

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-2406-RPM

David MILLARD, Arturo VEGA and Eugene KNIGHT
PLAINTIFFS

v.

Michael RANKIN,
DEFENDANT

PLAINTIFFS' REBUTTAL CLOSING ARGUMENTS BRIEF

The Plaintiffs, by and through their undersigned counsel, hereby submit their rebuttal closing arguments brief.

In his Closing Arguments, the Defendant claims that the "limited information" available on the website is necessary to allow the public to protect itself." This is untrue. There was zero evidence how publishing sex offense convictions, which in the case of the Plaintiffs are more than a decade old, and in the case of Mr. Vega, decades old, allows "the public to protect itself." No evidence was provided of a single sex offense in Colorado that was solved by use of registration information on the registry by either law enforcement or private citizens, nor was there any evidence of a single case of parents protecting their children from an offender who posed an actual identifiable risk of harm, rather

than merely having a decades old conviction (such as Mr. Fareti). Instead, the evidence was that the general public misuses the registry to ostracize, humiliate and harass the registrants and their friends and family.

Mr. Knight was deemed to be a “danger” to children in the Denver Public Schools and barred from setting foot on the property, for no other reason other than the fact he was on the registry from a 12 year old conviction. However, the Principal of his children’s elementary school testified that they would reconsider if he is ever taken off the registry. This means that it is the *registry* that is the issue, *not* his conviction. Mr. Knight is ineligible from ever petitioning off the registry pursuant to State law. See CRS 16-22-113(3)(b)(II). Therefore, his only chance to escape this stigma is if the Colorado statute is declared unconstitutional or is otherwise amended or repealed by the Colorado General Assembly. The Colorado General Assembly has consistently amended the registration statute in the last 25 years to increase the requirements and makes its effect more onerous upon sex offenders; there is little chance it could actually be repealed.

Ms. Flannery’s neighbors were not using the sex offender registry to protect itself, instead they misused the registry to chase her out of the neighborhood and ostracize her friend (Mr. Fareti) who was well liked and trusted in the neighborhood before the neighbors found out that he had been convicted of a sex offense more than ten years prior. Mrs. Meyer’s employer misused the fact that her husband was on the sex offender registry for an offense that did not even involve her or her students to harass her at school. There was no reason

for this school to send out fliers to all the parents of the children attending her school notifying them that she was married to a “sex offender” and include a picture of her husband when there was no evidence her husband ever tried to contact one of her students either on or off school grounds. Her employer, who was a Catholic School, even encouraged her to divorce her husband, which is strictly against Catholic beliefs, and when she refused, she was ultimately terminated. Mrs. Meyer’s case is also evidence how law enforcement itself will misuse the registry. The very law enforcement officer who took Mrs. Meyer’s husband’s annual registration is the person who gossiped to the school regarding who Mrs. Meyer’s husband was. This law enforcement officer did this, despite the fact that was no evidence that Mr. Meyer had ever posed an actual threat to any children at school. Instead, in the case of both schools (the private Catholic school where Mrs. Meyer taught, and the public school where Mr. Knight’s children attended), the sole piece of evidence used to conclude that a person was a “threat” or posed a “danger” to children was the fact of being on the registry. Men and women with convictions for manslaughter, domestic violence, stalking, child abuse, reckless endangerment, contributing to the delinquency of a minor, vehicular assault and vehicular homicide are not on any registry and are not automatically barred from a school based merely on the fact of a decades old conviction, when the conviction had nothing to do with a student or did not take place on school property.

With regard to the Channel 7 news report from over a decade ago that caused Mr. Millard’s eviction from his apartment, the Defendant has missed the

point. Even though the target of the story was not sex offenders per se, but all convicted felons, the fact is that sex offenders were the ones who ended up suffering the consequences. It was the names of the sex offenders who were flashed on the documents shown in the video. This because there is only a sex offender registry. There is no registry for other types of felonies – as testified to by the CBI witnesses at trial. This means that with only a brief (and free) internet search, all sex offenders in a neighborhood or a particular address are quickly and easily identified – and one does not even need to know their names in advance; all one has to do is to search by address. With respect to finding out about other felonies, an individual search needs to be conducted by name in the CBI registry, and there is a charge for each search. Therefore it is always the sex offenders who are easily identified, and therefore it is the sex offenders who are singled out.

In his closing arguments, the Defendant appears to assert that Mr. Brockhausen and Mrs. Toner claim that they have been “banished” from the City of Englewood due to the residency restriction. However, that was not even a subject of the testimony. In the case of Mr. Brockhausen, Rick Gillit a City Council member (and acting Mayor) looked him up on the internet and falsely concluded that he was a “sexually violent predator.” Mr. Gillit then used this false report in arguing or attempting to shape city policy regarding the City of Englewood residency restriction. Mr. Brockhausen is not a sexually violent predator, and Mr. Gillit’s incorrect conclusions and misunderstanding and misuse of the information on the internet from the sex offender registry is just another

example of how members of the public and even government officials misuse or misunderstand the information on the registry.

The point of Mrs. Toner's testimony is that the City of Englewood provides the most affordable housing in the Denver metro area. Other places near Englewood that provide equivalent housing for equivalent prices would be otherwise unsuitable for sex offenders (as being within line of sight of a school for example). As it existed at the time of trial, the City of Englewood residency restriction was so onerous that it banned registered sex offenders from renting or owning almost every residential address in the City. Rather than ban certain types of felons from renting or owning residences in the City, the City of Englewood arbitrarily used the sex offender registry to merely single out sex offenders – the class of felon with the lowest recidivism rates of any other class of felon. This is yet another example of how the sex offender registry is misused. The result of the registry is not to keep the public safer, but to harass sex offenders by pushing them out of the affordable housing market and making it more likely they will be homeless. By preventing sex offenders from renting or owning residences in Englewood, the City has now made it much more easy for felons on parole convicted of second degree murder, extortion, drug dealing, robbery, burglary, kidnapping and assault with a deadly weapon to live at these addresses. Because these classes of felons do not have to compete with the registered sex offenders on parole for the affordable housing available in Englewood, then more of them can parole to the City. This hardly keeps the City more "safe."

Finally, with respect to Mr. Vega, the Defendant did not respond to his Eighth Amendment argument that the punishment and stigma of the sex offender registry is different as applies to him because he is a juvenile offender.

DATED April 14, 2017

Respectfully submitted,

/s/ Alison Ruttenberg

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CERTIFICATE OF SERVICE

I hereby certify that I have, April 14 2017, served the foregoing upon all parties via electronic service through the PACER ECF system, with service to all counsel of record

/s/ Alison Ruttenberg