

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JACOB WINTER,)	
)	
Plaintiff,)	
)	No. 18 CV 3667
v.)	
)	Judge Tharp
LEO P. SCHMITZ, in his official capacity)	Magistrate Judge Finnegan
as Director of the Illinois State Police,)	
)	
Defendant.)	

ANSWER TO PLAINTIFF’S COMPLAINT

Defendant Leo P. Schmitz, the Director of the Illinois State Police; by his attorney, Lisa Madigan, the Illinois Attorney General, hereby answer Plaintiffs’ Complaint as follows:

Nature of the Case¹

1. This case arises under 42 U.S.C. §1983 and alleges violations of Plaintiff’s rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

ANSWER: Defendant admits that Plaintiff purports to bring this action pursuant to 42 U.S.C. § 1983 and alleges violations under the Fourteenth Amendment to the United States Constitution. Defendant denies all remaining allegations of Paragraph 1.

2. Plaintiff seeks an injunction prohibiting Defendant from enforcing 730 ILCS 150-2 (E-10), which provides that anyone “required to register in another State due to a conviction, adjudication or other action of any court triggering an obligation to register as a sex offender, sexual predator, or substantially similar status under the laws of that State” is considered a “sexual predator” under Illinois law. This law categorizes Plaintiff as a “sexual predator” based solely on the state in which he was convicted of an offense.

¹ All headings and sub-headings are reproduced from the Plaintiffs’ Complaint for the convenience of the Court and the parties and are not admissions.

ANSWER: Defendant admits that the Plaintiff seeks injunctive relief prohibiting Defendant from enforcing 730 ILCS 150-2 (E-10), but denies that this provision is unconstitutional, denies that Plaintiff is entitled to injunctive relief, and denies all remaining allegations of Paragraph 2.

3. Plaintiff was convicted of a misdemeanor offense in Michigan. Had Plaintiff been convicted of an identical offense in Illinois, he would not be labeled as a “sexual predator.”

ANSWER: Defendant admits that Plaintiff was convicted Fourth-Degree Criminal Sexual Conduct, which is a misdemeanor offense in Michigan. Defendant denies all remaining allegations of Paragraph 3.

4. Plaintiff alleges that this statute violates his rights under the Equal Protection Clause of the United States Constitution. Plaintiff seeks injunctive and declaratory relief.

ANSWER: Defendant admits that Plaintiff alleges violations of the Fourteenth Amendment to the United States Constitution and further admits that Plaintiff seeks injunctive and declaratory relief. Defendant denies that this provision violates his rights under the Equal Protection Clause, denies that Plaintiff is entitled to injunctive or declaratory relief, and denies all remaining allegations of Paragraph 4.

Jurisdiction and Venue

5. Jurisdiction for Plaintiffs federal claims is based on 28 U.S.C. §§ 1331 and 1343(a).

ANSWER: Defendant admits that the United States District Court for the Northern District of Illinois has jurisdiction over proper lawsuits brought under 42 U.S.C. § 1983. Defendant denies all remaining allegations of Paragraph 5.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events giving rise to Plaintiffs claims arose in this district.

ANSWER: Defendant admits that venue is proper.

The Parties

7. Defendant Leo P. Schmitz is sued in his official capacity as director of the Illinois State Police. In his capacity as the director of ISP, he has final authority to maintain and administer the Illinois Sex Offender Registry and to determine whether Plaintiff Winter is listed as a “sexual predator” on the registry. 730 ILCS 152/115 (a) and (b).

ANSWER: Defendant admits that Director Schmitz is sued in his official capacity as Director of the Illinois State Police (“ISP”). Defendant further admits that Director Schmitz has certain responsibilities for maintaining and administering the Illinois Sex Offender Registry. Defendant denies all remaining allegations of Paragraph 7.

8. Plaintiff Winter is a resident of Alsip, Illinois.

ANSWER: Defendant admits that Plaintiff is currently registered on the Illinois Sex Offender Registry as residing at an address in Alsip, Illinois.

Relevant Facts

9. Plaintiff was at all times relevant to this complaint a resident of Illinois.

ANSWER: Defendant admits that Plaintiff is currently registered on the Illinois Sex Offender Registry as residing at an address in Alsip, Illinois. Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiff has been a resident of Illinois “at all times relevant to this complaint.”

10. While on a business trip in Grand Rapids, Michigan, Plaintiff was arrested for allegedly assaulting an adult employee of a hotel at which he was staying. Plaintiff was alleged to have had non-consensual physical contact with the victim that did not involve sexual penetration.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 10.

11. Plaintiff pled guilty May 2017 to the Michigan offense of Criminal Sexual Conduct -- Fourth Degree (Michigan Penal Code, §750.520e). This offense is referred to as a “high court misdemeanor” in Michigan, meaning that it is an offense punishable by a maximum of two years of imprisonment. §502e(2).

ANSWER: Defendant admits the allegations of Paragraph 12.

12. Plaintiff was sentenced to 90 days in a county jail, three years of probation, and was ordered to undergo sex offender counseling.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiff was ordered to undergo sex offender counseling. Defendant admits all remaining allegations of Paragraph 12.

13. Under Michigan law, a conviction for Criminal Sexual Conduct — Fourth Degree results in the offender's being listed for 15 years on a non-public sex offender registry with the opportunity to petition the court for removal from the registry after ten years.²

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 13.

14. The elements of the Michigan offense of Criminal Sexual Conduct — Fourth Degree (Michigan Penal Code §750.520e), are functionally identical to the elements of the Illinois offense of Criminal Sexual Abuse (720 ILCS 5/11-1.50(a)).

ANSWER: Defendant admits that some of the elements of Fourth-Degree Criminal Sexual Conduct in Michigan are similar to elements of Criminal Sexual Abuse under Illinois law, but denies that the elements of the two offenses are “functionally identical.”

15. Under Michigan law, a person is “guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and ... [f]orce or coercion is used to accomplish the sexual contact.” Michigan Penal Code §750.520e.

ANSWER: Defendant admits that Paragraph 15 includes a partial quotation from Michigan Penal Code §750.520e, but denies that the quotation fully and accurately reflects the elements of Fourth-Degree Criminal Sexual Conduct.

16. Under Illinois law, “a person commits criminal sexual abuse if that person commits an act of sexual conduct by the use of force or threat of force.” 720 ILCS 5/11-1.50 (a).

² See Michigan Sex Offenders Registration Act, §28.722(r) (defining a person convicted of violating §520e as a “Tier I offender”); *Id.* at §28.728 (4)(c) (stating that the state's public registry shall not include any “individual registered solely because he or she was convicted of a single tier I offense.”); *Id.* at §28.728c (12) (stating that “Tier I” offenders who successfully complete supervision and treatment and do not commit another offense may petition for removal from the registry after ten years).

ANSWER: Defendant admits that Paragraph 16 includes a partial quotation from 720 ILCS 5/11-1.50 (a), but denies that the quotation fully and accurately reflects the elements of Criminal Sexual Abuse.

17. Under Illinois law, a person who has been convicted of Criminal Sexual Abuse (720 ILCS 5/11-1.50(a)), is required to register as a sex offender, but is not labeled as a “sexual predator” on the Illinois Sex Offender Registry.³

ANSWER: Defendant admits that a person who has been convicted of Criminal Sexual Abuse (720 ILCS 5/11-1.50(a)) is not required to register as a “sexual predator” solely based on a single conviction under 720 ILCS 5/11-1.50(a), but denies that a person convicted under 720 ILCS 5/11-1.50(a) is never designated as a sexual predator.

18. Accordingly, Plaintiff is labeled as a “sexual predator” on the Illinois Sex Offender Registry solely because he lives in Illinois and committed his offense in another state. See 730 ILCS 150-2 (E-10) (anyone “required to register in another State due to a conviction, ... triggering an obligation to register as a sex offender, sexual predator, or substantially similar status under the laws of that State” is designated as a “sexual predator” under Illinois law).

ANSWER: Defendant admits that Plaintiff is designated as “sexual predator” on the Illinois Sex Offender Registry because he committed a sex offense in another state and he was required to register as a sex offender in that state. Defendant denies all remaining allegations of Paragraph 18.

19. Had Plaintiff committed an offense identical to the offense he committed in Michigan in Illinois, he would not be labeled as a “sexual predator” under Illinois law.

ANSWER: Defendant admits that if Plaintiff committed an offense in Illinois that was substantially similar to the offense committed in Michigan, he would not be designated as a sexual predator based solely on that conviction. Defendant denies that a person convicted under 720 ILCS 5/11-1.50(a) is never designated as a sexual predator, denies that the

³ See 730 ILCS 150/2 (E) (setting forth the offenses that trigger the “sexual predator” designation).

elements of 720 ILCS 5/11-1.50(a) and Michigan Penal Code §750.520e are “identical,” and denies all remaining allegations of Paragraph 19.

20. The “sexual predator” designation carries with it restraints, disabilities and restrictions that are not applicable to other registrants who are not subject to the “predator” designation. In particular, the restrictions set forth in 720 ILCS 5/11-9.4-1 apply to people classified as “sexual predators” and “child sex offenders” but not to other registrants.

ANSWER: Defendant admits that 720 ILCS 5/11-9.4-1 applies to sexual predators and child sex offenders, but not to other sex offenders. Defendant denies the remaining allegations of Paragraph 20.

21. 720 ILCS 5/11-9.4-1 makes it illegal for a person designated as a “sexual predator” to “knowingly be present in any public park building or on real property comprising any public park” or to “knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park.” §9.4-1(b) and (c).

ANSWER: Defendant admits that Paragraph 21 includes a partial quotation from 720 ILCS 5/11-9.4-1 and further admits that sexual predators are prohibited from knowingly being present in a public park.

22. The restrictions pose substantial restraints on Plaintiff’s liberty. He is a parent to two minor daughters (a two year old and a ten year old). As a result of the “sexual predator” designation, he is unable to take his children to a park, register his children for sports leagues or other events that take place on park property, or participate in family activities that take place on or near public park property.

ANSWER: Defendant admits that, as a sexual predator, Plaintiff is prohibited from knowingly being present in a public park. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 22.

23. In addition, Plaintiff will be required to register as a sex offender with the state of Illinois for life due to the challenged law. If not for the “sexual predator” designation, Plaintiff would only be required to register for ten years. 730 ILCS 150/7.

ANSWER: Defendant admits the allegations of Paragraph 23.

24. Plaintiff also suffers a stigma as a result of being labeled as a “sexual predator” on the Illinois sex offender registry that is different from the stigma normally associated with a conviction for the offense he committed. The “sexual predator” designation implies that Plaintiff has been convicted of a rape or a sex offense against a minor victim. Illinois law only applies the

“predator” label to people who have offended against minors and people who have been convicted of rape, unless the offender committed an offense out of state (as Plaintiff did). 730 ILCS 150/2 (E); (E-10).

ANSWER: Defendant admits that 730 ILCS 150/2 (E) and (E-10) define which sex offenders are labeled as “sexual predators” for purposes of the Illinois sex offender registry. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 24.

COUNT I
42 U.S.C. §1983 – EQUAL PROTECTION

25. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendant incorporates by reference their answers to the paragraphs above.

26. The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which the Supreme Court has explained means that “all persons similarly situated should be treated alike” unless the difference in treatment is “rationally related to a legitimate state interest.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quotation omitted).

ANSWER: Defendant admits that Paragraph 26 includes a partial quotation of the Fourteenth Amendment and a partial quotation from *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

27. 730 ILCS 150-2 (E-10) classifies Plaintiff as a “sexual predator” solely because he committed his offense outside of Illinois. If he had committed an identical offense in Illinois, he would not be labeled as a “sexual predator.”

ANSWER: Defendant admits that if Plaintiff committed an offense in Illinois that was substantially similar to the offense in Michigan, he would not be classified as a sexual predator based solely on that conviction. Defendant denies that a person convicted under 720 ILCS 5/11-1.50(a) is never designated as a sexual predator, denies that the elements of 720 ILCS 5/11-1.50(a) and Michigan Penal Code §750.520e are “identical,” and denies all remaining allegations of Paragraph 27.

28. The difference in treatment between individuals who committed their offenses in Illinois and those who committed their offenses elsewhere is not rationally related to a legitimate state interest and thus fails rational basis review.

ANSWER: Defendant denies the allegations of Paragraph 28.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- (a) issue a preliminary and then permanent injunction prohibiting enforcement of 730 ILCS 150-2 (E-10);
- (b) issue a declaratory judgment that 730 ILCS 150-2 (E-10) is unconstitutional both on its face and as applied to Plaintiff;
- (c) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- (d) grant Plaintiffs any other relief the Court deems appropriate.

ANSWER: Defendant denies that Plaintiff is entitled to any relief whatsoever.

Plaintiff demands trial by jury.

ANSWER: Defendant denies that a jury trial is appropriate in this case because the Complaint seeks only equitable relief.

GENERAL DENIAL

Defendant denies each and every allegation not specifically admitted herein.

WHEREFORE, the Defendant respectfully requests this Honorable Court deny the relief requested in Plaintiff's Complaint, and order any further relief the Court deems reasonable and just.

LISA MADIGAN
Attorney General of Illinois

/s/ Sarah H. Newman
Thomas A. Ioppolo
Sarah H. Newman
Assistant Attorneys General
General Law Bureau
100 W. Randolph, 13th floor
Chicago, Illinois 60601
Tel: (312) 814-7198
Tel: (312) 814-6131
tioppolo@atg.state.il.us
snewman@atg.state.il.us