ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	: Case No. 10-0406
	:
	: Appeal from the Hamilton County Court
Plaintiff-Appellee,	: of Appeals, First Appellate District
	:
	: Court of Appeals Case No. C-0900141
vs.	:
	:
	:
CHAUNCEY R. BRANNON	:
	:
	:
Defendant-Appellant.	:

MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT CHAUNCEY R. BRANNON

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

This case presents the issues of all the critical constitutional questions raised by Senate Bill 10, Ohio's Adam Walsh Act, which pertains to the sex offender classification law. Challenges to the law including separation of powers, retroactivity, *ex post facto*, double jeopardy, due process, cruel and unusual punishment were presented and addressed below. Splits in opinions between the appellate districts, as well as the practice of many courts to stay challenges to Senate Bill 10 to await further guidance from this Court, strongly support the importance of the constitutional questions raised in this appeal. In addition, Appellant is only one of thousands of offenders affected by substantially the same issues.

STATEMENT OF THE CASE AND FACTS

A. Procedural Posture

Defendant-Appellant Chauncey R. Brannon (hereinafter "Mr. Brannon") submitted a petition to the trial court pursuant to R.C. 2950.031(E) and R.C. 2950.032(E), for a hearing to contest the application of Senate Bill 10 ("S.B. 10"), also known as the Adam Walsh Act, to him on December 9, 2008. On February 23, 2009, a hearing was held on the petition. On the same day, the court filed an Entry Denying Petition Contesting Reclassification and New Registration Requirements Pursuant to R.C. 2950.031(E). On March 23, 2009, Mr. Brannon filed a timely notice of appeal, and on January 27, 2010, the Hamilton County Court of Appeals upheld the trial court's decision.

B. Factual Background

In 1984, Mr. Brannon was found guilty in a jury verdict of kidnapping, aggravated robbery, and rape. He served twelve years in the Ohio Department of Corrections, then several more years on a parole violation. In 2001, a Cuyahoga County court found Mr.

Brannon to be a sexual-oriented offender. Pursuant to the old R.C. 2950, Mr. Brannon was required to report once a year for ten years. Pursuant to S.B. 10 and the new R.C. 2950, Mr. Brannon was reclassified as a Tier III offender and is required to report every 90 days for life.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: The Retroactive Application of Senate Bill 10 Violates the Prohibition of *Ex Post Facto* Laws in Article I, Section 10 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."[1] A challenged statute violates the federal prohibition on *ex post facto* laws if the General Assembly intended to create a retroactive criminal punishment or, even if the Assembly intended to impose a civil penalty, if the statutory scheme is "so punitive in effect as to negate the State's intention to deem it civil."[2]

In determining the General Assembly's intent, courts must first "ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other."[3] Unlike the 1997 Megan's Law, which the Ohio Supreme Court held was intended to be a "narrowly tailored attack on th[e] problem" of protecting the community from sex offenders, Senate Bill 10's classification is not tied to

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1 *Miller v. Florida* (1987), 482 U.S. 423, 429, 107 S.Ct. 2446, 96 L.Ed.2d 351 (quoting *Calder v. Bull* (1798), 3 Dall. 386, 390, 1 L.Ed. 3).

2 *State v. Cook* (1998), 83 Ohio St.3d 404, 415, 700 N.E.2d 570; *Smith v. Doe* (2003), 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164.

3 *Id.*; *Hudson v. United States* (1997), 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450.

the individual's ongoing threat to the community.[4] Rather, classification flows directly from the offense of conviction, transforming Megan's Law's narrowly tailored solution into a categorical and punitive statutory scheme. This conclusion that the Assembly intended Senate Bill 10 to be punitive is further supported by its decision to place the Bill within Ohio's Criminal Code and to impose criminal prosecution and penalties on individuals who do not comply with its registration, verification, or notification requirements.[5]

Even if this Court determines that the General Assembly intended Senate Bill 10 to operate as a remedial statute, the bill has a "punitive effect so as to negate a declared remedial intention."[6] Factors for assessing the punitive effects of a statute include whether the obligations were historically regarded as punishment; operate as a disability or restraint; further traditional notions of punishment; bear a rational connection to non-punitive purpose; and/or are excessive in relation to the alternative purposes assigned.[7]

Senate Bill 10 meets all these factors. At its mildest, it imposes "mild personal embarrassment to social ostracism," and its residency restrictions resemble colonial punishments of "public shaming, humiliation, and banishment."[8] Senate Bill 10 subjects offenders to significant restraints on their liberty not shared by the general citizenry, akin to parole and probation, as a direct consequence of criminal conduct. This furthers traditional notions of punishment and deterrence and is not "narrowly tailored to comport with the

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4 *Cook*, 83 Ohio St.3d at 417.

5 See, generally, R.C. 2950.99. See, *Smith*, 538 U.S. at 94.

6 *Allen v. Illinois* (1985), 478 U.S. 364, 369, 106 S.Ct. 2988, 92 L.Ed.2d 296.

7 *Smith*, 538 U.S. at 97 (citing *Kennedy v. Mendoza-Martinez* (1963), 373 U.S. 144, 168-69, 83 S.Ct. 554, 9 L.Ed.2d 644).

8 See, *Smith*, 538 U.S. at 98.

respective danger and recidivism levels of the different classifications of sex offenders."[9] The imposition of obligations or burdens regardless of whether they are necessary in a particular case is clearly punitive in effect.

<u>Proposition of Law No. 2</u>: The Retroactive Application of Senate Bill 10 Violates the Prohibition on Retroactive Laws in Article II, Section 28 of the Ohio Constitution.

The Retroactivity Clause of Article II, Section 28 of the Ohio Constitution expressly forbids the enactment of retroactive laws, affording Ohio citizens greater protection against retroactive laws than the *Ex Post Facto* Clause of the United States Constitution.[10]

In *Van Fossen v. Babcock & Wilcox Co.*, the Ohio Supreme Court established a two-part inquiry to determine whether a particular statute is unconstitutionally retroactive.[11] The first step is to determine whether the General Assembly clearly expressed its intent for the statute to apply retrospectively.[12] If not, then the statute cannot be applied retroactively.[13] If the General Assembly clearly expressed its intent to apply the statute retrospectively, the court must determine whether the statute is substantive or remedial.[14] If the statute is determined to be substantive, it violates the Retroactivity Clause.[15]

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9 See, *Cook*, 83 Ohio St.3d at 421-22.

10 Section 28, Article II, Ohio Constitution ("The general assembly shall have no power to pass retroactive laws * * *."); *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 105, 522 N.E.2d 489.

11 *Id.* at 105-06.

12 *Id.* at 106.

13 *Id.*

14 *Id.* at 105.

15 *Id.* at 106.

Ohio courts have held that the General Assembly clearly intended to apply Senate Bill 10's tier-classification and registration provisions retroactively.[16] First, a sexual offender must be given notice of the duty to register "regardless of when the person committed the sexually oriented offense."[17] Second, the tier classifications apply to offenders who registered under former R.C. Chapter 2950 prior to December 1, 2007.[18] Third, every "offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense," must register "[r]egardless of when the sexually oriented offense was committed."[19] Fourth and last, Senate Bill 10 provides for the reclassification of offenders who were classified under former R.C. Chapter 2950.[20]

With such clear intent, for Senate Bill 10 to apply retrospectively, it is rendered unconstitutional because it is a substantive law. First, Senate Bill 10 retroactively vacates a court order limiting Appellant's registration duties. Second, Senate Bill 10 retroactively affects accrued substantive rights conferred by former Chapter 2950 by impermissibly changing the registration and notification requirements for previously-adjudicated sex offenders. Where an appellant was provided an end date for registration requirements based on former Chapter 2950, he or she justifiably relied on that limitation and the Ohio Constitution requires that the General Assembly honor that limitation.[21] Third, Senate Bill 10 indisputably "creates a new obligation, imposes a new duty, or attaches a new disability,

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16 See *Sewell v. State* (Feb. 27, 2009), 1st Dist. No. C-080503, 2009-Ohio-872, at ¶ 10.

17 R.C. 2950.03; R.C. 2950.03(A)(1), (2).

18 R.C. 2950.03(A)(5).

19 R.C. 2950.04.

20 R.C. 2950.031; R.C. 2950.032.

21 See, *Miller v. Hixson* (1901), 64 Ohio St. 39, 51, 59 N.E. 749.

in respect to transactions or considerations already past."[22] Although "where no vested right has been created, a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration * * * created at least a reasonable expectation of finality."[23] Appellant here had a vested right and a reasonable expectation of finality. Accordingly, Senate Bill 10 is a substantive law and violates the Retroactivity Clause.

Proposition of Law No. 3: Reclassification of Appellant Constitutes a Violation of the Separation of Powers' Doctrine.

The legislative and executive branches' attempt to reclassify Appellant under Senate Bill 10 violates the separation of powers doctrine by interfering with a prior judicial adjudication regarding Appellant's sex offender status, and is therefore unconstitutional.

Prior to the enactment of Senate Bill 10, the determination of whether and how an offender had to register as a sexual offender was reserved to the judiciary.[24] The General Assembly impermissibly altered this judicial determination by enacting Senate Bill 10.

The Eleventh Appellate District recently held that the Adam Walsh Act violates the separation of powers doctrine to the extent it "attempts to modify the existing final sentencing judgments."[25] That holding was correct because, as the court noted, "[t]here is

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22 *Van Fossen*, 36 Ohio St.3d at 106.

23 *Cook*, 83 Ohio St.3d at 412.

24 Cf. *State v. Eppinger* (2001), 91 Ohio St.3d 158, 166, 743 N.E.2d 881.

25 *Spangler v. Ohio* (Ohio App. 11th Dist. June 30, 2009), No. 2008-L-062, 2009-Ohio-3178, ¶55-58. *But see Ohio v. Maggy* (Ohio App. 11th Dist. June 30, 2009), No. 2008-T-0078, 2009-Ohio-3180 (opinion published the same day as *Spangler* holding S.B. 10 to be constitutional -- critically, the "separation of powers" challenge that guided the holding in *Spangler* appears to have not been raised in *Maggy*); *Ohio v.*

no exception to the rule that final judgments may not be legislatively annulled in situations where the Legislature has enacted new legislation."[26]

Proposition of Law No. 4: Reclassification of Petitioner Constitutes Impermissible Multiple Punishment Under the Double Jeopardy Clauses of the Ohio and United States Constitutions.

The Double Jeopardy Clauses of the United States and Ohio Constitutions preclude the imposition of multiple punishments in separate proceedings for the same substantive offense.[27] "The protections afforded by the two Double Jeopardy Clauses are coextensive."[28]

In analyzing Appellant's double jeopardy protections, the Court must first determine whether the legislature "in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other."[29] Second, even in those cases where the legislature "has indicated an intention to establish a civil penalty," the statute may violate the Double Jeopardy Clauses where "the statutory scheme was so punitive

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Charette (Ohio App. 11th Dist. June 19, 2009), No. 2008-L-069, 2009-Ohio-2952 (explicitly rejecting the "separation of powers" challenge).

26 *Id.* at ¶ 60 (emphasis added).

27 See, *Blockburger v. United States* (1931), 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306; *United States v. Benz* (1930), 282 U.S. 304, 51 S.Ct. 113, 75 L.Ed. 354; *Brown v. Ohio* (1977), 432 U.S. 161, 166, 97 S.Ct. 2221, 53 L.Ed.2d 187; *State v. Gustafson* (1996), 76 Ohio St.3d 425, 437, 668 N.E.2d 435 ("The Double Jeopardy Clause affords protection not only from multiple prosecutions, but also from imposition of multiple punishments in separate and successive proceedings.").

28 *State v. Martello*, 97 Ohio St.3d 398, 2002-Ohio-6661, 780 N.E.2d 250, at ¶ 7.

29 *Cook*, 83 Ohio St.3d at 415 (quoting *United States v. Ward* (1980), 448 U.S. 242, 248-249, 100 S.Ct. 2636, 65 L.Ed.2d 742).

either in purpose or effect, * * * as to transfor[m] what was clearly intended as a civil remedy into a criminal penalty."[30]

As explained in Proposition of Law No. I ("Federal Ex Post Facto"), *supra,* the obligations and burdens imposed by Senate Bill 10 are punitive in both intent and effect and therefore constitute additional punishment. If the State is permitted to reclassify Appellant under Senate Bill 10, Appellant will have been punished twice in successive proceedings in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Ohio Constitution.

Proposition of Law No. 5: The Residency Restrictions of Senate Bill 10 Violate Due Process.

The residency restrictions enhanced by Senate Bill 10 violate the right to privacy guaranteed by Section 1, Article I of the Ohio Constitution. In addition, they violate the substantive component of the Due Process Clauses in the Fourteenth Amendment of the United States Constitution and in Section 16, Article I of the Ohio Constitution "which forbid[] the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."[31] Even when a fundamental liberty interest is not implicated, the due process clause requires state legislation to "rationally advanc[e] some legitimate governmental purpose."[32]

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30 *State v. Uskert*, 85 Ohio St.3d 593, 598, 1999-Ohio-289, 709 N.E.2d 1200 (internal quotations and citations omitted).

31 *Reno v. Flores* (1993), 507 U.S. 292, 301-302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (emphasis in original); *State v. Burnett*, 93 Ohio St.3d 419, 428, 2001-Ohio-1581, 755 N.E.2d 857.

32 *Reno*, 507 U.S. at 306; see, also, *Fabrey v. McDonald Village Police Dep't* (1994), 70 Ohio St.3d 351, 354, 639 N.E.2d 31.

Reclassification under Senate Bill 10 prohibits Appellant from residing within 1000 feet of a school, pre-school, or child day-care center, restricting Appellant's choice of a home and "loom[ing]" over any residence selected by Appellant because of "the possibility of being repeatedly uprooted and forced to abandon homes" if a pre-school or day-care center opens near his residence.[33] These restrictions operate as a direct restraint on Appellant's liberty and infringe his fundamental right to live where he wishes as well as his right to privacy.

Freedom from physical restraint has always been recognized "as the core of the liberty protected by the Due Process Clause," and residency restrictions are just such a "restraint[] not shared by the public generally."[34] The residency restriction also violates Appellant's right to "live and work where he will" and establish a residence of his own choosing by restricting him to residences that are not located within 1000 feet of any school, pre-school, or day-care facility.[35]

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33 R.C. 2950.034; see, *Mann v. Georgia Dept. of Corr.* (2007), 282 Ga. 754, 756, 759, 653 S.E.2d 740.

34 *Kansas v. Hendricks* (1997), 521 U.S. 346, 356, 117 S.Ct. 2072, 138 L.Ed.2d 501 (quoting *Foucha v. Louisiana* (1992), 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437); see, also, *Youngberg v. Romeo* (1982), 457 U.S. 307, 316, 102 S.Ct. 2452, 73 L.Ed.2d 28; see, *Jones v. Cunningham* (1963), 371 U.S. 236, 240, 83 S.Ct. 372, 9 L.Ed.2d 285 (explaining that parole constitutes such a restraint); *Hensley v. Municipal Court, San Jose Milpitas Judicial Dist.* (1973), 411 U.S. 345, 351, 93 S.Ct. 1571, 36 L.Ed.2d 294 (explaining that an individual released on "his own recognizance" is subject to such restraints).

35 *Meyer v. Nebraska* (1923), 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042; *Kramer v. United States* (C.A.6, 1945), 147 F.2d 756, 759; *Valentyne v. Ceccacci* (Aug. 12, 2004), 8th Dist. No. 83725, 2004-Ohio-4240, at ¶ 47; see also, *State v. Williams*, 88 Ohio St.3d 513, 525, 2000-Ohio-428, 728 N.E.2d 342 (an individual's right to privacy under Section 1, Article I of the Ohio constitution "runs parallel to those rights of privacy guaranteed by the Fourteenth Amendment to the United States Constitution").

Given that the residency restriction impairs a fundamental liberty interest, it must be struck down unless it serves a compelling state interest and is "narrowly tailored [to] target[] and eliminate[] the exact source of the 'evil' it seeks to remedy."[36] Even assuming that the residency restrictions were designed to promote the safety of children and that this constitutes a compelling state interest, the State cannot demonstrate that the statute is narrowly tailored. The restrictions are not rationally related, let alone narrowly tailored, to serve the interest of protecting children from sex offenders because they fail to discriminate between offenders who present an ongoing risk to children and those who do not. In addition, empirical research indicates that the residency restrictions are ineffective as a mechanism for protecting children and may even be counterproductive.[37]

Accordingly, because R.C. 2950.034 burdens fundamental liberty interests and is not narrowly tailored to serve a compelling state interest, it must be struck down as unconstitutional.

Proposition of Law No. 6: Senate Bill 10 Violates the Prohibition Against Cruel and Unusual Punishment in the United States Constitution.

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment and guarantees individuals the right not to be subjected to

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36 *Burnett*, 93 Ohio St. 3d at 429 (quoting *Frisby v. Schultz* (1998), 487 U.S. 474, 485, 108 S.Ct. 2495, 101 L.Ed.2d 420).

37 See, e.g., Minn. Dep't of Corrections, Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature, 9 (2003) ("Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact;" "[N]o evidence points to any effect on offense rates of school proximity residential restrictions;" "[B]lanket proximity restrictions on residential locations of [sex offenders] do not enhance community safety").

excessive sanctions.[38] The prohibition against cruel and unusual punishments must be "interpreted according to its text by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design" and must refer "to 'the evolving standards of decency that mark the progress of maturing society' to determine which punishments are so disproportionate as to be cruel and unusual."[39]

As discussed above, Senate Bill 10 is not a pure civil remedy. The new duties, obligations, restrictions, and penalties associated with a failure to comply with Senate Bill 10 drastically altered the provisions of Ohio's sex offender registration laws and imposed a punishment that is excessive for the crime. Accordingly, Senate Bill violates the United State Constitution's prohibition on cruel and unusual punishment.

CONCLUSION

For the reasons discussed above, this Court should accept jurisdiction, adopt Appellant's Propositions of Law, hold the provisions of Senate Bill 10 unconstitutional, and reverse the decision of the Court of Appeals.

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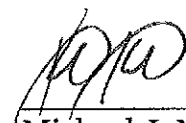
38 *Atkins v. Virginia* (2002), 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335. See also *Furman v. Georgia* (1972), 408 U.S. 238, 239, 92 S.Ct. 2726, 33 L.Ed.2d 346 (per curium) (provision is applicable to the states through the Fourteenth Amendment); *Robinson v. California* (1962), 370 U.S. 660, 666-67, 82 S.Ct. 1417, 8 L.Ed.2d 758; *Louisiana ex rel. Francis v. Resweber* (1947), 329 U.S. 459, 463, 67 S.Ct. 374, 91 L.Ed. 422 (plurality opinion).

39 *Id.* at 561 (quoting *Trop v. Dulles* (1958), 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (plurality opinion)).

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Jurisdiction of Defendant-Appellant Chauncey R. Brannon was sent via U.S. Mail to Assistant Prosecutor Paula Adams of the Hamilton County Prosecutor's Office, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202 on the 5th day of March, 2010.

Kurt R. Hunt

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

CHAUNCEY R. BRANNON,	:	APPEAL NO. C-090141
Petitioner-Appellant,	:	TRIAL NO. SP-0800603
vs.	:	*JUDGMENT ENTRY.*
STATE OF OHIO,	:	
Respondent-Appellee.	:	

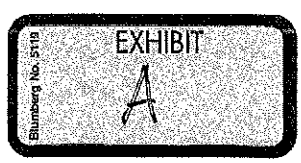
ENTERED
JAN 27 2010

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

In Texas in 1999, petitioner-appellant Chauncey R. Brannon was convicted of indecency with a minor and attempted sexual intercourse with a minor. Brannon moved to Ohio in 2006. Although the record is somewhat confusing, Brannon apparently registered as a sexual predator under former R.C. Chapter 2950.

Brannon received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 ("Senate Bill 10") as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. Brannon filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. He also filed an R.C. 2950.11(F)(2) petition for relief from the community-notification provisions. After a hearing, the trial court overruled Brannon's constitutional challenges to Senate Bill 10. But the parties agreed

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.



that Brannon had been incorrectly classified as a Tier III offender. The trial court found that Brannon's correct classification was a Tier II offender. As a Tier II offender, Brannon is required to register every 180 days for 25 years, but he is not subject to community notification.

Brannon's first assignment of error, which alleges that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, is overruled.

"The Ex Post Facto Clause applies only to criminal statutes."[2] We held in *Sewell v. State*[3] that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

Brannon's second, third, and fourth assignments of error are overruled because the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.[4] Brannon's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

Brannon's fifth assignment of error is overruled. Brannon has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside

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[2] See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.
[3] 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.
[4] Id.

ENTERED
JAN 27 2010

the restricted area.[5] We note that the Ohio Supreme Court held in *Hyle v. Porter*[6] that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender who had bought his home and committed his offense before the effective date of the statute.

The sixth assignment of error, alleging that the retroactive application of Senate Bill 10's registration requirements constitutes cruel and unusual punishment, is overruled because the statutes are civil and remedial, not punitive.[7] Therefore, the registration requirements cannot be viewed as punishment.[8]

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 27, 2010

per order of the Court Presiding Judge

ENTERED
JAN 27 2010

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[5] See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.
[6] 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.
[7] See *Sewell v. State*, supra, at fn. 3.
[8] See id.; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051.

ENTERED
FEB 03 2009

HAMILTON COUNTY COMMON PLEAS COURT
HAMILTON COUNTY, OHIO

State of Ohio
Respondent

-vs-

Chauncey Brannon
Petitioner

D82019067

CASE NO.: SP0800603
JUDGE: Dewine

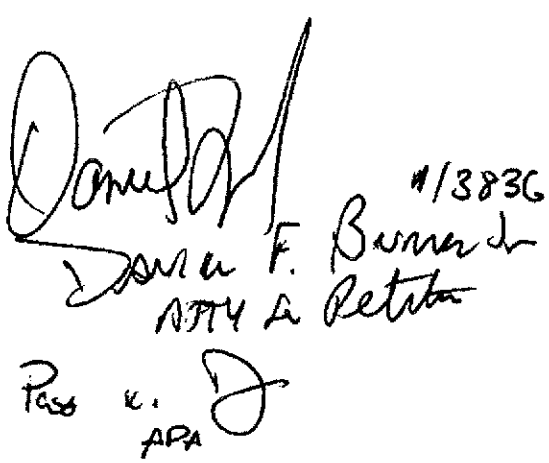
ENTRY DENYING PETITION CONTESTING RECLASSIFICATION AND NEW REGISTRATION REQUIREMENTS PURSUANT TO R.C.2950.031(E)

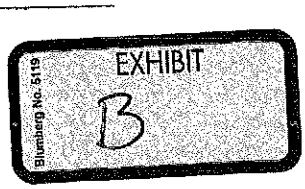
Pursuant to R.C. 2950.031(E), the court has considered all relevant information and/or testimony presented by all parties in this matter and finds that the Petitioner has proven by clear and convincing evidence that the new classification and expanded registration requirements as specified in the Attorney General's letter do not apply to him.

Therefore, the Court hereby orders that the registration requirements as set forth in R.C. 2950.05 and R.C. 2950.06 as applicable to a Tier II Offender rather than a Tier III Offender apply to Petitioner.

Petitioner's constitutional challenges to his reclassification and registration requirements are without merit in accord with *Slagle v. State*, 145 Ohio Misc.2d 98, 2008 Ohio 593 and *Sewell v. Ohio*, Hamilton County Court of Common Pleas SP0700035.

SO ORDERED.



Pat DeWine
JUDGE

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