

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JOHN DOE,

Plaintiff,

vs.

CASE NO. 4:16-cv-459

RICK SWEARINGEN, COMMISSIONER
FLORIDA DEPARTMENT OF
LAW ENFORCEMENT,

Defendant.

**COMPLAINT AND APPLICATION FOR DECLARATORY JUDGMENT
AND TEMPORARY AND PERMANENT INJUNCTION**

I. Introduction

1. The Plaintiff proceeds herein using the surrogate name "John Doe" because revealing his true identity at this time would, or could, render moot most of the relief he seeks.

2. Mr. Doe was convicted of a violation of Connecticut General Statutes (C.G.S.) §53a72a, sexual assault in the 3rd degree, on August 31, 1993, having entered a guilty plea on that same date. On that date a sentence was imposed of 3 years' incarceration, execution suspended, and 3 years' probation.

3. Mr. Doe successfully completed his probation, without incident, on August 31, 1996. He moved to the state of Florida on October 2, 1996, and has resided here ever since.

4. With the exception of a reckless driving offense in Georgia in 1999, the conviction described above is the only offense of any sort Mr. Doe has ever had, either prior to the incident in 1993 or since.

5. The background of the arrest and resolution of the matter described above includes a number of unusual circumstances which are described in an affidavit from the Plaintiff, using his real name and filed under seal, in support of this complaint in aid of the legal arguments made in the supporting memorandum.

6. Because the Connecticut sex offender registration statutes - C.G.S. §§54-250 *et seq.* - first took effect on October 1, 1998 (subsequent to the completion of his probation in 1996), Mr. Doe was never required to register in Connecticut.

7. Because the Florida sex offender registration statutes - Florida statutes §§943.0435 *et seq.* - first took effect on October 1, 1997, and because they do not contain a retrospective or "look-back" provision, as does the Connecticut statute, for the offense Doe had pled to, he was not required to register in Florida upon first moving here.

8. Nevertheless, in August 2007, Mr. Doe received a letter from the Florida Department of Law Enforcement ("FDLE") stating he was required to register in Florida because of the Connecticut conviction described above. He complied and has ever since.

II. Jurisdiction and Venue

9. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1361 inasmuch as this action arises under the Equal Protection Clause of the 14th Amendment to the United States Constitution and is based specifically on Plaintiff's deprivation, under color of state law, of the right to equal protection under the law as provided for in the Fourteenth Amendment.

III. Parties

10. Plaintiff is a resident and domiciliary of Jacksonville, Florida.

11. Defendant is the Commissioner of the Florida Department of Law Enforcement.

IV. Allegations of Fact

12. Plaintiff was convicted of a violation of C.G.S. §53a72a, sexual assault in the 3rd degree, on August 31, 1993, having entered a guilty plea on that same date. On that date a sentence was imposed of 3 years' incarceration, execution suspended, and 3 years' probation. He completed that probation on August 31, 1996, without incident.

13. Plaintiff moved to Florida, where he has lived ever since, on October 2, 1996.

14. Because the Connecticut sex offender registration statutes - C.G.S. §§ 54-250 *et seq.* - first took effect on October 1, 1998, at a time when Mr. Doe was a Florida resident, he was never required to register in Connecticut.

15. Because the Florida sex offender registration statutes - Florida statutes §§ 943.0435 *et seq.* - first took effect on October 1, 1997, and because those statutes do not contain a retrospective or "look back" provision, as do their Connecticut counterparts, for the offense he had pled to, Mr. Doe was not required to register in Florida upon first moving here.

16. For reasons that are not entirely clear, in August 2007, Mr. Doe received a letter from FDLE stating he was required to register in Florida because of the Connecticut conviction described above. He complied and has ever since.

17. The basis for the claimed requirement for registration in Florida is part of the following Florida statute:

943.0435 - Sexual offenders required to register with the department; penalty.

(1) As used in this section, the term:

(a) 1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c.; or sub-subparagraph d., as follows:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the

following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); 2. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810. 145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.

18. C.G.S. §54-252 would in fact require Mr. Doe to register in Connecticut today if he was a Connecticut resident — or within three days of October 1, 1998, if at that time he had been a Connecticut resident:

(a) Any person who has been convicted...of a sexually violent offense and...is released into the community on or after October 1, 1988, and prior to October 1, 1998, and resides in this state, shall, on October 1,

1998, or within three days of residing in this state, whichever is later...
[register]

C.G.S. §54-250 does include the offense to which Mr. Doe pled - sexual assault in the 3rd degree — as a "sexually violent offense".

19. If Mr. Doe had been required to register in Connecticut, it would have been for ten (10) years following his 1993 guilty plea. C.G.S. §54-254.

V. Claims of Law

20. That part of the Florida statute set forth above which requires Plaintiff to register is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that it treats Mr. Doe differently and to his substantial detriment from its treatment of any other person who, like Mr. Doe, was a citizen of the state of Florida at the time of passage of said statute and who had previously committed an offense similar to the one committed by Mr. Doe, but had committed that offense within the state of Florida.

21. That part of the Florida statute set forth above which requires Mr. Doe to register is a violation of Mr. Doe's constitutionally-protected right to interstate travel.

Prayer for Relief

22. Plaintiff seeks the following relief:

a. A judgment declaring §943.0435 (1)(a)1.b. of the Florida Statutes to be unconstitutional as it would affect any person who, prior to

enactment of the statute, was a resident of the state of Florida but, prior to his Florida residency, had been convicted of an offense in another state which would require, if said Florida resident were a resident of that other state subsequent to enactment of the Florida statute, that said Florida resident submit to registration under §943.0435 *et seq.*

b. A temporary and permanent injunction against the Defendant Commissioner and against the State of Florida prohibiting their requiring any type of registration of this Plaintiff under §943.0435 *et seq.*

c. A mandatory injunction and Order of Mandamus against Defendant requiring that he remove Plaintiff forthwith from the sex offender registry maintained by FDLE, and that he notify any other Florida state agency and any municipality, county or other governmental jurisdiction within the state of Florida, or any other entity or person who may have had contact with FDLE related to Plaintiff's sex offense.

Respectfully submitted,

s/ Richard A. Greenberg

RICHARD A. GREENBERG, ESQUIRE

Florida Bar No. 0382371

RUMBERGER, KIRK & CALDWELL, P.A.

215 South Monroe Street, Suite 702

Post Office Box 10507

Tallahassee, Florida 32302-2507

Telephone: (850) 222-6550

Telecopier: (850) 222-8783

Email: rgreenberg@rumberger.com

Counsel for Plaintiff