VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 7th day of October, 2021.

Present: All the Justices

Jeremy Lee Watson-Buisson,
s/k/a Jeremy Leigh Watson-Buisson, Appellant,

against Record No. 200955
Court of Appeals No. 0191-20-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and the argument of counsel, for the reasons set forth below, the Court is of opinion that the judgment below should be affirmed.

Watson-Buisson was found guilty of entering school property after conviction of a sexually violent offense. We awarded Watson-Buisson an appeal based on the following assignment of error:

> The Court of Appeals erred in: (a) concluding that treatment of any out-of-state conviction requiring registration in the state of conviction to be deemed a conviction of a "sexually violent offense" under Virginia Code § 9.1-902(F)(ii), as interpreted by this Court in *Turner v. Commonwealth*, 297 Va. 257, 826 S.E.2d 307 (2019), did not contravene the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and (b) upholding the trial court's determination that proof of the Defendant's prior Louisiana conviction of "computer-aided solicitation of a minor" in violation of La. Rev. Stat. § 14:81.3 constituted a proper predicate "sexually violent offense" within the meaning of Virginia Code §§ 9.1-902 and 18.2-370.5 establishing that requisite element of each of the three offenses of conviction.

BACKGROUND

In 2010, Watson-Buisson was convicted in Louisiana of computer-aided solicitation of a minor. The relevant statute provides as follows: "[c]omputer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years" and the purpose of this communication is "to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct or a crime of violence . . . , or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen." La. Stat. Ann. § 14:81.3(A)(1) (2020). This statute also applies when the person seventeen years of age or older contacts or communicates, through the use of electronic textual communication, with a "person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger." *Id*.

Persons convicted of computer-aided solicitation of a minor must register as sex offenders. *See* La. Stat. Ann. § 14:81.3(I) (2020) ("A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541. Whoever commits the crime of computer-aided solicitation of a minor shall be required to register as a sex offender . . . .").

In 2019, Watson-Buisson was indicted on two charges of being in proximity of children (in violation of Code § 18.2-370.2) and two charges of entry on school grounds by a violent sex offender (in violation of Code § 18.2-370.5) in the Circuit Court of the City of Norfolk. Watson-Buisson moved to dismiss on the grounds that he had not been convicted of a requisite predicate offense for any of the four charges. The trial court noted that a requisite offense for a violation of § 18.2-370.2 included any out-of-state conviction of an offense similar to conduct prohibited under Code § 18.2-370. Subsequently, the trial court conducted a similarity comparison of the statutes pursuant to *Johnson v. Commonwealth*, 53 Va. App. 608, 615 (2009). In its order of February 26, 2019, granting the motion to dismiss the two proximity of children offenses, the trial court concluded that "neither La. Stat. Ann. §§ 14:106 nor 14:81.3 is similar to Code §§ 18.2-370 or 18.2-374.1." Watson-Buisson was later indicted on a third charge of entry on school grounds by a violent sex offender (in violation of Code § 18.2-370.5). After a jury trial, Watson-Buisson was found guilty on all three counts.

Watson-Buisson moved to vacate the jury verdict on the ground that "the manner in which the Commonwealth used [Watson-Buisson's] out-of-state criminal record to establish a predicate conviction for purposes of prosecuting him for § 18.2-370.5 violates [his] right to Equal Protection of the laws under the 14th Amendment of the United States Constitution." On October 25, 2019, the trial court denied the motion to vacate, stating that "the offense in which [Watson-Buisson] was convicted in Louisiana is comparable to § 18.2-370, which is specifically included in the definition of sexual[ly] violent offense under § 9.1-902(E)." The Court of Appeals refused Watson-Buisson's appeal.

ANALYSIS

Watson-Buisson argues that his classification as a sexually violent offender violates the Equal Protection Clause by creating more onerous registration requirements for out-of-state offenders than for Virginia offenders. Requiring out-of-state offenders to register as a "sexually violent offender" in Virginia for any offense requiring registration, even if the offense was not "sexually violent" in Virginia, he argues, infringes his constitutionally protected right to travel and burdens out-of-state offenders. He further contends that the Commonwealth has not shown a rational basis to justify this distinction between persons convicted in Virginia and persons convicted in a sister State.

The Equal Protection Clause forbids the States from depriving any person of "the equal protection of the laws." U.S. Const. amend XIV. Equal protection is essentially a direction that all persons similarly situated should be treated alike. *Saunders v. Reynolds*, 214 Va. 697, 702 (1974). "[A] plaintiff challenging a state statute on an equal protection basis must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *Kolbe v. Hogan*, 849 F.3d 114, 146 (4th Cir. 2017) (internal quotation marks omitted). "If that initial showing has been made, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." *Id.* (internal quotation marks omitted).

We described the former sex offender registration regime in *Turner v. Commonwealth*, 297 Va. 257 (2019).[*] We explained that "[t]he effect of" this (now repealed) "statute is to treat

[*] We note that the General Assembly amended the registration regime in 2020, after Watson-Buisson's conviction. As amended, Code § 9.1-902(C)(2) now states: "Any offense for which registration in a sex offender and crimes against minors registry is required under the laws

some persons convicted in another state differently than some persons convicted in Virginia, by imposing on some out-of-state convicts a more onerous registration regime." *Id.* at 261.

Turning to Watson-Buisson's equal protection challenge, we first conclude that Watson-Buisson cannot raise a facial challenge to the statute. "A facial challenge . . . is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The Supreme Court has explained why abstract facial challenges are disfavored:

> Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records." Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "'[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.'"

Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 450-51 (2008) (citations omitted). Watson-Buisson does not meet the criteria to mount a facial challenge to the statute. We therefore turn to whether he can prevail in an "as-applied" challenge.

We conclude that Watson-Buisson's as-applied challenge fails at the threshold. Although it may not have been originally persuaded, the trial court rejected Watson-Buisson's motion to

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of the jurisdiction where the offender was convicted shall require registration and reregistration in accordance with" the Virginia Registry "in the manner most similar with the registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted[.]" Code Ann. § 9.1-902(C)(2) (2020) (emphasis added). This is true "unless such offense is similar to . . . any Tier I, II, or III offense . . ." in Virginia "and the registration and reregistration obligations imposed by the similar offense [in Virginia] are more stringent than those registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted." *Id.* "In instances where the similar offense listed or defined in this section imposes more stringent registration and reregistration obligations, the offender shall register and reregister as required by this chapter in a manner consistent with the registration and reregistration obligations imposed by the similar offense listed or defined in this section." *Id.* (emphasis added).

vacate his conviction, concluding that the Louisiana crime of computer-aided solicitation of a minor was "comparable" to the Virginia crime of taking indecent liberties with a child. We agree. Consequently, Watson-Buisson cannot show an equal protection violation.

Although both statutes contain multiple subparts, the mental state and actions required for conviction under both statutes are highly similar. To be sure, there are some differences between the two. Many of the differences are minor. The Louisiana statute allows conviction when an adult targets a minor to engage in *either* sexual conduct or "a crime of violence." La. Stat. Ann. § 14:81.3(A)(1). The indecent liberties statute, Code § 18.2-370, does not reference a "crime of violence." For purpose of equal protection review, however, "similarly situated does not mean identical." *Dalton v. Reynolds*, 2 F.4th 1300, 1310 (10th Cir. 2021). Our comparison of the Louisiana statute under which Watson-Buisson was convicted and Code § 18.2-370 leads us to conclude that the statutes are indeed similar. Therefore, Watson-Buisson was not treated differently than a Virginia defendant who is convicted of a similar crime in Virginia. Consequently, he suffered no "as-applied" equal protection violation. His Louisiana conviction of "computer-aided solicitation of a minor" in violation of La. Stat. Ann. § 14:81.3 constituted a proper predicate "sexually violent offense" for conviction.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Norfolk.

A Copy,

Teste:

Acting Clerk