



Ostergren v. McDonnell Update
U.S. District Court, Eastern District of Virginia
Memorandum Opinion

Issue: Are the provisions of § 59.1-443.2 unconstitutional, as applied to the plaintiff's website, on which she posts unredacted copies of land records that contain individual's social security numbers?

Background: The 2008 General Assembly adopted amendments to § 59.1-443.2 of the Personal Information Privacy Act (PIPA) of the Code of Virginia, providing that no person may intentionally communicate the social security of another person, regardless of whether the social security number was obtained from public or private records. (See chapters 652, 820 of the 2008 Acts of Assembly). Previously, PIPA only prohibited the dissemination of a social security number when it was obtained from a private record or source. The change was made at the recommendation of the Joint Commission on Technology and Science and the Virginia Freedom of Information Advisory Council.

Holding: The court found that the statute is unconstitutional as applied to the plaintiff's website, which is protected political speech. However, in issuing an injunction to prohibit the imposition of sanctions and fines on the plaintiff, the court said the injunction only applies to the website as it exists at the time of the opinion. Further briefings would be necessary to determine if the injunction would also apply if the website was broadened in scope, such as by stripping social security numbers from public records and posting them in list form.

Issues: The court found that an individual's social security number is personal in nature and entitled to privacy because of the susceptibility for misuse. In overcoming a First Amendment challenge, however, the state needs to establishing a "state interest of the highest order." The court found that the state failed to establish this burden because it makes public records that include the social security numbers available to the public. Furthermore, the court noted that the state had not funded a law that would require the redaction of social security numbers from court records did not become effective because it was contingent on funding that was not provided. The court seemed to indicate that if the state took steps to ensure that public records were redacted and social security numbers not provided, then the new law may not be unconstitutional as applied to the plaintiff.