

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

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MISSOURI
WESTERN DISTRICT

JANE DOE I, et al.,)
)
Respondents,)
)
v.) Case No. WD68066
)
THOMAS PHILLIPS, et al.,)
)
Appellants.)

**SUGGESTIONS IN OPPOSITION TO
APPELLANT KEATHLEY'S MOTION TO STAY APPLICATION OF
CIRCUIT COURT'S JUDGMENT PENDING APPEAL**

Appellant Keathley has filed a motion to stay application of the circuit court's judgment while this matter is pending on appeal. As explained herein, Respondents oppose the motion and it should be denied.

Likelihood of Success on the Merits

Respondents' basic disagreement with Keathley is with respect to his interpretation of the Missouri Supreme Court's opinion in *Doe v. Phillips*, 194 S.W.3d 833 (Mo. banc 2006), and its application to the Does whose convictions predate January 1, 1995.¹ It is true that court records and the fact of conviction as to these individuals, and even police mug shots that may have been taken at the time of arrest, are in the public record. However, the

¹The circuit court acknowledged that the conviction of Jane Doe III was subsequent to January 1, 1995, and, accordingly, entered judgment against her. Amended Order Granting Permanent Injunction (Judgment), No. 03-CV219085, at 1 n. 1, 3. Jane Doe III did not appeal the judgment against her. Thus, the respondents are Jane Does I and II and John Does I-VIII and references herein to "the Does" exclude Jane Doe III and are intended to relate only to those Does whose convictions predate January 1, 1995.

photographs that the Highway Patrol wants to continue to publish on the internet are not that kind of public information. The photographs that the Highway Patrol wishes to publish were obtained only because the Does were unconstitutionally required to register and otherwise comply with the registration law – that is, they had to be photographed at the time of registration, often at each quarterly or annual re-registration. Those photographs would not otherwise be in the public record nor would they be available to the Highway Patrol to publish absent the unconstitutional registrations. While the Highway Patrol might properly use on its website the public mug shots it may have obtained at the time of arrest, it should not be allowed to publish photographs it only obtained as a result of the unconstitutional registration law.

Irreparable Harm and Balancing Interests

There can be no irreparable harm to Keathley and the Highway Patrol from removing the photographs of ten individuals from its website or if there is any such harm it is de minimus at most. No one has required the Highway Patrol to destroy the photographs it currently has; all that the circuit court ordered was the cessation of dissemination. Although some minimal amount of labor may have been required to remove the photographs, all that would be necessary in the event that this Court overturns the circuit court is the relatively simple restoration of the same photographs to the website. The cost and labor involved cannot be extensive. The claim of irreparable harm cannot be given credence.

Respondents see the balance of interests differently. Keathley claims that since the Does' photographs have been published since 1995 any continued publication would not add greatly to the detriment they face. Stay Motion at 6. Respondents, however, have had their

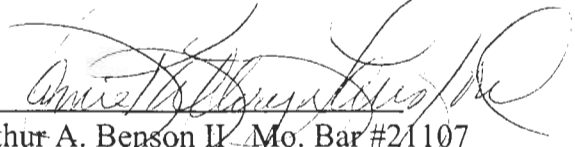
photographs illegally taken and published for over ten years and should not have to wait any longer for relief to which – at least in the circuit court’s view – they are entitled. Every day that the illegally obtained photographs remained on the website was another day on which their right to be free from the application of a retrospective law was violated. The claim that the “information is also available from other sources such as court records and the memories of persons involved”, *id.*, cannot accurately apply to the photographs in question. As explained, *supra*, the photographs were not in the public record but were obtained only because of registrations and those photographs cannot be in “the memories of persons involved.”

The public interest in protecting children and responding to the known danger of recidivism does not outweigh the public’s interest in not enforcing unconstitutional laws and assuring that they are not applied unconstitutionally. There is substantial societal value in constitutional compliance. None of the Does is a sexually violent predator. There are only ten photographs that have been removed pending the outcome of this matter on appeal. The vast majority of the unconstitutionally obtained photographs will remain on the website because the circuit court’s order did not require their removal. On the other side of the scale, the continued publication of the Does’ registration photographs is a significant burden on them, especially in view of the fact that they should never have had to submit to being photographed in the first place.

WHEREFORE, for the above and foregoing reasons, Respondents submit that the stay motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via electronic mail and First Class U.S. Mail, postage prepaid, this 14th day of March, 2007, on counsel listed below:

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