

**UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

AFT Michigan, Jane Doe 1 and Jane Doe 2,

Plaintiff,

Case No. 06

HON.
Magistrate

v.

The State of Michigan, The Michigan Department of State Police,
and the Michigan Department of Education,

Defendants.

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Complaint

Parties

1. The Plaintiff AFT Michigan is a labor organization.
 - a. It is the Michigan affiliate of the American Federation of Teachers, AFL-CIO.
 - b. AFT Michigan has nearly one hundred affiliated local unions whose aggregate membership exceeds 35,000.
 - c. Most AFT Michigan affiliates represent persons who are employed by Michigan school districts. Most such persons are teachers but many are not including para-professionals, clerical employee, teacher aides, custodians, engineers and bus drivers.

2. This action is brought by AFT Michigan on behalf of its members all of whom are employed within the State of Michigan.
3. Plaintiffs Jane Doe 1 and Jane Doe 2 are individuals.
 - a. They are employees of a public school employer.
 - b. They have never been convicted of any crime.
 - c. Despite this, they have been informed by their employer that their name appears on a list of persons who have been convicted of felonies and serious misdemeanors.
 - d. Each Plaintiff is concerned that they are likely to lose their job.
4. The first Defendant is the State of Michigan.
5. The second Defendant is an agency of the State of Michigan. It is a Department within the Executive Branch of State government. It is responsible to provide "...24-hour statewide quality police service for the safety and protection of the people and their property in the state of Michigan."
6. The third Defendant is an agency of the State of Michigan. It is a Department within the Executive Branch of State government. It is responsible to "...under the direction of the Superintendent of Public Instruction, (carry) out the policies of the State Board of Education."

Jurisdiction

7. This Court has jurisdiction over this complaint under 42 USC 1983 and the right of the Court to exercise pendent jurisdiction over a claim related to the principal claim.

Facts

8. In the Fall of 2005, The Legislature of the State of Michigan passed, and the Governor of the State of Michigan approved, a series of bills relating to employees of school districts in the State of Michigan.
9. The bills included House Bill 4928 which became 2005 PA 130 and was effective January 1, 2006.
10. 2005 PA 130 was directed at preventing the employment, Michigan school boards, of persons who had been convicted of certain crimes.
11. The law required local Boards of Education to secure from the Department of State Police a “criminal history check” on every person who was employed by, or volunteered for, a local Board of Education.
12. The Act requires the Department of State Police to perform certain acts. The law states:

“Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal history check and criminal records check on an individual under this section, the criminal records division of the department of state police shall do both of the following:

“(a) Conduct the criminal history check and, after conducting the criminal history check and within that time period,

“provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school.

“The report shall contain any criminal history record information on the individual that is maintained by the criminal records division of the department of state police.”
13. Upon receipt of the report, local Boards of Education have certain obligations:

If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (7) disclose that an individual has been

convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school *shall not employ* the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (7) disclose that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approve the employment or work assignment in writing. As used in this subsection, “listed offense” means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

14. Because of the peculiar language in 2005 PA 130, the mere *receipt of results* from the Department of State Police is sufficient to require the discharge of a person. That means that a person identified as having been convicted must be terminated even if the identification is erroneous and even if it is likely that a local Board of Education will repair a wrongful termination eventually.
15. Pursuant to the cited statute, the Department of State Police has furnished a list to the Defendant Department of Education and to Michigan school boards within the State of Michigan. The list is said to match the names of persons employed by local Boards of Education with those with a criminal conviction.

16. The list was made available to certain school boards within the past two weeks. It was made available to the Department of Education before that.
17. The list is rife with error. By its own admission, the Department of State Police has been unable to prevent the names of innocent persons from being included on the list.
18. A spokesperson for the Department of State Police was quoted in the press on February 2, 2006 as conceding that the list “is not 100 percent.” The same person has conceded that there are “false positives.”
19. These concessions are an understatement. As the annexed affidavits reveal, there are myriad errors. Teachers and other employees are being confronted by employers, face the immediate loss of their employment and irreparable damage to their reputation.
20. The list is subject to disclosure under the Michigan Freedom of Information Act, MCL 15.231 et seq.
21. A Michigan public entity, including all Michigan school boards and the Defendant Departments, are required to disclose the list if a proper request under the FOIA is submitted.
22. The list will have to be disclosed even if it is inaccurate and even if the public entity knows that it is inaccurate.

First Cause of Action

23. Plaintiff AFT Michigan’s members and Jane Doe 1 and Jane Doe 2 face a deprivation of their liberty as the result of their erroneous inclusion on a list of persons who have been convicted of a crime in that:
 - a. Each of said members and the named Plaintiffs may be terminated and lose employment;

- b. Each of said members and the named Plaintiffs may suffer an irreparable injury to their reputation and be unable to practice their profession.
- 24. The promulgation of a list known to be erroneous violates the Plaintiff's rights to be free from the intervention by the State or its political subdivisions in the liberty of these individuals.
- 25. To the extent that the Defendants have released a listing that Defendants know to be incorrect, the same is an unlawful deprivation of a substantive interest without due process of law contrary to Amendment 14 of the Constitution of the United States.
- 26. To the extent that the list impairs this right, the legislation requiring the list violates the Constitution of the United States as the legislation has been applied.

Second Cause of Action

- 27. In requiring the Department of State Police to produce a list [2005 PA 130, § 1230g(b)(7)], the Michigan Legislature imposed upon that Department a public duty.
- 28. Having a clear legal duty to produce the list, the Department had a clear legal duty to produce a list free from excessive error.
- 29. This obligation is both clear from and inherent in the legislation. A public entity charged with a task by the Legislature must fulfill its obligation competently.
- 30. For reasons that have not been publically disclosed, the list produced by the Department of State Police is filled with error.
- 31. The Department of State Police had a duty and failed to fulfill such duty. As such, this Court has jurisdiction to restrain the release of a list filled with error and direct the

Department of State Police to use such effort as is necessary to produce a list with minimal or no error.

Relief Requested

32. This Court should make the following findings of fact and issue the following temporary and permanent relief:
 - a. A finding that the Defendants are prepared to release to local Boards of Education and thence to the public a list containing names of school employees allegedly convicted of a crime when that list is substantially erroneous;
 - b. A finding that the release of the list will impair the liberty interest of those falsely identified as having been convicted of a crime;
 - c. A temporary restraining order restraining and enjoining the Defendants from releasing that list to anyone until such time as the Court may conduct a hearing on Plaintiff's application for temporary relief;
 - d. A temporary injunction restraining enjoining the Defendants from releasing that list to anyone until such time as the Court is satisfied that the list produced by the Defendants is not substantially erroneous;
 - e. An order finding that 2005 PA 130 is unconstitutional as applied as it has caused the impairment of rights protected by the Constitution;

- f. In the alternative an order requiring the Defendants to prepare a list as required by 2005 PA 130 that is not erroneous and a further order requiring the Defendants to provide such listing to the Court and the Plaintiff prior to releasing the list to anyone.

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