

ORIGINAL

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NO. 09-0477

IN THE SUPREME COURT OF OHIO

APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 91165

STATE OF OHIO,

Plaintiff-Appellee

-vs-

WILLIAM DUNLAP,

Defendant-Appellant

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MEMORANDUM IN RESPONSE TO JURISDICTION

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

This case presents constitutional challenges to Ohio's newly-adopted Adam Walsh Act. While this Honorable Court has previously ruled on constitutional challenges to Ohio's former Megan's Law, and amendments thereto, this will serve as the first opportunity for this Court to squarely address some of the constitutional challenges that have been raised by sex offenders across the State.

At the time of sentencing, the trial court apprised Appellant, Thomas Dunlap, of his classification as a Tier III sex offender under Ohio's newly-adopted Adam Walsh Act. On appeal, Dunlap complained that his classification as a Tier III sex offender under Ohio's Adam Walsh Act is violative of the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. The Eighth District Court of Appeals ruled, and the State agrees, that Dunlap's classification does not violate any of the constitutional challenges presented.

**Background**

In 2007, the Ohio legislature again changed the procedure for classifying sex offenders. This new system is now under attack. Yet the old registration system under Megan's Law was repeatedly found constitutional, see, e.g., *State v. Cook* (1998), 83 Ohio St.3d 404; *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428. The changes in the new registration system do not so change the system, unlike the changes put in place by Megan's Law in 1997. The new registration system, just as much as the old, permissibly considers prior convictions in regulating current conditions and circumstances, and it does so without taking away any vested right and without imposing an additional "punishment." As the Second and Third appellate districts

recently noted (in reviewing the constitutionality of Ohio's Adam Walsh Act): "We cannot ignore the precedent set by the Ohio Supreme Court in *Cook* and later reaffirmed in *Williams* and *Wilson*. Although S.B. 10 alters the landscape, we still do not find, in light of the foregoing cases and United States Supreme Court's opinion in *Smith*, that the reclassification and registration requirements at issue have a punitive effect negating the General Assembly's intent to establish a civil regulatory scheme." *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594, ¶ 13. See also, *In Re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234.<sup>1</sup>

Not only have registration systems been attacked statewide, several federal cases have also weighed in on similar registration schemes. Since the Ohio Supreme Court first reviewed Ohio's former Megan's Law, Alaska's system of lifetime, quarterly registration and its internet registry were upheld as valid non-punitive measures to protect the public in *Smith v. Doe* (2003), 538 U.S. 84. Additionally, classification based upon an offender's criminal conviction has been upheld. See *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003) (Connecticut's statutory scheme, like S.B. 10, provided for sex offender registration and community notification based on the fact of previous conviction); *Fullmer v. Michigan Dept. of State Police*, 360 F.3d 579 (6<sup>th</sup> Cir. 2004) (upholding Michigan's Sex Offender Registration Act in which the duty to register was based solely upon the fact of an offender's prior criminal conviction).

### **Ohio's Adam Walsh Act**

As a result of the federal Adam Walsh Act, Ohio passed Senate Bill 10, effective July 1, 2007, which reorganizes Ohio's sex-offender registration scheme. Instead of having three levels

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<sup>1</sup> Appellate districts, including the Eighth District, have recently weighed in on the issues presented herein, including: *State v. Honey*, Medina App. No. 08CA0018-M, 2008-Ohio-4943; *In Re Gant*, Allen App. No. 1-08-11, 2008-Ohio-5198; *State v. Clay*, Hamilton App. No. C-070752, 2008-Ohio-2980; *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051; *State v. Swank*, Lake App. No. 2008-L-019, 2008-Ohio-6059.

for “sexually oriented offenders,” “habitual sex offenders,” and “sexual predators,” the new law employs three “Tiers,” and it assigns offenders to such tiers based on the offense of conviction and/or the number of convictions. See R.C. 2950.01(E), (F), & (G). It removes discretion from the trial court in classifying an offender, which oftentimes produced illogical results.

Effective January 1, 2008, Tier I offenders must register for fifteen years and must periodically verify their residence address with the sheriff on an annual basis. R.C. 2950.05(B)(3); R.C. 2950.06(B)(1). Tier II offenders must register for twenty-five years and periodically verify every 180 days. R.C. 2950.05(B)(2); R.C. 2950.06(B)(2). Tier III offenders must register for the rest of their life and periodically verify every 90 days. R.C. 2950.05(B)(1); R.C. 2950.06(B)(3). Tier III offenders are also subject to community notification, under which the sheriff is required to notify the offender’s neighbors and certain other persons in the community of, inter alia, the offender’s residence, offense, and Tier III status. R.C. 2950.11. Defendant is a Tier III offender because rape is a Tier III offense. R.C. 2950.01(G)(1)(a).

The General Assembly also expressly provided that the new registration system would apply to offenders who were currently registering. Each of the Appellants herein were previously classified under Ohio’s former Megan’s Law and reclassified according to Ohio’s Adam Walsh Act, as follows: For registrant-offenders not currently in prison, the Attorney General would determine which tier the registrant-offender would belong to. R.C. 2950.031(A)(1). The Attorney General was required to send registered letters to the offenders by December 1, 2007, informing the registrant-offenders of their new Tier classification and their new duties thereunder. R.C. 2950.031(A)(2). Ohio’s Adam Walsh Act also provided a mechanism to challenge the new registration requirements by filing a petition in the common

pleas court in their county of residence. R.C. 2950.031(E). Similar transition provisions were put in place for the Attorney General to reclassify sex offenders in prison. See R.C. 2950.032.

As this Honorable Court is aware, since the inception of Ohio's Adam Walsh Act, effective in sum total on January 1, 2008, sex offenders who committed crimes prior to the effective date have raised a host of challenges to it in the trial courts. Slowly, the lower courts, including appellate courts, have spoken on the myriad issues. The lower courts have reached varying conclusions on the issues presented to this Court for review, including conflicting results within the Eighth District. Because of these inconsistent results, the parties look to this Honorable Court to settle, once and for all, the constitutional challenges to Ohio's Adam Walsh Act raised by sex offenders. The State of Ohio therefore respectfully requests this Court to accept jurisdiction over Propositions of Law II and III. The lower courts desperately seek the guidance of this Court in the application of the new sex offender laws to previously-classified offenders.

In the alternative, the State of Ohio requests this Court to accept jurisdiction over Propositions of Law II and III and hold this case for a decision in *State v. Bodyke*, Case No. 2008-2502, which was recently accepted by this Court for review. *Bodyke* raises similar constitutional concerns.

#### **STATEMENT OF THE CASE AND FACTS**

On July 26, 2007, Appellant, Thomas Dunlap, was indicted for two counts of gross sexual imposition with sexually violent predator specifications, kidnapping and disseminating matter harmful to juveniles. On February 7, 2008, a jury convicted Dunlap of two counts of gross sexual imposition with the specifications and disseminating matter harmful to juveniles.

The trial court, on March 4, 2008, sentenced Dunlap to an aggregate term of two years in

prison. At the same time, the trial court advised Dunlap of his classification under Ohio's Adam Walsh Act, as a Tier III sex offender.

Dunlap appealed his conviction, raising four assignments of error. On appeal, Dunlap argued that the journal entry did not correctly reflect his convictions, gross sexual imposition, as charged in the indictment, was defective, and his classification violated the Retroactivity and Ex Post Facto. The Eighth District Court of Appeals affirmed Dunlap's conviction. *State v. Dunlap*, Cuyahoga App. No. 91165, 2009-Ohio-134.

Dunlap requests this Court to accept jurisdiction on the issues surrounding his classification under Ohio's Adam Walsh Act. For the reasons set forth, the State of Ohio also respectfully requests this Court to accept jurisdiction, or in the alternative, hold this case for this Court's resolution of *Boydke*.

#### **LAW AND ARGUMENT**

##### **PROPOSITION OF LAW I: GROSS SEXUAL IMPOSITION AGAINST A CHILD UNDER 13 IS NOT A STRICT LIABILITY OFFENSE. THE ACT OF SEXUAL CONTACT MUST BE RECKLESSLY PERFORMED.**

Dunlap urges this Court to essentially change the requisite mens rea for the crime of gross sexual imposition of a child under the age of 13. But the Eighth District properly concluded that the mens rea for this offense is strict liability. And numerous other Ohio appellate courts have reached the same conclusion.

With the proposition of law, Dunlap essentially argues that recklessness is the requisite mens rea for the crime of gross sexual imposition, even involving a child under the age of 13. Recently, this Court ruled in *Colon I* that an indictment must charge the culpable mental state. This Court determined that under R.C. 2901.21, the "catchall culpable mental state" of recklessness applied, if a particular crime is silent as to the mental state. In *Colon I*, the

indictment for robbery did not include the necessary element of recklessness, and it was therefore defective. *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624. But an indictment charging gross sexual imposition of a child under the age of 13 is not required to allege that a defendant recklessly committed the act. Instead, the culpable mental state for gross sexual imposition of a child under the age of 13 is strict liability. *State v. O'Dell*, Montgomery App. No. 22691, 2009-Ohio-1040 (“\* \* \* the legislature intended that engaging in sexual conduct with a child under thirteen be a strict liability offense.”); *State v. Ferguson*, Franklin App. No. 07AP-999, 2008-Ohio-6677. And an indictment that charges the offense mirroring the statutory language will not be defective. *Colon* at ¶ 19. Herein, the indictment mirrored the statutory language. And Dunlap’s first proposition is without merit.

**PROPOSITION OF LAW II:  
APPLICATION OF SENATE BILL 10 TO OFFENDERS WHOSE CRIMES  
OCCURRED PRIOR TO ITS EFFECTIVE DATE DOES NOT VIOLATE THE EX POST  
FACTO CLAUSE OF THE UNITED STATES CONSTITUTION.**

The Eighth District properly concluded that that the prolonged registration and community notification provisions do not constitute an ex post facto law. “To fall within the *ex post facto* prohibition, a law must be retrospective -- that is ‘it must apply to events occurring before its enactment’ -- and it ‘must disadvantage the offender affected by it’ \* \* \* by altering the definition of criminal conduct or increasing the punishment for the crime \* \* \*.” *Lynce v. Mathis* (1997), 519 U.S. 433, 442 (citations omitted).

The Ex Post Facto Clause states that “[n]o State shall \* \* \* pass any \* \* \* ex post facto Law.” An ex post facto law literally means “[a]fter the fact; by an act or fact occurring after some previous act or fact, and relating thereto.” *State v. Cook* (1998), 83 Ohio St.3d 404, 414. “To violate the ex post facto clause, the law must be retrospective, such that it applies to events occurring before its enactment. It must also disadvantage the person affected by altering the

definition of criminal conduct or increasing the punishment for the crime.” *State v. Glaude* (Sept. 2, 1999), Eighth App. No. 73757, citing *Lynce v. Mathis* (1997), 519 U.S. 433. In effect, the Ex Post Facto Clause bars a law “that changes the punishment, and inflicts a greater punishment than the law annexed to the crime, when committed \* \* \*.” *Calder v. Bull* (1798), 3 U.S. 386, 390. The State posits that in the present case, the legislature expressly stated that the increased registration requirements, heightened residency restrictions and community notification provisions under Senate Bill 10 are civil in nature. And these additional requirements do not act as “punishment,” thus negating the civil label. In sum, the longer and more frequent registration and community notification provisions are not “punishment.”

#### **Intent**

As previously stated, whether a statute is violative of the Ex Post Facto Clause, a two-prong analysis must be utilized, commonly referred to as the intent-effects test.

The categorization of a particular proceeding as civil or criminal “is first of all a question of statutory construction.” We must initially ascertain whether the legislature meant the statute to establish “civil” proceedings. If so, we ordinarily defer to the legislature’s stated intent. \* \* \*

Although we recognize that a “civil label is not always dispositive,” we will reject the legislature’s manifest intent only where a party challenging the statute provides “the clearest proof” that “the statutory scheme [is] so punitive either in purpose or effect as to negate [the State’s] intention” to deem it “civil.” In those limited circumstances, we will consider the statute to have established criminal proceedings for constitutional purposes.

*Kansas v. Hendricks* (1997), 521 U.S. 346, 361 (citations omitted). A party faces a “heavy burden” when, despite a non-punitive legislative intent, he is claiming the statute imposes “punishment.” *Id.*

The registration and community notification duties do not rise to the level of criminal “punishment.” The General Assembly expressly stated its intent that these measures would be non-punitive and would be meant to serve the non-criminal purposes of aiding law enforcement,

providing helpful information to the public, and protecting the public. R.C. 2950.02(A) & (B). In further examining the legislative intent, the initial placement of the statutes in R.C. Title 29, the title containing the criminal code, is not dispositive of the question of legislative intent. The location and labels of the statute do not by themselves designate the nature of the statute. *Smith v. Doe*, 538 U.S. at 94. See, also, *Lee v. Alabama* (Ala. 2004), 895. Moreover, it has not been shown by the “clearest proof” that the purpose or effect of notification is so punitive as to negate the General Assembly’s intent that notification be treated as remedial.

Additionally, the Ohio Supreme Court has repeatedly upheld registration and community notification in the old system as valid non-punitive measures. “Registration with the sheriff’s office allows law enforcement officials to remain vigilant against possible recidivism by offenders. Thus, registration objectively serves the remedial purpose of protecting the local community.” *Cook*, 83 Ohio St.3d at 417. “Registration allows local law enforcement to collect and maintain a bank of information on offenders. This enables law enforcement to monitor offenders, thereby lowering recidivism.” *Id.* at 421. “Registration has long been a valid regulatory technique with a remedial purpose.” *Id.* at 418. “R.C. Chapter 2950 has the remedial purpose of providing law enforcement officials access to a sex offender’s registered information in order to better protect the public.” *Id.* at 419.

Registration and notification provisions “have the remedial purpose of collecting and disseminating information to relevant persons to protect the public from registrants who may reoffend.” *Cook* at 420. “Notification provisions allow dissemination of relevant information to the public for its protection.” *Id.* at 421. “[N]otification requirements may be a detriment to registrants, but the sting of public censure does not convert a remedial statute into a punitive one.” *Id.* at 423.

#### **Effect**

Examining the punitive nature of the statute, this Court must determine if the statute is so punitive in either its purpose or effect to negate its civil label. In determining whether the statute is so punitive, such that it overcomes the “civil” label, the court must consider five factors. “The factors most relevant to [an ex post facto] analysis are whether, in its necessary operation, the regulatory scheme: has been regarded in our history as punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a non-punitive purpose; or is excessive with respect to this purpose.” *Smith v. Doe*, 538 U.S. at 96. As set forth herein, the effects of the act are not so punitive to overcome the civil label.

(1) Historical Assessment

The registration, notification and residency mechanisms of sex offender laws are not rooted historically as a traditional means of punishment. These restrictions are relatively new and unique. *Id.* at 97. And the United States Supreme Court held, this fact “suggests that the statute was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing.” *Id.*

While a sex offender is required to provide additional information to a sheriff – the name and address of an employer or an institution of higher education – this information is not automatically disseminated to co-workers, fellow students, or the general public in its vicinity. Rather these individuals must actively seek this information. The information that has been supplied results in accurate dissemination of relevant information to further assist the public and protect it.

Additionally, the residency restrictions imposed by the Adam Walsh Act are not designed to banish sex offenders from the community. Rather, the restrictions place certain, minimal

restrictions on the places where a sex offender may reside within a community without completely banishing or restricting him from the community.

(2) Affirmative Disability or Restraint

The restraint posed upon a sex offender is minimal; it is not a physical restraint, such as imprisonment. Nor does it approximate the involuntary commitment of mentally ill sex offenders, which has been held to be non-punitive. *Kan. v. Hendricks* (1997), 521 U.S. at 363-365. And the inability to reside within one thousand feet of a school is even less severe than "occupational debarment" again another non-punitive measure. *Smith*, 538 U.S. at 100.

Furthermore, the act of periodically updating residential and employment information does not equate within the onerous obligations of probation and other forms of conditional release. Under the Adam Walsh Act, a sex offender is required to provide an additional piece of information during his regular reporting cycle. This is not an affirmative disability or a restraint.

(3) Promotes Punishment Via Deterrence and Retribution

While all laws, to some extent, may result in a deterrent effect that is not the primary purpose of the Adam Walsh Act. "Any number of government programs might deter crime without imposing punishment." *Id.* at 102. And "[t]o hold that the mere presence of a deterrent purpose renders \* \* \* sanctions 'criminal' \* \* \* would severely undermine the government's ability to engage in effective regulation \* \* \*." *Hudson*, 522 U.S. at 105.

Rather, the Adam Walsh Act protects citizens from future acts by reducing the opportunity for sex offenders to re-offend. This task is accomplished by restricting a sex offender's residence from within 1000 feet of a school. Much like the Iowa statute in *Doe v. Miller*, the Adam Walsh Act is "designed to reduce the likelihood of re-offense by limiting the

offender's temptation and reducing the opportunity to commit new crimes. *Doe v. Miller*, 405 F.3d at 720. Therefore, this law acts as a remedial measure rather than a deterrent.

In accordance with its remedial nature, the amendments present no criminal repercussions. In its place, civil remedies were instituted by the legislature in passing the Adam Walsh Act, whereby only an enumerated entity may seek injunctive relief. This civil remedy does not ostracize a sex offender from the community; it simply forbids them from living within a certain distance of a school. In essence, the law curtails the negative consequences inflicted upon sex offenders from the community as a whole, and therefore, does not serve as retribution.

(4) Rational Connection to Non-Punitive Purpose

In analyzing an ex post facto claim, the statute must have some rationale connection to a non-punitive purpose. However, the statute does not require such "a close or perfect fit with the non-punitive aim it seeks to advance." *Smith*, 538 U.S. at 103. The amendments in question were passed for the "preservation of the public peace, health, and safety." S.B. 5, Section 9. It thereby furthers the stated intent of Megan's Law, which seeks to protect the health and well being of the general public, with a specific focus on children.

The Adam Walsh Act is specifically targeted at protecting children. By requiring sex offenders to also notify authorities of their place of employment or institution of higher learning (in addition to their residence), it better enables law enforcement to disseminate information and thereby, the public can develop plans to protect their children. While the amendments to Megan's Law still afford sex offenders unfettered access to gainful employment, it empowers another community in which a sex offender spends a significant amount of time on a weekly basis to target against recidivism.

Protecting against the high risk of recidivism coincides with the 1000-foot residency restrictions. The buffer zone reduces access to children, thereby minimizing the opportunity and temptation for sex offenders to re-offend. Additionally, this restriction only places a prohibition on a sex offender's abode; it does not interfere with a sex offender's right to traverse within this buffer zone. The statute has a rational connection to a non-punitive purpose.

(5) Excessive in Light of Its Purpose

Whether a statutory scheme is excessive is "not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the non-punitive objective." *Smith*, 538 U.S. at 105.

Ohio's Adam Walsh Act is a reasonable approach to the compelling interest of public welfare, including child safety. The law requires additional reporting requirements and further limits where a sex offender may live. And as previously stated, it does not limit the sex offender's right to traverse 1000-foot radius for any reason, including employment. A requirement that limits where sex offenders, as a class, reside is not excessively restrictive. As such, the wholesale approach to restricting residency is not so excessive as to be punitive.

The Adam Walsh Act is neither retroactive nor is it punitive. The statute does not violate the ex post facto clause of the United States Constitution.

**PROPOSITION OF LAW III:  
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The new imposition of heightened registration and community notification on Appellant is valid under Article II, Section 28, of the Ohio Constitution, which prohibits the passage of

“retroactive laws.”<sup>2</sup> A retroactive statute is unconstitutional if it retroactively impairs vested substantive rights, but not if it is merely remedial in nature. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶ 9. In *Consilio*, the Ohio Supreme Court applied a two-part test. *Id.* at ¶ 10. Under this test, the court must first determine whether the General Assembly expressly made the statute retroactive. *Id.* If it did, then it must determine whether the statutory restriction is substantive or remedial in nature. *Id.*

A statute must “clearly proclaim” its retroactive application. *Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, paragraph one of the syllabus. Much like the Ohio Supreme Court’s finding in *Cook*, the legislature herein specifically made the statute retroactive. “In *State v. Cook* \* \* \* our finding that the General Assembly specifically made R.C. 2950.09 retroactive was based in part on an express provision making the statute applicable to anyone who ‘was convicted of or pleaded guilty to a sexually oriented offense prior to the effective date of this section, if the person was not sentenced for the offense on or after’ that date. *Hyle v. Porter* (2008), 117 Ohio St.3d 165, 2008-Ohio-542, ¶ 16.

Dunlap concedes that the statute is retroactive. The test now turns to second part of the test. And as set forth below, the statute is remedial in nature.

..... A statute is substantive in nature if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right.” *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 107. On the other hand, remedial laws are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right. *Cook* at 411. Senate Bill 10 does not “impos[e] new duties and obligations upon a

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<sup>2</sup> Ohio’s Retroactivity Clause provides a broader prohibition than that afforded under the Ex Post Facto Clause of the United States Constitution.

person's past conduct and transactions \* \* \*." *Personal Serv. Ins. Co. v. Mamone* (1986), 22 Ohio St.3d 107, 109, quoting *Lakengren v. Kosydar* (1975), 44 Ohio St.2d 199, 201. Conduct or transactions are "past" only if there is a "reasonable expectation of finality" as to those matters. *Matz*, 37 Ohio St.3d at 281-82. The commission of a felony does not create such a reasonable expectation of finality. *Id.*

The registration and community notification provisions of Ohio's Adam Walsh Act are remedial, so that they may be applied to prior offenders. As the *Cook* Court held: "[R]egistration and verification provisions are remedial in nature and do not violate the ban on retroactive laws \* \* \*." *Cook* at 413. In *Cook*, the Ohio Supreme Court reviewed the wholesale amendments to the prior version of Chapter 2950, originally enacted in 1963. While the Court noted that some of the amendments were directed at officials, rather than offenders, House Bill 180, in totality, amended the frequency and duration of the registration requirements, much like the Adam Walsh Act has done now. Additionally, it increased the number of classifications from one to three. The Adam Walsh Act essentially maintains the three classification levels; it merely renames them (which is a benefit to sex offenders). Clearly, the amendment of the registration provisions are a substitution better-suited to protect the public. "We cannot conclude that the Retroactivity Clause bans the compilation and dissemination of truthful information that will aid in public safety." *Id.*

In addition, community notification has already been deemed a non-punitive regulatory matter that could be newly-imposed on prior offenders, even those that had not been subject to any sex-offender registration laws at all before. *Cook*, supra. "Had the Legislature chosen to exempt previously-convicted offenders, the notification provision of the law would have provided absolutely no protection whatsoever on the day it became law, for it would have applied to no one." *Cook* at 412-413, citing *Doe v. Poritz* (1995), 142 N.J. 1, 662 A.2d 367.

Nor can Appellant claim a reasonable expectation of finality because they were initially processed under the old system, and in some instances, without community notification having been required. As the Ohio Supreme Court recently stated: “[N]o one has a vested right in having the law remain the same over time. If by relying on existing law in arranging his affairs, a citizen were made secure against any change in legal rules, the whole body of our law would be ossified forever.” *East Liverpool v. Columbiana Cty. Budget Comm.*, 114 Ohio St.3d 133, 2007-Ohio-3759, at ¶ 30. Finally “dissemination provisions do not impinge on any reasonable expectation of finality defendant may have had with regard to his conviction \* \* \*.” *Cook* at 414. If entirely new provisions, such as community notification, could be imposed on old offenders, it stands to reason that the General Assembly could take the smaller step here of adding to the provisions that were already applicable to these Appellants.

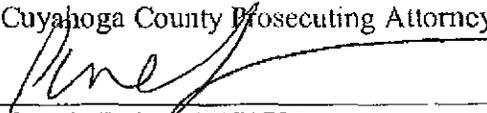
The Ohio General Assembly expressly made this law retroactive. More importantly, the revisions contained therein are remedial, rather than substantive in nature. And for these reasons, the Eighth District did not err in finding no violation under Ohio’s Retroactivity Clause.

### CONCLUSION

Accordingly, the State of Ohio respectfully requests this Court to accept jurisdiction over this case on Propositions of Law II and III, or in the alternative, hold this case for a decision in *Bodyke*.

Respectfully submitted,  
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**SERVICE**

A copy of the foregoing Memorandum In Support of Jurisdiction has been mailed this 10<sup>th</sup> day of April, 2009, to John T. Martin, 310 Lakeside Avenue, 2<sup>nd</sup> Floor, Cleveland, Ohio 44113.

A handwritten signature in cursive script, appearing to read "Amel", written over a horizontal line.

Assistant Prosecuting Attorney