

ORIGINAL

IN THE SUPREME COURT OF OHIO

07-0270

J. Rita McNeil
Plaintiff-Appellee

: No. _____
:
: On Appeal from the Hamilton County
: Court of Appeals, First District

v.

Derek Logue,
Defendant-Appellant

: Court of Appeals
: Case No. C-0600943

**MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT
DEREK "THE FALLEN ONE" LOGUE**

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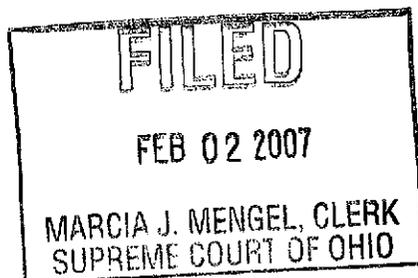


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**EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION AND IS A CASE OF PUBLIC OR GREAT GENERAL
INTEREST**

This case argues the critical issue of whether sex offender residency restrictions violate the 8th Amendment ban on Cruel and Unusual Punishment and the 14th Amendment safeguards of due process, equal protection under the law, and right to residence.

On September 6, 2006, Plaintiff-Appellant (From this point on referred to by name, Derek Logue) had scheduled an objection the magistrate's motion for summary judgment in favor of the plaintiff-appellee (From this point on referred to as J. Rita McNeil) based on the arguments now presented before this appeals Court; wherein the judge filed an entry erroneously overruling the Derek's objection to the Magistrate's decision, granting summary judgment to McNeil, and entered injunction.

Derek Logue filed his appeal on November 6th, 2006, believing his appeal to be done in a timely fashion. This notion was based upon faulty instructions of the secretary to the Appellate Courts, who told Derek he must first file all motions with the trial courts first, such as a motion of Stay, before he could file his paperwork with the First District Court of Appeals, and that the enclosed Judge's Entry was not the proper papers from the trial court to turn into her for processing. However, the Appellate Court dismissed the case based upon this error. It was advised by one of the court clerks for Derek to file a Motion for Reconsideration, which he did, but on December 22nd, that motion was also denied. Derek was denied an opportunity to effectively appeal the trial court's ruling, and has suffered irreparable harm as a result.

The critical issues of the appeal concern Ohio Revised Code Section 2950.031, the law

which restricts registered *all* sex offenders from residing within 1000 feet from all schools. The first issue is whether ORC 2950.031 is a punishment to begin with; The second issue closely tied to the first issue, is whether in light of regarding ORC 2950.031 a punishment, whether it is cruel and unusual. Finally, in light of regarding ORC 2950.031 as punishment, whether it violates due process, equal protection under the law, and right to residence as safeguarded by the 14th Amendment of the United States Constitution.

This case is also of public or great general interest because the perceived efficacy of residency restrictions is lacking, while the irreparable harm suffered under the letter of the law is very real and is of primary concern. Residency restrictions have been found to be not only ineffective as a means of public safety, but is detrimental to the efficacy of other sex offender laws such as the so-called "Megan's Law."

STATEMENT OF THE CASE AND FACTS

Derek Logue is a registered sex offender, convicted in Alabama with one count of First Degree Sexual Abuse in Alabama in 2001, a class C felony with a penalty of 1 to 10 years in prison. In April 2003, Derek moved to Cincinnati, Ohio to stay in Cincinnati Restoration Church (CRC). Derek was homeless for about six months following his stay at CRC.

In June 2004, after verifying with the Hamilton County Sheriff's Office that the residence at 2456 Gilbert Avenue #33 in Cincinnati, Ohio met the residency requirements in accordance to Ohio Revised Code Section 2950.031, Derek moved in. In June 2005, Derek received notice that the above residence violated ORC 2950.031. Derek believed the letter to be sent in error, asked for a further inquiry. The city solicitor's office has claimed the Life Skills Center, a GED school for people ages 16-22, was a school in accordance with the criteria set in ORC 2950.031. After

much delay a hearing was set for August 2006; the magistrate awarded the city solicitor's office summary judgment against the Derek without giving him a chance to argue the case. Thus the Derek filed an objection to the Magistrate's Decision but was overruled by Judge Fred Nelson.

Defendant would also like to move this Court to keep in mind that Ohio Revised Code Section 2950.031 does not make distinctions between sexually oriented offenders, habitual offenders, or sexual predators for the purposes of enforcing the residency restrictions. That being said, Derek would like to add the Trial Court had relied of faulty evidence to erroneously label Derek a "Sexual Predator" which may have also contributed to prejudice against Derek in subsequent cases. Derek was not classified as a sexual predator by the State of Alabama, the state of his conviction; the clinician who claimed Derek allegedly made statements about "having fantasies about young girls" (quoted in Judge Nelson's Entry, p.1) was later determined to made that claim *in error* and further added to the prejudice of the case by using the terms "sexual predator" and "sex offender" interchangeably. Derek has not even been suspected of a crime in the past four years, has been fully compliant with the laws, has been open and honest about his offense, has received treatment while incarcerated, and is an active advocate on sex offender rights and issues, working to for an information and support network entitled Sex Offenders Pursuing Healing in Adversity (SOPHIA).

Judge Nelson contends that because residency restrictions are "of a civil nature and does not constitute a punishment (*Id.* at 2), yet later admits, "the statute does impose a certain restraint on residency and may serve a deterrent effect (*Id.* at 3)." Nelson later uses the same argument in rejecting Derek's 14th Amendment claims (*Id.* at 5). Nelson also failed to see the connections between laws of a similar nature which was also struck down (*Id.* at 8).

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Sex Offender residency restrictions are indeed a punishment, and violate the United States and Ohio Constitution bans on Cruel and Unusual Punishments

In order to argue the constitutionality of Ohio Revised Code Section 2950.031 in light of the 8th Amendment ban on cruel and unusual punishment, it must first be established that the law should be considered a punishment or punitive by its very nature. Though the residency restrictions are regarded as civil sanctions, even a civil penalty is considered a punishment if the sanction cannot be fairly said to serve a remedial purpose, but instead as a *deterrent* or retribution, as Judge Nelson freely admitted [*US v. Gartner*, 93 F. 3d 633, *cert. denied* 519 US 1047], or when it is overwhelmingly disproportionate to the damages caused to the government [*US v. Walker*, 940 F. 2d 442]. In *Demery v. Arpaio*, 378 F. 3d 1020, *cert. denied* 125 S. Ct. 2961, 162 L. Ed. 2d 887, the mere claim that certain sanctions served purposes of deterrence and public scrutiny does not justify sanctions which do not serve a legitimate governmental purpose or worse yet, cause harm to the targets of the sanctions. Derek Logue contends he has suffered irreparable harm, both financially and emotionally, due to being forced out of a residence where he had lived for two years into another residence costing nearly three times the previous rent of the former residence, and being forced to pay court costs for exercising his constitutional rights.

In an August 2006 report released by the California Research Bureau, entitled "*The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: An Overview*," the researchers, citing a 2004 Florida survey of registered sex offenders following the enforcement of that state's residency restrictions, found that 60% suffered emotional distress, 25% could not return home after release from prison, 30% could not live with a supportive family

member, 22% was forced out of a home they owned and 28% was forced out of an apartment, bringing the total of displaced sex offenders to 50%, 48% suffered financially, and 57% found it difficult to obtain housing. Most had expressed increased psychological distress which is a primary factor in recidivism. Sex offenders suffer under these laws, and it should be painfully obvious that the sanctions are punitive by its effects. In *E.B. v. Verniero*, 119 F. 3d , *rehearing denied* 127 F.3d 298, *cert. denied*, 522 US 1110, it was determined that even when punishment is neither the actual or objective purpose of the law, civil sanctions may constitute punishment if the effects or “sting” are harsh enough to be considered a punishment, and must be evaluated in light of importance of any legitimate governmental interest served.

In *Artway v. Attorney General of the State of New Jersey*, 81 F. 3d 1235, *rehearing denied* 83 F. 3d 594, it was determined that even if some remedial purpose can fully explain a legislative measure, if a historical analysis shows that a sanction has been traditionally regarded as a punishment, and if text or history does not demonstrate that the measure is not punitive, it *must* be considered a punishment. I contend that Ohio Revised Code Section 2950.031 is an act of banishment by attrition, comparable in American jurisprudence only by deportation of illegal aliens. [See *Trop v. Dulles*, 356 US 86 (1958), where an order of banishment (or “divestiture”) was executed against a native born citizen who did not voluntarily relinquish or abandon his citizenship or become involved in any way with any foreign nation. The court ruled that the “divestiture of a natural born citizen was held to be unconstitutionally forbidden as a penalty more cruel and ‘more cruel and more primitive, inasmuch as it entailed statelessness’ or ‘the total destruction of the individual’s status in organized society.’” (CRS/LII Annotated Constitution 8th Amendment, www.law.cornell.edu/anncon/html/amdt 8_user.html)].

Ohio is merely jumping on the bandwagon of states passing similar restrictions on sex offenders. One of the consequences of passing such laws is the effectively exiling sex offenders as far from civilization as possible by limiting available housing to the point where finding housing is virtually impossible, what I refer to as "banishment by attrition." In *Rutherford v. Blankenship*, 468 F. supp. 1357, 1360 (W.D. Va. 1979), the Court stated, "To permit one state to dump its convict[ed] criminals into another is not in the interests of safety and welfare; therefore, the punishment by banishment to another state is prohibited by public policy." See also *Johnson v. State*, 672 S.W.2d 621 (Tex. Ct. App. 1984) and *Furman v. Georgia*, 408 US 238 (1972).

I also cited *State v. Burnett* (2001) 93 Ohio St. 3d 219, which struck down a city ordinance similar to the sex offender residency restrictions; in this case, the *Burnett* case struck down a law that temporarily barred drug offenders from being seen from Over-The-Rhine, the main drug active area in Cincinnati. Judge Nelson failed to recognize the essence of *Burnett*, namely, the law punished behavior *not even linked* to criminal activity, but merely the act of being in the restricted area. Also, the restriction restricted drug offenders from obtaining the assistance or support networks necessary for rehabilitation which was otherwise severely diminished by the restrictions. The principles are the same in the *Burnett* case and current sex offender residency restrictions, namely, to restrict activities for the purpose of alleged decreasing access to children. The decision to repeal the drug exclusion law was later upheld in *Johnson et al. v. City of Cincinnati*, 2002 FED App. 0332P (6th Cir.), *cert. denied*, US Supreme Court case no. 02-1452.

Proposition of law No. 2: Sex offender residency restrictions deny the US Constitution 14th Amendment safeguards of Due Process of the Law, Equal protection under the Law, and Freedom of Movement and residence

The right to reside and settle is such a fundamental constitutional right, the founding fathers of this country assumed it to be an unquestionable right. Thus the right of residence in and of itself is rarely spoken of directly. The Universal Declaration of Human Rights, Article 13, declares, "Everyone has the right of freedom of movement *and residence* within the borders of each state." See also *US v. Guest*, 383 US 745; *Edwards v. California*, 314 US 160; *Kent v. Dulles*, 357 US 116, 125-6; and *Apthecker v. Secretary of State*, 378 US 500, 517. In *Godfrey Bothelho v. John Doe et al.*, No. 01-729 (March 5, 2003), the Court has ruled that under the Constitution individuals have the right to travel and reside wherever they desire, unless under court supervision.

Residency restrictions or proximity laws, as a sanction, form a "collective punishment." Wikipedia (an internet encyclopedia) defines collective punishment as "the punishment of a group of people for the crime of a few or even of one. *It is contradictory to the modern concept of due process*, where each person receives separate treatment based on their individual circumstances- as they relate to the crime in question." Collective punishment contradictory to Due process. The 1949 Geneva Conventions- 4th Convention Article 33 states, "*No protected person may be punished for an offense he or she has not personally committed*,"... collective penalties and likewise all measures of intimidation or of terrorism are prohibited." The United States Supreme Court, in *Romer v. Evans*, 517 US 620 (1996), states, 'If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare... desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest...'

Residency restrictions punish sex offenders on the presumption that all sex offenders will more likely re-offend if residing within close proximity of a school, but presumption of criminal activity cannot be used to justify punishment without an actual crime committed. The mere knowledge of a person's past behavior does not justify a belief the person will automatically re-offend (*Tot v. US*, 319 US 463.)

While the state may claim a compelling interest in deterring convicted sex offenders from re-offending, there are certain fundamental rights that are being infringed upon, and thus "more than a compelling interest is needed to survive constitutional scrutiny. The statute must be narrowly tailored to meet the compelling interest." [*Reno v. Flores* (1993), 507 US 292, 301-302]. In the *Burnett* case, the law failed constitutional analysis because it went beyond restricting those interests associated with illegal drug activity and restricted a substantial amount of innocent conduct, like living in an apartment. I contend ORC 2950.031 also cannot meet such scrutiny.

There is no factual basis on the notion that residency restriction laws impact sex offender recidivism. According to the *Report on Safety Issues Raised By Living Arrangements For And Location Of Sex Offenders In The Community* (Colorado Dept. of Public Safety, Sex Offender Management Board, March 2004), the researchers failed to find any correlation between proximity to schools and recidivism and recommended the state not pass residency restrictions *Id.*, at 5, 37. The researchers had contacted states with residency laws, and of the four states that responded (Alabama, Illinois, Florida, and Oregon), none of the states passed their laws based on any scientific research regarding proximity and recidivism. *Id.*, at 12, also citing *Doe v. Miller*, 216 FDR 462(SD Iowa, Feb. 2004). In another report, *Minnesota Department of Corrections, Level Three Sex Offenders: Residential Placement Issues, 2003 Report to the Legislature*, the

department failed to find any correlation between proximity and recidivism: “Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact.” *Id.*, at 9.

In the book “*Preventing Sexual Violence: How Society Should Cope With Sex Offenders*” (John Q. LaFond, 2005, American Psychological Association), it is recommended to be realistic about the risk: “.it appears that most sex offenders are not dangerous and will not re-offend. Society’s fear that all sex offenders pose an ongoing threat of committing more serious sex crimes is incorrect, and more important, self-defeating... moreover, in painting with such a broad brush, we may be creating a public hysteria that is unnecessary and even counterproductive.” *Id.*, at 57. Later, in citing a Washington state study on notification laws, it was found that the notification law “does not prevent crime but aids in the investigation of a crime.” This translates into quicker arrests, either by higher scrutiny of activities, *or by disrupting housing, employment, and support networks of the sex offender, thus causing stress and increasing likelihood of recidivism.* *Id.*, at 108-9. The laws have had many adverse consequences, such as vigilantism, loss of employment, residence, and relationships, difficulty in obtaining suitable housing, and incentives to violate existing registration laws. *Id.*, at 113-6, 118. Needless to say, the APA recommends sex offender laws need a dramatic overhaul. *Id.* at 119.

In some states where residency laws have been passed, there have been a number of successful challenges. In an article in the *Daily Item* of Lynn, Massachusetts, entitled “*Revere Sex Offender Law Dismissed*,” (Thor Jourgensen, August 16, 2006), a Chelsea District Court magistrate dismissed the case against a Level 3 sex offender, and the state later chose not to pursue the case any further. In Oklahoma, the ACLU settled a suit involving a sex offender who

was being forced out of a residence after the house had already been pre-approved by the sheriff's office (<http://www.acluok.org/LegislatureCourts/DoevLane.htm>). Finally, in *State v. Benjamin David Groves*, 05771-AGCR-199229 (Polk Co. Iowa 2006), a married sex offender with five children was arrested for violating the state's sex offender residency laws. Polk county judge Carol Egly dismissed the case stating, "The Residency restrictions are a severe restriction of the defendant's liberty rights... [The] Court concludes the defendant's rights to substantive due process has been violated."

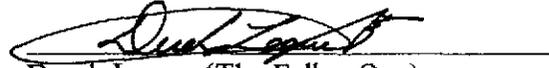
On the other hand, the Courts have firmly established that "rehabilitation of criminals is of paramount interest." [*Abbott v. City of Beverly Hills*, (Cal. Supreme Court, Feb. 26, 1960)] In the *Abbott* case, it was determined that registration of ex-felons is both in conflict with public policy and at variance with "moral and ethical concepts of decency and human dignity." Without a doubt, sex offender residency laws are so restrictive as to undermine the goals of rehabilitation by denying housing opportunities, forcing sex offenders to just take what's available, or undermine public safety by giving sex offenders ample incentive to fail to register.

CONCLUSION

If jurisdiction is granted, this matter will present the Court with the opportunity to determine whether residency restrictions:

1. Constitute punishment, and if it does, whether it is cruel and unusual punishment,
2. Whether residency restrictions lump all sex offenders into a suspect class and subject to far stricter sanctions than necessary,
3. Whether less intrusive alternatives to sex offender residency are indeed available, and
4. Whether or not the residency restrictions could truly meet a compelling interest test.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum In Support of Jurisdiction has been served upon Thomas Beridon, attorney for the appellee, at 801 Plum Street, Room 226, Cincinnati, OH 45202, via ordinary US Mail this the 29 day of January, 2007.

COPY

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SEP 28 2006

**COMMON PLEAS COURT
HAMILTON COUNTY, OHIO**

J. Rita McNeil,	:	CASE NO: A0507486
Plaintiff,	:	Judge Nelson
	:	
vs.	:	Entry Overruling Defendant's
	:	Objection to Magistrate's
Derek Logue,	:	Decision, Overruling Defendant's
Defendant.	:	Motion to Dismiss, Granting
	:	Summary Judgment to Plaintiff,
	:	and Entering Injunction

This matter comes before the court on Defendant's Objection to the Magistrate's Decision granting the Plaintiff's motion for summary judgment and enjoining Defendant from living at a specified address within 1,000 feet of a school. The court heard argument on the Objection on September 8, 2006.

The records of this court reflect that Defendant has been classified as a Sexual Predator pursuant to R.C. 2950.09 in light of a 2001 sexual abuse conviction in Franklin County, Alabama. See certified Entry of October 21, 2005 in case number A050593 as attached to Plaintiff's Motion for Summary Judgment (noting that Defendant "was 23 years old at the time he victimized the 11 year old girl and that he was sexually aroused by that child," and finding that as recently as 2004, Defendant "was having sexual fantasies about young girls" → untrue). The Defendant acknowledges that he is a registered sex offender barred by Ohio statute from living within 1,000 feet of a school. See Defendant's "Motion of Immediate Dismissal" at 3; R.C. 2950.031. Defendant bases his Objection on the argument that Ohio's prohibition against specified sex offenders living within 1,000 feet of a school violates his rights under the Eighth and Fourteenth Amendments to the United States Constitution. Objection at ¶1 (reciting alleged

constitutional violations), ¶2 (arguing that Magistrate “failed to consider above [constitutional] issues” in not granting Defendant’s motion to dismiss).

EIGHTH AMENDMENT

Defendant argues first that Ohio’s restraint on where sex offenders may live violates the Eighth Amendment prohibition against “cruel and unusual punishments.” This argument fails because the restriction is of a civil nature and does not constitute a punishment.

R.C. 2950.031 precludes someone who has been convicted of a sexually oriented offense that is not registration exempt from residing within 1,000 feet of a school, and the statute creates a cause of action for injunctive relief through which certain property owners and prosecuting attorneys may seek to enforce its provisions. “[T]he residence restriction in R.C. 2950.031 ... is non-punitive and remedial in nature [I]t is a collateral consequence of a sex-offense conviction, just like the registration and notification requirements of R.C. Chapter 2950.” *State v. Cupp* (2d Dist. App. April 7, 2006), 2006 WL 925174; *cf. State v. Williams* (2000), 88 Ohio St.3d 513, 528, 529, 534 (prior to enactment of residential restriction; registration and notification provisions of Chapter 2950 are not “criminal” or punitive; Chapter 2950 “does not inflict punishment” and is constitutional); *State v. Cook* (1998), 83 Ohio St.3d 404, 417 (prior to enactment of residential restriction; Chapter 2950 “is absolutely devoid of any language indicating an intent to punish;” “Protecting the public and preventing crimes are the types of purposes [the U.S. Supreme Court has] found ‘regulatory’ and not punitive”).

Cannot compare residence restrictions with registration

does not need to express intent

Williams and *Cook* held that the statutory framework into which the legislature inserted the residence restrictions is constitutional and non-punitive, and nothing in the

language or effect of R.C. 2950.031 alters that analysis for Eighth Amendment purposes. "The codification of Section 2950.031 in the criminal section of the Ohio statutes does not indicate a legislative intent to establish a criminal statute." *Costin v. Petro* (S. D. Ohio 2005), 398 F. Supp.2d 878, 885 (adding that "Section 2950.031 does not ... impose punishment and accordingly is not a criminal statute").

Ohio's legislature has found that "[s]ex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior even after being released from ... detention, and protection of members of the public from sex offenders ... is a paramount governmental interest." R.C. 2950.02(A)(2). The legislature's effort to vindicate that "paramount" interest through the residency restriction at issue does not purport to be punishment, *see Costin*, 398 F. Supp.2d at 885 ("2950.031 is civil and non-punitive on its face"), and the statute's effect is not "so punitive ... as to negate [the State's] intention to deem it 'civil'," *cf. Smith v. Doe* (2002), 538 U.S. 84, 92 (quoting *Kansas v. Hendricks* [1997], 521 U.S. 346, 361 in upholding Alaska sex offender registration and notification requirements against *ex post facto* challenge).

Although the statute does impose a certain restraint on residency and may serve a deterrent effect, it is not retributive and "does not involve a traditional means of punishment." *Costin*, 398 F. Supp. at 885-86; *cf., e.g., Doe v. Miller* (8th Cir. 2005), 405 F.3d 700, 719-20, cert. den. 126 S.Ct. 757 (2005) (upholding Iowa law barring certain sex offenders from living within 2,000 feet of a school; "It does not 'expel' the offenders from their communities or prohibit them from accessing areas near schools ... for employment, to conduct commercial transactions, or for any purpose other than

establishing a residence ... [The] law is unlike banishment in important respects, and we do not believe it is of a type that is traditionally punitive"). "[M]ost significant[ly]" for purposes of analyzing whether the statute is punitive, *Smith v. Doe*, 538 U.S. at 102, the statute does have a rational connection to a purpose other than punishment. "The risk of recidivism posed by sex offenders is 'frightening and high'." *Id.* at 103. "The public has a compelling interest in protecting children from sex offenders and ... 2950.031 furthers that goal by prohibiting sex offenders from establishing permanent residences in areas where children are sure to be concentrated'." *Costin*, 398 F. Supp. at 886. Moreover, a "statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Smith*, 538 U.S. at 103. This court agrees that R.C. "2950.031 does not have a punitive purpose or effect and, therefore, cannot be characterized as a criminal statute." *Costin*, 398 F. Supp. at 887.

*stat's

"[B]ecause this Court has determined that the law is non-punitive, there can be no Eighth Amendment violation." *Doe v. Baker* (U.S. Dist. Ct. N. D. Ga. 2006), 2006 WL 905368 (Georgia statute barring sex offenders from living within 1,000 feet of a school is "consistent with a regulatory purpose" and is constitutional); *see also Miller*, 405 F.3d at 723, n.6 ("In view of our conclusion that the statute is not punitive, it follows that the law is not a 'cruel and unusual punishment' in violation of the Eighth Amendment").

FOURTEENTH AMENDMENT

Defendant also urges that R.C. 2950.031 violates the due process and equal protection provisions of the Fourteenth Amendment to the federal Constitution, in part by infringing a "right to free residence" that he ties to an intrastate right to travel.

Defendant's Objection; Defendant's Motion to dismiss. Here, too, Defendant's argument fails.

"Procedural Due Process"

The first strand of Defendant's Fourteenth Amendment analysis appears to be that R.C. 2950.031 violates due process protections by imposing a form of "collective punishment" (that, according to Defendant, also contravenes the Geneva Convention). Defendant's Motion to dismiss at 5-7. As discussed above, the statute does not have a punitive purpose or effect: it does not constitute "punishment" at all, either individualized or collective. Further, Defendant has not otherwise identified procedural deficiencies that mark the statute as unconstitutional under the due process clause. Cf. *Miller*, 405 F.3d at 709 (2,000 foot "Iowa residency restriction does not contravene principles of procedural due process under the Constitution").

wrong, is punitive

Equal Protection

Another strand of Defendant's Fourteenth Amendment argument appears to be that the law violates the equal protection clause in that it impermissibly creates a suspect class of sex offenders who, "as a group, are assumed to be always on the verge of committing a subsequent sexual offense" See Defendant's Motion to dismiss at 8. As our State's Supreme Court has held: "Sex offenders ... are not a suspect class." *Williams*, 88 Ohio St.3d at 530. Absent a suspect class or the assertion of a fundamental constitutional right (to be discussed below), the equal protection clause requires only that a "legislative distinction ... be created in such a manner as to bear a rational relationship to a legitimate state interest. ... These distinctions are invalidated only where 'they are

based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them'." *Id.* (citations omitted).

Ohio's legislature is entitled to conclude that "the safety of children is promoted when sex offenders are prohibited from living near schools." *Costin*, 398 F. Supp.2d at 886 (adding that legislature could conclude that public interest in protecting children from sex offenders is advanced "by prohibiting sex offenders from establishing permanent residences in areas where children are sure to be concentrated"). *Cf., e.g., Smith v. Doe*, 538 U.S. at 103 (Alaska legislature's findings in establishing registration system "are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class"); *Miller*, 405 F.3d at 715-16, 721 ("Where individuals in a group, such as convicted sex offenders, have 'distinguishing characteristics relevant to interests the State has authority to implement, the courts have been very reluctant ... to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be pursued';" "In light of the high risk of recidivism posed by sex offenders, ... the legislature reasonably could conclude that [prohibition against sex offender's living within two thousand feet of a school] would protect society by minimizing the risk of repeated sex offenses against minors"); *Baker*, 2006 WL 905368 ("The General Assembly could rationally conclude that such a [1,000 feet] restriction upon residence would reduce the likelihood and opportunities for recidivism"). Because R.C. 2950.031 bears a rational relationship to a legitimate state interest, the court is not empowered to invalidate it on the basis of Defendant's equal protection clause argument.

"Substantive Due Process"

The final strand of Defendant's Fourteenth Amendment argument is that the statute impinges improperly upon a fundamental "right of travel and residence as afforded by the [d]ue process clause." Defendant's Motion to dismiss at 8. Although eschewing the label, Defendant advances a substantive due process analysis. A substantive due process claim arises from the U.S. Supreme Court's "line of cases which interprets the Fifth and Fourteenth Amendments' guarantee of 'due process of law' to include a substantive component [that] forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores* (1993), 507 U.S. 292, 302. This court is mindful of the admonitions of the Ohio and U.S. Supreme Courts that "in addressing matters of substantive due process, the utmost care must be taken when being asked to break new ground in Fourteenth Amendment jurisprudence." *See, State v. Burnett* (2001), 93 Ohio St.3d 419, 428 (citations omitted); *Flores*, 507 U.S. at 302 ("[T]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field").

The analysis here "must begin with a careful description of the asserted right." *Flores*, 507 US. At 302. In *Burnett*, Ohio's Supreme Court did find a fundamental, constitutionally protected right to intrastate travel. The Court offered a "specific, careful description" of the fundamental right in question: "the right of intrastate travel we contemplate is the right to travel locally through public spaces and roadways of this state." 93 Ohio St.3d at 428. Put another way, the Court identified the fundamental "freedom ... to roam about innocently in the wide open spaces of our state parks or

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through the streets and sidewalks of our most populous cities.” *Id.* *Burnett* held that a Cincinnati municipal ordinance making it a criminal offense for certain drug offenders to be “on any public street, sidewalk, or other public way in [an identified] drug exclusion zone[]” effected a deprivation of this right to travel and could not withstand constitutional scrutiny under the resulting strict scrutiny, compelling-interest test. *Id.* at 420, 430-31

→ (also noting that a “person subject to exclusion is exposed to a criminal penalty by simply being in Over the Rhine”). See also, *Johnson v. City of Cincinnati* (6th Cir. 2003), 310 F.3d 484, 495 (same municipal ordinance triggered and did not meet strict scrutiny test: “the right we address – the right to travel locally through public spaces and roadways – is fundamentally one of access”).

The state statute at issue in the instant case, establishing a civil enforcement mechanism for the preclusion against residing within one thousand feet of a school, does not deprive Defendant of the “specific [and] careful[ly]” formulated “right of intrastate travel” set forth in *Burnett*. It does not deny Defendant access to any locale, does not foreclose his “right to travel locally through public spaces and roadways,” and does not trammel his “freedom .. to roam about innocently” in parks, streets, sidewalks, or elsewhere. It simply does not implicate the right established in *Burnett* and *Johnson*. See, e.g., *Miller*, 405 F.3d at 713 (specifically distinguishing *Johnson*; even assuming intrastate right to travel, prohibition on residing within 2,000 feet of a school does not involve “free ingress to and egress from” any area and therefore “would not implicate” such a right).

Bullshit!
Same principles

by arguing this point, defeats purpose of the law, how does ~~my~~ where I lay my head at night bear upon my actions during the day?

Further, Defendant has provided scant basis for this court dramatically to transmute the precisely defined "right to intrastate travel" into a new "right to free residence." Cf. Defendant's Objection. The U.S. Constitution does not reference such a right, and this court finds no constitutional authority to manufacture such a right. See, e.g., *Miller*, 405 F.3d at 714 ("We are not persuaded that the Constitution establishes a right to 'live where you want' that requires strict scrutiny of a State's residency restrictions," citing *Prostrullo v. University of S.D.* [8th Cir. 1974], 507 F.2d 775, 781 ["we cannot agree that the right to choose one's place of residence is necessarily a fundamental right"]); cf. *Baker*, 2006 WL 905368 ("given this lack of precedential support and the Supreme Court's stated reluctance to expand constitutional rights, this Court declines ... to recognize the violation of a liberty interest here"); *Wardwell v. Board of Education of the City of Cincinnati* (6th Cir. 1976), 529 F.2d 625 (continuing employee residency requirement does not implicate fundamental right to travel that triggers strict scrutiny).

← Wrong!
I cited cases

Moreover, the history and traditions of this State and this country simply do not support the proposition that the people through their elected representatives lack the power to declare certain areas off limits for residential purposes or for potential would-be dwellers. For example, non-residential zoning restrictions, or lot size restrictions, or density restrictions that may limit certain people from living precisely where they would like do not automatically trigger strict scrutiny as intrusions upon some fundamental right to unfettered personal autonomy in home selection, although of course they must comport with other constitutional requirements. See, e.g., *Goldberg Cos., Inc. v. Richmond Hts. City Council* (1998), 81 Ohio St.3d 207 (presumption that zoning resolutions are

comparing this to zoning laws?
 oh, puh-leez! Sex offender
 group homes have to be commercial
 Zoned props.

constitutional); R.C. 519.02 (township trustees may regulate "percentages of lot areas which may be occupied," yard sizes, "the density of population, ... the uses of land for ... residence," and the like); *Fischer Development Co. v. Union Township* (12th Dist. 2000), 2000 WL 525815, app. den. 90 Ohio St.3d 1413 (2000) (zoning restrictions including lot size and square footage requirements: "[n]one of the classifications ... [is] suspect and no fundamental right is at issue;" rational relationship test applies).

Because R.C. 2950.031 implicates no fundamental right and because the statute bears a rational relationship to a legitimate state interest as discussed above, Defendant's substantive due process argument fails. *Cf. Miller*, 405 F.2d at 704-05 ("we conclude that the Constitution of the United States does not prevent the State of Iowa from regulating the residency of sex offenders [to preclude living within 2,000 feet of a school or child care facility] in order to protect the health and safety of the citizens of Iowa"); *State v. Seering* (Iowa S. Ct. 2005), 701 N.W.2d 655 (same Iowa provision: "Although freedom of choice in residence is of keen interest to any individual, it is not a fundamental interest entitled to the highest constitutional protection [A]n interest in choice of residency is entitled to only rational basis review"); *Graham v. Henry* (federal N.D. Okla. 2006), 2006 WL 2645130 ("there is no fundamental right to live where one pleases;" denying preliminary injunction against statute barring sex offenders from living within 2,000 feet of parks, schools, etc); *People v. Leroy* (Ill. App. 5th Dist. 2005), 828 N.E.2d 769 (no fundamental right to live within 500 feet of a school).

CONCLUSION

For the reasons set forth above, Defendant's Objection is overruled. The court adopts the Magistrate's decision (but for the recitation that the Defendant failed to

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respond to the Complaint) and grants the injunction prohibiting the Defendant from residing at 2456 Gilbert Avenue, which address is within 1,000 feet of a school, as further specified in the Magistrate's Decision of August 21, 2006. Defendant's motion is dismissed, and Plaintiff's motion for summary judgment is granted. This is a final order and there is no just cause for delay. Costs to Defendant.

SO ORDERED **ENTERED**

SEP 28 2006



Fred Nelson,
Judge

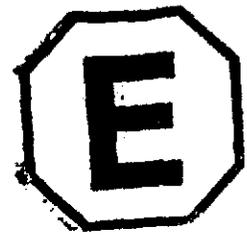
c.c.: Derek Logue, P.O. Box 141050, Cincinnati, OH 45250
2456 Gilbert Avenue, #33, Cincinnati, OH 45206 (by regular and certified mail)

Thomas Beridon, 801 Plum Street, Room 226, Cincinnati, OH 45202

Both addresses by regular and certified mail.

COURT OF COMMON PL.
ENTERED

FRED NELSON, Judge
THE CLERK SHALL SERVE THIS ORDER TO PARTIES PURSUANT TO THE RULES OF PROCEDURE WHICH SHALL BE THE SAME AS COSTS HEREIN.



A-12

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

J. RITA MCNEIL, CITY OF
CINCINNATI SOLICITOR,

APPEAL NO. C-060943
TRIAL NO. A-0507486

Appellee,

vs.

ENTRY OF DISMISSAL

DEREK LOGUE,

Appellant.

This cause came on to be considered upon the appeal from the trial court.

The Court *sua sponte* dismisses the appeal for failure of the appellant to comply with the Ohio Rules of Appellate Procedure to wit: the notice of appeal was not timely filed under Appellate Rule 4 (A).

The Court, upon consideration of the motion for stay, finds that the motion is not well taken and is overruled as moot.

It is further ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To The Clerk:

Enter upon the Journal of the Court on NOV 22 2006 per order of the Court.

By: 
Presiding Judge

(Copy sent to counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

J. Rita McNeil
Appellee

APPEAL NO. C-060943

TRIAL COURT NO. A0507486

vs

MOTION FOR RECONSIDERATION

Derek Logue
Appellant

MOTION FOR RECONSIDERATION

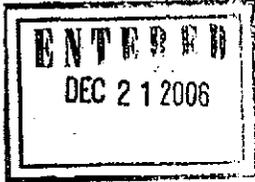
Defendant-Appellant, Derek Logue, respectfully moves this Court to reconsider its decision of Dismissal for the reasons below

1. I was given improper instruction by your secretary - she told me that the judge's entry was not the final order and that I had to exhaust all my remedies under the common pleas court before I can take it to the appeal court. The judge's entry was, however, the final order but I did not know until the end of October.
2. The weekend following my Oct. 6th court date, my building was condemned and I had to make temporary residence ~~with~~ with my mother in Alabama until my ^{new} apartment was ready on Nov. 1st.
3. The court ordered repayment of court costs causes irreparable ^(see attach.) harm as I am living off SSI and cannot afford to pay plus it would prevent me from paying my bills & render me homeless

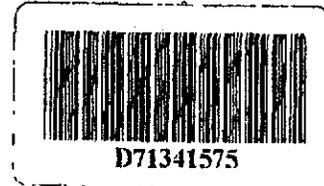
CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was serviced upon Thomas Berdon 801 Plum St. Rm 226 Cincinnati 45202 at _____ on this _____ day of _____, _____

A-14



IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



J. RITA MCNEIL, CITY OF
CINCINNATI SOLICITOR,

APPEAL NO. C-060943
TRIAL NO. A-0507486

Appellee,

vs.

ENTRY OVERRULING MOTION
FOR RECONSIDERATION

DEREK LOGUE,

Appellant

This cause came on to be considered upon the *pro se* motion of the appellant filed herein for reconsideration.

The Court, upon consideration thereof, finds that the motion is not well taken and is hereby overruled.

To The Clerk:

Enter upon the Journal of the Court on DEC 21 2006 per order of the Court.

By: 
Presiding Judge

(Copy sent to counsel)