

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, )

JOHN DOE VI, )  
Saline County, Missouri, )

and )

JOHN DOE VII, )  
Jackson County, Missouri, )

Plaintiffs, )

v. )

Case No. 0616-CV-35929

MAJOR JAMES F. KEATHLEY, )  
in his official capacity as Superintendent )  
Missouri State Highway Patrol )  
Hugh H. Waggoner Building )  
1510 East Elm )  
Jefferson City, Missouri 65101, )

Division 18

and )

THOMAS PHILLIPS, )  
in his official capacity as Sheriff of Jackson )  
County, Missouri, )  
3310 Rennau Drive )

Lee’s Summit, Missouri, )  
 )  
 and )  
 )  
 MELISSA MAUER-SMITH, )  
 in her official capacity as Interim Prosecutor, )  
 Jackson County, Missouri )  
 415 East 12th Street, 11th Floor )  
 Kansas City, Missouri 64106, )  
 )  
 Defendants. )

**FIRST 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 VII 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)**

5. John Does I - V (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 by SORA 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. Searches on Jackson County's

Sexual Offender Registry website do not reflect any responsive information regarding Doe I. However, his photograph, address, and conviction appear on the Missouri Highway Patrol website which presently shows him as “noncompliant.”

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 that he is required to register for life. His personal identifying information, photographs, address, vehicle information, and conviction information remain on the Missouri State Highway Patrol 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. His name, photograph, and conviction and the date of his conviction continue to be displayed on Platte County, Missouri's website. The Missouri State Highway Patrol website shows him as "exempt", but his name, photograph, and some conviction information remain on 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 Missouri Highway Patrol website, where he is designated as "compliant".

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

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. He served time in the Leavenworth Disciplinary Barracks and remains on parole. 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. His address, personal identifying information, conviction information, and photograph appear on the Missouri Highway Patrol website, where he is designated as "compliant", and his address information appears on the Jackson County website.

### **Count III Plaintiff (John Doe VII)**

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. He received a suspended imposition of sentence and a two-year supervised probation. He was released from probation on May 25, 2001. The Highway Patrol 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 Missouri Highway Patrol website, where he is designated as “compliant”.

### **Defendants**

13. 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”).

14. 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 Missouri Highway Patrol.

15. Defendant Melissa Mauer-Smith is the Interim Prosecutor for Jackson County, Missouri. She is named in her official capacity as Interim Prosecutor of Jackson County, Missouri as a Missouri county prosecutor who is charged by law with the responsibility of enforcing SORA in her county.

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

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

17. 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.

18. 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.

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

20. Pursuant to MO. REV. STAT. § 589.417, the chief law enforcement official of each county shall maintain, for all offenders registered in his county, a complete list of the names,

addresses and crimes (“short list”) of such offenders. Pursuant to § 589.410, the chief law enforcement official of each county shall forward the completed offender registration form (“long list”) to the Missouri Highway Patrol who shall enter the information into the Missouri Uniform Law Enforcement System (“MULES”).

21. 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.

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

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

24. 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.

25. On June 30, 2006, the Missouri Supreme Court handed down 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 v. All Defendants (Offenders Whose Out-of-State Convictions Predate January 1, 1995)**

26. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 25 above.

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

28. The enactment of Missouri's SORA and its application to Plaintiffs imposes additional punishment upon Plaintiffs 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.

29. 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 Missouri State Highway Patrol, Plaintiffs are disadvantaged and harmed, as the information branding them as sex offenders is subject to world wide dissemination.

30. 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.

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

**WHEREFORE**, Plaintiffs request that this Court enter its order declaring Missouri's SORA unconstitutional 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)**

32. Plaintiffs hereby adopt and incorporate by reference the allegations contained in

paragraphs 1 through 31 above.

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

34. 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. His address, personal identifying information, conviction information, and photograph appear on the Missouri Highway Patrol website, where he is designated as "compliant", and his address information appears on the Jackson County website.

35. 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.

36. 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 maintained by the Missouri State Highway Patrol, Plaintiff is disadvantaged and harmed, as the information branding him as a sex offender is subject to world wide dissemination.

37. 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.

38. 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 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 v. Defendant Keathley**  
**(Misdemeanor Offense Predating August 28, 2002)**

39. Plaintiffs hereby adopt and incorporate by reference the allegations contained in paragraphs 1 through 38 above.

40. Missouri's SORA as passed in 1994 and subsequently amended, reaches back to July 1, 1979, to include "any person" who was convicted, found guilty of or pled guilty to committing certain offenses. In 2002, the legislature amended § 589.400 to include the following language:

(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; incest; abuse of a child, pursuant to section 568.060, RSMo; 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;

\* \* \*

L. 2002, S.B. Nos. 969, 673 & 855, § A, effective August 28, 2002. This language brought within the SORA registration requirement individuals who had been convicted of, been found guilty of, or pled guilty to committing or attempting to commit certain misdemeanor offenses.

41. 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 Highway Patrol is insisting that Doe VII 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 Missouri Highway Patrol website, where he is designated as “compliant”.

42. The enactment of Missouri’s SORA and its application to Plaintiff John Doe VII, who was convicted before the August 28, 2002, effective date of the legislation requiring registration of persons convicted of specified misdemeanors, 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.

43. Because Plaintiff John Doe VII 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 maintained by the Missouri State Highway Patrol, Plaintiff is disadvantaged and harmed, as the information branding him as a sex offender is subject to world wide dissemination.

44. 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.

45. Missouri's SORA imposes new obligations, duties, and disabilities upon Plaintiff John Doe VII 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 VII requests that this Court enter its order declaring Missouri's SORA unconstitutional as applied to him because he was convicted of one of the misdemeanors specified in L. 2002, S.B. Nos. 969, 673 & 855, § A, now codified at MO. REV. STAT. § 589.400.1 (2), prior to the August 28, 2002, effective date of the legislation, enjoining any prosecution against him for failure to register, and for any further legal and equitable relief as this Court deems appropriate.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

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