

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

AUDREY DOE, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 11-00388
	:	(MLCF) (ALC)
BOBBY JINDAL, et al.,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
	:	

PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, Plaintiffs submit the following statement of material facts as to which there are no genuine disputes:

1. In Louisiana, the solicitation of oral or anal sex for compensation can be prosecuted under two statutes: the solicitation provision of the Prostitution statute and the Crime Against Nature by Solicitation statute (“CANS”).

2. The solicitation provision of the Prostitution statute outlaws “[t]he solicitation by one person of another with the intent to engage in indiscriminate sexual intercourse with the latter for compensation.” La. Rev. Stat. § 14:82(A)(2).

3. The Prostitution statute defines “sexual intercourse” as “anal, oral, or vaginal sexual intercourse.” La Rev. Stat. § 14:82(B).

4. CANS outlaws the “solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.” La Rev. Stat. § 14:89.2(A).

5. The Louisiana Supreme Court has defined “unnatural carnal copulation” as oral or anal sexual intercourse. See, e.g., Louisiana v. Smith, 766 So. 2d 501, 504-05 (La. 2000) (citations omitted); see also State v. Murry, 136 La. 253, 257-59 (La. 1914) (same); State v. Long, 133 La. 580, 582-83 (La. 1913) (same); State v. Vicknair, 52 La. Ann. 1921, 1925 (La. 1900) (same).

6. CANS was adopted in 1982, after the adoption of the Prostitution statute. 1982 La. Sess. Serv. Act 703 (H.B. 853); see also State v. Forrest, 439 So. 2d 404, 407 (La. 1983).

7. CANS and the solicitation provision of the Prostitution statute share identical elements. They both prohibit the solicitation of oral or anal sexual intercourse for compensation. The element of intent is also identical. CANS reaches no conduct that the solicitation provision of the Prostitution statute does not. The only difference between the two statutes is that Prostitution also encompasses solicitation of vaginal intercourse.

8. From the enactment of CANS until August 15, 2011, Louisiana has punished an individual convicted of CANS more harshly than an individual convicted under the solicitation provision of the Prostitution statute.

9. A first conviction under the Prostitution statute is a misdemeanor, punishable by a fine of no more than \$500 and/or a maximum term of imprisonment of six months. See La. Rev. Stat. § 14:82(C)(1). The statute does not create any obligation to register as a sex offender for any number of convictions.

10. Until August 15, 2010, a first CANS conviction was treated as a felony offense, punishable by a term of imprisonment of up to five years, with or without hard labor, and/or a fine of not more than \$2,000. See La. Rev. Stat. § 14:89(B) (2009). Until August 15, 2010, even

a single CANS conviction required mandatory sex offender registration. See La. Rev. Stat. § 15:541(24)(a) (2009).

11. After August 15, 2010, a first CANS conviction was no longer a felony, did not require sex offender registration, and carried identical penalties to a first Prostitution conviction. See 2010 La. Sess. Law Serv. Act 882 (S.B. 381). However, the amendments were not retroactive, and thus did not benefit those individuals with a single CANS conviction incurred prior to August 15, 2010. Furthermore, registration was still required for a second or subsequent CANS conviction. See id.

12. On June 28, 2011, the Louisiana Legislature eliminated all differences between how CANS and Prostitution convictions are treated for those convicted after August 15, 2011. Compare La. Rev. Stat. § 14:82(C) with 2011 La. Sess. Law Serv. Act 223 (H.B. 141) (West). As with the Prostitution statute, CANS convictions will no longer require sex offender registration. See 2011 La. Sess. Law Serv. Act 223 (H.B. 141) (West). However, the amendments were not retroactive, and thus those convicted prior to August 15, 2011 must continue to register as sex offenders. Id.

13. Registration as a sex offender involves requirements such as: the payment of annual registration fees, La. Rev. Stat. § 15:542(D); extensive community notification obligations, La. Rev. Stat. § 15:542.1; inclusion of the words “sex offender” in bright orange capital letters on one’s driver’s license or state-issued identification card, La. Rev. Stat. § 40:1321(J)(1); and adherence to separate evacuation protocols in the event of a state emergency, La. Rev. Stat. § 15:543.2, among other restrictions and requirements. See La. Rev. Stat. § 15:540 et seq.

14. In 2003, the Supreme Court, in the course of declaring sodomy statutes unconstitutional, found that “[e]arly American sodomy laws . . . sought to prohibit non-procreative sexual activity,” and that the purpose of such statutes in the “last third of the 20th century” was to target and penalize homosexuality. Lawrence v. Texas, 539 U.S. 558, 559 (2003).

15. All Plaintiffs were convicted under the CANS statute.

16. All Plaintiffs are registered as sex offenders as a result of their CANS convictions.

17. No Plaintiff is required to register as a sex offender for any reason other than a CANS conviction.

DATED: October 31, 2011

Respectfully submitted,

By: /s/ Alexis Agathocleous
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