UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CLASS ACTION REQUESTED AND CHALLENGE
TO CONSTITUTIONALITY OF STATE STATUTE

JOHN FREITAS, THEODORE CHAPDELAINE, TROY PORTER, FREDERICK KENNEY, MICHAEL CLINTON, and DERRICK LEE JENKINS each individually and on behalf of all persons similarly situated v. PETER KILMARTIN, in his official capacity as Attorney General of the State of Rhode Island, and A.T. WALL II, in his official capacity as Director of the Department of Corrections of the State of Rhode Island	C.A. No. 15-

VERIFIED COMPLAINT WITH CLASS ACTION ALLEGATIONS

Plaintiffs, individually and on behalf of all persons similarly situated, are persons subject to the registration requirements of the Sexual Offender Registration and Community Notification Act of the State of Rhode Island, chapter 11-37.1 of the General Laws of the State of Rhode Island, and hereinafter referred to as "SORNA," and have been placed at "tier" or "level" 3 within the meaning of SORNA. Plaintiffs seek classwide declaratory and injunctive relief to prohibit enforcement of §11-37.1-10(d) of the Rhode Island General Laws, enacted on July 10, 2015 and hereinafter referred to as "the Residency Prohibition," as violative of their rights under the United States Constitution and 42 U.S.C. §1983, on its face and as applied.

Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. §1983. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 2201.

2. Venue is properly lodged in the District of Rhode Island pursuant to 28 U.S.C. § 1391(b).

PLAINTIFFS

3. Plaintiffs are all residents of the State of Rhode Island. Each Plaintiff brings this action on behalf of himself and all persons similarly situated.

4. Each plaintiff, prior to July 10, 2015, had been convicted of a criminal offense within the meaning of §11-37.1-3 of SORNA and had been assigned to "tier" or "level" 3 within the meaning of SORNA.

5. Plaintiff John Freitas is 62 years of age and has resided in an apartment on Goddard Street in Providence, Rhode Island along with his fiancé, Barbara Kalil, for more than three years. Plaintiff Freitas is a level 3 sex offender having been convicted of indecent assault and battery on a child in 1983 and failing to register as a sex offender in 2013. Plaintiff Freitas was previously homeless for a six-year period until he obtained his current housing in 2012. He has been notified that he has until November 2, 2015 to vacate his current residence or face felony prosecution for violation of the Residency Prohibition. To date, he has been unable to find alternative housing and, but for the issuance of injunctive relief, he will be forced to reside at the Harrington Hall Homeless Shelter, located at 30 Howard Avenue, Building 58, Cranston, Rhode Island (hereinafter "Harrington Hall") .

6. Plaintiff Theodore Chapdelaine is 53 years old and has resided at his family-owned home on Providence Pike in North Smithfield, Rhode Island since the age of 16 with his

parents. Plaintiff Chapdelaine is a level 3 sex offender having been convicted of second degree child molestation in 1994 and 2004. In both cases, the victims were related to his acquaintances. Upon release from incarceration in April of 2015, Chapdelaine moved back to his North Smithfield address and has lived with his parents and, since his father's death in October 2015, with his mother. In October of 2015 the North Smithfield Police Department notified Plaintiff Chapdelaine that he was in violation of the Residency Prohibition and gave him 36 hours to move or be arrested and prosecuted. Since this notice, Plaintiff Chapdelaine has lived at various motels located on Route 146 in North Smithfield in an unsuccessful attempt to find alternative housing.

7. Plaintiff Troy Porter is 52 years of age and has resided in an apartment on Camp St. in Providence, Rhode Island for over 15 years. Plaintiff Porter is a level 3 sex offender having been convicted of first degree sexual assault involving an adult victim in 1996. He currently participates in counseling and treatment at the Providence Center near his home on Hope Street in Providence. He has been notified that he has until November 2, 2015 to vacate his current residence or face felony prosecution for violation of the Residency Prohibition. To date, he has been unable to find alternative housing and, but for the issuance of injunctive relief, he will be forced to reside at Harrington Hall, which will impair his ability to maintain his attendance at counseling and treatment at the Providence Center.

8. Plaintiff Frederick Kenney is 60 years of age and currently resides in a rooming house on Hendricks Street in Providence, Rhode Island, where he also serves as the manager of the rooming house. Plaintiff Kenney is a level 3 sex offender having been convicted of second degree child molestation in 1997. He has been notified that he has until

November 2, 2015 to vacate his current residence or face felony prosecution for violation of the Residency Prohibition. He has located three other potential apartments but has been advised by Providence Police that they would still violate the Residency Prohibition. As a result, but for the issuance of injunctive relief, he will be forced to live at Harrington Hall.

9. Plaintiff Michael Clinton is 44 years of age and was convicted of indecent assault on a child in 1995 and failure to register as a sex offender in 2014. He has rented an apartment on Mineral Spring Avenue in Pawtucket for the past 18 months. The Pawtucket Police Department has notified Plaintiff Clinton that his residence violates the Residency Prohibition and he must move by January 2, 2016 or face prosecution. Plaintiff Clinton is currently seeking but has not found alternative housing.

10. Plaintiff Derrick Lee Jenkins is 48 years of age and has been homeless since March, 2015. He was convicted of second degree sexual assault involving an adult acquaintance in 1990. But for the Residency Prohibition, Plaintiff Jenkins would live with his sister who owns a home.

DEFENDANTS

11. Defendant Peter Kilmartin is the Attorney General of the State of Rhode Island and as such is ultimately responsible for enforcement, including criminal prosecutions, of the Residency Prohibition. Defendant Kilmartin is hereinafter referred to as "the Attorney General."

12. Defendant A.T. Wall II is the Director of the Department of Corrections of the State of Rhode Island and as such is ultimately responsible for the Department's Division of Adult Probation and Parole, which, along with other law enforcement agencies, is

responsible to notify persons subject to SORNA of their registration and other obligations thereunder. Defendant Wall is hereinafter referred to as "the Director of the Department of Corrections."

13. With respect to all matters complained of herein, the Defendants act or have acted under color of state law within the meaning of 42 U.S.C. §1983.

14. Each Defendant is sued herein in his official capacity.

15. Defendants are hereinafter referred to collectively as "the State."

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action on behalf of themselves and a statewide class (hereinafter "the Class") of similarly situated persons defined as: all persons currently residing in, and those who may in the future relocate to, the State of Rhode Island who were or are convicted of offenses that require registration under SORNA pursuant to Rhode Island General Laws §§ 11-37.1-1 *et seq*. and have been, or will be, assigned to "tier" or "level" 3 and are therefore subject to the Residency Prohibition contained in §11-37.1-10(d).

17. The Class seeks certification of claims for declaratory and injunctive relief.

18. Excluded from the Class are any persons as to whom a criminal charge or indictment for alleged violation of the Residency Prohibition is pending.

19. Plaintiffs reserve the right to seek to modify the Class definition based on the results of discovery.

20. **Numerosity**: The Statewide Class (collectively referred to below as the "Class") is so numerous that the individual joinder of all members, in this or any action, is impracticable. Upon information and belief, the Class numbers over 150 persons.

21. **Commonality**: There is a well-defined community of interest in the questions of law and fact involved affecting the members of the Class.

22. **Typicality**: The issues and evidence that are to be presented in this case are typical among the named Plaintiffs and Defendants because each Plaintiff's claim arises from the same course of events and the theory of liability against Defendants is the same among all Plaintiffs similarly affected.

23. **Adequate Representation**: Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the members of the Class they seek to represent.

24. All Class Counsel are qualified and experienced to handle this type of litigation and can represent the Plaintiffs and Plaintiff Class Members fairly and adequately.

25. Class certification is appropriate under Rule 23(b)(1) and/or 23(b)(2) in that the prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the party opposing the Class.

26. Class certification is appropriate under Rule 23(b)(1) and/or 23(b)(2) in that adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of the other members of the Class or substantially impair or impede their ability to protect their interest.

STATEMENT OF CLAIM

27. Prior to July 10, 2015, Plaintiffs were each convicted of offenses that require registration under SORNA, pursuant to Rhode Island General Laws §§ 11-37.1-1 *et seq.*, and assigned to "tier" or "level" 3 thereunder.

28. Upon information and belief, SORNA was enacted in 1996 to require that certain individuals convicted of enumerated offenses be required to register their residence with the State. SORNA also provided for maintenance of a registration database and, for certain offenders, community notification.

29. Effective July 2, 2008, SORNA was amended to prohibit persons subject to its terms from residing "within three hundred feet (300') of any school, public or private," § 11-37.1-10(c).

30. Effective July 10, 2015, SORNA was amended to prohibit persons subject to its terms assigned to tier 3 from residing "within one thousand feet (1000') of any school, public or private," § 11-37.1-10(d)," as follows:

> (d) Any level three (3) sex offender who knowingly resides within one thousand feet (1,000') 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.

31. SORNA does not contain a definition of "school, public or private."

32. The absence of a definition of the term "school, public or private" requires Plaintiffs and members of the Class to guess at the meaning of the term.

33. The absence of a definition of the term "school, public or private" subjects Plaintiffs and members of the Class to discretionary, inconsistent, and arbitrary interpretation by local law enforcement and the State.

34. The term "school, public or private" does not distinguish schools based upon the age of the students or the type of "school" it is.

35. Upon information and belief, certain local law enforcement agencies have announced their interpretation of "school" to include licensed day care facilities that provide "pre-kindergarten" classes.

36. Upon information and belief, the term "school, public or private," could be interpreted to include an adult dance school, a yoga studio, or a school for the culinary arts, cosmetology or martial arts.

37. SORNA does not authorize or direct the Attorney General or any other agency to promulgate any uniform guidance as to the meaning of the term "school, public or private."

38. The Residency Prohibition contains no exemption for persons subject to its terms who established their residence prior to its effective date, including those who own or owned their own home, possess or possessed a leasehold or tenancy, reside or resided with family members or significant others, or reside or resided in a treatment facility or assisted living.

39. SORNA does not contain a definition of the term "within one thousand feet (1,000')" of any school nor any language as to how the distance is to be measured or calculated.

40. The absence of a definition of the term "within one thousand feet (1,000')" requires Plaintiffs and members of the Class to guess at the meaning of the term.

41. The absence of a definition of the term "within one thousand feet (1,000')" subjects Plaintiffs and members of the Class to discretionary, inconsistent, and arbitrary interpretation by local law enforcement and the State.

42. The term "within one thousand feet (1,000')" is not capable of a single definitive measurement.

43. Upon information and belief, certain local law enforcement agencies have announced their interpretation of the term to mean a measurement from the outermost edge of an

individual's residence to the outermost edge of a "school" facility, including parking lots and fields.

44. Upon information and belief, the measurement method used by the Division of Probation and Parole within the Department of Corrections to calculate the distance of 1000 feet is different from the method being used by some local law enforcement agencies.

45. SORNA does not authorize or direct the Attorney General or any other agency to promulgate any uniform guidance on how to measure the distance of 1000 feet in implementing the Residency Prohibition.

46. Upon information and belief, in September 2015, the Director of the Department of Corrections, by and through the Division of Probation and Parole, sent a notice to certain Tier 3 registrants residing in the City of Providence, requiring them to attend a meeting on September 30, 2015 at the Providence Public Safety Complex upon threat of having their probation or parole violated.

47. At this meeting, the members of the Class attending, including Plaintiffs Freitas, Porter and Kenney, were advised that their residences fell within 1000 feet of a school and that they had to relocate no later than November 2, 2015, or they would be prosecuted for violation of the Residency Prohibition.

48. Upon information and belief, attendees at this meeting were given no individualized notice as to the specific school that was located within 1000 feet of their residence, but instead were told to review maps that had been posted at the meeting in order to obtain that information.

49. Upon information and belief, attendees at this meeting were advised that, if they were a tenant with a lease in a residence within 1,000 feet of a school, they would be required to break their lease.

50. Upon information and belief, attendees at this meeting were advised that, if prior to September 30, 2015, they owned their residence and it is within 1,000 feet of a school, they would not be required to move.

51. Upon information and belief, attendees at this meeting, when the question was raised, were given no definitive answer as to whether a member of the Class who was married and living in a home within 1,000 feet of a school but whose name was not on the deed to the property would be required to move.

52. Upon information and belief, attendees at this meeting were advised that if they presently lived in a location that was not within 1000 feet of a school, but a school was later established within 1000 feet of their residence, they would be required to move.

53. Upon information and belief, attendees at this meeting were advised that a day care facility providing pre-kindergarten classes is considered a school for purposes of the Residency Prohibition, but that a day care facility without such classes would not be considered a school requiring a person to move.

54. The Residency Prohibition contains no procedure to apply for a hardship exemption based upon illness, advanced age, financial hardship, disability, or any other reason.

55. The Residency Prohibition contains no procedure for an individual to contest the State's determination that he or she resides within 1000 feet of a school.

56. Depending on how the measurement of 1000 feet is calculated, some members of the Class may or may not be subject to the Residency Prohibition.

57. The Residency Prohibition does not prohibit Plaintiffs or members of the Class from working, traveling, spending the day, or "being" "within one thousand feet (1000')" of a "school, public or private," however defined, so long as they do not "reside" there.

58. The Residency prohibition contains no "grandfather" provision for Plaintiffs or members of the Class who presently own a home or otherwise reside within 1000 feet of a school.

59. Upon information and belief, individuals affected by the Residency Prohibition have been given varying amounts of time to comply with the law depending on the municipality in which they reside.

60. For instance, Plaintiff Chapdelaine in North Smithfield was given 36 hours to move after being notified that the Residency Prohibition required him to move or be arrested.

61. For instance, Providence residents, including Plaintiffs Freitas, Porter and Kenney, were informed on September 30, 2015 that they must move by November 2, 2015 or face prosecution or parole violation.

62. For instance, residents of Pawtucket, including Plaintiff Clinton, were notified in mid-October that they must move no later than January 2, 2016 or be prosecuted.

63. Upon information and belief, every emergency shelter in the State but one that has provided shelter to homeless members of the Class is no longer able to do so because of the Residency Prohibition. This includes the elimination of all available shelters in Providence, Woonsocket and Newport.

64. Upon information and belief, the only shelter that has provided shelter to homeless members of the Class that is not subject to the Residency Prohibition is Harrington Hall, located at the Pastore Complex of the State of Rhode Island on the grounds of the Adult Correctional Institutions.

65. Harrington Hall is available to men only and does not admit the individual's family members or significant others.

66. Harrington Hall provides communal sleeping quarters in a common area with no privacy or assigned personal space.

67. Moving from a residence to a shelter or being forced into homelessness imposes registration burdens on Plaintiffs and members of the Class and also will make it more difficult or impossible for some, including Plaintiff Porter, to access required counseling, medical, substance abuse or other treatment services.

68. Upon information and belief, persons convicted of sex offenses are generally ineligible for public housing.

69. As a direct result of the Residency Prohibition, a number of Plaintiffs and members of the Class have been made or will be made homeless to avoid prosecution for violation of the Residency Prohibition.

70. The Residency Prohibition will have a profound effect on Plaintiffs Freitas, Chapdelaine, and Jenkins, and members of the Class who, but for the Residency Prohibition, do live or would choose to live with members of their family or significant others but are prevented and prohibited from doing so.

71. Upon information and belief, stable housing has been found to be an important component in reducing recidivism by past offenders, but the Residency Prohibition will instead produce housing instability.

72. Upon information and belief, increases in homelessness and transience make it more difficult for law enforcement officials to monitor members of the Class.

73. Upon information and belief, the vast majority of victims of sex offenses are known to the offender and are not victimized by strangers.

74. The Residency Prohibition applies to sex offenders whose offense was committed against an adult.

75. Upon information and belief, without injunctive relief, given the threat of imminent prosecution if the Plaintiffs and the Class do not leave their homes, Plaintiffs and the Class will suffer irreparable harm to their emotional, mental and physical well-being, and may be faced with imminent homelessness, potentially extensive financial burdens, separation from family, increased burdens in complying with parole and probation obligations and other hardships.

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

77. Upon information and belief, issuance of injunctive relief will preserve the status quo immediately before the implementation of the Residency Prohibition and threat of prosecution upon Plaintiffs and the Class.

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

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

COUNT I (Unconstitutionally Vague)

80. Plaintiffs incorporate the allegations contained in paragraphs 1 through 79 of the Complaint as if fully set forth herein.

81. Under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States 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).

82. As Rhode Island General Laws § 11-37.1-10(d) currently reads, ordinary people cannot understand whether a registered sex offender is residing within one thousand feet (1000') of a school, public or private.

83. The Residency Prohibition denies due process to plaintiffs and the Class both on its face and as applied, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

COUNT II (Substantive Due Process)

84. Plaintiffs incorporate the allegations contained in paragraphs 1 through 83 of the Complaint as if fully set forth herein.

85. The Residency Prohibition of R.I. Gen. Laws § 11-37.1-10(d) interferes with Plaintiffs' and the Class' fundamental rights to family privacy, specifically the right to cohabit with one's family, and of association, and is not narrowly tailored to serve a compelling governmental interest.

86. The Residency Prohibition interferes with Plaintiffs' and the Class' liberty and privacy interests while bearing no rational relationship to a legitimate purpose.

87. The Residency Prohibition deprives Plaintiffs and the Class of the basic right to be free of unreasonable, arbitrary and oppressive official action.

88. The Residency Prohibition denies Plaintiffs and the Class rights to substantive due process in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

COUNT III (Procedural Due Process)

89. Plaintiffs incorporate the allegations contained in paragraphs 1 through 88 of the Complaint as if fully set forth herein.

90. The Residency Prohibition denies Plaintiffs' and the Class' liberty and property interest without due process of law in that the Residency Prohibition affords no opportunity for Plaintiffs and the Class to challenge a determination that their residence is within 1000 feet of a school, public or private.

91. The Residency Prohibition denies Plaintiffs and the Class rights to procedural due process in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

COUNT IV (*Ex Post Facto* Law)

92. Plaintiffs incorporate the allegations contained in paragraphs 1 through 91 of the Complaint as if fully set forth herein.

93. The Residency Prohibition of R.I. Gen. Laws § 11-37.1-10(d) constitutes a retroactive punishment for plaintiffs and the Class.

94. The Residency Prohibition constitutes an ex post facto law as applied to Plaintiffs and the Class, in violation of Article I, § 10, clause 1 of the United States Constitution, and 42 U.S.C. §1983.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

(1) Grant temporary and preliminary injunctive relief restraining the State from enforcing the Residency Prohibition of R.I.G.L. §11-37.1-10(d) pending determination on the merits;

(2) Certify a class of all persons currently residing in, and those who may in the future relocate to, the State of Rhode Island who were, or will be, convicted of offenses that require registration under the Rhode Island Sexual Offender Registration and Community Notification Act pursuant to Rhode Island General Laws §§ 11-37.1-1 *et seq*. and have been assigned, or will be assigned, to "tier" or "level" 3 and therefore subject to the Residency Prohibition contained in §11-37.1-10(d).

(3) After hearing on the merits, issue its declaratory judgment that Rhode Island General Laws § 11-37.1-10(d) is unconstitutional both on its face and as applied to Plaintiffs and the Class and grant corresponding injunctive relief permanently enjoining the State from enforcing the Residency Prohibition.

(4) Award Plaintiffs their costs, including reasonable attorneys' fees; and

(5) Grant such other and further relief as the Court deems just and proper.

By their attorneys,
Cooperating counsel,
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF RHODE ISLAND

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VERIFICATION

I, John Freitas, hereby declare under penalty of perjury as follows:

1. I am a Plaintiff in the above-captioned law suit.

2. I bring this action on my own behalf and on behalf of a class of similarly-situated persons.

3. I have read the complaint filed in the above-captioned action and it is true and correct to the best of my knowledge, information and belief.

I, John Freitas, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

Executed on October 29, 2015

John Freitas