

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

JANE DOE I, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 03-CV-219085
)	
THOMAS PHILLIPS, et al.,)	Division No. 4
)	
Defendants.)	

**SUGGESTIONS IN SUPPORT OF
MOTION FOR ORDER PROHIBITING USE OF PHOTOGRAPHS OF SORA
REGISTRANTS WHOSE CONVICTIONS PREDATED JANUARY 1, 1985**

Plaintiffs have moved for an order prohibiting the use and internet publication of photographs of Plaintiffs (other than Jane Doe III) and photographs of other SORA¹ registrants whose convictions predated January 1, 1985, which law enforcement was provided by virtue of compliance with a statute that has been determined to be unconstitutional as applied to them. These brief suggestions are offered in support of Plaintiffs' motion.

The Missouri Supreme Court has held that application of SORA's registration requirements to those Plaintiffs and other registrants whose convictions predated January 1, 1985, is unconstitutional under the Missouri Constitution's prohibition against laws with retrospective application. *Doe v. Phillips*, 194 S.W.3d 833, 852 (Mo. banc 2006); MO. CONST. art I, sec. 13 ("no . . . law . . . retrospective in its operation . . . can be enacted").

¹MO. REV. STAT. §§ 589.400 to 589.425, "Sexual Offender Registration Act", also referred to as "Megan's Law".

Plaintiffs maintain that those Plaintiffs and other registrants whose convictions predated January 1, 1985², should never have had to register, and should never have had to provide their photographs to law enforcement authorities as a part of that registration process. Continued use and publication on the internet by law enforcement authorities of photographs which should never have been collected in the first place should be prohibited.

Provision of a photograph is integral to the registration process provided for by the statute and stricken as unconstitutional when retrospectively applied to those convicted prior to January 1, 1985. Section 589.407.1 requires that:

1. Any registration pursuant to sections 589.400 to 589.425 shall consist of completion of an offender registration form developed by the Missouri state highway patrol. Such form shall include, but is not limited to the following:

* * *

(2) The fingerprints and a photograph of the person.

MO. REV. STAT. § 589.407.1.

Furthermore, MO. REV. STAT. § 589.414 provides that:

6. In addition . . . , all registrants shall report semi-annually in person in the month of their birth and six months thereafter to the chief law enforcement agency to verify the information contained in their statement made pursuant to section 589.407. All registrants shall provide an updated photograph of himself or herself in the month of his or her birth to the chief law enforcement agency. The photograph must depict a clear likeness of the registrant or the registrant shall be in violation of this section.

So, there is no doubt that providing a photograph is a part of the affirmative duty or obligation to register based solely on pre-Act offenses that the Court found that the Missouri Constitution proscribed. *Doe*, 194 S.W.3d at 852. Thus, because the photographs are a part of a process to which those whose convictions predated January 1, 1985, should never have

²ORDER, June 4, 2004, at 2.

been subjected because as to them it was unconstitutional, they never should have had to provide photographs to law enforcement authorities in accordance with the statute and law enforcement authorities should never have had them. Since law enforcement authorities should never have had the photographs in the first place, their use or publication on the internet should not be allowed. It is logical, reasonable, consistent with the spirit of the Missouri Supreme Court's opinion and the constitutional prohibition against laws with retrospective application, and represents a fair balancing of the equities to prohibit use and internet publication of photographs that were, in essence, unconstitutionally procured.

The relief sought is, in essence, injunctive relief prohibiting law enforcement authorities who, with respect to those convicted prior to January 1, 1985, it turns out, obtained photographs as the result of an unconstitutional process, from using those photographs and presenting them on the internet. Whether such relief should be granted is a matter of the trial court's discretion in balancing the equities. *Southern Star Central Gas Pipeline, Inc. v. Murray*, 190 S.W.3d 423, 432 (Mo.App. S.D. 2006) (citing *Heinrich v. Hinson*, 600 S.W.2d 636, 640 (Mo.App. W.D. 1980)). "In 'balancing the equities', the trial court is to consider all the equities between the parties as disclosed by the circumstances of the case." *Id.* (quoting *Edmunds v. Sigma Chapter of Alpha Kappa Lambda Fraternity, Inc.*, 87 S.W.3d 21, 29 (Mo.App. W.D. 2002)). "The issuance of injunctive relief, along with the terms and provisions thereof, rests largely within the sound discretion of the trial court," which "is vested with a broad discretionary power to shape and fashion the relief it grants to fit particular facts, circumstances, and equities of the case before it. *Id.* Equity would not be served by allowing persons who never should have had to have provide law enforcement

authorities with their photographs to continue to suffer the effects of that unconstitutional requirement. It is not enough to say that those persons should not have had to register; law enforcement authorities must be denied the fruit of that illegal registration and prohibited from using or presenting such photographs on the internet. This Court has the discretion to so order and should do so.

WHEREFORE, Plaintiffs suggest that their motion to prohibit use of photographs of those convicted prior to January 1, 1985, obtained through the unconstitutional registration process applied to them must be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via electronic mail and First Class U.S. Mail, postage prepaid, this 30th day of October, 2006, on counsel listed below:

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A handwritten signature in blue ink, appearing to read "C. Banner", written over a horizontal line.

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