

ORIGINAL

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

JUN 20 2006

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

WENDY WHITAKER, JOSEPH
LINAWEAVER, JANET JENKINS
ALLISON, JAMES VICTOR WILSON,
JEFFERY YORK, DEWAYNE OWENS,
AL REGINALD MARKS, LORI SUE
COLLINS, REV. JOEL JONES,

Plaintiffs,

v.

SONNY PERDUE,
Governor of the State of Georgia
in his official capacity,

THURBERT E. BAKER,
Attorney General of the State of Georgia
in his official capacity,

SCOT DEAN,
Chief of Probation,
Cedartown, Polk County, Georgia
in his official capacity,

ROBERT SPARKS,
Sheriff of Polk County
in his official capacity,

Defendants.

CIVIL ACTION

No. _____

4 06 CV - 140

**COMPLAINT - CLASS
ACTION FOR INJUNCTIVE
RELIEF**

-HLM

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1.

Plaintiff WENDY WHITAKER and others bring this suit to prevent people on Georgia's sex offender registry – including the elderly and disabled – from being deprived of their homes and livelihoods due to the unfair and arbitrary provisions of Act No. 571, Ga. Laws 2006 (HB 1059), codified at Ga. Code Ann. § 42-1-15 (2006) (“the Act”). When the Act goes into effect on July 1, 2006, the result will be catastrophic. Thousands of people on Georgia's sex offender registry will be forced, by legislative fiat, to evacuate their homes, leave their jobs, cease attending their churches, and abandon court-mandated treatment programs. Plaintiffs have been convicted of crimes – some of them when they were teenagers for conduct a judge found was not a threat to public safety and did not warrant any time in prison – but they have paid the price and today live law-abiding lives as productive members of the community. Now they are being punished again. The Act prohibits anyone on the registry from living within 1,000 feet of any one of the hundreds of thousands of school bus stops in Georgia. This provision alone renders nearly all urban areas off-limits to people on the registry. Plaintiffs cannot find anywhere to live, though many have spent weeks driving hundreds of miles in search of a residence that complies with the Act. If HB 1059 goes into effect, it will drive many people on the registry to sleep in parks, under bridges, or in their cars, or to set up tents or trailers in the woods.

2.

There are approximately 11,000 registered “sex offenders” in Georgia, about 9,000 of whom live in the community. Unlike the sex offender residency requirements of many other states, Georgia does not differentiate between people convicted of violent sexual offenses, such as rape, and people who violated the law by having consensual sexual relations when they were teenagers with someone under the age of consent. Georgia treats everyone like the worst offender. Georgia already has a law governing where people on the registry can live. See Ga. Code Ann. § 42-1-13 (2006) (prohibiting residency within 1,000 feet of schools, child care facilities, and areas where minors congregate, including parks, recreation facilities, skating rinks, neighborhood centers, gymnasiums, and similar facilities providing programs or services directed toward children). HB 1059, signed into law by the Governor on April 24, 2006, substantially revises § 42-1-13, turning the law from one tailored to keep offenders away from children into one that essentially drives every person on the registry from all urban areas and many rural areas.

3.

The ostensible purpose of HB 1059 is to keep Georgia’s children safe from sexual offenses. No one would dispute that this is a laudable goal. Yet the Act imposes its residency restrictions and other significant penalties on all people on the registry – even those like Plaintiff Wendy Whitaker who is on the registry

because, at age 17, she had a single consensual act of oral sex with a 15-year-old boy. For this one act, committed ten years ago, the now 26-year-old Ms. Whitaker and her husband have been forced from one home and now will likely be forced from another. Plaintiff Joseph Linaweaver was 16 when he had a single consensual act of oral sex with a 14-year-old girl. For this act, Mr. Linaweaver is being driven from his home. Plaintiff Janet Allison was convicted of being "party to a crime of statutory rape and child molestation" because she did not prevent her 15-year-old daughter from becoming sexually active. Due to this conviction, Ms. Allison and her family will have to leave their home.

4.

Although they have nowhere to go and little prospect of finding a residence that is not within 1,000 feet of a school bus stop, if Plaintiffs and others on the registry do not leave their homes by July 1, 2006, they will be subject to arrest and prosecution. The punishment for failure to comply with the Act's residency and working restrictions is a minimum of 10 years imprisonment and a maximum of 30 years imprisonment.

5.

The Act will also prohibit anyone on the registry from working within 1,000 feet of a church, child care facility, or school. Hundreds, if not thousands, of people on the registry will lose their jobs.

6.

In addition to imposing onerous residency and employment restrictions, the Act impermissibly interferes with the practice of religion. It will require church halfway houses – but not sectarian halfway houses – to expel residents who are on the registry, even if the residents are low-risk offenders complying with the terms of probation. In addition, the Act impermissibly chills the right to exercise one’s religion by making it a felony punishable by a minimum of 10 years imprisonment to “loiter” at or near a church or other place of religious worship. Plaintiffs in this case and others on the registry rationally feel that they cannot go to church on Sunday, attend Wednesday or Friday night prayer groups, or go to weddings or funerals for fear that they will be thought to be loitering at a place of public religious worship. The penalty for loitering is simply too severe to risk participation in religious activities.

7.

Plaintiffs are persons subject to the residency, working, and loitering restrictions of HB 1059. Plaintiffs bring this putative class action on behalf of themselves and all persons subject to the Act. Plaintiffs respectfully ask this Court to preliminarily and thereafter permanently enjoin Defendants from enforcing such portions of the Act as are necessary to protect Plaintiffs’ constitutional rights.

8.

The Act's enforcement should be enjoined for the following reasons:

- a. The Act violates the Ex Post Facto Clause;
- b. The Act violates the procedural component of the Due Process Clause;
- c. The Act violates the substantive component of the Due Process Clause and the right to family privacy;
- d. The Act violates the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000(c)(c) (2006);
- e. The Act violates the Free Exercise Clause and the right to freedom of association;
- f. The Act violates the Takings Clause;
- g. The Act violates the right to interstate and intrastate travel;
- h. The Act violates the Eighth Amendment by imposing cruel and unusual punishment and by impermissibly punishing Plaintiffs based upon their status.

PARTIES

Plaintiffs

9.

Plaintiff WENDY WHITAKER is a 26-year-old woman who lives in McDuffie County, Georgia. She is a full-time student studying criminal justice at Augusta Technical College. She has been married for six years.

10.

Ten years ago, when Ms. Whitaker was a 17-year-old high school student, she engaged in a consensual act of oral sex with a 15-year-old male while on school property. Ms. Whitaker is white; the other student was African-American. Ms. Whitaker was arrested, charged with sodomy, and advised to plead guilty, and she ultimately completed five years on probation. Her conviction required her to register as a sex offender.

11.

Ms. Whitaker and her husband have already been required to comply with the current sex offender registration law, Ga. Code Ann. § 42-1-13 (2006). Earlier this year, the police made Ms. Whitaker leave her home in Harlem, Georgia. The residence sat within 1,000 feet of a church, and unbeknownst to the Whitakers when they bought the home, a day care program operated inside the church. The Whitakers still own their home and must pay their mortgage on it, but they can no longer live there.

12.

The Whitakers have since moved in with Mr. Whitaker's brother and his daughter in Thomson, Georgia. They must pay rent and expenses in addition to mortgage, causing them financial strain. The Whitakers' niece will be starting school in the fall and she will take the school bus. Presumably, the bus will stop within 1,000 feet of the house, making the Whitakers' present residence an unfit accommodation under HB 1059.

13.

If the Whitakers have to leave their current residence in Thomson, they do not know where they will go. Because of his work, Mr. Whitaker will not be able to leave the Augusta area. Ms. Whitaker has not been able to find another affordable residence anywhere in the area. The married couple will have to separate and live in different places.

14.

Plaintiff JOSEPH LINAWEAVER is a 22-year-old man who lives with his mother and father in Columbia County, Georgia. His mother works at Walgreen's and his father is an electrician. Mr. Linaweaver is looking for a job, but his status as a "sex offender" has made it difficult to find one.

15.

In 2000, when Mr. Linaweaver was 16, he engaged in a consensual act of oral sex with a 14-year-old female classmate while on a school bus. Mr. Linaweaver pled guilty to sodomy and was sentenced to five years on probation. Because of the conviction, he had to register as a sex offender.

16.

On June 1, 2006, the Columbia County Sheriff's Department notified Mr. Linaweaver that he must move from his family's home by June 30th. Mr. Linaweaver's whole family lives in the Augusta area. He cannot find anywhere to live in this area that meets the Act's requirements; nor has he found employment at any job that does not violate the Act's provisions. He plans to leave his family and move to Wisconsin rather than face being homeless and jobless in Georgia. Even his plans to move out of state, however, are uncertain at this point. Before leaving the state, Mr. Linaweaver has to arrange to transfer his probation, a process that can take six months in the best of circumstances. As probation offices across the state are being inundated with hundreds of requests to move and/or transfer probation, the interstate compact arrangements will likely take at least nine months. In the interim, Mr. Linaweaver has nowhere to go.

17.

Plaintiff JANET JENKINS ALLISON is a resident of Lumpkin County, Georgia. She is married and is the mother of five children, ages 25, 23, 20, 19 and 17. Ms. Allison lives with her husband and one of her sons. She formerly worked as the manager at the Huddle House in Dahlonega, Georgia but had to take a leave of absence after suffering an injury at work. Her husband is a diesel mechanic at Eagle Point Landfill Company.

18.

Ms. Allison was convicted of being party to a crime of statutory rape and party to a crime of child molestation in 2002. Ms. Allison has a teenage daughter who was sexually active and became pregnant at age 15. The indictment alleged that Ms. Allison did not do enough to stop her daughter's sexual activity. It also alleged that Ms. Allison permitted her daughter's teenage boyfriend to move into the house after her daughter became pregnant and the young couple decided to marry. (They later did marry.) For this, Ms. Allison is a registered sex offender. She was sentenced to fifteen years of probation.

19.

On June 15, 2006, a deputy from the Lumpkin County Sheriff's Office came to Ms. Allison's door and told her she must leave her home of four years by July 1 because she lives within 1,000 feet of a school bus stop. Ms. Allison does not know where her family will go. In the last week, they have driven around White,

Pickens, Dawson, Lumpkin, and Gilmer counties looking for a new home. They have not found any home they can afford that complies with HB 1059's requirements. They have looked in several mobile home parks, but found most of them will not be suitable because of playgrounds, swimming pools, and school bus stops.

20.

Ms. Allison must attend counseling as a condition of probation. Ms. Allison's court-ordered treatment provider told her and other members of the treatment group that under the Act, they may not be able to attend church because they could be prosecuted.

21.

Plaintiff JAMES VICTOR WILSON is a 23-year-old resident of Fulton County. He is a senior at Georgia State University pursuing a dual degree in accounting and finance. Mr. Wilson, who is due to graduate in December 2006, has worked at Miller, Ray, Houser & Stewart, an accounting firm in Atlanta, for three years. The firm has offered him a position upon graduation.

22.

In 2002, as a freshman at New York University in New York City, Mr. Wilson pled guilty to sexual abuse in the first degree for inappropriately touching an adult female college friend while highly intoxicated at a freshman party. The court sentenced him to five years of probation, which he is due to

complete in August 2007. Mr. Wilson was designated a level I sex offender, the lowest possible designation, reflecting the unlikeliest possibility of re-offending. He has never been arrested before or since and has complied with all terms of his probation. His criminal case file contains letters from approximately 40 individuals (former teachers, employers, professors, friends, etc.) attesting that the incident was an aberration and out of character for Mr. Wilson.

23.

Mr. Wilson is a co-owner of his home with his parents. It is within 1,000 feet of a school bus stop. His work place is within 1,000 feet of a building listed as a church in the telephone directory and on the Internet. Unless the Act is enjoined, Mr. Wilson will have to leave his home and he and his family will have to sell it. He will also have to give up his job and forgo his firm's offer of full-time, steady employment because his employer is within 1,000 feet of a church.

24.

For the last six weeks, Mr. Wilson and his family have searched the metro Atlanta area for any accommodation that would comply with HB 1059. All he could come up with is a motel in Clayton County, in an industrial area. He believes this motel meets the requirements of HB 1059, but he has not been able to determine whether there is a school bus stop within 1,000 feet of it. In addition, he knows school bus stop locations will change in six weeks with the coming school year.

25.

Plaintiff JEFFERY YORK is a 22-year-old resident of Polk County. He lives with his grandmother and brother in Cedartown, Georgia. He is a painter and a writer.

26.

When Mr. York was 17 years old, he dated a 15-year-old male. In 2003, Mr. York pled guilty to one count of sodomy for engaging in a consensual act of oral sex with the 15-year-old. He was sentenced to five years of probation.

27.

Mr. York has received two letters from the Polk County Sheriff's Department stating his home may be within 1,000 feet of a bus stop. If it is, he will have to move immediately.

28.

Plaintiff DEWAYNE OWENS is a 21-year-old male who is incarcerated at Calhoun State Prison in Calhoun County, Georgia.

29.

In 1998, when Mr. Owens was 13 years old, he was convicted of incest for allegedly having sex with his sister. Mr. Owens served nearly four years in a juvenile facility and was released. He has never been charged with any additional crime before or since. He was found, however, to have violated the terms of his probation in 2004 by: (a) looking at a magazine with sexual content,

and (b) being in the presence of his young cousins (no allegations of inappropriate conduct). Mr. Owens is currently incarcerated at Calhoun State Prison where he has an excellent behavioral record.

30.

Mr. Owens has a tentative parole date of December 2006. He must submit a home plan to the Board of Pardons and Paroles. The Act's residency restrictions prohibit Mr. Owens from living with any of his family members. He does not have money to rent or buy his own accommodation. Because of the Act's residency restrictions, his counsel has been unable to find a single halfway house or shelter in the State that can accept a male on the sex offender registry. Without a parole residence, Mr. Owens will remain in prison for the next seven years, despite any wish the Board of Pardons and Paroles may have to see him released and returned to the community.

31.

Plaintiff AL REGINALD MARKS is a 20-year-old male who lives in Cobb County, Georgia. Mr. Marks is a student at Chattahoochee Technical College where he studies computer science. He works seven days per week at McDonald's and is training to become a manager. Mr. Marks lives with his mother, Carol King, and his father, Alfonzo Marks. Alfonzo Marks is a lieutenant in the Georgia Department of Juvenile Justice and a former New York City police officer.

32.

In 2000, when he was 14-years-old, Al Reginald Marks was charged with hand-to-genital and mouth-to-genital sexual contact with the seven-year-old male son of a family friend. This was a one-time incident with no allegations of force. Mr. Marks pled guilty to child molestation and was sentenced to probation. He has served five years on probation without incident.

33.

The Marks family has already had to move from their home once to comply with Georgia's sex offender residency restrictions. In 2003, after Georgia passed its first residency restriction law, authorities notified the Marks family that their house sat within 1,000 feet of a swimming pool. When informed of the problem, the Marks family moved to their current home in Cobb County. It took the family one-and-one-half years to pay their debt from breaking the lease.

34.

Now the Marks family will have to move again. In a letter dated May 24, 2006, the Cobb County Sheriff's Department informed Mr. Marks he must leave because his home is within 1,000 feet of a school bus stop.

35.

For the past three weeks, the Marks family has been searching for a place to live that complies with HB 1059's requirements. They have spent days driving around the State of Georgia, using at least one tank of gas per day and visiting

potential locations in Dekalb, Paulding, Douglas, and Bibb counties. So far, they have not found a residence that would comply with the Act.

36.

If the family cannot find a residence that complies with HB 1059 by June 25, Al Marks plans to seek a 30-day travel pass to visit his grandmother in New York for July. He will have to postpone his college studies and give up his job.

37.

If the Marks family cannot find a home in Georgia, they will move to New York. Alfonzo Marks will have to quit his job of 14 years, and the family will be without income or health insurance until they have settled in New York and found other employment.

38.

Plaintiff LORI SUE COLLINS is a resident of Rockdale County. Ms. Collins lives at the Door of Hope Ministry, a faith-based halfway house for people recently released from prison. Ms. Collins is now the residential program director at Door of Hope. She is a volunteer prayer partner at Trinity Broadcasting Network. She also ministers to female inmates in the Henry County Jail.

39.

In 2002, Ms. Collins was convicted of statutory rape for having consensual sex on one occasion with a 15-year-old boy. Ms. Collins, who was 39 at the time, served three years in prison for her offense. While in prison, Ms. Collins lived in the honor dorm, served as assistant to the chaplain, edited a religious newsletter, and received a college diploma with honors.

40.

In June 2006, Ms. Collins received a letter from the Rockdale County Sheriff's office explaining she would have to leave Door of Hope because a school bus stop was within 1,000 feet of the residence. For three weeks, Ms. Collins has spent nearly every waking moment trying to find a new place to live. She drove around five counties (Hall, Barrow, Newton, Rockdale, and Henry) in search of a residence conforming to the requirements of HB 1059. She searched the Internet. She searched newspapers. She could not find anything. At one point, she thought she had found a place to live in an industrial area in Covington, Georgia. It turned out, however, that there was a school bus stop within 1,000 feet of the house.

41.

Ms. Collins considered staying with various family members. There is a school bus stop within 1,000 feet of her daughter's home. A school bus stop also prevents her from living with her aunt in Augusta. Her grandparents, who live in a rural area outside of Augusta, offered to take her in, but there is a school bus stop within 1,000 feet of their property as well.

42.

Ms. Collins has a second daughter who lives in South Carolina. Ms. Collins asked her probation officer if she could move to South Carolina. She was told she would have to ask for a transfer of probation under an interstate compact and that this could take up to six months.

43.

Just days ago, Ms. Collins finally found a temporary residence. She will be moving to the Door of Hope's other residential ministry in Polk County, Georgia. Ms. Collins' probation officer told her the Door of Hope in Polk County is not currently within 1,000 feet of a school bus stop. He specifically told her, however, that this may change in six weeks when school bus routes are reassigned for the coming school year.

44.

In addition, Ms. Collins may not be able to stay at the Door of Hope in Polk County because it conducts religious programs and services. Every Friday night, for example, there is a prayer watch during which congregants engage in praise, music, and singing. The ministry also hosts religious conferences, prayer, and worship. Even though children generally do not attend these events, the Act, on its face, prohibits Ms. Collins from living at Door of Hope because public worship occurs on the premises.

45.

If Ms. Collins has to leave Door of Hope, she does not know where she will go. She will likely become homeless and have to sleep in a shelter or on the street.

46.

Plaintiff REVEREND JOEL JONES is a minister in Henry County, Georgia.¹ He serves on the Board of Directors of the Door of Hope Ministry in Rockdale County, Georgia. Door of Hope is a faith-based half-way house that ministers to women who have been released from prison. Residents attend Bible study and church and participate in other structured activities. Reverend Jones's spiritual beliefs compel him to provide assistance and spiritual leadership to people

¹ Reverend Jones is not a member of the Plaintiff class.

released from prison and jail. In addition to running Door of Hope, Reverend Jones ministers to inmates in the U.S. Penitentiary and the Clayton County Jail. Lori Collins, who currently resides at Door of Hope, is on the sex offender registry. As the residential program director, she ministers to the other women in the home. Reverend Jones would like to continue to provide a residence and spiritual guidance to Ms. Collins as she transitions into the community. The Act will prohibit him from doing so. Under the Act, Door of Hope will no longer be able to house women on the registry because residents engage in religious worship and because the ministry's Rockdale location is within 1,000 feet of a school bus stop.

Defendants

47.

Defendant SONNY PERDUE is the Governor of the State of Georgia. As chief executive of the State of Georgia, he has the duty to "take care that the laws are faithfully executed." Ga. Const. art. V, § 2, ¶ II. He is sued in his official capacity. Plaintiffs ask that Defendant PURDUE be enjoined from enforcing the Act.

48.

Defendant THURBERT BAKER is the Attorney General of the State of Georgia. He is charged by law with enforcement of the Georgia Code and the defense of the constitutionality of the laws of Georgia. He is sued in his official capacity. Plaintiffs ask that Defendant BAKER be enjoined from enforcing the Act.

49.

Defendant SCOT DEAN is the Chief Probation Officer in Cedartown in Polk County, Georgia. He is charged with supervising probationers, including Plaintiff York and Plaintiff Collins. Georgia law authorizes Defendant DEAN to arrest a probationer if he believes the probationer has violated probation in a material respect, including by violating a law such as the Act. See Ga. Code Ann. § 42-8-38 (2006). Defendant DEAN is sued in his official capacity. Plaintiffs ask that Defendant DEAN be enjoined from enforcing the Act.

50.

Defendant ROBERT SPARKS is the Sheriff of Polk County and he resides in Polk County. He is charged with the common law and statutory duties of the office of sheriff to enforce the laws of Georgia. He is sued in his official capacity. Plaintiffs ask that Defendant SPARKS be enjoined from enforcing the Act.

JURISDICTION AND VENUE

51.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the action arises under and is brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C.A. § 2000(c)(c).

52.

Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because at least one Defendant resides in this judicial district. This District also is an appropriate venue for this action under 28 U.S.C. § 1391(b)(2) because at least one Plaintiff lives in the district.

ALLEGATIONS

53.

Under Georgia law, anyone who is convicted of a criminal offense against a minor or who is convicted of a “sexually violent offense” against any person must register as a sex offender. See Ga. Code Ann. 42-1-12(b)(1)(a)(i) (2006).² Such persons must register with the sheriff in the county where they live, work, and/or attend school. All such persons must have their photographs, addresses, and other identifying information posted on the website of the Georgia Bureau of Investigation.

54.

In June 2003, Georgia’s General Assembly passed a law restricting the locations where people on the sex offender registry can live. See Ga. Code Ann. § 42-1-13 (2006). According to this law, which remains in effect today, no one on the registry may live within 1,000 feet of the following locations: schools, child care facilities, and areas where minors congregate, including public and private parks, recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, and similar facilities providing programs or services directed

² Under current law, a “sexually violent offense” includes: rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or aggravated assault with intent to rape. See Ga. Code Ann. 42-1-12(a)(7) (2006).

towards persons under 18. Under the current law, the penalty for knowingly violating the residency restrictions is imprisonment from one to three years.

55.

Many people on the registry, including Plaintiff Al Reginald Marks, were required to leave their homes to comply with the terms of the 2003 law, Ga. Code Ann. § 42-1-13 (2006).

56.

HB 1059 was passed with the purpose of forcing all 10,000 people on the registry to leave the State. House Majority Leader Jerry Keen, the chief sponsor of HB 1059, stated:

- "We want those people running away from Georgia. Given the toughest laws here, we think a lot of people could move to another state."
- "If it becomes too onerous and too inconvenient, they just may want to live somewhere else. And I don't care where, as long as it's not in Georgia."
- "Candidly, Senators, they will in many cases have to move to another state."

57.

However, the legislators were not fully informed. People on the registry who are on probation and parole cannot simply move to another state. They must acquire the permission of their probation or parole officers, and arrangements must be made for their supervision in another state before they may leave

Georgia. Thus, the Act does not force people out of the State; it forces them into the street.

58.

HB 1059 was signed into law by Governor Sonny Perdue on April 26, 2006.

The Act, set forth at Ga. Code Ann. § 42-1-15 (2006), states in pertinent part:

(a) No individual required to register pursuant to Code Section 42-1-12 shall reside or loiter within 1,000 feet of any child care facility, church, school, or area where minors congregate. Such distance shall be determined by measuring from the outer boundary of the property on which the individual resides to the outer boundary of the property of the child care facility, church, school, or area where minors congregate at their closest points.

(b)(1) No individual who is required to register under Code Section 42-1-12 shall be employed by any child care facility, school, or church or by any business or entity that is located within 1,000 feet of a child care facility, a school, or a church.

The statute defines “areas where minors congregate” as:

“all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, and public and community swimming pools. See Ga. Code Ann. § 42-1-12 (3) (2006).

59.

HB 1059 severely restricts the locations in which people on the registry can live. It does this by adding the requirement that no one on the registry may live within 1,000 feet of any church, swimming pool, or school bus stop. In addition, under the Act no one will be able to work at or within 1,000 feet of a child care

facility, school, or church. Under the Act, no one on the registry will be able to loiter within 1,000 feet of a child care facility, church, school, public or private park, recreation facility, playground, skating rink, neighborhood center, gymnasium, school bus stop, public swimming pool, or community swimming pool.

60.

Unlike sex offender residency restrictions in other states, HB 1059 does not contain any exception to protect the rights of those who already own or rent homes in restricted locations. C.f. Iowa Code § 692A.2A (2006) (exempting those who already lived within 2,000 feet of school from its sex offender residency requirements).

61.

HB 1059 applies to everyone on the registry without exception. There is no procedure to apply for a hardship exemption based on illness, advanced age, financial hardship, or disability.

62.

The Act will have a profound effect on the elderly and disabled people who are now given just weeks to relocate. This is next to impossible for people like Jeff Kennedy who is blind; William Evans, who is missing a leg, had a heart attack, and is in a wheelchair; a man in northwest Georgia who is 91 years old, in a nursing home, and confined to a wheelchair; and Herman Williams, who is 80

years old, has numerous health problems, and cannot find anywhere for him and his 77-year-old wife to live. One of the persons on the registry is 100 years old and will have to move to comply with the Act. About 25 people on the registry are in nursing homes. The Act makes no exception for people who are elderly, sick, or disabled and who cannot reasonably be expected to move at short notice.

63.

HB 1059 does not provide for individualized justice. It provides no process to distinguish between people on the registry who are dangerous to children and those who are not. The exact same residency restrictions apply to Plaintiff Wendy Whitaker, convicted of consensual sexual activity with a boy of like age when she was 17, and adult felons convicted of violent crimes such as rape. The Act contains no "safety valve" provision to permit persons such as Plaintiffs Whitaker, Linaweaver, Allison, and others to appeal to a court to determine whether the residency restrictions are appropriate for them. By imposing punishment without an individualized showing of dangerousness or an individual opportunity to obtain an exception to the law, the Act deprives Plaintiffs of their property and livelihood without due process of law.

64.

Some sheriff's departments have notified people on the registry that they must leave their homes by July 1. Plaintiffs Whitaker, Linaweaver, Allison, and Collins have been ordered to leave their homes.

65.

Many sheriff's departments, however, have only just begun to notify persons on the registry that they will have to leave their homes and/or quit their jobs. Accordingly, many people will have two weeks or less actual notice that they must break their leases, sell their homes, and find another residence. People have nowhere to go. Even temporary accommodations, such as motels, are off-limits under the new law since motels often have swimming pools. See Ga. Code Ann. § 4-1-12 (a)(15) (2006) (prohibiting anyone on the registry from residing within 1,000 feet of a swimming pool, including a motel swimming pool).

66.

The provision of the Act that prohibits people from living within 1,000 feet of a school bus stop, Ga. Code Ann. 42-1-15(a) (2006), is particularly arbitrary, unreasonable, and punitive. The Act's prohibition against living within 1,000 feet of a school bus stop virtually guarantees that no one on the registry will be able to live or work in urban areas. Bibb County has roughly 4,700 bus stops. Approximately 227 of 230 people on the registry will be forced to move.

Rockdale County has roughly 4,000 bus stops. Approximately 48 of 51 people will be forced to move. Forsyth County has about 1,200 school bus stops. All 67 people on the registry will be forced to move.

67.

School bus stops change frequently depending on when children move into and out of neighborhoods, get cars of their own, and change schools. This renders it virtually impossible for anyone on the registry to buy or rent a home. If a child moves into the neighborhood or reaches school age, a bus stop may force the registrant to move.

68.

School bus stops are usually unmarked. The measurements of a school bus stop are unclear; there is no way to know where a stop begins and ends so that one may measure 1,000 feet from it. In many rural areas, school buses stop at the end of the driveways of children's houses.

69.

In many Georgia counties, it has been impossible to get a list of school bus stops from the sheriff's department, the probation office, the local department of education, or any other state or local office. Currently, no listing of school bus

stops is available in some counties because it is being revised during the summer months.

70.

HB 1059 will make it impossible for registrants in certain professions – construction, roofing, and truck driving – to maintain their jobs, as they cannot predict or control where their jobs will take them.

71.

The Act is breaking families apart. Many parents will no longer be able to live with their children. People taking care of elderly parents or terminally ill spouses will have to leave home.

72.

In many cases, instead of banishing people beyond state lines, HB 1059 will simply render people homeless and unaccounted for within the State of Georgia. Many probationers cannot leave the county or the state without their probation officers' approval. Yet there will be nowhere for people on the registry to move in many Georgia counties. Urban areas are generally off-limits. And law enforcement is so backed up with requests to approve new residences that people on the registry are not able to initiate relocation to different counties. People on the registry are stuck in an impossible situation: they are subject to prosecution if

they stay in their homes, they cannot find alternative residences, and they cannot leave the State without prior approval.

CLASS ACTION ALLEGATIONS

73.

Plaintiffs bring this class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure on their behalf and on behalf of a class similarly situated and affected during the pendency of this lawsuit and in the future. The class is defined as all persons who have registered as sex offenders pursuant to Ga. Code Ann. § 42-1-12 (2006), or must so register in future, and who are harmed by the Act's residency, working, and loitering provisions.

74.

The requirements of Rule 23(a) are met with respect to the class.

75.

The members of this class are so numerous that their joinder is impractical. The class consists of approximately 11,000 people.

76.

There are questions of law and fact common to the class, specifically whether the Act violates rights secured by the United States Constitution. The questions of law and fact common to the class as a whole concern the

constitutionality and lawfulness of the Act. For example, there are common questions of law and fact concerning the lawfulness of each of the following matters:

- a. whether the Act violates the Ex Post Facto Clause;
- b. whether the Act violates the procedural component of the Due Process Clause;
- c. whether the Act violates the substantive component of the Due Process Clause and the right to family privacy;
- d. whether the Act violates the Religious Land Use and Institutionalized Persons Act;
- e. whether the Act violates the Free Exercise Clause and the right to freedom of association;
- f. whether the Act violates the Takings Clause;
- g. whether the Act violates the right to interstate and intrastate travel; and
- h. whether the Act violates the Eighth Amendment by placing an unconstitutional punishment on persons based upon their status.

77.

The Act challenged in this action applies with equal force to the named Plaintiffs and all members of the class so that the claims of the named Plaintiffs are typical of those of the class. All class members will be subject to the Act's restrictions absent the requested relief.

78.

The named Plaintiffs will fairly represent and adequately protect the interests of the class as a whole. Plaintiffs are persons on Georgia's sex offender registry. Plaintiffs, like others in the class, are required to move from their homes, leave jobs, and/or cease attendance at religious services. They possess the requisite personal interest in the subject matter of the lawsuit and possess no interests adverse to other class members.

79.

Plaintiffs are represented by counsel experienced in civil rights class action litigation. The named Plaintiffs and the class members are represented by attorneys at the Southern Center for Human Rights, a privately funded, nonprofit organization with extensive experience in complex class action litigation, and the American Civil Liberties Union, a nonprofit law office with extensive experience litigating class action lawsuits. Plaintiffs' counsel have the resources, expertise, and experience to effectively prosecute this action.

80.

The requirements of Fed. R. Civ. P. 23(b)(2) are met. Defendants have acted in a way generally applicable to the class the Plaintiffs represent, thereby making preliminary and permanent injunctive relief and corresponding declaratory relief appropriate for the class as a whole pursuant to Fed. R. Civ. P. 23(b)(2).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF EX POST FACTO CLAUSE

81.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, ¶¶ 53-61, ¶¶ 66-67, and ¶¶ 70-72.

82.

The Act punishes Plaintiffs for crimes for which they have already been punished by forcing them to sell their homes, break their leases, leave their families, and give up their jobs, the source of their food and shelter. The Act banishes Plaintiffs from their homes and communities.³ Application of the Act to the named Plaintiffs and others who were convicted of offenses before July 1,

³ Plaintiffs are not raising any state constitutional claims, including, but not limited to banishment.

2006 will violate the Ex Post Facto Clause of the United States Constitution, U.S. Const. art. I, § 10.

COUNT TWO

VIOLATION OF PROCEDURAL DUE PROCESS CLAUSE

83.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, ¶¶ 53-69, and ¶¶ 72.

84.

The Act violates Plaintiffs' right to procedural due process of law under the Fourteenth Amendment to the Constitution of the United States, U.S. Const. amend. XIV, § 1, as applied to the states and enforced through 42 U.S.C. § 1983 (2006).

COUNT THREE

**VIOLATION OF SUBSTANTIVE DUE PROCESS:
THE RIGHT TO FAMILY PRIVACY**

85.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, ¶¶ 53-61, ¶¶ 63, ¶¶ 65-68, and ¶¶ 71-72.

86.

The Act is unconstitutional because it impinges on Plaintiffs' fundamental right to family privacy – specifically the right to cohabit with one's family.

87.

Therefore, the Act violates Plaintiffs' right to substantive due process of law under the Fourteenth Amendment to the Constitution of the United States, U.S. Const. amend. XIV, § 1, as applied to the states and enforced through 42 U.S.C. § 1983.

COUNT FOUR

VIOLATION OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT, 42 U.S.C.A. § 2000(c)(c)

88.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50 and ¶¶ 53-61.

89.

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C.A. § 2000(c)(c)(a)(1) (West 2006) ("RLUIPA") states:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the

government demonstrates that imposition of the burden on that person, assembly, or institution (A) is in furtherance of a compelling interest; and (B) is the least restrictive means of furthering that compelling governmental interest.

RLUIPA further states:

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
42 U.S.C.A. § 2000(c)(c)(b)(1) (2006).

90.

The Act explicitly prohibits anyone on the registry from living in churches or religiously affiliated halfway houses where public worship takes place. The Act violates RLUIPA by placing an impermissible land use restriction on ministries and churches that house people on the registry, including the Door of Hope Ministry in Conyers, Georgia.

91.

The Act violates RLUIPA by prohibiting people on the registry from living in halfway houses sponsored by churches while not imposing the same burden on secular halfway houses.

COUNT FIVE

**VIOLATION OF FREE EXERCISE CLAUSE
AND RIGHT TO FREEDOM OF ASSOCIATION**

92.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, and ¶¶ 53-61.

93.

The Act prohibits all people on the registry from living or working at or within 1,000 feet of a church. The penalty for loitering at or within 1,000 feet of a church is a minimum of 10 years and a maximum of 30 years in prison. The Act creates an impermissible chilling effect on the right to attend a house of worship. The Act violates the Free Exercise Clause, U.S. Const. amend. I, and the right to freedom of association, see U.S. Const. amend. I.

COUNT SIX

VIOLATION OF TAKINGS CLAUSE

94.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, ¶¶ 53-61, ¶¶ 63-69, and ¶¶ 71-72.

95.

By requiring Plaintiffs immediately to sell their property, break their leases, and leave their homes, the Act violates the Fifth Amendment's prohibition on takings without just compensation, U.S. Const. amend. V, as applied to the states and enforced through 42 U.S.C. § 1983 (2006).

COUNT SEVEN

VIOLATION OF RIGHT TO INTERSTATE AND INTRASTATE TRAVEL

96.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, ¶¶ 53-61, ¶¶ 65-69, and ¶ 72.

97.

The Act violates the right to interstate and intrastate travel. See U.S. Const. amend. XIV, § 1, as applied to the states and enforced through 42 U.S.C. § 1983.

COUNT EIGHT

VIOLATION OF EIGHTH AMENDMENT

98.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of ¶¶ 1-50, ¶¶ 53-63, and ¶¶ 65-72.

99.

The Act violates the Eighth Amendment, U.S. Const. amend. VIII, by imposing cruel and unusual punishment and by placing an unconstitutional punishment on Plaintiffs based upon their status as people on the sex offender registry.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;
2. Determine by Order pursuant to Rule 23 of the Federal Rules of Civil Procedure that this action be maintained as a class action;
3. Enter a preliminary and thereafter a permanent injunction enjoining the portions of the Act that violate the rights of Plaintiffs and the class they represent;
4. Declare that the portion of the Act prohibiting residence within 1,000 feet of a school bus stop is vague and overbroad;
5. Declare that the Act violates: the Ex Post Facto Clause; the procedural component of the Due Process Clause; the substantive component of the Due Process Clause and the right to family privacy; the Religious Land Use and Institutionalized Persons Act; the Free Exercise Clause and the right to freedom of association; the

Takings Clause; the right to interstate and intrastate travel; and the Eighth Amendment.

6. Enter judgment in favor of Plaintiffs;
7. Award Plaintiffs the costs of this lawsuit and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
8. Order such other and further relief as this Court may deem just and proper.

Respectfully submitted this 20th day of June, 2006.

SOUTHERN CENTER
FOR HUMAN RIGHTS

s/ Sarah Geraghty

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