

OPPOSITION Response to HB 3183

Prohibiting those listed on the state sex offender database from public school activities and events.

February 1, 2023

House Judiciary Committee:

[West Virginians for Rational Sexual Offence Laws \(WVRSOL\)](#) is a West Virginia non-profit association and affiliate of the [National Association for Rational Sexual Offence Laws \(NARSOL\)](#), which advocates for society's segment that is adversely affected by the sex offender registry. We try to help families impacted by the registry, seek ways to maintain and improve public safety, recommend prudent use of state funding in this area, and work to ensure that proposed legislation is constitutional.

WVRSOL **opposes** HB 3183 because it is unconstitutional in effect.

HB 3183 is unconstitutional

1. The new section §16-11A-5 makes it a felony "to attend any public school function or attend or participate in public school or athletic events in any capacity, regardless of participation by offender's own children" for those required to register on the WV "sex offender registry."
 - It is restrictive and inclusive to registrants on the "sex offender registry" only while allowing all other "Central Abuse Registry" registrants with misdemeanor or felony offenses constituting child abuse or neglect free to attend school events, as well as all other persons with past convictions for murder, assault, etc.
 - It is broad in its language to be a total ban for said registrants without any exceptions, i.e., parent-teacher conferences, expulsion hearings/reviews, etc.
 - It is not based on any current disruptive behavior but rather past behavior/convictions that, in many cases, are decades old.
 - As written, it is a US Constitution 14th Amendment violation. Under the Fourteenth Amendment to the United States Constitution, Plaintiff has a right to due process for any proceedings from a governmental authority. Br. in Supp. 4, ECF No. 7. In this case, no due-process rights are afforded before registrants are banned from school property.
 - i. In *Cole v. Montague Bd. of Educ.*, 145 Fed.Appx. 760, 762-63 (3d Cir. 2005) (citing *Lovern*, 190 F.3d at 648), the court "held that parent's claim that prohibiting him from entering school property without a hearing violated due process."
 - ii. *McNett v. Jefferson-Morgan Sch. Dist.*, 2:21-cv-01064-RJC, 12 (W.D. Pa. Nov. 23, 2021) established that plaintiffs have a due process claim on the basis that a school board defendant had violated their due process rights by banning the parents from a public school without a hearing and by refusing to accept a petition for a hearing. Again if HB 3183 is passed as written, no due processing is incorporated.
2. Restricting persons from school property.
 - "School officials have the authority to control students and school personnel on school property, and also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property." *Lovern v. Edwards*, 190 F.3d 648, 655 (4th Cir. 1999) (citing *Carey v. Brown*, 447 U.S. 455, 470-71 (1980); *Goss v. Lopez*, 419 U.S. 565, 582-83 (1975)).
 - "School officials are well within constitutional bounds in limiting access to school property where it is necessary to maintain tranquility." *Cunningham v. Lenape Reg'l High Dist. Bd. of Educ.*, [492 F.Supp.2d 439, 448-49](#) (D.N.J. 2007).
3. Taking 1. and 2. above into account, it's clear that HB 3183, as written as a blanket ban without justification, reasoning, and, most notably, due processing, is/will be found unconstitutional if passed.

WVRSOL supports legislation that actually works to reduce abuse and sexual offenses, help children and families, and improve public safety. Unfortunately, HB 3183 does none of these things. Therefore, we **oppose** and respectfully urge the House, its members, and House Judiciary Committee to **reject HB 3183** and, if deemed necessary, amend it to address the issues mentioned above.

Sincerely,

Philip W. Kaso

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Works Cited

- "Br. in Supp. 4, ECF No. 7. " *McNett v. Jefferson-Morgan Sch. Dist.*, 2:21-cv-01064-RJC, 12 (W.D. Pa. Nov. 23, 2021)
- "*Cunningham v. Lenape Reg'l High Dist. Bd. of Educ.*, [492 F.Supp.2d 439, 448-49](#) (D.N.J. 2007)" *McNett v. Jefferson-Morgan Sch. Dist.*, 2:21-cv-01064-RJC, 10 (W.D. Pa. Nov. 23, 2021)
- "*Goss v. Lopez*, [419 U.S. 565, 582-83](#) (1975)" *McNett v. Jefferson-Morgan Sch. Dist.*, 2:21-cv-01064-RJC, 10 (W.D. Pa. Nov. 23, 2021)
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