ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, Plaintiff-Appellee, vs. GEORGE WILLIAMS, Defendant-Appellant.	:	Case No. 2009-0088 On Appeal from the Warren County Court of Appeals Twelfth Appellate District C.A. Case No. CA2008-02-029

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STATEMENT OF THE CASE AND FACTS

The Amicus Brief of the Franklin County Prosecutor in Support of Appellee (F.C.P.) and the Amicus Brief of the Ohio Attorney General in Support of Appellee (O.A.G.) wrongly attempt to characterize the claims raised in the case sub judice as forfeited. (Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien in Support of Appellee, p. 3; Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, p. 14). However, the F.C.P.'s and the O.A.G.'s reliance on the Twelfth District Court of Appeals' finding that Mr. Williams did not object to the retroactive application of Senate Bill 10 ignores the record. See *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195, at ¶6 ("At this juncture, we note that on the record before us, appellant never raised his constitutional arguments in the trial court."). Even the State recognizes the fact that Mr. Williams filed a motion requesting that he be sentenced under the former sex-offender classification laws. (State's Merit Brief, p. 1 "On January 25, 2008, the Appellant filed a motion to be sentenced under the former sex offender reporting statute."). See, also, George Williams's January 25, 2008 Motion for Sentencing Under Former R.C. 2950.01 et seq.; January 31, 2008 Sentencing Hearing Transcript, p. 3. Although the trial court denied the motion, (January 31, 2008 Sentencing Transcript, p. 3), the record contradicts the court of appeals' conclusion, and the Amici's proposition, that Mr. Williams did not properly preserve the argument that the retroactive application of Senate Bill 10 is unconstitutional. Furthermore, the court of appeals still addressed the merits of the claim despite its erroneous conclusion that the claims were "forfeited." As such, although the court of appeals reviewed the merits of Mr. Williams's argument, it erroneously applied a plain-error review to a claim that Mr. Williams properly preserved.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

The retroactive application of Senate Bill 10 violates the Ex Post Facto and Due Process Clauses of the United States Constitution and the Retroactivity Clause of Section 28, Article II of the Ohio Constitution. Fourteenth Amendment to the United States Constitution; Section 10, Article I of the United States Constitution; and Sections 16 and 28, Articles I and II, respectively, of the Ohio Constitution.

I. Summary of Argument.

The Retroactivity and Ex Post Facto Clauses were designed as "'an *additional* bulwark in favour [sic] of the personal security of the subject,' *Calder*, 3 Dallas at 390 (Chase, J.), to protect against 'the favorite and most formidable instruments of tyranny,' The Federalist No. 84, p. 512 (C. Rossiter ed. 1961) (A. Hamilton), that were 'often used to effect the most detestable purposes,' *Calder*, 3 Dallas at 396 (Paterson, J.)." *Carmell v. Texas* (2000), 529 U.S. 513, 532. (Emphasis sic.) As Justice Washington explained in characterizing "the injustice and tyranny" of ex post facto laws:

> Why did the authors of the constitution turn their attention to this subject, which, at the first blush, would appear to be peculiarly fit to be left to the discretion of those who have the police and good government of the State under their management and control? The only answer to be given is, because laws of this character are oppressive, unjust, and tyrannical; and, as such, are condemned by the universal sentence of civilized man.

Ogden v. *Saunders* (1827), 25 U.S. 213, 12 Wheat. 213, 266.

The primary intent and effect of Senate Bill 10 is punishment. The State and its Amici unconvincingly argue that Senate Bill 10's markedly increased restraints against Mr. Williams, and other similarly situated, are not punishment. In accordance with Mr. Williams's merit brief, and this reply brief, this Court should hold that Senate Bill 10 violates the United States

Constitution's prohibition against ex post facto laws and the Ohio Constitution's ban on retroactive punishment, and that it may not be applied to people like Mr. Williams, whose crime was committed before July 1, 2007.

II. Introduction.

The State and the F.C.P. argue that this Court should affirm the Twelfth District Court of Appeals' decision in Mr. Williams's case and rule that the new registration requirements under Senate Bill 10 are neither retroactively applied, nor are the new statutes punishment. Despite conceding that "portions of [Senate Bill 10] are retroactive," the State and the F.C.P. attempt to make the argument that this Court should rule that Senate Bill 10 is only being applied "prospectively." (State's Merit Brief, p. 3; Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien, pp. 6-11). However, this Court's precedent, along with Senate Bill 10's plain language, logic, and common sense, defy the State's characterization of Senate Bill 10 as "prospective." (See Argument III(A), pp. 13-16, infra). Also, the O.A.G. agrees that the General Assembly mandated that Senate Bill 10 be applied retroactively. (Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, p. 12).

Furthermore, as argued by Mr. Williams throughout these proceedings, sex-offender registration, as it functions under Senate Bill 10, is purely punitive. As such, the retroactive application of Senate Bill 10 is violative of the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Section 10, Article I of the United States Constitution; Section 28, Article II of the Ohio Constitution.

III. Argument.

Mr. Williams relies upon the arguments made in his merit brief for this section.

A. The retroactive application of Senate Bill 10 to crimes committed before July 1, 2007 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

Mr. Williams relies upon the arguments made in his merit brief for this section.

1. Senate Bill 10 violates Section 10, Article I of the United States Constitution.

Mr. Williams relies upon the arguments made in his merit brief for this section.

The Intent of Senate Bill 10

The State unpersuasively argues that Senate Bill 10 "is devoid of any language indicating an intent to punish; instead, the General Assembly has expressly declared that the intent of [Senate Bill 10] is 'to protect the safety and general welfare of the state,' which is 'a paramount governmental interest,' and that 'the exchange or release of [information required by law] is not punitive.'" (State Merit Brief, p. 6, quoting R.C. 2950.02, citing *State v. Cook*, 83 Ohio St.3d 404, 416-417, 1998-Ohio-291). But as argued by Mr. Williams in his merit brief, the civil label is not always dispositive. (George Williams's Merit Brief, pp. 12-18). Indeed, "[w]hen the criminal law casts so long a shadow on a putatively civil proceeding..., it [is] clear that the procedure must be deemed a 'criminal case.'" *Allen v. Illinois* (1986), 478 U.S. 364, 377 (Stevens, J., dissenting). The fact that a State attaches a "civil" label to a proceeding cannot change the character of a criminal proceeding. Id.

In addition to trying to use the General Assembly's labeling of the new statutes as civil to convince this Court that Senate Bill 10 is remedial, the State also attempts to argue that "the failure to register was already a punishable offense [under] former R.C. Chapter 2950...[and that] [t]he former provision of R.C. 2950 et seq. also criminalized an offender's failure to comply with the registration and verification requirements." (State's Merit Brief, p. 7). However,

Senate Bill 10's punishments for failure-to-register convictions are much higher than the penalties under former R.C. Chapter 2950:

Former 2950.99—Penalties	Current 2950.99—Penalties
• If no prior convictions for failing to register: ○ If the most serious sexually oriented offense that was the basis of failure under 2950.04-2950.06 was: ▪ **Aggravated murder, murder, or felony of first, second, or third degree—guilty of a third-degree felony** (2950.99(A)(1)(a)(i)) ▪ **Felony of the fourth or fifth degree, or a misdemeanor—guilty of a felony or a misdemeanor of the same degree** (2950.99(A)(1)(a)(ii))	• If no prior convictions for failing to register: ○ If the most serious sexually oriented offense that was the basis of failure under 2950.04-2950.06 was: ▪ **Aggravated murder or murder—guilty of a first-degree felony** (2950.99(A)(1)(a)(i)) ▪ **Felony of the first, second, third or fourth degree—guilty of a felony of the same degree as the most serious offense of basis for registration** (2950.99(A)(1)(a)(ii)) ▪ **Fifth degree or misdemeanor—guilty of a fourth-degree felony** (2950.99(A)(1)(a)(iii))
• If there is a prior conviction for failure to register, notify address, etc.: ○ If the most serious sexually oriented offense that was the basis of failure under 2950.04-2950.06 was: ▪ **Murder or a felony of the first, second, third, or fourth degree—guilty of a third-degree felony** (2950.99(A)(1)(b)(i))	• If there is a prior conviction for failure to register, notify address, etc.: ○ If the most serious sexually oriented offense that was the basis of failure under 2950.04-2950.06 was: ▪ **Aggravated murder or murder—guilty of a first-degree felony** (2950.99(A)(1)(b)(i))

▪ **Felony of the fifth degree—guilty of a fourth-degree felony** (2950.99(A)(1)(b)(ii)) ▪ **Misdemeanor of the first degree—guilty of a fifth-degree felony** (2950.99(A)(1)(b)(iii)) ▪ **Misdemeanor other than first degree—guilty of a misdemeanor one degree higher than the most serious offense** (2950.99(A)(1)(b)(iv))	▪ **Felony of first, second, or third degree—guilty of a felony of the same degree as the most serious offense of basis for registration** (2950.99(A)(1)(b)(ii)) ▪ **Felony of the fourth degree or fifth degree—guilty of a third-degree felony** (2950.99(A)(1)(b)(iii)) ▪ **Misdemeanor—guilty of a fourth-degree felony** (2950.99(A)(1)(b)(iv)) ▪ **If there is a prior conviction for failure to register, notify, etc., the sentence shall be at least a three-year definite prison term.** (2950.99(A)(2)(b))

Indeed, just because former R.C. 2950.99 made the failure to register a punishable offense does nothing to mitigate the fact that the majority of the penalties under the current version of R.C. 2950.99 are significantly higher for the majority of defendants.

The Effect of Senate Bill 10

The State, the F.C.P., and the O.A.G. cite to this Court's decisions in *State v. Cook*, 83 Ohio St.3d 404, and *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, as support for the argument that under the *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144 factors, this Court rejected the argument that Ohio's antecedent sex-offender laws were criminal. (State's Merit Brief, pp. 8-9; Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien in Support of Appellee, pp. 15-19; Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, pp. 16-34). The State and its Amici are correct that, in *Cook*, this Court analyzed House Bill 180, the first major change to Ohio's sex-offenders laws, and found House

Bill 180 to be civil. However, in *Ferguson,* the majority opinion of this Court never analyzed Senate Bill 5 under the *Kennedy* factors. *Ferguson* at ¶1-43. In fact, it was the dissent in *Ferguson* which analyzed Senate Bill 5 under the *Kennedy* factors and determined that Senate Bill 5 was a *punitive* statute. Id. at ¶56-60 (Lanzinger, J., dissenting). (Emphasis added.) The dissent stated, "[t]hrough classification and registration, an affirmative disability is imposed." Id. at ¶57; see also, *State v. Ettenger*, 11th Dist. No. 2008-L-054, 2009-Ohio-3525 (Grendell, J., concurring in judgment only) (Trapp, P.J. dissenting) (noting the changes to the original 1997 law analyzed in *Cook* have transformed the sex-offender law to a punitive statute). Ohio's sex-offender laws have undergone a fundamental transformation resulting in the necessary conclusion that under the *Kennedy* factors, Senate Bill 10 is a punitive statute.

i. Senate Bill 10 imposes affirmative obligations, disabilities, and restraints.

Both the State and its Amici fail to recognize that Senate Bill 10 unquestionably changed the manner in which sex offenders are classified. Rather than concede that Senate Bill 10 increased the registration and verification burdens upon Mr. Williams and people similarly situated, the State and its Amici continue to maintain that this Court's decision in *Cook*, relating to House Bill 180, "confirms that [Senate Bill 10's] requirements are fundamentally civil, remedial, and non-punitive in nature." (Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien in Support of Appellee, p. 3; see, also, State's Merit Brief, pp. 8-9; Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, pp. 15-34).

The State's characterization of the obligations as de minimus (State's Merit Brief, pp. 8-9) is wrong, misleading, and trivializes the significant changes that have occurred to Ohio's sex-offender laws over the past decade. Under the State's logic, the legislature could require daily

in-person reporting for life for someone convicted of misdemeanor sexual imposition. The point is that there is a limit.

Senate Bill 10 did more than just impose the same type of obligations as House Bill 180. The following chart tracks the changes that have occurred since the original implementation of Megan's Law in House Bill 180 that this Court analyzed under the *Kennedy* factors, to Senate Bill 5 in 2003, and finally in Senate Bill 10 at issue today:

	H.B. 180 (effective 1998)	S.B. 5 (effective 2003)	S.B. 10 (effective 2008)
Periodic Verification (lowest level: sexually oriented/Tier I)	Annually for 10 years	Annually for 10 years	Annually for *15 years*
Periodic Verification (mid-level: habitual offender/Tier II)	Annually for 20 years	Annually for 20 years	*Twice a year for 25 years*
Periodic Verification (highest level: sexual predator/ Tier III)	Every 90 days for life	Every 90 days for life	Every 90 days for life
Personal Offender Information provided to public	Name, residential address, offense of conviction	Name, offense, residential address, *employment address*	Name, offense, residential address, employment address, *license plate, all motor vehicles registered, where offender parks; any aliases used by the offender; the name of the registrant's school, institution of higher education, and place of employment; the license plate number of any vehicle owned by or registered to the offender; the license plate number of any vehicle the offender operates as part of employment and any vehicle that is regularly available to or operated by the registrant; and the number of any driver's license, commercial driver's license, or state identification card*

Where the offender must register	County of residence	County of residence, *county of employment, county of school*	County of residence, county of employment, county of school
Residency Restriction	None	*All sex offenders are prohibited from residing within 1000 feet of a school*	All sex offenders are prohibited from residing within 1000 feet of school, *pre-school or day care*

When *Cook* was decided, the new sex-offender law affected only a few people, and only substantially affected even fewer. Thus, it was easy to characterize the changes as regulatory. Now, however, not only have the burdens dramatically increased, but the number of people this seriously effects has exponentially increased. See Tom Beyerlein, *Sex Offender Registration Useless, Some Experts Say—Their Research Finds Registration Laws Costly To Maintain With Questionable Effects*, Dayton Daily News, November 7, 2010 ("A study published in the January 2010 issue of the Sex Offender Law Report found that by classifying offenders by their crimes rather than by actuarial guidelines, the percentage of offenders in the high-risk category would jump from 55 percent to 87 percent. That carries with it greater demands on law enforcement officials, researchers said, and could prompt more offenders not to register.").

ii. *Senate Bill 10 imposes sanctions that have historically been considered punishment.*

iii. *Senate Bill 10 comes into play only upon a finding of scienter.*

iv. *Senate Bill 10 serves the traditional aims of punishment.*

v. *Senate Bill 10 applies only to behavior which is already a crime.*

Mr. Williams relies upon the arguments made in his merit brief for these sections.

vi. *Senate Bill 10 is excessive in relation to any non-punitive interest.*

The State and the F.C.P. ask this Court to review the Cleveland Rape Crisis Center's and the Texas Association Against Sexual Assault's websites as a means to counter the amicus brief in which those organizations submitted in support of Mr. Williams. (Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien in Support of Appellee, pp. 24-26). But as stated by the Cleveland Rape Crisis Center and the Texas Association Against Sexual Assault in their brief in support of Mr. Williams, Senate Bill 10 does not actually protect Ohio's citizens from sex offenders. In fact, offense-based classification makes monitoring the most dangerous offenders more difficult and costly for law enforcement. (Merit Brief of Cleveland Rape Crisis Center and the Texas Association Against Sexual Assault in Support of the Appellant, pp. 7-10). Additionally, research demonstrates that stability and support increase the likelihood of successful reintegration for former offenders, and that public policies making it more difficult for former offenders to succeed undermine public safety. Id. at pp. 2-6. And the fact that those agencies have websites that "concede that sex crimes are massively underreported," (Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien p. 24), yet still submitted a brief in support of Mr. Williams, exhibits the strength of their belief that Senate Bill 10 does not help Ohio in its attempt to protect citizens against sex offenders.

Additionally, the O.A.G. asserts that Mr. Williams's argument that sex-offender laws do little to protect public safety is undermined by Mr. Williams's own studies. (Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, pp. 27-28). However, the studies must be read in full, not piecemeal as the O.A.G. attempts to do. The O.A.G. cites to the following statement in the Vasquez study: "The rape incidence in...Ohio...significantly decreased after the introduction of the sex offender notification laws." Id. at p. 27. Initially, Mr. Williams cited to the Vasquez study for the broad proposition that

empirical research has found that sex-offender laws, in general, do very little to advance public safety. (George Williams's Merit Brief, p. 24; see also, *Ferguson* at ¶59, fn. 7 (Lanzinger, J., dissenting) ("Although the majority discounts the research done regarding the recidivism rate[s] of sexual offender[s], it is relevant for determining whether the scope of the legislation exceeds its civil purpose.")).

The O.A.G. reads the study out of context. The study examined ten states that implemented sex-offender registries. Bob Vasquez, *The Influence of Sex Offender Registration and Notification Laws in the United States*, 54 Crime & Delinquency 185 (2008). The study looked at the incidence of rape three-to-five years before the intervention of the registry, and three-to-five years after. Id. at 185-86. The study looked at the results from each state and found that six states saw no statistically significant increase of the incidences of rape after the implementation of a registry, three states (including Ohio), saw a decrease of the incidences of rape, and one state saw a statistically significant increase in the incidences of rape. Id. The study's conclusion was that there was nothing to differentiate the states that saw a decrease in incidences of crime from those that did not. Id. at 188. The evidence did *not* support a conclusion that sex-offender laws reduce the crime of rape. Id. at 187. Presumably, the O.A.G. is not arguing that Ohio's rapists are more responsive to deterrence than Connecticut's, or that Ohio's citizens are smarter than Arkansas's and, therefore, can naturally protect themselves better when equipped with community notification. Because the flip side of that claim is that the states which saw an increase of the incidences of rape, e.g., California, somehow *encouraged* offenders to commit rape. Id. at 187. This is true because under the study, the states all had similar sex-offender statutes in place. Id. at 182. The authors point out that using any one example independently was not the purpose of the study. Id. at 186. The value of the Vasquez

study is to show that there is no conclusive empirical evidence to suggest that a statute like Senate Bill 10 will have a deterrent effect.

The O.A.G. next cites to the Prescott study as stating that there was "evidence that sex offender registration and notification laws decreased the total frequency of sex offenses in the states...examine[d]," and that "the registration of released sex offenders alone is associated with a significant decrease in the frequency of crime." (Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, p. 28). However, the next paragraph of the article states, "Importantly, we find no evidence that notification laws (as opposed to registration laws) reduced crime by lowering recidivism." J.J. Prescott, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, NBER Working Paper No. 13803, p. 4 (February 2008).[1] The study notes that the implementation of notification dampens any positive effect of a registry. Id. Furthermore, the study notes that notification laws can only be effective if the size of the registry is relatively small. Id. at p. 25.

This Court recognized the same premise in *State v. Eppinger*, 91 Ohio St.3d 158, 185, 2001-Ohio-247: "[I]f we were to adjudicate all sexual offenders as sexual predators, we run the risk of 'being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law. This result could be tragic for many.'" (Internal citations omitted.) Thus, read in context, the empirical data is a functional tool to use to appreciate the effects and intricacies (such as the value of a small registry versus a large registry) of sex-offender laws. The study must be read in full, not piecemeal. Indeed, Senate Bill 10's intended goal of protecting the public is excessive and ineffective.

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[1]http://www.law.umich.edu/centersandprograms/olin/papers.htm;
http://www.psc.isr.umich.edu/pscinfoserv/?p=426.

Senate Bill 10 is Retrospective.

The State and the F.C.P. unsuccessfully argue to this Court that Senate Bill 10 is not retrospective. The plain language of Senate Bill 10 orders that it be applied retroactively. (See George Williams's Merit Brief, pp. 26-27). And the fact that this Court severed R.C. 2950.031 and 2950.032 in *State v. Bodyke* has nothing to do with the case sub judice. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, reconsideration denied by *State v. Bodyke*, 126 Ohio St.3d 1235, 2010-Ohio-3737. When explaining that the legislature mandated that Senate Bill 10 be applied retroactively, Mr. Williams cited to R.C. 2950.07(C)(2) and to Senate Bill 10's enactment language, S.B. 10, 127th General Assembly, § 2, 3, 4, and 5, (Amended Substitute Senate Bill Number 10) (2007-2008), not to R.C. 2950.031 and 2950.032. (See George Williams's Merit Brief, pp. 26-27). Indeed, in order to regulate the prospective registration and classification of a sexually oriented offender, courts have to look back to the previous conduct committed by the offender and that offender's conviction.

The F.C.P.'s citation to *Landgraf v. USI Film Products* (1994), 511 U.S. 244, 264, actually supports Mr. Williams's argument that the legislature has required that Senate Bill 10 be applied retroactively. In *Landgraf*, the Court held that "congressional enactments and administrative rules will not be construed to have retroactive effect *unless their language requires this result.*" (Emphasis added.) Indeed, Ohio's legislature has required, by it own enactment language, that Senate Bill 10 be applied retroactively.

In *Hawker v. New York* (1898), 170 U.S. 189, the Court upheld a New York statute that prohibited persons with felony convictions from practicing medicine. The crux of the Court's decision in upholding the New York statute was that the legislation *was not punishment*, not that a court should not look to the specific language of a statute in determining whether the

legislature meant for the law to apply retroactively. Id. at pp. 199-200 ("'The question is,' said Lord Mansfield, 'whether, after the conduct of this man, it is proper that he should continue a member of a profession which should stand free from all suspicion.... It is not by way of punishment; but the court[s] in such cases exercise their discretion, whether a man whom they have formerly admitted is a proper person to be continued on the roll or not.'"); accord, *DeVeau v. Braisted* (1960), 363 U.S. 144; *Flemming v. Nestor* (1960), 363 U.S. 603, 614.

The State and the F.C.P. seem to confuse and intertwine two components of the ex post facto analysis. The question as to whether a law is to be considered criminal in its intent and effect is wholly separate from the determination as to whether the legislature has ordered that a statute be applied retroactively. The legislature unambiguously ordered that Senate Bill 10 be imposed retroactively. And Senate Bill 10 is criminal in nature and has a punitive effect. (See George Williams's Merit Brief, pp. 3-26).

Senate Bill 10 Disadvantages Mr. Williams.

Mr. Williams relies upon the arguments made in his merit brief for this section.

2. Senate Bill 10 violates Section 28, Article II of the Ohio Constitution.

As in the federal ex post facto analysis, the State and the F.C.P. attempt to argue that for purposes of this Court's analysis of the Ohio Constitution, the General Assembly has not mandated that Senate Bill 10 be applied retroactively. A two-step standard is followed to decide if the retroactive application of a statute will be deemed to violate Ohio's constitution. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, at ¶9-10. In accordance with the fist prong of the "retroactive" test, *the language of the statute is reviewed to determine whether the legislature expressly stated that retroactive application was intended.* Id. (Internal citation omitted,

emphasis added.) If the wording of the General Assembly is sufficiently explicit to demonstrate a retroactive intent, the statute is then reviewed to determine if it affects a substantive or remedial matter. Id. (Internal citation omitted.)

A review of various provisions in the present version of R.C. Chapter 2950 confirms that the General Assembly has mandated that offenders whose conduct occurred under the prior version of the scheme are obligated to comply with the new requirements. (See pp. 11-12, supra). See, also, R.C. 2950.03 and 2950.033(A). The F.C.P. mistakenly relies upon *Doe v. Ronan*, Slip Opinion No. 2010-Ohio-5072, in support of the flawed argument that Senate Bill 10's application is prospective. The legislation at issue in *Doe* did not go back to the date of the employee's initial hire, terminate that person effective as of the hire date, or eliminate any of that person's accrued benefits. *Doe* at ¶27. In contrast, the General Assembly has specifically ordered that the new classification and registration requirements imposed by Senate Bill 10 relate back to particular conduct that has been committed by a defendant and which occurred on a specific date or range of dates. See *State v. Cook*, 83 Ohio St.3d at 410 ("[T]he registration and verification requirements may be applied to certain sex offenders whose crimes occurred before the effective date.... [Additionally, the] failure to comply with the registration and verification requirements constitutes a crime regardless of when the underlying offense was committed. R.C. 2950.06(G)(1) and 2950.99. Consequently, we find a clearly expressed legislative intent that R.C. Chapter 2950 be applied retrospectively.").

The F.C.P. also erroneously relies upon this Court's decision in *State v. Clayborn*, 125 Ohio St.3d 450, 2010-Ohio-2123, in support of the claim that Senate Bill 10's "registration requirements are non-punitive." (Brief of Amicus Curiae Franklin County Prosecutor Ron O'Brien, p. 3). However, in *Clayborn*, this Court made sure to explain that it "*express[ed] no*

opinion on Clayborn's challenge to the application of S.B. 10 to him." *Clayborn* at ¶14. (Emphasis added.) And as argued by Mr. Williams throughout these proceedings, the only conclusion is that the retroactive application of Senate Bill 10 conflicts with Section 28, Article II of the Ohio Constitution.

B. Senate Bill 10's residency restrictions violate the Due Process Clause of the United States Constitution and Section 16, Article I of the Ohio Constitution.

Citing to *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, at ¶24, the O.A.G. concedes that Senate Bill 10's residency restrictions do not apply retroactively. (Merit Brief of Amicus Curiae Ohio Attorney General Richard Cordray in Support of Appellee, pp. 20, 32). Mr. Williams urges this Court to accept the O.A.G.'s concession, and asks this Court to make a finding that Senate Bill 10's residency restrictions do not apply to Mr. Williams, nor to similarly situated individuals. Such a finding is consistent with due process.

However, if this Court should rule otherwise, and conclude that Senate Bill 10's residency restrictions apply retroactively, that decision further demonstrates the fundamental unfairness regarding the onerous restraints upon which individuals like Mr. Williams face.

Senate Bill 10 restrains Mr. Williams's liberty.

Senate Bill 10 infringes upon Mr. Williams's fundamental right to live where he chooses.

Senate Bill 10 does not rationally advance a legitimate State purpose.

Mr. Williams relies upon the arguments made in his merit brief for these sections, along with the O.A.G.'s concession that the residency restrictions in Senate Bill 10 only apply prospectively.

CONCLUSION

For the reasons stated in his Merit Brief and in this Reply Brief, Mr. Williams asks this Court to adopt the proposition of law put forth by Mr. Williams, and reverse the judgment of the Twelfth District Court of Appeals.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

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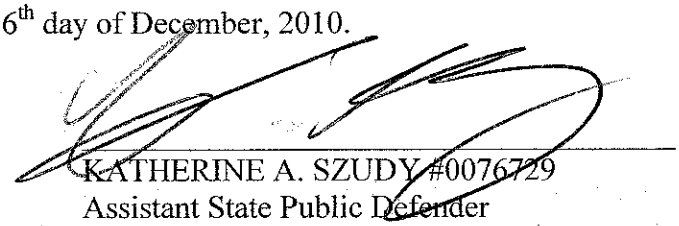
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Brief of Appellant George Williams** has been sent by regular U.S. mail, postage prepaid, to Michael Greer, Assistant Warren County Prosecutor, addressed to his office at the Warren County Courthouse, 500 Justice Drive, Lebanon, Ohio 45036; to Ron O'Brien, Franklin County Prosecuting Attorney, addressed to his office at 373 South High Street, 13th Floor, Columbus, Ohio 43215; and to Alexandra T. Schimmer, Chief Deputy Solicitor General, addressed to her office at 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, on this 6th day of December, 2010.



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2009-0088
Plaintiff-Appellee,	:	
	:	On Appeal from the Warren
vs.	:	County Court of Appeals
	:	Twelfth Appellate District
GEORGE WILLIAMS,	:	
	:	C.A. Case No. CA2008-02-029
Defendant-Appellant.	:	

APPENDIX TO

REPLY BRIEF OF APPELLANT GEORGE WILLIAMS

LEXSTAT O.R.C. 2950.02

*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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ORC Ann. 2950.02 (2010)

§ 2950.02. Legislative determinations and intent to provide information to protect public safety

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or a child-victim offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and child-victim offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further de-

clares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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*** ARCHIVE MATERIAL ***

*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH MARCH 6, 2007 ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.05 (2006)

§ 2950.05. Notice of change of address; registration of new address

(A) If an offender or delinquent child is required to register pursuant to *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, the offender or delinquent child, at least twenty days prior to changing the offender's or delinquent child's residence address, or the offender, at least twenty days prior to changing the address of the offender's school or institution of higher education and not later than five days after changing the address of the offender's place of employment, during the period during which the offender or delinquent child is required to register, shall provide written notice of the residence, school, institution of higher education, or place of employment address change, as applicable, to the sheriff with whom the offender or delinquent child most recently registered the address under *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code* or under division (B) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in that notice a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address. If a person whose residence address change is not to a fixed address describes in a notice under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (H) of this section, *sections 2950.06* to *2950.13 of the Revised Code*, and *sections 311.171 [311.17.1]* and *2919.24 of the Revised Code*, the place or places so described in the notice shall be considered the person's residence address and registered residence address, until the person provides the written notice of a fixed residence address as described in this division.

(B) If an offender is required to provide notice of a residence, school, institution of higher education, or place of employment address change under division (A) of this section, or a delinquent child is required to provide notice of a residence address change under that division, the offender or delinquent child, at least twenty days prior to changing the residence, school, or institution of higher education address and not later than five days after changing the place of employment address, as applicable, also shall register the new address in the manner described in divisions (B) and (C) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, whichever is applicable, with the sheriff of the county in which the offender's or delinquent child's new address is located, subject to division (C) of this section. If a residence address change is not to a fixed address, the offender or delinquent child shall include in the registration a detailed description of the place or places at which the offender or delinquent child intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall register with that sheriff that fixed residence address. If a person whose residence address change is not to a fixed address describes in a registration under this division the place or places at which the person intends to stay, for purposes of divisions (C) to (H) of this section, *sections 2950.06* to *2950.13 of the Revised Code*, and *sections 311.171 [311.17.1]* and *2919.24 of the Revised Code*, the place or places so described in the registration shall be considered the person's resi-

dence address and registered residence address, until the person registers a fixed residence address as described in this division.

(C) Divisions (A) and (B) of this section apply to a person who is required to register pursuant to *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code* regardless of whether the new residence, school, institution of higher education, or place of employment address is in this state or in another state. If the new address is in another state, the person shall register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the address.

(D) (1) Upon receiving from an offender or delinquent child pursuant to division (A) of this section notice of a change of the offender's residence, school, institution of higher education, or place of employment address or the delinquent child's residence address, a sheriff promptly shall forward the new address to the bureau of criminal identification and investigation in accordance with the forwarding procedures adopted pursuant to *section 2950.13 of the Revised Code* if the new address is in another state or, if the new address is located in another county in this state, to the sheriff of that county. The bureau shall include all information forwarded to it under this division in the state registry of sex offenders and child-victim offenders established and maintained under *section 2950.13 of the Revised Code* and shall forward notice of the offender's or delinquent child's new residence, school, institution of higher education, or place of employment address, as applicable, to the appropriate officials in the other state.

(2) When an offender registers a new residence, school, institution of higher education, or place of employment address or a delinquent child registers a new residence address pursuant to division (B) of this section, the sheriff with whom the offender or delinquent child registers and the bureau of criminal identification and investigation shall comply with division (D) of *section 2950.04* or *2950.041 [2950.04.1] of the Revised Code*, whichever is applicable.

(E) (1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section shall fail to notify the appropriate sheriff in accordance with that division.

(2) No person who is required to register a new residence, school, institution of higher education, or place of employment address with a sheriff or with an official of another state pursuant to divisions (B) and (C) of this section shall fail to register with the appropriate sheriff or official of the other state in accordance with those divisions.

(F) (1) It is an affirmative defense to a charge of a violation of division (E)(1) of this section that it was impossible for the person to provide the written notice to the sheriff as required under division (A) of this section because of a lack of knowledge, on the date specified for the provision of the written notice, of a residence, school, institution of higher education, or place of employment address change, and that the person provided notice of the residence, school, institution of higher education, or place of employment address change to the sheriff specified in division (A) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the address change to the sheriff specified in division (A) of this section by telephone immediately upon learning of the address change or, if the person did not have reasonable access to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the address change and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the address change to the sheriff by telephone, provided written notice of the address change to that sheriff.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the address change, provided written notice of the address change to the sheriff specified in division (A) of this section.

(2) It is an affirmative defense to a charge of a violation of division (E)(2) of this section that it was impossible for the person to register the new address with the sheriff or the official of the other state as required under division (B) or (C) of this section because of a lack of knowledge, on the date specified for the registration of the new address, of a residence, school, institution of higher education, or place of employment address change, and that the person registered the new residence, school, institution of higher education, or place of employment address with the sheriff or the official of the other state specified in division (B) or (C) of this section as soon as possible, but not later than the end of the first business day, after learning of the address change by doing either of the following:

(a) The person provided notice of the new address to the sheriff or official specified in division (B) or (C) of this section by telephone immediately upon learning of the new address or, if the person did not have reasonable access

to a telephone at that time, as soon as possible, but not later than the end of the first business day, after learning of the new address and having reasonable access to a telephone, and the person, as soon as possible, but not later than the end of the first business day, after providing notice of the new address to the sheriff or official by telephone, registered the new address with that sheriff or official in accordance with division (B) or (C) of this section.

(b) The person, as soon as possible, but not later than the end of the first business day, after learning of the new address, registered the new address with the sheriff or official specified in division (B) or (C) of this section, in accordance with that division.

(G) An offender or delinquent child who is required to comply with divisions (A), (B), and (C) of this section shall do so for the period of time specified in *section 2950.07 of the Revised Code.*

(H) As used in this section, and in all other sections of the Revised Code that refer to the duties imposed on an offender or delinquent child under this section relative to a change in the offender's or delinquent child's residence, school, institution of higher education, or place of employment address, "change in address" includes any circumstance in which the old address for the person in question no longer is accurate, regardless of whether the person in question has a new address.

HISTORY:

146 v H 180 (Eff 7-1-97); 149 v S 3 (Eff 1-1-2002); 149 v S 175. Eff 5-7-2002; 150 v S 5, § 1, eff. 7-31-03; 150 v H 473, § 1, eff. 4-29-05.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2950. SEXUAL PREDATORS, HABITUAL SEX OFFENDERS, SEXUALLY ORIENTED OFFENDERS

ORC Ann. 2950.99 (2006)

§ 2950.99. Penalties

(A) (1) (a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05,* or *2950.06 of the Revised Code* shall be punished as follows:

(i) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, or if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition was a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as that offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in this state.

(b) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05,* or *2950.06 of the Revised Code,* whoever violates a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05,* or *2950.06 of the Revised Code* shall be punished as follows:

(i) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed

by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor of the first degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fifth degree.

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor other than a misdemeanor of the first degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, change of address, or address verification requirement that was violated under the prohibition or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition was a comparable category of offense committed in another jurisdiction, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in this state.

(2) In addition to any penalty or sanction imposed under division (A)(1) of this section or any other provision of law for a violation of a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05,* or *2950.06 of the Revised Code,* if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(3) As used in division (A)(1) of this section, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in this state, would constitute or would have constituted aggravated murder, murder, or a felony of the first, second, or third degree for purposes of division (A)(1)(a)(i) of this section, a felony of the fourth or fifth degree or a misdemeanor for purposes of division (A)(1)(a)(ii) of this section, aggravated murder, murder, or a felony of the first, second, third, or fourth degree for purposes of division (A)(1)(b)(i) of this section, a felony of the fifth degree for purposes of division (A)(1)(b)(ii) of this section, a misdemeanor of the first degree for purposes of division (A)(1)(b)(iii) of this section, or a misdemeanor other than a misdemeanor of the first degree for purposes of division (A)(1)(b)(iv) of this section.

(B) If a person violates a prohibition in *section 2950.04, 2950.041 [2950.04.1], 2950.05,* or *2950.06 of the Revised Code* that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or as an out-of-state juvenile offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152. of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

(C) Whoever violates division (C) of *section 2950.13 of the Revised Code* is guilty of a misdemeanor of the first degree.

HISTORY:

130 v 671 (Eff 10-4-63); 134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 146 v H 180 (Eff 7-1-97); 149 v S 3. Eff 1-1-2002; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 473, § 1, eff. 4-29-05.