UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

	*	**CIVIL ACTION**
EMMA DOE, ET AL	*	
	*	**No. 12-1670 "F" (5)**
VERSUS	*	
	*	**JUDGE FELDMAN**
JAMES D. CALDWELL, ET AL	*	
	*	**MAG. JUDGE CHASEZ**

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

MAY IT PLEASE THE COURT

The plaintiffs, a proposed class of pseudonymous registered sex offenders, filed the instant suit under 42 U.S.C. §1983 and the Declaratory Judgment Act, 28 U.S.C. §§2201, 2202, against various state officials, in their official capacities. For the reasons contained herein, the plaintiffs' suit should be dismissed pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

The plaintiffs allege they are being denied equal protection of the laws in violation of the Fourteenth Amendment because they are required to register as sex offenders pursuant to La. R.S. 15:542(A)(1)(a). The plaintiffs claim they are each registered solely for convictions of Crimes Against Nature by Solicitation (CANS).[2] This Honorable Court previously found in *Doe v. Jindal* (*Doe I*) CA No. 11-388(F)(5), Rec. Doc. 103, 2012 WL 1068776 (March 29, 2012), that because Louisiana's prostitution statute and crimes against nature by solicitation statute punish identical conduct, requiring one group of offenders to register but not the other violates the Fourteenth Amendment's guarantee of equal protection under the laws. That decision

[2] For ease of reference herein except as otherwise specified, convictions under La. R.S. 14:89(A)(2) (prior to August 15, 2010) and under La. R.S. 14:89.2 (after August 15, 2010) will be referenced *in globo* as "CANS" convictions.

declared unconstitutional state law as it existed at that time. However, about six weeks after Judgment was rendered in *Doe I*, the Louisiana Legislature, in direct response to the decision, changed the law. *See* 2012 La. Sess. Law Serv. Act 402 (H.B. 566) (signed into law May 31, 2012). Act. 402 is attached hereto as an Appendix. As will be shown below, the plaintiffs are only required to register due to La. R.S. 15:542(F) *as amended by* Act 402. The effect of the change in the law is that the plaintiffs have no justiciable claim and this suit should be dismissed.

I. STANDARDS OF REVIEW

Motions filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure allow a party to challenge the subject matter jurisdiction of the district court to hear a case. Fed. R. Civ. P. 12(b)(1). Article III standing is a jurisdictional requirement, therefore plaintiffs' lack of standing is properly raised on a Rule 12(b)(1) motion. See *Pub. Citizen, Inc. v. Bomer*, 274 F.3d 212, 217 (5th Cir. 2001), citing *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 555 n. 22 (5th Cir.1996). Furthermore, sovereign immunity deprives the court of subject matter jurisdiction and, therefore, is an issue properly brought in a motion under Fed. R. Civ. P. 12(b)(1). *Warnock v. Pecos County, Tex.*, 88 F.3d 341 (5th Cir. 1996).

"The standard of review applicable to motions to dismiss under Rule 12(b)(1) is similar to that applicable to motions to dismiss under Rule 12(b)(6)" except that the Rule 12(b)(1) standard permits the Court to consider a broader range of materials in considering its subject matter jurisdiction over the cause(s) in the suit. *Thomas v. City of New Orleans,* CIV.A. 12-896, 2012 WL 3150056 (E.D. La. Aug. 2, 2012) (citing *Williams v. Wynne,* 533 F.3d 360, 364–65 n. 2 (5th Cir. 2008)).

> Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3)

> the complaint supplemented by undisputed facts plus the court's resolution of disputed facts., citing *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir.1996). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *Id*, citing *McDaniel v. United States*, 899 F.Supp. 305, 307 (E.D.Tex.1995). Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir.1980).

Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001). On the other hand, consideration of a Rule 12(b)(6) motion is generally restricted to the face of the plaintiffs' complaint.

"To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Bell Atlantic Corp v. Twombly*, 127 S.Ct. 1955, 1974 (2007).

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. ----, 129 S.Ct. 1937, 1949-1950 (2009) (*citing Twombly*, 550 U.S. 544,127 S.Ct. 1955; Fed. Rule Civ. Proc. 8(a)(2)).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S.Ct. at 1964-1965. "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 127 S.Ct. at 1965 (*internal citations omitted)*. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief." '

" *Iqbal*, 556 U.S. ----, 129 S.Ct. at 1949-1950 (*citing Twombly*, 127 S.Ct. 1955; Fed. Rule Civ. Proc. 8(a)(2)).

II. ACT 402 SUBSTANTIVELY CHANGED THE LAW DECLARED UNCONSTITUTIONAL IN *DOE I.*

This Honorable Court held that the plaintiffs in *Doe I* were entitled to judgment as a matter of law based on two findings:

> First, the State has created two classifications of similarly (in fact, identical) situated individuals who were treated differently (only one class is subject to mandatory sex offender registration). Second, the classification has no rational relation to any legitimate government objective: there is no legitimating rationale in the record to justify targeting only those convicted of Crime Against Nature by Solicitation for mandatory sex offender registration.

Doe v. Jindal [Doe I], CIV.A. 11-388, 2012 WL 1068776, *8 (E.D. La. Mar. 29, 2012) (footnote omitted). The plaintiffs claim they are identically situated to the plaintiffs in *Doe I.* See Rec. Doc. 1, ¶3. Accepting that statement as true, the plaintiffs are people convicted on or before August 15, 2011, of soliciting oral and/or anal sex from an adult. *See* Paragraphs 1 and 3 of the Judgment in *Doe I* (noting in ¶1 that the plaintiffs were convicted of violating La. R.S. 14:89(A)(2) (pre-August 15, 2010) or La. R.S. 14:89.2(A) (between 8/15/10 and 8/15/11); and in ¶3 that the Judgment expressly does not apply to La. R.S. 14:89.2(C) (solicitation of sex from a minor)).

Act 402 of the 2012 Regular Session of the Louisiana Legislature applies to this exact group of people (convicted before August 15, 2011, of soliciting sex from an adult). The Act provides a remedy in state court to people who prove they are only on the registry for CANS convictions and that they did not solicit sex from a minor. As such, the only reason the proposed class members are still on the registry (assuming their allegations are true) is because they have

not availed themselves of this remedy. Act 402, signed into law on May 31, 2012 about a month before this suit was filed, substantively changed the previously identified "classifications" of people and rationally relates to legitimate state interests.

III. THE CLASSIFICATIONS THAT EXISTED UNDER THE LAW AT THE TIME OF THE *DOE I* DECISION NO LONGER EXIST.

This Honorable Court found in *Doe I* that Louisiana law as it existed at the time of the decision created two classes of identically situated people, those required to register and those not required to register. Here, the classifications are different because Act 402 substantively changed the law. Now, the law does not mandate continued registration of anyone convicted of CANS. The only distinction remaining is that some people never had to register (prostitution convictions) and some people no longer have to register (CANS convictions).

Louisiana Law now treats equally people who were convicted of prostitution and those convicted of CANS. The significant differentiation between prostitution and CANS, the registration requirement, was cured effective August 15, 2011. *See* Rec. Doc. 1, ¶32 (citing 2011 La. Sess. Law. Serv. 223 (West) (HB 141)). However, Act 223 of 2011, the law that equalized the two crimes, was not retroactive. As such, the plaintiffs in *Doe I*, were all required to remain on the registry because they had been convicted before August 15, 2011 (the effective date of Act 223). Based on the law requiring the *Doe I* plaintiffs to remain on the registry, this Court was easily able to identify two groups of people: those required to register (CANS convictions) and those not required to register (prostitution convictions).

The law that mandated the *Doe I* plaintiffs remain on the registry is not the same law that requires the plaintiffs in this case be on the registry. See La. R.S. 15:541(F)(4) *as amended by* Act 402.

> In many, if not most, equal protection cases, the classification to which the plaintiff objects is explicitly set out in the legislation under which the state acts. By using standards, qualifications, or criteria to control the scope and applicability of the legislation, the legislation itself classifies.

Mahone v. Addicks Util. Dist. of Harris County, 836 F.2d 921, 932 (5th Cir. 1988). The plaintiffs in this case are only required to register because of La. R.S. 15:541(F)(4). Correspondingly, La. R.S. 15:541 *as amended by* Act 402 (and is effective now) is the law that creates the "classifications" to which the plaintiffs are subject. Because the law substantively changed via Act 402, the "classifications" under current law are substantively different than those identified in *Doe I*. Now, the two "classifications" are those who were never required to register (prostitution convictions) and those who are no longer required to register but must prove this fact before they are removed from the registry (CANS convictions).

IV. RATIONAL BASES EXIST FOR THE "CLASSIFICATIONS."

This Court held in *Doe I* that no rational basis existed for the distinction in the law as it existed at that time between people convicted of CANS and people convicted of prostitution. Under current law, two rational bases exist for the distinction as it currently exits. First, the state has a rational (if not compelling) interest in ensuring the people requesting to be removed from the registry did not solicit sex from a minor. Second, the state has a rational interest in establishing a procedure by which people can be removed from the sex offender registry subsequent to a change in the law.

A. Requiring offenders to prove they did not solicit sex from a minor before they are removed from the registry is rationally related to a compelling government interest.

Under La. R.S. 14:89 (crimes against nature) as it existed at the time of the plaintiffs' respective convictions (pre August 15, 2010), the age of the person solicited was not a specific

element of the crime. Solicitation of a crime against nature under La. R.S. 14:89(A)(2) was a registerable offense regardless of whether the person solicited was a child or an adult. As such, there is a possibility that among the prospective class members are people convicted of solicitation of sex from a minor.[3] In light of the fact that some of the people convicted under §14:89 solicited a minor, Act 402 furthers the State's compelling interests in protecting minors from sexual abuse by requiring people like the prospective class members to prove they did not solicit sex from a minor before they are removed from the registry.

Act 402, furthers the State's interests in removing people from the sex offender registry and in protecting children by requiring people convicted of solicitation of a crime against nature to prove they did not solicit sex from a minor before being removed from the registry. Under current law, people convicted of soliciting sex from a minor are (and should be) required to register as sex offenders. See La. R.S. 14:89.2(B)(3) and (C). *Accord* 18 U.S.C.A. §2422 (relative to coercion and enticement of a minor across state lines to engage in "illegal" sexual activity). Protecting children from sexual abuse is a compelling and indisputable interest of the government.

> The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people. In its legislative findings, Congress recognized that there are subcultures of persons who harbor illicit desires for children and commit criminal acts to gratify the impulses. See Congressional Findings, notes following § 2251; see also U.S. Dept. of Health and Human Services, Administration on Children, Youth and Families, Child Maltreatment 1999 (estimating that 93,000 children were victims of sexual abuse in 1999). Congress also found that surrounding the serious offenders are those who flirt with these impulses and trade pictures and written accounts of sexual activity with young children.

[3] The decision in *Doe I* expressly does not apply to people convicted of CANS where the person solicited was a minor. (See Paragraph 3 of the Judgment).

Ashcroft v. Free Speech Coal., 535 U.S. 234, 244-45 (2002).

The Louisiana Legislature unequivocally expressed the State's interest in protecting children from sexual abuse and concomitant interest in creating a registry to warn the public about child predators.

> The legislature finds that sex offenders, sexually violent predators, and child predators often pose a high risk of engaging in sex offenses, and crimes against victims who are minors even after being released from incarceration or commitment and that protection of the public from sex offenders, sexually violent predators, and child predators is of paramount governmental interest. The legislature further finds that local law enforcement officers' efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses and crimes against victims who are minors, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders, sexually violent predators, and child predators who live within the agency's jurisdiction, and the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Restrictive confidentiality and liability laws governing the release of information about sex offenders, sexually violent predators, and child predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense or a crime against a victim who is a minor have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sex offenders, sexually violent predators, and child predators to public agencies, and under limited circumstances to the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

La. R.S. 15:540(A). In unequivocal accord with the underlying interests in protecting children from sex abuse, Louisiana law makes it a crime to solicit sex from a minor. See La. R.S.

14:89.2(B)(3) (solicitation of Crime Against Nature). See also La. R.S. 14:82.1 (solicitation of Prostitution from a minor). Correspondingly, people convicted of solicitation of sex from a minor are required to register as sex offenders. See La. R.S. 15:542(A)(1)(a) (required registration for conviction of a "sex offense"), and (A)(1)(b) (required registration for a "criminal offense against a victim who is a minor").

Considering Louisiana law mandates registration for people convicted of soliciting sex from a minor, it is completely legitimate to require (via Act 402) potential class members to prove they did not solicit sex from a minor before they are excused from the registration requirement. This minor burden of proof furthers the State's interest in protecting children from sexual abuse.

B. The State has a legitimate interest in establishing a process by which changes to the law governing who is required to register as a sex offender can be implemented.

Attitudes toward sex and sex acts are ever-changing. Some acts that were widely considered taboo, immoral and even predatory 50 years ago are now widely-considered to be normal, healthy sexual activity. See e.g. *50 Shades of Grey marketing phenom goes mainstream*, by Leanne Italie, Associated Press, published August 16, 2012, http://www.huffingtonpost.com/huff-wires/20120816/us-fifty-shades-of-consumption/. The laws are correspondingly changing. While it may seem that the laws are changing only at the Orders of federal courts, e.g. *Lawrence v. Texas*, 539 U.S. 558 (2003), we cannot assume that Louisiana's legislature (or any state's legislature for that matter) will never act on its own to change its definition of who is a "sex offender" mandated to comply with the State's registration requirements. In this case, for example, the Louisiana Legislature acted quickly to provide relief to the people who did not join in *Doe I*. However, in doing so, the State protected interests not

considered in that litigation – namely that some of the people convicted of CANS under La. R.S. 14:89(A)(2) solicited sex from a minor.

The State has an interest in defining "registerable sex offense" and, correspondingly, the State has an interest in changing that definition. This interest is reflected in Act 402. The State has an interest in developing a process for removing people from the sex offender registry in response to a change in the definition of "registerable sex offense." The need for a process to remove people from the registry arises from the fact that each individual sex offender's registration mandate must be evaluated individually. Individual evaluation is necessary because each offender has, for example, a unique criminal history. This Court's decision in *Doe I* affects more individuals than just those registered for a CANS conviction and the State has an interest in protecting the rights of even those who have not sued. It also affects people registered for CANS *and* another registerable offense. Such individuals are required to register for life due to multiple convictions for registerable offenses. However, in light of the fact that it people convicted of CANS cannot be made to register for that offense, these individuals now only have one conviction for a registerable offense and, as such, are no longer required to register for life. This is just one example of the effect of a change in the law like the one made in *Doe I* that is not remedied by the Court's decision itself. As such, the State has an interest in developing its own processes by which to provide a remedy to *individuals* affected by a change in the law without the need for oversight founded in federal litigation. The plaintiffs in *Doe I* did not sue on behalf of others similarly situated. As such, the injunctive relief awarded in *Doe I* did not extend beyond the nine plaintiffs in that suit. The State recognized, however, that the declaratory relief did extend to all of the people falling within that category. As such, the Legislature passed a law to provide relief to those people.

The State has a legitimate interest in developing processes by which to remove people from the sex offender registry, to change their registration or notification requirements, or to otherwise provide them relief in light of a change in the law. The process created in Act 402 to provide relief to the people who did not sue in *Doe I* is rationally related to that interest.

In sum, La. R.S. 15:542 as it exists now is the reason why the prospective class members are still on the registry. The process created by Act 402 which amended §15:542, is rationally related to the legitimate state interests in protecting children from sexual abuse and in developing processes by which to provide relief to registered sex offenders arising from a change in the law. As explained above, the plaintiffs in this case are not identically situated to the plaintiffs in Doe I because of Act 402. And for the foregoing reasons, because the purported "class distinction" is rationally related to legitimate government interests, there is no cognizable equal protection claim in this lawsuit.

V. PLAINTIFFS FAIL TO PLEAD AN EQUAL PROTECTION CLAIM.

"[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end." *Sonnier v. Quarterman*, 476 F.3d 349, 368 (5th Cir. 2007) (*quoting Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620, 1627 (1996)). Furthermore, where a statute burdens neither a fundamental right nor a suspect class, it is entitled to a "strong presumption of validity," *Heller v. Doe*, 509 US 312, 319 (1993), and must be upheld if it bears a rational relationship to some legitimate governmental interest. *Romer*, 517 U.S. at 631.

As explained above, the law that requires the prospective class members to register as sex offenders is La. R.S. 15:542 *as amended by* Act 402. As was the case in *Doe I*, the registration requirement neither targets a suspect class nor burdens any fundamental right. As such, §15:542

is entitled to a "strong presumption of validity" and must be upheld because, as described above, it bears a rational relationship to legitimate governmental interests. Considering the foregoing, the plaintiffs have not stated a cognizable equal protection challenge to the law as it exists now.

VI. THE PLAINTIFFS LACK ARTICLE III STANDING TO SUE FOR REMOVAL FROM THE SEX OFFENDER REGISTRY.

The plaintiffs allege they were all "convicted of CANS based on allegations that they agreed to engage in oral sex for compensation." Rec. Doc. 1, ¶51. They seek a declaration that the law requiring them to register as sex offenders is unconstitutional and removal from the registry. The plaintiffs do not have standing to bring this suit because they have not alleged or proven that they did not solicit sex (of any kind) from a minor. As explained above, the decision in *Doe I* does not apply to people convicted of soliciting sex from a minor and Louisiana law continues to mandate registration by people convicted of soliciting sex from a minor. Because the plaintiffs have not established that they did not solicit sex from a minor, they have not established that the judgment they seek will provide them any relief.

> Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal citations and quotations omitted). In the absence of an allegation (at this stage) or proof (at the summary judgment stage) that the plaintiffs did not solicit sex from a minor, they cannot show that they have suffered an

injury in fact that will be redressed by a favorable decision of this Court. This is simply because any of the plaintiffs who did solicit sex from a minor must still register as sex offenders.

VII. THE DEFENDANTS ARE ENTITLED TO SOVEREIGN IMMUNITY.

The plaintiffs and prospective class members in this case are suing various state officials, in their official capacities, under 42 U.S.C. §1983. The defendants are entitled to sovereign immunity from this suit because the relief requested is not properly characterized as prospective and because the complaint does not allege an ongoing violation of federal law.

> The Eleventh Amendment has been interpreted by the Supreme Court to bar suits by individuals against nonconsenting states. *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 363, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). In addition, the principle of state-sovereign immunity generally precludes actions against state officers in their official capacities, *see Edelman v. Jordan*, 415 U.S. 651, 663-69, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), subject to an established exception: the *Ex parte Young* doctrine. Under *Ex parte Young*, "a federal court, consistent with the Eleventh Amendment, may enjoin state officials to conform their future conduct to the requirements of federal law." *Quern v. Jordan*, 440 U.S. 332, 337, 99 S.Ct. 1139, 59 L.Ed.2d 358 (1979).

McCarthy ex rel. Travis v. Hawkins, 381 F.3d 407, 412 (5th Cir. 2004).

> In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a "straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997) (O'CONNOR, J., joined by SCALIA and THOMAS, JJ., concurring in part and concurring in judgment); see also *id.*, at 298-299, 117 S.Ct. 2028 (SOUTER, J., joined by STEVENS, GINSBURG, and BREYER, JJ., dissenting).

Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland, 535 U.S. 635, 645 (2002).

A. All of the relief requested is not properly characterized as prospective.

The plaintiffs seek a declaration that a previous version of a state law is unconstitutional. Rec. Doc. 1, p. 17, ¶(b).[4] This relief is retrospective. Also retrospective is plaintiffs' request that the defendants "expunge all state records that document in any fashion that plaintiffs and members of plaintiff class were ever registered as sex offenders." *Id* at ¶(d). Finally, plaintiffs' final prayer that the plaintiffs receive "such other relief as this Court deems just and proper" is not the type of well-pleaded prospective relief over which this Court would have jurisdiction. *Id* at ¶(h). Considering *Ex parte Young* only excepts the State's entitlement to sovereign immunity for prospective relief, this Honorable Court lacks jurisdiction over the foregoing requested relief.

B. The Complaint does not allege an ongoing violation of federal law.

The only prospective relief requested is removal of all of the class members from the sex offender registry and notification to various parish, state and federal agencies that plaintiffs are no longer subject to registration or notification requirements. *Id at* ¶(c) and (e). Considering a small part of the relief requested is properly characterized as prospective, this Honorable Court should then consider whether the complaint alleges an ongoing violation of federal law. As described above, the pre-suit changes to the law made in Act 402 corrected all previously existing violations of the Fourteenth Amendment. As such, there is no ongoing violation of federal law and the defendants are entitled to sovereign immunity from suit.

[4] La. R.S. 15:542 (A)(1)(a) does not (and has not since 2011) required "all individuals convicted under the CANS statute to register as sex offenders." At the time this suit was filed, §15:542 did not say what the plaintiffs' claim it says and, as such, their request for declaratory relief is, at best, a request that a prior version of §15:542 that is no longer in existence be retroactively declared unconstitutional.

VIII. CONCLUSION

Considering the foregoing, this suit should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) or 12(b)(6).

Respectfully submitted,

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ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2012, I electronically filed the foregoing using the court's CM/ECF system which will provide a notice of electronic filing to All Counsel of Record.

s/Phyllis E. Glazer
PHYLLIS E. GLAZER