No. 06-6393

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DOE

Plaintiff - Appellant

v.

Phil Bredesen, et al., in his capacity as Governor of the State of Tennessee,

Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

BRIEF OF APPELLEES

ROBERT E. COOPER, JR.
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STATEMENT REGARDING SIXTH CIRCUIT RULE 26.1

Pursuant to Rule 26.1(a), no corporate affiliate/financial interest disclosure statement is required because defendants/appellees are the Governor of the State of Tennessee and other officials of the State of Tennessee.

Lynsay Fuller — 3/21/06

(Signature of Counsel) (Date)

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellees request oral argument. This case presents a constitutional challenge to Tennessee's statutory and regulatory scheme governing the registration and monitoring of convicted sex offenders. The issues that have been raised by this challenge are matters of substantial public interest and concern. Oral argument would be beneficial in further developing the case before decision by this Court.

STATEMENT OF THE ISSUES

I. Whether the reclassification of appellant's offense from "sexual offense" to "violent sexual offense" and the probation requirement that he wear a G.P.S. monitoring device violates the Ex Post Facto Clause of the United States Constitution, when no punishment is present.

II. Whether requiring John Doe to wear an electronic monitoring device violates his right to privacy, when no fundamental rights are affected.

III. Whether John Doe's reclassification as a violent sex offender violates the Due Process Clause of the United States Constitution, when he has not shown that a hearing would afford him an opportunity to present relevant information.

STATEMENT OF THE CASE

The Plaintiff filed an action in the Eastern District of Tennessee challenging the constitutionality of certain provisions of the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004" (Act) as applied to him. (R. 1 Complaint, pg. 3, Apx. pg. 7). Plaintiff alleged in his Complaint filed March 1, 2006: (1) that the reclassification of his offender status from "sexual offender" to "violent sexual offender" pursuant to Tenn. Code Ann. § 40-39-202 violates his right to due process; (2) that the fact that, as a result of the reclassification, he now has to register as a sex offender for the remainder of his life pursuant to Tenn. Code Ann. § 40-39-207 violates the Ex Post Facto Clause of the United States Constitution; (3) that the requirement that he participate in the Satellite Based Monitoring Program as a condition of his probation pursuant to Tenn. Code Ann. § 40-39-303 violates his rights to privacy and against self-incrimination, and that this requirement violates the Ex Post Facto Clause of the United States Constitution. (R. 1 Complaint, pg. 3, Apx. pg. 7).[1]

In response, Defendants filed a Motion to Dismiss and supporting Memorandum pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon

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[1]Plaintiff also filed a Motion for Temporary Restraining Order and Preliminary Injunction at the same time. (R. 4 Motion for Temporary Restraining Order pgs. 1-3, Apx. pgs. 10-12).

which relief could be granted. (R. 12 Motion to Dismiss & R. 13 Memorandum in Support, Apx. pgs.21-57). The basis for this motion was that the Plaintiff could not establish a set of facts that would show that the registration and monitoring requirements set forth in Tenn. Code Ann. §§ 40-39-201 through 40-39-306 constitute punishment. (R. 13 Memorandum pg. 3, Apx. pg. 25). Specifically, Defendants contended that: (1) Plaintiff's reclassification as a violent sexual offender does not violate his due process rights under the Fourteenth Amendment to the United States Constitution; (2) his reclassification and the requirement that he must now register as an offender for life do not violate the Ex Post Facto Clause of the United States and Tennessee Constitutions because it is a reasonable regulatory measure to protect the public; (3) requiring the Plaintiff to wear a G.P.S. monitoring unit as a condition of his probation is not punishment, and thus not violative of the Ex Post Facto Clause of the United States and Tennessee Constitutions; and (4) that the G.P.S. monitoring unit does not violate the Plaintiff's right to privacy because it does not impose restrictions on any fundamental personal rights. (R. 13 Memorandum pgs. 1-10, Apx. pgs. 23-32).

The Plaintiff filed a response May 5, 2006, challenging the statutes on grounds not set forth in his Complaint, namely, that the law altered the terms of Plaintiff's plea agreement, relying solely on *Santobello v. New York,* 404 U.S. 257, 92 S.Ct. 495, 30

L.Ed. 2d 427. (R. 14 Plaintiffs Response pgs. 1-4, Apx. pgs. 58-61). Defendants filed a Reply with the contention that *Santobello* did not apply to the case at hand and that Plaintiff had cited no other authority on which to base his position. (R. 15 Reply, pgs. 1-3, Apx. pgs. 63-65).

The District Court issued its Memorandum Opinion on October 18, 2006, wherein the Court agreed with Defendants on the premise that the registration and electronic monitoring requirements are reasonable regulatory measures that are intended to protect the public and are constitutional as applied to Plaintiff. (R. 16 Memorandum Opinion pg. 1, Apx. pg. 66). The Court also held that Plaintiff waived his claims that the Act was unconstitutional because it infringed on his right to privacy, violated his right to procedural due process, and violated his right against self-incrimination, because Plaintiff had not addressed those claims in his Response to the Motion to Dismiss. (R. 16 Memorandum Opinion pg. 17, Apx. pg. 82). A Judgment on Decision by the Court dismissing the Complaint was entered the same day. (R. 17 Judgment pg. 1, Apx. pg. 84). This appeal followed.

STATEMENT OF THE FACTS

After January 1, 1995, but before July 1, 2004, Plaintiff, John Doe, pled guilty in the Criminal Court of Knox County to attempted aggravated kidnaping and two counts of sexual battery by an authority figure. (R. 1 Complaint pg. 1, Apx. pg. 5). He received a sentence of eighteen (18) years, to be served on probation. (R. 1 Complaint pg. 1, Apx. pg. 5). At the time of the plea, John Doe's criminal offense was classified as a "sexual offense" under Tennessee law. (R. 1 Complaint pg. 2, Apx. pg. 6). His offense remained so classified until August 1, 2004, when the State of Tennessee enacted the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004." Tenn. Code Ann. § 40-39-201, et seq. (R. 1 Complaint pg. 2, Apx. pg. 6). Pursuant to Tenn. Code Ann. § 40-39-202 (24)(j), John Doe's criminal offense is currently classified as a "violent sexual offense." (R. 1 Complaint pg. 2, Apx. pg. 6). As a violent sexual offender[2], John Doe must comply with the requirements of the Act for the remainder of his life. Tenn.

[2]"Violent sex offender" means a person who has a conviction defined as a "violent sexual offense" in Tenn. Code Ann. § 40-39-202(25) and certain other conditions are present as provided in Tenn. Code Ann. § 40-39-202(24).

Code Ann. § 40-39-207(g)(1)(B).[3] [4]

On July 1, 2004, the "Satellite Based Monitoring Program" took effect. Tenn. Code Ann. § 40-39-303. This statute authorizes the Board of Probation and Parole to enroll a person convicted of a sexual offense in a satellite based monitoring program for the extent of his or her term of probation. *Id.* On or about August 15, 2005, John Doe was notified by his probation officer that, beginning in September 2005, he would be required to wear a Global Positioning System device (G.P.S.) at all times. (R. 1 Complaint pg. 3, Apx. pg. 7).[5]

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[3]Tenn. Code Ann. § 40-39-204(b) requires persons classified as violent sexual offenders to report quarterly to their designated law enforcement agency in order to update their registration information.

[4]Under John Doe's previous classification, he had an opportunity, after ten (10) years from the termination of his probation, to file a petition in the circuit court where he resided, relieving him of filing registration forms, and expunging all related data pertaining to him. Tenn. Code Ann. § 40-39-207.

[5]It is not clear from the Complaint, nor other filings, how long Plaintiff has been or will continue to be on probation pursuant to his plea agreement.

SUMMARY OF THE ARGUMENT

Plaintiff, John Doe, brought an action in the District Court to enjoin the Defendants from requiring him to wear an electronic monitoring (G.P.S.) device as a condition of probation and to register as a sexual offender for the rest of his life. He contends that such requirements are unconstitutional because they violate the Ex Post Facto Clause of the United States Constitution, as well as his rights to privacy and procedural due process.

The District Court correctly ruled that the registration and electronic monitoring requirements are not punishment. They are reasonable regulatory measures that are intended to protect the public, and are, therefore, constitutional as applied to the Plaintiff.

ARGUMENT

A court reviews *de novo* a district court's dismissal of a complaint for failure to state a claim under Rule 12(b)(6). *Zigler v. IBP Hog Market,* 249 F.3d 509, 511-12 (6th Cir. 2001). A motion to dismiss requires the Court to construe the complaint in the light most favorable to the plaintiff, accept all of the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of the claims that would entitle him to relief. *Meador v. Cabinet for Human Resource,* 902 F.2d 474, 475 (6th Cir. 1990).

In this case, the District Court correctly held that the statutes complained of were constitutional, and that the Plaintiff could prove no set of facts that would entitle him to relief. (R. 16 Memorandum Opinion pg. 1, Apx. pg. 66) Thus, the Motion to Dismiss was properly granted. (R. 16 Memorandum Opinion pg. 1, Apx. pg. 66).

I. THE RECLASSIFICATION OF PLAINTIFF'S OFFENSE FROM "SEXUAL OFFENSE" TO "VIOLENT SEXUAL OFFENSE," AND THE PROBATION REQUIREMENT THAT HE WEAR A G.P.S. MONITORING DEVICE, DOES NOT VIOLATE THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION.

There can be no violation of the federal prohibition against ex post facto laws unless there is punishment. *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072, 138 L. Ed. 2d 501, (1997); *Kaylor v. Bradley*, 912 S.W.2d 728 (Tenn. App. 1995).[6] As *Hendricks* shows, the issue is primarily a matter of statutory construction and, therefore, a matter of law.

In order to determine whether a statute imposes a new punishment for a crime, the courts have applied a two-pronged test: (1) whether the legislature intended to impose a punishment or enact a regulatory scheme that was civil and non-punitive; and (2) whether the effect of the law is so punitive that it negates the state's attempt to craft civil restrictions. *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d. 164 (2003).

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[6]The Ex Post Facto Clause also prohibits the enactment of laws that: (1) criminalize past acts that were lawful when committed; (2) deprives a person of a defense that was available at the time the crime was committed; or (3) reduces the burden of proof that the state had to meet at the crime was committed. *Collins v. Youngblood*, 497 U.S. 37; 110 S. Ct. 2715; 111 L. Ed. 2d 30 (1990). None of these other prohibitions are at issue in this case because Tenn. Code Ann. § 40-39-302 does not criminalize past acts, decrease the State's burden of proof, or deprive any defendant of any defenses that might have previously been available..

Although the stated purpose of a statute might be to protect the public, the burdens it imposes might be so severe as to impose punishment. The second step of the analysis thus involves examining the effects of the Act. This is done by reviewing the factors set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed. 2d 644 (1963). These factors, which have been used by courts in the arena of sex offender registration and reporting requirements, include: (1) in its necessary operation, the regulatory scheme has been regarded in our history and traditions as a punishment; (2) the regulatory scheme imposes an affirmative disability or restraint; (3) the scheme promotes the traditional aims of punishment; (4) the scheme has a rational connection to a non-punitive purpose; or (5) the scheme is excessive with respect to this non-punitive purpose. *Smith v. Doe*, 123 S.Ct. at 1149.

A. The Stated Purpose of the Act is Not Punitive.

In determining whether a statute was punitive, the court in *Smith v. Doe* first looked to the language of the statute itself to determine whether the legislature intended to impose punishment. In this case, the language of the statute and its enacting legislation indicates that protection of the public was the reason for the enactment of Tenn. Code Ann. § 40-39-303. That statute was part of Chapter 889 of the Public Acts of 2004. Section 3 of the Public Chapter states:

The general assembly hereby finds and declares the following:

(a) The United States department of justice has published confirmed statistics that over sixty percent (60%) of serious and violent sex offenders in state prisons have a prior conviction history and that the number of prisoners convicted for violent sexual assault has increased by an annual percentage of fifteen percent (15%) each year since 1980;

(b) Criminals who commit serious and violent sexual crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community;

(c) Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community;

(d) Mature technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders following their release;

(e) These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly-updated geographic location of supervised serious offenders and violent sexual offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

(f) Continuous twenty-four (24) hours a day, seven (7) days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation; who have failed to register as a sexual offender as required by law; or who have been released from incarceration while they remain under the active supervision of the department of correction, the board of probation and parole, or other state and local agencies.

2004 Pub. Acts Ch. 889, § 3. The legislative intent to create a civil, regulatory remedy, not a criminal penalty, is clear. Thus, the Court should now look at whether the effect of the law is so punitive that it negates the State's attempt to craft civil restrictions. *Smith v. Doe*, 123 S.Ct. at 1149.

B. Reclassification of Plaintiff as "violent sex offender" Is Not Punitive.

Plaintiff is currently classified as a violent sexual offender. Tenn. Code Ann. §§ 40-29-202(24) and (25) define "violent sexual offender" as someone who has been convicted of a "violent sexual offense" after January 1, 1995. "Violent sexual offense," as it relates to Plaintiff, is defined as the commission of sexual battery by an authority figure under Tenn. Code Ann. § 39-13-527.[7] *See* Tenn. Code Ann. § 40-39-202(25)(J). As a result, Plaintiff must comply with the registration, verification, and tracking requirements set forth in Tenn. Code Ann. § 40-39-207(f)(1)(B) for life. Tenn. Code Ann. § 40-39-207(f).

Plaintiff contends that Tenn. Code Ann. §§ 42-39-202 and 40-39-207 violate the prohibition against ex post facto laws because these provisions, as applied to him, impose an affirmative disability or restraint; do not promote the traditional aims of punishment; have no rational connection to a non-punitive purpose, and even if they do, are punitive as applied to him and are excessive with respect to any purpose.

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[7]Plaintiff pled guilty to two violations of Tenn. Code Ann. § 39-13-527.

Although not binding on this Court, the United States District Court for the Eastern District of Tennessee has addressed the balancing of the *Kennedy* factors in substantially similar circumstances in *Mr. & Mrs. John & Jane Doe v. Phil Bredesen, et al.*, No. 3:04-CV-566 (E.D. Tenn. 2006). (R. 13 Memorandum in Support Exhibit 2, Apx. pgs. 36-57). As in *Doe,* the Plaintiff in this case has raised the same arguments, and the district court's basis for rejecting those arguments is persuasive. Plaintiff has offered no legal basis to cast doubt on the validity of the law relied on by the court.

1. The Act Does Not Impose an Affirmative Disability or Restraint.

Plaintiff contends that the change in his status as a violent offender effects an affirmative disability or restraint. Disability or restraint has been held by this Court to be "some sanction approaching the infamous punishment of imprisonment." *Herbert v. Billy*, 160 F.3d 1131, 1137 (6th Cir. 1998). The Supreme Court has concluded that indefinite debarment from the banking industry did not rise to an affirmative disability or restraint. *Hudson v. United States*, 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997). Additionally, this Court concluded in *Herbert* that driver's license suspension for driving under the influence did not impose an affirmative disability. 160 F.3d 1131 (6th Cir. 1998).

Similarly, the Act does not impose an affirmative disability or restraint. As this Court stated *in Cutshall v. Sundquist*, 193 F.3d 466, 474-475 (6th Cir. 1999), "the burdens imposed on sex offenders are less onerous than those imposed in *Hudson* and *Herbert*, loss of livelihood and loss of driver's license." This Court further rationalized in *Cutshall* that an offender need only:

> notify the TBI where he lives, where he works, and other basic data. He is free to live where he chooses, come and go as he pleases, and seek any employment he wishes. Neither are the public notification provisions tantamount to imprisonment . . . This imposes no restraint whatever upon the activities of a registrant.

Cutshall, 193 F. 3d 474-475. Since the registration requirements themselves are not an affirmative restraint, the length of time that Plaintiff is subject to those requirements should not be held to be so either, under the same rationale.

2. The Registration Requirements are Neither Punitive nor Excessive.

Plaintiff contends that the Act is punitive and excessive as applied to him. This issue also has been addressed by this Court in *Cutshall.* "Given the gravity of the state's interest in protecting the public from recidivist sex offenders, and the small burdens imposed on registrants, we cannot say that the requirements of the Act exceed its remedial purpose." *Cutshall* at 193 F. 3d 476. Plaintiff offers this Court not reason to depart from its holding in *Cutshall.*

C. Requiring Plaintiff to Wear a G.P.S. Monitoring Device is Not Punitive.

Tenn. Code Ann. § 40-39-303 authorizes the Department of Probation and Parole to require a convicted sex offender to wear an electronic device that provides constant information about his or her location at any given time.[8] As the Supreme Court noted in *Smith v. Doe,* providing information has not been regarded as a form of punishment.

The G.P.S. requirement of the statute does not impose any affirmative disability or restraint. There is no showing that the device has the capability of physically preventing the Plaintiff from going wherever he chooses. The fact that it can report his location, by itself, is not a form of physical restraint.

Tenn. Code Ann. § 40-39-303 has a rational connection to a non-punitive purpose. Sex offenders have high rates of recidivism. A study released by the Department of Justice indicated that of 4,300 child molesters released, an estimated 3.3 percent (3.3%), or approximately 142, were re-arrested for another sex crime against a child within three years. Bureau of Justice Statistics Press Release, *Recidivism of Sex Offenders Released from Prison* (November 2003) <http://www.ojp.gov/bjs/pub/press/rsorp94pr.htm. (R. 13 Memorandum in Support,

[8]This requirement, therefore, obviously applies only to persons, like Plaintiff, who are already on probation as a convicted sex offender.

Exhibit 1, Apx. pgs. 33-35). With satellite-based monitoring, authorities can now ascertain the whereabouts of an offender, and attempt to make sure that the offender is not frequenting places he should not be pursuant to the terms of his probation.[9]

Furthermore, the statute is not excessive in light of its purpose of protecting the public from the dangers posed by convicted sex offenders on probation. The device only transmits information, it does nothing to restrict movement or to call attention to Plaintiff's status as a convicted sex offender or probationer.

II. REQUIRING JOHN DOE TO WEAR AN ELECTRONIC MONITORING DEVICE DOES NOT VIOLATE HIS RIGHT TO PRIVACY.

Plaintiff contends that requiring him to wear an electronic monitoring device violates a claimed right to privacy. Other than making a generalized reference to a right to privacy, he has not provided any specific explanation of the source of the right that he claims has been violated. In any event the assertion is without merit.

In *Cutshall*, the plaintiff contended that the then-effective Act, Tenn. Code Ann. §§ 40-39- 101 to 108 (1994)(repealed), violated various due process rights, including a right to privacy. In rejecting the plaintiff's argument, this Court noted

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[9]As indicated by the findings of the Tennessee Legislature, "intensive supervision of serious offender and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community." 2004 Tenn. Pub. Acts 899.

that the statute did not infringe on any privacy or other protected interest. 139 F.3d at 482. The Court found that the Act did not implicate a constitutionally protected liberty or property interest in employment, and did not impose any restrictions on personal rights that are fundamental or implicit in the concept of ordered liberty, such as procreative or marital rights, 139 F.3d. at 480.

The current statute, even though it adds the requirement to wear a G.P.S. monitoring device, likewise does not implicate any constitutionally protected interest or fundamental right. John Doe is a convicted sex offender currently on probation. The granting of probation to a criminal offender is a privilege, not a right. *Berman v. U.S.*, 302 U.S. 211, 58 S.Ct. 164, 82 L.Ed. 204 (1937). Inherent in the nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled. *U.S. v. Knights,* 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed. 2d 497 (2001). Whatever its source, the limited right of privacy to which Plaintiff is entitled as a person on probation for conviction of a sexual offense is not violated by requiring him to wear a device that informs officers of his whereabouts.

III. THE REGISTRATION REQUIREMENTS OF THE ACT DO NOT VIOLATE THE PLAINTIFF'S PLEA AGREEMENT.

Plaintiff has appealed on grounds not set forth in the Complaint that the changes in the Act, Tenn. Code Ann. § 40-39-201, *et. seq.*, violate the plea agreement

that he entered into with the State. Plaintiff bases this argument on the holding in *Santobello v. New York,* 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). *Santobello* does not apply in this case.

In *Santobello,* the dispute related to the punishment that the State intended to seek in connection with the defendant's guilty plea. The initial prosecutor handling the case promised Santobello that he would not make a sentencing recommendation to the Court as part of the plea agreement. A second prosecutor was subsequently assigned to the case, and he made a sentencing recommendation of the maximum sentence to the Court, in violation of the initial verbal agreement concerning punishment. The primary issues were whether the State breached its settlement agreement with the defendant and, if so, whether the defendant was entitled to specific performance of that initial agreement.

This Court, in *United States v. Barnes,* 278 F.3d 644, 647 (6th Cir. 2002), said that, "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled." In this case, the Plaintiff has not alleged that the prosecutor related to him that he would not be placed under G.P.S. supervision. In fact, no alleged breach of the plea agreement is related to punishment. The length of plaintiff's sentence has not changed. He will continue to serve the term of probation

that he received at his sentencing. The only changes relate to the level of supervision he will be under for the remainder of his term. The increase in supervision is a reasonable regulatory provision that is intended to protect the public.

IV. PLAINTIFF'S RECLASSIFICATION AS A VIOLENT SEX OFFENDER DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

Plaintiff alleges that his reclassification from "sexual offender" to "violent sexual offender" violates his due process rights under the Fourteenth Amendment. But this argument is also without merit..

Connecticut Department of Public Safety v. Doe, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed. 2d 98 (2003), is instructive. In that case, purportedly non-dangerous sex offenders challenged provisions of Connecticut's sex offender registry law that required the Department of Public Safety to post sex offender registry information on the Internet. The plaintiff argued that publishing such information violated the Due Process Clause because offenders were not afforded an opportunity to be heard before the information was posted on the website. The Court rejected the argument and held that the statute did not violate the plaintiff's due process rights. It noted that plaintiff's propensity to commit future offenses--the issue plaintiff sought to address at a hearing--was not relevant to whether registration was required and, therefore,

plaintiff was not entitled to a hearing. The Court stated that, "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Id.* at 1165.

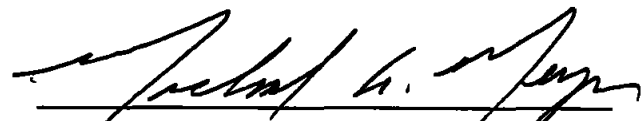
Here, Plaintiff has not shown that a hearing would give him a meaningful opportunity to present any relevant information. He has not asserted any facts that would change his classification under the statutory scheme. He does not challenge his conviction of attempted aggravated kidnaping and two counts of sexual battery by an authority figure, nor does he allege that he has been mis-classified pursuant to the statute.

CONCLUSION

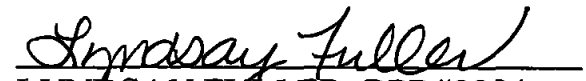
For the reasons set out above, the judgement of the district court should be affirmed.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General & Reporter



MICHAEL A. MEYER, BPR#9230
Deputy Attorney General



LYNDSAY FULLER, BPR#2284
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation provided in Fed.R.App.P. 32(a)(7)(B). The foregoing brief contains 4347 words of Times New Roman proportional type, from the jurisdictional statement to the last word in the conclusion, including footnotes. The word processing software used to prepare this brief was WordPerfect 7 for Windows XP.

Lyndsay Fuller

LYNDSAY FULLER

CERTIFICATE OF SERVICE

I hereby certify that I sent a true and correct copy of the foregoing document via United States Mail, Postage Prepaid, to:

ANGELA R. MORELOCK
1410 N. Broadway
Knoxville, TN 37917

on this, the 21st day of March, 2007.

Lyndsay Fuller
LYNDSAY FULLER

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 06-6393	)
	)
Case Caption:	)
	)
JOHN DOE,	)
	)
Plaintiff-Appellant	)
	)
PHIL BREDESEN, et al.	)
in his capacity as Governor of	)
of the State of Tennessee,	)
	)
Defendants-Appellees	)

APPELLEES' AMENDED DESIGNATION OF JOINT APPENDIX CONTENTS

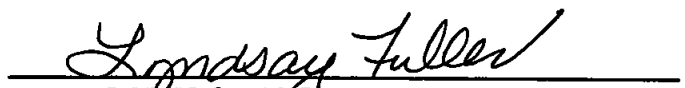
Appellees, pursuant to Sixth Circuit Rule 30(b), hereby designate the following items for inclusion in the Joint Appendix:

Description	Entry Date	Docket Entry
Complaint	March 1, 2006	R.1
Plaintiff's Motion for Temporary Restraining Order	March 1, 2006	R.4
Memorandum in Support of Motion for Temporary Restraining Order	March 1, 2006	R.5

Description	Entry Date	Docket Entry
Defendants' Motion to Dismiss and Response in Opposition to Motion for Temporary Restraining Order	April 5, 2006	R.12
Defendants' Memorandum in Support of Motion to Dismiss with Attachments, Exhibit#1 DOJ Statistics and Exhibit#2 Memorandum Opinion, Doe v. Bredesen et al., No. 3:04-CV-566 (E.D. Tenn. 2006)	April 5, 2006	R.13
Plaintiff's Response to Defendant's Motion to Dismiss	May 2, 2006	R. 14
Defendants' Reply to Plaintiff's Response to Defendant's Motion to Dismiss	May 8, 2006	R. 15
Memorandum Opinion	October 18, 2006	R. 16
Judgment on Decision by the court	October 18, 2006	R. 17

CERTIFICATE OF APPENDIX

I certify that all of the documents listed in the designation of appendix are copies of documents properly made a part of the record in the district court.



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