

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

WENDY WHITAKER, et. al.	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
v.	)	
	)	No. 4:06-cv-140-CC
SONNY PERDUE, et. al.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS’ STATEMENT OF MATERIAL FACTS  
IN SUPPORT OF RENEWED MOTION FOR SUMMARY JUDGMENT  
AND FOR A PERMANENT INJUNCTION TO ENJOIN  
ENFORCEMENT OF THE “SCHOOL BUS STOP”  
PROVISION OF O.C.G.A. § 42-1-15(B), 42-1-16(B)**

Pursuant to L.R. 56.1, Plaintiffs submit this Statement of Facts in support of their *Motion for Summary Judgment and for a Permanent Injunction to Enjoin Enforcement of the School Bus Stop Provision of O.C.G.A. § 42-1-15 and 42-1-16*:

A. *The School Bus Stop Provision*

1. O.C.G.A. § 42-1-15(b) states:

[No sex offender] shall reside within 1,000 feet of any child care facility, church, school, or *area where minors congregate* if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. (emphasis added).

2. O.C.G.A. § 42-1-16(b) states:

Any individual who committed an act between July 1, 2006 and June 30, 2008, for which such individual is required to register shall not reside within 1,000 feet of any child care facility, church, school, or *area where minors congregate*. (emphasis added).

3. “School bus stops” are included in the definition of “area[s] where minors congregate.”<sup>1</sup> House Bill 571, which became effective May 20, 2010, made no change to this provision.

4. For purposes of the sex offender law, a “school bus stop” is defined as “a school bus stop as designated by local school boards of education or by a private school.”<sup>2</sup> House Bill 571 made no change to this provision.

5. Together, O.C.G.A. 42-1-15(b) and 42-1-16(b) prohibit sex offenders whose offenses occurred on or after July 1, 2006 from residing within 1,000 feet of “school bus stops.”

6. The penalty for violating the school bus stop provision is a mandatory 10 to 30 years in prison.<sup>3</sup>

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<sup>1</sup> See O.C.G.A. § 42-1-12(a)(3).

<sup>2</sup> See O.C.G.A. § 42-1-12 (a)(19).

<sup>3</sup> See O.C.G.A. § 42-1-15(g); § 42-1-16(g).

7. The intent of the legislation containing the school bus stop provision, as expressed by Representative Jerry Keen, the chief sponsor of the bill, was to drive all sex offenders from the state:
- a. "There is no place in our society for those who prey on innocent children."<sup>4</sup>
  - b. "We don't want these types of people staying in our state."<sup>5</sup>
  - c. "We want those people running away from Georgia. Given the toughest laws here, we think a lot of people could move to another state."<sup>6</sup>
  - d. "If someone did something now to my grandchildren, I think you and I would have the same reaction to that. Those are the people we're targeting. Those are the people we're trying to get off the streets of this state, and those are the people that we are going to send a message to that if you have a propensity to that crime perhaps you need to move to another state."<sup>7</sup>

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<sup>4</sup> Press Release, *Georgia House of Representatives, Majority Leader Urges House to Consider Tougher Laws for Sexual Predators*, Sept. 28, 2005, available at [http://www.legis.ga.gov/legis/2005\\_06/house/communications/Press/tougherLawsSexual.htm](http://www.legis.ga.gov/legis/2005_06/house/communications/Press/tougherLawsSexual.htm) (quoting Rep. Keen).

<sup>5</sup> Greg Bluestein, *House Leaders Lobby for Tougher Sex Offender Penalties*, MACON TELEGRAPH, Jan. 13, 2006 (quoting Rep. Keen).

<sup>6</sup> Emily Kopp, *Sensational Topics Set for Election-Year Session*, GEORGIA PUBLIC RADIO, Jan. 6, 2006.

<sup>7</sup> Statement by Rep. Keen to Rep. Roger Bruce during House debate on HB 1059, Feb. 2, 2006, House Internet Broadcasts, available at: [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_47120020,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_47120020,00.html).

- e. "If it becomes too onerous and too inconvenient, they just may want to live somewhere else. . . . And I don't care where, as long as it's not in Georgia."<sup>8</sup>
- f. "Candidly, Senators, they will in many cases have to move to another state."<sup>9</sup>

B. Enforcement of the School Bus Stop Provision in 2006

- 8. Between April 20, 2006 (the date on which the school bus stop provision was signed into law by the Governor) and July 1, 2006 (the law's effective date), sheriffs' offices across Georgia prepared for a mass eviction of sex offenders who lived within 1,000 feet of any place a school bus stopped to pick up children.<sup>10</sup>

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<sup>8</sup> Nancy Badertscher, *Law to Track Sex Offenders Studied*, ATLANTA J.-CONST., Aug. 16, 2005, at B1 (quoting Rep. Keen).

<sup>9</sup> Editorial, *Sex Offenders Won't Vanish for Good*, ATLANTA J.-CONST., Mar. 23, 2006, at 14A ("[H]ouse Majority Leader Jerry Keen . . . told his Senate colleagues that he intends to drive sex offenders out of Georgia.").

<sup>10</sup> At the preliminary injunction hearing, Sheriff Ted Paxton testified that all 60 people on the registry in Forsyth County would have to move due to the bus stop provision. *See* Tr. of Hearing, July 11-12 [Doc. No. 42, 43] at 23. Investigator Russell Finley testified that in Cobb County, all but 4 of the approximately 200 sex offenders would have to move from the county's 17,000 bus stops. *See id.* at 37-38. Captain David Davis testified that 222 of 230 sex offenders in Bibb County would be required to move. *See id.* at 49-50. A DeKalb County official testified that all 490 sex offenders in that county would have to move. *See id.* at 62. Corporal Karen Pirkel testified that 277 of 278 sex offenders in Gwinnett County

9. Sheriffs' offices in Bibb, Cherokee, Cobb, DeKalb, Forsyth, Fulton, Gwinnett, Haralson, and Rockdale counties, among other counties, all made plans to remove all or nearly all sex offenders from their homes due to the bus stop provision.<sup>11</sup>
10. A number of sheriffs' offices ordered all or nearly all sex offenders in their counties to move by July 1, 2006 due to the school bus stop provision of § 42-1-15, even though no "school bus stops" had been "designated" for purposes of the sex offender law at that time.<sup>12</sup> In the weeks leading up to July 1, 2006, many plaintiffs were required to move to avoid prosecution.<sup>13</sup>

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would have to move, all due to bus stops. *See id.* at 85, 87. Sergeant Jay Baker testified that 88 of 95 sex offenders in Cherokee County would have to move. *See id.* at 88. Investigator Gene Higdon of Rockdale County testified that 51 of 52 sex offenders would have to move due to the bus stop provision. *See id.* at 159-60.

<sup>11</sup> *See* n. 10, 13; *see also* Decl. of Chief Deputy Joel McSwain, July 10, 2006 at 2 [Ex. 1 to Doc. No. 37] (stating "at least 12 [of 54] offenders will need to move to comply with the bus stop provision" in Haralson County and "[t]here will probably be many more who will be required to move because of bus stops"); Decl. of Detective Jodie Askea, June 27, 2006 [Doc. No. 19-4] (stating that 90 of 100 offenders in Paulding County would have to move, most due to school bus stop provision).

<sup>12</sup> The Forsyth County Sheriff's Office notified all sex offenders in the county about the school bus stop provision and planned to give registrants 72 hours to vacate their homes or face arrest. *See* Tr. of Hearing, July 11-12 at 27-28. The Cobb County Sheriff's Office directed most of its 200 sex offenders to vacate by July 1, 2006 due to the bus stop provision. *See id.* at 37-40. Corporal Stephen

11. On June 20, 2006, the plaintiffs moved to enjoin the school bus stop provision, and on June 29, 2006, this Court enjoined that provision pending a preliminary injunction hearing.<sup>14</sup>

12. At the preliminary injunction hearing, law enforcement officers from ten sheriffs' offices testified that they were enforcing the school bus stop

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Lifland testified that the DeKalb County Sheriff's Office had imminent plans to "start arresting" people who remained at a residence within 1,000 feet of a school bus stop. *See id.* at 65-66.

<sup>13</sup> *See* Mica Doctoroff Decl. (Ex. 9) at ¶ 12; Attachment C (stating that in their discovery responses, sheriffs admitted to expelling at least 43 people from their homes due to the school bus stop provision in 2006). *See also* Lori Collins Decl., June 19, 2008 at 6-7 [Doc. No. 187-10] (stating that Collins was forced from her home in Rockdale County due to school bus stop provision); Andrew Norton Decl., June 12, 2008, [Doc. No. 186, Ex. 5 ¶ 13] (stating that he and his wife and children were forced to move from a rented residence when Cobb County law enforcement officials told them that a "school bus stop" had been designated within 1,000 feet of his residence); Aaron Raines Decl., Sept. 3, 2009 (Ex. 21) (stating that he, his wife and their 11-month-old daughter were forced to move from their home in Columbia county due to the bus stop provision); Jeffrey Jones Decl., Jan. 29, 2008 [Ex. C to Doc. No. 169] (stating that the bank foreclosed on his home and that he lost approximately \$25,000 after a Cobb County Sheriff's Deputy ordered him to move from his home within 30 days because it was within 1,000 feet of a school bus stop).

<sup>14</sup> *See* Order, June 27, 2006 [Doc. 16] (Plaintiffs "demonstrated a substantial likelihood of success on the merits with respect to the Ex Post Facto claim").

provision as they interpreted the provision, and that the provision would force nearly all sex offenders in their jurisdictions from their homes.<sup>15</sup>

13. Attorneys for the Governor, by contrast, argued that sex offenders who lived within 1,000 feet of school bus stops would *not* have to move unless those bus stops had been *specifically designated by a local school board* for purposes of O.C.G.A. § 42-1-15.<sup>16</sup> The state defendants' attorneys presented conflicting arguments as to whether any such school bus stops existed in Georgia at the time of the hearing.<sup>17</sup>

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<sup>15</sup> See n. 10, 12.

<sup>16</sup> See Tr. of Hearing, July 11, 2006 at 12-16 [Doc. No. 42] (Sr. Asst. Att'y Gen. Devon Orland) ("[M]any of the sheriffs . . . were not familiar with what is designated by the local school board. They'll say they went to the school board and they got a list of bus stops and then they drew their map, but not that it was designated by the local school board, and as a result have created [sic] this conundrum of panic . . ."); Tr. of Hearing, July 12, 2006 [Doc. No. 43] at 347-48 (Sr. Asst. Att'y Gen. Devon Orland) ("Now, I don't know where the sky is falling mentality started but it spread like wildfire and one sheriff talked to another and there it went.").

<sup>17</sup> Cf. Tr. of Hearing, July 11, 2006 [Doc. No. 42] at 10 (Sr. Asst. Att'y Gen. Devon Orland) ("[S]ome school boards now, thanks to the statute, will have the opportunity to pass their own designated school bus stops. Some counties in fact do that now, others don't."); *with* Tr. of Hearing, July 12, 2006 [Doc. No. 43] at 345 (Sr. Asst. Att'y Gen. Devon Orland) ("I do not personally know whether there is a school board that does designate school bus stops.").

14. On July 25, 2006, this Court adopted the Attorney General's definition of "school bus stop" and denied plaintiffs' request to preliminarily enjoin the bus stop provision, noting:

[P]laintiffs have no risk of irreparable injury at this time because local law enforcement officers cannot legally enforce the school bus stop provision until local school boards of education designate school bus stops.<sup>18</sup>

C. Designation of Bus Stops in Bulloch, Chatham, and Columbia Counties

15. Just hours after this Court's July 25, 2006 Order, the school board in Columbia County designated its approximately 6,000 school bus stops for purposes of § 42-1-15(b),<sup>19</sup> and Sheriffs' deputies instructed persons on the registry to leave their homes.<sup>20</sup>

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<sup>18</sup> See Order of July 25, 2006 [Doc. No. 54] at 5.

<sup>19</sup> See Resolution of Columbia County Bd. of Educ., July 25, 2006 ("Be it resolved that the attached list of designated school bus stops be the designated bus stops for the 2006-2007 school year. Therefore, this resolution is passed in accordance with House Bill 1059 and; Be it further resolved that this list may be amended as necessary and the Columbia County Board of Education authorizes the Superintendent of Schools or his designee to make this amendment without further resolution by the Board of Education.") (Ex. 5).

<sup>20</sup> See, e.g., Decl. of Bobby Brassell, July 26, 2006 [Doc. 58] (stating that on July 25, 2006, a Columbia County sheriff's deputy ordered him to leave his home due to its proximity to a school bus stop); Decl. of Thomas Early, July 27, 2006 [Doc. No. 63] (same); Decl. of Jeffrey Crenshaw, July 26, 2006 [Doc. No. 63] (same); Decl. of Stacy Rush, July 26, 2006 [Doc. No 63] (same); Decl. of Roger Rhoden, July 27, 2006 [Doc. No. 63] (stating that he was ordered to move on July 27, 2006

16. On August 10, 2006, the school board in Bulloch County approved designation of its bus stops,<sup>21</sup> and persons including Paul Stewart, Raymond Lodge, and Robert White were ordered to leave their homes.<sup>22</sup>

17. On September 6, 2006, the school board in Chatham County designated its bus stops, an act that would have expelled nearly all sex offenders in that county from their homes.<sup>23</sup>

18. The evictions were halted only because the parties entered into consent agreements, providing that the bus stop provision would not be enforced pending resolution of this case.<sup>24</sup>

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because his residence was near a school bus stop).

<sup>21</sup> See Minutes of Regular Session Bd. Meeting, Bulloch County Bd. of Educ., Aug. 10, 2006 at 2 (approving bus stops “per HB 1059”) (Ex. 6).

<sup>22</sup> See Decl. of Paul Stewart, Aug. 14, 2006, [Doc. No. 79-2] (stating that he was ordered to move due to bus stop provision); Decl. of Raymond Lodge, Aug. 11, 2006 [Doc. No. 79-3] (same); Decl. of Robert White, Aug. 14, 2006 [Doc. No. 79-6] (same).

<sup>23</sup> See Resolution of Chatham County Sch. Bd., Sept. 6, 2006 (Ex. 7).

<sup>24</sup> See Consent Order, July 28, 2006 [Doc. No. 67] (Columbia County); Consent Order, Aug. 3, 2006 [Doc. No. 83] (Richmond and Burke counties); Consent Order, Aug. 31, 2006 [Doc. No. 96] (Bulloch County); Consent Order, Sept. 11, 2006 [Doc. No. 98] (Chatham County).

19. School bus stops remain designated in these counties, stayed only by the consent agreements and all qualifying sex offenders in those jurisdictions are subject to immediate criminal prosecution absent order of this Court.<sup>25</sup>

20. Upon information and belief, no other local school boards have yet designated school bus stops for purposes of the sex offender law. One private school in Fulton County, however, has designated school bus stops by a letter to the Georgia Attorney General that stated:

The purpose of this letter is for Woodward Academy to designate the bus stops on the enclosed list as official “school bus stops” as defined by Georgia law for the purpose of prohibiting registered sex offenders from residing within 1,000 feet of these bus stops. *Because the statute does not provide private schools with guidance as to how to designate its school bus stops, the enclosed list is being sent to your office. . . .*<sup>26</sup>

21. Woodward Academy “designated” approximately 50 school bus stops in Cobb, Fulton, DeKalb, Gwinnett and other counties.<sup>27</sup>

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<sup>25</sup> See Ex. 5-7.

<sup>26</sup> See Letters from Alicia P. Starkman to Georgia Attorney General Thurbert Baker, July 22, 2008 and Aug. 8, 2007 (indicating that Woodward Academy, Inc. designated 50 school bus stops in the metro Atlanta area for purposes of the sex offender law) (emphasis supplied) (Ex. 8).

<sup>27</sup> See *id.*

22. Although only three counties have designated bus stops to date, this Court has recognized that the cessation of designations is due to the orders entered in this case. *See* Order, Mar. 30, 2007 at 14. Other counties stand poised to designate school bus stops depending on this Court's order.

D. *Exemptions for Certain Homeowners (2008)*

23. In 2007, the Supreme Court of Georgia held that O.C.G.A. § 42-1-15 violated the takings clauses of the state and federal constitutions to the extent that it deprived homeowners of property.<sup>28</sup> The Court held that the Statute:

[e]ffectively places the State's police power into the hands of private third parties, enabling them to force a registered sex offender like appellant, under penalty of a minimum ten-year sentence for commission of a felony, to forfeit valuable property rights in his legally-purchased home.<sup>29</sup>

24. In 2008, following *Mann*, the General Assembly revised O.C.G.A. § 42-1-15 to provide certain homeowners with an exemption to the residence restrictions.<sup>30</sup>

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<sup>28</sup> *See Mann v. Ga. Dep't of Corr.*, 282 Ga. 754 (2007).

<sup>29</sup> *Mann*, 282 Ga. at 760.

<sup>30</sup> *See* O.C.G.A. § 42-1-15(f), (g).

25. According to documents produced by the sheriffs in discovery in mid-2009, only a small number of plaintiffs – 134 of more than 17,000 – or **less than one percent** – are exempt under the homeowner exemption.<sup>31</sup>

E. Exemptions for Certain Renters (2010)

26. On May 20, 2010, the Governor signed into law House Bill 571 (Act Number 389 of the 2010 Georgia General Assembly), the text of which is attached as Exhibit A to Document No. 278. The legislation made a number of changes to Georgia’s sex offender law, including adding a protection for certain renters for the duration of existing leases.<sup>32</sup>

27. Pursuant to the 2010 statutory revisions, *some* persons with leases are now exempt from the residence restrictions during the term of their lease. To be protected by the renter exemption, however, the renter’s lease must *pre-date* the designation of a school bus stop within 1,000 feet of the residence.<sup>33</sup> In addition, the lease must be in writing.<sup>34</sup> Finally,

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<sup>31</sup> See Mica Doctoroff Decl. (Ex. 9 ¶ 14) (compiling sheriffs’ discovery responses).

<sup>32</sup> See O.C.G.A. § 42-1-15(e), 42-1-16(e).

<sup>33</sup> See O.C.G.A. § 42-1-15(e)(1) (“If an individual . . . leases real property and . . . a [school bus stop] thereafter located itself within 1,000 feet of such property . . . such individual shall not be guilty of a violation . . .”).

“[l]easehold exemptions shall only be for the duration of the executed lease,” meaning that a person must move at the end of his lease if a school bus stop is designated within 1,000 feet of the residence during the lease’s term.<sup>35</sup>

F. *Impact of School Bus Stop Provision in Bulloch, Chatham, and Columbia Counties If Provision Is Enforced: Nearly All Sex Offenders Subject to School Bus Stop Provision – Including Children – Will Be Forced From Their Homes Absent Action By This Court*

28. Attached to plaintiffs’ motion for summary judgment are maps of Chatham and Columbia counties showing the broad scope of the school bus stop provision.<sup>36</sup>

29. The maps show that nearly all persons on the registry in these counties who are subject to the school bus stop provision will have to move if the school bus stop provision is enforced.<sup>37</sup> Plaintiffs describe below the steps used to arrive at this calculation:

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<sup>34</sup> See O.C.G.A. §§ 42-1-15(f)(3), 42-1-16(f)(3).

<sup>35</sup> See *id.*

<sup>36</sup> See Maps of Chatham, Columbia counties (Ex. 1, 2); Wagner Decl. (Ex. 3).

<sup>37</sup> See *id.*

- a. First, there are currently as many as 70 persons on the registry in Bulloch, Chatham, and Columbia counties whose offenses occurred after July 1, 2006.<sup>38</sup> That number is growing all the time.<sup>39</sup>
- b. Second, nearly all people on the registry in these counties live within 1,000 feet of designated school bus stops.<sup>40</sup> In Columbia County, **55 of 56** non-incarcerated sex offenders live within 1,000 feet of a school bus stop.<sup>41</sup> In Chatham County, **289 of 294** sex offenders live within 1,000 feet of a bus stop.<sup>42</sup> In Bulloch County, at least **55 of 65** sex offenders live within 1,000 feet of a bus stop.<sup>43</sup>
- c. Third, very few sex offenders in “bus stop” counties fall within the homeowner exemption of O.C.G.A. § 42-1-15(e), (f), 42-1-16(e), (f). As of August 2010, none of the sex offenders subject to the school bus stop provision in Bulloch County was exempt under the

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<sup>38</sup> See *Stipulation Regarding Numbers of Sex Offenders in Counties That Have Designated School Bus Stops* [Doc. 284] (stating there are 5 people on the registry whose offenses occurred after July 1, 2006 in Bulloch County; there are 16 such people in Columbia County; and there 49 people *convicted* after July 1, 2006 in Chatham County).

<sup>39</sup> The number of registered sex offenders statewide is expected to nearly double over the next ten years. See Russell Hinton, State Auditor, Ga. Dep’t of Audits and Accounts, *Georgia’s Sexual Offender Registry*, July 2010 at 8, available at: <http://www.audits.ga.gov/rsaAudits/viewMain.aud>.

<sup>40</sup> See Wagner Decl. (Ex. 3 at ¶ 9, 14, 19); Maps (Ex. 1-2).

<sup>41</sup> See Wagner Decl. at ¶ 9 (stating that only one sex offender does not live within 1,000 feet of a school bus stop in Columbia County).

<sup>42</sup> See *id.* at ¶ 14.

<sup>43</sup> See *id.* at ¶ 19.

homeowner exemption.<sup>44</sup> In Chatham County, as of July 2009, the sheriff reported that none of the 294 non-incarcerated sex offenders was exempted by the homeownership provision.<sup>45</sup> In Columbia County, as of August 2010, only 4 of 16 persons subject to the school bus stop provision were exempted by home ownership.<sup>46</sup>

- d. Finally, few renters in the school bus stop counties will qualify for the renter exemption because in order to be protected by the renter exemption, the renter's lease must *pre-date* the designation of a school bus stop within 1,000 feet of the residence.<sup>47</sup> In Bulloch, Chatham, and Columbia counties, school bus stops were designated four years ago, in 2006. Since most residential leases are one year in duration, renters in these three counties will not likely be protected by the renter exemption. Moreover, even in cases in which the renter preceded the school bus stop, those renters will be forced to move at the expiration of their lease since "[l]easehold exemptions shall only be for the duration of the executed lease."<sup>48</sup>

30. In sum, if the consent agreements are lifted, as many as 66 people will be subject to immediate eviction, including approximately 12 from Columbia

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<sup>44</sup> See *Stipulation Regarding Numbers of Sex Offenders in Counties That Have Designated School Bus Stops* [Doc. 284] at ¶ I. See also Resp. by Bulloch County Sheriff to Pls' Second Interrogs. at 1 (Ex. 10).

<sup>45</sup> See Resp. of Chatham County Sheriff to Pls' Second Interrogs. at 2 (Ex. 11).

<sup>46</sup> See *Stipulation Regarding Numbers of Sex Offenders in Counties That Have Designated School Bus Stops* [Doc. 284] at ¶ III.

<sup>47</sup> See O.C.G.A. § 42-1-15(e)(1) ("If an individual . . . leases real property and . . . a [school bus stop] thereafter located itself within 1,000 feet of such property . . . such individual shall not be guilty of a violation . . .").

<sup>48</sup> O.C.G.A. §§ 42-1-15(f)(3), 42-1-16(f)(3).

County, as many as 49 from Chatham County, and 5 from Bulloch County.<sup>49</sup>

31. There are 18 children (persons age 17 and under) on the registry, 4 of whom reside in Chatham County.<sup>50</sup> All 4 of these children reside within 1,000 feet of school bus stops.<sup>51</sup> Those affected include the following:
- a. R.W., age 15, is on the registry for an offense that occurred two weeks after his 13<sup>th</sup> birthday. He resides with his grandparents within 1,000 feet of a school bus stop in Chatham County. He will face 10 to 30 years in prison if the consent order is lifted and he remains in his home with his family.<sup>52</sup>

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<sup>49</sup> See ¶ 29; *Stipulation Regarding Numbers of Sex Offenders in Counties That Have Designated School Bus Stops* [Doc. 284]; Wagner Decl. (Ex. 3 ¶ 9, 14, 19).

<sup>50</sup> See G.B.I., Sex Offender Registry Data, available to download at: [http://gbi.georgia.gov/00/channel\\_modifieddate/0,2096,67862954\\_87983024,00.html](http://gbi.georgia.gov/00/channel_modifieddate/0,2096,67862954_87983024,00.html) (Sept. 14, 2010) (showing 13 people on the registry born in 1993; 1 person born in 1994; and 4 persons born in 1995). See also Doctoroff Decl. (Ex. 9 ¶ 14) (reporting 14 children on the registry in September 2009).

<sup>51</sup> See Wagner Decl. (Ex. 3 ¶ 15); R.W. Decl. (Ex. 13); G.W. Decl. (Ex. 14); Maps (Ex. 1-2).

<sup>52</sup> See R.W. Decl., Sept. 11, 2009 and B.W. Decl., Sept. 11, 2009 (stating that R.W. is her grandson and discussing the family hardship that will occur if he is forced to move) (Ex. 13). See also Ga. Sex Offender Registry (listing R.W.'s conviction date as Feb. 17, 2009).

- b. G.W., age 17, was convicted of a sexual offense that occurred when he was 13. He will not be able to live with his family if the school bus stop provision goes into effect in Chatham County.<sup>53</sup>
- c. J.M., age 17, is on the registry and resides in Chatham County. He was convicted September 19, 2008. He will face 10 to 30 years in prison if the consent order is lifted and he remains in his home with his family.<sup>54</sup>
- d. K.M., age 16, is on the registry and resides in Chatham County. He was convicted September 4, 2008. He will face 10 to 30 years in prison if the consent order is lifted and he remains in his home with his family.<sup>55</sup>

32. There are also disabled persons subject to immediate eviction, including Walter Smiley, who is blind.<sup>56</sup> In 2006, other plaintiff class members – including a man in hospice care with weeks to live and an Alzheimer’s patient – were forced to seek injunctions to block their evictions from

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<sup>53</sup> See G.W. Decl., Sept. 4, 2009 and R.W. Decl., Sept. 4, 2009 (stating that G.W. is his son and discussing the hardship that will occur if he is prevented from living with his family) (Ex. 14).

<sup>54</sup> See J.M. Decl. (Ex. 22).

<sup>55</sup> See Ga. Sex Offender Registry, available at: <http://services.georgia.gov/gbi/gbisor/SexualOffenderDetails.jsp?action=SexualOffenderDetails&sexualoffenderId=77128AD2>.

<sup>56</sup> See Smiley Decl. (Ex. 18).

nursing homes.<sup>57</sup> The 2010 revisions to the sex offender law permit a plaintiff who is “seriously physically incapacitated” or “totally and permanently disabled” to apply for an exemption from the residence restrictions, but only if he has completed probation or parole.<sup>58</sup> Many recently convicted persons, such as Mr. Smiley, cannot apply for a “disability exemption” because they are still on probation or parole.<sup>59</sup>

33. The school bus stop provision has caused and will continue to cause enormous upheaval and distress, affecting not just plaintiffs, but their families.<sup>60</sup>

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<sup>57</sup> See Pls’ Mot. for Prelim. Inj., Oct. 12, 2006 [Doc. No. 99]; Consent Order, Oct. 19, 2006 [Doc. No. 105] (agreement between plaintiffs and Cherokee County Sheriff to permit plaintiff to remain in nursing home within 1,000 feet of a church pending resolution of this action); Consent Order, Oct. 17, 2006 [Doc. No. 104] (agreement between plaintiffs and Sheriff of Candler County to permit three plaintiffs to remain in nursing home within 1,000 feet of a church pending resolution of this case); Resp. of Sheriff Whittle to Pls’ Mot., Oct. 13, 2006 [Doc. No. 102] (permitting certain plaintiffs to remain in nursing homes pending resolution of this case).

<sup>58</sup> See O.C.G.A. 42-1-19(a).

<sup>59</sup> See *id.*; Smiley Decl. (Ex. 18) (stating that he is on probation).

<sup>60</sup> See Decl. of Ruben Luna, Sept. 2010 (Ex. 19) (stating that he does not want to leave his home and be separated from his pregnant wife and 5-year-old daughter). See also Decl. of Rebecca Danner, Dec. 19, 2007 (Ex. 20) (stating that she and her late husband, who died of cancer, were forced to move three times

G. Effect of School Bus Stop Provision in Other Counties

34. Although only three counties have designated bus stops to date, all other counties are poised to do so depending on the ruling of this Court.<sup>61</sup>

35. In 2006, plaintiffs presented this Court with evidence of the vast geographic scope of the school bus stop provision, should it go into effect in counties other than Bulloch, Columbia and Chatham. (*See supra* ¶ 9-12, n. 10-13). In many cases, all or nearly all persons on the registry who are

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due to the sex offender residence law; further stating that they were ordered to move a fourth time while her husband was under hospice care); Decl. of Thomas Early, July 27, 2006 [Ex. 1 to Doc. No. 63] (stating that school bus stop provision would separate him from his wife who has multiple sclerosis); Decl. of Kimberly Sponsler, June 25, 2006 [Ex. 1 to Doc. No. 12] at 1 (describing the stress and uncertainty wrought by the school bus stop provision and its effect on family life as parent of 4-year-old and infant); Decl. of Adrienne Mauldin, June 25, 2006 [Ex. 2 to Doc. No. 12] at 2-3 (describing predicament of being expectant mother married to a person on the registry and being faced with the possibility of separation from husband while 8 ½ months pregnant; fearing that statute “will hinder us from raising our child in a stable environment”); Decl. of Kathleen Corbin, June 25, 2006 [Ex. 4 to Doc. No. 12] (describing emotional effects of possibility of separation from husband on registry, with emphasis on hardship on special-needs child); Decl. of Amy Whitaker, June 28, 2006 [Doc. No. 19-6] (expressing concerns about separation from disabled father, for whom registrant was primary caregiver); Decl. of Benjamin Hodges, Sept. 4, 2009 (Ex. 15 to Doc. 262) (stating that he had two strokes, is paralyzed on one side, confined to wheelchair, and relies on family for assistance).

<sup>61</sup> See Order, Mar. 30, 2007 at 14 (stating “the prior Orders in this case have effectively halted the enforcement of the school bus stop provision.”).

subject to the school bus stop provision will have to move if the provision goes into effect.<sup>62</sup>

36. If school bus stops are designated in Atlanta, the consequences for plaintiffs and law enforcement will be particularly severe.<sup>63</sup> In June 2009, an official for the Georgia Department of Corrections stated that about 900 people on the registry in Fulton County live within 1,000 feet of a school bus stop.<sup>64</sup>

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<sup>62</sup> See Doc. No. 274, Ex. 1 (map showing the vast scope of school bus stop provision in Bibb County); Ex. 2 (same in Cobb County); Ex. 3 (same in DeKalb County); Ex. 4 (same in Richmond County).

<sup>63</sup> See, e.g., Chandler Brown, *Sheriff: New Sex Offender Law 'Nearly Impossible to Enforce,'* ATLANTA J.-CONST., June 23, 2006 (“There is not one place in DeKalb County where any sexual offender can live. Not one,” [Sheriff Thomas] Brown said at a news conference. “Where are the 490 offenders going to go? I have no earthly idea.”).

<sup>64</sup> See Depo. of Ahmed Holt, Georgia Dep’t of Corr., Manager of Sex Offender Admin., June 2, 2009 at 16-17 (Ex. 4). Following the passage of House Bill 571, not all of these 900 people will be subject to the school bus stop provision since some of these persons’ offenses occurred before July 1, 2006. However, Mr. Holt’s testimony still gives a sense of the broad geographic scope of the school bus stop provision, should it come into effect in Fulton County.

H. Law Enforcement Response to School Bus Stop Provision

37. Many law enforcement officials and experts in the prevention of sexual abuse have called for a change in Georgia's sex offender law since this litigation began:

- a. **Investigator David Rush of the Columbia County Sheriff's Office** stated in his deposition: "[i]t's my opinion that the school bus stop [provision] should not be a part of a sex offender law" because it would "almost be impossible . . . to enforce" and because of "fears" that "offenders go underground."<sup>65</sup>
- b. **Sheriff McGuffey of Coweta County** stated that if sex offenders are constantly being forced to move, "they're more apt to go underground and hide."<sup>66</sup>
- c. **Sheriff Jolley of Harris County** stated in a declaration to this Court "[a] sex offender registry should keep track of people, which will be much more difficult to do if [the school bus stop] provision goes into effect."<sup>67</sup>
- d. **Sheriff Brown of DeKalb County** stated at a news conference in June 2006: "There is not one place in DeKalb County where any sexual offender can live. Not one . . . Where are the 490 offenders going to go? I have no earthly idea."<sup>68</sup>

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<sup>65</sup> See Depo. of David Rush, June 22, 3009 at 51 (Ex. 15).

<sup>66</sup> Sarah Campbell, *Sex Law Change No Major Concern*, TIMES-HERALD, Nov. 25, 2007.

<sup>67</sup> Decl. of Mike Jolley, July 10, 2006 [Ex. 2 to Doc. No. 37] at 2.

<sup>68</sup> Chandler Brown, *Sheriff: New Sex Offender Law 'Nearly Impossible to Enforce,'* ATLANTA J.-CONST., June 23, 2006.

- e. **Sheriff McDuffie of Chatham County** advocated different sex offender restrictions based upon the severity of the crime.<sup>69</sup>
- f. **Former DeKalb County District Attorney, J. Tom Morgan,** authored an editorial criticizing the sex offender law: “Georgia’s sex offender registry law is irreparably flawed . . . . It provides a false sense of security for citizens while unreasonably and irrationally depriving individuals of fundamental rights.”<sup>70</sup>
- g. **Lt. Wanda Edwards of the Lowndes County Sheriff’s Department** predicted that Ga. Code Ann. § 42-1-15 (2006) would cause people to abscond, and stated “what people don’t realize is that the public will be in more danger if the new provisions are upheld and must be enforced.”<sup>71</sup>

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<sup>69</sup> *Reversal of Sex Offender Law Frees Shelter to Serve*, SAVANNAH MORNING NEWS, Nov. 28, 2007.

<sup>70</sup> J. Tom Morgan, *Law Weakens Rights, Offers Little Security*, ATLANTA J.-CONST., Aug. 22, 2006.

<sup>71</sup> Kelly Hernandez, *Will New Sex Offender Law Help or Hurt?* VALDOSTA DAILY TIMES, July 13, 2006.

I. Expert Testimony Regarding School Bus Stop Provision

38. Experts in the prevention of sexual abuse, including Dr. Kevin Baldwin, share similar concerns about the school bus stop provision.<sup>72</sup> At the July 12, 2006 hearing in this case, Dr. Baldwin testified that rather than furthering public safety, the school bus stop provision “will in fact have the opposite effect of increasing potential harm to children,” and that O.C.G.A. § 42-1-15 runs directly contrary to accepted strategies to reduce recidivism.<sup>73</sup> Under questioning from this Court, *the State’s expert witness* agreed that the school bus stop provision had the “potential to raise risk for recidivism.”<sup>74</sup>

39. Georgia’s former Child Advocate, moreover, stated in a letter to the Office of the Governor that “[t]here is no evidence that sex offender residence

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<sup>72</sup> See Tr. of Hearing, July 11-12, 2006 [Doc. No. 42, 43] at 203-211. Dr. Baldwin has nearly 20 years of experience in the evaluation of sex offenders, was formerly employed by the North Carolina Department of Corrections, and served on the panel of state experts who performed assessments of persons considered sexually dangerous persons in that state. See *id.* at 193-97.

<sup>73</sup> *Id.* at 216.

<sup>74</sup> See Testimony of Dr. Mario Dennis, Tr. of Hearing, July 12, 2006 at 338.

restrictions prevent sex crimes or increase public safety” and concluded that:

[d]isrupting offenders’ stability through exclusionary housing and employment provisions is likely to exacerbate the psychosocial stressors that can increase the likelihood of recidivism, thereby impeding the public safety goal that is at the very heart of SB 1.<sup>75</sup>

J. Research Regarding Sex Offender Residence Restrictions

40. Research shows that sex offenders with stable housing are *less* likely to commit new sex offenses than those who lack such stability.<sup>76</sup>

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<sup>75</sup> See Letter to the Office of the Governor from the Child Advocate, Apr. 29, 2008 [Doc. No. 176, Attachment 3].

<sup>76</sup> See Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step from Absurd?*, 49 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168 (2005) (suggesting that residence restrictions disrupt stability and lead to an increase in risk factors associated with sex offense recidivism); COLO. DEP’T OF PUB. SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 4 (2004) (“Placing restrictions on the location of . . . supervised sex offender residences may not deter the sex offender from re-offending and should not be considered as a method to control sexual offending recidivism”); MINN. DEP’T OF CORR., LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES: 2003 REPORT TO THE LEGISLATURE 9 (2003) (“Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact.”).

41. An analysis of Georgia's parolees verified the importance of stable housing.<sup>77</sup> Most relevant to this case, this 2003 study found that among Georgia parolees, residential instability has a significant impact on recidivism, quantifiable as a 25% increase in the likelihood of arrest *each time* a parolee changes addresses.<sup>78</sup>

42. Further, training materials for sex offender supervision disseminated by the Board of Pardons and Paroles in 2008 list "lifestyle instability" as "one of the most powerful triggers to committing a sex offense."<sup>79</sup>

K. *Impact of the School Bus Stop Provision on Future Class Members*

43. This Court certified a "school bus stop" subclass in its Order of March 30, 2009.<sup>80</sup>

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<sup>77</sup> See Applied Research Serv., *Enhancing Parole Decision-making Through the Automation of Risk Assessment* at 15 (Apr. 2003) (Ex. 17).

<sup>78</sup> See *id.*

<sup>79</sup> See Ga. Bd. of Pardons and Paroles, *Basic Parole Officer Training, Sex Offender Supervision*, Oct. 8, 2008 at 5 (Ex. 16). The training materials further state: "*Financial, employment, and residence stability lower stress levels and increase a person's self worth. Lowering or losing any of these increases stress, which in turn increases risk.*" (emphasis added).

<sup>80</sup> See Doc. 223 at 17-18. By separate motion, plaintiffs will ask the Court to amend the subclass definition in light of House Bill 571.

44. Following the passage of House Bill 571, the prohibition against living within 1,000 feet of a school bus stop now applies only to class members who are required to register as sex offenders for offenses committed *on or after July 1, 2006*. See O.C.G.A. §§ 42-1-15, 42-1-16.

45. According to the Georgia Bureau of Investigation, there are currently about 2,200 sex offenders whose convictions occurred after July 1, 2006.<sup>81</sup> Hundreds of people are added to the sex offender registry each year so that the number of people potentially subject to the school bus stop provision is growing all the time. For example:

- a. In 2010, 245 people were convicted of registerable sex offenses and added to the Georgia sex offender registry.
- b. In 2009, 454 people were convicted of registerable sex offenses and added to the Georgia sex offender registry.
- c. In 2008, 578 people were convicted of registerable sex offenses and added to the Georgia sex offender registry.
- d. In 2007, 713 people were convicted of registerable sex offenses and added to the Georgia sex offender registry.<sup>82</sup>

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<sup>81</sup> See GBI Sex Offender Registry Database (Sept. 14, 2010), available at: [http://gbi.georgia.gov/00/channel\\_modifieddate/0,2096,67862954\\_87983024,00.html](http://gbi.georgia.gov/00/channel_modifieddate/0,2096,67862954_87983024,00.html).

<sup>82</sup> See *id.*

46. According to the Georgia Department of Audits and Accounts, there are projected to be 19,080 registered sex offenders by the end of 2010 and 34,600 registered sex offenders by the year 2020.<sup>83</sup>

L. New Plaintiffs

47. Following the passage of House Bill 571, plaintiffs moved to substitute new plaintiffs for the current plaintiffs whose claims had become moot.

48. Plaintiffs moved to substitute the following persons as plaintiffs:

- a. **Walter Smiley** lives in Chatham County.<sup>84</sup> He is blind and requires assistance to perform basic tasks.<sup>85</sup> Smiley was convicted of statutory rape on December 22, 2009<sup>86</sup> for an offense that occurred in 2009, and he must register as a sex offender under Georgia law.<sup>87</sup> Smiley's residence is within 1,000 feet of a school bus stop.<sup>88</sup> Smiley neither owns nor rents his residence and thus does not qualify for an

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<sup>83</sup> See Russell Hinton, State Auditor, Ga. Dep't of Audits and Accounts, *Georgia's Sexual Offender Registry*, July 2010 at 8, available at: <http://www.audits.ga.gov/rsaAudits/viewMain.aud>.

<sup>84</sup> See Smiley Decl. ¶ 3 (Ex. 18). See also Ga. Sex Offender Registration Information (Attachment 1 to Ex. 18).

<sup>85</sup> See Smiley Decl. ¶ 3.

<sup>86</sup> See Smiley Decl. ¶ 4; Ga. Sex Offender Registration Information (Attachment 1 to Ex. 19).

<sup>87</sup> See Smiley Decl. ¶ 4.

<sup>88</sup> *Id.* at ¶ 6.

exemption from the residence restrictions.<sup>89</sup> If the 2006 consent order enjoining Chatham County from enforcing the school bus stop provision is lifted, Smiley will face immediate eviction.<sup>90</sup>

- b. **Ruben Luna** lives in Columbia County with his pregnant wife their 5-year-old daughter.<sup>91</sup> Luna was convicted of “lewd or lascivious conduct” on March 30, 2009<sup>92</sup> for an offense that occurred after July 1, 2006,<sup>93</sup> and he must register as a sex offender under Georgia law. The Lunas rent their home pursuant to a lease that terminates at the end of 2010.<sup>94</sup> To be protected by the renter exemption, the renter’s lease must *pre-date* the designation of a school bus stop within 1,000 feet of the residence.<sup>95</sup> The Lunas’ home is within 1,000 feet of a bus stop that was designated before the Lunas moved into their

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<sup>89</sup> *Id.* at ¶ 8.

<sup>90</sup> *Id.* at ¶ 9.

<sup>91</sup> *See* Luna Decl. ¶ 2, 5 (Ex. 19). *See also* Ga. Sex Offender Registration Information (Attachment 1 to Ex. 19).

<sup>92</sup> *See* Luna Decl. ¶ 4. *See also* Ga. Sex Offender Registration Information (Attachment 1 to Ex. 19).

<sup>93</sup> *See* Luna Decl. ¶ 4.

<sup>94</sup> *See id.* ¶ 8.

<sup>95</sup> *See* O.C.G.A. § 42-1-15(e)(1) (“If an individual . . . leases real property and resides on such property and a . . . [school bus stop] *thereafter* locates itself within 1,000 feet of such property . . . such individual shall not be guilty of a violation . . .”) (emphasis added). *See also* O.C.G.A. § 42-1-16(e)(1) (providing same renter exemption to persons whose offenses occurred between July 1, 2006 and June 30, 2008).

residence.<sup>96</sup> The Lunas wish to renew their lease and remain in their home.<sup>97</sup> If the 2006 consent order enjoining Columbia County from enforcing the school bus stop provision is lifted, the Lunas will face eviction.<sup>98</sup>

- c. **G.W.** is 17 years old and lives in Chatham County.<sup>99</sup> He is required to register as a sex offender for an incident that occurred in October 2006, when he was 13.<sup>100</sup> G.W.'s parents' home is within 1,000 feet of a school bus stop.<sup>101</sup> If the consent order enjoining Chatham County from enforcing the school bus stop provision is lifted, G.W. will not be able to live with his family or re-locate in Chatham County.<sup>102</sup>

49. Defendants do not oppose plaintiffs' motion to substitute plaintiffs.<sup>103</sup>

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<sup>96</sup> See *id.* ¶ 6.

<sup>97</sup> See *id.* ¶ 8.

<sup>98</sup> See *id.* ¶ 9.

<sup>99</sup> See G.W. Decl. ¶ 1, Sept. 4, 2009 (Ex. 14). See also Ga. Sex Offender Registration Information (Attachment 1 to Ex. 14).

<sup>100</sup> See G.W. Decl. ¶ 2 (Ex. 14). See also Ga. Sex Offender Registration Information (Attachment 1 to Ex. 14).

<sup>101</sup> G.W. Decl. ¶ 3.

<sup>102</sup> See *id.* ¶ 3-4; see also Chatham County Map (Ex. 1).

<sup>103</sup> See Doc. 282 (stating "[d]efendants do not object to the substitution of named Plaintiffs . . .").

Respectfully submitted this 15<sup>th</sup> day of September, 2010.<sup>104</sup>

SOUTHERN CENTER  
FOR HUMAN RIGHTS

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<sup>104</sup> Pursuant to L.R. 7.1, undersigned counsel hereby certifies that this document has been prepared in compliance with Local Rule 5.1B.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Statement of Facts in Support of Plaintiffs' Renewed Motion for Summary Judgment* upon Defendants by causing a true and correct copy thereof to be delivered by the Court's ECF filing system to Defendants' counsel of record at the following addresses:

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This 15<sup>th</sup> day of September, 2010.

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