127464

On Direct Appeal from the Circuit Court

for the Sixteenth Judicial Circuit, Kane County, Illinois

Kopf

Plaintiff-Appellee/Cross-Appellant

v.

Kelly, Raoul, and McMahon

Defendants-Appellants/Cross-Appellees

and

Hampshire Police Department

Defendants

19-CH-000883

The Hon. Kevin T. Busch

Judge Presiding

Martin T. Kopf *pro se*

724 Kathi Dr.

Hampshire, IL, 60140

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Nos. 127464, 127487 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

MARTIN KOPF, Plaintiff-Appellee/Cross-Appellant v. BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, and JOE McMAHON, in his official capacity As Kane County State's Attorney, Defendants-Appellants/ Cross-Appellees and HAMPSHIRE POLICE DEPARTMENT, Defendants	)	On Direct Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois No. 19-CH-000883 The Honorable KEVIN T. BUSCH Judge Presiding

PLAINTIFF'S REPLY BRIEF

127464

TABLE OF CONTENTS
PONTS AND AUTHORITIES

127464

127464

127464

127464

127464

ARGUMENTS ON CROSS-APPEAL

Plaintiff brings a constitutional challenge to the "Scheme" asserting that it violates the prohibition on *ex post facto* laws under the Illinois and United States' Constitutions; violates substantive due process under The United States' and Illinois' Constitutions; violates the prohibition against the constitutionally repugnant use of irrebuttable presumptions; violates substantive due process; and violates the equal protection clauses of the United States' and Illinois' Constitutions. These arguments are posed as-applied to the Plaintiff, someone who pleaded guilty to a sex offense over two decades ago and who has not had a criminal conviction or moving violation since.

The Plaintiff challenges the following statutes: the Sex Offender Registration Act, 730 ILCS 150/7; the Sex Offender Community Notification Law, 730 ILCS 150/3; and the residency and presence restrictions, 720 ILCS 5/9.3-9.4.

The circuit court granted in part Defendants' motion to dismiss ("MTD") but found that the residency restriction was facially unconstitutional by violating Plaintiff's rights to equal protection and substantive due process While Plaintiff's claims were styled "as-applied," the circuit court found the residency restrictions were facially violative of the constitutions. The distinction between facial and as-applied constitutional challenges is critical. *Hartich v. Harley-Davidson*, 2018 IL 121636, ¶11. A party raising a facial challenge must establish that the statute is unconstitutional under any possible set of facts, where an as-applied challenge requires showing that the statute is unconstitutional as it applies to the specific facts and circumstances of the challenging party. *Id.* ¶12.

127464

The circuit court found a facial defect in the definition of a home-daycare and its interplay with the residency restrictions, By doing so, the court found that a more narrow as-applied ruling was not necessary as the definition of home-daycare and how it affects the residency restrictions is unconstitutional in all applications.

I. Plaintiff has not abandoned his right to an evidentiary hearing.

Instead of replying to Plaintiff's complaint, the Defendants sought a 2-615 Motion to Dismiss the *ex post facto,* due process, irrebuttable presumption and equal protection claims. A 2-615 MTD admits the facts of the case, including "[e]xhibits attached to the complaint" as they are "included as part of the complaint and must also be considered." *Lipinski v Martin J. Kelly Oldsmobile*, 325 Ill.3d 1139. 1147 (1st Dist. 2001). Because the Defendants, through the MTD, admitted the facts of the case, the Plaintiff has not waived any evidentiary hearing as he has not had the opportunity to for an evidentiary hearing due to Defendants' strategy.

Further, Defendants filed a motion for remand, asking in part for this Court to remand for an evidentiary hearing and a clarification of the circuit court's order in accordance with Illinois Supreme Court Rule 18. This Court remanded the case for the sole and limited purpose of compliance with Rule 18. Had this Court felt that an evidentiary hearing was proper, then this Court would have ordered an evidentiary hearing as well. Upon remand, the Defendants *still* attempted to circumvent this Court's order and demanded an evidentiary hearing or stipulations. While Plaintiff did object to the Defendants attempt to disregard this Court's order, this objection was not entertained by the circuit court, as it correctly found that compliance with Rule 18 does not require an evidentiary hearing.

127464

Finally, the Defendants attempt to shift the blame for lack of an evidentiary hearing to the Plaintiff, a *pro se* litigant. Yet the Defendants chose their strategy to moved for a dismissal instead of responding to the complaint and proceeding to an evidentiary hearing. The Defendants also sought remand for compliance with Rule 18. A rule 18 finding only concerns the duties required upon a circuit court decision when declaring a statute unconstitutional. *People v. Cornelius*, 213 Ill.2d 178 (2004). That this Court did not remand for the purpose of an evidentiary hearing as well as compliance with Rule 18 must be the deciding factor.

Defendants' claim that this Court remanded the matter back to the circuit court to allow it to make factual findings is completely inaccurate. Compliance with Rule 18 does not address factual findings. As such, Defendants' argument that a "party cannot complain of error which that party induced the court to make or to which that party consented," (*In re Detention of Swopes*, 213 Ill.2d 210, 217 (2004)) applies to them instead of Plaintiff. Had the circuit court decided that an evidentiary hearing was required possibly would have been an appealable error. Had it found an as-applied unconstitutionality to the statute would also have been appealable. But in the end, Defendants are arguing a point they already know is false: "In regard to the facial finding, we do agree that an additional stipulated record would not be needed." Sup 2 R 21.

II. Plaintiff's arguments are properly before this Court.

Plaintiff had previously identified the fundamental rights of owning property and raising one's children in support of strict scrutiny for his substantive due process, irrebuttable presumption, *ex post facto,* and equal protection claims. Defendants have repeatedly denied

127464

that the Scheme implicates any life, liberty or property interest. Plaintiff has only rebutted this assertion and therefore, the fundamental rights are properly before this Court.

A. Defendants' reliance on Lazenby is misplaced.

Defendants argue that Plaintiff's recognition of even more fundamental rights implicated by the Scheme are not properly before this Court, relying on *Lazenby v. Mark's Const. Inc.,* 236 Ill.2d 83 (2010). Plaintiff asserts that Defendants are incorrect in their reliance on *Lazenby* (argument not raised in circuit court forfeited on appeal) (*Id.* 92).

The plaintiff in *Lazenby* raised for the first time on appeal to this Court new arguments (trial court error; rule does not apply to willful and wanton conduct). (*Id.*) But there is a difference in what the Plaintiff is bringing forth in the instant case. Plaintiff has already stated that fundamental rights are at issue, some of which only arose during the ongoing restrictions of his civil rights while this case has been proceeding (attack happened 16 June 2022; divorce filed August 2022). These are issues that could not have been predicted.

The fundamental rights identified for the first time on appeal are not new arguments like *Lazenby*. For example, Plaintiff is not bringing a new claim stating that the Scheme violates his right to bear arms. "Defendants argue for the first time before this court that, as a matter of law, the allegations in plaintiff's complaint are insufficient to demonstrate that their conduct proximately caused the decedent's injuries." *Marshall v. Burger King Corp.,* 222 Ill.2d 422, 43031 (2006). Stated another way, Plaintiff is not bringing "a new argument [which] poses an alternative theory of the case." *Dineen v. City of Chicago,* 125 Ill.2d 248, 266 (1998). Therefore, Defendants' reliance on *Lazenby* is inapposite to the identification of more fundamental rights

127464

implicated by the Scheme. Alternatively, Defendants argue that the Scheme does not affect any life, liberty or property interests. Plaintiff's inclusion of the rights is a rebuttal to the Defendants' claims and therefore should be allowed.

B. This Court has recognized exceptions to the "forfeiture rule."

Even if this Court does not accept the above arguments to recognize all the fundamental rights implicated by the Scheme meticulously laid out in his cross-appeal brief, Plaintiff still suggests that they are properly before this Court.

This Court has consistently recognized that there are exceptions to the forfeiture rule. One exception that this Court has recognized is when an issue is "inextricably intertwined with other matters before the Court. *Hansen v. Baxter Healthcare Corp.,* 198 Ill.2d 420, 430 (2002). Plaintiff asserted throughout his opening brief and complaints that fundamental rights were implicated by the Scheme. These fundamental rights are "inextricably intertwined" with his arguments that strict scrutiny should apply to equal protection violations; the imposition of an irrebuttable presumption; violation of the ban on *ex post facto* laws; and violation of his substantive due process rights. The recognition of these fundamental rights would require a court to proceed under an analysis greater than rational-based, hence the rights would be "inextricably intertwined" to the constitutional issues at hand.

Finally, this Court has found that the forfeiture rule "is not a jurisdictional bar to review a matter but, rather, 'a principle of administrative convenience.'" *In re Rolandis G.,* 902 N.E.2d 600, 613-14, (2008)(*quoting Dineen,* 265-66).

127464

For the foregoing reasons, Plaintiff asks this Court to find the fundamental rights expressed in his opening brief to be properly before this Court.

III. Response to Defendants' denial that fundamental rights are implicated.

A. The Scheme interferes with Plaintiff's right to raise his children.

Defendants have offered brief denials of each of the fundamental rights which Plaintiff asks that this Court recognize are implicated by the Scheme. Plaintiff would first like to respond to the Defendants' answer to parental rights. Defendants acknowledge that Plaintiff has the right to make decisions involving the care, custody and control of his children without unwarranted intrusion by the state. But this is exactly what the Scheme does; it places undue burdens on the Plaintiff in parenting his children, so much that the Scheme makes it nearly impossible for the Plaintiff, now living as a single parent, to retain his rights to have complete care, custody and control of his children during his parenting time. Defendants do not dispute Plaintiff's arguments that he is unable to support his children's education (including extra-curricular activities), attend doctors' appointments, pick up his children from school in case of an emergency/illness, all the other ways Plaintiff illustrated in his opening brief. Instead, Defendants only argue that Plaintiff's right to parent his children is not implicated by the residency restrictions. They offer no rebuttal to Plaintiff's claim that this right is implicated by the imposition of the Scheme in its entirety. But ignoring Plaintiff's claim does not make it go away.

But the Defendants do not appreciate the implications of the residency restrictions either. No matter where Plaintiff moves for the rest of his life, law enforcement can force him to

127464

vacate on as short as 22 days notice. This fact, in conjunction with the Dissolution of Marriage Act ("DOMA") 750 ILCS 5/ can and will affect Plaintiff's parenting time. For example, if Plaintiff is forced from his home by the decision of this Court, Plaintiff will be homeless. And once Plaintiff is forced from his home because of the residency restrictions, DOMA states that the family court can take that into consideration in determining parenting time. 750 ILCS 5/602.7(b-15). So yes, the residency restrictions do affect Plaintiff's parenting rights.

As for Defendants' argument that section 11-9.4-1(b) of the Criminal Code, which prohibits Plaintiff from being present in a public park, the argument misses the mark. In *People v. Legoo*, 2020 IL 124965, this Court rejected the challenge on the basis that there was "no fundamental right for any person to be present in a public park." *Id.* ¶32. Yet, as this Court also pointed out, the defendant did "not cite any authority holding that he is entitled to take his child to a public park as part of his liberty interest in raising and caring for his child. If defendant does not have a fundamental liberty interest to be present in a park, it follows that he does not have a fundamental right to take his child to a park either." *Id.* Yet Plaintiff cited the Human Rights Act 775 ILCS 5/5-102, ("HRA") which states: "[i]t is a civil rights violation for any person on the basis of unlawful discrimination to...[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation." Included in public accommodations relevant to Plaintiff's challenge are parks, daycare centers, schools, doctor's office, etc. *Id.* §101. Plaintiff asserts that because these are civil rights, and Plaintiff is a *supposedly* "free" citizen, not under control of the courts, parole or probation, he has the same fundamental liberty rights as any other free citizen.

127464

And Defendants' attempts to limit the HRA are misplaced. Nowhere under the HRA does it explicitly allow the state or any other person to prohibit Plaintiff's access to public accommodations by virtue of any conviction. In fact, the HRA does quite the opposite; it expressly prohibits denial of the enumerated civil rights to any person with a conviction record. 775 ILCS 5/1-103(G-5).

Defendants further argue that "[P]laintiff did not allege that he was charged with violating section 11-9.4-1(b). Yet Defendants ignore the doctrine of standing, as Plaintiff (and by extension his children) have a real interest in the outcome of this controversy. *People ex rel. Hartigan v. E & E Hauling Inc.,* 153 Ill.2d 473, 482 (1992). Standing requires some injury to a legally cognizable interest. *Greer v. Illinois Housing Development Auth.,* 122 Ill.2d 462, 492 (1998). The injury could be actual or *threatened,* and must be: distinct and palpable; fairly traceable to Defendants' actions; and likely to be prevented by the grant of declaratory and injunctive relief. *Id.* 492-93. Plaintiff has a legally cognizable interest in the civil rights granted under the HRA. Section 11-9.4-1(b) infringes on Plaintiff's interest in attending his children's school events, extra-curricular activities, doctors' appointments, and his civil right to go to other places of public accommodation. Therefore, Defendants' argument that Plaintiff lacks standing because he was not arrested lacks merit. The *threat* of arrest is enough to invoke standing.

B. Plaintiff has a right to interstate and intrastate travel.

Defendants have already admitted interstate and intrastate travel are fundamental rights. Plaintiff identified only three examples which have deterred his travel in his opening brief. And Defendants point out that giving law enforcement information to monitor the movements of the Plaintiff by "allowing ready access to crucial information" (*People v. Adams,*

127464

144 Ill.2d 381, 388 (1991)) makes the right to travel "inextricably intertwined" with all of Plaintiff's claims. When Plaintiff pleaded guilty to his offense in 2003, the travel restrictions were 10 days. While Plaintiff is unable to find the exact timeline and Public Act numbers, the law was later changed to 5 days and even further reduced to 3 days away from his residence on 01 January 2011. That the law makes it a criminal offense for Plaintiff to be away from his residence, not just travelling out-of-state, implicates both intra/interstate travel. As the law stands now, Plaintiff must spend 3 days reporting to law enforcement in order to travel for 49 hours: informing local police of his itinerary; reporting to law enforcement upon arrival; and reporting to law enforcement upon his return. No other "free' citizen is required to do the same.

C. The Schem most definitely affects Plaintiff's property rights.

There can be no doubt that the Scheme affects Plaintiff's rights to the use and enjoyment of his property. Defendants claim that his expectation of property rights is the date in which he took up residence in his home. This argument ignores the history and values of the *ex post facto* clauses of both the United States' and Illinois' constitutions, Supreme Court precedent and the consensus of the Appellate Circuits and state courts. *Koch v. Village of Hartland,* 43 F.4th 747, 751-55 (2022)(*and cases cited therein*). To avoid *ex post facto* violations, the property rights expectation must be the date in which the Plaintiff pleaded guilty. In *Koch,* the court overruled their findings in *Vazquez v. Foxx,* 895 F.3d 515, 520 (7th Cir. 2018)(holding that a law applying "only to conduct occurring *after* the law's enactment" is not retroactive.). In *Smith v. Doe,* 538 U.S. 84 (2003) the Supreme Court implicitly acknowledged that a scheme which applies to people with convictions before the effective date is retroactive. "The Alaska

127464

law,...contains two components: a registration requirement and a notification system. Both are retroactive." *Id.* 90.

The Defendants' argument must also fail on the holdings in *Weaver v. Graham,* 450 U.S. 24 (1981), and adopted in *Koch*. In *Weaver,* the Supreme Court found that a state law was retroactive when it applied to all persons, even those convicted before its effective date. *Id.* 27. A law that "applies to [persons] convicted for acts committed before the provision's effective date" is retroactive. *Id.* This Court has noted that it interprets this state's *ex post facto* provision in lockstep with the Supreme Court's pronouncements. *People ex rel. Birkett v. Konetski,* 233 Ill.2d 185, 203 (2009).

Defendants' argument that "grandfathered individuals have a reliance interest based on their acquisition before the restrictions took effect" *Caulkins v. Pritzker,* 2023 IL 129453 ¶70-71) is misplaced as it ignores Defendants' claim of the purpose of the statute. *In re M.A.,* 2015 IL 118049 ¶29 ("The determination whether individuals are similarly situated generally can only be made by considering the purpose of the legislation.") Defendants allege the purpose of the legislation is to protect children from persons convicted of a sex offense against a child. So the class would then include *all* persons who were once convicted of a sexual offense against a child.

Finally, "[e]very owner has the right to use his property in his own way and for his own purposes, subject only to the restraint necessary to secure the *common* welfare. This privilege is both a liberty and property right." *Hannifin Corp., v. city of Berwyn,* 1 Ill.2d 28, 35 (1953)(*emphasis added).* And this is why the circuit court found that the residency restrictions were found to be facially unconstitutional under both equal protection and substantive due

127464

process. The phrase "common welfare" is used. But the residency restrictions only apply to certain entities, not the common welfare of children in general, i.e. the law does nothing to allegedly protect the approximately 50 children living within the 500 foot radius of Plaintiff's home. It only protects the welfare of the 2-3 children attending the home-daycare.

D. Plaintiff has an individual freedom and fundamental right to practice his Catholic faith.

In their arguments, Defendants ignore the Illinois Religious Freedom Restoration Act ("RFRA") specifically 775 ILCS 35/15 which states: "[g]overnment may not substantially burden a person's exercise of religion, even if the rule results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling state interest and (ii) is the least restrictive means of furthering that compelling state interest." According to the statute, the RFRA was passed to enshrine in Illinois state law the decisions espoused in Plaintiff's opening brief, specifically *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and *Sherbert v. Verner,* 374 U.S. 398 (1963). (§ 35/10(b-1)). Further, it applies retroactively to all laws. Therefore, Defendants' claim that *Morr-Fitz v. Blagoyevich,* (231 Ill.2d 474 (2008)) is controlling is absolutely incorrect.

E. Under the Illinois Constitution, Plaintiff has a right to privacy.

As for the right to privacy, explicitly mentioned in the Illinois Constitution Art. I Sect. 6, Plaintiff stands by his arguments in his opening brief. But in further support of his claim that he has a fundamental right to privacy, which would implicate strict scrutiny on all his claims, Plaintiff asserts that this Court has noted that citizens have a right to privacy when the State obtains "access to personal documents and records or...engage[s] in 'close scrutiny of [the]

127464

personal characteristics' of an individual." *People v. Caballes,* 851 N.E.2d 26, 50 (2006). This Court went on to note that the "confidentiality of personal medical information is, without question, at the core of what society regards as a fundamental component of individual privacy." *Id.* 51 (quoting *Kunkel v. Walton,* 179 Ill.2d 519, 537 (1997)(*internal quotes omitted*).

Defendants attempt to use *People v. Cornelius,* 213 Ill.2d 178 (2004) to rebut Plaintiff's claims. But *Cornelius* is distinguishable from the case at bar in a few aspects: 1. *Cornelius* did not cite state law which says that certain information is private i.e. phone number, email address etc.; 2. the information disseminated has been consistently used to harass Plaintiff and his children, threaten Plaintiff and even brutally attack Plaintiff; and 3. The information disseminated includes medical scars, most not readily visible unless Plaintiff partially disrobes. *Cornelius* did not complain of those things whereas Plaintiff has. And that ties into Plaintiff's claim of his right to be free from assault and harassment as part of his fundamental right to life.

F. Plaintiff has a fundamental right to reputation under the Illinois Constitution.

Plaintiff is not suggesting that he shouldn't have faced a hit to his reputation upon his conviction. What Plaintiff is saying is that the Illinois Constitution protects the right to reputation and that must include the right to repair one's reputation. Yet, the imposition of the Scheme interferes with his reputational rights, even after over two decades. The advertisement of Plaintiff as a supposed "sexual predator" by the state interferes with Plaintiff doing any good in his life to atone for his past transgression. That Plaintiff has led a law-abiding life for the past two decades matters not. In fact, if not for the state's insistence on advertising a crime that Plaintiff committed over two decades ago, no one would know about it and Plaintiff could have

127464

possibly helped people, especially other veterans suffering from mental health issues as Plaintiff does.

In short, the reputational right is implicated in the fact that Plaintiff must spend the rest of his life under the Scheme, restricting his movements and actions throughout society because all persons who commit a sex offense, especially those who committed one against a child, will forever be dangerous to the community, especially children. To broadcast worldwide, a picture of the Plaintiff with the words "sexual predator" above his picture along with his current address and current description is telling society that this is a person to stay away from.

IV. Reply to Irrebuttable Presumption Arguments

Plaintiff has brought forth for the first time in Illinois and only the second time in the nation (*see Commonwealth v. Torsilieri,* 232 A.3d 567 (Pa. 2020)) a claim that the Scheme employs the use of an unconstitutional irrebuttable presumption)("I.P."). The Defendants do not dispute the fact of the I.P., instead they embrace the use of it throughout their arguments while simultaneously arguing that I.P. only implicates procedural due process.

Plaintiff's arguments are styled as such: the continued imposition of the Scheme on the Plaintiff is either punishment, a presumption that Plaintiff will reoffend, or just plain arbitrary (or some combination thereof). There must be a reason for the continued imposition of restrictions and requirements that affect every aspect of Plaintiff's life, and by extension his children's lives. Defendants argue that "he is subject to the residency restriction[s] and registration requirement[s] by virtue of his conviction, not based on his likelihood to reoffend" Plaintiff's Reply Brief 19. ("PRB"). This could only mean that the Scheme is extra-judicial

127464

punishment or arbitrary, thereby implicating *ex post facto* and/or substantive due process violations.

Defendants argue this while simultaneously arguing that the Scheme is designed to keep those who were once convicted of a sex offense against a minor away from minors to protect children. The Defendants' briefs are peppered with these presumptions. Therefore, Plaintiff argues that the Defendants admit that the Scheme statutorily imposes a presumption. And because the Scheme does this without giving Plaintiff a chance to prove he is not dangerous, it would then meet the standard of being irrebuttable.

A. Both procedural and substantive due process are implicated in an irrebuttable presumption as well as equal protection.

Plaintiff has identified numerous protected rights that are implicated by the Scheme. Therefore, contrary to the Defendants' arguments, he is due process as well as equal protection under both the United States' and Illinois' Constitutions. As Plaintiff has repeatedly pointed out throughout his complaints and briefs, he is *supposedly* a "free citizen," not under the control of the courts, probation or parole. Yet, he remains under the direct control, supervision and surveillance of law enforcement, even after he completed his sentence 17+ years ago. And without intervention from this Court, he will remain that way for the rest of his life. Plaintiff has maintained that argument throughout, thereby implicating a liberty interest to be free from the control of law enforcement. Because this Court has never heard an I.P. challenge to the Scheme, nor has this Court ever heard a challenge from someone after 20+ years being subjected to the Scheme, Plaintiff asks this Court to consider this a matter of first impression.

127464

Plaintiff has identified numerous cases in which the Supreme Court and this Court have found that statutes which arbitrarily imposed a presumption without a chance to prove said presumption were unconstitutional: *Stanley v. Illinois,* 405 U.S. 645 (1972)(statute arbitrarily deemed all single fathers as unfit parents); *Vandis v. Kline,* 412 U.S. 412 (1973)(statute arbitrarily deemed all university students as out-of-state students for tuition purposes for the entirety of their education)' *Torsilieri,* 232 A.3d 567 (Pa. 2020)(arbitrarily designates someone convicted of sex offense as dangerous); *Carrington v. Rash,* 380 U.S. 89 (1965)(arbitrarily denying all servicemembers stationed in Texas the right to vote); *In re D.W.,* 214 Ill.2d 289 (2005)(arbitrarily designates all persons convicted of certain crimes against children as unfit parents); and others. Each of the above cases were decided upon more than just procedural due process. The substantive due process of an I.P. is the *arbitrary* designation.

Defendants can only rely on cases wherein the challenges to the Scheme were brought on the *initial* imposition of the Scheme. No Illinois court has heard a challenge based on the *continued* arbitrary imposition of the Scheme for life, while others convicted of a sex offense are arbitrarily and extra-judicially only required to serve 10 years under the Scheme. By arbitrarily basing the length of time having to endure the weight of the Scheme while also living in constant fear of violating one of the ever-changing, inane and arbitrarily-imposed requirements of the Scheme implicates substantive due process.

Procedural due process is also implicated because the Scheme is imposed by statute, allowing enhanced restrictions based on allegations of future dangerousness. Because this was done without any hearing, without proof beyond a reasonable doubt, Plaintiff alleges it is in

127464

violation of *Alleyne v United States,* 570 U.S. 99 (2013) and *Apprendi v. New Jersey,* 530 U.S. 466 (2000).

But the procedural due process protections go farther than that under an I.P. The above cited cases all found that once the statutory presumption is enacted, there *must* be a process in which to disprove the presumption. The Scheme offers no relief in this aspect as it applies to Plaintiff's lifetime requirements under the Scheme.

As for the equal protection portion of an I.P., there are six classifications of persons who have been convicted of a sex offense; those labelled sex offenders("SO"); sexual predators("SP); sexually dangerous persons("SDP"); sexually violent persons("SVP"); child sex offenders("CSO"); and Romeo and Juliet child sex offenders "(RJ"). Those labelled as SO are arbitrarily and automatically removed from the Scheme after 10 years. An arbitrarily labelled SP is never removed. An SP will have "SEXUAL PREDATOR: in big bold red letters above that person's picture on the internet for the rest of their life. An SDP not only receives a hearing before being labelled but also receives a hearing at a later date to determine if the person is still dangerous. 725 ILCS 205. To have a person labelled as SDP requires proof beyond a reasonable doubt (205/3.01) that "it is substantially probable that the person...will engage in the commission of sex offenses in the future." 205/4.03. An SVP receives the same hearing and level of proof before the label attaches and an opportunity to have a hearing to determine if the person is still dangerous. 725 ILCS 207. The CSO, who is designated based on age and must adhere to all the restrictions laid out in the Scheme for life whereas the RJ is arbitrarily exempt from those restrictions.

127464

The class of persons are everyone who is/was convicted of a sex offense and required to register. What violates the equal protection clauses is that some have a hearing before a label attaches, some are arbitrarily removed and some automatically have the labels, and therefore the accompanying restrictions, for life. In looking at the purpose of the Scheme, which one must do in an equal protection challenge, the Scheme is irrational as if its purpose is to truly protect society from recidivists, then each and every person would get an SDP hearing, to determine if the person "will engage in the commission of sex offenses in the future." Plaintiff has pointed out numerous decisions from other jurisdictions which have found an offense-based Scheme to be violative of substantive due process and/or *ex post facto*.

Because the Scheme has been consistently defended in Illinois courts as protecting the public from future dangerousness of those once convicted of a sex offense, then whether Plaintiff remains a danger to society is relevant to the continued imposition of the Scheme on him. If the Plaintiff's current level of danger is not relevant, as Defendants claim, then the continued imposition must be considered punitive.

V. *ex post facto*

Plaintiff argues that the Scheme, taken as a whole, violates the prohibition on *ex post facto* laws in the United States' Constitution Art. 1 §10 and the Illinois' Constitution, Art. 1 §16 by retroactively imposing punishment on the Plaintiff. As Plaintiff has already shown *supra* that the retroactive prong has been met through numerous precedents, he will move on to address Defendants' rebuttal.

127464

Defendants wish to argue that the Scheme is necessary as it *may* protect *some* people from harm. But that's a presumption, which Defendants have already disavowed in their answer to Plaintiff's I.P. claim. Its illogical for the Defendants to argue the Scheme does not depend on the danger one may pose to society yet state in the next breath arguing the Scheme is necessary to protect society from recidivists.

Plaintiff has shown that he is not a threat to society through 20+ years of being offense-free in the community. This doesn't only include sex offenses, it includes *all* offenses, even moving violations. The Defendants state in their rebuttable to I.P. that dangerousness is not a factor in whether the Scheme applies to him. They insist that the only factor involved in the imposition of his *de facto* extra-judicial life sentence is the crime for which he pled guilty. Plaintiff asserts that if dangerousness is not a factor in imposing a wide-range of restrictions on his movement throughout society and all the other aforementioned effects on his life, the Scheme *must* be considered punishment. Because the Scheme is offense-based, versus risk-based, its purpose cannot be said to protect society. Plaintiff has pointed to multiple decisions from other jurisdictions that have found the respective states' schemes violate *ex post facto* on that very point. And because it attaches to the offense instead of risk, it would be violative of *Alleyne* and *Apprendi*.

The fact that Plaintiff is still under the continuous supervision, surveillance and control of law enforcement, long after his sentence was completed is also indicative of the punitive nature. As Mr. Justice Kennedy stated in *dictum,* "[o}f importance, the troubling fact that the law imposes severe restrictions on persons who already have completed their sentence and are no longer subject to the supervision of the criminal justice system is also not an issue before the

127464

Court." *Packingham v. North Carolina,* 582 U.S. at __ 137 S.Ct. 1730, 1737 (2017). Plaintiff suggests this *dictum* was a warning to states and courts alike: the Supreme Court was concerned about the ever-growing restrictions on supposedly free citizens.

While the Supreme Court recognized the control aspect of Plaintiff's allegations, the Defendants likewise acknowledge the supervision and surveillance aspects of the Scheme by "allowing ready access to crucial information." *Adams,* 388. This begs the question: why is this information so crucial?

Finally, Defendants suggest that *stare decisis* dictates that this Court reject this challenge. Yet, there are a distinguishing factors between the cases Defendants rely on and the issues Plaintiff presents. First the reliance on *People v. Malchow,* 193 Ill.2d 413 (2000), *In re J.W.,* 204 Ill.2d 50 (2003) and *People ex rel. Birkett v. Konetski,* 233 Ill.2d 185 (2009) were all challenging the *initial* imposition of the Scheme whereas Plaintiff is challenging the *continued* imposition after 2+ decades of law-abiding behavior. Defendants also rely on *Smith v. Doe* 538 U.S. 84 (2003) and *People v. Cornelius*, 213 Ill.2d 178 (2004) but multiple state and one federal appellate court have recognized that the current schemes employed do not represent the Alaska Scheme at issue in *Smith*. Most notably, Michigan's Scheme, which closely resembles the current Scheme at issue here, was invalidated on *ex post facto* grounds. *Does #1-5 v. Snyder,* 834 F.3d 696 (6th Cir. 2016)(*cert. denied*). Because there have been numerous changes to the Scheme over the last 19 years, including adding residency and presence restrictions, tightening travel restrictions, increasing the registration fee, and others, the Scheme has now morphed into something which dictates every aspect of Plaintiff's life. Finally, the arguments in the cases Defendants cite were based upon the presumed dangerousness of someone who was once

127464

convicted of a sex offense. The Defendants cannot argue that here without admitting the Scheme creates an irrebuttable presumption.

CONCLUSION

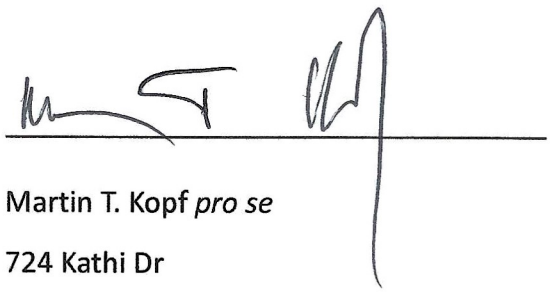
Plaintiff-Appellee/Cross-Appellant requests that this Honorable Court: (1) affirm the circuit court's 22 June and 23 June orders finding the residency restrictions violate Plaintiff's substantive due process and equal protection rights; (2) affirm the circuit court's permanent injunction entered in its 22 June 2021 order; (3) affirm the circuit court's 28 January 2022 and 16 February 2022 orders finding that the residency restriction is facially unconstitutional and violates Plaintiff's substantive due process and equal protection rights; (4) reverse the circuit court's order dismissing Plaintiff's *ex post facto*, irrebuttable presumption, substantive due process and equal protection challenges to the entire Scheme; and (6)either grant declaratory and injunctive relief against all parties named or (7) remand for further proceedings, namely an evidentiary hearing.

Respectfully submitted

/s/ Martin T. Kopf
MARTIN T. KOPF
Plaintiff *pro se*
724 Kathi Dr.
Hampshire, IL 60140
224 800-8321
kopfem@gmail.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the 341 (h)(1) table of contents and statements of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5670 words.



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