

Ind. Code § 11-8-8-15, and the individual is prohibited from petitioning for a name change, Ind. Code § 11-8-8-16. An individual classified as a so-called “sexually violent predator”—including Gary Snider—is subject to more stringent requirements in several respects (Ind. Code § 35-38-1-7.5). An individual classified as an “offender against children”—including both Mr. Snider and Brian Hope—is also limited in where he may live (Ind. Code § 35-42-4-11) and where he may work (Ind. Code § 35-42-4-10). And an individual classified as a so-called “serious sex offender”—again, including both Mr. Snider and Mr. Hope—is statutorily prohibited from even entering school property. Ind. Code § 35-42-4-14.

2. In *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009), the Indiana Supreme Court held that imposing SORA’s registration requirements on an individual who committed his offense prior to the enactment of that statute violated the *ex post facto* clause of the Indiana Constitution, Ind. Const. art. 1, § 24. The defendants generally follow this directive with respect to individuals convicted of sex or violent offenses in Indiana who have never been required to register in another state, although they may require that these persons formally petition a court (or take other affirmative steps) before removing them from the registry. However, when an individual has been required to register in another state—either by virtue of having been convicted in that state or by virtue of having traveled to that state following an Indiana conviction—the defendants require registration when and if that person moves or returns to Indiana, even though registration could not have been required had they never left the state. This interpretation of the *ex post facto* clause of the Indiana Constitution is supported by two recent decisions of the Indiana Supreme Court. See *Tyson v. State*, 51 N.E.3d 88 (Ind. 2016); *State v. Zerbe*, 50 N.E.3d 368 (Ind. 2016).

3. Mr. Hope was convicted of a sex offense in Indiana before the enactment of SORA. Following the enactment of SORA, he moved to Texas for several years and was required to register under the laws of that state. When he returned to Indiana, he was informed that he would now be required to register as a sex or violent offender for the rest of life. Mr. Snider, on the other hand, was convicted of a sex offense in Michigan before the enactment of SORA and before the enactment of any similar registration requirement in Michigan. He was required to register under Michigan law during a period of incarceration, after which he moved to Indiana. Like Mr. Hope, he has been informed that he is now required to register as a sex or violent offender for the rest of his life. This is so even though neither Mr. Hope nor Mr. Snider would not be required to register at all if they had been convicted in Indiana and never left the state. This places an unjustified burden on the plaintiffs' right to engage in interstate travel, which is protected by the Fourteenth Amendment to the United States Constitution, and is unconstitutional. To the extent that the plaintiffs are required to register as sex or violent offenders—and are subjected to the numerous burdens that that designation entails—but a similarly situated individual who has never left Indiana is not, this classification is also irrational and violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
4. Finally, the plaintiffs' offenses were committed before the enactment of SORA. The burdens imposed by Indiana law are punitive in effect, and SORA therefore violates the *ex post facto* clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 1.

Jurisdiction, Venue, and Cause of Action

5. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
7. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
8. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

9. Brian Hope is an adult resident of Marion County, Indiana.
10. Gary Snider is an adult resident of Huntington County, Indiana.
11. The Commissioner of the Indiana Department of Correction is the duly appointed individual in charge of that agency, and is sued in his official capacity.
12. The Marion County Prosecutor is the duly elected prosecutor of Marion County, and is sued in his official capacity.
13. The Marion County Sheriff is the duly elected Sheriff of Marion County, and is sued in his official capacity.
14. The Huntington County Prosecutor is the duly elected prosecutor of Huntington County, and is sued in his official capacity.
15. The Huntington County Sheriff is the duly elected Sheriff of Huntington County, and is sued in his official capacity.

Factual Allegations

Indiana's Sex Offender Registration Act and the Indiana Sex and Violent Offender Registry

16. Indiana's Sex Offender Registration Act ("SORA"), currently codified at Indiana Code § 11-8-8-1, *et seq.*, was first enacted and took effect in 1994.

17. Although several amendments have been made to SORA over the years, in its current form the statute imposes numerous burdens and obligations on individuals required to register as sex or violent offenders. These include, but are not limited to, the following:
 - a. The individual must provide a substantial amount of personal identifying information, as information concerning his or her vehicle, information concerning internet identifiers, and “[a]ny other information required” by the Department of Correction (“DOC”). Ind. Code § 11-8-8-8(a).
 - b. The individual must re-register at least annually and must also register if any of his or her registration information changes. Ind. Code §§ 11-8-8-11, 14.
 - c. Local law enforcement must visit the individual either every ninety days or annually. Ind. Code § 11-8-8-13.
 - d. The individual must maintain a valid driver’s license or identification card. Ind. Code § 11-8-8-15.
 - e. The individual is prohibited from petitioning for a name change. Ind. Code § 11-8-8-16.
18. Indiana law also imposes additional burdens on persons convicted of specified offenses. For instance, a person who meets the statutory definition of 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. Ind. Code §§ 35-42-4-10, 11. A person who meets the statutory definition of a “serious sex offender” may not enter school property. Ind. Code § 35-42-4-14. And a person who meets the statutory definition of a “sexually violent predator,” Ind. Code § 35-38-1-7.5, is subjected to other stringent requirements.
19. In *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009), the Indiana Supreme Court held that imposing SORA’s registration requirements on an individual who committed his offense prior to the enactment of that statute violated the *ex post facto* clause of the Indiana Constitution, Ind. Const. art. 1, § 24.

20. Under Indiana law, the DOC is responsible for determining the registration status of persons in Indiana who have been convicted of sex or violent offenses. In compliance with the *Wallace* decision, the DOC does not require persons to register whose offenses occurred at a time when they did not require registration and who have never left Indiana, although it may require that these persons formally petition a court (or take other affirmative steps) before removing them from the registry.
21. However, if a person travels temporarily to another state and is required to register as a sex offender under the laws of that jurisdiction, the DOC requires that that person register as a sex or violent offender upon his return to Indiana, even if he would not be required to register had he never left Indiana. Depending on the offense of which that person was convicted, he might then be required to register for ten years or for the rest of his life.
22. The upshot of the DOC's registration policy and the recent decisions of the Indiana Supreme Court in *Tyson* and *Zerbe*, therefore, is that, if two persons are convicted of an identical offense at a time when this offense did not require registration under Indiana law, and one of those persons thereafter travels in interstate commerce but the other does not, only one of these persons will now be required to register by the DOC—the individual who crossed state lines.

Brian Hope

23. In 1993, Brian Hope was charged with child molesting as a Class C felony in Porter County, Indiana, under cause number 64D01-9310-CF-140. He pled guilty to that offense on or about October 7, 1996.

24. As a result of this guilty plea, Mr. Hope was placed on probation. His period of probation expired on or about September 19, 2000, and he has not been on any form of supervised release since that time.
25. In July of 2004, Mr. Hope moved to Texas, where he resided continuously through September of 2013. As a result of his Indiana conviction, during this time period Mr. Hope was required to register as a sex offender under the laws of Texas.
26. In September of 2013, Mr. Hope returned to Indiana, where he has resided continuously since that time. Upon his return, Mr. Hope was informed that he must register as a sex offender for the remainder of his life.
27. He has therefore registered as a sex offender in Indiana and has been subjected to the other requirements of Indiana's SORA. This is so even though, as a result of the *Wallace* decision and the DOC's policy, he would not be required to register under Indiana law if he had not moved to Texas temporarily.
28. Mr. Hope is currently homeless and has been for some time. He therefore must register at least once every seven days pursuant to Indiana Code § 11-8-8-12.
29. Given his offense and the requirement that he must still register, Mr. Hope also qualifies as an "offender against children" and as a "serious sex offender" under Indiana law, and is subject to the additional restrictions imposed as a result of those classifications.

Gary Snider

30. In 1994, Gary Snider was charged with criminal sexual conduct in the first degree in Michigan, under cause number 94001760FC. He was convicted of that offense on or about September 6, 1995.

31. As a result of this conviction, Mr. Snider was incarcerated in Michigan until 2003. Under Michigan law, he was required to register as a sex offender during this period of incarceration.
32. Mr. Snider was released from prison in July of 2003, and he was not required to serve a term of probation, parole, or any other form of supervised release. Promptly upon his release, Mr. Snider moved to Huntington County, Indiana in order to live with his then-fiancée.
33. Mr. Snider registered as a sex or violent offender upon moving to Indiana until, in February of 2007, he received a letter from the Huntington County Sheriff informing him that, in light of the *Wallace* decision, he was no longer required to register.
34. In August or September of 2016, however, he received another letter from the Huntington County Sheriff informing him that he is again required to register as a sex or violent offender for the remainder of his life.
35. Mr. Snider has therefore once again registered as a sex offender in Indiana and has been subjected to the other requirements of Indiana's SORA. This is so even though, as a result of the *Wallace* decision and the DOC's policy, he would not be required to register under Indiana law if he had been convicted in Indiana and never left the state.
36. Given his offense and the requirement that he must still register, Mr. Snider qualifies as a "sexually violent predator," as an "offender against children" and as a "serious sex offender" under Indiana law, and is subject to the additional restrictions imposed as a result of those classifications.

Concluding Factual Allegations

37. The application of Indiana's SORA to Mr. Hope and Mr. Snider thus imposes a burden

on them for exercising their right to interstate travel. This burden is without justification.

38. There is no rational justification for treating Mr. Hope and Mr. Snider differently than an offender who has never left Indiana or has left Indiana but had not traveled to a state that required his registration, and who is therefore not required by the DOC to register as a sex or violent offender.
39. Indiana's SORA is punitive in effect and is not justified.
40. The defendants have, at all times, acted or refused to act under color of state law.
41. As a result of the actions of the defendants, the plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

Legal Claims

42. As applied to the plaintiffs, Indiana's Sex Offender Registration Act (Ind. Code § 11-8-8-1, *et seq.*) violates the right to travel protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
43. As applied to the plaintiffs, Indiana's Sex Offender Registration Act (Ind. Code § 11-8-8-1, *et seq.*) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution insofar as a similarly situated individual who never leaves Indiana or who travels only to a jurisdiction that does not require his registration is not required to register.
44. As applied to the plaintiffs, Indiana's Sex Offender Registration Act (Ind. Code § 11-8-8-1, *et seq.*) violates the *ex post facto* clause of the United States Constitution.

Request for Relief

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Accept jurisdiction of this cause and set it for hearing.

2. Declare that the defendants have violated and continue to violate the rights of the plaintiffs for the reasons described above.
3. Issue a permanent injunction prohibiting the defendants from enforcing Indiana's Sex Offender Registration Act against the plaintiffs.
4. Award the plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

/s/ Gavin M. Rose

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/s/ Jan P. Mensz

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