

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JOHN DOES,

Plaintiffs,

v.

CASES NO. 4:19cv467-RH-MJF

RICK SWEARINGEN,
Commissioner of the Florida
Department of Law Enforcement,

Defendant.

_____ /

**ORDER DISMISSING THE FIRST AMENDED COMPLAINT
AND GRANTING LEAVE TO AMEND FURTHER**

In this action the plaintiffs assert that the Florida statute requiring sex offenders to register, Florida Statutes § 943.0435, imposes so many burdensome obligations that the statute is unconstitutional root and branch. But settled law is to the contrary. *See, e.g., Smith v. Doe I*, 538 U.S. 84 (2003) (holding a state registry constitutional even as applied to offenses committed before the registry was created); *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005) (holding Florida’s registry constitutional). The defendant Commissioner of the Florida Department of Law Enforcement—the official who maintains the Florida sex-offender registry—has

moved to dismiss. This order grants the motion but also grants leave to file a second amended complaint.

As a practical matter, dismissal with leave to amend is good case management. The 99-page first amended complaint is long on background and short on focus. And many plaintiffs have dropped out; a second amended complaint with only those plaintiffs who wish to press on will better frame the issues. The first amended complaint is also an impermissible shotgun pleading. *See, e.g., Joseph v. Bernstein*, 612 F. App'x 551, 555 (11th Cir. 2015) (affirming dismissal when the initial complaint incorporated every preceding paragraph under each count and the amended complaint instead incorporated no factual allegations under any count).

More importantly, the first amended complaint includes plainly unfounded claims that should be eliminated so that those claims that are genuinely at issue can be identified. If the goal of the first amended complaint was to show that the entire Florida registration statute is so flawed it is unconstitutional, the effort has failed; if *Smith* or *Moore* is to be overruled, a higher court than this one will have to do the overruling. If, on the other hand, the goal was to show the registration requirement is unwise or has been implemented unwisely, that effort, too, has failed.

To survive a motion to dismiss, a second amended complaint should identify the components of the registration requirement deemed unconstitutional. The plaintiffs should save for their briefs a background recitation of all the requirements—those that are plainly constitutional as well as those that are challenged. The plaintiffs should do this, that is, unless their only claim is that the entire registration statute is unconstitutional on its face. If that is the plaintiffs' contention, they should simply ask for entry of a judgment in favor of the Commissioner so that they can appeal sooner rather than later.

Any second amended complaint should come to grips with the four-year statute of limitations. A plaintiff had four years after imposition of any discrete requirement to challenge it. A plaintiff who knew about a requirement more than four years before the original complaint in this action was filed will not prevail on a challenge to that requirement. *See, e.g., Meggison v. Bailey*, 575 F. App'x 865, 867 (11th Cir. 2014) (affirming the dismissal of a challenge to § 943.0435 based on the statute of limitations).

Finally, a second amended complaint must identify the plaintiffs by name, not just by pseudonyms. The order of November 5, 2019 addressed the law on this and concluded that the only plaintiffs who can properly proceed under pseudonyms in this case are those who assert in good faith that they cannot constitutionally be required to register at all. *Compare Doe v. Swearingen*, No. 4:16cv459-RH/CAS

(N.D. Fla. Sept. 26, 2016) (allowing a plaintiff to proceed under a pseudonym in a challenge to the requirement to register at all), *with Doe v. Swearingen*, No. 4:16cv501-RH/CAS (N.D. Fla. Oct. 11, 2016) (refusing to allow a properly registered plaintiff to proceed under a pseudonym in a challenge to specific Florida sex-offender registration requirements). The November 5 order required the plaintiffs to file a notice listing any plaintiffs who met this standard and, for each, setting out a brief statement of the basis for the assertion that, under the Supreme Court and Eleventh Circuit decisions upholding registration requirements, the plaintiff could not be required to register at all. The plaintiffs responded by asserting they all meet this standard, but only on the ground that the entire Florida registration statute is unconstitutional. That assertion is incorrect.

A second amended complaint should not repeat the claim that the entire Florida registration statute is unconstitutional. And a second amended complaint should not repeat claims challenging discrete requirements barred by the statute of limitations. This order has definitively rejected such claims.

IT IS ORDERED:

1. The motion to dismiss, ECF No. 34, is granted.
2. The first amended complaint is dismissed.
3. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b).

4. The plaintiffs may file a second amended complaint using their actual names, not pseudonyms. The deadline to do so is May 11, 2020.

SO ORDERED on April 22, 2020.

s/Robert L. Hinkle
United States District Judge