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

WENDY WHITAKER, et al., Plaintiffs, v. SONNY PERDUE, et al. Defendants.	CIVIL ACTION No. 4:06-140-CC

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs seek to enjoin Defendants from enforcing the portion of Georgia law, scheduled to go into effect on July 1, 2006, that would prohibit people on the sex offender registry from living within 1,000 feet of any one of Georgia's hundreds of thousands of school bus stops.[1] If this law goes into effect, it will render nearly all urban areas and most rural areas in Georgia off-limits for the 11,000 people on the registry. Hundreds, if not thousands, of Georgia citizens – including children, the elderly and disabled, and residents of nursing homes – will become homeless. In addition, because designated school bus stops are subject to change, Plaintiffs will be unable to resettle with any permanency.

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[1] See Act No. 571, Ga. Laws 2006 (HB 1059), codified at Ga. Code Ann. § 42-1-15 ("the Act").

Plaintiffs also seek a preliminary injunction with respect to the portion of the Act that prevents people on the registry from living within 1,000 feet of a place of religious worship, upon penalty of 10 to 30 years imprisonment. This portion of the Act impermissibly bars people on the registry from living at faith-based shelters, halfway houses, and assisted-living facilities.

Plaintiffs seek a preliminary injunction on behalf of themselves and others on the registry. Absent an injunction, Plaintiffs will be irreparably harmed. They will be forced from their homes and communities in violation of the Ex Post Facto Clause, the procedural Due Process Clause, and the substantive Due Process Clause. In addition, Plaintiffs' religious rights will be impermissibly burdened in violation of the Religious Land Use and Institutionalized Persons Act, the First Amendment, and the right to freedom of association. The balance of interests and public policy considerations weigh heavily in favor of granting a preliminary injunction to prevent Plaintiffs and others from becoming homeless while this matter is being litigated.

STATEMENT OF FACTS

There are approximately 11,000 people on Georgia's sex offender registry, about 9,000 of whom live in the community.[2] Georgia law already imposes substantial restrictions on where they may live. See Ga. Code Ann. § 42-1-13 (prohibiting residency within 1,000 feet of schools, child care facilities, parks, recreation facilities, skating rinks, neighborhood centers, gymnasiums, and similar facilities providing services to children). The penalty for violating Ga. Code Ann. § 42-1-13 (2006) is one to three years imprisonment.

HB 1059, signed into law by the Governor on April 24, 2006, substantially revises Ga. Code Ann. § 42-1-13. It transforms a law tailored to keep offenders away from children into a law that essentially forces every registered sex offender in Georgia from all urban areas and many rural areas. The Act states:

> (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.

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[2] Of the approximately 11,000 people on the registry, 14 are designated "sexually violent predators," meaning that they have been deemed to have a propensity to re-offend.

Ga. Code Ann. § 42-1-15 (2006).

The Act 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"
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> Id. § 42-1-12(3) (emphasis added).

The Act defines "school bus stop" as:

> "a school bus stop as designated by local school boards of education or by a private school"
>
> Id. § 42-1-12 (a)(19).

The ostensible purpose of HB 1059 is to keep Georgia's children safe from sexual offenses. 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 act, committed ten years ago, Ms. Whitaker has been forced from one home and will be forced from another.[3] Plaintiff Janet Allison was convicted of being "party to a crime of

[3] On July 1, HB 1059, the very same Act that is driving Ms. Whitaker from her home, will revise Georgia's criminal code to provide that a 17-year-old who engages in consensual sexual activity with a 15-year-old, as Ms. Whitaker did ten years ago, will be guilty of a misdemeanor and will not have to register as a sex offender. See Ga. Code Ann. § 16-6-2(d). The Act does not, however, provide an exemption for Ms. Whitaker; she must still leave her home absent an injunction.

statutory rape" for not preventing her 15-year-old daughter from becoming sexually active. Absent an immediate injunction, Ms. Allison and her family will be forced by HB 1059's school bus stop provision to leave their home.

Many states have sex offender residency restrictions, yet HB 1059 goes significantly farther than any other such law. HB 1059 applies to everyone on the registry without exception.[4] There is no provision for a hearing or any opportunity for someone like Ms. Allison to show she is not a danger to children. There is no procedure to apply for a hardship exemption based on illness, advanced age, or disability. Unlike sex offender residency restrictions in other states, HB 1059 does not contain an exemption to protect the rights of those who already own or rent homes in restricted locations.[5] Most significantly, rather than limit residency restrictions to schools, playgrounds, and other similarly discrete areas, the Act's prohibition against living within 1,000 feet of a school bus stop renders nearly all of Georgia off-limits to anyone on the registry.[6] Although they have nowhere to go, if Plaintiffs do not leave their homes by July

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[4] Cf. Ark. Code Ann. § 5-14-128(a) (applying sex offender residency restrictions only to level 3 and 4 sex offenders).

[5] See, e.g., Iowa Code § 692A.2A (stating that new statute prohibiting sex offenders from residing near school may not be enforced against persons who were already established in a residence when the statute went into effect).

[6] See, e.g., Ala. Code § 15-20-26(a) (prohibiting sex offenders from living near a school or child care facility).

1, 2006, they will be subject to arrest, prosecution, and mandatory imprisonment of 10 to 30 years.

ARGUMENT AND CITATION OF AUTHORITIES

Plaintiffs seek preliminary injunctive relief barring enforcement of the Act. To be entitled to a preliminary injunction, Plaintiffs must show: (1) irreparable harm to the plaintiff unless the injunction issues; (2) a substantial likelihood of success on the merits; (3) that the threatened injury to the plaintiff outweighs the harm to the defendant if the injunction issues; and (4) that the injunction will not disserve the public interest. See MacGinnitie v. Hobbs Group LLC, 420 F.3d 1234, 1240 (11th Cir. 2005). Plaintiffs satisfy this standard.

I. PLAINTIFFS WILL SUFFER IRREPARABLE HARM UNLESS THE ACT IS ENJOINED.

Attached to the Motion for Preliminary Injunction as Exhibits 1-8 are detailed declarations by Plaintiffs describing the harm that will befall them absent an injunction.[7] If HB 1059 goes into effect, many Plaintiffs will be made homeless in nine days. 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. Plaintiff Collins has searched Hall, Barrow, Newton,

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[7] See Declaration of Wendy Whitaker (Exhibit 1); Declaration of Joseph Linaweaver (Exhibit 2); Declaration of Janet Allison (Exhibit 3); Declaration of James Wilson (Exhibit 4); Declaration of Jeffery York (Exhibit 5); Declaration of Al Marks (Exhibit 6); Declaration of Lori Collins (Exhibit 7); Declaration of Joel Jones (Exhibit 8).

Rockdale, and Henry counties without success. Plaintiff Marks searched Dekalb, Douglas, Madison, and Paulding counties, but cannot find a residence. Plaintiff Allison searched White, Pickens, Dawson, Lumpkin, and Gilmer counties, but has not found a residence. Plaintiff Wilson searched Fulton, Dekalb, and Clayton counties and found only a temporary-stay motel in an industrial area. HB 1059 will also require Plaintiffs and others to leave their jobs, lose their health insurance, and abandon court-mandated treatment programs. Unless enjoined, the Act will force many people on the registry to sleep on the streets or in their cars, or to set up tents or trailers in the woods.

II. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Intent and Effect of HB 1059 Is to Punish Plaintiffs, Violating the Constitution's Prohibition Against Ex Post Facto Laws.

The Ex Post Facto prohibition against retroactively increasing the punishment of a crime is essential to our constitutional system, reflecting the fundamental values of fairness to individuals and limited government. See Calder v. Bull, 3 U.S. 386 (1798). This Court recently considered an Ex Post Facto challenge to Georgia's current sex offender residency restrictions, Doe v. Baker, 2006 WL 905368 (N.D. Ga. April 6, 2006) (Thrash, J.), where the plaintiff was required to move from his home in Cobb County because it was within 1,000 feet of a school. Doe claimed he had been "banished," though he was able to find another home in the same county. This Court held that the Ex Post Facto Clause

was not violated on these facts. The Court specifically stated, however, that a more restrictive law that would make it impossible for a person to live in his community would result in an Ex Post Facto problem:

> The Court takes judicial notice that Cobb County is primarily a suburban county where it would be relatively easy to find an affordable residence that is more than 1,000 feet from a school or daycare center. It is undisputed that the Plaintiff has found a residence in the county where he can live without violating the Residence Act. Therefore, he has no standing to claim that the effect of the act is to banish him from residence in the community. A more restrictive act that would in effect make it impossible for a registered sex offender to live in the community would in all likelihood constitute banishment which would result in an ex post facto problem if applied retroactively to those convicted prior to its passage.

Baker, 2006 WL 905368 at *4 (emphasis supplied).

HB 1059 is just such a law. As anticipated by the Baker opinion, HB 1059 retroactively imposes one of the oldest and most severe forms of societal punishment: banishment from the community. See Smith v. Doe, 538 U.S. 84, 98 (2003) (holding that statutory requirement to register as a sex offender did not violate Ex Post Facto Clause because it was not "punishment," but characterizing "banishment" as a punishment with deep roots in our nation's criminal jurisprudence); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 170 n. 23 (1963) (stating that "banishment and exile have throughout history been used as punishment"); Doe v. Miller, 405 F.3d 700, 720-21 (8th Cir. 2005) (finding that Iowa's sex offender residency statute did not impose banishment because it allowed people to maintain residences established before the statute's effective

date, and because the statute did not "'expel' the offenders from their communities.").

At the preliminary injunction hearing, Plaintiffs will show that HB 1059 essentially banishes everyone on the sex offender registry from all urban areas and many rural areas. HB 1059 not only forces people from their homes, it forces them from their communities and makes it impossible to resettle anywhere in the State. There are hundreds of thousands of school bus stops in Georgia; Atlanta alone has at least 40,000. School bus stops change frequently, depending on when children move into and out of neighborhoods and graduate to different schools. HB 1059 effectively banishes Plaintiffs from the State by making it impossible for anyone on the registry to buy or rent a home in Georgia.

There is little doubt the intent of HB 1059 was to punish individuals who committed sex offenses by banishing them from the State. House Majority Leader Jerry Keen, the sponsor of HB 1059, repeatedly and explicitly announced that the intent was to banish people from Georgia:

- "This legislation will probably make Georgia one of the toughest in the nation on sex offenders. No sex offender is ever going to want to live here. I'd be mighty happy to see that happen."
- "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."

- "There is no place in our society for those who prey on innocent children."
- "Candidly, Senators, they will in many cases have to move to another state."

Insofar as the legislative intent was to retroactively punish people on the registry by banishing them from Georgia, HB 1059 violates the Ex Post Facto clause and must be struck down. See Smith v. Doe, 538 U.S. at 92 ("If the intention of the legislature was to impose punishment, that ends the inquiry[,]" and the statute must be overturned.).

Even without an explicit legislative intent to punish, HB 1059 is unconstitutional because it is punitive in its effect. See Kansas v. Hendricks, 521 U.S. 346, 361 (1997) (a statute may violate the Ex Post Facto Clause if it is so punitive in effect that it negates any intent to deem it "civil"). Courts consider the following factors to determine if a statute is punitive: (1) whether it promotes the traditional aims of punishment; (2) whether it imposes an affirmative disability or restraint; (3) whether the law was regarded in history and tradition as punishment; (4) whether it has a rational connection to a non-punitive purpose; and (5) whether it is excessive with respect to that purpose. See Smith, 538 U.S. at 97 (quoting Mendoza-Martinez, 372 U.S. at 168-69).

In all respects, HB 1059 imposes punishment, as defined by the Mendoza-Martinez factors. The Act ostensibly promotes the traditional aims of punishment, including deterrence and retribution; the Act imposes an affirmative

disability by depriving people of their homes and livelihoods; and the Act banishes thousands, not just from their homes, but from their communities.

HB 1059 may have the non-punitive purpose of promoting public safety, but it is not rationally related to that purpose. In fact, the Act diminishes public safety. HB 1059 does not provide for closer monitoring of people on the registry. Rather, it will dramatically disrupt the monitoring required by the existing law by removing people from stable locations to homelessness.

Finally, HB 1059 is clearly excessive. Unlike the sex offender residency restrictions of other states, Georgia does not differentiate between people convicted of violent sexual offenses, such as rape, and teenagers who violated the law by consensual sexual activity with someone of like age. Georgia treats everyone like the worst offender, making the punitive effect of the law not only excessive, but arbitrary as well. For example, Joseph Linaweaver – who is on the sex offender registry because he had consensual sexual relations at age 16 with his 14-year-old girlfriend – is being forced to leave Georgia, six years after his conviction, because he cannot find anywhere to live. Mr. Linaweaver and other Plaintiffs who pled guilty to minor crimes and received probation now face the additional and extraordinary punishment of banishment.

Whether by intent or by effect, newly imposing the punishment of banishment on everyone on Georgia's sex offender registry would violate the Ex Post Facto clause. Enjoining the Act's residency and work restrictions, but particularly the bus stop provision, is necessary to avoid this result.

B. HB 1059 Deprives Plaintiffs of Their Homes and Employment without Any Procedural Safeguards and in a Manner That Is Arbitrary and Irrational, in Violation of the Procedural and Substantive Components of the Due Process Clause.

1. Procedural Due Process

The Due Process Clause, U.S. Const. amend. XIV, prohibits states from depriving persons of property without adequate procedural safeguards. Where, as here, plaintiffs have a constitutionally protected interest in life, liberty or property, see Mikeska v. City of Galveston, 419 F.3d 431, 435 (5th Cir. 2005) (individuals have a constitutionally protected right in their homes); Greene v. McElroy, 360 U.S. 474, 492 (1959) ("The right to hold specific chosen employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment. . ."), and state action such as HB 1059 causes a deprivation of that interest, the Court must inquire into the adequacy of procedures accompanying the deprivation. See Bank of Jackson County v. Cherry, 980 F.2d 1362, 1365 (11th Cir. 1993). As a general rule, due process requires at least notice and an

opportunity to be heard by a neutral decision-maker. See Goldberg v. Kelly, 397 U.S. 254, 268 (1970).

The Supreme Court requires consideration of three factors when determining whether procedures attendant upon a deprivation of property are constitutionally sufficient: (1) the private interest to be affected by the action, (2) the risk of erroneous deprivation of that interest through the procedures that were used and the probable value of added procedures, and (3) the government's interest, including the fiscal and administrative burdens of added procedures. See Mathews v. Eldridge, 424 U.S. 319, 335 (1979).

Plaintiffs' private interests in their homes and livelihood are profoundly affected by HB 1059. The Act's prohibition against living in proximity to school bus stops is forcing them to leave their homes and jobs. The Act will have a particularly profound effect on the elderly and disabled, who are given just weeks to relocate. This is next to impossible for Jeff Kennedy who is blind; William Evans, who is missing a leg, had a heart attack, and is in a wheelchair; a 91-year-old man in north Georgia who is 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 person on the registry is 100 years old and will have to move. About 25 people on the registry live in nursing homes and now must move.

Courts tolerate exceptions to the rule requiring pre-deprivation notice and hearings only in "extraordinary situations." See United States v. James Daniel Good Real Prop., 510 U.S. 43, 53 (1993) (quoting Boddie v. Connecticut, 401 U.S. 371, 379 (1971); Fuentes v. Shevin, 407 U.S. 67, 92 (1972) (listing "extraordinary situations" that "justify postponing notice and opportunity for hearing," including to collect internal revenue, to meet the needs of a national war effort, to protect against the disaster of bank failure). Yet HB 1059 provides no procedure whatsoever before depriving people of their homes and employment.

The remaining Matthews factors inquire into the value and burden of added procedures prior to deprivation. The value of added procedures to HB 1059 would be enormous. Despite its severe infringement on the right to property, HB 1059 does not provide for individualized consideration of dangerousness.[8] The same residency restrictions apply to Plaintiff Whitaker,

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[8] HB 1059 contains a process for the Sexual Offender Registration Review Board to make individualized determinations of whether a person should be classified as a "sexually dangerous predator," and as such, be subject to lifetime electronic monitoring. See Ga. Code Ann. § 42-1-13, 42-1-14. The Board, composed of professionals "knowledgeable in the field of the behavior and treatment of sexual offenders" as well as law enforcement officials, is charged with making individualized determinations of dangerousness. Persons considered sexually dangerous predators have an opportunity for a hearing to present testimony and evidence. Without commenting on the sufficiency of these procedures as applied to lifetime electronic monitoring, Plaintiffs contend that the loss of homes and employment caused by the school bus stop provision are at least as serious as the loss of liberty caused by lifetime electronic monitoring. This is especially true since many people will be on the registry their entire lives.

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 burden of requiring a particularized finding of dangerousness before depriving someone of their home and job is minimal. It is certainly no larger than the extraordinary burden placed on local law enforcement to enforce the Act's school bus stop restrictions.

The Supreme Court has made it clear that due process is central to our constitutional structure. Ruling for the plaintiffs in a case involving repossession of a stove and a stereo without a hearing, the Court stated:

> The prohibition against the deprivation of property without due process of law reflects the high value embedded in our constitutional and political history that we place on a person's right to enjoy what is his, free from government interference.

Fuentes v. Shevin, 407 U.S. 67, 81 (1972).

If it is necessary for a state to provide process before depriving a person of a stove and a stereo, a process must also be accorded to a person being forcibly ejected from his home. If the State is unwilling or unable to provide such process, the school bus stop provision must be enjoined from being enforced.

2. Substantive Due Process

HB 1059 also violates the substantive component of the Due Process Clause because to the extent that the Act imposes restrictions that have no rational relationship to its purpose. See Lewis v. Brown, 409 F.3d 1271, 1273 (11th Cir. 2005) (the right to substantive due process protects people from "arbitrary and irrational" action by state officials).

The Act casts its net far too broadly. HB 1059 will force people out of their homes for having engaged in consensual sex as teenagers. It will drive people who are severely disabled, bedridden and incapable of re-offending from nursing homes without any logical reason. The state can offer no rational reason why persons such as Wendy Whitaker must be banished from their communities. HB 1059, the very same Act that will force Ms. Whitaker from her home, also changes the criminal law of sodomy, transforming the act she committed ten years ago (sexual contact between teenagers, ages 17 and 15) into a misdemeanor. See Ga. Code Ann. § 16-6-2(d). If Plaintiffs York, Linaweaver, and Whitaker had been convicted of the same offenses after July 1, 2006, they would not even have to register as sex offenders, let alone be subject to forced displacement from their homes. To the extent that HB 1059 lacks a rational relationship to a legitimate government welfare concern, see Restigouche, Inc. v. Town of Jupiter, 59 F.3d 1208 (11th Cir. 1995), it must be overturned.

C. Because HB 1059 Is Not Reasonably Tailored to Protect Children, It Violates Plaintiffs' Fundamental Right to Live with Their Families.

The Fourteenth Amendment provides that states shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. This guarantee includes a substantive protection "against government interference with certain fundamental rights and liberty interests." Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (citing Reno v. Flores, 507 U.S. 292, 301-02 (1993)). Infringement of a fundamental right requires strict scrutiny review, meaning that a law will be constitutional only if it serves a compelling state interest and is narrowly tailored toward that interest. See Flores, 507 U.S. at 302.

The Supreme Court has recognized that the right to co-habit with family is a fundamental right. See Roberts v. U.S. Jaycees, 468 U.S. 609, 619 (1984) (describing the life activities entitled to constitutional protection as "those that attend the creation and sustenance of a family," including "cohabitation with one's relatives") (citations omitted); Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) ("the institution of the family is deeply rooted in this Nation's history and tradition"); Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974) ("[F]reedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."). As the Court declared in Moore, "when the government

intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation." 431 U.S. at 499.

While HB 1059 does not explicitly forbid people on the sex offender registry from living with their relatives, the statue will, in effect, prohibit families from living together. The law will expel Plaintiffs, not just down the block or across town, but, in some cases, to distant parts of the state or across the country. Husbands, wives, and children of people on the registry will be faced with the Hobson's choice of moving hundreds of miles away – perhaps to a trailer in the woods – or being separated. Economic realities dictate that this "choice" is often not a choice at all. Joseph Linaweaver's family, for example, cannot afford to move to Wisconsin with their son. Wendy Whitaker's husband cannot afford to leave his job, and yet the couple also cannot afford to pay for two homes. The married couple will have to separate.

With Plaintiffs' fundamental right to live with their relatives thus infringed, the State has the burden of showing HB 1059 is "narrowly tailored to serve a compelling state interest." Flores, 507 U.S. at 302. The State can point to no interest that the challenged provisions of HB 1059 actually serves, much less is narrowly tailored to serve.

Defendant Purdue, in official statements regarding HB 1059, suggests the Act is designed to improve public safety, particularly the safety of children. The provisions Plaintiffs ask this Court to enjoin – particularly the school bus stop restriction – will do exactly the opposite, by forcing individuals on the registry to abandon treatment programs, leave stable homes, and abscond from the registry.

The bus stop provision also makes the Act too broad to withstand strict scrutiny. There is no conceivable reason to impose such substantial restrictions on Ms. Whitaker, Mr. Linaweaver, and others who were teenagers when they committed their consensual sex "offenses" with other teenagers. They pose no threat to public safety, yet HB 1059 will utterly derail their lives. A properly tailored law would limit the bus stop restrictions to people who have been determined by a competent review board to be at risk of harming children. As the Act burdens Plaintiffs' fundamental right to live with their family members and is not narrowly tailored toward the purported state interest, the Court should strike it down as unconstitutional.

D. HB 1059 Is an Impermissible Restriction on Churches and Burdens Religion in Violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

The Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C.A. § 2000cc (West 2006) protects religious activities and practices from being substantially burdened by government action. HB 1059 violates RLUIPA by impermissibly restricting churches from housing people on the registry.

1. HB 1059 Violates 42 U.S.C.A. § 2000cc(a)(1).

Attending church and living at a faith-based ministry are both protected by RLUIPA as "exercises of religion." 42 U.S.C.A. § 2000cc-5(7). HB 1059 burdens these protected activities by prohibiting anyone on the registry from living at or within 1,000 feet of any church or place of worship. See Ga. Code Ann. § 42-1-15(a), (b). Such a burden is permissible only if it is the least restrictive means of furthering a compelling government interest. See 42 U.S.C.A. § 2000cc(a)(1).

In fact, the Act works to impede rather than further the common interest in protecting children. Many churches offer residences and services to people on the registry, and often churches and ministries are the only entities offering such services. Plaintiff Reverend Joel Jones, for example, wishes to provide residence, services, and spiritual guidance to Plaintiff Lori Collins and others. Under the Act, he cannot. Under the Act's church restrictions, ministries providing scarce housing, stability, and guidance to people on the registry will be forced to evict

their parishioners, severing people from precisely the stabilizing forces that are necessary to make children safer.

Moreover, while protecting children is a compelling interest, the Act's church restrictions are not narrowly tailored to such an interest. Church halfway houses will be forced to expel even residents who are low-risk offenders complying with the terms of probation. The Act permits no exceptions or exemptions. It would forcibly displace a completely disabled person in a faith-based shelter, extended care facility, or nursing home. Therefore, the Act violates 42 U.S.C.A. § 2000cc(a)(1).[9]

2. HB 1059 Violates 42 U.S.C.A. § 2000cc(b)(1).

Additionally, by prohibiting churches but not other institutions from housing and employing people on the registry, HB 1059 illegally treats a religious institution "on less than equal terms with a nonreligious assembly or institution." 42 U.S.C.A. § 2000cc(b)(1). It is impermissible to permit secular halfway houses to take in people on the registry while forbidding faith-based halfway houses to do the same. See Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 2006 WL 1493825, at *9 (11th Cir. 2006) (noting that regulations violate

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[9] For the same reasons, HB 1059 violates the Free Exercise Clause and the right to freedom of association. See Employment Division v. Smith, 494 U.S. 872, 881-82 (1990) (Free Exercise claim is entitled to strict scrutiny review when it is asserted in conjunction with other constitutional protections).

RLUIPA if they "separate[] permissible from impermissible assemblies or institutions in a way that burdens 'almost only' religious uses").

III. THE BALANCE OF HARDSHIPS AND PUBLIC POLICY STRONGLY FAVOR A PRELIMINARY INJUNCTION.

The balance of hardships weighs in favor of Plaintiffs because: (A) without an injunction, they will be expelled from their homes and communities in just days; (B) Georgia already has a stringent law governing where sex offenders can live; and (C) enforcing the school bus stop and church provisions of HB 1059 will diminish public safety.

A. Plaintiffs Will Be Forced From Their Homes and Communities.

When HB 1059 goes into effect, Plaintiffs and thousands of others will be forced to evacuate their homes, leave their jobs, cease attending their churches, and abandon court-mandated treatment programs. 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. The Act will make Plaintiffs and others homeless.

B. Georgia Law Already Imposes Substantial Limitations On Plaintiffs.

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, parks, recreation facilities, skating rinks, neighborhood centers, gymnasiums, and similar facilities providing programs or

services directed toward children).

C. **HB 1059 Threatens Public Safety.**

People who have previously committed criminal offenses are significantly less likely to re-offend when they have stable homes and employment, and appropriate access to treatment. See Declaration of Kevin Baldwin, Ph.D. (Exhibit 9), Declaration of Candice Osborn, M.A., L.P.C. (Exhibit 10). HB 1059 is counterproductive to these goals. The Act will cause thousands of people on the registry to lose their homes. It will force them into unemployment so that they cannot support themselves and their families. Many will have to sleep on the streets because they do not have money or resources to move to other states. In addition, the law will severely inhibit participation in court-ordered treatment programs – a crucial component of rehabilitation for persons convicted of sexual offenses.

The State of Iowa's experience with sex offender residency restrictions strongly suggests HB 1059 will do more harm than good.[10] Iowa's statute was a public safety disaster. The number of sex offenders who absconded from the registry's oversight tripled in just months. In January 2006, Iowa's district attorneys' association issued a statement strongly opposing the residency restrictions due to their negative impact on public safety.

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[10] See Declaration of Kevin Baldwin, Ph.D (Exhibit 9, Attachment A).

The balance of hardships and public policy strongly favor the Court entering a preliminary injunction.

IV. GRANTING AN INJUNCTION WOULD SERVE THE PUBLIC INTEREST.

Granting an injunction would serve the public interest by preventing thousands of families from being made homeless pending the adjudication of this action.

WHEREFORE, Plaintiffs respectfully pray that this Court will enter a preliminary and thereafter a permanent injunction enjoining the portions of HB 1059 that prohibit Plaintiffs from:

a. living within 1,000 feet of a school bus stop; and

b. living within 1,000 feet of a church.

Respectfully submitted this 21st day of June, 2006.

SOUTHERN CENTER
FOR HUMAN RIGHTS

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CERTIFICATION OF COMPLIANCE WITH L.R. 5.1B

Pursuant to L.R. 7.1, I, Sarah Geraghty, hereby certify that this brief has been prepared in compliance with Local Rule 5.1B.

Dated this 21st day of June, 2006.

s/ Sarah Geraghty

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