

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No. 2008-2502

Plaintiff-Appellee, :

v. : On Appeal from the

CHRISTIAN N. BODYKE, : Sixth Appellate District,

Defendant-Appellant. : Huron County, Ohio

: Case Nos. H-07-040, H-07-041,

: H-07-042

**MERIT BRIEF OF AMICI CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER,  
 CUYAHOGA COUNTY PUBLIC DEFENDER, OHIO ASSOCIATION OF CRIMINAL  
 DEFENSE LAWYERS, AND OHIO JUSTICE AND POLICY CENTER IN SUPPORT  
 OF APPELLANT CHRISTIAN BODYKE**

JEFFREY M. GAMSO (0043869)  
 (Counsel of Record)  
 ACLU of Ohio Foundation, Inc.,  
 Max Wohl Civil Liberties Center  
 4506 Chester Avenue  
 Cleveland, Ohio 44103  
 (216) 472-2220  
 (216) 472-2210

RUSSELL V. LEFFLER (0026024)  
 Huron County Prosecutor  
 12 East Main Street, 4th Floor  
 Norwalk, Ohio 44857  
 (419) 668-8215  
 (419) 663-3844

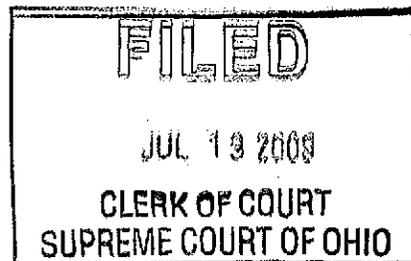
JOHN D. ALTON (002514)  
 Hiltz, Wiedemann, Allton & Koch, L.P.A.  
 49 Benedict Avenue, Suite C  
 Norwalk, Ohio 44857

**COUNSEL FOR APPELLEE,  
 STATE OF OHIO**

**COUNSEL FOR APPELLANT,  
 CHRISTIAN N. BODYKE**

KELLY K. CURTIS (0079285)  
 Office of the Ohio Public Defender  
 8 East Long Street, 11th Floor  
 Columbus, Ohio 43215  
 (614) 466-5394  
 (614) 752-5167

**COUNSEL FOR AMICUS CURIAE,  
 OHIO PUBLIC DEFENDER**



IAN N. FRIEDMAN (0068630)  
Ian N. Friedman & Associates, L.L.C.  
1304 W. 6th Street  
Cleveland, Ohio 44113  
(216) 928-7700  
(216) 556-9779

**COUNSEL FOR AMICUS CURIAE,  
OHIO ASSOCIATION OF CRIMINAL  
DEFENSE LAWYERS**

DAVID SINGLETON (0074556)  
Ohio Justice & Policy Center  
215 East Ninth Street, Suite 601  
Cincinnati, Ohio 45202  
(513) 421-1108  
(513) 562-3200

**COUNSEL FOR AMICUS CURIAE,  
OHIO JUSTICE & POLICY INSTITUTE**

ROBERT L. TOBIK  
JOHN T. MARTIN (0020606)  
CULLEN SWEENEY (0077187)  
Cuyahoga County Public Defender  
340 Lakeside Avenue  
Suite 200  
Cleveland, OH 44113  
(216) 443-7583  
(216) 443-3632 FAX

**COUNSEL FOR AMICUS CURIAE,  
CUYAHOGA COUNTY PUBLIC DEFENDER**

**TABLE OF CONTENTS**

Page No.

<b>TABLE OF AUTHORITIES</b> .....	ii
<b>INTEREST OF AMICUS CURIAE</b> .....	1
<b>STATEMENT OF THE CASE AND FACTS</b> .....	2
<b>INTRODUCTION</b> .....	2
<b>ARGUMENT</b> .....	2
<b>A. Sexual Registration in Ohio Prior to July 31, 2003</b> .....	3
<b>B. Sexual Registration in Ohio Between July 31, 2003 and January 1, 2008</b> .....	5
<b>C. Sexual Registration in Ohio after July 1, 2008</b> .....	6
<b>D. Punitive Consequences of Registration and Community Notification</b> .....	8
1. Inability to Secure Housing.....	9
2. Inability to Secure Employment.....	10
3. Threats to Personal Safety .....	12
<b>E. This Court must recognize the punitive effect of registration and notification</b> .....	13
<b>CONCLUSION</b> .....	14
<b>CERTIFICATE OF SERVICE</b> .....	16

## TABLE OF AUTHORITIES

### Page No.

#### **CASES:**

<i>E.B. v. Verniero</i> (C.A. 3 1997), 119 F.3d 1077 .....	12
<i>Housing Auth. v. Demmings</i> , 2001 Wash. App. Lexis 2276.....	10
<i>Smith v. Doe</i> , 538 U.S. 84.....	13
<i>State v. Cook</i> (1998), 83 Ohio St.3d 404 .....	<i>passim</i>
<i>State v. Eppinger</i> (2001), 91 Ohio St.3d 158.....	4,7
<i>State v. Ferguson</i> (2008), 120 Ohio St.3d 7 .....	6,13
<i>State v. Hayden</i> (2002), 96 Ohio St.3d 211 .....	4
<i>State v. Williams</i> (2000), 88 Ohio St.3d 513.....	4,13
<i>State v. Wilson</i> , 113 Ohio St.3d 382, 2007-Ohio-2202.....	6

#### **CONSTITUTIONAL PROVISIONS:**

Ohio Constitution, Article. II, Section 28 .....	5
United States Constitution, Article I, Section 10 .....	5

#### **STATUTES:**

Former R.C. 2904.04 .....	3
R.C. 2950.01 .....	3,4
R.C. 2950.04 .....	6
R.C. 2950.07 .....	5
Former R.C. 2950.09 .....	4
R.C. 2950.09 .....	4,5
R.C. 2950.031 .....	5

R.C. 2950.081 .....	6
Former R.C. Chapter 2950, 130 Ohio Laws 669 .....	3
42 U.S.C. § 13663 (2004) .....	10
<b>OTHER AUTHORITIES:</b>	
<i>A.A. v. New Jersey</i> , Docket No. A-2153-04TI, Appellant’s Brief.....	12
Amended Substitute House Bill 180, Ohio’s Megan’s Law .....	<i>passim</i>
Amended Substitute Senate Bill 3 .....	6
Amended Substitute Senate Bill 5 .....	5,6
Senate Bill 10.....	<i>passim</i>
<i>Assessing Housing Availability under Ohio’s Sex-Offender Residency Restrictions</i> (Mar. 25, 2009), Red Bird, S., The Ohio State University .....	9
From Prison to Home: The Dimensions and Consequences of Prison Re-Entry (Jun. 2001), at <a href="http://www.urbaninstitute.org/uploadedPDF/from_prison_to_home.pdf">http://www.urbaninstitute.org/uploadedPDF/from_prison_to_home.pdf</a> .....	10
P. Gendrau, <i>A Meta-Analysis of the Predictors of Adult Criminal Recidivism: What Works</i> , 34 <i>Criminology</i> 1 .....	11
R. Karl Hanson, Dept. of the Solicitor General of Canada, <i>Dynamic Predictors of Sexual Offense Recidivism</i> , at <a href="http://ww2.ps-sp.gc.ca/publications/corrections/199801b_e.pdf">http://ww2.ps-sp.gc.ca/publications/corrections/199801b_e.pdf</a> .....	11
<i>Homeless Shelter Use and Reincarceration Following Prison Release: Assessing the Risk</i> , 3 <i>Crim. &amp; Pub. Pol.</i> 2, 201-222 (2004).....	10
Corey Kilgannon, <i>Threats of Violence as Homes for Sex-Offenders Cluster in Suffolk</i> , <i>New York Times</i> (Oct. 9, 2006) .....	13
Corey Kilgannon, <i>Threats of Violence as Homes for Sex-Offenders Cluster in Suffolk</i> , <i>New York Times</i> (Oct. 9, 2006); <i>Man Anticipates Support, Not Jail, For Attacking Pedophiles</i> , <i>Portsmouth Herald</i> (May 6, 2005).....	12
Candace Kruttschnitt, Christopher Uggen, and Kelly Shelton, <i>Predictors of Desistance Among Sex-Offenders: The Interactions of Formal and Informal Social Controls</i> , 17 <i>Justice Quarterly</i> 1, 61-87 (2000) .....	11,12
Levenson & Cotter, <i>The Effects of Megan’s Law on Sex-Offender Reintegration</i> , 21 <i>J. Cont. Crim. J.</i> .....	8

Kira Milage, *Charges Filed in Double Homicides*, Bellingham Herald (Sept. 9, 2005).....13

*Shelter to Turn Tier III Offenders Away* (Jun. 17, 2009), Columbus Dispatch.....9

Richard Tewksbury, *Collateral Consequences of Sex-Offender Registration*,  
21 J. Cont. Crim. J. ....8

*Time to Work: Managing the Employment of Sex-Offenders under Community  
Supervision* (Jan. 2002), at <http://www.csom.org/pubs/timetowork.pdf> .....11

Virginia Sentencing Commission, *Assessing the Risk Among Sex Offenders in  
Virginia* (Jan. 15, 2001), at [http://www.state/va.us/sex\\_off\\_report.pdf](http://www.state/va.us/sex_off_report.pdf) .....11

**I. INTEREST OF AMICI CURIAE**

The Office of the Ohio Public Defender (OPD) is a state agency responsible for providing legal representation and other services to indigent criminal defendants convicted in state court. The primary focus of the OPD is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The primary mission of the OPD is to protect and ensure the individual rights guaranteed by the state and federal constitutions through exemplary legal representation. In addition, the OPD seeks to promote the proper administration of criminal justice by enhancing the quality of criminal defense representation, educating legal practitioners and the public on important defense issues, and supporting study and research in the criminal justice system.

The Ohio Association of Criminal Defense Lawyers (OACDL) is a statewide association of over 600 public defenders and private attorneys who practice primarily in the field of criminal defense law. OACDL has an enduring interest in protecting the rights guaranteed to criminal defendants under the United States and Ohio Constitutions.

The Ohio Justice & Policy Center (OJPC) is a public interest, nonprofit law firm dedicated to establishing a forward-thinking, evidence-based criminal justice system that protects public safety and empowers former offenders to become productive members of the community. Established in 1997 and based in Cincinnati, Ohio, the Ohio Justice & Policy Center has litigated numerous cases surrounding the constitutionality and efficacy of national, state, and local sex offender policies. Through its work, the Ohio Justice & Policy Center has emerged as a regional and national expert on criminal justice issues.

The Office of the Cuyahoga County Public Defender (CPD) is legal counsel to more than one-third of all indigent persons indicted for felonies in Cuyahoga County. As such, the CPD is the largest single source of legal representation of criminal defendants in Ohio's largest county.

As Amici Curiae, the OPD, CCPD, OACDL, and OJPC offer the Court the perspective of experienced practitioners who routinely handle significant criminal cases in the Ohio courts. Amici collectively have an interest in this case insofar as it will determine the constitutionality of Ohio's most recent sex-offender classification law, Senate Bill 10. We believe that it is imperative to the protection of our clients' rights that this Court move swiftly to address the myriad constitutional challenges to Senate Bill 10 presented in this case.

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

Amici adopt by reference the statement of the case and facts set forth by Appellant Christian Bodyke.

## **II. INTRODUCTION**

As set forth in the jurisdictional memoranda, this case presents six distinct propositions of law challenging the constitutionality of Ohio's newest sex-offender classification law, Senate Bill 10 ("S.B. 10"). In his merit brief, Mr. Bodyke presents this Court with comprehensive and compelling arguments in support of each proposition of law, and Amici urge this Court to adopt each proposition of law. The legal arguments have been fully presented by the parties to this litigation, and Amici do not wish to present this Court with duplicative legal arguments. Rather, as on-the-ground advocates working on a daily basis with sex-offenders and their families, Amici urge this Court to consider Senate Bill 10 in its practical and real-world application, including the serious punitive consequences this statute imposes in the lives of those it targets and the unintended dangers to public safety it creates.

## **III. ARGUMENT**

Ohio enacted its first sex-offender registration statute in 1963. Remarkably, the original version of this statute adequately protected the citizens of this state, without substantial modification, for thirty-three years. In fact, between 1963 and 1996, R.C. Chapter 2950 was

amended just three times, and the General Assembly never modified the provisions governing the duty to register, the duration of registration, or the registration requirements. See Former R.C. Chapter 2950, 130 Ohio Laws 669. By contrast, in the past twelve years, the General Assembly has enacted three different versions of the sex-offender classification law; each version more restrictive and punitive than the last.

In recent years, the laws purporting to protect society from these sex offenders have grown increasingly broad, and the restrictions have become more severe and applicable to more people. Unfortunately, the General Assembly has treated the prior decisions of this Court with respect to sex-offender classification as an open invitation to add additional requirements without limitation. But there comes a time when this Court must say, “enough is enough.” That time has arrived.

**A. Sexual Registration in Ohio Prior to July 31, 2003**

Ohio’s version of “Megan’s Law,” enacted as Amended Substitute House Bill 180 (“H.B. 180”) in 1996, and codified at R.C. 2950.01 et seq., was part of a national movement by state legislatures to require persons convicted of sexual crimes to be subject to law enforcement scrutiny and registration following the service of their judicially prescribed sentence. Under Ohio’s original Megan’s Law, trial courts had to determine whether sex offenders fall into one of the following three classifications: 1) sexually oriented offender; 2) habitual sex offender (with or without notification); or 3) sexual predator. *State v. Cook* (1998), 83 Ohio St.3d 404, 407. While the registration provisions of former R.C. 2904.04 applied to all three classifications, the duration of the registration requirement varied: sexually oriented offenders had to periodically verify their address for 10 years; habitual sex offenders had to verify their address annually for 20 years; and sexual predators had to verify their address every ninety days for life. *Id.* at 408. Moreover, the community notification requirements of former Chapter 2950 *did not* apply to

sexually oriented offenders, *could or could not* apply to habitual sex offenders, and *always* applied to sexual predators. *Id.* at 408-409. As enacted via H.B. 180, Ohio's Megan's Law placed no residential restrictions on sexual registrants.

Consistent with this graduated scheme of restrictions, Ohio's Megan's Law adopted an articulated process, pursuant to former R.C. 2950.09, by which trial courts determined which classification is appropriate. *State v. Williams* (2000), 88 Ohio St.3d 513, 518 ("Under R.C. 2950.09, a sentencing court must determine whether a sex offender is a habitual sex offender, a sexual predator, or a sexually oriented offender."). The sexually oriented offender classification, the "least restrictive designation," attached as a matter of law once the defendant had been convicted of a sexually oriented offense as defined in former R.C. 2950.01(D). *State v. Hayden* (2002), 96 Ohio St.3d 211, 215. While the sexually oriented offender classification attached as a matter of law with the conviction, the trial court was required, pursuant to former R.C. 2950.09(E)(1), to make an affirmative determination, prior to sentencing, of whether or not the individual met the statutory requirements to be a habitual sex offender. Finally, having determined whether an offender was a sexually oriented offender and/or habitual sex offender, the trial court conducted an H.B. 180 hearing to determine whether the offender is a sexual predator. Former R.C. 2950.09(B).

In order to classify a defendant as a sexual predator, the State had to prove by clear and convincing evidence "that the offender has been convicted of a sexually oriented offense *and* that the offender is likely to engage in the future in one or more sexually oriented offenses." *State v. Eppinger* (2001), 91 Ohio St.3d 158, 163. Clear and convincing evidence is "that measure of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *Id.* at 164.

In Ohio, as elsewhere, Megan's laws were subject to constitutional challenges relating to their retroactive application. In Ohio, this challenge claimed that the new notification and registration requirements violated the prohibition against retroactive/ex post facto laws in the Ohio and United States Constitutions. Ohio Const. Art. II, Sec. 28; U.S. Const. Art. I, Sec. 10. Eventually, these challenges were rejected because this Court concluded that the laws were not "punishment" and therefore did not implicate the prohibition. See, *State v. Cook* (1998), 83 Ohio St.3d 404.

In *Cook*, this Court relied upon the "intent-effects" test utilized by several courts (including the United States Supreme Court) in evaluating whether subsequent legislation amounts to punishment. *Cook* at 415. Within this analysis, this Court concluded that the "narrowly tailored" version of the law passed by the Ohio Legislature was not intended to constitute punishment and, as a practical matter, did not effectively constitute punishment. *Id.* Central to this Court's decision in *Cook* was the fact that a judicial determination regarding future dangerousness was utilized before placing individuals into the most restrictive classification. *Id.*

**B. Sexual Registration in Ohio Between July 31, 2003 and January 1, 2008**

Effective July 31, 2003, Amended Substitute Senate Bill 5 ("S.B. 5") was enacted. S.B. 5 changed Ohio's sexual registration laws in several ways. First, a sexual predator designation could no longer be revisited – once a person was designated a predator, the person remained a predator for life. Compare, R.C. 2950.07(B)(1) (S.B. 5 version, eff. 7-31-03) with R.C. 2950.09(D) (H.B. 180 version: 146 Ohio Laws, Part II, 2560, 2621-2623). Second, all sexual registrants, whether sexually oriented offenders, habitual sexual offenders or sexual predators, were prohibited from living within 1000 feet of a school. R.C. 2950.031 (S.B. 5 version). Third, sex offenders were required to register not only in their county of residence but also in counties

where they worked or attended school. R.C. 2950.04(A) (S.B. 5 version). Fourth., S.B. 5 amplified upon an amendment passed in 2001 via Amended Substitute Senate Bill 3 (S.B. 3) to provide that community notification included a sex-offender Internet database to be maintained by the Attorney General. R.C. 2950.081 (S.B. 5 version). This expanded the information about sexual registrants from that provided by H.B. 180 and reviewed in *Cook*, 83 Ohio St.3d at 422. See generally, *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202 (Lanzinger, J., concurring in part and dissenting in part (chronicling changes in Megan’s Law since *Cook*)).

In *State v. Ferguson* (2008), 120 Ohio St.3d 7, this Court once again applied the intent-effects test and concluded that the S.B. 5 amendments did not violate the prohibition on ex post facto/retroactive legislation. In reaching this conclusion, this Court determined that, on the whole, the amended version of Megan’s law was remedial rather than punitive. However, the statute before this Court in *Cook* remained “narrowly tailored” and subjected offenders to the most stringent registration and community notification provisions following a judicial determination of future dangerousness.

### **C. Sexual Registration in Ohio after July 1, 2008**

S.B. 10 bears little resemblance to the statutes considered in *Cook* and *Ferguson*. Most importantly, the judicial determination regarding future dangerousness, which was central to this Court’s resolution of both *Cook* and *Ferguson*, has been entirely eliminated. As a result, a staggering number of offenders previously found by judges to have a low risk of recidivism have been legislatively reclassified as Tier III offenders. In fact, under Senate Bill 10, the number of

people in the highest tier of the sex-offender registry has tripled. In addition, the number of offenders who face community notification has more than doubled.<sup>1</sup>

In *State v. Eppinger* (2001), 91 Ohio St.3d 158, 165, Justice Stratton expressed concern over the trend toward adjudicating “all sexual offenders as sexual predators.” Specifically, Justice Stratton noted the “risk of ‘being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law. This result could be tragic for many.’” *Id.* By eliminating any evaluation of dangerousness and tying the classification solely to the offense of conviction, the General Assembly has created precisely the problem Justice Stratton identified in *Eppinger*, which has eviscerated the remedial purpose of the law.

Prior to Senate Bill 10, sex-offender classifications broke down as follows:

- 77% sexually-oriented offenders (17, 536 individuals)
- 2 % habitual sex offenders without notification (510 individuals)
- 2% habitual sex-offenders with notification (395 individuals)
- 18% sexual predators (4,115 individuals)

Thus, the vast majority of classified offenders were only required to register annually without any community notification. Additionally, only 20% of offenders faced community notification under the prior law. However, as the law as exists today, the majority of offenders fall into the most restrictive tiers:

- 13% Tier I offenders (2, 842 individuals)
- 33% Tier II offenders (7, 492 individuals)
- 54% Tier III offenders (12, 006 individuals)

---

<sup>1</sup> The figures in this section are based upon the discovery provided by the Ohio Attorney General

By placing more than 2/3 of offenders into the highest tier levels, the General Assembly has made it impossible for the public to reasonably use the sex-offender registry to protect themselves from dangerous individuals.

In addition, 7,167 reclassified sex-offenders are subject to community notification, **for the first time**, as a result of their reclassification under Senate Bill 10. Moreover, the registration obligation for many offenders has been increased from once a year for ten years to four times a year for life. Setting aside the additional burden imposed by lifetime registration, the consequences of being labeled a Tier III sex-offender and subjected to community notification cannot be understated.

**D. Punitive Consequences of Registration and Community Notification**

For many offenders, the damaging effects of Senate Bill 10, and similar laws, emanate not from registration itself, but from the widespread dissemination of their status as a registered sex-offender to the community. Richard Tewksbury, *Collateral Consequences of Sex-Offender Registration*, 21 J. Cont. Crim. J. 1, 67-81 (2005). In fact, a recent study of the impact of community notification in Florida found that one-third to one-half of sex offenders subjected to community notification reported "dire consequences" such as the loss of a job or home, threats or harassment, or property damage. Levenson & Cotter, *The Effects of Megan's Law on Sex-Offender Reintegration*, 21 J. Cont. Crim. J. 3, 49-66 (2005). About 16 percent of the registrants reported being physically assaulted. *Id.* About 19 percent of sex offenders reported that these negative consequences had affected other members of their households. *Id.*

This Court cannot ignore the fact that being identified as a registered sex offender elicits public hostility, fear, and loathing. And that these strong emotions can motivate conduct that all too often far exceeds legitimate safety precautions. Registered sex offenders face ostracism, job

---

in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio).

loss, eviction or expulsion from their homes, and the dissolution of personal relationships. They confront harassment, threats, and property damage. Some have endured vigilantism and violence. Some have been killed. Thus, Amici urge this Court to consider not just the words of the statute, but also the actual effect of those words for a convicted sex-offender.

**1. Inability to Secure Housing**

Former sex offenders have an extremely difficult time finding and keeping homes. In some cases, neighbors find their names via online registries or through community notification by law enforcement and begin campaigns to force registered sex offenders out of their neighborhoods. Private landlords do not want to rent or sell to them; federally funded public landlords are prohibited from doing so.

Consider, as an example, that in Franklin County alone, sex-offenders are effectively banned from 60% of all residential property in the county, and more than 80% of property in high-poverty areas.<sup>2</sup> See *Assessing Housing Availability under Ohio's Sex-Offender Residency Restrictions* (Mar. 25, 2009), Red Bird, S., The Ohio State University. In addition, in Franklin County there are currently no homeless shelters that will accept Tier III offenders. According to Columbus Dispatch, the only shelter that had been accepting Tier III offenders recently changed its policy to prohibit Tier III offenders from staying at the shelter. See *Shelter to Turn Tier III Offenders Away* (Jun. 17, 2009), Columbus Dispatch. Similar problems with securing safe and affordable housing plague sex-offenders across the state.

For many offenders, reclassification under Senate Bill 10 will now bar them from public housing. Federal law specifically prohibits anyone subject to lifetime registration on a state sex

---

<sup>2</sup> This study is based upon the residency restrictions as proposed by the legislature, which would apply retroactively to all registrants. However, it remains an open question whether this Court will permit such retroactive application of the residency restrictions.

offender registry from admission to public housing. 42 U.S.C. § 13663 (2004); see, also, *Housing Auth. v. Demmings*, 2001 Wash. App. Lexis 2276. The purpose of the law was to exclude "dangerous sex offenders" from regular public housing. *Id.* So, 54% of sex-offenders in Ohio, including Mr. Bodyke, are now absolutely barred from public housing. This is despite the fact that a judge previously found many of these individuals were not "dangerous sex offenders."

Prohibiting offenders from finding stable and affordable housing may have a direct and negative effect on public safety. Amici are unaware of any studies specifically addressing reoffense rates by sex-offenders and housing, but studies of general inmate populations indicate that individuals released from prison into stable housing are less likely to re-offend. *Homeless Shelter Use and Reincarceration Following Prison Release: Assessing the Risk*, 3 *Crim. & Pub. Pol.* 2, 201-222 (2004); *From Prison to Home: The Dimensions and Consequences of Prison Re-Entry* (Jun. 2001), at [http://www.urbaninstitute.org/uploadedPDF/from\\_prison\\_to\\_home.pdf](http://www.urbaninstitute.org/uploadedPDF/from_prison_to_home.pdf) (finding 2/3 of former prisoners who did not have stable housing recommitted crimes within 12 months of release, whereas only 1/4 of those who obtained housing reoffended in the same time frame). Moreover, common sense dictates that overly broad community notification laws and irrational residency restrictions will have the likely effect of driving greater numbers of sex-offenders underground and away from supportive services like sex-offender treatment, and away from the supervision of and monitoring of law enforcement.

## **2. Inability to Secure Employment**

Being publicly identified through online registries (i.e., E-SORN) as a sex offender can restrict employment in many ways. Often, offenders who tell prospective employers they are registered sex offenders are denied employment; those who fail to tell risk being fired when employers find out-often through fellow employees who found the information through searching online sex offender registries. In addition, Senate Bill 10's requirement that Tier III

offenders provide their work address creates a powerful disincentive for the employer who does not want their business associated with E-SORN.

Making it difficult for former sex offenders to find and keep gainful employment is counterproductive for public safety. P. Gendreau, *A Meta-Analysis of the Predictors of Adult Criminal Recidivism: What Works*, 34 *Criminology* 1, pp. 575-607 (1996). Structured, full-time employment is a cornerstone of nearly all re-entry programs for offenders. See *Time to Work: Managing the Employment of Sex-Offenders under Community Supervision* (Jan. 2002), at <http://www.csom.org/pubs/timetowork.pdf>. According to the Center for Sex Offender Management, "Research has shown that meaningful employment can provide a stabilizing influence by involving offenders in pro-social activities and assisting them in structuring their time, improving their self-esteem, and meeting their financial obligations." *Id.*

Employment contributes to the likelihood that people who have previously committed crimes, including sex crimes, will not reoffend. A 2001 risk assessment study by Virginia's Criminal Sentencing Commission found employment to be a major factor affecting whether paroled sex offenders relapse and reoffend: sex offenders who had been unemployed or not regularly employed were found to recidivate at higher rates than sex offenders who experienced stable employment. Virginia Sentencing Commission, *Assessing the Risk Among Sex Offenders in Virginia* (Jan. 15, 2001), at [http://www.state/va.us/sex\\_off\\_report.pdf](http://www.state/va.us/sex_off_report.pdf). Another recent study showed that former sex offenders who committed subsequent offenses were more likely to be unemployed. R. Karl Hanson, Dept. of the Solicitor General of Canada, *Dynamic Predictors of Sexual Offense Recidivism*, at [http://ww2.ps-sp.gc.ca/publications/corrections/199801b\\_e.pdf](http://ww2.ps-sp.gc.ca/publications/corrections/199801b_e.pdf). According to a different study, the only factors associated with reduced reoffending among sex offenders were the combination of stable employment and sex-offender treatment. Candace Kruttschnitt, Christopher Uggen, and Kelly Shelton, *Predictors of Desistance Among Sex-*

*Offenders: The Interactions of Formal and Informal Social Controls*, 17 *Justice Quarterly* 1, 61-87 (2000).

### **3. Threats to Personal Safety**

Information provided by state online sex offender registries, as well as information provided during community notification by law enforcement, is not just used by private citizens to protect themselves or their children. Neighbors as well as strangers harass, intimidate and physically assault people who have committed sex offenses. At least four registered sex offenders have been targeted and murdered because they appeared on sex-offender registries. See Corey Kilgannon, *Threats of Violence as Homes for Sex-Offenders Cluster in Suffolk*, *New York Times* (Oct. 9, 2006); *Man Anticipates Support, Not Jail, For Attacking Pedophiles*, *Portsmouth Herald* (May 6, 2005).

As part of a case challenging community notification laws, New Jersey public defenders collected over one hundred affidavits from people convicted of sex offenses who experienced vigilante violence soon after their whereabouts were made available to the public, either through the internet registry or some other community notification scheme. See *A.A. v. New Jersey*, Docket No. A-2153-04TI, Appellant's Brief. In the affidavits, registrants speak of having glass bottles thrown through their windows; being "jumped from behind" and physically assaulted; having garbage thrown on the lawn; people repeatedly ringing the doorbell and pounding on the sides of the house late at night; being struck from behind by a crowbar after being yelled at by the assailant that "People like you who are under Megan's Law should be kept in jail. They should never let you out. People like you should die. When you leave tonight, I am gonna kill you." *Id.* Reviewing a similar record of such incidents, the Third Circuit Court of Appeals concluded "they happen with sufficient frequency and publicity that registrants justifiably live in fear of them." *E.B. v. Verniero* (C.A. 3 1997), 119 F.3d 1077, 1102.

Other examples from across the country have been documented. For example, in August 2005, a man shot and killed two registrants in Bellingham, Washington. Kira Milage, *Charges Filed in Double Homicides*, Bellingham Herald (Sept. 9, 2005). And, in 2006, four convicted sex offenders moved into a home near Donald Keegan in New York state. Corey Kilgannon, *Threats of Violence as Homes for Sex-Offenders Cluster in Suffolk*, New York Times (Oct. 9, 2006). Later that year Keegan was arrested for plotting to blow up the home where the offenders were living. *Id.* Police found a concoction of paint thinner and road flares in Keegan's garage that they believe Keegan planned to use to kill the offenders. *Id.*

**E. This Court must recognize the punitive effect of registration and notification.**

Several Justices of both this Court and the United States Supreme Court have recognized the substantial punitive effect of sex-offender registration and community notification. For example, in *Smith v. Doe*, 538 U.S. 84, Justice Souter described the invasive and damaging nature of registration and community notification as follows:

Widespread dissemination of offenders' names, photographs, addresses, and criminal history serves not only to inform the public but also to **humiliate and ostracize the convicts**. It thus bears some resemblance to shaming punishments that were used earlier in our history to **disable offenders from living normally in the community**. While the [majority] accepts the State's explanation that the Act simply makes public information available in a new way, the scheme does much more. Its point, after all, is to send a message that probably would not otherwise be heard, by selecting some conviction information out of its corpus of penal records and broadcasting it with a warning. **Selection makes a statement, one that affects common reputation and sometimes carries harsher consequences, such as exclusion from jobs or housing, harassment, and physical harm.**

*Id.* at 109 (Souter, J., concurring) (emphasis added).

Similarly, in *State v. Ferguson* (2008), 120 Ohio St.3d 7, 17-18, Justice Lanzinger's dissent emphasized that "[t]he simple registration process and notification procedures are now different from those considered in *Cook and Williams*" and "R.C. Chapter 2950 has been

transformed from remedial to punitive.” According to Justice Lanzinger, this Court “cannot deny that severe obligations are imposed upon those classified as sex offenders,” and that the “stigma attached to sex offenders is significant, and the potential exists for ostracism and harassment.” Therefore, Justice Lanzinger concluded sex-offender registration and community notification laws could no longer be labeled as “civil in nature” and “should be recognized as part of the punishment that is imposed as a result of the offender's actions.” *Id.*

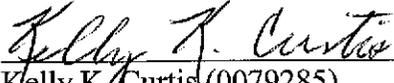
Senate Bill 10 imposes even greater restrictions on a larger number of individuals. The consequences, both legally and practically, are significant. Therefore, Amici urge this Court to adopt Justice Lanzinger’s well-reasoned dissent in *Ferguson*, and hold that the retroactive application of Senate Bill 10 violates both the United States and Ohio Constitutions.

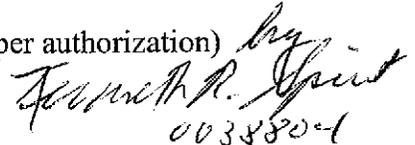
#### IV. CONCLUSION

For the foregoing reasons, and for the reasons stated in Appellant’s merit brief, this Court should reverse the decision of the Sixth District Court of Appeals.

Respectfully Submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

  
Kelly K. Curtis (0079285)  
Assistant State Public Defender  
250 East Broad Street, 14th Floor  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167

(per authorization)   
003880-1

**COUNSEL FOR AMICUS CURIAE,  
OHIO PUBLIC DEFENDER**

*Ian N. Friedman* (per authorization) *by*  
IAN N. FRIEDMAN (0068630) *Kenneth R. Spint*  
Ian N. Friedman & Associates, L.L.C. *0038804*  
1304 W. 6th Street  
Cleveland, Ohio 44113  
(216) 928-7700  
(216) 556-9779

**COUNSEL FOR AMICUS CURIAE, OHIO  
ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS**

*David Singleton* (per authorization) *by*  
DAVID SINGLETON (0074556) *Kenneth R. Spint*  
Ohio Justice & Policy Center *0038804*  
215 East Ninth Street, Suite 601  
Cincinnati, Ohio 45202  
(513) 421-1108  
(513) 562-3200

**COUNSEL FOR AMICUS CURIAE,  
OHIO JUSTICE & POLICY INSTITUTE**

*John T. Martin* (per authorization) *by*  
ROBERT L. TOBIK *Kenneth R. Spint*  
JOHN T. MARTIN (0020606) *0038804*  
CULLEN SWEENEY (0077187)  
Cuyahoga County Public Defender  
340 Lakeside Avenue, Suite 200  
Cleveland, OH 44113  
(216) 443-7583  
(216) 443-3632

**COUNSEL FOR AMICUS CURIAE,  
CUYAHOGA COUNTY PUBLIC DEFENDER**

**CERTIFICATE OF SERVICE**

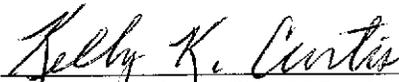
I hereby certify that a true copy of the foregoing **Merit Brief of Amici Curiae Office of the Ohio Public Defender , Ohio Association of Criminal Defense Lawyers, Ohio Justice and Policy Institute, and Cuyahoga County Public Defender in Support of Appellant Christian Bodyke** was served by regular U.S. mail; this 13<sup>th</sup> day of July, 2009, upon the following:

Russell Leffler  
Huron County Prosecuting Attorney  
12 East Main Street, 4th Floor  
Norwalk, Ohio 44857

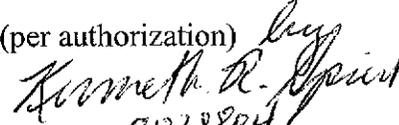
**COUNSEL FOR APPELLEE,  
STATE OF OHIO**

Jeffrey M. Gamso  
ACLU of Ohio Foundation  
4506 Chester Avenue  
Cleveland, Ohio 44103

**COUNSEL FOR APPELLANT,  
CHRISTIAN BODYKE**

  
KELLY K. CURTIS (0079285)  
Assistant State Public Defender

(per authorization)

  
0038804

**COUNSEL FOR AMICUS CURIAE,  
OHIO PUBLIC DEFENDER**