

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

JANE DOE I,)
)
JOHN DOE I,)
)
JOHN DOE II,)
)
JOHN DOE III,)
)
JOHN DOE IV,)
)
JOHN DOE V,)
)
JOHN DOE VI,)
)
JANE DOE II,)

v.)

Case No. _____

THOMAS PHILLIPS,)
in his official capacity as Sheriff of Jackson)
County, Missouri and as representative of all)
Missouri sheriffs,)
3310 Rennau Drive)
Lee's Summit, Missouri,)

and)

MICHAEL SANDERS,)
in his official capacity as Prosecutor)
Jackson County, Missouri and as)
representative of all Missouri county)
prosecutors,)
415 East 12th Street, 11th Floor)
Kansas City, Missouri 64106,)

and)

COLONEL ROGER D. STOTTLEMYRE,)
in his official capacity as Superintendent)
Missouri State Highway Patrol)
Hugh H. Waggoner Building)

1510 East Elm)
Jefferson City, Missouri 65101,)
)
Defendants.)

PETITION FOR DECLARATORY RELIEF

**(Class Action Challenging the Constitutionality of
Missouri's Sexual Offender Registration Act)**

COME NOW Plaintiffs Jane Doe I and II and John Doe I through VI by their undersigned counsel, and, for their causes of action against the above named defendants, their employees, agents, and successors in office, state and allege as follows:

JURISDICTION AND VENUE

1. Plaintiffs' claims are brought under the Constitution of the State of Missouri. Moreover, Plaintiffs' 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 Plaintiffs' 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 plaintiffs' rights are affected by Missouri's Sex Offender Registration Act, ("SORA"), §§ 589.400 to 589.425 MO. REV. STAT and Plaintiffs are contesting the validity of those statutes.

CLASS ACTION

5. This petition is properly filed as a class action pursuant to Rule 52.08 because the class consists of all convicted sex offenders living in the State of Missouri and required by SORA to register in their county of residence. The class is so numerous that joinder of all members is impracticable.

6. The question of the constitutionality of SORA is common to all members of the class.

7. The representative plaintiffs will fairly and adequately protect the interests of the class.

THE PARTIES

Plaintiffs

8. All Plaintiffs are convicted sex offenders, living in the State of Missouri, and required by SORA to register in their counties of residence.

9. Plaintiff Jane Doe I was convicted in St. Louis County, Missouri, in 1992, of having consensual sex when she was age twenty (20) with a boy age fifteen (15), whom she thought was age eighteen (18). She received a suspended imposition of sentence ("SIS"), served no time, has no criminal conviction, and was released from probation in 1997. She now has five children, all of whom are in her custody. Jane Doe I is required by SORA to register in person at the office of the county sheriff four times a year for the rest of her life.

10. Plaintiff John Doe I, was convicted in Lawrence County, Missouri, in 1988, of having *touched* his 15-year-old girlfriend inappropriately. He initially pleaded not guilty, but changed his plea and received a suspended execution of sentence ("SES"). His probation

expired in 1992.

11. Plaintiff John Doe II was convicted in Wyandotte County, Kansas, in 1986, of one count of enticement of a minor. He was placed on probation for two (2) years, which he successfully completed. He obtained mental health counseling for seven years and has had no other convictions. He now resides in Newton County, Missouri.

12. Plaintiff John Doe III, a man in his sixties, was convicted in 1993 in Jackson County, Missouri, of sodomy and sexual abuse (he fondled his two granddaughters). He served nine years in correctional facilities and has successfully completed the Missouri sex offenders program. He is still required to attend group-counseling sessions. He has been assessed as a low risk to society.

13. Plaintiff John Doe IV was accused by his stepdaughter of molesting her. Even though Plaintiff knew the charges were false, on advice of his attorney, he entered an *Alford*¹ plea, in St. Louis County, Missouri, to save the family from having to go through a painful trial. He served no time, received three to five years probation, and was released in 1992 or 1994. He continues to reside in St. Louis County, Missouri.

14. John Doe V, a resident of St. Louis County, Missouri, had sex with a minor in 1992. On his own volition, he sought in-patient psychological treatment that same year and in December, 1992, voluntarily underwent an orchiectomy (a form of castration). It was after this treatment that he was identified to authorities and prosecuted, serving four months in prison. He successfully completed his period of parole in 1998. Near the termination of

¹*North Carolina v. Alford*, 400 U.S. 25 (1970) (holding that the lack of defendant's confession to the criminal act charged did not constitutionally impair acceptance of his plea because the trial court had before it a strong factual basis for the plea).

his parole, he passed a lie detector test concerning his sexual activities during parole.

15. John Doe VI, a resident of Jackson County, was convicted of sodomy in Platte County, Missouri in 1991. He was released from probation in 1996. Recently, the church that John Doe VI and his wife had been attending for the last ten (10) years, upon learning of his earlier conviction through his registration on the offender list, confronted him and demanded that he sign a "contract" regarding his behavior even though Plaintiff has no involvement with youth activities. John Doe VI and his wife have had to seek another church where they can worship.

16. Jane Doe II was convicted of sexual assault in 1991, in Jackson County, Missouri, received a SIS and was released from probation in 1996. She was a municipal employee until terminated in the spring of 2003. Jane Doe II was the subject of an anonymous letter sent to her supervisor. The letter writer stated that she found out about Plaintiff's prior conviction from a friend who noticed Jane Doe II's name on the sex offender registration list, and, because the letter writer's fiancé had previously been fired by the city, she thought it only fair that the City fire Jane Doe II. Jane Doe II presently resides in Jackson County, Missouri.

Defendants

17. 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 and as a class representative of all Missouri county sheriffs and/or chief law enforcement officers who are 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.

18. Defendant Michael Sanders is the Prosecutor for Jackson County, Missouri. He is named in his official capacity as Prosecutor of Jackson County, Missouri and as representative of all Missouri county prosecutors who are charged by law with the responsibility of enforcing SORA in their respective counties..

19. Colonel Roger D. Stottlemyre 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

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

21. 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.

22. Anyone 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.

23. When sex offenders are forced to comply with SORA, it imposes upon them a

new set of legal duties significantly altering their legal status.

24. 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”).

25. 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.

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

27. Many offenders required under SORA to register are not dangerous to others and have not been found to be dangerous sex offenders. Plaintiffs Jane Does I and II and John Does I - VI are not dangerous to anyone.

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

29. When Plaintiffs’ names are added to a list of sex offenders kept in the office of the county sheriff and/or the information concerning their 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.

30. 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.

31. Article I, Section 13 of the Missouri Constitution prohibits enacting any *ex post facto* law or statute with retrospective application. It also prohibits retrospective application of statutes.

32. 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.

33. Article I, Section 30 of the Missouri Constitution states that no person can be attainted of treason or felony by the general assembly.

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

35. 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.

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

COUNT I
(Substantive Due Process: Missouri Constitution)

37. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 37 above.

38. Plaintiffs have a fundamental liberty interest, deeply rooted in the State's history and tradition, in being free from restriction upon their personal freedom once their sentence has been served and/or they have successfully completed their probation or parole.

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

40. 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, Plaintiffs 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 II
(*Ex post facto* law/Retrospective Application of Statutes: Missouri Constitution)

41. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 41 above.

42. Missouri's SORA as passed in 1994 and subsequently amended, reaches back to July 1, 1979, to include "any person" who was convicted, found guilty of or pled guilty to committing certain offenses.

43. The enactment of Missouri's SORA and its application to Plaintiffs, many of whom were fully discharged from prior criminal sanctions, imposes additional punishment upon Plaintiffs in violation of the prohibition against *ex post facto* laws contained in Article 1, Section 13 of the Missouri Constitution.

44. If Plaintiffs register and their names are added to a list of sex offenders kept in the office of the county sheriff and/or the information concerning their convictions is entered into the MULES data bank maintained by the Missouri State Highway Patrol, Plaintiffs will be disadvantaged and harmed, as the information branding them as sex offenders would be subject to world wide dissemination.

45. SORA is punitive-in-fact and imposes an additional punishment to that in effect at the time the act was committed because:

- a. it requires some offenders to register in person four times a year, similar to probation or supervised release;
- b. it imposes lifetime registration for all offenders;
- c. it does not relate the registration requirement to the risk of recidivism or provide for an individualized clinical assessment of the risk of recidivism;
- d. it makes no provision for a judicial determination of rehabilitation permitting a subsequent release from the requirement to register; and,
- e. it criminally punishes non-compliance with the registration requirements.

46. Missouri's SORA imposes new obligations, duties, and disabilities upon Plaintiffs with respect to past transactions in violation of Article 1, Section 13 of the Missouri Constitution's prohibition against enacting a law that is retrospective in its operation.

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

47. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 46 above.

48. Plaintiffs 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.

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

50. When Plaintiffs 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 Plaintiffs in violation of their right to a jury trial protected by Article 1, Section 2, of the Missouri Constitution.

WHEREFORE, Plaintiffs 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
(Equal Protection: Missouri Constitution)

51. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 50 above.

52. Plaintiffs have a fundamental right or basic liberty to be free from restriction upon their personal freedom once their sentence has been served and/or they have

successfully completed their probation or parole.

53. 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.

54. When Plaintiffs are required to register as sex offenders they will 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.

55. 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.

56. 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 Plaintiffs' right to equal protection.

WHEREFORE, Plaintiffs 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 V
(Bill of Attainder: Missouri Constitution)

57. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 56 above.

58. SORA is a legislative act that specifically singles out and designates sex offenders by describing them in terms of their past conduct and applies to them in such a way as to inflict punishment on them for past acts without a judicial trial.

59. The offenders so described under SORA are unable to escape registration by altering the course of their present activities.

60. SORA deprives sex offenders, including those never given a judgment of conviction, of a previously enjoyed right to be free of registration and identification once their parole is completed.

61. There is no rational, non-punitive basis for the legislation.

WHEREFORE, Plaintiffs 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 VI
Special Law

62. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 61 above.

63. 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.

64. 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.

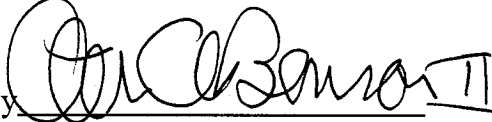
65. The classification of those who must register is arbitrary and without a rational relationship to a legislative purpose in that it does not apply to all persons similarly situated.

66. 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, Plaintiffs 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,

ARTHUR BENSON & ASSOCIATES

By 

Arthur A. Benson II Mo. Bar #21107
Jamie Kathryn Lansford Mo. Bar #31133
Aften P. McKinney W.D. # 000050
4006 Central Avenue (Courier Zip: 64111)
P.O. Box 119007
Kansas City, Missouri 64171-9007
(816) 531-6565
(816) 531-6688 (telefacsimile)

abenson@bensonlaw.com
jlansford@bensonlaw.com
amckinney@bensonlaw.com

Attorneys for Plaintiff