

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

JANE DOE I, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 03-CV-219085
)	
THOMAS PHILLIPS, et al.,)	Division No. 18
)	
Defendants.)	

**MEMORANDUM AND ORDER
DENYING INJUNCTIVE AND DECLARATORY RELIEF
(JUDGMENT)**

In this action, the Doe Plaintiffs and Intervenors (collectively referred to as "Plaintiffs") challenge Missouri's Sexual Offender Registration Act ("SORA") on state constitutional grounds and seek declaratory and injunctive relief to prevent its further enforcement.

On August 5, 2004, the Court received evidence in the form of a stipulation of facts and subsequently received written filings from the parties on the merits of Plaintiffs' Petition for Declaratory Relief. The parties further agreed that the evidence and arguments received on or after November 24, 2003, in conjunction with Plaintiffs' motions for class certification and for preliminary injunction would be considered as admitted into evidence for purposes of the Court's decision. After weighing the evidence and the arguments, the Court finds in accordance with the stipulation of the parties and enters the following conclusions of law.

MEMORANDUM CONCLUSIONS OF LAW

Count I - Substantive Due Process

In analyzing substantive due process claims, a court must first determine whether the government action interferes with fundamental rights or burdens a suspect class. *Casualty Reciprocal Exchange v. Missouri Employers Mut. Ins. Co.*, 956 S.W.2d 249 (Mo. 1997). If a law interferes with a fundamental right or burdens a suspect class, then it must be narrowly tailored to serve a compelling state interest. *Deaton v. State*, 705 S.W.2d 70 (Mo. App. 1985). Plaintiffs here do not assert a burden on any suspect class, but rather they assert interference with their fundamental rights.

Fundamental rights derive only from the United States Constitution. *Batek v. Curators of Univ. of Missouri*, 920 S.W.2d 895 (Mo. 1996). Fundamental rights include the rights to free speech, to vote, to freedom of interstate travel, as well as other basic liberties. Plaintiffs argue that SORA interferes with their fundamental rights to personal freedom, to travel, to privacy and to freedom from unwanted publicity. Assuming that a right to personal freedom is sufficiently specific to constitute a fundamental right protected by substantive due process, SORA does not interfere with the personal freedom of those who are subject to its registration requirements. Reporting requirements under sex offender registration statutes in other states have been found constitutional and do not constitute a burden on a registrant's right to travel. *State v. Wigglesworth*, 63 P.3d 1185 (Or. Ct. App. 2003); *Ex Parte Robinson*, 80 S.W.3d 709 (Tex. Ct. App. 2002); *State v. Martin*, 17 P.3d 72 (Alaska 2001). The obligations of SORA do not amount to an interference with fundamental rights that will trigger substantive due process protections.

The plaintiffs have further asserted that SORA impermissibly infringes on their right to privacy and to freedom from unwanted publicity. The right to privacy encompasses only personal information and not information readily available to the public. *State v. Williams*, 728 N.E.2d 342 (Ohio 2000). Plaintiffs' right to privacy is not violated by SORA because it discloses information that is already in the public domain. Courts in other states have upheld sex offender registration laws against right to privacy challenges. *Martinez v. Commonwealth*, 72 S.W.3d 581 (Ky. 2002); *People v. Malchow*, 739 N.E.2d 433 (Ill. 2000). There is also no violation of the right to privacy due to the compilation of information under SORA that would not otherwise be collected in one place for public dissemination. With regard to a right to be free from unwanted publicity, it does not appear that such a right has ever been recognized under the Missouri Constitution. Plaintiffs fail to establish such right to be fundamental.

Although SORA contains no express statement of purpose, its clear intent is to provide information to law enforcement officers that will assist them in investigating future crimes and to provide information to members of the public so they can take steps to protect themselves and their children. Because SORA neither burdens a suspect class nor impinges on a fundamental right, it need only be rationally related to a legitimate state interest. The Court concludes that SORA's requirements are rationally related to legitimate state interests. As a consequence, the Court concludes it does not deprive plaintiffs of any substantive due process rights.

Count II - Ex Post Facto/Retrospective Application of Laws

The Missouri Constitution prohibits the enactment of *ex post facto* laws. Art. 1, Sec. 13, Mo. Const. The prohibition on retrospective laws applies when the law at issue

impairs some vested right or affects past transactions to the substantial prejudice of a person. *La-Z-Boy Chair Co. v. Director of Economic Dev.*, 983 S.W.2d 523 (Mo. 1999). A vested right is one guaranteed by a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another. SORA applies to plaintiffs because of their past convictions for sex offenses. This application, however, neither deprives them of any vested right nor imposes upon them any new obligation based on a past event to their substantial prejudice.

SORA is forward looking and applies if the offender has been convicted of certain predicate offenses. The obligation to register and the consequence of not doing so are transactions controlled by the registration statute rather than by the underlying offense. Because SORA governs only those actions that occur after its enactment, and not before, it is not retrospective law in its effect.

Count III - Open Courts and Right to Jury Trial

Plaintiffs' petition also asserts that SORA violates the open courts provision of the Missouri Constitution and its guarantee of a right to a jury trial. Plaintiffs have not pursued this issue in their filings. Consequently, Count III will be considered abandoned by the Court. Plaintiffs' position with regard to the open courts provision is that they are barred from going to court to challenge the applicability of SORA. The open courts provision only prohibits laws that arbitrarily or unreasonably bar individuals from accessing courts in order to enforce recognized causes of action under the substantive law.

Count IV - Equal Protection

Plaintiffs take issue with SORA because its obligations apply to all sex offenders without individual regard for the relative risk of individuals to commit offenses. Plaintiffs also take issue with the application of SORA to sex offenders but not to non-sex offenders. The Court concludes that it is reasonable for the state to impose SORA obligations on all sex offenders without making individual risk determinations. *People v. Malchow*, 739 N.E.2d 433 (Ill. 2000). SORA is rationally related to legitimate state interests and does not deny equal protection to persons required by its terms to register.

Count V - Bill of Attainder

SORA is not an impermissible bill of attainder. One element of a bill of attainder is that it inflicts punishment. Plaintiffs focus on three factors in asserting that SORA inflicts punishment. These three factors are (1) whether the challenged statute falls within the historical meaning of punishment; (2) whether the statute, viewed in the light of the severity of burdens it imposes, can reasonably be said to advance a nonpunitive purpose; and (3) whether the legislative record discloses an intent to punish. *Bunker Resource Recycling and Reclamation, Inc. v. Mehan*, 782 S.W.2d 381 (Mo. 1990).

The registration and notification obligations imposed by SORA are in no way analogous to historical forms of similar punishment. The severity of the burden imposed by SORA, including the duration of its reporting requirements and wide dissemination of the registration information are not excessive in light of the purpose of the statute. SORA is intended to protect the public from sex offenders and establishes an administrative rather than a punitive protection in furtherance of its legislative intent.

Because the obligations imposed by SORA are not punitive, SORA does not violate the Bill of Attainder clause.

Count VI - Special Law

The test for 'special legislation' under Article III, Sec. 40, of the Missouri Constitution, involves the same principles and considerations that are involved in determining whether the statute violates equal protection in a situation where neither a fundamental right nor suspect class is involved. A law does not run afoul of the special law prohibition so long as the legislature had a rational basis for establishing the boundaries of the class as it did. The Court has found the legislative purposes to be reasonable. Therefore, SORA does not violate the special law provisions of the Missouri Constitution.

JUDGMENT

SORA is a reasonable measure tailored to further legitimate state interests. It is not inconsistent with any of the state constitutional provisions raised by plaintiffs. Because SORA is constitutionally sound, plaintiffs' claims for injunctive and declaratory relief must be denied.

Upon the evidence presented, the Court concludes that plaintiffs are unable to establish a valid claim and that defendants are entitled to judgment in their favor. The plaintiffs' requests for injunctive and declaratory relief are hereby DENIED.

Costs in the cause are assessed to the plaintiffs.

JAN - 6 2005

Date



JON R. GRAY, Circuit Judge

A TRUE COPY - ATTEST
CIRCUIT COURT OF JACKSON COUNTY, MO.
COURT ADMINISTRATOR'S OFFICE
DEPARTMENT OF CIVIL RECORD

BY  DCA

I hereby certify that a true and correct copy
of the foregoing was mailed,
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