No. 17-3857

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JANE DOE, Appellee, v. OHIO ATTORNEY GENERAL, ET AL., Appellants.	:	On Appeal from the United States District Court for the Southern District of Ohio Western Division District Court Case No. 1:12-cv-00846

BRIEF OF APPELLEE JANE DOE

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 17-3857 Case Name: Jane Doe v Ohio Attorney General, et al

Name of counsel: Alexandra (Sasha) Naiman

Pursuant to 6th Cir. R. 26.1, Jane Doe
Name of Party
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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

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s/ Sasha Naiman
Alexandra (Sasha) Naiman (0091466)

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellee/Plaintiff requests oral argument. This cases addresses Constitutional issues in Ohio's complex sex-offender classification scheme. Oral argument would help to fully illuminate relevant nuances and changes in applicable law.

STATEMENT OF THE ISSUES

1) Do Defendants violate Doe's procedural due process rights by labeling and treating her as a "sexual predator" – a person who is likely to commit a new sex offense – when Doe is unlikely to reoffend?
2) Are Defendants protected by Article III standing when they cause plaintiff's injury by proclaiming that she is dangerous predator?
3) Are Defendants protected by Eleventh Amendment sovereign immunity when they enforce unconstitutional state laws against Doe?

STATEMENT OF THE CASE[1]

In 2006, Jane Doe pled guilty to unlawful sexual contact with a minor. At the time, Ohio had a risk-based sex-offender classification scheme, which intended to ensure public safety by linking offenders' restrictions/obligations to present risk levels. In a separate hearing to determine Doe's classification, the judge conducted a multi-factorial analysis of dangerousness set forth in former R.C. §2950.09(B) (2006) (risk factors include age of the offender and victim, mental health, and criminal history). Based on these considerations, the court classified Doe as a

[1] While Appellee-Plaintiff's Statement of Case adds important information to *Brief of Appellants*, the material facts underlying this matter are largely accepted by both parties. These facts are also well described in the District Court's Order on Cross-Motions for Summary Judgment, in the "Background" section. Order, R.83, PageID#736-742. Unless clearly erroneous, Appellee-Plaintiff adopts procedural history described and jurisdictional statement in *Brief of Appellants*, Doc 29

"sexual predator" – meaning a person who "is likely to engage in the future in one or more sexually oriented offenses." R.C. §2950.01(E) (2006). This classification, reflecting present dangerousness, was the highest risk level and, therefore, triggered the most restrictions and obligations. Other classifications had shorter registration requirements, no community notification, and lower-level obligations.

Subsequently, Doe successfully completed sex offender treatment, and two qualified doctors evaluated Doe and concluded that she now has a very low re-offense risk. Order, R.22, PageID#127. Doe also regained custody of four children, who currently reside with her. Order, R.83, PageID#742; *See* Doe Dec., R. 38-1 and Humphries Dec, R. 38-2. In the 12 years since her conviction, Doe has not committed any additional sex offenses.

Although Doe can show she is no longer likely to reoffend, Defendants continue to publically label her as presently dangerous and enforce restrictions and obligations meant for the highest-risk offenders. As a result of her inaccurate "sexual predator" label, Doe is burdened for her *lifetime* by complex, costly registration every 90 days, community notification (by email and notecard), online registry disclosures, prohibition from public housing and other residency restrictions, and more. Order, R.83, PageID#740-41. If Doe fails to comply, she can be convicted of a felony. R.C. §2950.99 (2006).

Prior to 2003, a person in Doe's position could get a new hearing on present dangerousness, where the court would consider factors in R.C. §2950.09(B) and determine the correct classification. This was consistent with scientific scholarship: likelihood of recidivism decreases over time; certain factors reduce risk of recidivism; and there are evidence-based risk assessment instruments. Ullman Dec., R.37-2, PageID#249, 253-254.

In 2003, a legislative change unconstitutionally removed any opportunity for courts to evaluate current risk and to set a classification with appropriate restriction. The law prohibits a judge from removing or terminating Doe's predator classification and lifetime registration duty. R.C. §2950.07(B)(1) and §2950.09(D)(2) (2006).

As detailed in the Appellant's Brief, Doe brought a civil suit in 2012, asserting her due process right to a new hearing on her present dangerousness. Doe sought the opportunity to prove in court that she poses no risk and that her "sexual predator" designation no longer fits. The District Court correctly found that Defendants DeWine and Strickrath violated Doe's of procedural due process rights, and that relief was not barred under Article III or Eleventh Amendment sovereign immunity. This Court reviews the case de novo.

SUMMARY OF ARGUMENT

1. *Defendants violate Doe's procedural due process rights by labeling and treating her as a "sexual predator" – a person who is likely to commit a new sex offense – while Doe is demonstrably unlikely to reoffend.*

In a sex-offender-classification scheme based on present dangerousness, Doe is incorrectly labeled and treated as belonging to a classification most likely to commit a sex crime. As a result, she faces the highest level restrictions, including lifetime registration, community notification, residency restrictions, and other significant changes to her legal status. She would not face these burdens with another classification.

Doe can prove that she is no longer likely to commit another sex offense and presents no realistic risk to the public. Since her classification reflects present level-of-risk – rather than being an automatic attribute of conviction alone – she has a due process right to a hearing on current dangerousness. *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003) and *Fullmer v. Michigan Dep't of State Police*, 360 F.3d 579, 581-82 (6th Cir. 2004) (both finding that a plaintiff is entitled to a hearing on present dangerousness where sex-offender classifications/restriction laws are based on present dangerousness, not on conviction alone). However, Ohio law does not afford Doe an opportunity to demonstrate that she is no longer a threat.

Doe has a protected interest in public housing, but she is "permanently ineligible for public housing based on her classification as a sexual predator who is likely to re-offend and is subject to lifetime registration requirements." Order, R. 83, PageID# 753-54. "Participation in a public housing program is a property interest protected by due process" under *Woods v. Willis*, 515 F. App'x 471, 478 (6th Cir. 2013).

Additionally, Doe also has a liberty interest that protects her from state-sponsored defamation under the "stigma plus" test, announced in *Paul v. Davis*, 424 U.S. 693, 701 (1976). This means that Defendants caused reputational stigma plus a change in legal status – such as onerous registration, community notification, and residency requirements. These harms make Doe different than other citizens and they are mistakenly applied to Doe because she is low risk.

There is no process for Doe to challenge her "predator" label after the initial designation. The District Court correctly ruled that Doe should have an opportunity to demonstrate to her sentencing court that she is no longer a dangerous, high-risk, sex offender.

2. *Defendants are not protected by Article III standing or sovereign immunity.*

Defendants' argue that the relief ordered by the District Court is blocked by Article III standing and sovereign immunity. For this argument, Defendants downplay their many clear, distinct, specific enforcement duties described

throughout Chapter §2950 (including a lengthy statute, R.C. §2950.13, dedicated just to listing dozens of those duties). The Ohio Attorney General and the Ohio BCII maintain internet registries that publish Doe's predator status (publically proclaiming she is high risk), as well as her physical characteristics, home address, employment, and other personal information that should only be shared for the highest-risk people. They enforce community notification requirements, setting geographic areas for distribution and sending notecards and emails, and control many levels of "implementation and administration" and "adopt[ing] procedures" for the enforcement of Ohio's Megan's Law against Doe. R.C. §2950.13.

While the Eleventh Amendment protects state officers acting in their official capacities, Doe's suit clearly falls into the *Ex Parte Young* exception to sovereign immunity. *Ex Parte Young*, 209 U.S. 123 (1908). *Young* removes sovereign immunity when state actors they attempt to enforce an unconstitutional state law, as is the case here. *Id*. at 156-60. In Doe's present case, Defendants are definite, if not principle, enforcers of Ohio's sex offender scheme.

Doe has Article III standing because her injuries (e.g., exclusion from public housing, community notification, residency restrictions, and more) have a causal connection to Defendant's conduct – meaning, the injury must be "fairly traceable" to Defendants' action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). There is also standing because Doe's injury will be redressed if the

court grants a favorable decision. *Id.* If this Court strikes the unconstitutional statutes in question, Doe could get a new classification hearing, where she can prove she poses no risk. She will no longer have to labeled and treated as a "sexual predator" – a person who is likely to commit a new sex offense – when she is unlikely to reoffend.

Contrary to Defendants' arguments, the fact that other agencies and officials also have enforcement duties does not reduce or eliminate the fact that Defendants' conduct enforces the relevant Megan's Law scheme in Ohio and it causally connects Doe's injury. To establish a claim under 42 U.S.C. §1983, like the claim Jane Doe brings here, a plaintiff must "identify a right secured by the United States Constitution and deprivation of that right by a person acting under color of state law." *Russo v. City of Cincinnati*, 953 F.2d 1036, 1042 (6th Cir. 1992). For Doe to bring this suit, there is no requirement that Defendants act alone – only that Defendants' challenged actions satisfy *Ex Parte Young* and are fairly traceable to Doe's injury.

ARGUMENT

I. DEFENDANTS MISCONSTRUE THE CENTRAL ROLE OF RISK.

Although Doe is unlikely to reoffend, she is labeled and treated as a person who poses a high risk for committing future sex offenses. Defendants argue that "the fact of reduced risk is *irrelevant* under Ohio law." *Brief of Appellants*, Doc.

29, Page 18; *Id*. at 29 ("Doe's current likelihood of re-offense is irrelevant under Ohio law"). They assert that "Ohio's legislature made a judgement that any sex-offender judged a predator at the time of sentencing" posed lifetime risk. *Id.* at 19. This could not be further from the truth. In reality, relevant statutory language, statutory intent/history, and scientific scholarship show the central role of current risk in Megan's Law classifications.

A. Statutory language shows relevance of present risk.

The key to Doe's claim is that her classification defines her as presently dangerous. A "sexual predator" is defined as "a person who *has been* convicted of, or has pleaded guilty to, committing a sexually-oriented offense and *is likely* to engage in the future in one or more sexually-oriented offenses." R.C. §2950.01(E) (2006) (emphasis added). The statutory construction uses present-tense language for likelihood of reoffending, contrasted with past tense for "convicted of or pleaded guilty." Based on this definition, Doe's status as a sexual predator purports to reflect current dangerousness, not her level of dangerousness in 2006.

B. Statutory intent/history shows relevance of present risk.

Under Ohio's Megan's Law, judge classified people as "sexually oriented offenders," "habitual sex offenders," or "sexual predators," each respectively having a higher risk of reoffending and higher restrictions/obligations. When creating these classifications, Ohio's legislature expressed its intention to build a

risk-based system to ensure public safety. R.C. §2950.01-.02 (1996), HB 180, eff. 1-1-97. They stated explicitly:

> "[I]t is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sexual predators and habitual sex offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sexual predators and habitual sex 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."* R.C. §2950.02(B) (1996).

The General Assembly stated that initial classifications help communities create safety plans when sexual predators (people who "pose a high risk of engaging further offenses") are released. R.C. §2950.02(A)(1)-(2) (1996-2006). But, information about predators can continue to be released only for "as long as it is rationally related" to "the government's interest in public safety." R.C. §2950.02(A)(6) (1996-2006). This articulated reasoning was not changed when the legislature amended Megan's Law in 2003 or in 2006 when Doe was convicted.

To ensure that classifications continued to "assur[e] public protection" and were "rationally related to the furtherance of" safety goals, the original law allowed sex offenders lifelong opportunities to petition for new classification. R.C. §2950.02 (1996-2003). A judge would determine the correct classification, case by case, based on a multi-factorial analysis of dangerousness. R.C. §2950.09(B)

(2002). In this way, classifications would appropriately represent current risk, triggering correct restrictions to ensure public safety.

In 2003, the General Assembly removed sexual predators' opportunity for a hearing on present dangerousness, in violation of due process. Predator-status became "permanent" and "in no case" could "be removed or terminated." R.C. §2950.09(D)(2) (2006). From 2003 until 2007, people were classified based on present risk, but treated as continually "likely to engage in the future in one or more sexually oriented offenses", without a chance to correct their risk level over time.

Defendants argue that, in 2003, the legislature made a "*deliberate* choice to make registration a lifetime duty for those adjudicated as sexual predators" because legislators believed that a high-risk person remains high-risk for life. *Brief of Appellants*, Page 19, 29-30. Defendants show no evidence about this alleged legislative intent/history. In reality, the General Assembly made no change to the factors a court must consider in making an initial classification, no change to the meaning assigned to the "sexual predator" label, and no change to its explicitly-stated purposes in R.C. §2950.02 – to publicly release correct information about the highest-risk offenders where such release assures public safety.

Moreover, all changes in law, even unconstitutional ones, are deliberate. A Due Process violation is no less real when the legislature deliberately takes away a

constitutionally-protected hearing opportunity because they incorrectly believe that Due Process is not needed.

C. Scientific scholarship shows relevance of present risk.

Defendants argue that Doe should face lifetime registration because "a convicted sex offender poses some threat of committing a similar offense in the future" and they quote snippets of cases implying that people with sex offense convictions are substantially high risk to recidivate. Whatever value this argument might have had fifteen years ago, today it is contradicted by extensive and widely accepted clinical research and scholarship.

The likelihood that a sex offender will reoffend declines with time, treatment, and other factors. As it decreases, assessment instruments exist to properly score sex offenders' current risk of recidivism. Ullman Dec., R.37-2, PageID#249, 253-254. *See also* Harris, A., Phenix, A., Hanson, R.K., & Thornton, David, *Static 99 Coding Rules Revised, Adjustment in Risk Based on Time Free*, 2003 (finding that sexual offence recidivism rates decrease by half if offenders have 5-10 years of offence-free behavior in the community.)

In *Does #1-5 v. Snyder*, this Court dismantled the myth of stagnant, high sex offender recidivism. This Court had "significant doubt cast by recent empirical studies on the pronouncement … that 'the risk of recidivism posed by sex offenders is 'frightening and high.'' One study suggests that sex offenders (a

category that includes a great diversity of criminals, not just pedophiles) are actually less likely to recidivate than other sorts of criminals." *Does #1-5 v. Snyder*, 834 F.3d 696, 704–05 (6th Cir. 2016) (internal citations removed).[2] This Court further noted that there are calculable "risk factors for recidivism," and found Michigan's conviction-based system unconstitutional in part because it "makes no provision for individualized assessments of proclivities or dangerousness". *Id.*

D. Risk-based schemes are evaluated differently than conviction-based schemes.

The distinction between risk- and conviction- based classification falls at the crux of this case. Defendants correctly point out that, "in 2007, Ohio amended its sex-offender" scheme to one that "classifies offenders based solely on the offense, without regard to the circumstances of the crime or the likelihood to reoffend. … After 2007, Ohio moved to *automatic* classification based on crime committed without regard to a determination about a likelihood to reoffend." *Brief of Appellants*, Page 20-21. Defendants further correctly indicate that the 2007

[2] *See also* Levine, Barbara and Elsie Kettunen, Citizens Alliance on Prisons & Public Spending, Citizens Alliance on Prisons & Public Spending, *Paroling people who committed serious crimes: What is the actual risk*, Dec 1, 2014 (of 4,109 sex offenders, 32 (0.8%) returned to prison for a new sex offense); State of Connecticut Office of Policy & Management, *Recidivism among sex offenders in Connecticut*, Feb 15, 2012 (746 sex offenders had 3.6% re-arrest and 2.7% re-conviction rates after 5 years).

"changes do not affect Jane Doe." *Id.* at 20. She continues to be classified under Ohio's risk-based Megan's Law.

Defendants correctly turn to the United States Supreme Court's 2003 decision in *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003), as instructive about Due Process rights in a risk-based versus conviction-based classification scheme. But Defendants incorrectly apply and interpret the case to block Doe's constitutional rights. In *Connecticut*, the Supreme Court established that a sex offender's procedural due process right to a hearing about current dangerousness hinges on whether the statutory scheme defines him as presently dangerous, or if it reflects conviction alone. *Id.* at 7. "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish are relevant under the statutory scheme. … Due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme." *Id.* Plainly put: if Plaintiff wants a hearing on the facts of current dangerousness, then current dangerousness should be material to classification. Since Connecticut's classification scheme "turn[ed] on an offender's conviction alone," "not the fact of current dangerousness," the plaintiff was not entitled to litigate current dangerousness. *Id.* at 4, 7-8.

Defendant's citation to *Gautier v. Jones*, 364 F. App'x 422 (10th Cir 2010), which considered Oklahoma's sex offender scheme, only reaffirms *Connecticut's*

rule that a plaintiffs requesting a hearing on current dangerousness "must at least show that current dangerousness is relevant to the [sex offender registration and classification] requirements." Oklahoma's scheme, unlike Ohio's, classified people "without regard to any extraneous circumstances […or] proclivity to reoffend." *Id.*

The Sixth Circuit has not yet decided a case with a risk-based classification scheme like Doe's; but, it affirmed that *Connecticut Dept. of Public Safety* "made an important distinction between the structure of the Connecticut registry, which is based on the fact of the registrant's conviction rather than his or her current 'dangerousness,'" and other states' sex offender registries. *Fullmer v. Michigan Dep't of State Police*, 360 F.3d 579, 581-82 (6th Cir. 2004). In *Fullmer*, the Sixth Circuit found that Michigan's sex offender scheme did not create a due process right for a hearing on current dangerousness – because it was "based solely upon the fact of an offender's conviction." *Id.* at 582.

In contrast to Connecticut's, Oklahoma's, and Michigan's laws, Ohio's Megan's Law creates a system based on present dangerousness. In this system, Doe is designated as *currently dangerous* – she "*is* likely to engage in the future in one or more sexually-oriented offenses." R.C. §2950.01(E) (2006) (italics added). The classification scheme is based on *a case-by-case, a multi-factorial analysis* of dangerousness set forth in former R.C. §2950.09(B)(2006), rather than solely the offender's conviction. Under Ohio's statutory scheme, Doe seeks to prove a fact –

her low risk of reoffending – that is most material, relevant, and consequential. Subjecting Doe to the "sexual predator" classification, which is based on her current dangerousness, not on her conviction, is thus unconstitutional.

In addition to *Connecticut, Fullmer,* and *Gautier,* Defendants rely on a series of non-binding authorities "from other circuits and from state courts" to allege that Doe's present risk is "an irrelevant fact." *Brief of Appellants,* Page 50 (discussion continues Page 50-54). None of these cases support Defendants' proposition. Rather, they affirm *Connecticut's* rule: current dangerousness is relevant in risk-based systems. In these cases, courts denied risk-hearings because plaintiffs were classified under a conviction-based, not risk-based, system. *Doe v. Cuomo,* 755 F.3d 105, 113 (2d Cir. 2014) ("New York State has concluded—as it was constitutionally entitled to do—that the mere fact of conviction of certain sex offenses justifies the imposition of SORA's registration, notification, and other restrictions"); *Amin v. Voigtsberger*, 560 F. App'x 780, 783 (10th Cir. 2014) ("classification was based on a prior conviction"); *United States v. Garner*, 586 F. App'x 360, 361 (9th Cir. 2014) (classification is based on "elements of the state offense and the length of imprisonment by which that offense is punishable");

State v. Eighth Judicial Dist. Ct., 306 P.3d 369, 372 (Nev. 2013)(no facts beyond conviction were relevant in the Nevada system).[3]

Among the cases in Defendants' series from other jurisdictions, the only case with a *risk*-based system is *State v. Briggs*, 199 P.3d 935 (Utah 2008). In *Briggs*, the court finds a violation of procedural due process because a person is classified based on present risk, without opportunity for new hearings "on whether he was [actually] currently dangerous." *Briggs* at 945. Like the Plaintiff in *Briggs*, Doe has no "opportunity to contest the fact of her current dangerousness" (*Id.* at 948). Contrary to Defendants' argument, Doe's ability to appeal her dangerousness level in 2006 – or the veracity of her "full scale court hearing" in 2006 – is irrelevant. *See Brief of Appellants,* Page 53, attempting to distinguish *Briggs.* Like Briggs, Doe is asserting her low-risk *presently*, and not challenging her initial classification or initial hearing on dangerousness.

[3] Additionally, the opinion in *Murphy v. Rychlowski*, 868 F.3d 561 (7th Cir. 2017), explicitly distinguishes itself from hearing on dangerousness in *Connecticut Department of Public Safety*. *Murphy* is not about dangerousness. It is about Wisconsin's law requiring out-of-state sex offenders to register if they had registration duties in their past state-of-residence. Murphy challenged Wisconsin's legal determination that his registration in California translated to registration duties in Wisconsin. *Id.* at 565-66.

II. DEFENDANTS VIOLATE DOE'S PROCEDURAL DUE PROCESS RIGHTS BY FALSELY PROCLAIMING SHE IS CURRENTLY DANGEROUS, WITHOUT GRANTING HER AN OPPORTUNITY TO PROVE SHE IS NOT.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Due process ensures that the government does not cause a mistaken or unjustified deprivation of her liberty or property. *Carey v. Piphus*, 435 U.S. 247, 259 (1978). To determine whether a procedural due process claim is meritorious, this Court must determine (1) whether there exists a liberty or property interest which has been interfered with by the state and (2) whether the procedures attendant upon the deprivation are constitutionally sufficient. *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

A. The State's proclamation that Doe is presently dangerous deprives her of a protected and liberty interests protected by the 14th Amendment.

1. Housing

In the Sixth Circuit, "participation in a public housing program is a property interest protected by due process." *Woods v. Willis*, 515 F. App'x 471, 478 (6th Cir. 2013); see also *Davis v. Mansfield Metro. Housing Auth.*, 751 F.2d 180, 184 (6th Cir. 1984) (agreeing with the district court conclusion, which was not disputed by defendants upon appeal, that "participation in a public housing program is a

property interest protected by due process"); *Baker v. Cincinnati Metro. Housing Auth.*, 490 F. Supp. 520, 532 (S.D. Ohio 1980), *aff'd*, 675 F.2d 836 (6th Cir.1982) ("The statutes and regulations under this Section 8 program create an expectancy of government-assisted housing which is entitled to some measure of constitutional protection. […There is] a protectable interest under the Due Process Clause.") Due process extends protection to "statutory entitlements which are conferred by the government to meet the needs of recipients." *Baker*, 490 F. Supp. at 532. The protected interest in public housing assistance is established in courts nationwide. Plaintiff's Supplemental Memo, R.78, PageID#610-11 (citing 13 case-examples).

Doe's mandatory restriction on her public housing benefit is triggered exclusively and specifically by her status as a sexual predator who must register for life. S*ee* 24 CFR 960.204; 24 CFR 982.553. Doe would not be barred if her classification were reduced.

Doe has a protected interest in public housing because she is income-qualified and would be in public housing but-for her predator status. She cannot live in public housing because Defendants improperly forces her to register for a lifetime, without opportunity for reclassification as a person with lesser registration requirements. Jane Doe lived in federally-subsidized public housing with her children, but they were forced to move because of her sexual-predator status. Jane Doe's grandmother recently invited the family to live with her, but they were

unable to accept because her grandmother lives in federally-subsidized housing. Doe Dec., R.38-1,PageID#261. With the help of a social worker at the Shelter Diversion Program in Cincinnati, Jane Doe spent three years applying for and staying on the waiting list for federally subsidized house; however, she was denied placement "solely because her sexual predator classification requires her to register for life." Plaintiff's Reply on Summary Judgement, R.51, PageID #367 (citing to Declaration of Jane Doe, R. 38-1, and Declaration of Sarah Humphrie,R.38-2).

2. Stigma Plus

Additionally, the injuries Doe has suffered as a result of her erroneous classification satisfy the "stigma-plus" test set forth in *Paul v. Davis*, 424 U.S. 693, 701 (1976). *Paul* established that stigmatizing conduct (e.g. reputational harm) by the government gives rise to a due process liberty interest if it is accompanied by some tangible injury, such as deprivation of legal status previously recognized under state law. *Id.* at 711 (for example, when "a right or status previously recognized by state law was distinctly altered or extinguished."). The *Paul* decision discusses how *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), exemplifies the stigma-plus test: a state statute empowered police to post public notices about people who "by excessive drinking" exhibited undesirable "traits, such as exposing himself or family 'to want' or becoming 'dangerous to the peace' of the community," and it forbade effected people from purchasing alcohol. *Id*. at 434.

Like the plaintiff in *Constantineau,* as discussed in *Paul,* Doe faced a change in her legal status in addition to stigmatization. Worse than posting that she is a drunkard, Defendants publicly disseminate information declaring Doe is presently likely to commit sex offenses. Worse than being deprived of the previously-held right to purchase liquor, she is deprived of housing options and public benefits, privacy, family relationships, and more. The liberties, rights, and status lost by Ms. Doe are more important than those identified in *Paul* as passing the stigma-plus test, entitling Doe to constitutional protection.

Despite Defendants' argument to the contrary, the District Court correctly relied upon the Seventh Circuit decision *Schepers v. Comm'r, Indiana Dep't of Correction,* 691 F.3d 909 (7th Cir. 2012) for guidance. Doe's classification incorrectly labels her as presently dangerous, and similarly, "Schepers was erroneously designated as a 'Sexually Violent Predator' and thus was subject to the more burdensome requirements and restrictions that apply to that group." *Id.* at 912. In Indiana, like Ohio, people classified as predators had increased restrictions including more onerous registration responsibilities and limitations on where they could live; failure to comply with these increased restrictions could have criminal consequences, like a felony conviction. The court found that such plaintiffs satisfied the stigma-plus test, under *Paul v Davis*, "to show alteration of legal

status along with some stigmatic or reputation injury" because of a change in legal status:

> The plaintiff class here is complaining about much more than the kind of simple reputational interest asserted by respondent *Davis* in the Supreme Court's case. The Indiana statute deprives members of the class of a variety of rights and privileges held by ordinary Indiana citizens, in a manner closely analogous to the deprivations imposed on parolees or persons on supervisory release. Citizens do not need to report to the police periodically, nor is their right to travel conditioned on notifications to the police in both the home and the destination jurisdiction. Unlike Schepers, who was forbidden from living within 1,000 feet of a school or park while he was categorized as a sexually violent predator, members of the public are free to decide where they wish to live. These restrictions, in our view, fit the requirement in *Paul v. Davis* of an alteration in legal status that takes the form of a deprivation of rights under state law.
>
> Although any kind of placement on the sex offender registry is stigmatizing, we agree with the district court that erroneous labeling as a sexually violent predator is "further stigmatizing to [one's] reputation." Society's abhorrence of sexually violent predators goes above and beyond that reserved for other sex offenders. Indiana has taken that position formally through the additional restrictions in the law on the sexually violent predator's actions. Other courts have reached similar conclusions when considering sex offender registration systems with "tiered" registration levels. We are satisfied that plaintiffs have shown that the kind of registry mistakes they have alleged here implicate a liberty interest protected by the Due Process Clause.
>
> *Id*. at 914-915.

Schepers is instructive because of the harm the plaintiff has suffered. The State is making degrading misstatements about Doe – and harm to her, like Schepers, is the same whether the state's misstatements are caused by clerical error or by lack of a process for risk-evaluation.

Contrary to Defendant's argument, the District Court correctly distinguished the Sixth Circuit decision in *Cutshall* from *Schepers.* In *Cutshall*, this Court found that "the now-repealed Tennessee SORN law did not infringe upon an offender's employment interest, because it did not interfere with the offender's right to seek or obtain a job. … A government act that 'merely makes a plaintiff less attractive to other employers but leaves open a definite range of opportunity does not constitute a liberty deprivation.'" Order, R.83, PageID#750 (citing *Cutshall v. Sundquist,* 139 F.3d 466, 479–80 (6th Cir. 1999)). The Tennessee law, at issue in *Cutshall*, contained only registration requirements, while Indiana law in *Schepers* (like Ohio law) contains restrictions on where a person lives and many other changes in legal status (e.g. requirements to report all changes in housing and schools). *Compare* Tenn. Code §§40-39-101, *et seq.* (1997) to Ind. Code §§11-8-8-18, 35-42-4-11; O.R.C. §§2950.031 (2006), §2950.05 (2006). A less attractive employee is certainly not the same as a person excluded from public housing with a material, significant change in legal status.

"Accordingly, although the Sixth Circuit concluded in *Cutshall* that the former Tennessee law did not impose upon liberty interests," the District Court in this case "finds that the Ohio SORN law is more similar to the Indiana law at issue in *Schepers* than to the former Tennessee law at issue in *Cutshall*. The Court concludes that the Ohio SORN law implicates a liberty interest under the stigma-

plus test because it changes Jane Doe's legal status and imposes a variety of restrictions and obligations on her not imposed on other citizens. Therefore, Jane Doe is entitled to procedural due process protections." Order, R.83 PageID#752.

B. Doe's procedural due process claim is not barred by Defendants' cited cases.

Defendants argue that Doe cannot assert an interest in Procedural Due Process rights if she does not also prove a Substantive Due Process rights, as if these are identical causes of action. *Brief of Appellants,* Page 42-44. In reality, some liberties are protected only the context of procedural, not substantive, due process. Particularly, the interests asserted by Doe – public housing and stigma-plus – are well established as *procedural,* not substantive, due process rights. *See e.g. Doe v. Michigan Dep't of State Police*, 490 F.3d 491 (6th Cir. 2007) (discussing stigma-plus as a procedural, not substantive, due process test for interests/liberties related to reputation).

First, it is important to note that substantive due process prohibits the government from infringing on "fundamental rights" that are so "implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed." *Doe v. Michigan Dep't of State Police,* 490 F.3d 491, 499 (6th Cir. 2007) (citing *Palko v. Conn.*, 302 U.S. 319 (1937)). In a "cognizable substantive due process claim, [a] plaintiff must allege 'conduct intended to injure in some way unjustifiable by any government interest' and that is 'conscience-shocking' in

nature." *Printup v. Dir., Ohio Dep't of Job & Family Servs*., 654 F. App'x 781, 788 (6th Cir. 2016) (citing to *Eidson v. State of Tennessee Dep't of Children's Servs*, 510 F.3d 631, 635-36 (6th Cir. 2007)).

In contrast, for procedural due process, protected interests flow implicitly from the Due Process Clause or non-constitutional law (like state law or policy), creating expectations that people will not be deprived of that kind of liberty without fair procedures. *Wilkinson v. Austin*, 545 U.S. 209 (2005); *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 460 (1989); *Kerry v. Din*, 135 S. Ct. 2128, 2142 (2015). "In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty or property' is not itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." *Eidson v. State of Tennessee Dep't of Children's Servs.*, 510 F.3d 631, 635 (6th Cir. 2007). The right to procedural due process is "absolute," meaning it does not depend upon the merits of her substantive assertions. *Carey*, 435 U.S. 247 at 266. Many rights, freedoms, and expectations have risen to the level of liberty interest, from prisoners' rights to "goodtime" credit, to freedom from involuntary commitment, to expectation of welfare benefits. See, *e.g., Wolff v. McDonnell*, 418 U.S. 539, 556–557 (1974) (inmate's right to maintain "goodtime" credits shortening imprisonment); *Goss v.*

Lopez, 419 U.S. 565 (1975) (student's right not to be suspended); *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970) (right to welfare benefits).

In denying Doe's liberty interest, Defendants incorrectly rely on *Kerry v. Din*, 135 S. Ct. 2128 (2015), which created no new precedent because of a three-way split in opinions (no opinion signed by a majority of the Justices).[4] As Defendants note, the Plaintiff in *Kerry* attempted to create "implied rights" in marriage. In contrast Doe can show deprivation of liberties well-established and clearly-recognized by case law on harms related to the stigma-plus test and exclusion from public housing.

Defendants further argue that, under *Cutshall*, "a sex offender's interest in keeping her status private is not a liberty interest under the Fourteenth Amendment" (*Brief of Appellants*, Page 44), even though Doe's case is quite distinct. In *Cutshall*, a sex offender argued for the privacy of *correct* information that was *properly* distributed, claiming that his employment opportunities were impacted. Doe, however, is trying to prevent the dissemination of *inaccurate* information telling the world that she is presently dangerous ("sexual predator" label), as well as dissemination of personal information that *should only be*

[4] *See* Breyer dissent, which had more Justices joining than any other opinion for the case, for a thoughtful explanation the difference between procedural and substantive due process protections.

distributed for the highest-risk offenders (registry and community notification requirements for sexual predators).

Also, contrary to Defendants' argument, *Greenholtz* does not bar Doe's claim. In *Greenholtz*, the court found no inherent right for inmates to get paroled before the expiration of a valid sentence; however, "the expectancy of release provided in [Nebraska's] statute is entitled to" constitutional protection. *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1 (1979). The court distinguishes that *termination* of parole for a released person is more clearly a deprivation of a liberty, while an inmate's "*possibility* of parole provides no more than a mere hope that the benefit will be obtained." *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1 (1979).

Unlike the desire to get parole in *Greenholz* or the desire for employment in *Cutshall*, Doe is asserting a liberty that she has, not one she merely dreams about. For example, she would absolutely be in public housing – either her own or with her grandmother – but for Defendant's false proclamation that she is a presently dangerous predator. In this Circuit, it is well established that public housing and stigma-plus interests are protected by procedural due process; they are not a mere hope or wish. *See, e.g.*, *Baker* 490 F. Supp at 531-32 (finding that public housing for eligible individuals is a protected interest, "more than an abstract need or desire," and "more than a unilateral expectation.")

Of note, if a "predator" had an opportunity for a new hearing on present dangerousness and then the court justifiably decided to maintain his classification, that person would probably have received procedural Due Process (until their risk decreases). Such a person could not immediately sue to force the new classification he dreams about, and *Greenholz* and *Curshall* could be the right authorities for the Defendants' Brief in that case. But Doe, having been denied the opportunity for a hearing on present dangerousness, is not such a person. *Greenholz* and *Curshall* do not apply to Doe's circumstances.

C. Doe's requested remedy is relevant and appropriate.

Defendants argue that Doe's requested remedy is "practically irrelevant" because a judge would classify Doe "how Doe would be classified under current law." *Brief of Appellants,* Page 54. In reality, if Doe's sexual predator classification were no longer permanent, the court would look to how Doe would be classified under Megan's Law's risk-based scheme. As Defendants themselves acknowledge, their long analysis of Tier III and related obligations is irrelevant because the post-2007 scheme is not applicable at all to Doe. See *Brief of Appellants,* Page 20-21.

Defendants further incorrectly argue that Doe has no appropriate remedy because her "liberty has been restricted as a consequence of [her] conviction." *Id.* at 43. (Similarly Defendants assert that Doe seeks the "reputational interests" of "a

person without a sex-offender conviction" or "a citizen who has not been convicted of a crime" and that "lifetime consequence of Doe's criminal conviction is not unusual" *Id.* at 43, 56.) This argument misconstrues Doe's case completely. Doe is not challenging her conviction, the sentence for her conviction, or any conviction-based consequence. Doe understands that she will always have a sex offense conviction, which will continue to create collateral consequences in her life. Her deprivation of liberty comes from being classified as presently dangerous – a label she was given in a separate hearing from her conviction, based on an evaluation of risk and not on the mere fact of conviction. She asserts her interest in *not being labeled falsely as being likely to sexually reoffend*.

Defendants misinterpret Doe's requested remedy further, arguing that a judgement against them is inappropriate because Defendants have no power to "hold a hearing about Doe's status", "order other state officials to do so", or "change Doe's registration obligations." *Brief of Appellants*, Page 16-17 (see also page 33-34, stating Defendants cannot personally reclassify Doe or "interfere with the judicial power by requiring the reopening of final judgements"). This is not what Doe requests. She asks the court to find that Ohio's applicable sex offender laws, which are enforced by Defendants, violate her Due Process rights by making her predator status permanent. She asks the court to find that Defendants must stop labeling and restricting Doe as a "sexual predator" when she proves in court that

she is not presently likely to reoffend. She does so appropriately – by challenging unconstitutional laws that Defendants enforce.

III. THE DISTRICT COURT PROPERLY FOUND THAT NEITHER SOVERIGN IMMUNITY NOR ARTICLE III BLOCK RELIEF.

A. Sovereign immunity does not block the relief ordered by the district court.

Defendants incorrectly argue that they are protected by sovereign immunity. *Brief of Appellants*, Page 31. While the Eleventh Amendment to the United States Constitution generally proscribes federal suits against state officers acting in their official capacities, Doe's suit clearly falls into the *Ex Parte Young* exception to sovereign immunity. The doctrine of *Ex Parte Young*, 209 U.S. 123 (1908), strips state officials of sovereign immunity when they attempt to enforce an unconstitutional state law. *Id*. at 156-60. A suit against a state official, in his official capacity, can go forward, unhindered by sovereign immunity, where the suit seeks prospective injunctive relief in order to end a continuing constitutional violation. *Green v. Mansour*, 474 U.S. 64, 68 (1985). Plaintiff, in this case, seeks exactly this.

The threshold requirement of *Ex Parte Young* is that defendants have "some connection" with the enforcement of the laws in question. In their Brief, Defendants argue that they lack sufficient connection to Doe's injury and do not enforce the relevant legal scheme. *Brief of Appellants*, Page 34. To the contrary, Defendants DeWine and Stickrath have many clear, distinct, specific enforcement

duties described throughout Chapter §2950, "Sexual Predators, Habitual Sex Offenders, Sexually Oriented Offenders." See e.g, R.C. §2950.031-.032 (describing the Attorney General's duty to "determine for each offender" in prison and on the registry their "new classification … under Chapter §2950" after the classification law changed); R.C. §2950.033 (explaining that offenders' "duty to comply with [registration and classification requirement] shall continue in accordance with, and for the duration specified in, the determinations of the attorney general that are specified in the registered letter the offender … received from the attorney general […]"); R.C. §2950.11(A) ("The sheriff shall provide the notice [of identity and location of offender to…] persons who are within any category of neighbors … that the attorney general … requires to be provided the notice."); R.C. §2950.11(J) (anyone who "wishes to receive the notice [of identity and location of offenders …] located in the specified geographical notification area [should] notify the sheriff[, who] shall promptly inform the bureau of criminal identification and investigation of these requests."); R.C. §2950.11(L) (the Attorney General establishes the "specified geographical notification area" which requires particular community notification.) Furthermore, the fact that other agencies and officials also have enforcement duties does not reduce or eliminate these Defendants' abundantly-clear "connection with the enforcement of the act."

The Attorney General's and Bureau of Criminal Identification's unique calling to enforce Chapter §2950 is most evident in R.C. §2950.13, "State registry of sex offenders - duties of attorney general." While there are too many examples to list, some enforcement duties include: "adopt rules for the implementation and administration of … notification of neighbors of an offender"; "prescribe the forms to be used by judges and officials … to advise offenders … of their duties of filing a notice of intent to reside, registration, notification of a change of residence, school, institution of higher education, or place of employment address and registration of the new, school, institution of higher education, or place of employment address"; "provide the notifications … to appropriate law enforcement officials"; "adopt procedures for officials, judges, and sheriffs to use to forward information, photographs, and fingerprints to the bureau of criminal identification and investigation"; "adopt rules that contain guidelines to be followed by boards of education …, chartered nonpublic schools …, preschool programs, child day-care centers, … family daycare homes, … and institutions of higher education"; adopt rules that designate a geographic "areas within which the notice" of identity and location of offender must be sent; "establish and operate" the searchable internet a sex offender database, including "registrant's school, institution of higher education, or place of employment"; "develop software to be used by sheriffs in establishing on the internet a sex offender … database for the

public dissemination"; establish "categories of neighbors of an offender" who must be notified about offenders' identity and location. R.C. §2950.13.

The Attorney General also offers email alerts for the public (http://www.ohioattorneygeneral.gov/, link to http://www.communitynotification.com/cap_main.php?office=55149). Additionally, the Attorney General claims to have the most accurate records for the public and lauds itself as the controlling, go-to resource for public safety and information (Attorney General's Office Ohio Presentation, available at http://www.communitynotification.com/cap_main.php?office=55149). Furthermore, the Attorney General's website states that the "registry is designed to increase community safety and awareness" (http://www.ohioattorneygeneral.gov/). The Attorney General's Office proclaims that: "We control the information. We check offender information for accuracy. … Use of any other sources … is not as accurate" (Attorney General's Office Ohio Presentation, available at http://www.communitynotification. com/cap_main.php?office=55149). Through the registry, email alerts, and community notifications, Defendants are presently reporting that Doe is a "sexual predator," a person who is presently likely to commit a sexually offense.

Defendant's incorrectly rely on *Children's Healthcare is a Legal Duty v. Deters*, where the court held the Ohio Attorney General immune because Ohio law

delegate all "enforcement of the challenged statutes to local prosecutors, not the Attorney General." 92 F.3d 1412, 1416 (6th Cir.1996). The plaintiffs in *Children's Healthcare* were not contesting any action by the Attorney General or any enforcement of any statute. *Id.* Rather, they were addressing failure of law enforcement to prosecute individuals who believed only in spiritual, rather than medical, treatment of their children. *Id.*

In contrast, Doe contests action and enforcement by the Defendants – who control the sex offender database information, establish and operate a public sex offender registry, send and structure community notifications, and claim that Doe's present risk is an accurate assessment necessary for public safety. *See eg* R.C. §2950.13.

B. Article III standing does not block the relief ordered by the district court.

Defendants argue that Doe lacks standing under Article III because Defendants did not cause Doe's injury and because this court's decision cannot redress the injury. *Brief of Appellants*, Page 30, 33. In reality, Doe meets all requirements for standing under Article III, as thoroughly discussed in the lower court's *Order Denying Defendants' Motion to Dismiss*, R.22, PageID#139-141.

Article III standing (one component of the case-or-controversy requirement) has three elements. "First, the plaintiff must have suffered an injury in fact." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Second, a causal connection

must exist between plaintiff's injury and defendant's conduct – meaning, the injury must be "fairly . . . trace[able] to the challenged action of the defendant" rather than the result of "the independent action of some third party not before the court." *Id.* Finally, it must be likely that the injury will be redressed if the court grants a favorable decision for the plaintiff. *Id.*

Doe meets all standing requirements in this case. While Defendants make no argument about the first prong, it is noteworthy that Doe alleges multiple injuries (e.g., Defendants publically disseminate false information that Doe is currently dangerous, while she could prove that she is not; Doe and her children are barred from public housing because of Defendant's dissemination of this false information; Doe is also subject to community notification and must register more often than appropriate for her risk-level).

Second, a causal connection exists between the alleged injury and Defendants' conduct: Ohio law assigns Defendants a critical role, if not the central role, in enforcing Ohio's sex-offender statutory scheme. *See Doe v. Virginia Dept. of State Police*, 713 F.3d 745, 755 (4thCir. 2013) (finding procedural due process claim that the plaintiff was reclassified as a sexually violent offender and the classification made public without a procedure for challenging these actions to state an injury in fact, fairly traceable to the Virginia statute that the defendant implemented); *Cutshall v. Sundquist*, 139 F.3d 466, 471–72 (6th Cir. 1999) (noting

that the traceability requirement requires only an arguable claim of injuries traceable to the state and finding that "[b]ecause it is the state that controls the release of the [registry] information, the alleged injuries are causally connected to the state's conduct"). Defendants argue that they are not involved in the "executive enforcement" of the laws impacting Doe. *Brief of Appellants,* Page 34. However, as stated above, they have dozens of enforcement duties explicitly laid out in the law.

Finally, if Plaintiff is successful in this action, it is likely that the requested relief—a declaration that R.C. §2950.07(B)(1) and §2950.09(D)(2) (2006) are unconstitutional for failure to provide her with a hearing—will redress the alleged injury to her due process rights. Namely, she will have the opportunity to ask a state court to give her a hearing on present dangerousness, whereby she can ensure she is designated under the correct risk-based classification, triggering the appropriate obligations and restrictions to ensure public safety. Since her original classification in 2006, Doe has successfully completed sex offender treatment, been evaluated by multiple clinical professionals who attest she is no longer at risk of reoffending, regained custody of 4 children, and had no additional sexual offenses. Doe Dec., R.38-1,PageID#261. Doe can prove that she is no longer a "sexual predator" who "is likely to engage" in a future sex offense. On this final prong, the Defendants misconstrue Doe's request. They argue that since "state

constitutional law prohibits the State Defendants from giving Doe a new hearing" (under *Bodyke*), "Doe therefore lacks standing to sue State Defendants for an order to compel a hearing about her sex offender status." *Brief of Appellants*, Page 27; see also page 33-34. Doe does not ask Defendants to personally reclassify her, reopen a court's final judgement, or compel a State court to give her a hearing. *Brief of Appellants*, Page 33-34. Rather, she asks for chance to request a hearing on current dangerousness (not her dangerousness in 2006). As such, she asks this federal court to strike unconstitutional laws that prevent her from having this hearing; and, if this court responds favorably, the harm of being treated as presently dangerous – a harm traceable to defendants' conduct – will likely be redressed.

C. Defendants have sufficient connection to plaintiff's injury to create standing and satisfy the *Ex Parte Young* exception to sovereign immunity.

To the extent that Defendants argue that "Article III jurisdictions and Eleventh Amendment immunity are related" and can be found "for the same reasons," Doe agrees. *See Brief of Appellants,* Page 32 (citing *Digital Recognition Networks, Inc. v. Hutchinson*, 803 F. 3d 952, 957-58, (8th Cir. 2015). And, in this case, there are many reasons. While Defendants minimize their connection to the enforcement of Ohio's sex offender scheme, in reality they enforce the aforementioned laws that publically proclaim Doe is a "sexual predator" – someone likely to commit a sexual offense. This label triggers

restrictions/obligations reserved or the most dangerous offenders, and Defendants also enforce these restrictions, as explained above.

For their argument, Defendants repeatedly turn *Digital Recognition Networks, Inc. v. Hutchinson*, 803 F.3d 952 (8th Cir 2015), where plaintiff's injury was not "fairly traceable" to defendants (Attorney General or Governor) and injury was not redressible by favorable court decision. In that case, a state law created a private cause of action for private damages suits, with no mention of enforcement by the attorney general. *Id*. at 958 ("Digital Recognition's injury is 'fairly traceable' only to the private civil litigants who may seek damages under the Act and thereby enforce the statute against the companies.") In contrast, Ohio's Megan's Law includes dozens of explicit enforcement duties for Defendants. The alleged enforcement statute in *Digital Recognition* is distinct from the actual complex statutory enforcement scheme at issue in this case.

D. Defendants' Article III and sovereign immunity arguments rest on a fundamental misunderstanding of Doe's requested remedy.

Defendants conclude their argument about Article III and sovereign immunity by asserting: "At bottom, Doe wants an Ohio common pleas court to reconsider its 2006 judgment classifying her as a sexual predator. No federal court declaration and no federal court injunction can compel the Attorney General or the Superintendent of Ohio's crime-investigating body to make that happen." *Brief of Appellants*, Page 40. This grossly misstates Doe's argument about Defendants'

enforcement role and Doe's requested remedy. Doe does want a court or Defendants to reconsider a 2006 judgment. She wants Defendants to stop spreading inaccurate information that she is likely to reoffend, causing her lifetime exclusion from public housing, community notification, burdensome registration, and loss of other legal status – all in violation of her Due Process rights. Doe asks this court for a remedy that will address her injury: striking as unconstitutional the laws that made her classification permanent. This would allow Ms. Doe to have a new hearing on present dangerousness, whereby a court can change her predator status.

CONCLUSION

For the foregoing reasons, Jane Doe asks this Court to affirm the District Court's Summary Judgement Order against Defendants findings that:

1) R.C. §2950.09(D)(2) and §2950.07(B)(1) are unconstitutional to the extent they forever prohibit the removal or termination of a "sexual predator" classification with its requirements and duties, and
2) Defendants are not protected under Article III or Eleventh Amendment Sovereign Immunity.

Jane Doe also requests any other relief deemed necessary and just by this Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with FRAP Rule 32(g), that this *Brief of Appellee* complies with the requirements for a type-volume limitations. Without excluded sections, this brief contains 8,728 words and is submitted in 14 pt Times New Roman font, in compliance with FRAP Rule 32(a)(7)(B).

/s/ Sasha Naiman

CERTIFICATE OF SERVICE

I hereby certify, that on April 13, 2018, a copy of the foregoing was filed electronically via the Court's ECF system. Parties may access this filing through the Court's system.

/s/ Sasha Naiman

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Appellee Jane Doe hereby designates the following district court documents as relevant to this matter:

***Jane Doe v. Mike DeWine, e al.*, 1:12-cv-846**

Date Filed	R.No.; PageID#	Document Description
10/31/12	R.1;1-9	Complaint
2/25/13	R.18; 100-113	Plaintiff's Memo in Opposition to Motion to Dismiss
4/15/15	R.22; 125-143	Order Denying Defendants' Motions to Dismiss
10/30/15	R.37; 221-237	Plaintiff's Motion for Summary Judgement
10/30/15	R. 37-2; 249-256	Ullman Declaration
10/30/15	R. 38-1; 259-261	Doe Declaration
10/30/15	R. 38-2; 264-265	Humphries Declaration
12/4/15	r.49; 347-358	Plaintiff's Memorandum in Response to Defendants' Motions for Summary Judgment
12/21/15	R.51; 365-375	Plaintiff's Reply To Defendants' Responses To Plaintiff's Motion For Summary Judgment
7/20/17	R.83; 735-767	Order Granting in Part and Denying in Part Motions for Summary Judgment
8/8/17	R.85;769	Amended Order, Declaratory Judgement