

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

Christina Thomas, individually and as )  
representative of others similarly situated, )

Plaintiff, )

v. )

Ladue School District, on its own behalf and as )  
the representative of all other Missouri school )  
districts, and )

Marsha Chappelow, in her official capacity as )  
Superintendent of Ladue School District and )  
the representative of all other Superintendents )  
of Missouri school districts, )

Peter F. Herschend, in his official capacity as a )  
member of Missouri State Board of Education, )

Rev. Stan Archie, in his official capacity as a )  
member of Missouri State Board of Education, )

Deborah L. Demien, in her official capacity as )  
a member of Missouri State Board of )  
Education, )

Michael W. Jones, in his official capacity as a )  
member of Missouri State Board of Education, )

J. Michael Ponder, in his official capacity as a )  
member of Missouri State Board of Education, )

Sybl Slaughter, in her official capacity as a )  
member of Missouri State Board of Education, )  
and )

Russell C. Still, in his official capacity as a )  
member of Missouri State Board of Education. )

Defendants. )

No. 4:11-cv-1453

**BILATERAL CLASS-ACTION  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## COMPLAINT

1. Christina Thomas, like all Missouri public school teachers, faces the imposition of a prior restraint on her speech. Effective August 28, 2011, Mo. Rev. Stat. § 162.069 will require her school district, like every district, to prohibit its teachers from using any website that allows exclusive communications with students or former students who have not graduated. On their face, the restrictions say teachers cannot use such widely employed forms of communication as Facebook and Google Docs. Because there are no exceptions, Thomas cannot even use such websites to communicate with her own child.

2. This action seeks declaratory and injunctive relief against Mo. Rev. Stat. § 162.069's broad prior restraint on a large amount of protected speech.

### **Jurisdiction and Venue**

3. This Court has jurisdiction under 28 USC §§ 1331, 1343, 2201 and 42 USC § 1983.

4. Venue is proper in this Court pursuant to 28 USC § 1391(b) and E.D. Mo. L.R. 2.07(A)(1). Defendants Ladue School District and Chappelow are located in St. Louis County, Missouri.

### **Parties**

5. Plaintiff is a teacher employed by Ladue School District. She is also the parent of children who attend schools operated by Ladue School District, including the school where she is a teacher.

6. Defendant Ladue School District is a public school district that provides elementary and secondary education for all or part of ten self-governed communities in St. Louis County, Missouri.

7. Defendant Marsha Chappelow is Superintendent of Ladue School District.

8. The supervision of the public schools is vested in the Missouri State Board of Education, which has the authority to take corrective action against school districts that fail to comply with statutory mandates.

9. Defendants Peter F. Herschend, Rev. Stan Archie, Deborah L. Demien, Michael W. Jones, J. Michael Ponder, Sybl Slaughter, and Russell C. Still, are members of the Missouri State Board of Education and named in their official capacities only.

### **Plaintiff Class Allegations**

10. Plaintiff is a member of a class of teachers in Missouri who are employed by school districts.

11. The number of individuals in the class of teachers in Missouri who are employed by school districts is so numerous that joinder of all members of the class would be impracticable.

12. There are questions of law and fact that are common to the class, including, but not limited to, the legal question of whether compliance Defendants and by the Defendant Classes with the mandate of Mo. Rev. Stat. § 162.069 violates the First and Fourteenth Amendment rights of members of the Plaintiff Class.

13. Plaintiff's claim that compliance with the mandate of Mo. Rev. Stat. § 162.069 impermissibly infringes on her rights under the First and Fourteenth Amendments is typical of the claims of the Plaintiff Class.

14. Plaintiff will fairly and adequately protect the interests of the Plaintiff Class.

15. Defendants and the Defendant Classes are required by Mo. Rev. Stat. § 162.069 to act on grounds generally applicable to the Plaintiff Class, making appropriate injunctive relief or corresponding declaratory relief with respect to the Plaintiff Class and Defendant Classes as wholes.

### **Defendant Class Allegations**

16. Defendant Ladue School District is a member of a class of Missouri school districts.

17. Defendant Chappelow is a member of a class of Superintendents of Missouri school districts.

18. There are more than 540 school districts in Missouri, which makes the number of members of the class of Missouri school districts so numerous that joinder of all members of the class would be impracticable.

19. There are more than 500 superintendents of school districts in Missouri, which makes the number of members of the class of Superintendents of Missouri school districts so numerous that joinder of all members of the class would be impracticable.

20. Mo. Rev. Stat. § 162.069 requires the Defendant Classes to engage in standardized conduct implicating the constitutional rights of members of the Plaintiff Class such that there is a common nucleus of operative facts and law.

21. The actions and conduct required of Defendant Ladue School District and Defendant Chappelow is mandated by Mo. Rev. Stat. § 162.069 and under the guidance of the Missouri State Board of Education. As such, Ladue School District and Chappelow act in a way that is uniform and common with other members of the Defendant Classes.

22. Any defenses that could be raised by the Defendant Classes would have the same essential characteristics as the defenses of the Defendant Classes at large.

23. Defendant Ladue School District will fairly and adequately protect the interests of the class of Missouri school districts.

24. Defendant Chappelow will fairly and adequately protect the interests of the class of Superintendent of Missouri school districts.

## **General Allegations**

25. On May 12, 2011, the Missouri General Assembly truly agreed to and finally passed Senate Bill 54.

26. On July 14, 2011, the Governor of the State of Missouri signed Senate Bill 54.

27. Senate Bill 54 is effective August 28, 2011.

28. On August 28, 2011, Mo. Rev. Stat. § 162.069 will be created and effective.

29. The new statute requires every school district to, no later than January 1, 2012, promulgate a written policy that contains at least the elements required by the statute.

30. Plaintiff and other members of the Plaintiff Class reasonably believe they are required to conform to the requirements of the statute no later than August 28, 2011.

31. Ladue School District has notified its teachers that they must begin complying with the statute immediately.

32. The restriction required by the statute prohibit any teacher from using a non-work-related Internet site that “allows exclusive access with [*sic*] a current of former student.”

33. A non-work-related Internet site is defined as any Internet website or web page used by a teacher primarily for personal purposes and not for educational purposes.

34. Exclusive access means “the information on the website is available only to the owner (teacher) and user (student) by mutual explicit consent and where third parties have no access to the information on the website absent an explicit consent agreement with the owner (teacher)[.]”

35. A former student is considered “any person who was at one time a student at the school at which the teacher is employed and who is eighteen years of age or less and who has not graduated[.]”

36. Plaintiff and members of the Plaintiff Class use non-work-related Internet sites

that allow exclusive access to students and former students to engage in a large amount of speech about matters of public concern.

37. Under the statute's definitions, websites such as Facebook ([www.facebook.com](http://www.facebook.com)) and Google Docs ([docs.google.com](http://docs.google.com)) allow owners of an account to have exclusive access with other individuals.

38. Plaintiff and members of the Plaintiff Class reasonably believe that they could face disciplinary action if they "use a non[-]work-related [I]nternet site [that] allows exclusive access with a current or former student[.]"

39. Plaintiff has children with whom she engages in exclusive communications on Facebook, including one who is a student or former student under the statutory definitions.

40. Plaintiff and other members of the Plaintiff Class reasonably fear that they could face disciplinary action if they communicate with their own children on Facebook or other websites that allow for exclusive communication.

41. Ladue School District has notified its teachers that they cannot have exclusive communications with their own children on Facebook, if they meet the statutory definition of student or former student. Specifically, Plaintiff and other teachers at Ladue School District were notified in writing that because of the statute they will be prohibited from communicating exclusively through Facebook or other social-networking sites with their own children or members of their Sunday School classes, athletic teams, or scout troops "unless or until exceptions are enacted[.]" if the children are students or former students as defined by the statute.

42. Upon information and belief there are many students whose parents want them to have the ability to communicate with Plaintiff and members of the Plaintiff Class in a manner prohibited by Mo. Rev. Stat. § 162.069.

43. Plaintiff and members of the Plaintiff Class have engaged in, and wish to continue to engage in, expression and expressive conduct that is prohibited by the plain language of Mo. Rev. Stat. § 162.069. Absent relief from this Court, Plaintiff and members of the Plaintiff Class will be required to choose between self-censoring their expression and expressive conduct or facing discipline by Defendants or members of the Defendant Classes.

44. Defendants Herschend, Archie, Demien, Jones, Ponder, Slaughter, and Still, in their official capacities, have the authority to take corrective or punitive action against Defendant Ladue School District or any member of the Defendant Class of school districts that does not comply with the mandates of Mo. Rev. Stat. § 162.069.

### **COUNT I**

#### *Mo. Rev. Stat. § 162.069 is Unconstitutional Under the First and Fourteenth Amendments*

45. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

46. Mo. Rev. Stat. § 162.069 is a speaker-based restriction on speech that does not advance any compelling government interest.

47. Mo. Rev. Stat. § 162.069 is a prior restraint on speech in that it requires promulgation and enforcement of a policy that restricts the speech of Plaintiff and members of the Plaintiff Class before the speech occurs.

48. Mo. Rev. Stat. § 162.069 is substantially overbroad in that it restrict a large amount of protected speech of Plaintiff, members of the Plaintiff Class, and others not before this Court that is not related to and does not advance any significant government interest.

49. Mo. Rev. Stat. § 162.069 is unconstitutionally vague in that it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits,

authorizes or encourages arbitrary and discriminatory enforcement, or both.

50. Mo. Rev. Stat. § 162.069 is an unconstitutional prior restraint on the speech of public employees because the statute is both over-inclusive and under-inclusive and does not justify a substantial burden on speech that does not advance a significant government interest.

51. Mo. Rev. Stat. § 162.069 is not narrowly tailored toward advancement of any significant government interest.

WHEREFORE, the Plaintiff prays this Court:

- A. Certify a Plaintiff Class of teachers employed by Missouri School Districts and appoint Plaintiff as representative of the class;
- B. Certify a Defendant Class of Missouri school districts and appoint Ladue School District as representative of the class;
- C. Certify a Defendant Class of Superintendents of Missouri school districts and appoint Marsha Chappelow, in her official capacity, as representative of the class;
- D. Enter declaratory judgment finding Mo. Rev. Stat. § 162.069 facially unconstitutional;
- E. Issue appropriate preliminary and permanent injunctions to prevent the deprivation of the constitutional rights of Plaintiff, members of the Plaintiff Class, and third parties not before this Court;
- F. Award Plaintiff's costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. §1988; and
- G. Allow such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF  
EASTERN MISSOURI

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