IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

JOHN DOES,

Plaintiffs,

v. CASES NO. 4:19cv467-RH-MJF

RICK SWEARINGEN,
Commissioner of the Florida
Department of Law Enforcement,

Defendant.

_____/

ORDER DISMISSING THE SECOND AMENDED COMPLAINT WITH PREJUDICE

In this action the plaintiffs challenge the Florida sex-offender registration statute. Binding decisions of the Supreme Court and the United States Court of Appeals for the Eleventh Circuit are fatal to the plaintiffs' claims. This order grants the defendant's motion to dismiss the action with prejudice.

I

In the second amended complaint, 47 plaintiffs who have registered as sex offenders in Florida assert that the statute that requires registration, Florida Statutes § 943.0435, is unconstitutional on its face and as applied. The defendant is the

Commissioner of the Florida Department of Law Enforcement—the official who maintains the Florida sex-offender registry. The Commissioner has moved to dismiss for lack of subject-matter jurisdiction and for failure to state a claim on which relief can be granted.

II

Although the Commissioner asserts the action is not within the court's subject-matter jurisdiction, he submits no argument in support of the assertion. No colorable argument comes to mind. The plaintiffs assert a state statute violates the United States Constitution, and they seek relief under 42 U.S.C. § 1983. The action thus arises under the Constitution and laws of the United States and is within the court's arising-under jurisdiction. *See* 28 U.S.C. § 1331. The plaintiffs have named as the defendant the state official responsible for enforcing the challenged statute; this makes this a proper action under *Ex parte Young*, 209 U.S. 123 (1908).

III

To survive a motion to dismiss for failure to state a claim on which relief can be granted, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For purposes of a motion to dismiss, the complaint's factual allegations, though not its legal conclusions, must be

accepted as true. *Id.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

The plaintiffs have alleged that the registration requirement imposes a substantial burden on them and has harmful collateral consequences, including, for example, hindering their ability to find housing and employment. These allegations must be accepted as true, as they surely are. The plaintiffs say these burdens should not be visited on individuals who have been convicted of covered offenses but do not in fact pose a sufficient risk of recidivism.

The plaintiffs have failed, however, to come to grips with the governing law. The Supreme Court has held registration requirements constitutional. *See, e.g.*, *Smith v. Doe I*, 538 U.S. 84 (2003) (holding a state registry constitutional even as applied to offenses committed before the registry was created). The Eleventh Circuit has applied this ruling to the Florida statute at issue here. *See, e.g.*, *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005) (holding Florida's registry constitutional). The Florida statute's registration requirements have changed at the margins since *Doe v. Moore* was decided but not in ways that affect the issues here. And the plaintiffs have alleged nothing making their circumstances different from the typical sex-offender to whom the statute applies.

The plaintiffs also say the statute denies them due process because it is based on the view that they pose a risk of recidivism but affords them no opportunity to

contest that view. If the statute required registration only of individuals who pose a risk of recidivism, the plaintiffs would indeed be entitled to notice and an opportunity to be heard on the question of whether they pose a risk of recidivism. But that is not what the statute requires. The statute requires registration based only on the fact of conviction of a covered offense—a fact on which the plaintiffs were afforded due process in the underlying criminal case. *See, e.g.*, *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 7-8 (2003); *Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019).

The Due Process Clause does not afford a plaintiff a right to be heard on the legislative judgment that persons convicted of covered offenses present a risk of reoffending and thus should be required to register. *See, e.g.*, *Jones v. Governor of Fla.*, 975 F.3d 1016, 1048-49 (11th Cir. 2020) (en banc). Instead, the Due Process Clause would afford a right to be heard only on the question whether the plaintiff was in fact convicted of a covered offense. The plaintiffs do not assert they were denied due process on the narrow question of whether they were in fact convicted of covered offenses—and by registering in the first place, they admitted it.

In sum, the plaintiffs have failed to state a claim on which relief can be granted.

IV

An alternative basis for dismissal of the claims of some but not all of the plaintiffs is the statute of limitations. Many of the plaintiffs were convicted and thus required to register as sex offenders more than four years ago. The statute of limitations for an action under 42 U.S.C. § 1983 in Florida is four years. *See, e.g.*, *Burton v. City of Belle Glade*, 178 F.3d 1175, 1188 (11th Cir. 1999). The statute of limitations thus bars any challenge to requirements that were imposed on a plaintiff—and that the plaintiff knew about—more than four years ago. *See, e.g.*, *McGroarty v. Swearingen*, __ F.3d __, 2020 WL 6141003 (11th Cir. Oct. 20, 2020) (holding a challenge to the Florida sex-offender registration requirement barred by the statute of limitations).

V

The plaintiffs have had adequate opportunity to amend and have not asked for leave to amend further. Moreover, they have given no indication they could amend to allege facts that would avoid the holdings in the controlling cases cited above. Their claims fail not for inadequate pleading but because the claims cannot survive controlling decisions of the Supreme Court and Eleventh Circuit. This order dismisses the second amended complaint with prejudice and directs the clerk to enter judgment.

IT IS ORDERED:

1. The motion to dismiss, ECF No. 69, is granted.

2. The claims of the 47 plaintiffs named in the second amended complaint are dismissed with prejudice.

3. The clerk must enter judgment stating: "This action was resolved on a motion to dismiss. The claims of the 47 plaintiffs named in the second amended complaint are dismissed with prejudice. Any remaining claims of any other plaintiffs included in prior versions of the complaint are dismissed without prejudice."

4. The clerk must close the file.

SO ORDERED on November 5, 2020.

s/Robert L. Hinkle
United States District Judge