

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
STATE OF MISSOURI**

MISSOURI STATE TEACHERS )  
ASSOCIATION, )  
)  
RUSSELL SMITHSON )  
The president of the Missouri State )  
Teachers Association, )  
)  
TARA GANN, )  
)  
CARRIE TRIPP, )  
)  
CHARLES COLLIS, )  
)  
and )  
)  
LINDA DOUGHERTY, )  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE OF MISSOURI, )  
GOVERNOR JEREMIAH "JAY" NIXON, )  
and ATTORNEY GENERAL CHRIS )  
KOSTER )  
)  
Defendants. )

Case No.: \_\_\_\_\_

**PETITION FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

**COME NOW** Plaintiffs by and through the undersigned counsel and for their Petition for Injunctive and Declaratory Relief state as follows:

1. Plaintiff Missouri State Teachers Association is a private association of public school teachers in the State of Missouri, and constitutes the largest teacher association in the state of Missouri and has standing both in its representative capacity and in its own capacity to assert the constitutional rights described herein.

2. Individual Plaintiffs named in the Petition are teachers in public schools in the State of Missouri and reside in the State of Missouri.

3. Defendant Jeremiah “Jay” Nixon is the governor of Defendant State of Missouri and is responsible pursuant to Article IV, Section 2, of the Missouri Constitution for the execution of the laws for the state of Missouri.

4. Defendant Chris Koster is the Attorney General of the State of Missouri and is responsible for prosecuting disciplinary actions against teachers licensed to teach in the State of Missouri.

5. The Missouri Senate recently passed Senate Bill 54, called the Amy Hestir Student Protection Act (hereinafter “the Act”). Senate Bill 54 is designed to protect students from sexual abuse in schools. The Act goes into effect on August 28, 2011.

6. Defendant Governor Jay Nixon signed the bill into law on July 14, 2011.

7. Claims in this litigation are brought pursuant to 42 U.S.C. Section 1983 and Missouri law.

8. At all times pertinent to this litigation, Defendant Governor Jay Nixon acted within the normal, usual and customary scope of his duties as Governor of the State of Missouri.

9. At all times pertinent to this litigation, Defendants Nixon and the State of Missouri acted under the color of state law.

10. Section 160.069 of Senate Bill 54, makes it unlawful for teachers in elementary, middle, or high schools to have non-work-related websites or any other social networking sites that allow exclusive access with current or former students.

11. Senate Bill 54 defines “former student” as “any person who was at one time a student at the school at which the teacher is employed and who is 18 years of age or less, and who has not graduated.”

12. Section 160.069 makes it unlawful for school teachers to communicate with their children, relatives, church youth group members, and even news paper reporters who happen to be current or former students using Facebook-type web sites or by many of the other popular and increasingly indispensable computer and cell phone based technologies in wide-spread use in society today.

13. Senate Bill 54, §162.069 effectively prohibits Plaintiffs from interacting with students via Twitter, Facebook, and potentially prohibits other communication sites such as BlackBoard, Virtual Classroom, Angel, and other sites commonly used by teachers for online classes and distance learning.

14. The Act is so vague and overbroad that the Plaintiffs cannot know with confidence what conduct is permitted and what is prohibited and thereby “chills” the exercise of first amendment rights of speech, association, religion, collective bargaining and other constitutional rights by school teachers.

15. Plaintiffs have used and are using non-work-related social networking sites as an important avenue for contact with students, both during emergencies and for everyday educational issues, such as when a student has difficulty with a classroom assignment or identifying bullying.

16. Senate Bill 54, §160.069 makes it unlawful for Plaintiffs who are also parents of a child in the school district to communicate with her student/child via a non-work-related social networking site if there could be exclusive access.

17. Senate Bill 54, §160.069 makes it unlawful for Plaintiffs who are also youth leaders in a church to communicate with students using a non-work-related social media regarding religious activities.

18. Senate Bill 54, §162.069 makes it unlawful for MSTA and its members to utilize its Facebook page because it is a social medium accessed by teachers and students.

19. Senate Bill 54, §162.069, to the extent that it makes it unlawful for Plaintiffs and other teachers to have a non-work-related website or other social networking sites that allow exclusive access with current or former students, is unconstitutional on its face for the following reasons:

a. The Act violates Plaintiffs' freedom of speech, which is guaranteed under the Missouri Constitution, Article I, Section 8, and the First Amendment of the United States Constitution because it is a prior restraint on a form of expression included within the free speech guarantees of the first and fourteenth amendments of the United States Constitution.

b. The Act is a form of prior restraint in advance of the exercise of first amendment activity; therefore the Act bears a heavy presumption against its constitutional validity.

c. The Act is unconstitutionally overbroad and void on its face because it prohibits every teacher in the state of Missouri from having any non-work-related web-based communications with current or former students that allow exclusive access by the teacher and student which will deter legitimate exercise of first amendment rights.

d. The Act in question is not readily subject to a narrowing construction by state courts and its deterrent effect on legitimate expression is real.

e. Alternatively, the Act could be read to provide school districts with discretion as to a teacher's use of non-work-related web based social networking, but the Act provides no definable standard sufficient to control a school district's discretion in exercising a prior restraint on Plaintiffs' protected activities. The Act is therefore unconstitutionally vague.

20. Senate Bill 54, §162.069 is void on its face because it clearly contravenes Plaintiffs' freedom of personal choice in family matters which is a liberty protected by the due process clause of the fourteenth amendment of the United States Constitution, in that:

a. The Act would ban and make unlawful communications via non-work-related websites and other social networking sites between parents who are teachers and their children who are students.

b. The Act requires no showing of harm to the child.

c. The Act interferes with the rights of parents and guardians to direct the upbringing and education of children under their control, and places a significant infringement on a fundamental right.

d. The governmental intrusion on family liberty resulting from the Act is not justified by any compelling state interest and is not narrowly drawn to accomplish any compelling state interest that is at stake.

e. Parents have a recognized liberty interest in the care, custody, and management of their children, and the Act would deprive parents of a means of

communicating with their children without having afforded the parent a pre- or post-deprivation hearing.

21. Senate Bill 54, § 162.069 unlawfully intrudes upon Plaintiffs' religious freedom and right of association granted to Plaintiffs in Article I, Section 5 of the Missouri Constitution, and the first amendment and the fourteenth amendment of the United States Constitution, in that:

a. The Act makes it unlawful for Plaintiffs and other teachers to communicate with students outside of work through web based social media regarding non-work-related religious activities.

b. The Act violates Plaintiffs' and other teachers' freedom of association because it is facially coercive in derogation of Plaintiff's First Amendment rights.

c. In order to comply with the requirements of the Act, Plaintiffs will be required to stop using non-work-related websites and other social networking sites that allow exclusive access with current or former students, and absent the Act, Plaintiffs would continue to benefit from the use of non-work-related sites that allow exclusive access with current or former students.

22. The Act denies Plaintiffs and teachers equal protection of the law by prohibiting school teachers from communicating with students via commonly used electronic means but not imposing those same limitations on sexual predators.

23. Because of the chilling effect on their constitutional rights as described above, Plaintiffs will suffer irreparable harm unless this Court prevents the Senate Bill 54 from becoming effective and restrains the application of Senate Bill 54 § 162.069.

24. Defendants by their acts and/or omissions did violate Plaintiffs' Constitutional right to, inter alia, free speech, association, and religious practice guaranteed by the Missouri Constitution and the Constitution of the United States.

25. Defendants by their conduct did violate Plaintiffs' Constitutional right to liberty and/or the due process of law as provided by the First and Fourteenth Amendments of the United States Constitution.

26. Each of the rights described above are clearly established Constitutional rights.

27. As a direct and proximate result of the actions of Defendants in violating the rights of Plaintiffs, they will suffer the previously-mentioned injuries and damages.

28. 42 U.S.C. 1983 and 1988 authorize Plaintiffs to seek the payment of their reasonable and necessary attorney's fees and expenses incurred in bringing this case, and Plaintiffs seek that relief.

29. Plaintiffs are without an adequate remedy at law and seek injunctive relief from this Court including a preliminary and permanent injunction prohibiting Defendants from enforcing Senate Bill 54, §162.069 to the extent that it makes it unlawful for teachers to have non-work-related websites that allow exclusive access with current or former students.

30. Plaintiffs are entitled to a declaration from this Court with respect to the illegality of Senate Bill 54 as described herein pursuant to §527.010 RSMo.

31. Plaintiffs request that this Court exercise its power to construe the validity of Senate Bill 54 as described herein, pursuant to §527.020 RSMo.

32. Plaintiffs have served the attorney general for the State of Missouri with a copy of this proceeding as required by §527.110.

WHEREFORE Plaintiffs pray this Court to convene a hearing on Plaintiffs' Request for Preliminary Injunction and to enter its order restraining and enjoining Defendants from the enforcement of the relevant parts of §162.069 of Senate Bill 54 and preventing its effectiveness as described above and that the injunction be made permanent, and for a declaration from this Court that Senate Bill 54, §162.069 is, in pertinent part, unlawful and unconstitutional as described herein, and for Plaintiffs' attorney fees, costs and litigation expenses incurred herein and for such other relief as Court deems just and proper.

Respectfully submitted,  
KENT L. BROWN, P.C.

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