

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRIAN HOPE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:16-cv-02865-RLY-TAB
)	
COMMISSIONER OF THE INDIANA)	
DEPARTMENT OF CORRECTION, <i>et al.</i> ,)	
)	
Defendants.)	

ENTRY ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The Indiana Department of Correction ("DOC") requires some—but not all—persons who committed sex offenses before the enactment of Indiana's Sex Offender Registration Act ("SORA") to register as sex offenders. The DOC distinguishes between these "pre-SORA offenders" solely on the basis of whether the offender is subject to an existing registration requirement in another state. The Seventh Circuit remanded this case so that this court could determine whether SORA, as applied to Plaintiffs, violates the Equal Protection Clause of the Fourteenth Amendment. *Hope v. Comm'r of Ind. Dep't of Corr.*, 9 F.4th 513, 529 (7th Cir. 2021) (en banc). While Indiana's interest in protecting the public from high-recidivism-risk offenders is unquestionably legitimate, SORA's distinction between pre-SORA offenders based solely on whether the offender incurred an out-of-state registration obligation is not rationally related to any legitimate government purpose. Therefore, SORA—as applied by the DOC, the respective county

prosecutors' offices, and the respective county sheriffs (collectively, the "State" or "Indiana")—violates the Equal Protection Clause.

I. Background

A. Indiana's Sex Offender Registration Act

SORA requires sex offenders who reside, work, or study in Indiana to periodically report to law enforcement and register. Ind. Code § 11-8-8-1 *et seq.* The name of each offender who registers pursuant to SORA is listed on the Indiana Sex and Violent Offender Registry ("registry"), which is jointly maintained by the DOC and local sheriffs. *See id.* §§ 11-8-2-12.4; 11-8-2-13(b); 36-2-13-5.5. The DOC determines who is required to register on the registry, the length of the registration period, and whether an individual is classified as a "sexually violent predator," an "offender against children," and/or a "serious sex offender" under Indiana law. (Filing No. 142-1, First Myers Dep. at 6–7).¹

Persons required to register must provide detailed personal information, including: the offender's full name, date of birth, sex, race, height, weight, hair color, eye color, identifying features, social security number, driver's license or state identification card number, vehicle description and plate number, residential address, address of the offender's employer or educational institution, electronic mail address, social networking username, and any other information required by the DOC. Ind. Code § 11-8-8-8(a). Some of this information is privately maintained by the DOC, but most of it is published

¹ Brent Myers is the DOC's Director of Registration and Victim's Services. (Filing No. 142-3, Third Myers Dep. at 5).

on the public registry. (First Myers Dep. at 12). And any changes in information must be reported in person within 72 hours of the change. Ind. Code § 11-8-8-8(c).

Specific categories of offenders are subject to additional restrictions. A "sexually violent predator" must inform law enforcement whenever he plans to be absent from his home for more than 72 hours. *Id.* § 11-8-8-18. A person who qualifies as an "offender against children" may not work or volunteer at, or reside within 1,000 feet of, school property, a youth program center, or a public park. *Id.* §§ 35-42-4-10, -11. And a person who qualifies as a "serious sex offender" may not enter school property. *Id.* § 35-42-4-14.

In its current form, SORA requires an individual to register if the individual has been: (1) convicted of an enumerated Indiana criminal offense; (2) convicted of a "substantially similar" offense in another jurisdiction; or (3) required to register by another state (the "other-jurisdiction provision"). *Hope*, 9 F.4th at 520 (en banc) (citations omitted). "By its plain terms, SORA covers any offender who fits within these categories—regardless of his date of conviction." *Id.*

B. The Boundaries of Indiana's Ex Post Facto Clause

"While SORA is fully retrospective as a statutory matter, the Indiana Constitution constrains its applicability to offenders with pre-SORA offenses." *Id.* In a series of decisions beginning with *Wallace v. State*, the Indiana Supreme Court articulated the boundaries of the State's Ex Post Facto Clause. In *Wallace*, the court held that the Ex Post Facto Clause precluded the retroactive application of SORA to Wallace, who had been charged, convicted, and served his sentence before SORA was enacted. *Wallace v.*

State, 905 N.E.2d 371, 379, 384 (Ind. 2009). However, a case decided the same day as *Wallace* made clear that not all retroactive applications of SORA are forbidden. *Jensen v. State*, 905 N.E.2d 384, 388 (Ind. 2009).

In 2016, the Indiana Supreme Court issued a trio of decisions which permit the retroactive application of SORA to offenders whose initial registration requirements originated in other states. In *Tyson v. State*, the court held that an offender who was required to register under Texas law at the time of his conviction could be required to register under Indiana law, even though his conviction and Texas registration occurred before SORA would have covered his offense. 51 N.E.3d 88, 90 (Ind. 2016). The court reasoned that the registration did not amount to added punishment, which would have violated Indiana's Ex Post Facto Clause, because Indiana was merely maintaining a registry requirement across state lines. *Id.* In *State v. Zerbe*, the court extended that reasoning and concluded that Indiana could maintain a Michigan registration obligation—which Michigan applied retroactively consistent with its own Ex Post Facto Clause—even though the offender was convicted before either Indiana or Michigan enacted their registration laws. 50 N.E.3d 368, 369–71 (Ind. 2016). Finally, in *Ammons v. State*, the court held that a sex offender convicted in Indiana before SORA was enacted could nonetheless be required to register because another state had required him to register for that offense. 50 N.E.3d 143, 144–45 (Ind. 2016) (per curiam). Ammons would not initially have been required to register under *Wallace*; however, he moved to Iowa and incurred a registration obligation there, and his registration could be maintained in Indiana consistent with the State's Ex Post Facto Clause. *Id.*

In sum, though *Wallace* prohibits the State from imposing a new duty upon pre-SORA offenders, the State may maintain, extend, or modify an existing duty under SORA. *Hope*, 9 F.4th at 522 (en banc). The State may even maintain, extend, or modify another state's registration requirement regardless of where or when the conviction occurred, so long as SORA does not so significantly alter that obligation so as to result in added punishment. *Id.* "Indiana caselaw thus has the peculiar effect of permitting the State to treat similarly situated offenders differently based solely on whether the offender had an out-of-state registration obligation." *Id.* at 519.

C. The DOC's Application of SORA

The other-jurisdiction provision imposes a registration requirement on "a person who is required to register as a sex or violent offender in any jurisdiction." Ind. Code § 11-8-8-5(b)(1). If a person is required to register in a state other than Indiana, the DOC requires that person to register under SORA regardless of how long that person had been required to register in a state other than Indiana. (Filing No. 142-3, Third Myers Dep. at 14–15 & Ex. 2 ¶¶ 4, 6). The DOC applies the other-jurisdiction provision retroactively regardless of when a person moves to Indiana, (*id.* at 30), as permitted by the Indiana Supreme Court's decisions in *Tyson*, *Zerbe*, and *Ammons*.

A person required to register under the other-jurisdiction provision will be required to register in Indiana for either the period of time established by Indiana Code § 11-8-8-19 or the period of time required by the other state's registration provision, whichever is longer. (Third Myers Dep. at 15 & Ex. 2 ¶ 8). For example, if an individual who relocates to Indiana has a 25-year registration obligation in another state but

qualifies as a lifetime registrant under Indiana law, the individual will be required to register for the remainder of his life. (*Id.*). On the other hand, if an individual who relocates to Indiana has a 25-year registration obligation in another state but would qualify as a 10-year registrant under Indiana law, the individual will be required to register for 25 years. (*Id.*).

D. The Plaintiffs

Each Plaintiff in this case was convicted of a sex offense committed before SORA would have required registration for the offense. Because another state had required each Plaintiff to register, the DOC required them to register in Indiana pursuant to the other-jurisdiction provision.²

1. Brian Hope

In 1993, Brian Hope was charged with child molesting in Indiana. (Filing No. 142-4, Hope Aff. ¶ 3). He pleaded guilty and was sentenced to probation. (*Id.* ¶ 3–4). In 2004, Hope moved from Indiana to California. (*Id.* ¶ 5). Shortly thereafter he moved to Texas. (*Id.*). Texas officials informed Hope that he was required to register as a sex offender under the laws of Texas as a result of his Indiana conviction. (*Id.* ¶ 6). In 2013, Hope moved back to Indiana. (*Id.* ¶ 8). Upon his return, Hope was required to register in

² There has been disagreement throughout this litigation regarding whether Indiana required Plaintiffs to register pursuant to other provisions of SORA. *Hope*, 9 F.4th at 522 n.3 (en banc). However, the Seventh Circuit clearly remanded the case for consideration of a single issue: whether the State violates the Equal Protection Clause by distinguishing between pre-SORA offenders "based solely on whether the offender has an out-of-state registration obligation." *Id.* at 529. Therefore, the court declines Plaintiffs' invitation to resurrect their right-to-travel claim based on an alleged change in Indiana's application of the "substantially similar" provision. The only issue on remand is the as-applied equal protection claim based on the other-jurisdiction provision.

Indiana for the remainder of his life as an "offender against children," because he had incurred a registration obligation while he lived in Texas. (*Id.* ¶¶ 8, 11).

Hope has been homeless since 2016.³ (*Id.* ¶ 2). As an offender against children who lacks a permanent residence, he must register in person at the sheriff's office once every seven days. (*Id.* ¶ 12). This is often a time-consuming process. (*Id.*). Hope also is not permitted to live within 1,000 feet of a park, daycare, or certain other facilities. (*Id.* ¶ 16). On at least one occasion, he has been forced to leave a homeless shelter because it was located within 800 feet of a park. (*Id.*).

2. Gary Snider

Gary Snider was convicted by a jury of criminal sexual conduct in the first degree for a rape committed in Michigan in 1988. (Filing No. 142-5, Snider Aff. ¶ 2). While incarcerated, he was required to register as a sex offender in Michigan. (*Id.* ¶ 3). He was told that if he remained in Michigan post-incarceration he would have to maintain his registration for a period of twenty-five years from the date he began registering. (*Id.*).

Snider completed his incarceration in 2003 and immediately moved to Indiana to live with his wife. (*Id.* ¶ 4). He does not believe they even stopped for gas during his drive straight from the prison to Indiana. (*Id.*). He initially registered upon his arrival in Indiana but stopped registering when he was informed he no longer was required to do so

³ Hope was apparently able to secure employment and a home while this case was pending. (Hope Aff. ¶ 2). He believes he was able to obtain employment because, as a result of the injunction in this case, he was no longer designated a sex offender. (*Id.* ¶ 13).

because of the Indiana Supreme Court's decision in *Wallace*. (*Id.* ¶ 7). In 2016, he was informed that he was again required to register—now for the rest of his life. (*Id.*).

At least once every ninety days, Snider must register in person at the sheriff's office. (*Id.* ¶ 11). Like Hope, Snider cannot live within 1,000 feet of a park, daycare, or certain other facilities. (*Id.* ¶ 12). He was once required to move away from his wife because their house was located within 1,000 feet of a daycare. (*Id.*).

3. Joseph Standish

Joseph Standish pleaded no contest to attempted criminal sexual conduct with a child under 13, committed in Michigan in 1995. (Filing No. 142-6, Standish Aff. ¶ 2); *Hope*, 9 F.4th at 523 n.5 (en banc). Although SORA was in effect at the time Standish committed his offense, the offense did not become a registrable offense in Indiana until the statute was amended years later. Under Michigan law, Standish was required to register as a sex offender while he was serving his first term of probation. (Standish Aff. ¶ 3).

In 2013, Standish moved to Indiana, where his wife had obtained a job. (*Id.* ¶ 6). When he went to register in Indiana, he was initially told he was not required to register because of a court decision. (*Id.* ¶ 6). However, in late 2015 or early 2016, he was informed that he was now required to register for the rest of his life. (*Id.* ¶ 7).

Like Snider, Standish must register once every ninety days. (*Id.* ¶ 12). Because of his status, Standish has not been able to support his two teenagers at school events. (*Id.* ¶ 13). He has been denied employment for which he believes he was qualified, neighbors have told him to move, and laser pointers have been shined through his family's living

room windows. (*Id.* ¶ 14). Standish's son ultimately dropped out of Boy Scouts because of the embarrassment stemming from other kids finding out about Standish's status. (*Id.* ¶ 15). On top of this, Standish is constantly worried that new restrictions could be placed on him at any time based on his 1995 offense. (*Id.* ¶ 16).

4. Patrick Rice

Patrick Rice was convicted of aggravated criminal sexual assault for a rape committed in Illinois in 1989. (Filing No. 142-7, Rice Aff. ¶ 2). He was sentenced to twenty-five years in the Illinois prison system. (*Id.*). Rice had no resources and no home in Illinois, so he would have been homeless if he stayed there after he was released. (*Id.* ¶ 6). He decided to move in with his sister in Indiana while he got back on his feet, and he informed the authorities on the day he was released from prison that this was his intention. (*Id.* ¶ 7). Even so, he was told upon release that he was required to promptly register as a sex offender under Illinois law. (*Id.*).

Had he stayed in Illinois, he would have been required to register for ten years. (*Id.*). However, he moved in with his sister in Indiana as intended and was required to register in Indiana for the remainder of his life as a "sexually violent predator." (*Id.* ¶ 8). Rice's registration process in Indiana was complicated. He did not have the required documents after his release from prison, so he had to make multiple trips despite a lack of reliable transportation. (*Id.* ¶¶ 9–14). His lack of transportation remains an impediment that he must deal with at least once every ninety days when he is required to register in person. (*Id.* ¶ 20). Like the other Plaintiffs, Rice is subject to significant restrictions.

(*Id.* ¶¶ 21–22). He believes he has not been able to secure employment because of his 1989 offense and sex offender status. (*Id.* ¶ 23).

5. Adam Bash

Adam Bash pleaded guilty but mentally ill to charges of rape and sodomy, which occurred in Kentucky in the mid-1980s when he was fourteen years old or younger. (Filing No. 142-8, Bash Aff. ¶¶ 2–3). He was incarcerated in Kentucky—spending most of the time in a psychiatric or medical facility—and released in 1998. (*Id.* ¶ 4). He moved to Cincinnati, Ohio, where he was required to register as a sex offender for ten years. (*Id.* ¶ 5). He only lived in Ohio for a few months before he decided to move to Indiana in 1999 or 2000. (*Id.* ¶ 6).

Bash was not required to register in Indiana until sometime in 2012 or later, even though he has not been convicted of any offense that qualifies as a sex or violent offense under Indiana law.⁴ (*Id.* ¶¶ 6–7). Bash qualifies as an "offender against children"—though he was in his early teens when the offense was committed—and a "serious sex offender." (*Id.* ¶ 13).

At least once a year, Bash is required to register in person with the local sheriff. (*Id.* ¶ 14). Like the others, Bash is subject to burdensome restrictions. (*Id.* ¶¶ 15–22). He has been required to provide detailed itineraries of vacations to the sheriff, (*id.* ¶ 16), he has difficulty obtaining housing, (*id.* ¶ 18), and he cannot attend school events to support his young son—whose mother is not a part of his life, (*id.* ¶¶ 20–22).

⁴ Bash does have convictions for other non-sex offenses, for which he was sentenced to probation. (Bash Aff. ¶ 7).

6. Scott Rush

Scott Rush was convicted sexual battery of a child under 12 years old, committed in Florida in 1992. (Filing No. 142-2, Rush Aff. ¶ 9); *Hope*, 9 F.4th at 523 n.5. He was released from prison in 1995, and his probation expired in 2005. (Rush Aff. ¶ 2). He was required to register as a sex offender under Florida law for a period of twenty years. (*Id.* ¶¶ 2–3).

Rush has not been charged or convicted of any offense since his 1992 conviction, nor has he been accused of violating a term of supervised release. (*Id.* ¶ 4). In 2017, the company for which he worked for nearly twenty years closed its Florida office. (*Id.* ¶ 5). Rush was offered a transfer to its Indiana office, and he accepted.⁵ (*Id.*). When he arrived in Indiana, Rush was required to register for life as a sex offender. (*Id.* ¶ 8). Of course, his status means he is subject to significant restrictions, including restrictions which limit his ability to participate in school activities with his young children. (*Id.* ¶ 16).

II. Legal Standard

The parties filed cross-motions for summary judgment. Summary judgment is appropriate when the moving party shows that there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The ordinary summary judgment standard remains unchanged when the parties file cross-motions for summary judgment: the court construes all facts and inferences

⁵ Rush later moved companies after a change in management. (Rush Aff. ¶ 7).

arising from those facts in favor of the party against whom the motion under consideration is made. *Blow v. Bijora, Inc.*, 855 F.3d 793, 797 (7th Cir. 2017).

III. Discussion

Plaintiffs challenge SORA as applied, on the grounds that it treats them differently than similarly situated Indiana offenders who committed sex offenses prior to the statute's enactment. The Seventh Circuit determined that SORA neither implicates a suspect or quasi-suspect class nor infringes upon a fundamental right and remanded this case for consideration of whether the statute satisfies rational basis review. *Hope*, 9 F.4th 529 (en banc). Thus, for the State's application of the statute to be upheld, SORA's differential treatment of similarly situated individuals need only be rationally related to a legitimate government purpose. *Id.* "Rational basis review favors the State but does not ensure an automatic win." *Id.*

In remanding the case, the en banc court explained:

SORA, as modified by the Indiana Supreme Court's constitutional overlay, creates two classes of pre-SORA offenders—those who must register in Indiana, and those who are free from that requirement. Indiana distinguishes between the two groups based solely on whether the pre-SORA offender had a registration obligation in another state. For example: two lifelong Indiana residents, both with pre-SORA convictions, will be treated differently if one commutes into Chicago for work—and so is subject to Illinois's reporting requirements—while the other never leaves Indiana. The distinction holds true for offenders who attend school in another state or who have lived in another state imposing registration obligations on them. In short, two similarly situated Indiana offenders may have vastly different legal obligations simply because one of them has an out-of-state registration obligation. The question is whether Indiana's differential treatment on this basis is rationally related to a legitimate government purpose.

Id.

Two points from this statement should be highlighted before proceeding further. First, the court considers the application of SORA "as modified by the Indiana Supreme Court's constitutional overlay." *Id.* Second, "[t]he question is whether *Indiana's differential treatment* [based on out-of-state registration] is rationally related to a legitimate government purpose." *Id.* (emphasis added).

The first point is necessary to clear up some confusion that has persisted throughout this litigation regarding the proper characterization of the operation of SORA. *Hope v. Comm'r of Ind. Dep't of Corr.*, 984 F.3d 532, 537 (7th Cir. 2020) (panel decision), *reh'g en banc granted, opinion vacated* (Mar. 12, 2021). Defendants' primary argument, as the court understands it, is that the State wishes to register *all* sex offenders in Indiana regardless of their date of conviction, but it is precluded from doing so by the holding in *Wallace*. *Id.* at 548; (*see also* Filing No. 145, Defs.' Mem. Support at 11–14); (Filing No. 148, Defs.' Resp. Opp'n at 6–9). So the State never intended to treat pre-SORA offenders differently; "that line-drawing merely seeks to comply" with the Indiana Supreme Court's Ex Post Facto jurisprudence. (Defs.' Mem. Support at 11).⁶

⁶ Defendants repeatedly assert that the State has struck a "balance" between its public safety interest in registering sex offenders on the one hand and "the important constitutional principles of fair notice undergirding the Indiana Supreme Court's decisions in *Tyson*, *Zerbe*, and *Ammons* on the other." (*See, e.g.*, Defs.' Mem. Support at 13). Defendants' Rule 30(b)(6) designate on remand acknowledged that this statement accurately summarizes the State's interest. (Third Myers Dep. at 37–38). Yet Defendants now expressly disclaim any interest in fair notice by itself. (Defs.' Resp. Opp'n at 11). Instead, the court understands Defendants' argument as explained above: the State wishes to register all sex offenders, but it must comply with the Indiana Supreme Court's decisions.

From the point of view of the Indiana General Assembly and the DOC, this explanation for the differential treatment seems perfectly reasonable. However, as the panel decision made clear:

This . . . is not how we ordinarily describe operative state law. For example, in 2003, the U.S. Supreme Court declared unconstitutional the Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct. *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L.Ed.2d 508 (2003). Despite this ruling, the Texas statute that makes it a crime if a person "engages in deviate sexual intercourse with another individual of the same sex" remains on the books in Texas to this day. See Tx. Penal Code § 21.06. Yet no one ought to write a brief which describes same sex behavior as illegal in Texas under the statute but allowed by the Supreme Court's interpretation of the Constitution. Legislatively enacted laws, modified by case law, together as a whole become the law of the land and we do not continue to refer to the statutory law of Texas separately from the law of Texas as limited, clarified, or modified by the judiciary.

Hope, 984 F.3d at 537–38 (panel decision). In other words, it does not matter that the DOC's hands are tied by the Indiana Constitution. "SORA, *as modified by the Indiana Supreme Court's constitutional overlay*, creates two classes of pre-SORA offenders."

Hope, 9 F.4th at 529 (en banc) (emphasis added). And the differential treatment of those two classes must comport with the Equal Protection Clause regardless of whether the Indiana General Assembly or the DOC meant to create the classes in the first place. See U.S. Const. art. VI, cl. 2 ("This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

As to the second point, it bears emphasis that it is "the classification itself" that must be rationally related to a legitimate government interest. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 533 (1973). While there may be legitimate purposes for SORA as

a whole that are incrementally advanced by the other jurisdiction provision, the State must still have a rational basis for treating similarly situated pre-SORA offenders differently. *See Hope*, 9 F.4th at 529 (en banc). Meaning, it is not enough that the State wishes to register all sex offenders and the other jurisdiction provision will increase the number of sex offenders registered. The Equal Protection Clause "imposes a requirement of some rationality in the nature of the class singled out." *Rinaldi v. Yeager*, 384 U.S. 305, 308–09 (1966). Here, to reiterate, the State must have a rational basis for requiring some pre-SORA offenders to register, but not others, depending "solely on whether the pre-SORA offender had a registration obligation in another state." *Hope*, 9 F.4th at 529 (en banc).

With those principles in mind, the court considers whether Indiana has a rational basis for its application of SORA. Indiana posits two main government purposes served by treating similarly situated pre-SORA offenders differently based on whether the offender has an out-of-state registration obligation. First, the State asserts that it has an interest in maintaining a complete and accurate sex offender registry of persons at a high risk for recidivism. Second, and relatedly, the State submits that it has an interest in closing loopholes whereby offenders relocate to evade an obligation to register. Neither purpose is rationally tethered to the differential treatment of pre-SORA offenders.

Start with the interest in maintaining a complete and accurate registry of persons at a high risk for recidivism. There is no doubt this is a legitimate government purpose. However, distinguishing between pre-SORA offenders solely because one has an out-of-

state registration obligation is not rationally related to the completeness or the accuracy of the registry.

Take the Seventh Circuit's example. *See Hope*, 9 F.4th at 529 (en banc). A lifelong Indiana resident with a pre-SORA conviction will be required to register if he commutes to Illinois for work—so long as he works in Illinois for at least ten days. 730 Ill. Comp. Stat. 150/2(G). But the same person with the same criminal history and residency could safely work in Indiana without incurring an obligation to register. How does requiring registration for an individual who works in Chicago but not for an identical individual who works in Gary promote the completeness or accuracy of Indiana's sex offender registry? Again, it is the *distinction* between these two classes for which the State must have a basis. *See Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 680 (2012). The distinction here is simply not tied to the State's interest in a complete and accurate registry.

To take a more extreme example, consider an Indiana resident with a pre-SORA conviction who vacations to Florida. If he stays in the Sunshine State for just three days, *see Fla. Stat. §§ 775.21(k), (n)*, he will be required to register upon his return to Indiana—potentially for the remainder of his life. Alternatively, he may travel to Hawaii for up to nine days without triggering a registration requirement. *See Haw Rev. Stat. § 846E-2(a)*. Or he could travel to Alaska indefinitely, because Alaska does not apply its registration statute retroactively. *See Doe v. State*, 189 P.3d 999 (Alaska 2008). What interest is served by requiring registration for individuals who spend a long weekend in Florida but not for individuals who do so in Alaska?

Plaintiffs' own experiences demonstrate the States' means are irrational. Brian Hope was convicted of an Indiana offense which occurred before SORA was enacted, and thus he was not required to register for that offense. Yet because he moved to Texas and was required to register there on account of the same Indiana offense, Indiana required him to register upon his return. One would think, given the State's interest in registering high-recidivism-risk sex offenders, that the State would be most interested in registering sex-offenders who spend their entire lives in Indiana and thus have many opportunities to recidivate in Indiana. Paradoxically, though, pre-SORA sex offenders who never leave Indiana are free of registration requirements, but pre-SORA offenders who leave and come back must register potentially for the remainder of their lives—even if they committed the exact same offense. This makes no sense. Indiana's differential treatment of pre-SORA offenders is not in any way related to the completeness or the accuracy of the registry.

Nor is the differential treatment related to the State's interest in closing loopholes in the registration requirements which may occur when an offender relocates to evade a registration obligation. "Closing loopholes" is just a means of ensuring the registry is as complete and accurate as possible, which itself is just a method of ensuring the registry works as intended. Registration for registration's sake is not a legitimate state interest. Registration is a *means* designed to effectuate the State's legitimate interest in protecting the public from sex offenders. *See, e.g., Wallace*, 905 N.E.2d at 383 ("[R]egistration systems are a legitimate *way to protect the public* from repeat offenders." (emphasis added)). Like the interest in a complete and accurate registry, the loophole interest does

not explain why offenders who are equally likely to pose a danger to the public are subject to vastly different legal obligations.

A pre-SORA offender who lives in Indiana but works in Chicago must register in Indiana, whereas a pre-SORA offender who works in Gary—but is otherwise identical in all respects—is exempt from the requirement. It is not clear what "loophole" is closed by requiring the Chicago commuter to register. The Chicago commuter need not even relocate from another jurisdiction; he could be a lifelong neighbor of the Gary employee. But more importantly, there is no reason to believe the Chicago commuter poses any more danger to Hoosiers than the Gary employee. Thus, there is no legitimate reason for the State to require the Chicago commuter to register but not the Gary employee.

Similarly, because Rice committed his offense in Illinois in 1989 and was required to register in that state, he was required to register in Indiana after moving there to live with his sister while he got back on his feet. Had he committed the offense in Indiana in 1989 and stayed with his sister after his release, he would not be required to register. In this hypothetical, the same offense was committed on the same date by an offender with the exact same criminal history, but the legal consequences under Indiana law are wildly different. What justifies the distinction? The fact that identical offenses happen to be committed in states with differing registration requirements does not change the fact that the offenders pose the same level of danger to Hoosiers. And protecting Hoosiers, after all, is the whole point of the registration system. *See Wallace*, 905 N.E.2d at 383.

To be sure, rational basis review does not require a perfect fit between the State's means and ends. But rational basis review "does not ensure an automatic win." *Hope*, 9

F.4th at 529 (en banc). In this court's view, this is one of those rare cases where the State's legitimate purposes are not rationally related to the law's differential treatment of similarly situated individuals. Accordingly, the court holds that SORA violates the Equal Protection Clause as applied to pre-SORA offenders who were required to register solely on the basis of whether they had a registration obligation in another state. *See Hope*, 984 F.3d at 547 (panel decision) ("[S]ingling out only newer citizens with a history of sex offenses to the exclusion of more longstanding citizens with the same criminal history does not further [the State's interest in protecting residents from sex offenders]: the distinction is not even rational."); *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 108 (3d Cir. 2008) (distinguishing between in-state and out-of-state sex offenders to determine whether a parolee receives a hearing before community notification was not rational); *Hendricks v. Jones ex rel. State ex rel. Okla. Dep't of Corr.*, 349 P.3d 531, 536 (Okla. 2013) (Oklahoma lacked rational basis to require registration for sex offenders convicted in another jurisdiction prior to the enactment of its SORA but not require registration of sex offenders convicted in Oklahoma prior to the enactment of SORA).

IV. Conclusion

Plaintiffs' unopposed motion for voluntary dismissal of the Huntington County Prosecutor and the Huntington County Sheriff (Filing No. 141) is **GRANTED**. The Huntington County Prosecutor and the Huntington County Sheriff are hereby **DISMISSED without prejudice and without costs** because the claims against these Defendants are **MOOT**.

Because SORA violates the Equal Protection Clause as applied to Plaintiffs, Plaintiffs' motion for summary judgment (Filing No. 142) is **GRANTED** and Defendants' motion for summary judgment (Filing No. 144) is **DENIED**.

The Commissioner of the Indiana Department of Correction, as well as his officers, agents, servants, employees, and attorneys, is hereby **PERMANENTLY ENJOINED** from enforcing the Indiana Sex Offender Registration Act, Ind. Code § 11-8-8-1, *et seq.*, against Plaintiffs, or from requiring their registration as sex or violent offenders in any manner.

The Sheriffs of Marion County, Allen County, Delaware County, and Pulaski County, as well as their officers, agents, servants, employees, and attorneys, are hereby **PERMANENTLY ENJOINED** from enforcing the Indiana Sex Offender Registration Act, Ind. Code § 11-8-8-1, *et seq.*, against Plaintiffs, or from taking any other action against Plaintiffs as a result of their failure to register as sex or violent offenders.

The Prosecutors of Marion County, Allen County, Delaware County, and Pulaski County, as well as their officers, agents, servants, employees, and attorneys, are hereby **PERMANENTLY ENJOINED** from taking any action against Plaintiffs as a result of their failure to register as sex or violent offenders.

Final judgment will issue by separate order.

IT IS SO ORDERED this 31st day of May 2022.


RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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