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<b>DENNIS GESMONDI, DALLAS HUARD)</b>	
<b>and GEORGE MADANCY,</b>	)
<b>Plaintiffs,</b>	)
<b>v.</b>	) <b>C.A. No.</b>
	)
<b>STATE OF RHODE ISLAND,</b>	)
<b>RHODE ISLAND ATTORNEY</b>	)
<b>GENERAL, and PROVIDENCE POLICE)</b>	
<b>DEPARTMENT,</b>	)
<b>Defendants.</b>	)
_____ )	

**COMPLAINT**

1. This action arises under Article I, §§ 2, 7, 10 and 12 of the Rhode Island Constitution and Article I, § 10, clause 1 and Amendments V and XIV of the United States Constitution.

2. This Court has jurisdiction pursuant to the provisions of Rhode Island General Laws § 8-2-14.

3. Declaratory judgment jurisdiction is based on Rhode Island General Laws § 9-30-1.

4. Venue is proper in the Superior Court in Providence County under Rhode Island General Laws § 9-4-3, which allows an action to be brought in the Superior Court of the County in which the plaintiff or the defendant resides.

5. Plaintiffs Dennis Gesmondi, Dallas Huard and George Madancy are all residents of the State of Rhode Island, City of Providence.

6. Plaintiff Dennis Gesmondi is a 54-year old male who resides at Warren Manor II Assisted Living facility (hereafter “Warren Manor”), 292 Elmwood Avenue in

Providence, Rhode Island. He is developmentally disabled and relies on the staff at Warren Manor to assist him with his medication, meals, laundry and making and keeping appointments with his doctor and probation officer. If removed from Warren Manor, he is unlikely to find and be placed in a comparable assisted living facility. He has been classified as a Level I sex offender, and will continue to have to register until May of 2023.

7. Plaintiff Dallas Huard is a 38-year old male who also resides at Warren Manor. He too is developmentally disabled, and was court-ordered to be placed at Warren Manor. Mr. Huard, like Mr. Gesmondi, relies upon the staff at Warren Manor to assist him with his medication, meals, laundry and making and keeping appointments. If removed from Warren Manor, he is unlikely to find and be placed in a comparable assisted living facility, and may then be charged with violating the terms of his probation (since he believes he was court-ordered to remain at an assisted living facility as a term of his sentence). He has been classified as “Registration Only” (meaning he was found to be at a lower risk than a Level I), and will continue to have to register until April 2026.

8. Plaintiff George Madancy, a Veteran, is a 65-year old male who resides at 72 Mawney Street in Providence, Rhode Island. He is on oxygen approximately eight hours a day and has difficulty walking due to a car accident in 1989. If evicted from 72 Mawney Street, he may likely become homeless and/or be placed in the hospital. He has been classified as a Level II sex offender, and will continue to have to register until November 2022.

9. Prior to institution of the within action against the State of Rhode Island, the Plaintiffs were all convicted of offenses that require registration under the Sexual

Offender Registration and Community Notification Act (hereafter “SORCNA”), pursuant to Rhode Island General Laws §§ 11-37.1-1 *et seq.*

10. Specifically, Plaintiff George Madancy was convicted of a registrable sex offense on or about June 5, 2006, and again on or about December 13, 2006. Both offenses were for possession of child pornography, which are non-contact crimes.

Plaintiff Dennis Gesmondi was convicted of a registrable sex offense on or about May 6, 2008. Plaintiff Dallas Huard was convicted of a registrable sex offense on or about April 4, 1996.

11. As of today’s date, all three Plaintiffs are still required to register under SORCNA, including verify their permanent residence with the Sexual Offender Community Notification Unit (“SOCNU”) and/or the Defendant Providence Police Department. All three Plaintiffs have registered with the appropriate authorities since their requirements began.

12. After the Plaintiffs were convicted of their respective registrable sex offenses, the Rhode Island State Legislature amended the “Penalties” section of SORCNA with 2008 Senate Bill 2328.

13. 2008 Senate Bill 2328A amended Rhode Island General Laws § 11-37.1-10, “Penalties,” to add the following section:

(c) Any person who is required to register or verify his or her address, who knowingly resides within three hundred feet (300’) of any school, public or private, shall be guilty of a felony and upon conviction may be imprisoned not more than five (5) years, or fined not more than five thousand dollars (\$5,000) or both.

14. Rhode Island General Laws § 11-37.1-10(c) went into effect on July 2, 2008.

15. As Rhode Island General Laws § 11-37.1-10(c) currently reads, there is no exemption for those persons who are required to register who were charged with and/or convicted of a registrable offense prior to July 2, 2008.

16. As Rhode Island General Laws § 11-37.1-10(c) currently reads, there is no exemption for those persons who are required to register who established their residence prior to the enactment of § 11-37.1-10(c).

17. On or about October 16, 2007, Plaintiff Dennis Gesmondi was admitted to the Warren Manor II assisted living facility, 292 Elmwood Avenue, Providence, RI.

18. On or about February 3, 2009, Plaintiff Dallas Huard was admitted to the Warren Manor II assisted living facility, 292 Elmwood Avenue, Providence, RI.

19. Plaintiff George Madancy began living at 72 Mawney Street, Providence, RI in 2011. This location has been verified and approved by the Probation Office as appropriate for sex offenders to live.

20. Nowhere in SORCNA, Rhode Island General Laws §§ 11-37.1-1 *et seq.*, is there a definition for a “school, public or private.”

21. As Rhode Island General Laws § 11-37.1-10 currently reads, there is no explanation for how or at what locations the three hundred feet (300’) referred to in § 11-37.1-10(c) is to be calculated.

22. Upon information and belief, on or about June 18, 2012, the Plaintiffs were notified by a representative of the Defendant Providence Police Department that they were required to move from their current residences within thirty (30) days or risk being arrested and charged with a felony for violating Rhode Island General Laws § 11-37.1-10(c).

23. Upon information and belief, police officers notified the residents at Warren Manor that the residence is 286 feet away from Gilbert Stuart Middle School, located at 188 Princeton Avenue in Providence. MapQuest cites the walking distance between the two properties as 0.09 miles (or 475 feet), and because Princeton Avenue is a one-way street, the driving distance as 0.33 miles (or over 1,742 feet). In comparison, a professional land surveyor measured the distance between the two buildings to be 349 feet; 304.5 feet if you measure the distance between the Warren Manor building and the middle school's chain link fence on its presumed property line.

24. Upon information and belief, officers told the residents of 72 Mawney Street, where Plaintiff George Madancy resides, that the residence is approximately 294-296 feet from Fortes Elementary School, located at 65 Greenwich Street in Providence. Yet using MapQuest, the driving and walking directions suggest that the distance between the two is 0.15 miles (or 792 feet). Mr. Madancy's residence also appears to be 0.22 miles (or over 1,161 feet) walking distance and 0.26 miles (or over 1,372 feet) driving distance from Gilbert Stuart, yet he could be told that he resides too close to that school as well, depending on how the 300 feet is calculated.

25. Upon information and belief, the Plaintiffs have maintained their current residences for months, if not years, with the knowledge and approval of the Rhode Island Department of Corrections Probation Office, as well as the knowledge and acquiescence of the SOCNU and/or the Defendant Providence Police Department, who have monitored their addresses in order to comply sex offender registration requirements. Yet after years of registering, and after living at these residences for quite some time, Plaintiffs are now being threatened with prosecution.

**COUNT I**  
**(DECLARATORY JUDGMENT)**  
***Ex Post Facto Law***

26. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Pursuant to Article I, § 12 of the Rhode Island Constitution and Article I, § 10, clause 1 of the United States Constitution, no state may enact statutes that create retroactive punishments.

28. Rhode Island General Laws § 11-37.1-10, as amended by 2008 Senate Bill 2328, constitutes a retroactive punishment for those who are required to register as a sex offender and have established their residence within three hundred feet (300') of a school prior to the enactment of § 11-37.1-10(c).

29. Due to the fact that all three Plaintiffs were convicted of their sex offenses before the enactment of Rhode Island General Laws § 11-37.1-10(c), and Plaintiff Gesmondi established his residence at Warren Manor prior to July 2, 2008, enforcement of the provision would constitute a violation of the *Ex Post Facto* Clause of both the Rhode Island and United States Constitutions as applied to the Plaintiffs, as well as to any registered sex offender who committed his or her offense prior to July 2, 2008.

30. Plaintiffs seek a determination of the constitutionality of Rhode Island General Laws § 11-37.1-10(c), as applied to any registered sex offender who committed his or her offense prior to July 2, 2008, as to whether it constitutes an *ex post facto* law.

**COUNT II**  
**(DECLARATORY JUDGMENT)**  
**Unconstitutionally Vague**

31. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as well as Article I, §§ 2 and 10 of the Rhode Island Constitution, a state statute must define criminal conduct with “sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” Kolender v. Lawson, 461 U.S. 352, 357 (1983).

33. As Rhode Island General Laws § 11-37.1-10(c) currently reads, ordinary people cannot understand whether a registered sex offender is residing within three hundred feet (300’) of a “school, public or private.”

34. As Rhode Island General Laws § 11-37.1-10(c) currently reads, ordinary people cannot understand whether a registered sex offender is residing within three hundred feet (300’), because there is no explanation for how or at what locations the three hundred feet (300’) referred to in § 11-37.1-10(c) is to be calculated.

35. Furthermore, as Rhode Island General Laws § 11-37.1-10(c) currently reads, the statute encourages arbitrary and discriminatory enforcement.

36. Plaintiffs seek a determination of the constitutionality of Rhode Island General Laws § 11-37.1-10(c) on its face, as well as it applies to them, regarding its vagueness.

**COUNT III**  
**(DECLARATORY JUDGMENT)**  
**Unconstitutionally Overbroad**

37. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 36 of this Complaint as if fully set forth herein.

38. Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as well as Article I, §§ 2 and 10 of the Rhode Island Constitution, a “clear and precise enactment may nevertheless be ‘overbroad’ if in its reach it prohibits constitutionally protected conduct.” Grayned v. City of Rockford, 408 U.S. 104, 114 (1972); State v. Authelet, 385 A.2d 642 (R.I. 1978).

39. As Rhode Island General Laws § 11-37.1-10(c) currently reads, a reasonable reading of a “school, public or private,” could interpret such facilities as an adult dance school, a yoga studio, a school for the culinary arts, “The Center for Sexual Pleasure and Health,” or the Paul Mitchell school for “creative hair design.” The provision does not distinguish schools based upon the age of the students or the type of “school” it is.

40. Plaintiffs seek a determination of the constitutionality of Rhode Island General Laws § 11-37.1-10(c), on its face, regarding its overbreadth.

## INJUNCTIVE RELIEF

41. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. Upon information and belief, given the threat of imminent prosecution if the Plaintiffs do not leave their homes, Plaintiffs will suffer irreparable harm to their emotional, mental and physical well-being, and will be faced with imminent homelessness and/or unnecessary institutionalization without injunctive relief.

43. Upon information and belief, unless injunctive relief is immediately granted, Plaintiffs Dennis Gesmondi and Dallas Huard will lose their current residence, as well as the stability and services that enable them to live in a more integrated setting.

44. Upon information and belief, there is no adequate remedy at law for the harm to the Plaintiffs.

45. Upon information and belief, there will be no harm suffered by the Defendants if injunctive relief is granted.

46. Upon information and belief, the public interest will be served by allowing Plaintiffs to continue to reside in stable home environments, as opposed to the unstable and potentially harmful environment of homelessness.

**WHEREFORE**, Plaintiffs Dennis Gesmondi, Dallas Huard and George Madancy respectfully request that this Court enter judgment in their favor and against Defendants as follows:

- (1) A declaratory judgment that Rhode Island General Laws § 11-37.1-10(c) is unconstitutional both on its face and as applied to Plaintiffs, under both the *Ex Post Facto* Clause and the Due Process Clause in both the Rhode Island and United States Constitutions;
- (2) A temporary, preliminary and permanent injunctive relief restraining Defendants from enforcing Rhode Island General Laws § 11-37.1-10(c);
- (3) An award to Plaintiffs of reasonable attorneys' fees and costs; and
- (4) Such other and further relief as the Court deems just and proper.

Dated: July 16, 2012

**DENNIS GESMONDI, DALLAS  
HUARD and GEORGE MADANCY**  
By Their Attorneys,

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**CERTIFICATION**

I hereby certify that on this 16<sup>th</sup> day of July, 2012, I caused to be served a true copy of the within Complaint by hand-delivery upon:

Stacey Veroni, Esq., Chief of the Criminal Division  
Attorney General's Office  
150 South Main Street  
Providence, RI 02903

City Solicitor Jeffrey Padwa  
444 Westminister Street, 2<sup>nd</sup> Floor  
Providence, RI 02903

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