

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT
AT KANSAS CITY**

JANE DOE I, et al.,)	
)	
Plaintiffs,)	
)	
JANE DOE III,)	
JOHN DOE VII,)	
JOHN DOE VIII,)	
)	
Plaintiff-Intervenors,)	
)	
v.)	Case No. 03-CV-219085
)	Division 18
THOMAS PHILLIPS, et al.)	
)	
Defendants.)	

FILED
DEPT. OF CIVIL RECORDS
COURT ADMINISTRATOR'S OFFICE

AUG - 5 2004

CIRCUIT COURT OF JACKSON CO., MO.
BY M. G. DCA

PETITION OF APPLICANT-INTERVENORS FOR DECLARATORY RELIEF

COME NOW Plaintiff-Intervenors Jane Doe III, John Doe VII, and John Doe VIII ("Intervenors"), by undersigned counsel, and, for their causes of action against the defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Intervenors' claims are brought under the Constitution of the State of Missouri and their claims for declarative relief are authorized by Rule 87.02 of the Missouri Rules of Civil Procedure and by the general legal and equitable powers of this Court.
2. The Court has jurisdiction over Defendants because a substantial part of the acts alleged in this Petition were committed, or are to be performed, in Jackson County, Missouri.
3. Venue is proper in this Court because a substantial part of the acts or omissions giving

rise to Intervenor's claims occurred in Jackson County, Missouri, and because all defendants reside in Missouri and Defendants Phillips and Sanders perform their official duties within the State of Missouri.

4. This action for declaratory judgment is properly brought under Rule 87.02 because the Intervenor's rights are affected by Missouri's Sex Offender Registration Act, (SORA), §§ 589.400 to 589.425 MO. REV. STAT and Intervenor is contesting the validity of those statutes.

THE PARTIES

Intervenor

5. In 1998 Plaintiff-Intervenor Jane Doe III, a resident of Jackson County, Missouri, was convicted of a sex crime in Atascosa County, Texas, given a suspended imposition of sentence, and placed on parole for ten years. She was advised by her attorney in Texas that she was required to register in Texas for the ten years she was on parole, but no longer. When she moved to Missouri, she discovered that under Missouri's SORA she was required to register for the rest of her life. She presently resides in Jackson County, Missouri and is required by SORA to register in Jackson County.

6. Plaintiff-Intervenor John Doe VII, a resident of Jackson County, Missouri, was convicted of harming a minor; during a bitterly contested dissolution proceeding in 1993 John Doe VII was charged with a 1991 incident in which it was charged that he had injured his son by spanking him with a belt, leaving a bruise; on the advice of his lawyer that a plea of guilty would result in a suspended imposition of sentence, probation, and no criminal history record of a conviction, he entered a plea of guilty and received a suspended imposition of sentence and probation; thereafter, he successfully completed probation; when SORA became effective as to him, he learned he had to register; had he known that he would have a criminal history record of

a conviction resulting in his obligation to register under SORA, he would not have entered his plea in 1993.

7. Plaintiff-Intervenor John Doe VIII, a resident of Jackson County, Missouri, was convicted in Missouri in December 1993 of inappropriate touching of his then-eight year old stepdaughter; he maintained his innocence but was told that it would cost him \$35,000 in fees to defend the charges and impose a hardship on his step-daughter; on the advice of his lawyer that a plea of guilty would result in a suspended imposition of sentence, probation, and no criminal history record of a conviction, he entered a plea of guilty and received a suspended imposition of sentence and probation; thereafter, he successfully completed probation; when SORA became effective as to him, he learned he had to register; had he known that he would have a criminal history record of a conviction resulting in his obligation to register under SORA, he would not have entered his plea in December 1993.

Defendants

8. Defendant Thomas Phillips (“Phillips”) is the present Sheriff of Jackson County, Missouri, and the chief law enforcement officer for Jackson County. He is named in his individual capacity because he is charged, under SORA, with maintaining a complete public list of the names, addresses, and crimes of all offenders registered in their respective counties (“short list”), with providing a copy of the list to any person who requests one, and with forwarding the complete registration (“long list”) to the Missouri Highway Patrol.

9. Defendant Michael Sanders is the Prosecutor for Jackson County, Missouri. He is named in his official capacity as Prosecutor of Jackson County, Missouri because he is charged by law with the responsibility of enforcing SORA in their respective counties.

10. Colonel Roger D. Stottlemire is Superintendent of the Missouri State Highway Patrol, a state agency, created and operating under Chapter 43 of the Missouri Revised Statutes and charged under SORA with entering the offender information ("long list") into the Missouri Uniform Law Enforcement System ("MULES").

ALLEGATIONS COMMON TO ALL COUNTS

11. In 1994, Missouri enacted a sexual offender registration statute, informally called Megan's Law, MO. REV. STAT. §§ 589.400 to 589.425, Supp. 1999 ("SORA"), requiring registration by certain sex offenders with their local sheriff's department.

12. Subsequently, the 91st Missouri General Assembly passed Senate Bill No. 758, effective August 28, 2002, which broadened § 589.400.2 to include among those who must register not only offenders "coming into the county" but any person convicted and released from incarceration or probation.

13. Any person who is required to register but fails to do so may be charged with a Class A misdemeanor and will also be subject to prosecution for a felony if the registrant makes any errors, intentional or inadvertent, in subsequent registrations.

14. When sex offenders are forced to comply with SORA, it imposes upon them a new set of legal duties significantly altering their legal status.

15. Pursuant to MO. REV. STAT. § 589.417, the chief law enforcement official of each county shall maintain, for all offenders registered in his county, a complete list of the names, addresses and crimes ("short list") of such offenders. Pursuant to § 589.410, the chief law enforcement official of each county shall forward the completed offender registration form ("long list") to the Missouri Highway Patrol who shall enter the information into the Missouri Uniform Law Enforcement System ("MULES").

16. Pursuant to § 589.417, any person may request the short list from the chief law enforcement officer of any county. The statute contains no restrictions as to what any person may do with that list and those obtaining the list may post it on the internet, publish it, or pass it out at homes or businesses near listed persons. Missouri does not base access to information on the risk level assigned to the individual offender.

17. The short list is undifferentiated; it does not say which registrants are, or may be, currently dangerous and which are not.

18. Many offenders required under SORA to register are not dangerous to others and have not been found to be dangerous sex offenders. Jane Doe III, John Doe VII, and John Doe VIII are not dangerous to anyone.

19. When offenders are discharged from parole, the State of Missouri certifies that their discharge is “not incompatible with the best interests of society”.

20. When a person’s name is added to a list of sex offenders kept in the office of the county sheriff and/or the information concerning her convictions is entered into the MULES data bank maintained by the Missouri State Highway Patrol, the publication of the registry implies that each person listed is more likely than the average person to be currently dangerous.

21. Article I, Section 10 of the Missouri Constitution states that no person shall be deprived of life, liberty, or property without due process of law.

22. Article I, Section 2 of the Missouri Constitution affirms that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government.

23. Article I, Section 30 of the Missouri Constitution states that no person can be

attainted of treason or felony by the general assembly.

24. Article III, Section 40(30) prohibits the general assembly from passing any local or special law where a general law can be made applicable.

25. Article I, Section 14 of the Missouri Constitution provides that the courts of justice shall be open to every person and certain remedy afforded for every injury to person, property or character and justice shall be administered without denial or delay.

26. Article 1, Section 2 of the Missouri Constitution guarantees the right to trial by jury.

COUNT I
(Substantive Due Process: Missouri Constitution)

27. Intervenors hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 26 above.

28. Intervenors have a fundamental liberty interest, deeply rooted in the State's history and tradition, in being free from restrictions upon their personal freedom once their sentences have been served and/or they have successfully completed their probation.

29. The State's action in implementing the provisions of SORA adversely implicates that fundamental liberty interest.

30. SORA covers all sex offenders from the time of their release until their death without relation to whether or not they are likely to repeat their offense, the gravity of their offense, or the danger they present to society. SORA is not narrowly tailored to serve a compelling state interest.

WHEREFORE, Intervenors requests that this Court enter its order declaring Missouri's SORA unconstitutional and for any such further legal and equitable relief as this Court deems appropriate.

COUNT II

(Open Courts and Right to Jury Trial: Missouri Constitution)

31. Intervenors hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 30 above.

32. Intervenors under SORA are automatically required to register and there is no provision in SORA for them to test that requirement, individually or as a class, in court.

33. Intervenors are arbitrarily and unreasonably barred from court in contravention of Article 1, §14 of the Missouri Constitution.

34. When Intervenors register as sex offenders, they are exposed to penalties and/or conditions imposed upon them exceeding the maximum they received when punished according to the facts reflected in their initial conviction. These penalties or conditions are imposed on Intevenors in violation of their right to a jury trial protected by Article 1, Section 2, of the Missouri Constitution.

WHEREFORE, Intervenors request that this Court enter its order declaring Missouri's SORA unconstitutional and for any such further legal and equitable relief as this Court deems appropriate.

COUNT III

(Equal Protection: Missouri Constitution)

35. Intervenors hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 34 above.

36. Intervenors have a fundamental right or basic liberty to be free from restriction upon their personal freedom once they have successfully completed probation.

37. Sex offenders are required to register under SORA without regard to their propensity

to repeat their offense or without regard to the danger they present to the public or society. Other persons convicted of violent crimes such as murdering an adult or battery upon an adult, no matter how often they are found guilty of the offense and no matter what risk they present to society are not treated similarly to sex offenders in that they are not required to register. All persons similarly situated, i.e. presenting an equal risk to society, are not treated similarly. SORA is impermissibly biased against one subclass of offenders.

38. When Intervenors are required to register as sex offenders they will and do suffer punishment and injuries consisting of loss of good name and reputation, harassment, humiliation, embarrassment, and inconvenience, as well as possible lost earnings and benefits, none of which is rationally related to a legitimate state interest and none of which happens to, or is incurred by, other offenders who are not required to register, many of whom are in fact violent and dangerous.

39. Persons are required to register regardless of whether they were found guilty by a jury or pled guilty. Moreover they are required to register if they were given an SIS or SES even though an SIS does not result in a final judgment of conviction from which an appeal will lie. Thus, SORA requires that dissimilar groups be treated similarly.

40. Because the requirement to register is not based upon any present danger to society or the degree of risk the offender presents to the public, the requirement is not rationally related to any legitimate state interest and violates Intervenors' right to equal protection.

WHEREFORE, Intervenors request that this Court enter its order declaring Missouri's SORA unconstitutional and for any such further legal and equitable relief as this Court deems appropriate.

COUNT IV
Special Law

41. Intervenors hereby adopts and incorporates by reference the allegations contained in paragraphs 1 through 40 above.

42. SORA is a "special law" in that it excludes or omits many violent offenders who are at equal risk of re-offending or who present an equal danger to society to those included in SORA.

43. The designation in SORA of the class required to register is closed-ended in that it is not possible that the status of the members of the class could change.

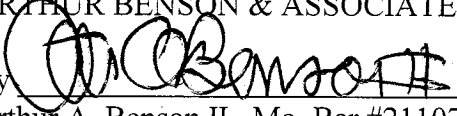
44. The classification of those who must register is arbitrary and without a rational relationship to a legislative purpose in that it does not apply to all persons similarly situated.

45. As a special law, SORA is unconstitutional because there are many other general laws that could be used to serve the same purpose as SORA: § 43.504 *et seq.*, Reportable crimes; § 558.016 *et seq.*, Extended terms for recidivism; § 589.010 *et seq.*, Sexual Assault Prevention Act; and, § 589.303 *et seq.*, Records required-public-access-court ordered access.

WHEREFORE, Intervenors request that this Court enter its order declaring Missouri's SORA unconstitutional and for any such further legal and equitable relief as this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Plaintiff hereby certifies that a copy of the above pleading was delivered to the following

on August 5, 2004:

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