

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Final Exit Network, Inc.

DEFENDANTS

Lori Swanson, in her official capacity as Minnesota Attorney General

(b) County of Residence of First Listed Plaintiff Leon County, Florida (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Ramsey (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Paul Engh, Suite 420, 200 South Sixth Street, Minneapolis, MN 55402 612.252.1100; Robert Rivas, Sachs Sax Caplan, P.L., 600 E. Jefferson Street, Suite 102, Tallahassee, FL 32301 850.412.0306

Attorneys (If Known) Lori Swanson, Minnesota Attorney General, 1100 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 651.296.6196

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff x 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF 1 x 1 Incorporated or Principal Place of Business In This State
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION Brief description of cause: This is a complaint for declaratory and injunctive relief, requesting this Court to find Minn. Stat. 609.215, Subd. 1 in violation of the First Amendment on its face and as applied.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 4.16.201

SIGNATURE OF ATTORNEY OF RECORD

/s/ Paul Engh

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44 Reverse (Rev. 06/17)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**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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