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

JOHN DOE,

Plaintiff,

v.

COLONEL GARY T. SETTLE, in his official capacity as Superintendent of the Virginia Department of State Police,

Defendant.

Serve: Colonel Gary T. Settle, Superintendent
Virginia Department of State Police
7700 Midlothian Turnpike
North Chesterfield, VA 23235

Civil Action No. _____

COMPLAINT

Plaintiff John Doe[1], by and through counsel, hereby alleges as follows:

INTRODUCTION

1. Two months after Mr. Doe's 18th birthday, he had consensual sex with his girlfriend, who was 98 days from turning 15. For sex offender registration purposes, Virginia does not consider consensual sex "violent" when it occurs between teenagers. But Mr. Doe pled guilty to the *less* serious offense of indecent liberties, which makes no provision for teenage couples.

2. As a result, Mr. Doe is classified as "violent" on Virginia's Sex Offender Registry. Instead of being able to seek removal from the Registry after 15 years, he has a life sentence to Virginia's strictest sex offender laws. This arbitrary distinction between identical offenses violates

[1] Due to the sensitive nature of the issues raised in this Complaint, Plaintiff has chosen to use a pseudonym. A motion requesting permission to do so has been filed herewith.

the Equal Protection Clause of the U.S. Constitution. The constitutional remedy, among other things, is to re-classify Mr. Doe's offense as non-violent.

3. Several other aspects of Mr. Doe's treatment also violate the Constitution, including his attorney's complete failure to mention sex offender registration, and the extreme nature of laws governing "violent" sex offenders. This suit challenges those violations as well.

PARTIES

4. Plaintiff John Doe is in his early 30s, and a resident of the Eastern District of Virginia, Norfolk Division. He faces lifetime status as a "violent" sex offender under the Virginia Sex Offender and Crimes Against Minors Registry Act. *See* V.A. Code §§ 9.1-100 *et seq.* (collectively, along with associated rules and disabilities including other Virginia statutes and regulations, and former V.A. Code §§ 19.2-298.1 *et seq.*, the "Registry"). Mr. Doe's Registry status imposes current disabilities, requirements, and harms detailed further below.

5. Defendant Gary T. Settle is the Superintendent of the Virginia Department of State Police (hereinafter "State Police" or "Department"). This suit names Colonel Settle only in his official capacity, as the chief executive officer of the State Police. The State Police are required by Virginia law to collect registrants' information for inclusion in the Registry, maintain the Registry, and supervise Mr. Doe's compliance with the many requirements placed on registrants. For the reasons set forth in this Complaint and in governing law, the Superintendent of the State Police is liable for government enforcement of the Registry and related Virginia laws.

JURISDICTION AND VENUE

6. The Court has jurisdiction over Plaintiff's lawsuit pursuant to 28 U.S.C. §§ 1331, as this is a "civil action[] arising under the Constitution, [and] laws . . . of the United States."

Under 42 U.S.C. § 1983, Plaintiff alleges several violations of the United States Constitution, including the Equal Protection Clause and others.

7. Venue is proper in the United States District Court for the Eastern District of Virginia, Norfolk Division, pursuant to 28 U.S.C. § 1391, because Mr. Doe resides in and is subject to registration requirements in the Norfolk Division, and thus "a substantial part of the events or omissions giving rise to the claim occurred [and continue to occur]" in this Division. *See* 28 U.S.C. § 1391(b)(2). Furthermore, the Department maintains numerous offices in the Norfolk Division, including its Area 32 Office (6387 Center Drive, Building 2 Suite 1, Norfolk, VA 23502). *See* 28 U.S.C. § 1391(b)(1).

FACTUAL ALLEGATIONS

I. Mr. Doe's Offense

8. As a 17-year-old student on the eastern shore of Virginia, Mr. Doe began dating a 14-year-old in the same high school who was three years and a half years his junior.

9. The pair continued dating after Mr. Doe turned 18, and the girlfriend's family knew of and approved the relationship.

10. Approximately two months after Mr. Doe's 18th birthday, the couple had consensual sex. The young woman was 98 days from turning 15.

11. The date was April 2007, and both were still in high school.

II. Advice and Guilty Plea

12. Mr. Doe was arrested for and charged with violating Va. Code § 18.2-370(A): "Taking indecent liberties with children."

13. Mr. Doe's appointed attorney advised him to plead guilty.

14. Counsel never advised Mr. Doe about sex offender registration at all. Nor did he inform Mr. Doe that pleading guilty would automatically impose lifelong "violent" registration status on the Virginia Sex Offender Registry.

15. In fact, no party—including defense counsel, the prosecutor, or the court—even mentioned sex offender registration. In Mr. Doe's words, "I found out the hard way."

16. Instead, Mr. Doe's counsel falsely represented that a light sentence would be the only consequence of pleading guilty, and no other significant considerations existed.

17. Before and after pleading guilty, Mr. Doe had no idea that the Registry existed, had no notion of sex offender registries generally, and did not know he would have to register as a sex offender. If he had known about sex offender registration, Mr. Doe would not have pled guilty, and would have insisted on trial.

18. Mr. Doe was sentenced to three years of incarceration with all but four months suspended, and allowance for work release.

19. It was not until his jail sentence began that jail officials first informed Mr. Doe he needed to register as a sex offender.

III. Sex Offender Registration

20. The Virginia Registry is governed by a list of crimes "requiring registration." Va. Code § 9.1-902(A). The most significant distinction is between a "sexually violent offense" and other crimes. *Id*.

A. "Violent" Versus Non-Violent Designation

21. Anyone convicted of a "sexually violent offense" is required to register for life, Va. Code § 9.1-908, and can never petition for removal. *Id*. at § 9.1-910.

22. But those convicted of non-violent offenses can ordinarily petition for removal after 15 years. *Id.*

23. A judge can grant a petition for removal after an evidentiary hearing, if the court is "satisfied that such person no longer poses a risk to public safety." Va. Code § 9.1-910.

24. By statute, the Registry "shall . . . include a separate indication that a person has been convicted of a sexually violent offense." VA Code § 9.1-911.

25. As a result, the Registry's public website inscribes "Violent: Yes" beside a recent photograph of Mr. Doe.

26. Virginia law itself also labels Mr. Doe "a violent sexual offender." VA Code § 16.1-228.

27. This classification falsely stigmatizes Mr. Doe—who is not and never has been violent—and falsely equates him with the most dangerous tier of sex offenders on the Registry.

28. This classification also makes it a crime to leave a child alone with Mr. Doe, once someone has knowledge of his offense. Under VA Code § 18.2-371, it is a Class 1 Misdemeanor to leave a child alone with someone who the Registry considers "violent." VA Code § 16.1-228.

B. 2017 "Failure to Register" Conviction

29. In fact, the categorization of Mr. Doe's offense as "violent" directly resulted in an Orwellian, unjust conviction in 2017.

30. If he was correctly classified as non-violent, Mr. Doe would have only been required to re-register annually. But because Mr. Doe is classified as a "violent" offender, the Registry required Mr. Doe to re-register every three months.

31. Mr. Doe religiously complied with these requirements. In fact, he had a spotless record for almost a decade, until 2017.

32. In mid-2017, the State Police mailed Mr. Doe's reregistration paperwork late. Mr. Doe accidentally forgot to check his mail at the post office during the narrow window, and the post office returned the reregistration form to the State Police.

33. When he realized what had occurred, Mr. Doe tried to remedy the issue as swiftly as possible. He called Trooper A.[2], his assigned State Police officer, *the day after the re-registration deadline* and told him about the issue. At Trooper A.'s suggestion, Mr. Doe agreed to re-register in person next time Trooper A. was in the geographic area.

34. But when Trooper A. called the next time, Mr. Doe was not immediately available. The trooper misinterpreted Mr. Doe's conduct as rebellious. With no warning, he drove to Mr. Doe's workplace and arrested Mr. Doe onsite.

35. Mr. Doe was charged with a violation of Va. Code § 18.2-472.1(B)—knowing failure to register by someone convicted of a sexually violent offense. This is a Class 6 felony.

36. Knowing failure to register by someone convicted of a *non-violent* Registry offense implicates a separate provision, Va. Code § 18.2-472.1(A), and is only Class 1 misdemeanor.

37. Mr. Doe pled guilty, as advised, despite his innocence.

38. His sentence included wearing an ankle monitor for six months, and the conviction automatically required him to reregister *monthly*, instead of quarterly.

[2] If the pending pseudonym motion is granted, Trooper A.'s full last name will be furnished to defense counsel along with Plaintiff's identity.

C. The Registry's Life-Strangling Requirements

39. People required to register as sex offenders in Virginia—in every category—face a thick web of regulations that govern nearly every area of their lives and marginalize them from everyday society.

40. This Complaint cannot list all the legal disabilities and requirements that the Registry imposes. All the Registry's associated restrictions, requirements, and disabilities that affect Mr. Doe are challenged, whether listed herein or not.

41. The baseline of sex offender registration is **constant monitoring,** and the **collection and public dissemination of the registrant's information** by the Internet and other means.

42. This information "include[s] the offender's name; all aliases that he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his age, current address, and photograph; his current work address; the name of any institution of higher education at which he is currently enrolled; and such other information as the State Police may from time to time determine is necessary to preserve public safety, including but not limited to the fact that an individual is wanted for failing to register or reregister." Va. Code § 9.1-913.

43. At the time of registration, registrants must provide all the above information, and "submit to have a sample of his blood, saliva, or tissue taken for DNA," and "provide electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, submit to have his fingerprints and palm prints taken, provide information regarding his place of employment, and provide motor vehicle,

watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by him," as well as other information. *See, e.g.* VA Code § 9.1-903.

44. Whenever any information changes, the registrant must quickly update authorities. For example, Mr. Doe has **three days** to inform authorities if he change jobs, becomes unemployed, retired, disabled, or laid-off, if he starts or ends an additional job, moves inside the state, buys a car, or graduates from college.

45. If Mr. Doe obtains a new email address or Internet "identity information," he must inform authorities **within 30 minutes**, either in-person or electronically. VA Code § 9.1-909. This makes it is unclear whether, for example, registrants must report immediately if they set up an online account to pay taxes, purchase Christmas presents, or check their water bill.

46. Many of these onerous reporting requirements are **in-person**.

47. For example, Mr. Doe reports to a sex offender investigative officer who is permanently assigned to his specific case. This officer verifies Mr. Doe's residence and employer, and Mr. Doe must inform him whenever his information changes.

48. This officer can visit Mr. Doe's residence for an in-person meeting at any time, but usually does so approximately twice per year, every six months or so. These random home checks can occur at any time and become an embarrassing part of life.

49. If Mr. Doe changes his address, car, or employment information, he must report in-person to update this information.

50. Registrants whose offense is classified as "violent" must reregister every 90 days. VA Code § 9.1-904. At least once every two years, Mr. Doe must be photographed in-person by law enforcement for the Registry.

51. Registrants also face significant **legal barriers to employment**.

52. First and foremost, registrants like Mr. Doe are publicly branded as "violent," and required to list the *name and address of their employer* on the Registry's public website.

53. Furthermore, registrants are specifically banned from participating in various professions.

54. For example, registrants cannot teach children or operate a daycare. Registrants cannot work for a rideshare service (Uber, Lyft, etc.) or drive a tow-truck. VA Code §§ 46.2-116; 46.2-2099.49.

55. If a registrant wants a commercial driver license with permission to carry passengers, their license must carry a special designation that identifies them as a sex offender, and prevents them from driving for children or schools. *See* Va. Code § 46.2-341.9(A).

56. The public nature of registration makes it easy for private employers and related organizations to take adverse employment actions based a registrant's status. Many employers have a standing policy against hiring those on the Registry.

57. In Mr. Doe's case, this wrong is magnified by his classification as a "violent" offender.

58. Virginia also has related laws that make it illegal for those "convicted of a sexually violent offense or an offense requiring registration" to adopt a child, Va. Code § 63.2-1205.1, and **laws that prevent sex offenders from being close to children**, either through entering school property, or "loitering." VA Code §§ 18.2-370.2 to 370.5.

59. By virtue of his offense classification as "violent," Mr. Doe is "prohibited from entering or being present (i) during school hours, and during school-related or school-sponsored activities upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property; (ii) on any school bus as defined in § 46.2-100; or

(iii) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity." *See* VA Code § 18.2-370.5.

60. The Registry also provides that Mr. Doe "shall **as part of his sentence** be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school" or "within 100 feet of the premises of any place he knows or has reason to know is a child day program." Va. Code § 18.2-370.2. The statute does not define "loitering."

61. In short, Mr. Doe cannot enter school grounds or daycares, Va. Code § 18.2-370.5, and he cannot "loiter" within 100 feet thereof "as a part of his sentence." Va. Code § 18.2-370.2.

62. These restrictions severely limit the ability of parents on the Registry to aid their children in the normal incidents of childhood and education.

63. These restrictions can also severely limit opportunities to gather with the religious community of the registrant's choice, since a daycare, school, or Sunday school may be held on the premises.

64. **Traveling** as a registered sex offender can be prohibitively difficult.

65. Before moving outside of Virginia, registrants must notify the State Police 10 days beforehand.

66. The Registry requires the State Police to affirmatively notify other states when anyone required to register moves. Va. Code § 9.1-903(D). This severely discourages travel for the rest of Mr. Doe's life.

67. Registrants who travel to another state in the United States must comply with that state's registration laws. Often, that means someone on the Registry in Virginia must complete the

time-consuming, arduous registration process in a new state if they plan to remain for 48 hours or longer.

68. Many states tie their own registration requirements to whether the individual is required to register in their home state. Both Pennsylvania and Maryland are examples of this. *See* 42 Pa. Cons. Stat. Ann. § 9799.13; Md. Code Crim. Proc. § 11-704.

69. In Maryland, registrants can stay for 14 days before registration is required. Md. Code Crim. Proc. §§ 11-701, 704. In Alaska, registrants must register the "next working day" after physically arriving. Alaska Stat. § 12.63.010. In Florida, it is only 48 hours—meaning that a weekend visit triggers the requirement to register. Fla. Stat. § 943.0435.

70. Registration in another state creates a permanent, public record in that state. This expands the shame, embarrassment, potential vigilantism, and other negative effects that registrants already face in their home state.

71. The total effect of these restrictions is that registrants find it prohibitively difficult to travel, and certainly move between states. As a result, they often do not travel outside Virginia at all.

72. The **assorted restraints and requirements** placed on registrants goes on and on. Registrants must provide the state with information about all motor vehicles they own, even those that do not require license plates. *See* Va. Code § 9.1-903(B).

73. Although Virginia driver licenses normally last for eight years, a registrant's license only lasts for five years.

74. Normally, Virginians can renew their driver licenses on-line or by mail, thereby avoiding a fee. But registrants must renew in person and pay the fee. So registrants have to renew more often and pay the fee associated with in-person renewal.

75. Registrants are also excluded from a wide variety of federal benefits.

D. The Registry's Provisions are Punitive

76. The Registry's provisions are punitive in both purpose and effect.

77. Several aspects of the Registry point to its punitive purpose, including the law's application only to those convicted of crimes, the fact that the state's criminal justice system administers and enforces it, the law's punitive effects (such as shaming, ongoing supervision, and exclusion from various spheres), and others.

78. The Registry provisions are also punitive in effect.

79. The law inflicts what has been regarded as punishment in our history and traditions. Those punishments include shaming, banishment, probation/parole, and others. By excluding registrants from anywhere that children gather, including school zones, and occupations like tow truck driving and Uber driving, the law inflicts punishment akin to the ancient punishment of banishment. By making registrants stand permanently before the world, pictured on an easily searchable "sex offender" website with a recitation of their crime (or in this case, made-up allegations of violence), the law inflicts a modern version of public shaming. And by subjecting registrants to regular in-person checks, residence verifications, fingerprint and photograph updates, reporting of electronic identifiers, and other incidents of constant accountability, the law duplicates the conditions of probation and parole.

80. The conditions imposed by the law are affirmative disabilities and restraints, since they directly restrict where registrants travel, live, and work. In-person and other reporting requirements also constitute such restraints.

81. The law also promotes each of the traditional aims of punishment: incapacitation, retribution, and deterrence. The law seeks incapacitation by limiting registrants' anonymity and

possible interactions with children, in innumerable ways. The law is retributive, in that it inflicts painful requirements and restrictions based on commission of a crime. And it seeks both specific and general deterrence: specific because a registrant's every move is tracked and monitored, and general because no person would want the restricted, shamed life of a registrant.

82. Indeed, the law unfortunately accomplishes little that is non-punitive. In other words, it has little rational connection to any non-punitive purpose.

83. The *ostensible* goal of registration and related provisions is to counter high recidivism amongst sex offenders, preventing future crimes through public information-spreading, accountability, and limited interaction with children. *See* VA Code § 9.1-900.

84. But blunt, "offense-based public registration has, **at best, no impact on recidivism**." (emphasis added). "One study suggests that sex offenders . . . are actually less likely to recidivate than other sorts of criminals." *Doe v. Snyder*, 834 F.3d 696, 704 (6th Cir. 2016) (citing Lawrence A. Greenfield, *Recidivism of Sex Offenders Released from Prison in 1994* (2003).

85. In fact, offense-based registration and notification systems like Virginia's Registry "may actually increase recidivism," J.J. Prescott & Jonah E. Rockoff, *Do Sex offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ. 161, 161 (2011). "[P]ublicity can lead to negative consequences for sex offenders, including loss of employment, housing, or social ties; harassment; and psychological costs such as increased stress, loneliness, and depression." *Id*. at 168.

86. "This peer-reviewed study assessed data from Virginia and 14 comparable states across ten years, indicates that the Registry may well have increased the frequency of sex crimes committed by convicted sex offenders, and almost certainly have not reduced that number. *Id.*

87. Offense-based registries like Virginia's—as opposed to risk assessment-based registries—are not effective. **Lumping Mr. Doe and his teenage misdeed with violent rapists actually hampers the ability of the public and law enforcement to accurately identify dangerous persons**. In fact, no scientific study reveals a significant reduction in sex crime rates that can be attributed to SORN laws and policies for an offense-based registry like Virginia's.

88. In other words, the Registry currently accomplishes only punitive purposes. It has no discernible positive effect on recidivism. The Registry may have the *general* deterrence effect on the public that severe punishment accomplishes. But the scourge of shaming and communal banishment likely exacerbates recidivism, rather than helping.

89. The research bears out what is intuitive—registration is punitive.

90. With punitive effects apparent from its face, and an exacerbating effect on recidivism, the punitive effect of the Registry is excessive with respect to its non-punitive purposes.

IV. Impact on Mr. Doe's Life

91. As should now be clear, registration as a sex offender affects every area of life,

92. Because he is permanently branded a sex offender, Mr. Doe has been forced to remain in the same job since high school. Since his conviction, Mr. Doe has been able to work only for the personal business of a family member—a family member courageous enough to endure the ignominy of her business name publicly listed on the Registry.

93. Saddled with shame, a conviction, and a label, Mr. Doe has never obtained a college degree, or post high school education.

94. The communal effects are insidious. People have insulted Mr. Doe as a sex offender. Vigilantism is a constant possibility for registrants, and violence is not unusual.

95. When Mr. Doe married in 2012, his wife had young children of elementary school age. But because of his "violent" status, Mr. Doe was unable to attend school events, drop the kids off at school, or play a fatherly role in the children's lives. Five years later, the marriage fell apart.

96. Mr. Doe is again in a stable relationship. But his girlfriend lost custody of her biological daughter, based on Mr. Doe's violent sex offender status. Because of his Registry status, Mr. Doe is prohibited from adopting or fostering children. *See, e.g.*, Va. Code § 63.2-1205.1.

97. In sum, the requirement that Mr. Doe register as a sex offender has pulled and tugged at the fabric of his life in endless ways.

98. The Registry's classification of Mr. Doe and his offense as "sexually violent," and the application of the Registry to Mr. Doe, both constitute fixed and continuing practices.

99. Without court-ordered relief, the Registry's restrictions, requirements, and disabilities will continue to apply to Mr. Doe for the rest of his life.

COUNT I – VIOLATION OF THE EQUAL PROTECTION CLAUSE

100. Plaintiff incorporates by reference the allegations of the preceding and forthcoming paragraphs.

101. Under the Equal Protection Clause of the Fourteenth Amendment, "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

102. This provision is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) (citation omitted).

103. The Registry draws a distinction between 18-year-olds who commit identical offenses—consensual sex with a 14-year-old—based on whether the teenager is convicted of

carnal knowledge (Va. Code § 18.2-63(A)) or indecent liberties (Va. Code § 18.2-370(A)). *See* Va. Code § 9.1-902.

104. In these circumstances, those convicted of carnal knowledge are considered non-violent sex offenders, but those convicted of indecent liberties are considered "violent" sex offenders, with the extreme disabilities that accompany that designation, as explained above.

105. There is no rational basis for this disparate treatment.

106. The irrationality of this disparate treatment is demonstrated by the fact that a violation of Va. Code § 18.2-63(A) (carnal knowledge) is *more* serious than a violation of Va. Code § 18.2-370(A) (indecent liberties), both in Virginia law and in common sense.

107. Carnal knowledge outlaws consensual sexual intercourse, while indecent liberties outlaws not only consensual sex itself, but also mere proposals to have sex or engage in intimate acts. *Compare* Va. Code § 18.2-63(A) *with* Va. Code § 18.2-370(A). In Mr. Doe's circumstance, the elements of the two offenses are identical.

108. Carnal knowledge is a *class 4* felony, with penalties of 2-10 years imprisonment and $100,000 in fines. But indecent liberties is a *class 5* felony, which warrants only 1-10 years in prison and a $2,500 fine. *Id.*; Va. Code § 18.2-10(d) (Class 4 felonies) and (e) (Class 5).

109. As a matter of law, Virginia does not consider actual, consensual sex between an 18-year-old and a 14-year-old to be a "violent" offense for Registry purposes. Va. Code § 9.1-902. But that same act—if charged as indecent liberties—slaps a lifelong "violent" designation on the convicted 18-year-old. *Id*.

110. This irrational distinction violates the Equal Protection Clause.

111. Prior conviction of a "violent" offense is an element of Mr. Doe's 2017 conviction under Va. Code § 18.2-472.1(B). And that conviction directly resulted from the requirement that "violent" offenders register quarterly, rather than annually.

WHEREFORE, Plaintiff respectfully asks this Court to grant the following relief:

a. Issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 declaring that where Va. Code § 9.1-902 draws the arbitrary distinction identified in this Count, it violates the Equal Protection Clause of the United States Constitution, and issue a permanent injunction prohibiting Defendant from classifying Mr. Doe's offense as "sexually violent" for Registry purposes;

b. Issue an order vacating and expunging Mr. Doe's 2017 Va. Code § 18.2-472.1(B) conviction—which was premised on the same "violent" designation from Va. Code § 9.1-902— thereby allowing Mr. Doe to petition for removal from the Registry in the year 2022 rather than 2032, pursuant to Va. Code § 9.1-910;

c. Award Plaintiff his court costs, expert fees, and attorney's fees in pursuing this action pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority; and

d. Grant such other relief as this Court deems just and proper.

COUNT II – CRUEL AND UNUSUAL PUNISHMENT

112. Plaintiff incorporates by reference the allegations of the preceding and forthcoming paragraphs.

113. The Eighth Amendment prohibits all "cruel and unusual punishments." U.S. Const. Amend. VIII.

114. Plaintiff has already alleged, in ¶¶ 45-97 and throughout the Complaint, sufficient facts to demonstrate that the Registry's lifelong application constitutes punishment, especially given Mr. Doe's "violent" designation.

115. This punishment is also cruel and unusual, as applied to Mr. Doe.

116. First, Mr. Doe was only 18 years old at the time of his offense.

117. Second, Mr. Doe's offense is non-violent, according to how Virginia views such facts under Va. Code § 18.2-63(A), and § 9.1-902. Other Virginians who commit the identical offense are not treated like Mr. Doe.

118. Third, even beyond Virginia, there is a growing consensus that subjecting non-violent offenders convicted at a young age to lifelong, extreme sex offender restrictions violates evolving standards of decency in American society. *See, e.g. People v. Dipiazza*, 778 N.W.2d 264 (Mich. Ct. App. 2009).

119. Therefore, the Registry's application to Mr. Doe violates the Eighth Amendment, especially to the extent that it classifies his offense as "violent" and arbitrarily requires him to register for life, rather than for 15 years.

WHEREFORE, Plaintiff respectfully asks this Court to grant the following relief:

a. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that the Registry violates the Eighth Amendment as applied to Mr. Doe, and issue a permanent injunction disallowing the defendants from enforcing the Registry against Mr. Doe;

b. Issue an order vacating and expunging Mr. Doe's 2017 Va. Code § 18.2-472.1(B) conviction—which was premised on the "violent" designation from Va. Code § 9.1-902— thereby allowing Mr. Doe to petition for removal from the Registry in the year 2022 rather than 2032, pursuant to Va. Code § 9.1-910;

c. Award Plaintiff his court costs, expert fees, and attorney's fees in pursuing this action pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority; and

d. Grant such other relief as this Court deems just and proper.

COUNT III – VIOLATION OF THE VIRGINIA CONSTITUTION

120. Plaintiff incorporates by reference the allegations of the preceding and forthcoming paragraphs

121. The Virginia Constitution prohibits legislation that lacks a rational basis.

122. As stated above, Virginia law inflicts disparate treatment on 18-year-olds who commit identical offenses—consensual sex with a 14-year-old—based on whether the teenager is convicted of carnal knowledge (Va. Code § 18.2-63(A)) or indecent liberties (Va. Code § 18.2-370(A)). Counter-intuitively, the Registry classifies those convicted of the lesser offense as "violent" for Registry purposes.

123. The Registry constitutes "the punishment of crime" for the reasons stated above, including under Va. Const. Art. IV, Section 14, especially in its designation of Mr. Doe as "violent."

124. There is no rational basis for this disparate treatment, and this violates the due process and equal protection provisions of the Virginia Constitution, and the prohibition on "local, special, or private law" under Va. Const. Art. IV, Section 14.

WHEREFORE, Plaintiff respectfully asks this Court to grant the following relief:

a. Issue a declaratory judgment finding that classifying Mr. Doe's offense as "sexually violent" under Va. Code § 9.1-902 for Registry purposes violates the Virginia Constitution, and issue a permanent injunction prohibiting that classification;

b. Issue an order vacating and expunging Mr. Doe's 2017, Va. Code § 18.2-472.1(B) conviction—which was premised on the same "violent" designation from Va. Code § 9.1-902—thereby allowing a petition for removal from the Registry in the year 2022 rather than 2032, under Va. Code § 9.1-910;

c. Grant such other relief as this Court deems just and proper.

COUNT IV -- VIOLATIONS OF SUBSTANTIVE DUE PROCESS

125. Plaintiff incorporates by reference the allegations of the preceding and forthcoming paragraphs.

126. The Registry violates Mr. Doe's substantive Due Process rights under the Fourteenth Amendment to the United States Constitution.

127. Virginia labels Mr. Doe and his offense "violent," and subjects him to registration for life.

A. No Rational Basis

128. As detailed above, Mr. Doe's offense involved no force on his part.

129. It is irrational to subject Mr. Doe to lifetime sex offender registration as "violent"—with the associated embarrassment, restrictions, and requirements—when his offense was not violent, and those who commit an equivalent or worse offense register as non-violent.

130. As explained in Count I, Virginia law inflicts disparate treatment on 18-year-olds who commit identical offenses—consensual sex with a 14-year-old—based on whether the teenager is convicted of carnal knowledge (Va. Code § 18.2-63(A)) or indecent liberties (Va. Code § 18.2-370(A)). Counter-intuitively, the Registry classifies those convicted of the lesser offense as "violent" for Registry purposes.

131. There is no rational basis for this disparate treatment.

132. This violates substantive Due Process.

B. The Right to Travel

133. The right to travel is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

134. The Registry substantially interferes with Mr. Doe's ability to travel.

135. The Registry does not provide for any individualized consideration before restricting Mr. Doe's right to travel.

136. The Registry violates Mr. Doe's right to travel, because it is not narrowly tailored to serve a compelling state interest.

C. The Right to Work

137. The right to work is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

138. The Registry substantially interferes with Mr. Doe's ability to work.

139. The Registry does not provide for any individualized consideration before restricting Mr. Doe's right to work.

140. The Registry violates Mr. Doe's right to work, because it is not narrowly tailored to serve a compelling state interest.

D. The Right to Privacy

141. The right to privacy is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

142. The Registry substantially interferes with Mr. Prynne's right to privacy, including by collecting and broadcasting large amounts of Mr. Doe's information, by making the information

publicly available for further dissemination, and by constantly monitoring and restricting numerous details of his life.

143. The Registry does not provide for any individualized consideration before restricting Mr. Doe's privacy.

144. The Registry violates Mr. Doe's right to privacy, because it is not narrowly tailored to serve a compelling state interest.

E. The Right to Parent

145. The right to parent and raise children is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

146. The Registry substantially interferes with this right.

147. The Registry does not provide for any individualized consideration before restricting Mr. Doe's ability to parent and raise children.

148. The Registry violates Mr. Doe's right to parent and raise children, because it is not narrowly tailored to serve a compelling state interest.

WHEREFORE, Plaintiff respectfully asks this Court grant the following relief:

a. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that the Registry's application to Mr. Doe violates the Due Process Clause, and issue a permanent injunction restraining the defendants from requiring Mr. Doe to submit to the Registry.

b. Award Plaintiff his court costs, expert fees, and attorney's fees in pursuing this action pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority; and

c. Grant such other relief as this Court deems just and proper.

COUNT V

VIOLATION OF PROCEDURAL DUE PROCESS—INVOLUNTARY GUILTY PLEA

149. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

150. The Due Process Clause requires that a guilty plea be both knowing and voluntary. *E.g.*, *Henderson v. Morgan*, 426 U.S. 637, 644-45 (1976).

151. Mr. Doe's guilty plea in 2007 was neither knowing nor voluntary.

152. Mr. Doe had no idea that as a direct consequence of a guilty plea, he would have to register as a sex offender for the rest of his life.

153. Furthermore, Mr. Doe's counsel falsely represented that a light sentence would be the only consequence of pleading guilty.

154. Thus, Mr. Doe was deprived of procedural Due Process.

155. Prior conviction of a "violent" offense is an element of Mr. Doe's 2017 conviction under Va. Code § 18.2-472.1(B). And that conviction directly resulted from the requirement that "violent" offenders register quarterly, rather than annually.

WHEREFORE, Plaintiff respectfully asks this Court to grant the following relief:

a. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that Mr. Doe's guilty plea was obtained in violation of procedural Due Process Clause of the U.S. Constitution;

b. Issue an order vacating and expunging Mr. Doe's 2007 and 2017 convictions;

c. Award Plaintiff his court costs, expert fees, and attorney's fees in pursuing this action pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority; and

d. Grant such other relief as this Court deems just and proper.

COUNT VI – INEFFECTIVE ASSISTANCE OF COUNSEL

156. Plaintiff incorporates by reference the allegations of the preceding and forthcoming paragraphs.

157. The Sixth Amendment guarantees to all criminal defendants "the Assistance of Counsel for his defence." U.S. Const. Amend. VI. "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010) (citations omitted).

158. Failure to advise a defendant that pleading guilty will automatically subject them to lifelong registration as a "violent" sex offender—with all of the accompanying requirements and disabilities—is ineffective assistance of counsel. *See id.* at 366-369.

159. Sex offender registration is a unique and severe sanction. It exiles the defendant from normal life, bans them from various professions, and requires them to maintain an excruciatingly detailed public webpage with a "Violent" label.

160. Sex offender registration is also automatic. Conviction for one of the offenses listed in Va. Code Section 9.1-902 automatically triggers all of the Registry's provisions.

161. The failure of Mr. Doe's counsel to advise him of these facts falls beyond the pale of professionally competent performance. The application of these laws to Mr. Doe's offense is evident from a simple reading of the statute.

162. The effect of registration is devastating and life-altering. Prevailing professional norms unanimously dictate informing a defendant of these consequences before he pleads guilty, and especially for a "violent" offense under Va. Code § 9.1-902.

163. Counsel's false affirmative representation that a light sentence would be the only direct impact of pleading guilty also independently constitutes ineffective assistance and falls below the standard of professionally competent practice.

164. If properly advised, Mr. Doe would have steadfastly refused to plead guilty and insisted on trial. The impact on his life would be simply too severe to permit him to plead guilty in those circumstances and voluntarily become a social outcast.

165. Therefore, Mr. Doe was denied effective assistance of counsel, and his 2007 guilty plea was obtained in violation of the Sixth Amendment.

166. Furthermore, the 2007 conviction constituted an element of Mr. Doe's 2017 conviction under Va. Code § 18.2-472.1(B).

WHEREFORE, Plaintiff respectfully asks this Court to grant the following relief:

a. Issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 finding that counsel's failure to advise a criminal defendant that pleading guilty will automatically require lifelong registration as a "violent" sex offender on the Virginia Registry constitutes ineffective assistance of counsel, in violation of the Sixth Amendment of the United States;

b. Issue an order vacating and expunging Mr. Doe's 2007 and 2017 convictions;

c. Award Plaintiff his court costs, expert fees, and attorney's fees in pursuing this action pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority; and

d. Grant such other relief as this Court deems just and proper.

Respectfully Submitted,

JOHN DOE

By: /s/

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[3] Mr. Welkener's attorney admission application to the Eastern District of Virginia is submitted and pending in the Alexandria Division.