IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NATIONAL ASSOCIATION FOR RATIONAL SEXUAL OFFENSE LAWS, et al.,	)	
Plaintiffs,	)	
v.	)	1:17CV53
JOSHUA STEIN, Attorney General of the State of North Carolina, ERIK A. HOOKS, Secretary of the North Carolina Department of Public Safety; ANDY WOMBLE (District 01); SETH EDWARD (District 02); KIMBERLY ROBB (District 03A); SCOTT THOMAS (District 03B); ERNIE LEE (District 04); BEN DAVID (District 05); VALERIE ASBELL (District 06); et al.,	)	
Defendants.	)	

ORDER

Plaintiffs initiated this action on January 23, 2017, alleging deprivation of rights arising under the United States Constitution pursuant to 42 U.S.C. § 1983, as well as state law; and seeking injunctive and declaratory relief. (ECF No. 1.) The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). (*Id.* ¶ 41.) Before the Court is Defendants' Motion to Dismiss on Behalf of All State Defendants, (ECF No. 12); and Plaintiffs' Motion to Seal Affiants' Identity, (ECF No. 29). A hearing on the motion to dismiss was held on April 16, 2018. For the reasons stated below, this Court, in its discretion, will convert Defendants' motion to dismiss into a motion for a more definite statement, and the motion will be allowed. Further, Plaintiffs' motion to seal will be granted.

I. BACKGROUND

A. The Parties

Plaintiffs in this action are two individuals required to register as sex offenders in North Carolina, who will be referenced as John Does 1 and 2,[1] and two non-profit groups that advocate for such individuals. (ECF No. 1 ¶¶ 59–109.) Plaintiff John Doe 1 "currently resides in Alamance County, North Carolina," was "convicted in 2009 . . . of two counts of misdemeanor sexual battery," and "is registered as a sex offender in North Carolina." (*Id.* ¶¶ 94, 95.) Plaintiff John Doe 2 "currently resides in Wake County, North Carolina[,] . . . pled guilty to a qualifying offense in 2009," was "convicted of misdemeanor sexual battery" in 2011, and "is registered as a sex offender in North Carolina." (*Id.* ¶¶ 102, 103.) Plaintiff National Association for Rational Sexual Offense Laws ("NARSOL") is a non-profit corporation whose "purpose is to advocate, both legislatively and legally, for the reform of state and national laws regarding sex offender registries and legal restrictions placed on registrants." (*Id.* ¶¶ 59, 61.) NARSOL's membership "includes registrants, family members of registrants, and other concerned citizens." (*Id.* ¶ 64.) Plaintiff NC RSOL "is the North Carolina affiliate of NARSOL." (*Id.* ¶ 76.)

Defendant Joshua Stein is the Attorney General of the State of North Carolina; Defendant Erik A. Hooks is the Secretary of the North Carolina Department of Public Safety; and the forty-four remaining individual Defendants are North Carolina's district attorneys. (*Id.* ¶¶ 45–58.)

[1] This Court entered an Order on August 7, 2017 that allowed these Plaintiffs to proceed under pseudonyms. (ECF No. 22 at 4.)

B. The Complaint

In the Complaint, Plaintiffs allege six claims for relief, three of which contain multiple counts. (*See* ECF No. 1.) The first claim for relief alleges a violation of the Ex Post Facto Clause of the Constitution, arising from four successive amendments to Article 27A of the North Carolina Criminal Code. (*Id.* ¶¶ 600–03.) The second claim alleges that subsections (a)(2) and (a)(3) of section 14-208.18 of the North Carolina General Statutes violate the First and Fourteenth Amendments; and this claim contains three counts: (i) substantial overbreadth, (ii) unconstitutional burden on the free exercise of religion, and (iii) unconstitutional burden on freedom of association. (*Id.* ¶¶ 604–07.) The third claim alleges that section 14-208.18(a)(3) of the North Carolina General Statutes violates the Fifth and Fourteenth Amendments on vagueness grounds. (*Id.* ¶¶ 608–10.) The fourth claim alleges that the "North Carolina registry law" violates the Fifth and Fourteenth Amendments on substantive due process grounds, and this claim contains three counts: (i) the right to direct the education and upbringing of one's children, (ii) the right to pursue the common occupations of life, and (iii) the right to acquire useful knowledge. (*Id.* ¶¶ 611–25.) The fifth claim alleges a violation of the Fourteenth Amendment on procedural due process grounds and also contains three counts: (i) deprivation of liberty interests without due process, (ii) extension of time on the registry without due process, and (iii) fundamental fairness. (*Id.* ¶¶ 626–44.) The sixth claim alleges defamation under North Carolina law.[2] (*Id.* ¶¶ 645–55.) Plaintiffs' Complaint is 88 pages long and has approximately 657 numbered paragraphs. (*See* ECF No. 1.)

[2]At the hearing, counsel for Plaintiffs conceded that North Carolina has not waived its sovereign immunity as to this claim. Therefore, the Court will not consider arguments relating to the claim.

II. MOTION TO DISMISS

The Court will first consider Defendants' motion to dismiss. Defendants have moved to dismiss the Complaint on several grounds. However, because the Court agrees with Defendants' argument that Plaintiffs' Complaint has failed to satisfy pleading standards under Rule 8 of the Federal Rules of Civil Procedure, (*see* ECF No. 16 at 8–11), making the Complaint vulnerable to dismissal under Rule 12(b)(6), the Court need not address each of Defendants' arguments.

A motion made under Rule 12(b)(6) challenges the legal sufficiency of a complaint, specifically whether it satisfies the pleading standards set forth in Rule 8. *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). Rule 8 requires a party to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 8 also provides that "[e]ach allegation must be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Rule 8 is thus designed to "'give fair notice of the claim being asserted' to the adverse party; 'sharpen the issues to be litigated'; and 'confine discovery and the presentation of evidence at trial within reasonable bounds.'" *Plumhoff v. Cent. Mortg. Co.*, 286 F. Supp. 3d 699, 701 (D. Md. 2017) (quoting *T.M. v. District of Columbia*, 961 F. Supp. 2d 169, 173–74 (D.D.C. 2013)). The determination whether a plaintiff has complied with Rule 8 is left to the district court's discretion. *Id.* at 702. *See Sewraz v. Long*, 407 F. App'x 718, 718 (4th Cir. 2011) (per curiam) (reviewing a district court's dismissal pursuant to Rule 8 for abuse of discretion).

Here, Plaintiffs' Complaint is deficient in several respects. One feature that renders the Complaint vague and thus deficient is that each claim for relief incorporates hundreds of preceding paragraphs. (*See* ECF No. 1 ¶ 599.) Plaintiffs' practice of incorporating hundreds

of preceding paragraphs into each claim obscures the factual basis of each claim. As an example, one of Plaintiffs' claims is an unconstitutional burden on the freedom of association. (*Id.* ¶ 607.) The claim is pled in a single paragraph, which states simply: "N.C.G.S. §§ 14-208.18(a)(2) and (a)(3) substantially restrict Plaintiffs' associational rights and are not narrowly tailored to serve a compelling government interest." (*Id.*) This claim incorporates 598 preceding paragraphs. (*Id.* ¶ 599.) The Court cannot fathom how Defendants could determine which allegations—among these nearly 600 paragraphs—provide the factual basis of this freedom of association claim. Each of the other claims and counts in Plaintiffs' Complaint likewise incorporates the same 598 paragraphs. (*Id.*)

Plaintiffs counter that "[t]he Complaint is divided into allegations related to specific constitutional burdens." (ECF No. 18 at 5.) Turning again to the claim alleging a burden on the freedom of association, Plaintiffs, in opposing the motion to dismiss, argue that supporting factual allegations appear in the Complaint in paragraphs "285 *et seq.*"; "405 *et seq.*"; "307 *et seq.*"; and "245 *et seq.*" (*Id.* at 25.) Two of these paragraphs are organized into sections that have headings which reference burdens on association: paragraph 245 appears under a heading entitled: "Burdens on Free Speech and Association," (ECF No. 1 at 34); and paragraph 285 appears under a heading that reads: "Burdens on Religion/Association," (*id.* at 40). However, the other two paragraphs cited by Plaintiffs as containing allegations supporting the freedom of association claim are organized into sections that have headings which appear to be unrelated to any burdens on association. (*See id.* ¶¶ 307, 405.) Paragraph 307 appears under a heading that reads: "Burdens on Housing," (*id.* at 43); and Paragraph 405 appears under a heading entitled: "Parenting," (*id.* at 53). Thus, the Court cannot agree with Plaintiffs that the

allegations in the Complaint are divided into sections that relate to specific constitutional burdens. These above-described organizational defects, compounded by the length of the Complaint, preclude "the Court [and] the [D]efendants [from] sort[ing] out the nature of the claims or evaluat[ing] whether the claims are actually supported by any comprehensible factual basis." *See Plumhoff*, 286 F. Supp. 3d at 704 (quoting *Belanger v. BNY Mellon Asset Mgmt., LLC*, 307 F.R.D. 55, 58 (D. Mass. 2015)).

Plaintiffs' Complaint is also deficient in that several of the claims therein are pled very broadly. For example, Plaintiffs have pled five due process claims that allege that the "registry law" has violated some right of Plaintiffs. (*See* ECF No. 1 ¶¶ 615, 620, 625, 640, 644.) The Complaint defines the "registry law" as "Article 27A and related statutes" of the North Carolina Criminal Code. (*Id.* ¶ 7.) However, in opposing the motion to dismiss, Plaintiffs do not appear to contend that every provision in Article 27A of the North Carolina Criminal Code—including the mere requirement to register—violates due process on each ground alleged in the Complaint. (*See, e.g.*, ECF No. 18 at 26–31.) Thus, these broad references to the "registry law" prevent Defendants and the Court from discerning the statutory basis of each due process claim. Plaintiffs have, in effect, tasked Defendants and this Court with trudging through the voluminous allegations in the Complaint and the many statutes cited therein to attempt to discern many of Plaintiffs' claims. This the Court will not do as the federal rules task Plaintiffs with alleging their claims plainly and concisely. *See* Fed. R. Civ. P. 8(a)(2), (d)(1).

Plaintiffs' Complaint is further deficient in that it fails to specify the parties to each claim. It is axiomatic that Rule 8(a)(2) requires "'a short and plain statement of the claim

showing that the pleader is entitled to relief,' in order to 'give [each] defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Here, four Plaintiffs brought this action against forty-six Defendants. Yet, no claim alleged in the Complaint specifies which Plaintiff alleges the claim or which Defendant the claim is brought against. This failure to specify the parties to each claim renders the Complaint ambiguous and deprives Defendants of fair notice of the claim(s) brought against each of them. *See Switzer v. Thomas*, No. 5:12cv00056, 2013 WL 693090, at *6 (W.D. Va. Feb. 25, 2013) (concluding that a "complaint clearly fails to meet even minimal Rule 8 pleading requirements" when "the complaint . . . fails to give fair notice of the plaintiff's specific claim against each defendant"), *adopted by* No. 5:12cv00056, 2013 WL 1145864 (W.D. Va. Mar. 19, 2013), *aff'd*, 535 F. App'x 312 (4th Cir. 2013) (per curiam); *see also Woods v. Cty. of Wilson*, No. 5:10-CT-3118-BO, 2011 WL 4460619, at *3 (E.D.N.C. Sept. 26, 2011) (stating that a "complaint fails to give [each] defendant fair notice of what the plaintiff's claim is" when "[t]he court cannot identify the specific claims plaintiff is attempting to make against each defendant" (first alteration in original) (internal quotation marks omitted) (citation omitted)).

In sum, the Court finds that Plaintiffs' Complaint: fails to make clear which facts in the Complaint support which claim; makes references throughout the Complaint to violations of "Article 27A" and the "registry law" without providing the specific provision(s) of the law referenced; and fails to provide individual Defendants with fair notice as to which specific claims are asserted against each Defendant.

A complaint that is deficient because it is vague or ambiguous is subject to dismissal under Rule 12(b)(6) or an order to submit a more definite statement under Rule 12(e). *See Luna-Reyes v. RFI Constr., LLC*, 57 F. Supp. 3d 495, 503–04 (M.D.N.C. 2014) (ordering a plaintiff to submit a more definite statement of a vague complaint when the vagueness rendered the complaint "vulnerable to dismissal"); 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1376 (3d ed. 2004) ("If the pleading is impermissibly vague, the court may act under Rule 12(b)(6) or Rule 12(e), whichever is appropriate."). Under Rule 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). While Rule 12(e) allows a party to move for a more definite statement, the Court also possesses inherent authority to convert a motion to dismiss into a motion for a more definite statement. *See Luna-Reyes*, 57 F. Supp. 3d at 504 ("[T]he court is authorized to convert a Rule 12(b)(6) motion to dismiss into a motion for a more definite statement under Rule 12(e)."); *Hall v Tyco Int'l, Ltd.*, 223 F.R.D. 219, 257 (M.D.N.C. 2004) (converting a motion to dismiss into a motion for a more definite statement pursuant to the federal rules and the court's "inherent authority").

This Court will convert Defendants' motion to dismiss into a motion for a more definite statement and allow this motion. The Court finds that allowing this motion is in the interests of justice because, rather than dismissing the Complaint which is a drastic measure, allowing the motion "gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities." *Cf. Matrix Capital Mgmt. Fund, LP v. BearingPoint, Inc.*, 576 F.3d 172, 193 (4th Cir. 2009). The Court further finds that ordering

Plaintiffs to submit a more definite statement will not prejudice Defendants because this litigation is in its early stages. Finally, this Court finds that a more definite statement of the claims alleged in the Complaint will better assist the Court in managing this litigation to the benefit of the parties and the public. As one court has articulated, "[e]xperience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." *Anderson v. Dist. Bd. of Trs.*, 77 F.3d 364, 367 (11th Cir. 1996).

Plaintiffs will be required to submit a more definite statement that clearly identifies the factual allegations that support each claim for relief, the specific statutory provision(s) of which Plaintiffs complain, and the specific claim(s) alleged against each Defendant named in the Complaint. Plaintiffs' failure to do so may subject claims alleged in the Complaint to dismissal without further notice.

III. MOTION TO SEAL

The Court next turns to Plaintiffs' motion to seal. Plaintiffs request that the Court permanently seal two affidavits filed by Plaintiffs in opposition to the motion to dismiss. (*See* ECF No. 30 at 3.) These affidavits appear in the docket in redacted form as ECF Nos. 18-1 and 18-2, and under seal in unredacted form as ECF Nos. 31 and 31-1. Plaintiffs contend that sealing is necessary to protect the affiants, who are required to register as sex offenders, "from widespread opprobrium, even physical violence." (*Id.* at 2.) Defendants did not file a brief opposing the motion to seal.

"It is well settled that the public and press have a qualified right of access to judicial documents and records filed in civil and criminal proceedings." *Doe v. Pub. Citizen*, 749 F.3d 246, 265 (4th Cir. 2014). "The right of public access springs from the First Amendment and the common-law tradition that court proceedings are presumptively open to public scrutiny." *Id.* However, "[f]or a right of access to a document to exist under either the First Amendment or the common law, the document must be a 'judicial record.'" *In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 290 (4th Cir. 2013). According to the Fourth Circuit, judicial records include "judicially authored or created documents," and documents filed with a court that "play a role in the adjudicative process, or adjudicate substantive rights." *Id.* In this case, the affidavits at issue are not judicially authored or created documents; the affidavits have not played a role in the adjudicative process because the Court has not considered them in resolving the motion to dismiss; and the affidavits do not adjudicate substantive rights. Therefore, the affidavits are not judicial records and no public right of access attaches to them. *See In re Policy Mgmt. Sys. Corp.*, Nos. 94-2254, 94-2341, 1995 WL 541623, at *4 (4th Cir. Sept. 13, 1995) ("Because the documents played no role in the court's adjudication of the motion to dismiss, we hold that the documents did not achieve the status of judicial documents to which the common law presumption of public access attaches."). The Court will, therefore, order that the affidavits remain under seal permanently.

[ORDER TO FOLLOW ON NEXT PAGE]

For the reasons stated herein, it is hereby ordered that:

ORDER

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss on Behalf of All State Defendants, (ECF No. 12), is treated as one for a more definite statement under Federal Rule of Procedure 12(e) and is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs shall submit a more definite statement[3] that clearly identifies the factual allegations that support each claim for relief, the specific statutory provision(s) of which Plaintiffs complain, and the specific claim(s) alleged against each Defendant named in the Complaint within twenty-one (21) days of the entry of this Order.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Seal Affiants' Identity, (ECF No. 29), is GRANTED. The unredacted versions of the affidavits filed by Plaintiffs, (ECF Nos. 31, 31-1), are and shall be permanently sealed.

This, the 30th day of May, 2018.

/s/ Loretta C. Biggs
United States District Judge

[3] A more definite statement generally takes the form of an amended pleading. *See* 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1379 (3d ed. 2004).