UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 18-24145-CIV-WILLIAMS

JOHN DOE 1, *et al*,

Plaintiffs,

vs.

MARK GLASS,

Defendant.
________________________________/

ORDER

THIS MATTER is before the Court on Defendant's Motion to Dismiss Plaintiffs' Third Amended Complaint (DE 255) ("***Motion***"). Plaintiffs filed a Response (DE 258), Defendant filed a Reply (DE 263), and Plaintiffs filed a Sur-reply (DE 272). For the reasons provided below, Defendant's Motion (DE 255) is **GRANTED**.

I. BACKGROUND

Plaintiffs challenge the constitutionality of the Florida Sex Offender Registration Law ("***Florida Sex Offender Statute***"), Fla. Stat. § 943.0435. Since their initial filing in 2018 (DE 1), Plaintiffs have amended their complaint three times. (DE 50; DE 102; DE 248). And through the course of this action, several Plaintiffs have voluntarily dismissed their claims against Defendant. The remaining Plaintiffs are John Doe 1 and Next Friend Jane Doe, the older sister of former Plaintiff John Doe 6 (collectively, "***Plaintiffs***"). According to the Third Amended Complaint ("***Complaint***"), the Florida Sex Offender Statute has evolved from its 1997 version into "a trip-wired maze of restrictions and affirmative obligations" since it was first enacted. (DE 248 at 1). Accordingly, Plaintiffs

claim that application of the Florida Sex Offender Statute violates procedural due process by imposing strict liability for "inadvertent and unknowing violations;" and substantive due process because there is no rational relationship between the statute's goals and its means as applied to Plaintiffs. (*Id.* at 23–25).

II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A court's consideration is limited to the allegations in the complaint. *See GSW, Inc. v. Long Cty.*, 999 F.2d 1508, 1510 (11th Cir. 1993). All factual allegations are accepted as true and all reasonable inferences are drawn in the plaintiff's favor. *See Speaker v. U.S. Dep't. of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010); *see also Roberts v. Fla. Power & Light Co.*, 146 F.3d 1305, 1307 (11th Cir. 1998). Although a plaintiff need not provide "detailed factual allegations," a complaint must provide "more than labels and conclusions." *Twombly*, 550 U.S. at 555. "[A] formulaic recitation of the elements of a cause of action will not do." *Id.* Rule 12(b)(6) does not allow dismissal of a complaint because the court anticipates "actual proof of those facts is improbable" but the "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 545).

III. ANALYSIS

Defendant argues not only that Plaintiffs' substantive due process claim is moot,

but also that the Complaint suffers fatal flaws, undermining Plaintiffs' ability to adequately state a procedural due process claim. (DE 255 at 3–12). Specifically, the Motion asserts that Plaintiffs' procedural due process claim must fail because the Florida Sex Offender Statute is not a strict liability statute due to the implicit *mens rea* requirement. (*Id.* at 4–6). Furthermore, Defendant argues that each of Plaintiffs' assertions used to bolster their *as-applied* substantive due process challenge falls short because there is a rational basis and legitimate purpose for each challenged requirement. (*Id*. at 12). The Court addresses Defendants' arguments in turn below and finds that the Florida Sex Offender Statute does not offend Plaintiffs' constitutional due process rights.

A. The Florida Sex Offender Statute is not a strict liability statute.

The Florida Sex Offender Statute enumerates the reporting requirements of those individuals deemed "sexual offenders." *See* Fla. Stat. ¶ 943.0435. Defendant argues that the Florida Sex Offender Statute includes a *mens rea* requirement and therefore the statute is not one that imposes strict liability for any violation. (DE 255 at 4–6). In response, Plaintiffs maintain that the Florida Sex Offender Statute "dispenses with a *mens rea* requirement" and imposes significant punishment for harmless conduct in contravention of due process principles. (DE 248 at 24; DE 258 at 4). The parties primarily disagree about the effect of § 943.0435(9)(d), which states:

> An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to

> register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. **A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.** Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

Fla. Stat. § 943.0435(9)(d) (emphasis added) ("***Section 9(d)***").

Plaintiffs assert that the above-referenced language eliminates the lack of notice defense for subsequent offenders, "creat[ing] an irrebuttable presumption of actual knowledge of all reporting requirements . . . no matter how numerous the amendments enacted since." (DE 258 at 3). Conversely, Defendant argues that this portion of the statute does not eliminate the required element of *knowingly* failing to report, which is the *mens rea* attributed to the Florida Sex Offender Statute by the Florida Supreme Court. (DE 255 at 5); *See State v. Giorgetti*, 868 So. 2d 512, 519–20 (Fla. 2004) (analyzing the Florida Sex Offender Statute and recognizing that without clear legislative intent to dispense with knowledge, courts will not assume that knowledge is not required where a statute is silent). The Court agrees with Defendant and finds that Section 9(d) does not create a strict liability scenario under the Florida Sex Offender Statute.

At the outset, a statute is considered to impose strict liability where establishing *mens rea* is not a required element for conviction. *See* 21 Am. Jur. 2d Criminal Law § 128 (noting that "although a criminal conviction generally requires an act and a criminal or wrongful intent," this general rule does not "apply to public welfare offenses created by statute"). "To determine whether the Legislature included a knowledge requirement in any given statute, [the court] first looks to the statute's plain language." *Giorgetti*, 868 So. 2d

at 515. However, where a statute is silent as to *mens rea* and provides no explicit direction, there is a "presumption in favor of a guilty knowledge element." *Id*.

In *Giorgetti*, the Court analyzed the Florida Sex Offender Statute and determined that the statute "includes a requirement that the alleged offender knows of the obligation to register and maintain current addresses." *Id.* at 520. The *Giorgetti* court reasoned that the passive conduct of failing to report a change of address requires a finding of knowledge where there is no express intent to remove knowledge as an element. *Id.* at 519–20. While the decision in *Giorgetti* seems to completely foreclose Plaintiffs' *mens rea* argument, the Court acknowledges Plaintiffs' position that Section 9(d) was enacted months after the *Giorgetti* decision. (DE 258 at 5). Nevertheless, the legislature's decision to remove the lack of notice defense for subsequent offenses creates a distinction without a difference as to *mens rea* because courts still require knowledge as an element for conviction.

Plaintiffs frame the critical inquiry regarding strict liability under the Florida Sex Offender Statute as:

> whether due process requires a *mens rea* element where elderly or disabled registrants may lack the capacity to remember; where reporting requirements are unclear; where sheriffs impose requirements incorrectly; where defendant's own witness/agents interpret the requirements inconsistently; where the statutory requirements and terms are so often amended; and where enhanced penalty for third-degree felony includes mandatory minimum terms of community control with electronic monitoring ranging from six months to two years.

(DE 258 at 6). However, Plaintiffs' view is misguided because removing the notice defense (for a subsequent offender) does not foreclose that offender's opportunity to defeat conviction based on the passive non-compliance scenarios offered above. Stated

differently, the elimination of a notice defense does not remove the affirmative obligation to establish knowledge as an element before conviction under the Florida Sex Offender Statute. Indeed, if someone lacks capacity to remember, or the reporting requirements are unclear, the burden to establish that the individual *knew* the reporting requirement at the time of the offense and *knowingly* chose not to report still remains with the prosecuting actor and that burden must be met to sustain a conviction.

Even Plaintiffs' cited legal authority supports this conclusion. Plaintiffs rely on *Commonwealth v. Corbett*, 101 Mass. App. Ct. 355 (2022), a case where the appellate court rejected the argument that proof of actual knowledge was irrelevant and determined that "to knowingly fail to act requires that the defendant have the ability to perceive—to remember—that he has an obligation to act as of the time of the crime." *Id*. at 360–61 (internal quotation omitted); (DE 258 at 8). The court explained that barriers to proving actual knowledge such as dementia "would be relevant to a fact finder's evaluation of whether a defendant knowingly failed to meet his obligations." *Corbett*, 101 Mass. App. Ct. at 361. The Court finds that this analysis holds true here as applied to Section 9(d) and the Florida Sex Offender Statute. Under the Florida Sex Offender Statute, irrespective of whether a lack-of-notice defense is asserted, a fact finder must determine whether a subsequent offender *knowingly* failed to register, and barriers to actual knowledge—such as John Doe No. 6's incompetency—remain relevant to the inquiry. Therefore, *mens rea* is not effectively eliminated in the Florida Sex Offender Statute to create strict liability.

In the Response, Plaintiffs dispute the validity of *Giorgetti*'s application to cases since Section 9(d)'s enactment, arguing that *Giorgetti* does not alter the express terms of Section 9(d) because the holding does not apply to subsequent offenses "in which case the defense of knowledge is not allowed." (DE 258 at 10). However, courts in Florida have routinely found that to sustain a conviction under Fla. Stat. 943.0435, knowledge is required. *See Newell v. State*, 875 So. 2d 747, 748 (Fla. Dist. Ct. App. 2004) (noting that "the Florida Supreme Court rejected this argument in *State v. Giorgetti,* 868 So.2d 512 (Fla. 2004), and held that **section 943.0435 must be construed as including a knowledge requirement**") (emphasis added); *see also Smith v. State*, 968 So. 2d 1054, 1056 (Fla. Dist. Ct. App. 2007) (noting that during a charge conference for a trial concerning a plaintiff's failure to register as a sex offender, the State submitted proposed jury instructions "informing the jury that **the State had to prove beyond a reasonable doubt that Smith knowingly failed to report in person** to a driver's license office within 48 hours after any change in his permanent or temporary residence") (emphasis added).

Plaintiffs primarily rely on *Horton v. State* to sustain their position. 943 So. 2d 1016 (Fla. Dist. Ct. App. 2006). In *Horton*, the appellate court examined whether the trial court erred in allowing the State to introduce evidence of a defendant's prior conviction "in order to show that [the defendant] was on notice of the requirement that he report a change of address." *Id*. at 1017. The defense argued that "it was **not contesting** the notice element of the offense and therefore the prior conviction was substantially more prejudicial than probative," contrary to the rules of evidence. *Id*. at 1018 (emphasis added). The court found that evidence of the defendant's prior conviction "had no probative value as to any

disputed issue." *Id*. (emphasis in original). In making this determination, the *Horton* court expressly disclaimed reading subsection 9(d)—formerly subsection 9(c)—as authorizing the introduction of a prior conviction as substantive evidence, while noting that "[a]lthough the State was **required** to show that [the defendant] had notice of the duty to register . . . it was undisputed that the State had available other less prejudicial evidence that could have satisfied the notice element (e.g., the form [the defendant] signed when he was released from prison acknowledging the change in address requirement)." *Id.* (emphasis added). Accordingly, Plaintiffs misconstrue the holding in *Horton*: the decision in *Horton* does not remove the requirement that an individual must have *knowingly* failed to report at the time of the offense, regardless of whether they had previous notice of the duty to register. The accused may still put forth evidence of barriers that prevented actual knowledge at the time of the offense.

Furthermore, several Florida courts analyzing different statutory schemes have recognized that a statute must be construed as including a knowledge element where the legislature did not expressly remove knowledge as an element for conviction. *See Krampert v. State*, 13 So. 3d 170, 173 (Fla. Dist. Ct. App. 2009) (examining the elements of The Florida Sexual Predator Act). In *Krampert*, the plaintiff appealed his conviction and sentence for failure to register as a sexual predator, which is a third-degree felony under Fla. Stat. § 775.21(10)(a). *Id* at 171. The plaintiff argued that "the trial court fundamentally erred by not instructing the jury that before it could find the plaintiff guilty, the State had to prove that he knowingly failed to reregister by not reporting in person at the sheriff's office during the sixth month following his birthday month." *Id*. at 172. The *Krampert* court

applied *Giorgetti* and acknowledged the "reluctance of the United States Supreme Court to impute to Congress the intent to do away with the *mens rea* requirement in cases involving serious consequences." *Id*. at 173.[1]

The *Krampert* court recognized that "[s]imilar to section 943.0435, section 775.21 does not express any intent to remove knowledge as an element and it punishes the failure to comply with the statute's registration requirements as a third-degree felony." *Id*. Accordingly, the court held that "the reasoning in *Giorgetti* applies . . . and section 775.21 must be construed as including a knowledge element. *Id*.; *see also Wegner v. State*, 928 So. 2d 436, 439 (Fla. Dist. Ct. App. 2006) (construing Florida's Computer Pornography and Child Exploitation Prevention Act as requiring knowledge by the accused where the court could not discern legislative intent to dispense with a knowledge or *mens rea* element); *See also Mathis v. State*, 208 So. 3d 158, 163-64 (Fla. Dist. Ct. App. 2016)[2] (applying *Giorgetti* and construing Florida's RICO statute as having a knowledge element where the statute "does not express the Legislature's intent to dispense with a *mens rea* requirement"). For these reasons, the Court does not depart from the rationale and holding of *Giorgetti* and concludes that the Complaint does not state a claim premised on strict liability.

B. Plaintiffs do not adequately state an as-applied substantive due challenge.

[1] The Court notes that *Krampert* was decided five (5) years *after* Section 9(d) (formerly section 9(c)) was enacted.

[2] Similarly, *Mathis* was decided twelve (12) years *after* Section 9(d) (formerly section 9(c)) was enacted.

Plaintiffs allege an *as-applied* challenge "to Fla. Stat. §§ 943.0435(4)(a), (7) and (9)(d)," arguing that these specific subsections, as applied to them, fail to satisfy rational basis scrutiny. (DE 248 ¶ 58; DE 255 at 7). Plaintiffs advance five distinct challenges to the Florida Sex Offender Statute. First, Plaintiffs argue that the restriction on intra-state travel fails scrutiny because the community sought to be warned about a registrant's presence does not receive notice until the 48-hour period after the registrant has left for a long weekend stay. (DE 248 ¶ 58). Second, Plaintiffs contend that a rational basis is lacking for § 943.0435(7) because a registrant traveling outside of Florida need only provide his whereabouts for the first three days of his travel, "after which Florida has no inkling of his whereabouts." [3] (*Id.*) Third, as it relates to both inter and intra-state travel, Plaintiffs claim that registrants may evade reporting requirements if they stay only two days in one location. (*Id.*) Fourth, Plaintiffs assert a rational basis nexus is absent because "dual, in-person" reporting of temporary travel to "both" the Department of Highway Safety and Motor Vehicles ("***DHSMV***") and sheriff's office is "extremely burdensome and irrational." (*Id.*) And finally, Plaintiffs argue that the reporting requirements of the Florida Sex Offender Statute are premised on false assumptions about the risk posed by offenders. (*Id.*)

Where a challenged statute "has no substantial impact on any fundamental interest and does not affect with particularity any protected class," the consideration becomes whether the statute "is rationally related to a legitimate governmental interest." *Lyng v. Int. Union, United Auto., Aerospace and Agr. Implement Workers of Am.*, *UAW*, 485 U.S.

[3] Plaintiff does not cite a specific subsection for this assertion, but the Court notes that § 943.0435(7) governs out-of-state travel.

360, 370 (1988) (internal quotations omitted). Under a rational basis standard, the review is "quite deferential." *Id.* An individual attacking the rationality of the government's action has the burden to establish that there is no "reasonably conceivable state of facts that could provide a rational basis" for action. *Humphreys v. Comm'r, Ga. Dept. of Corr.*, 161 F.4th 1300, 1309 (11th Cir. 2025) (internal quotations omitted).

Furthermore, to successfully assert an *as-applied* challenge, a plaintiff must allege a sufficient factual basis for the court to determine "whether 'a statute is unconstitutional on the facts of a particular case or to a particular party.'" *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009) (citing Black's Law Dictionary 223 (7th ed.1999)). Indeed, "[b]ecause such a challenge asserts that a statute cannot be constitutionally applied in particular circumstances, it necessarily requires the development of a factual record for the court to consider." *Id*.; *See also Schultz v. Ala.*, 42 F.4th 1298, 1229 (11th Cir. 2022) ("This is because an as-applied challenge addresses whether a statute is unconstitutional on the facts of a particular case or to a particular party") (citations omitted).

Under this framework, Plaintiffs do not contest that the only question before the Court is whether the statutory reporting requirements in question are rationally related to a legitimate governmental interest. Therefore, to survive Defendant's motion to dismiss, Plaintiffs must allege sufficient facts showing that there is no "reasonably conceivable state of facts that could provide a rational basis" for the challenged reporting requirements. *Id*. The Court scrutinizes each requirement below.

1. **The requirement to report a change of address within 48 hours after intra-state travel.**

Plaintiffs assert that requiring a registrant to report an address change within 48 hours does not serve a legitimate purpose because "the community sought to be warned . . . receives no notice" until 48-hours after the registrant's departure. (DE 248 ¶¶ 21, 58); *see also* Fla. Stat. § 943.0435(4)(a). The Complaint does not provide any additional factual context beyond this allegation to establish that there are no "reasonably conceivable state of facts that could provide a rational basis," despite the highly deferential standard applied under rational basis review. *Humphreys*, 161 F.4th at 1309; *see also F.C.C. v. Beach Comm., Inc.*, 508 U.S. 307, 315 (1993) (noting that "those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it) (internal quotation omitted). In response to Plaintiffs' sole assertion, Defendant contends that the measurable timeframe is an enforcement tool that "provides the sex offender the opportunity to report and provides information to the community in a reasonable time." (DE 255 at 8). The requirement that a registrant report an address change within 48 hours serves a legitimate governmental purpose: strengthening public safety by documenting the locations of offenders and providing notice to the community. [4] "The state has a strong interest in preventing future sexual offenses and alerting local law enforcement and citizens to the whereabouts of those that could reoffend." *Doe v. Moore*, 410 F.3d 1337, 1348–49 (11th Cir. 2005). "For this reason, the Court does not question the legislature's decision-making. *See Beach Comm., Inc.*, 508 U.S. at 315 ("[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical

[4] The Court also finds persuasive the argument that not all sex offenders are changing their addresses so frequently "to avoid the dissemination of information." (DE 255 at 8).

data."). Accordingly, Plaintiffs' *as-applied* challenge to the 48-hour intra-state reporting requirement fails.

2. The requirement to report inter-state travel for the first three days of travel.

As noted above, *supra* n.3, the Complaint does not identify the specific subsection of the Florida Sex Offender Statute challenged by Plaintiffs. However, the Court analyzes Plaintiffs' argument under § 943.0435(7), which governs travel to another state or jurisdiction. *See* Fla. Stat. § 943.0435(7).

Plaintiffs argue that requiring registrants traveling outside of Florida to provide their location only for the first three days of travel does not "bear a rational relationship to a permissible legislative objective" because "Florida does not know where the sex-offender is three days after they leave the state." (DE 248 ¶ 58; DE 255 at 9). However, Defendant counters that "every state has a reporting or registration requirement, and any sex offender would be subject to penalties for not reporting or registering in those states. Therefore, the whereabouts of the offender would be known." (DE 255 at 9).

As argued by Defendant, most states have reporting requirements that offenders must comply with upon travel to the particular state. Moreover, requiring offenders to report their whereabouts in this manner assists law enforcement with a reasonable transition of information, ensuring public safety. Under subsection 7 of the Florida Sex Offender Statute, a sexual offender:

> who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence at least 48 hours before the date he or she intends to leave this state to establish residence

> in another state or jurisdiction or at least 21 days before the date he or she intends to travel outside of the United States.

Fla. Stat. § 943.0435(7). Upon notification, "[t]he sheriff shall promptly provide to the department [of law enforcement] the information received from the sexual offender." *Id*. Then, "the department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence or the intended country of travel of the sexual offender's intended residence or intended travel." *Id*. And seeing that there are several steps that must occur before the intended state, jurisdiction, or country of travel is notified by law enforcement, requiring an offender to disclose their location for their first three days of travel may assist with documenting the offender's whereabouts during this critical transition period. Accordingly, the Court finds Plaintiffs' challenge to § 943.0435(7) unavailing.

3. Avoidant Reporting.

Plaintiffs argue that "with respect to both inter and intra-state travel, a registrant can avoid reporting his whereabouts entirely so long as he stays only 2 days in any one location or leaves one minute before rather than one minute after the next calendar day." (DE 248 ¶ 58); *See* Fla. Stat. § 943.0435 (4)(a) (requiring a registrant to report in-state travel "within 48 hours *after*" a change in residence) (emphasis added); *cf*. Fla. Stat. § 943.0435(7) (requiring a registrant "who intends to establish a permanent, temporary, or transient residence" outside of Florida to report "at least 48 hours *before* the date he or she intends to leave" Florida) (emphasis added). As noted above, *supra* III(b)(1), the timeframe is not a guarantor of a registrant's movement but is an enforcement tool that "provides the sex offender the opportunity to report and provides information to the

community in a reasonable time." (DE 255 at 8). "Without such a requirement, sex offenders could legally subvert the purpose of the statute by temporarily traveling to other jurisdictions for long periods of time and committing sex offenses without having to notify law enforcement." *Moore*, 410 F.3d at 1349. Moreover, "[n]ot all sex offenders are changing addresses every two days to avoid reporting or to avoid the dissemination of information. . . ." (DE 255 at 8); *see supra* n.4. Accordingly, Plaintiffs' *as-applied* challenge fails in this respect.

4. The "dual, in-person" reporting requirement for temporary travel.

The Complaint alleges that "requiring dual, in-person temporary travel reporting to both the DHSMV and the sheriff's office is extremely burdensome and irrational." (DE 248 ¶ 58). In response, Defendant initially argued that this point was mooted by the decision in *Harper v. Glass*, No. 4:21-cv-85 (N.D. Fla. Mar. 25, 2024), which required the Florida Department of Law Enforcement to provide a method of online reporting of any in-state change in permanent or temporary residence. *Id*. at 26 ¶ 2; *See also* (DE 245-1). "The *Harper* Court also suggested that the State repeal the duplicative requirement" that obligated offenders to report to the DHSMV and sheriff's office. (DE 255 at 4). Thereafter, HB 1351 repealed the dual reporting requirement and instituted an online mechanism for intra-state reporting effective October 1, 2025. Notwithstanding this repeal, and as noted by Defendant, Plaintiffs' response to the Motion raises for the first time the argument that their "substantive due process challenge to § 943.0435(7), governing out-of-state travel, is not moot" because "online reporting is now permitted for intra-state travel." (DE 258 at 12; DE 263 at 12). Therefore, Plaintiffs now reframe the inquiry to be "whether requiring

in-person reporting of 3-day out-of-state trips violates substantive due process where the state already provides for online reporting of a wide variety of personal information, including intra-state travel." (DE 258 at 13).

While the Court finds Plaintiffs' reframing of the issue and raising a new challenge in their Response to be improper, the Court also finds that in-person reporting of out-of-state travel does not violate substantive due process. As noted by the *Harper* court, while an offender must report out-of-state travel in-person in advance of departure, (*see* Fla. Stat. § 943.0435(7)), like the reporting statute in Alabama, a registrant is then "free to travel without further reporting" to Florida officials, which is an entirely "workable" system. *Harper*, No. 4:21-cv-85, at 21. Accordingly, out-of-state travel as governed by "Florida Statutes § 943.0435(7), which requires an in-person report of out-of-state travel in advance, not within 48 hours after," is constitutional. *Id*. at 24 (quotations omitted).

5. Alleged false assumptions about risk.

Finally, Plaintiffs allege that the reporting requirement "is anchored in false assumptions about risk, and its means fail to mitigate whatever risk there is," especially when applied specifically to them. (DE 248 ¶ 58). In response, Defendant asserts that Plaintiffs failed to (1) establish facts that adequately support their *as-applied* challenge; and (2) provide verifiable sources for the several studies cited in the Complaint. (DE 255 9–11).

To successfully challenge the reporting requirement in this manner, Plaintiffs must sufficiently set forth a factual predicate for the Court to consider regarding whether the requirements are constitutional as applied to Plaintiffs themselves. *Harris*, 564 F.3d at

1308 (citing Black's Law Dictionary 223 (7th ed.1999)). Moreover, when determining the constitutionality of a statute under rational basis review, "a state 'has no obligation to produce evidence to sustain the rationality'" of a statutory scheme. *Leib v. Hillsborough Cnty. Public Transp. Com'n.*, 558 F.3d 1301, 1306 (11th Cir. 2009) (citing *Heller v. Doe*, 509 U.S. 312, 319–320 (1993)) (dismissing a challenge to a Hillsborough County Public Transportation Commission rule under rational basis review); *see also Vance v. Bradley,* 440 U.S. 93, 111 (1979) (noting that district courts are not authorized to "reject legislative judgment on the basis that without convincing statistics in the record to support it, the legislative viewpoint constitutes nothing more than . . . pure speculation") (quotations omitted); "Rather, a statute is presumed constitutional, and the burden is on the one attacking the law to negate every conceivable basis that might support it, even if that basis has no foundation in the record." *Leib*, 558 F.3d at 1306. "Under rational basis review, a court must accept a legislature's generalizations even when there is an imperfect fit between means and ends." *Id*. As such, the Court does not reject the legislature's decision to include such requirements, regardless of Plaintiffs' belief that the requirement is founded upon false assumptions about risk. *See Beach Comm., Inc.*, 508 U.S. at 315. ("A legislative choice . . . may be based on rational speculation unsupported by evidence of empirical data.").

The Court finds that Plaintiffs have not advanced sufficient factual assertions to allow the Court to consider Plaintiffs' empirical data and the statute's constitutionality as applied to Plaintiffs. For example, without authority, Plaintiffs state, "[John Doe 6] has not since been arrested for a substantive offense, consistent with forensic testing reflecting

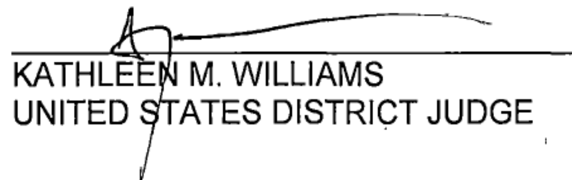
virtually no risk of reoffense [sic].” (DE 248 ¶ 9). Plaintiffs also include several paragraphs of allegations under the title “Empirical Evidence,” but fail to cite verifiable authority. (*Id.* ¶¶ 31–35). As a result, the Court is unable to effectively evaluate the constitutionality of the reporting requirements as applied to Plaintiffs; and Plaintiffs have not negated every conceivable basis that might support the challenged reporting requirements. *Leib*, 558 F.3d at 1306. Therefore, Plaintiffs’ final challenge to the Florida Sex Offender Statute fails. *See Harris*, 564 F.3d at 1308 (“An as-applied challenge, by contrast, addresses whether a statute is unconstitutional on the facts of a particular case or to a particular party. Because such a challenge asserts that a statute cannot be constitutionally applied in particular circumstances, it necessarily requires the development of a factual record for the court to consider.”) (cleaned up).

IV. CONCLUSION

For the reasons set forth above, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant’s Motion to Dismiss Plaintiffs’ Third Amended Complaint (DE 255) is **GRANTED**.
2. Count I of the Complaint is **DISMISSED WITH PREJUDICE**.
3. Count II of the Complaint is **DISMISSED WITHOUT PREJUDICE**.

DONE AND ORDERED in chambers in Miami, Florida, this 27th day of March, 2026.



KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE