UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NATIONAL ASSOCIATION FOR RATIONAL SEXUAL OFFENSE LAWS; NC RSOL; and JOHN DOE, Plaintiffs, v. JOSHUA STEIN, Attorney General of the State of North Carolina; and DISTRICT ATTORNEYS Lorrin Freeman (District 10); Pat Nadolski (District 15A); and Kristy Newton (District 16A), Defendants.	)	Case No. 1:17-cv-53

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOTICE OF CHALLENGE TO CONSTITUTIONALITY OF STATE STATUTE

Preliminary Statement

1. Sex Offender Registry laws largely originated in the mid-1990s in response to several highly publicized, violent crimes against children.

2. Although the abduction and/or sexual assault of children by strangers is rare, the sheer horror of these crimes, combined with their publicity,

caused the near universal enactment of federal and state registry laws by 1996.

3. Originally, these laws were relatively simple, often doing no more than establishing a non-public or limited release law-enforcement database to track the current addresses of persons convicted of certain sexual crimes and/or crimes against children. The original laws generally (and North Carolina's in particular) required registration for a period of ten years, allowed for a petition for exception, and imposed no disabilities other than the fact of registration itself.

4. Since that time, however, the registry laws in North Carolina and many other states have morphed into mandatory, public, often lifetime registration and reporting requirements, along with housing, occupational, and mere presence restrictions that impose extensive direct and indirect restraints on all registrants regardless of their actual level of dangerousness.

5. In North Carolina, a registry originally designed to collect and provide basic information on registrants has grown into an elaborate system of affirmative restraints affecting nearly all aspects of registrants' lives without any history of legislative fact-finding or other indication that these restraints are either necessary or effective in protecting the public.

6. In fact, there is now general consensus among researchers that these laws not only fail to protect the public, but actually exacerbate genuine risk factors for recidivism, thereby increasing the chance of future criminal activity.

7. In this case, Plaintiffs ask this Court to recognize that the North Carolina registry laws, as specifically enumerated herein, have changed from a

database of criminal convictions to a punitive regime of affirmative restraint. *See, e.g.*, *Doe v. Snyder*, 834 F.3d 696 (6th Cir. 2016) (holding Michigan Sex Offender Registration Act violates *ex post facto* clause); *U.S. v. Juvenile Male*, 590 F.3d 924 (9th Cir. 2009) (finding 42 U.S.C. § 16901 *et seq*. (SORNA) violates *ex post facto* clause when applied to juveniles), *vacated as moot*, 564 U.S. 932 (2011); *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011) (holding Ohio's registry scheme violates *ex post facto* clause); *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009) (holding Indiana's registry scheme violates *ex post facto* clause); *State v. Letalien*, 985 A.2d 4 (Me. 2009) (holding Maine's registry scheme violates *ex post facto* clause); *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009) (holding that Kentucky's limitations on where registrant may live violates the *ex post facto* clause).

8. In light of these constitutional deficiencies, the Plaintiffs seek declaratory and injunctive relief barring retroactive application of the following provisions of the North Carolina registry law[1]:

    a. 2006 N.C. Sess. Laws 247 (2005 N.C. HB 1896) mandating semi-annual, in-person reporting to the local sheriff, giving the local sheriff the authority to require the registrant to report at any time, mandating in-person reporting for any change in registry status, severely restricting where registrants can live, and banning them

[1] Herein, the term "registry law" is used to refer to those North Carolina statutes that pertain solely to registered sex offenders. They are codified at Article 27A of the North Carolina Criminal Code (N.C.G.S. §14-208.5 – §14-208.45) as well as the two separate criminal provisions referred to above – N.C.G.S. § 14-202.5 (ban on use of commercial networking sites by sex offenders) (declared unconstitutional) and N.C.G.S. § 14-202.6 (ban on name changes by sex offenders).

from jobs that involve the "instruction, supervision, or care of a minor");

b. 2008 N.C. Sess. Laws 117 (2007 N.C. HB 933) lengthening the registration requirement from ten (10) to thirty (30) years, shortening the time in which a registrant must report to the sheriff any changes of information, and banning registrants from a wide-range of public and private spaces;

c. 2008 N.C. Sess. Laws 220 (2007 N.C. SB 1736) requiring registrants to notify the sheriff of any "online" identifiers and authorizing release of that information to companies;

d. 2009 N.C. Sess. Laws 491 (2009 N.C. HB 1117) barring any registrant from obtaining a "P" or "S" endorsement on their driver's license ("P" for "passenger" and "S" for "school bus"); and

e. 2016 N.C. Sess. Laws 102 (2015 N.C. HB 1021) reinstituting the ban on registrants from a wide range of public and private spaces after 2008 N.C. Sess. Laws 117 was largely struck down on First Amendment grounds.

Jurisdiction and Venue

9. Plaintiffs' claims are brought pursuant to 42 U.S.C. § 1983.

10. Jurisdiction of federal claims is proper under 28 U.S.C. §§ 1331 and 1343. Plaintiffs seek redress for the deprivation of rights secured by the U.S. Constitution.

11. Venue is proper in the Middle District of North Carolina pursuant to 28 U.S.C. § 1391(b). All defendants are residents of North Carolina and at

least one defendant resides in the federal Middle District of North Carolina.

12. The declaratory and injunctive relief sought by Plaintiffs is authorized by 28 U.S.C. §§ 2201 and 2202, Federal Rules of Civil Procedure 57 and 65, and by the legal and equitable powers of the Court.

Defendants

a. Joshua Stein (Attorney General)

13. Defendant Joshua Stein is the Attorney General of the State of North Carolina. He is sued in his official capacity.

14. The Attorney General is the State's authorized legal representative charged with defending the interests of the State in all criminal and civil suits.

15. Under N.C.G.S. §§ 114-11.6 and 114-2(1), the Attorney General has the authority, through special prosecutors, to bring or assist in criminal suits upon request of a district attorney.

16. Under N.C.G.S. § 114-3, the Attorney General consults with and advises district attorneys, provides legal opinions, and handles all criminal appeals from state trial courts.

17. The previous Attorney General actively pursued prosecutions under the registry law and indicated an intent to do so in the future. The current Attorney General is expected to do the same.

b. Individual District Attorneys

18. Defendant District Attorneys are responsible for the prosecution of crimes in their respective judicial districts. They are each sued in their official capacities.

19. The District Attorneys each have statutory authority under N.C.G.S. § 7A-61 to prosecute individuals for violations of the registry laws. The statute states that "[t]he district attorney shall . . . prosecute in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district court of his prosecutorial district[.]"

20. The Plaintiffs, including NARSOL and NC RSOL on behalf of their members, wish to engage in conduct proscribed by the provisions of the registry law challenged herein and are reasonably concerned that they will be prosecuted for doing so.

21. The State has not disclaimed any intention of enforcing these provisions of the registry law against either the individual Plaintiffs or the affected members of NC RSOL.

Plaintiffs

a. John Doe

22. John Doe is a resident of North Carolina judicial district 15A.

23. John Doe is currently required to register as a sex offender in North Carolina solely on the basis of his conviction for sexual assault in 2002.

24. At the time John Doe committed the offense leading to registration he was fifteen (15) years old. The victim in that case was known to John Doe and was older than John Doe.

25. The provisions of the registry law challenged herein have been retroactively applied to John Doe.

26. Specifically, John Doe is subject to the provisions of 2006 N.C. Sess. Laws 247, 2008 N.C. Sess. Laws 117, 2008 N.C. Sess. Laws 220, 2009 N.C. Sess. Laws 491, and 2016 N.C. Sess. Laws 102.

27. John Doe has been barred from housing due to the restrictions of 2006 N.C. Sess. Laws 247; banned from libraries, parks, and numerous other fora due to 2008 N.C. Sess. Laws 117 and 2016 N.C. Sess. Laws 102; has been prevented from obtaining a "P" endorsement on his driver's license due to 2009 N.C. Sess. Laws 491; and is hesitant to engage in online discourse due to 2008 N.C. Sess. Laws 220.

28. But for these restrictions, John Doe would have bought housing, would go to the library, parks, and other public and private fora made off-limits by 2008 N.C. Sess. Laws 117 and 2016 N.C. Sess. Laws 102, would have sought a "P" endorsement for his driver's license, and would engage in online discourse.

b. NC RSOL

29. NC RSOL is an independently chartered non-profit corporation organized under the laws of the State of North Carolina.

30. It is a voluntary membership organization.

31. Its purpose is to advocate, both legislatively and legally, for the reform of state and national laws regarding sex offender registries and legal restrictions placed on registrants (collectively "registry laws") and to seek to vindicate the constitutional rights of its members.

32. NC RSOL has membership that includes registrants, family members of registrants, and other concerned citizens – specifically including current registrants subject to the provisions of the law challenged herein as violating the *Ex Post Facto* clause of the United States Constitution.

33. One such member is the affiant of a sealed affidavit previously entered in this case [D.E. 31-1]. This member is hereinafter referred to as James Doe 1.

34. James Doe 1 is currently a member of NC RSOL.

35. James Doe 1 currently resides within North Carolina judicial district 16A.

36. He is currently on the North Carolina Sex Offender Registry and is subject to the provisions of the registry law challenged herein.

37. The sole offense of conviction for which James Doe 1 is required to register occurred prior to 1997.

38. The provisions of the registry law challenged herein have been retroactively applied to James Doe 1.

39. Specifically, James Doe 1 is subject to the provisions of 2006 N.C. Sess. Laws 247, 2008 N.C. Sess. Laws 117, 2008 N.C. Sess. Laws 220, 2009 N.C. Sess. Laws 491, and 2016 N.C. Sess. Laws 102.

40. James Doe 1 has been barred from housing due to the restrictions of 2006 N.C. Sess. Laws 247; banned from libraries and political meetings due to 2008 N.C. Sess. Laws 117 and 2016 N.C. Sess. Laws 102; and is hesitant to engage in online discourse due to 2008 N.C. Sess. Laws 220.

41. But for these restrictions, James Doe 1 would have bought housing, would go to the library and attend political meetings, and would engage in online discourse.

42. In this lawsuit, NC RSOL seeks to protect the interests of its members, including James Doe 1, by removing from them unconstitutional burdens and restrictions on their constitutional liberties.

43. The relief sought, if granted, will inure to the benefit of the members of NC RSOL whose constitutional rights are injured by the provisions of the North Carolina registry law challenged herein.

c. National Association for Rational Sexual Offense Laws (NARSOL)

44. The National Association for Rational Sexual Offense Laws (NARSOL) is a non-profit corporation organized under the laws of the State of North Carolina.

45. It is a voluntary membership organization.

46. Its purpose is to advocate, both legislatively and legally, for the reform of state and national laws regarding sex offender registries and legal restrictions placed on registrants (collectively "registry laws") and to seek to vindicate the constitutional rights of its members.

47. NARSOL has membership that includes registrants, family members of registrants, and other concerned citizens – specifically including current registrants subject to the provisions of the law challenged herein as violating the *Ex Post Facto* clause of the United States Constitution.

48. One such member is the affiant of a sealed affidavit previously entered in this case [D.E. 31-2]. This member is hereinafter referred to as James Doe 2.

49. James Doe 2 is currently a member of NARSOL.

50. James Doe 2 currently resides within North Carolina judicial district 10.

51. He is currently on the North Carolina Sex Offender Registry and is subject to the provisions of the registry law challenged herein.

52. The sole offense of conviction for which James Doe 2 is required to register occurred prior to 1997.

53. The provisions of the registry law challenged herein have been retroactively applied to James Doe 2.

54. Specifically, James Doe 2 is subject to the provisions of 2006 N.C. Sess. Laws 247, 2008 N.C. Sess. Laws 117, 2008 N.C. Sess. Laws 220, 2009 N.C. Sess. Laws 491, and 2016 N.C. Sess. Laws 102.

55. James Doe 2 has been barred from housing due to the restrictions of 2006 N.C. Sess. Laws 247; banned from libraries, parks, and other public fora due to 2008 N.C. Sess. Laws 117 and 2016 N.C. Sess. Laws 102; and is hesitant to engage in online discourse due to 2009 N.C. Sess. Laws 491.

56. But for these restrictions, James Doe 2 would have bought housing, would go to the library, parks, and other public fora, and would engage in online discourse.

57. In this lawsuit, NARSOL seeks to protect the interests of its members such as James Doe 2 by removing from them unconstitutional burdens and restrictions on their constitutional liberties.

58. The relief sought, if granted, will inure to the benefit of the members of NARSOL whose constitutional rights are injured by the provisions of the North Carolina registry law challenged herein.

Factual Allegations

a. Historical Development of the North Carolina Registry Laws

59. North Carolina passed its first registry law in 1995. Before then, there was no state database of "sex offenders."

60. This initial registry law did no more than create a database of persons who had been convicted of a relatively small number of qualifying offenses.

61. Registration terminated automatically after ten (10) years and a person could petition for removal from the registry on the grounds that inclusion did not serve a useful purpose in the individual case. *See* 1995 N.C. Sess. Laws 545.

62. The registry was maintained by the local sheriff and was available to the public only upon request by a member of the public regarding a specific individual; however, the public was not entitled to take or make copies of any photograph of the registrant. *See id.*

63. Registrants were required to mail in notification of any change of address. *See id.*

64. Violation of the registry law was a Class 3 misdemeanor. *See id.*

65. The stated purpose of this law was to "assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders to register . . . and to require an exchange of relevant information about sex offenders among law enforcement agencies and to authorize the access to necessary and relevant information about sex offenders to others[.]" *See id.*

66. The statute applied to all persons committing a qualifying offense or who were released from a penal institution after the effective date. *See id.*

67. Although N.C.G.S. § 14-208.5 (1995) (purpose) states that "the General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration," there is no evidence of any studies, testimony, or other factual basis for this finding in the legislative record. *See id.*

68. In 1997, the state legislature expanded the list of reportable offenses (those requiring registration) and established a process for adjudicating whether an individual was a "sexually violent predator." *See* 1997 Sess. Laws 516.

69. Registry for persons adjudicated a sexually violent predator was increased to thirty (30) years while it remained at ten (10) years for all other registrants. *See id.*

70. The provision allowing for petition for removal if the registry served no purpose was deleted. *See id.*

71. All registrants were now required to mail in an annual address verification form and their photographs were made part of the public record. *See id.*

72. State officials also created an internet-searchable database including the names, addresses, photographs, offenses, sentences, and "any other relevant information" as determined by the sheriff. *See id.*

73. Violation of these reporting and verification requirements was made a Class F felony. *See id.*

74. The database created in 1997 now allows the public to "subscribe" to email alerts either tracking individual registrants or monitoring whether a registrant moves within a mile of a given address.

75. This subscription service automatically pushes out notifications to the subscribers.

76. These "alerts" can be received by email or text message.

77. State officials have now also developed a mobile phone application ("app") which allows users to access the sex offender registry directly from their mobile phone.

78. In 1999, new reportable offenses were added -- including "solicitation or conspiracy to commit" or "aiding and abetting" a reportable offense, *see* 1999 Sess. Laws 363; though registration for "aiding and abetting" would only occur when a court deemed it necessary. *See id.*

79. In 2001, the registration period was extended to life for persons categorized as "recidivists," "sexually violent predators," and persons convicted of statutorily-defined "aggravated offenses" (including engaging in a penetrative sexual act with a victim of any age through the use of force). *See* 2001 N.C. Sess. Laws 373.

80. A provision of the law allowing review of the determination that a person is a "sexually violent predator" was removed. *See id.*

81. In 2002, notification provisions (still allowed by mail) were expanded to include a statement whether the registrant intended to enroll as a student or obtain employment at an institute of higher learning and to report any change in educational enrollment or employment status. *See* 2002 N.C. Sess. Laws 147.

82. Between 2003 and 2005, the list of reportable offenses was expanded through multiple bills – now to include misdemeanor sexual battery. *See* 2003 N.C. Sess. Laws 303; 2004 N.C. Sess. Laws 109; 2005 N.C. Sess.

Laws 121; 2005 N.C. Sess. Laws 130 (adding misdemeanor sexual battery to the list of reportable offenses); 2005 N.C. Sess. Laws 226.

83. In 2006, the North Carolina legislature made significant amendments to the laws pertaining to sex offenders. 2006 N.C. Sess. Laws 247.

84. 2006 N.C. Sess. Laws 247 added several offenses to the list of "sexually violent offenses" requiring registration, including statutory rape (a strict liability offense). *See id.* § 1.

85. 2006 N.C. Sess. Laws 247 also significantly changed the verification and notification requirements of the registry law. *See id.*

86. Whereas in 1995, the registry law required initial registration and mail-in notification of any change of address, under 2006 N.C. Sess. Laws 247registrants became required to report change of address, change of academic status, change of educational employment status, establishment of residence out-of-state and intent to move out-of-state, and any "temporary" residence and employment out-of-county in-person to the sheriff's office. *Id.* §§ 6, 7, 8.

87. Rather than annual confirmation of information, a registrant became required to completely re-register in-person every six (6) months. *Id.* §7.

88. Failure to provide any required notifications or verifications, in-person, within ten (10) days, became a felony offense for which the registrant is strictly liable if not actually incarcerated. *Id.* § 7.

89. In addition to these time and event driven notifications and verifications, the Sheriff became authorized to confirm current address status (through home visitation or otherwise) at any time. *Id.* § 6.

90. The Sheriff also became authorized to require any registrant to come to the sheriff's office upon seventy-two (72) hours' notice in order to have a new photograph taken. *Id.* § 7.

91. 2006 N.C. Sess. Laws 247 further banned all registrants from establishing a residence within one thousand (1000) feet of "the property on which any public or nonpublic school or child care center is located" (including home-based after-school care). *Id.* § 11.

92. While registrants who had established a residence in a restricted zone prior to the effective date were not required to move, the restrictive zones themselves retroactively apply to all persons registered or required to register as of the effective date in 2006. *Id.*

93. 2006 N.C. Sess. Laws 247 also added a provision titled "Sexual Predator Banned from Working or Volunteering for Child-Involved Activities," which bans all registrants from accepting any work, for pay or otherwise, which involves "the instruction, supervision, or care of a minor." *Id.* § 11.

94. Despite its title, the provision "Sexual Predator Banned from Working or Volunteering for Child-Involved Activities" applies to all registrants regardless of whether they have been convicted of a sexual offense or whether they have been adjudicated a "sexually violent predator."

95. 2006 N.C. Sess. Laws 247 also fundamentally alter the prospects and process for removal from the registry. *Id.* § 9.

96. For "Part II" offenders, those not adjudicated a recidivist, aggravated offender, or sexually violent predator, 2005 N.C. HB 1896 ends automatic termination of the registry requirement after ten (10) years and instead

creates a process whereby a registrant can petition the court to terminate the registry requirement after ten (10) years. *Id.* § 10.

97. The statute then lays out the conditions under which a court *may* grant termination. *Id.*

98. Importantly, the court *cannot* grant termination if doing so would shorten federally-mandated registration periods. *Id.*

99. Effectively, this changes the North Carolina ten (10) year registration requirement into a "tier-based" system in which each registrant is effectively classified as a "Tier I," "Tier II," or "Tier III" offender. *Id.*

100. The effective length of registration is determined by this classification: Tier I registrants must register for fifteen (15) years (which may be shortened to ten (10) in some instances); Tier II registrants must register for twenty-five (25) years; and Tier III registrants must register for life. *Id.*

101. The tier classifications are based solely on the offense of conviction, without regard for any extenuating circumstances or individualized determination of dangerousness. *Id.*

102. Even upon the clearest proof that an individual is not dangerous, there is no mechanism that allows a registrant to be removed prior to these time periods.

103. Prior to this amendment, most North Carolina registrants were required to register for ten (10) years.

104. These provisions of 2006 N.C. Sess. Laws 247 have been applied retroactively to all persons whose period of registration had not already ended as of the effective date of December 1, 2006.

105. 2008 N.C. Sess. Laws 117 again increased the duration of the registry period and added additional reporting requirements and substantive offenses.

106. The baseline registry requirement was changed to thirty (30) years for all registrants (with the ability to petition for removal as described above). *Id.* § 8.

107. The time period for complying with all registration requirements (including changes to any information) was shortened from ten (10) days to three (3) days. *Id.* §§ 9, 10.

108. 2008 N.C. Sess. Laws 117 added the offense of "sex offender on premises" (preventing most registrants from being in churches, libraries, the General Assembly building, colleges, community centers, parks, and wide range of private businesses). § 12.

109. Though most of the "sex offender on premises" statute was later declared unconstitutional, *Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016), a new version was enacted in 2016 with minor changes.

110. In 2008, 2008 N.C. Sess. Laws 218 banned registrants from accessing certain "commercial social networking" websites, though this law has since been struck down as unconstitutional. *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017).

111. 2008 N.C. Sess. Laws 218 also banned registrants from changing their name.

112. The ban on access to certain Internet sites and the ban on name changes were codified separately in the North Carolina criminal code as

"offenses against public decency" alongside "secretly peeping" and "indecent liberties with a minor." N.C.G.S. §§ 14-202.5, 14-202.6.

113. And in 2008, registrants became required to notify the Sheriff of any "online identifiers." 2008 N.C. Sess. Laws 220.

114. The increase in registry duration, new reporting requirements, premises ban, and Internet-ban were all applied retroactively to registrants regardless of the date of offense, conviction, or initial registration.

115. 2009 N.C. Sess. Laws 491 banned registrants from obtaining or maintaining a commercial driver's license allowing them to operate a commercial passenger vehicle ("P" endorsement) or school bus ("S" endorsement).

116. And 2016 N.C. Sess. Laws 102 re-enacted the "sex offender on premises" law (codified at N.C.G.S. §14-208.18) again effectively banning most registrants from churches, libraries, the General Assembly building, colleges, community centers, fairs, parks, and wide range of private businesses.

117. The current North Carolina registry law is substantially similar to the registry laws in most States around the country – specifically including those of Michigan, Maine, Ohio, and Kentucky where such regimes have already been found to be unconstitutional.

118. At all times, the registry law, including the laws specifically referenced above, have been codified as part of Chapter 14 of the North Carolina General Statutes – the North Carolina criminal code.

b. Effect of North Carolina Registry Law on Plaintiffs

119. As described above, since its inception the North Carolina registry law has grown from a simple law enforcement database of the kind upheld in *Smith v. Doe*, 538 U.S. 84 (2003) (upholding registry scheme that imposed only "minor and indirect" obligations and restraints), into a comprehensive monitoring, control, and exclusion scheme bearing a striking resemblance to conditions of probation or supervise release only without any individualized consideration of the dangerousness of the offender or the appropriateness of such conditions.

i. Reporting, Surveillance, and Supervision[2]

120. Under the North Carolina registry law, all registrants are required to provide the following to the sheriff of their county of residence within three (3) business days[3] of release from prison or immediately upon conviction if no active term of imprisonment is imposed:

1) Name and aliases (including specifically the registrant's name at the time of the reportable offense as well as a description of that offense);
2) Residential address;
3) Physical description;
4) Driver's license number;
5) Photograph;
6) Fingerprints;
7) The name and address of any school attended or that the registrant expects to attend;

[2] Where a provision of the registry law is mandated by one of the specific laws challenged herein that fact is noted in the factual allegation.
[3] The "grace period" for compliance with reporting requirements was shortened from ten (10) days to three (3) by 2008 N.C. Sess. Laws 117.

8) Notice if the registrant is employed or expects to be employed at any institute of higher learning;

9) Any "online identifiers" such as email addresses, log-in names, or other Internet identifiers [mandated by 2008 N.C. Sess. Laws 220]; and

10) Name and address of employer (if a non-resident registrant).

(N.C.G.S. § 14-208.7)

121. If the registrant changes his or her residence, name (although name changes are separately prohibited under the law), academic status, employment status, or changes or adds an online identifier, they must report the change, in-person, within three business days [as mandated by 2006 N.C. Sess. Laws 247 and 2008 N.C. Sess. Laws 117]. *See* N.C.G.S. § 14-208.9.

122. In addition, a registrant must notify the Sheriff, again in-person, if they intend to move out of the state or if they then decide to remain in the state [as mandated by 2006 N.C. Sess. Laws 247]. *Id.*

123. If a registrant lives and works for ten (10) days a month or thirty (30) days a year (including travel lodgings such as hotels, motels, etc.), the registrant must provide the temporary address as well as employment information [as mandated by 2006 N.C. Sess. Laws 247]. *See* N.C.G.S. § 14-208.8A.

124. Regardless of whether any information has changed, on the anniversary of a registrant's initial registration and every six months thereafter, the registrant must appear in-person at the sheriff's office to verify the above information [as mandated by 2006 N.C. Sess. Laws 247]. *Id.*

125. This in-person verification must be completed within three (3) days of receiving written notice from the sheriff that verification is due [as mandated by 2008 N.C. Sess. Laws 117]. *Id.*

126. In addition to these general reporting requirements, the sheriff is authorized to verify the registrant's address at any time [as allowed by N.C. Sess. Laws 247]. *Id.*

127. Sheriffs around the state routinely conduct such checks – arriving at the registrants home often late at night or publicly.

128. Such checks have been conducted on John Doe and on members of NC RSOL and NARSOL – including James Does 1 and 2.

129. This provision is widely interpreted to mean that the sheriff or his representative may go to and inspect the registrant's address at any time.

130. The sheriff may also, at any time, require any registrant to come to the sheriff's office to update their photograph [as allowed by 2006 N.C. Sess. Laws 247]. A registrant must comply with the request within three (3) business days [same]. *Id.*

131. Failure to comply with any registration requirement is a Class F felony offense that carries a base-level penalty of 10 to 41 months imprisonment. N.C.G.S. § 14-208.11.

132. By comparison, this is the same felony level as "taking indecent liberties with children" (N.C.G.S. § 14-202.1) and a higher felony level than "solicitation of a child by computer" (N.C.G.S. § 14-202.3 (Class H felony)).

133. There is no good cause exception to these reporting requirements.

134. A registrant may only be excused if the registrant is actually incarcerated, and then only if he makes the reporting requirement known to the official in charge of the incarcerating facility [as specified in 2006 N.C. Sess. Laws 247]. *See* N.C.G.S. § 14-208.11.

135. Unlike other criminal statutes, the registry law specifically mandates that law enforcement officials will arrest any person that violates these verification and notification provisions. *Id.*

136. In addition to these formal reporting requirements, the registry law sets up a second, informal surveillance regime.

137. Unlike any other law in North Carolina, the registry law makes it a felony offense for any person to fail to report a known violation of the registry laws [as enacted by 2006 N.C. Sess. Laws 247]. N.C.G.S. § 14-208.11A.

138. The State actively provides, in a publicly accessible, Internet-searchable database, updated photographs of all registrants.

139. On its website, the State invites the public to sign up for telephonic alerts whenever a "sex offender moves into a particular zip code" but cautions the public that "these updates should be just one part of your safety plan." NC Dep't of Public Safety, *http://sexoffender.ncsbi.gov/telephone.aspx* (last visited June 18th, 2018).

140. The net effect is to enlist the public in monitoring and reporting on registrants in a way it does not do for any other class of prior offenders.

141. As noted above, these in-person reporting requirements were substantially enacted in 2006 and 2008 and applied retroactively to all

registrants regardless of the date of offense, conviction, release, or placement on the registry.

142. These reporting requirements are substantially similar to, and in many cases more burdensome, than the requirements of post-conviction supervised release imposed on non-registrants.

ii. Burdens on Free Speech and Association

143. 2008 N.C. Sess. Laws 117 and 2016 N.C. Sess. Laws 102 [codified collectively at N.C.G.S. § 14-208.18(a)] place significant burdens on registrants' rights of free speech and association.

144. N.C.G.S. § 14-208.18(a) was amended by 2016 N.C. Sess. Laws 102 after the 4th Circuit struck down most of 2008 N.C. Sess. Laws 117 as unconstitutionally overbroad and vague. *See Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016).

145. However, the 2016 amendment did not significantly alter the scope of this provision of the registry law.

146. N.C.G.S. § 14-208.18(a) applies to any registrant convicted of an offense listed in Article 7B of the North Carolina criminal code or any reportable offense in which the victim was under eighteen (18).

147. Substantially all registrants are subject to the provisions of N.C.G.S. § 14-208.18(a).

148. Under N.C.G.S. § 14-208.18(a) registrants are prohibited from being:

> (1) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.
>
> (2) Within 300 feet of any location intended primarily for

> the use, care or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.
>
> (3) At any place where minors frequently congregate, including, but not limited to, libraries, arcades, amusement parks, recreation parks, and swimming pools, when minors are present.
>
> (4) On the State Fairgrounds during the period of time each year that the State Fair is conducted, on the Western North Carolina Agricultural Center grounds during the period of time each year that the North Carolina Mountain State Fair is conducted, and on any other fairgrounds during the period of time that an agricultural fair is being conducted.

149. Subsections 1, 3, and 4 of this law apply to all qualifying registrants. N.C.G.S. § 14-208.18(c).

150. Subsection 2 applies to persons convicted of any offense against a person under age eighteen (18) or to persons individually adjudicated to be a danger to minors. *Id.*

151. Both directly and in effect, this statute bars almost all registrants from a substantial portion of traditional and limited public fora.

152. By direct decree, registrants cannot be present in parks, state fairgrounds, or libraries.

153. By effect, registrants cannot be present in many government buildings, on the campus of public or private colleges, community centers, public museums or the like.

154. Registrants also cannot be present at limited public or private fora associated with First Amendment freedoms such as schools, theaters, movies, or sporting events.

155. The limitation on subsection (a)(3) that presence is a violation only when "minors are present" does not alleviate the First Amendment burdens.

156. "Minor" is defined as anyone under age 18 and the statute does not require that the minors be "congregated," only that they be "present."

157. In almost any park, library, community center, social event or gathering, there will be "minors present."

158. Every county-run library in North Carolina contains a children's section and runs programs specifically for children.

159. There will be "minors present" in every community center in North Carolina at all or substantially all times.

160. There will be "minors present" in every "recreation park" in North Carolina at all or substantially all times.

161. Moreover, under the statute, a registrant would have to immediately leave if a minor became present – again an event that will happen in substantially all cases.

162. The limitation in subsection (a)(2) of application to only those persons convicted of an offense against a minor does not address the burden this statute places upon such persons.

163. John Doe specifically desires to use the public library, go to movies, sporting events, recreation parks, and other areas made off-limits to him by N.C.G.S § 14-208.8(a).

164. He also wishes to engage in political rallies and other group activities, but cannot as these functions are usually held in a place made off-limits by N.C.G.S. § 14-208.18(a).

165. John Doe would exercise these rights if not for the ban imposed by statute.

166. Many members of NARSOL and NC RSOL -- specifically including James Does 1 and 2 – similarly desire to go to libraries, public meetings, parks, and the like but cannot because of N.C.G.S. § 14-208.18(a).

167. Many of these members wish to exercise those rights and would if not for the ban imposed by the statute.

168. Violation of N.C.G.S. § 14-208.18(a) is a Class H felony punishable by 4 to 25 months imprisonment.

169. Section 14-208.18(a) applies retroactively to all qualifying registrants regardless of the date of offense, conviction, release, or placement on the registry.

iii. Burdens on Housing

170. Under 2006 N.C. Sess. Laws 257 [codified at N.C.G.S. § 14-208.16], no registrant may reside "within 1000 feet of the property on which any public or nonpublic school or child care center is located."

171. "Child care center" is defined in law as "an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care." N.C.G.S. § 110-86(3)(a).

172. This statute effectively bars registrants from much available housing and effectively restricts where they can live.

173. N.C.G.S. § 14-208.18 further restricts housing for registrants.

174. Under this section, a qualifying registrant cannot be present: "within 300 feet of any location intended primarily for the use, care, or supervision of minors[.]" N.C.G.S. §14-208.18(a)(2).

175. Taken individually and together, these two restraints severely limit the scope of available housing for registrants as a matter of law.

176. Many members of NARSOL – specifically including James Doe 2 – have been forced to relocate to rural areas due to these housing restrictions.

177. Members of NCRSOL – specifically including James Doe 1 – have been unable to purchase housing because of the restrictive areas.

178. John Doe has been forced to live with his parents because of the difficulty in finding housing due to these housing restrictions.

179. Registrants on lifetime registration are also banned by law from obtaining federally subsidized (Section 8) housing. 24 C.F.R. § 5.856 [2018].

180. Beyond these direct restraints imposed as a matter of law, further restraints are caused by the surveillance regime described above.

181. Because the registry intentionally (and falsely) correlates registration with "dangerousness," landlords are reluctant to rent and homeowner's are reluctant to sell housing that would otherwise be available to registrants.

182. This reluctance further limits housing options.

183. Registrants have been forced to relocate from otherwise qualified housing when their landlord found out he was on the registry.

184. When they are able to at all, it routinely takes months for registrants to locate suitable housing because of these restrictions – both because of the exclusion zones and because landlords will not rent to registrants.

185. Additionally, registrants often cannot live with family or friends as the substantial likelihood is that family and friends live in an exclusion zone.

186. The laws codified at N.C.G.S. §§ 14-208.16 and 14-208.18 were passed in 2006 and 2008 respectively (and 14-208.18 was repassed in 2016) and apply retroactively to all registrants.

iv. Employment

187. As described specifically below, the provisions of the North Carolina law challenged herein place severe restraints on employment and work in several ways.

188. First, the registry law creates direct and indirect occupational bars to many jobs and professions.

189. 2009 N.C. Sess. Laws 491 [codified at N.C.G.S. § 14-208.19A] bars all registrants from obtaining or renewing a "P" or "S" endorsement for their driver's license.

190. This means that a registrant cannot operate a vehicle designed to transport sixteen (16) or more passengers.

191. Section 14-208.19A was enacted in 2009 and applies to all registrants regardless of the date of their offense, conviction, release, or placement on the registry.

192. John Doe is a commercial driver and would apply for his "P" endorsement were it not for the statute.

193. 2006 N.C. Sess. Laws 247 [codified at N.C.G.S. § 14-208.17] prevents any registrant from "work[ing] for any person or as a sole proprietor, with or without compensation, at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors."

194. This provision is titled "sexual predator prevented from working or volunteering for child-involved activities" but applies to *all* registrants – including those not adjudicated to be a sexual predator, those not convicted of any crime against a minor, and those not convicted of any sexual offense.

195. This prohibition acts as a direct bar to any job or profession that necessarily involves "instruction, care, or supervision of minors."

196. This prohibition also acts as an indirect bar to any job above entry-level in retail sales, restaurants (including fast food), discount stores, amusement parks, or other economy sectors that routinely hire minors for entry-level and even supervisory positions.

197. All or substantially all of the jobs above entry-level in these sectors will necessarily involve the supervision of minors.

198. N.C.G.S. § 14-208.18(a), further place severe restrictions on career and job opportunities for registrants.

199. Section 14-208.18(a) acts as an indirect bar to work as a delivery person, postal worker, or the like because such work will, in almost all cases, require entry into a restricted zone.

200. John Doe currently operates a service business and is severely hampered in his work because he cannot enter restricted zones and he has been fired from previous jobs because he cannot enter restricted zones.

201. Section 14-208.18(a) places severe restrictions on employment in trades such as construction, electrician, plumbing, HVAC, emergency medical service, etc., because no work can be performed in a restricted zone.

202. Restricted zones typically cover a significant portion of the locations in which such tradespeople would otherwise work.

203. A significant number of businesses are themselves located within restricted zones.

204. Registrants are prevented from working at any such business.

205. Finally, registrants are being administratively barred from obtaining or maintaining many professional licenses required by the state.

206. Many members of NC RSOL and NARSOL – specifically including James Does 1 and 2 – have experienced substantial difficulty finding employment because of these restrictions.

207. John Doe has experienced substantial difficulty finding employment due to these restrictions.

208. Beyond these official restraints, registrants suffer intense discrimination in hiring and are often fired when employers learn they are on the registry.

209. This discrimination and unfair treatment is not simply the collateral consequence of the State's publication of information, but is the direct result of the intentional correlation between registration and "dangerousness."

v. Education

210. North Carolina General Statute N.C.G.S. § 14-208.18(a) places significant burdens on registrants' rights to further their own education ("to acquire useful knowledge").

211. It is the opinion of the legal counsel for North Carolina Community Colleges that N.C.G.S. §14-208.18(a) renders all community colleges off-limits to registrants.

212. They are not allowed to be present on campus.

213. Law enforcement personnel recently escorted a member of NC RSOL off the campus of a North Carolina community college where he had arrived to register for classes.

214. Other registrants have been denied enrollment at community colleges because of their status.

215. Section 14-208.18(a) specifically prohibits registrants from being at libraries.

216. Each of these burdens applies to all registrants, regardless of their date of offense, conviction, or placement on the registry.

217. Members of NARSOL and NC RSOL desire to go to colleges and libraries but cannot do so because of the registry law.

c. The North Carolina Registry Law in an *Ex Post Facto* Law

218. Collectively, these burdens, along with the history of the registry law, demonstrate the intent to punish and/or create the effect of punishment in violation of the *Ex Post Facto* clause.

219. Each of the statutes that comprise the registry law is codified in the North Carolina criminal code.

220. Registration is handled exclusively by criminal justice agencies.

221. Violation of registry provisions is a felony offense often more serious than the crime leading to registration.

222. The registry law has been repeatedly amended to make it harsher with no evidence of any legislative findings of fact to support these harsher restrictions.

223. There is no mechanism to seek exemption from any registry requirement and each requirement is applied to persons known to the state not to be a danger to children, minors, or the public generally.

224. The application of the totality of the registry law is triggered solely by the commission of a criminal offense and its restrictions are imposed regardless of the individual circumstances of such offenses.

225. The amendments to the registry law challenged herein, those enumerated in Paragraph 8 above, inflict both directly and indirectly what has been regarded in our history and traditions as punishment.

i. Similarity to Traditional Forms of Punishment (Shaming)

226. The State mislabels all registrants as "sex offenders" and "sexual predators" and states they are a danger to children, minors, and the public.

227. It then actively publishes registrants' photographs and detailed personal information.

228. The State not only publishes this information, but pushes it out to the public along with warnings that registrants are dangerous.

229. The State actively encourages the populace, under threat of criminal sanction, to monitor and report on registrants.

230. These actions are specifically intended to bring attention to registrants' status, to ensure that the public is easily able to identify them, and to subject them to a unique system of state and social controls.

231. As a result of these actions, registrants are routinely subjected to discrimination and harassment by the general public.

(Banishment)

232. North Carolina General Statutes § 14-208.16 (2006 N.C. Sess. Laws 247) and N.C.G.S. § 14-208.18 (2008 N.C. Sess. Laws 117 and 2016 N.C. Sess. Laws 102), together with the public opprobrium encouraged by the State, often force registrants to live away from population centers.

233. North Carolina General Statute § 14-208.18(a) creates geographic exclusion zones into which registrants cannot enter regardless of actual risk.

234. It severely reduces the ability of registrants to attend any kind of public event or to be present in public, limited, and even private fora.

235. The registry law precludes registrants from participating in many sectors of the economy, both by precluding them from many professions and jobs, and by severely limiting the areas where they can shop.

236. Registrants are largely prohibited from being present at shopping malls and in other commercial areas both because malls are "places where

minors frequently congregate" under § 14-208.18(a)(3) and because large swaths of malls and general commercial areas are excluded under (a)(2).

(Probation/Parole)

237. The restrictions on registrants imposed by the provisions of the registry law challenged herein are more burdensome than those generally imposed under conditions of probation, parole, or supervised release.

238. To the extent the registry restrictions are not *more* burdensome, they are substantially similar to a condition of probation, parole, or supervised release.

239. Uniquely, the State then enlists the public, under threat of felony prosecution, to further monitor registrants.

ii. Affirmative Disability or Restraint

240. The provisions of the registry law challenged herein, both directly and indirectly, impose affirmative disabilities and restraints on registrants.

241. As described above, these provisions dictate where registrants may live. *See* 2006 N.C. Sess. Laws 247; 2008 N.C. Sess. Laws 117; 2016 N.C. Sess. Laws 102.

242. As described above, these amendments dictate where registrants may work and limit what jobs they may have. *See* 2006 N.C. Sess. Laws 247; 2009 N.C. Sess. Laws 491; 2016 N.C. Sess. Laws 102.

243. As described above, these amendments prevent registrants from being present in a wide array of public, limited public, and private fora. *See* 2008 N.C. Sess. Laws 117; 2016 N.C. Sess. Laws 102.

244. Registrants are subject to random checks by law enforcement and substantial in-person reporting requirements for which they are strictly liable under threat of felony prosecution. 2006 N.C. Sess. Laws 247; 2007 2008 N.C. Sess. Laws 117.

iii. Traditional Aims of Punishment

245. The traditional aims of punishment are retribution, incapacitation, general and specific deterrence.

246. Application of the registry law, including the provisions of the registry law challenged herein, is based solely on the offense of conviction without regard to any individualized determination of the appropriateness of the restrictions.

247. The amendments requiring in-person reporting of any change of status, limiting housing, and restricting presence all appear, on their face, to be designed to "keep tabs" on a registrant and prevent him from going about freely in the community.

248. The stated purpose of (and only potential legitimate rationale) for these laws is to deter recidivism. *See* N.C.G.S. § 14-208.5.

iv. Rational Relation to a Non-Punitive Purpose

249. The only legitimate non-punitive purpose of the registry law would be to increase public safety by reducing recidivism.

250. To be reasonably related to this purpose, the registry law would need to actually and materially *reduce* recidivism.

251. However, the consensus of researchers is that registry laws *increase* rather than reduce sexual offense recidivism.

252. Public sex offender registries that are based on the offense of conviction (like North Carolina's) strongly correlate with an *increase* in the frequency of sex offenses against all types of victims (family members, neighbors, acquaintances, and strangers).

253. Research conducted in Michigan (which then had a registry law substantially similar to North Carolina's), suggests that the incidence of sex offenses is increased by about 10% over the incidence that would occur without the registry.

254. In North Carolina, there is no evidence that the registry law has either decreased the incidence of sexual offenses or decreased recidivism.

255. These results are driven by the fact that the registry law significantly exacerbates the actual risk factors for recidivism by substantially reducing employment and housing opportunities, and, through both direct restraint and untrue stigmatization, preventing registrants from effectively reintegrating into society.

256. There is no research to support the hypothesis that registrants who live closer to schools or childcare centers are more likely to reoffend.

257. Research shows that the location of a registrant's residence is not correlated with risk of re-offense.

258. There is no empirical evidence to suggest that more frequent or in-person verifications of registry information reduces recidivism.

259. The State has never produced evidence showing that the premises restriction materially reduces recidivism nor are Plaintiffs aware of any such evidence.

260. The North Carolina registry law is not reasonably related to a legitimate non-punitive purpose.

v. Excessiveness in Relation to Purpose

261. The stated purpose of the registry law, including those provisions challenged herein, is to "assist law enforcement communities by requiring persons who are convicted of sex offenses and other sex offenses or of certain other offenses committed against minors to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, and to authorize the access to necessary and relevant information about those offenders[.] N.C.G.S. § 14-208.5

262. The extent and duration of registry requirements are substantially greater than necessary to meet the legislature's avowed purpose.

263. The North Carolina registry law goes far beyond the simple sharing of information among law enforcement personnel and even the provision of information to the public.

264. The North Carolina registry law requires continued registration long past the period when there is any meaningful risk of recidivism.

265. The North Carolina registry law applies to persons who have been found not to be dangerous to children, youths, or the public at large.

266. The North Carolina registry law applies to persons who have never committed an offense against a minor.

267. The North Carolina registry law applies to persons who have received full treatment and counseling.

268. The North Carolina registry law applies to persons who have no risk factors for future recidivism.

269. The North Carolina registry bans all registrants from certain occupations and constructs occupational barriers without a reasonable relationship between those barriers and the dangerousness of individuals subject to them.

270. The North Carolina registry law creates substantial barriers to housing for all registrants without a reasonable relationship between those barriers and the dangerousness of individuals subject to them.

271. The North Carolina registry law prevents all registrants from being at places associated with young children without distinction as to which registrants pose a danger to young children.

272. The North Carolina registry law significantly curtails the First Amendment rights and other fundamental liberties registrants without a reasonable relationship between those barriers and the dangerousness of individuals subject to them.

273. There is no reasonable relationship between the stated purpose of the registry law and those provisions of the registry law challenged herein.

274. There is no reasonable relationship between imposition of the provisions of the registry law challenged herein and a material reduction in public risk.

275. There is no reasonable fit between the constitutional burdens and affirmative restraints imposed by the provisions of the registry law challenged herein and the class of persons subject to them.

276. The vast weight of objective evidence is that the North Carolina registry law exacerbates rather than reduces sex offense recidivism.

Claim for Relief

Violation of the Ex Post Facto Clause of the Constitution of the United States

Count 1:

277. The retroactive application of 2006 N.C. Sess. Laws 247 (2005 N.C. HB 1896) violates the Ex Post Facto Clause of the U.S. Constitution Art. 1, § 10, cl. 1, because that law make more burdensome the punishment imposed for offenses committed prior to the enactment of that law and applies the provisions of that law retroactively.

Count 2:

278. The retroactive application of 2008 N.C. Sess. Laws 117 (2007 N.C. HB 933) violates the Ex Post Facto Clause of the U.S. Constitution Art. 1, § 10, cl. 1, because that law make more burdensome the punishment imposed for offenses committed prior to the enactment of that law and applies the provisions of that law retroactively.

Count 3:

279. The retroactive application of 2008 N.C. Sess. Laws 220 (2007 N.C. SB 1736) violates the Ex Post Facto Clause of the U.S. Constitution Art. 1, § 10, cl. 1, because that law make more burdensome the punishment imposed for offenses committed prior to the enactment of that law and applies the provisions of that law retroactively.

Count 4:

280. The retroactive application of 2009 N.C. Sess. Laws 491 (2009 N.C. HB 1117) violates the Ex Post Facto Clause of the U.S. Constitution Art. 1, § 10, cl. 1, because that law make more burdensome the punishment imposed for offenses committed prior to the enactment of that law and applies the provisions of that law retroactively.

Count 5:

281. The retroactive application of 2016 N.C. Sess. Laws 102 (2015 N.C. HB 1021) violates the Ex Post Facto Clause of the U.S. Constitution Art. 1, § 10, cl. 1, because that law make more burdensome the punishment imposed for offenses committed prior to the enactment of that law and applies the provisions of that law retroactively.

Lack of Legal Remedy

282. The Plaintiffs' harm is ongoing and cannot be alleviated except by declaratory and injunctive relief.

283. No other remedy is available at law.

Prayer for Relief

Wherefore, the Plaintiffs respectfully request that this Court:

Issue a judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that the retroactive application of the afore-listed laws, jointly and severally, violates the prohibition in the U.S. Constitution against *ex post facto* laws, and further that the Court issue a permanent injunction restraining the Defendants from retroactively enforcing those amendments.

Respectfully submitted this is the 20th day of June, 2018.

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CERTIFICATION

This is to certify that on June 20th, 2018, a copy of the foregoing **FIRST AMENDED COMPLAINT** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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