

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	Civil Case. No. 1:15-cv-00139-PB
)	
JOSEPH FOSTER, in his official capacity)	
only as Attorney General of the State of)	
New Hampshire, and ROBERT L.)	
QUINN, in his official capacity only as)	
Director of the Division of the New)	
Hampshire State Police,)	
)	
Defendants)	
)	

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality, facially and as applied, of RSA 651-B:4-a. In support, Plaintiff John Doe, by and through his attorneys, hereby alleges as follows:

INTRODUCTION

1. There is a long-established right to anonymous speech in the United States. As the United States Supreme Court has made clear time after time, speech offered anonymously is not only something to be valued under the First Amendment, but it has been integral to our country’s development and history. As the Court has explained:

Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular; to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society. The right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.

McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995); *see also Talley v. California*, 362 U.S. 60, 64 (1960) (“Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind.”).

2. In the brave new world of instant mass digital communication, the right to anonymous speech also applies to speech on the Internet. As the United States Supreme Court in *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) explained the Internet at the time:

This dynamic, multifaceted category of communication [on the Internet] includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soap-box. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer [T]he content on the Internet is as diverse as human thought.

Id. at 870 (citation omitted). Indeed, the ideas, opinions, emotions, actions, and desires capable of communication through the Internet are limited only by the human capacity for expression. If First Amendment protections are to enjoy enduring relevance in the twenty-first century, they must continue to apply with full force to speech conducted online.

3. RSA 651-B:4-a implicates these important principles by impermissibly infringing upon the First Amendment right to engage in anonymous speech on the Internet.

4. RSA 651-B:4-a, which became effective on January 1, 2009, requires more than 2,700 New Hampshire citizens who are required to register as a result of being convicted of a sex-related offense to disclose to the police information about their use of “online identifiers” for expressive purposes. In short, this requirement effectively bans registrants from engaging in anonymous speech online, including anonymous political speech.

5. For example, this requirement even covers individuals who were convicted of a wide range of crimes well before the registry was in effect, and it requires registrants to provide

information about online activities that are wholly innocent and have no possible relationship to criminality, such as the screen names they use to post comments about articles on a newspaper’s website or names that they use to access political discussion groups. Even worse, when registrants want to engage in this innocent speech using a new screen name, they must now provide information about that name to the police *before engaging in this speech*. Put another way, under RSA 651-B:4-a, government disclosure is a necessary prerequisite to engaging in this form of innocent speech. And the failure to disclose this online identifier to the government prior to engaging in this innocent speech is with real consequence—a “negligent” failure is a misdemeanor offense and a “knowing” failure is a class B felony.

6. This requirement burdens the online speech of all such persons, infringes on their right to engage in lawful, anonymous speech on the Internet, and requires them to reveal their membership in online groups, including groups devoted to political reform. Because this law sweeps much too broadly in terms of who must comply with its provisions and the types of information they must provide, the law is overbroad in violation of the First Amendment. Moreover, at least five federal courts have invalidated or enjoined the enforcement of similar laws that require registrants to provide the government with identifying information about their online speech. *See Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014); *Doe v. Nebraska*, 898 F. Supp. 2d 1086 (D. Neb. 2012); *White v. Baker*, 696 F. Supp. 2d 1289 (N.D. Ga. 2010); *see also Doe v. Shurtleff*, No. 1:08-CV-64 TC, 2008 U.S. Dist. LEXIS 73787 (D. Utah Sept. 25, 2008), *vacated after law amended by* 2009 U.S. Dist. LEXIS 73955 (D. Utah Aug 20, 2009), *aff’d*, 628 F.3d 1217 (10th Cir. 2010); *Doe v. Snyder*, No. 12-11194, 2015 U.S. Dist. LEXIS 41681, at *63-79 (E.D. Mich. Mar. 31, 2015). In addition, the statutory definition of “online identifier”—namely, its broad inclusion of the terms “user identification” and “chat or other Internet communication

name or identity information”—is unconstitutionally vague. As a result of these and other constitutional infirmities, RSA 651-B:4-a is facially invalid and cannot continue to be enforced.

7. Moreover, the State cannot show how RSA 651-B:4-a has achieved—and will achieve in the future—its objectives in preventing or detecting crimes. In response to nineteen (19) Right-to-Know records requests submitted by the American Civil Liberties Union of New Hampshire, New Hampshire law enforcement agencies could not identify a single case in which an online identifier disclosed by a sex offender pursuant to RSA 651-B:4-a was used to uncover subsequent criminal activity that resulted in the filing of criminal charges against that sex offender. However, more than 32 individuals have been charged for failing to disclose online identifiers pursuant to RSA 651-B:4-a from 2009 to 2014. Multiple prosecutions for failing to disclose online identifiers under RSA 651-B:4-a are currently pending in courts throughout New Hampshire.

8. Accordingly, this action seeks a judgment under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 that RSA 651-B:4-a, both on its face and as applied, is an unconstitutional violation of Plaintiff’s rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiff also seeks preliminary and permanent injunctive relief in the form of an order enjoining all law enforcement agencies in the State from applying or enforcing RSA 651-B:4-a.

THE PARTIES

9. Plaintiff John Doe is a resident of New Hampshire. He was convicted of a registerable offense years ago. He spent only ninety (90) days in jail, and he has completed all conditions of his sentence. Despite this small period of confinement, he is required to register for life with law enforcement under Chapter 651-B for this conviction.

10. Doe is not a danger to anyone. He has not been arrested or convicted of any

crime since he was released from custody, nor did he have any criminal history as an adult prior to this conviction. Moreover, the psychologist with whom he completed his sex offender treatment wrote a letter of recommendation on his behalf, stating that she “do[es] not feel that he would pose a threat to his neighbors.” Since Doe was released from jail, he has worked hard to rebuild his life. He is a loving father, and has worked steadily since his conviction.

11. Doe, like most citizens, has a computer, an e-mail account, and regular access to the Internet. Doe wishes to engage in a wide variety of online speech, including through social media and participation in online discussions about political topics. However, because of New Hampshire’s online identifier requirement, Doe is deterred from engaging in this online speech by the burden of documenting and reporting the online identifiers that he may use. Given this legal obligation, he is refraining from engaging in these forms of online speech due to the burdens of reporting.

12. If Doe is required to disclose his identity in publicly-filed pleadings in this action, he would also be reluctant to participate in this litigation due to fear of retaliation.

13. Defendant Joseph Foster is the Attorney General of the State of New Hampshire. He is named in his official capacity only. His office is located at 33 Capitol Street, Concord, NH 03301. The Attorney General is in charge of administering New Hampshire’s criminal laws. He is the chief legal officer and chief law enforcement officer of the State. The Attorney General has and exercises “general supervision of the criminal cases pending before the supreme and superior courts of the state, and with the aid of the county attorneys [he] shall enforce the criminal laws of the state.” *See* RSA 7:6; *see also* RSA 7:11 (a law enforcement officer “shall be subject to the control of the attorney general whenever in the discretion of the latter he shall see fit to exercise the same”). New Hampshire law “demonstrate[s] a legislative purpose to place

ultimate responsibility for criminal law enforcement in the Attorney General, and to give him the power to control, direct and supervise criminal law enforcement by the county attorneys in cases where he deems it in the public interest.” *Wyman v. Danais*, 101 N.H. 487, 490 (1958). Thus, the Attorney General has the ability to control, direct, and supervise the county attorney in the New Hampshire county in which Plaintiff resides, as well as the other county attorneys in this State.

14. As Attorney General, Defendant Foster also supervises the operations of the New Hampshire Department of Safety’s Division of State Police, which is tasked with registering every sexual offender and offender against children. *See* RSA 651-B:2. The Division of State Police is responsible for implementing many of New Hampshire’s registration requirements, including collecting information from registrants, *see* RSA 651-B:7(III), maintaining the law enforcement list of all tier I, tier II, and tier III offenders required to register, *see* RSA 651-B:7(II), the creation and maintenance of the publicly-accessible website that contains information about certain registrants, *see* RSA 651-B:7(IV), the creation of registration forms that specify what information registrants must provide, *see* RSA 651-B:8, and the coordination of registration information for registrants who move from one jurisdiction to another, *see* RSA 651-B:2(III). Chapter 651-B specifically states that registrants are required to disclose “online identifiers” to law enforcement agencies and that law enforcement agencies are not limited “from making any use or disclosure of any such information as may be necessary for the performance of a valid law enforcement function.” *See* RSA 651-B:4-a; RSA 651-B:7(I). Therefore, all New Hampshire law enforcement personnel who collect information relating to registrants’ “online identifiers” under RSA 651-B:4-a do so as agents of, and in active participation with, Defendant Attorney General Foster. Attorney General Foster, personally and

through the conduct of his agents, servants, and employees, acted under color of state law at all times relevant to this action.

15. Defendant Colonel Robert L. Quinn is the Director of the New Hampshire Department of Safety's Division of State Police. Colonel Quinn is named in his official capacity only. His office is located at 33 Hazen Drive, Concord, NH 03305. Colonel Quinn oversees enforcement of criminal, motor vehicle, and other public safety laws and the regulation of detective agencies and security services as governed by law. As explained above, the Division of State Police is tasked with registering every sexual offender or offender against children. *See* RSA 651-B:2. The New Hampshire Department of Safety is also tasked with writing rules relative to forms and procedures for the administration of Chapter 651-B. *See* RSA 651-B:8. All state police troopers who collect information relating to registrants' "online identifiers" under RSA 651-B:4-a and who may disseminate this information do so as agents of, and in active participation with, Defendant Colonel Robert L. Quinn. Colonel Quinn, personally and through the conduct of his agents, servants, and employees, acted under color of state law at all times relevant to this action.

JURISDICTION AND VENUE

16. This action arises under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

17. Declaratory relief is authorized by 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

18. The Defendants are all public officials of the State of New Hampshire or its political subdivisions. Each Defendant resides within this District and/or performs official duties within the State of New Hampshire. This Court, accordingly, has personal jurisdiction over each

Defendant.

19. Venue in the District of New Hampshire is based on 28 U.S.C. § 1391(b).

FACTS

20. In New Hampshire, every person who has ever been convicted of a variety of offenses—including convictions occurring before the registry went into effect—must register as a sex offender, with some being obligated to do so for the rest of their lives. *See* RSA 651-B:2. This registration requirement applies to persons convicted of a number of listed crimes, *see* RSA 651-B:1(V), (VII), as well as to persons who committed non-registerable offenses “as a result of sexual compulsion or for purposes of sexual gratification and [where] protection of the public would be furthered by requiring the person to register.” *See* RSA 651-B:1(V)(c), (VII)(e). Registerable offenses include misdemeanor violation of privacy, *see* RSA 644:9 (III-a), or a second offense within a 5-year period for misdemeanor indecent exposure and lewdness, *see* RSA 645:1(I)—a statute which could be broadly construed to criminalize erotic dancing on a stage at a bar. *See* 651-B:1(VIII)(a).

21. Because New Hampshire’s registration statute is so broad and because it fails to distinguish between sex offenders who pose a high risk to the public, there are currently more than 2,700 people required to register in New Hampshire.

22. New Hampshire’s registration law specifically requires that registrants provide local law enforcement with, among other things, their address, employer, professional licenses, social security numbers, landlord information, telephone numbers, and license plate numbers. *See* RSA 651-B:4(III). Registrants must provide this information “within 5 business days after the person’s release, or within 5 business days after the person’s date of establishment of residence, employment, or schooling in New Hampshire.” *See* RSA 651-B:4(I). Moreover,

“[w]hen there is a change to any of the information that a [registrant] is required to report . . . , the offender shall give written notification of the new information to the local law enforcement agency to which he or she last reported under RSA 651-B:4 within 5 business days of such change of information.” *See* RSA 651-B:5(I).

23. Effective January 1, 2009, RSA 651-B:4-a amended Chapter 541-B so that registrants must provide the following additional information whenever they register or re-register: “any online identifier such person uses or intends to use.” The statute further states that, for purposes of this section, an “online identifier” broadly “includes all of the following: electronic mail address, instant message screen name, user identification, user profile information, and chat or other Internet communication name or identity information.” RSA 651-B:4-a (emphasis added). This expansive language does not define, for example, the phrases “user identification” or “chat or other Internet communication name or identity information.”

24. RSA 651-B:4-a also requires that registrants provide this newly required information “*before using the online identifier.*” (emphasis added).

25. As with the other registration requirements, a violation of any of these requirements is a crime. A “negligent” failure to disclose an “online identifier” is a misdemeanor offense, and a “knowing” failure to disclose this information is a class B felony. *See* RSA 651-B:9, I, II; *see also* RSA 651:2, II(c), IV(a) (misdemeanors punishable by up to one year in jail and a fine up to \$2,000); RSA 651:2, II(b), IV(a) (class B felonies punishable by up to 7 years in jail and a fine up to \$4,000).

26. RSA 651-B:4-a was passed by the legislature in June 2008 and was signed by the Governor on July 2, 2008. RSA 651-B:4-a was packaged in 2008 Senate Bill 495—a bill styled as “prohibiting Internet solicitation and exploitation of children.” Though most of the legislative

history focusses on other aspects of the bill, the New Hampshire Attorney General's Office did provide a brief comment on the bill's requirement that online identifiers be disclosed: "This is a new section. It is necessary because social networking sites currently do not have identity verification, and sexual predators can log on anonymously to meet and lure minors. It will ensure that if a registered sex offender or offender against children is caught using the internet and he or she has not registered his or her online identity, that person can be prosecuted."

27. Registered sex offenders who have completed their terms of probation and parole enjoy the full protection of the First Amendment. However, RSA 651-B:4-a's "online identifier" reporting requirement inevitably burdens the ability of registrants who have completed all conditions of their sentence to engage in protected speech on the Internet. Indeed, the purpose of the challenged law is to collect online identifiers that all sex offenders use for the purpose of engaging in "Internet communication." The burden here is substantial—registrants must disclose online identifiers to the government "before using the online identifier," thus making government disclosure a prerequisite to engaging in innocent online speech. And if that was not enough of a burden, RSA 651-B:4-a's reporting requirement carries with it the threat of criminal sanctions.

28. RSA 651-B:4-a is unconstitutional for several reasons. First, the law impermissibly makes disclosure of an online identifier a prerequisite for the registrant to use that online identifier to engage in innocent, protected speech. *See* RSA 651-B:4-a (disclosure required before "before using the online identifier"). In fact, this statute is far worse than a California law recently struck down by the Ninth Circuit Court of Appeals that required the disclosure of Internet identifiers "within 24 hours of using a new Internet identifier." *See Doe v. Harris*, 772 F.3d 563, 581 (9th Cir. 2014). As the Ninth Circuit held there, "[t]he Act's 24-hour

reporting requirement thus undoubtedly chills First Amendment Activity. Of course, that chilling effect is only exacerbated by the possibility that criminal sanctions may follow for failing to update information about Internet identifiers” *Id.*; *see also White v. Baker*, 696 F. Supp. 2d 1289, 1310 (N.D. Ga. 2010) (striking down Georgia statute requiring registrants to provide updated online identifier information within 72 hours). RSA 651-B:4-a is no different, especially where it requires a registrant to constantly update the government before he or she wants to engage in speech online. *See also Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1120 (D. Neb. 2012) (granting a preliminary injunction because a blog-reporting requirement that “[r]equir[ed] sex offenders to constantly update the government . . . [wa]s unnecessarily burdensome and . . . [wa]s likely to deter the offender from engaging in speech that is perfectly appropriate”).

29. Second, RSA 651-B:4-a is overbroad. The challenged law criminalizes constitutionally-protected anonymous speech, and is not narrowly tailored because it restricts far too much anonymous speech by too many speakers and allows the information to be used for too many purposes. The statute prohibits all anonymous speech, even if it pertains to news, politics, and professional activity, and could not possibly be used to commit a crime. For example, the law requires disclosure of screen names registrants use to post comments about articles on a newspaper’s website or names that they use to access political discussion groups. *See Harris*, 772 F.3d at 581 (striking down similar California law where “the requirement applies to all websites and all forms of communication, regardless of whether the website or form of communication is a likely or even a potential forum for engaging in illegal activity”); *White*, 696 F. Supp. 2d at 1309 (striking down similar Georgia law, and holding that “[a] regulatory scheme designed to further the state’s legitimate interest in protecting children from communication

enticing them into illegal sexual activity should consider how and where on the internet such communication occurs”); *Nebraska*, 898 F. Supp. 2d at 1120 (striking down similar Nebraska law, holding that the statute unnecessarily chills “far too much expressive activity”).

30. Here, RSA 651-B:4-a applies to all registrants, regardless of the severity, type, or age of the underlying offense and whether it had any connection whatsoever to the Internet or to children. In comprehensive arrest data from 2006, only 1% of sex-crimes against children involve any sort of technology, and even fewer involve the use of the Internet. Registered sex offenders made up only 2% to 4% of persons arrested for technology-facilitated sex crimes against youth. And after a number of years in the community without a new arrest, sex offenders are less likely to re-offend than a non-sexual offender is likely to commit an “out of the blue” sexual offense. Thus, RSA 651-B:4-a criminalizes many types of anonymous speech—and the speech of many people—that do not pose the dangers with which the statute is concerned. *See Harris*, 772 F.3d at 581 (noting that the “reporting requirement is not only onerous, it is also applied in an across-the-board fashion” where it “applies to all registered sex offenders, regardless of their offense, their history of recidivism (or lack thereof), or any other relevant circumstance”).

31. Further, RSA 651-B:4-a contains no real restrictions on the purposes for which law enforcement may use disclosed online identifiers. New Hampshire’s sex offender registration statute provides that information provided by registered sex offenders “shall not be considered ‘public records’ subject to inspection under RSA 91-A:4.” *See* RSA 651-B:7(I). But the law expressly allows law enforcement to make “any use or disclosure of any such information as may be necessary for the performance of a valid law enforcement function.” *Id.* (emphasis added). RSA 651-B:7(I) contains no standards for judging what is “necessary for the

performance of a valid law enforcement function.” Thus, under New Hampshire law, there is a real risk that law enforcement officials might disclose online identifiers to members of the public in order to allow them to monitor registrants’ online speech. Indeed, when a registrant discloses a Facebook account as an online identifier, Chapter 651-B does not prohibit New Hampshire law enforcement officers from disclosing that account to Facebook in the hope that Facebook will then close that account pursuant to its policy of prohibiting convicted sex offenders from using this social media service. Law enforcement can also use online identifiers to investigate alleged crimes that having nothing to do with sex or the Internet. As the Ninth Circuit Court of Appeals recently concluded: “[S]ex offenders’ fear of disclosure in and of itself chills their speech. If their identity is exposed, their speech, even on topics of public importance, could subject them to harassment, retaliation, and intimidation.” *See Harris*, 772 F.3d at 581 (where the law allows for disclosure “necessary to ensure public safety,” noting that it “contains no standards for judging what is ‘necessary to ensure the public safety,’” despite the fact that the law also stated that that information provided by registered sex offenders generally “shall not be open to inspection by the public”); *see also White*, 696 F. Supp. 2d at 1310 (striking down Georgia online identifier statute because it permitted disclosure to law enforcement agencies for “law enforcement purposes,” “was not defined[,] and could potentially be very broad”, despite the fact that the online identifiers “shall be treated as private data”).

32. *Third*, the State cannot show how the challenged law has achieved—and will achieve in the future—its objectives in preventing or detecting crimes. In January 2015, the American Civil Liberties Union of New Hampshire submitted Right-to-Know records requests to all ten County Attorney offices in New Hampshire, the police departments of the seven largest cities in New Hampshire (Concord, Derry, Dover, Manchester, Nashua, Rochester, and Salem),

the New Hampshire Division of the State Police, and the New Hampshire Attorney General's Office concerning the enforcement of RSA 651-B:4-a and the use by law enforcement of online identifiers disclosed by registrants. In response to these nineteen (19) records requests, each of these law enforcement agencies in New Hampshire could not identify a single case in which an online identifier disclosed by a sex offender pursuant to RSA 651-B:4-a was used to uncover subsequent criminal activity that resulted in the filing of criminal charges against that sex offender. While it appears from over 6 years of data that the online identifiers disclosed under RSA 651-B:4-a have not resulted in the detection of a single crime, more than 32 individuals have been prosecuted for failing to disclose online identifiers pursuant to RSA 651-B:4-a from January 1, 2009 to the end of 2014. People are being prosecuted as we speak.

33. *Fourth*, RSA 651-B:4-a is unconstitutional because it imposes burdensome registration requirements on a great deal of non-anonymous online speech by registrants, but is not narrowly tailored to its stated goals, for the reasons set forth above.

34. *Fifth*, RSA 651-B:4-a violates due process because it is impossibly vague. It requires registrants to immediately report all "online identifiers," but the examples of this term—particularly its inclusion of "user identification" and "chat or other Internet communication name or identity information"—leaves it entirely unclear whether they trigger reporting obligations for creating an account with, for example, an online university or a website that allows customer reviews, such as Yelp.com. This vague definition does not give registrants sufficient notice of what they need to report to comply with the law—a vagueness that is particularly intolerable given the free speech rights implicated and the severe criminal penalties for failing to comply. In interpreting an online identifier law in California that swept within its scope "similar Internet communications," the Ninth Circuit Court of Appeals held that its terminology was ambiguous

and not susceptible of a narrowing construction: “[W]hether narrowly construed or not, the ambiguities in the statute may lead registered sex offenders either to overreport their activity or underuse the Internet to avoid the difficult questions in understanding what, precisely, they must report. This uncertainty undermines the likelihood that the [Act] has been carefully tailored to the [State’s] goal of protecting minors and other victims.” *Harris*, 772 F.3d at 579 (internal quotations omitted); *see also White*, 696 F. Supp. 2d at 1310 (holding that a statute using the term “interactive online communication” chilled a sex offender’s right to anonymous free speech because the term is too ambiguous). RSA 651-B:4-a’s inclusion of the phrases “user identification” and “chat or other Internet communication name or identity information” is no different, and it will cause offenders to overreport their activity and to underuse the Internet. Thus, RSA 651-B:4-a is unconstitutionally vague.

35. *Sixth*, RSA 651-B:4-a is unconstitutional because it violates registrants’ associational rights by potentially compelling disclosure of their participation in online forums organized by political and other groups and by compelling disclosure of the identity of other registrants with whom they discuss political issues.

36. As a result of these and other constitutional infirmities, RSA 651-B:4-a is facially invalid and cannot continue to be enforced. Thus, rather than imposing these requirements on all registrants, the government could have a more narrowly tailored requirement that excludes registrants whose offense of conviction and post-release conduct show that they do not pose a high risk of using the Internet to commit a new crime.

NEED FOR INJUNCTIVE AND DECLARATORY RELIEF

37. Plaintiff re-alleges and incorporates the allegations in the above paragraphs, as though fully set forth herein.

38. There exists an actual, present, and justiciable controversy between Plaintiff and Defendants concerning his rights and duties with respect to Defendants' conduct described herein. Plaintiff contends that Defendants violate Plaintiff's rights under the Constitution and laws of the United States because the challenged law is unconstitutional on its face and as applied to the individual Plaintiff. Defendants deny that their conduct violates Plaintiff's rights under the Constitution and laws of the United States. Plaintiff fears that he is now and will again be subjected to such unlawful and unconstitutional actions and therefore seeks a judicial declaration that Defendants' conduct deprives him of his rights under the Constitution and laws of the United States.

39. This controversy is ripe for judicial decision, and declaratory relief is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202, so that the parties may know the legal obligations that govern their present and future conduct.

40. In the absence of court-ordered relief, Plaintiff will suffer imminent, immediate, and ongoing irreparable harm in the form of loss of anonymity and a chilling of his free speech and associational rights. Irreparable harm also exists because there are multiple prosecutions for failing to disclose online identifiers under RSA 651-B:4-a currently pending in courts throughout New Hampshire. No future award of damages can remedy the loss of these constitutional rights. Both the public interest and equity favor granting an injunction to allow Plaintiff and others to exercise their constitutional free speech and associational rights. Injunctive relief is therefore necessary and appropriate.

CLAIMS FOR RELIEF

COUNT I – VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

41. Plaintiff re-alleges and incorporates the allegations in the above paragraphs, as though fully set forth herein.

42. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1988 allows the court to award attorney’s fees and costs to the prevailing party in an action brought under Section 1983.

43. The First Amendment to the United States Constitution, as applicable to the States through the Fourteenth Amendment, prohibits the making of any law that “abridg[es] the freedom of speech.”

44. As described above, RSA 651-B:4-a, on its face and as applied to Plaintiff’s speech, unconstitutionally infringes or imminently threatens to infringe upon Plaintiff’s rights under the First and Fourteenth Amendments, including his right to freedom of speech and expression.

45. RSA 651-B:4-a, on its face and as applied to Plaintiff’s speech, is a prior restraint on speech in that it restricts the speech of Plaintiff before the speech occurs.

46. RSA 651-B:4-a, on its face and as applied to Plaintiff’s speech, is vague, overbroad, burdens speech without being appropriately tailored to the government’s stated goals, and requires the compelled disclosure of individuals with whom registrants associate.

47. RSA 651-B:4-a, on its face and as applied to Plaintiff's speech, is substantially overbroad in that it restricts a large amount of protected speech of Plaintiff by requiring him and other registrants to provide information about online activities that are wholly innocent and have no possible relationship to criminality.

48. Accordingly, RSA 651-B:4-a, on its face and as applied to Plaintiff's speech, violates the First Amendment.

49. Defendants, acting under color of state law, have threatened to and will enforce and implement the challenged laws against the individual Plaintiff in violation of his First Amendment rights.

50. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has and will suffer irreparable harm, which will continue absent injunctive relief.

COUNT II – VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

51. Plaintiff re-alleges and incorporates the allegations in the above paragraphs, as though fully set forth herein.

52. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1988 allows the court to award attorney's fees and costs to the prevailing party in an action brought under Section 1983.

53. Section 1 of the Fourteenth Amendment prohibits a state from “depriving any person of life, liberty, or property without due process of law.”

54. RSA 651-B:4-a's definition of "online identifier"—namely, its broad inclusion of the terms "user identification" and "chat or other Internet communication name or identity information"—is impermissibly vague in that persons of common intelligence must guess at its meaning. This problem is magnified because a registrant who reads the provisions too narrowly is subject to criminal prosecution and punishment, and one who reads them too broadly suffers a greater infringement of his First Amendment rights than the statute requires. This statute therefore violates due process.

55. Accordingly, RSA 651-B:4-a, on its face and as applied to Plaintiff, violates the Fourteenth Amendment's protections against the denial of due process.

56. Defendants, acting under color of state law, have threatened to and will enforce and implement the challenged laws against the individual Plaintiff in violation of his Fourteenth Amendment rights.

57. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has and will suffer irreparable harm, which will continue absent injunctive relief.

COUNT III – VIOLATION OF EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

58. Plaintiff re-alleges and incorporates the allegations in the above paragraphs, as though fully set forth herein.

59. 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or

other proper proceeding for redress.” 42 U.S.C. § 1988 allows the court to award attorney’s fees and costs to the prevailing party in an action brought under Section 1983.

60. Section 1 of the Fourteenth Amendment prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”

61. RSA 651-B:4-a’s requirement that registrants provide their online identifiers to the government violates equal protection because it applies to some persons but not others without sufficient justification.

62. Accordingly, RSA 651-B:4-a, on its face and as applied to Plaintiff, violates the Fourteenth Amendment’s protections against the denial of equal protection under the law.

63. Defendants, acting under color of state law, have threatened to and will enforce and implement the challenged laws against the individual Plaintiff in violation of his Fourteenth Amendment rights.

64. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has and will suffer irreparable harm, which will continue absent injunctive relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

a) Declare that RSA 651-B:4-a is facially unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution;

b) Declare that RSA 651-B:4-a is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution as applied to Plaintiff;

c) Temporarily, preliminarily, and permanently restrain and enjoin the Defendants—including all of Defendant Foster’s and Defendant Quinn’s officers, troopers, agents, servants, employees, attorneys, and other persons in active concert or participation with Defendants,

including but not limited to every New Hampshire County Attorney, municipal prosecutor, or peace officer—from enforcing RSA 651-B:4-a or from otherwise requiring registrants to provide their online identifiers to the government;

- d) Award Plaintiff attorneys' fees in this action pursuant to 42. U.S.C. § 1988(b);
- e) Award Plaintiff his costs of suit; and
- f) Grant such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted,

JOHN DOE,

By and through their attorneys affiliated with the
American Civil Liberties Union of New Hampshire
Foundation,

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette (N.H. Bar No. 265393)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org

Jon Meyer (N.H. Bar No. 1744)
BACKUS, MEYER & BRANCH, LLP
116 Lowell Street
P.O. Box 516
Manchester, NH 03104
Tel.: 603.668.7272
jmeyer@backusmeyer.com

Dated: May 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day through ECF to the following:

Matthew T. Broadhead, Esq.
Rebecca Woodard, Esq.
33 Capitol Street
Concord, NH 03301
Tel. 603-271-3658
E-mail: Matthew.Broadhead@doj.nh.gov, Rebecca.Woodard@doj.nh.gov

/s/ Gilles Bissonnette

Gilles Bissonnette, Esq.