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Oral Testimony to the House K-12 Budget Committee

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BILL NUMBER: House Bill 2382, School District Board of Education Member Free Speech and Transparency Act

PROPONENT, OPPONENT, or NEUTRAL: OPPONENT

Dear Chair & members of the committee,

I am currently president of the USD 497 Board of Education. I have been elected by my community to serve 12 years on my local board, and have been selected by my fellow board members to serve three terms as board president and three terms as board vice president. I appear before the committee in opposition to House Bill 2382. My opposition is based on my extensive experience as a locally elected school board member and board officer, as well as my background and training in good board governance practices. This bill conflicts with the Kansas Constitution, with multiple provisions of state statute, with the policies and operating procedures adopted by my local board of education pursuant to these laws, and with sound governance principles and practices, about which board members in my own district receive training both as new and returning board members.

USD 497 is fortunate—as are other public school districts across Kansas—to have parents and other members of our community engaged in public service and willing to seek local elected offices. My community has a proud tradition and culture of support for public education, and the parents and community leaders serving on the USD 497 board are evidence of that. We are elected by the very same voters that elect members of this body. We serve long hours, under public scrutiny and oversight, just as you do and as do all other elected officials serving the citizens of Kansas at the local and state levels. This bill targets just one group of locally elected officials—school board members—with harshly different and onerous requirements for conducting the business of the school boards on which they serve, on behalf

of the communities that elected them to serve there. Such harshly different treatment is unwarranted, ill-advised, and contrary to law.

Transparency is core value to be upheld in all government service on behalf of the public. But this bill does not promote transparency; rather, its requirements will stifle open and transparent consideration of school board business by permitting a single board member to take over board meetings and impede and prevent the timely and reasoned consideration of board business by all seven members of the board during public meetings.

Specific issues with this bill include, but are not limited to, the following:

1. New Section 1(c) runs contrary to state law and the scope of authority granted to elected members of local school boards. The new language would permit “*a member of a board of education of a school district shall have authority to add or place new items for discussion on the meeting agenda.*” Currently, any school board member may request to add an item to the agenda of a board meeting, and can make a motion to amend an agenda to add an item once it has been adopted. But no single board member has the sole authority to modify an adopted agenda, nor should they. A proposed change to an agenda adopted by a majority of the board must be seconded and then approved by a vote of at least 4 board members—a majority of the board. This is standard practice for governing bodies, to ensure that the agenda of the body is agreed upon by a majority of its members. To provide otherwise by statute would take away the inherent authority of the body itself, acting as a whole, to conduct its business in an efficient and transparent manner.

The [USD 497 Board of Education Governance and Operating Procedures](#), reviewed and adopted annually by my board for the purpose of clearly describing these procedures for new board members and the public, states as follows: “A board member may make a request in writing to the board president to add an item to an upcoming agenda or may move to amend the agenda at a regular board meeting.” Motions must be seconded and then approved by a majority of the board, i.e., by four members. This ensures that actions taken by the board, and discussions had by the board at board meetings, reflect the will of the majority of the elected body, as is required in accordance with [K.S.A. 72-1138](#). See also [Policy BCBG Voting Method](#).

Moreover, as a matter of fairness and transparency to the public as well as other members of the board of education, last second changes to the board meeting agenda should, as a matter of good governance practices, be avoided except in extraordinary circumstances. To routinely permit such changes at the behest of a single board member, without a board vote, at any time, invites chaos, dysfunction, and a profound lack of transparency, where such does not currently exist.

2. New Section 1(d) also runs contrary to state law and the authority of local boards. The new language indicates that “*no member of a board of education of a school district shall act to restrict, limit or prohibit any other board member from engaging with and questioning any person who presents public comment.*” **Under this language, a single board member would be granted the unlimited ability to engage for an unlimited amount of time with a member of the public during a board meeting and without any ability of the board chair to move the meeting forward or to enforce mutually agreed-upon time limits or other reasonable guidelines for public comment.** Such an outcome would contravene the authority of the body acting as a whole, and would stifle the ability of other members of the public to participate in public comment and of members of the public to reasonably observe the board conduct the business of the district during a meeting held in public.

The president of the board is elected by the majority of fellow board members. **Much like a state legislative committee chair, the president of the school board is responsible for facilitating meetings, following an agenda, providing opportunity for all relevant parties to be heard, and given the authority to call a point of order when rules of engagement are not being followed.**

Further, the bill ignores that all school districts have board policy that governs how a parent or community member should bring forward a concern or complaint to the district (e.g., [Policy KN General Complaints](#), which encourages such complaints to be shared with the staff member closest to the situation so that an issue can be resolved, and provides direction as to how to proceed beyond that step). Most, if not all, Kansas school districts also have policies on Rules of Order ([Policy BCBF](#)), Public Participation ([Policy BCBI](#)), and Public Hearings ([Policy BCAE](#)).

Moreover, it must be noted that members of the public can contact the board of education, in my district, at any time by phone or by email, information for which is clearly provided on my district's [website](#).

3. New Section 1(e) undermines the local control of elected school board members. Even though the USD 497 board has voted to provide community members with the opportunity for public comment at all its regularly scheduled board meetings, my board would not presume to mandate this local preference for all 285 other public school districts and nearly 2,000 locally elected officials across Kansas. The language of this proposed bill needlessly invites this committee to trample on the principle of local control.
4. New Section 1(f) also conflicts with the operations of a school board and exceeds the authority of its elected members. First, the board of education does not hold supervisory authority over district employees, with the sole exception of the superintendent. Nor may a single board member direct the actions of district staff, including the superintendent. As noted previously, that authority of a board resides with the action of the whole by way of majority vote, in a meeting held in public. Further, any secrecy regarding any request such as the bill contemplates runs contrary to the expectations and standards for transparency of elected officials. The rules that guide executive session in the context of the Kansas Open Meetings Act are very specific, in accordance with Kansas Open Meetings Act [K.S.A. 58-4612](#). These rules currently function well and should not be changed in this manner.
5. New Section 1(g) is nonsensical and most likely untenable—how can board members be legally required to discern the intent of the sender of an email in this manner? It is not reasonable or logical to place that burden on school board members, especially given that no such burden is placed by statute on any other elected official in Kansas.
6. New Section 1(h) is also in conflict with state statute and the authority of locally elected boards of education of school districts, as it reflects the collective concerns raised in the above paragraphs.
7. The bill's targeting of changes to open records rules serves no legitimate purpose and will inhibit school board members' ability to do their work on behalf of voters. Note this singularly targeted change that members of the Kansas Legislature do not and will not even hold

themselves to: Section 2, “public records” exclusion clause (B) p.4, lines 11-13, “records that are made, maintained or kept by an individual who is a member of the [Kansas] legislature or of the governing body of any political or taxing subdivision of the state EXCEPT” those made by school board member. This targeting of school board members is unnecessary. Moreover, it is overly intrusive, potentially requiring school board members to provide individual work product in response to open records requests. No other public official in Kansas is required to do so. School board members deserve the same support for doing their work as elected officials as is provided by the Open Meetings and Open Records Acts to every other elected official in Kansas—legislators, county commissioners, city council members, library board members, hospital board members, etc.

8. This bill conflicts with many general principals of law and governance enshrined in the Kansas Constitution and state statute. [Article 6, section 5 of the Kansas Constitution](#) provides as follows: “Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards.” USD 497’s 2023 Legislative Priorities ask the Legislature to support local boards of education by upholding those principles by, e.g., not acting to impede or limit local boards’ constitutional authority over their local public schools (USD 497 “[s]upports continued management of public schools under local boards of education, including setting curriculum, staffing, financial management, and policies so that such schools can progress and meet State Board standards.”). This bill further conflicts with [K.S.A. 72-1138](#), and with board policies flowing from that statute, which are found throughout the USD 497 Board Policy manual and which would commonly be found in the policy manuals of local boards across Kansas.

On behalf of myself and the board of USD 497, I respectfully request members of this committee to reject HB 2382 in its entirety. In closing, I ask you to deeply consider this: would you, as a member of this House committee, be willing to implement all of these rules, or any of these rules, for your own work in the Legislature? For those of you who have served in local elected office, would you be willing to serve in that role under these chaotic, disruptive, overly prescriptive conditions? I am confident that the honest answer is no. Please reject this bill.