

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MARY ROE,

Plaintiff,

File No. \_\_\_\_\_

v.

Hon. \_\_\_\_\_

RICHARD SNYDER, Governor of the  
State of Michigan, Col. KRISTE ETUE,  
Director of the Michigan State Police,  
CORRIGAN O'DONOHUE, Royal Oak  
Police Chief, and JESSICA R. COOPER,  
Oakland County Prosecutor, in their  
official capacities, and Royal Oak Officer  
CABANAW, in his individual capacity,

Mag. Judge \_\_\_\_\_

Defendants.

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**VERIFIED COMPLAINT**

**PRELIMINARY STATEMENT**

1. On August 25, 2016, the Sixth Circuit Court of Appeals held, in a published and binding decision, that Michigan's Sex Offender Registration Act (SORA), M.C.L. § 28.721 *et. seq.*, imposes punishment, and that therefore retroactive application of SORA violates the Ex Post Facto Clause of the United States Constitution. *Does v. Snyder*, \_\_ F.3d \_\_, 2016 WL 4473231 (6th Cir. 2016) (Exhibit 1).

2. Plaintiff Mary Roe<sup>1</sup> is a Michigan registrant who must either quit her job or face arrest and prosecution because Defendants are retroactively enforcing SORA against her, in direct violation of the Sixth Circuit's holding in *Does*.

3. In 2002, Ms. Roe, at the age of 19, had consensual sex with an underage teen. Upon conviction in 2003, she became subject to the version of SORA in effect at the time.

4. SORA has been amended repeatedly since that time. Most notably, amendments that became effective in 2006 barred registrants from working, residing, or "loitering" within 1,000 feet of school property. Mich. Pub. Acts 121, 127 (2005). Further amendments in 2011 fundamentally changed Michigan's sex offender registry by categorizing registrants into tiers; requiring in-person reporting of vast amounts of personal information, and retroactively lengthening the registration period for most registrants. Mich. Pub. Acts 17, 18 (2011).

5. The Sixth Circuit in *Does* specifically held that retroactive application of the 2006 and 2011 amendments must cease. *See* Exhibit 1, slip op. at 13.

6. On Friday, September 9, 2016 – after the *Does* decision was issued – a Royal Oak police officer informed Ms. Roe that her place of employment is within 1,000 feet of a school, and that she must quit her job or face prosecution for a SORA violation.

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<sup>1</sup> Mary Roe is a pseudonym. Concurrently with this complaint, Ms. Roe is filing a motion seeking permission to proceed anonymously in this action.

7. Ms. Roe is currently the Clinical Director at a residential drug treatment center for the homeless where she has worked for the last eight years.

8. The SORA provision that Ms. Roe is accused of violating, M.C.L. § 28.734(1)(a), was added to SORA in 2006.

9. Even though it is clear under *Does* that applying this provision of SORA retroactively is unconstitutional, Ms. Roe is at imminent risk of losing the job she has held for the last eight years or of being arrested and prosecuted. Either choice will cause her irreparable harm, which is why she is now seeking a temporary restraining order and/or a preliminary injunction, as well as a permanent injunction barring enforcement of SORA against her.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because the plaintiff seeks redress for the deprivation of rights secured by the U.S. Constitution. The plaintiff's federal claims are brought under 42 U.S.C. § 1983.

11. Ms. Roe's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, by Fed. R. Civ. P. 57 and 65, and by the legal and equitable powers of this Court.

12. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

### **Plaintiff Mary Roe<sup>2</sup>**

13. Plaintiff Mary Roe resides within the Eastern District of Michigan.

14. Due to a 2003 conviction for criminal sexual conduct, she has been required to register under SORA.

15. Ms. Roe is currently the Clinical Director of a residential drug treatment center that the Royal Oak police claim is within 1,000 feet of a school.

### **Defendant Richard Snyder**

16. Defendant Richard Snyder is the Governor of Michigan. He is sued in his official capacity.

17. Pursuant to Article 5, §1 of the Michigan Constitution, the executive power of the state is vested in the governor. The Michigan Constitution further provides that the governor shall take care that applicable federal and state laws are faithfully executed. Mich. Const., Art. 5, § 8. Defendant Snyder is ultimately responsible for the enforcement of the laws of this state, as well as for the supervision of all state departments, including the Michigan State Police.

18. The Governor is an appropriate defendant in a case challenging the constitutionality of a state statute.

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<sup>2</sup> Ms. Roe's declaration verifying the facts alleged in the complaint is attached as Exhibit 2.

### **Colonel Kriste Etue**

19. Defendant Colonel Kriste Etue is the director of the Michigan State Police. She is sued in her official capacity.

20. The Michigan State Police maintains Michigan's sex offender registry. M.C.L. § 28.721 *et seq.* The State Police's responsibilities include enforcing SORA, maintaining the state's database of sex offenders, maintaining an on-line public sex offender registry, registering offenders (along with other law enforcement agencies), developing registration forms, providing statutorily-required notices to registrants, collecting registration fees, and coordinating with national law enforcement and the national sex offender registry. *See* M.C.L. §§ 28.724, 28.724a, and 28.725 *et seq.*

21. The director of the Michigan State Police is an appropriate defendant in a case challenging the constitutionality of applying SORA to the plaintiff.

### **Defendant Corrigan O'Donohue**

22. Corrigan O'Donohue is the Royal Oak Police Chief. He is sued in his official capacity.

23. In that capacity he enforces state and local law and can decide or recommend whom to refer to the county prosecutor for SORA violations.

24. In that capacity he also has supervisory power over police officers in Royal Oak, and is responsible to ensure that they comply with constitutional

requirements, including not arresting or initiating criminal prosecutions based on laws that are unenforceable because they violate the United States Constitution.

25. Defendant Officer Cabanaw, who works under Chief O'Donohue's command, instructed Ms. Roe to immediately quit her job and threatened her with prosecution for being non-compliant with SORA if she continued to work at the drug treatment center that is alleged to be located within 1,000 feet of a school.

**Defendant Jessica R. Cooper**

26. Defendant Jessica Cooper is the Oakland County Prosecutor. She is sued in her official capacity.

27. Defendant Cooper has ultimate authority over criminal prosecutions in Oakland County, including the decision about whether, and with what SORA violations, Ms. Roe could be charged.

28. Because charges against Ms. Roe would be brought by the Oakland County Prosecutor, she is an appropriate defendant in this action.

**Defendant Officer Cabanaw**

29. Defendant Officer Cabanaw is a police officer with the Royal Oak Police Department.

30. Despite being aware of the Sixth Circuit's decision in *Does v. Snyder*, Defendant Cabanaw instructed Ms. Roe to immediately quit her job and threatened her with prosecution for being non-compliant with SORA if she continued to work

at the drug treatment center that is alleged to be located within 1,000 feet of a school.

### **FACTUAL ALLEGATIONS**

31. In 2002 at the age of 19, Ms. Roe had sex with a boy who was, at that time, either 14 or 15. Both she and the boy had drug addictions and ran with the same crowd.

32. Ms. Roe was more than four years older than the boy. Had she and the boy been less than four years apart in age, SORA would not apply to her.

33. Ms. Roe pled guilty to criminal sexual conduct III, M.C.L. § 750.520d, in 2003.

34. She was on probation for two uttering and publishing charges at the time of her sex offense, and ended up serving approximately 2½ years in prison.

35. Ms. Roe straightened herself out in prison, and was released shortly after her earliest release date.

36. Ms. Roe has led a productive life since her release. She has been in school or employed (or both) steadily since leaving prison. Ms. Roe earned a Bachelor's Degree in Addiction Studies *summa cum laude*, and then went on to earn a Master's Degree in Counseling.

37. Since 2008, Ms. Roe has worked at a residential drug treatment facility for homeless people. She initially worked as a therapist, and has been repeatedly

promoted. She is currently the Clinical Director and supervises a staff of approximately 20 therapists and counselors.

38. The facility provides services to over 500 clients each year. Ms. Roe has been responsible for tripling the residential treatment program revenue by a factor of three, to \$2.7 million.

39. Ms. Roe has not been charged with or convicted of any crime since her 2003 conviction.

40. The State of Michigan has required Ms. Roe to register as a sex offender under SORA without conducting any individualized assessment of whether she presents a danger to the public.

41. In 2002, when she committed her crime, SORA was a far more limited statute. SORA has been repeatedly amended since 2002, and all of those amendments have been applied retroactively to Ms. Roe.

42. Under the terms of those SORA amendments, Ms. Roe was banned from living or working in many areas; subjected to constant supervision; required to report frequently in person; restricted as to when she can travel; limited in her rights to free speech; hindered from maintaining normal family relationships; identified publicly and falsely as dangerous; and subjected to a vast array of state-imposed restrictions that encompass virtually every facet of her life. Ms. Roe must comply with SORA's restrictions/obligations forever or face criminal sanctions.



43. Since 2008 Ms. Roe has duly registered the address of her employer every three months with the reporting authorities as required by SORA. From 2008 until now she has continued to register her workplace without incident.

44. From 2008 to 2016, Ms. Roe lived in several different cities, including Detroit and Ferndale. She reported to the Michigan State Police in Oak Park, as well as to local law enforcement in Ferndale.

45. No law enforcement agency ever told her that her workplace was within a 1,000 feet of a school. To the contrary, to her knowledge she has been listed on the registry as SORA-compliant in all respects from 2008 until now.

46. Ms. Roe moved to Royal Oak in the spring of 2016.

47. Defendant Cabanaw, a police officer in Royal Oak, came to Ms. Roe's home around August 28, 2016, to do a SORA compliance check.

48. On Friday, September 9, 2016, Officer Cabanaw called Ms. Roe as she was on her way to work and told her that she is not in compliance with SORA, purportedly because her place of employment is within 1,000 feet of a school. The officer told Ms. Roe that she must quit her job immediately or face prosecution.

49. Ms. Roe not only explained to Officer Cabanaw that she has worked at that job for eight years, but that SORA's exclusion zones had recently been ruled unconstitutional in *Does v. Snyder*. The officer indicated that he was aware of that court decision, but that he would be referring the case to a detective.

50. After Officer Cabanaw spoke with Ms. Roe, the page on the Public Sex Offender Registry for Ms. Roe was changed to show her as non-compliant. Underneath her name and picture, in bright red letters, there is now a large red bullet with an exclamation point, and the text: “Non-compliant, Employment Violation.” *See* Exhibit 3 (Redacted Registry Print-Out).

51. When Ms. Roe attempted to determine the distance between her place of employment and the nearest school by using Google maps, she found that the distance was 1,056 feet.

52. The Royal Oak police officer told Ms. Roe that his computer research showed that the distance was less than 1,000 feet.

53. Ms. Roe does not know whether her place of employment is within a “student safety zone,” as that term is defined in SORA. M.C.L. § 28.733(f).

54. It is impossible for Ms. Roe to identify the areas that are inside and outside these geographic exclusion zones (“student safety zones”).

55. No law enforcement agency has ever provided Ms. Roe with a map showing where the exclusion zones are located or what their boundaries are.

56. Ms. Roe is passionate about her work; for her it a calling as well as a job. As a former addict, she is keenly aware of the difficulties that young people with drug problems face. She has dedicated herself to ensuring that others do not repeat the mistakes she made. Losing her job would be losing her life’s work.

57. Without immediate and permanent injunctive relief from this Court, Ms. Roe must either quit the job she has held for the last eight years or risk being arrested and prosecuted for continuing to work there.

### **LEGAL STATUS OF SORA**

58. On August 25, 2016, the Sixth Circuit U.S. Court of Appeals held in a published decision that the current version of SORA violates the Ex Post Facto Clause of the U.S. Constitution and therefore cannot be applied retroactively. The Court said that SORA's cumulative requirements constitute punishment, and the public benefit of SORA, if any, is far outweighed by the harm it causes to registrants. *See Does v. Snyder*, \_\_\_ F.3d \_\_\_, 2016 WL 4473231 (6th Cir. 2016), slip op. at 11-13 (Exhibit 1).

59. Under the binding precedent established by the Sixth Circuit's decision in *Does*, Defendants cannot enforce the current iteration of SORA, and in particular the 2006 amendments that bar employment within 1,000 feet of a school, against Ms. Roe.

60. In *Does*, the federal district court had previously held that SORA's geographic exclusion zones are void for vagueness. *See Does v. Snyder*, 101 F. Supp. 3d 672, 682-85 (E.D. Mich. 2015) (Cleland, J.), *reversed on other grounds*, \_\_\_ F.3d \_\_ (6th Cir. 2016). The district court also found that certain SORA report-

ing requirements are unconstitutionally vague.<sup>3</sup> *Id.*

61. In reviewing the district court's opinion, the Sixth Circuit said that because its ruling on the Ex Post Facto claim meant that "none of [SORA's] contested provisions may now be applied to the plaintiffs in this lawsuit," any ruling as to the remaining issues (including vagueness) "would be dicta" and would therefore have to "wait for another day." *Does*, slip op. at 13. However, the Court did not reverse the district court's ruling on vagueness, instead specifying that it was reversing "the district court's decision that SORA is not an Ex Post Facto law." *Id.*

62. While the district court opinion in *Does* is not binding, Judge Cleland's decision that SORA's exclusion zones are void for vagueness provides an additional reason why those zones cannot be applied to Ms. Roe.

### **CLAIMS FOR RELIEF**

63. Under 42 U.S.C. § 1983, state actors are liable at law or equity for their acts or omissions undertaken under color of law which deprive any person of the rights secured by the Constitution and laws of the United States.

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<sup>3</sup> On June 30, 2016, the Michigan Court of Appeals held in a published decision that, although it was not bound by *Does*, SORA's reporting requirements are unconstitutionally vague for the reasons set forth in Judge Cleland's opinion. *See People v. Solloway*, \_\_ Mich. App. \_\_, 2016 WL 3555211 (2016), slip op. at 5-6 (Exhibit 4).

64. Defendants are state actors and, at all times relevant to this Complaint, were acting and are acting under color of law.

**COUNT I: VIOLATION OF THE EX POST FACTO CLAUSE**

65. The retroactive application of SORA to Ms. Roe violates the Ex Post Facto Clause of the U.S. Constitution, Art. I, § 10, cl. 1, because it makes more burdensome the punishment imposed for an offense committed prior to enactment of the current iteration of SORA.

**COUNT II: VIOLATION THE DUE PROCESS CLAUSE  
(Vagueness)**

66. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits states from enforcing laws that are impermissibly vague. Statutory requirements must be written with sufficient specificity that readers of ordinary intelligence need not guess at their meaning and will not differ as to their application.

67. SORA's geographic exclusion zones are invalid under the vagueness doctrine because those provisions fail to provide a person of ordinary intelligence fair notice of what is required and what is prohibited under the statute, making it impossible for the plaintiff to conform her conduct to the statutory requirements, and making it likely that the statute will be enforced in different ways in different places or against different people.

### **Lack of Legal Remedy**

68. The plaintiff's harm is ongoing and cannot be alleviated except by injunctive relief. No other remedy is available at law.

### **Request For Relief**

Wherefore, the plaintiff requests that this Court:

- a. Issue a temporary restraining order and/or a preliminary injunction, and a permanent injunction, barring the defendants from enforcing SORA against her;
- b. Issue a judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that retroactive application of SORA violates the prohibition in the United States Constitution against ex post facto laws;
- c. Issue a judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that SORA's geographic exclusion zone provisions, M.C.L. §§ 28.733-36 are void on their face due to vagueness, and issue a preliminary and permanent injunction restraining the defendants from enforcing those provisions;
- d. Award the plaintiff costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- e. Grant such other relief as the Court finds just and proper.

Respectfully submitted,

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Dated: September 15, 201