18-8446
No.

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK JAMES WERNER,

Petitioner,

v.

CITY OF GREEN BAY,

Respondent

ORIGINAL

FROM THE SEVENTH CIRCUIT COURT OF APPEALS WHERE THE DECISION WAS LAST RENDERED

PETITION FOR WRIT OF CERTIORARI

Petitioner
Nonprofessional (*Pro Se*) Litigant

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QUESTION(S) PRESENTED

1. Whether Respondent's Ordinance conformed with Due Process or is this Petitioner denied this based on his original offense, which was committed about 20 years ago?
2. Whether the Sister Court of Appeals' Decisions and/or Opinions are in conflict with each other.
3. Whether this will have an Impact of Profound Proportions throughout the United States and all Court Jurisdictions.
4. Whether one District Court Official ruled one way and another the opposite with no Conformity by these Court Officials.
5. Whether Respondents' Ordinance conformed to the requirements of the Ex Post Facto Clause of the United States Constitution.
6. Whether these Residency Restrictions or Exclusion Restrictions are punishment?
7. Whether Respondent's Sexual Offender Ordinance was based on Facts or was Based on Fear-Based Driven by the Outrage from the Public.

PARTIES TO THE PROCEEDINGS

Petitioner **PATRICK J WERNER** is the plaintiff and appellant in the proceedings below.

Respondent, **CITY OF GREEN BAY**, is the defendant and appellee in the proceedings below.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES — PAGE NUMBER

UNITED STATES CASE LAW

OTHER JURISDICTIONAL CASE LAW

STATUTES

PUBLICATIONS/LAW REVIEWS

UNITED STATES CONSTITUTION

WISCONSIN CONSTITUTION

AMICUS BRIEF

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is unreported at **2018 US App LEXIS, 2018 WL 3623244**. Appendix 1 C1-4. The Summary Judgment opinion of the United States District Court for the Eastern District of Wisconsin is unreported but available at **2017 US Dist LEXIS 142500**. Appendix 1 B1-10. The screening order of the United States District Court for the Eastern District of Wisconsin is unreported but available at **2015 US Dist LESXIS 125935, 2015 WL 5559826**, which was screened by the Honorable Judge Pamela Pepper. Appendix 1 A-1-9.

JURISDICTION

The judgment of the Court of Appeals was entered on July 30, 2018. No petition for re-hearing or suggestions for re-hearing en banc were filed in this action. The jurisdiction of this Court is involved under *28 USC § 1254(1)*.

CONSTITUTIONAL PROVISION INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution, which provides:

> Section 1: " All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or

> immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case involves *Art I, § 9, Cl 3*, Bill of Attainder—Ex Post Facto Laws, of the United States Constitutions, which provides:

> No bill of attainder or ex post facto law shall be passed

This case involves *Art I, § 10, Cl 1*, Powers Denied States, of the United States Constitutions, which provides:

> No State shall enter into any treaty, alliance, or confederation; grant letters of marquee, and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of Debts; pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts or grant any title of Nobility

This case involves *Art I, § 12*, Attainder; ex post facto; and contracts, of the Wisconsin State Constitution, which provides:

> No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed and no conviction shall work corruption of blood or forfeiture of estate

WHY PETITION OF WRIT OF CERTIORARI SHOULD BE GRANTED

Pursuant to *Supreme Court Rule 10(a)*, this states:

> A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same matter.

In addition, in conflict with both other district courts' and other state courts on the same matter.

STATEMENT OF THE CASE

Petitioner was convicted and sentenced for crimes that were completed in 1998 and he was sentenced for these crimes on August 23, 1999, and he was sentenced to state prison, on one case and probation, with a stayed/imposed prison sentence term on the other.

In June 1999, the Petitioner was convicted of second degree sexual assault of a child and child enticement. *Dkt. No. 1 at 4.* As a result of those convictions, he has to register as a sex offender, and pay a DNA surcharge. *Id.*

In the spring of 2008, the Petitioner completed the prison term imposed for his sexual assault conviction, and sought authority from the Green Bay Sex Offender Residency Board to live with his mother. The Board approved this request. *Id at 4-5.* In June of 2009, however, his probation was revoked. *Id at 5.* Nonetheless, in November 2009, he asked the Board's permission to live in the Transitional Living Placement Program ("TLP") in Green Bay. This time, the Board denied his request, stating, "You were given ample opportunity to reside in Green Bay. So denied." *Id.* He spoke to his probation officer about this; she told him that "due to the Ordinances and not having approved residence upon his release from prison," the Department of Corrections would, upon his release from prison, house him in the Brown County Jail. *Id.* When the Petitioner was released from prison on March 16, 2010, he was taken to the Brown County Jail, and he stayed there until he moved into a residence on July 1, 2011. *Id.* He was in the Brown County Jail, then, for over 13 months.

In April 2010, the Petitioner again asked the Board for permission to live in the TLP; again, the board refused, for the same reason. *Id.* He began to "search in [the cities of] DePere, Village of Bellevue, Village of Howard and Village of Allouez areas." *Id.* Eventually, after being denied permission yet another time, the defendant found a residence in the Village of Bellevue, into which he moved in July 2011. *Id.* In August 2012, the Petitioner tried one last time to get permission to move to the TLP. This time, the Board denied him because "he was a severely high risk to re-offend." *Id.*

The Petitioner alleges that the Board—acting in accordance with the city's sex offender ordinances—denied his requests to live in Green Bay on four occasions: November 2009; April 2010; April 2011; and August 2012. *Id at 5.* He argues that these

denials deprived him of his constitutional rights. Specifically, the Petitioner alleges that the city's sex offender ordinances restrict where all sex offenders may reside [that is, without any individualized assessment], which results in community ostracism and very limited places to live. In essence, his argument boils down to an allegation that the ordinance deprived him of liberty—the liberty to choose where to live—without due process.

The Petitioner alleges that the city enacted its residency ordinance on April 6, 2007. *Dkt. 1 at 4.* As discussed above, the Petitioner was sentenced on June 23, 1999. *Id.* Taking the allegations of the complaint as true, the Green Bay residency ordinance did not go into effect until at least eight years after the Petitioner was sentenced.

The Petitioner argues that the Green Bay ordinance constitutes such a statutory scheme—that restricting where he may live, and exercising sole control over where he may live, is so punitive that the court should deem it punishment, and not a civil protective measure. There is a reasonable argument to be made, however, that the ordinance does constitute punishment, and that because the Petitioner was subjected to that increased punishment after his conviction and sentencing, he has a claim under the Ex Post Facto Clause. The court will allow him to proceed on that claim.

The court will allow the Petitioner to proceed with his requests for monetary damages—compensatory and punitive damages, as well as costs and fees.

The Petitioner is an adult man who is currently incarcerated relating to his convictions for Child Enticement on 99-CF-16. He was previously sentenced and serving time until November 16, 2012, on 2nd Degree Sexual Assault of a Child on 98-CF-1181. Both of these cases were resolved on August 23, 1999, and he received 10 years Prison to be served within the Wisconsin Prison System on 98-CF-1181, and then he was sentenced to 10 years Prison in which this was stayed and imposed upon him on 99-CF-16. These cases were to be served consecutive to each other and consecutive to 98-CF-101, which was Uttering as PTAC out of Outagamie County Wisconsin, which was for a maximum of 2 years Prison but was stayed and imposed.

The Petitioner has been in and out of jail and prison since 1999, due to his convictions, parole, and parole revocations. When he is not in jail or prison...he has attempted at various times to reside in the Defendant's Jurisdiction, but has had mixed

success due to the existence of the various iterations of the Defendant's Sex Offender Residency Ordinance.

The Petitioner claims that Defendant's Sex Offender Ordinance only applies to convicted sex offenders who are required to register under *Wis Stat § 301.45*. The Petitioner claims these ordinances unconstitutionally regulate where sex offenders may live by forbidding them from living within certain distances of places where children may congregate, how many registered sex offenders may reside at one address, and what procedures registered sex offenders must follow to gain approval for a specific residence.

The Petitioner alleges that the Board, acting in accordance with the Defendant's Sex Offender Ordinances, has denied his requests to live in Defendant's Jurisdiction on Four occasions: November 2009; April 2010; April 2011, and August 2012.

Based on these allegations, the Court has allowed the Petitioner to proceed against the Defendant on a claim of denial of liberty to choose where to live without due process. **(Decision and Order #12, pp 11-12)**. The Court has also allowed the Petitioner to proceed with an Ex Post Facto Claim, because the First Ordinance was enacted in 2007, after the Petitioner's 1999 convictions.

The Petitioner's claims must not be dismissed. The Defendant alleges that they have provided notice and a hearing each time the Petitioner had requested to live at a particular residence upon his parole, thus providing him with Due Process. The Petitioner's requests for placement were limited by his parole agent's failure to recommend to him any placement other then one temporary living placement ("TLP").

The Petitioner's Ex Post Facto Claim must not be dismissed because the intent of the Ordinance is penal towards him, and it was not intended to protect the health, safety, and welfare of the citizens of the City of Green Bay, but to punish him specifically in that the Sex Offender Residency Board denied his placement as he was not a productive member of society.

Respondent admits that on April 6, 2007, they enacted their Sex Offender Ordinance.

Respondent admits that Plaintiff was subsequently revoked, for rule violations, in June 2009.

This matter was filed on **February 13, 2015**, to the District Court for the Eastern District of Wisconsin.

This matter was ruled on in the District Court for the Eastern District of Wisconsin on Summary Judgment on **March 23, 2017**.

The Appeal in this matter was filed on or about **April 2, 2017**, in the District Court for the Eastern District of Wisconsin.

The Appeal was rendered on **July 30, 2018**, by the Seventh Circuit Court of Appeals.

ARGUMENTS IN SUPPORT FOR GRANTING THE PETITION

I. THE COURT OF APPEALS' DECISION DIRECTLY CONFLICTS WITH OTHER DECISIONS FROM OTHER SISTER CIRCUITS

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

The holding of the courts below state that As Judge Hamilton noted, local residency restrictions enacted in cities and towns across the country "make it difficult, and in some case literally impossible for released offenders to live and work in compliance with all the laws that apply to them." See *Werner v Wall, 836 F 3d 751, 766-771(7th Cir 2016)*. Other courts have catalogued the draconian residency restrictions imposed upon sex offenders.[1]

In Miami-Dade, the Eleventh Circuit found it relevant to the complainant's sufficiency that the plaintiff's examined the permanency of the law's application, its failure differentiate individual risks of recidivism, and

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1 See e.g *Does #1-5 v Snyder, 834 F 3d 696, 697(6th Cir 2016), reh'd denied (Sept 15, 2016)*(Discussing Michigan law and stating "what began in 1994 as a non-public registry maintained solely for law enforcement use has grown into a byzantine code governing in minute detail the lives of the State's sex offenders" (citation omitted); *In re Taylor, 343 P 3d 867, 880(Cal 2015)*(discussing California's residency restrictions and stating they "effectively barred petitioners access to approximately 97 percent of the multi-family rental housing units in San Diego ... [and] the small percentage of remaining compliant housing was not necessarily available to paroled sex offenders due to a variety of factors, including law vacancy rates, high prices, and the unwillingness of some landlords to rent to them"); *Commonwealth v Canadyan, 944 NE 2d 93, 96(Mass 2010)*(discussing Massachusetts's residency and GPS restrictions, noting that "[w]hile these laws plainly serve a public purpose, they also affect the ability of former sex offenders to reintegrate into the work force and into the community. One of the consequences has been an increase in homelessness among such persons.").

its inflexibility in accounting for routes to the school. *Miami-Dade, 846 F 3d at 1185-86.*

A Sixth Circuit case holding that Michigan's Sex Offender statutory regime (which as, relevant here, prohibited registered sex offenders from living, working, or loitering within 1000 feet of a school) violated the Ex Post Facto Clause. *Does #1-5 v Snyder, 834 F 3d 696, 698, 706(6th Cir 2016), reh'g denied (Sept 15, 2016), cert denied sub nom, Snyder v John Does #1-5, 138 S Ct 55, 199 L Ed 2d 18(2017).* Like the Arkansas statute in *Weems*[2], the Michigan law applies to offenders who victimized adults – but the court was concerned that the restrictions were based entirely on the crime of conviction rather than individualized assessment. Id. The Court expressed particular concern that the classifications were not appealable. *Id at 702-03.* It was also concerned about the restrictions on working and loitering, *id at 703*, and the lack of evidence as to the efficacy of such restrictions, *id at 704-05. Evenstad v City of W St Paul, 306 F Supp 3d 1086, 1095(2018).*

The Eleventh Circuit that considered a law prohibiting offenders who had victimized someone under 16 from living within 2500 feet of a school. *Doe v Miami-Dade, Cnty, Fla 846 F 3d 1180, 1182-83(11th Cir 2017).* The court affirmed denial of a motion to dismiss an Ex Post Facto Challenge because the complaint sufficiently alleged that the county law created an affirmative disability (plaintiffs' alleged that their homelessness resulted from the residency restriction), and because the law was excessive in relation to its shared purpose (it contained no individualized assessment and applied for life). *Id at 1185-86.* The court distinguished the ordinance from a less-severe time-limited state residency restriction. *Id at 1186.*

The *Snyder* opinion refers twice to the *Federalist Papers*, noting that the Ex Post Facto Clause was part of the "constitutional bulwark in favor of personal security and private rights,"[3] and that punishment in the guise of civil regulation represented an ugly vestige of tyranny.[4] The opinion noted,

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2 *Weems v Little Rock Police Department, 453 F 3d 1010(8th Cir 2006)*

3 See *Snyder, 834 F 3d at 699(quoting The Federalist No 44, at 232(James Madison)).*

4 See *Snyder, 834 F 3d at 706(quoting The Federalist No 84, at 44(Alexander Hamilton)).*

too, that the Supreme Court in 1810 signaled that the framers of the Constitution intended for federal courts to proactively act to check state sovereignty when state officials might "punish socially disfavored persons without prior notice."[5] To more discretely define what ex post facto punishment entails, the Sixth Circuit drew upon the 1798 Supreme Court ruling in *Calder v Bull*, for proposition that the Ex Post Facto Clause prohibits retroactive punishment.[6]

In *Smith v Doe*, the United States Supreme Court found that Alaska's sex offender registry was necessary for public safety because it asserted, the recidivism rate of sex offenders is "frightening and high."[7] In *Doe v Snyder*, the United States Court of Appeals for the Sixth Circuit was not so convinced that the scientific evidence supported this assertion. Instead, the Court determined that empirical research failed to establish that Michigan's SORA law was rationally related to the purpose of protecting public safety. The Court looked to a statistical study indicating that sex offenders are actually *less* likely to recidivate than other types of criminals.[8] It also referred to other research findings that laws such as SORA might in reality disserve their aims by increasing the risk of recidivism via barriers they present for registrants to successfully reenter and to secure safe housing and decent jobs.[9]

The Sixth Circuit also found SORA excessive in degree. The Court expressed concern that the record contained no specific support that the record contained no specific support that the multitude of restrictions resulted in greater benefits than the law's many obvious detriments. It specifically took Michigan's authorities to task for their failure to even study whether registries and residency restrictions actually reduced recidivism.[10]In the end, the foregoing factors led the Sixth Circuit to conclude SORA is

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5 See *Snyder, 834 F 3d at 699(citing Fletcher v Peck, 10 US (6 Cranch) 87, 137-38(1810))*.

6 See *Snyder, 834 F 3d at 699(citing Calder v Bull, 3 US (3 Dall) 386, 388(1798))*.

7 See *Smith v Doe, 538 US 84, 103(2003)(quoting McKune v Lile, 536 US 24, 34(2002))*.

8 See *Does #1-5 v Snyder, 834 F 3d 696, 704(6th Cir 2016)*(citing Lawrence A Greenfield, Recidivism of Sex Offenders Released from Prison in 1994(2003)).

9 See *id*(citing JJ Prescott & Jonah E Rockoff, Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?, 54 J L & Econ 161, 164(2011)).

10 See *id at 705*("Michigan has never analyzed recidivism rates having the data to do so.").

punitive in nature. Other litigators have evidently take notice of the Sixth Circuit's interest in *Snyder* in engaging the empirical literature.

On another front, in November 2016, the Fourth Circuit found a provision of North Carolina's Sex Offender Residency Restriction law to be unconstitutional.[11] That case was not based on the Ex Post Facto Clause, but that case is still relevant because the court expressly looked for scientific evidence that the law served public safety. The court found the residency restriction to be overbroad because it prohibited individuals from visiting a variety of public places where people tend to exercise their First Amendment rights. Significantly, the State had declined to offer any scientific evidence or data that sex offenders pose a high risk of reoffending. The district judge and the appellate panel both expressed their consternation that the State's representatives chose instead to argue that it was simply "common sense" to realize that sex offenders would likely reoffend. Thus, these new cases following the publication of Snyder already provide hints of a sea of change in constitutional decision-making furthered by a new emphasis upon empirically-led analysis.

Several commentators have noted the importance of *Doe v Snyder* for challenging "civil" sex offender legal regimes. Professor Doug Berman, a well-known sentencing law and policy blogger, labels the Sixth Circuit's ruling "significant."[12] A Slate reporter calls is a "vitally important" decision that rightly conceptualized such laws as "unconstitutional monstrosities."[13] Similarly, a commentator at Reason Magazine indicated that the opinion reasonably recognizes that these sex offender laws are simply "stupid" and

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11 See *Doe v Cooper, 842 F 3d 833, 847(4th Cir 2016).*

12 See Douglas A Berman, Sixth Circuit Panel Concludes Michigan's Sex Offender Registration Amendments "Impose Punishment" and thus are Ex Post Facto Unconstitutional for Retroactive Applications, Sent'g L & Pol'y (Aug 25, 2016, 12:29 p.m.), http://www.sentencing.typepad.com/sentencing_law_and_policy/2016/08/sixth-circuit-panel-concludes-michigan-sex-offender-registration-amendments-are-punitive-and-thus-ar.html [https://perma.cc/BWBY-8U8Q]

13 See Mark Joseph Stern Appeals Court Issues Scathing Ruling Against Michigan Sex Offender Penalities, Slate (Aug 26, 2016, 4:36 p.m.), http://www.slate.com/blogs/xx_factor/2016/08/26/appeals_court_strikes_down_michigan_sex_offender_penalities.html [http://web.archive.org/web/2017V107020447/http://www.slate.com/blogs/xx_factor/2016/08/26/appeals_court_strikes_down_michigan_sex_offender_penalities.html]

that "the court offered a scathing assessment that suggests such laws make little sense."[14]

Snyder is a shining example of a court actually engaging with scientific evidence that refutes moralized judgments about a particularly disfavored group. Equally important, a reasonable interpretation of the Sixth Circuit's opinion by many is that more of Michigan's civil sex offender law; and other state laws like it are now subject to a broader invalidation.[15]

In 2002, the Iowa legislature, by near unanimous vote, adopted its exclusion law, which prohibits individuals who have committed a designated offense against a minor from living within 2000 feet of a school or child care facility. Just over a year later, the US District Court for the Southern District of Iowa certified a class of John Doe plaintiffs coming within the ambit of the law. After hearing arguments and receiving expert testimony on the law's effects, the trial court enjoined application of Iowa's residence exclusion law, deeming it violative of the Ex Post Facto Clause, substantive and procedural due process, and the Fifth Amendment privilege against compelled self-incrimination.

A three-judge panel of the Eighth Circuit reversed. Writing for the Court, Judge Colloton first rejected plaintiffs' assertion that the law violated procedural due process because they were denied notice of the law's application insofar as Iowa failed to provide them with information on the location of all schools and childcare facilities. Likewise, the panel rebuffed

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14 See Jacob Sullum, Sixth Circuit Says Michigan Sex Offender Registry is Punitive, and, Not Incidentally is Stupid, Reason(Aug 26, 2016, 10:12 a.m.), http://reason.com/blog/2016/08/26/6th-circuit-says-michigans-sex-offender [https://perma.cc/WW4N-23UA].

15 See e.g. Jack Lessenberrry, Michigan's Sex Offender law is Unfair and Probably Unconstitutional, Mich Radio (Aug 26, 2016), http://michiganradio.org/post/michigans-sex-offender-law-unfair-and-probably-unconstitutional [https://perma.cc/55YN-HU34]; David Post, Sex Offender Laws and the Sixth Circuit's Ex Post Facto Clause Ruling, Wash Post(Sept 7, 20160, http://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/09/07/sex-offender-laws-and-the-6th-circuit-sex-post-facto-clause-ruling/?UFM_term=.5d429f8964bc#comments [https://perma.cc/F8CU-28BY]; See Mark Joseph Stern Appeals Court Issues Scathing Ruling Against Michigan Sex Offender Penalities, Slate (Aug 26, 2016, 4:36 p.m.), http://www.slate.com/blogs/xx_factor/2016/08/26/appeals_court_strikes_down_michigan_sex_offender_penalities.html [http://web.archive.org/web/2017V107020447/ http://www.slate.com/blogs/xx_factor/2016/08/26/appeals_court_strikes_down_michigan_sex_offender_penalities.html]

the claim that the law violated due process because it failed to provide for individualized determinations of dangerousness:

The restriction applies to all offenders who have been convicted of certain crimes against minors, regardless of what estimates of future dangerousness might be proved in individualized hearings. Once such a legislative classification has been drawn, additional procedures are unnecessary, because the statute does not provide a potential exemption for individuals who seek to prove that they are not individually dangerous or likely to offend against neighboring schoolchildren.... The absence of an individualized hearing in connection with a statute that offers no exemptions does not offend principles of procedural due process.[16]

In *State v Seering, 2003 WL 21738894, at* *13, *15, holding Iowa's statute unconstitutional accepting self-incrimination, cruel and unusual punishment, substantive and procedural due process, and ex post facto arguments, but rejecting bill of attainder and over-breadth claims, *rev'd, 701 NW 2d 655(Iowa 2005).*

B. CONFLICTS WITH DECISIONS OF OTHER COURTS AND STATE COURTS

The holding of the Courts below state that The California Supreme Court, for example, recently held that residency restrictions, as applied to certain sex offenders in San Diego County, violated the Due Process Clause of the Fourteenth Amendment. *In re Taylor, 343 P 3d 867(Cal 2015).* The restrictions at issue effectively barred access to approximately 97% of multifamily rental housing units. *Id at 880.* Moreover, of the small number of housing options that remained, even they were not necessarily available to paroled sex offenders due to a variety of factors, including low vacancy rates, high prices, and the unwillingness of some landlords to rent to them. *Id.* These conditions forced many sex offenders out into the streets. *Id at 881.* This in turn hampered efforts to monitor, supervise, and rehabilitate them. *Id*

16 *Doe v Miller, 298 F Supp 844, 851(SD Iowa 2004), rev'd, 405 F 3d 700(8th Cir 2005)*

at 881-82. As such, the court held, the restrictions bore "no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators." *Id.*

Petitioner faced similarly draconian residency restrictions. Brown County, Wisconsin alone had approximately 14 different Sex Offender Ordinances in 2010, placing severe limits on where he could live.

In *Commonwealth v Baker*, the Kentucky Supreme Court overturned a State law barring all registered offenders from residing within 1000 feet of a school, playground, or day care. *295 SW 3d 437, 439-41, 447(Ky 2009)*. The *Baker Court* was similarly troubled that the statute covered all offenders, regardless of their victim's age, and that it did not contain any sort of individualized risk assessment. *Id at 444, 446*. And in *Starkey v Oklahoma Dep't of Corr*, the Oklahoma Supreme Court held that retroactive application of a state-law restriction on residency within 2000 feet of locations, including schools, playgrounds, parks, and day cares, violated the State Constitutions Ex Post Facto Clause, in part because the extension took place without any individualized risk assessments. *2013 Ok 43, 305 P 3d 1004, 1026, 1028-30*.

Similar ordinance establishing "a blanket prohibition against residency" without considering "whether the offender's victim was a minor or the offender is determined to be a threat to minors" held to be "obstructing the operation of the statewide statutory scheme by requiring courts and the Board of Probation and Parole to abandon and attempt to devise new approaches that would satisfy the County's wider-reaching restrictions" *Fross v County of Allegheny, 610 Pa 421, 20 A 3d 1193, 1206(Pa 2011)*. Similarly, there is no assessment of the offender's recidivism risk of his or her rehabilitation or reintegration needs.

II. WHAT OTHER VEHICLE'S SHOULD HAVE BEEN ADVISED TO HIM WHEN HE WAS DENIED TO STAY AT THE TLP (TRANSITIONAL LIVING PROGRAM PLACEMENT) IF ANY

Pursuant to *Wis Stat § 68.001*, which states:

> The purpose of this chapter is to afford a constitutionally sufficient, fair, and orderly administrative procedure and review in connection with determination by municipal authorities which invoke constitutionally protected rights of specific persons which are entitled to due process protections under the Fourteenth Amendment to the United States Constitution.

Pursuant to *Wis Stat § 68.01*, which states:

> Any person having a substantial interest, which is adversely affected by an administrative determination of a governing body, board, commission, committee, agency, officer, or employer of a municipality or agent acting on behalf of municipality as set forth in *s 68.02*, may have such determination reviewed as provided in this chapter. The remedies under this chapter shall not be exclusive.

Pursuant to *Wis Stat § 68.05*, which states:

> "Municipal authority" includes municipality and governing body, board, commission, committee, agency, officer, employee, or agent thereof making determination under *s 68.01*, and every person, committee, or agency of a municipality appointed to make an independent review under *s 68.09(2)*

Pursuant to *Wis Stat § 68.06*, Persons Aggrieved, which states:

> A person aggrieved includes any individual partnership, limited liability company, corporation, association, public or private organization, officer, board, commission, or agency of the municipality, whose rights, duties, or privileges are adversely affected by a determination of a municipal authority

Pursuant to *Wis Stat § 68.08*, Request for Review of Determination, which states:

> Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within 30 days of notice to such person of such determination. The request to review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed. A request for review shall be made to the officer, employee, agent, agency, committee, board, commission, or body who made the determination but failure to make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

Pursuant to *Wis Stat §68.09*, Review of Determination, which states:

(1) Initial Determination

If a request for review is made under *s 68.08*, the determination to be reviewed shall be termed an initial determination

(2) Who shall make review

A review under this section may be made by the officer, employee, agent, agency, committee, board, commission, or body who made the initial determination. However, an independent review of such initial determination by another person, committee, or agency of the municipality may be provided by the municipality

(3) When to make review

The municipal authority shall review the initial determination within 15 days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved

(4) Right to present evidence and argument

The person aggrieved may file with the request for review or within the time agreed with the municipal authority written evidence and argument in support of the person's position with respect to the initial determination

(5) Decision on Review

The municipal authority may affirm, reverse, or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the municipal authorities decision on review, which shall state the reasons for such decision. The decision shall advise the person aggrieved of the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom notice of appeal shall be filed

Pursuant to *Wis Stat § 68.10,* Administrative Appeal, this states:

(1) From Initial Determination or Decision of Review

(a) If the person aggrieved did not have a hearing substantially in compliance with *s 68.11*, when the initial determination was made, the person may appeal under this section from the decision on review and shall follow the procedures set forth in ss *68.08* and *68.09*

(b) If the person aggrieved had a hearing substantially in compliance with *s 68.11*, when the initial determination was made, the person may elect to follow the procedures provided in *ss 68.08 and 68.09*, but is not entitled to appeal under this section unless granted by the municipal authority. The person may, however, seek review under *s 68.13*

(2) Time within which appeal may be taken under this section

Appeal from a decision on review under *s 68.09*, shall be taken within 30 days of notice of such decision

(3) How Appeal may be taken
An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal

Pursuant to *Wis Stat §68.11*, Hearing on Administrative Appeal, which states:

(1) Time of Hearing
The municipality shall provide the appellant a hearing on an appeal under *s 68.10* within 15 days of receipt of the notice of appeal filed or mailed under *s 68.10* and shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing

(2) Conduct at Hearing
At the hearing, the appellant and the municipal authority may be represented by an attorney and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The municipality shall provide an impartial decision-maker, who may be an officer, committee, board, commission, or the governing body who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. This decision-maker may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially same form as provided in *s 805.07(4)* and must be served in the manner provided in *s 805.07(5)*. The attorney shall, at the time of issuance, send a copy of the subpoena to the decision-maker. The hearing may, however, be conducted by an impartial person, committee, board, or commission designated to conduct the hearing and report to the decision-maker

(3) Record of Hearing
The person conducting the hearing or a person employed for the purpose shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality

Pursuant to *Wis Stat §68.12*, Final Determination, which states:

(1) Within 20 days of completion of the hearing conducted under *s 68.11* and the filing of briefs, if any, the decision-maker shall mail or deliver to the appellant its written determination stating the reasons thereof. Such determination shall be a final determination.

(2) A determination following a hearing substantially meeting the requirements of *s 68.11* or a decision on review under *s 68.09* following such hearing shall also be a final determination.

Pursuant to *Wis Stat §68.13,* Judicial Review, which states:

(1) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision-maker for further proceedings consistent with the court's decision.

(2) If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requestor's expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the municipality and the person seeking review shall be furnished a free copy of the transcript, by stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.

III. WHETHER RESPONDENT'S ORDINANCE CONFORMED WITH DUE PROCESS OR IS THIS PETITIONER DENIED THIS BASED ON HIS ORIGINAL OFFENSE, WHICH WAS COMMITTED ABOUT 20 YEARS AGO

To establish a procedural due process claim, a party must demonstrate that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of life, liberty, or property, and (2) the procedures available to him did not provide due process of law. See *McCarthy v Darman, 372 Fed Appx 346.*

Due process ... is not a technical conception with a fixed content unrelated to time, place, and circumstances. [D]ue process is flexible and

calls for such procedural protections as the particular situation demands. *Mathews v Eldridge, 424 US 319.*

A successful procedural due process claim requires plaintiff to show (1) the deprivation of a liberty or property interest, and (2) the absence of due process. *Mecca v United States, 389 Fed Appx 75.*

The requirements of due process in a given type of case are determined by balancing three factors: How serious the deprivation is; how much good additional procedures are likely to do; and how expensive or difficult additional procedures would be for the officials who must carry them out. *Mathews v Eldridge, 424 US 319, 35, 96 S Ct 843(1976).* This "balancing test determines what due process requires, even if state law calls for something different *Cleveland Bd of Educ v Loudermill, 470 US 532, 541, 105 S Ct 1487(1985); Vitek v Jones, 445 US 480, 491, 100 S Ct 1254(1980).*

The Fourteenth Amendment guarantees that "[n]o state shall ... deprive any person of life, liberty, or property without due process of law." *US Const Amend XIV § 1.* The Supreme Court has interpreted that Due Process Clause to include both substantive and procedural components. See *Washington v Glucksberg, 521 US 702, 719-20, 117 S Ct 2258, 117 S Ct 2302, 138 L Ed 2d 772(1997).* Procedural due process guarantees that a state will not deprive a person of life, liberty, or property without undertaking certain procedures, including some form of notice and an opportunity to be heard. *Hamdi v Rumsfeld, 542 US 507, 533, 124 S Ct 2633, 159 L Ed 2d 578(2004).* Substantive due process protects certain fundamental rights that are so "implicit in concept of ordered liberty" from state infringement regardless of any procedures that the state may use. *Glucksberg, 521 US at 720-21(quoting Palko v Connecticut, 302 US 319, 325-26, 58 S Ct 149, 82 L Ed 2d 188(1937)).* State legislation that infringes on a fundamental right is subject to strict scrutiny and will be invalidated unless is "narrowly tailored to serve a compelling state interest." *Reno v Flores, 507 US 292, 302 113 S Ct 1439, 123 L Ed 2d 1(1993).*

The requirement of due process are flexible and should be tailored to the situation. *Mathews v Eldridge, 424 US 319, 334, 46 S Ct 843, 47 L Ed 2d*

18(1975). To determine the "appropriate" due process in a given situation, a court considers:

> [F]irst, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administration burdens that the additional or substitute procedural requirement would entail.

Wilkinson v Austin, 545 US 209, 224-25, 125 S Ct 2384, 162 L Ed 2d 174(2005)(quoting Mathews, 424 US at 335).

Due process requires that an appropriate hearing, include: (1) written notice in advance of the hearing; (2) disclosure of the evidence on which the state is relying; (3) a hearing, scheduled sufficiently after a notice to permit the persons to prepare, at which he will have the opportunity to be heard in person represented by counsel, and to present documentary evidence; (4) an opportunity at the hearing to call witnesses and confront and cross-examine state witnesses, "except upon a finding, not arbitrarily made, of good cause for not permitting each as to a particular witness"; (5) an independent decision maker; and (6) a written statement by the fact finder as to the evidence relied upon and the reasons for the decision. *Miller v Vitek, 437 F Supp 569, 574(D Neb 1977)*.

The due process right to a jury, as interpreted by *Apprendi v New Jersey*,[17] is triggered by a finding that a sanction is punitive, obliging that a jury play a role when SORN turns on fact-finding.[18]

More broadly, the increasingly critical approach taken by Courts, and their willingness to eschew the pro-forma, stock analysis common to date in assessing punitiveness, could well affect other constitutional questions with even more significant practical impacts. In particular, the Sixth Circuit's landmark decision in *Does v Snyder*, and other decisions discussed which bar retroactive application of SORN laws, can possibly pave the way for a

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17 *530 US 466(2000)*(holding that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt)

18 *Fushek v State, 183 P 3d 536(Ariz 2008)*(concluding that imposition of SORN qualified offense as "serious" requiring jury determination under Arizona law)

successful substantive due process claim, which would bar application of SORN to current and future individuals. To date, despite passing reference by concurring Justices in 2003, that substantive due process challenge against SORN might have merit.[19] Courts have usually rejected due process claims reasoning that SORN laws satisfy the modest threshold inquiry of whether the law satisfies the rational relationship test.[20]

Recent decisions have scrutinized the avowed public safety rationales of SORN and compared them against what researchers have learned about its actual efficacy and the incidence of sex offender recidivism more generally. In *Snyder*, the Sixth Circuit disputed the commonly relied upon legislative promise that sex offender recidivism rates are exorbitant, and questioned whether Michigan's SORN law had a "[r]ational [r]elation to the [n]on-[p]unitive [p]urpose." Although Snyder was decided on ex post facto grounds not due process grounds, both require assessment of the rationality of the law in question (with ex post facto analysis making the question "most significant"). The Sixth Circuit, for its part, characterized a due process claim as "far from frivolous" and "a matter [ ] of great public importance."

To determine whether due process requirements apply in the first place, we must look not to the "weight" but to the *nature* of the interest at stake. See *Morrissey v Brewer, 408 US 471, 481.* We must look to see if the interest is within the Fourteenth Amendments protection and property.

The Supreme Court, in order to determine what process is constitutionally due where there is allegation of deprivation of due process

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19 *See Connecticut Dept of Pub Safety v Doe, 538 US 1, 8(2003)*(CDPS)(noting that petitioner did not rely on substantive due process, only procedural due process, and stating that the court "express[ed] no opinion as to whether Connecticut's Megan's Law violates principles of substantive due process"); *id at 9*(Souter, joined by Ginsburg, JJ, concurring)(noting that the majority holding did not foreclose a substantive due process challenge); Cf. *Smith v Doe, 538 US 84, 110(2003)*(Stevens, J, dissenting and concurring)(noting that neither the instant case, nor CDPS, addressed whether the challenged statutes deprive the registrants of a constitutionally protected interest in liberty, but concluding that "these statutes unquestionably affect a constitutionally protected interest in liberty.").

20 *Doe v Poritz, 662 A 2d 367, 408(NJ 1995)*(concluding that aggregated data triggers a privacy interest because "if the information disclosed under the Notification Law, were in fact freely available, there would be no need for the law," but ultimately deciding that the public safety purpose of the law outweighed the privacy intrusion); see also Wayne A Logan, Liberty Interest in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws, 89 J Crim L & Criminology 1167(1999).

will generally balance (1) private interest that will be affected by official action; (2) risk of erroneous deprivation of interest through procedures used and probable values, if any, of additional or substantive procedural safeguards; and (3) government's interest. *Gilbert v Homer, 520 US 924, 138 L Ed 2d 120, 117 S Ct 1807(1997).*

According to the positivist view of procedural due process, the courts should play no role in defining what procedures are necessary to satisfy the constitutional requirement. Rather, the term "due process" dictates that individuals be afforded whatever procedures the legislature has mandated – no more and no less. If the legislature has not recognized the risk to a given procedure, the positivist argument goes, it is simply not "due" in any sense of the word.

This argument is not a new one. Instead, in the first Supreme Court decision construing the clause,[21] the court considered and rejected this proposition:

> It is manifest that if not left to the legislative power to enact any process, which might be devised. This Article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to Congress free to make any process "due process of law," by its mere will.[22]

The Court had long held that the boundaries of due process are very different in the agency rulemaking process from those in the adjudicatory process. Yet the "basic elements of fairness" inquiry, tended to lead to the conclusion that the individual in an administrative proceeding should be afforded procedural safeguards identical to those afforded the individual in traditional judicial proceedings.

According the instrumental conception of due process, the purpose of the clause is to ensure the most accurate decision possible. The due process protection such as notice, hearing, and right to counsel are valuable because they contribute to the goal of accuracy. The Supreme Court has long relied upon this rationale in shaping its conception of the due process clause.

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21 *Murray's Lessee v Hoboken Land and Improvement Co, 59 US (18 How) 272(1855)*

22 *59 US 272, 272*

The instrumental conception of due process focuses on the individuals interest in having an opportunity to convince the decision-maker that he deserves the right at issue.

As might be expected in light of the court's emphasis on instrumental concerns, most of the procedures that have fallen within the scope of the due process clause deal with the individual's opportunity to argue his case effectively. The rights to notice, hearing, counsel, transcript, and to calling and cross-examining witnesses all related directly to the accuracy of the adjudicative process. These procedural safeguards are of no real value, however, if the decision-maker bases his findings on factors other than his assessment of the evidence before him.

Under the current approach, one must look to state law to determine whether the government has created property interests.[23] Two principles guide this inquiry. First, it is the nature, rather than the weight of a particular interest that determines whether it constitutes constitutionally protected property. The weight of the interest becomes relevant only at the second stage of procedural due process analysis when the court must determine what process is due. Second, an individual must have a justified expectation, grounded in state law, of receiving a particular government benefit. There are two ways in which state law can generate a justified expectation and thus create an entitlement worthy of due process protection: a statute may expressly create the entitlement or an entitlement many arise from "mutually explicit understandings" between the individual and government officials. In either case, the government must act in some way to justify the expectation; an individual cannot unilaterally create constitutionally protected entitlements.

Mathews v Eldridge best illustrates utilitarian theory. In *Mathews*, the Supreme Court decided that disabled people were not entitled to evidentiary hearings before their social security benefits were terminated. The Court reached this conclusion by balancing three factors: (1) the nature of the

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23 This notion was first articulated in *Board of Regents v Roth, 408 US 564, 577(1972)*

private interest affected, (2) the risk of error in the process, and (3) the government interest, including costs.

The Second criterion, accuracy, is very appealing because it seems to serve both individual and societal interests. The accuracy criterion, however, assumes that the primary reason individuals would want to participate in the process is to assume an accurate result. "Procedural due process rules are meant to protect persons not from the deprivation, but from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property ...."[24] By focusing on accuracy instead of participation, the discourse of due process shifts from "who participates?" to "what works"? So long as the government's version is considered accurate, the individual's right to tell her story possesses no independent values. Thus, utilitarian due process silences the powerless because they cannot speak unless they can win.

Accordingly, the right to participate should include: (1) the right to hear; (2) the right to speak; and (3) the right to be heard. He right to hear includes the right to have some prior notice of government action and some statement of the governing principles and factual determination that justify the action. [25] The right to speak includes the right to respond to the government's justification. Such a right may be meaningless unless the chance to speak actually may change the decision.[26] Thus, the right to be heard includes the chance actually to affect the outcome of the decision.

Whether the law would amount to a violation of procedural due process rights also requires a two-step inquiry: "the First asks whether there exists a liberty or property interest which has been inferred with the State; the Second examines whether the procedures attendant upon that were deprivation were constitutionally sufficient." *Ky Dep't of Corrs v Thompson, 490 US 454, 460, 109 S Ct 1904, 104 L Ed 2d 506(1989) (internal citations omitted).*

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24 *Carey v Piphus, 435 US 247, 259(1978)*

25 See e.g. *Cosby v Ward, 843 F 2d 967(7th Cir 1988)*

26 See Redish & Marshall, 95 Yale L J 455, 488(arguing that participation only has value if the participant can persuade the decision-maker to rule in her favor).

The Due Process Clause does not entitle an individual to a hearing unless there is "some factual dispute" that a hearing could serve to resolve. *Codd v Velgar, 429 US 624, 627, 97 S Ct 882, 51 L Ed 2d 92(1977)(per curiam).*

Substantive due process limits the regulations a state can place on human life and liberty. See *Troxell v Granville, 530 US 57, 65(2000)*(stating that substantive due process protects individual rights from state interference); *1 Laurence H Tribe, American Constitutional Law 8.1, at 1334-35(3d Ed 2000)*(stating that substantive due process remains chief vehicle through which individual rights are protected from arbitrary state action); Kathryn R Burke, The Privacy Penumbra and Adultery: Does Military Necessity Justify an Adultery Regulation and What Will It Take for the Court to Declare It Unconstitutional:, *19 Hamline J Pub L & Pol'y 301, 312(1997)*(discussing that substantive due process is limit on state powers).

If a fundamental constitutional right is at stake a court will apply a "strict scrutiny" test to the offending state action. However, if the right at stake is not deemed fundamental, a court applies a mere deferential "rational basis" test to the state action. See *Glucksberg, 521 US at 720-21*(stating that Due Process Clause analysis requires strict scrutiny of government regulations restricting fundamental rights); *Reno v Flores, 507 US 292, 302(1993)*(stating that strict scrutiny test must be applied to all regulations restricting fundamental rights); see also *Planned Parenthood v Casey, 505 US 833, 851(1992)*(describing that specially protected individual rights are subject to heightened judicial scrutiny). See *also Clark v Jeter, 486 US 456, 461(1988)*(describing that rational basis test is most minimal test applied to regulations restricting individual rights); *San Antonio Indep Sch Dist v Rodriquez, 411 US 1, 17(1973)*(stating that if fundamental rights is not at stake, rational basis test should be applied); See also *United States v Virginia, 518 US at 567-68*(Scalia, J, dissenting)(describing situations in which heightened judicial scrutiny is applied).

In *Elwell v Township of Lower, 2006 WL 3797979 (NJ Super Ct Law Div 2006)*, where a registered sex offender challenged the validity of a township

ordinance which prohibits registered sex offenders from residing or loitering within 500 feet of any school, park, playground, recreation area, or day care facility or within 25 feet of a school bus stop located in the township, or adjacent municipalities, the court found that the ordinance violated the plaintiff's substantive due process rights under the New Jersey Constitution. That Court explained that the state has a legitimate interest in protecting the public, in particular women and children, from recidivism by sex offenders. However, the court took the view that, notwithstanding the valid, comprehensive, and potentially severe steps taken by the legislature in protecting the public from convicted sex offenders through the enactment of Megan's Law (*NJ Stat Ann § 2C:7-16*), the statutory provision which requires, inter alia, the registration of sexual offenders, since the ordinance prohibited convicted sex offenders from residing in the restricted areas the ordinance, in a purported attempt to protect the public, regulated the location of sex offenders' residences in a manner that was overly broad in that it failed to balance the nature of the rights by the ordinance, with the public need for the prohibitions set forth in the ordinance. Furthermore, the court found that the ordinance did not differentiate the various tiers of offenders, or attempt to assess the actual risk posed by a particular offender, rather, the ordinance painted all sex offenders with the same broad brush, namely, that they all are equally likely to reoffend, but are less likely to do so if they are geographically limited with regard to residence and loitering. The geographical restrictions on where the plaintiff (or any other sex offenders for that matter) may reside or loiter, substantially intruded on significant family matters involving private and personal choices about how to raise and care for children, and decision-making about where to reside , the court said, in that instant case, where it restricted the plaintiff, a low risk offender, from accompanying his children to the school bus stop, going into a school or to a public park with his children, for fear of being charged with loitering because he is a convicted sex offender. The rights affected are significant, and are unnecessarily burdensome by the ordinance, the court concluded.

IV. WHY DID HE STRUGGLE TO FIND APPROPRIATE RESIDENCY FROM MARCH 2010 UNTIL JULY 2011?

He had struggled to find a residence, because he was released from prison, he had no money in his release account, he had no employment or one in the future, and he was denied this by his agent, because he did not have an approved residence, and this included the Transitional Living Placement Program(TLP), this alone severely curtailed his residence outlook.

Since the TLP was denied, he was forced to reside in the Brown County Jail in Green Bay Wisconsin throughout that whole time, except for 92 days whereas he was placed into an Alternative to Revocation Sanction for violating minor rules of the Jail. See *Werner v Wall, 836 F 3d 751, 766-771(7th Cir 2016).*

To make matters worse, when he would speak to a potential landlord and explain his situation, and then both parties had expressed interest in assisting the other, once he mentioned that the Residency Board required that the potential landlord provide a written statement, in essence a contract, that the potential landlord would change his/her mind and decide to not rent to him.

Prior to this, the property owners would wonder how he was going to cover the Rent and Security Deposit if he did not have gainful employment. He then would explain to them that the Department of Corrections would cover the first months rent and security deposit, and each month of rent until he obtained gainful employment.

Once this was advised to the property owner, either the property owner was to call the agent of record or he would have the agent of record call the potential property owner.

Another facet is that once he expressed interest in said property to be able to rent, most did not want to lose other tenants and/or future tenants and/or be harassed by the public or their neighbors of either their own home or the property wherein he was to reside.

Because of the Ordinance, and the Residency Board denying him residency at the TLP, Administrative Directive #02-10 kicked in, wherein he was immediately detained within the Local County Jail for having no approved residence. See *Werner v Wall, 836 F 3d 751, 766-771(7th Cir 2016).*

V. WHAT IS DETERMINED BY EX POST FACTO CLAUSE VIOLATION

The Ex Post Facto Clause of the United States Constitution bars retroactive punishment. See United States Constitution *Art 1, § 10, cl 1; see also Calder v Bull, 3 US 386, 388(1798).*

Art 1, § 9, cl 3 of the United States Constitution prohibits ex post facto laws—laws that criminalizes "an action and simultaneously provides to punishment of those who took the action before it had legally become a crime." (Specifically, a law that impermissibly applies a retroactively, especially in a way that negatively affects a person's rights, as by making into a crime an action that was legal when it was committed or increasing the punishment for past conduct). In other words, ex post facto laws are laws that: (1) punish an action that, when committed was lawful; (2) making a crime more severe than when it was committed: (3) changes or increases the punishment retroactively; or (4) alters the rules of evidence from those in effect when the offense was committed. The question whether sex offender registry laws violate the ex post facto clause of the constitution hinged on whether or not the sex offender regulations were enacted for a non-punitive or civil purpose, or were intended to be punitive.

Even these courts rejecting ex post facto challenges have generally conceded that, in contrast to registration-notification laws, residency statutes (1) at least somewhat resemble the traditional punishment of banishment,[27] (2) impose an affirmative restraint, and (3) advance deterrent and retributive aims.

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27 See *Miller II, 405 F 3d 700, 719(8th Cir 2005)*(rejecting direct analogy between residency restrictions and banishment, but admitting that banishment "involves an extreme form of residency restriction."), *cert denied, 546 US 1034, 126 S Ct 757, 163 L Ed 2d 574(US Nov 28, 2005).*

The frequent discussion of banishment in ex post facto cases may appear anomalous. However, the examination of banishment as punishment in those cases stems from the discussion by Justice Chase of banishment in the over 200-year-old case that still controls Ex Post Facto Clause cases, *Calder v Bull*.[28]

The Ex Post Facto Clause "forbids the congress and the state to enact any law which imposes a punishment for an act which was not punishable to that then prescribed.'" *Weaver v Graham, 450 US 24, 28, 101 S Ct 960, 67 L Ed 2d 17(1981)*(quoting *Cummings v Missouri, 71 US (4 Wall) 277, 325, 18 L Ed 356(1866)*). As the Supreme Court has explained the Ex Post Facto Clause is but one expression of the "deeply rooted" jurisprudential "presumption against the retroactive application of new laws." *Lynce v Mathis, 519 US 433, 439-40, 117 S Ct 891, 137 L Ed 2d 6(1997)*. This "limitation on the sovereign's ability to use its law making power to modify bargains it has made with its subjects" protects "not only the rich and the powerful, but also the indigent defendant, engaged in negotiations that may lead to an acknowledgment of guilt and a suitable punishment." *Id at 440(internal citation omitted)*. The protection afforded by the Ex Post Facto Clause is limited, however, and as the Supreme Court has held that its prohibition "applies only to criminal laws, not to civil regulatory regimes." *United States v W B H, 664 F 3d 848, 852(11th Cir 2011)(citing Kansas v Hendricks, 521 US 346, 369, 117 S Ct 2072, 138 L Ed 2d 501(1997))*.

If the analysis ended with the legislature's stated intent, the legislative branch would have pitched a shut out to the judicial branch. But the Supreme Court has recognized for centuries that what something actually is may be two different things. Just so, in double jeopardy and ex post facto law, allowance is made for guardedly going behind expressed legislative intent to the reality of a legislatively created thing by assessing the exposed purpose or effects of the thing. Hence, we have the ancient observation that "the Constitution deals with substance not shadows. Its inhibition was

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28 *3 US 386(1798)*

leveled at the thing not the name. Its intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however distinguished." *Weaver v Graham, 450 US 24, 28, 101 S Ct 960, 67 L Ed 2d 17(1981)(quoting Cummins v Missouri, 71 US (4 Wall) 277, 325, 18 L Ed 356(1866))(emphasis added)*. Thus, in the second step of the ex post facto analysis, the focus turns to whether this scheme is so punitive in purpose or effect as to negate the State's declared non-punitive intent.

A law applies "retroactively" for purposes of the Ex Post Facto Clause if it "changes the punishment and inflicts a greater punishment, than the law annexed to the crime when committed." *Collins v Youngblood, 497 US 37, 42, 110 S Ct 2715, 111 L Ed 2d 30(1990)(quoting Calder v Bull, 3 US (3 Dall) 386, 390, 1 L Ed 648, 3 Dall 386(1798)(emphasis added; emphasis original removed)*. This is the sense in which we use "retroactive" and "retroactively," regardless of the date when probation was granted or revised.

The Ex Post Facto Clause prohibits any "penal statute" that applies "retroactively," i.e., that either (i) "makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action"; (ii) "aggravates a crime, or makes it greater than it was, when committed"; or (iii) "changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed"; or (iv) "alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender." *Collins v Youngblood, 497 US 37, 40-42, 110 S Ct 2715, 111 L Ed 2d 30(1990)(Rehnquist, C. J.)(emphasis and quotations omitted)*; see also *Weaver v Graham, 450 US 24, 29, 101 S Ct 960, 67 L Ed 2d 17(1981)(Marshall, J.)*("Two critical elements must be present for a criminal or penal law to be ex post fact: It must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it."). The Ex Post Facto Clause protects against

"legislatures...retroactively altering the definition of crimes or increasing the punishment for criminal acts." *Collins, 497 US at 43.*

Contained within *United States v Lovett, 328 US 303(1946)*, defines bills of attainder as "(1) legislative acts no matter what their form, (2) that apply wither to named individuals or to easily ascertainable members of a group, (3) in such a way as to inflict punishment ion them, and (4) without a judicial trial."

The naming of specification of persons to be punished is a central evil that the non-attainder interest seeks to avoid. The clever drafting of statutes to avoid using individual names does not resolve the problem. Legislation that identifies a fixed group whose members are either known to or knowable by, the legislature (such as "persons who took up arms for the Confederacy" or "members of the Communist Party") has made a forbidden specification.

Many laws might specify the people to be affected but only laws that specify people for people for punishment are forbidden as bills of attainder.

A number of constitutional provisions come into play only when punishment is a possible consequences. In addition, to the Attainder Clause the definition of punishment is crucial for determining whether a law violates the Ex Post Facto Clause (punishment for actions that were lawful when performed); The Double Jeopardy Clause (multiple attempts to impose punishment); The Self-Incrimination Clause (a right that is triggered by the prospect of punishment); the Substantive Due Process Rights of Pretrial Detainees (who may not be punished before conviction); and of course, the Cruel and Unusual Punishment Clause.

Like the definition of liberty, the definition of punishment is an evergreen topic that will never be susceptible to a bright-line solution. One may justifiably wonder whether my proposal to treat non-attainder as a liberty interest gains anything by swapping one eternal conundrum (what is liberty) for another (what is punishment). While a punishment focus will undoubtedly leave many hard cases and inconsistencies in application, it has

two great advantages over the current methods of dealing with blacklists. First, and most important, it appears to be the right question. This is especially apparent when compared to a series of unrelated "find-the-privilege" inquiries that would ask whether liberty includes flying on an airplane or sitting on a park bench, without noting the true structure of the problem. Second, even though there are plenty of devils in the details, punishment is a narrower concept than liberty itself.

As Alice Ristroph has summarized Thomas Hobbes's definition, "punishment properly so called is imposed by the right person, on the right person, for the right reasons. "Assuming that the government is at least the "right person" to impose punishment, who should receive it and why" Alice Ristroph, Respect and Resistance in Punishment Theory, 97 Cal L Rev 601, 612(2009). According to Ristroph, Hobbes identified four essential elements to punishment:

> (1) it must be a harm (or "evil"); (2) this harm must be inflicted by public authority; (3) it must be inflicted on someone who has been judged, by public authority, guilty of a violation of the law; and (4) it must be inflicted "to the end that will of men thereby the better be disposed to obedience." If any of these requirements are not met the harm is a "hostile act" other than punishment. Id (quoting Thomas Hobbes, Leviathan 214-15(Richard Tuck ed 1991)(1651)).

Punishment is always a response to perceived wrongdoing. As George Fletcher puts it,: punishment is always imposed "for" some past event." See George P Fletcher, Punishment and Responsibility in a Comparison to the Philosophy of Law and Legal Theory 514, 514 (Dennis Paterson ed, 1996). H L A Hart, drawing on the works of Antony Flew and Stanley Benn, proposed a frequently cited formulation of punishment:

i. It must involve pain or other consequences normally considered unpleasant.
ii. It must be for an offense against legal rules.
iii. It must be of an actual or supposed offender for his offense.
iv. It must be intentionally administered by human beings other than the offender.

v. It must be imposed and administered by authority constituted by a legal system against which the offense is committed

H L A Hart, Punishment and Responsibility: essays in the Philosophy of Law 4-5(1968).

An ex post facto law is a law that "applies to events occurring before its enactment" and that "disadvantages the offender affected by it, by altering the definition of criminal conduct or increasing the punishment for the crime." *Lynce v Mathis, 519 US 433, 441, 117 S Ct 891, 896, 137 L Ed 2d 63(1997) (internal quotation marks and citation omitted).*

VI. THIS IS AN IDEAL VEHICLE TO ADDRESS THE QUESTIONS PRESENTED AND PROVIDE FURTHER GUIDANCE ON THE CONSTITUTIONAL TREATMENT OF SEX OFFENDERS AND THE MUNICIPALITIES OR LOCAL GOVERNMENTS' WHEN THEY CREATE ADDED ORDINANCES TO FURTHER HINDER A PERSON TO REHABILITATE AND ALLOW A SEX OFFENDER TO REINTEGRATE BACK INTO SOCIETY

This case presents a fundamental question and the proper vehicle for these issues to be properly decided as there are some Sister Courts of Appeals that have decided one way while others, of older matters, except for one, have decided the opposite.

Especially in *Does #1-5 v Snyder, 834 F 3d 696(6th Cir 2016), reh'g denied(Sept 15, 2016), cert denied sub nom, Snyder v Does #1-5, 138 S Ct 55(Oct 2, 2017)*, this Court refused to grant Certiorari to Snyder, after receiving the Brief from the Acting US Solicitor General, wherein he stated:

> Michigan's Sex Offender Registration Scheme contains a variety of features that go beyond the baseline requirements set forth in federal law and differ from those of most other states.... [T]he [Sixth Circuit] Court of Appeals' analysis of the distinctive features of Michigan's laws does not conflict with [decisions of other courts rejecting ex post facto claims] nor does it conflict with the Court's holding in Smith [v Doe].

See *Snyder v Does, No 16-768, July 7, 2017, Amicus Briefs of the Acting Solicitor General, 2017 US S Ct Briefs Lexis 2369, *16-17.*

In addition, even state courts[29] have decided that these residency or "exclusion zones" are unconstitutional towards sex offenders, since these in essence push them away, in essence, banish them from the locality and restrict where they can still live and what process is required for each of them, not based on their individual risk assessment but based on their original offense. Most of which were committed years prior to the enactment of these "exclusion zones."

VI. DID HIS REVOCATIONS' INVOLVE RULE VIOLATIONS OR WERE NEW ADDITIONAL SEX OFFENSES COMMITTED, AS THE RESPONDENTS' CLAIM

His previous revocations were not based on any sort of new sex offense or new criminality, but only on Parole Rule Violations, and when he had advised the Residency Board of this, they had stated that it was only a matter of time before someone would come forward to claim that he sexually assaulted them. In addition, there should have been these words in the notes from one specific hearing, in August 2012, but those exact words were removed, and since they only paraphrased what was stated at the hearing.

In Wisconsin recidivism rate calculations do not include:

-persons convicted/sentenced in another state;
-persons convicted/sentenced in Federal court;
-persons convicted/sentenced in another country;
-persons arrested with no conviction;
-persons charged with no conviction;
-persons municipal ordinance violations;
-persons convicted of a crime that results in a court disposition that *does not* lead to custody or supervision under the WI DOC;
-persons admitted to jail or prison without a new conviction;
-persons who have not been apprehended or convicted of a new crime;
-charges that do not result in a conviction due to plea bargaining or a read-in during sentencing

VII. INDIVIDUAL RISK ASSESSMENT SHOULD HAVE BEEN DONE AND THAT THESE OFFENSES WERE OVER 20 YEARS AGO

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29 *In re Taylor, 343 P 3d 867(Cal 2015)*

There has never been any recent criminal activity on his part, and the fact that he has been on the "streets" for approximately 2 years, 8 months, and 13 days, without any sort of new criminal actions perpetrated by him nor has he been referenced in any criminal investigations since he was initially convicted in 1999 for crimes that were committed in 1998.

Other courts have reached similar conclusions in over-inclusive registration schemes that are not based on individualized risk assessment are vulnerable to attack under *Mendoza-Martinez*.[30]

States categorize registrants based on either individualized risk assessment or offense of conviction [the latter being the majority approach, urged by the federal government]. With their categorizations determining the duration and onerousness of registration, and in some instances, whether and how community notification occurs.[31]

States should implement well-founded risk assessment criteria to categorize sex offenders based on a future risk or prior bad acts, and then tailor restrictive measures accordingly. Studies show that sex offenders do not re-offend at a higher rate than other criminals, in fact, quite the opposite is true, as even the longest twenty-year study shows that fewer than half of sex offenders will re-offend. Legislators would thus better protect the community by creating assessment criteria to identify the sex offenders that pose the greatest risk of re-offending.

Risk assessment criteria have several advantages. First, assessment criteria can ensure a better allocation of state resources. The state can imprison or harshly restrict the high-risk offenders, while enabling low and

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30 See e.g. *Millard v Rankin, 265 F Supp 3d 1211, 2017 US Dist Lexis 140301, 2017 WL 3767796, at 15(D Colo Aug 31, 2017)*("These sweeping registration and disclosure requirements—in the name of public safety to a finding that public safety is at risk in a particular case—are excessive in relation to SORA's expressed public safety objective."); *accord, Starkey v Okla Dept of Corr, 305 P 3d 10054, 1029(Okla 2013); Doe v State, 111 A 3d 1077, 1100(NH 2015)*("We find that the ACT as currently constituted is excessive when compared with this purpose and when compared with past versions of the ACT.") (quoting *Kennedy v Mendoza-Martinez, 372 US 144(1963))*

31 Logan, Knowledge as Power: Criminal Registration and Community Notification Laws in America 54-55, 66-79(Stanford Univ Press, 2009). In the federal criminal justice system tier designation (I-III, the latter being the most serious) also affects sentencing under the United States Sentencing Guidelines when an individual violates federal registration provision. *United States v Berry, 814 F 3d 192, 195(4th Cir 2016)*. One such provision criminalizes residence changes from one state to another without notifying authorities.

moderate risk sex offenders to live in the community with appropriate restrictions and undergo mandatory outpatient treatment. The latter option is significantly cheaper than incarceration.

Second, risk assessment criteria allow courts to impose future restrictions in proportion to an offender's prior acts. Judges and scholars critical of the uniformly applied residency restrictions have urged this type of nuanced, individually tailored approach. In *Leroy*, Judge Kuehn criticized the disconnect between risk and punishment caused by uniformly applied residency restrictions:

> [A] man branded a child sex offender for having had consensual sex with a seventeen-year-old girl could safely reside in close proximity to toddlers gathered at a daycare center, but present a problem living across the street from a high school. On the other hand, a pedophile grandfather, branded a child sex offender for fondling his young grandchildren, and their friends, presents a potential problem living across the street from a daycare center, but could safely reside in close proximity to a high school. [Instead], this act treats all offenders alike, without consideration of whether a particular offender is likely to re-offend....[32]

Dissenting in *Miller*, Judge Melloy similarly concluded that the uniform application of residency restrictions made no sense without a determination of on-going individual risk.[33]

The use of risk assessment criteria to determine appropriate sentences for convicted sex offenders, while not fool proof, would nonetheless be a considerable improvement over the current method of meting out uniform punishment to all. That said, assessment criteria would be a large step forward in managing the risk of sex offenders. Such a system would alleviate ex post facto concerns and mollify the critics who contend that with the current residency restriction laws, "sex offenders are subject to the residency restriction regardless of whether they pose a danger to the population."[34] In addition, the use of risk assessment criteria and tailored restrictions would

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32 *People v Leroy, 357 Ill App 3d 530, 553, 828 NE 2d 769, 791(Ill Ct App 2005)*(Kuehn, J, dissenting)

33 *Doe v Miller, 405 F 3d 700, 726(8th Cir 2005)*(Melloy, J, concurring in part and dissenting in part)

34 *Doe v Miller, 298 F Supp 2d 844, 87(SD Iowa 2004), rev'd, 405 F 3d 700(8th Cir 2005), cert denied, 126 S Ct 757(2005)*

allow states to better allocate their finite resources to incarcerate and control high-risk offenders while letting the lowest risk offenders return to society with appropriate minimal supervision. Narrowly tailored residency restrictions, based on the circumstances of each individual sex offender, would also be more likely to withstand judicial scrutiny then those that applied to all.

The handling of sex offenders is one of the most well publicized criminal justice issues in our nation today, and states are trying a wide variety of strategies to manage sex offender risk of recidivism. Some strategies, like registration, appear to be here to stay, for better or for worse. Others such as residency restrictions, have not faced Supreme Court scrutiny and very well may fail based on their retroactive, ex post facto application in a uniform manner to all offenders, regardless of demonstrated risk of recidivism and elapsed time since conviction. These flawed strategies should be modified or replaced by a scheme that borrows from the best practice of various states.

First, courts need to be more willing to take time to tailor the restrictions and punishments imposed on sex offenders to the crimes committed, the probability of the offenders' recidivism, and their likely victims. Risk assessment criteria like Nebraska's would allow courts to factor criminal history and future risk of harm into sentencing and conditional release, ending the practice of uniformly-applied laws instead efficiently focusing police resources on the highest risk offenders. Further, states should use the risk assessment criteria to grant longer, indeterminate sentences for the minority of sex offenders to enable those that can improve to do so.

"Factors associated with sex offense recidivism have been identified through research and have been incorporated into the development of actuarial risk assessment instruments .... Though they cannot predict that a specific individual will or will note reoffend, risk assessment instruments are useful for screening offenders into relative risk categories." Jill S Levenson et

al, *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 ANALYSES OF SOC ISSUES & PUB POL'Y 1, 20(2007).

The absence of individualized risk assessment (i.e. a method of distinguishing between offenders based on the threat they pose) is an important factor that tends to render retroactive operation of sex offender laws excessive. *Wallace v State, 905 NE 2d 371.* Other courts have emphasized the first *Mendoza-Martinez* factor—affirmative disability or restraint—and have found measures such as electronic monitoring and residency restrictions impose substantial limitations on an offender's freedom of movement. *32 A 3d at 199; Baker, 295 SW 3d at 446-47.*

Still others have focused on the second *Mendoza-Martinez* factor—similarity to traditional forms of punishment—and have found aspects of sex offender laws resemble traditional punishments such as banishment or shaming.

VIII. WHETHER RESPONDENTS' ORDINANCE CONFORMED TO THE REQUIREMENTS OF THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION

In *Miami-Dade*, the Eleventh Circuit explained that any ex post facto challenge must allege (1) "the [jurisdiction's] residency restriction applied retroactively"; (2) it "imposes a direct restraint on [plaintiff's] freedom to select or change residences"; and (3) it is "excessive in comparison to its public safety goal of addressing recidivism." *Miami-Dade, 846 F 3d at 1184-85.*

A Sixth Circuit case holding that Michigan's Sex Offender statutory regime (which as, relevant here, prohibited registered sex offenders from living, working, or loitering within 1000 feet of a school) violated the Ex Post Facto Clause. *Does #1-5 v Snyder, 834 F 3d 696, 698, 706(6th Cir 2016), reh'g denied (Sept 15, 2016), cert denied sub nom, Snyder v John Does #1-5, 138 S Ct 55, 199 L Ed 2d 18(2017).*

IX. WHETHER THESE RESIDENCY RESTRICTIONS OR EXCLUSION RESTRICTIONS ARE PUNISHMENT

Even these courts rejecting ex post facto challenges have generally conceded that, in contrast to registration-notification laws, residency statutes (1) at least somewhat resemble the traditional punishment of banishment,[35] (2) impose an affirmative restraint, and (3) advance deterrent and retributive aims. Thus, since the first three of the five relevant Mendoza-Martinez factors point more strongly toward a punitive effect, courts must rely heavily on the fourth factor, the non-punitive purpose of residency statutes is the same as that of registration-notification laws—protection of children from sexual abuse. The remaining question is: when does the burden imposed by a statute become excessive in relation to the aim?

Given that, three factors already weigh in favor of ruling that exclusion zones are punishment, the state should have to provide some evidence that its chosen means are not excessive. The State may succeed is exclusion zones are the only way to protect children, or at least a particularly effective way to do so. But until the state shows some proof beyond a mere "common sense," courts should label this severe restraint of sex offenders as what it is—additional punishment that legislatures cannot constitutionally apply retroactively. The state interest in protecting children cannot trump the constitutional ban on ex post facto laws. In order for our criminal justice system to work, and remain fair, citizens must know what punishment attaches to a behavior before engaging in that behavior. It is unfair to impose such substantial restrictions merely based on a prior conviction; particularly when so many defendants plea bargain for various practical reasons.

X. WHETHER RESPONDENT'S SEXUAL OFFENDER ORDINANCE WAS BASED ON FACTS OR WAS BASED ON FEAR-BASED DRIVEN BY THE OUTRAGE FROM THE PUBLIC

In the United States, sex offenders are uniquely regarded as moral lepers, in need of constant supervision and forced to the margins of society.

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35 See *Miller II, 405 F 3d 700, 719(8th Cir 2005)*(rejecting direct analogy between residency restrictions and banishment, but admitting that banishment "involves an extreme form of residency restriction."), *cert denied, 546 US 1034, 126 S Ct 757, 163 L Ed 2d 574(US Nov 28, 2005).*

The public's fear of persons who have committed crimes of a sexual nature is so extreme that policymakers across jurisdictions have become convinced that traditional criminal law and sentencing regimes are inadequate to protect public safety.

Citing evidence in the record by the three plaintiffs and several witnesses, Judge Matsch concluded that:

> the effect of publication of the information required to be provided by registration is to expose the registrants to punishment inflicted not be the State but by their fellow citizens.
> The fear that pervades the public reaction to sex offenders ... generates reactions that are cruel and in disregard if any objective assessment of the individual's actual proclivity to commit new sex offenses. The failure to make any individual assessment is a fundamental flaw in the system.

Millard v Rankin, 265 F Supp 3d 1211(D Colo 2017), Appeal Filed, No 17-1333, Sept 21, 2017.

Fears are not reality, and they should not be allowed to cloud the constitutional issues in this case.

Whereas a legislature acts quickly to pass a new law, or amend an existing one, in response to a notorious crime, but fails to consider social science data bearing on the necessity and effectiveness of the law, there is increased danger that the legislature is merely responding to community fear and outrage rather than engaging in reasoned and dispassionate analysis. Lawmakers' failure to consider relevant data constitutes serious cause for concern.

If upon weighing the four factors, a court determines that there is a substantial danger that the law resulted primarily from fear and outrage, rather than thoughtful consideration of the issues, that court should more closely scrutinize the relationship between the means and ends of the statute.

For example, once the Supreme Court concluded in *Moreno, Cleburne,* and *Romer,*[36] that those laws were motivated by fear and prejudice, the Court refused to defer completely to the justifications offered by the

36 413 US 528; 473 US 432; 517 US 620

government in defense of the law. In addition, they also hold that laws obviously based on fear and prejudice are irrational and therefore entitled to no deference from the courts. *3 U St Thomas L J 600*(**App 4A**), attempts to articulate a framework to determining when a public safety law, such as a sex offender residency restriction, is rooted in fear despite its ostensible community safety purpose. Thus, if a court concluded that a sex offender residency statute was driven primarily by community fear and outrage, the Court would then examine more rigorously the question of whether prohibiting sex offenders from living near schools, actually protects children from sexual abuse.

Sex offender residency restrictions likely fail the test proposed in 3 U St Thomas L J 600, 623-24. These laws are a response to the public's growing outrage and fear of sex offenders created the frenzied media coverage of child abduction cases. These restrictions are not based on evidence of their effectiveness. To the contrary, they are potentially counter-productive. Lastly, these restrictions impose an enormous burden on offenders, many of whom have long ago been punished for their crimes.

At one of the meetings of the City Council of Respondent, had stated:

> Chair Chris Wery asked if the entire City were red, would this be unconstitutional?
> Atty Jon Nitti stated that you couldn't make a blanket prohibition
> Ald. Tom De Wane stated he would not have a problem with seeing the entire map red. These offenders gave no thought for the women who were raped or the children they assaulted. These victims don't get another chance.
> Ald. Chad Fradette stated that under the 2000-foot restriction there are still ten areas of the City that they could live. It looks to be about 5-10% of the City's area. He asked Atty. Jon Nitti if he could defend this?
> Atty. Jon Nitti stated as long as it is not a total prohibition you could defend it he supposed. He would be more comfortable with the 1500 feet. He could defend 2000 feet because there are still areas available. He can't say 100%. He is more confident with 1500 feet and less comfortable with 2000 feet.
> Ald. Tom De Wane stated he is willing to take a chance.

> Ald. Chad Fradette stated he is willing to entertain it. Chair Chris Wery stated that this is a tough issue. There is not an easy answer. This won't cure or wipe it out. If it helps even a small percentage then it was worth the effort. People are already scared. They want something done. Their duty is to protect the innocent. These new laws will be perfected with time. This can be reviewed every six months and perfect it. He is in favor of 2000 feet.[37]

CONCLUSION

The petition for a writ of certiorari should be granted, in that he was subjected to the Ordinance, based on his original offense that was committed in 1998, and based alone on that, since there was no individual risk assessment completed, and that there was no type of appellate review of the determination by the Residency Board, that, since this was in addition fear-based and based on public outrage, with no scientific evidence to substantiate the Ordinance, that this Court should conclude that the matter resembles *Does #1-5 v Snyder* and Grant Certiorari in his favor, and in effect, determine that this matter should be implemented across the board. Lastly, in a recent development, the Decision from *Does #1-5 v Snyder, Snyder* (the State of Michigan) is not even following the Sixth Circuit Court of Appeals decision. With the various materials enclosed in the Appendix, this will ultimately show that what he is pointing out is correct and should be considered.

Dated this 25th day of February, 2019

Respectfully submitted,

Petitioner
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[37] Minutes Production and Welfare Committee Wednesday, February 28, 2007