

**IN THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT  
OF WEST VIRGINIA**

(1) JOHN DOE 1,

(2) JOHN DOE 2,

(3) JOHN DOE 3,

individually and on behalf of all  
those similarly situated,

Plaintiffs,

v.

(1) JAMES L MITCHELL, in his  
official capacity as Superintendent  
of West Virginia State Police,

Defendant.

Case No. 2:26-cv-00194

**COMPLAINT UNDER 42 U.S.C. § 1983**

**Injunctive and Declaratory Relief Requested**

The plaintiffs, individually and on behalf of all similarly situated individuals, through their undersigned counsel, complain against defendant Colonel James L. Mitchell, the Superintendent of the West Virginia State Police, as follows:

**Nature of the Case**

1. This is a civil rights class action challenging the constitutionality of the provision of W. Va. Code Ann. § 15-12-2 (d)(8) which requires individuals listed on West Virginia's Sex Offense Registry to disclose and provide to law enforcement "information relating to any Internet accounts the registrant has and the screen names, user names, or aliases the registrant uses on the Internet[.]"

2. Failure to disclose the information is a strict criminal liability offense and can result in a felony conviction including a mandatory 1-5 years in prison for a first-time offense. (see W. Va. Code §15-12-8 (c))

3. Internet email addresses disclosed are then available to the public via an instant internet search database as provided by the WVSP monitored site and numerous other entities. (see W. Va. Code §15-12-5)

4. Plaintiffs, individually and on behalf of all other so situated citizens of West Virginia, allege that the challenged statutory requirement violates the First Amendment of the United States Constitution by chilling speech and not allowing anonymous free-speech rights.

5. Plaintiffs allege that the statute is unconstitutionally vague and does not specify what “all internet accounts” includes. Registrants are unclear as to what accounts are reportable. Law enforcement officers collect different information according to their own understanding of “all Internet accounts”.

6. Plaintiffs seek injunctive and declaratory relief to redress the violation of their clearly established constitutional rights.

### **Jurisdiction and Venue**

7. This case is brought pursuant to 42 U.S.C. § 1983. Plaintiff seeks redress for the deprivation, under color of state law, of rights secured by the U.S. Constitution.

8. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343. The Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, Federal Rules of Civil Procedure 57 and 65, and by the legal and equitable powers of the Court.

9. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claim occurred in this judicial district.

### **The Parties**

10. Defendant Colonel James L. Mitchell, the Superintendent of the West Virginia State Police, is sued in his official capacity and leads the state agency responsible for enforcement of WV Sex Offender Registration Act (WV SORA) and the statute in question. (See W. Va. Code Ann. § 15–12–1 to § 15–12–10)

11. Plaintiff John Doe 1, age 44, is required to register under the WV SORA. He has been registered for over a decade, and his required registration duration is lifetime. Doe 1 is a resident of West Virginia, and like all WV SORA registrants he is subject to the statute in question.

12. Plaintiff John Doe 2, age 61, is required to register under the WV SORA. He has been registered for over twenty-five years, and his required registration duration is lifetime. Doe 2 is a resident of West Virginia, and like all WV SORA registrants he is subject to the statute in question.

13. Plaintiff John Doe 3, age 73, is required to register under the WV SORA. He has been registered for over a decade, and his required

registration duration is lifetime. Doe 3 is a resident of West Virginia, and like all WV SORA registrants he is subject to the statute in question.

### **The Challenged Statute**

14. The relevant West Virginia Code requiring the Internet accounts disclosure reads as follows:

W. Va. Code Ann. §15-12-2 (d)(8)

(d) A person required to register under the provisions of this article shall register in person at the West Virginia State Police detachment responsible for covering the county of his or her residence, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:

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(8) Information relating to any Internet accounts the registrant has and the screen names, user names, or aliases the registrant uses on the Internet;

### **Facts Pertinent to the Plaintiffs**

15. Plaintiffs Does 1-3 are currently subject to the provisions of WV SORA. None of the plaintiffs used the internet to commit their crime of conviction. Plaintiffs are residents of West Virginia and are required to disclose any internet account the registrant has or makes changes to.

16. WV SORA relies entirely on the statutory conviction code for registration requirements, and most registrants are required to register for life. (See W. Va. Code Ann. § 15-12-4 Duration). No risk analysis of

individual registrants is ever provided under WV SORA.

17. Any changes to any internet account by the registrant must be reported to law enforcement **in person** within ten (10) business days. (W.Va. Code. § 15-12-3). *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1329 (M.D. Ala. 2019) Law enforcement generally requires appointments be made for their availability to make updates.

18. Each change requires new face photographs from the front and side to be obtained along with fingerprinting like a booking intake.

19. Failure to provide this information, or changes to this information, carries criminal penalties. W.Va. Code § 15-12-8.

### **Class Allegations**

20. Pursuant to Fed. R. Civ. P. 23(b)(2), Plaintiffs seek certification of this complaint as a class action.

21. Named Plaintiffs seeks to represent a class defined as follows:

- All persons who are currently or will in the future be, subject to the internet ID disclosures provision of W. Va. Code Ann. **§15-12-2** (d)(8).

22. The proposed class is numerous. There are approximately 6,679 individuals currently on the WV Sex Offender Registry. All registrants are subject to the challenged provision. The numerosity, commonality,

typicality, and adequacy thresholds are met. See Fed. R. Civ. P. 23 and *In re Amaranth Nat. Gas Commodities Litig.*, 269 F.R.D. 366 (S.D.N.Y. 2010)

23. Joinder of all class members is impracticable. Not only is the class numerous, but membership in the class is constantly expanding as additional people with convictions for sexual offenses are added to WV SORA registration with no means of ever being deregistered and therefore will be subject to the challenged law for life.

24. There are questions of law and fact common to all class members, including but not limited to the following:

- Does the law advance an important government interest;
- Whether there is any compelling need served by the law;
- If there is a compelling need, has the state ever used the information to prevent or solve any crime;
- Whether the law substantially burdens more speech than necessary to further any government interest;
- Whether the law is narrowly tailored and the least restrictive means to achieve those interests;
- Whether the law violates any constitutional protections of the First Amendment or is unconstitutionally vague.

25. All individuals falling within the class definition have been subject to the same law. Given the commonality of the questions

pertinent to all class members, a single declaratory judgment and injunctive relief would provide relief to each member of the class.

26. Plaintiffs and the proposed class will be directly injured by the statute challenged herein; and members of the class are currently at risk of future harm from the continuation of this law.

27. The individual plaintiffs will fairly and adequately represent the interests of the class; and Plaintiffs' claims are typical of the claims of all members of the proposed class.

28. Plaintiffs' counsel are experienced in civil rights litigation, including class actions under Fed. R. Civ. P. 23 and constitutional matters on behalf of persons on sex offense registries. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

### **CLAIM FOR RELIEF**

#### **COUNT I –First Amendment-- Overbreadth**

29. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation referenced above.

30. The requirement that registrants provide a list of “any internet accounts” and “screen names, user names or aliases” burdens protected speech— the “ability and willingness to speak on the internet” and the

right to speak anonymously. *Cornelio v. Connecticut*, 32 F. 4th 160, 169 (2nd Cir. 2022) (internal citation and quotation omitted).

31. The disclosure requirement specifically targets speakers engaged in online communication, thus targeting “conduct with a significant expressive element” and having “the inevitable effect of singling out those engaged in expressive activity.” *Id.*

32. The disclosure requirement is subject to heightened scrutiny. *Id.*

33. The disclosure requirement fails to advance important governmental interests unrelated to the suppression of speech.

34. The disclosure requirement burdens substantially more speech than is necessary to further those interests.

35. The disclosure requirement is not narrowly tailored to achieve a compelling government interest. *Does v. Whitmer*, 751 F. Supp. 3d 761, 833 (E.D. Mich. 2024).

36. The disclosure requirement is not the least restrictive means of advancing a compelling government interest.

37. The disclosure requirement is overbroad. Overly broad laws which burden the Freedom of Speech under the First and Fourteenth Amendments to the United States Constitution are constitutionally infirm. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973).

38. The challenged provision here mandates that individuals who are required to register provide a wide swath of information related to their activities online, i.e. “any internet account”.

39. The breadth of the statute further chills the willingness of individuals subject to it to engage in constitutionally protected speech online, knowing that doing so will trigger a reporting obligation to the state — for example, creating an account to leave a comment on a news article, or joining a social media platform. *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310 (M.D. Ala. 2019)

40. The challenged provision targets an enormous amount of protected speech that is not narrowly drawn when judged against any legitimate sweep the statute might have. *Virginia v. Hicks*, 539 U.S. 113 (2003).

41. On information and belief, the information that is compelled to be provided to the state has either never or rarely been used for a legitimate governmental or law enforcement purpose such as, for example, to investigate, solve, or prevent a crime. *Cornelio v. Connecticut*, 691 F.Supp.3d 529 (D. Conn. 2023).

## **COUNT II – Unconstitutionally Vague**

42. Plaintiffs reallege and reincorporate each preceding allegation as though fully set forth herein.

43. West Virginia Code § 15-12-2(d)(8) requires disclosure of “[i]nformation relating to any Internet accounts the registrant has and the screen names, user names, or aliases the registrant uses on the Internet.”

44. The statute does not define “Internet account,” does not define “information relating to,” and does not limit the requirement to social networking platforms, online communities, or accounts used for communication.

45. The phrase “any Internet account,” if read literally, would extend to every account accessed through the Internet, including purely financial, medical, or service-related portals.

46. The provision applies to “any” Internet account and contains no textual exclusion for financial portals, employment platforms, medical accounts, subscription services, retail accounts, or other non-communicative online services. Nothing in the statute clarifies whether such accounts are included or excluded.

47. The statute does not clarify whether it truly encompasses all

Internet-based accounts or only a narrower subset. Registrants must therefore guess whether the requirement applies to all Internet-based login credentials or only to a subset consistent with the statute's purpose.

48. Unlike other provisions within the same statutory scheme, such as § 15-12-2(d)(7), which expressly defines "trailer" by cross-reference, the Legislature supplied no definition, boundary, exemption, or limiting construction for "Internet account."

49. The statute provides no approval mechanism, no supervisory discretion, and no avenue by which a registrant may obtain authoritative clarification as to whether a particular account must be reported.

50. The statute is criminally enforceable. A violation of the reporting requirement constitutes a felony offense under West Virginia law, requiring registrants to determine the statute's scope without guidance and under threat of criminal prosecution.

51. Undefined reporting requirements are unconstitutionally vague where registrants are left uncertain as to what must be disclosed.

52. The due process vagueness doctrine protects against laws that fail to provide fair notice and that invite arbitrary enforcement. Those concerns are especially pronounced where a vague statute implicates online activity and access to information.

53. Section 15-12-2(d)(8) provides no clear standard by which a registrant can determine what qualifies as a reportable “Internet account.” It leaves scope to discretionary interpretation in a criminally enforceable context.

54. Section 15-12-2(d)(8) is unconstitutionally vague on its face and as applied, in violation of the Due Process Clause of the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- (a) enter a declaratory judgment that the provision of the law is unconstitutional both on its face and as applied to Plaintiffs;
- (b) enter an injunction prohibiting Defendant from continuing to enforce W. Va. Code Ann. § 15-12-2 (d)(8) and databasing such information online for public search or disclosure;
- (c) issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);
- (d) appoint the undersigned as class counsel pursuant to Fed.

R. Civ. P. 23(g);

- (e) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- (f) grant Plaintiffs any other relief the Court deems appropriate.

Respectfully submitted,

/s/ Larwence King

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