

ORIGINAL

IN THE SUPREME COURT OF OHIO

09-1086

GILDERSLEEVE, ROBERT	91515
STEVENS, JAMES W.	91516
BROWN, JOHN	91517
TOPEKA, MICHAEL	91518
BOHAMMON, ROBERT	91519
EVANS, JOHN W.	91521
MAVER, SHAWN	91522
REDDICK, DEMETRIUS	91523
WELLS, RALPH	91524
MONCRIEF, WILLIE	91525
HARRIS, ARNOLD	91526
SCHNEIDER, EDWARD	91527
JONES, CHARLES	91528
PATTERSON, WESLEY	91529
PATTERSON, MARK	91530
ZAMORA, ROBERT	91531
ORR, DWAYNE	91532

On Appeal from the  
Cuyahoga County Court  
of Appeals, Eighth  
Appellate District Court  
of Appeals

Appellants	:
	:
-vs-	:
STATE OF OHIO	:
	:
Appellee	:

---

**MEMORANDUM IN SUPPORT OF JURISDICTION**  
**OF APPELLANT**

---

COUNSEL FOR APPELLEE, THE  
STATE OF OHIO

COUNSEL FOR APPELLANTS ROBERT  
GILDERSLEEVE, ET. AL

WILLIAM MASON, ESQ.  
Cuyahoga County Prosecutor  
The Justice Center – 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, OH 44113  
(216) 443-7800

ROBERT L. TOBIK, ESQ.  
Cuyahoga County Public Defender  
BY: CULLEN SWEENEY (COUNSEL  
OF RECORD)  
# 0077187  
Assistant Public Defender  
310 Lakeside Avenue  
Suite 200  
Cleveland, OH 44113  
(216) 443-7583  
(216) 443-3632 FAX  
*cswweeney@cuyahogacounty.us.*

FILED

JUN 15 2009

CLERK OF COURT  
SUPREME COURT OF OHIO

## TABLE OF CONTENTS

	PAGES
EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND AN ISSUE OF GREAT GENERAL AND PUBLIC INTEREST: .....	1
STATEMENT OF THE CASE AND FACTS .....	1
LAW AND ARGUMENT .....	4
<i>Proposition of Law I: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders whose crimes occurred before its effective date violates the Ex Post Facto Clause of the United States Constitution. ....</i>	<i>4</i>
<i>Proposition of Law II: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders whose crimes occurred before its effective date violates the Retroactivity Clause of the Ohio Constitution. ....</i>	<i>6</i>
<i>Proposition of Law III: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who were previously classified under Ohio’s Megan’s Law effectively vacates valid judicial orders, and violates the Separation of Powers Doctrine embodied in the Ohio Constitution. ....</i>	<i>9</i>
<i>Proposition of Law IV: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who have previously been sentenced for sex offenses violates the Double Jeopardy Clauses of the Ohio and United States Constitutions. ....</i>	<i>10</i>
<i>Proposition of Law V: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who have previously been subject to the provisions of Megan’s Law violates Due Process and constitutes cruel and unusual punishment as prohibited by the Ohio and United States Constitutions. ....</i>	<i>11</i>
<i>Proposition of Law VI: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who entered into a plea agreement with the State of Ohio prior to the effective date of Senate Bill 10 constitutes a breach of contract and impairs the obligation of contracts as protected by the Ohio and United States Constitutions. ....</i>	<i>12</i>
CONCLUSION.....	13
SERVICE.....	13

## APPENDIX

Appointment of the Public Defender for purposes of appeal (Gildersleeve).....	A1
Opinion from the Eighth District Court of Appeals	
<i>Robert Gildersleeve, Et. Al vs. State of Ohio 2009 Ohio 2031</i> .....	A2
Gildersleeve, Robert	91515 (CV08-648935).....A38
Stevens, James W.	91516 (CV08-651271).....A39
Brown, John	91517(CV08-648978).....A40
Topeka, Michael	91518 (CV08-647560).....A41
Bohammon, Robert	91519 (CV08-649277).....A42
Evans, John W.	91521 (CV08-652329).....A43
Maver, Shawn	91522 (CV08-646682).....A44
Reddick, Demetrius	91523 (CV08-646646).....A45
Wells, Ralph	91524 (CV08-652131).....A46
Moncrief, Willie	91525 (CV08-651446).....A47
Harris, Arnold	91526 (CV08-652246).....A48
Schneider, Edward	91527 (CV08-648361).....A49
Jones, Charles	91528(CV08-647325).....A50
Patterson, Wesley	91529 (CV08-646910).....A51
Patterson, Mark	91530 (CV08-646012).....A52
Zamora, Robert	91531 (CV08-648749).....A53
Orr, Dwayne	91532 (CV08-647701).....A54

**EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND AN ISSUE OF GREAT GENERAL AND  
PUBLIC INTEREST:**

This case involves a consolidated appeal by seventeen individuals challenging the constitutionality of retroactively reclassifying them under Ohio's new or more onerous sex offender law (the "Adam Walsh Act" or "AWA"). This Court has already accepted a case to address these very same constitutional questions. *State v. Bodyke*, Sup. Ct. Case No. 2008-2502. Appellants' propositions of law should therefore be accepted and held for decision in *Bodyke*.

**STATEMENT OF THE CASE AND FACTS**

**A. Appellants' Sex Offender Classifications Under Ohio's Megan's Law.<sup>1</sup>**

This consolidated appeal involves seventeen appellants. Sixteen of the appellants were previously classified as sexually-oriented offenders under Ohio's Megan's Law, the least restrictive classification: Robert Bohammon, John R. Brown, John Evans, Robert Gildersleeve, Arnold Harris, Charles Jones, Shawn Maver, Willie Moncrief, Dwayne O. Orr, Wesley Patterson, Demetrious Reddick, Edward Schneider, James Stevens, Michael Topeka, Ralph Wells, and Robert Zamora. Appellant Mark Patterson was classified as a habitual sex offender without community notification.<sup>2</sup>

**B. Appellants' Sex Offender Reclassification Pursuant to the Adam Walsh Act.**

The Ohio Attorney General reclassified appellants pursuant to the recently enacted Adam Walsh Act (R.C. 2950.01 *et seq.*). Enacted on June 30, 2007, Ohio's AWA fundamentally transforms Ohio's sex offender classification process and offender registration requirements,

---

<sup>1</sup> In this brief, appellants will be referring to Ohio's former sex offender registration and notification law, which was enacted in 1996 via House Bill 180, as "Ohio's Megan's Law."

<sup>2</sup> All of these classification decisions were made after a judicial hearing except for Moncrief, Wells, and Zamora. The State did not seek a classification hearing with respect to Wells and Zamora and stipulated to Moncrief's classification as a sexually oriented offender.

notification requirements, and residency restrictions. Unlike sex offender classifications under Ohio's Megan's Law which were based on an offender's likelihood of committing future sex offenses, Ohio's AWA assigns sex offenders to one of three tiers based solely on the offense of conviction with no consideration of the offenders' risk to the community or likelihood of reoffending. For all appellants, the retroactive application of the AWA extends their registration periods and/or increases their obligations and responsibilities as classified sex offenders.

Appellant James Stevens been reclassified as Tier I Sex Offenders. As a result of this new classification, he will be required to register annually for 15 years rather than annually for 10 years as a sexually oriented offender and will be subject to more stringent restrictions on where he can lawfully reside.

Appellants John Evans, Willie Moncrief, Edward Schneider, Michael Topeka, and Robert Zamora have been reclassified as Tier II Sex Offenders. As a result of this new classification, they will be required to register every 180 days for 25 years rather than annually for 10 years and will be subject to stringent restrictions on where they could lawfully reside.

Appellants Robert Bohammon, John R. Brown, Robert Gildersleeve, Arnold Harris, Charles Jones, Shawn Maver, Dwayne O. Orr,<sup>3</sup> Mark Patterson, Wesley Patterson, Demetrious Reddick, and Ralph Wells have been reclassified as Tier III Sex Offenders. As a result of this new classification, they will be required to register every 90 days for life as Tier III Sex Offenders rather than annually for 10 years as sexually oriented offenders,<sup>4</sup> will be subject to community notification requirements for the first time, and will be subject to stringent

---

<sup>3</sup> The State conceded that Mr. Orr had been misclassified as a Tier III Sex Offender instead of a Tier I Sex Offender, and the trial court corrected his classification. However, Mr. Orr still maintains that the AWA cannot be retroactively applied to him.

<sup>4</sup> As a habitual sex offender, Mark Patterson was previously required to register annually for 20 years.

restrictions on where they can lawfully reside.

### C. Proceedings Below

Appellants filed petitions challenging the application of the Adam Walsh Act, and their petitions were randomly assigned to the docket of Judge Shirley Strickland Saffold.<sup>5</sup> With their petitions, appellants argued that the retroactive application of the Adam Walsh Act violated several constitutional provisions, including the Ex Post Facto and Retroactivity Clauses of the United States and Ohio Constitutions (ART. I, SEC. 10 U.S. CONST.; ART. II, SEC. 28 OHIO CONST.), the Double Jeopardy Clauses of the United States and Ohio Constitutions (U.S. CONST. AMEND. V; ART. I, SEC. 10 OHIO CONST.), the Due Process Clauses of the United States and Ohio Constitutions (U.S. CONST. AMEND. XIV; ART. I, SEC. 16 OHIO CONST.), the prohibition on cruel and unusual punishment in the United States and Ohio Constitutions (U.S. CONST. AMEND. VIII; ART. I, SEC. 9 OHIO CONST.), and the separation of powers doctrine encompassed in the Ohio Constitution. Moreover, several petitioners argued that the retroactive application of the AWA constituted a breach of their plea agreements. Finally, several petitioners argued that, pursuant to R.C. 2950.11(F)(2), they must be relieved of community notification.

The trial court appointed the public defender to represent the *pro se* petitioners,<sup>6</sup> established a consolidated briefing schedule, and scheduled a single consolidated hearing on the requests for a preliminary injunction and on the merits of the petition. The trial court held a hearing on April 23, 2008. After oral argument by counsel for petitioners and the State of Ohio,

---

<sup>5</sup> These petitions were filed as new civil cases per the policy of the Cuyahoga County Common Pleas Clerk's Office.

<sup>6</sup> Ten of the appellants (Robert Bohammon, John Brown, John Evans, Robert Gildersleeve, Arnold Harris, Willie Moncrief, Dwayne Orr, Michael Topeka, James Stevens, Robert Zamora) filed their petitions *pro se*.

the trial court rejected all of petitioners' arguments, found "the Adam Walsh Act to be constitutional," and refused to relieve any of the petitioners of community notification as provided by R.C. 2950.11(F)(2).

Petitioners filed a timely appeal with the Eighth District Court of Appeals. On April 30, 2009, the Eighth District issued a decision, affirming in part and reversing in part. *Gildersleeve v. State*, Cuyahoga App. No. 91515-91519, 91521-91532, 2009 Ohio 2031. In a 2-1 decision, the Eighth District affirmed the trial court's ruling that the retroactive application of the Adam Walsh Act was constitutional and did constitute a breach of petitioner's plea agreements. *Id.* at ¶¶ 17-54. The dissenting judge would have held that the Adam Walsh Act was unconstitutional as applied to petitioners. *Id.* at ¶ 89 (Sweeney, J., dissenting). However, the Eighth District reversed the trial court's decision on several petitioner's request for relief from community notification pursuant to R.C. 2950.11(F)(2). *Id.* at ¶¶ 55-84. It also reversed the trial court's decision to dismiss two petitioner's cases due to their failure to appear at the hearing. *Id.* at ¶¶ 85-87.

This timely appeal follows.

## LAW AND ARGUMENT

*Proposition of Law I: Application of Senate Bill 10 ("Ohio's Adam Walsh Act") to offenders whose crimes occurred before its effective date violates the Ex Post Facto Clause of the United States Constitution.*

The retroactive application of Senate Bill 10 to crimes that occurred before January 1, 2008 violates the Ex Post Facto Clause of the United States Constitution.

The *Ex Post Facto* Clause of Article I, Section 10 of the United States Constitution prohibits, among other things, any legislation that "changes the punishment, and inflicts greater punishment, than the law annexed to the crime, when committed." *Miller v. Florida* (1987), 482

U.S. 423, 429 (quoting *Calder v. Bull* (1798), 3 Dall. 386, 390). In analyzing whether a challenged statute imposes retroactive punishment in violation of the federal prohibition on *ex post facto* laws, this Court must apply the intents-effect test. *State v. Cook* (1998), 83 Ohio St. 3d 404, 415.

The fundamental question presented by this Proposition of Law is whether Ohio's current sex offender law (Adam Walsh Act), *taken as a whole*, is punitive in either intent or effect. In so doing, this Court must look at the entirety of the legislation including, but not limited to, the changes worked by the Adam Walsh Act. Although this is an issue of first impression for this Court, this Court's recent decision in *State v. Ferguson* (2008), 120 Ohio St.3d 7 suggests that the Adam Walsh Act is unconstitutional.

In *Ferguson*, this Court addressed an *ex post facto* challenge to the retroactive application of the 2003 amendments to Ohio's Megan's Law. Although this Court upheld the 2003 amendments in a 4-3 decision, *Ferguson* illustrates that Megan's Law, as amended in 2003, pushed the limits of what was constitutionally permissible in terms of retroactive sex offender legislation and that the Adam Walsh Act, which is significantly more burdensome, crosses the threshold of punitive legislation. The following chart highlights many of the qualitative and quantitative differences between Ohio's Megan's Law, as reviewed by this Court in *Ferguson*, and the Adam Walsh Act:

<b>OHIO'S MEGAN'S LAW (As Reviewed in <i>State v. Ferguson</i>)</b>	<b>OHIO'S ADAM WALSH ACT</b>
1. Three classification levels: - Sexual Predator (Register Every 90 Days for Life) - Habitual Sex Offender (Register Annually for 20 Years) - Sexually Oriented Offender (Register Annually	1. Three classification levels: - Tier III (Register Every 90 Days for Life) - Tier II (Register Every 6 Months for 25 Years) - Tier I (Register Annually for 15 Years)

for 10 Years)	
2. Individualized judicial classification after a hearing where the State carries the burden	2. Categorical classification based on offense of conviction (no individualized hearing)
3. Classification based on an individual's actual risk of sexual recidivism and risk to the community	3. An individual's actual risk of sexual recidivism and risk to the community is irrelevant
4. Community notification via postcard only for the individuals likely to commit future sex offenses	4. Community notification sent without regard to likelihood of re-offending sexually
5. No restrictions on where offenders can live	5. Severe residency restrictions (not within 1000 feet of a school, pre-school, or daycare)
6. Disclosure of minimal personal information	6. Disclosure of an immense amount of highly personal information
7. Criminal penalties for non-compliance (maximum of 5 years in prison)	7. Enhanced criminal penalties (maximum of 10 years in prison; mandatory minimum sentences in certain cases)

Ohio's Adam Walsh Act operates to impose punishment on offenders for the commission of specific crimes by disregarding a prior judicial determination that appellant does not represent a significant ongoing risk to the community, by tying sex offender classification decisions and obligations directly and solely to the crime of conviction, and by imposing obligations which are excessive in relation to, and even counterproductive to, any purported remedial objective. As such, the retroactive application of the law violates the *Ex Post Facto* Clause.

*Proposition of Law II: Application of Senate Bill 10 ("Ohio's Adam Walsh Act") to offenders whose crimes occurred before its effective date violates the Retroactivity Clause of the Ohio Constitution.*

The retroactive application of Senate Bill 10 to crimes that occurred before January 1, 2008 violates the Retroactivity Clause of the Ohio Constitution.

Article II, Section 28 of the Ohio Constitution expressly forbids the enactment of retroactive laws. *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St. 3d 100, 106. With this guarantee, the Ohio Constitution affords its citizens greater protection against retroactive laws than does the Ex Post Facto Clause of the United States Constitution. *Van Fossen*, 36 Ohio St.3d at 105. This constitutional bar on retroactive laws has been interpreted to apply to laws affecting substantive rights but not to procedural or remedial aspects of such laws. *Kunkler v. Goodyear Tire & Rubber Co.* (1988), 36 Ohio St.3d 135, 137. A statute is substantive—and therefore unconstitutional if applied retroactively--if it “impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation or liabilities as to a past transaction, or creates a new right.” *Cook*, 83 Ohio St. 3d at 411.

The Adam Walsh Act is a substantive law because, among other things, it impairs appellants’ right to reside where they wish by providing that they cannot reside within 1000 feet of a day-care center and pre-school in addition to schools as defined under the prior law. R.C. 2950.034.

Moreover, due to Senate Bill 10’s reclassification of appellants, their registration obligations have increased, at the very least, by five years and, in most cases, from ten years to lifetime registration. This additional obligation and burden subjects appellants to the prospect of increasingly severe criminal penalties if they fail to comply with the extended registration and verification requirements of the new law. R.C. 2950.99. The State argued below that the Adam Walsh Act essentially maintains the same classification system but “merely renames” the classification levels. (State’s Br. at 9). Such a statement wildly understates the impact of the Adam Walsh Act on individual appellants. The Adam Walsh Act not only alters the classification system but increases the classification level for those previously classified under

Ohio's Megan's Law. Most appellants were found, by a trial court, not to be a significant risk to the community and therefore faced only 10 years of annual registration. With the enactment of the AWA, many appellants now find themselves reporting four times a year for the *remainder of their lives* and facing *lifetime* community notification and *lifetime* residency restrictions.

Not only does S.B. 10 impose new and additional burdens upon an offender, it also takes away or impairs vested rights. Persons who have been previously adjudicated sexually oriented or habitual sex offenders under Ohio's Megan's Law have a vested right in the final judgments which limited their registration duties to ten or twenty years. The State argued below that appellants' retroactivity claim fails in light of *State ex rel. Matz. v. Brown* (1988), 37 Ohio St. 3d 279. *Matz* is inapposite, however. In *Matz*, the Ohio Supreme Court held that the commission of felony does not, by itself, create a "reasonable expectation of finality" that "their conduct will never thereafter be made the subject of legislation." *Id.* at 281-82. Appellants are *not* arguing that their felony convictions created an expectation of finality but rather that they possess an expectation of finality in their judicially determined sex offender classification. Such classification decisions, made by a trial court after a hearing and subject to appeal by both parties, established specific time-limited obligations and burdens that appellants had reason to expect were final. By retroactively reclassifying individuals previously adjudicated as the lowest levels of sex offender and increasing their obligations without any consideration given to the prior judicial adjudication, the Adam Walsh Act impairs appellants' vested rights.

Because Senate Bill 10 is a substantive law, it is unconstitutional as applied to appellant, whose criminal conduct preceded the effective date of its restrictions.

*Proposition of Law III: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who were previously classified under Ohio’s Megan’s Law effectively vacates valid judicial orders, and violates the Separation of Powers Doctrine embodied in the Ohio Constitution.*

The legislative and executive branches’ attempt to reclassify petitioners under Ohio’s AWA violates the separation of powers doctrine by interfering with prior judicial adjudications regarding petitioners’ sex offender status.

A statute that violates the doctrine of separation of powers is unconstitutional. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St. 3d 451, 475. This doctrine is embedded in the very framework of the Ohio Constitution which defines “the nature of scope of powers designated to the three branches of government.” *Id.* (quoting *State v. Hochhausler* (1996), 76 Ohio St. 3d 455, 463. As a part of this doctrine, courts “possess all powers necessary to secure and safeguard the free and untrammled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.” *Zangerle v. Court of Common Pleas* (1943), 141 Ohio St. 70, paragraph two of the syllabus. Courts must “jealously guard the judicial power against encroachment from the other two branches of government” in order “to avoid the evils that would flow from legislative encroachments on our independence.” *City of Norwood v. Horney* (2006), 110 Ohio St. 3d 353, 387.

Prior to the enactment of the AWA, the determination of whether and how an offender had to register as a sexual offender was specifically reserved to the judiciary. *Cf. State v. Eppinger* (2001), 91 Ohio St. 3d 158, 166. Specifically, the trial court had the responsibility to determine whether an individual was a sexual predator and/or habitual sex offender or simply a sexually oriented offender. *See* R.C. 2950.09 (pre-AWA). The finality of court judgment is critical to the fair and effective administration of justice. *See United States v. Daddino* (C.A. 7 1993), 5 F.3d 262, 265; *see also Wightman v. Consol. Rail Corp.* (1999), 86 Ohio St. 3d 431,

443. Once a court order becomes final, it is immune from executive-branch interference. *City of South Euclid* (1986), 28 Ohio St.3d 157, 163 (striking down a statute that an executive branch agency to overrule final court judgments).

S.B. 10 requires the Attorney General, an executive branch official, to vacate existing court judgments regarding sex offenders' classifications and to replace them with new classifications which substantially alter the burdens and obligations of each appellant. Such interference with previous judicial adjudications impermissibly encroaches on judicial authority and violates the separation of powers doctrine.

*Proposition of Law IV: Application of Senate Bill 10 ("Ohio's Adam Walsh Act") to offenders who have previously been sentenced for sex offenses violates the Double Jeopardy Clauses of the Ohio and United States Constitutions.*

Senate Bill 10 violates the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I, Section 10 of the Ohio Constitution by inflicting a second punishment upon a sex offender for a single offense. These constitutional provisions forbid the imposition of multiple criminal punishments for the same offense in successive proceedings. *Hudson v. United States* (1997), 522 U.S. 93, 98-99; *State v. Martello* (2002), 97 Ohio St. 3d 398, 399-400.

As explained in appellants' first and second propositions of law, the obligations and burdens imposed by Senate Bill 10 are punitive in both intent and effect and therefore, as applied to appellants, constitutes additional punishment. Appellants were first punished when they were sentenced as many as 33 years ago for their underlying criminal conduct. Senate Bill 10 provides for the imposition of new punishment by subjecting them to its more onerous requirements as of January 1, 2008. Because appellants' reclassification under the AWA adds

punishment at a successive proceeding, it is unconstitutional and violates the state and federal Double Jeopardy Clauses.

*Proposition of Law V: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who have previously been subject to the provisions of Megan’s Law violates Due Process and constitutes cruel and unusual punishment as prohibited by the Ohio and United States Constitutions.*

The Eighth Amendment to the United States Constitution and Article I, Section 9 of the Ohio Constitution similarly provide: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” The Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. *Atkins v. Virginia* (2002), 536 U.S. 304. This right flows from the basic “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Weems v. United States* (1910), 217 U.S. 349, 367.

When it comes to laws that involve sex offenders, the passions of the majority must be tempered with reason. Joseph Lester, *The Legitimacy of Sex Offender Residence and Employment Restrictions*, 40 AKRON L. REV. 339, 340 (2007). “Overborne by a mob mentality for justice, officials at every level of government are enacting laws that effectively exile convicted sex offenders from their midst with little contemplation as to the appropriateness or constitutionality of their actions.” *Id.* “Given that the sex-offender lobby is neither large nor vocal, it is up to the courts to protect the interests of this disenfranchised group.” *Id.*, citing *Cal. Dept. of Corr. V. Morales* (1995), 514 U.S. 499, 522 (Stevens, J. dissenting) (“The danger of legislative overreaching . . . is particularly acute when the target of the legislation is a narrow group of unpopular (to put it mildly) as multiple murderers [or sex offenders]. There is obviously little legislative hay to be made in cultivating the multiple-murderer [or sex offender] vote.”)

Particularly for those offenders who have served their periods of incarceration (or supervision) and have previously been determined to be the least likely to reoffend, the extensive registration, notification, and residency restrictions imposed by S.B. 10 is disproportionate to their crimes.

*Proposition of Law VI: Application of Senate Bill 10 (“Ohio’s Adam Walsh Act”) to offenders who entered into a plea agreement with the State of Ohio prior to the effective date of Senate Bill 10 constitutes a breach of contract and impairs the obligation of contracts as protected by the Ohio and United States Constitutions.*

In addition to the constitutional problems associated with the retroactive application of the AWA, such application of the AWA also constitutes a breach of appellants’ plea agreements.<sup>7</sup>

Appellants resolved the criminal charges against them by entering into plea agreements with the State of Ohio. Appellants’ sex offender classification and the attendant obligations imposed by the sex offender law in existence *at the time* of appellants’ plea were material parts of appellants’ plea agreement. The State of Ohio’s retroactive application of Senate Bill 10 to reclassify appellants and impose new and additional obligations constitutes a breach of that plea agreement. This breach also involves an impairment of an obligation of contract prohibited by Section 28, Article II of the Ohio Constitution and Article I, Section 10, Clause 1 of the United States Constitution (“No State shall . . . pass any . . . Law impairing the Obligation of Contracts).

A plea agreement is a contract that binds the State and is governed by principles of contract law. *State v. Butts* (1996), 112 Ohio App. 3d 683, 686; *see also Layne v. Ohio Adult Parole Authority* (2002), 97 Ohio St. 3d 456. Moreover, “the law in effect at the time a plea

---

<sup>7</sup> This proposition of law applies to appellants Robert Bohammon, John Brown, John Evans, Robert Gildersleeve, Charles Jones, Shawn Maver, Willie Moncrief, Dwayne Orr, Wesley Patterson, Mark Patterson, Demetrious Reddick, Edward Schneider, James Stevens, and Michael Topeka.

agreement is entered is part of the contract. *Ridenour v. Wilkinson*, Franklin App. No. 07AP-200, 2007 Ohio 5965, ¶ 21, citing *Ankrom v. Hageman*, Franklin App. No. 04AP-984, 2005 Ohio 1546. When a plea agreement is breached, the breach may be remedied by specific performance. *Santobello v. New York* (1971), 404 U.S. 257.

When appellants entered into plea agreements, there were different sex offender laws in effect at the time which were a part of the agreement. By enacting Senate Bill 10 and applying it retroactively to appellants, the State has materially breached appellants' plea agreements by subjecting them to enhanced sex offender classifications with more onerous obligations. As such, appellants are entitled to specific performance of the State's obligation to impose sex offender requirements that are materially identical to those contemplated by the law in effect at the time of the plea agreement.

### CONCLUSION

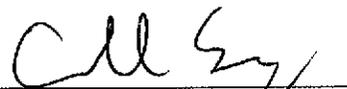
For the foregoing reasons, Appellants respectfully ask this Court to accept jurisdiction over this matter as it presents substantial constitutional questions for review.

Respectfully submitted,

  
CULLEN SWEENEY, ESQ.  
Counsel for Appellants

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to William Mason, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113, on this 11 day of June, 2009.

  
CULLEN SWEENEY, ESQ.



51227447

EDF

A1

# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

F

ROBERT E GILDERSLEEVE  
Plaintiff

Case No: CV-08-648935

Judge: SHIRLEY STRICKLAND SAFFOLD

STATE OF OHIO  
Defendant

## JOURNAL ENTRY

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

*[Handwritten Signature]* *5/2/08*  
\_\_\_\_\_  
Judge Signature Date

RECEIVED FOR FILING

MAY 05 2008

By *[Handwritten Signature]* GERALD E. PIERST, CLERK Dep.

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
Nos. 91515 - 91519 and 91521 - 91532

---



**ROBERT GILDERSLEEVE, ET AL.**

PLAINTIFFS-APPELLANTS

vs.

**STATE OF OHIO**

DEFENDANT-APPELLEE



---

**JUDGMENT:**  
**AFFIRMED IN PART, REVERSED IN PART,**  
**AND REMANDED**

---

Civil Appeals from the  
Cuyahoga County Common Pleas Court  
Case Nos. CV-648935, CV-651271, CV-648978, CV-647560,  
CV-649277, CV-652329, CV-646682, CV-646646, CV-652131,  
CV-651446, CV-652246, CV-648361, CV-647325, CV-646910,  
CV-646012, CV-648749, and CV-647701

**BEFORE:** Boyle, J., Stewart, P.J., and Sweeney, J.

**RELEASED:** April 30, 2009

**JOURNALIZED:** MAY 11 2009

0681 00347

**ATTORNEYS FOR APPELLANTS**

Robert L. Tobik  
Cuyahoga County Chief Public Defender  
Cullen Sweeney, Assistant Public Defender  
Paul Kuzmins, Assistant Public Defender  
310 Lakeside Avenue  
Suite 200  
Cleveland, Ohio 44113

**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor  
Pamela Bolton, Assistant Prosecutor  
Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

**FILED AND JOURNALIZED  
PER APP. R. 22(B)**

**MAY 11 2009**

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.  
ANNOUNCEMENT OF DECISION  
PER APP. R. 22(B), 22(D) AND 26(A)  
**RECEIVED**

**APR 30 2009**

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

**RECEIVED FOR FILING  
MAY 19 2009**

GERALD E. FUERST, CLERK  
BY [Signature] Deputy

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

**NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-COSTS TAXED**

MARY J. BOYLE, J.:

This case consists of 17 consolidated appeals involving 17 appellants<sup>1</sup> convicted of various sex offenses who had previously been classified under H.B. 180, Ohio's Megan's Law (former R.C. Chapter 2950), and have now been classified under S.B. 10, Ohio's Adam Walsh Act ("AWA").<sup>2</sup> Because we find merit to appellants' eighth and ninth assignments of error, we affirm in part, reverse in part, and remand.

Appellants were notified by the Ohio Attorney General via registered letter that they would be reclassified under the AWA. They filed petitions challenging their reclassification under the AWA, as well as a request for a preliminary injunction to prevent the AWA from applying to them until the court ruled on their petitions. Several appellants who had been classified as a Tier III offender also requested the court to relieve them of community notification.

The trial court consolidated the cases, held a hearing, denied the petitioners' challenges and preliminary injunction request, and found the AWA

---

<sup>1</sup>See Appendix for list of appellants, the crime they were convicted of, their old H.B. 180 classification, and their new S.B. 10 classification.

<sup>2</sup>All sections of S.B. 10 did not become effective on the same date. Sections 1 to 3 (and certain other provisions) became effective on July 1, 2007. The remaining provisions (including when the tier classifications went into effect) became effective on January 1, 2008. See Am.Sub.S.B. 10, Final Bill Analysis. The AWA and S.B. 10 will be used interchangeably throughout this opinion.

-2-

to be constitutional. It is from this judgment that appellants now appeal, raising nine assignments of error for our review.

“[I.] The retroactive application of Senate Bill 10 violates the Ex Post Facto Clause of the United States Constitution.

“[II.] The retroactive application of Senate Bill 10 violates the Retroactivity Clause of the Ohio Constitution.

“[III.] The retroactive application of Senate Bill 10 violates the separation of powers doctrine.

“[IV.] Senate Bill 10 violates the Double Jeopardy Clause of the United States Constitution and Section 10, Article I[,] of the Ohio Constitution.

“[V.] Senate Bill 10, as applied to appellant[s], violates the United States and Ohio Constitutions’ prohibition against cruel and unusual punishment.

“[VI.] Senate Bill 10’s residency restrictions violate the due process clauses of the United States and Ohio Constitution [sic].

“[VII.] The retroactive application of Senate Bill 10 constitutes a breach of appellant’s [sic] plea agreements and impairs the obligation of contract protected by Article I, Section 10, Clause I of the United States Constitution and Section 28, Article II[,] of the Ohio Constitution.

“[VIII.] The trial court erred by categorically denying appellants relief from community notification pursuant to R.C. 2950.11(F)(2).

VOL 681 00350

"[IX.] The trial court erred in dismissing appellants Mark Patterson and Robert Zamora's petitions with prejudice for failing to appear at the April 23, 2008 hearing."

### **Background**

S.B. 10 modified former R.C. Chapter 2950 ("Megan's Law") so that it would be in conformity with the federal AWA. The changes made to R.C. Chapter 2950 by S.B. 10 altered the sexual offender classification system. Under pre-S.B. 10, depending on the crime committed and the findings by the trial court at the sexual classification hearing, an offender who committed a sexually oriented offense could be labeled a sexually oriented offender, a habitual sex offender, or a sexual predator. See former R.C. 2950.09. Each classification required registration and notification requirements.

Under Megan's Law, a sexually oriented offender was required to register with the sheriff in the county of his or her residence, employment, and school annually for ten years. A sexually oriented offender was not subject to "community notification" of this information; i.e., the information a sexually oriented offender was required to provide to the sheriff was not shared with the public. A habitual sex offender was required to register his or her address annually for 20 years and may or may not have been subject to community

7810681 00351

-4-

notification. A sexual predator was required to register every 90 days for life and was subject to community notification.

S.B. 10 abolished those classifications. The new provisions leave little, if any, discretion to the trial court in classifying an offender. See R.C. 2950.01. Instead, the statute requires the trial court to classify an offender based solely on his or her conviction. Depending on what crime the offenders committed, they are classified as a Tier I, Tier II, or Tier III sex offender. R.C. 2950.01(E)-(G). The tiers dictate the registration and notification requirements. Tier I is the least restrictive tier, requiring a Tier I sex offender to register once annually for 15 years, but there are no community notification requirements. Tier II requires registration every 180 days for 25 years, but it also has no community notification requirements. Tier III, the most restrictive and similar to the former sexual predator finding, requires registration every 90 days for life, and community notification may occur every 90 days for life. See R.C. 2950.07 and 2950.11.

The stated purpose of S.B. 10 is “\*\*\* to provide increased protection and security for the state’s residents from persons who have been convicted of, or found to be delinquent children for committing, a sexually oriented offense or a child-victim oriented offense \*\*\*.” See S.B. 10, Section 5. Similar language is used in the purpose section of the federal act. (“In order to protect the public

VOL 681 00352

from sex offenders and offenses against children, \*\*\* Congress in this chapter establishes a comprehensive national system for the registration of those offenders \*\*\*.”) Section 16901, Title 42, U.S. Code. Moreover, the Ohio legislature has declared that the purpose of sex offender registration is not punitive, but “to protect the safety and general welfare of the people of this state.” R.C. 2950.02(B). This statement of purpose antedates the present amendment. See *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶28.

### Ex Post Facto and Retroactivity

In their first two assignments of error, appellants claim that the application of S.B. 10 to crimes that occurred before January 1, 2008, violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

We start with the proposition that statutes, including amendments to those statutes, that are enacted in Ohio are presumed to be constitutional. *Ferguson* at ¶12. Therefore, unless appellants can demonstrate, beyond a reasonable doubt, that S.B. 10 is unconstitutional, it remains valid. *Id.*

The Ex Post Facto Clause, Section 10, Article I, United States Constitution, prohibits the passage of an enactment which may, inter alia, criminalize acts that were innocent when committed or “changes the punishment, and inflicts a greater punishment, than the law annexed to the

-6-

crime, when committed.” *Miller v. Florida* (1987), 482 U.S. 423, 429, quoting *Calder v. Bull* (1798), 3 U.S. 386. Likewise, the Retroactivity Clause, Section 28, Article II, Ohio Constitution, bans the enactment of retroactive statutes that impair vested, substantive rights, but not those rights that are merely remedial and civil in nature. *State v. Graves*, 4th Dist. No. 07CA3004, 2008-Ohio-5763, ¶11. Thus, both contentions turn upon whether Ohio’s AWA is punitive, rather than remedial.

At the outset, we note that this court has already addressed the issue of whether the changes made to R.C. Chapter 2950 altered the statute such that it is now punitive, rather than remedial. We held that the AWA is not punitive, and does not violate either the Ohio or United States constitutional clauses at issue. *State v. Ellis*, 8th Dist. No. 90844, 2008-Ohio-6283; *State v. Rabel*, 8th Dist. No. 91280, 2009-Ohio-350; and *State v. Omiecinski*, 8th Dist No. 90510, 2009-Ohio-1066.

Every other Ohio appellate district has also held that R.C. Chapter 2950, as modified by S.B. 10, remains remedial in nature and is not punitive. See, e.g., *Sewell v. State*, 1st Dist. No. C-080503, 2009-Ohio-872; *State v. King*, 2d Dist. No. 08-CA-02, 2008-Ohio-2594; *In re Gant*, 3d Dist. No. 1-08-11, 2008-Ohio-5198; *Graves*, supra; *In re Kristopher W.*, 5th Dist. No. 2008 AP030022, 2008-Ohio-6075; *Montgomery v. Leffler*, 6th Dist. No. H-08-011, 2008-Ohio-6397; *State v.*

VOL 0681 #0354

*Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051; *In re G.E.S.*, 9th Dist. No. 24079, 2008-Ohio-4076; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; and *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195. In addition, federal courts that have addressed the issue have also reached the same result. See *United States v. Markel* (W.D.Ark. 2007), 2007 U.S. Dist. LEXIS 27102; see, also, *United States v. Templeton* (W.D.Okla. 2007), 2007 U.S. Dist. LEXIS 8930.

**A. Ohio Supreme Court Cases on Former R.C. Chapter 2950**

In *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, the Ohio Supreme Court addressed whether former R.C. Chapter 2950, as applied to conduct prior to the effective date of the statute, violated the Ohio Constitution's prohibition on retroactive laws and the Ex Post Facto Clause of the United States Constitution. The Supreme Court noted that former R.C. Chapter 2950 sought to "protect the safety and general welfare of the people of this state," which was a "paramount governmental interest." *Id.* at 417. It held that because the statute was remedial rather than punitive, the registration provisions of former R.C. Chapter 2950 also did not violate the Ohio Constitution's ban on retroactive laws. *Id.* at 413. The Supreme Court reasoned that in light of the statute's remedial nature, and because there was no clear proof that the statute was punitive in its effect, the registration and notification provisions of former R.C.

Chapter 2950 did not violate the Ex Post Facto Clause of the United States Constitution. *Id.* at 423.

Two years later, in *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, the Ohio Supreme Court addressed whether the registration and notification provisions of former R.C. Chapter 2950 amounted to double jeopardy. The Supreme Court held that because former R.C. Chapter 2950 was “neither ‘criminal,’ nor a statute that inflicts punishment,” former R.C. Chapter 2950 did not violate the Double Jeopardy Clauses of the United States and Ohio Constitutions. *Id.* at 528. Subsequently, in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, the Ohio Supreme Court reiterated that “the sex-offender-classification proceedings under [former] R.C. Chapter 2950 are civil in nature[.]” *Id.* at ¶32.<sup>3</sup>

---

<sup>3</sup>In *Wilson*, Justice Lanzinger, in a concurring in part and dissenting in part opinion (joined by Justice O’Connor and Judge Donovan), opined: “While protection of the public is the avowed goal of R.C. Chapter 2950, we cannot deny that severe obligations are imposed upon those classified as sex offenders. All sexual predators and most habitual sex offenders are expected, for the remainder of their lives, to register their residences and their employment with local sheriffs. Moreover, this information will be accessible to all. The stigma attached to sex offenders is significant, and the potential exists for ostracism and harassment, as the *Cook* court recognized. *Id.*, 83 Ohio St.3d at 418. Therefore, I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender’s actions.” *Wilson* at ¶45-46.

Former R.C. Chapter 2950 was amended by S.B. 5 in 2003. The amendments (1) required the designation “sexual predator” and the concomitant duty to register remain for life; (2) required sex offenders to register in three different counties (that is, county of residence, county of employment, and county of school) every 90 days (as opposed to registering only in their county of residence); (3) expanded community notification requirements; and (4) required any information in the registration process be included on an internet data base. See S.B. 5.

Recently, in *Ferguson*, the Ohio Supreme Court addressed whether the S.B. 5 amendments, as applied to conduct prior to the effective date of the statute, violated the Ex Post Facto Clause of the United States Constitution and the Ohio Constitution’s prohibition on retroactive laws. Once again, noting the civil, remedial nature of the statute, the Supreme Court held that the S.B. 5 amendments to former R.C. Chapter 2950 neither violated the Retroactivity Clause of the Ohio Constitution nor the Ex Post Facto Clause of the United States Constitution. *Id.* at ¶36, 40, and 43.<sup>4</sup>

---

<sup>4</sup>Again in *Ferguson*, Justice Lanzinger dissented and was joined by Justices Pfeifer and Stratton. Discussing the S.B. 5 amendments, Justice Lanzinger stated that R.C. Chapter 2950 has evolved from a remedial statute to a punitive one, that the registration requirements are not merely “collateral to a criminal conviction,” and that it violates the Ex Post Facto Clause of the United States Constitution. She pointed out that “S.B. 5 applies to all sex offenders, without regard to their future dangerousness.” *Id.* at ¶59. She also noted that “[t]he reporting requirements themselves are

**B. Punitive versus Remedial**

To determine if the amendments set forth in S.B. 10 are punitive in nature, and not civil or remedial, we shall turn to the “intent-effects” test used by the Ohio Supreme Court in *Cook*. *Id.* at 415. First, we must determine if the legislature intended the statute to be punitive or remedial. If the intent is found to be remedial, then we must determine if the statute has such a punitive effect that it negates its remedial intent. *Id.* at 418, citing *Allen v. Illinois* (1986), 478 U.S. 364.

Upon reviewing S.B. 10, we find that the legislature’s intent in enacting the statute was clearly civil, not punitive. “A court must look to the language and the purpose of the statute in order to determine legislative intent.” *Cook* at 416. S.B. 10 is devoid of any language indicating an intent to punish. To the contrary, and just as the Ohio Supreme Court found in *Cook* with regard to former R.C. Chapter 2950, the legislature has expressly declared that the intent of S.B. 10 is “to protect the safety and general welfare of the people of this state,” which is “a paramount governmental interest”; and that “the exchange or release

---

exorbitant; S.B. 5 requires sexual predators to engage in perpetual quarterly reporting to the sheriff of the county in which they reside, work, and go to school, even if their personal information has not changed. \*\*\* And meriting heaviest weight in my judgment, S.B. 5 makes no provision whatever for the possibility of rehabilitation. Offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation. Prior to S.B. 5, a sexual predator had the opportunity to remove that label.” *Id.* at ¶60.

-11-

of [information required by this law] is not punitive.” R.C. 2950.02; *Cook* at 417. Indeed, the language in former R.C. Chapter 2950, which the Supreme Court in *Cook* relied on to find that the legislature’s intent was remedial, is almost identical to the language used in S.B. 10.

A more difficult issue is whether S.B. 10 is so punitive in effect as to negate the legislature’s non-punitive intent. As the Seventh District noted in *Byers*, the registration requirements under S.B. 10 “are more involved” than the requirements in the former R.C. Chapter 2950 that were discussed in *Cook*. *Id.* at ¶33. Nonetheless, we agree that “[w]hile some may view [Justice Lanzinger’s] reasoning to be persuasive and logical, we must follow the Supreme Court’s decision in *Cook* and the majority decision in *Wilson* that offender classification is civil in nature and the registration requirement is still de minimus; *Cook* and *Wilson* are still controlling law.” *Id.* at ¶37.

The *Byers* court further stated:

“Senate Bill 10’s R.C. Chapter 2950 may not be the narrowly tailored dissemination of information that was contemplated by *Cook*. However, as stated above, *Cook* is still controlling law and as of *Wilson*, the Supreme Court was still of the opinion that sex offender classification was still remedial and not punitive. \*\*\* Admittedly, Senate Bill 10 does make some changes to the classification procedure. It changes the classification types from sexually

oriented offender, habitual sex offender, and sexual predator to Tier I, Tier II and Tier III. It also provides a more systematic determination of what offenses fall into what classification. Lastly, it increases the registration period. Tier I is 15 years, while a sexually oriented offender would only have been 10 years. Tier II is 25 years, while a habitual sex offender was 20 years. Tier III is a lifetime registration requirement, which sexual predator has always been. But those changes do not clearly indicate that *Wilson* and *Cook* are no longer controlling and that the sexual offender classification system is now punitive rather than remedial.” *Id.* at ¶55.

Notably, one day after the Seventh District released *Byers*, the Ohio Supreme Court released *Ferguson*, upholding the S.B. 5 amendments to R.C. Chapter 2950 (which were even more restrictive than those discussed in *Cook* and *Wilson*). *Ferguson* adds to the strength of the Seventh District’s reasoning that the Supreme Court will likely uphold the changes to R.C. Chapter 2950, under S.B. 10, as it has continually upheld prior versions.

This court further agrees with the Second District that it is unlikely that the Ohio Supreme Court will find difficulty with the AWA after its *Cook* decision or that the United States Supreme Court will find it unconstitutional after *Smith v. Doe* (2003), 538 U.S. 84 (upheld Alaska’s version of Megan’s Law). *King*, *supra*, at ¶13.

-13-

Accordingly, we conclude that S.B. 10, which sets forth Ohio's version of the AWA, is civil in nature, and not punitive. Appellants' first and second assignments of error are overruled.

### Separations of Powers

In their third assignment of error, appellants argue that the retroactive application of S.B. 10 violates the separation-of-powers doctrine because the legislative and executive branches interfere with a prior court adjudication regarding their sex offender status.

First, appellants claim that "[p]rior to the enactment of the AWA, the determination of whether and how an offender had to register as a sexual offender was specifically reserved for the judiciary." That is simply not the case, however. Under former R.C. Chapter 2950, an offender who committed a sexually oriented offense that was not registration-exempt was classified by operation of law as a sexually oriented offender. No judicial action was required, and courts had no discretion to remove the label. Similarly, under S.B. 10, sex offenders are placed by operation of law into tiers based upon the crime they committed. Courts have no discretion to determine that a sex offender should not be placed into a tier. Under both systems, offenders are essentially classified by the offense they committed. See *Montgomery*, supra.

VOL 681 PG 0361

-14-

In fact, "the classification of sex offenders into categories has always been a legislative mandate, not an inherent power of the courts. *Slagle v. State*, 145 Ohio Misc.2d 98, 2008-Ohio-593. Without the legislature's creation of sex offender classifications, no such classification would be warranted. Therefore, \*\*\* we cannot find that sex offender classification is anything other than a creation of the legislature, and therefore, the power to classify is properly expanded or limited by the legislature." *In re Smith*, 3d Dist. No. 1-07-58, 2008-Ohio-3234, ¶39 (holding that S.B. 10 does not violate the separation-of-powers doctrine). See, also, *Smith*, supra; *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; and *Williams*, 2008-Ohio-6195.

Appellants further claim that S.B. 10 violates the separations-of-powers doctrine by requiring the executive branch, namely, the Ohio Attorney General, to interfere with a prior final adjudication. S.B. 10, however, does not require the Attorney General to reopen final court judgments. See *Slagle*, supra. It simply changes the classification and registration requirements for sex offenders and requires that the new procedures be applied to sex offenders currently registered under the old law or offenders currently incarcerated for committing sexually oriented offenses. In *Cook*, the Ohio Supreme Court made it clear that appellants should not have a reasonable expectation that their sex offenses

VOL0681 000362

would never be made the subject of future sex-offender legislation. *Id.* at 412. Thus, S.B. 10 cannot be said to abrogate a final judicial determination.

Accordingly, S.B. 10 does not violate the separation-of-powers doctrine. Appellants' third assignment of error is overruled.

### **Double Jeopardy**

In their fourth assignment of error, appellants maintain that S.B. 10 violates the Double Jeopardy Clause of the United States and Ohio Constitutions. Specifically, they argue that because S.B. 10 is "punitive in both its intent and effect and therefore, as applied to appellants, constitutes additional punishment" that it is prohibited by double jeopardy protections.

Since this court has already determined that S.B. 10 is a civil, remedial statute, and not a criminal, punitive statute, we find that S.B. 10 does not violate double jeopardy rights. See, also, *Smith*, *supra*; *Byers*, *supra*; and *Slagle*, *supra*. Accordingly, appellants' fourth assignment of error is overruled.

### **Cruel and Unusual Punishment**

In their fifth assignment of error, appellants contend that the application of S.B. 10, as applied to them, violates the prohibition of cruel and unusual punishment as protected by the United States and Ohio Constitutions. They argue that the registration, notification, and residency restrictions imposed by S.B. 10 are disproportionate to their crimes. We disagree.

It is true that under S.B. 10, several of the appellants will have to register for a longer period of time. Under the old law, a sexually oriented offender had to register for 10 years. Under S.B. 10, even the least restrictive, a Tier I offender, has to register for 15 years. Thus, the reporting period is longer under S.B. 10.

The fact that a sex offender has to register for a longer period of time, however, does not change the fact that S.B. 10 is remedial, and not punitive. As the Seventh District stated in *Byers*, “[a]s long as R.C. Chapter 2950 is viewed as civil, and not criminal – remedial and not punitive – then the period of registration cannot be viewed as punishment. Accordingly, it logically follows that it does not constitute cruel and unusual punishment since the punishment element is lacking.” *Id.* at ¶77.

Appellants’ fifth assignment of error is overruled.

**Due Process - Residency Restrictions**

In their sixth assignment of error, appellants argue that S.B. 10 violates their substantive and procedural due process rights protected by both the Ohio and United States Constitutions. Specifically, they claim that “[b]y restricting sex offenders to residences that are not located within 1000 feet of any school, pre-school or day-care center, R.C. 2950.034 clearly infringes an individual’s constitutional right to establish the residence of their [sic] own choosing.”

-17-

First, there is absolutely no evidence in the record before us, nor do any of the appellants claim, that they currently reside within 1,000 feet of a school, preschool, or daycare center. Nor have any of the appellants alleged that they were forced to move from an area due to their proximity to a school, preschool, or daycare center, or that they have any intention of moving to a residence within 1,000 feet of a school, preschool, or daycare center.

This court has held that where the offender does not presently claim to reside “within 1,000 feet of a school, or that he was forced to move from an area because of his proximity to a school[,]” the offender “lacks standing to challenge the constitutionality” of the residency restrictions. *State v. Peak*, 8th Dist. No. 90255, 2008-Ohio-3448, ¶ 8-9; see, also, *State v. Pierce*, 8th Dist. No. 88470, 2007-Ohio-3665, ¶ 33; and *State v. Amos*, 8th Dist. No. 89855, 2008-Ohio-1834. The United States District Court for the Southern District of Ohio has reached the same conclusion. *Coston v. Petro* (S.D. Ohio 2005), 398 F.Supp.2d 878, 882-883. “The constitutionality of a state statute may not be brought into question by one who is not within the class against whom the operation of the statute is alleged to have been unconstitutionally applied and who has not been injured by its alleged unconstitutional provision.” *Pierce* at ¶ 33, quoting *Palazzi v. Estate of Gardner* (1987), 32 Ohio St.3d 169, syllabus.

VOL 068 | 00365

-18-

Accordingly, we agree with the state that this issue is premature and not ripe for review. See, also, *In re: R.P.*, 9th Dist. No. 23967, 2008-Ohio-2673; *State v. Worthington*, 3d Dist. No. 9-07-62, 2008-Ohio-3222.

We note that even if this issue was ripe for review, the only modification of the statute made by S.B. 10 was to add daycare centers and preschools. The statute was not expressly made retroactive. Therefore, the Ohio Supreme Court's holding with regard to the pre-S.B. 10 amendments in *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, syllabus, is controlling. Specifically, the *Hyle* court held: "[b]ecause [former] R.C. 2950.031 was not expressly made retrospective, it does not apply to an offender who bought his home and committed his offense before the effective date of the statute." Thus, if appellants had purchased their homes near daycare centers, preschools, or schools prior to the effective date of S.B. 10, the new version of the statute would be inapplicable to them.

Appellants' sixth assignment of error is overruled.

#### **Retroactive Application of AWA on Plea Agreements**

In their seventh assignment of error, appellants argue that the retroactive application of the AWA constitutes a breach of their plea agreements. They claim that the state is obligated "to impose sex offender requirements that are

-19-

materially identical to those contemplated by the law in effect at the time of the plea agreement.” We disagree.

We have already determined that the retroactive application of S.B. 10 is constitutional. Further, except with regard to constitutional protections against ex post facto laws, convicted sex offenders have no reasonable right to expect that their conduct will never be subject to future versions of R.C. Chapter 2950. *Cook* at 412. “If the rule were otherwise, the initial version of R.C. Chapter 2950 could not have been applied retroactively in the first place.” *King*, supra, at ¶ 33. Accordingly, the state did not breach any agreement entered into with appellants.

We also note that Ohio courts have rejected similar arguments regarding H.B. 180 classifications that went into effect after an offender had entered into a plea agreement, as well as S.B. 10 classifications. See *Gant*, supra; *State v. Desbiens*, 2d Dist. No. 22489, 2008-Ohio-3375; *State v. Taylor*, 11th Dist. No. 2002-G-2441, 2003-Ohio-6963, ¶ 28; *State v. Paris* (June 16, 2000), 3d Dist. No. 2-2000-04; and *State v. Harley* (May 16, 2000), 10th Dist. No. 99AP-374; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and *Randlett*, supra.

Appellants’ seventh assignment of error is not well-taken.

**Relief from Community Notification**

In their eighth assignment of error, the Tier III appellants maintain that “the trial court erred by categorically denying them relief from community notification pursuant to R.C. 2950.11(F)(2).” They argue, “[s]imply put, R.C. 2950.11(F)(2) provides that an individual is not subject to community notification requirements if he or she would not have been subject to those requirements under Ohio’s Megan’s Law.” The state maintains that “[c]ommunity notification is presumed and will apply unless the court affirmatively finds,” after holding an individualized hearing and considering the R.C. 2950.11(F)(2) factors, “that the offender would not be subject to community notification under the old system.”

Based upon the disparity between appellants’ and the state’s arguments, it is clear that R.C. 2950.11(F)(1) and (2), which set forth community-notification provisions under S.B. 10, are wrought with confusion. We wholeheartedly agree with the Second District’s frustration regarding these provisions that “[t]he enactment of the ‘Adam Walsh Act’ by the Ohio legislature, had resulted in a confusing array of very poorly worded statutory provisions that require a trial court to constantly refer to the law in effect prior to the enactment of the Adam Walsh Law in order to apply the current law.” *In re S.R.B.*, 2d Dist. No. 08-CA-8, 2008-Ohio-6340, ¶6.

To address this issue, we must first look to the statute itself. In determining the meaning of a statute, a court must give effect to the intent of the legislature. See *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, ¶ 17; *State ex rel. Van Dyke v. Pub. Emp. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, ¶ 27.

**A. R.C. 2950.11(F)(1) and (2)**

R.C. 2950.11(F)(1) states that “[e]xcept as provided in division (F)(2) of this section, the duties to provide the notices \*\*\* apply regarding any offender \*\*\* who is in any of the following categories[.]” It then lists Tier III sex offenders and various categories of Tier III delinquent child offenders. See R.C. 2950.11(F)(1)(a)-(c).<sup>5</sup>

R.C. 2950.11(F)(2) provides: “[t]he notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment. In making the determination of whether a person would have been subject to the notification provisions under prior law as

---

<sup>5</sup>In this case, we only address issues relating to adult sex offenders.

-22-

described in this division, the court shall consider the following [community-notification] factors:<sup>[6]</sup>

“(a) The offender’s or delinquent child’s age;

“(b) The offender’s or delinquent child’s prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;

“(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;

“(d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

“(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

“(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a

---

<sup>6</sup>With the exception of factor (j), these factors are identical to the “sexual predator” factors under former R.C. 2950.09(B)(3) that a trial court had to consider when determining whether an offender should be labeled a sexual predator. Factor (j) is related to a habitual sexual offender finding.

VOL 681 00370

-23-

sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

“(g) Any mental illness or mental disability of the offender or delinquent child;

“(h) The nature of the offender’s or delinquent child’s sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

“(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

“(j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under the definitions of those terms set forth in section 2950.01 of the Revised Code as that section existed prior to the effective date of this amendment;

“(k) Any additional behavioral characteristics that contribute to the offender’s or delinquent child’s conduct.”

VBL0681 000371

**B. *Presumption of Community Notification and Hearing Requirement***

The Tier III appellants here contend that “[f]or individuals, like [them], who were originally classified under Ohio’s Megan’s Law, a trial court does not need to hold subsequent hearings \*\*\* to determine whether those individuals would not have been subject to community notification under Ohio’s Megan’s Law.” The state disagrees, arguing that the statute requires the court to hold individualized hearings and consider the required factors for all Tier III offenders before they can be relieved of community notification.

After reviewing R.C. 2950.11(F)(1) and (2), we conclude that it is clear that the legislature intended for Tier III sex offenders to be subject to community notification until a court determines otherwise. We find, however, that R.C. 2950.11(F)(2) is ambiguous as to whether a court must hold an evidentiary hearing and consider the community-notification factors for sex offenders who were previously classified under Ohio’s Megan’s Law.

R.C. 2950.11(F)(2) requires courts to look back to the former version of R.C. 2950.11 to determine if “the person would not be subject to the notification provisions \*\*\* that were in the version \*\*\* that existed immediately prior to the effective date” of S.B. 10. Under the version of R.C. 2950.11 that was in effect immediately prior to S.B. 10, only sexual predators, certain habitual sexual offenders, or offenders who had been convicted of an aggravated sexually

-25-

oriented offense, were subject to community notification. See former 2950.11(F)(1). For offenders then who were not subject to community notification under the prior law, we conclude that the language plainly indicates that they will not be subject to it under the AWA. For those who were subject to it previously, they will still be subject to it under the AWA.

Thus, we agree with appellants that it would be nonsensical for a court to hold a hearing to determine whether they *would have been* subject to community notification under the former statute, when it was already determined that they were not subject to community notification under the former statute.

If we were to adopt the state's interpretation that R.C. 2950.11(F)(2) requires the court to hold a hearing and consider the factors for all offenders who were previously classified under Megan's Law, absurd results would most certainly occur. For example, one judge could have held a H.B. 180 hearing and found that the offender should not be labeled a sexual predator (meaning that person would *not* be subject to community notification under the former law), and then another judge (or even the same judge for that matter) subsequently holds a R.C. 2950.11(F)(2) hearing under the AWA and, after considering essentially the exact same factors, finds that the offender should be subject to community notification. It is our view that the legislature could not have intended such paradoxical results. Thus, this court will not adopt such an

VOL 0681 #0373

-26-

interpretation. See *State v. Smith*, 104 Ohio St.3d 106, 2004-Ohio-6238 (“[i]t is an axiom of judicial interpretation that statutes be construed to avoid unreasonable or absurd consequences”); *State v. Wells*, 91 Ohio St.3d 32, 2001-Ohio-3.

For a Tier III offender who was not previously classified under Megan’s Law and is, therefore, being classified for the first time under the AWA, we find that R.C. 2950.11(F)(2) does require the sentencing court to hold an individualized hearing in every case where community notification is at issue, and consider the required factors prior to determining whether the offender should be relieved of community notification. See *State v. Stockman*, 6th Dist. No. L-08-1077, 2009-Ohio-266, ¶ 19 (upon initial classification of a sex offender, R.C. 2950.11(F)(2) requires sentencing court to hold a hearing and consider the factors listed therein).

For those Tier III offenders who were not subject to community notification under the former statute, we find that they are exempt from community notification under the AWA. See *State v. Clay*, 177 Ohio App.3d 78, 2008-Ohio-2980 (First District held that if appellant had been classified as a sexually oriented offender under H.B. 180, then he would be exempt from community notification under the current R.C. 2950.11(F)(2)). In such

990681 860374

-27-

situations, the court need not hold an evidentiary hearing or consider the R.C. 2950.11(F)(2) factors.

**C. R.C. 2950.11(F)(2) Motion**

Although R.C. 2950.11(F)(2) is not clear as to how the issue of relief from community notification should arise, in practice, it will most likely be the Tier III sex offender who raises the issue to the court, through a written motion or otherwise.<sup>7</sup> See *Sewell*, supra, at ¶4 (“Sewell filed a R.C. 2950.11(F)(2) motion \*\*\* for relief from the community-notification provisions,” which the trial court granted).

Moreover, as in most other circumstances when a party files a motion, in either a civil or criminal case, that person must state the grounds with particularity and set forth the relief sought. See Crim.R. 47 and Civ.R. 7(B)(1).<sup>8</sup>

---

<sup>7</sup>We point out, though, that there is nothing in R.C. 2950.11(F)(2) to prevent a court from sua sponte holding a hearing and considering the factors to determine whether a sex offender should be relieved from community notification.

<sup>8</sup>Crim.R. 47 provides: “An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.”

Civ.R. 7(B)(1), which is similar, states: “An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing. A motion, whether written or oral, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.”

Thus, when a Tier III sex offender sufficiently raises the issue of community notification, just as in other matters, the burden then will shift to the state to establish that community notification should apply, if indeed, that is what the state contends.

**D. *Clear and Convincing Evidence Burden***

The state argues that sex offenders must establish by clear and convincing evidence that they are entitled to relief from community notification. The state does not cite to any authority regarding this claim. Contrary to the state's assertion, R.C. 2950.11(F)(2) says nothing about "clear and convincing evidence" or even that it is the sex offender's burden to prove anything.

There is a provision in R.C. 2950.11 regarding the suspension of community notification that requires an offender to prove by clear and convincing evidence that he or she "is unlikely to commit in the future a sexually oriented offense." R.C. 2950.11(H)(1).<sup>9</sup> But a hearing to suspend community

---

<sup>9</sup>R.C. 2950.11(H)(1) provides: "Upon the motion of the offender or the prosecuting attorney \*\*\* or upon the motion of the sentencing judge or that judge's successor in office, the judge may schedule a hearing to determine whether the interests of justice would be served by suspending the community notification requirement under this section in relation to the offender. The judge may dismiss the motion without a hearing but may not issue an order suspending the community notification requirement without a hearing. At the hearing, all parties are entitled to be heard, and the judge shall consider all of the factors set forth in division (K) of this section. If, at the conclusion of the hearing, the judge finds that the offender has proven by clear and convincing evidence that the offender is unlikely to commit in the future a sexually oriented offense or a child-victim oriented offense and if the judge finds that

-29-

notification under R.C. 2950.11(H)(1) only arises after the sex offender has been registering for 20 years. R.C. 2950.11(H)(2).

In addition, under R.C. 2950.031 and 2950.032, if sex offenders challenged their reclassification or new registration duties under the AWA, then it was their burden to file a petition with the court within 60 days of receiving a letter from the Ohio Attorney General, request a hearing, and establish by clear and convincing evidence that the reclassification or new registration duties did not apply to them. See R.C. 2950.031(E) and 2950.032(E).<sup>10</sup> But the hearing provided for in these two sections, as well as the offender's burden set forth in them, *was only applicable when an offender had been reclassified* as a Tier I, II, or III sex offender under the AWA. These provisions do not apply to the community-notification hearing set forth in R.C. 2950.11(F)(2). We therefore disagree with the state that under R.C. 2950.11, sex offenders have a "clear and convincing evidence" burden to prove that they should not be subject to community notification.

---

suspending the community notification requirement is in the interests of justice, the judge may suspend the application of this section in relation to the offender. The order shall contain both of these findings."

<sup>10</sup>R.C. 2950.031 applied to sex offenders who had a duty to register under Megan's Law and R.C. 2950.032 applied to sex offenders who were still in prison.

VOL 681 PG 377

-30-

**E. *Ripe for Review***

Finally, the state contends that the community notification issue is not ripe for review because the trial court did not hold individualized hearings for each offender. We disagree.

First, as we discussed, individualized hearings were not required for these offenders because they either were or were not subject to community notification under Megan's Law. Second, the appellants who had been reclassified as Tier III offenders sufficiently raised the issue in their petitions to the trial court that they should be relieved from community notification. Thus, the trial court erred when it summarily denied the Tier III offenders' request since it is clear that some, if not all, were not previously subject to community notification. Further, the trial court had decided all of the other issues before it. Therefore, we conclude that this issue is ripe for review.

**Failure to Appear at Hearing**

Two appellants failed to appear at the April 23, 2008 hearing on their petitions challenging their reclassifications. The trial court dismissed their petitions with prejudice. These appellants argue that the trial court erred in doing so because it did not provide notice to them prior to dismissing their petitions. We agree.

980681 00378

-31-

Under Civ.R. 41(B)(1), a court may dismiss an action for failure to prosecute, but only after "notice to the plaintiff's counsel" is given. *Quonset Hut, Inc. v. Ford Motor Co.* (1997), 80 Ohio St.3d 46, 49. The trial court erred by not giving prior notice to counsel that it would dismiss the appellants' petition involuntarily, and with prejudice.

Accordingly, appellants' ninth assignment of error is sustained.

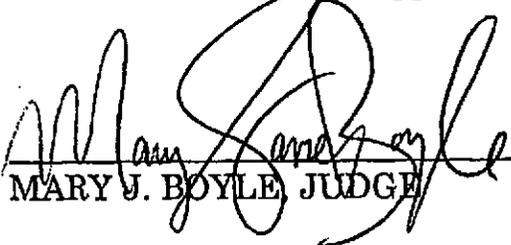
Judgment affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. The trial court is further instructed to reinstate the two petitioners it dismissed for failure to appear at the hearing.

It is ordered that appellee and appellants equally share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

  
MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., CONCURS;  
JAMES J. SWEENEY, J., DISSENTS WITH SEPARATE OPINION

VEL0681 PG0379

-32-

JAMES J. SWEENEY, J., DISSENTING:

I respectfully dissent from the majority opinion. For the reasons stated in my dissenting opinion in *State v. Omiecinski*, Cuyahoga App. No. 90510, 2009-Ohio-1066, I would sustain the first and second assignments of error, which would render the remaining assignments of error moot.

-33-

## APPENDIX:

Name	Conviction	H.B. 180 Classification	S.B. 10 Classification
Robert Gildersleeve	Sexual Battery	Sexually Oriented Offender	Tier III
James Stevens	GSI	Sexually Oriented Offender	Tier I
John Brown	Attempted Rape	Sexually Oriented Offender	Tier III
Michael Topeka	Attempted Corruption of Minor	Sexually Oriented Offender	Tier II
Robert Bohammon	Sexual Battery	Sexually Oriented Offender	Tier III
John W. Evans	Unlawful Sexual Conduct	Sexually Oriented Offender	Tier II
Shawn Maver	Rape	Sexually Oriented Offender	Tier III
Demetrius Reddick	Sexual Battery	Sexually Oriented Offender	Tier III
Ralph Wells	Rape	Sexually Oriented Offender	Tier III
Willie Moncrief	GSI	Sexually Oriented Offender	Tier II
Arnold Harris	Rape and GSI	Sexually Oriented Offender	Tier III
Edward Schneider	GSI	Sexually Oriented Offender	Tier II
Charles M. Jones	Rape	Sexually Oriented Offender	Tier III
Wesley Patterson	Rape	Sexually Oriented Offender	Tier III
Mark D. Patterson <sup>11</sup>	Attempted Felonious Penetration	Habitual Sexual Offender	Tier III
Robert Zamora <sup>12</sup>	CA conviction	CA conviction	Tier II
Dwayne Orr <sup>13</sup>	GSI	Sexually Oriented Offender	Tier III

<sup>11</sup>Did not show up for hearing, so trial court dismissed his petition.

<sup>12</sup>Did not show up for hearing, so trial court dismissed his petition.

<sup>13</sup>Was classified incorrectly as a Tier III offender; he should have been classified as a Tier I offender. The trial court corrected his classification.

0681 00381

The State of Ohio, }  
Cuyahoga County. } ss.

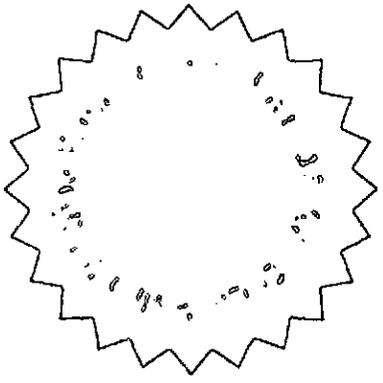
I, GERALD E. FUERST, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied

from the Journal, Volume 681 Page 347 Dated: 5-11-09 CA 91515 - 91519 and 91521 - 91532

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal, Vol. 681 Page 347

Dated: May 11, 2009 and that the same is correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 18th day of May A.D. 20 09

GERALD E. FUERST, Clerk of Courts

By C. Pusk Deputy Clerk







51228377

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**



JOHN R. BROWN  
Plaintiff

Case No: CV-08-648978

STATE OF OHIO  
Defendant

Judge: SHIRLEY STRICKLAND SAFFOLD

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

*S. Strickland*      5/2/08  
\_\_\_\_\_  
Judge Signature      Date

RECEIVED FOR FILING  
MAY 05 2008

GERALD E. EBERST, CLERK  
By *[Signature]* Dep.  
Page 1 of 1





IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO



ROBERT BOHAMMON  
Plaintiff

Case No: CV-08-649277

STATE OF OHIO  
Defendant

Judge: SHIRLEY STRICKLAND SAFFOLD

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

*[Handwritten Signature]*  
Judge Signature

*5/2/08*  
Date

RECEIVED FOR FILING

MAY 05 2008

By *[Handwritten Signature]*  
GERALD E. QUERST, CLERK Dep.



51227398



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

JOHN EVANS  
Plaintiff

Case No: CV-08-652329

Judge: SHIRLEY STRICKLAND SAFFOLD

STATE OF OHIO  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215. COURT COST ASSESSED TO THE PLAINTIFF(S).

*Shirley Strickland Saffold*  
Judge Signature \_\_\_\_\_ Date 5/1/08

RECEIVED FOR FILING

MAY 05 2008

By *Gerald E. Fuerst* Dep. CLERK





51228571

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

SDP

F

DEMETRIUS L REDDICK  
Plaintiff

Case No: CV-08-646646

Judge: SHIRLEY STRICKLAND SAFFOLD

STATE OF OHIO  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215. COURT COST ASSESSED TO THE PLAINTIFF(S).

2.2102/00      5/2/08  
Judge Signature      Date

RECEIVED FOR FILING

MAY 05 2008

GERALD E. FORREST, CLERK  
By [Signature] Dec.  
Page 1 of 1



51227880



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

RALPH WELLS  
Plaintiff

Case No: CV-08-652131

Judge: SHIRLEY STRICKLAND SAFFOLD

STATE OF OHIO  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

2.202000      5/21/08  
Judge Signature      Date

RECEIVED FOR FILING

MAY 05 2008

By: [Signature] GERALD T. MCFAUL, CLERK, Dep.

*e*



51227814

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**



**WILLIE MONCRIEF**  
Plaintiff

**STATE OF OHIO**  
Defendant

Case No: CV-08-651446

Judge: SHIRLEY STRICKLAND SAFFOLD

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

*S. Strickland* 5/2/08  
\_\_\_\_\_  
Judge Signature Date

**RECEIVED FOR FILING**

**MAY 05 2008**

By *[Signature]* GERALD E. FURST, CLERK Dep.

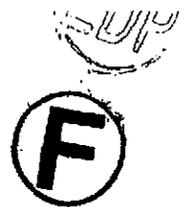






51228607

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**



CHARLES JONES  
Plaintiff

Case No: CV-08-647325

STATE OF OHIO  
Defendant

Judge: SHIRLEY STRICKLAND SAFFOLD

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.

COURT COST ASSESSED TO THE PLAINTIFF(S).

*[Handwritten Signature]* 5/2/08  
Judge Signature Date

RECEIVED FOR FILING

MAY 05 2008

GERALD E. FUERST, CLERK  
By *[Handwritten Signature]* Dep. Page 1 of 1



51221540



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**



WESLEY PATTERSON  
Plaintiff

Case No: CV-08-646910

Judge: SHIRLEY STRICKLAND SAFFOLD

STATE OF OHIO  
Defendant

**JOURNAL ENTRY**

89 DIS. W/ PREJ - FINAL

PETITIONER FILED A PETITION TO CONTEST THE APPLICATION OF THE ADAM WALSH ACT ON 1-10-08. A HEARING ON PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION/TRIAL ON THE MERITS WAS SCHEDULED FOR 4-23-08 AT 10AM. THE PETITIONER FAILED TO APPEAR. CASE IS HEREBY DISMISSED WITH PREJUDICE.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFaul, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.

COURT COST ASSESSED TO THE PLAINTIFF(S).

Shirley Strickland Saffold      5/2/08  
Judge Signature      Date

RECEIVED FOR FILING

MAY 05 2008

By Gerald E. Ernst CLERK, Dep.



51228502



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**



MARK PETERSON  
Plaintiff

Case No: CV-08-646012

STATE OF OHIO  
Defendant

Judge: SHIRLEY STRICKLAND SAFFOLD

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR THE COURT'S CONSIDERATION ON PLAINTIFF'S FILING OF A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT. A HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION CONSOLIDATED WITH A TRIAL ON THE MERITS PURSUANT TO OHIO CIVIL RULE 65(B)(2) WAS HELD ON 4-23-08 AT 10AM.

IN ORDER FOR THE PLAINTIFF TO OBTAIN A PRELIMINARY INJUNCTION HE WOULD NEED TO DEMONSTRATE (1) THERE IS A LIKELIHOOD HE WILL PREVAIL ON THE MERITS (2) HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM SHOULD BE PROVISIONS ON THE ACT BE ENFORCED, AND (3) NO UNDUE HARM WILL RESULT TO THE RESPONDENT OR TO THIRD PARTIES SHOULD INJUNCTIVE RELIEF BE ORDERED, AND (4) THE PUBLIC INTEREST WOULD BE SERVED BY ORDERING A BRIEF STAY PENDING JUDICIAL DETERMINATION OF THE ISSUES PRESENTED. THE COURT FINDS THAT PLAINTIFF DID NOT MEET THIS BURDEN.

BOTH PETITIONER AND RESPONDENT WERE THEN GIVEN THE OPPORTUNITY TO ARGUE THE MERITS OF THE PETITION. AFTER HEARING ARGUMENTS FROM BOTH PARTIES, THE COURT DENIES PLAINTIFF'S PETITION TO CONTEST THE ADAM WALSH ACT. THIS COURT HOLDS THE GENERAL ASSEMBLY INTENDED THE ADAM WALSH ACT TO BE A CIVIL AND NON-PUNITIVE SET OF REGULATIONS DESIGNED EXCLUSIVELY TO PROTECT THE PUBLIC FROM SEXUALLY ORIENTED OFFENDERS.

ORDERED THAT PETITIONER'S MOTION TO CONTEST THE ADAM WALSH ACT BE DENIED. PETITIONER WILL BE RECLASSIFIED BASED ON THE TIER SYSTEM ESTABLISHED BY THE ADAM WALSH ACT. PETITIONER SHALL REGISTER AND REPORT IN CONFORMITY WITH THE REQUIREMENTS OF HIS NEWLY ASSIGNED TIER. PETITIONER SHALL BE BOUND BY THE RESIDENCY RESTRICTIONS OF HIS ASSIGNED TIER. PETITIONER IS FURTHER ORDERED TO FULLY COMPLY WITH ANY ADDITIONAL REQUIREMENTS OF THE ACT NOT SPECIFICALLY LISTED IN THIS COURT'S ORDER.

PETITIONER'S ORAL MOTION FOR A COPY OF THE TRANSCRIPT AT THE STATE'S EXPENSE IS HEREBY GRANTED. THE PUBLIC DEFENDER'S OFFICE SHALL RECEIVE ONE COPY OF THE PROCEEDINGS HELD ON 4-23-08. THE PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED TO REPRESENT PETITIONER FOR PURPOSES OF APPEAL. PETITIONER'S ORAL MOTION TO STAY THE COURT'S DECISION PENDING APPEAL IS HEREBY DENIED.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.

COURT COST ASSESSED TO THE PLAINTIFF(S).

*[Signature]* 5/2/08  
Judge Signature Date

RECEIVED FOR FILING

MAY 05 2008

By *[Signature]* GERALD E. FWERST, CLERK Dep. Page 1 of 1 *e*



