

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

JOHN DOE I, )  
Jackson County, Missouri, )  
)  
JOHN DOE II, )  
Jackson County, Missouri, )  
)  
JOHN DOE III, )  
Pettis County, Missouri, )  
)  
JOHN DOE IV, )  
Platte County, Missouri, )  
)  
JOHN DOE V, )  
Webster County, Missouri, ) Case No. 0616-CV-35929  
)  
JOHN DOE VI, ) Division 15  
Jackson County, Missouri, )  
)  
JOHN DOE VII, )  
Saline County, Missouri, )  
)  
JOHN DOE VIII, )  
Christian County, Missouri, )  
)  
JOHN DOE IX, )  
St. Louis County, Missouri, )  
)  
JOHN DOE X, )  
Jefferson County, Missouri, )  
)  
and )  
)  
JOHN DOE XI, )  
Phelps County, Missouri, )  
)  
Plaintiffs, )  
)  
v. )  
)  
COLONEL JAMES F. KEATHLEY, )

in his official capacity as Superintendent )  
Missouri State Highway Patrol )  
Hugh H. Waggoner Building )  
1510 East Elm )  
Jefferson City, Missouri 65101, )  
) )  
and )  
) )  
THOMAS PHILLIPS, )  
in his official capacity as Sheriff of Jackson )  
County, Missouri, )  
3310 Rennau Drive )  
Lee’s Summit, Missouri, )  
) )  
and )  
) )  
JAMES KANATZAR, )  
in his official capacity as Prosecutor, )  
Jackson County, Missouri )  
415 East 12th Street, 11th Floor )  
Kansas City, Missouri 64106, )  
) )  
Defendants. )

**SECOND AMENDED PETITION  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

**(Class Action Challenging the Constitutionality of Various  
Retroactive Applications of Missouri’s Sexual Offender Registration Act)**

COME NOW Plaintiffs John Doe I through XI by their undersigned counsel, and, for their cause 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 and injunctive relief are authorized by Rule 87.02 and 92.01 of the Missouri Rules of Civil Procedure, respectively, 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 all Defendants 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 as applied to them. This Court has authority to issue injunctions. Rule 92.01.

## **THE PARTIES**

### **Count I Plaintiffs (John Does I-V, VIII and IX)**

5. John Does I - V, VIII, and IX (Count I) are convicted sex offenders, convicted in other states, convicted prior to January 1, 1995, in states other than Missouri, but now living in the State of Missouri. Some of the plaintiffs moved to Missouri prior to January 1, 1995, and others have moved to Missouri after January 1, 1995. Plaintiffs are being required to register in their counties of residence.

6. Plaintiff John Doe I, who now resides in Jackson County, Missouri, was convicted circa 1989 in Bakersfield, Kern County, California, of attempted assault to commit rape for simply touching a woman on the shoulder. He was released from parole in 1992. He moved to Jackson County, Missouri, on February 25, 1993, and is currently being required to

register twice a year. Information regarding John Doe I appears on both the Missouri State Highway Patrol's Sex Offender Registry (where he is shown as "compliant") and the Jackson County Sexual Offender Registry.

7. Plaintiff John Doe II, who now resides in Jackson County, Missouri, was convicted in 1987 in Las Vegas, Nevada, of two counts of lewdness with a minor. He was released in November, 1990, and moved to Missouri on October 4, 2000. Information regarding Doe II appears on the Jackson County Sexual Offender Registry and his photograph, address, and conviction appear on the Missouri Highway Patrol website which presently shows him as "compliant."

8. Plaintiff John Doe III, who now resides in Pettis County, Missouri, was convicted on January 26, 1990, of two counts of Criminal Sexual Conduct in the Second Degree in the Fourth Judicial District Court of Hennepin County, Minnesota. On March 27, 1990, he was sentenced for commitment to the Commissioner of Corrections, Stillwater, Minnesota, for twenty-one months on one count and twenty-six months on the other count, but execution of the sentence was stayed and John Doe III was put on probation for fifteen years, or until March 26, 2005. Doe III was assigned to the Hennepin County Department of Court Services for supervision. He moved to Missouri in the fall of 1993 and his probation was transferred to Missouri. He completed probation in 2005, and on April 3, 2005, was advised by the Minnesota Bureau of Criminal Apprehension that he was no longer required to register in the State of Minnesota and that, as of March 25, 2005, his registration requirement was fulfilled. Doe III was advised that his registration status in any other state would be determined by the law of that state. John Doe III has been advised by the Pettis County

Sheriff's Department that he is no longer required to register but has been advised by the Missouri State Highway Patrol ("MSHP") that he is required to register for life. His personal identifying information, photographs, address, vehicle information, and conviction information remain on the MSHP website, where he is designated as "compliant".

9. Plaintiff John Doe IV, who now resides in Platte County, Missouri, was convicted in 1992 in Bexar County, Texas, of indecency with a child. He had moved to Missouri in 1988, but returned to Texas to face charges when he learned they had been filed. His probation was transferred to and completed in Missouri. At the time of the filing of Plaintiffs' original petition, his name, photograph, and conviction and the date of his conviction were displayed on Platte County, Missouri's website, but not on the MSHP website. Presently, no information appears about John Doe IV on either Platte County's website or the MSHP website.

10. Plaintiff John Doe V, who now resides in Webster County, Missouri, was convicted in April, 1993, in Stanislaus County, California, of one count of lewd or lascivious act with a child under 14. He moved to Missouri on July 26, 2004, and, since then, has been required to report every three months. His address, personal identifying information, conviction information, and photograph appear on the MSHP website, where he is designated as "compliant". No information about John Doe V currently appears on the Webster County, Missouri website.

11. Plaintiff John Doe VIII, who now resides in Christian County, Missouri, was convicted circa 1983 in Modesto, Stanislaus County, California (later transferred to Kern County, California), of lewd and lascivious crimes against a child. He was released from

parole on March 19, 1984, and received a Certificate of Rehabilitation and a recommendation for a full pardon on April 26, 1991. He moved to Missouri in 1993 and to Christian County, Missouri in 1994. He is currently being required to register by Christian County and the MSHP. Information regarding John Doe VIII appears on the MSHP website. Visitors to the Christian County Sheriff's website are provided with a link to the MSHP site.

12. Plaintiff John Doe IX, who now resides in St. Louis County, Missouri, pled guilty in 1972 in the City and County of Los Angeles, California, to a violation of Cal. Penal Code § 288. In about 1973 or 1974, he moved from California to the City of St. Louis, Missouri. Subsequently, in approximately 1975 or 1976, he moved to St. Louis County, Missouri. He is currently being required to register by the St. Louis County Police Department, allegedly because he is required to register for life in California as a result of his conviction for a sex crime against a child. He is shown as in violation of California registration law on the California State Sex Offender website, although the website acknowledges that he "may have subsequently relocated" from the California address it provides for him. Information about John Doe IX appears on the St. Louis County Police Department's website but no information about him appears on the MSHP website.

### **Count II Plaintiff (John Doe VI)**

13. Plaintiff John Doe VI, who now resides in Jackson County, Missouri, was convicted in a military courts martial at Homestead Air Force Base, Florida, on February 21, 1985, of one count of Article 125, sodomy, and three counts of Article 134, for acts involving his daughter. He served time in the Leavenworth Disciplinary Barracks and remains on parole. Both the Sheriff's office and the Missouri State Highway Patrol tell him he must

continue to register, contending that the opinion in *Doe v. Phillips*, 194 S.W.3d 833 (Mo. *banc* 2006), does not apply to persons convicted in a military courts martial. His address, personal identifying information, conviction information, and photograph appear on the MSHP website, where he is designated as “compliant”, and his address information appears on the Jackson County website.

### **Count III Plaintiffs (John Does VII, X, and XI)**

14. Plaintiff John Doe VII, who now resides in Saline County, Missouri, pled guilty on May 26, 1999, to sexual misconduct in the first degree, a “class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or unless in the course thereof the actor displays a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or ceremony, in which case it is a class D felony.” MO. REV. STAT. § 566.090. He received a suspended imposition of sentence and a two-year supervised probation. He was released from probation on May 25, 2001. The MSHP is insisting that he register even though his conviction date was before the effective date of the legislation amending MO. REV. STAT. § 589.400 to require those convicted of certain misdemeanors to register. His address, personal identifying information, conviction information, and photograph appear on the MSHP website, where he is designated as “compliant”.

15. Plaintiff John Doe X, who resides in Jefferson County, Missouri, pled guilty on July 23, 2002, to an offense which occurred sometime in 1999 (the victim could not remember when it occurred), specifically, sexual misconduct in the first degree, pursuant to MO. REV. STAT. § 566.090, a class A misdemeanor. He received a suspended imposition of sentence and a two year supervised probation. He was released from probation in July, 2004.

Doe X is required to register by the MSHP and his address, personal identifying information, conviction information, and photograph appear on the MSHP website, where he is designated as “compliant”. His address, conviction information, and photograph also appear on the Jefferson County, Missouri Sheriff’s registry.

16. Plaintiff John Doe XI, who resides in Phelps County, Missouri, pled guilty on August 23, 1999, to sexual misconduct in the first degree under MO. REV. STAT. § 566.090, a Class A misdemeanor. He received a suspended imposition of sentence and was placed on probation for two years under the supervision of the Missouri State Board of Probation and Parole. In July, 2000, Doe XI was required to register with Phelps County. On August 24, 2001, Doe XI received an Order of Discharge from Probation which directed that the record in his case be closed. His address, personal identifying information, conviction information, and photograph appear on the MSHP website. Plaintiffs’ counsel was unable to determine whether Phelps County, Missouri has a sexual offender registry website.

### **Defendants**

17. Major James F. Keathley 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”). The MSHP operates a sex offender website.

18. 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 official capacity as a Missouri county sheriff and/or chief law enforcement officer who 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 MSHP.

19. Defendant James Kanaztar is the Prosecutor for Jackson County, Missouri. He is named in his official capacity as Prosecutor of Jackson County, Missouri as a Missouri county prosecutor who is charged by law with the responsibility of enforcing SORA in his county.

### **ALLEGATIONS COMMON TO ALL COUNTS**

20. In 1994, Missouri enacted a sexual offender registration statute, informally called Megan’s Law, requiring registration by certain sex offenders with their local sheriff’s department. L. 1994, S.B. No. 693, § A (§ 1, subsecs 1, 2), eff. January 1, 1995, originally codified at MO. REV. STAT. §§ 566.600 *et seq.*, now at MO. REV. STAT. §§ 589.400-589.425.

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. SORA was also amended in 2003, 2004, and 2006.

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 MSHP who shall enter the information into the Missouri Uniform Law Enforcement System (“MULES”). The MSHP also operates a sex offender registry website.

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. 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 and sex offender websites maintained by the MSHP and/or Missouri counties, the publication of the registry implies that each person listed is more likely than the average person to be currently dangerous.

28. 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.

29. On June 30, 2006, the Missouri Supreme Court issued its opinion in *Doe v.*

*Phillips*, 194 S.W.3d 833 (Mo. *banc* 2006). The Missouri Supreme Court held that as to those offenders who were convicted prior to the effective date of January 1, 1995, the application of the registration requirement to them based solely on their pre-act criminal conduct is truly retrospective in its operation. The registration requirement

looks solely at their past conduct and uses that conduct not merely as a basis for future decision-making by the state, in regard to things such as the issuance of a license, or as a bar to certain future conduct by the Does, such as voting. Rather, it specifically requires the Does to fulfill a new obligation and imposes a new duty to register and to maintain the registration regularly, based solely on their offenses prior to its enactment. This violates the standard set out in *Bliss* and violates our constitutional bar on laws retrospective in operation.

*Id.*, 194 S.W.3d at 852 (citing *Jerry-Russell Bliss v. Hazardous Waste*, 702 S.W.2d 77, 82 (Mo. *banc* 1985)). The Missouri Supreme Court invalidated the registration requirements as to those persons who were convicted or pled guilty prior to the law's January 1, 1995, effective date.

## COUNT I

### **Retrospective Application of Statutes: Missouri Constitution John Does I-V, VIII, and IX v. All Defendants (Offenders Whose Out-of-State Convictions Predate January 1, 1995)**

30. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 29 above.

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

32. The enactment of Missouri's SORA and its application to Plaintiffs imposes additional punishment upon Plaintiffs in violation of the prohibition against laws with retrospective application contained in Article 1, Section 13 of the Missouri Constitution.

33. As alleged, *supra* at ¶¶ 5-12, John Does I-V, VIII, and IX are convicted sex offenders, convicted in other states, convicted prior to January 1, 1995, in states other than Missouri, but now living in the State of Missouri. Some of the plaintiffs moved to Missouri prior to January 1, 1995, and others have moved to Missouri after January 1, 1995. They are being required to register in their counties of residence.

34. Because 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 MSHP and published on the MSHP website, Plaintiffs are disadvantaged and harmed, as the information branding them as sex offenders is subject to world wide dissemination.

35. 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 many 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.

36. 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 John Doe I-V, VIII, and IX request that this Court enter its

order declaring Missouri's SORA unconstitutional as applied to them, enjoining any prosecution for their failure to register, and for any such further legal and equitable relief as this Court deems appropriate.

**COUNT II**  
**Retrospective Application of Statutes: Missouri Constitution**  
**John Doe VI v. All Defendants**  
**(Military Conviction Predating January 1, 1995 and/or August 28, 2000)**

37. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 29 above.

38. As alleged, *supra* at ¶ 31, Missouri's SORA as passed in 1994 and subsequently amended, purports to reach back to July 1, 1979, to include "any person" who was convicted, found guilty of or pled guilty to committing certain offenses. As passed in 1994, the statute required registration of persons who were "convicted of, been found guilty of, or pled guilty or nolo contendere in any other state *or under federal jurisdiction* to a violation . . ." L. 1994, S.B. No. 693, effective January 1, 1995. Although "federal jurisdiction" would arguably include those convicted under military law, the legislature determined not to leave the matter to chance and Section 589.400 was subsequently amended to require registration of persons "required to register under *federal or military law*." L. 2000, S.B. Nos. 757 & 602, effective August 28, 2000.

39. As alleged, *supra* at ¶ 11, Plaintiff John Doe VI, who now resides in Jackson County, Missouri, was convicted in a military courts martial at Homestead Air Force Base, Florida, on February 21, 1985, of one count of Article 125, sodomy, and three counts of Article 134, for acts involving his daughter. Both the Sheriff's office and the Highway Patrol tell him he must continue to register, contending that the opinion in *Doe v. Phillips*, 194

S.W.3d 833 (Mo. *banc* 2006), does not apply to persons convicted in a military courts martial. The address, personal identifying information, conviction information, and photograph of John Doe VI appear on the Missouri Highway Patrol website, where he is designated as “compliant”, and his address information appears on the Jackson County website.

40. The enactment of Missouri’s SORA and its application to Plaintiff John Doe VI, who was convicted before January 1, 1995, imposes an additional punishment upon Plaintiff John Doe VI in violation of the prohibition against *ex post facto* laws and laws with retrospective application contained in Article 1, Section 13 of the Missouri Constitution.

41. Because Plaintiff John Doe VI registers and his name is added to a list of sex offenders kept in the office of the county sheriff and/or the information concerning his convictions is entered into the MULES data bank and sex offender website maintained by the MSHP and the county of his residence, Plaintiff is disadvantaged and harmed, as the information branding him as a sex offender is subject to world wide dissemination.

42. 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 many 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.

43. Missouri's SORA imposes new obligations, duties, and disabilities upon Plaintiff John Doe VI 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**, Plaintiff John Doe VI requests that this Court enter its order declaring Missouri's SORA unconstitutional as applied to him because his military conviction in 1985 predates the enactment and original effective date of SORA, enjoining any prosecution against him for failure to register, and for any such further legal and equitable relief as this Court deems appropriate.

**COUNT III**  
**Retrospective Application of Statutes: Missouri Constitution**  
**John Doe VII, X and X v. Defendant Keathley**  
**(Misdemeanor Offenses)**

44. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 29 above.

45. As alleged, *supra* at ¶¶ 31 and 38, Missouri's SORA as passed in 1994 and subsequently amended, purports to reach back to July 1, 1979, to include "any person" who was convicted, found guilty of or pled guilty to committing certain offenses.

46. The sexual offender registration statute initially enacted in 1994 required registration of:

Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to a violation of, or an attempt to violate, section 566.030, 566.060 or 566.110; or . . .

L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995, originally codified at § 566.600. Sections 566.030 and 566.060 are felonies. Section 566.110, however, was the offense of "sexual

abuse in the second degree”, which was a class A misdemeanor “unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which cases the crime is a class D felony.” MO. REV. STAT. § 566.110 (L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979, amended by L.1990, H.B. Nos. 1370, 1037 & 1084, § A, repealed, L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995). However, the legislation that required registration of § 566.110 offenders is the same legislation that repealed § 566.110.

47. The legislature thereafter amended SORA to require registration of:

Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, a felony offense of chapter 566; or . . .

L.1995, H.B. No. 424, § A, eff. August 28, 1995.

48. Chapter 566 contains offenses which are or can be classified as misdemeanors and/or felonies.

49. Between January 1, 1995 and August 28, 1995, registration was required of persons with misdemeanor convictions of § 566.110. As of August 28, 1995, registration was not required of persons of misdemeanor convictions.

50. In 1997, SORA was moved from Chapter 566 to Chapter 589 and amended to require registration of:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing or attempting to commit, a felony offense of chapter 566, RSMo; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnaping, promoting prostitution in the first degree; promoting prostitution in the second degree; promotion prostitution in the third

degree; incest; abuse of a child; used a child in a sexual performance; or promoting sexual performance by a child, and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under seventeen years of age; or . . .

L. 1997, H.B. No. 883, § A , now codified at § 589.400.1. No misdemeanor offenses required registration; all the listed offenses in § 589.400.1(2) were felonies.

51. An amendment to § 589.400 in 1998 did not affect whether or not those convicted of misdemeanor offenses were required to register. L. 1998, H.B. No. 1405 et al., § A.

52. In 2000, the legislature amended § 589.400.1 to require registration of:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, *an offense* of chapter 566, R.S.Mo; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnaping, promoting prostitution in the first degree; promoting prostitution in the second degree; promotion prostitution in the third degree; incest; abuse of a child; used a child in a sexual performance; or promoting sexual performance by a child, and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or . . .

L. 2000, S.B. Nos. 757 and 602, § A, eff. August 28, 2000 (emphasis added).

53. The 2000 legislation omits the words “a felony” from subsection (1) and inserts in their stead the word “an”, thereby bringing within the registration requirement all offenses of chapter 566 whether classified as felony or misdemeanor. The offenses listed in subsection (2) are all felonies. Thus, beginning August 28, 2000, SORA required registration of offenders of Chapter 566 misdemeanors.

54. As of August 28, 2000, John Doe VII and John Doe XI were required to register under § 589.400 as misdemeanor offenders.

55. In 2002, the legislature amended § 589.400 to require registration of:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, a felony offense of chapter 566, RSMo, or any offense of chapter 566, RSMo, where the victim is a minor; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnapping, pursuant to section 565.110, RSMo.; felonious restraint; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; abuse of a child, pursuant to section 568.060; use of a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or . . .

L. 2002, S.B. Nos. 969, 673 & 855, § A, eff. August 28, 2002.

56. Effective August 28, 2002, the 2002 amendment to subsection (1) abolished the requirement that all Chapter 566 misdemeanor offenders register.

57. The 2002 amendment to subsection (1) of § 589.400 re-established the registration requirement for all Chapter 566 felony offenders, and established a registration requirement for all Chapter 566 misdemeanor offenders whose victims were minors. L.

2002, S.B. Nos. 969, 673 & 855, § A. The offenses listed in subsection (2) are all felonies.

58. As of August 28, 2002, John Doe VII, John Doe X, and John Doe XI were required to register as misdemeanor offenders of Chapter 566 whose victims were minors.

59. Legislation amending SORA in 2003 did not affect whether or not those convicted of misdemeanor offenses were required to register. L. 2003, S.B. No. 5, § A, eff. June 27, 2003, and L. 2003, S.B. No. 184, § A, eff. August 28, 2003.

60. In 2004, the legislature again amended § 589.400 to require registration of:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been

found guilty of, or pled guilty or nolo contendere to committing, or attempting to commit, a felony offense of chapter 566, RSMo, or any offense of chapter 566, RSMo, where the victim is a minor; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, or attempting to commit one or more of the following offenses: kidnapping, pursuant to section 565.110 RSMo; felonious restraint; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; sexual exploitation of a minor; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic material to minors; public display of explicit sexual material; coercing acceptance of obscene material; promoting obscenity in the first degree; promoting pornography for minors or obscenity in the second degree; incest; abuse of a child pursuant to section 568.060, RSMo; use of a child in a sexual performance; promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or . . .

L. 2004, S.B. No. 1055, § A, eff. August 28, 2004.

61. Effective August 28, 2004, in addition to the requirement that Chapter 566 felony offenders register, § 589.400.1(1) required registration of Chapter 566 misdemeanor offenders whose victims were minors. Added to the list of specific felony offenses in subsection (2) requiring registration were offenses of §§ 573.040, 573.060, and 573.030 which are class A misdemeanors.

62. In 2006, the legislature again amended § 589.400 to require registration of:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, or attempting to commit, a felony offense of chapter 566, RSMo, including sexual trafficking of a child and sexual trafficking of a child under the age of twelve<sup>1</sup>, or any offense of chapter 566, RSMo, where the victim is a minor; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, or attempting to

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<sup>1</sup>Both offenses are felonies. MO. REV. STAT. §§ 566.212 and 566.213.

commit one or more of the following offenses: kidnapping when the victim was a child and the defendant was not a parent or guardian of the child; felonious restraint when the victim was a child and the defendant is not a parent or guardian of the child; sexual contact or sexual intercourse with a resident of a nursing home, under section 565.200, RSMo; endangering the welfare of a child under section 568.045, RSMo, when the endangerment is sexual in nature; genital mutilation of a female child, under section 568.065, RSMo; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; sexual exploitation of a minor; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic material to minors; public display of explicit sexual material; coercing acceptance of obscene material; promoting obscenity in the first degree; pornography for minors or obscenity in the second degree; incest; use of a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or . . .

L. 2006, H.B. Nos. 1698, 1236, 995, 1362 § 1290, § A, eff. June 5, 2006.

63. Effective June 5, 2006, in addition to requiring registration of felony offenders of Chapter 566 and offenders of other specifically identified felonies, § 589.400.1 (1) and (2) required registration of offenders of §§ 573.040, 573.060, and 573.030, which are class A misdemeanors, and registration those offending § 565.200 which contains offenses that are class A or class B misdemeanors.

64. As alleged, *supra* at ¶ 12, Plaintiff John Doe VII, who now resides in Saline County, Missouri, pled guilty on May 26, 1999, to sexual misconduct in the first degree, a “class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or unless in the course thereof the actor displays a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or ceremony, in which case it is a class D felony.” MO. REV. STAT. § 566.090. The conduct which resulted in this conviction occurred during John Doe VII’s senior year in high school where he was a special education

student. As he passed a female student in the hall, he swiped at her breast. This act was caught on video and charges followed. Doe VII received a suspended imposition of sentence and a two-year supervised probation. He was released from probation on May 25, 2001. The MSHP is insisting that Doe VII register even though his conviction date was prior to the August 28, 2000, effective date of the legislation amending MO. REV. STAT. § 589.400 to require those convicted of Chapter 566 misdemeanors to register and prior to the August 28, 2002, effective date of the legislation amending MO. REV. STAT. § 589.400 to require those convicted of Chapter 566 misdemeanors whose victims were minors to register. His address, personal identifying information, conviction information, and photograph appear on the MSHP website, where he is designated as “compliant”.

65. As alleged, *supra* at ¶ 15, Plaintiff John Doe X, who now resides in Jefferson County, Missouri, pled guilty on July 23, 2002, to sexual misconduct in the first degree, a Class A misdemeanor. He received a suspended imposition of sentence and a two year supervised probation from which he was released in July, 2004. Doe X is being required to register even though his conviction date was prior to the August 28, 2002, effective date of the legislation amending MO. REV. STAT. § 589.400 to require those convicted of Chapter 566 misdemeanors whose victims were minors to register. His address, personal identifying information, conviction information, and photograph appear on the MSHP website, where he is designated as “compliant” and his address, conviction information, and photograph also appear on the Jefferson County, Missouri Sheriff’s registry.

66. As alleged, *supra* at ¶ 16, Plaintiff John Doe XI, who resides in Phelps County, Missouri, pled guilty on August 23, 1999, to sexual misconduct in the first degree, a Class A

misdemeanor. He received a suspended imposition of sentence and was placed on probation for two years under the supervision of the Missouri State Board of Probation and Parole. In July, 2000, he was required to register with Phelps County. On August 24, 2001, Doe XI received an Order of Discharge from Probation which directed that the record in his case be closed. Even though Doe XI's conviction date was prior to the August 28, 2000, effective date of the legislation amending MO. REV. STAT. § 589.400 to require those convicted of Chapter 566 misdemeanors to register and prior to the August 28, 2002, effective date of the legislation amending MO. REV. STAT. § 589.400 to require those convicted of Chapter 566 misdemeanors whose victims were minors to register, he is being required to register with MSHP and Phelps County.

67. The enactment of Missouri's SORA and its application to John Does VII and XI, who were convicted before the August 28, 2000, effective date of the legislation requiring all Chapter 566 misdemeanor offenders to register and its application to John Does VII, X, and XI, who were convicted before the August 28, 2002, effective date of the legislation requiring registration of persons convicted of Chapter 566 misdemeanors whose victims were minors, imposes an additional punishment upon Plaintiffs Doe VII, X, and XI in violation of the prohibition against *ex post facto* laws and laws with retrospective application contained in Article 1, Section 13 of the Missouri Constitution.

68. Because John Does VII, X, and XI 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 and the sex offender website maintained by the MSHP, Plaintiffs are disadvantaged and harmed, as the information branding them as sex

offenders is subject to world wide dissemination.

69. 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 many 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.

70. Missouri's SORA imposes new obligations, duties, and disabilities upon Plaintiffs Doe VII, X, and XI, 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 John Doe VII, X, and XI request that this Court enter its order declaring Missouri's SORA unconstitutional as applied to them because they were convicted of misdemeanors prior to the August 28, 2000, and/or August 28, 2002, effective dates of the legislation, enjoining any prosecution against them for failure to register, and for any further legal and equitable relief as this Court deems appropriate.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was mailed, first class U.S. postage pre-paid, and sent by electronic mail, this \_\_\_\_ day of July, 2007, to:

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