

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CASE NO: 09-51205CA 13

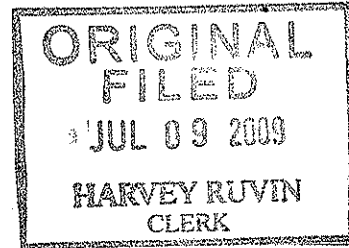
BRYAN A. EXILE and
ELLIOTT M. BLOOM,

Plaintiffs,

v.

MIAMI-DADE COUNTY,

Defendant.



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs BRYAN A. EXILE and ELLIOTT M. BLOOM, through their counsel, sue MIAMI-DADE COUNTY and ask this Court to declare that Florida law preempts Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284 and to enjoin enforcement of the County's Ordinance.

I. INTRODUCTION

Scores of sex offenders and sexual predators live "like post-apocalyptic trolls beneath a bridge in the middle of Biscayne Bay."¹

1. Plaintiffs, residents of the Julia Tuttle Causeway shantytown ("the shantytown"), challenge Miami-Dade County's Sexual Offender and Predator Ordinance ("Ordinance") as preempted by Florida state law. The Florida Legislature has enacted a complex statutory scheme to regulate, rehabilitate and safely reintegrate convicted sex offenders into society. As part of that scheme, Plaintiffs, sex offenders who have served their sentences and are released on probation, are forbidden from establishing a residence within 1,000 feet of "any

¹ Fred Grimm, *Woman Joins Sex-Offender Group Living Under Julia Tuttle Causeway*, Miami Herald March 23, 2009.

school, day care center, park, or playground.” Fla. Stat. § 794.065. The Florida Department of Corrections (“DOC”) is charged with oversight of Plaintiffs, who are subject to extensive supervision, registration, electronic monitoring and tracking by DOC.

2. Despite the State’s uniform and statewide regulation of sex offenders, Miami-Dade County enacted its own more restrictive ordinance that extended the residency restriction to 2,500 feet. The County’s unlawful intrusion into the State’s statutory scheme has resulted in scores of homeless, transient, or absconded convicted sex offenders and has thereby obstructed State and other law enforcement officials from performing their statutory mandates.

3. The Florida Department of Law Enforcement (“FDLE”) Sexual Offender website, <http://offender.fdle.state.fl.us/offender/Search.jsp>, currently lists, for Miami-Dade County, the addresses of at least one hundred and seventy-seven (177) convicted sex offenders and predators as “Transient”; “Transient General Delivery Causeway”; “Transient Julia Tuttle Causeway/Homeless” or “Transient Under Julia Tuttle Cswy.” The website lists two hundred and thirty-six (236) sex offenders and predators in Miami-Dade County as absconded. Upon information and belief, some of those absconders were at some point living in the shantytown.

4. The Secretary of the DOC, Walter A. McNeil, wrote the following on May 15, 2009 to the leaders of the Miami-Dade County Homeless Trust:

Using the 1,000 ft criteria, most of the sex offenders living under the Julia Tuttle Causeway would be able to find a place to live in accordance with state law. However, because the county ordinance has extended the distance to 2,500 feet, these offenders have no other options for housing other than living under the Causeway.

A true and correct copy of the letter is attached as Ex. A.

5. The DOC thus confirms that Miami-Dade County's incursion into the State's field of legislation exacerbates the very danger the County intended to avert. Living in filth and squalor, remote from stable family life, increases Plaintiffs' risk of criminal recidivism and absconding and thereby increases the danger to society. As noted in 2007 by a Duval County Court Judge:

Although not officially part of the record in this case, problems arising from the enforcement of Miami-Dade's 2,500 foot residency ordinance have been widely reported. Apparently, the State's Department of Corrections has been forced to approve living arrangements for five sex offender probationers, which calls for them to reside out of doors under a bridge located on the Julia Tuttle Causeway. *Florida Times-Union*, April 7, 2007, page A-4. **Can it be realistically contended that such living arrangements are consistent with the Legislature's desire to provide intensive supervision of these individuals?**

State v. Schmidt, 15 Fla. L. Weekly Supp. 73a at n.15 (Case No. 16-2006-MO-010568-AXXX, County Court, 4th Jud. Circ. Oct. 11, 2007) (holding that Jacksonville's 2,500 foot residency restriction was preempted by State law) (emphasis added). The population of the shantytown, having numbered five when *Schmidt* issued, now numbers more than seventy (70). The FDLE website shows that during the week before this Complaint was filed, two new offenders took residence in the shantytown: one on July 6, 2009 and one on July 3, 2009. The population will inexorably rise as more offenders complete their terms of incarceration.

6. Plaintiffs therefore respectfully request that this Court declare the County's Ordinance invalid and enjoin its enforcement, as Florida's pervasive legislative scheme so regulates convicted sex offenders and sexual predators that the State has preempted any subordinate local government's lawmaking within the same field.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to Fla. Stat. § 26.012 (injunctive relief) and Fla. Stat. § 86.011 (declaratory relief).

8. Venue is proper in this Court, as Defendant is Miami-Dade County.

III. PARTIES

9. Plaintiff Bryan Exile (“Exile”) is twenty-two (22) years old and a resident of Miami-Dade County. In 2006 he pled guilty to lewd and lascivious battery committed when he was nineteen and his victim was fifteen. He was sentenced as a sexual offender to 364 days in jail and five years of probation. He served ten months of his sentence and remains on sexual offender probation under DOC supervision until 2012. The terms of his probation appear at Ex. B. Although Exile lived in housing that was approved by his probation officer when he was released, after he committed a technical violation of his probation when he did not hear his monitor beep while he was working at his job, with earphones on, he was sentenced to 364 days in jail. Upon his release, he was unable to find housing that did not violate the Ordinance, and since December 2008, Exile has lived in a car at the Encampment, with his wife.

10. Plaintiff Elliott Bloom (“Bloom”) is 31 years old and a resident of Miami-Dade County. In 2005 he pled guilty to lewd and lascivious battery when he was 27 and his victim was 15; he also pled guilty to impregnating his victim.² He was sentenced as a sexual offender to 270 days incarceration and 8 years of probation. He remains on sexual offender probation under DOC supervision until 2013. The terms of his probation are attached as Ex. C. Although Bloom initially lived in a series of residences that were approved by his

² The police report on Bloom’s offense indicates that “[t]he victim disclosed she engaged in consensual . . . intercourse with the Def on numerous occasions.”

probation officer, after he served three (3) days in jail for a technical violation of probation, he was unable to find housing that does not violate the Ordinance. Bloom has lived in a tent at the shantytown since June 18, 2009; his Florida Identification card lists his residence as “Julia Tuttle Causeway.”

11. Defendant Miami-Dade County is a political subdivision of the State of Florida organized under the laws of Florida.

**IV. THE FLORIDA LEGISLATURE’S EXTENSIVE AND
PERVASIVE REGULATION OF SEX OFFENDERS
PREEMPTS THE COUNTY’S ORDINANCE.**

12. Florida’s Legislature enacted a comprehensive framework for dealing with sexual offenders and sexual predators. Predators are treated differently than offenders based upon the perceived level of danger they pose.

13. Individuals are labeled sexual offenders if they are convicted of certain enumerated offenses. A sexual offender, upon initial release, must register with the FDLE within forty-eight hours of establishing a temporary or permanent Florida address and abide by all existing conditions of probation. A sexual offender is also subject to certain community notification requirements if the jurisdiction’s chief law enforcement officer deems such action necessary. Fla. Stat. § 943.0435 *et seq.*

14. Individuals designated as sexual predators are subject to much more stringent registration and community notification standards than sexual offenders. In 1998, the Florida Legislature enacted the Florida Sexual Predators Act, Fla. Stat. § 775.21, which is Florida’s version of “Megan’s Law,” 42 U.S.C. §14071(e) (2000), versions of which have been adopted by all fifty states. Florida’s “Sexual Predator Act” is also known as the “Jessica Lunsford Act.” The label of “sexual predator” attaches after an individual is convicted of a

capital, life, or first degree sex-related felony or attempted commission of such an offense (or violation of a similar law in another jurisdiction), convicted of certain enumerated sex-related felonies after a previous conviction for another enumerated felony, or designated as a sexual predator in a civil commitment hearing. Fla. Stat. § 775.21(4) & (5). Once released from prison, a sexual predator also faces potential lifetime registration in a manner similar to sexual offenders, but the law also requires additional measures of direct supervision and community notification. Fla. Stat. § 775.21 (6).

15. The Florida Legislature, noting that “[t]he laws relating to sexual predators and sexual offenders are substantive law,” specifically requires Florida courts to uphold the sexual predator and sexual offender laws and to avoid “*unlawfully encroach[ing] on the Legislature’s exclusive power to make [these] laws . . . [thereby] plac[ing] at risk significant public interests of the state.*” Fla. Stat. § 775.24(1) (“Duty of the court to uphold laws governing sexual predators and sexual offenders”) (emphasis added).

16. The “Jessica Lunsford Act” underscores that “[t]he *state* has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity” and that “it is the *purpose of the Legislature*” to “protect the public” and “it is the *intent of the Legislature* to address the problem of sexual predators. . .” Fla. Stat. § 775.21(3) (c)-(e) (emphases added).

17. The “Jessica Lunsford Act” requires “specialized supervision of sexual predators who are in the community by specially trained probation officers with low case loads . . . The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration . . .” Fla. Stat. § 775.21(3)(b)(2).

18. The “Jessica Lunsford Act’s” integrated framework of statutes controls the activities of sexual predators, including where they will be permitted to reside. These requirements are extensive and represent the Florida Legislature’s coordinated and uniform statewide strategy to deal with “[r]epeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children ...” Fla. Stat. § 775.21(3).

19. The Florida Legislature has similarly enacted a series of statutes that tightly regulate the activities of released sexual offenders. Through Fla. Stat. § 943.0435, the legislature enacted registration requirements for sexual offenders, reporting requirements, and release of information into the public record, much as the “Jessica Lunsford Act” requires for sexual predators. Like the comprehensive scheme for sexual predators, this statute mandates a detailed and comprehensive strategy for achieving the legislature’s statewide goal of protecting children from sexual offenders.

20. Fla. Stat. § 948.03 provides that conditions of probation in Florida are to be determined by the courts, and include remaining within a specified place, and permitting probation officers visit the offender “at his or her home or elsewhere.”

21. Sex offender probation is more stringent than non-sex offender probation: “[s]ex offender probation” or “sex offender community control” means “a form of intensive supervision, with or without electronic monitoring, which emphasizes treatment and supervision of a sex offender in accordance with an individualized treatment plan administered by an officer who has a restricted caseload and specialized training.” An officer who supervises an offender placed on sex offender probation or sex offender community control “must meet as necessary with a treatment provider and polygraph examiner to develop and implement the supervision and treatment plan, if a treatment

provider and polygraph examiner specially trained in the treatment and monitoring of sex offenders are reasonably available.” Fla. Stat. §§ 948.001(10), 948.30; *see also* § 948.061.

22. Additionally, Plaintiffs and other convicted sex offenders are prohibited from “living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate” if their victim was under age eighteen. Fla. Stat. § 948.30(1)

(b).

23. Plaintiffs must also comply with, *inter alia*, the following:

- a. a mandatory curfew from 10 p.m. to 6 a.m.;
- b. active participation in and successful completion of a sex offender treatment program;
- c. a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to, schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls;
- d. a prohibition on viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services;
- e. a requirement to submit a specimen of blood or other approved biological specimen to the FDLE, to be registered with the DNA data bank;
- f. submission to warrantless searches by their probation officers of their persons, residences, or vehicles;
- g. participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce their denial mechanisms;
- h. maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of their probation officers;
- i. a prohibition against obtaining or using a post office box without the prior approval of their probation officers
- j. electronic monitoring when deemed necessary by the community control or probation officers and their supervisors, and ordered by the court at the recommendation of the DOC.

See Fla. Stat. § 948.30.

24. As part of the State scheme for regulating sex offenders, Fla. Stat. § 947.1405 imposes strict terms of supervision on sex offenders on conditional release supervision. These terms include “a prohibition on living within 1,000 feet of a school, day care center,

park, playground, designated public school bus stop, or other place where children regularly congregate”; mandatory sex offender treatment; electronic monitoring; driving and employment restrictions; and a prohibition on having contact with children. Fla. Stat. § 947.1405 (7)(a).³

25. Fla. Stat. § 943.043, Florida Statutes, requires the FDLE to provide a statewide toll free phone number and a searchable database available on-line to allow the public access to information about both sexual predators and sexual offenders. *See* <http://www.fdle.state.fl.us/>. Governmental agencies are required to search these records prior to making hiring decisions or accepting volunteers for work at “at any park, playground, day care center, or other place where children regularly congregate.” Fla. Stat. § 943.0431. These records must also be searched when anyone is placed on misdemeanor probation. Fla. Stat. § 943.04352.

26. The Florida Legislature enacted an even more stringent statutory framework for predators who are found to present an unacceptable risk of reoffending: civil commitment of sexually violent predators after completion of their incarceration. Sections 394.910 through 394.931, Florida Statutes, the “Jimmy Ryce Act,” mandate civil commitment of certain dangerous sex offenders and predators when they are coming to the end of a prison sentence. The act constructs an elaborate procedure for determining which of those sex offenders and predators present the greatest danger to the public and provides for their continued confinement until such time, if ever, that the risk of harm may be reduced.

27. Thus Florida’s “Jessica Lunsford Act,” which governs sexual predators, and other statutory sections governing sexual offenders, provide a detailed, extensive and

³ Neither Exile nor Bloom is on conditional release.

comprehensive statutory statewide scheme for the regulation, rehabilitation and safe reintegration into society of sexual offenders and predators.

**V. THE COUNTY'S ORDINANCE IMPERMISSIBLY
INVADES THE STATE'S EXTENSIVE REGULATION,
REHABILITATION AND SAFE REINTEGRATION OF SEX
OFFENDERS INTO SOCIETY.**

28. Notwithstanding the State's comprehensive regulation of convicted sex offenders and sexual predators, on November 15, 2005 Miami-Dade County passed its own Sexual Offender Residency Restriction, contained in Article XVII of the Miami-Dade County Code, entitled "The Miami-Dade County Sexual Offender and Sexual Predator Ordinance," which more than doubled the exclusionary zone from the State's 1,000 foot uniform zone to 2,500 feet from any school. The Ordinance does not distinguish between sexual predators and sexual offenders, and unlike the State's extensive regulatory scheme, does not treat differently the varying danger levels of offenders. The Ordinance provides:

Sec. 21-281. Sexual Offender and Sexual Predator Residence Prohibition; Penalties.

(a) It is unlawful for any person who has been convicted of a violation of Sections 794.011 (sexual battery), 800.04 (lewd and lascivious acts on/in presence of persons under age 16), 827.071 (sexual performance by a child) or 847.0145 (selling or buying of minors for portrayal in sexually explicit conduct), Florida Statutes, or a similar law of another jurisdiction, in which the victim of the offense was less than sixteen (16) years of age, to reside within 2,500 feet of any school.

(b) The 2,500 foot distance shall be measured in a straight line from the outer boundary of the real property that comprises a sexual offender's or sexual predator's residence to the nearest boundary line of the real property that comprises a school. The distance may not be measured by a pedestrian route or automobile route, but instead as the shortest straight line distance between the two points.

(c) *Penalties.* A person who violates section 21-281 (a) herein shall be punished by a fine not to exceed \$1,000.00 or imprisonment in the County jail for not more than 364 days or by both such fine and imprisonment.

28. The Ordinance, which applies “to incorporated and unincorporated areas” preempted less restrictive residency restrictions that might have been enacted by the County’s constituent municipalities and permitted its municipalities to opt out of having any restrictions; but, at the same time, it expressly invited its constituent municipalities to “adopt more restrictive requirements.” Ord. 211-279(a).

29. The Ordinance unreasonably burdens Plaintiffs’ ability to find lawful housing in that, as the Secretary of the DOC recognizes:

Using the 1,000 ft criteria, most of the sex offenders living under the Julia Tuttle Causeway would be able to find a place to live in accordance with state law. However, because the county ordinance has extended the distance to 2,500 feet, these offenders have no other options for housing other than living under the Causeway.

Ex. A.

30. Research studies show that housing instability is a consistent and robust indicator of absconding, probation violation, and recidivism for criminal offenders in general and sex offenders specifically. Homeless sex offenders tend not to report detailed information about how they can be contacted or where they stay during the day, or who helps meet their survival needs. Public notification is also more difficult when a sex offender or sexual predator does not have a fixed address.⁴

31. Upon information and belief, DOC officers who oversee released sex offenders and sexual predators are tasked with checking dozens of residences to determine if those dwellings comply with the Ordinance, only to find that the only available residence within Miami-Dade County is the shantytown.

⁴ Those offenders, like Plaintiffs, who live in the shantytown, do not have access to electrical outlets to recharge their GPS monitors, which require daily and extensive recharging.

32. Upon information and belief, the Ordinance strains law enforcement officials' resources in the performance of their duties relating to sex offenders' and predators' registration and notification procedures.

33. The Ordinance is thus antithetical to well-established goals of probation, and furthermore, places untenable burdens on both DOC officers and law enforcement officers who track, monitor, supervise and otherwise regulate Plaintiffs and their activities.

34. Accordingly, the Ordinance impermissibly interferes with the State of Florida's comprehensive statutory regulation of Plaintiffs and impedes fulfillment of the State's objectives of regulation, rehabilitation and *safe* reintegration of sex offenders into society.

COUNT I

Declaratory Relief on the Grounds of Preemption

35. Based on the Florida legislative scheme and the facts alleged as set forth in Paragraphs 1- 34, Plaintiffs are entitled to a declaratory judgment that Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284 is preempted by the Florida Legislature's exhaustive scheme for regulating released convicted sex offenders and sexual predators.

36. There is a bona fide, actual, present practical need for a declaration that Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284 is preempted by State law, as it impermissibly interferes with the State's ability to regulate, rehabilitate and safely reintegrate Plaintiffs into society.

37. Accordingly, Plaintiffs respectfully request entry of a declaratory judgment that Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-

277 through 21-284 is preempted by Florida's extensive and comprehensive statutory scheme.

COUNT II

Injunctive Relief on the Grounds of Preemption

38. Based on the Florida legislative scheme and the facts alleged as set forth in Paragraphs 1 through 34, Plaintiffs are entitled to a judgment enjoining enforcement of Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284 on the grounds of preemption.

39. Plaintiffs have a clear legal right to injunctive relief, as Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284 unduly burdens their ability to obtain housing in Miami-Dade County and thereby obstructs and frustrates the objectives of the Florida Legislature and impermissibly interferes with the State's ability to regulate, rehabilitate and safely reintegrate Plaintiffs into society.

40. Plaintiffs have no adequate remedy at law.

41. Plaintiffs are subject to irreparable injury and will remain subject to irreparable injury if enforcement of the Ordinance is not enjoined as Plaintiffs will be compelled to remain in the shantytown on pain of violation of probation and re-incarceration should they violate the Ordinance.

42. The equities favor Plaintiffs and will advance the State's ability to regulate, rehabilitate and safely reintegrate Plaintiffs into society.

43. Enjoining enforcement of the Ordinance will serve the public interest, as it will enable the State to efficiently execute its scheme to track, monitor, supervise, regulate, rehabilitate and safely reintegrate Plaintiffs into society.

44. Accordingly, Plaintiffs respectfully request that this Court enjoin enforcement of Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284, as preempted by Florida's extensive and comprehensive statutory scheme.

PRAYER FOR RELIEF

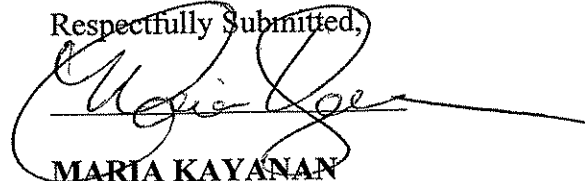
WHEREFORE, Plaintiffs BRYAN A. EXILE and ELLIOTT M. BLOOM respectfully request that this Court:

A. Declare that the State of Florida's extensive and comprehensive regulation of sex offenders and sexual predators preempts Miami-Dade County's Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284, as the State's regulation of sexual offenders and predators precludes any entity but the State of Florida from regulating the field.

B. Enjoin Miami-Dade County from enforcing its Sexual Offender and Sexual Predator Ordinance, Art. XVII, Ord. 21-277 through 21-284, as the State's extensive and comprehensive regulation of sexual offenders precludes any entity but the State of Florida from regulating the field.

C. Order such other and further relief as is necessary and equitable.

Respectfully Submitted,



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