

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WENDY WHITAKER, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO.
	:	
vs.	:	4:06-CV-0140-CC
	:	
SONNY PERDUE, et al.,	:	
	:	
Defendants.	:	

ORDER

This matter is presently before the Court on Plaintiffs' Motion for Temporary Restraining Order. On June 20, 2006, Plaintiffs filed this action challenging discrete portions of Georgia's new sex offender residency law, Act No. 571, Ga. Laws 2006 (HB 1059), codified at Ga. Code Ann. § 42-1-15 ("the Act"), including the portion of the Act that prohibits anyone on the registry from living within 1,000 feet of any school bus stop in Georgia. See § 42-1-15(a) ("No individual required to register pursuant to Code Section 42-1-12 shall reside . . . within 1,000 feet of any . . . area[s] where minors congregate."); § 42-1-12(a)(3) (defining "area where minors congregate as including "all . . . school bus stops"); § 42-1-12(a)(19) (defining school bus stop as "a school bus stop as designated by local school boards of education or by a private school").

On June 22, 2006, Plaintiffs filed a Motion for Temporary Restraining Order

asking the Court to enjoin, inter alia, the school bus stop provision.¹ The Court has reviewed and considered Plaintiffs' Motion for Temporary Restraining Order, all documents attached thereto, and all submissions provided by both parties in connection therewith. The Court has heard oral argument from both Plaintiffs and Defendants. After careful consideration, the Court hereby finds as follows:

1. To be entitled to a temporary restraining order, Plaintiffs must show:

(1) irreparable harm to the Plaintiffs unless the relief is granted; (2) a substantial likelihood of success on the merits; (3) that the threatened injury to the Plaintiffs outweighs the harm to the Defendants if the TRO issues; and (4) that the TRO will not disserve the public interest.

See Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005).
2. The Court finds that Plaintiffs have satisfied this standard.
3. Plaintiffs have presented evidence that they will suffer irreparable harm in absence of a restraining order. Plaintiffs have shown that they will be required to leave their homes and that they have been unable to locate suitable alternative residences in their respective

¹ Plaintiffs also ask the Court to enjoin the portion of the Act that prohibits Plaintiffs from living within 1,000 feet of a church. The Court DENIES this request and will consider only the school bus stop provision in this Order.

counties of residence or in nearby counties.

4. Plaintiffs have demonstrated a substantial likelihood of success on the merits with respect to the Ex Post Facto claim. While the Court recognizes and appreciates the importance of protecting the public, the Court cannot approve of doing so in a manner that offends the Constitution. See Doe v. Baker, No. Civ. A. 1:05-CV-2265, 2006 WL 905368, *4 (N.D.Ga. Apr. 5, 2006) (upholding Georgia's current sex offender law against Ex Post Facto challenge, but finding that "[a] more restrictive act that would in effect make it impossible for a registered sex offender to live in the community would in all likelihood constitute banishment which would result in an ex post facto problem if applies retroactively to those convicted prior to its passage").
5. The threatened injury to Plaintiffs outweighs the harm to Defendants if the TRO issues. The current sex offender residency law, prohibiting registered sex offenders from living within 1,000 feet of schools, playgrounds, public and private parks, neighborhood centers, gymnasiums, and other places where minors congregate will remain in force and effect. Additionally, the non-movement of Plaintiffs,

who are in compliance with these restrictions, will not harm public safety.

6. The Court recognizes the important interest of protecting children but finds that the TRO will not disserve the public interest, particularly since enforcement of the bus stop provision might result in greater difficulty in monitoring registered sex offenders.

WHEREFORE, for the foregoing reasons, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, the Court finds as follows:

(a) Defendants are TEMPORARILY RESTRAINED from taking any action to enforce the portion of Ga. Code Ann. § 42-1-15(a) that prohibits living within 1,000 feet of a school bus stop, as applied to the named Plaintiffs² in this case. This Order will remain in force and effect until further order from the Court.

(b) The Court further ORDERS the parties to appear before the Court on July 11, 2006 at 1:30 p.m. for a hearing on Plaintiffs' Motion for a Preliminary Injunction.

² Plaintiffs' Motion to Provisionally Certify a Class for the Duration of the TRO Already Granted is currently pending before the Court. The Court will consider this motion on an expedited basis and has requested that Defendants submit a response to Plaintiffs' motion by 1:00p.m. on Wednesday, June 28, 2006, and that Plaintiffs file a reply by 12:00p.m. on Thursday, June 29, 2006.

(c) The Court further ORDERS Plaintiffs to produce by July 7, 2006 at 5:00 p.m. information regarding the number and location of school bus stops that are pertinent to this litigation and the corresponding areas impacted by the Act.

(d) The Court DENIES Defendants' oral motion for a stay of this Order.

SO ORDERED this 27th day of June, 2006.

s/ CLARENCE COOPER

CLARENCE COOPER
UNITED STATES DISTRICT JUDGE