

STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT

ERIC ROTHOFF,

Intervenor-Appellant,

v

Supreme Court No. 140929  
Court of Appeals No. 288977

HOWELL EDUCATION ASSOCIATION, MEA/NEA,  
DOUG NORTON, JEFF HUGHEY, JOHNSON  
McDOWELL, and BARBARA CAMERON,

Plaintiffs-Appellees

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SECOND NOTICE OF SUPPLEMENTAL AUTHORITY  
OF AMICI CURIAE  
MICHIGAN PRESS ASSOCIATION AND  
MACKINAC CENTER FOR PUBLIC POLICY  
IN SUPPORT OF LEAVE TO APPEAL

Mackinac Center for Public Policy  
Patrick J. Wright (P54052)  
140 West Main Street, P.O. Box 568  
Midland, MI 48640  
989-631-0900

Michigan Press Association  
Robin Luce Herrmann (P46880)  
Butzel Long PC  
41000 Woodward Ave.  
Stoneridge West  
Bloomfield Hills, MI 48304  
248-593-3044

On January 26, 2010, the Court of Appeals held that “personal” emails and emails related to “internal union communications” sent using a school district’s email system could not be obtained through the Freedom of Information Act. In a joint amicus brief supporting leave to appeal, the Michigan Press Association and the Mackinac Center for Public Policy forewarned that the Court of Appeals’ reasoning would lead to public bodies refusing to disclose emails related to criminal activity undertaken by public employees.

On December 29, 2010, this Court denied leave to appeal, with three dissenters indicating that they would have granted leave. A motion for reconsideration was filed on January 18, 2011.

Since that motion, the Michigan Education Association (MEA) has openly discussed a “statewide work stoppage.” Strikes by public employees are illegal. *See generally* MCL 423.202, MCL 423.202a, and MCL 423.206. The MEA is asking its local chapters to approve this potential statewide strike. As part of this process, the union sent an informational question-and-answer sheet for its members to consider when voting on whether to authorize a strike. On that sheet, the MEA admitted that individual teachers could be fired for engaging in a strike, but noted that a general strike might overwhelm the system:

6. Can I be fired if we go out on strike?

Since strikes in the public sector are illegal in Michigan, there is the possibility that you could be fired for engaging in a strike. . . .

It is simply not possible to replace all or most school employees in the state. A public school employee has the right to an individual hearing at which it must be proved that the employee engaged in an illegal strike. The employee has the right to appeal that determination through the Michigan courts. It is, to say the least, a time-consuming and expensive process for school districts.

Exhibit A.

Given the possibility of an illegal statewide teachers strike, and given the Mackinac Center’s long-standing interest in educational issues and its daily reporting in its online

periodical *Michigan Capitol Confidential*, amicus Mackinac Center for Public Policy on March 22, 2011, sent 200 Michigan public school districts a FOIA request seeking all emails related to “a possible employee strike against the district.” Exhibit B. On March 23, 2011, a school district cited the Court of Appeals’ decision in the instant case as a basis for withholding emails discussing illegal strike activity. Exhibit C.

Thus, not only is the Court of Appeals’ decision being interpreted in such a way as to prevent taxpayer scrutiny of public employees’ actions through FOIA, the Court of Appeals’ decision is being deployed as a justification for preventing a public policy organization with a journalistic arm from obtaining information about a potential statewide illegal strike.

For the reasons stated in their amicus brief in support of leave to appeal, the Michigan Press Association and the Mackinac Center for Public Policy seek to have this Court grant leave to appeal and overturn the decision of the Court of Appeals.

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Date: March 24, 2011