

**Summary of SC96683, *R.M.A. (a Minor Child), by his next friend: Rachele Appleberry v. Blue Springs R-IV School District and Blue Springs School District Board of Education***

Appeal from the Jackson County circuit court, Judge Marco Roldan  
Argued and submitted April 25, 2018; opinion issued February 26, 2019

**Attorneys:** R.M.A. was represented by Alexander Edelman and Katherine Myers of Edelman, Lisen & Myers LLP in Kansas City, (816) 607-1529; and Madeline Johnson of the Law Offices of Madeline Johnson in Platte City, (816) 607-1836. The school district and its board were represented by Mark D. Katz, Steven F. Coronado and Merry M. Tucker of Coronado Katz LLC in Kansas City, (816) 410-6600.

A number of organizations filed briefs as friends of the Court. The Alliance Defending Freedom was represented by Jonathan Whitehead of the Law Office of Jonathan R. Whitehead LLC in Lee's Summit, (816) 398-8305; and Jeana Hallock and Gary S. McCaleb in Scottsdale, Arizona, (480) 444-0020. The American Civil Liberties Union, ACLU of Missouri and Transgender Law Center were represented by Anthony E. Rothert of the ACLU Foundation of Missouri in St. Louis, (314) 652-3114, and Gabriel Arkles of the ACLU Foundation in New York, New York, (212) 549-2569. A group of organizations including the American Medical Association was represented by LaRue L. Robinson of Jenner & Block LLP in Chicago, Illinois, (312) 222-9350. Lambda Legal and GLAD were represented by Natalie T. Lorenz of Mathis, Marifian & Richter Ltd. In St. Louis, (314) 421-2325, and Mitchell P. Reich, Eugene A. Sokoloff and David S. Victorson of Hogan Lovells US LLP in Washington, D.C., (202) 637-5600. The Kansas City and St. Louis chapters of the National Employment Lawyers Association were represented by Sarah A. Brown of Brown & Curry LLC in Kansas City, (816) 756-5458. The National Women's Law Center was represented by Donna L. Harper of Sedey Harper Westhoff PC in St. Louis, (314) 733-3566. A group of organizations including PFLAG Inc. was represented by Kristin J. Dunnett of Marta J. Papa PC in St. Louis, (314) 862-0202. PROMO was represented by Denise D. Lieberman in St. Louis, (314) 780-1833. The state was represented by First Assistant and Solicitor D. John Sauer of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A student appeals the circuit court's judgment dismissing his petition alleging his school district and its board of education discriminated against him in a public accommodation on the grounds of his sex. In a decision written by Judge Paul C. Wilson and joined by four judges, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case for further proceedings. The student's petition alleges facts that – if taken as true, as the standard of review requires – establish the elements of a claim under the state's human rights act, and the district and its board are "persons" subject to liability under the act.

In an opinion joined by one judge, Chief Justice Zel M. Fischer dissents. He would affirm the circuit court's judgment. Taking all of the student's allegations in his petition as true, he failed to

state a claim of unlawful sex discrimination under the plain language of the human rights act. The author expresses no opinion of whether the district is a “person” subject to suit under the act.

**Facts:** A student sued the Blue Springs R-IV school district and its board of education (collectively, the district) alleging his sex is male and, by denying him access to the boys’ restrooms and locker rooms, the district discriminated against him in the use of a public accommodation “on the grounds of his sex” in violation of section 213.065.2, RSMo. The circuit court entered its judgment sustaining the district’s motion to dismiss. The student appeals.

**VACATED AND REMANDED.**

**Court en banc holds:** The circuit court should have overruled the district’s motion to dismiss.

(1) The student’s pleadings are sufficient to state a claim under the statute, which is all that is required of him at this stage of the proceedings. In reviewing the circuit court’s grant of the motion to dismiss, this Court must review the petition to determine if the facts alleged meet the elements of a recognized cause of action, accepting all properly pleaded facts as true and giving the pleadings their broadest intendment. The student asserts a claim under section 213.065.2. To prevail under the version of the statute in effect when the student filed his lawsuit, the student would have to show the district discriminated against in the use of a public accommodation, as defined by section 213.010, RSMo; he is a member of a class protected by section 213.065; his status as a member of a protected class was a contributing factor in that discrimination; and he suffered damage as a direct result. The student’s petition alleges facts sufficient to satisfy all four elements. First, his petition alleges the district denied him access to the boys’ restrooms and locker rooms, which constitute public accommodations as defined in section 213.010(15)(e). Second, his petition specifically alleges his sex is male. Under the academic manner with which the applicable standard of review requires this Court to view the petition in reviewing a motion to dismiss, it is sufficient the student alleges he is a member of the male protected class. Third, the student alleges he was discriminated in his use of a public accommodation and received different and inferior access to public facilities because of his sex. He is not alleging such discrimination under the state’s human rights act based on his transgender status but rather based on his sex. Fourth, the student alleges he has suffered damages as a direct result of the district’s allegedly unlawful conduct.

(2) The district and its school board are “persons” subject to liability as defined by section 213.010(14) and used in section 213.065. This statutory definition provides a person “includes” one or more individual or entities listed. The statute does not limit the definition to such individuals or listed entities. The state and its political subdivisions – including the school district and its board – need not be listed explicitly to be encompassed in a statute if the intent to include them is clear. The state’s human rights act plainly prohibits discrimination by the state or its subdivisions on the basis of sex and also prohibits discrimination in access to public accommodations, which includes “[a]ny public facility owned ... by or on behalf of this state or any agency or subdivision thereof.”

**Dissenting opinion by Chief Justice Fischer:** The author would hold the student’s petition failed to state a claim of unlawful sex discrimination under the act and, therefore, would affirm

the circuit court's judgment dismissing his petition. Taking *all* the student's allegations in his petition as true, the student alleges the district discriminated against him by barring him – a biological female who transitioned to living as a male and self-identifies as a male – from using the boys' restrooms and locker room because he is transgender and is alleged to have female genitalia. But the plain language of the state's human rights act prohibits discrimination on the grounds of biological sex; it does not include claims based on transgender status. The legislature expressly distinguishes "sex" from "sexual orientation" in other statutes but repeatedly has declined to adopt bills seeking to amend the human rights act to prohibit discrimination based on sexual orientation or transgender status. To survive a motion to dismiss, the petition must allege the student, as a biological female, was deprived of any public accommodation available to biological males. The student makes no such allegation. The author expresses no opinion of whether the district is a "person" subject to suit under the act.