

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

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

**DEFENDANT STOTTLEMYRE'S RESPONSE TO
PLAINTIFFS' MOTION FOR ORDER PROHIBITING USE OF SORA
REGISTRANTS WHOSE CONVICTIONS PREDATED JANUARY 1, 1995¹**

On June 30, 2006, the Missouri Supreme Court upheld Missouri's Sex Offender Registration Law (SORA, also known as Megan's Law), §§ 589.400 to 589.425, RSMo, in all challenged respects, except that it ruled that SORA could not be applied to require registration by persons convicted of sex offenses before SORA's effective date of January 1, 1995. *Doe v. Phillips*, 194 S.W.3d 833, 852-53 (Mo. banc 2006). The Court then emphasized that its "ruling applies only to the registration requirements. All other provisions of Megan's Law remain in effect as to these and all other persons subject to it." *Id.* Then the Court remanded the case.

¹The motion actually refers consistently to January 1, 1985, but this appears to be in error because the Supreme Court, in *Doe v. Phillips*, 194 S.W.3d 833, 852-53 (Mo. banc 2006), ruled that persons convicted or pleading guilty before January 1, 1995, could not be constitutionally required to comply with registration requirements.

Now plaintiffs move to bar defendants – including the Superintendent of the Missouri State Highway Patrol, which is charged with maintaining a searchable internet site of registered sex offenders, including photographs (§ 43.650, RSMo) – from using and publishing the photographs obtained during registration of sex offenders who, under the *Doe* decision, should not have been required to register because their convictions occurred before January 1, 1995. Plaintiffs (those convicted before January 1, 1995) assert that because they should not have been required to register, the photographs they provided during their registration should never have been obtained by law enforcement authorities. Because the photographs should never have been obtained, these plaintiffs continue, the law enforcement authorities should be prohibited from using those photographs now.

In *Doe*, the Court concluded that requiring persons convicted of sex offenses before the effective date of SORA to register as sex offenders was inconsistent with Missouri's constitutional prohibition (Mo. Const., art. I, § 13) on laws retrospective in operation. 194 S.W.3d at 852. The Court reasoned that the prohibition on retrospective laws barred application of SORA's registration requirements to sex offenders convicted before January 1, 1995, because requiring registration by such offenders constitutes "an affirmative obligation on them to register" and this "obligation to *register* by its nature imposes a new duty or obligation." *Id.* (Emphasis by Court.)

The Court's emphasis on the obligation to register as a new duty is telling. It is the imposition of a new duty obligating a person to take some action that caused the constitutional problem that the Court found with SORA. Nothing about continued use of the

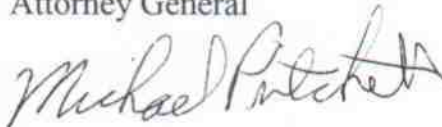
photographs at issue here involves any duty or obligation on plaintiffs' part. Although the photographs may have been obtained during a registration process that has now been found, with regard to some of the plaintiffs here, to have been improperly imposed on them, that registration process is now past. The photographs are in the public record and their use requires no new act on plaintiffs' part. Because continued use of the photographs does not obligate plaintiffs in any way, such use does not raise the same concerns that led the Supreme Court to determine that the continuing duty to register under SORA, as applied to these plaintiffs, was constitutionally prohibited.

Moreover, the Supreme Court expressly stated: "this Court rejects the claim that publication of true information about the Does affects a past transaction to their substantial detriment by imposing a new obligation, adding a new duty or attaching a new disability in respect to transactions or considerations already past." *Id.* Continued use of plaintiffs' photographs is nothing other than the publication of true information about them that has been specifically approved by the Court.

WHEREFORE, defendant Stottlemire prays this Court to deny Plaintiffs' Motion for Order Prohibiting Use of Photographs of SORA Registrants Whose Convictions Predated January 1, 1995, and to approve the use in sex offender registries of photographs of persons convicted before January 1, 1995, that were obtained before the ruling that persons convicted before January 1, 1995, were not required to register.

Respectfully submitted by

JEREMIAH W. (JAY) NIXON
Attorney General



MICHAEL PRITCHETT
Missouri Bar No. 33848
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
Telephone (573) 751-3321
Fax (573) 751-9456

ATTORNEYS FOR DEFENDANT
STOTTLEMYRE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 24th day of November 2006, to:

Arthur A. Benson II
Jamie Kathryn Lansford
Arthur Benson & Associates
4006 Central Avenue
P.O. Box 119007
Kansas City, MO 64171-9007

Lisa N. Gentleman
Jackson County Counselor's Office
415 East 12th Street, 2d Floor
Kansas City, MO 64106



MICHAEL PRITCHETT