

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FINAL EXIT NETWORK, INC., FRAN  
SCHINDLER, and JANET GROSSMAN,

Plaintiffs,

v.

LORI SWANSON, in her official capacity  
as the attorney general of Minnesota;  
JAMES C. BACKSTROM, in his official  
capacity as the Dakota County Attorney; and  
JOHN L. FOSSUM, in his official capacity  
as the Rice County Attorney,

Defendants.

**Case No. 0:18-cv-01025-JNE/SER**

**AMENDED COMPLAINT**

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The plaintiffs, Final Exit Network, Inc. (“FEN”), Fran Schindler, and Janet Grossman, pursuant to Fed. R. Civ. P. 15(a)(2), sue the defendants, Lori Swanson, in her official capacity as the attorney general of Minnesota; James C. Backstrom, in his official capacity as the Dakota County Attorney; and John L. Fossum, in his official capacity as the Rice County Attorney; and allege:

**A. JURISDICTION**

1. This is a preenforcement challenge to the facial constitutionality of Minn. Stat. § 609.215, subd. 1 (the “Statute”), under the First Amendment to the United States Constitution.

2. The Statute makes it a crime for one to assist another in a suicide. The plaintiffs do not challenge the Statute to that extent. However, as § 609.215, subd. 1 has been authoritatively interpreted under Minnesota law, the word “assists” criminalizes not only conduct, but alternatively “speech” that “enables” a “suicide.” The plaintiffs challenge the facial

constitutionality of Minnesota law to the extent it therefore makes a crime of First Amendment-protected speech in the absence of any physical assistance.

3. The plaintiffs seek a declaratory judgment of the Statute's unconstitutionality pursuant to the United States Constitution; 42 U.S.C. § 1983; and 28 U.S.C. § 2201. The plaintiffs further seek permanent injunctive relief pursuant to 28 U.S.C. § 2202.

4. Venue lies in this district under 28 U.S.C. § 1391(b) because the Minnesota statute is enforced here and the defendants reside here.

5. The defendants act under color of state law when acting in their official capacities. The county attorneys are vested with the authority to determine whether to prosecute a suspect under Minn. Stat. § 609.215, subd. 1, and to initiate such prosecutions. The attorney general provides them with support and cooperation and conducts appeals from convictions under the Statute. The attorney general is also authorized to serve as the stand-in prosecutor in any instance in which a county attorney should request such assistance.

6. The plaintiffs have suffered and continue on an ongoing basis to suffer a concrete, particularized injury in fact inasmuch as they desire and intend to violate the Minnesota Statute as they carry out the same policies, protocols, and practices apply in every other State in the Union, in reliance on their First Amendment-protected right to do so, and are threatened with arrest, prosecution and punishment under Minnesota law for the exercise of their right to freedom of speech.

7. Their injury is fairly traceable to the defendants. Backstrom and Fossum have prosecuted cases in recent years based solely on "speech" that "enables" a "suicide." They have publicly established the position that the Statute's prohibition on "speech" that "enables" a "suicide" is constitutionally permissible and publicly expressed their intention to prosecute this

“crime” should such a “crime” arise in their jurisdictions in the future. There is no reason to believe the attorney general would decline to exercise her discretionary ability to assist in a prosecution or appeal under the Statute.

8. As a consequence of the actions of the defendants, the plaintiffs are forced to choose between abandoning their First Amendment-protected right to advise people about their right to terminate irremediable suffering, on one hand, and engaging in that speech and risking criminal prosecution on the other. This injury will be redressed by a declaratory judgment that the Statute is unconstitutional and a permanent injunction that the Statute not be enforced to the extent it bans “speech” that “enables” a “suicide.”

9. The plaintiffs have no adequate remedy at law, are being denied their First Amendment-protected rights, and face imminent and irreparable loss of their rights in the future by the threat of prosecution. Absent expedited consideration and prompt injunction, the plaintiffs will continue to suffer substantial and irreparable harm and their rights will finally and fully be denied.

## **B. STANDING**

10. Final Exit Network, Inc. is a not-for-profit corporation organized and existing under the laws of the State of Florida and recognized by the Internal Revenue Service as a 501(c)(3) charitable organization. FEN’s volunteers operate in every State in the Union. In its Exit Guide program, FEN provides information, education, and emotional support to people who are considering whether to make an informed and rational choice to terminate irremediable suffering.

11. FEN screens applicants to the Exit Guide program to ensure that their suffering cannot be relieved and that their decision is competent, voluntary, and well considered. Under

FEN’s published policies, protocols, and practices, Exit Guides do not solicit or encourage applicants or participants in the Exit Guide program at any stage of the process and scrupulously avoid providing any physical assistance in (or providing the means for) what the law defines as “suicide.” As part of the Exit Guide program, the volunteers sometimes sit at a person’s bedside at the time of her or his death in the belief that few people wish to die alone.

12. Under *State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014), and *State v. Final Exit Network, Inc.*, 889 N.W.2d 296, 307–08 (Minn. Ct. App. 2016), *pet. for rev. denied*, Case No. A15-1826, March 14, 2017, *cert. denied*, 138 S. Ct. 145, 199 L. Ed. 2d 36 (2017), Minnesota has become the only State in the Union to explicitly and unmistakably make the routine activities of the Exit Guides a crime.

13. FEN is therefore threatened with prosecution every time its volunteers talk with anyone in Minnesota about legal methods of inducing their own death. Such a conversation can result in the prosecution of FEN and the Exit Guides even if the other person does not “commit suicide” or dies by some means other than the means the Exit Guides discussed. Under Minnesota law, a suspect can be convicted of *attempting* to assist in a suicide by engaging in “speech” that “enables” a “suicide” even if the “suicide” does not take place or the “victim” does not utilize the supposedly “enabling” information. *See State v. Melchert-Dinkel*, No. A15-0073, 2015 WL 9437531, at \*10–11 (Minn. Ct. App. 2015) (confirming the existence of the crime of “attempting” to “assist” in “suicide” by speech that “enables” a “suicide” while finding the defendant not guilty).

14. FEN and its Exit Guides are subject to conviction under Minnesota’s prohibition on speech that “enables” a “suicide” for imparting the exact same information to people — provided only that the speech be “targeted” — as the same people may obtain every day from

bookstores, libraries, or on the Internet. Indeed, FEN and its Exit Guides — or even a librarian or a bookstore sales clerk — may be convicted solely for informing a “targeted” person where to find the same information for himself or herself.

15. Since the *Final Exit Network* and *Melchert-Dinkel* precedents, FEN now advises its Exit Guides of the danger of providing Exit Guide services in Minnesota. As volunteers, some of the Exit Guides decline to participate in the Exit Guide program in Minnesota. Some applicants for Exit Guide services elect to travel out of Minnesota in order to receive the counseling they need. Some have considered going to a hotel outside of Minnesota for their exit.

16. FEN’s case coordinators have observed indications that some Minnesotans have considered contacting FEN but did not because they have heard of Minnesota’s criminalization of FEN’s Exit Guide services. Others call and become discouraged to the point of not calling back when they are advised of the unique danger of providing Exit Guide services in Minnesota.

17. The plaintiff Janet Grossman is a volunteer Exit Guide for FEN. Given the limited number of Exit Guides, and the number of inquiries for Exit Guide services in Minnesota, FEN will probably contact Grossman about whether to accept an Exit Guide assignment in Minnesota. She is now forced, before that call comes, to choose between abandoning her First Amendment-protected right to advise people about their right to terminate irremediable suffering, on one hand, and engaging in that speech and risking criminal prosecution on the other.

18. The plaintiff Fran Schindler is a volunteer Exit Guide for FEN. In that capacity, FEN has contacted her on occasions when Exit Guide services were requested in Minnesota. She personally has been forced to choose between abandoning her First Amendment-protected right to advise people about their right to terminate irremediable suffering, on one hand, and engaging in that speech and risking criminal prosecution on the other.

19. Schindler has submitted her resignation from FEN, effective on October 15, 2018. She has resigned because she wishes to be able to provide education, information, and counseling without being constrained by FEN's policies, some of which she considers to be overly cautious. She has at least one ongoing relationship with an Exit Guide client in Minnesota and plans to continue to serve this person after she is no longer associated with FEN. She intends not to provide physical assistance or the means to the person in Minnesota, but she does intend to give information in violation of the Statute when the person is ready. Schindler is considering whether to arrange for this person to travel to her home in North Carolina in order to provide counseling without running the risk of prosecution under the Minnesota Statute.

20. Once Schindler is no longer associated with FEN, she plans to stage public seminars, in great detail, on how to painlessly and effectively induce one's own death. She plans to teach such groups anywhere in the country, but she must soon decide whether to redline Minnesota as the only State in the Union where she will not make such presentations.

21. The plaintiffs have been obligated to retain the undersigned counsel to vindicate their right to the freedom of speech. They have been forced to incur court costs and a reasonable attorneys' fee in connection with this action. They are entitled to recover their costs and a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988.

**C. PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs pray for:

- a) a declaratory judgment that Minn. Stat. § 609.215, subd 1, is unconstitutional on its face to the extent it criminalizes “speech” that “enables” a “suicide;”
- b) a permanent injunction prohibiting the defendants from enforcing Minn. Stat. § 609.215, subd 1, to the extent it criminalizes “speech” that “enables” a “suicide;”
- c) an award of their court costs, including a reasonable attorneys’ fee, and
- d) such other relief as the Court deems appropriate.

Dated this August 21, 2018.

Respectfully submitted,

\_\_\_\_\_  
/s/Robert Rivas  
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Lawyers for Final Exit Network, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FINAL EXIT NETWORK, INC., FRAN  
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Plaintiffs,

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JOHN L. FOSSUM, in his official capacity  
as the Rice County Attorney,

Defendants.

**Case No. 0:18-cv-01025-JNE/SER**

**NOTICE OF FILING DEFENDANT'S  
CONSENT TO THE FILING OF THE  
PLAINTIFFS' AMENDED  
COMPLAINT**

The plaintiffs, Final Exit Network, Inc. ("FEN"), Fran Schindler, and Janet Grossman, pursuant to Fed. R. Civ. P. 15(a)(2), give notice of the filing of the Minnesota attorney general's consent, attached hereto, to the filing of the Amended Complaint, which is filed simultaneously with this notice.

Dated this August 21, 2018.

Respectfully submitted,

\_\_\_\_\_  
/s/Robert Rivas

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Lawyers for Final Exit Network, Inc.



## Robert Rivas

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**From:** Marisam, Jason <Jason.Marisam@ag.state.mn.us>  
**Sent:** Tuesday, August 21, 2018 12:26 PM  
**To:** Robert Rivas  
**Cc:** Paul Engh (Engh4@aol.com); Donna Wilkerson; Peick, Julie  
**Subject:** RE: Final Exit Network's Amended Complaint

As counsel for the Attorney General in this matter, I consent to the filing of the Amended Complaint. I anticipate filing a motion to dismiss the Amended Complaint and do not waive any right to do so.

Thank you.

Jason Marisam  
Assistant Attorney General  
445 Minnesota Street, Suite 1100  
St. Paul, MN 55101-2128  
Tel: (651) 757-1275  
Fax: (651) 282-5832

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**From:** Robert Rivas [mailto:rrivas@ssclawfirm.com]  
**Sent:** Tuesday, August 21, 2018 11:06 AM  
**To:** Marisam, Jason  
**Cc:** Paul Engh (Engh4@aol.com); Donna Wilkerson  
**Subject:** RE: Final Exit Network's Amended Complaint

Jason, here's the slightly edited final version we anticipate filing today. Please confirm if General Swanson gives consent.

Thanks,

**Robert Rivas**  
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**From:** Robert Rivas  
**Sent:** Saturday, August 18, 2018 2:03 PM  
**To:** Jason Marisam <Jason.Marisam@ag.state.mn.us>  
**Cc:** Paul Engh (Engh4@aol.com) <Engh4@aol.com>; Donna Wilkerson (dwilkerson@ssclawfirm.com)

<dwilkerson@ssclawfirm.com>

**Subject:** Final Exit Network's Amended Complaint

Jason, here's Final Exit Network's amended complaint. Can you let us know by Monday whether the AG will consent to its filing? Thanks,

**Robert Rivas**

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