

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FINAL EXIT NETWORK, INC.,

Plaintiff,

v.

LORI SWANSON, in her official
capacity as Attorney General
of Minnesota,

Defendant.

Case No. 18-CV-01025

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

The Plaintiff, Final Exit Network, Inc. (“FEN”), sues the defendant, Lori Swanson, in her official capacity as the attorney general of Minnesota, and alleges:

1. FEN is a Sec. 501 (c)(3) non-profit corporation with a stated mission to provide information, education, counseling, and emotional support to persons who are competent, suffering intolerably, and who make an informed choice to hasten their deaths. FEN seeks a declaratory judgment that Minn. Stat. 609.215, subd. 1, on its face and as applied in this case and in the future, violates its First Amendment protected rights under the United States Constitution.

2. The text of Minn. Stat. § 609.215, subd. 1 prohibits FEN to “assist” another in suicide, when the critical element of “assistance” is met solely by pure First Amendment-protected speech.

3. Declarative and injunctive relief is available pursuant to the United States Constitution; 42 U.S.C. § 1983; 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

4. Venue is appropriate in this District under 28 U.S.C. 1391(b), because the

Minnesota statute is enforced here, and because the events giving rise to this lawsuit occurred in this state.

5. Ms. Swanson acts under the color of state law when enforcing the challenged statute, and in that capacity is authorized by the Minnesota Legislature to be the named defendant in this case. Minn. Stat. 8.01.

6. FEN has no other adequate or available remedy in law, has been denied its First Amendment-protected rights, and faces imminent and irreparable loss of its rights in the future by the threat of further prosecution. Absent expedited consideration and prompt injunction, the corporation will continue to suffer substantial and irreparable harm.

GENERAL ALLEGATIONS

7. As noted, it is a violation of Minn. Stat. § 609.215, subd. 1 for FEN to “advise, encourage, or assist” in a “suicide,” which includes a rational choice to hasten one’s death in the face of irremediable and intolerable suffering. In 2012, a Dakota County Grand Jury handed down an indictment of FEN for an alleged violation of this statute in connection with a suicide death in that county.

8. The wording of the charge and pretrial proceedings established that the State intended to seek a conviction of FEN solely for violating the “advises” and “encourages” clauses of the Statute, to the exclusion of the “assists” clause, as there was no evidence of physical “assistance” in the “suicide.” At that time, the parties recognized that the providing of information about how one could hasten his or her own death was prohibited by the “advises” or “encourages” clauses, and was not criminalized by the “assists” clause. Thus FEN sought and

obtained pretrial ruling that the “advises” and “encourages” clauses were unconstitutional restraints on FEN’s right to freedom of speech under the First Amendment, and the District Court agreed. The State took an interlocutory appeal. The Minnesota Court of Appeals held that the “advises” and “encourages” clauses of the statute were both unconstitutional restraints on FEN’s right to freedom of speech under the First Amendment, and authorized further prosecution solely under the “assists” clause of the Statute. *See State v. Final Exit Network, Inc.*, No. A13-0563, 2013 WL 5418170, at *3 (unpublished) (Minn. App. Sept. 30, 2013).

9. In an unrelated case pending at the same time, the Supreme Court of Minnesota agreed with the Court of Appeals, holding that the “advises” and “encourages” clauses violated the First Amendment on their face, and severed those words from the statute. *See State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014).

10. In *Melchert-Dinkel*, however, the Supreme Court of Minnesota interpreted the word “assists” to criminalize speech that “enables” a “suicide,” even in the absence of any physical assistance in the suicide or in the providing of any means.

11. At FEN’s trial in May 2015, the jury instructions were based on the *Melchert-Dinkel* precedent, i.e., speech that enabled the suicide violated the statute, without evidence of actual physical assistance. The jury was thus compelled to convict FEN based on its open practice of providing instructions to its members, including the decedent. This information was available to anyone in America, either online, or at bookstores, or in public libraries. In all of these places, a citizen may obtain the very same information that FEN imparted to the woman who committed suicide, specifically the use of helium. The conviction was supported solely by

the fact that FEN's volunteer personnel told the decedent where to find the publicly available information for herself.

12. The Dakota County District Court entered judgement judgment based on the jury's verdict, fined FEN the statutory maximum \$30,000 for a violation of the "assists" clause of Minn. Stat. § 609.215, subd. 1, and imposed the costs of restitution, \$2,975.63, both of which were paid. FEN raised the First Amendment defense in the Court of Appeals of Minnesota, which affirmed the conviction in *State v. Final Exit Network, Inc.*, 889 N.W.2d 296, 307–08 (Minn. Ct. App. 2016). The Supreme Court of Minnesota denied discretionary review, and the Supreme Court of the United States denied FEN's petition for writ of certiorari. 138 S. Ct. 145 (Oct. 2, 2017). The alternative of federal Habeas Corpus relief is not available to FEN, for lack of custodial status. 28 U.S.C. 2254(a).

13. FEN has been forced to incur compensable costs and a reasonable attorneys' fee in connection with this action.

COUNT I: DECLARATORY JUDGMENT

14. The allegations of paragraphs 1 through 13 are incorporated here by reference.

15. FEN was convicted not for any physical assistance in a suicide, nor for providing the means, but for solely for uttering "speech" that "enables" a "suicide." The existence of the conviction on the Plaintiff's record causes direct, immediate, and ongoing prejudice under a number of state and federal laws. FEN seeks a declaratory judgment that Minnesota violates its First Amendment-protected right to freedom of speech by making it a crime to utter "speech"

that “enables” a “suicide, speech that was non-exclusive, and which is in fact protected in any other setting.

COUNT II: INJUNCTIVE RELIEF

16. The allegations of paragraphs 1 through 13 are incorporated here by reference.

17. FEN provides its “Exit Guide” services all across the country, including still in Minnesota. For offering this Constitutionally protected assistance and advice, FEN is in constant danger of being prosecuted again for the utterance of “speech” that “enables” a “suicide.”

18. A prosecution, even one based solely on the “probable cause” finding that FEN uttered “speech” that “enables” a “suicide,” would again violate FEN’s rights under the speech clause of the First Amendment to the United States constitution.

REQUEST FOR RELIEF

WHEREFORE, FEN seeks:

- a) A declaratory judgment holding that the statute, and FEN’s conviction under it, to be violation of the First Amendment, and voiding FEN’s conviction;
- b) Injunctive relief to bar the State of Minnesota from initiating a prosecution of FEN, and its personnel, under Minn. Stat. § 609.215, subd. 1, based solely the utterance of “speech” that “enables” a suicide;
- c) An award of attorneys’ fees and costs. 42 U.S.C. Sec. 1988.

d) Such further and equity relief as this Court deems just and proper.

Dated: April 16, 2018

Respectfully submitted,

/s/Robert Rivas

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