



Florida Action Committee (FAC)

PO Box 470932
Lake Monroe, FL 32747-0932
With Unity Comes Change

A Constitutional Challenge to Provisions of Florida's Sex Offender Registration Statute

Introduction

This is a proposal to fund a constitutional challenge to provisions of Florida's Sex Offender Registration Statute, §§ 943.0435(4)(e) and 943.0437, Florida Statutes (2014), which (1) require registered persons to disclose to law enforcement all e-mail addresses, internet identifiers and online service providers, and (2) permit law enforcement unbridled discretion to disclose this information to the public. Similar statutes have been stricken in other jurisdictions for violating the First Amendment right to anonymous speech. Florida Action Committee (FAC), an organization which advocates for Florida's registered persons and their families, has retained the law firm of Weitzner & Jonas, P.A., to challenge Florida's provisions as violating both the First Amendment and Florida's state constitutional right to privacy on behalf of all registered persons, many of whom are indigent.

Proposed Legal Challenge

The 2014 revisions to Florida's Sex Offender Registration statute require all registrants to disclose to law enforcement, **before use**, all e-mail addresses and internet identifiers used in chat rooms, instant messaging, social, political, professional, commercial or spiritual networking, online educational courses, blogs, and any online informational source, such as a newspaper, with comment functionality. There are literally hundreds of millions of online forums implicated by this regulation. Failure to comply is a third-degree felony punishable by five years in prison.

Furthermore, law enforcement may, with unbridled discretion, disclose this information to the public at large, allowing it to pierce the anonymity and marginalize the expression of any registered person in any of these forums. And it may, with unbridled discretion, disclose this information to any online sites in which a person may post a profile and engage in discussion – such as facebook, tumblr, tinder, twitter, linkdin, etc. The expressed purpose of the latter provision is to allow the hosts to screen, disable or bar access to their sites. Many of these



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sites are critical to professional, commercial and social success; to educational and informational access; and to political expression in today's world.

Because of the obvious chilling effect on the right to anonymous speech, similar regulations – those that reach a substantial amount of protected speech and permit wholesale public disclosure of the registered person's identity – have been stricken in other jurisdictions as violating the First Amendment:

Doe v. Harris, 772 F.3d 563 (9th Cir. 2014) (striking requirement that registered persons send written notice within 24 hours of using new internet service provider, Court particularly noting that the regulations were vague, and that law enforcement had unbridled discretion to disclose the information to public);

White v. Baker, 696 F.Supp.2d 1289 (N.D. Ga. 2010) (striking law which required registered persons to disclose usernames and passwords to police and allowed police to disclose this to public, Court noting absence of guidelines for disclosing information to public and availability of narrower measures, such as disclosure only to online sites likely to be used by predators);

Doe v. Nebraska, 898 F.Supp.2d 1086 (D. Neb. 2012) (striking requirement that registered persons disclose e-mail, chat room, domain names, blogs where content may be uploaded, because requirement chilled "perfectly proper communication," "driving a stake through the heart of the First Amendment's protection of anonymity on matters of public importance," such as online discussion of just such laws).

These cases should be compared with those in which internet identifiers and online addresses were to be disclosed only for law enforcement purposes and not to the public: *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2011); and *Coppolino v. Noonan*, 102 A.3d 1254 (Pa.Cmwlth.2014).

Weitzner and Jonas plan to challenge the 2014 internet provisions in state court under the First Amendment and the state constitutional privacy provision, adopted by Florida's voters in 1980 as a strong and freestanding right which is particularly protective of informational/disclosural privacy. Professor David G. Post, the expert witness who testified for the prevailing parties in the above cases, has agreed to work with them on this challenge for half his customary rate of \$325.00/hour. Weitzner and Jonas have agreed to a reduced rate of \$250.00/hour for their fee.



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Qualifications of Weitzner & Jonas, P.A.

Beth Weitzner and Val Jonas, who have each been in practice for more than thirty years, have represented numerous registered persons in a variety of legal contexts:

In 2008, while at the Miami-Dade County Public Defender's Office, they represented dozens of homeless sex offenders living under the Julia Tuttle Causeway in an unsuccessful challenge in county court to the Miami-Dade County residency restriction.

They recently drafted the ACLU's challenge to Ft. Lauderdale's residency restriction, which is pending.

They have successfully appealed probation revocations of sex offenders, including a registrant from under the Causeway who broke curfew due to an emergency hospitalization and was sentenced to 25 years in prison.

They successfully defended a sex offender with intellectual deficits disability in a probation revocation proceeding arising from a failure to register plea. They then persuaded the County that its residency restriction did not apply to him, allowing him to live with his wife, who also suffers cognitive deficits, and her parents. They are now seeking to vacate his failure to register conviction.

They succeeded in modifying the probation of a sex offender to permit contact visitation with his minor children. They are now preparing to challenge the GPS-monitoring condition of his probation.

They are preparing the sentencing hearing of a migrant farm worker with intellectual deficits disability who was recently convicted of a sex offense.

They have prepared an ex post facto and substantive due process challenge to the registration statute, on behalf of a sex offender whose predicate offense – lewd and lascivious conduct with a girl two weeks short of her 16th birthday – was incurred twenty years ago. They are seeking to persuade the State Attorney to avoid litigation by vacating the predicate conviction and substituting a non-sex offense of equal degree.

They assisted in removing from the Florida registry an out-of-state sex offender whose own state had released him from its registry.



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In addition, Weitzner and Jonas have represented several death-sentenced defendants on direct appeal, in re-sentencing hearings, and in post-conviction proceedings. They have represented thousands of indigent criminal defendants in intermediate appellate courts, the Florida Supreme Court, federal district court and the Eleventh Circuit Court of Appeal. For thirty years, Weitzner was chief of the Miami-Dade County Public Defender’s Appellate Division. Jonas represented the class of homeless people in Miami against the police for arresting them for acts, such as sleeping outside, that were inseparable from their involuntarily homeless status. *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D.Fla. 1992).

How to Donate to Legal Fund

FAC is a 501(c)(4) non-profit organization with the ability to do direct advocacy and lobbying (which is not tax-deductible). It has already begun receiving small donations for this litigation from its members. You can mail a check to *Florida Action Committee*, marking the intent of the donation on the memo line as “FAC Legal Fund,” to P.O. Box 470932, Lake Monroe, Florida 32747. You can also visit the FAC website to make donations via PayPal from the following link: <http://floridaactioncommittee.org/donations/>

If you wish to make a tax-deductible donation, you can contribute to FAC’s affiliate “Justice Transitions, Inc.,” a 501(c)(3) non-profit focused on community outreach and support. Send your check to the same address, payable to “*Justice Transitions*,” marking the intent of the donation on the memo line as “FAC Legal Fund.”