
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

2018-CA-00795

**CHRISTOPHER E. LOZIER
APPELLANT**

v.

**STATE OF MISSISSIPPI, *EX. REL.*
MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY,
APPELLEE**

**ON APPEAL FROM THE CIRCUIT COURT
OF PEARL RIVER COUNTY, MISSISSIPPI**

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PARTIES

THE UNDERSIGNED counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Christopher E. Lozier, Appellant
2. Vicki L. Gilliam, Counsel for Appellant
3. Honorable Anthony Mozingo, Circuit Court Judge, 15th Judicial District
4. Mississippi Department of Public Safety, division of the Mississippi Sex Offender Registry

THE UNDERSIGNED counsel further certifies that the following attorneys have an interest in the outcome of this case:

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SO CERTIFIED this 23rd day of April 2019.

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STATEMENT OF ISSUES

- I. **The trial court did not err in denying Appellant's petition for relief from his registration duty under Mississippi Sex Offender Law, Miss. Code Ann. § 45-33-21, *et. seq.* The trial court properly applied Miss. Code Ann. § 45-33-47.**
- II. **Mississippi Sex Offender Law does not violate the right to travel under the *Privileges and Immunities Clause* of the Fourteenth Amendment to the United States Constitution.**
- III. **Mississippi Sex Offender Law, as applied to the Appellant, is not violative against the imposition of *ex post facto* laws.**
- IV. **Mississippi Sex Offender law, as applied to the Appellee, is not violative against the Eighth Amendment of the United States Constitution against Cruel and Unusual Punishment and corollary rights under Mississippi Constitution § 16 and § 28.**
- V. **The *Full Faith & Credit Clause* does not apply in this case.**

STATEMENT OF THE CASE

A Barnstable County, Massachusetts, Grand Jury returned a true bill as to Christopher Lozier for a single count of rape in violation of Massachusetts General Law (M.G.L.) Chapter 265, Section 22(b) on July 1, 1991. (R. at 33-34) Lozier stood trial on that Indictment which resulted in a mistrial September 3, 1992. (R. at 76) Subsequently, on March 24, 1993, Lozier entered a plea of guilty to the reduced charge of Indecent Assault & Battery on a Person Over the Age of Fourteen (14) Years, M.G.L. c. 265, § 13H, and an order of nolle prosequendum was entered as to the Indictment. Court records indicate the victim, a nineteen (19) year old female, expressed that she did not wish to testify in a second trial. (R. at 76.) Lozier received a four to five year sentence at the Massachusetts Correctional Institution, all of which was suspended. Lozier was placed on probation for a term of three years. Lozier was discharged from probation by court order on May 24, 1996. (R. at 15) As required by Massachusetts' law, Lozier began registering as a sex offender in the State of Massachusetts upon his adjudication of guilt in March of 1993.

According to Mississippi Sex Offender Registry (hereinafter "MSOR") records, Lozier moved to Pearl River County, Mississippi from Massachusetts to work construction in 2006 and began registering with the MSOR on or about June 12, 2006. (R. at 16) MSOR records further show a history of compliance with his registration duty.¹

On April, 24, 2017, the Massachusetts' Sex Offender Registry Board notified Lozier that he no longer had a duty to register in the Commonwealth of Massachusetts. (R. at 36) Relief from the duty to register in Massachusetts was pursuant to M.G.L. c. 6

¹ Lozier testified to being delinquent "by a week or two, once" in his local registration. (R. at 78) This delinquency is not reflected in Lozier's MSOR file.

§178G, which expressly allows for a sex offender required to register pursuant to the chapter to cease registering after twenty years from the date of conviction, adjudication or release from custody or supervision, whichever is last. *Id.* Essentially, in the Commonwealth of Massachusetts the duration of registration is twenty (20) years for registrants not subject to lifetime registration.²

On November 28, 2017, Lozier filed his *Petition for Relief of Duty to Register* under Mississippi Sex Offender Registry Law, Miss. Code Ann. § 45-33-21, *et. seq.* in his county of residence, Pearl River County. (R. at 10) The MSOR filed a written response objecting to which Lozier replied. The Honorable Judge Anthony Mozingo heard the matter on May 7, 2018 during which Lozier testified and both the MSOR and counsel for Lozier presented arguments. (R. at 61-101) The circuit court issued an Order dated May 15, 2108 denying Lozier's Petition for Relief. (R. at 49) Lozier appealed that decision to this Honorable Court.

² Lifetime registration applies to offenders with two or more sex offense convictions, convicted of a sexually violent offense, that have been determined to be sexually violent predators or those that the Sex Offender Registry Board deem a lifetime registrant. M.G.L. c. 6 §178G. *See also* (R. at 35).

SUMMARY OF THE ARGUMENT

The MSOR contends that at the lower court, this case was about the application of the Mississippi Sex Offender Law, § 45-33-21, *et. seq.*, in its clear and unambiguous terms and the uniform application of that body of law, which require Christopher Lozier to register for a minimum 15-years in the state of Mississippi for his Indecent Assault & Battery on a Person Over the Age of Fourteen (14) Years conviction in the state of Massachusetts. The trial court properly applied Miss. Code Ann. § 45-33-47. The trial court properly denied Appellant's petition for relief from his registration duty under Mississippi Sex Offender Law. In addition to the statutes themselves, the lower court considered arguments regarding the application of the *Full Faith and Credit Clause*. Courts throughout the country have consistently found the *Full Faith and Credit Clause* does not apply to sex offender registration laws between states. Mississippi's registration statutes are specific to the public safety needs of the citizens in this state.

There are additional constitutional arguments, which Appellant presents in his brief for the first time, raised neither in the two motions filed by Lozier in the lower court nor in oral argument at the hearing. Notwithstanding, Mississippi Sex Offender Law does not violate the right to travel under the *Privileges and Immunities Clause* of the Fourteenth Amendment to the United States Constitution. Mississippi Sex Offender Law, as applied to the Appellee, is not violative against the imposition of *ex post facto* laws. Mississippi Sex Offender law, as applied to the Appellee, is not violative against the Eight Amendment of the United States Constitution against cruel and unusual punishment and corollary rights under Mississippi Constitution § 16 and § 28.

The decision of the Circuit Court of Pearl River County, Mississippi denying

Lozier relief should be affirmed.

ARGUMENT

- I. The trial court did not err in denying Appellant’s petition for relief from his registration duty under Mississippi Sex Offender Law, Miss. Code Ann. § 45-33-21, et. seq. The trial court properly applied Miss. Code Ann. § 45-33-47.**

The statutory basis for Lozier’s registration is the proper place to begin. First, pursuant to Miss. Code Ann. § 45-33-23(a), “any person having a permanent or temporary residence in this state or who is employed or attending school in this state or another jurisdiction or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction *shall* [emphasis added] register with the responsible agency, the Mississippi Department of Public Safety.” Second, Lozier’s guilty plea in the State of Massachusetts to the crime of Indecent Assault & Battery on a Person Over the Age of Fourteen (14) Years is a qualified “conviction,” which is defined as a determination or judgement of guilt as a result of a trial or the entry of a plea of guilty. *See* Miss. Code Ann. § 45-33-23(a). Third, Lozier’s conviction is a registrable offense in Mississippi pursuant to Miss. Code Ann. § 45-33-25(h)(xxii), which defines a registrable offense as “Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had.” Massachusetts did in fact require Lozier to register as a sex offender for a duration of twenty (20) years. Because Petitioner was required to register as a sex offender in Massachusetts, he is required to register with the MSOR by statute. Lozier did not dispute his initial registration requirement.

On April, 24, 2017, the Massachusetts’ Sex Offender Registry Board notified

Lozier that he no longer had a duty to register in the Commonwealth of Massachusetts. (R. at 36) Relief from the duty to register in Massachusetts was pursuant to a mechanism of law, M.G.L. c. 6 §178G, which expressly allows for a sex offender required to register pursuant to the chapter to cease registering after twenty years from the date of conviction, adjudication or release from custody or supervision, whichever is last.

Next, a discussion of the statutory requirements to petition a court for relief from the registry is appropriate. Miss. Code Ann. § 45-33-47 sets forth the only grounds for relief from the MSOR and minimum periods of continuing registration based on a three-tier classification of registrable offenses. Pursuant to Miss. Code Ann. § 45-33-47(1), “A sex offender with a duty to register under Section 45-33-25 *shall only* [emphasis added] be relieved of the duty under subsection (2) of this section.” Under Miss. Code Ann. § 45-33-47(2), a person required to register for a registrable sex offense under Section 45-33-25 may petition the circuit court of the sentencing jurisdiction, or for a person whose duty to register arose in another jurisdiction, the county in which the registrant resides, to be relieved of that duty under the following conditions:

(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender's tier classification. Incarceration for any offense will restart the minimum registration requirement. *Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.* [emphasis added]

(b) Tier One registrable offenses require registration for a minimum of fifteen (15) years *in this state.* [emphasis added]

(c) Tier Two registrable offenses require registration for a minimum of twenty-five years (25) years *in this state*. [emphasis added]

(d) Tier Three registrable offenses require lifetime registration.

Pursuant to Miss Code Ann. § 45-33-47(2)(b)(7), “Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had, although registration would not be otherwise required in this state” is a Tier One offense. At a minimum, Lozier’s registrable offense is a Tier One offense requiring fifteen (15) years registration in the State of Mississippi. Lozier’s registration requirement in the state of Mississippi did not begin until he moved to Pearl River County, Mississippi in June 2006. Therefore, Lozier’s statutory minimum registration requirement does not expire until June 2021.

Miss. Code Ann. §45-33-47(3) continues:

In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant *properly maintained his registration as required by law* [emphasis added] and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

Petitioner references the factors articulated in Miss. Code Ann. § 45-33-47(3) in his Petition as well in his brief before this Honorable Court; however, Petitioner completely disregards the mandatory minimum registration requirements set forth in the same statute, Miss. Code § 45-33-47(2)(a)-(d). The decision to relieve an offender from his/her duty to

register is within the discretion of the court, only after Petitioner has met the statutory requirements set forth in Miss. Code Ann. § 45-33-47, including required minimum registration periods. Should this Court find Lozier met his burden of proof of clear and convincing evidence “that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety,” Lozier cannot prove by clear and convincing evidence that he “maintained his registration as required by law.” Lozier has not registered in the state of Mississippi for *any* minimum statutory registration period. Therefore, the lower court had no discretion pursuant to Miss. Code Ann. § 45-33-47 to grant the relief sought by Lozier. The Pearl River County Circuit Court properly applied the Sex Offender Law to Lozier’s case and properly denied his petition for relief.

The following issues begin constitutional arguments raised by Appellant against the statutory effect of Mississippi Sex Offender Law.

II. Mississippi Sex Offender Law does not violate the right to travel under the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution.

Lozier contends the Mississippi Sex Offender law violates an offender’s right to travel under the *Privileges and Immunities Clause* of the Fourteenth Amendment. U.S. Const. Art. IV § 2. Lozier did not raise this issue at the trial court level. Notwithstanding, there is no *binding* case authority for this specific issue which Appellee (or Appellant for that matter) could locate. Appears, the Appellant faced the same challenge. In Lozier’s brief, the only authority provided in support of Lozier’s argument is *Saenz v. Roe*, 526 U.S. 489 (1999). *Saenz* is not a sex offender case with sex offender law or registration considerations. Therefore, *Saenz* is inapplicable. According to Appellant’s brief, “In *Saenz v. Roe*, 526 U.S. 489 (1999), the Supreme Court held that a California statute, in which

residency restrictions limited welfare benefits for new residents in the state to the level of the state that they moved from for their first year of residence, was unconstitutional because it violated the *Privileges or Immunities Clause of the Fourteenth Amendment*.” (Appellant Brief, 18) *See* U.S. Const. Art. IV § 1.

The Eighth Circuit Court of Appeals decided an analogous case in *Doe v. Miller*, 405 F.3d 700 (2005), in which that court considered whether an Iowa statute that prohibited a person who had committed a criminal sex offense against a minor from residing within two thousand feet of a school or child care facility interfered with a sex offender’s right to travel under the *Privileges and Immunities Clause* of the Fourteenth Amendment. The court held that the Iowa statute imposing a residential restriction did not violate the *Privileges and Immunities Clause* of the Fourteenth Amendment because “it did not erect actual barrier to interstate movement, and it did not treat nonresidents who visited Iowa any differently than current residents or discriminate against citizens of other states who wished to establish residence in Iowa.” *Id.* at HN 10. *See also* U.S. Const. Art. IV § 2.

Lozier simply fails to articulate how Mississippi Sex Offender Law impeded his ability to travel interstate, or even intrastate, as a sex offender.

III. Mississippi Sex Offender Law, as applied to the Appellee, is not violative against the imposition of *ex post facto* laws.

Not all laws with retroactive effects have been held to be unconstitutional. Courts throughout the country, including the United States Supreme Court, have considered the imposition of *ex post facto* laws as applied to the context of sex offender laws. For example, the *Adam Walsh Child Protection and Safety Act of 2006* has a retroactive application. This law imposes registration requirements on convicted sex offenders and also applies to offenders whose crimes were committed before the law was enacted. The

U.S. Supreme Court ruled in *Smith v. Doe*, 123 S.Ct. 1140 (2003) that forcing sex offenders to register their whereabouts at regular intervals, and the posting of identifying information about them on the Internet, do not violate the general constitutional prohibition against *ex post facto* laws, because these laws do not impose any kind of punishment. In other words, the *Ex Post Facto Clause* does not prohibit the retroactive application of a civil, regulatory (i.e., non-punitive) law. Thus, to survive constitutional scrutiny, a sex offender registration law must be deemed a civil, regulatory measure that is designed to achieve a non-punitive goal. *Id.* The federal courts, including the United States Supreme Court, have consistently characterized sex offender registration law as just that: non-punitive, civil, regulatory measures designed to protect the innocent from dangerous sex offenders by deterring the commission of subsequent sex offenses. *Id.*

Lozier also concedes:

The United States Supreme Court first addressed constitutional challenges to sex offender regulation statutes in *Kansas v. Hendricks*, 521 U.S. 346 (1997) and *Smith v. Doe*, 538 U.S. 84 (2003). In each of these cases, the majority held these laws to be civil, nonpunitive regulatory measures and thus, the retroactive application of these laws, contravening the prohibition against *ex post facto* laws, was permitted. *Id.*

(Appellant’s Brief, p. 13.)

Appellant fails to articulate how current Mississippi Sex Offender Law is designed to be punitive in nature, rather than a body of civil, regulatory law intended to protect the public. Lozier continues from the quote above, “Most courts have followed precedent of these two cases; however, the Sex Offender Registration requirements have become much more restrictive on the registering offender, including the Mississippi SORL. *See* Comparison in the June 2006 MSORL above and the current 2019 MSORL for section 45-33-47. For convenience of space in this Brief, Lozier respectfully requests that this Court compare the early versions of the MSORL with the latest version.” Lozier fails to specify

what, if any, part of this statute was amended to now be punitive in nature rather than regulatory.

To the contrary, the Legislature provided their intent in the passage of the full body of law encompassed in Chapter 33 of the Mississippi Code, entitled “Registration of Sex Offenders” in Miss. Code Ann. § 45-33-21, which specifies a litany of non-punitive reasons for the registration of sex offenders.

Lozier cited a “growing minority of courts” who have ruled that their state’s statutes are punitive. (Appellant’s Brief, p. 14) These decisions are non-binding and merely persuasive to this Honorable Court. Lozier relied heavily upon *Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016) in which the court held that retroactive imposition of sex offender registration law amendments violated *ex post facto* law; however, that case is not analogous to the case at hand. The court considered a substantial amount of evidence presented by the Plaintiffs including the number of parcels within 1,000 feet of a school in Grand Rapids, Michigan for example. Of course, Michigan’s population, demographics, schools, etc. are not remotely analogous to Pearl River County, Mississippi. Also, Michigan’s sex offender registry law included lifetime registration of all on-line aliases. Mississippi has no such requirement. Most importantly, is Lozier’s lack of specificity when arguing that Mississippi Sex Offender Law has become punitive in effect. “An ostensibly civil and regulatory law, such as the Michigan Sex Offenders Registration Act (SORA), does not violate the Ex Post Facto clause unless the plaintiff can show by the clearest proof that what has been denominated a civil remedy is, in fact, a criminal penalty.” *Id.* at HN 2. Here, Lozier has failed to meet this cursory showing.

In *Smith v. Doe*, the Supreme Court defended Alaska's Sex Offender and Registration Act, opined it was nonpunitive, and therefore its retroactive application did not violate the *ex post facto* clause:

Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment. On the contrary, our criminal law tradition insists on public indictment, public trial, and public imposition of sentence. Transparency is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused. The publicity may cause adverse consequences for the convicted defendant, running from mild personal embarrassment to social ostracism. In contrast to the colonial shaming punishments, however, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme.

123 S.Ct. 1140, 1150. Mississippi's body of Sex Offender Law is the same in both intent and effect.

IV. Mississippi Sex Offender law, as applied to the Appellant, is not violative against the Eighth Amendment of the United States Constitution against Cruel and Unusual Punishment and corollary rights under Mississippi Constitution § 16 and § 28.

Lozier presents one non-biding case as authority to support his position that Mississippi Sex Offender Law, as applied to him, invokes cruel and unusual punishment in violation the Eighth Amendment, *Millard v. Rankin*, 265 F. Supp. 3d 1211 (2017). In that case, the court applied an intent-effects test that determined shaming and banishment are forms of punishment that *could* be considered cruel and unusual. However, as discussed, in Section II, *supra*, Lozier Mississippi Sex Offender Law did not banish Lozier. The MSOR will not dispute that having your name as a sex offender published on a public registry can have a shameful effect upon the offender, but that effect is

outweighed by Mississippi's legitimate government interest to protect its citizenry.

Further, Lozier identified a point the *Millard* court made, "theoretical ability to deregister can be illusory". Lozier continued that because his registration period changed after he moved to Mississippi, Mississippi Sex Offender Law violates the Eight Amendment against cruel and unusual treatment and the corollary rights in the Mississippi Constitution (Appellant Brief, p. 17) This is simply false. Miss. Code Ann. § 45-33-47 does provide finite statutory provisions for relief from the registry, which are not subject to ex post facto law. See, Section II, *supra*.

V. The *Full Faith & Credit Clause* does not apply to Appellant's release from the Massachusetts's Sex Offender Registry Board.

Lozier asserted in his petition for relief, "that full, faith and credit be given for the order from Massachusetts" without any supporting binding or non-binding authority other than Miss. Code Ann. §11-7-301. (R. at 12) Miss. Code Ann. §11-7-301 reads, "In this act 'foreign judgement' means any judgement, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state."

According to the *Full Faith and Credit Clause*, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const. Art. IV § 1.

First, Petitioner's relief from the duty to register in Massachusetts did not result from a court order but rather an executive action by the Massachusetts Sex Offender Registry Board, evidenced through a letter. (R. at 36).

Second, neither the Mississippi Court of Appeals, nor the Mississippi Supreme Court, nor the Fifth Circuit have decided a case involving the application of the *Full*,

Faith and Credit Clause to a sex offender registration requirement under Mississippi law.

However, other courts have considered the application of the *Full, Faith and Credit*

Clause as applied to their state's respective sex offender law.

In *Spiteri v. Russo*, 2013 U.S. Dist. Lexis 128379, at 151-153 (E.D.N.Y. 2013), the District Court for the Eastern District of New York, provided a thorough analysis of

Full Faith and Credit Clause decisions as applied to sex offender registration requirements:

Every court to squarely address the issue of whether the Full Faith and Credit Clause requires a state to give a convicted sex offender who relocates to that state the same classification that he would have had in the state of conviction has agreed that it does not. *See, e.g., Daniels v. Arapahoe Cnty. Dist. Court*, 376 F. App'x 851, 854 (10th Cir. 2010) (holding that Colorado was not bound by the Full Faith and Credit Clause, to give the plaintiff the same sex offender classification status for his California guilty plea as he would have received in California); *Rosin v. Monken*, 599 F.3d 574 at 577 (7th Cir. 2010) (holding that the Full Faith and Credit Clause did not prevent Illinois from requiring a plaintiff to register even though registration was not required in the state where he pled guilty); *McGuire v. City of Montgomery*, No.11-CV-1027, 2013 WL 1336882, at *12 (M.D. Ala. Mar. 29, 2013) (plaintiff failed to state a Full Faith and Credit claim because "the judgment of the Colorado court — which is silent on registration in Colorado or any other state — does not preclude Alabama from requiring Plaintiff to register"); *Doe v. O'Donnell*, 924 N.Y.S.2d 684, 687-88 (App. Div. 2001) (holding that New York could impose a different registration requirement than Virginia where the plaintiff was convicted); *People v. McGarghan*, 920 N.Y.S.2d 329, 331 (App. Div. 2011)(the requirement that plaintiff register for 20 years in New York when he would only have to register for 10 years in Vermont where his conviction occurred was not a violation of Full Faith and Credit Clause); *Smith v. Devane*, 898 N.Y.S.2d 702, 704-05 (holding that New York did not have to give full faith and credit to the plaintiff's registration requirement in Texas, the state where the plaintiff pled guilty); *People v. Arotin*, 796 N.Y.S.2d 743, 745 (App. Div. 2005) (finding

that the Full Faith and Credit Clause "is not violated by requiring a convicted sex offender moving into New York to be governed by [New York's] registration requirements").

Most of these courts found that each state's police power over its citizens gives states the authority to independently determine sex registration laws for sex offenders located within its borders. For example, in *Rosin*, the Seventh Circuit found that "Illinois, as a state of the Union, has police power over the health and welfare of its citizens." *Spiteri*, 2013 U.S. Dist. Lexis 128379, at 153 (citing *Rosin*, 599 F.3d at 577). The Seventh Circuit went on to state that "New York has no authority to dictate to Illinois the manner in which it can best protect its citizenry from those convicted of sex offenses." *Id.* (citing *Rosin*, 599 F.3d at 577). The Seventh Circuit concluded that "there is no tension between Illinois's police power and the Full Faith and Credit Clause here. As a result, New York could promise *Rosin* only that he would never have to register as a sex offender within its own jurisdiction. *Rosin* could not bargain for a promise from New York as to what other states would do based on his guilty plea to sexual abuse in the third degree, for New York had no power to make such a promise." *Id.* at 154 (citing *Rosin*, 599 F.3d at 577).

In *O'Donnell*, 924 N.Y.S.2d at 687-88, the court found that New York and Virginia had each separately assessed the public safety risk posed by the petitioner to their respective citizens and imposed registration requirements upon the petitioner based upon each state's sex offender registration law. The court reasoned that neither state had attempted to adjudicate the same matter, therefore the *Full Faith and Credit Clause* had not been violated. *Doe v. O'Donnell*, 924 N.Y.S.2d 684 (App. Div. 2011).

“[T]he administrative manner in which a state chooses to exercise the registration requirements for a sex offender who moves into its jurisdiction falls squarely within the power of that state and is not governed by the procedures in effect in the state where the offender previously resided.” *McGarghan*, 920 N.Y.S.2d at 330-31 (2011) (quoting *Arotin*, 19 A.D.3d 845, 796 N.Y.S.2d 743).

In *Donlan v. State*, 249 P.3d 1231 (Nev. 2011), Eugene W. Donlan filed a petition in district court to terminate his requirement to register as a sex offender. The Nevada Supreme Court upheld the district court's denial of Donlan's petition, rejecting his argument that the *Full Faith and Credit Clause* required Nevada to recognize California's termination of his sex offender registration requirement in the State of California. In 1985, Donlan entered a plea of guilty to a sex offense, which required him to register as a sex offender in California. Donlan registered in Nevada in 2005. In July of 2009, the California Department of Justice terminated his registration requirement. But in September of 2009 the district court denied his petition to terminate his Nevada registration duty. The Nevada Supreme Court held that an executive branch administrative decision was not a final court judgment, and public acts or records do not "require a State to apply another State's law in violation of its own legitimate state policy" (quoting, *Nevada v. Hall*, 40 U.S. 410, 421-22 (1979)). Consequently "[California] has no authority to dictate to [Nevada] the manner in which it can best protect its citizenry from those convicted of sex offenses" (quoting, *Rosin v. Monken*, 599 F.3d 474, 577 (7th Cir. 2010)). Further, "Nevada is free to protect its populace from individuals convicted of sex offense by enforcing its own registration requirements." Again, the same applies in Lozier, his registration requirement in Massachusetts resulted

from a mechanism of a law which resulted in an executive decision by the Massachusetts Sex Offender Registry Board.

One purpose of the *Full Faith and Credit Clause* is to avoid “forum shopping” by a litigant or movant or from adjudication of the same issues, to estop them from seeking a different outcome in a different jurisdiction. As the *O’Donnell* Court found, applying registration requirements to out-of-state offenders does not re-adjudicate Petitioner. 924 N.Y.S.2d at 687-88. *See also* U.S. Const. Art. IV § 1.

Like the states in the aforementioned cases, Mississippi also has its own respective set of Sex Offender Laws, Miss. Code Ann. § 45-33-21, *et seq.* Other courts have consistently found the *Full Faith and Credit Clause* does not apply to sex registration laws between states. Mississippi’s registration statutes are specific to the public safety needs of the citizens in this State. Mississippi exercises police powers, which include the power to independently determine our own sex registration requirements for sex offenders residing or working within our State, regardless of another state’s registration requirements or offender classifications.

CONCLUSION

Christopher Lozier has failed to meet the statutory requirements for relief from the Mississippi Sex Offender Registry pursuant to Miss. Code Ann. § 45-33-47, including a minimum registration period of (15) years *in this state*. Lozier’s mandatory (15) registration period in Mississippi does not expire until June 2021. Before that time, Mississippi Sex Offender Law does not provide the Mississippi Sex Offender Registry nor any circuit court the discretion to remove Lozier from the registry. It is the position of the MSOR that Lozier’s petition is simply filed prematurely under the law. In this

instance, the trial court properly applied Miss. Code Ann. § 45-33-47 and did not err in denying Appellant's petition for relief from his registration duty under Mississippi Sex Offender Law.

In addition to the statutes themselves, the lower court considered arguments regarding the application of the *Full Faith and Credit Clause*. Courts throughout the country have consistently found the *Full Faith and Credit Clause* does not apply to sex registration laws between states. Mississippi's registration statutes are specific to the public safety needs of the citizens in this State.

Mississippi Sex Offender Law does not violate the right to travel under the *Privileges and Immunities Clause* of the Fourteenth Amendment to the United States Constitution. Lozier failed to present any evidence of Mississippi Sex Offender Law precluding his ingress and regress into Mississippi.

Mississippi Sex Offender Law, as applied to the Appellee, is not violative against the imposition of *ex post facto* laws. Mississippi Sex Offender law is a civil, regulatory body of law designed to achieve a non-punitive goal. Sex Offender law, as applied to the Appellee, is not violative against the Eight Amendment of the United States Constitution against cruel and unusual punishment and corollary rights under Mississippi Constitution § 16 and § 28.

The decision of the Circuit Court of Pearl River County, Mississippi denying Lozier relief should be affirmed.

Respectfully Submitted,

BY: /s/Lora E. Hunter

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CERTIFICATE OF SERVICE

I, Lora E. Hunter, General Counsel for Mississippi Department of Public Safety, do hereby certify that I have this day sent via electronic mail the above and foregoing

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The same was electronically filed utilizing the Mississippi Electronic Courts (MEC) system.

This, the 23rd day of April, 2019.

STATE OF MISSISSIPPI, *EX. REL.*,
MISSISSIPPI DEPARTMENT OF PUBLIC
SAFETY,
Criminal Information Center, Sex Offender Registry

SO CERTIFIED this 23rd day of April 2019.

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