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CIVIL RIGHTS GROUP QUESTIONS CONSTITUTIONALLY OF PROPOSAL

Albuquerque, NM / April 2, 2013—Reform Sex Offender Laws, Inc. (RSOL) plans to fight HB 48, a proposal that was recently pre-filed by State Rep. Nate Gentry (R – Albuquerque). The legislation would make it illegal for any of New Mexico’s 3000 registered sex offenders, whether or not still under supervision and whether or not the register-able offense involved a child or the Internet, to use any social networking, chat, or instant messaging services where minors are allowed to register on the site.

RSOL was quick to criticize this proposed law as unconstitutional and one that would likely be struck down in the courts.

RSOL believes that any law restricting a person’s rights, particularly First Amendment rights and access to the internet, beyond the end of the person’s sentence is unconstitutional.

Contrary to what is commonly understood, registration as a sex offender is supposed to be a non-punitive, collateral consequence of a conviction for a sex offense. In fact, the US Supreme Court held registration to be constitutional because the Alaska requirements at the time did not impose any disability or restraint on the offender. *See Smith v. Doe*, 538 U.S. 84 (2003).

To remain constitutional, registration cannot impose any disability or restraint on a registered person’s daily activities. We base that opinion on the court’s finding that, “The Act imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint.” *See Id* at 100.

This and similar types of laws have also been held unconstitutional across the country under First Amendment rights. *See Doe v. Jindal*, in federal court (Louisiana) and *Does v. Nebraska*, federal court (Nebraska).

The proposed law is overly broad.

It covers all persons required to register as a sex offender. Many have not committed a crime that involves a minor. For example, false imprisonment and kidnapping are on New Mexico’s list of register-able offenses.

RSOL believes that restricting a registered person from nearly all social networking and chat rooms, where encountering a minor brings threat of prosecution, would chill

NATIONAL ASSOCIATION FOR RATIONAL SEXUAL OFFENSE LAWS

Fighting to restore dignity & constitutional rights to millions.

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legitimate speech and clearly run afoul of the First Amendment.

The proposed law is unnecessary to promote public safety.

In New Mexico those convicted of a sex offense are required to be on probation and/or parole from 5 to 20 years. During this period, the person's Internet use is restricted, and in order to be released from supervision, the person must complete treatment and demonstrate that he/she has been rehabilitated to the satisfaction of a judge.

In articulating RSOL's position, Executive Director Brenda Jones said, "It doesn't take any consideration into account of whether or not the person actually committed a crime that involved a minor; it's simply indiscriminately applied to anyone required to register under New Mexico's law."

RSOL is frankly astonished that despite the fact that similar laws have been successfully challenged in other states, a New Mexico legislator, who happens to be an attorney as well, is choosing to grandstand rather than engage in a serious dialogue regarding how best to protect New Mexico. This proposal is even more troubling in view of United States District Judge Richard Kopf's (Nebraska) recent decision on December 21, 2012, to award plaintiffs nearly \$300,000 in attorneys' fees as a result of a successful challenge to a similar law in that state, and the adverse decision against the city of Albuquerque when it attempted to prevent all registrants from using any of the city's publicly funded libraries.

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