In the

# United States Court of Appeals

## For the Seventh Circuit

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No. 22-2150

BRIAN HOPE, *et al.*,

*Plaintiffs-Appellees*,

*v.*

COMMISSIONER OF INDIANA DEPARTMENT OF CORRECTION, *et al.*,

*Defendants-Appellants*.

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Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:16-cv-02865 — **Richard L. Young**, *Judge.*

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ARGUED JANUARY 6, 2023 — DECIDED APRIL 27, 2023

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Before EASTERBROOK, ST. EVE, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. The Indiana Sex Offender Registration Act (SORA), Ind. Code § 11-8-8-1 et seq., requires sex offenders who study, work, or reside in Indiana to register with the State. Plaintiffs are all Indiana residents who committed sex offenses either before the Indiana General Assembly enacted SORA or before the Assembly amended SORA to cover their specific offense. They challenge SORA's "other-jurisdiction" provision—which requires them to register under

SORA because they have a duty to register in another jurisdiction, see Ind. Code § 11-8-8-5(b)(1)—under the Fourteenth Amendment's Equal Protection Clause. We previously rejected plaintiffs' arguments that SORA violated their constitutional right to travel and the Constitution's Ex Post Facto Clause. *Hope v. Comm'r of Ind. Dep't of Corr.*, 9 F.4th 513, 523–28, 530–35 (7th Cir. 2021) (en banc). We also concluded that the district court incorrectly applied strict scrutiny to plaintiffs' equal protection claim and remanded for the narrow purpose of determining whether the other-jurisdiction provision survives rational basis review. *Id.* at 529, 534–35. On remand, the district court concluded that requiring the registration of pre-SORA sex offenders who have a registration obligation in another jurisdiction is not rationally related to a legitimate state interest and granted summary judgment to plaintiffs. We disagree and now reverse.

## I

Plaintiffs Brian Hope, Gary Snider, Joseph Standish, Patrick Rice, Adam Bash, and Scott Rush are all Indiana residents who committed sex offenses either before SORA existed or before it covered their specific offenses. Plaintiffs' exact registration obligations vary depending on their offenses, but they all must register under SORA at least once annually and pay an associated fee. Ind. Code §§ 11-8-8-14, 11-8-8-7, 36-2-13-5.6. They also must comply with various restrictions—such as staying off school property and residing more than 1,000 feet from certain facilities such as public parks and daycares—and notify law enforcement before leaving their residence for more than 72 hours. See *id.* at §§ 35-42-4-14(b), 35-42-4-10(c), 35-42-4-11, 11-8-8-18.

By its terms, SORA applies to sex offenders who committed crimes before its enactment in 1994. But the Indiana Supreme Court has limited SORA's retroactive application under the Indiana Constitution's Ex Post Facto Clause. See, e.g., *Wallace v. State*, 905 N.E.2d 371, 378–84 (Ind. 2009). As a result, Indiana ordinarily cannot require pre-SORA offenders to register because doing so would be punitive and strip offenders of their right to fair notice. *Id.* at 377, 383–84.

Plaintiffs' situation is different, however. Even though they are all pre-SORA offenders, they each have a registration obligation in another jurisdiction because they either moved to Indiana from another state or left Indiana for some period before returning. The Indiana Supreme Court has determined that requiring the registration of individuals who already have a separate registration obligation in another state does not violate Indiana's Ex Post Facto Clause. *Tyson v. State*, 51 N.E. 3d 88, 96 (Ind. 2016). The court has reasoned that when an offender is already required to register in a different jurisdiction, requiring him to maintain his sex offender status across state lines does not impose retroactive punishment. *Tyson*, 51 N.E. 3d at 96; *State v. Zerbe*, 50 N.E.3d 368, 369–70 (Ind. 2016); *Ammons v. State*, 50 N.E.3d 143, 144 (Ind. 2016). The court has also concluded that SORA's other-jurisdiction provision "undoubtedly" advances a legitimate and non-punitive interest by alerting and protecting the community from offenders with a "frighteningly high risk of recidivism," and prevents Indiana from "becoming a safe haven for offenders attempting to evade [registration] obligation[s]" in other states. *Tyson*, 51 N.E. 3d at 96. Therefore, the State is authorized to require these pre-SORA offenders to register without violating Indiana's Ex Post Facto Clause.

Plaintiffs, who all fall into this subset of pre-SORA offenders, filed this lawsuit alleging that SORA violates the federal Ex Post Facto Clause, their right to travel under the Fourteenth Amendment's Privileges or Immunities Clause, and their right to equal treatment under the Fourteenth Amendment's Equal Protection Clause. The district court granted summary judgment to plaintiffs on all claims and on appeal, a panel of this court affirmed. *Hope v. Comm'r of Ind. Dep't of Corr.*, 954 F.3d 532, 557 (7th Cir. 2021) (vacated). We then heard the case en banc and reversed, holding that SORA does not violate either the right to travel or the federal Ex Post Facto Clause. *Hope*, 9 F.4th at 534. We also reversed the district court's grant of summary judgment on the equal protection claim, holding that the other-jurisdiction provision does not trigger heightened scrutiny, and remanded for the district court to determine in the first instance whether SORA passes rational basis review. *Id.* at 529, 535. On remand, the district court concluded that the answer was no, reasoning that the provision is not rationally related to any legitimate government interest. Thus, it granted summary judgment for plaintiffs on their equal protection claim.

II

We review the district court's grant of summary judgment de novo. *Hope*, 9 F.4th at 523. When applying rational basis review to an equal protection claim, we are highly deferential to the government. *Lamers Dairy, Inc. v. U.S. Dep't of Agric.*, 379 F.3d 466, 473 (7th Cir. 2004). We consider whether "there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). If we can hypothesize a sound reason for the classification, the law survives. *Id.* at 313.

Plaintiffs do not challenge the legitimacy of Indiana's goal of protecting the public through SORA. But they contend that the classification of offenders with other registration obligations is not rationally related to that goal. They emphasize, for example, the apparent oddity that a pre-SORA offender who lives in Indiana and works in Chicago will acquire a registration obligation in Illinois and therefore trigger a registration obligation in Indiana, while a pre-SORA offender who works in Gary but is otherwise identical will not have to register. Plaintiffs argue that because these two individuals could have been convicted of the same exact offense at the same time and may be considered equally dangerous, distinguishing them lacks any sound reason.

We disagree. SORA's other-jurisdiction provision satisfies rational basis review because the State has a legitimate interest in seeking to register as many sex offenders as the state constitution permits, and SORA's other-jurisdiction provision is rationally related to advancing that interest. As previewed above, the Indiana Supreme Court has issued a series of decisions to narrow SORA's permissible scope under the state constitution's Ex Post Facto Clause. See *Wallace*, 905 N.E.2d at 384; *Jensen v. State*, 905 N.E.2d 384, 394 (Ind. 2009); *State v. Pollard*, 908 N.E.2d 1145, 1154 (Ind. 2009); *Tyson*, 51 N.E. 3d at 96; *Zerbe*, 50 N.E.3d at 369–70; *Ammons*, 50 N.E.3d at 144. The culmination of these decisions is that the State cannot impose a new duty to register on pre-SORA offenders who have no existing registration obligations anywhere else. But when an offender is already obligated to register elsewhere, requiring registration in Indiana merely extends that existing duty, which is not punitive and does not offend Indiana's Ex Post Facto Clause. *Hope*, 9 F.4th at 522. Because these offenders are already subject to the stigma of being publicly identified as a

sex offender by another state, the Indiana Supreme Court reasoned that requiring them to also register in Indiana has a much smaller impact than on someone who has never been required to register. *Tyson*, 51 N.E.3d at 94–96.

Although the Indiana Constitution imposes some constraints that have resulted in an imperfect classification system, it is not irrational for Indiana to require as many sex offenders to register as Indiana's Constitution permits. Rational basis review tolerates classifications that may be overinclusive or underinclusive. *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1010 (7th Cir. 2019). Even if a risk posed by two groups of offenders is identical, a state may have a rational reason for treating them differently. See *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 655 (7th Cir. 2013). Requiring offenders who are already subject to the burdens of registration elsewhere rationally promotes public safety through the maintenance of a sex-offender registry that is as complete as the Indiana Constitution permits. See *Tyson*, 51 N.E. 3d at 96; *Zerbe*, 50 N.E.3d at 370–71. Accordingly, SORA's other-jurisdiction provision satisfies rational basis review.

REVERSED