UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TROY WALLACE, CARLOS PEREZ,

And all other level 1 sex offenders, and

All those similarly situated,

Plaintiffs,

LAURA AHEARN, director and founder of PARENTS FOR MEGAN'S LAW, Suffolk County Police Chief JAMES BURKE, and Suffolk County Executive STEVE BELLONE

Defendants,

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COMPLAINT

CV - 13 - 2520

FEUERSTEIN, J

WALL, M.J.

I, Troy Wallace and Carlos Perez bring this cause of action on behalf of ourselves and all those similarly situated including but not limited to all level 1 sex offenders. Further, this cause of action under Title 42 Section 1983 of the United States code is being brought against Laura Ahearn, founder and director of the non-profit organization, Parents for Megan's Law advocacy group in her official and individual capacities, Suffolk County Police Chief James Burke in his individual and official capacities, and Suffolk County Executive Steve Bellone in his individual and official capacities for numerous civil rights violations as enumerated in the United States Constitution relating to registered sex offenders which includes but not limited to the Fourth Amendment, the Fifth Amendment, the Fourteenth Amendment, Article 1 Section 10, and the Eight Amendment. Ms. Ahearn by and through her counsel may projectively contend that she is not liable under such section, and is therefore not bound by its parameters. However, if a private

organization utilizes State or municipal funds, as records reflect that she has for their initiatives, then they are deemed a State actor under color of law thereby subjecting them to the pains and penalties of those found to be culpable under said federal code.

Defendant #1

1. **Deliberate Indifference/Equal Protection**

On January 21st, 1996, New York State enacted the Sex Offender Registration Act (hereinafter "SORA"), or "Megan's Law" as it is commonly known, codified under Article 6-c Section168 of New York Corrections Law. Under such act, SORA requires the Division of Criminal Justice Services (hereinafter "DCJS") to maintain a public registry via the internet which can only include level two and level three offenders. In accordance with legislation, it attaches to it a notification component that extends to law enforcement agencies having jurisdiction to disseminate information regarding all levels of offenders to vulnerable entities only, and not to the general natural public. The inclusion of level ones notification expansion came by way of a June 23, 2006 amendment to SORA, § 168-1(a).

Ms. Ahearn, in assuming the role of an elected official has made a law unto herself in that she has posted level ones and all of their pertinent information electronically for public scrutiny disregarding several directives from DCJS to discontinue these unlawful postings. The above named has yet to comply and it is because of this she is found to be acting with deliberate indifference.

The language in Corrections Law, Article 6-c, § 168-q(2) is unambiguous as it states in pertinent part;

"(2) Any person who uses information disclosed pursuant to this section in violation of the law shall in addition to any other penalty or fine imposed, be subject to a fine of not less than five hundred dollars and not more than one thousand dollars. Unauthorized removal or duplication of the subdirectory from the offices of local, village or city police departments shall be punishable by a fine not to exceed one thousand dollars. In addition, the attorney general, and district attorney or any person aggrieved is authorized to bring a civil action in the appropriate court requesting preventative relief, including an application for permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for such action."

Such act by Ms. Ahearn has left her exposed to federal scrutiny as it relates to the United States Constitution involving one's personal liberty and equal protection under the laws under several enumerated amendments. The right to enjoy privacy in all matters, especially ones carved out in accordance with state law, in which the rights of others are not violated, are not to be rescinded, abrogated or taken away as if those rights were mere privilege.

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment… in legal contemplation, it is as inoperative as if it had never been passed… since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it… A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a

statute runs counter to the fundamental law of the land, it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it." Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908); NORTON v. SHELBY COUNTY, 118 U.S. 425

FUNDAMENTAL FAIRNESS

As convicted sex offenders, our rights are further diminished as opposed to other convicted felons. Other homeless felons are not confined to secured compounds at night by way of trailers and are not overseen and/or monitored by a contracted security agency. It is blatantly clear that such arrangement for this class of offenders contravents the very tenets of the Constitution under the 14th Amendment. See Brown v. Board of Education (1954) citations omitted.

"(17) To have a sentence which explicitly states all disablements, and is final in that once rendered, no further disablements may be imposed for the same offense.[1]" Summary of Constitutional Rights, Powers and Duties.

Ms. Ahearn, in her misguided passion to save the world from uncontrollable "monsters" that do not exist and to further vilify ex-sexual offenders has constructed her own website but for the sole purpose of punishing said designated offenders. Her social vigilantism has gained her notoriety amongst those ignorant to the facts and who lack the visibility to see that these "so-called" compulsive, sexually deviant pedophiles and rapists are not re-offending, if they ever even offended to begin with. This is in no way an attempt to disqualify the horror experienced by true sexual assault victims. The fact is her numbers, from whence they derive, have never mirrored criminal statistics as it relates to recidivism simply because lies can never superimpose the truth. For years, Ms. Ahearn has found a damaging rhythm in taking the facts of sex

convictions and marrying them to purely fabricated statistics of recidivism thereby toeing the very lines of slander. She has pulled on the heartstrings of the public in full awareness that no descent human being of sound mind and moral fortitude would oppose any measure regarding the protection of women and children. In so doing, she has garnered full public support for her agenda. However, if such agenda is in large part based on fear, anorexic of fact as it relates to the potential dangerousness of convicted sex offenders, then her campaign loses its credibility as time exposes her efforts to propaganda. In fact, her over-zealous crusade to catch "the Boogeyman" makes her unfit to lead any sound effort regarding the management of "so-called" sexual offenders and does not escape the definitional parameters of domestic terrorism.

2. **Racketeering**

Under the scope of Title 18 Section 1961, Parents for Megan's Law could legally be defined as a racket to wit: a racket is a service that is fraudulently offered to solve a problem, such as for a problem that does not actually exist, will not be affected, or would not otherwise exist. Conducting a racket is **racketeering.** Particularly, the potential problem may be caused by the same party that offers to solve it, although that fact may be concealed, with the specific intent to engender continual patronage for this party. Case in point, I humbly ask the Court, when was the last time a child got victimized by a sex offender in a daycare? When was the last time a child was abducted from a school by a registered sex offender? When was the last time any of the homeless sex offenders residing in the Suffolk County Trailer Program reoffended? I mean, we are talking about a class of people whom Laura Ahearn and Parent's for Megan's Law accuse of not being able to control themselves, aren't we?

3. **Preemption Doctrine**

In addition, Ms. Ahearn by way of legislative package, commonly known as the Community Protection Act (hereinafter "CPA"), enacted February 5, 2013 has assembled a team of sex offender trackers comprised of ex-law enforcement and ex-military, in total disregard of this nation's charter as it relates to one's guaranteed life, liberty and pursuit of happiness. After having completed his or her sentence, a convicted sex offender has a fundamental, inalienable right to enjoy the same freedoms as other men do without further governmental or quasi-governmental intrusion. Yet, this team of trackers, by design, is employed to follow and many times harass ex-sex offenders during the course of their daily lives, as there exists absolutely no grounds for such unlawful surveillance. Their rationale would imaginatively be that these measures are being taken to ensure compliance with SORA, but that measure has been the existing and long standing duties of local police departments under the pre-existing act (SORA).

There exists no rational basis and no antecedent for such unlawful surveillance, especially when the state already has complete interest in the field relating to sex offender management, which in essence raises the question: Is Steve Bellone and the Suffolk County Legislature preempting state law? There stands no legitimate county purpose for such "trackers" in that there is no data supporting the county's latest move to curb and prevent recidivism by ex-sex offenders. Furthermore, by enacting this CPA, the county has once again violated

the state's preemption doctrine in relation to the management of sex offenders. See. People v. Oberlander (citations omitted)

"The New York State Constitution allows municipalities broad police power relating to the welfare of its citizens. People v. Speakerkits. Inc., 83 N.Y. 2D 814 (1994); N.Y.S. Club Assoc. v. City of N.Y. 69 N.Y. 2d, 211 (1987). However, that local police power may not be exercised in an area in which it is preempted by state law. Id. See also Levy v. City Commission on Human Rights, 85 N.Y. 2d. 740 (1995) Village of Nyack v. Daytop Village Inc. 78 N.Y. 2d. 5000 (1991); People v. Cook, 34 N.Y. 2d. 100 (1974). Preemption applies both in cases of express conflict between local and state law, and in cases where the state has evidenced its intent to occupy the field. Matter of Cohen v. Bd. Of App. Village of Saddle Rock, 100 N.Y. 2d. 395 (2003)

Defendant #2

Suffolk County Police Chief James Burke, by and through his actors, agents, or officers, (hereinafter SCPD) in a concerted effort along with Ms. Ahearn, to enforce the CPA has violated the fourth amendment rights of this class of citizen. To Wit: Section 745-34 (b) of the CPA states in pertinent part; "The SCPD is authorized to utilize available resources within appropriations to enhance or develop and implement registered sex offender monitoring and enforcement

which made include, but not limited to; (iv) developing patrol officer intelligence reports for each registered sex offender contact and (v) **developing watch lists.**"

A search occurs when a person actually exhibits an expectation of privacy which society is prepared to view as reasonable and that privacy is infringed. It involves an invasion of a person's privacy. A search can take a variety of forms. It could involve a physical entry into premises, **a visual inspection from afar** or listening to a conversation through a wall or door. See Katz v. United States, 389 U.S. 347 (1967). See also People v. Volpe, 89 A.D. 2d 510 (1st Dept. 1982, aff'd, 60 N.Y. 2d 803 (1983)).

An *unreasonable* search occurs when a governmental or quasi-governmental agency having police power unlawfully surveils its citizens when (1) they are not under investigation for criminal behavior, (2) criminal activity is not afoot, or (3) not under heightened knowledge and belief that criminal activity has recently occurred. See Section 140.50 (1) of the New York State Criminal Procedure Law or Terry v. Ohio. The scope and purpose, by component of the Suffolk County CPA under its current design violates those rights guaranteed by the Fourth Amendment thereby making such act void as per Marbury v. Madison (citations omitted).

A seizure occurs when there is meaningful interference with an individual's possessory interest in property, or whenever he is physically or constructively detained by a significant interruption of his liberty of movement through police or quasi-police action. A seizure becomes *unreasonable* when citizens are constructively detained by a significant interruption of his liberty of movement through such police action as the CPA

proposes to do in effect. The fact that the adversely affected class (registered sex offenders) will be potentially detained lawfully represents a seizure by which reasonable suspicion of a crime is needed for such detention, therefore deemed unconstitutional. See People v. Mercado, 68 N.Y. 2d 874 (1986), cert denied, 479 U.S. 1095 (1987). "No free man shall be seized, or imprisoned…except by lawful judgment of his peers or by the law of the land." Summary of Constitutional Rights, Powers and Duties.

Defendant #3

4. The Suffolk County Executive, Steve Bellone, the signatory author of Suffolk County's local law Chapter 745 Article VII commonly known as the CPA, under the color of law has violated the tenets of the United States Constitution. Such slight renders him culpable under Title 42 Section 1983 of the United States Code. Furthermore, he is criminally liable under Title 18 §§ 241 and 242 of the United States Code in that by and through the so-called "certificate of necessity", he not only conspired to deprive sex offenders of a constitutional right, but by such enactment of the CPA did deprive such class of citizens of their constitutional rights. In fact, the entire Suffolk County legislative body has been knowingly and willingly proposing and passing unconstitutional local laws as it relates to sex offenders.

Ex post facto

The progression of these current laws are not based on any current deviant behavior, so the county can no longer hide these laws under the guise of civility in a clever attempt to circumvent ex post facto scrutiny. The very nature in that these laws are enacted under the

campaign of "get tough" on sex offenders has very little to do with the public's safety and everything to do with further punishment. These draconian measures only serve as further punishment in that statistics show that a child is more likely to be victimized by a family member who is not on the registry. The United States Department of Justice has released the above mentioned fact which is supported by clinical experts, yet local legislation has consistently ignored these facts and continued to make punitive laws affecting such class of citizens as they attempt to move on with their lives. These laws which are made after the fact or commission of an act which leaves a person at a disadvantage, are indeed ex post facto. See Kring v. Missouri (citations omitted). Moreover, certain legislators are being politically strong-armed into violating their oaths of office knowing that such laws are unconstitutional and punitive in effect, yet they vote for their passage. One particular legislator, namely Legislator Kennedy, knows that these laws are unconstitutional, yet so as not to lose the support of his party, he votes for their passage. In fact, he can be quoted as saying, "We put this feel good pablum out there for the public, making them think they'll be safer. And now we've spent a tremendous amount of taxpayer money to defend bad legislation."

These factors tip the balance from a constitutional scheme based on laudable goals to an unconstitutional intrusion upon the sex offender. The concept that a regulatory scheme may be unconstitutional if not narrowly drawn was explored in Poritz 662 A. 2D 367.39 (N.J. 1995) ("The law is characterized as punitive only if the punitive impact comes from aspects of the law unnecessary to accomplish its regulatory purposes- that is, if the law is 'excessive', the excess consisting of provisions that cannot be justified as regulatory.") To say that the privacy interests of the persons adjudicated guilty of sex offenses is less

important than the government's interests in public safety, is to say that the government is greater than the people and we have suffered an inversion of power.

MEMORANDUM OF LAW

1) "The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice" - Davis v. Wechsler, 263 U.S. 22, 24.
2) "Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them." – Miranda v. Arizona 384 U.S. 436, 491.
3) "The Constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded; when the Constitution speaks with reference to a particular matter, it must be given effect as the paramount law of the land." People v. Parks, 58 cal. 624.
4) "It is the duty of all officials, whether legislative, judicial, executive, administrative, or ministerial, to so perform every official act *as* not to violate Constitutional provisions." Montgomery v. State, 55 Fla. 97, 45 So. 879.
5) "The provisions of the Constitution must be given effect even if in doing so a statute is held to be inoperative." State ex rel. West v. Butler, 7 Fla. 102, 69 So. 771.
6) "The officers of the law, in the execution of process, are obligated to know the requirements of the law, and if they mistake them, whether through ignorance or design, and anyone is harmed by their error, THEY MUST RESPOND IN DAMAGES." Rosters v. Marshall, (United States use of Rogers v. Conklin) I Wall, (US) 644, 17 L. Ed 714 (emphasis added)

7) "It is a general rule that an officer –executive, administrative, quasi-judicial, ministerial or otherwise –who acts outside the scope of his jurisdiction and without authorization of law may thereby render him amenable to personal liability…" Cooper v. O'Connor, 69 App DC 100, 99 F 2d 135, 118 ALR 1440; *Chamberlain* v. Clayton, 56 Iowa 331, 9 NW 237, 41 Am Rep 101.

8) "If a public officer authorizes the doing of an act not within the scope of his authority, he will be held liable." Bailey v. New York, 3 Hill (NY) 531, 38 Am Dec 669, affirmed in 2 Denio 433.

Therefore, the plaintiffs seek an injunction enjoining the Suffolk County Legislature, Suffolk County Police Department and Laura Ahearn from enforcing the unconstitutional law legislatively known as the Community Protection Act. In addition, enjoining Laura Ahearn in her continuing effort to violate state law by posting level 1 sex offenders on her Parents for Megan's Law website.

Wherefore, the plaintiffs are seeking injunctive relief, declatory relief, punitive and compensatory damages in the sum certain amount of one hundred million dollars ($100,000,000.00). The plaintiffs pray that this court rules to rescind any and all local legislation that is not pursuant to the United States Constitution, the Supreme Law of the Land for which all actors, agents, officers in the discharging of their duties are oathfully bound to, and any other further relief the court may deem just and equitable.

Note: The plaintiffs fear that due to the nature and sensitivity of the subject matter and those so named within this document that retaliatory acts may be taken as a result of such class filing suit.

Dated April 15, 2013

Respectfully submitted,

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