

IN THE SUPREME COURT OF OHIO

TAMARA WELTON
and JANE DOE
c/o David A. Singleton
Ohio Justice & Policy Center
215 East 9th Street, Ste. 601
Cincinnati, Ohio 45202,

Relators,

v.

MARC DANN
Attorney General, State of Ohio
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215,

SIMON L. LEIS, JR.
Sheriff, Hamilton County, Ohio
1000 Sycamore Street
Cincinnati, Ohio 45202,

TOM ARISS
Sheriff, Warren County, Ohio
550 Justice Drive
Lebanon, Ohio 45036,

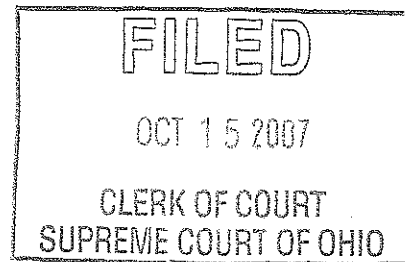
HON. JAMES L. FLANNERY
Presiding Judge
Court of Common Pleas
Warren County, Ohio
500 Justice Drive
Lebanon, Ohio 45036,

HON. JOHN ANDREW WEST
Presiding Judge
Court of Common Pleas
Hamilton County, Ohio
1000 Main Street
Cincinnati, Ohio 45202,

Case No.

07 - 1894

Original Action in Prohibition and Mandamus



COMPLAINT FOR A WRIT OF PROHIBITION AND MANDAMUS

PRELIMINARY STATEMENT

This Court should prohibit the State of Ohio from implementing and enforcing Amended Substitute Senate Bill 10 ("SB 10"). The measure permits the executive branch to retroactively increase the judicially determined punishment for sex offenders, in violation of the separation of powers, ex post facto, due process, and double jeopardy provisions of the constitutions of Ohio and the United States.

Signed into law by the Governor on June 30, 2007, SB 10 fundamentally changes Ohio's sex offender classification and notification provisions. Unlike Ohio's Sex Offender Registration and Notification law ("SORN") and Ohio's Juvenile Sex Offender Registration and Notification law ("JSORN"), under which a trial court classified a sexual offender based on the offender's likelihood of reoffending, SB 10 assigns sex offenders to one of three tiers based solely on the offense committed with no reference whatsoever to the likelihood of reoffending. By tying sex offender classification, registration, and notification requirements directly and solely to the crime of conviction, SB 10 has created a sex offender registration scheme that can no longer be considered remedial and civil in nature. Sex offender registration as it functions under SB 10 is purely punitive.

Under SB 10, Tier I offenders will be required to register for 15 years, five years longer than they would be required to register if deemed sexually oriented offenders under SORN. Tier II offenders will be required to register for 25 years, five years longer than habitual sex offenders are required to register under SORN. Tier III offenders will be required to register every ninety days for life. These increases in the length and terms

of punishment violate the Double Jeopardy Clauses of both the Ohio Constitution and the United States Constitution and the Ex Post Facto Clause of the United States Constitution.

SB 10 grants the Ohio attorney general quasi-judicial authority that violates the separation of powers provisions of the Ohio Constitution. SB 10 requires the Ohio attorney general to unilaterally reclassify all persons to whom the bill applies retroactively (approximately 35,000 people), thereby abrogating previous judicial orders adjudicating each of those persons under SORN or JSORN.

Tamara Welton and Jane Doe are sex offenders. Ms. Welton, while employed as a quartermaster at Warren Correctional Institution in 1999, had consensual sex with an adult male prisoner. She accepted responsibility for her actions and pled guilty to sexual battery. In 2002, Ms. Doe, while employed as a correction officer at a state correctional institution, also had consensual sex with an adult male prisoner. She, too, accepted responsibility for her conduct, pleading guilty to attempted sexual battery. While both women are sex offenders, they are also devoted mothers who work full-time to provide for themselves and their families.

Each woman had a sexual predator hearing under SORN. A trial judge determined each woman would register as a “sexually oriented offender” – the least dangerous sex offender classification level in Ohio – for ten years, as required by statute. Accordingly, both women reasonably expected that after a decade on the registry, they would be able to leave behind the substantial burden, shame, and stigma of having to register as a sexual offender. Starting on January 1, 2008, however, a retroactive change in the law will require Ms. Welton and Ms. Doe to register as sex offenders every 90 days for the rest of their lives.

Pursuant to SB 10, the Ohio Attorney General will unilaterally reassign Ms. Welton and Ms. Doe to Tier III, the “worst of the worst” designation, because the offenses they committed (sexual battery and attempted sexual battery, respectively) are Tier III offenses. Based on the Attorney General’s new designation, each will have to register every 90 days until they die. Further, each will now be listed on the Ohio Attorney General’s eSORN website, and will subject to community notification every 90 days. Moreover, their status will be widely disseminated to various community groups and volunteer organizations including schools, daycares, and preschools, in addition to their neighbors, and all of the persons and entities that are notified are authorized to further disseminate the information.

Although the General Assembly has previously passed registration and notification laws to protect the public, much of the motivation for passing SB 10 was financial. Specifically, Congress, in enacting the federal Adam Walsh Child Protection and Safety Act of 2006 (“AWA”), directed the states to pass legislation substantially similar to AWA or lose potentially millions of dollars in federal funding. The AWA includes an escape clause, however: a state will not lose federal funds if the state’s highest court determines that compliance with AWA would violate the state’s constitution.

Retroactive application of SB 10 to Tamara Welton and Jane Doe¹ violates several provisions of both the Ohio and United States Constitutions. First, SB 10, as applied to Ms. Welton and Ms. Doe, violates the separation of powers principle inherent in Ohio’s constitutional framework. Second, SB 10, when applied to Ms. Welton and

¹ And, not incidentally, to others like Ms. Welton and Ms. Doe who committed their offenses before the effective date of SB 10.

Ms. Doe, violates the Retroactivity Clause of the Ohio Constitution (Section 28, Article II). Third, SB 10, when applied to Ms. Welton and Ms. Doe, violates the Ex Post Facto Clause of the United States Constitution. Fourth, SB 10 violates the Double Jeopardy prohibitions of both Ohio and United States Constitutions.

Ms. Welton and Ms. Doe have no adequate remedies at law. Once they are reclassified as Tier III offenders, their new classification as “worst of the worst” sex offenders will be placed on the eSORN website maintained by the Ohio Attorney General. Millions of people will have access to their new designations, as will internet businesses like www.sexoffender.com, www.stopsexoffenders.com, and www.us-sex-offenders.com. Should Ms. Welton and Ms. Doe prevail on their claims after their Tier III classifications are placed on the web, there is no guarantee that any website that collects and distributes information on sex offenders will correct Ms. Welton’s and Ms. Doe’s designations. Certainly, there is no guarantee that all such websites will make appropriate corrections. Moreover, as soon as they are registered as Tier III offenders, the sheriff will be required to mail postcards informing neighbors and nearby schools of their presence. There will be no way for Ms. Welton and Ms. Doe to undo the stigma of being identified as high risk offenders should it eventually be determined that they are not subject to community notification.

Finally, this case gives the Court the opportunity to avoid a flood of tens of thousands of individual actions in the lower courts. Absent a clear ruling from this Court in this Case, all 35,000 sex offenders will have to challenge SB 10 in tens of thousands of individual trial court cases cases, leading to thousands of individual appeals, as well as thousands of individual discretionary appeals to this Court, regardless of which side prevails in the lower courts.

JURISDICTION

1. This action is brought under Supreme Court Practice Rule X. The Court has jurisdiction of this original action pursuant to Section 2, Article IV of the Ohio Constitution.

THE PARTIES

Tamara Welton

2. Relator Tamara Welton is a 37-year-old woman who lives in Morrow, Ohio. She graduated third in her class from Little Miami High School in 1988. She then graduated from Florida Southern College in 1992 with a Bachelor of Science in Mathematics with an undeclared minor in Biology and Military Science.

3. In August 1992, Ms. Welton joined the Ohio National Guard and was assigned to a bridge building unit. She became a platoon leader in September 1994. At the time of her honorable discharge in December 2000, she had achieved the rank of 1st Lieutenant.

4. On or about September 9, 1996, Ms. Welton began working as the Laundry Coordinator/Inmate Quartermaster at Warren Correctional Institution in Lebanon, Ohio. As part of her duties, she supervised eight to twelve prisoners who worked in the laundry with her.

5. In 1999, Ms. Welton began a sexual relationship with one of the adult prisoners she supervised. During 1999, the two willingly had sex on several occasions in the laundry area of the prison. It was illegal, however, for Ms. Welton to have sex with the prisoner given her custodial position of authority.

6. In March 2000, prison officials notified Ms. Welton that she was under investigation for having a sexual relationship with the prisoner. She was escorted from prison grounds and her employment was terminated.

7. Three months later, the grand jury indicted Ms. Welton on five counts of Sexual Battery in violation of R.C. 2950.03(A)(6).

8. In September 2000, Ms. Welton pled guilty to two counts of Sexual Battery. In November 2000, the court sentenced her to 180 days in jail to be followed by three years of community control.

9. Also in November 2000, the court filed an entry adjudicating Ms. Welton a sexually oriented offender, and ordered, as the statute required, that she register annually for ten years.

10. Ms. Welton has no other criminal convictions.

11. Ms. Welton completed her probation on or about November 16, 2003. Before finishing probation, she successfully completed an outpatient sex offender treatment program at the Clermont Counseling Center, located in Amelia, Ohio.

12. Ms. Welton currently works two jobs, one as a cashier and clerk at Kroger's, the other as a crewmember at Wendy's. Her employment prospects will grow even dimmer if she is forced to register as a Tier III offender under SB 10.

13. Ms. Welton, the divorced mother of a 14-year-old girl, is engaged to be married next year. She hopes to one day put her conviction behind her and move on with her life.

14. Eventually, Ms. Welton would like to move to Georgia with her new husband, but believes that she will have difficulty finding employment if she is registered in Ohio as a Tier III offender.

Jane Doe

15. Relator Jane Doe is a 31-year-old woman who lives in the Cincinnati metropolitan area.

16. Ms. Doe is the mother of two children, ages 10 and 11. She is very devoted to her children and participates in their school and extracurricular activities.

17. In 1998, Ms. Doe began working as a corrections officer at a prison in Ohio.

18. In approximately 2002, Ms. Doe, who was married, but experiencing marital problems, began a sexual relationship with an adult male prisoner.

19. In 2003, Ms. Doe resigned from her job after realizing that she was about to be charged criminally for having sex with a prisoner.

20. On July 9, 2003, Ms. Doe was charged, by information, with one count of Attempted Sexual Battery. One day later, she pleaded guilty to the charge.

21. In September 2003, the court sentenced Ms. Doe to two years of community control, and adjudicated her a sexually oriented offender. Ms. Doe, like Ms. Welton, was ordered to register annually as a sex offender for ten years.

22. Ms. Doe has no other criminal convictions.

23. Ms. Doe reasonably believes that she will lose her current job if labeled a Tier III offender.

Marc Dann

24. Respondent Marc Dann is the Attorney General of Ohio. Under SB 10 he is required to determine, for each sex offender who had a duty to register on or after July 1, 2007, the offender's new classification under SB 10. Respondent is required to send, by registered mail, notification to each offender informing the offender of his or her new classification and duties thereunder, and his or her right to request a hearing.

25. In addition to sending the required notice of new classification and the duties thereunder by December 1, 2007, Respondent Dann is required by SB 10 to notify individuals whose duty to register under current law is scheduled to terminate before January 1, 2008. The letter sent by Respondent Dann informs the offender that his or her duties will not terminate as previously scheduled and that he or she will have to continue registering as required by SB 10.

26. Because the process of reclassification and of ordering new and additional punishment involves vacating judicial determinations and imposing new penalties on sex offenders, the process is judicial, and Attorney General Dann acts in a judicial or quasi-judicial capacity when he engages in that mandatory process.

Tom Ariss

27. Respondent Tom Ariss is the Sheriff of Warren County, Ohio. Respondent Ariss will be responsible for enforcing the registration and community notification provisions of SB 10 as to Relator Welton and all other similarly situated sex offenders in Warren County.

Simon L. Leis, Jr.

28. Respondent Simon Leis, Jr. is the Sheriff of Hamilton County, Ohio. Respondent Leis will be responsible for enforcing the registration and community notification provisions of SB 10 against Relator Doe and all others similarly situated within Hamilton County.

Hon. James L. Flannery

29. Respondent James L. Flannery is the Presiding Judge of the Warren County Court of Common Pleas. Respondent Flannery will be responsible for instituting

administrative rules concerning how the Warren County Court of Common Pleas implements and enforces the provisions of SB 10.

Hon. John Andrew West

30. Respondent John Andrew West is the Presiding Judge of the Hamilton County Court of Common Pleas. Respondent West will be responsible for instituting administrative rules governing how the Hamilton County Court of Common Pleas implements and enforces the provisions of SB 10.

THE NEW SB 10 PROVISIONS

31. SB 10 fundamentally changes SORN classification, notification, and registration requirements by tying sex offender classification, registration, and notification requirements directly to the crime of conviction. SB 10 organizes sex offenses into three tiers.

32. The following constitute Tier I offenses under SB 10: Importuning, 2907.07; Unlawful Sexual Conduct with a Minor, 2907.04 (if non-consensual and offender less than 4 years older than the victim and if offender not previously convicted of Rape (2907.02), Sexual Battery (2907.03), Unlawful Sexual Conduct with a Minor, or Felonious Sexual Penetration (under former 2907.12)); Voyeurism, 2907.08; Sexual Imposition, 2907.06; Gross Sexual Imposition, 2907.05(A)(1)-(3), (5); Illegal Use of a Minor in Nudity-Oriented Material or Performance, 2907.323(A)(3); Child Enticement with Sexual Motivation, 2905.05(B) (a new offense under SB 10); Pandering Obscenity, 2907.32; Menacing by Stalking with Sexual Motivation, 2903.211(A)(3) (a new offense under SB 10); and Unlawful Restraint with Sexual Motivation, 2905.03(B) (a new offense under SB 10). Tier I offenses include an attempt, complicity, or conspiracy to commit any of the aforementioned offenses.

33. The following constitute Tier II offenses under SB 10: Compelling Prostitution, 2907.21; Pandering Obscenity Involving a Minor, 2907.321; Pandering Sexually Oriented Material Involving a Minor 2907.322; Illegal Use of a Minor in Nudity-Oriented Material or Performance, 2907.323 (A)(1) and (2); Unlawful Sexual Conduct with a Minor, 2907.04 (when offender is at least 4 years older, or when the offender is less than 4 years older and has a prior conviction for Rape, Sexual Battery, Unlawful Sexual Conduct with a Minor or former Felonious Sexual Penetration); Gross Sexual Imposition with Victim Under 13, 2907.05(A)(4); Child Endangering, 2919.22(B)(5) (with respect to obscene, sexually oriented or nudity-oriented material); Kidnapping with Sexual Motivation, 2905.01(A)(1)-(3), (5); Kidnapping victim over 18 2905.01 (A)(4); Abduction with Sexual Motivation, 2905.02 (B) (a new offense under SB 10); any sexual offense that occurs after the offender has been classified as a Tier I offender. Tier II offenses include an attempt, complicity, or conspiracy to commit any of these offenses; pre-SB 10 habitual offenders, unless reclassified after hearing under R.C. 2950.031 or 2950.032.

34. The following constitute Tier III offenses under SB 10: Rape, 2907.02; Sexual Battery, 2907.03; Aggravated Murder with Sexual Motivation, 2903.01; Murder with Sexual Motivation, 2903.02; Unlawful Death or Termination of Pregnancy as a Result of Committing or Attempt to Commit a Felony with Sexual Motivation, 2903.04 (A); Kidnapping of Minor to Engage in Sexual Activity, 2905.01 (A)(4); Kidnapping of Minor, Not by Parent, 2905.01 (B); Gross Sexual Imposition 2907.05 (B) (touching genitalia of minor under twelve with sexual motivation); Felonious Assault with Sexual Motivation, 2903.11; any sexual offense that occurs after the offender is classified as a Tier II or III offender; an attempt, complicity or conspiracy to commit any of these

offenses. Additionally, Tier III offenders include pre-SB 10 sexual predators unless reclassified as a Tier I or II offenders after a hearing, and persons automatically classified pursuant to a Sexually Violent Predator specification.

35. Offenders who fall under Tier I, the lowest SB 10 classification level, are required to register personally with the sheriff in the county of their residence, and, if applicable, in the county or counties in which they are employed or attend school, once per year for 15 years.

36. Offenders who fall under Tier II are required to register personally with the sheriff in the county of their residence, and, if applicable, in the county or counties in which they are employed or attend school, once every 180 days for 25 years.

37. Offenders who fall under Tier III, the highest SB 10 classification level, are required to register personally with the sheriff in the county of their residence, and, if applicable, in the county or counties in which they are employed or attend school, once every 90 days for life.

38. SB 10 also fundamentally changes juvenile sex offender registration and notification by tying juvenile sex offender classification, registration, and notification requirements directly to the crime of adjudication. Juveniles who are as young as fourteen years old at the time of their offense will be presumed to fall into one of the three tiers. Juvenile offenders who fall under Tier I are required to register personally with the sheriff in the county of their residence, employment, and school once per year for 10 years. Juvenile offenders who fall under Tier II are required to register personally with the sheriff in the county of their residence, employment, and school once every 180 days for 20 years. Juvenile offenders who fall under Tier III are required to register personally with the sheriff in the county of their residence, employment, and school once

every 90 days for life. While most juvenile offenders will not appear on the national internet database, they are placed into the same tier structure as adult offenders and have similar registration duties and notification requirements. As with adult offenders, SB 10 applies retroactively to juveniles.

39. All offenders are required to submit their name and any aliases; social security number and date of birth; address; name and address of employer; name and address of school, if applicable; photograph; copies of travel and immigration documents; license plate number for each vehicle owned, driven for work, or regularly available to the offender; description where all vehicles are stored; drivers license number or state ID number; description of each professional and occupational license, permit, or registration; and any email address, internet identifiers, or telephone numbers registered to or used by the offender.

40. By December 1, 2007, Respondent Dann's office is required to determine, for each sex offender who had a duty to register on or after July 1, 2007, the offender's new classification under SB 10. Respondent is required to send, by registered mail, notification to each offender informing the offender of his or her new classification and duties thereunder, and his or her right to request a hearing. A representative of the Attorney General has publicly stated that the Attorney General intends to mail the letters before Thanksgiving.

41. An offender or delinquent child, who has received a reclassification letter from the Respondent Attorney General has 60 days to file a new civil petition and request a hearing to contest the application to the offender or delinquent child or the new registration requirements under R.C. Chapter 2950, as it will exist under the changes that

will be implemented on January 1, 2008. Under the plain terms of SB 10, failure to do so forfeits the offender's right to challenge the new classification.

42. Under the plain terms of SB 10, there is no right to counsel at a "civil" contest hearing, and the only issue to be addressed by a court at this hearing are whether the Attorney General has correctly identified the offense of conviction and the tier into which an offender or delinquent child is to be placed.

43. Under the plain terms of SB 10, the offender or delinquent child subject to reclassification has the burden, by clear and convincing evidence, to establish that the offender or delinquent child is not subject to classification or has been misclassified by the Attorney General. Unlike the pre-SB 10 classification scheme, the trial court does not consider dangerousness or the likelihood of reoffending in determining whether the offender or delinquent child has been correctly classified.

44. In addition to sending the required notice of new classification and the duties thereunder by December 1, 2007, Respondent Dann is required by SB 10 to notify individuals whose duty to register under current law is scheduled to terminate before January 1, 2008. The letter sent by Respondent Dann informs the offender that his or her duty to register will not terminate as previously scheduled and that he or she will have to continue registering as required by SB 10.

THE ABSENCE OF AN ADEQUATE REMEDY AT LAW

45. Ms. Welton and Ms. Doe have no adequate remedies at law. Once they are reclassified as Tier III offenders, their new classification as "worst of the worst" sex offenders will be placed on the internet and the notifications will be widely disseminated in their own communities and across the nation. Even if they prevail on their challenge, there is no guarantee that the Tier III designation will be removed from any or all of the

national databases. Thus, there is a substantial risk that their new classifications, even if eventually deemed unconstitutional, will follow them for the rest of their lives.

46. Additionally, Ms. Doe fears that her two young children will be subject to ridicule and harassment and may suffer severe emotional harm when her status as “worst of the worst” is sent to her neighbors and their school. The school is authorized to give the information to all the parents of students in the school. She fears she will no longer be allowed to volunteer at school and her daughters will be ridiculed by their classmates. Further, the sheriff must notify all volunteer organizations that may have contact with minors. Ms. Doe fears that her children will be shunned, and she will no longer be allowed to participate in her children’s activities, such as Scouts, sports, and church groups.

47. Thus, neither Ms. Welton nor Ms. Doe has an adequate remedy at law.² Once the new classification and notification is complete, both Ms. Welton and Ms. Doe will face irreparable harm that cannot be mitigated even if they eventually prevail in future court action.

FIRST CLAIM FOR RELIEF – VIOLATION OF THE SEPARATION OF POWERS

48. A trial court ordered each Relator to register as a sex offender for ten years. Pursuant to SB 10, however, the Attorney General will reclassify relators, placing them into new tiers that will require them to register for life.

49. The Attorney General’s reclassification of Relators abrogates final judicial orders adjudicating Ms. Welton and Ms. Doe sexually oriented offenders and requiring

² Nor, again, do other similarly situated persons.

them each to register for ten years only. This violates the separation of powers principle inherent in Ohio's constitutional framework.

**SECOND CLAIM FOR RELIEF – VIOLATION OF THE OHIO
CONSTITUTION'S RETROACTIVITY CLAUSE**

50. When classified under SORN, each Relator obtained a vested right in the court order that their registration period would be limited to ten years and would not include community notification.

51. When classified under SORN, each Relator had the right to expect, based upon the court's classification order, that his or her registration period would be limited to ten years and would not include community notification.

52. SB 10 retroactively impairs vested rights and imposes new obligations and additional substantial burdens on relators by requiring each to register for life and to be subject to community notification.

53. This violates Section 28, Article II of the Ohio Constitution, which prohibits retroactive laws.

**THIRD CLAIM FOR RELIEF – VIOLATION OF THE EX POST
FACTO CLAUSE OF THE UNITED STATES CONSTITUTION**

54. By imposing registration duties based on the offense committed, rather than on an individualized assessment of dangerousness, SB 10's registration requirements will become part and parcel of the offender's sentence for the offense committed.

55. Additionally, the additional burdens that will be placed on Ms. Welton and Ms. Doe as a result of SB 10's retroactive application to them, including being subject to community notification and having to register every 90 days for the rest of their lives, render the new classification and registration rules punitive.

56. The Ex Post Facto Clause of the United States Constitution prohibits retroactive punishment, including increases in the sentence originally imposed. Because SB 10 essentially increases the sentence for the crimes Relators committed, application of SB 10 to Relators violates the Ex Post Facto Clause.

**FOURTH CLAIM FOR RELIEF – VIOLATION OF THE DOUBLE
JEOPARDY CLAUSES OF THE OHIO AND UNITED STATES
CONSTITUTION**

57. The registration and notification requirements of SB 10 are punitive in nature, rather than remedial. Under SORN, the law in effect when Relators committed their offenses, a sexual offender's registration requirements were determined by the offender's likelihood of reoffending. However, SB 10 classifies sex offenders based solely on the offense committed, without any consideration of the likelihood of reoffending. Under SB 10, the crime of conviction, alone, determines the offender's sex offender classification, registration, and notification requirements. This exclusive connection between the offense of conviction and the offender's registration requirements demonstrates that the General Assembly intended the registration requirements under SB 10 to be part of the punishment for the offense.

58. When classified under SORN as sexually oriented offenders, Relators were required to register annually for a period of ten years. SORN did not require community notification. SB 10, however, classifies Relators' offenses as Tier III offenses. Therefore, Relators will be required to register every 90 days for the rest of their lives and will be subject to extremely broad community notification provisions. This additional punishment constitutes a multiple punishment and violates the Double Jeopardy Clauses of the Ohio and United States Constitutions.

59. Similarly, under SB 10, Tier I offenders will be required to register for 15 years, five years longer than they would be required to register if deemed sexually oriented offenders under SORN. Tier II offenders will be required to register for 25 years, five years longer than habitual sex offenders are required to register under SORN. These increases in the length and terms of punishment violate the Double Jeopardy Clauses of the Ohio and United States Constitutions.

**FIFTH CLAIM FOR RELIEF – VIOLATION OF RIGHT TO
CONTRACT OF THE OHIO AND UNITED STATES
CONSTITUTIONS**

60. The sex offender residency and notification requirements were a material part of Relators' plea agreements on which Relators relied when agreeing to plead guilty.

61. A plea agreement is a contract that binds the State. *Layne v. Ohio Adult Parole Authority*, 97 Ohio St.3d 456, 2002-Ohio-6719, 780 N.E.2d 548.

62. SB 10 will breach the plea agreement contract by imposing far harsher punishment than contemplated by the plea agreement. The breach will be an impairment of an obligation of contract prohibited by Section 28, Article II of the Ohio Constitution and Article I, Section 10, Clause 1 of the United States Constitution ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts").

63. Relators are entitled to specific performance of the State's obligation to impose sex offender residency and notification and procedures that are materially identical to those contemplated by the plea agreement.

PRAYER FOR RELIEF

Relators respectfully request this Court to issue an alternative writ immediately staying and restraining the Respondent Attorney General from transmitting notice of reclassification to Relators and all similarly situated persons as required by the provisions of 127 Am. Sub. S.B. 10, and to grant the following particular relief:

1) to establish a briefing schedule for the instant case consistent with Rules of Practice of this Court, or in the alternative, establish an accelerated briefing schedule;

2) to stay and restrain the Respondent Attorney General from reclassifying Relators and all similarly situated persons pursuant to the provisions of 127 Am. Sub. S.B. 10;

3) to stay and restrain the Respondent Attorney General from transmitting notice of reclassification to Relators and all similarly situated persons as required by the provisions of 127 Am. Sub. S.B. 10;

4) to stay and restrain the Respondent Sheriffs from requiring the relators and all similarly situated persons to comply with the provisions of 127 Am. Sub. S.B. 10;


5) to stay and restrain the Respondent Judges from classifying Relators and all similarly situated persons under the provisions of 127 Am. Sub. S.B. 10;

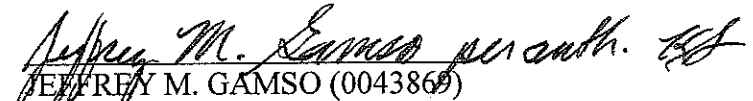
6) to stay any and all implementation, effect, and enforcement of all provisions of 127 Am. Sub. S.B. 10, including those portions of the bill that purport to modify or repeal currently existing law, until such time as the Court resolves this case;


7) to stay and restrain the respondent prosecutors from charging and prosecuting Relators and all similarly situated persons for any violations of 127 Am. Sub. S.B. 10;


8) any such other and further relief as the Court deems just.

Respectfully submitted,


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CERTIFICATE OF SERVICE

A courtesy copy of this complaint was delivered to Respondent Marc Dann by hand delivery to Senior Assistant Attorney General Erin Rosen, Senior Assistant Attorney General, Special Prosecutions Section, 30 East Broad Street, 14th Floor, Columbus, Ohio 43215. Courtesy copies were mailed to all other Respondents at the addresses on the cover page.


KENNETH R. SPIERT (0038804)

IN THE SUPREME COURT OF OHIO

TAMARA WELTON, et al.

Supreme Court No.

Relators,

**ORIGINAL ACTION IN PROHIBITION
AND MANDAMUS**

vs.

MARC DANN, et al.

Respondents.

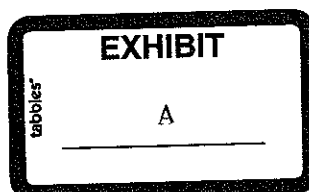
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AFFIDAVIT OF TAMMY WELTON

1. I am a 37-year-old woman who lives in Morrow, Ohio. I graduated third in my class from Little Miami High School in 1988. I graduated from Florida Southern College in 1992 with a Bachelor of Science in Mathematics and with an undeclared minor in Biology and Military Science.

2. In August 1992, I joined the Ohio National Guard and was assigned to a bridge building unit. I became a platoon leader in September 1994. At the time of my honorable discharge in December 2000, I had achieved the rank of 1st Lieutenant.

3. On or about September 9, 1996, I began working as the Laundry Coordinator/Inmate Quartermaster at Warren Correctional Institution in Lebanon, Ohio. As part of my duties, I supervised eight to twelve prisoners who worked in the laundry with me.

4. In 1999, I began a sexual relationship with one of the adult prisoners I supervised. We had sex on several occasions in the laundry area of the prison.

5. In March 2000, prison officials notified me that I was under investigation for having a sexual relationship with the prisoner. I was escorted from prison grounds and my employment was terminated.

6. Three months later, the grand jury indicted me on five counts of Sexual Battery.

7. In September 2000, I accepted responsibility for my actions and pled guilty to two counts of Sexual Battery. In November, I was sentenced to 180 days in jail to be followed by three years of community control.

8. The court also filed an entry adjudicating me a Sexually Oriented Offender, and ordering me to register annually for ten years.

9. I completed probation on or about November 16, 2003. Before finishing probation, I successfully completed an outpatient sex offender treatment program at the Clermont Counseling Center, located in Amelia, Ohio.

10. I have no other criminal convictions.

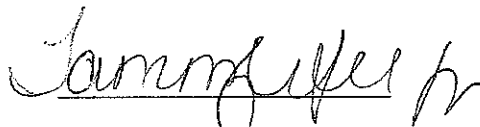
11. I am the divorced mother of a 14 year-old girl and am engaged to be married this month. I had hoped to put my conviction behind me and move on with my life.

12. I am planning eventually to move to Georgia with my new husband, and I believe that my current employer will revoke my transfer to a new position in Georgia if I am forced to register as a Tier III offender.

13. I currently work two jobs, one as a cashier and clerk at Kroger's, the other as a crewmember at Wendy's. I believe that my employment prospects will grow even dimmer if I am forced to register as a Tier III offender under SB10.

14. I also believe that my family will be shunned, excluded, and harassed if I am forced to register as a Tier III offender.

FURTHER AFFLIANT SAYETH NOT.


Tammy Welton

NOTARY PUBLIC

The foregoing was sworn to before me, and the same was subscribed personally in my presence, by Tammy Welton, on the 12 day of OCT, 2007.

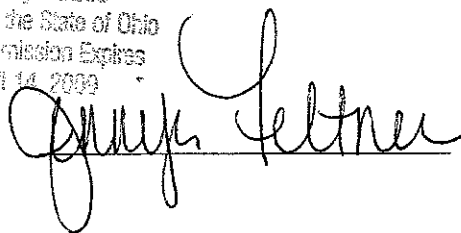
State of Ohio

County of ~~Hamilton~~: ss

Warren



JENNIFER FELNER
Notary Public
in and for the State of Ohio
Commission Expires
April 14, 2009



IN THE SUPREME COURT OF OHIO

TAMARA WELTON, et al.

Supreme Court No.

Relators,

**ORIGINAL ACTION IN PROHIBITION
AND MANDAMUS**

vs.

MARC DANN, et al.

Respondents.

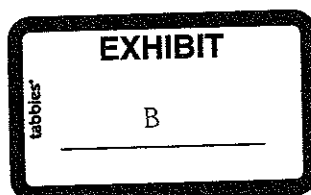
AFFIDAVIT OF JANE DOE

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wolman@equaljusticefoundation.com



AFFIDAVIT OF JANE DOE

1. I am a 31-year-old woman who lives in the Cincinnati metropolitan area.
2. In 1998, I began working as a corrections officer at a Correctional Institution.
3. In approximately 2002, while I was experiencing marital problems, I began a sexual relationship with a male prisoner at a Correctional Institution.
4. In 2003, I resigned from my job after realizing that I was about to be charged criminally for having sex with a prisoner.
5. On July 9, 2003, I was charged, by information, with one count of Attempted Sexual Battery. On July 10, 2003, I pled guilty to the charge.
6. On or about September 9, 2003, the court sentenced me to two years community control, and adjudicated me a Sexually Oriented Offender. I was ordered to register annually as a sex offender for ten years.
7. I have no other criminal convictions.
8. I am the mother of two children, ages 10 and 11. I am very devoted to my children and participate in their school and extracurricular activities such as Scouts, basketball, and numerous church activities.
9. I believe that if I am labeled a Tier III offender, my children and I will be shunned, excluded, and harassed.
10. I have a good job that enables me to support my family, but I believe that my job will come to an end if I am labeled a Tier III offender.
11. I also believe that my car may be vandalized if I am labeled a Tier III offender.

FURTHER AFFIANT SAYETH NOT.

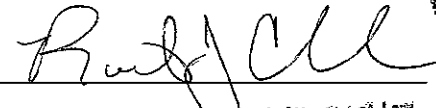

Jane Doe

NOTARY PUBLIC

The foregoing was sworn to before me, and the same was subscribed personally in my presence, by Jane Doe, on the 13 day of OCTOBER, 2007.

State of Ohio

County of Hamilton: ss


ROBERT J. CLARK, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration
date Section 14703 O.R.C.

