

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FLORIDA ACTION COMMITTEE,
INC.;

Plaintiff,

v.

SEMINOLE COUNTY and
SHERIFF DONALD F. ESLINGER,
in his Official Capacity as Sheriff
of Seminole County

Defendants.

Case No. 15-cv-1525-ORL-GJK

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA
FILED

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Plaintiff, Florida Action Committee (FAC), on behalf of its members, brings this civil rights action pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief against Defendant Seminole County and Defendant Sheriff Donald F. Eslinger, in his official capacity, for violations of the First, Eighth and Fourteenth Amendments which secure the right to freedom of speech and association, the right to be free from prosecution for vague criminal statutes, to be free from deprivations of liberty without due process of law, and to be free from ex post facto laws. In addition, Plaintiff brings this action to vindicate the right to intrastate travel as guaranteed by Article I, Section II of the Florida Constitution.

2. Plaintiff is a voluntary membership organization that provides information and advice to individuals and family members affected by Florida sex offender registration laws and advocates for the reform of laws that unreasonably limit the ability of offenders to legally live and work in Florida's communities. Many of FAC's members live in or routinely travel through Seminole

County. Plaintiff challenges Seminole County 2005-41 (Ordinance) of the Seminole County Code of Ordinances (codified as Seminole County Code Chapter 228) both facially and as applied by officers, agents, and employees of the Defendants pursuant to policy, practice and/or custom of each Defendant. The Ordinance prohibits individuals convicted of certain sexual offenses from traveling through or being present within 1,000 feet of any school, daycare center, park or playground in Seminole County.

3. The Ordinance is vague because it fails to provide Plaintiff's members fair notice as to where within the county they may travel without violating the Ordinance and fails to sufficiently inform Plaintiff's members as to when travel through prohibited zones may be justified. Further, the Ordinance violates due process because it fails to provide sufficient notice as to where prohibited zones begin and end so that the Plaintiff's members may avoid violating the Ordinance. In addition, the Ordinance is enacted for the purposes of punishment in violation of the Ex Post Facto Clause. Finally, the Ordinance violates the Plaintiff's member's right to lawfully travel throughout the state, a violation of Florida's constitutional right to travel as secured by Article I, Section II of the Florida Constitution.

Jurisdiction and Venue

4. Plaintiff's claims are brought pursuant to 42 U.S.C. § 1983 and arise under the Constitution and laws of the United States. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1331 and § 1343 (a) (3). This Court has the authority to grant declaratory and injunctive relief under 28 U.S.C. § 2201-2202.

5. This Court has supplemental jurisdiction over Plaintiff's state constitutional claim pursuant to 28 U.S.C. § 1367 (a).

6. The venue is proper in the Middle District of Florida, Orlando Division, pursuant to 28 U.S.C. § 1391 (b). The Plaintiff's members reside, Defendant is located, and all of the acts and omissions complained of herein occurred and will continue to occur in the Orlando Division of the Middle District of Florida.

Parties

Plaintiff

7. The Plaintiff Florida Action Committee, Inc. (FAC) is a non-profit corporation that works to reform sex offender laws in Florida.

8. FAC's mission is to educate the media, legislators, and the public with the facts surrounding sex offender laws.

9. FAC has approximately 650 members across Florida. Many of FAC's members are required by state law to register with state and local law enforcement agencies as sexual offenders or sexual predators (referred to herein as Registrants).

10. FAC has approximately 30 Registrant members in Seminole County, Florida. These members are subject to the challenged Ordinance and are harmed by enforcement.

11. FAC also has Registrant members who reside outside of Seminole County, who may travel through Seminole County and are at risk of inadvertently violating the Ordinance. Other FAC members residing outside of Seminole County avoid travel in or through Seminole County because of fear of potentially violating the Ordinance and being subject to arrest.

12. FAC must divert significant time and resources working and consulting with individuals in Seminole County who are in fear of inadvertently violating the Ordinance and unsure as to the operation of the Ordinance.

Defendants

13. Defendant Seminole County, Florida is a political subdivision organized under the constitution of the State of Florida and it has the capacity to sue and be sued. It is the legal and political entity responsible for the actions of the Seminole County Board of Commissioners, which is the legislative and policy-making body for the County. The County is sued for declaratory and injunctive relief on the basis of the acts of the Board of Commissioners who promulgated, adopted and enacted Seminole County Code Chapter 228. The Ordinance reflects the official policy of the County. At all times relevant to this Complaint the County and its officers, agents, and employees were acting under the color of law.

14. Defendant Sheriff Donald F. Eslinger is the Sheriff of Seminole County (Sheriff). He is sued in his official capacity for declaratory and injunctive relief. Sheriff Eslinger is the chief law enforcement officer of Seminole County and is responsible for the enforcement of all applicable laws and the citation and arrest of persons alleged to have violated the law, including Seminole County Code Chapter 228, within the jurisdiction of Seminole County. He is sued in his official capacity on the basis of the acts of his deputies, agents and employees which were taken pursuant to his official policy, practice and or custom. At all times relevant to this Complaint the Sheriff and his deputies, agents, and employees were acting under the color of state law.

Facts

The Ordinance

15. Seminole County Ordinance 2005-41 was enacted by the Seminole County Commission in October 2005. It is codified as Seminole County Code Chapter 228. The definitions in the Ordinance are codified in Seminole County Code Chapter 2. It applies to all incorporated and unincorporated areas of the County. A copy of the Seminole County Code Chapter 228 (SCC

Ch. 228) is attached as Exhibit A. Seminole County Code Chapter 2, “Definitions” (SCC Ch. 2) is attached as Exhibit B.

16. The Ordinance applies to any “sexual offender” as defined by Florida Statute Section 944.606 (1) and “whose victim was, at the time of the offense, less than 16 years old.” SCC Ch. 2. The Ordinance also applies to any “sexual predator” as defined by Florida Statute Section 775.21. SCC Ch. 2.

17. The Ordinance applies to persons meeting these definitions regardless of the date of their offense.

18. The Ordinance states that “no sexual offender or sexual predator shall travel through or remain within a 1,000 foot buffer zone surrounding any school, daycare center, park or playground.” SCC § 228.2.

19. By its terms, the Ordinance applies to any Registrant traveling through Seminole County, not just Registrants who are residents of the County.

20. The Ordinance requires that, for the purposes of measuring the buffer zone (“exclusion zone”) from a school, daycare center, park or playground, “all distances shall be measured from the outermost property line of the school, daycare center, park or playground.” SCC § 228.3.

21. “School” is defined as: “Any public or private school as defined in F.S. §§ 1000.04(1) and 1002.01 (2004), excluding facilities dedicated exclusively to the education of adults.” SCC Ch. 2.

22. “Daycare” is defined as: “Any family or child care facility licensed by the State of Florida pursuant to Chapter 402, F.S. SCC Ch. 2. The code also states that for “purposes of Chapter 228 of this Code, a day care center includes the parking lot, curtilage, yards, landscaped

areas, playgrounds, accessory buildings and all outdoor areas of the facility. It is the intent to include all areas reasonably included in and part of the facility.” SCC Ch. 2.

23. “Park” is defined as: “a publicly owned or operated area used or available for the public's use as a recreational facility, including, by way of example and not limitation, linear parks and the state, county and municipal recreational trails systems.” SCC Ch. 2.

24. “Playground” is defined as an “established or dedicated outdoor area for recreation and play, including, by way of example and not limitation, soccer fields, baseball diamonds, football fields and locations with outdoor equipment, such as, by way of example and not limitation, swing sets, climbing apparatus and slides.” SCC Ch. 2.

25. The Ordinance by its terms is not limited to public playgrounds. Its terms extend to all public and private playgrounds. Private playgrounds such as those in apartment or other private housing complexes are covered by the Ordinance. The exclusion zones created by private playgrounds often extend to public streets and sidewalks but the playgrounds themselves are often not visible from public streets and are not listed on maps.

26. The Ordinance provides several exceptions to the prohibition on travel through or remaining within the 1,000 foot exclusion zone from schools, daycares, parks or playgrounds, including:

- a) attend a scheduled meeting with an attorney who is recognized as a licensed member of the Bar of the State of Florida;
- b) attend a scheduled interview with a social services provider licensed by the State of Florida;
- c) comply with a request or court order from the judiciary, a correctional facility or a law enforcement entity;
- d) contact criminal justice personnel at a criminal justice facility;
- e) attend a church service or function;
- f) attend a bonafide educational institution as a registered student;
- g) attend to medical or health care needs with a licensed physician;
- h) attend familial or parental obligations;
- i) be gainfully employed or as part of duties imposed by gainful employment;

j) seek refuge during times of impending natural disasters or acts of terrorism as such schools have been designated by Seminole County or the State of Florida as a place of refuge.”

SCC § 228.2.

27. The Ordinance does not define what familial or parental “obligations” are or what kind of duty or responsibility constitutes an “obligation.”

28. The Ordinance states that a law enforcement officer shall prior to any arrest for a violation of the Ordinance “afford the person an opportunity to explain his or her presence in the area and the purpose thereof.” SCC § 228.2.

29. The Ordinance states that none of its provisions shall prohibit an individual from “traveling along any roadway constituting part of the Florida Intrastate Highway System.” SCC § 228.8. The Ordinance does not have a definition of the Florida Intrastate Highway System. The statutory definition of the Florida Intrastate Highway System was repealed by the Florida legislature in 2012. No similar definition currently exists in state law.

30. The exception for travel on the Florida Intrastate Highway System is not included on the Seminole County Sheriff’s website that purports to provide information about Seminole County’s exclusion zones.

31. Violation of the Ordinance is a misdemeanor, punishable by a fine of up to \$500.00 and/or 60 days in jail. SCC § 1.8.

32. In many locations within the County, and especially within the more densely populated incorporated cities, exclusion zones encompass many, if not most, public roads, sidewalks, bus stops for public transportation and privately owned businesses such as grocery, hardware, and clothing stores.

33. In the more densely populated areas of the County such as Altamont Springs, Longwood, Oviedo and Sanford, exclusion zones overlap to make large areas of the cities and towns off limits to Registrants and create barriers to moving in or through those areas.

34. The County provides no signs or warnings regarding exclusion zones. In many cases, the location of a school, day care center, park or playground is not readily apparent or ascertainable.

35. In many cases, the outermost property line of a school, day care center, park or playground is not readily apparent or ascertainable. There is no feasible way for a Registrant traveling through the County to determine where exclusion zones are located.

36. The Ordinance requires the Sheriff's office to provide everyone who registers in the County a "map showing the location of all schools, day care centers parks and playgrounds." SCC § 228.6. However, the map provided by the Sheriff explicitly does not include the location of "playgrounds" as defined by the Ordinance. In addition, the Ordinance states that the failure of the map to identify excluded areas is not a defense to a violation of the Ordinance. SCC § 228.6.

38. The Ordinance does not allow Registrants to travel through exclusion zones for otherwise innocent and legal purposes such as voting, mailing a letter at a post office, shopping for food and clothing, visiting restaurants, or visiting with friends and family.

39. The Seminole County Government Office in Sanford where the Seminole County Board of Commissioners meets is in an exclusion zone. The Ordinance does not include an exception allowing Registrants to attend government meetings or to conduct government business.

40. The Ordinance does not take into consideration that bus stops and other locations used to access public transportation may be located at or within an exclusion zone. Therefore,

Registrants are prohibited from accessing any publicly available transportation at transit stops located in restricted areas, according to the Ordinance.

41. It is unreasonable for the City to expect anyone, in particular a Registrant visitor to Seminole County, to refrain from being at or within 1,000 feet of all restricted areas at all times when he or she is unfamiliar with the County and/or has no knowledge of the Ordinance's restrictions because there are no signs notifying Registrants of the Ordinance or the existence of exclusion zones.

42. Interstate 4 runs through the heart of Seminole County and many of the exits, including all of the exits in southern Seminole County, are in exclusion zones. Registrants exiting the Interstate to obtain food, gas or lodging are in violation of the Ordinance.

43. The Ordinance directly impairs the ability of Registrants to travel in and through Seminole County on public roads and sidewalks.

44. FAC member John Doe #1 is a resident of Seminole County, Florida, where he is registered as a "Sexual Offender" as defined by the Ordinance.

45. Over 20 years ago Doe #1 was placed on probation for five years for a charge of lewd and lascivious act in the presence of a child under the age of 16, in violation of Florida Statute § 800.01. The court withheld adjudication.

46. A court may withhold adjudication in a criminal case if it determines that the defendant is not likely again to engage in a criminal course of conduct. § 948.01, Fla. Stat.

47. Doe #1 completed his probation more than 15 years ago. He did not violate his probation and has not been charged with any criminal offense since then.

48. After Seminole County adopted the Ordinance, Doe #1 was advised by Seminole County Sheriff officials to avoid parks and schools. No other information has been provided to him on

how to avoid traveling through or being in exclusion zones. He has not been informed as to how to determine where all day care centers and playgrounds are located.

49. Doe #1 does not know where all exclusion zones are in Seminole County and does not know how to avoid them. Even if he can avoid some of the exclusion zones he has no way of knowing whether he is avoiding all of them. He is at risk of inadvertently violating the Ordinance.

50. Doe #1's home is not in an exclusion zone. However, he must travel through exclusion zones in order to enter or leave his neighborhood. He must travel through or into exclusion zones for routine activities such as shopping for food or other necessities, visiting his bank or conducting business with County government. He is at risk of being stopped by law enforcement for violation of the Ordinance.

51. FAC member John Doe #2 was convicted in 2012 in Seminole County of counts of possessing child pornography on his computer. He was sentenced to 30 months in the Florida Department of Corrections and five years of probation. He was released from prison in January 2015 and began to serve his probationary term.

52. Doe #2 currently resides in Sanford in Seminole County.

53. The probation order for Doe #2 indicates that any violation of law, including the County Ordinance, will violate his probation.

54. Doe #2 is currently unemployed and has no car. He relies on public transportation.

55. All of the public transportation routes in and around Sanford travel through exclusion zones. Doe #2 cannot travel on public transportation without traveling through exclusion zones or waiting at bus stops that are in exclusion zones.

56. Doe #2 has been given confusing information from his probation officers as to whether the Ordinance allows him to wait at a bus stop in an exclusion zone. One probation officer told him he can wait as long as there are no children present. Another told him he can wait but cannot “loiter” at a bus stop. These interpretations are not supported by the language of the Ordinance and Doe #2 fears that relying on them could result in a violation of the Ordinance and his probation.

57. Doe #2 must travel through exclusion zones in order to enter or leave his neighborhood. He must travel through or into exclusion zones for routine activities such as shopping for food or other necessities. He fears that he may be stopped by law enforcement for violation of the Ordinance and that he will violate his probation.

58. FAC members Doe #1 and 2 all have friends and family members that live in or around Seminole County. Doe # 1 and 2 cannot visit these friends or family members without traveling through exclusion zones in violation of the Ordinance.

59. A Registrant is in violation of the Ordinance whenever he or she travels within a restricted area on his or her way to or from another location. The Ordinance, by virtue of its absolute prohibition of being present within a restricted area, invites incidental violation. Therefore, it is virtually impossible for a Registrant to strictly comply with the Ordinance, rendering it void for vagueness.

60. The Ordinance grants unfettered discretion to law enforcement officers in determining whether Registrants have violated the Ordinance.

61. Registrants have been given conflicting information as to how to comply with the Ordinance and the exclusion zones. Sheriff’s officials have told registrants that they may pass through exclusion zones as long as they pass through from one permitted area to another and

they do not stop in the zone. Others have been told that they may go into exclusion zones as long as they have a “legitimate reason” for being there such as purchasing food. One Registrant who lived in a home with several other unrelated adults was told that he could travel into an exclusion zone if he was buying food for others in the home because they were considered “family.” However he was not permitted to buy food for just himself. None of these interpretations are in the Ordinance and neither the County nor the Sheriff has formally adopted any such limiting constructions on the Ordinance.

Count One

The Ordinance is Void for Vagueness

62. The allegations of paragraphs 1 through 61 are incorporated by reference as if fully set forth here.

63. The Ordinance is void for vagueness under the Fourteenth Amendment of the United States Constitution because it fails to provide sufficient notice as to where schools, daycare centers, parks and playgrounds are located and there is no way for Plaintiff’s Registrant members covered by the Ordinance to determine whether or not their travel through public streets pass within a restricted exclusion zone.

64. The Ordinance is also void for vagueness because it fails to adequately define the justifications which allow an individual to enter exclusion zones and thus promotes the arbitrary and discriminatory enforcement of the Ordinance against the Plaintiff’s Registrant members. Defendants’ arbitrary and discriminatory enforcement of the unconstitutionally vague Ordinance prevents Plaintiff’s Registrant members from knowing whether they will be arrested for violating the Ordinance when they travel through or stop at any location within Seminole County.

65. Defendants' arbitrary and discriminatory enforcement of the unconstitutionally vague Ordinance prevents Plaintiff's Registrant members from knowing whether they will be arrested for violating the Ordinance or the terms of their probation if they engage in routine and ordinary activities such as stopping at a restaurant, or shopping at a grocery or hardware store.

Count Two

The Ordinance Violates the Plaintiff's Procedural Due Process Rights

66. The allegations of paragraphs 1 through 61 are incorporated by reference as if fully set forth here.

67. The Ordinance violates the Fourteenth Amendment's right to notice prior to deprivation of liberty in that it fails to provide the Plaintiff's Registrant members with adequate notice as to when or where they may be violating the Ordinance at any particular time while traveling through or remaining in any particular area of Seminole County. The Ordinance requires Plaintiff's Registrant members to guess as to where property lines may run in order to determine where they may legally travel through or remain within Seminole County.

68. The Ordinance also violates the Due Process Clause because it imposes strict liability for exclusion zone violations. The Defendant's Ordinance fails to provide adequate notice as to locations of exclusion zones and imposes criminal liability for inadvertent and unknowing presence in those zones to conduct common and ordinary non-criminal activity.

Count Three

The Ordinance is an Unconstitutional Ex Post Facto Law

69. The allegations of paragraphs 1 through 61 are incorporated by reference as if fully set forth here.

70. The Ex Post Facto Clause of Article I, Section IX of the U.S. Constitution prohibits Florida from retroactively increasing an individual's punishment beyond that authorized by the law in effect at the time the offense was committed.

71. Defendant Seminole County passed the Ordinance with the intent to punish those convicted of the offenses specified by the Ordinance irrespective of the date the individual committed the offense.

72. Regardless of the legislative intent, the retroactive application of the Ordinance on Plaintiff's Registrant members whose offenses predate the Ordinance violates the federal Ex Post Facto Clause because its debilitating effects are clearly punitive.

Count Four

The Ordinance Violates the First Amendment

73. The allegations of paragraphs 1 through 61 are incorporated by reference as if fully set forth here.

74. The Ordinance violates the First Amendment right to freedom of association in that it prohibits Plaintiff's Registrant members from traveling through or into exclusion zones to meet with friends or family that may reside in such zones.

75. The Ordinance violates the First Amendment right of freedom of speech and to petition government in that it prohibits Plaintiff's Registrant members from traveling through or into exclusion zones to attend or speak at government meetings, such as County Commission meetings, or to meet with county or city officials.

Count Five

The Ordinance Violates the Right to Intrastate Travel

76. The allegations of paragraphs 1 through 61 are incorporated by reference as if fully set forth here.

77. Article I, Section II of the Florida Constitution guarantees the right to intrastate travel.

78. The Ordinance, with its prohibition on traveling along public streets and roadways inhibits the ability of Plaintiff's Registrant members to travel in and through Seminole County.

79. The Ordinance criminalizes otherwise innocent and legal conduct and infringes on Plaintiff's Registrant members right to engage in non-criminal routine activities such as shopping or traveling to visit friends and family.

80. The Ordinance does not advance a compelling state interest, is not narrowly tailored to achieve any compelling interest, and is not the least restrictive manner of achieving any such interest.

Relief

WHEREFORE, the Plaintiff respectfully requests that this Court:

A. Enter a judgment declaring Seminole County Code Section 228.2 is void for vagueness in violation of the Fourteenth Amendment of the United States Constitution;

B. Enter a judgment declaring the Seminole County Section 228.2 violates the Plaintiff's right to procedural due process as guaranteed by the Fourteenth Amendment of the United States Constitution;

C. Enter a judgment declaring that Seminole County Code 228.2 violates the Plaintiff's right to be free from ex post facto laws;

D. Enter a judgment declaring that the Seminole County Code 228.2 violates the Plaintiff's right to intrastate travel as guaranteed by Article I, Section II of the Florida Constitution;

E. Issue a permanent injunction prohibiting Defendants from enforcing the Seminole County Code 228.2;

F. Award the Plaintiff its reasonable costs and attorneys' fees pursuant to 42 U.S.C. Section 1988; and

G. Grant or award any other relief this Court deems just and proper.

Respectfully submitted,

/s/ Peter P. Sleasman
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