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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

14 The American Civil Liberties Union of Nevada, Does 1-
15 8 and Does A-S, individuals,

16 Plaintiffs,

17 v.

18 Catherine Cortez Masto, Attorney General of the State
19 of Nevada; Jerald Hafen, Director of the Nevada
20 Department of Public Safety; Bernard W. Curtis, Chief,
21 Parole and Probation Division of the Nevada
22 Department of Public Safety; Captain P.K. O'Neill,
23 Chief, Records and Technology Division of the Nevada
24 Department of Public Safety; Michael Haley, Sheriff of
25 the Washoe County Sheriff's Office; Michael
26 Poehlman, Chief of the Reno Police Department;
27 Richard A. Gammick, District Attorney of Washoe
28 County; Douglas Gillespie, Sheriff of the Las Vegas
Metropolitan Police Department; Joseph Forti, Chief of
the North Las Vegas Police Department; David Roger,
District Attorney of Clark County; Chief Richard
Perkins, Henderson Police Department,

Defendants.

2:08-cv-00822-JCM-PAL

**PLAINTIFFS' REVISED
ORDER GRANTING
PERMANENT INJUNCTION**

1 On September 10, 2008, a hearing was held before Hon. Judge James C. Mahan on
2 Plaintiffs' Motion for Summary Judgment. Appearing for plaintiffs the American Civil Liberties
3 Union and Does 1 through 8 were Margaret McLetchie and Allen Lichtenstein. Robert Langford
4 appeared for Plaintiffs Does A through S. Binu Palal and Kimberly Buchanan appeared for
5 defendants.
6

7 Plaintiffs filed their complaint on June 24, 2008, requesting that this court declare A.B.
8 579 and S.B. 471 unconstitutional and to issue an injunction prohibiting the enforcement of
9 changes to various N.R.S. provisions to be modified by the implementation of A.B. 579 and
10 S.B. 471. Plaintiffs stated several causes of action, including that the laws violated:
11

12 (1) Procedural Due Process under the U.S. Constitution; (2) the Ex Post Facto Clause under the
13 U.S. Constitution; (3) the Double Jeopardy Clause under the U.S. Constitution; (4) the
14 Contracts Clause under the U.S. and Nevada Constitutions; (5) the Separation of Powers under
15 the Nevada Constitution; and (6) the prohibition against Vague and Ambiguous laws under the
16 U.S. Constitution.
17

18 Plaintiffs originally named two sets of defendants:

19 (1) the "State Defendants:" Defendant Cortez Masto, Attorney General of the State
20 of Nevada; Defendant Jerald Hafen, Director of the Nevada Department of Public
21 Safety; Defendant Bernard W. Curtis, Chief of the Parole and Probation Division of
22 the Nevada Department of Public Safety; and Defendant Captain P.K. O'Neill, Chief
23 of the Records and Technology Division of the Nevada Department of Public Safety;
24
25 and

26 (2) Defendant Michael Haley, Sheriff of the Washoe County Sheriff's Office;
27
28 Defendant Michael Poehlman, Chief of the Reno Police Department; Defendant

1 Richard A. Gammick, District Attorney of Washoe County; Defendant Douglas
2 Gillespie is Sheriff of the Las Vegas Metropolitan Police Department; Joseph Forti,
3 Chief of the North Las Vegas Police Department; including but not limited to the
4 community notification provisions therein; Defendant David Roger, District
5 Attorney for Clark County, Nevada; and Defendant Chief Richard Perkins of the
6 Henderson Police Department.
7

8 Plaintiffs subsequently entered stipulations, approved by this court, with all the Law
9 Enforcement Defendants, dismissing them from this action on the condition that they abide by
10 the terms of any relief.
11

12 On June 30, 2008, the court denied plaintiffs’ request for a Temporary Restraining Order
13 but granted Plaintiffs’ Preliminary Injunction Motion.
14

15 In July of 2007, the Nevada Legislature passed A.B. 579 which mandated that its
16 restrictions, notification provisions, and potential criminal penalties apply retroactively, not
17 just to pedophiles, but to anyone who has committed any offense that involves “any sexual act
18 or sexual conduct with another” – no matter how minor the sexual offense was – and to
19 offenses committed as long ago as July 1, 1956. In July of 2007, the Nevada Legislature also
20 passed S.B. 471, which imposed G.P.S. monitoring and movement and residency restrictions on
21 certain sex offenders. Plaintiffs submitted declarations, uncontroverted by the defendants,
22 making clear that the Parole and Probation Department was applying S.B. 471’s provisions
23 retroactively.
24

25 Together, A.B. 579 and S.B. 471 redefine who is considered a “sex offender,” the way
26 in which sex offenders are classified and monitored, and what restrictions apply to which sex
27 offenders. Prior to the enactment of these laws, sex offenders had been individually assessed
28

1 and classified based on psychological assessments focusing on whether the offenders pose a risk
2 to society and are likely to re-offend. The statutes mandated that sex offenders would
3 henceforth be automatically classified based on one factor, the crime committed. Because of
4 the changed standards, numerous people: (1) whose crimes were committed in the distant past;
5 (2) who have been determined by the state of Nevada to be unlikely to re-offend; and (3) who
6 have complied with the law, attended counseling, and who have not committed additional
7 crimes would be thrown back into the system or be subject to more onerous monitoring and
8 residency requirements.
9
10

11 A.B. 579 and S.B. 471 do not provide any procedural due process protections, leaving
12 even people who believe that they have been miscategorized as sex offenders with no means to
13 challenge the application of A.B. 579 and S.B. 471.
14

15 The application of these laws retroactively is the equivalent a new punishment tacked on
16 to the original sentence – sometimes years after the fact – in violation of the Ex Post Facto and
17 Double Jeopardy Clauses of the U.S. Constitution, as well as the Contracts clauses of the U.S.
18 and Nevada Constitutions. Moreover, because they do not provide any procedural protections
19 from their retroactive application, A.B. 579 and S.B. 471 violate the Due Process Clause of the
20 U.S. Constitution.
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1 For these reasons, the Court hereby grants Plaintiffs' Motion for Summary Judgment,
2 making the June 30, 2008 Preliminary Injunction enjoining the enforcement of A.B. 579 and
3 S.B. 471 a Permanent Injunction.

4 Respectfully submitted,

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6
7 DATED: October 7, 2008

ACLU of NEVADA, Attorneys for the ACLU of
8 Nevada and Does 1-8

9
10 By: /s/

11 Margaret A. McLetchie

12
13 DATED: October 7, 2008

ROBERT L. LANGFORD & ASSOCIATES, Attorneys
14 for the ACLU of Nevada and Does 1-8

15
16 By: /s/

17 Robert L. Langford

18
19
20 **IT IS SO ORDERED.**

21
22 

23 **HONORABLE JUDGE JAMES C. MAHAN**

24 Dated: October 7, 2008