

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

JANE DOE I, et al.

Plaintiffs,

v.

THOMAS PHILLIPS, et al.

Defendants.

)
)
)
)
)
)
)
)
)
)
)
)

**Case No. 03-CV-219085
Division No. 18**

**DEFENDANTS PHILLIPS' AND SANDERS' PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Defendants Thomas Phillips and Michael Sanders, for their Findings of Fact and Conclusions of Law in regard to the hearing held on November 24, 2003, state as follows:

I. Findings of Fact

A. On July 10, 2003, plaintiffs, Jane Doe I and II and John Does I - VI, filed a lawsuit challenging the validity of the Missouri Sex Offender Registration Act ("SORA") on the bases of the *Ex Post Facto*/retrospective, open courts and right to jury trial, equal protection, bill of attainder, and special law clauses of the Missouri Constitution as well as substantive due process. The defendants in this case are Jackson County Sheriff Thomas Phillips, Jackson County Prosecutor Michael Sanders and Colonel Roger D. Stottlemyre, Superintendent of the Missouri Highway Patrol.

B. Plaintiffs filed a Motion for Class Certification on July 23, 2003, requesting the certification of three classes: a plaintiff class of all sex offenders required to register in Missouri under SORA, a defendant class of all Missouri sheriffs and a defendant class of all Missouri

prosecutors.

C. On October 28, 2003, plaintiffs filed a Motion for Preliminary Injunction requesting that the registration and notification provisions of SORA be suspended during the pendency of this lawsuit based on *Ex Post Facto*/retrospective, equal protection, bill of attainder, special law, and substantive due process arguments.

D. A hearing was held on November 24, 2003 on Plaintiffs' Motion for Class Action and Plaintiffs' Motion for Preliminary Injunction.

E. Defendants Phillips' and Sanders' stipulated that their interests in Missouri's Sex Offender Registration Act (SORA), Mo. Rev. Stat. § 589.400, *et seq.*, are to enforce the laws of the state of Missouri.

F. Defendant Stottlemire stipulated that the Missouri legislature does not maintain a record of legislative history that provides direct evidence as to the intent or purpose of Missouri's Sex Offender Registration Act (SORA), Mo. Rev. Stat. § 589.400, *et seq.*

G. Defendant Stottlemire stipulated that there are currently 9,212 registrations of persons in the Missouri State Highway Patrol's SORA database; that data does not state registrants are registered as a result of an offense that was adjudicated by a suspended imposition of sentence.

H. Defendant Stottlemire stipulated that the apparent intents of Missouri's SORA are a) to provide information to law enforcement officers to assist them in investigating future crimes and b) to provide information to members of the public so they may take steps to protect themselves and their children. There may be other purposes.

I. Plaintiffs elicited testimony from three witnesses, all of whom are required to

register under SORA but none of whom were parties, about their concerns with regard to the notification provisions of SORA.

J. The purpose of SORA is to protect children from violence at the hands of sex offenders.

K. Sex offenders have high rates of recidivism, particularly sex offenders whose victims are children. Sex offenders are much more likely than any other criminal class to commit another crime.

L. It is difficult to accurately predict if a sex offender will commit another sex offense.

II. Conclusions of Law

A. Movants carry the burden in proving whether the balance of equities weighs toward granting the injunction and that this case be certified as a class action.

B. Plaintiffs also bear the burden of establishing that SORA is unconstitutional.

C. Because the declaration of a Missouri court that SORA is unconstitutional would suspend SORA's requirements as to all sex offenders to whom SORA applies, certification of any class in this action is unnecessary. Therefore, this Court denies plaintiffs' Motion for Class Certification.

D. Plaintiffs' evidence in the form of testimony from three non-party witnesses is disregarded as their testimony is irrelevant in light of this Court's denial of plaintiffs' Motion for Class Certification.

E. The balance of equities weigh against granting a preliminary injunction in this case. Plaintiffs' probability of success on the merits of each claim is low.

1. SORA infringes no fundamental rights of plaintiffs. SORA has not infringed plaintiffs' rights of privacy, liberty or travel. Their right of privacy is not infringed in that SORA provides only for the public disclosure of a public fact.¹ Nor does SORA infringe plaintiffs' liberty interest. Plaintiffs are free to move, to change jobs, enroll in any school, or engage in any other activity. Last, SORA does not infringe on plaintiffs' right to travel. SORA does not require that plaintiffs obtain permission before traveling, nor does it set any condition as to when and where a plaintiff may travel. It merely requires that sex offenders register either quarterly or annually.²

2. SORA is rationally related to a legitimate state interest. The state interest in this case, the protection of children from violence at the hands of sex offenders, is legitimate and rationally related to the registration and notification provisions of SORA. In fact, such an interest is compelling. Without SORA, law enforcement would not know the whereabouts of sex offenders in Missouri for quick apprehension and the possible prevention of additional crimes. Without SORA, Missouri citizens would not know with whom they cannot trust their children and may unwittingly place their children in the hands of a sex offender.

3. Because SORA does not infringe any fundamental rights and is rationally

¹ SORA requires that individuals register under SORA who, since July 1, 1979, have been convicted of, been found guilty of, or pled guilty to committing or attempting to commit one of a series of enumerated offenses. Mo. Rev. Stat. § 589.400. Other individuals who meet certain criteria are also required to register. *Id.*

² Reporting is required every ninety days for offenders registered as predatory or persistent sexual offenders; offenders whose victim was less than eighteen years of age at the time of the offense; and any offender who has failed to register or submitted false registration information. Mo. Rev. Stat. § 589.414.5. Other sex offenders must register annually in the month of their birth. Mo. Rev. Stat. § 589.414.6.

related to a legitimate state interest, SORA does not violate the Equal Protection clause or the clause prohibiting special laws; nor does it violate plaintiffs' substantive due process rights.

4. The effects of SORA do not constitute punishment. The legislative intent as regulatory is revealed by its inclusion in Chapter 589, Crime Prevention and Control. The effects of SORA differ from historical punishments in that stigma from its application results from the public disclosure of a public fact, not from a ritual designed to subject the offender to public shaming and ridicule. To accomplish the legitimate state purpose of the prevention of sex offenses, the statute sets forth a process to ensure that law enforcement is aware of the whereabouts of sex offenders living in Missouri and that the public has a means to determine with whom they cannot trust their children. SORA's procedures are consistent with its purpose and impose no affirmative disability or restraint on sex offenders. They may move anywhere they wish, work anywhere they are qualified, attend any school they choose, and engage in any other lawful activity they desire. They need not ask permission, nor does the State impose any conditions on their activities. As a result, SORA's registration and notification provisions do not constitute punishment.

5. Because the effects of SORA do not constitute punishment, it does not violate the *Ex Post Facto* clause or the clause prohibiting bills of attainder.

6. A retrospective analysis may not be applied to SORA in that SORA is not a civil law. As a law codified in Title 38, Crimes and Punishment, and its violation prosecuted as a felony or misdemeanor,³ SORA is a criminal law and may be analyzed under the *Ex Post Facto*

³ A person who fails to register is subject to a prosecution for a class A misdemeanor for the first offense. Mo. Rev. Stat. § 589.425. Subsequent offenses constitute a class D felony. *Id.*

clause. This Court finds that the application of a retrospective analysis to a criminal law is inappropriate and therefore disregards plaintiffs' arguments on this basis.

7. SORA does not violate the Special Law clause of the Missouri Constitution. Because the class of sex offenders is open-ended and other members may join the class, SORA is not a special law. Even if the class was deemed closed, no current Missouri law accomplishes the objectives of SORA by establishing a process to record and report the whereabouts of sex offenders. Moreover, there is a rational basis for obtaining and providing this information to the public based on the recidivism rate of sex offenders as much higher than for other types of criminals; hence the requirement that only sex offenders and not other criminals register. In addition, the inability to accurately predict if an individual will offend again also serves as a rational basis to require that all sex offenders register without attempting to determine each individual's risk of re-offense. The Missouri legislature had a rational basis for establishing the limits of the class as it did. In fact, the statute is narrowly drawn to accomplish the objective of protecting children from sex offenders. SORA does not violate the clause of the Missouri Constitution prohibiting the enactment of special laws.

F. The other factors to consider when deciding to issue a preliminary injunction favor denial.

1. Absent the injunction, movants will suffer no irreparable harm. SORA disseminates information about plaintiffs' sex offenses that is already public. Proceedings with regard to plaintiffs' prosecutions were public. Plaintiffs' attempt to suppress such public information is like shutting the barn door after the livestock has escaped. It is too late. Moreover, the harm to plaintiffs stems from their committing a sex offense, not from SORA's

notification of their crimes to the public upon request.

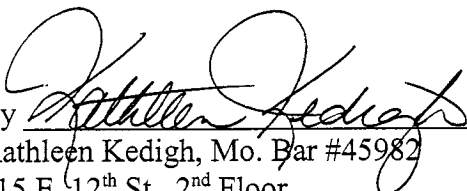
2. The threat of harm to Missouri's children is greater than any that may be endured by plaintiffs. Sex offenders may suffer damage to their reputations; a victim of a sex offense suffers much more.

3. The citizens of Missouri have a compelling interest in protecting their children from violence at the hands of sex offenders.

G. Because plaintiffs are unlikely to succeed on the merits of this case, the threat to children outweigh any damage to plaintiffs' reputations and the public has an interest in protecting children from sex offenders, this Court finds that the equities weigh in favor of denying plaintiffs the preliminary injunction they seek. Therefore, this Court denies their Motion for Preliminary Injunction.

Respectfully submitted,

JACKSON COUNTY COUNSELOR'S OFFICE

By 
Kathleen Kedigh, Mo. Bar #45982
415 E. 12th St., 2nd Floor
Kansas City, Missouri 64106
(816) 881-3355
(816) 881-3398 (facsimile)
kkedigh@jacksongov.org
ATTORNEYS FOR DEFENDANTS PHILLIPS
AND SANDERS

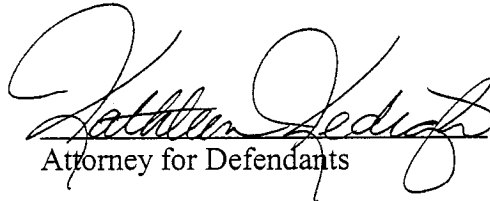
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, via U.S. mail, postage prepaid, on this 3rd day of December, 2003 to:

Arthur Benson II
Arthur Benson & Associates
P.O. Box 119007
Kansas City, Missouri 64171-9007
ATTORNEYS FOR PLAINTIFFS

Michael Pritchett
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, Missouri 65102
ATTORNEYS FOR DEFENDANT STOTTLEMYRE

I hereby certify that a true copy of the foregoing was hand-carried to the chambers of The Honorable Jon R. Gray with a 3-½ inch computer diskette that was new and has been scanned for viruses and is virus-free.


Attorney for Defendants