

SEX OFFENDER REGISTRY RAISES COMPLEX LEGAL ISSUES

Daniel Scott Fullmer's name is listed in Michigan's Public Sex Offender Registry at www.mipsor.state.mi.us. If his legal challenge fails, this Royal Oak man who is convicted of fourth-degree criminal sexual conduct must report four times a year, for the next 25 years, to his local police department where he will provide updated information on his whereabouts. Among other requirements, he must also be fingerprinted and provide a blood sample for DNA analysis. Failure to comply is a felony and/or a misdemeanor punishable by up to ten years in prison.

A former state corrections officer, Fullmer was fired for having consensual sex with a female inmate at Scott Regional Correctional Facility in 1999 and sentenced to two years probation, which he has served. His lawyer, Thomas Lazar, has described his predicament as a "lifetime of probation." "Michigan law creates a whole new class of citizens—a second class of citizens, the ones with the scarlet letter 'A' on them," Lazar added.

A similar case from Connecticut now before the U.S. Supreme Court drew responses in the same vein from Justices Ruth Bader Ginsburg and Anthony M. Kennedy. They observed that the requirement that offenders register with the police four times a year was "very, very burdensome." At the core of both the Michigan and Connecticut cases are arguments about imposing new punishment for old crimes, the right to privacy, and violating principles of due process.

Laws requiring all sex offenders, including non-violent, first offenders, like Fullmer, to make their whereabouts and presence in the community known are called Megan's Laws. The first such law was enacted in New Jersey in 1994 and named after a child victim, Megan Kanka, who was raped and murdered by a convicted sex offender who was a neighbor. Since then, all 50 states have sex offender registration and notification laws to protect communities from sexual predators.

Current statistics show that Michigan has a total of 30,878 registered sex offenders. Of these, 11,647 are in prison. While 82 percent of Michigan's sex offenders comply with the registration law, there are more than 1,300 sex offenders whose whereabouts are not known. In California more than 33,000 convicted sex offenders are not checking in with the police and the state has lost track of 44 percent of its convicted sex offenders.

In June of last year, the U.S. District Court, presided over by Judge Victoria Roberts, ruled that the Michigan Public Sex Offender Registry violated Fullmer's 14th Amendment rights by failing to provide pre- and post-registration hearings and temporarily removed the list from the website. *Fullmer v Michigan Dept of State Police*, 207 F Supp 2d 650. The Michigan Department of State Police appealed and the case is currently before the Sixth Circuit Court of Ap-

change in legal status and stigmatization violates the 14th Amendment, Lazar maintains in his brief.

Margaret Nelson, Assistant Attorney General in Lansing, who is representing the state, argues that due process is not violated. She points out in her brief that the registration requirement changes the offender's legal status, but it does not stigmatize him. Nelson says that if anything about the law stigmatizes him, it would be notification, not registration. According to Nelson, for due process to be violated, the very same part of the law that changes the offender's legal status must be the stigma. This, she argues, does not occur in this case.

Nelson also states in her brief that notification [putting the offender's name on the web] itself does not stigmatize the offender. Rather it's the fact that the offender broke the law that stigmatizes him. She maintains

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peals, which has put the registry back online while it reviews the case.

In Michigan, "sex offenders are listed and publicly shamed on the Internet without a formal finding that each one still poses a danger to the community," argues Thomas Lazar. He claims that due process is violated because his client has to check in with the police every three months and this changes his legal status because failure to report is a criminal offense. Furthermore, his name is published in a single undifferentiated registry with the "real bad guys" like serial rapists and pedophiles. Lazar says this gives people the misimpression that his client is dangerous and a threat to society. The combination of a

that only truthful information is provided on the registry. On the issue of the "undifferentiated" registry, Nelson's response is that Michigan's approach to make information accessible to members of the public on request is permitted by federal guidelines for community notification.

Daniel Kennedy, a professor of criminal justice at the University of Detroit Mercy, points out that, "New Jersey and many other states differentiate between classes of offenders based on how likely they are to re-offend. If there's a low risk for re-offending, then only the local police are notified. For moderate risk offenders, the police, schools, churches, and community groups are also

notified. If there's a high risk of offending, then Megan's Law calls for the entire community to be notified. They can be notified by the police directly or notification can be made on the website."

Professor Kennedy said, "Notification is the community's right, particularly given the fact that paraphilias (people with abnormal sexual compulsions like child molesters, rapists, and masochists) are very, very, difficult to treat. Paraphilia is an affliction that does have a strong likelihood of recidivism or being repeated." Professor Kennedy also says that the framers of these registration and notification laws passed such laws with paraphilias in mind.

Nelson's view of recidivism is that "no expert can say with any degree of certainty that someone will or will not do it again. They are likely recidivists or they are not. And that's one of the problems here. There is no reasonable measure."

Michael Steinberg, legal director for the Michigan chapter of the American Civil Liberties Union in Detroit, said he remained hopeful about the outcome of the Supreme Court decision. In his view, many judges in the state would welcome a ruling because there is a hesitancy to convict someone of an offense when they know the ramifications can ruin a defendant's life.

"The purpose of the law is to let parents know if there are sexual predators in the neighborhood that may prey on children," Steinberg said. "Before you put someone on the list, there should be a hearing where a judge can determine whether or not they pose a threat to the community. The problem comes when you ruin people's lives, you ruin their educational, employment, and housing opportunities by placing their name on a registry, which is supposed to be for sexual predators but in fact includes many people who are not sexual predators."

What happens next is likely to be influenced by how the U.S. Supreme Court rules in the Connecticut case. According to Nelson, "The Supreme Court will have its opinion issued before we even get scheduled for oral argument. This case is going to turn on what the Supreme Court does." ◆

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