

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2010 JUN 25 P 3:02

JANE DOE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF STATE POLICE, and
COLONEL W. STEVEN FLAHERTY,
in his official capacity as Superintendent of the
Virginia Department of State Police,

Serve: Colonel W. Steven Flaherty, Superintendent
Virginia Department of State Police
7700 Midlothian Turnpike
Richmond, Virginia 23235

and

SPOTSYLVANIA COUNTY SCHOOL BOARD, and
J. GILBERT SEAUX, in his official capacity as the
Chairman of the School Board of the Spotsylvania
County Schools

Serve: J. Gilbert Seaux, Chairman
School Board, Spotsylvania County Schools
3140 Summit Crossing Road
Fredericksburg, Virginia 22408

Defendants.

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Case No.: i:10cv713
TSE/TCB

COMPLAINT

The Law Offices of

MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

Preliminary and Jurisdictional Statement

1. The Virginia General Assembly amendment to Va. Code § 9.1-902(E), which reclassified Jane Doe's pre-Registry 1993 offense of conviction, entered into effect on July 1, 2008. Based on her reclassification, Jane Doe now must register on the Virginia Sex Offender and Crimes Against Minors Registry (hereinafter "Registry") for the rest of her life under Va. Code § 9.1-910(A).

2. This Complaint for declaratory and injunctive relief arises under the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. §§ 2201-2202, and 42 U.S.C. § 1983 because reclassification does not constitute a criminal penalty. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

3. To the extent that this Complaint for declaratory and injunctive relief also presents a state law claim arising out of the same operative facts as those giving rise to the federal claims, this Court has jurisdiction over the state law claim under 28 U.S.C. § 1367.

4. This Court has venue to hear this Complaint under 28 U.S.C. § 1391(b).

Parties

5. Plaintiff Jane Doe is an adult resident of Spotsylvania County, Virginia. Since December 2008, after the July 1, 2008 amendment to Va. Code § 9.1-902 (previously Va. Code § 19.2-298.1), Jane Doe has resided in Spotsylvania County, Virginia with her husband, her biological children with her husband, James Doe and Judy Doe, and her stepchild from her husband's previous marriage, John Doe. Based on that amendment, Jane Doe must register for life.

6. Defendant Virginia Department of State Police (hereinafter "State Police") is a state agency under Virginia law with its headquarters in Richmond, Virginia. The State Police

are required by Virginia law to collect registrants' information for inclusion in the Registry and to maintain the Registry. The State Police also make certain information that is collected publicly available on the Internet.

7. At all relevant times, Defendant Colonel W. Steven Flaherty was acting under color of state law. As Superintendent of the State Police, Colonel Flaherty is a law enforcement officer under Virginia law. Law enforcement officers employed by the State Police were under the supervision of Colonel Flaherty at all relevant times. Colonel Flaherty and/or law enforcement officers under his supervision have collected registrants' information for inclusion in the Registry, have maintained the Registry, and have made certain information that was collected publicly available on the Internet.

8. Defendant School Board of Spotsylvania County Schools (hereinafter "School Board") is a municipality under Virginia law. The School Board has authority under Virginia law to decide whether a registrant classified as a sexually violent offender may enter public school property in Spotsylvania County and under what conditions.

9. At all relevant times, Defendant J. Gilbert Seaux was acting under color of state law. As Chairman of the School Board of the Spotsylvania County Schools acting in his official capacity, Mr. Seaux is responsible for exercising the authority granted to the School Board under Virginia law.

Statement of Facts

Jane Doe's Reclassification

10. In 1993, Jane Doe was convicted of carnal knowledge of a minor without the use of force in violation of Va. Code § 18.2-63 and sentenced to two-years incarceration with all but 30 days suspended. Jane Doe, who at the time was immature for her age, had a sexual

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

relationship with a student, who was mature for his age. Jane Doe was not considered a dangerous individual at the time of the unlawful conduct or at any time thereafter.

11. In 1994, the Virginia General Assembly enacted Va. Code § 19.2-298.1 (repealed), which required Jane Doe to register as a sex offender in the Registry. Jane Doe registered as she was required. Va. Code § 19.2-298.1 was repealed on July 1, 2003 and Va. Code § 9.1-902 was enacted and became effective on that date.

12. On July 1, 2008, an amendment to Va. Code § 9.1-902 became effective whereby Jane Doe's offense of conviction was reclassified as a sexually violent offense. Prior to the 2008 amendment, violation of Va. Code § 18.2-63 was not classified as a sexually violent offense unless the individual had two or more prior convictions for that offense, which Jane Doe did not. Based on the 2008 amendment, violation of Va. Code § 18.2-63 for non-forcible carnal knowledge of a minor was reclassified as a sexually violent offense when the individual was more than five years older than the minor, which Jane Doe was.

13. Jane Doe was not afforded any procedure by which she could contest her reclassification before the State Police and Colonel Flaherty reclassified her and made that reclassification publicly available on the Registry. Jane Doe also was not afforded any procedure after the State Police and Colonel Flaherty reclassified her. Jane Doe was afforded no procedure to contest her reclassification based on the facts of her offense and her specific characteristics, including that she is not a dangerous individual.

14. Because of her 2008 reclassification, approximately fifteen years after her offense, Jane Doe now has a continuing duty to register for life under Va. Code § 9.1-908. Prior to that amendment, Va. Code § 9.1-910 allowed Jane Doe to petition the circuit court in the jurisdiction in which she then resided or was convicted to have her name and all identifying

The Law Offices of

MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

information removed from the Registry.

15. The State Police and Colonel Flaherty continue to collect, maintain and make available to the public Jane Doe's reclassification in the Registry.

Prohibition on Entering School and Child Day Center Property

16. Because of her 2008 reclassification, Jane Doe also is prohibited from "entering and being present, during school hours and during school-related and school-sponsored activities" on any property that is a public or private school or a child day center under Va. Code § 18.2-370.5.

17. While Jane Doe may petition the juvenile and domestic relations or circuit court in the county in which the school or child day center property is located to allow her to enter and be present on that property, the superintendent of the public school or other chief administrator of the private school or child day center has sole authority to decide whether and under what conditions she may enter and be present on such property. After July 1, 2010, Jane Doe no longer may petition the juvenile and domestic relations court, but may only petition the circuit court under an amendment to Va. Code § 18.2-370.5.

18. In order to make such a request of the School Board and Chairman Seaux, Jane Doe must reveal her identity, reclassification, and relationship to her minor children, John Doe, James Doe, and Judy Doe, and, in effect, brand John Doe, James Doe, and Judy Doe as the minor children of a sexually violent offender. The School Board is vested with supervisory authority over the public schools in Spotsylvania County, its school division, pursuant to Article VIII, Section 7 of the Virginia Constitution.

19. The School Board has not amended its policy on providing Registry information to school employees or on petitioning the School Board to permit a person now classified as a

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

sexually violent offender to enter and be present on school property since *Commonwealth v. Doe*, 278 Va. 223, 682 S.E.2d 906 (2009) was decided. The policy does not provide a registered offender who is a parent any procedure by which she, as a parent of school children, can petition the School Board and Chairman Seaux to be permitted to enter and be present on school property. In particular, the School Board has no policy whereby she may petition without revealing her identity or that of her children.

20. Jane Doe has two biological minor children, James Doe, age four, and Judy Doe, age two, and one minor stepchild who is under her care and control, John Doe, age nine. Before her reclassification, Jane Doe was involved in John Doe's education at private and public schools in the Commonwealth of Virginia, including attending parent-teacher conferences and school activities. Since her reclassification, Jane Doe has not entered school property.

21. Jane Doe no longer can attend parent-teacher conferences, even though she is the parent who primarily helps John Doe with his homework.

22. Jane Doe no longer can attend or pick-up John Doe from after school activities. Her husband, John Doe's father, usually works six days per week, from before 7:00 a.m. to 8:00 p.m. or 10:00 p.m. at night except for every other Friday, when he leaves work at 2:00 p.m. to bring John Doe to his biological mother for the weekend. In order for John Doe to attend an after school activity, Jane Doe's elderly in-law's who live in Alexandria, Virginia must drive to Spotsylvania County in rush hour traffic to drop-off and pick-up John Doe from such activity.

23. John Doe only is able to participate in Cub Scouts, which meet once a week at a church with a school, when his grandparents are able to provide his transportation for that

meeting. He cannot participate in after school activities, such as karate lessons with his friends, which are offered at school after school hours, because Jane Doe cannot pick him up at school after the activities are completed.

24. Jane Doe no longer can pick-up John Doe from school when he gets sick during the school day. John Doe must wait until his father, Jane Doe's husband, is able to leave work in Arlington, Virginia, or his grandparents are able to leave their home in Alexandria, Virginia, and drive to Spotsylvania County to pick him up from school.

25. Jane Doe no longer can drop-off John Doe at school when he misses the school bus.

26. Jane Doe no longer can take John Doe, who was diagnosed with ADHD, to his doctor for his appointment, every three months, to monitor his ADHD medication because she cannot drop-off or pick-up John Doe at school. The doctor's hours are 8:00 a.m. to 4:00 p.m., with the last appointment of the day scheduled for 3:45 p.m. John Doe begins school at 8:30 a.m., and he would miss the school bus if he scheduled an 8:00 a.m. appointment. Because John Doe gets off of the school bus at 3:45 p.m., Jane Doe also cannot make an appointment for him after school.

27. Jane Doe no longer can attend school activities and events with John Doe, including attending a school play in which he participated because it was held during school hours.

28. Before her reclassification, Jane Doe enrolled John Doe in child care at a child day center. Jane Doe now cannot enroll her minor children, John Doe, James Doe, and Judy Doe, in day care because she cannot drop them off or pick them up. Since her reclassification, Jane Doe has not entered any child day center property.

29. Because Jane Doe no longer can enroll her minor children in day care, she must work from her home in order to provide child care for them during the day.

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

The Law Offices of

MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

30. Jane Doe no longer can enter and be present on public school property for programs and events sponsored by Spotsylvania County or the Commonwealth of Virginia, including H1N1 flu vaccination clinics for her minor children, John Doe, James Doe, and Judy Doe. She cannot take her minor children onto school property to purchase pumpkins at Halloween or a tree at Christmas from programs that support Spotsylvania County schools.

31. James Doe and Judy Doe, the biological minor children of Jane Doe, will not be able to enroll in public school in Spotsylvania County upon reaching school age for the reasons set forth in paragraphs 21-30, as applied to James Doe and Judy Doe. Because of her reclassification, Jane Doe will have to home school James Doe and Judy Doe, contrary to her preference that they attend public school and contrary to children's right to a public education protected by Article I, Section 15 and Article VIII of the Virginia Constitution.

32. Jane Doe is denied, and will continue to be denied, the right to direct the upbringing and education of her minor children, John Doe, James Doe, and Judy Doe with regard to school and child day care, because of her 2008 reclassification, Va. Code § 18.2-370.5, and the School Board policy.

33. Jane Doe is denied, and will continue to be denied, the right to meet and to associate with other parents whose children attend school and child care at a child day center with John Doe, James Doe, and Judy Doe, their teachers, and other school and child day center employees.

34. The denial of Jane Doe's associational rights is to the detriment of the minor children's normal social development.

Prohibition on Entering Religious Property

35. Jane Doe practices the Episcopal religion. She stopped attending church around the

time she met her husband because it was difficult to watch John Doe, a minor child, while at service. Now that John Doe and her biological children, James Doe and Judy Doe, are older, Jane Doe wants to return to regular Episcopal Church services with her biological children.

36. The Episcopal Churches in the Spotsylvania County area that Jane Doe wishes to attend have a child day center, Sunday school, or weekend Bible study program. Because of her reclassification, Jane Doe cannot attend church services and practice her religion at church with her children.

37. Jane Doe is denied, and will continue to be denied, the right to freely exercise her religion because of her 2008 reclassification and Va. Code § 18.2-370.5.

Causes of Action

Count I

Violation of Fourteenth Amendment: Substantive Due Process
Right to Direct the Upbringing and Education of Children

38. Plaintiff Jane Doe incorporates by reference the allegations in Paragraphs 1-37 above.

39. The 2008 amendment to Va. Code § 9.1-910, by which Jane Doe was reclassified, Va. Code § 18.2-370.5, and the School Board policy, violate Jane Doe's substantive due process right to direct the upbringing and education of her minor children, John Doe, James Doe, and Judy Doe, guaranteed to her by the Fourteenth Amendment to the United States Constitution, by prohibiting her entry onto public and private school and child day center property.

40. Defendants State Police and Colonel Flaherty have violated Jane Doe's substantive due process right protected by the Fourteenth Amendment by collecting, maintaining, and

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

making publicly available in the Registry her information, including her reclassification, thereby preventing Jane Doe from entering school and child day center property to direct the upbringing and education of John Doe, her stepchild, who is enrolled in public school, and James Doe and Judy Doe, her biological children, who cannot enroll in child care and will not be able to enroll in public school upon reaching school age.

41. Defendants School Board and Chairman Seaux have violated Jane Doe's substantive due process rights protected by the Fourteenth Amendment to direct the upbringing and education of her children, John Doe, James Doe, and Judy Doe, by their exercise of authority to decide whether a registrant classified as a sexually violent offender, who has children who attend or will attend a public school in Spotsylvania County, may enter school property and under what conditions.

Count II

Violation of Fourteenth Amendment: Procedural Due Process
Right to Direct the Upbringing and Education of Children

42. Plaintiff Jane Doe incorporates by reference the allegations in Paragraphs 1-41 above.

43. The 2008 amendment to Va. Code § 9.1-910, by which Jane Doe was reclassified, Va. Code § 18.2-370.5, and the School Board policy, violate Jane Doe's procedural due process right to direct the upbringing and education of her minor children, John Doe, James Doe, and Judy Doe, guaranteed to her by the Fourteenth Amendment to the United States Constitution, by prohibiting her entry onto public and private school and child day center property without first affording her any procedure by which she could contest her reclassification.

44. Defendants State Police and Colonel Flaherty have violated Jane Doe's procedural

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

due process right protected by the Fourteenth Amendment by reclassifying her and by maintaining and making publicly available her reclassification in the Registry, thereby preventing Jane Doe from entering school and child day center property to direct the upbringing and education of her minor children, John Doe, James Doe, and Judy Doe, without first affording her any procedure by which she could contest that reclassification.

45. Defendants School Board and Chairman Seaux have violated Jane Doe’s procedural due process right protected by the Fourteenth Amendment to direct the upbringing and education of her children by the lack of a procedure to exercise their authority whereby the identity of Jane Doe, John Doe, James Doe, and Judy Doe is not known to them, and only the facts related to the registrant’s offense history and reclassification are known, before a decision is reached on whether that registrant could enter school property in Spotsylvania County and under what conditions.

Count III

Violation of First and Fourteenth Amendments:
Plaintiff Jane Doe’s Associational Rights

46. Plaintiff Jane Doe incorporates by reference the allegations in Paragraphs 1-45 above.

47. The 2008 amendment to Va. Code § 9.1-910, by which Jane Doe was reclassified, Va. Code § 18.2-370.5, and the School Board policy, violate Jane Doe’s right to associate with parents whose children attend school and child care at a child day center with John Doe, James Doe, and Judy Doe, their teachers, and other school and child day center employees, guaranteed to her by the First and Fourteenth Amendments to the United States Constitution.

48. Defendants State Police and Colonel Flaherty have violated Jane Doe’s

The Law Offices of

MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

associational right protected by the First and Fourteenth Amendments by collecting, maintaining, and making publicly available in the Registry her information, including her reclassification, thereby preventing Jane Doe from entering school and child day center property to associate with parents whose children attend school and child care at a child day center with John Doe, James Doe, and Judy Doe, their teachers, and other school child day center employees.

49. Defendants School Board and Chairman Seaux have violated Jane Doe's associational rights protected by the First and Fourteenth Amendments by their exercise of authority to decide whether a registrant classified as a sexually violent offender could enter school property in Spotsylvania County and under what conditions to associate with parents whose children attend school with her children, their teachers, and others.

Count IV

Violation of First and Fourteenth Amendments:
Plaintiff Jane Doe's Right to Exercise Religion

50. Plaintiff Jane Doe incorporates by reference the allegations in Paragraphs 1-49 above.

51. The 2008 amendment to Va. Code § 9.1-910, by which Jane Doe was reclassified, and Va. Code § 18.2-370.5, violate Jane Doe's right to exercise her religion, guaranteed to her by the First and Fourteenth Amendments to the United States Constitution.

52. Defendants State Police and Colonel Flaherty have violated Jane Doe's right to exercise her religion protected by the First and Fourteenth Amendments by collecting, maintaining, and making publicly available in the Registry her information, including her reclassification, thereby preventing Jane Doe from entering churches that maintain schools and child day centers on church property.

Prayer for Relief

Good cause shown, Plaintiffs request the following relief:

1. Declare that the 2008 amendment to Va. Code § 9.1-910, by which Plaintiff Jane Doe was reclassified as a sexually violent offender, Va. Code § 18.2-370.5, and the School Board policy, violate the Fourteenth Amendment to the United States Constitution as applied to Plaintiff Jane Doe.
2. Declare that the 2008 amendment to Va. Code § 9.1-910, by which Plaintiff Jane Doe was reclassified as a sexually violent offender, Va. Code § 18.2-370.5, and the School Board policy, violate the First Amendment to the United States Constitution as applied to Plaintiff Jane Doe.
3. Order Defendants to cease enforcement of Va. Code § 9.1-900, et seq., Va. Code § 18.2-370.5, and the School Board policy, as applied to Plaintiff Jane Doe, which violate the First and Fourteenth Amendments to the United States Constitution.
4. Order Defendants School Board and Chairman Seaux to implement a procedure whereby a registrant reclassified as a sexually violent offender who is the parent of a school child can petition the School Board and Chairman Seaux to enter and be present on school property by disclosing the facts related to the registrant's offense history and reclassification, and not the identity of the registrant/parent and her child.
5. Enjoin Defendants State Police and Colonel Flaherty from classifying Plaintiff Jane Doe as a sexually violent offender and from collecting, maintaining, and making publicly available in the Registry her information.
6. Enjoin Defendants School Board and Chairman Seaux from exercising its authority to prevent Plaintiff Jane Doe from entering school property in Spotsylvania County and

The Law Offices of

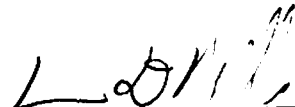
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179

from proscribing conditions to limit her entry.

7. Grant Plaintiff such other and further relief as the Court deems just and proper.

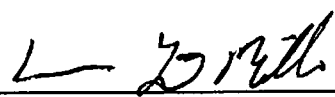
Respectfully submitted,
JANE DOE
By Counsel



Marvin D. Miller
V.S.B. No. 1101
Counsel for Jane Doe
Law Office of Marvin D. Miller
1203 Duke Street
Alexandria, VA 22314
Phone: (703) 548-5000
Fax: (703) 739-0179
Email: katherine@marvinmilleratlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Proceed by Pseudonym was mailed, first-class postage, pre-paid this 25th day of June 2010 to Charles Quagliato, Esq., Assistant Attorney General, 900 E. Main Street, Richmond, VA 23219, who will be representing the Virginia Department of State Police, and its representative, Col. W. Steven Flaherty. It will also be served on, as well as mailed to, Spotsylvania County School Board and its representative J. Gilbert Seaux, Chairman, School Board, Spotsylvania County Schools, 3140 Summit Crossing Road, Fredericksburg, VA 22408



Marvin D. Miller
V.S.B. No. 1101
Counsel for Jane Doe
Law Office of Marvin D. Miller
1203 Duke Street
Alexandria, VA 22314
Phone: (703) 548-5000
Fax: (703) 739-0179
Email: katherine@marvinmilleratlaw.com

The Law Offices of
MARVIN D. MILLER

P.O. BOX 663 • ALEXANDRIA, VA. 22313 • TELEPHONE (703) 548-5000 • FAX (703) 739-0179