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"Uphill . . . Both Ways!" The Issues with Missouri's Compulsory Attendance Legislation

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NOTE

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State v. Williams, 673 S.W.3d 467 (Mo. 2023) (en banc).

Amaris Garber [*]

I. INTRODUCTION

"When I was a kid, I walked to school uphill . . . both ways!" Hidden in this adage is a kernel of truth regarding America's relationship with education: for many Americans, school attendance is often difficult for more reasons than just the early morning struggle of getting out of bed. Prior to 2020, 15% of students missed at least 10% of the school year.[1] In the wake of the COVID-19 pandemic, absenteeism increased at worrisome rates;[2] in the 2021-2022 school year, more than 25% of students missed at least 10% of the school year.[3] In Missouri specifically, chronic absenteeism increased by 11% between the 2018-2019 and the 2021-2022 school year.[4] As a national conversation centers around how the United

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[1] Bianca Vazquez Toness, *Millions of Kids are Missing Weeks of School as Attendance Tanks Across the US*, ASSOCIATED PRESS (Aug. 11, 2023), https://projects.apnews.com/features/2023/missing-students-chronic-absenteeism/index.html [https://perma.cc/M5X6-EFVW].

[2] *See Chronic Absenteeism in the Nation's Schools: A Hidden Educational Crisis*, U.S. DEPT. OF ED., https://www2.ed.gov/datastory/chronicabsenteeism.html [https://perma.cc/X2B7-6YCF] (last visited Feb. 13, 2024) [hereinafter *Chronic Absenteeism*].

[3] Toness, *supra* note 1.

[4] *Id.*

States can address this absenteeism problem, the judiciary has not been silent. In the summer of 2023, the Missouri Supreme Court contributed to the dialogue by re-examining Missouri's truancy legislation in *State of Missouri v. Caitlyn C. Williams*, *State of Missouri v. Tamarae L. LaRue* ("*Williams*").[5]

Missouri's compulsory attendance legislation arises from a complicated national history. Legislation requiring school attendance exacerbated tensions between the state's interest to safeguard students' needs against perceived parental neglect and the legal interest against government interference into private life.[6] *Williams* illustrates this strain.[7] While the ultimate issue in *Williams* involved a question of legislative vagueness, the case implicated broader themes of compulsory attendance legislation such as prosecutorial discretion, concerns over discriminatory application, and the tension between parental rights and state interests in children's education.[8] Ultimately, though, the holding in *Williams* lacked meaningful clarification of these issues and, instead, created new problems for Missouri parents.

This Note explores the Missouri Supreme Court's holding in *Williams* against the backdrop of national school attendance trends, with a specific focus on its effect on Missouri parents. Part II presents the facts and holding of *Williams*, detailing how two Missouri parents challenged the state's compulsory attendance legislation, arguing unconstitutionality under the void-for-vagueness doctrine. Part III explores the history of national compulsory attendance laws and current trends. Part IV explains the court's holding that the state's law is not vague and both parents were guilty of violating the law. Finally, Part V weighs the *Williams* holding against the potential legal ramifications for its interpretation of the void-for-vagueness doctrine, as well as its future implications for Missouri families. Part V ultimately suggests that the Missouri Supreme Court should have applied the absurd result doctrine and quantified attendance requirements to safeguard parents and children from further confusion.

II. FACTS AND HOLDING

Williams came before the Missouri Supreme Court as a consolidated appeal involving two Missouri parents, Caitlyn Williams and Tamarae

[5] State v. Williams, 673 S.W.3d 467 (Mo. 2023) (en banc).

[6] *See generally* Emily Rauscher, *Hidden Gains: Effects of Early U.S. Compulsory Schooling Laws on Attendance and Attainment by Social Background*, 36 EDUC. EVALUATION AND POL'Y ANALYSIS 501 (2014); David B. Tyack, *Ways of Seeing: An Essay on the History of Compulsory Schooling*, 46 HARV. ED. REV. 355 (1976).

[7] *Williams*, 673 S.W.3d 467.

[8] *Id.* at 470.

LaRue ("Defendants"), who were each charged with violating Missouri's compulsory attendance law.[9] After conviction in the circuit court, Williams and LaRue challenged the constitutionality of the statute on appeal.[10]

A. Caitlyn Williams

Caitlyn Williams is the sole custodian of her minor daughter, E.P.[11] During the 2021-2022 school year, E.P. was enrolled as a first grader at Esther Elementary in the Lebanon School District, located in central Missouri.[12] Esther Elementary's attendance policy indicates that when a student's attendance falls below the 90% mark, the school district examines the student's performance in order to determine how to proceed; after six absences, the student's parents are contacted.[13] The parental student handbook provides:

> The state mandates that students maintain 90% or higher attendance each year in school and that continued and valuable learning cannot take place without regular attendance . . . Therefore, in accordance with the laws of the state of Missouri, the Lebanon R-III School District requires regular attendance of all school age children each day school is in session.[14]

Procedurally, when a student is absent for six days or the student's attendance is below 90%, the school will notify the parents.[15] At fifteen absences, the school—through either the assistant principal or district

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[9] *Id.*

[10] *Id.* Section 167.031.1 reads in relevant part:

> A parent, guardian or other person in this state having charge, control, or custody of a child between the ages of seven years of age and the compulsory attendance age for the district shall cause the child to attend regularly some public, private, parochial, parish, home school or a combination of such schools not less than the entire school term of the school which the child attends.

MO. REV. STAT. § 167.031.1 (2009).

[11] *Williams*, 673 S.W.3d at 470.

[12] *Id.*

[13] Appellant's Brief (Williams) at *6, State v. Williams, 673 S.W.3d 467 (Mo. 2023) (en banc).

[14] *Williams*, 673 S.W.3d at 470.

[15] Respondent's Brief (LaRue) at *6, State v. Williams, 673 S.W.3d 467 (Mo. 2023) (en banc).

attendance advisor—will contact the prosecutor, who will once again notify the parents.[16]

In accordance with these stated policies, the school sent Williams a letter in early November 2021 stating that E.P.'s attendance percentage was at 85.33% after six absences.[17] In December 2021, following another three absences, Esther Elementary sent a second letter reporting that E.P.'s attendance percentage had dropped to 84.11%.[18] A final letter was sent after E.P. had a total of fifteen absences.[19] In total, E.P.'s attendance for the year was 87.27%.[20]

After Esther Elementary submitted a probable cause statement to the prosecutor's office, the State charged Williams with violating Missouri's compulsory attendance law in that she "knowingly failed to cause a child under her custody or control to attend a required academic program on a regular basis."[21] She subsequently filed a motion to quash and dismiss the claim on grounds that the statute was unconstitutionally vague with respect to the phrase "regularly attend."[22] The Twenty-Sixth Judicial Circuit overruled the motion.[23] The court ultimately found Williams guilty and sentenced her to serve seven days in the Laclede County jail.[24]

B. Tamarae LaRue

Tamarae LaRue is the sole custodian of her minor son, A.L.[25] During the 2021-2022 school year, A.L. was a kindergartener at Esther Elementary where Williams's daughter, E.P., was also enrolled.[26] Per Esther Elementary's attendance policy as discussed above,[27] the school initiated conversations with LaRue in late September about A.L.'s attendance; in November, the school sent a letter to LaRue.[28] In total, A.L. was absent a total of fifteen days by January 2022.[29] LaRue was charged

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[16] *Id.* at *7.

[17] Appellant's Brief (Williams), *supra* note 13, at *7.

[18] *Id.*

[19] *Id.* at *7–8.

[20] *Id.* at *8.

[21] State v. Williams, 673 S.W.3d 467, 470 (Mo. 2023) (en banc).

[22] Appellant's Brief (Williams), *supra* note 13, at *6.

[23] *Williams*, 673 S.W.3d at 470.

[24] *Id.* at 471. The circuit court suspended LaRue's sentence and placed her on probation for a term of two years. *Id.* at 472.

[25] Respondent's Brief (LaRue), *supra* note 15, at 7.

[26] *Id.*

[27] *Williams*, 673 S.W.3d at 471–72.

[28] Respondent's Brief (LaRue), *supra* note 15, at 7.

[29] Appellant's Brief (LaRue) at *7, State v. Williams, 673 S.W.3d 467 (Mo. 2023) (en banc).

and convicted of violating Missouri's compulsory attendance law.[30] The Twenty-Sixth Judicial Circuit found LaRue guilty and sentenced her to fifteen days in the Laclede County jail, but suspended the execution of the sentence and placed her on probation instead.[31]

C. The Holding

Williams and LaRue appealed their convictions to the Missouri Supreme Court on three grounds: (1) "[T]he State failed to prove beyond a reasonable doubt that their conduct was a purposeful or knowing violation of the statute;"[32] (2) "[T]he State did not prove beyond a reasonable doubt that the children's attendance was not sufficiently 'regular' to constitute a violation of the statute;"[33] and (3) "[S]ection 167.031.1 is unconstitutionally vague because the statute fails to give a person of ordinary intelligence fair notice that her contemplated conduct is forbidden and allows for arbitrary and discriminatory application."[34] The court dedicated the bulk of its analysis to the constitutional vagueness argument.[35] In its rejection of Defendants' vagueness argument, the court applied the plain language principle and held that, for public schools, regular attendance means attending school "on those days the school is in session."[36]

III. LEGAL BACKGROUND

The history of compulsory attendance legislation in the United States implicates broader cultural dialogues surrounding both the State's interest in education and the success of its legislative aims. Part A examines the origins and evolution of compulsory attendance legislation in the United States. Part B investigates if these laws work to improve school attendance, laying the legal groundwork for the Missouri Supreme Court's decision in *Williams*.

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[30] *Id.* at *4.

[31] *Id.* at *7.

[32] *Williams*, 673 S.W.3d at 472.

[33] *Id.*

[34] *Id.*

[35] Pages 473–76 were dedicated to point three in comparison to 476–77 dedicated to the issues of sufficient evidence. *Id.* at 473–77.

[36] *Id.* at 474.

A. Origins and Evolution

The nation's first compulsory attendance law was passed in Massachusetts in 1852.[37] The statute, titled "An Act Concerning the Attendance of Children at School," read in relevant part:

> Every person who shall have any child under his control between the ages of eight and fourteen years shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control, six weeks of which shall be consecutive.[38]

Over the next seventy years, all fifty states would establish their own legislation criminalizing absenteeism, also called "truancy."[39] Notable education scholar, David Tyack, characterized the inception and rise of compulsory attendance legislation in the late 19th century as "part of an elaborate and massive transformation in the legal and social rules governing children."[40] Compulsory attendance laws across the United States share many features, including specification of minimum and maximum ages for when children must attend school as well and as certain consecutive periods of attendance.[41] The statutes also provide various exceptions for attendance, including "achievement of a certain level of education (for example, the completion of eighth grade), mental or

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[37] Deborah Gleich-Bope, *Truancy Laws: How are They Affecting our Legal Systems, our Schools, and the Students Involved?*, 87 THE CLEARING HOUSE 110, 110–11 (2014).

[38] Nicky Hardenbergh, *Massachusetts Compulsory Attendance Statutes from 1852–1913*, MASS. HOME LEARNING ASS'N (2003), https://drive.google.com/file/d/1hezjeVI9QjPgKbpLNhL9UNo45q5bqki2/view [https://perma.cc/J9BW-VM9V]. Additionally, the statute placed the burden of investigation and enforcement on the treasurer of each town and set the fine for violation at twenty dollars. *Id.*

[39] Howard M. Johnson, *Are Compulsory Laws Outdated?*, 55 PHI DELTA KAPPAN 226, 226 (1973).

[40] Tyack, *supra* note 6, at 363. The laws emerged in the same legislative sweep that saw child labor laws passed. Adriana Lleras-Muney, *Were Compulsory Attendance and Child Labor Laws Effective? An Analysis from 1915 to 1939*, 45 J. OF L. & ECON. 401, 403 (2002). Notably, although developed concurrently, compulsory attendance laws and child labor restrictions did not coordinate their age restrictions; often, age requirements for schooling conflicted with minimum age for workers. *Id.* at 404.

[41] Lleras-Muney, *supra* note 40, at 403.

physical disability, distance from school, poverty, and lack of schools."[42] For example, the first compulsory attendance law, the Massachusetts statute, created exceptions for physical incapacity and poverty.[43]

Government intervention in the lives of children can be traced back even further than Massachusetts's first compulsory attendance law. The English common law principle *parens patriae*, first observed in 1696, recognized the state's right to act on behalf of those unable to act for themselves; it evolved from the idea that there exists a governmental interest in securing and protecting the welfare and best interests of children.[44] Many Americans were unpersuaded by the principle of *parens patriae* when compulsory attendance laws became more common and, instead, saw the legislation as an interference with parental rights and as an unamerican overreach granted to the government.[45] However, advocates embraced the legislation: the National Education Association published a resolution in favor of compulsory education laws, which Tyack described as a reflection of "the notion of the state as an agency of social and economic reform and control."[46]

Intertwined in the perception of the state as an agent of change was a nativist instinct that saw education as a tool to unify American culture and weed out undesirable qualities from the country brought in by immigrants.[47] Tyack characterized the cultural attitudes toward compulsory attendance and education reform as the desire to create "citizens" and to "institutionalize the authority of the state."[48] Early compulsory attendance laws targeted immigrants and poorer populations to "counteract" perceived neglectful parenting.[49] Advocates saw required, government-provided education as a means to correct the presumed moral failings of poor and immigrant families.[50] Tyack noted,

> Much of the drive for compulsory schooling reflected an animus against parents considered incompetent to train their children. Often combining fear of social unrest with humanitarian zeal, reformers used the powers of the state

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[42] *Id.*

[43] Hardenbergh, *supra* note 38.

[44] Robert van Krieken, *The 'Best Interests of the Child' and Parental Separation: On the 'Civilizing of Parents'*, 68 MODERN L. REV. 25, 27 (2005).

[45] Rauscher, *supra* note 6, at 503.

[46] Tyack, *supra* note 6, at 368–69.

[47] *Id.* at 363.

[48] *Id.* at 365. In *Pierce v. Society of Sisters*, the Supreme Court states that it is within the rights of the state to determine that teachers be of "patriotic disposition" and to teach subjects "essential to good citizenship." 268 U.S. 510, 534 (1925).

[49] Rauscher, *supra* note 6, at 503.

[50] Tyack, *supra* note 6, at 363.

> to intervene in families and to create alternative institutions of socialization.[51]

Fears of governmental overreach of religious liberties tempered the burgeoning support for governmental intervention and compulsory attendance laws. This tension ultimately necessitated judicial intervention to determine the limits of the legislation. Specifically, in *Pierce v. Society of the Sisters*, the United States Supreme Court determined that an Oregon law requiring that children between the ages of eight and sixteen attend public schools infringed upon the right of parents to choose schooling that is specific to their religious values and familial interests.[52] The Court acknowledged and affirmed the right of the State to require students to attend school but limited its power to determine the form and manner of the education.[53] It buttressed this principle with a reflection upon the doctrine of *parens patriae*, noting: "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[54] *Pierce* highlighted the principle that a compulsory attendance statute may not "unreasonably interfere with the interests of parents in directing the rearing of their offspring, including their education in church-operated schools."[55]

In 1973, *Pierce*'s legacy was solidified in *Wisconsin v. Yoder*, which also reignited a national discourse surrounding the rights of the government weighed against the personal liberties of parents.[56] Much like *Pierce*, *Yoder* arose from a challenge to Wisconsin's compulsory attendance legislation that required students to attend school until the age of sixteen.[57] The challenge was brought by members of an Old Order Amish religion who declined to send their children to school after age fourteen as part of their religious practice of rejecting secular life for fear of endangerment of their faith and salvation.[58] The trial court held that compulsory school attendance does not interfere with personal freedoms to exercise religion and that compulsory attendance legislation is a "'reasonable and constitutional' exercise of governmental power."[59] After making its way through the lower courts, the United States Supreme Court held that a state's interest in compelling school attendance cannot infringe

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[51] *Id.*
[52] *Pierce*, 268 U.S. at 535.
[53] *See id.*
[54] *Id.*
[55] Wisconsin v. Yoder, 406 U.S. 205, 213 (1972).
[56] Johnson, *supra* note 39, at 226.
[57] *Yoder*, 406 U.S. at 207.
[58] *Id.*
[59] *Id.* at 213.

upon religious rights.[60] Accordingly, Wisconsin's legislation was unconstitutional in its requirement that Amish children must attend traditional schooling.[61]

In *Yoder*, the Court recognized the care a state must exercise when establishing compulsory attendance laws: "[C]ourts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable education requirements."[62] Yet in the same breath, it openly acknowledged its inability to determine—via a strict rule—how a state might adhere to the call of careful drafting.[63] "[C]ourts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education."[64]

Together, *Pierce* and *Yoder* recognize that there are limits to the government's ability to direct parental control of children's education, while also indicating the judiciary's hesitancy to give clear guidance as to how state legislatures might draft their compulsory attendance laws.[65] The result muddies the waters for both legislators drafting laws and American parents sending their children to school.

B. Success and Issues Regarding Applications

The history of compulsory attendance laws indicates that legislation has largely been influenced by cultural dialogues and concerns about personal liberties and national interests. Rarely, though, does the cultural conversation engage with the question of effectiveness. More specifically, scholars inquire: Do laws criminalizing truancy work?[66]

Historical data demonstrates that early compulsory attendance legislation, coupled with general lack of enforcement, produced inequitable results and proved largely ineffective.[67] Notably, enrollment between 1880 and 1910 did not increase.[68] In the early to mid-20th century, attendance data indicated that compulsory attendance laws

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[60] *Id.* at 214.

[61] *Id.* at 234.

[62] *Id.* at 235.

[63] *Id.* at 234–35.

[64] *Id.* at 235.

[65] *See* Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 535 (1925); *see also Yoder*, 406 U.S. at 234.

[66] *See, e.g.*, Johnson, *supra* note 39; *see also* Gleich-Bope, *supra* note 37; Rauscher, *supra* note 6.

[67] Gleich-Bope, *supra* note 37, at 111. Notably, Tyack warns that statistics and data maintained from late 19th and early 20th century is "notoriously unreliable." Tyack, *supra* note 6, at 360.

[68] Lleras-Muney, *supra* note 40, at 405.

contributed to increased educational rates among White students but not among Black students.[69] Attendance laws appeared to be more effective in increasing attendance rates in southern states as opposed to northern states, specifically with respect to laws that increased the number of years a student must attend school.[70]

Modern research focuses more on the punitive nature of compulsory attendance legislation, rather than the details of the legislation's disparate effects.[71] A 2017 study detailed how a national effort to fight truancy in the mid-90s to early 2000s led to an increased number of juvenile cases.[72] A 2021 study found that punitive responses to absenteeism were unlikely to improve attendance when low attendance is due primarily to factors beyond the student's control, including "transportation challenges, the lack of access to health care, or bullying in the classroom."[73] Perhaps more worrisome, research indicates that attendance policies at schools are applied discriminatorily: minority students or students who are socioeconomically disadvantaged are more likely to have their absences labeled as unexcused.[74] When compared with White students, "Black students experience the largest disparity."[75] Further, "[s]trategies that rely on court action alone have not proven effective," and court involvement has negatively impacted a student's likelihood of completing his or her schooling.[76] Overall, punitive measures hinder students' achievement and their ability to succeed academically.[77]

The research regarding compulsory attendance laws' actual effects complicates the legislation's already complex history. The impetus to secure education for all students acts as a guiding policy motivation for legislators,[78] but questions regarding effectiveness and discriminatory

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[69] *Id.* at 427.

[70] *Id.*

[71] *See, e.g.*, Brandy R. Maynard et al., *Truancy in the United States: Examining Temporal Trends and Correlates by Race, Age, and Gender*, PUBMED CENTRAL (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5733793/ [https://perma.cc/C28B-8839].

[72] *Id.* This period saw the Truancy Reduction Demonstration Program as well as the No Child Left Behind Act, initiatives implemented as collaboration of several national organizations to effect change regarding truancy. *Id*.

[73] PHYLLIS JORDAN, ATTENDANCE PLAYBOOK: SMART STRATEGIES FOR REDUCING STUDENT ABSENTEEISM POST-PANDEMIC 69 (2003), https://www.future-ed.org/wp-content/uploads/2023/05/Attendance-Playbook.5.23.pdf [https://perma.cc/U9Z8-PP24].

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.* at 69–70.

[78] *See, e.g*., the "My Brother's Keeper" Initiative, which was established by a Presidential Memorandum under President Barak Obama and sought to "improve measurably the expected educational and life outcomes" for male students of color.

application add a new dimension to the modern conversation about truancy. These concerns exacerbate the difficulties faced by school districts, parents, and students as the issue of absenteeism only continues to loom larger.

IV. INSTANT DECISION

In *Williams*, the court determined that the phrase "to attend. . . on a regular basis" is not vague.[79] Its analysis began at the substantive core of the appellants' argument, which pertained to the void-for-vagueness doctrine.[80] The court defined the doctrine by asserting that a penal statute must be sufficiently definite so "that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[81] In order to determine whether or not a penal statute, such as section 167.031 of the Missouri Revised Statutes, violates the void-for-vagueness doctrine, its prohibited conduct must be ascertainable to a person of ordinary intelligence as applied to the facts of the case, rather than to hypothetical facts.[82]

In light of appellants' argument that the language of section 167.031 requiring that parents send their children to school on a "regular basis" is vague, the bulk of the court's analysis was allocated to defining the word "regular," and whether it is so indefinite as to be unascertainable to an ordinary parent.[83] As outlined in section 1.090, undefined words and phrases are viewed in their plain meaning.[84] Accordingly, the court examined prior instances where the Missouri judiciary interpreted "regular."[85] In *Union Mut. Ins. Co. v. Brown*, relying on Webster's Third International Dictionary, the Circuit Court of St. Louis County found that "regular" means "steady or uniform in course, practice or occurrence; not subject to unexplained or irrational variation" and "returning, recurring or received at stated, fixed or uniform intervals."[86] The court in *Brown*

Presidential Memorandum—Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color (Feb. 27, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/02/27/presidential-memorandum-creating-and-expanding-ladders-opportunity-boys-[https://perma.cc/8MN8-PS6T]. As part of this aim, the initiative sought to reduce dropout rates. *Id.*

[79] State v. Williams, 673 S.W.3d 467, 474 (Mo. 2023) (en banc).

[80] *Id.*

[81] *Id.* at 473 (quoting State v. Faruqi, 344 S.W.2d 193, 199 (Mo. 2011) (en banc)).

[82] *Id.*

[83] *Id.* at 473–74.

[84] *Id.* at 473.

[85] *Id.* at 473–75.

[86] Union Mut. Ins. Co. v. Brown, 809 S.W.2d 144, 146 (Mo. Ct. App. 1991).

further relied on another case, *Fowler v. Baalman*, to determine that "regular" is "not synonymous with constantly or continuously."[87]

On this basis, the court applied *Brown*'s and *Fowler*'s understanding of "regular" to school attendance: regular attendance means attending school on every day the school is in session.[88] By inputting this definition of regular attendance into the test raised under the void-for-vagueness doctrine, the court determined that "no Missouri parent would conclude attendance 'on a regular basis' means anything less than having their children go to school on those days the school is in session."[89] Accordingly, the court held that the statute's language was not so indefinite as to violate the void-for-vagueness doctrine, affirming the validity of the statute.[90]

The void-for-vagueness doctrine's purpose is to avoid arbitrary application by law enforcement that could result in discriminatory and arbitrary practices.[91] In *Williams*, the court found that the statute "does not permit arbitrary and discriminatory application."[92] The court does admit that its definition of regular is strict and that, in its most literal application, it could have extreme consequences.[93] Yet, the court sees this reality buffered by "the discretion of school officials and of prosecutors to choose not to prosecute in [marginal cases of noncompliance]."[94]

V. COMMENT

The holding in *Williams* ultimately implicates two key issues regarding compulsory attendance that leave Missourians vulnerable to confusion. First, the court's definition for "regular basis" establishes such a high standard for attendance that it dangerously approaches perfection. Rather than providing much-needed clarity, the new, unattainable standard promulgated by the Missouri Supreme Court in *Williams* creates a new variant of uncertainty for Missouri parents. That is, it makes parents decide how "perfect" attendance must be to achieve a "marginal case of noncompliance" that would safeguard them against prosecutorial action.

Second, prosecutors and school districts exercise discretion when determining if Missouri parents meet the new standard. While leaving criminal prosecution up to local discretion can lead to more tailored action, it may also expose Missouri parents to further unclear proceedings and

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[87] *Id.* (quoting Fowler v. Baalman, 234 S.W.2d 11, 14 (Mo. 1950) (en banc)).
[88] *Williams*, 673 S.W.3d at 474.
[89] *Id.*
[90] *Id.* at 475.
[91] *Id.* at 473.
[92] *Id.* at 475.
[93] *Id.*
[94] *Id.*

action, as well as discrimination. The confusing future of compulsory education requirements seems to undermine the *Williams* court's statement that, "[w]hen measured by common understanding and practices, no Missouri parent would conclude attendance 'on a regular basis' means anything less than having their child go to school on those days the school is in session."[95]

This Comment examines these two concerns in Parts A and B. Part C then suggests that solving this issue to best protect the interests of Missouri parents and seeking a better understanding of the laws dictating their children's education and attendance involves developing clearer statutory language and a path toward decriminalization of truancy.

A. The New Standard: Perfection

Williams creates a new standard for Missouri parents when they look to section 167.031.1 for clarity over prohibited conduct concerning their children's attendance.[96] No longer does "regularly attend," in all its indefiniteness, couch a forgiving understanding of the difficulties faced by families across Missouri when it comes to getting children to school. Rather, *Williams* holds that "regularly attend" means to attend "on those days the school is in session."[97]

The Missouri Supreme Court's analysis in *Williams*, and its ultimate holding, reflects a series of issues at play. First, its unwillingness to parse out what regular means in numerical terms aligns with the *Yoder* standard.[98] *Yoder* held that the discrete details of compulsory attendance laws are beyond the scope of the judiciary and instead fall to state legislators and school boards.[99] Beyond following the *Yoder* standard, the hesitancy to interpret "regular" in concrete terms reflects the cornerstone principle that judges should not establish nor rewrite laws.[100] The court rightfully highlights this principle in its analysis: "[T]his court is bound by its duty to 'ascertain the intent of the legislature from the language used to consider the words used in their plain and ordinary meaning.'"[101] In placing this concept first and foremost in its analysis, the court in *Williams* does not stray from typical legislative interpretation principles.

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[95] *Id.* at 474.

[96] *Id.*

[97] *Id.*

[98] *Id.* at 475; *see also* Wisconsin v. Yoder, 406 U.S. 205, 213 (1972).

[99] *Yoder*, 406 U.S. at 235.

[100] Veronica M. Dougherty, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM. U. L. REV. 127, 128 (1994).

[101] *Williams*, 673 S.W.3d at 475 (quoting Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 665 (Mo. 2010) (en banc)).

Further, there are possible policy considerations impacting the court's decision to interpret "regular" as essentially perfect attendance, beyond the principle of delineating judicial and legislative power. One may wonder about the policy motivations for this approach: perhaps giving control over enforcement and interpretation of "regular" to local schools and prosecutor's offices allows the diagnosis of chronic absenteeism and its solution to be more personalized and tailored to student-specific situations. Or perhaps the court fully embraces *Yoder* by determining that school districts are more familiar with the specific needs of students.[102] Regardless, the court here does not submit any such policy rationales; instead, it indicates that its only purpose in the analysis is to ascertain the phrase "regularly attend," divorced from policy considerations.[103] By strictly adhering to this purpose, the court loses its frame of reference within the analysis, ignoring both the practical policy implications of its holding and the reality for Missouri parents.

The court's rejection of the void-for-vagueness challenge impacts the decisions of Missouri parents when sending their children to school. The doctrine relies on a simple premise: an ordinary person must understand what conduct is prohibited by a criminal statute.[104] With respect to compulsory attendance legislation, Missouri parents must be able to read section 167.031.1 and understand what sending their child to school "on a regular basis" means.[105] *Williams* does not stray from the plain meaning principle, and its adherence to such an approach renders the statute as preposterous as it was previously vague. Missouri parents must make their child attend 100% of school or else face prosecution for violation of this statute.[106] When faced with two interpretations—vague conjecture to "regular basis" or perfection—how ought Missouri parents respond?

Notably, legislative interpretation principles are not completely circumscribed to the plain meaning rule. Specifically, there exists an exception to the rule where, when statutory meaning is not clear and its plain meaning would result in an illogical result, the court may construe its meaning distinct from the plain language.[107] This concept is known as the absurd result principle.[108] Courts may apply this principle by considering the practical implications of their interpretation; when the consequences and practical ends of their interpretation result in absurdity

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[102] *Yoder*, 406 U.S. at 235.

[103] *Williams*, 673 S.W.3d at 473.

[104] *Id.*

[105] *Id.*

[106] There are exceptions to compulsory education found in RSMo. § 167.061, such as for mental or physical incapacitation or upon notice from a parent that the child is dropped from the school's rolls. MO. REV. STAT. § 167.061.

[107] Dougherty, *supra* note 100, at 127.

[108] *Id.*

that the legislature likely did not intend, they may construe the language in a manner which considers the consequences rather than a strictly literal interpretation.[109] The Missouri Supreme Court itself wrote of the doctrine: "A court will look beyond the plain meaning of the statute only when the language is ambiguous or would lead to an absurd or illogical result."[110]

Had the legislature wanted the statute to be interpreted in the manner promulgated by the *Williams* court, it might have said instead:

> A parent, guardian or other person in this state having charge, control, or custody of a child between the ages of seven years of age and the compulsory attendance age for the district shall cause the child to attend *every single day* at some public, private, parochial, parish, home school or a combination of such schools for not less than the entire school term of the school which the child attends.

Alternatively, the state legislature may have cut to the chase even further: "Attend school every day it is in session or else be in violation of this statute." Notably, the state legislature did not write this, but rather used the phrase "regularly attend." "Regular attendance," therefore, must exist somewhere between consistency and perfection.

The outlandish nature of the *Williams* court's interpretation is highlighted in the facts of the case. Esther Elementary required a 90% attendance rate.[111] The Missouri Supreme Court held that section 167.031 requires students "to attend school on those days the school is in session."[112] By its promulgated standards, even Esther Elementary violates the statutory requirements of Missouri's compulsory attendance legislation by requiring that students only attend 90% of the school year.[113] Ultimately, *Williams* replaced Missouri's vague standard of regular attendance with an even more unattainable level of perfection, leaving Missouri parents equally as vulnerable to confusion as they were prior to *Williams*.

B. The Problem With Implementing Perfection

While the legislature and judiciaries may squabble over terms and interpretations of compulsory attendance legislation, it is undeniable that implementation and diagnostic analysis of chronic absenteeism is localized and dependent on school districts and prosecutors' offices. In

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[109] 58 CAL. JUR. 3d *Statutes* § 108, Westlaw (database updated Feb. 2024).
[110] Akins v. Dir. of Revenue, 303 S.W.3d 563, 565 (Mo. 2010) (en banc).
[111] State v. Williams, 673 S.W.3d 467, 470 (Mo. 2023) (en banc).
[112] *Id.* at 474.
[113] *Id.* at 475.

2019, schools referred 91% of petitioned truancy cases, indicating that they were the most significant force in actively addressing issues of educational neglect.[114] The remaining 9% of truancy cases were referred by either law enforcement, relatives, or others, such as social service agencies and probation officers.[115]

While truancy cases may not appear as a very visible issue that impacts the daily life of the average child, it is a pervasive problem that affects high rates of children and disproportionately affects students of minority groups. According to the National Juvenile Court Statistics Report of 2019, truancy cases were the largest type of criminal procedures involving youth across all race groups.[116] In 2015-2016, Native Americans experienced the highest rate of chronic absenteeism (26%); followed by Pacific Islander (22.6%); Black (20.5%); Hispanic (17%); and White (14.5%).[117] Further, data from 2015-2016 demonstrated that students with disabilities "are 1.5 times more likely to be chronically absent than students without disabilities."[118] In a 2023 study of the effects of COVID-19 on chronic absenteeism, Dr. Thomas Dee of Stanford University described truancy as a product of both in-school factors such as "school climate, safety, and practices related to instruction, discipline, and student support," as well as out-of-school factors relating to economic status of a family and health.[119] Data indicates that chronic absenteeism was exacerbated by COVID-19.[120] Specifically, in Massachusetts and Connecticut, states which reported their attendance tracking data for the 2022-2023 school year, rates of chronic absenteeism were 24.5% and 21% respectively.[121] Further, Black and Hispanic students from economically disadvantaged families suffered the most.[122]

In the face of such statistics, a perfect attendance requirement under section 167.031 is ill-equipped to aid parents, local schools, and prosecutor's offices in addressing the problem. Court instructions to double down on already unattainable standards ignores the realities of families in Missouri and across the country. While *Williams* perhaps initially appears to adopt a *Yoder*-like standard by leaving implementation

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[114] JUVENILE COURT STATISTICS 2019, NAT'L CTR. FOR JUV. JUS. 76 (June 2021), https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2019.pdf [https://perma.cc/448C-QQ9X].

[115] *Id.*

[116] *Id.* at 72.

[117] *Chronic Absenteeism*, *supra* note 2.

[118] *Id.*

[119] Thomas S. Dee, *Higher Chronic Absenteeism Threatens Academic Recovery from the COVID-19 Pandemic*, STANFORD UNIV. (Aug. 2023 version) 1, 2, https://osf.io/bfg3p/ [https://perma.cc/MC65-KZNX].

[120] *Id.*

[121] *Id.*

[122] *Id.*

up to prosecutorial discretion, its gross refusal to offer clarity to the phrase "attend regularly" deprives Missouri parents and schools of clear guidance when they look to tackle the Sisyphean task of addressing post-COVID-19 truancy. When the guidance for parents reaches the unattainable or nebulous standard outlined in *Williams*, children will continue to be impacted by chronic absenteeism.[123]

C. Safeguarding Missouri Parents and Students

Truancy is not an insignificant issue facing families in America, nor will it dissipate without concentrated efforts. The question, therefore, becomes: how can section 167.031 be redrafted to both provide clarity to Missouri parents, as well as safeguard the benefits of a localized approach to truancy? In other words: How can Missouri redefine "regularly attend" in a way that protects Missouri parents by its definiteness but also avoids a bright-line rule that strips schools of their discretion to address chronic absenteeism factors?

To better protect Missouri parents and children, aid school districts, and actually address the rising statistics of chronic absenteeism, Missouri needs to rework its truancy legislation, explicitly lay forth attendance requirements, and include clearer procedural guidelines for addressing absenteeism that places more tailored power with school districts rather than the legal system. The Texas legislature implemented similar actions in 2015.[124] First, the legislature demoted truancy from a criminal offense to a civil one and "enhance[d] interventions that school districts must perform to address students' attendance issues before referring them to truancy court."[125] Further, the Texas Education Department published rules for best practices and procedures for school districts to address truancy, which were adopted into Texas's legislation.[126] The guidelines included requirements that districts initiate truancy prevention measures

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[123] Notably, the letters sent to the appellants in Williams stated that "[t]he Missouri Department of Elementary and Secondary Education states that students should have a 90% or higher attendance percentage." State v. Williams, 673 S.W.3d 467, 472 (Mo. 2023). While the Court does not question this assertion, the Missouri Department of Elementary and Secondary Education's page on truancy does not indicate that 90% or higher attendance is required. *Compulsory Attendance Law*, MO. DEP'T OF ELEMENTARY AND SECONDARY EDUC., https://dese.mo.gov/governmental-affairs/freqaskques/Attendance [https://perma.cc/EL6U-2BFR] (last visited Mar. 21, 2024).

[124] OVERVIEW OF THE EFFECT OF CHANGES TO TEXAS TRUANCY LAWS, LEGIS. BUDGET BD. 2 (2017) https://www.lbb.texas.gov/Documents/Publications/Policy_Report/3012_Changes_to_Texas_Truancy_Laws.pdf [https://perma.cc/649U-8ACN] [hereinafter CHANGES TO TEXAS TRUANCY LAWS].

[125] *Id.* at 1.

[126] *Id.* at 1–2.

on the third unexcused absence within a four-week period, which must include one of the following:

> [1] a behavior improvement plan that includes a specific description of required or prohibited behavior, the period the plan will be effective (not to exceed 45 days after the effective date of the contract), and penalties for additional absences;
>
> [2] school-based community service; or
>
> [3] referral to counseling, mediation, mentoring, teen court, community-based services, or other services to address the student's truancy.[127]

Review of the policy the year following implementation confirmed that truancy court cases had decreased across Texas.[128] In the 2014-2015 school year, Texas saw 88,576 truancy complaints.[129] In 2015-2016, the state noted only 20,555 complaints.[130] Despite reported concerns that decriminalization would lead to increased truancy, data did not indicate any such increase.[131] Attendance largely stayed the same, with a slight increase of 0.05%.[132]

Perhaps most strikingly, Texas quantified truancy.[133] A parent and student may be referred to truancy proceedings "if the student is absent . . . 10 or more days or parts of days within a six-month period in the same school year."[134] A school district must notify the parents of this requirement in writing at the beginning of the school year.[135] Missouri should emulate the Texas approach. As demonstrated by the actions in Texas, not only does quantifying truancy standardize school districts' requirements for students, but it does not infringe upon a district's ability to address the student's situation given that districts may tailor their truancy prevention measures based on the guidelines provided by the state's education department.[136]

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[127] *Id.* at 2.
[128] *Id.* at 3.
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] TEX. EDUC. CODE ANN. § 25.095(a).
[134] *Id.*
[135] *Id.*
[136] CHANGES TO TEXAS TRUANCY LAWS, *supra* note 124, at 2.

For Missourians, paralleling the Texas approach would both address the vagueness issue raised in *Williams*, as well as enable school districts to address issues of absenteeism as they see fit. Rather than rely on a new standard that sees the cure for legal ambiguity as perfection, an approach that legally quantifies truancy empowers Missouri parents to best understand what conduct is and is not proper under the law. Further, by creating guidelines for districts regarding truancy preventative measures, the Missouri legislature can prioritize children's education by encouraging districts to partner with parents and ensure children have access to a fully supported education.

VI. CONCLUSION

The *Williams* holding disappoints any current hopes of eliminating unnecessary confusion for Missouri parents. By switching out one vague standard for another unattainable one, the Missouri Supreme Court has done little to provide clarity for parents. Accordingly, as parents aim for perfection with no guidance as to how far from perfection they can stray without facing significant consequences, the trend of absenteeism will only be exacerbated. As truancy continues to become more common, legislators should consider the vagueness issue raised in *Williams*. Rather than demanding perfection from parents and students, Missouri lawmakers should reconstruct section 167.031, contemplate the policies motivating the state's approach to compulsory attendance, and consider ways in which the state can aid parents in protecting their children's education rather than imposing unattainable standards. If Missouri lawmakers can support parents and clear the muddied waters of compulsory attendance legislation in the state, perhaps the path to education will no longer be uphill, both ways.