Suit Contests Limits on Online Activities of Sex Offenders

By NORIMITSU ONISHI

California's sex offender registry, the nation's oldest and largest, lists more than 74,000 living Californians convicted of sex crimes since 1947. Like sex offenders elsewhere in the nation, they have been increasingly restricted in recent years as communities have barred them from not only schoolyards and playgrounds but also beaches, libraries, harbors and other public places.

Now, under a ballot initiative that California endorsed on Election Day, sex offenders' movements will also be monitored in the digital realm. They must inform the authorities of their e-mail addresses, user names, screen names and other Internet handles, as well as report any additions or changes within 24 hours. The information will not be included in the public registry that lists sex offenders' names, addresses and other details.

The new law immediately brought a lawsuit from the American Civil Liberties Union, which argued that its requirements violate the First Amendment by infringing on the right to free, anonymous speech on the Internet. A federal judge has issued a temporary restraining order blocking the Internet provisions of the law, which also includes increased prison terms for sex trafficking. The judge is expected to consider a request for a preliminary injunction at a hearing on Tuesday.

The dispute in California, home to many Internet companies and some of the nation's fiercest advocates of online freedom, could have wider repercussions. In recent years, many states have struggled to place appropriate limits on the online activities of registered sex offenders, with some issuing outright bans on using the Internet and others imposing narrower restrictions. Successful legal challenges have forced some state legislatures, like Louisiana's, to alter their bans, while the courts have upheld outright bans elsewhere, including in Indiana.

The ballot measure's original supporters, including Chris Kelly, a former chief privacy officer at Facebook, are expected to join the state in defending the new law. Mr. Kelly said it simply closed “the Internet loophole” in the existing sex offender registry.

“What California law does now is it adds essentially an extra field in the database of what sex offenders have to register,” Mr. Kelly said. “That is a common-sense way to extend the registry in the Internet era.”

Speaking about the law and the possibility that it runs afoul of the First Amendment, he said: “This doesn't do that, and it's deliberately crafted not to do that. All it says is law enforcement and, in some cases other entities, should have access to that data.”

Failure to comply with the law, which also requires registered sex offenders to inform the authorities of their Internet service providers, could result in punishment ranging from 90 days in jail to three years in prison.

Michael Risher, the A.C.L.U. lawyer leading the suit, said the law was unconstitutional because it is too broad. The law, he said, applies to all registered sex offenders, including those whose convictions have little to do with online activities, like sex workers or those convicted of indecent exposure. What is more, he said, is that it makes no distinction between online activities, and it would curtail even Internet usage that could not be criminal.

“This is a problem under the First Amendment,” Mr. Risher said. “Americans have a right under the First Amendment to speak anonymously, and this eviscerated that right. People, for example, would have to turn over the screen names they use to comment on the New York Times Web site.”

“That's not activity that can be used to commit a crime in any way,” he continued. “It is pure speech, often pure speech about important political issues of the day. It's an area where there is no reason for the government to be requiring people to identify themselves to the police.”

In the lawsuit, the A.C.L.U. is representing two anonymous sex offenders who say they will reduce or cease their participation in online discussions on political topics for fear that their identities could be revealed.

The requirements became law after Californians overwhelmingly passed Proposition 35. Mr. Kelly, who ran unsuccessfully for state attorney general in 2010, bankrolled the campaign for the initiative, which did not face an organized opposition.

Hanni Fakhoury, a lawyer at the Electronic Frontier Foundation, an Internet civil rights group that has joined the A.C.L.U. in the lawsuit, said the law reflected government attempts to strengthen limits on sex offenders and regulate the Internet. Sex offenders, he said, should be guaranteed First Amendment rights in both physical and digital spheres.

“Online speech is very different in form than traditional speech,” Mr. Fakhoury said. “But in substance, they should be treated the same under the First Amendment.”

Other states, including New York and Utah, also collect Internet information for registered sex offenders. But how that information can be used and from what category of sex offender it is collected varies according to the states' laws, experts said.

The First Amendment implications of those laws carry great significance, experts said, because they will remain in effect long after sex offenders have served their sentences — for life, in the case of California.

Prof. Ruthann Robson, who focuses on constitutional law at the City University of New York School of Law, said California's law was one of the nation's broadest in requiring online information for all sex offenders, regardless of the severity of the crime or its link to the Internet.

“These laws are not supposed to be about punishment but about prevention,” Professor Robson said. “If we curtail someone's First Amendment rights because we're afraid something else will happen, there has to be a really close fit between how the state is curtailing somebody's First Amendment rights and what they think is going to happen.”

Daphne Phung, the founder of California Against Slavery, a private organization that works to combat sex trafficking and campaigned for the ballot initiative with Mr. Kelly, said registered sex offenders presented a potential danger even if their crime was unrelated to the Internet.

“The Internet has been used in an increasing way to lure, to recruit, to exploit children, but also even adults,” Ms. Phung said. “We want to make sure that our law enforcement has the tools that they need when they need those tools.”