IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	
vs.	)	**No. SC 92491**
	)	
JASON R. PETERSON,	)	
	)	
Respondent.	)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF CARROLL COUNTY, MISSOURI
EIGHTH JUDICIAL CIRCUIT
THE HONORABLE KEVIN L. WALDEN, JUDGE

RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

Respondent, Jason R. Peterson, a registered sex offender, was charged with the felony offense of Loitering Within 500 Feet of a Public Park or Swimming Pool in violation of Section 566.150, RSMo (Cum. Supp. 2009). The Honorable Kevin L. Walden sustained Respondent' s "First Amended Motion to Dismiss Charge as Unconstitutional," holding that Section 566.150, RSMo as applied to Respondent violated the ban on retrospective laws as provided for in Article I, Section 13 of the Missouri Constitution. The State appeals the ruling of the trial court. This Court has original jurisdiction over challenges to the validity of a Missouri statute. Article V, Section 3, Mo. Const. (as amended 1982).

STATEMENT OF FACTS

On June 17, 2011, the Ray County Prosecuting Attorney, Danielle Rogers, filed a Grand Jury Indictment in the Circuit Court of Ray County Missouri charging Jason R. Peterson with the Class D felony offense of Loitering Within 500 Feet of a Public Park or Swimming Pool in violation of Section 566.150, RSMo Cum. Supp 2009. (L.F. 2, 26-27). The Indictment alleged that Peterson had violated Section 566.150, RSMo on September 20, 2010, by knowingly being present in real property comprising a public park with playground equipment or a swimming pool and that he was prohibited from doing so due to his previous conviction for the offense of Indecent Behavior with a Juvenile in the Twenty-Fifth Judicial District of Louisiana in January 20, 1998. (L.F. 26-27).

On June 27, 2011, the State filed a Motion for Change of Judge after which the Missouri Supreme Court assigned the Honorable Kevin L. Walden to hear the cause. (L.F. 4). Thereafter, Respondent filed a Motion for Change of Venue and the Court ordered the cause transferred to the Circuit Court of Carroll County Missouri. (L.F. 4).

On August 3, 2011, Peterson filed a "Motion to Dismiss Charge as Unconstitutional" in which he alleged that Section 566.150, RSMo was unconstitutional as applied to him as it violated Missouri's ban on retrospective laws. (L.F. 4, 36-37). On August 10, 2011, the State filed its "Response to Defendant's Motion to Dismiss" in which the State argued, among other things, that Missouri's constitutional ban on retrospective laws applies only to civil cases and has no applicability to criminal offenses. (L.F. 4, 38-47). Peterson thereafter filed a "First Amended Motion to Dismiss Charge as

Unconstitutional" on November 16, 2011 and suggestions in support wherein he again alleged that Section 566.150, RSMo was unconstitutional as applied to him as it was a retrospective law. (L.F. 110-133). On February 21, 2012, the State filed its response again denying that the constitutional ban on retrospective laws has any applicability to criminal laws. (L.F. 137-154).

On March 28, 2012, the Court after considering the motions and briefs of the parties, entered its order dismissing the charge against Peterson, finding that Section 566.150, RSMO violated Article I, Section 13 of the Missouri Constitution as a retrospective law as applied to Peterson. (L.F. 7, 155-56). The Court held that the constitutional ban on retrospective laws is not limited to applicability to civil cases. (L.F. 7, 155-56). The State filed its Notice of Appeal and challenges the Court's ruling herein. (L.F. 7, 157-58).

RESPONSE TO POINT RELIED ON

The Indictment filed against Jason R. Peterson was properly dismissed by the trial court because the statute under which Peterson was charged, Section 566.150, RSMo, as applied to Peterson, violates the ban on retrospective laws contained in Article 1, Section 13 of the Missouri Constitution. The trial court properly concluded that Article I, Section 13 applies to crimes and punishments as well as civil rights and remedies when considering the plain language of Article I, Section 13, other canons of statutory and constitutional construction, and this Court's holdings subsequent to *Ex Parte Betherum*. Because 566.150, RSMo created new obligations, duties, and attached new disabilities to Peterson solely based on a past transaction, his 1998 conviction for a sex offense, the statute was unconstitutionally retrospective as applied to Peterson.

Mo. Const., Art. I, Sec. 13

State ex inf. Dalton v. Dearing, 364 Mo. 475, 263 S.W.2d 381 (Mo. 1954)

Independence National Education Association v. Independence School District, 223 S.W.3d 131 (Mo. banc 2007)

F.R. v. St. Charles County Sheriff's Dept., 301 S.W.3d 56 (Mo. Banc 2010)

ARGUMENT

The Indictment filed against Jason R. Peterson was properly dismissed by the trial court because the statute under which Peterson was charged, Section 566.150, RSMo, as applied to Peterson, violates the ban on retrospective laws contained in Article 1, Section 13 of the Missouri Constitution. The trial court properly concluded that Article I, Section 13 applies to crimes and punishments as well as civil rights and remedies when considering the plain language of Article I, Section 13, other canons of statutory and constitutional construction, and this Court's holdings subsequent to *Ex Parte Betherum*. Because 566.150, RSMo created new obligations, duties, and attached new disabilities to Peterson solely based on a past transaction, his 1998 conviction for a sex offense, the statute was unconstitutionally retrospective as applied to Peterson.

Standard of Review

The Missouri Supreme Court reviews issues of law *de novo*. *State v. Justus,* 205 S.W.3d 872, 878 (Mo. banc 2006). "A statute is presumed valid and will not be held unconstitutional unless it clearly contravenes a constitutional provision." *F.R. v. St. Charles County Sheriff's Department*, 301 S.W.3d 56, 61 (Mo. Banc 2010). The party asserting the invalidity of a statute bears the burden of proving that a statute is unconstitutional. *Id.*

The Plain Language of Article I, Section 13 Indicates the Ban on Retrospective Laws Applies to Criminal Cases as well as Civil.

The State, in its brief, urges this Court to ignore the plain meaning of Article I, Section 13 of the Missouri Constitution and to ignore over 100 years of precedent defining and interpreting the scope of the ban on retrospective laws. (Ap. Brief 12-17). The Statue suggests that this Court should instead, speculate as to the intent of the drafters of the Missouri Constitution as well as the understanding of the voters who approved it and to inject words into a constitutional provision that do not appear. *Id.* However, this Court has been clear that statutes and constitutional provision should be interpreted using their plain, ordinary, common sense meaning. *State ex inf. Dalton v. Dearing*, 364 Mo. 475, 263 S.W.2d 381, 385 (Mo. 1954). Constitutional provisions are given even broader interpretations than statutory provisions "due to their more permanent character." *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006). "Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature, founded on the common business of life, adapted to common wants, designed for common use, and fitted for common understandings." *Dearing* at 385.

Article I, Section 13 states "[t]hat no ex post fact law, nor law impairing the obligations of contracts, or retrospective in its operation or making any irrevocable grant of special privileges or immunities, can be enacted." Nowhere in this constitutional provision does the word "civil" appear. However, the State asks this Court to insert this term into the provision which entirely changes its meaning and effect.

This Court, as recently as 2007, has addressed the issue of interpretation of a constitutional provision based on the plain language of the Missouri Constitution. In *Independence National Education Association v. Independence School District*, 223 S.W.3d 131 (Mo. banc 2007), the issue before this Court was whether Article I, Section 29 of the Missouri Constitution regarding the collective bargaining right of employees was limited to private- sector employees only. Article I, Section 29 provides that "employees shall have the right to organize and to bargain collectively through representatives of their own choosing." In support of Respondent's position, Respondent cited *City of Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539, 542 (1947) in which this Court had previously held that the right to collectively bargain as provided for in Article I, Section 29 did not apply to public employees.

This Court overruled *Clouse*, ultimately concluding that the plain language of the constitutional provision controlled and that there was no need for the Court to read words into the provision that did not appear. *Independence School District* at 137. Both parties cited the debates of the constitutional convention to support their positions as to what the delegates intended with regard to the inclusion or exclusion of public sector employees. *Id.* at 136-37. This Court noted that while the debates were interesting, they neither added nor subtracted from the plain meaning of the constitutional provision. *Id.* at 137. "Missouri's voters did not vote on the words used in the deliberations of the constitutional convention. The voters voted on the words in the Constitution, which says "employees shall have the right to organize and to bargain collectively...." *Id.* The Court also noted

that Article III, Section 50 provides a vehicle for the voters to change the language of the constitution. *Id.*

The facts at issue in *Independence School District* and this Court's holding therein are entirely parallel to the case now before the Court as they relate to the construction of constitutional provisions. The State cites the Constitutional Debates of 1875 at length in support of its position that the drafters did not intend to include crimes and punishment in the protection against retrospective laws contained in Article I, Section 13. (Ap. Brief 13-15). The State also relies on *Ex Parte Betherum*, 66 Mo.545, 1877 WL 8778 (Mo. 1877), in support of its position that Article I, Section 13 applies only to civil rights and remedies and not to crimes and punishments. The *Betherum* case, decided just two years after the enactment of Article I, Section 13 specifically declared the ban on retrospective laws to civil rights and remedies despite no constitutional language limiting it so. *Id.* at 550. The State acknowledges in its brief that the *Betherum* Court applied the technical meaning rather than the plain meaning of the provision. (Ap. Brief 11).

However, this Court has specifically rejected the State's position of reliance on historical research to determine the meaning of a constitutional provision. This Court has also rejected the interpretation of a constitutional provision when Courts have applied a technical meaning versus the plain ordinary language. *Betherum* is an incorrect precedent as it failed to follow this Court's standards for constitutional interpretation. Just as with the constitutional provision at issue in *Independence School District*, the voters in 1875 voted on the provision relating to retrospective laws as it read, in its plain and ordinary meaning. The voters did not approve a constitutional provision with

language limiting its application to civil rights and remedies. There is no need or justification for this Court to inject additional language and meaning 137 years later.

Additional Canons of Statutory and Constitutional Construction do not Support the State's position

Respondent asserts that the plain, ordinary language contained in Article I, Section 13 controls and is dispositive in this matter. However, even when examining other possible interpretations and canons of construction, the conclusion remains the same: that Article I, Section 13 is not limited to civil rights and remedies alone. The Court in *Ex Parte Betherum*, in deciding that the prohibition on retrospective laws applied only to civil rights and remedies relied on case law from New Hampshire and Texas as well as the belief that the drafters did not intend to include redundant language. *Betherum* at 550-53. However, even the language following the provision relating to ex post facto laws is redundant. "[N]or law impairing the obligations of contracts, or retrospective in its operation or making any irrevocable grant of special privileges or immunities, can be enacted." Art. I, Section 13. If this provision is construed to relate to civil rights and remedies alone, this construction renders this clause redundant. It is a common understanding that contracts fall within the realm of civil rights and remedies. However, the drafters included the phrase "obligation of contracts." If the provision relating to retrospective laws were meant to apply to all civil rights and remedies, why would the drafters include redundant language regarding contractual obligations? This redundancy directly contradicts any argument as to why the prohibition against retroactive laws does not apply to crimes and punishment.

Further, the disjunctive use of the words "or" and "nor" in Article I, Section 13 indicate that the phrase relating to retrospective laws has a distinct, separate meaning from the language relating to ex post facto laws. "Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise" *Reiter v. Sonotone Corp.*422 U.S. 330, 99 S.Ct. 2326, 2331(1979). By use of the disjunctive, the phrases relating to ex post facto laws and retroactive laws are each afforded separate meaning. To inject the word "civil" into the plain language of the phrase following the disjunctive, ignores the canons of statutory construction and unduly limits its meaning.

Case Law Subsequent to Betherum Does not Limit Article I, Section 13 to Civil Rights and Remedies Alone

Respondent can find no case since *Betherum* which explicitly interprets the ban on retrospective laws to apply to civil rights and remedies alone. However, there are numerous cases in which this Court has recognized that the protection against retrospective laws is indicated it has a much broader application and in which the Court has recognized that the prohibition against retrospective laws is broader than the prohibition against ex post fact laws.

In *State v. Kyle*, 65 S.W. 763 (Mo. 1901), this Court discussed the distinction between ex post facto laws and retrospective laws. The Court noted that the ban on retrospective laws is broader than the protections against ex post facto laws. "Every ex post facto law must necessarily be retrospective, but every retrospective law is not an ex post facto law. *Id.* at 768. The Court ultimately decided that issue was procedural rather

than substantive and that the law was neither ex post act or retrospective. However, the Court recognized that these are two separate principles and recognized that the concept of retrospective laws encompasses a broader range of laws than ex post facto laws.

The Court in *Squaw Creek Drainage Dis. V. Turney,* cited extensively in subsequent cases addressing retrospective laws, did not specifically limit the prohibition against retrospective laws to civil rights and remedies. 235 Mo. 80, 138 S.W. 12 (Mo. 1911). A retrospective laws was defined as "one which creates a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already past. It must give to something already done a different effect from that which it had when it transpired." *Id.* at 16.

In *R.L. v. Department of Corrections*, decided in 2008, this Court addressed a statute enacted after the conviction of a sex offender which limited the residency of the offender. 245 S.W.3d 236 (Mo. Banc 2008). The statute provided a criminal penalty for failing to meet the new obligations. *Id.* The Court held that the new obligations imposed on the offender by the statute violated the constitutional ban on retrospective laws as they were based solely on an offense committed before the enactment of the statute. *Id.* at 237-38. The Court did not limit the applicability of Article I, Section 13 to civil rights and remedies alone.

If there was any doubt before *F.R. v. St. Charles County Sheriff's Dept./State v. Raynor,* 301 S.W. 3d 56 (Mo. banc 2010), the Missouri Supreme Court removed all uncertainty by explicitly and unequivocally declaring the ban on retrospective laws of Article 1, Section 13 of the Missouri Constitution applicable to criminal laws as well as

civil laws. "A new criminal law operates retrospectively if it changes the legal effect of a past conviction." *Id.* At 63. "A subsequent law that requires a sex offender to do something - with a criminal penalty for not doing what the new law requires - is the imposition of a new obligation or duty imposed solely as a result of the pre-statute conviction." *Id.* at 62. The facts in the case now before the court are nearly identical to those in the *R.L.* and *F.R./Raynor* cases. In any respect that the *F.R.* case is in conflict with the *Betherum* decision, the *Betherum* decision has effectively been overruled by the Missouri Supreme Court's holding in *F.R.* and is no longer applicable law. The Court has clearly expressed that the ban against retrospective laws is applicable to crimes and punishment as well as to civil rights and remedies.

However, the State, in reliance on a 135 year old case, asks this Court to undo the Court's decisions of over 100 years, in particular, decisions as recent as 2010, and now claims that *Betherum* is binding precedent. Of note, is that Respondent cannot locate any case until 2011 in *State v. Melvin Ray Davis* 348 S.W.768 (Mo. banc 2011), ultimately decided on procedural grounds, in which the State has raised or argued this claim. Is it presumable that the State also understood the ban on retrospective laws to apply to crimes and punishment as well based on the plain language of the provision and the precedent of the prior century? While this Court has recognized the importance of the principle of stare decisis in promoting predictability and security in the status of the law, this Court has also noted that "adherence to precedent is not absolute, and the passage of time and the experience of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course." *Medicine Shoppe Int'l v. Director*

of Revenue, 156 S.W.3d 333, 334–35 (Mo. banc 2005). *Betherum* was an incorrect precedent as it failed to follow this Court's standards for constitutional interpretation by applying a technical meaning versus the plain, ordinary meaning and by failing to follow other canons of construction. This Court has recognized this faulty precedent and has overruled the *Betherum* decision, no longer applying the prohibition against retrospective laws to civil rights and remedies alone. This Court has clearly expressed its intent to apply the ban against retrospective laws to criminal as well as civil laws.

Excluding Crimes and Punishment from the Ban on

Retrospective Laws to Advance the Purposes

Behind Criminal Laws is Neither Permissible or Persuasive

While the State has a legitimate interest in protecting the public, this cannot come at the cost of individual constitutional rights. The number of statutes seeking to regulate and restrict sex offenders is ever-increasing. This perceived need for increased protection from those convicted of sex offenses is based on perceptions that sexual offenders have startling rates of re-offending. This Court has recognized that this perception simply isn't supported by the empirical data:

> *"While recognizing the dissent's evident concern about recidivism of sex offenders, rather than assuming that the rates are high, one should look at the data. Of the five categories of felony offenders in Missouri's correctional population – drugs, nonviolent felonies, violent felonies, DWI (driving while intoxicated) felonies, and sex and child abuse – sex offenders have the lowest rates of recidivism. Their rate of recidivism after two years*

is 5.3 percent, while recidivism rates for other categories of offenders are 9.6 percent for violent offenders, 14.9 percent for nonviolent offenders, 11.7 percent for drug offenders, and 11.4 percent for felony DWI offenders. The rate of recidivism includes the likelihood of a convicted sex offender to commit any future crime, not just a sex offense. Missouri Sentencing Advisory Commission, Recommended Sentencing Biennial Report 2009 at 46, available at:

http://www.mosac.mo.gov/file/2009%20Biennial%20Report.pdf (last accessed Jan. 8, 2010).

F.R. v. St. Charles County Sheriff's Dept. at FN 14. *See also* Bureau of Justice Statistics, NCJ 198281, *Recidivism of Sex Offenders Released from Prison in 1994* (2003).

Despite much higher recidivism rates among DWI offenders and the number of people injured and killed by drunk drivers, the legislature does not pass comparable statutes which restrict DWI offenders from being present in bars, taverns, liquor stores, or other places where alcoholic beverages are to be found. The reality is that certain laws regulating the residency and movement sex offenders are largely ineffective or laws which are a means to no end prompted by unfounded public fear. The Legislature's intent--compelling or otherwise--is not relevant to a determination whether Section 566.150, RSMo operates retrospectively. This Court simply cannot allow itself to be persuaded by arguments of the State which appeal to fears and emotions in an effort to

circumvent the real issue, which is that the statute in question is clearly retrospective and violates the Missouri Constitution.

Section 566.150, RSMO is a Retrospective Law as Applied to Peterson

Missouri Supreme Court Rule 84.04(d) provides that every brief on appeal shall contain points relied on which identify the trial court ruling or action that the appellant challenges, state concisely the legal reasons for the appellant's claim of reversible error, and explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error. A point is not properly presented for review if it is raised for the first time in the argument portion of the brief. *Hastings v. Coppage*, 411 S.W.2d 232, 235 (Mo. 1967). An issue is considered to abandoned on appeal if not presented in the points relied on. *State v. Brookshire*, 325 S.W.2d 497, 500 (Mo. 1959). Appellant has not properly preserved any issue for consideration by this Court as to whether or not Section 566.150, RSMo is a retrospective law as applied to Peterson. However, Appellant presents veiled argument in its brief that this statute is not a retrospective law as applied to Peterson. Respondent, without waiving any objection to review of Appellant's claim, as a matter of prudence, is compelled to address this argument and seeks affirmance of the trial court's ruling on the merits.

It is undisputed, both in the trial court and in this Court, that Section 566.150, RSMo was enacted and went into effect eleven years following Peterson's qualifying conviction for a sex offense. (L.F. 26-27, Ap. Brief 6, FN1). The State contends that a sex offender can avoid criminal liability under Section 566.150, RSMo by

simply refraining from activities prohibited under the statute and asserts that the statute imposes criminal liability for activity occurring after the statute's effective date rather than imposing any new obligation, duty or disability. (Ap. Brief 21). However, this assertion fails to consider the restrictions and affirmative obligations Peterson now faces based solely on his previous conviction.

The statute clearly imposes a disability on Mr. Peterson as a result of his previous conviction by preventing his presence in or near public parks or swimming pools. He can no longer visit and enjoy public parks or swimming pools, a right that he has had for his lifetime and most importantly, a right that he has continued to have for the past eleven years following his conviction until the passage of Section 566.150, RSMo.

Section 566.150, RSMo provides that individuals convicted of certain sexual offenses "shall not knowingly be present in or loiter within five hundred feet of any real property comprising any public park with playground equipment or a public swimming pool. " This statute places on the individual the obligation and duty of locating every public park and public swimming pool in any city, town, or location he resides. It places on the individual the obligation and duty of locating every public park and public swimming pool in any city, town, or location he visits or passes through. It places on the individual the obligation and duty of locating every business, establishment, or other building or location within 500 feet of every public park and public swimming pool in any city, town, or location in which he resides or visits. It effectively places on the individual the restriction of preventing residence within 500 feet of every public park and public swimming pool. The requirements under this statute are analogous to the

requirements placed on the petitioner in *F.R. v. St. Charles County Sheriff's Dept.*, which the Court found to be new duties and obligations rendering the statute's application unconstitutionally retrospective.

"The obligation or duty imposed on F.R. is that – before moving to a new residence – F.R. has to find out whether the residence is within 1,000 feet of a school or day-care facility. If, as it turns out, the new residence is within 1,000 feet of such a facility, he must move. There is in this case an obligation or a duty imposed years after F.R.'s conviction that he must perform or else he will be subject to a new criminal penalty under section 566.147.4." *F.R.* at 63. The duties placed on Peterson by Section 566.150, RSMo are nearly identical, and arguably more burdensome than those faced by Appellant in *F.R.* Instead of a school as in *F.R.*, Peterson must stay away from public parks and swimming pools. Instead of the requirement that *F.R.* faced that he not reside within 1,000 feet of a school, Peterson must stay from within 500 feet of public parks and swimming pools. And although Section 566.150, RSMo does not state that the defendant is not allowed to "reside" within 500 feet of a public park or swimming pool, in effect, it prevents him from doing so by prohibiting him from "loitering" within 500 feet of either.

In its Indictment, the State fails to name the location where the Peterson is alleged to have been present or loitered in violation of the statute. (L.F. 26-27). The State references Maurice Roberts Park in Richmond, Missouri in its "State's Response to Defendant's Motion to Dismiss." (L.F. 137-154). For purposes of illustration, there are a number of businesses and establishments within 500 feet of Maurice Roberts Park. A restaurant, a gas station, the Ray County Veteran's Building, the Richmond Masonic

Lodge, and a number of residences are located within 500 feet of this park. This statute requires Peterson to locate each of these locations and prevents Peterson and all other individuals who the statute applies to from being present in or "loitering" at these locations. Section 566.150, RSMo provides no definition for the term "loitering," nor is the term "loitering" defined anywhere in the entirety of the Missouri Revised Statutes. Black's Law Dictionary (7th ed. 1999) defines loitering as remaining "in a certain place … for no apparent reason." It is unclear whether Peterson would be allowed to visit a friend's house which was located within 500 feet of a park, attend an event at the Veteran's Building, or have a meal at the nearby restaurant. While the unclear nature of the term "loitering" begins a discussion about vagueness which Respondent will not explore at this time, it is apparent that at a minimum, Peterson under the statute, has an obligation and duty to seek out all locations within 500 feet of Maurice Roberts Park, or any other public park or swimming pool located in Ray County or any other location in the State of Missouri and refrain from being present in or "loitering" within 500 feet of them.

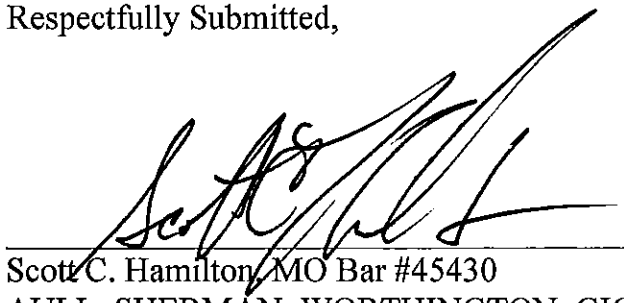
Mr. Peterson cannot, as the State argues, avoid criminal liability merely by refraining from the activities prohibited by the statute. It requires an affirmative duty for him to seek out and locate the restricted areas so he can avoid them and prevent violation of Section 566.150, RSMo, as Appellant was required to do in *F.R.* All of these obligations, duties and disabilities are imposed solely because of Peterson's 1998 conviction for a sex offense and not as a result of some later criminal conduct. These new obligations, duties and disabilities imposed by Section 566.150, RSMo are more

than mere collateral consequences of his 1998 conviction. This statute imposed an entirely new criminal penalty, eleven years following his 1998 conviction, solely based on his status as a sex offender. Section 566.150, RSMo gave "to something already done a different effect from that which it had when it transpired." *Doe v. Phillips*, 194 S.W.3d 833, 850 (Mo. Banc 2006). Section 566.150, RSMO, as applied to Peterson, is a retrospective law which violates Article I, Section 13 of the Missouri Constitution.

CONCLUSION

For all of the above and foregoing reasons presented, Respondent, Jason R. Peterson respectfully requests that this Court affirm the trial court's dismissal of the Indictment charging Respondent with the Class D Felony offense of Loitering Within 500 Feet of a Public Park or Swimming Pool pursuant to Section 566.150, RSMo (Cum. Supp. 2009).

Respectfully Submitted,



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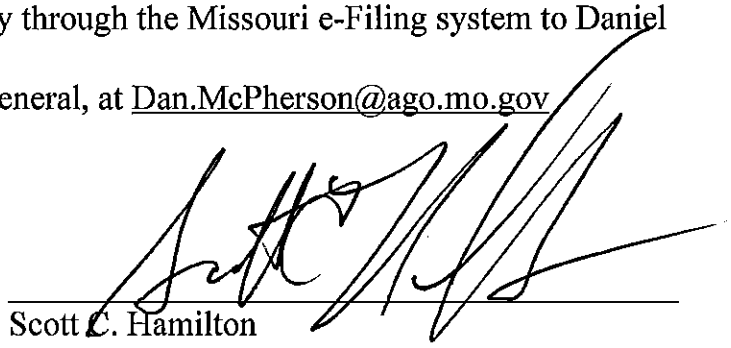
CERTIFICATE OF COMPLIANCE AND SERVICE

I, Scott C. Hamilton, hereby certify to the following. The attached brief complied with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, in Times New Roman Font, size 13 point font and contains margins no smaller than one inch. The brief, exclusive of the cover page and certificate of compliance and service contains 5,123 words.

On this 27th day of September, 2012, electronic copies of Respondent's Brief and Appendix were placed for delivery through the Missouri e-Filing system to Daniel McPherson, Assistant Attorney General, at Dan.McPherson@ago.mo.gov



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