

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

JAMES SHULTZ and RENEE CHEATHAM,

Petitioners,

-against-

NEW YORK STATE EDUCATION DEPARTMENT,
SHANNON TAHOE, in her official capacity as Interim
Commissioner of Education of the New York State
Education Department, and TEMITOPE AKINYEMI, in
her official capacity as Chief Privacy Officer of the New
York State Education Department,

Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Index No. _____

**AFFIDAVIT OF JAMES
SHULTZ IN SUPPORT OF
VERIFIED PETITION**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

JAMES SHULTZ, being sworn, says:

1. I am one of the Petitioners in this Article 78.
2. I am the parent of a student who currently attends school in the Lockport City School District (“Lockport”).
3. On January 2, 2020, Lockport activated a biometric face recognition technology system in all of its schools, from elementary to high school. When I have visited the my child’s school, I have seen these many new surveillance cameras capturing images of the children’s faces. This intrusive and inaccurate system has been deployed on children because the

New York State Education Department (“NYSED”) claims that the system does not implicate data about the students under New York’s Education Law.

4. I have been raising concerns about the Lockport face recognition system since I first learned about it in February 2018. I organized a citizen’s petition against the system and urged fellow Lockport residents to vote against the school board budget that contained the expenditures for the system. I also frequently write about the system in my opinion column for the Lockport Union-Sun & Journal¹ and I wrote an op-ed for the New York Times.²

5. Like every parent in the United States today, I worry about my child’s safety in school. But I do not believe that a face recognition system belongs in a school system. Neighboring districts invested their Smart Schools Bond Act money in iPads and faster internet, while Lockport bought spy cameras. These sorts of spy cameras will not keep children safe and are invading the privacy of all the children in the District, including my child. NYSED’s decision is reckless and does not make any sense.

6. The technology’s potential is chilling. When Lockport’s security consultant, Tony Olivo, was pitching the face recognition system to Lockport, he explained that it would have the capacity to go back and create a map of the movements and associations of any student or teacher the district might choose. It can tell them who has been seen with whom, where and how often. District officials pledge that they would never deploy the software in that way, but if we have learned anything from the privacy breaches at Facebook and elsewhere, what matters is not what those in charge promise but what an intrusive technology has the capacity to do. Facial

¹ For example, see *The \$2.7 million bonfire on Beattie Avenue*, Lockport Union-Sun & Journal, January 8, 2020, available at https://www.lockportjournal.com/opinion/jim-shultz-the-million-bonfire-on-beattie-avenue/article_a6c767bb-517f-5564-ab89-dbd4e48b872.html and at Exhibit 1.

² See *Spying on Children Won’t Keep Them Safe*, New York Times, June 7, 2019, available at <https://www.nytimes.com/2019/06/07/opinion/lockport-facial-recognition-schools.html> and at Exhibit 2.

recognition technology is also notoriously unreliable, particularly when it comes to recognizing women, children and people of color.³

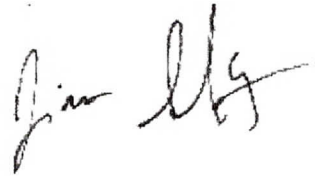
7. I understand that NYSED's determination that the Lockport face recognition system does not involve student data means that we, parents, and our children have lost the protections and remedies guaranteed by Education Law § 2-d, relating to the personally identifiable biometric information of our children. We have lost the right that the District and its third party face recognition technology vendors, such as Ferguson ECC and/or SN Tech, not use any of that student data for commercial purposes. We have also lost the right that the District, and its third-party vendors, are required to notify parents in the event of any data breach or leak of student personally identifiable information.

8. NYSED's determination that Lockport's face recognition system does not involve the creation or maintenance of student data endangers Lockport's students and parents by stripping us of the heightened protections of Education Law § 2-d for this sensitive information. It leaves Lockport students and parents without any recourse when the Lockport face recognition systems suffers a breach or should Lockport's vendors seek to use this data for commercial purposes.

9. As a petitioner in this Article 78 proceeding, I request that the Court

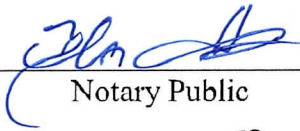
³ I am well aware that most of the facial-recognition algorithms in use currently, including the algorithms used in Lockport's AEGIS face recognition system exhibit significant biases, with a high likelihood of misidentifying Asian American and African American people, as well as women and children. The National Institute of Standards and Technology, or NIST, has issued a series of face recognition vendor tests (FRVT) to evaluate and assess different algorithms over the past twenty years. In a recent series of reports, NIST has evaluated the performance of one-to-one face recognition algorithms used for verification of asserted identities, and performance of one-to-many face recognition algorithms, such as the one used in the Lockport face recognition system, used for identification of individuals in photo databases. *See e.g. NISTIR 8280 Face Recognition Vendor Test (FRVT), Part 3: Demographic Effects*, issued on December 12, 2019, available at <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>. These document is attached at Exhibit 7 to the Affidavit of Daniel Schwarz, dated June 22, 2020.

annul the Respondents' determination and restore my privacy rights, including all of the protections and remedies guaranteed by Education Law § 2-d, relating to the personally identifiable biometric information of my children who attend school in the Lockport City School District.



James Shultz

Sworn to and subscribed before me
this 20th day of June, 2020



Notary Public

BETH HAROULES
Notary Public, State of New York
No. 02HA4890292
Qualified in New York County
Commission Expires March 30, 2023