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**EXPLANATION OF WHY THIS CASE IS NOT ONE OF  
PUBLIC OR GREAT GENERAL INTEREST AND DOES  
NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL  
QUESTION.**

The State of Ohio (hereinafter referred to as “Appellant”) goes to great lengths in its Memorandum in Support of Jurisdiction filed herein to predict doomsday and atrocity for the general public in keeping tabs on registered sex offenders by the decision of the Eleventh District Court of Appeals herein by making it so much easier for a plethora of sex offenders simply to be “at liberty to terminate their obligation to account for where they are living and working.” Anarchy is inevitable and the rush to the courthouse by previously classified sex offenders will open the floodgates to the trial court criminal dockets statewide for convicted sex offenders to “shed their registration responsibilities” according to Appellant. Perhaps that would be true if not for the built in procedural safeguards of R.C. 2950.15, which includes the extremely limiting factors of being an “eligible offender” and classified as a Tier I offender to the group of persons, registered offenders, who are even eligible pursuant to R.C. 2950.15 to file a Motion to Terminate their Registration requirements after the appropriate statutory time period. R.C. 2950.15(A)(B) and (C) state as follows:

“(A) As used in this section 2950.16 of the Revised Code, “eligible offender” means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a tier I sex offender/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense, regardless of when the offense was committed, and is a public registry-qualified juvenile offender registrant.

“(B) Pursuant to this section, an eligible offender may make a motion to the court of common pleas or, for a delinquent child, the juvenile court of

the county in which the eligible offender resides requesting that the court terminate the eligible offender's duty to comply with sections 2950.04, 2950.041 and 2950.06 of the Revised Code.

(C)(1) Except as provided in division (C)(2) of this section, an eligible offender who is classified a tier I sex offender-child-victim offender may make a motion under division (B) of this section upon the expiration of ten years after the eligible offender's duty to comply with division (A)(2) or (4) of section 2950.04 or division (A)(2) or (4) of section 2950.1041 and sections 2950.05 and 2950.06 of the Revised Code begins in relation to the offense for which the eligible offender is subject to those provisions".

More importantly, Appellant completely misreads and misconstrues the utter urgency of The Eleventh District Court of Appeals Opinion herein by ignoring the fact the Appellate Court clearly articulated therein that "the scope of this Opinion will be limited to the specific ruling issued by the trial court" in reference to the application to terminate Aaron Von's (hereinafter referred to as "Appellee") obligation to comply with sexual registration requirements. (In Re Von, 2015 Ohio 943, page 3) The Eleventh District Court of Appeals decision herein only specifically referred to the Von case and does not permit all convicted offenders in the Eleventh District and the entire State of Ohio to "disappear into the shadows when their convictions and whereabouts are supposed to be known" in the community. The Court of Appeals herein stated in its Opinion the following pertinent discussion:

"{8} Appellant raises a single assignment of error for review:

{9} "The trial court erred when it found that R.C. 2950.15 does not apply to convictions prior to the date of the underlying conviction, and dismissed Appellant's conviction [sic], without considering the merits of the application."

{10} Pursuant to R.C. 2950.115(B), a sexual offender has been granted the right to move a common pleas court to terminate his obligation to comply with registration requirements. However, under division (A) of the statute, the offender is only eligible for this relief if, inter alia, he is a

Tier I sexual offender. In this case, no final determination was ever made regarding whether Appellant is a Tier I sexual offender for purposes of R.C. 2950.15. Instead, the trial court based its decision to deny Appellant's motion solely upon the consideration that the statute could not be applied retroactively. **Therefore, the scope of this opinion will be limited to the specific ruling issued by the trial court.** Emphasis added. (Von at page 3)

Clearly, the Eleventh District Court of Appeals Opinion was specifically enumerated and absolutely written to conform to the unique set of facts set forth in the instant case. The Eleventh District Court of Appeals decision is solely based on the premise that Appellee has filed an appropriate motion to terminate his sexual registration requirements pursuant to R.C. 2950.15, is an eligible offender, i.e.: a Tier I sexual offender and more than ten years has elapsed since the time of his conviction. All these factors were presumed in place by the Appellate Court (which will be reviewed later herein) when making the Court's ruling and Opinion.

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

Appellee does not take exception to the statement of the case and the fact set forth by Appellant, but would like to add the following facts for this Honorable Court's consideration. On January 29, 1997, in Arapahoe County, Colorado, Appellee pled guilty to Sexual Assault of a child, a fourth degree felony and Sexual Assault in the third degree, a misdemeanor of first degree. Appellee moved to Trumbull County, Ohio in August, 2011 from New Mexico after living briefly in Mahoning County, Ohio and Appellee always timely registered as a sexual offender with the requisite county sheriff.

Thereafter, on October 5, 2012 and after residing in Trumbull County for fourteen (14) months, Appellee filed his application to terminate his ongoing registration requirements pursuant to R.C. 2950.15. A review of Appellee's application to terminate

his registration requirements filed herein fails to list his registration status, however Appellee argued in subsequent documents submitted to the trial court that he was a Tier I sexual offender under Ohio's current statutory scheme. It is important to note, as set forth by the Eleventh District Court of Appeals in its Opinion that:

. . . "While his application was pending, he also moved the trial court for a preliminary injunction to stop the state from taking any steps to change his sexual offender classification from Tier I to Tier III. The trial court granted this motion, expressly holding that appellant would suffer irreparable harm if his classification were modified prior to the issuance of a final ruling on his application to terminate." (Von opinion, page 2)

This issue surrounding Appellee's sexual offender classification has always been and still is a point of contention between the parties as evidenced by the following factors:

- 1) On November 14, 2012, when Appellee registered with the Trumbull County Sheriff he was notified that he was a "sexual predator" under the Pre Adam Walsh Act with an obligation to register for a period of a lifetime with verification every 90 days;
- 2) In response to this notification, Appellee filed a Motion for a Preliminary Injunction with the trial court on November 15, 2012 to challenge this sexual predator classification;
- 3) On November 15, 2012, the trial court granted Appellee's preliminary injunction and specifically issued a Judgment Entry indicating that until the trial court issues a determination of the merits of Appellee's Motion to Terminate his registration rights under R.C. 2905.031 or until further order of the court, Appellee was to remain Tier I.

As such, that Judgment Entry of the trial court is still valid today and the issue of the "appropriate" sexual offender status that Appellee should hold has never been properly adjudicated by the trial court. For all intents and purposes, Appellee is considered a Tier I offender by the trial court, a significant factor used by the Eleventh District Court of Appeals in concluding as it pertains to Appellee, that his claim for relief,

his application to terminate his registration requirements under Ohio's sex offender classification laws entitle him to have his motion considered by the trial court because as a Tier I offender, he is eligible to have R.C.2950.15 applied retroactively to him.

## ARGUMENT OPPOSING PROPOSITION OF LAW

### STATE'S PROPOSITION OF LAW NO. 1: THE REGISTRATION TERMINATION PROCEDURE DELINEATED IN R.C. 2950.15 CAN BE RETROACTIVELY APPLIED TO SEX OFFENDERS WHO COMMIT THEIR CRIMES BEFORE JANUARY 1, 2008 AND WHO ARE CONVICTED AND SENTENCED BEFORE THAT DATE.

The issues on appeal herein involve statutory construction regarding R.C. 2950.15(A) which clearly states "(a)s used in this section and section 1950.16 of the Revised Code, "eligible offender" means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, **regardless of when the offense was committed**, and is a tier I offender/child-victim offender . . ." (emphasis added). Therefore, the statute itself, as an expression of the desires of the legislature, clearly states this statute applies **regardless of when the offense was committed.**" Therefore, Appellant's proposal that R.C. 2950.15 only applies to Sex Offenders convicted on or after January 1, 2008 is misplaced and the Eleventh District Court of Appeals in its decision herein was correct. This Court in State v. Williams, 2011 Ohio 3374, resolved the issue of retroactivity of a statute and created a two (2) part test to determine the same.

Initially, the first part of the test was to determine if the legislature expressly intended to make the statute retroactive. As concluded by the Eleventh District Court of Appeals and the preceding paragraph, this question can only be answered in the affirmative. This is so as this court in Williams, supra stated "R.C. 2950.03 imposes registration requirements for offenders sentenced on or after January 1, 1998, **regardless of when the offense was committed.**" The second part of the test involves a determination whether the statutory provisions are substantive or remedied. Williams,

supra , citing Hyde v. Porter 2008 Ohio 542. As correctly interpreted by the Eleventh District Court of Appeals, a retroactive substantive statute will not be held to be constitutional under the Ohio Constitution, where a remedial statute would be. Williams, supra. “A substantive statute is one that would impair or take away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right.” Williams, supra Remedial laws, however, are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right. In the instant case, R.C. 2950.15, as created by the legislature, does not impair or take away any vested rights of the defendant, nor does it create any additional burdens on the defendant. It is merely a mechanism for a Court to consider whether a defendant, who has served his judicially and statutorily imposed sentence and that accompany sex offender registration, can then later be released from the registration requirement. As the Eleventh District Court of Appeals concluded and observed, it is Appellant who is the party contesting the retroactive application of R.C. 2950.15, yet the entire procedure of considering and deciding a motion to terminate registration requirements does not place any new burdens or obligations on the State of Ohio. Clearly, the applicant has the burden of establishing he is entitled to relief under R.C. 2950.15, is an eligible offender and ten (10) years has passed since his conviction and then he still has to carry the burden of going forward with evidence to establish relief and the final burden of proof. R.C. 2950.15(H)(3).

The Eleventh District Court of Appeals correctly surmised that R.C. 2950.15, as part of the Adam Walsh Act, the legislature “determined that there can be instances in which, after ten years of legal behavior, the risk posed by a Tier I sexual offender is so slight that the benefit of continued monitoring through the registration requirements is significantly outweighed by the State’s financial burden.” (Von Opinion, page 10)

R.C. 2950.15 is a viable, constitutional statute currently recognized and used in Ohio Criminal Courts every day and was duly created by the Ohio Legislature as part of the broad sweeping revamping of Megan’s Law and morphed into the Adam Walsh Act. Despite this fact, Appellant herein is only concerned about the additional workload and safety of the general community indicated by a multitude of sexual offenders who are going to escape their registration requirements because of the Eleventh District Court of Appeals decision herein; contending the Appellate Court erred by holding that Megan’s law sex offenders are now free to an Adam Walsh Act privilege of terminating their previously imposed duties to register. This is only true if they meet all the statutory criteria of R.C. 2950.15 by establishing the burden of proof needed by the trial court to grant the motion. The Eleventh District Court of Appeals decision herein does not expand the eligible offenders or make the establishment of any of the needed prerequisites for success easier to establish. It only applies to Appellee by design of the Court of Appeals. It only applies to Aaron Von, a registered “Tier I” sex offender, whose conviction occurred in 1997, that has petitioned the court for termination of that registration requirement as can any “eligible offender” ten years after his conviction.

This proposition is unequivocally establish by a review of paragraph thirty-seven (37) of the Eleventh District Court of Appeal Opinion herein which states:

{37} “ In reviewing the materials accompanying appellant’s motion for a preliminary injunction, the trial court found the materials sufficient to warrant a interim order that appellant would be considered a Tier I sexual offender. Furthermore, the trial court never overruled the interim order. Thus, in light of our holding on the retroactivity issue, this case must be remanded so that the trial court can conduct a full hearing on the re-classification issue, as raised in the motion for a preliminary injunction, and then issue a final ruling on appellant’s status as a sexual offender for purposes of deciding his eligibility for relief under R.C. 2950.15. As part of this proceeding, the trial court may consider the state’s new argument, concerning appellant’s proper classification under the “three tier” system. In turn, if the trial court finds that appellant is a Tier I sexual offender, it can proceed to the final merits of the motion to terminate.”

Accordingly, the Eleventh District Court of Appeals decision herein deciding the trial court erred in denying Appellee’s application to terminate his registration requirements on the grounds that R.C. 2950.15 could not be applied retroactively, should stand and this Honorable Court should conclude the issue set forth in Appellant’s Memorandum in Support of Jurisdiction should not be accepted for review herein.

### CONCLUSION

Based upon the preceding case law and the argument, Appellant’s Memorandum in Support of Jurisdiction fails to establish a case of great public interest and does not involve a substantial constitutional question.

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**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum Opposing Jurisdiction has been mailed this 18<sup>th</sup> day of May, 2015, to: LuWayne Annos, Asst. Pros., Prosecutor's Office, 160 High St. N.W. 4<sup>th</sup> Floor, Warren, Ohio, Attorney for Appellant.

/s John P. Laczko  
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