

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRIAN VALENTI, on his own behalf and)	
on behalf of a class of those similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:15-cv-1304-WTL-TAB
)	
INDIANA SECRETARY OF STATE, in her)	
official capacity; THE INDIVIDUAL MEMBERS)	
of the INDIANA ELECTION COMMISSION,)	
in their official capacities; THE)	
SUPERINTENDENT of the INDIANA STATE)	
POLICE, in his official capacity; THE)	
BLACKFORD COUNTY PROSECUTOR, in his)	
official capacity,)	
)	
Defendants.)	

Motion for Class Certification

Brian Valenti, by counsel, says that:

1. This action challenges the constitutionality of Indiana Code § 35-42-4-14 (effective July 1, 2015) as applied to Mr. Valenti and others whose polling places are located on school property.
2. He brings this action on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.
3. Class claims are brought against the Indiana Secretary of State, the individual members of the Indiana Election Commission, and the Superintendent of the Indiana State Police (collectively, “State Defendants”).
4. The class is defined as:

All “serious sex offenders,” as that term is defined by Indiana Code § 35-42-4-14(a), who are, or will be, eligible to vote, and currently, or will in the future, live in a voting precinct where the polling place is located on school property

5. As defined, the class meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:
 - a. The class is so numerous that joinder of all members is impracticable. A conservative estimate would put the number of class members in the hundreds. For example, a reasonable estimate finds that there would be 536 class members in Marion and Lake Counties alone. There are considerably more in Indiana’s other 90 counties.
 - b. There are questions of law or fact common to the class – namely whether Indiana Code § 35-42-4-14 violates the United States Constitution as applied to the plaintiff and the putative plaintiff class.
 - c. The claims of the named plaintiff are typical of those in the class.
 - d. Brian Valenti will fairly and adequately represent the interests of the class.
6. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met here in that the State Defendants have at all times acted or refused to act on grounds that generally apply to the class, thereby making final injunctive relief and corresponding declaratory relief appropriate for the class as a whole.
7. Additionally, plaintiffs’ counsel should be appointed as counsel for the class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.
8. In support of this motion plaintiff submits the affidavit of Kandy Kendall, attached as Exhibit 1.
9. In further support of this motion plaintiff separately submits his memorandum of law.

WHEREFORE, plaintiff requests that this case be certified as a class action with the class defined above, and for all other proper relief.

/s/ Jan P. Mensz

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Attorneys for the plaintiff

CERTIFICATE OF SERVICE

I hereby verify that on this 2nd day of September 2015, a copy of the foregoing was filed electronically with the Clerk of this Court. A copy was also mailed on this date to the following parties by U.S. postage, pre-paid.

Indiana Secretary of State
201 State House
200 W. Washington St.
Indianapolis, IN 46204

The Individual Members of the Indiana Election Commission
c/o Office of the Secretary of State
201 State House
200 W. Washington St.
Indianapolis, IN 46204

Superintendent
Indiana State Police
Indiana Government Center - North
100 N. Senate Ave.
Indianapolis, IN 46204

Blackford County Prosecutor
111 N. High St.
Hartford City, IN 47348

/s/ Jan P. Mensz
Jan P. Mensz
Attorney at Law

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BLACKFORD COUNTY PROSECUTOR, in his)
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Defendants.)

AFFIDAVIT OF KANDY KENDALL

COMES NOW Kandy Kendall, being first duly sworn upon her oath, and states as follows:

1. I am an adult resident of Marion County, Indiana and a paralegal employed by the American Civil Liberties Union of Indiana.
2. I am familiar with the Indiana Sex and Violent Offender Registry and have visited the website – <http://www.icrimewatch.net/indiana.php> – on numerous occasions.
3. On August 28, 2015, I reviewed a sampling of individuals listed on the Indiana Sex and Violent Offender Registry in Marion and Lake Counties.
4. Specifically, I reviewed the first 50 individuals listed alphabetically in Marion County who were convicted of an Indiana offense and the first 50 individuals listed alphabetically in Lake County who were convicted of an Indiana offense.

5. For each person listed, I observed whether that person was either listed as a sexually violent predator or listed as being convicted of at least one of the offenses listed under Indiana Code § 35-42-4-14(a)(2).
6. If the person was not convicted of an Indiana offense or there was insufficient information to determine the person's conviction, I skipped the entry and did not count that individual among the 50 individuals I reviewed.
7. Of the 50 individuals I reviewed on the registry for Marion County, 45 were either registered as sexually violent predators or registered as having been convicted of an offense listed under Indiana Code § 35-42-4-14(a)(2).
8. Of the 50 individuals I reviewed on the registry for Lake County, 35 were either registered as sexually violent predators or registered with an offense listed under Indiana Code § 35-42-4-14(a)(2).
9. The total number of registrants, as indicated by the Indiana Sex and Violent Offender Registry website, in Marion County was 2,211 and in Lake County was 563.

VERIFICATION

I hereby verify, under penalties for perjury, that the foregoing statements are true and correct to the best of my information and belief.

9/1/15
Date

Kandy Kendall
Kandy Kendall, Affiant