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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

TERRANCE D. WOODS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 21-0018-II**
	)	**Chancellor Anne C. Martin**
DAVID B. RAUSCH, Director of the	)	**Judge Barry A. Steelman**
Tennessee Bureau of Investigation, in his	)	**Judge J. Robert Carter, Jr.**
official capacity,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

Before the Court is the Motion of Defendant David B. Rausch, Director of the Tennessee Bureau of Investigation to Dismiss the Complaint of Plaintiff Terrance D. Woods. For the reasons that follow, Director Rausch's motion is **GRANTED IN PART AND DENIED IN PART**. The Court finds that Mr. Woods failed to timely file a petition for judicial review under the Uniform Administrative Procedures Act and has thereby deprived the Court of jurisdiction over such review. Regarding his section 1983 claims, however, the Court finds that Mr. Woods has alleged adequate facts to support his as-applied Ex Post Facto claim. He has failed to do so with his other claims. Accordingly, with respect to Mr. Woods's as-applied Ex Post Facto challenge to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 ("SORVTA") brought under 42 U.S.C. § 1983, the motion is **DENIED**. With respect to all of Mr. Woods's other claims, the motion is **GRANTED**. The other claims are **DISMISSED**. This matter shall be set for an evidentiary hearing on the merits as to the permanent injunction requested by Mr. Woods's Complaint on **July 14, 2022 at 1:00 PM Central Time in the Ground Floor Jury Assembly Room**. This will be the opportunity for Mr. Woods to put forth any proof in support of his request for relief. All other pending motions shall be held in abeyance.

Factual and Procedural Background[1]

On October 8, 1999, Mr. Woods pleaded guilty to facilitating aggravated rape. Pl.'s Compl., at 1 & Ex. A, Jan. 6, 2021. He did so with the understanding that he would have to comply with the requirements of the sex offender registry for a period of at least ten years. Pl.'s Compl., at 1. As the result of the passage of the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 ("SORVTA"), however, Mr. Woods was reclassified as a violent sex offender. Pl.'s Compl., at 1–2. This change requires Mr. Woods to remain on the sex offender registry for the duration of his life. Pl.'s Compl., at 1–2. Mr. Woods states that these continued requirements have restricted where he may live or work and whom may assist him with daily needs. Pl.'s Compl., at 1. Mr. Woods is legally blind. Pl.'s Compl., at 1 & Ex. C. Mr. Woods thus requires the assistance of relatives who have or are themselves minor children. Pl.'s Compl., at 1. But because of his continuing status as a registered sex offender, Mr. Woods may not be around those children. *See* Pl.'s Compl., at 1. Similar issues have prevented Mr. Woods from living at nursing homes or government-assisted housing or even renting an apartment. Pl.'s Compl., at 1. Sometime prior to October 20, 2020, Mr. Woods petitioned the Tennessee Bureau of Investigation for removal from the sex offender registry. *See* Pl.'s Compl, Ex. B. In light of Mr. Woods's status as a violent sex offender, the TBI denied his request in an October 20, 2020 letter. Pl.'s Compl, Ex. B.

Mr. Woods then attempted to file suit. While Mr. Woods did not succeed in filing his complaint until January 6, 2021, the Court notes that the Clerk & Master's office actually first received it on November 24, 2020. *See* Pl.'s Compl., at 1. It appears that Mr. Woods failed to

[1] The first several paragraphs of this section are identical to those in the order ruling on Governor Lee's motion to dismiss. *See* Memorandum and Order, at 2–4, Nov. 30, 2021. As explained in the Court's discussion of the appropriate legal standards, Mr. Woods's allegations are presumed true at this stage.

either pay the filing fees or file an oath of indigency, and the Clerk & Master's office mailed the complaint back to him with this explanation, but the matter was not resolved until January 6, 2021. *See* Pl.'s Compl., at 1; Order Allowing Filing on Pauper's Oath, at 1, Jan. 6, 2021.

In his complaint, Mr. Woods seeks a variety of relief.[2] Pl.'s Compl., at 1. Under Tenn. Code Ann. § 40-39-207(g), Mr. Woods appeals the TBI's decision to deny his request for removal from the sex offender registry. Pl.'s Compl., at 1. Under 42 U.S.C § 1983, Mr. Woods seeks injunctive relief from the State's enforcement of SORVTA, a declaration that SORVTA is unconstitutional on ex-post-facto grounds, and damages in the amount of $1,000,000 dollars.[3] Pl.'s Compl., at 1. Mr. Woods also indicated in his complaint that these registration requirements, as applied to him, violate the Fourteenth Amendment's Equal Protection Clause and his due process rights. Pl.'s Compl., at 2.

On March 24, 2021, the Court, aware that the defendants had not been served in this matter, required Mr. Woods to do so by April 9, 2021. Order, at 1, Mar. 24, 2021. Summonses were issued to then-Defendant William B. Lee, Governor of the State of Tennessee,[4] and Director Rausch on April 6, 2021, and delivered on April 12, 2021. Summons to Bill Lee, at 1, Apr. 12, 2021; Summons to David B. Rausch, at 1, Apr. 12, 2021. Director Rausch entered a limited appearance on April 13, 2021, to give notice that service as to him had been insufficient because

[2] Mr. Woods has amended this complaint, as will be discussed below, but the Court will consider both documents. *See Cantrell v. Cantrell*, No. M2009-00106-COA-R3-CV, 2010 WL 1644988, at * 3 (Tenn. Ct. App. Apr. 23, 2010) (quoting *Young v. Barrow*, 130 S.W.3d 59, 62 (Tenn. Ct. App. 2003) ("We measure the papers prepared by pro se litigants by less stringent standards than those applied to papers prepared by attorneys. Thus, courts 'should give effect to the substance, rather than the form or terminology of a pro se litigant's papers.' As we grant such consideration to a pro se litigant who is untrained in the law, it is also important that we 'be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary.'").

[3] At the hearing on Governor Lee's motion, held October 11, 2021, Mr. Woods clarified that he was primarily seeking injunctive relief from SORVTA's registration requirements.

[4] The Court dismissed all claims against Governor Lee on the basis of sovereign immunity. *See* Memorandum and Order, *supra* note 1, at 8.

it had been delivered to TBI headquarters rather than the Office of the Attorney General or Assistant Attorney General. Notice of Insufficient Service, at 1, Apr. 13, 2021. The Court then ordered Mr. Woods to obtain proper service upon Director Rausch. Order, at 1, Apr. 29, 2021. Mr. Woods finally did so on January 24, 2022. *See* Notice of Appearance, at 1 n.1, Jan. 24, 2022. Director Rausch then filed the instant motion. *See generally* Mot. to Dismiss of Def. David B. Rausch, Feb. 23, 2022.

After Director Rausch's motion, Mr. Woods filed his own "Motion to Amend or Alter 42 U.S.C 1983 Motion for Injunctive Relief." *See generally* Mot. to Amend or Alter 42 U.S.C 1983 Motion for Inj. Relief, Mar. 21, 2022 [hereinafter Am. Compl.]. Mr. Woods described the document as his First Amended Complaint. Am. Compl., at 1. The Court construed the motion an effort to amend his complaint and asked Director Rausch to file a supplemental brief to his motion to dismiss if he thought it was necessary. Order, at 1, Mar. 30, 2022. Director Rausch did so. *See generally* Supp. Briefing on Mot. to Dismiss of Def. David B. Rausch, Apr. 11, 2022. Having already considered these arguments from Governor Lee's motion, the Court decided to rule on the papers.

The Amended Complaint added no new, material factual allegations. It contained, however, two references, without elaboration, to the prohibition on states passing laws that impair the obligations of contracts—the same constitutional provision that prohibits ex post facto laws. *See* Am. Compl., at 2–3. Director Rausch did not treat these bare mentions of the constitutional provisions as a new claim in that he did not explicitly move the Court to dismiss it.

Legal Standards

Director Rausch first moves the Court to dismiss the claims against him under Tennessee Rule of Civil Procedure 12.02(1), invoking a "lack of jurisdiction over the subject matter." Subject

matter jurisdiction concerns a court's very authority to resolve the case before it. *Minyard v. Lucas*, 576 S.W.3d 351, 355 (Tenn. 2019) (citing *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712–13 (Tenn. 2012). Such authority may "only be conferred on a court by constitutional or legislative act." *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000) (citing *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977); *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 734 (Tenn. Ct. App. 1989)); *Minyard*, 576 S.W.3d at 355 (citing *Chapman*, 380 S.W.3d at 712–13) ("Subject matter jurisdiction is conferred and defined by the Tennessee Constitution and statutes."). A determination on the particular nature of a case is essential to whether a court may properly assert subject matter jurisdiction over it. *See Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (citing *Cooper v. Reynolds*, 77 U.S. 308 (1870); *Turpin v. Conner Bros. Excavating Co.*, 761 S.W.2d 296, 297 (Tenn. 1988)); *State ex rel. Comm'r of Dep't of Transp. v. Thomas*, 336 S.W.3d 588, 602 (Tenn. Ct. App. 2010) (quoting *Northland Ins. Co.*, 33 S.W.3d at 729). A court must ascertain what a plaintiff is seeking, on what basis or bases the plaintiff is seeking it, and whether state law authorizes the court to give the plaintiff what he seeks. *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012) (citing *Northland Ins. Co.*, 33 S.W.3d at 729; *Landers*, 872 S.W.2d at 675) ("Determining whether subject matter jurisdiction exists in a particular case requires the courts to examine (1) the nature or gravamen of the cause of action, (2) the nature of the relief being sought, and (3) the constitutional or statutory provisions relied upon by the plaintiff.").

Director Rausch next moves under Rule 12.02(6), which provides for dismissal in the event of a "failure to state a claim upon which relief may be granted." Our Supreme Court has reiterated that a motion made under Rule 12.02(6) "tests 'only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence.'" *Elvis Presley Enterprises, Inc. v. City of Memphis*, 620 S.W.3d 318, 323 (Tenn. 2021) (quoting *Webb v. Nashville Area Habitat for Human., Inc.*, 346

S.W.3d 422, 426 (Tenn. 2011)). As such, a plaintiff's allegations[5] are taken as true, *id.* (citing *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002)), and all reasonable inferences that a court may draw from those allegations are drawn in the plaintiff's favor, *Webb*, 346 S.W.3d at 426 (quoting *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31–32 (Tenn. 2007)). Indeed, by the very act of filing a motion to dismiss, a defendant—*only* for the purposes of that motion—"admit[s] the truth of all of the relevant and material allegations contained in the complaint, but . . . assert[s] that the allegations fail to establish a cause of action." *Elvis Presley Enterprises, Inc.*, 620 S.W.3d at 323 (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)). For these reasons, the Supreme Court instructed trial courts to "grant a motion to dismiss only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Id.* (quoting *Crews*, 78 S.W.3d at 857).

Analysis

Director Rausch begins with arguments that the Court lacks subject matter jurisdiction over Mr. Woods's claims. First, Director Rausch argues, to the extent Mr. Woods seeks judicial review of the TBI's denial of his request for removal from the sex offender registry, Mr. Woods has not complied with the UAPA, thereby depriving this Court of jurisdiction. Second, to the extent Mr. Woods brings a claim under 42 U.S.C § 1983, Director Rausch identifies two defects with the Court's jurisdiction. Foremost of these is that Mr. Woods asks the Court to function both as a trial court and as an appellate court by bringing his section 1983 claim alongside his petition for judicial review, and that, according to Director Rausch, the Court cannot do. Next, to the extent Mr. Woods

[5] "Legal arguments or legal conclusions couched as facts" are not factual allegations and therefore are not taken as true. *Estate of Haire v. Webster*, 570 S.W.3d 683, 690 (Tenn. 2019) (quoting *Moore-Pennoyer v. State*, 515 S.W.3d 271, 276 (Tenn. 2017)) (alterations and internal quotation marks omitted).

seeks monetary damages, Director Rausch argues that sovereign immunity protects state officials sued in their official capacity for money damages from suit.

Director Rausch then argues in the alternative that Mr. Woods fails to state a claim upon which relief may be granted with respect to the Ex Post Facto Clause, Equal Protection Clause, or the Due Process Clause. The Court raises Mr. Woods's apparent claim involving the impairment of contract obligations of its own accord. We examine each issue in turn.

I. Subject Matter Jurisdiction

A. Uniform Administrative Procedures Act

Petitions for judicial review of the TBI's denial of a request for termination of registry requirements are governed by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.* *Clark v. Gwyn*, No. M2018-00655-COA-R3-CV, 2019 WL 1568666, at *3 (Tenn. Ct. App. Apr. 11, 2019) (citing *Miller v. Gywn*, No. E2017-00784-COA-R3-CV, 2018 WL 2332050, at *2 (Tenn. Ct. App. May 23, 2018)). The UAPA provides that such petitions must be filed within 60 days of the agency's decision. Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv). Mr. Woods did not file his original complaint until 78 days after the TBI's denial of his request. *See* Pl.'s Compl., at 1. Arguing that the timeframe is jurisdictional, Director Rausch asserts that the Court must dismiss Mr. Woods's claims to the extent they seek judicial review of the TBI's decision because the Court lacks subject matter jurisdiction.

Regrettably, a confluence of circumstances worked to Mr. Woods's detriment in this instance. First, he tried to file his complaint well within the provided 60-day period. *See* Pl.'s Compl., at 1. Second, we were at that time in the midst of a global pandemic that—to put it mildly—caused all sorts of logistical issues for courts and those accessing them. *See, e.g.*, Quinn Klinefelter, *'There's No End in Sight': Mail Delivery Delays Continue Across the Country*, NPR,

Jan. 22, 2021, https://www.npr.org/2021/01/22/959273022/theres-no-end-in-sight-mail-delivery-delays-continue-across-the-country. Third, at the time Mr. Wood first attempted to file, on November 24, 2020, the Davidson County Clerk & Master, like many court offices, was operating under pandemic-related modified procedures.[6] Fourth, Mr. Woods lives in Lexington, Tennessee, and thus is not local to Davidson County, where he was required to file. As a pro se plaintiff, he was not registered to use the Court's e-filing system. Thus, he had to resort to "snail mail" through the United States Postal Service.

If the Court were able, it might very well be inclined to consider these circumstances adequate to justify a late filing. Yet the statute mandates that "[p]etitions seeking judicial review *shall* be filed within sixty (60) days after the entry of the agency's final order thereon." Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv). And the statute is jurisdictional. *StarLink Logistics, Inc. v. ACC, LLC*, 494 S.W.3d 659, 668–69 (Tenn. 2016) (stating that the UAPA "sets forth the extent of judicial authority to review agency decisions"). Accordingly, the Court finds it has no jurisdiction over Mr. Woods's effort to seek judicial review of the TBI's action. With respect to this claim, Director Rausch's motion is **GRANTED** and such claim is hereby **DISMISSED**.

B. Failure to Elect Between Inconsistent Remedies

Director Rausch also challenges Mr. Woods's claims under section 1983, arguing that Mr. Woods improperly joined an original action with a petition for judicial review of an agency decision. The Court of Appeals has been clear on this matter: "[I]t is impermissible to join an appeal from an action of a board with an original action in the trial court." *State ex rel. Byram v. City of Brentwood*, 833 S.W.2d 500, 502 (Tenn. Ct. App. 1991) (citing *Goodwin v. Metro. Bd. of Health*, 656 S.W.2d 383 (Tenn. Ct. App. 1983)). In *Wimley v. Rudolph*, 931 S.W.2d 513, 517

[6] The Court takes judicial notice of this fact and those that follow.

(Tenn. 1996), our Supreme Court permitted a plaintiff to seek both attorney's fees under 42 U.S.C. § 1988 and judicial review of her termination of Aid for Dependent Children benefits. The Court distinguished that particular plaintiff, explaining:

> In plaintiff's complaint, she did not seek remedies under Section 1983 that were inconsistent with those in her petition for judicial review. As the state notes, Section 1983 entitles one aggrieved to seek "monetary, declaratory, or injunctive relief." Had Plaintiff sought to join a claim for any of those types of relief under Section 1983 which were inconsistent to remedies available in a petition for judicial review under the Uniform Administrative Procedures Act, the state's estoppel claim would have had merit.

Id. at 515. These are the exact types of relief that Mr. Woods seeks under section 1983. *See* Pl.'s Compl., at 2. But because the Court has already dismissed Mr. Woods's efforts to seek judicial review, this argument is now moot. The Court will not dismiss Mr. Woods's claims under section 1983 on this basis.

C. Monetary Relief Under Section 1983

Director Rausch next asserts that sovereign immunity bars Mr. Woods's claim for damages under section 1983. "Sovereign immunity protects states, as well as state officials sued in their official capacity for money damages, from suit in [] court." *Boler v. Earley*, 865 F.3d 391, 409–10 (6th Cir. 2017); *Colonial Pipeline Co. v. Morgan*, 264 S.W.3d 827, 850 (Tenn. 2008) (citing Tenn. Code Ann. § 20-13-102; *Edelman v. Jordan*, 415 U.S. 651, 665 (1974)) (Sovereign immunity does "not allow for money damages to be awarded against state officers because such a suit would 'reach the state, its treasury, funds, or property.'"). This principle is specific to monetary relief as opposed to injunctive or declaratory relief. *See Colonial Pipeline Co.*, 264 S.W.3d at 850 (citing *Stockton v. Morris & Pierce*, 110 S.W.2d 480 (Tenn. 1937)) ("[T]he doctrine of sovereign immunity does not bar suits against state officers to prevent them from enforcing an allegedly unconstitutional statute."). Thus, with respect to any claim for monetary damages,

Director Rausch's motion is **GRANTED**, and such claim from Mr. Woods is hereby **DISMISSED**.

II. Failure to State a Claim Upon Which Relief Can Be Granted

A. Ex Post Facto Clause

Director Rausch first asserts that Mr. Woods has failed to state a claim with respect to his Ex Post Facto Clause challenge to SORVTA. We divide this challenge into separate facial and as-applied challenges. Our Supreme Court has explained the distinction as follows:

> A constitutional challenge to a statute may be either facial or as-applied. In a facial challenge, the plaintiff contends that there are no circumstances under which the statute, as written, may be found valid. *City of Memphis*[*v. Hargett*], 414 S.W.3d [88,] 103 [(Tenn. 2013)] (citing *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 525 (Tenn. 1993)); [*Hughes v.*]*Tenn. Bd. of Prob. and Parole*, 514 S.W.3d [707,] 712 [(Tenn. 2017)]. In contrast, in an as-applied challenge, the plaintiff contends that the statute is unconstitutional as construed and applied in actual practice against the plaintiff under the facts and circumstances of the particular case, not under some set of hypothetical circumstances. *City of Memphis*, 414 S.W.3d at 107.

Fisher v. Hargett, 604 S.W.3d 381, 396–97 (Tenn. 2020).

1. Facial Challenge

To the extent Mr. Woods makes a facial challenge to SORVTA, Director Rausch's motion is **GRANTED**, and such a claim is hereby **DISMISSED**. Mr. Woods sets forth no argument that the statutory scheme is facially unconstitutional beyond an assertion in the original complaint that the scheme is unconstitutional "in toto." Pl.'s Compl., at 2. Indeed, Mr. Woods's entire argument, discussed below, is premised upon SORVTA's alleged retroactive application *to him*, and his Amended Complaint even appears to reject such a facial claim. *See* Am. Compl., at 3.

2. As-Applied Challenge

The United States Constitution prohibits any state from passing an ex post facto law. U.S. Const. art. I, § 10 ("No State shall . . . pass any . . . ex post facto Law . . . ."). The federal courts

have established two elements that make an unconstitutional ex post facto law: the statute must (1) be retrospective and (2) disadvantage the offender. *Lynce v. Mathis*, 519 U.S. 433, 441 (1997). To satisfy the first element, the challenged statute must "apply to events occurring before its enactment." *Dyer v. Bowlen*, 465 F.3d 280, 285 (6th Cir. 2006) (quoting *Lynce*, 519 U.S. at 441). Mr. Woods pleaded guilty five years prior to the enactment of SORVTA, so he has no issue there. Pl.'s Compl., at 1. The second element, however, does not mean simply *any* disadvantage. The statute must specifically disadvantage the offender "by altering the definition of criminal conduct or increasing the punishment of the crime." *Lynce*, 519 U.S. at 441 (citing *Collins v. Youngblood*, 497 U.S. 37, 50 (1981)). In discerning whether SORVTA's application to Mr. Woods has violated the Ex Post Facto Clause, the Court follows the United States Supreme Court's "well established" framework. *Smith v. Doe*, 538 U.S. 84, 92 (2003). First, we must determine whether the General Assembly intended for SORVTA "to establish 'civil proceedings'" or "to impose punishment." *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)). If the Court finds that the legislature intended to impose punishment, then our inquiry ends with the conclusion that SORVTA violates the Ex Post Facto Clause. If we find that the General Assembly intended for the statute to be regulatory, the Court "must further examine whether the statutory scheme is 'so punitive either in purpose or effect as to negate [the legislature's] intention' to deem it 'civil.'" *Id.* "The factors most relevant to our analysis are whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose." *Id.* at 97. "Because we ordinarily defer to the legislature's stated intent, only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Id.* at 92 (quoting

Hendricks, 521 U.S. at 361; *Hudson v. United States*, 522 U.S. 93, 100 (1997) (internal quotation marks omitted).

The United States Court of Appeals for the Sixth Circuit and the Tennessee Supreme Court have both previously examined this statute and found it to be nonpunitive. The Sixth Circuit explained that, in enacting SORVTA, the General Assembly had intended "to create a civil, nonpunitive regime":

> With respect to the Monitoring Act, the Tennessee Legislature stated its intent to "utilize the latest technological solutions to monitor and track serious criminal offenders and violent sex offenders . . . ." 2004 Pub. Acts, Ch. 889, § 2. The legislature set forth statistics with regard to the abnormally high recidivism rate among sex offenders and stated its findings that intensive supervision is "a crucial element to both the rehabilitation of the convict and the safety of the surrounding community." *Id.* at § 3. The Tennessee Legislature added that the electronic monitoring would enable law enforcement to geographically link offenders with reported crimes, but also to possibly exclude released offenders from ongoing investigations. *Id.* In light of this clear declaration of legislative intent, the district court correctly found that the Tennessee General Assembly intended to implement a civil regulatory scheme, not a punitive scheme.

Doe v. Bredesen, 507 F.3d 998, 1004 (6th Cir. 2007). Similarly our Supreme Court, in the context of analyzing whether the sex offender registry requirements were punitive such that a trial court's failure to advise the accused of those requirements rendered his guilty plea invalid, examined SORVTA and concluded that the statute was nonpunitive. *Ward v. State*, 315 S.W.3d 461, 468–72 (Tenn. 2010) ("We agree with the majority of states that the registration requirements imposed by the sex offender registration act are nonpunitive . . . .").

The Court noted, however, in light of regular amendments to Tennessee's sex offender registration scheme, that its opinion would not preclude future challenges in light of future amendments. *Ward*, 315 S.W.3d at 472 ("Obviously, nothing in this opinion precludes the possibility that an amendment to the registration act imposing further restrictions may be subject to review on the grounds that the additional requirements render the effect of the act punitive.").

Following a Sixth Circuit decision on such a challenge to Michigan's own scheme, *see Does #1–5 v. Snyder*, 834 F.3d 696, 701–06 (6th Cir. 2016) (discussing a similar statute in Michigan in the context of each of these factors), the legal landscape, at least in the federal courts, with respect to the punitive nature of SORVTA seems to be shifting. *See, e.g.*, *Doe v. Lee*, No. 3:21-cv-00028, 2021 WL 1907813, at *14–16 (M.D. Tenn. May 12, 2021); *Doe #1 v. Lee*, 518 F. Supp. 3d 1157, 1203–04 (M.D. Tenn. 2021); *Doe v. Rausch*, 461 F. Supp. 3d 747, 768–69 (E.D. Tenn. 2020); *Reid v. Lee*, 476 F. Supp. 3d 684, 706–08 (M.D. Tenn. 2020).[7] Mr. Woods has alleged, particularly in light of his pro se status, sufficient hardship caused by SORVTA with respect to his living situation and the need for assistance due to his blindness that this Court believes he ought to be permitted to introduce proof of that hardship. Accordingly, Director Rausch's motion is **DENIED** regarding Mr. Woods's as-applied Ex Post Facto challenge under section 1983.

Mr. Woods is cautioned, however, that *it is his burden alone to establish, through evidence, the punitive nature of SORVTA*. *See Clark*, 2019 WL 1568666, at *7 (rejecting the plaintiff's reliance on *Snyder* when he "presented little evidence of how [Tennessee's sex offender registry] punished him"). The Court does not lightly declare the government's application of a statute unconstitutional.

B. Equal Protection and Due Process Clauses

Director Rausch next argues that Mr. Woods has failed to state a claim either his Equal Protection Clause or Due Process challenges. The Court must agree with Director Rausch. Mr. Woods states no allegations with respect to these challenges and simply references the Fourteenth Amendment. While the Court interprets the pleadings of a pro se plaintiff liberally, the plaintiff

[7] In one instance, *Jackson v. Rausch*, No. 3:19-CV-377, 2021 WL 4302769, at *9–10 (E.D. Tenn. Sep. 21, 2021), the U.S. District Court reasoned that SORVTA was not so punitive as to violate the Ex Post Facto Clause with respect to the plaintiff before it because he was only required to register for five more years rather than the remainder of his life.

must still make sufficient allegations for the Court to draw conclusions. *See Purswani v. Purswani*, 585 S.W.3d 907, 914 (Tenn. Ct. App. 2019) (quoting *Stewart v. Schofield*, 368 S.W.3d 457, 462 (Tenn. 2012); *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003)). Accordingly, with respect to these claims, Director Rausch's motion is **GRANTED**. The claims are hereby **DISMISSED**.

III. Impairment of Contracts

The Court raises this issue sua sponte upon review of Mr. Woods's Amended Complaint. Director Rausch does not mention it. "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ." U.S. Const. art I, § 10. This is the same provision that prohibits ex post facto laws. Mr. Woods does not state which contract SORVTA impairs, but the Court is able to safely assume that he means his plea agreement prior to SORVTA's enactment. But even this is not enough for the Court to consider in evaluating such a claim. Actual allegations must be set forth. To the extent Mr. Woods tries to make a claim involving the impairment of contract obligations, it is **DISMISSED**.

Conclusion

For the foregoing reasons, Director Rausch's Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**. The motion is **DENIED** with respect to Mr. Woods's as-applied Ex Post Facto Clause challenge brought under 42 U.S.C. § 1983. The motion is **GRANTED** in all other respects, and accordingly, all of Mr. Woods's claims, *except* his as-applied Ex Post Facto Clause challenge brought under section 1983, are **DISMISSED**. An evidentiary hearing on the merits of Mr. Woods's remaining claim and on the permanent injunction requested by Mr. Woods in his Amended Complaint is set for **July 14, 2022 at 1:00 PM Central Time in the Ground Floor Jury Assembly Room**.

s/ Anne C. Martin
CHANCELLOR ANNE C. MARTIN, Chief Judge

s/ Barry A. Steelman
JUDGE BARRY A. STEELMAN

s/ J. Robert Carter, Jr.
JUDGE J. ROBERT CARTER, JR.

cc by U.S. Mail, fax, or e-filing as applicable to:

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