

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

JOHN DOE

Plaintiff,

– Versus –

BOBBY JINDAL, Governor of Louisiana, in
his official and individual capacities, and
JAMES D. CALDWELL, Attorney General
of Louisiana, in his official and individual
capacities,

Defendants.

NUMBER:

JUDGE:

MAG:

COMPLAINT

INTRODUCTION

1. This is an action pursuant to 42 U.S.C. §§ 1983 and 1988, for a temporary restraining order, preliminary and permanent injunctive relief, declaratory relief and nominal damages to redress Defendants' violations of Plaintiff John Doe's rights as protected by the First and Fourteenth Amendments to the United States Constitution. Specifically, Plaintiffs seek judicial review of La. R.S. §14:91.5, a newly-enacted Louisiana Statute criminalizing the use or access of various internet resources by individuals convicted of certain sex offenses enumerated therein. Enforcement of §14:91.5 would infringe upon Plaintiff's exercise of his free speech rights under the First Amendment. Moreover, §14:91.5 is vague and facially overbroad in violation of Plaintiff's rights under the First and Fourteenth Amendments. Lastly, §14:91.5

unlawfully infringes upon Plaintiff's procedural due process rights under the 14th Amendment. Plaintiff therefore requests that this Honorable Court declare §14:9.5 unconstitutional, along with such additional relief as set forth below.

JURISDICTION AND VENUE

2. This is a civil rights action brought pursuant to 42 U.S.C. §1983, over which this Court has original jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), because Plaintiff resides in the Middle District of Louisiana.

4. Declaratory relief is authorized pursuant to 28 U.S.C. §2201 and 28 U.S.C. §2202. A declaration of the law is necessary and appropriate to determine the respective rights and duties of the parties to this action.

THE PARTIES

5. Plaintiff JOHN DOE is an individual of the age of majority currently residing East Baton Rouge Parish, Louisiana, within the jurisdiction of this Court. He is a registered sex offender who was convicted of possessing child pornography under La. R.S. §14:81.1, a qualifying offense enumerated in §14:91.5, the statute at issue in this case. He brings suit in his personal capacity, and files this matter anonymously to protect his privacy.

6. Defendant Bobby Jindal is the current governor of Louisiana. He is responsible for the execution and administration of the laws of the State of Louisiana, and is responsible for the implementation and enforcement of the policies of the executive branch of the State of Louisiana. He is responsible for execution of §14:91.5, the statute

challenged in this case, and has violated Plaintiff's rights by such implementation. He is sued in his official and individual capacities.

7. Defendant James D. Caldwell is the current Attorney General of the State of Louisiana. He is responsible for the enforcement of the laws of the State of Louisiana, and is sued in his official and individual capacities.

FACTUAL ALLEGATIONS

8. On June 14, 2011, the Governor Jindal signed into law La R.S. §14:91.5, creating the offense of "unlawful use or access of social media."

9. La R.S. §14:91.5 retroactively increases internet use or access restrictions on registered sex offenders who were previously convicted of the following offenses:

- (a) R.S. §14:81 (indecent behavior with juveniles),
- (b) R.S. §14:81.1 (pornography involving juveniles),
- (c) R.S. §14:81.3 (computer aided solicitation of a minor),
- (d) R.S. §14:283 (video voyeurism),
- (e) any "sex offense" under R.S. §15:541 (defining "sex offense") in which the victim of the sex offense was a minor.

10. Under §14:91.5, affected registrants are barred from "using" or "accessing" "social networking websites," "chat rooms" and "peer-to-peer networks;"

11. However, the statute does not define "use," "access" or other included terms, and defines "social networking website," "chatroom" and "peer-to-peer network" so broadly as to render unlawful virtually all internet access by registrants.

12. Specifically, the statute defines "social networking websites," "chatrooms" and "peer-to-peer networks" as follows:

§14:91.5(C)

- (1) “Chat room” means any Internet website through which users have the ability to communicate via text and which allows messages to be visible to all other users or to a designated segment of all other users.
...
- (3) “Peer-to-peer network” means a connection of computer systems whereby files are shared directly between the systems on a network without the need of a central server.
- (4) “Social networking website” means an Internet website that has any of the following capabilities:
 - (a) Allows users to create web pages or profiles about themselves that are available to the general public or to any other users.
 - (b) Offers a mechanism for communication among users, such as a forum, chat room, electronic mail, or instant messaging.

13. The statute will ban affected registrants from likely targets Facebook and MySpace. However, it will also make it a felony for registrants to browse the rest of the internet, severely curtailing their First Amendment freedoms in ways that bear no relation to the state’s legitimate pursuit of public safety.

14. Among the websites that affected registrants will not be allowed to access:

- (a) NOLA.com, CNN.com, FoxNews.com, ESPN, BBC or Reuters, NYTimes.com, Politico.com, Newsweek, The Economist, The New Republic, YouTube and National Geographic, because they – along with virtually every other news website – “offer a mechanism for communication among users” in the form of comments and content forwarding;

- (b) Getagameplan.org – Louisiana’s official hurricane preparedness website, because it permits “communication among users” in the form of emails, tweets and instant messages that warn of impending storms;
 - (c) Twitter, Gmail, Yahoo, Hotmail, Comcast and AOL, because, in the language of §14:91.5, they too “Offer a mechanism for communication among users, such as a forum, chat room, electronic mail, or instant messaging”;
 - (d) Hotjobs.com, Careerbuilder.com, LinkedIn, Monster, Indeed.com and even USAJOBS.gov – the federal government’s own employment database – because such websites not only allow users to communicate via text, they also “Allo[w] users to create web pages or profiles about themselves that are available to the general public or to any other users”;
 - (e) Craigslist, eBay, Amazon, Zagat, Urbanspoon, Yelp, Consumerist, or any other website that allows user reviews of products, restaurants, movies, books or music.
15. On Monday, August 15, 2011, §14:91.5 will take effect, significantly abridging the rights of all affected registrants, including Plaintiff.
16. Plaintiff was found in possession of child pornography, was tried and convicted under La R.S. §14:81.1, and served four years in prison.
17. Upon his release, Plaintiff registered as a sex offender pursuant to La R.S. §15:542, Louisiana’s sex offender registration statute.

18. Since his initial registration, Plaintiff has re-registered every six months as required. He currently is registered and will remain so for a total of twenty-five years, or as otherwise required by law.

19. Since his release, Plaintiff has worked hard to reenter society. He works as a compliance officer and computer technician at a Louisiana company. He has reestablished relationships with friends and family, and he regularly communicates with them over email. As a disabled veteran of the United States Armed Forces, he has joined the local Veterans Association and frequently associates with other veterans in the area. He has become an active member of his local church; he serves on the board of a local nonprofit that helps paroled prisoners transition to civilian life; and he maintains a blog to which he posts commentary on a regular basis.

20. However, because Plaintiff's crime is a qualifying offense under §14:91.5, he will be subject to the internet use and access restrictions at issue here, and his efforts to remain a productive, contributing member of society will be severely hampered.

21. Under those restrictions, Plaintiff immediately will suffer the following irreparable injuries:

- (a) He will be unable to perform his job as a compliance officer and computer repair technician (both occupations require plaintiff to spend considerable time on internet search engines, databases and online resources), and as a result, his employment may be terminated.
- (b) He will have to shut down his online Veterans Association profile and cease online association with his fellow veterans.

- (c) He will have to terminate his Gmail account, which will limit his ability to communicate with friends and family from the privacy of his own home.
- (d) He will have to disable his blog, on which he regularly posts social and political commentary.

22. In addition, Plaintiff will be barred from almost all other internet activity, and will be unable to engage in the protected First Amendment activities described in more detail above, such as reading online news and political commentary, communicating with friends and family, searching for employment or following the careers of his favorite athletes and artists.

23. §14:91.5 does incorporate a clause that will allow Plaintiff to seek an exception to the statute's proscriptions; however, that exception clause is vague and ultimately meaningless. It reads:

§14:91.5(B): The use or access of social media shall not be considered unlawful for purposes of this Section if the offender has permission to use or access social networking websites, chat rooms, or peer-to-peer networks from his probation or parole officer or the court of original jurisdiction.

24. As written, the exception clause sets forth no procedure for obtaining permission from one's probation or parole officer or from the court of original jurisdiction.

Furthermore, it provides no standards by which parole or probation officers must abide in granting exceptions, leaving open the possibility of purely arbitrary decisionmaking.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(§14:91.5 is Unconstitutionally Overbroad and Violates Plaintiff's Rights Under the First Amendment to the United States Constitution)

25. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

26. A law is facially overbroad where its plain language impermissibly criminalizes otherwise constitutionally protected First Amendment activity beyond the statute's arguably legitimate purpose.

27. Here, §14:91.5 is facially overbroad because criminalizes Plaintiff's use and access of the entire internet, including Plaintiff's right to transmit and receive protected speech in the privacy of his own home, to achieve the limited goal of keeping certain registered sex offenders off of Facebook, MySpace and other such "social networking sites."

SECOND CLAIM FOR RELIEF

(§14:91.5 is Unconstitutionally Vague and Violates Plaintiff's Rights Under the First and Fourteenth Amendments to the United States Constitution)

28. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

29. A law is unconstitutionally vague where it does not provide a person of ordinary intelligence notice of what conduct is prohibited, or where it fails to provide standards for law enforcement.

30. Here, §14:91.5 is unconstitutionally vague because its language is so unclear that persons of ordinary intelligence reasonably could disagree about the law's prohibitions, and because it provides law enforcement with no clear guide as to what conduct is illegal.

THIRD CLAIM FOR RELIEF

(§14:91.5 is an Unconstitutional Content-Based Restriction on Speech Because it Forecloses an Entire Medium of Communication)

31. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

32. Where a facially content-neutral statute forecloses access to an entire, widely-used medium of communication, it will be treated as a content-based restriction on free speech.

33. §14:91.5 violates the First Amendment because it forecloses Plaintiff's access to an entire medium of otherwise protected speech, and is not a narrowly tailored measure necessary to achieve a compelling government interest.

FOURTH CLAIM FOR RELIEF
(§14:91.5 is an Unconstitutional Content-Neutral Restriction on the Time, Place and Manner of Plaintiff's Otherwise Protected Speech)

34. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

35. In the alternative, §14:91.5, while a content-neutral restriction on the time, place and manner of Plaintiff's speech, nonetheless violates the First Amendment because it incidentally restricts Plaintiff's First Amendment freedoms to a degree far greater than is essential to further the state's legitimate interest in public safety, and because it does not leave open ample alternative channels for communication.

FIFTH CLAIM FOR RELIEF
(§14:91.5 Violates Plaintiff's Procedural Due Process Rights Under the Fourteenth Amendment)

36. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

37. §14:91.5 violates Plaintiff's Fourteenth Amendment rights because it fails to inform him of a method by which he may seek an exception to the statute's restrictions,

and fails to set forth substantive standards by which parole or probation officers must abide in granting exceptions, leaving open the possibility of purely arbitrary decisionmaking.

PRAYER FOR RELIEF

38. WHEREFORE, Plaintiff, having no adequate remedy at law, prays for the following: that a temporary restraining order be issued restraining and enjoining Defendants and their employees and agents from enforcing or threatening to enforce La R.S. §14:91.5 upon Plaintiff or any other person in this state;

39. That a preliminary injunction and permanent injunction be issued restraining and enjoining Defendants and their employees and agents from enforcing or threatening to enforce La R.S. §14:91.5 upon Plaintiff or any other person in this state;

40. That a declaratory judgment be issued holding that La R.S. §14:91.5 is unconstitutional on its face;

41. That Plaintiff be awarded nominal damages;

42. That Plaintiff be awarded actual and compensatory damages;

43. That reasonable attorneys' fees, expenses and costs be awarded to Plaintiff pursuant to 42 U.S.C § 1988 and any other applicable provision of law;

44. That this Court grant all equitable and further relief which the Court deems just and proper.

Respectfully Submitted,

/s/ Justin Harrison

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