

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AUDREY DOE, ET AL * CIVIL ACTION
VERSUS * NO. 11-0388
GOV. BOBBY JINDAL, ET AL * SECTION "F"
* MAG: "3"

* * * * *

MEMORANDUM IN SUPPORT of MOTION TO DISMISS PURSUANT
TO F.R.C.P. 17(a) and F.R.C.P. 12(B)(6)

MAY IT PLEASE THE COURT:

Defendant, Superintendent of Police Ronal W. Serpas, respectfully submits that Plaintiffs have (1) failed to plead or establish that they are real parties in interest as required by Fed. R. Civ P. 17(a), and (2) likewise failed to plead a cause of action for which relief can be granted.¹

Accordingly, defendant herein respectfully prays that Plaintiffs' Complaint be dismissed as against these defendants with or without prejudice.

1 There are other obvious challenges that may be made regarding the sufficiency of Plaintiffs' Complaint, which Defendants reserve the right to pursue at another time if necessary. Defendant, the Superintendent of Police, is for the time being willing to address the threshold legal issues raised by the State.

BRIEF STATEMENT OF FACTS

Plaintiffs brought the present action on February 15, 2011. Rec. Doc.

1. Plaintiffs allege that “Defendants, by requiring, administering, enforcing, and endorsing Plaintiffs’ inclusion on the SOCPR [Sex Offender and Child Predator Registry], and their subjection to the requirements of the registry law, are violating the rights guaranteed to Plaintiffs under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.” *Id.* at ¶ 17.

Plaintiffs brought the present action as “Aubrey Doe” Plaintiffs, choosing to “proceed under pseudonyms in order to protect their identities from both the public and from defendant. *Id.* at fn. 1. Plaintiffs explain that [b]ecause people registered as sex offenders, as well as their family members, are often targets of harassment, intimidation, and violence, Plaintiffs reasonably fear disclosing their identity to the public realm.” *Id.*

Heretofore, Plaintiffs have not moved the Court, upon a showing of good cause, to redact any information, including their names, or to place any information under seal. Plaintiffs have heretofore not sought a protective order, or any other order from this Court authorizing Plaintiffs to proceed under “pseudonyms.” There has been no hearing, nor any

evidence taken vis-à-vis any real or perceived threat of “harassment, intimidation, or violence” against Plaintiffs.

Plaintiffs allege they were all convicted of soliciting oral sex in exchange for money in violation of La. R.S. 14:89.2 – Crimes Against Nature by Solicitation. They contend that their constitutional rights have been violated because their convictions resulted in the requirement that they register as sex offenders.

Plaintiffs do not challenge the constitutionality of their underlying convictions. Rather, plaintiffs challenge the constitutionality of the statute requiring persons convicted of crimes against nature to register as sex offenders, and ask for a declaratory judgment that the statute, La. R.S. 15:542(A)(1)(a), “violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution insofar as it requires individuals convicted of Crime Against Nature to register as sex offenders.” Rec. Doc. 1, p. 43, ¶ a. Ultimately, plaintiffs ask that their names be removed from the sex offender registry and that, in the future, no person convicted under the Crime Against Nature statute be mandated to register.

LAW AND ARGUMENT

First, Plaintiffs have not pled or established that they are real parties

in interest as required by Fed. R. Civ P. 17(a) and, correspondingly, failed to properly establish standing before the Court. Second, Plaintiffs have failed to plead a cause of action for which relief can be granted by this defendant.

I. DEFENDANT ADOPTS THE ARGUMENTS OF STATE THE DEFENDANTS

Defendant herein, Superintendent Serpas, hereby adopts and incorporates herein by reference as if copied *in extenso* pursuant to Fed. R. Civ. P. 10(c) the arguments made in subparagraphs IV. And V. of the State Defendants' Memorandum in Support of Motion to Dismiss, Rec. Doc. 11-1, which Defendant.

Accordingly, Plaintiffs' Complaint ought to be dismissed as against this Defendant.

II. PLAINTIFFS' CLAIMS OUGHT TO BE DISMISSED PURSUANT TO F.R.C.P. 17(a)

First, Defendant agrees with the law² and arguments made in subparagraph V. of the State Defendants' Memorandum in Support of Motion to Dismiss, Rec. Doc. 11-1, which Defendant hereby adopts and

² See *Southern Methodist University Ass'n v. Wynne & Jaffe*, 599 F.2d 707 (5th Cir. 1979); Fed. R. Civ. P. 17(a)(1); *Coe v. U.S. Dist. Court for Dist. of Colorado*, 676 F.2d 411, 415 (10th Cir. 1982); *Doe v. Deschamps*, 64 F.R.D. 652 (D.Mont.1974)); *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009)

incorporates herein by reference as if copied *in extenso* pursuant to Fed.R.Civ.P. 10(c).

However, Defendants respectfully submit that said arguments are grounds for dismissal of Plaintiffs' claims on the present motion insofar as Plaintiffs have failed to demonstrate that they are real parties in interest and have the requisite standing to proceed with their claims. *See In Re Signal Intern., L.L.C.*, 579 F.3d 478, 490 n. 8 (5th Cir. 2009)(a pleading is not required to raise a real party in interest challenge); *Lans v. Digital Equipment, Corp.*, 252 F.3d 1320 (Fed. Cir. 2001)(affirming grant of summary judgment on ground of lack of Rule 17-related standing).

Accordingly, Defendant herein prays that Plaintiffs' claims be dismissed.

III. THE PLAINTIFFS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED UNDER §1983 BECAUSE THEY FAIL TO PLEAD A VIOLATION OF THE CONSTITUTION.

Defendant herein, Superintendent Serpas, hereby adopts and incorporates herein by reference as if copied *in extenso* pursuant to Fed. R. Civ. P. 10(c) the arguments made in subparagraph IV. of the State Defendants' Memorandum in Support of Motion to Dismiss, Rec. Doc. 11-1, which Defendant.

Indeed, the Plaintiffs fail to state a cause of action under 42 U.S.C. § 1983 for which relief can be granted by this Defendant. First, plaintiffs fail to state a claim for a violation of the Fourteenth Amendment Equal Protection Clause insofar as (1) the law does not burden a suspect class, and (2) the law does not burden a fundamental right. Second, and notwithstanding the foregoing, the requirement that persons convicted under the crimes against nature statutes register as sex offenders bears a rational relationship to a legitimate governmental interest, namely the public morality and the public safety.

Third, the complaint fails to allege a violation of any constitutionally protected right to privacy because crimes against nature by solicitation involves commercial sex acts, not private acts of intimacy. Fourth, the Constitution does not create a protected liberty interest in one's reputation; therefore, plaintiffs fail to state a claim for a violation of due process arising from any defamation, emotional distress, and injury to reputation they allegedly suffer. Fifth, and finally, the registration requirements do not violate the Eighth Amendment because the requirements are not punishment.

CONCLUSION

The Plaintiffs fail to plead that they are real parties in interest and possess the requisite standing to proceed in this suit. Therefore, Plaintiffs' suit ought to be dismissed pursuant to Fed. R. Civ. P. 17(a). The plaintiffs, furthermore, fail to plead facts sufficient to show a violation of the Constitution. They, therefore, fail to state a claim under §1983 upon which relief can be granted and this suit should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendant, Superintendent Serpas, respectfully prays that, after due proceedings are had, the foregoing motion be granted and Plaintiffs' claims against this Defendant dismissed, with prejudice.

Respectfully submitted,

/s/ Jim Mullaly _____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been sent to all counsel of record via electronic filing this 17th day of May, 2011.

/s/ Jim Mullaly_____
JAMES B. MULLALY