

**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.: 11AC-CC00553

AMENDED¹ ORDER ENTERING PRELIMINARY INJUNCTION

Now on this 24th day of August, 2011, Plaintiffs and their counsel, along with Defendants' counsel, appear before this Court on Plaintiffs' request that a Preliminary Injunction be issued to enjoin Defendants from implementing that portion of Senate Bill 54 designated as § 162.069.4 RSMo.

¹ The Order is amended to correct a typographical error in a statutory reference on the last page.

At Defendants' request, Plaintiffs agree that Defendant Governor Nixon is dismissed from the case and evidence is adduced. The Court finds that § 162.069 RSMo, was signed by the Governor of the State of Missouri, and is to go into effect on August 28, 2011. Section 162.069.4 RSMo states in pertinent part, "No teacher shall establish, maintain, or use a non-work-related internet site which allows exclusive access with a current or former student."

The matter comes before the Court on a request for a preliminary injunction. Based upon the evidence adduced to date, the Court makes the following findings:

Section §162.069.4 RSMo implicates the rights of Plaintiffs protected by the First amendment of the United States Constitution and the Missouri Constitution in that it prohibits all teachers from using any non-work-related social networking sites which allow exclusive access with current and former students. Even if a complete ban on certain forms of communication between certain individuals could be construed as content neutral and only a reasonable restriction on "time, place and manner," the breadth of the prohibition is staggering. The Court finds at based upon the evidence adduced at the preliminary injunction hearing, social networking is extensively used by educators. It is often the primary, if not sole manner, of communications between the Plaintiffs and their students. Examination of the statute indicates that that it would prohibit all teachers from using any non-work-related social networking sites which allow exclusive access with current and former students. It clearly prohibits communication between family members and their teacher parents using these types of sites. The Court finds that the statute would have a chilling effect on speech.

Given the fundamental nature of the right implicated, a "chilling effect" constitutes an immediate and irreparable harm sufficient to support a preliminary injunction. Further, the Court finds that Plaintiffs have established a substantial likelihood of succeeding on the merits.

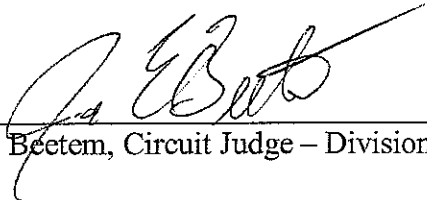
Because there is no way to compensate for this loss, the court finds that the Plaintiffs have no adequate remedy at law.

Finally, the Court is required to balance the individual rights of the Plaintiffs against the public interest. Given the nature of the right implicated, the reliance of the Plaintiffs on social networking technology and the breadth of the prohibition, the Court finds that the public interest is best served by allowing a trial and ruling on the merits before the statute is implemented.

WHEREFORE this Court enters its Order enjoining Defendant Attorney General Koster and Defendant State of Missouri from taking any action to enforce the provisions of §162.069.4 RSMo, or in any way limiting or threatening public school teachers from utilizing non-work-related electronic communications with students or former students that allow exclusive access. Further, Public school teachers who rely on this Order during its pendency will not be subject to any discipline or other adverse consequence if this order should be dissolved or overturned, for any violation of §162.069.4 RSMo which may occur from August 28, 2011, through the termination of this order. This Order granting Preliminary Injunction is entered this 26th day of August, 2011 at 0845. This Preliminary Injunction will stay in effect for 180 days and will expire on the 20th day of February, 2012, or at such earlier time should there be a final determination on the merits.

The cause is placed on the October 14, 2011 lawday at 9:00 to discuss scheduling and final disposition of the cause.

SO ORDERED



Jon E. Beetem, Circuit Judge – Division I