID-19 pandemic and if the Capitol had been opened to the general public, Mr. King would have planned to attend the meeting in person.
25. Just prior to the start of the 2 p.m. committee meeting, Mr. King clicked the link via the legislature’s website to listen in to the meeting.

26. Another local business owner, John Coombs, attempted to listen to the meeting as well. *See* Coombs Declaration, attached as Exhibit C.

27. At first, Mr. King was unaware the meeting had begun due to his inability to hear any committee members or other individuals speaking.

28. Approximately five minutes into the meeting, an individual can be heard on an audio recording of the meeting stating, “Are the microphones all broken? ... okay.” *See* Zepeda Declaration, attached as Exhibit D.

29. Although the committee was aware that there was an audio issue and that the general public had no other meaningful access to committee deliberations, the committee continued the meeting.

30. Although small portions of the meeting were audible, this was undercut by the disproportionate amount of the meeting that was either inaudible or muffled.

31. Approximately 30 minutes into the meeting, a committee member stated, “You guys please speak up so that everybody can hear and also to pick up the audio.” *Id.*

32. Again, although the committee was aware that the audio was not functioning appropriately, the committee continued the meeting. *Id.*

33. Approximately forty-five minutes into the meeting, House Bill 2890 was introduced for consideration. While the initial explanation of the bill could be heard and some questions of counsel could be heard, the audio dissolved into static. *Id.*

34. Because discussion of the bill was mostly inaudible, Mr. King and was able to hear very little of the discussion of HB 2890, and, of the limited parts that he could hear, he was unable to distinguish who was speaking at any point in time.

35. The committee recommended to the full House passage of the bill.

36. On April 2, 2021, the Speaker of the House of Delegates and the Clerk of the House of Delegates were formally put on notice that the audio stream from the March 23, 2021 committee meeting was not functional and that the general public could not hear deliberations of committee members during that meeting. *See* 30-Day Notice, attached as Exhibit E.

37. Although the House had been notified that Open Meetings Act violations occurred during the meeting, four bills—including HB 2890—that were debated in that meeting ultimately passed through both chambers and were signed into law by the Governor.

38. The three other bills signed into law are House Bills 2773, 3002, and 2962.

39. House Bill 2890 is set to take effect on July 6, 2021.

#### LEGAL AUTHORITY AND DISCUSSION

40. In enacting the laws relating to open governmental proceedings, the legislature stated:

[T]he citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

W. Va. Code § 6-9A-1.

41. The Open Meetings Act further provides that the public should be allowed “to educate itself about government decision-making through individuals’ attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.” *Id.*

42. The Open Meetings Act requires that, “[e]xcept as expressly and specifically otherwise provided by law, whether or heretofore or hereinafter enacted... [or if an exception by statute applies] all meetings for any governing body shall be open to the public.” *Id.*

43. Because in-person access to committee meetings was restricted due to the COVID-19 pandemic, the only access available to the general public was via audio streaming.

44. Because Mr. King was unable to “participate” in the meeting because of the audio feed was inoperable, he was unable to remain informed or educated himself on the public debate on issues deliberated in the March 23, 2021, committee meeting.

45. The Open Meetings Act provides that “[t]he court is empowered to compel compliance or enjoin noncompliance with the provisions of this article to annul a decision made in violation of this article.” W. Va. Code § 6-9A-6.

46. The Petitioner brings this instant case against the West Virginia House of Delegates and the West Virginia House Government Organization Committee for declaratory and injunctive relief under the Open Meetings Act.

#### CONCLUSION

A technology failure, unintentional or otherwise, does not grant the legislature authority to give “public servants the right to decide what is good for [the public] to know or what is not good for them to know.” When in-person access to the Capitol is restricted, it is more important than ever to ensure that the public may remain informed through the limited channels available.

#### PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court:


47. Enter an Order declaring that Respondents violated Section 6-9A-3(a) of the Open Meetings Act by conducting a meeting without open access to the public;

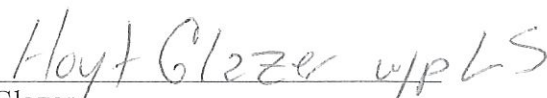
48. Issue injunctive relief enjoining against enforcement of House Bills 2890, 2773, 3002, and 2962;

49. Issue an Order declaring House Bills 2890, 2773, 3002, and 2962 void because the ultimate passage of those bills was predicated on a proceeding under which operated in violation of the Open Meetings Act;
50. That Petitioner be awarded reasonable attorneys fees and costs; and
51. Grant such other relief as this Court deems just and proper.

Respectfully submitted by the Petitioner,

ROBERT E. KING,  
By Counsel,

  
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Loree Stark  
ACLU of West Virginia Foundation  
Bar No.: 12936  
P.O. Box 3952  
Charleston, WV 25339-3952  
(p): 914-393-4614  
(e): lstark@acluwv.org

  
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Hoyt Glazer  
Bar No.: 6479  
Glazer Saad Anderson L.C.  
P.O. Box 1638  
Huntington, WV 25717  
(p): 304-522-4149  
(e): hoyt@gsalaw-wv.com