

**ORIGINAL**

IN THE SUPREME COURT OF OHIO  
2010

STATE OF OHIO,

Case No. 10-1660

Appellee,

-vs-

On Appeal from the  
Franklin County Court  
of Appeals, Tenth  
Appellate District

PAUL E. PALMER,

Court of Appeals  
Case Nos. 09AP-956  
09AP-957

Appellant

**MEMORANDUM OF APPELLEE STATE OF OHIO OPPOSING  
JURISDICTION**

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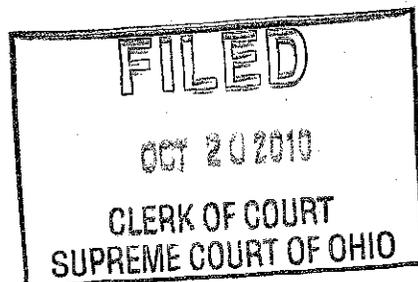
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(D) The decision in <i>Bodyke</i> , as interpreted in <i>Chojnacki v. Cordray</i> , 126 Ohio St.3d 321, 2010-Ohio-3212, has resulted in the entire severance of the petition-contest mechanisms created by R.C. 2950.031(E) and R.C. 2950.032(E). As a result, offenders cannot proceed under previously-filed petition contests and cannot be afforded relief in such petition contests. Those offenders seeking judicial relief from application of the new registration scheme must resort to another procedural mechanism. ( <i>State v. Bodyke</i> , 126 Ohio St.3d 266, 2010-Ohio-2424, limited)	4
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**CERTIFICATE OF SERVICE**

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## EXPLANATION OF WHY THIS COURT SHOULD DECLINE JURISDICTION

The unique procedural posture of these cases makes review unwarranted, and therefore jurisdiction should be declined.

Insofar as appellant's criminal case was concerned, the trial court exceeded its authority by ruling on whether an element of the offenses could be proven. There is no "summary judgment" procedure in criminal cases on the elements of the offense.

Appellant's second proposition of law does not warrant review, and the reversal of the dismissal of the criminal case is unassailable.

Insofar as appellant's petition-contest appeal is concerned, appellant uses the first proposition of law to challenge the Tenth District's statutory ruling that the new law applies to pre-Megan's Law offenders. But there is no reason to grant review of that issue. The Tenth District's discussion of the issue was solid and was consistent with other appellate case law on the statutory issue. Appellant's weak and simplistic arguments would constitute a waste of this Court's judicial resources. There was *ample* basis in the statutory language for the Tenth District to conclude the new statutory scheme applies to pre-Megan's Law offenders like appellant.

Insofar as appellant uses the first proposition of law to contend he has a separation-of-powers defense to application of new law to him, appellant notably does not explain how he would fit within the holding of *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424. *Bodyke's* separation-of-powers holding only applies when there has been a prior *judicial* classification, and appellant does not claim that any judge classified him previously. Indeed, his main argument has been that he was not even subject to Megan's Law, which is consistent with the view that no judge ever classified him. As appellant's

conviction predated the effective date of Megan's Law, the sentencing judge made no reference to sex-offender registration status. Appellant simply does not benefit from *Bodyke*, and there is no prior judicial classification to "reinstate."

If anything, *Bodyke* undercuts appellant's effort to obtain judicial relief from new registration requirements, since *Bodyke*, as interpreted by *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, has severed the petition-contest mechanism invoked by appellant in the trial court to challenge those requirements. The trial court has no jurisdiction to address such a "petition" after the *Bodyke/Chojnacki* severance.

To be sure, without addressing the jurisdiction question, this Court has granted appellate relief and/or granted remands to several sex offenders, based on the apparent assumption that jurisdiction persists after the *Bodyke/Chojnacki* severance for the trial court to act. But this Court has not explained the source of such jurisdiction, which is a substantial question in its own right. If such "jurisdiction" is based upon some theory of inherent authority, this Court has not provided justification for an exercise of such raw judicial power, especially in a case in which no prior judicial classification took place. The exercise of such raw power cannot be justified here under a theory of a court protecting its prior actions, as there was no prior judicial classification to "protect." It would be ironic indeed if the decision in *Bodyke*, premised on the careful separation of powers that should be observed by all branches of government, were turned into a font of unlimited extra-statutory power by courts.

Appellant's third proposition of law brings this proposed exercise of raw judicial power into stark view, as the trial court in the petition-contest proceeding issued a broad order enjoining officials, including federal officials, to remove appellant's name "from all

sexually oriented lists maintained by the local, state or federal government.” This broad order was not even justified under R.C. 2950.031(E), the pertinent petition-contest mechanism. But now, with the petition-contest mechanism itself severed, there would be no statutory basis for such a broad order. Given such severance, appellant’s third proposition of law, with its proposed recognition of endless judicial authority by courts of limited jurisdiction, does not warrant review.

If this Court believes that review is warranted, this appeal should proceed through full briefing and argument. Appellant simply does not fit within the *Bodyke* separation-of-powers holding, as no prior judicial classification occurred. Again, the ratio decidendi of *Bodyke* was the separation-of-powers problem created by the General Assembly’s interference with prior judicial classifications. Absent such classification, there is no basis to find a separation-of-powers violation. Absent a prior judicial classification, the General Assembly has merely decided to add or change classifications that the General Assembly itself imposed. Such intra-legislative changes as to registration simply cannot pose a separation-of-powers problem.

If *Bodyke* is to be extended to appellant, who had no prior judicial classification, such extension should only occur after full briefing and argument. For if the General Assembly could not impose a new registration requirement on appellant, when none existed before, then every registrant who was newly classified by Megan’s Law would potentially have a valid separation-of-powers complaint too, including predators who were classified as such before their release from prison. This would potentially gut the registration scheme as to a substantial number of Megan’s Law registrants. Instead of “reinstating” these offenders’ old Megan’s Law classifications as per the *Bodyke* plurality,

the end result could be to wipe clean their classifications even under Megan's Law. This Court did not intend such a result, given its express limiting of its holding to offenders having prior judicial classifications, and given its desire to "reinstate" prior Megan's Law classifications. Given the ramifications of extending *Bodyke* beyond judicially-classified offenders, such extension should only occur after full briefing and oral argument.

Full briefing and argument would also give this Court the opportunity to explore the implications of this Court's facial severance of the petition-contest mechanism on the trial court's jurisdiction. However, the State submits that this Court should decline review of appellant's appeal for the reasons stated earlier.

### STATEMENT OF THE CASE AND FACTS

The State incorporates by reference the procedural history discussed in paragraphs one to eight of the Tenth District decision.

### ARGUMENT

**Response to First Proposition of Law:** (A) The unqualified language of R.C. 2950.04(A)(2) applies the registration duty to all offenders who were convicted of sexually oriented offenses, regardless of when the offense or conviction occurred. Language in prior versions of the statute tying the registration duty to the date of the sentencing hearing or release from prison has been deleted, thereby rendering the holding of *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098, inapposite.

(B) The separation-of-powers holding in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, is expressly limited to offenders who received a prior judicial classification. The Court did not purport to rule on other offenders, and the Court's holding is accordingly limited to such offenders.

(C) No separation-of-powers violation is shown merely because the offender was not subject to a registration duty under the prior registration scheme and the General Assembly has newly imposed such a duty in the new registration scheme. The General Assembly's decision to amend prior statutory law is an inherent legislative function that, absent a prior judicial classification, does not invade any proper prerogative of another branch of

government.

(D) The decision in *Bodyke*, as interpreted in *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, has resulted in the entire severance of the petition-contest mechanisms created by R.C. 2950.031(E) and R.C. 2950.032(E). As a result, offenders cannot proceed under previously-filed petition contests and cannot be afforded relief in such petition contests. Those offenders seeking judicial relief from application of the new registration scheme must resort to another procedural mechanism. (*State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, limited)

(A) The duty to register under the Megan's Law scheme hinged on language in former R.C. 2950.04(A)(1)(a), (b), and (c) that made the duty dependent on whether the offender was sentenced after July 1, 1997, whether the offender was released from prison from serving the sex-offense sentence after July 1, 1997, and/or whether the offender qualified as a habitual sex offender under the prior registration scheme. In *Champion*, this Court emphasized the need for one of these time-related criteria for a registration law to apply.

Appellant's argument about the absence of a duty to register under Megan's Law is misplaced for at least two reasons. First, the duty to register imposed in current R.C. 2950.04(A)(2) is not dependent on a prior duty to register. Second, the provisions upon which those cases relied, i.e., former R.C. 2950.04(A)(1)(a), (b), and (c), were *deleted* by Senate Bill 10 effective 1-1-08 and cannot be dispositive of any current duty to register.

R.C. 2950.04(A)(2) provides that convicted sex offenders must register in the counties where they reside, are temporarily domiciled, or are employed or attend school, and this duty applies, without limitation, to persons previously convicted of "sexually oriented offenses", and expressly applies "[r]egardless of when the sexually oriented offense was committed \* \* \*." This "regardless of" language makes the timing of appellant's sexually oriented offense irrelevant; whenever such offense or conviction

occurred, an offender must register.

Appellant below appeared to point to provisions requiring that the Attorney General reclassify offenders who were in prison on 1-1-08, or who were required to register under the law as of July 1, 2007. See R.C. 2950.031, .032, and .033. But these reclassification provisions did not purport to limit the reach of the registration duty imposed by R.C. 2950.04(A)(2), which applies regardless of when the offense occurred.

Notably, R.C. 2950.031(B) and R.C. 2950.043 specifically provide for the classification of *new* registrants who were convicted before 12-1-07. These provisions support the view that there need not have been any registration duty extant prior to 1-1-08, since entirely new registrations regarding such old offenses and old convictions are now included within the registration scheme.

Appellant is essentially asking this Court to disregard the phrase “[r]egardless of when the sexually oriented offense was committed \* \* \*.” But every part of the statutory scheme is presumed to be effective, see R.C. 1.47(B), and so this “regardless \* \* \*” phrase cannot be disregarded. “A basic rule of statutory construction requires that ‘words in statutes should not be construed to be redundant, nor should any words be ignored.’”

*D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health* (2002), 96 Ohio St.3d 250, 2002-Ohio-4172, ¶ 26 (quoting another case). Nor can such unqualified language be limited by the judicial insertion of language that the General Assembly did not itself insert. *Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127.

Appellant’s reliance on R.C. 2950.07(A)(8) is also misplaced. That subsection provides that, if the offender had a duty to register under Megan’s Law and now has a duty to register under the AWA, the AWA duty is considered to be a continuation of the prior

Megan's Law duty. But this is unremarkable, as the new statutory scheme was also meant to include such old registrants. Making provision for a continuation rule as to this group does not purport to limit the reach of the registration duty that is newly imposed on the group of offenders including appellant. R.C. 2950.04(A)(2) unqualifiedly imposes a duty to register on offenders like appellant, regardless of when the offense occurred.

(B) Appellant cannot take advantage of *Bodyke* because he was not previously judicially classified. It is clear from *Bodyke* that only those offenders who received a prior judicial classification can benefit from the separation-of-powers ruling. The syllabus to that effect had four votes, and a fifth vote concurred in the conclusion that there was a separation-of-powers violation when there was a prior judicial classification. *Bodyke*, at paragraph two of the syllabus ("offenders who have already been classified by court order"); *Id.* at paragraph three of the syllabus ("offenders whose classifications have already been adjudicated by a court"); *Id.* at ¶¶ 1, 54, 55, 58, 59 (plurality opinion – "as those provisions apply to sex offenders whose cases were adjudicated"; "previously were classified by Ohio judges"; "already classified by judges"; "the final decision of a judge classifying a sex offender"; "revisit a judicial determination"); *Id.* at ¶¶ 68, 75, 91 (O'Donnell, J. – "previously classified \* \* \* by a member of the judicial branch"; "previously been adjudicated and classified pursuant to a final order of a court").

Some have contended that *Bodyke* is implicated merely when a court has entered a judgment of conviction for a sex offense, regardless of whether the court itself mentioned the resulting classification. But *Bodyke* repeatedly focused on the prior court order or judgment *classifying* the offender. The syllabus, plurality opinion, and concurring opinion mentioned "classified by court order," "classifications \* \* \* adjudicated by a court," and

like-minded phrases 16 times. *Bodyke*, at paragraphs two and three of syllabus, and at ¶¶ 54, 55, 56, 57, 59, 60, 61, 66, 67, 68, 75, 91. The rule of law set forth in *Bodyke* is clear: a court itself must have pronounced the classification in a ruling, judgment, or order for there to be a separation-of-powers violation.

Even the “reinstatement” remedy espoused by the plurality indicated that “prior *judicial* classifications of sex offenders” would be reinstated and that “the classifications and community-notification and registration orders *imposed previously by judges* are reinstated.” Id. at ¶¶ 2, 66 (emphasis added). A judgment without affirmative classification language simply would not fall within this group of prior court orders or judgments, as there otherwise would be no “prior judicial classification” to reinstate. See *Green v. State*, 1<sup>st</sup> Dist. No. C-090650, 2010-Ohio-4371, ¶¶ 5-10; *Boswell v. State*, 12th Dist. No. CA2010-01-006, 2010-Ohio-3134.

(C) Since there was no prior judicial classification, appellant would be left to complain that he was not subject to registration under the General Assembly’s prior law but that General Assembly has now changed prior law to require registration by him. But such an assertion could not constitute a separation-of-powers problem, as a *legislative* change of a prior *legislative* scheme could not possibly intrude on any proper prerogative of another branch of government. Not even the legislative branch itself can bar future legislation, and so neither can another branch of government. *State ex rel. Public Institutional Bldg. Auth. v. Griffith* (1939), 135 Ohio St. 604, 619-20 (“No general assembly can guarantee the continuity of its legislation or tie the hands of its successors.”).

(D) After *Bodyke/Chojnacki*, it is clear that the petition-contest mechanisms in R.C. 2950.031(E) and R.C. 2950.032(E) have been severed. Therefore, to the extent the

“petition” was based on those provisions, it could not proceed on that basis.

Claims of inherent authority would be flawed. The “petition” was filed in appellant’s criminal case, and criminal courts have no continuing general civil jurisdiction to address how officials and regulatory schemes consider the appellant’s conviction. The criminal court is not the criminal defendant’s all-purpose civil court, and a claim to the contrary would be unprecedented. See p. 15, *infra*.

Appellant might try to posit a theory of continuing jurisdiction based on the view that criminal courts can repel encroachments on their prior judicial classifications. But, even if they can, appellant cannot argue that point here; there was no prior judicial classification. In addition, such a theory of inherent jurisdiction based on protecting the prior judicial classification would be unhelpful to offenders who followed R.C. 2950.031(E) by filing their petitions in their county of residence or domicile rather than in their county of conviction. By proceeding in a court other than the court that classified them, those offenders would be in the wrong venue under this “repel” theory.

In addition, such a theory of inherent jurisdiction would potentially allow the court itself to modify its prior classification order under the concept of changed circumstances and changed law. So construed, a prior classification and “registration order” would be analogous to injunctive relief, and no one has a “vested right” in prospective injunctive relief, as such relief necessarily operates in futuro. *Landgraf v. USI Film Products* (1994), 511 U.S. 244, 273-74. Prospective statute-based injunctive relief is subject to modification or vacation when a significant change in statutory law has occurred, even when the original injunction was the result of a consent decree. *Horne v. Flores* (2009), 129 S.Ct. 2579, 2593; *Agostini v. Felton* (1997), 521 U.S. 203, 215; Civ.R. 60(B)(4). As a result, an

invocation of continuing jurisdiction comes with the prospect of the court adopting the legislative modification and itself reclassifying the offender to Tier I, Tier II, or Tier III in line with the revamped registration scheme. Such a judicial change would not violate the separation of powers, as the court itself would be changing its earlier order.

**Response to Second Proposition of Law:** A criminal defendant cannot obtain pretrial dismissal of a charge on the ground that the prosecution will be unable to prove an element of the offense at trial. There is no “summary judgment” procedure in criminal cases.

One of the elements of these charges was that appellant had a duty to register, to provide periodic verification, and to provide change of address at the time of March 26, 2009, the date listed in the indictment. In appellant’s motion to dismiss, he cited the *Champion* case as requiring that the offender must have been sentenced or under incarceration for the sexually oriented offense conviction on or after July 1, 1997, in order for the duty to register to have applied. He further contended that, absent a prior duty to register, he could have no duty to register under R.C. Chapter 2950 as effective January 1, 2008. The State opposed the motion to dismiss by contending that there is no summary judgment procedure in criminal cases. Despite that argument, the trial court proceeded to address the merits of the duty-to-register issue. The Tenth District correctly reversed.

“[A] motion to dismiss \* \* \* tests the sufficiency of the indictment, without regard to the quantity or quality of evidence that may be produced by either the state or the defendant.” *State v. Patterson* (1989), 63 Ohio App.3d 91, 95. “When a defendant in a criminal action files a motion to dismiss that goes beyond the face of the indictment, he is, essentially, moving for summary judgment,” and there is no such criminal procedure. *State v. Tipton* (1999), 135 Ohio App.3d 227, 228; see, also, *State v. McNamee* (1984), 17 Ohio App.3d 175, 176; *State v.*

*Scott*, 174 Ohio App.3d 446, 2007-Ohio-7065, ¶ 9. If trial courts were to entertain such pretrial “summary judgment” motions to dismiss, “trial courts would soon be flooded with pretrial motions to dismiss alleging factual predicates in criminal cases,” and “[a]lready overburdened prosecutors would be forced to respond to such attacks with specific evidence in advance of trial.” *State v. Varner* (1991), 81 Ohio App.3d 85, 86-87.

This Court has concluded that, upon a motion to dismiss, a court *can* consider material outside the four corners of the indictment when the “motion did not embrace what would be the general issue at trial.” *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, ¶ 18. “Because [the defendant’s] pretrial motion to dismiss did not require a determination of the general issue for trial, Crim.R. 12(C) allowed the trial court to consider it.” *Id.* This Court distinguished cases like *Varner*, in which the motion to dismiss challenged whether the evidence would support conviction, “because they involved pretrial motions to dismiss that required consideration of the general issue for trial.” *Id.*

Whether appellant was subject to registration duties on the date of the indicted offenses (3-26-09) was a matter for trial. To the extent appellant was contending that his sexual-battery sentence expired before the effective date of Megan’s Law, that factual assertion was a matter that went beyond the face of the indictment and therefore was not properly litigated in a pretrial motion to dismiss. There had been no jury-trial waiver, and so the trial court even lacked jurisdiction to determine the elemental duty-to-register issue. *State v. Reese*, 106 Ohio St.3d 65, 2005-Ohio-3806, ¶ 9.

The Eighth District has addressed a similar situation in *State v. Caldwell*, 8<sup>th</sup> Dist. No. 92219, 2009-Ohio-4881, concluding that the duty-to-register issue cannot be determined by pretrial motion to dismiss. See, also, *State v. Jackson*, 6<sup>th</sup> Dist. No. L-06-1105, 2007-Ohio-

1870, ¶ 10 (duty-to-register argument in motion was not “proper procedure for dismissal”).

The defense argument relied on facts that were not alleged in the indictment. While the indictment alleged that the 1996 sexual battery conviction was the most serious offense that was a basis for registration duties, it did not assert that sexual battery was the only such basis. In addition, appellant’s argument was premised on the allegation that he had completed his sexual-battery sentence before July 1, 1997. But the indictment did not state what sentence had been imposed, or what jail time credit had been recognized, and so appellant’s motion to dismiss necessarily invited the court to go beyond the indictment.

Although the existence of a duty to register is a question of law, the development of facts related to that issue must await a trial. To be sure, if such facts were undisputed at trial, the court would then be faced with the legal question of whether the evidence showed that appellant had a duty to register. If the evidence of duty was insufficient, the court could grant a motion for judgment of acquittal.

A trial is not “unnecessary.” A trial is the lone designated mechanism by which the elements of the crime and any affirmative defenses are factually litigated. The facts asserted by the defense were not cognizable “as a matter of law,” but, rather, required the factual development that a trial would entail.

Appellant errs in claiming that *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098, provides “implicit approval” for a pretrial summary judgment procedure. While the duty-to-register issue in that case was litigated by pretrial motion, neither side questioned the propriety of that procedure, and so the *Champion* Court was not faced with the issue. “A reported decision, although in a case where the question might have been raised, is entitled to no consideration whatever as settling, by judicial determination, a question not

passed upon at the time of the adjudication.” *B.F. Goodrich v. Peck* (1954), 161 Ohio St. 202, paragraph four of the syllabus. There are no “implicit” precedents, and courts are not bound by “perceived implications” of an earlier decision that did not “definitively resolve” the issue. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶¶ 10, 12. More relevant than *Champion* is this Court’s decision in *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, which recognized that, upon a motion to dismiss, a court *can* consider material outside the four corners of the indictment, provided that the “motion did not embrace what would be the general issue at trial.” *Id.* at ¶ 18.

**Response to Third Proposition of Law:** A common pleas court cannot order that an offender’s name be removed from all sexually oriented lists maintained by local, state, or federal government, as the court lacks jurisdiction to afford such overbroad injunctive relief.

The common pleas court ordered that appellant’s “name be removed from all sexually oriented lists maintained by the local, state or federal government.” But a court of criminal jurisdiction lacks authority to issue injunctive relief; the petition-contest procedure authorized by R.C. 2950.031(E) did not allow such broad relief; the petition-contest procedure has now been severed; and appellant had not proven any entitlement to such broad relief.

Insofar as the petition-contest proceeding is concerned, R.C. 2950.031(E) only allowed the court to grant relief in relation to registration requirements imposed by R.C. Chapter 2950. Various provisions in R.C. 2950.031(E) limited the court’s authority to determining how the registration requirements under R.C. Chapter 2950 apply to the offender. Moreover, when the court determined that the registration requirements do not apply at all, the court’s power was limited to issuing “an order that specifies that the new

registration requirements do not apply to the offender” and to forwarding such order to BCI, a state agency.

The common pleas court’s broad “all lists” removal order exceeded this statutory authority in several respects. At most, the court only had the ability to determine how local or state agencies would administer lists or databases maintained pursuant to R.C. 2950.13. The court had no authority to control whether and how local, state, or federal governmental agencies might keep other lists of sex offenders. Such agencies, most particularly law enforcement agencies, might keep lists of known sex offenders available for investigative purposes. The common pleas court had no authority to control how or whether such agencies would include or not include appellant’s name on a list of sex offenders as a general matter. While the court under R.C. 2950.031(E) might order relief that effectively required BCI to remove appellant’s name from the registry or database maintained under R.C. 2950.13, the court could not go further and prevent state law enforcement agencies from keeping a list of known sex offenders for investigative or other purposes. Appellant *is* a convicted sex offender, regardless of when his sex-offense conviction occurred, and local, state, and federal agencies could keep a sex-offender list or database handy regardless of R.C. Chapter 2950.

The court’s “all lists” removal order was particularly erroneous in relation to the federal government, as nothing in R.C. 2950.031(E) authorized the common pleas court to issue orders against federal officials and whatever lists they might maintain pursuant to federal law. The court’s “all lists” removal order stands on an even weaker footing after *Bodyke/Chojnacki*, which have resulted in the facial severance of R.C. 2950.031(E).

Nor could the order be justified in the criminal case. The sole question before the

court was whether the indictment should be dismissed. Its sole authority was to dismiss the indictment if it was flawed. It had no authority to issue orders to third parties.

A criminal court is a court of *law*, not a court of equity. “A court of equity is in no sense a court of criminal jurisdiction.” *State ex rel. Chalfin v. Glick* (1961), 172 Ohio St. 249, 252. “Except where there is express statutory authority therefor, equity has no criminal jurisdiction \* \* \*.” *Id.* at 252 (quoting *Corpus Juris Secundum*). Accordingly, a criminal court does not have a roving commission to issue injunctive orders against third parties, especially when those third parties have not been given notice or opportunity to be heard. See, e.g., *State v. Thoman* 10<sup>th</sup> Dist. No. 05AP-817, 2006-Ohio-1651, ¶ 11; *State v. DeMastry*, 5<sup>th</sup> Dist. No. 05CA15, 2005-Ohio-5175, ¶ 26 & n. 4; *State v. Cole*, 5<sup>th</sup> Dist. No. 2004-CA-108, 2005-Ohio-3048, ¶ 16. Since the court had determined that it would dismiss the indictment, its *criminal* jurisdiction had been exhausted.

Respectfully submitted,



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#### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was hand delivered on this 20<sup>th</sup> day of Oct., 2010, to office of David Strait, 373 South High Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215, counsel for appellant.



STEVEN L. TAYLOR