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## Soering sues over McDonnell's overturning Kaine decision

*By Tasha Kates / The Daily Progress*

Nearly a year after Gov. Bob McDonnell revoked Virginia's approval to transfer convicted double-murderer Jens Soering to a prison in his native Germany, Soering has filed a lawsuit questioning whether McDonnell had the authority to withdraw the consent of his predecessor.

Soering filed suit on Tuesday in Richmond City Circuit Court, according to court records. The motion for declaratory judgment asks the court to rule on whether McDonnell's action was within his statutory or constitutional authority.

Taylor Thornley, a McDonnell spokeswoman, said Tuesday afternoon that "at this time, we are not aware of a lawsuit."

Charlottesville-based attorney Steven D. Rosenfield, who is representing Soering, said there is case law in other states where a governor was found to not have the authority to revoke certain agreements made by his predecessor.

"Gov. McDonnell has moved in very dangerous waters in revoking the action of a predecessor," Rosenfield said. "That is because one day, he will leave office and no doubt grant clemencies and pardons and consent with foreign governments and will not have to be worried that his actions will be revoked by a successor."

In a Jan. 12, 2010, letter to a U.S. Department of Justice official, former Gov. Timothy M. Kaine said he authorized the application for Soering's transfer to Germany. Kaine wrote that the country's Bonn Regional Court ordered Soering to a term of life imprisonment with no consideration of a suspended sentence for two years from the time of his transfer. Under the agreement, Soering wouldn't have been allowed to return to the United States.

A week later, McDonnell wrote a letter to U.S. Attorney General Eric Holder to revoke Virginia's consent to Soering's transfer. Holder replied on July 6 that the U.S. Department of Justice wouldn't consider Soering for transfer unless Virginia "provides clear and unambiguous consent to such a transfer."

Soering, 44, said Tuesday that he believes Virginia's statute on repatriation doesn't grant the governor the authority to withdraw the state's consent once it has been given.

"... Mr. Rosenfield and I are taking the traditionally conservative position that statutes should be interpreted narrowly, that no powers should be inferred that are not explicitly

stated in the text of the law,” Soering said. “The purpose of this legal principle is to limit the power of the executive and prevent abuse of governmental authority ... ”

A spokesman for the state Attorney General’s Office didn’t immediately return a request for comment on whether the office would represent McDonnell in the suit, but Virginia Attorney General Ken Cuccinelli previously has opposed Soering’s transfer. In a July news release, Cuccinelli said his office had researched Virginia’s legal options in keeping Soering in Virginia.

“We did everything we could to stop this double murderer from escaping our custody and from being released to Germany, where he would have served only a fraction of the sentence Virginia gave him,” Cuccinelli said.

Rosenfield said a transfer would be mutually beneficial — Soering would return to a country where he is more comfortable culturally and Virginia would have an open space in its overcrowded prisons and the assurance that Soering would remain imprisoned in Germany.

The son of a German diplomat, Soering came to Charlottesville in 1984 as a Jefferson scholar to the University of Virginia. During his time at UVa, he dated fellow student Elizabeth Haysom. Soering was convicted in 1990 by a Bedford County jury of the March 30, 1985, slayings of Haysom’s parents, Derek and Nancy. He is currently serving two life terms.

Soering has maintained over the years that he is innocent, noting that he initially confessed to the murders because he thought his father’s status would protect him and keep Haysom from the death penalty. She pleaded guilty in 1987 to being an accessory to murder and was sentenced to 90 years in prison.

Soering said Tuesday that it took a while for him to find a lawyer after the result of his repatriation attempt. Rosenfield previously represented Haysom, although the attorney said there isn’t a conflict of interest because the transfer is unrelated to the criminal case and he hasn’t spoken to her in decades.

Soering said his suit will be a test of Virginia’s legal system.

“It’s easy to stand on principle when it’s a politically popular cause,” he said. “It’s very different to uphold the rule of law and legal principles when the person involved is controversial.”