[Cite as *Hungerford v. State*, 2009-Ohio-6997.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

ROBERT L. HUNGERFORD,	:	**O P I N I O N**
Petitioner-Appellant,	:	**CASE NO. 2008-L-073**
- vs -	:	
STATE OF OHIO,	:	
Defendant-Appellee.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 08 MS 000061.

Judgment: Affirmed.

Michael A. Partlow, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113-1204 (For Petitioner-Appellant).

Charles E. Coulson, Lake County Prosecutor and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, James L. Hungerford, appeals from the judgment entry of the Lake County Court of Common Pleas reclassifying him from a sexually oriented offender to a Tier II Sex Offender as required by Am. Sub. Senate Bill 10 (a.k.a. the Adam Walsh Act). For the reasons discussed in this opinion, the trial court's judgment is affirmed.

{¶2} The record indicates appellant originally pleaded guilty to one count of corruption of a minor, a felony of the fourth degree, in violation of R.C. 2907.04(A).

Prior to the enactment of S.B. 10, appellant was classified as a "sexually oriented offender." Appellant's classification required him to report once a year for a period of ten years. On November 26, 2007, the Attorney General sent appellant a letter informing him that he was going to be reclassified under S.B. 10 as a "Tier II Sex Offender." Pursuant to the new law, appellant must report for a period of 25 years and periodically verify specified personal information every 180 days.

{¶3} On February 20, 2008, appellant filed a petition to contest his reclassification as a violation of his constitutional rights. The state responded and a hearing was held on April 10, 2008. On April 14, 2008, the Lake County Court of Common Pleas denied appellant's petition, concluding he had not proved the requirements of S.B. 10 did not apply to him. The court accordingly determined appellant was properly reclassified as a Tier II offender.

{¶4} Appellant filed a timely notice of appeal assigning ten errors for our review. His first assignment of error alleges:

{¶5} "The trial court erred in determining that the retroactive application of Ohio's Adam Walsh Act (AWA) does not violate the prohibition on ex post facto laws in Article I, Section 10 of the United States Constitution."

{¶6} Before addressing appellant's arguments, we first point out that each appellate district in Ohio, including this one, have concluded that S.B. 10 passes constitutional muster. See *State v. Swank,* 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *Sewell v. State*, 181 Ohio App.3d 280, 2009-Ohio-872; *State v. Desbiens*, 2d Dist. No. 22489, 2008-Ohio-3375; *In re Smith*, 3d Dist. No. 1-07-58, 2008-Ohio-3234; *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832; *State v. Hughes*, 5th Dist.

No. 2008-CA-23, 2009-Ohio-2406; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051; *State v. Holloman-Cross*, 8th Dist. No. 90351, 2008-Ohio-2189; *In re G.E.S.*, 9th Dist. No. 24079, 2008-Ohio-4076; *State v. Gilfillan*, 10th Dist. No. 08AP-317, 2009-Ohio-1104; *Ritchie v. State*, 12th Dist. No. CA2008-07-073, 2009-Ohio-1841.

{¶7} Moreover, several of appellant's arguments have been considered and rejected by this court in *Swank.* Id. at ¶98-100 (separation of powers); Id. at ¶71-89 (ex post facto); ¶90-97 (retroactive legislation); ¶101-111 (due process of law). By operation of stare decisis, these arguments are therefore overruled. However, since our holding in *Swank,* litigants, particularly those who have experienced a reclassification such as appellant, have further developed their positions. In light of these developments, we shall revisit these arguments to amplify our previous conclusion that S.B. 10 is not unconstitutional. Pursuant to appellant's first assignment of error, we shall begin with the ex post facto challenge.

{¶8} All of Ohio's appellate districts, including this court, have relied on the Supreme Court of Ohio's decision in *State v. Cook*, 83 Ohio St. 3d. 404, 1998-Ohio-291, as a foundation for upholding the constitutionality of S.B. 10. In *Cook*, the Court addressed H.B. 180, the statutory predecessor of S.B. 10. The Court held that, although H.B. 180 was retroactive, the purpose of its registration and notification requirements was to protect the public from released sex offenders. The Court in *Cook* held that because H.B. 180 was remedial and not punitive in nature, it did not present an ex post facto or retroactivity violation. Id. at 413, 423.

{¶9} Since the Ohio Supreme Court's ruling in *Cook*, the Court has reaffirmed its holding that former R.C. Chapter 2950 is not an ex post facto law.

{¶10} In *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, the defendant alleged that H.B. 180 violated the Double Jeopardy Clause because it inflicted a second punishment for a single offense. Relying on its reasoning in *Cook*, the Supreme Court reaffirmed that R.C. Chapter 2950 is "neither 'criminal,' nor a statute that inflicts punishment," and held there was no violation of the Double Jeopardy Clause. Id. at 528.

{¶11} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, the Court held:

{¶12} "Consistent with our jurisprudence in [*Cook* and *Williams*], we find that the sex-offender-classification proceedings under R.C. Chapter 2950 are civil in nature and that a court of appeals must apply the civil manifest-weight-of-the-evidence standard in its review of the trial court's findings." *Wilson*, supra, at 389.

{¶13} In *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, the Supreme Court of Ohio considered whether the more stringent revisions to H.B. 180, incorporated in S.B. 5, effective July 31, 2003, violated the prohibitions against ex post facto and retroactive laws.

{¶14} Ferguson had been convicted of rape and kidnapping in 1990. In 2006, the trial court classified Ferguson as a sexual predator.

{¶15} Ferguson challenged three amendments in S.B.5. First, he challenged former R.C. 2950.07(B)(1), which provided that the designation "predator" remains for life, as does the concomitant duty to register. The previous version of this section allowed for review of the predator classification by a judge and the possible removal of that classification. See former R.C. 2950.09(D).

{¶16} Second, Ferguson challenged former R.C. 2950.04(A), which provided that sex offenders are required to personally register with the sheriff in their county of residence, the county in which they attend school, and the county in which they work, and that they must do so every 90 days. R.C. 2950.06(B)(1)(a). Previously, offenders had been required to register only in their county of residence. See former R.C. 2950.06(B)(1).

{¶17} Third, Ferguson challenged amended R.C. 2950.081, which expanded the community-notification requirements. After S.B. 5, any statements, information, photographs, and fingerprints required to be provided by the offender are public records and are included in the Internet database of sex offenders maintained by the Attorney General's office. Former R.C. 2950.081 and 2950.13.

{¶18} In *Ferguson*, the Supreme Court (O'Connor, J. writing for the majority) held:

{¶19} "As we have before, we acknowledge that R.C. Chapter 2950 may pose significant and often harsh consequences for offenders, including harassment and ostracism from the community. *** We disagree, however, with Ferguson's conclusion that the General Assembly has transmogrified the remedial statute into a punitive one by the provisions enacted through S.B. 5.

{¶20} "***

{¶21} "As an initial matter, we observe that *an offender's classification as a sexual predator is a collateral consequence of the offender's criminal acts rather than a form of punishment per se.* Ferguson has not established that he had any reasonable

expectation of finality in a collateral consequence that might be removed. *** Absent such an expectation, there is no violation of Ohio's retroactivity clause.

{¶22} "***

{¶23} "We conclude that the General Assembly's purpose for requiring the dissemination of an offender's information is the belief that education and notification will help inform the public so that it can protect itself. 'Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.'" (Emphasis added and internal citations omitted.) Id. at 14-16, quoting *Smith v. Doe* (2003), 538 U.S. 84, 99.

{¶24} Also, the *Ferguson* Court held that the lifetime classification imposed on sexual predators as well as the more burdensome registration requirements and the collection and internet dissemination of additional information about the offender as part of the statute's notification provisions were part of a remedial, regulatory scheme designed to protect the public rather than to punish the offender. Id. at 15.

{¶25} Furthermore, in *Smith v. Doe*, supra, relied on by the Ohio Supreme Court in *Ferguson,* the United States Supreme Court considered an ex post facto challenge to Alaska's sex offender registration act. In disposing of this challenge, the Court addressed many of the arguments asserted by appellant herein.

{¶26} The Alaska Act contained registration and notification requirements that were expressly made retroactive. Under the Act, the offender was required to register with local law enforcement authorities and in so doing to provide his name, aliases, identifying features, address, place of employment, date of birth, conviction information, driver's license number, information about vehicles to which he has access, and his

postconviction medical treatment history. He was also required to permit authorities to photograph and fingerprint him. The non-confidential information was made available on the internet.

{¶27} Under the Alaska statute, if the offender was convicted of a non-aggravated sex offense, he was required to provide annual registration for 15 years. In contrast, if he was convicted of an aggravated sex offense, he was required to register quarterly for life. Thus, the frequency and length of registration were based solely on the type of offense of which he was convicted, rather than any finding concerning the likelihood that the offender would reoffend. Further, if a sex offender failed to comply with the Act, he was subject to criminal prosecution.

{¶28} The convicted sex offenders in *Smith* filed an action in the district court seeking a declaration that the Alaska Act violated the Ex Post Facto Clause of the Federal Constitution. The district court entered summary judgment in favor of the state. The Ninth Circuit held the Act violated the Ex Post Facto Clause because, although the legislature intended the Act to be a non-punitive, civil regulatory scheme, the effects of the Act were punitive.

{¶29} In reversing the decision of the Ninth Circuit, the United States Supreme Court held the intent of the Act was remedial and not punitive. In arriving at this holding, the Supreme Court considered various factors. First, it considered the legislative purpose set forth in Alaska's Act. The Court held: "Because we 'ordinarily defer to the legislature's stated intent, [*Kansas v.*] *Hendricks*, [521 U.S. 346], at 361, '"only the clearest proof" will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty,' *Hudson v. United States*, 522 U.S.

93, 100 *** (1997) (quoting [*United States v.*] *Ward*, [448 U.S. 242,] at 249 ***." Id. at 92.

{¶30} The Supreme Court pointed out that the Alaska Legislature expressed its intent in the statute. It found "sex offenders pose a high risk of reoffending," and stated that "protecting the public from sex offenders" is the "primary governmental interest" of the law. The legislature found the "release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety." *Smith* at 93. We note the legislative intention set forth in S.B.10 is virtually identical to that expressed in the Alaska legislation.

{¶31} The Supreme Court held the imposition of restrictive measures on sex offenders is a legitimate non-punitive governmental objective, and that nothing on the face of the statute suggests the legislature sought to create anything other than a civil scheme to protect the public from harm. Id.

{¶32} In addressing the respondents' argument that placement of the Act in Alaska's criminal code was probative of a punitive intent, the Court held this factor was not dispositive. The Court held: "The location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one." Id. at 94. Further, the Court held the "codification of the Act in the State's criminal *** code is not sufficient to support a conclusion that the legislative intent was punitive." Id. at 95. As a result, the General Assembly's placement of S.B. 10 in Ohio's criminal code is not dispositive of the legislature's intent.

{¶33} The Supreme Court also addressed the Alaska statute's requirement that the judgment of conviction for sex offenses "'set out the requirements of [the Act] and

*** whether that conviction will require the offender to register for life or a lesser period.'" Id. at 95. The Court held:

{¶34} "The policy to alert convicted offenders to the civil consequences of their criminal conduct does not render the consequences themselves punitive. When a State sets up a regulatory scheme, it is logical to provide those persons subject to it with clear and unambiguous notice of the requirements and the penalties for noncompliance. The Act requires registration either before the offender's release from confinement or within a day of his conviction (if the offender is not imprisoned). Timely and adequate notice serves to apprise individuals of their responsibilities and to ensure compliance with the regulatory scheme. Notice is important, for the scheme is enforced by criminal penalties. See [Secs.] 11.56.835, 11.56.840. Although other methods of notification may be available, it is effective to make it part of the plea colloquy or the judgment of conviction. *Invoking the criminal process in aid of a statutory regime does not render the statutory scheme itself punitive*." (Emphasis added.) Id. at 95-96.

{¶35} As with the Alaska statute, S.B. 10 requires the judge to notify the offender of his registration duties at the time of sentencing. Based upon the United States Supreme Court's holding in *Smith*, this does not render S.B. 10's regulatory system punitive.

{¶36} After determining that Alaska's Act was not punitive in intent, the Court in *Smith* considered whether the Act was punitive in effect. In analyzing the effects of a statute for purposes of determining whether it is an ex post facto law, courts refer to the factors noted in *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168-169.

{¶37} First, the Supreme Court considered whether the regulatory scheme has traditionally been regarded as a punishment. The Court noted that the sex offender registration statutes are of recent origin, which suggests "it did not involve a traditional means of punishing." Id. at 97. The Supreme Court further held that early punishments, such as shaming or banishment, always involved more than the dissemination of information. Id. at 98. They either held the offender up before his fellow citizens for face to face shaming or expelled him from the community. Id. The Court held: "By contrast, the stigma of Alaska's Megan's Law results *** from the dissemination of accurate information about a criminal record, most of which is already public. Our system does not treat the dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." Id.

{¶38} Moreover, the Court held the fact that Alaska posts the offender's information on the internet does not alter its decision. The Court held:

{¶39} "It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.

{¶40} "The State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath his record. An individual seeking

the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective, and convenient for Alaska's citizenry." *Smith,* supra, at 99.

{¶41} Second, the Supreme Court held Alaska's Act imposes no disability or restraint. The Court held that because the Act does not impose a physical restraint, it does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint. Id. at 100. The Court held the statute's obligations are less harsh than the sanction of "occupational debarment," which the Court has held to be non-punitive. Id.

{¶42} The Court also rejected the argument that the act's registration system is parallel to probation in terms of the restraint imposed. Id. at 101. The Court held:

{¶43} "*** Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation or release in case of infraction. *** By contrast, offenders subject to the Alaska statute are free to move where they wish *** with no supervision. Although registrants must inform the authorities after they change their facial features (such as growing a beard), borrow a car, or seek psychiatric treatment, they are not required to seek permission to do so. A sex offender who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense. *** [T]he registration requirements make a valid

regulatory program effective and do not impose punitive restraints in violation of the Ex Post Facto Clause." (Internal citations omitted.) Id. at 101-102.

{¶44} Third, the Court rejected the argument that the statute's deterrent quality renders it punitive since deterrence is one purpose of punishment. The Court held: "This proves too much. Any number of governmental programs might deter crime without imposing punishment. 'To hold that the mere presence of a deterrent purpose renders such sanctions "criminal" . . . would severely undermine the Government's ability to engage in effective regulation.'" Id. at 102, quoting *Hudson*, supra, at 105.

{¶45} Fourth, the Court held the Act's rational connection to a non-punitive purpose was the "most significant" factor in its determination that the statute's effects are not punitive. The Court held the act has a legitimate, non-punitive purpose of public safety, which is advanced by alerting the public to the risk of sex offenders in their community. Id. at 102-103.

{¶46} Fifth, the Court held the Act was not excessive even though it applies to all convicted sex offenders *without regard to the likelihood that they would reoffend in the future*. The United States Supreme Court held:

{¶47} "Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism. The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is 'frightening and high.' *McKune v. Lile*, 536 U.S. 24, 34 (2002); see also Id., at 33 ('When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault') (citing U.S.

Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997)).

{¶48} "The Ex Post Facto Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences. *** The State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment under the Ex Post Facto Clause.

{¶49} "*** In the context of the regulatory scheme the State can dispense with individual predictions of future dangerousness and allow the public to assess the risk on the basis of accurate, nonprivate information about the registrants' convictions without violating the prohibitions of the Ex Post Facto Clause." Id. at 103-104.

{¶50} The Supreme Court's analysis of this factor therefore defeats the argument that S.B. 10 is unconstitutional because its classification system is based solely on the type of crime committed by the offender.

{¶51} The Supreme Court also rejected the argument that the Act was excessive in that it places no limit on the number of persons who have access to the offender's information. The Court held:

{¶52} "[T]he notification system is a passive one: An individual must seek access to the information. The Web site warns that the use of displayed information 'to commit a criminal act against another person is subject to criminal prosecution.' *** Given the general mobility of our population, for Alaska to make its registry system

available and easily accessible throughout the State was not so excessive a regulatory requirement as to become a punishment. ***" Id. at 105.

{¶53} Post-*Smith*, federal appellate courts have repeatedly held that SORNA does not violate the Ex Post Facto Clause of the United States Constitution. Since S.B. 10 places Ohio law in conformity with the federal SORNA, decisions of federal appellate courts considering the federal act are strongly persuasive in considering challenges to S.B. 10.

{¶54} In *United States v. May* (C.A. 8, 2008), 535 F.3d 912, the Eighth Circuit applied *Smith* in holding SORNA does not violate the Ex Post Facto Clause. The court held that Congress' stated intent was to protect the public from sex offenders by enacting a regulatory scheme that is "civil and nonpunitive." Id. at 920. In concluding the scheme was not so punitive that it negated Congress' stated intention to deem it civil, the court held:

{¶55} "The only punishment that can arise under SORNA comes from a violation of [Sec.] 2250, which punishes convicted sex offenders who travel in interstate commerce after the enactment of SORNA and who fail to register as required by SORNA. Congress clearly intended SORNA to apply to persons convicted before the Act's passage. *** If SORNA did not apply to previously convicted sex offenders, SORNA would not serve Congress' stated purpose of establishing a 'comprehensive national system' for sex offender registration. Section 16901. *** Section 2250 punishes an individual for traveling in interstate commerce and failing to register. *The statute does not punish an individual for previously being convicted of a sex crime.* ***

Thus, prosecuting May under [Sec.] 2250 is not retrospective and does not violate the ex post facto clause." (Emphasis added.) Id.

{¶56} In *United States v. Hinckley* (C.A. 10, 2008), 550 F.3d 926, the Tenth Circuit adopted the reasoning of *May*, and held that neither SORNA's registration requirements nor the criminal penalties attached to non-compliance in Sec. 2250 violate the Ex Post Facto Clause. Relying on *Smith*, supra, the court held that the legislative intent expressed in SORNA's preamble and SORNA's primary effect satisfy the requirements of the Ex Post Facto Clause. Id. at 936.

{¶57} In *Hinckley,* the defendant attempted to distinguish the regulatory scheme in *Smith* from the federal SORNA. The defendant argued the *Smith* scheme was primarily civil in nature, and, unlike SORNA, did not require internet dissemination of offenders' information, did not establish a community notification program, did not require in-person reporting, and did not include felony criminal penalties for failing to register. Id. at 937. The court reasoned that SORNA's declaration of intent "shapes the statute as one involving public safety concerns, making clear that the law is designed 'to protect the public from sex offenders and offenders against children,' and comes as a 'response to the vicious attacks by violent predators.'" Id. quoting 42 U.S.C. Sec. 16901. The court then independently assessed whether the so-called civil statute is so punitive either in purpose or effect as to negate Congress' express intention. Id. Toward this end, the court observed that while SORNA uses criminal penalties to further its public safety ends, "'[i]nvoking the criminal process in aid of a statutory regime does not render the statutory scheme itself punitive.'" *Hinckley*, supra, quoting *Smith* at 96.

{¶58} Moreover, the court in *Hinckley* pointed out that SORNA, just as Alaska's regulatory scheme in *Smith*, merely provides for the "'dissemination of accurate information about a criminal record, most of which is already public.'" *Hinckley*, quoting *Smith*, supra, at 98. The *Hinckley* court held that while the public display of information may result in humiliation for the registrant, it is not an "'integral part of the objective of the regulatory scheme.'" *Hinckley,* supra, at 938, quoting *Smith*, supra, at 99. To the contrary, the court in *Hinckley* held that SORNA aims to "'inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.'" *Hinckley,* supra, quoting *Smith,* supra. The court held the primary effect of the act supports Congress' intent that the statute operate as a civil, regulatory scheme.

{¶59} Next, in *United States v. Dixon* (C.A. 7, 2008), 551 F.3d 578, the Seventh Circuit observed, based on the holding in *Smith*, SORNA's registration requirement (which, if an offender fails to follow, he or she can be prosecuted) is regulatory rather than punitive. The *Dixon* court unequivocally held that, in light of *Smith,* an offender "could not successfully *** challenge the registration requirement itself as an ex post facto law." Id. at 584.

{¶60} In *United States v. Ambert* (C.A. 11, 2009), 561 F.3d 1202, the Eleventh Circuit also held that SORNA did not violate protections against ex post facto laws. The court held that SORNA does not "impose a retroactive duty to register for prior convicted sex offenders or punish a defendant for actions that occurred prior to February 28, 2007[, the date the Attorney General determined the act was retroactive]."

Id. at 1207. The court held that SORNA imposed a duty to register beginning on the date of the Attorney General's retroactivity determination. Id. The court further held a violation of the act only occurs thereafter when a defendant fails to register after the date the statute became applicable. Id.

{¶61} Also, in *United States v. Samuels* (Apr. 2, 2009), 6th Cir. No. 08-5537, 2009 U.S. App. LEXIS 7084, the Sixth Circuit, relying on *Smith* and *May*, held SORNA presented no ex post facto violation. The court observed the intent and effects of SORNA are non-punitive and, moreover, SORNA only criminalizes behavior occurring after the enactment of the statute itself. *Samuels,* supra, at *11-*13. See, also, *United States v. Gould* (C.A. 4, 2009), 568 F.3d 459 (released June 18, 2009).

{¶62} Even though many of the cases outlined above do not directly address S.B. 10, the qualitative components of the schemes these cases addressed are substantially the same as S.B. 10. We therefore reaffirm the conclusion this court drew in *Swank* that Ohio's Adam Walsh Act does not violate constitutional protections against ex post facto legislation.

{¶63} Appellant's first assignment of error is overruled.

{¶64} We shall next address appellant's third assignment of error, which provides:

{¶65} "The trial court erred in determining that reclassification of appellant under Ohio's AWA does not violate the separation of powers doctrine."

{¶66} We first point out that, while S.B. 10 authorizes the Ohio Attorney General to reclassify offenders previously classified under H.B. 180, see R.C. 2950.031, such reclassification does not vacate or modify a prior final judgment of the court. There is

no doubt that a judicial determination of a sex offender's classification under H.B. 180 (former R.C. Chapter 2950) is a final judgment for purposes of appeal. *State v. Washington*, 11th Dist. No. 99-L-015, 2001-Ohio-8905, 2001 Ohio App. LEXIS 4980, *9. Still, such a judgment does not deprive the legislature of its constitutional authority to classify sex offenders.

{¶67} "[T]he classification of sex offenders into categories has always been a legislative mandate, not an inherent power of the courts. *** Without the legislature's creation of sex offender classifications, no such classification would be warranted. Therefore, *** we cannot find that sex offender classification is anything other than a creation of the legislature, and therefore, the power to classify is properly expanded or limited by the legislature." *In re Smith*, supra, at ¶39.

{¶68} Put simply, S.B. 10 does not require the Attorney General (via legislative mandate) to reopen final judicial judgments. The new scheme merely changes the classification and registration requirements for sex offenders and mandates that new procedures be applied to sex offenders currently registered under the former law. In *Cook,* supra, the Court pointed out that "where no vested right has been created, 'a later [legislative] enactment will not burden or attach a new disability to a past, transaction or consideration in the constitutional sense, unless the past transaction or consideration *** created at least a reasonable expectation of finality." Id. at 412, quoting *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281. With the exception to the constitutional protection against ex post facto laws, which, as discussed supra, S.B. 10 does not violate, "'*felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation*.'" (Emphasis sic.) *Cook,* supra, quoting

Matz, supra, at 281-282. Accordingly, because convicted sex offenders have no reasonable "settled expectation" or vested rights concerning the registration obligations imposed on them, S.B. 10 does not function to abrogate a final prior judicial adjudication. See *State v. King*, 2d Dist. No. 08-CA-02, 2008-Ohio-2594, at ¶33; *State v. Linville*, 4th Dist. No. 08CA3051, 2009-Ohio-313.

{¶69} Finally, in *Ferguson*, supra, the Ohio Supreme Court held that an offender's classification as a sexual predator is merely a "collateral consequence of the offender's criminal acts rather than a form of punishment per se." In that case, the Court concluded the offender had "not established that he had any reasonable expectation of finality in [such] a collateral consequence ***." Id. at 14. Here, we acknowledge that appellant possesses a reasonable expectation in the finality of his conviction; however, this expectation does not extend to his former classification. His previous sexual classification is nothing more than a collateral consequence arising from his criminal conduct. Even though appellant's registration and notification obligations have changed under S.B. 10, he has failed to provide this court with any authority indicating he possessed a reasonable expectation of finality in the collateral consequence of his former classification.

{¶70} The new registration and notification scheme does not violate the doctrine of separation of powers and, as a result, we reaffirm the same conclusion reached in *Swank.*

{¶71} Appellant's third assignment of error lacks merit.

{¶72} We next address appellant's second assignment of error which alleges:

{¶73} "The trial court erred in determining that the retroactive application of Ohio's AWA does not violate the prohibition on retroactive laws in Article II, Section 28, of the Ohio Constitution."

{¶74} R.C. 1.48 provides: "A statute is presumed to be prospective in its operation unless expressly made retrospective." Here, S.B. 10 expressly states it shall apply retroactively. Further, while it is clear that S.B. 10 imposes different obligations upon appellant, such an imposition does not imply the law is substantive in nature. To the contrary, because appellant had no reasonable expectation of finality in the collateral consequence of his former classification, the new obligations do not affect or take away a vested, substantive right. As a result, S.B. 10 is procedural in nature and is valid under Article II, Section 28 of the Ohio Constitution. See *Ferguson,* supra, at 14-16. Again, we reaffirm *Swank* in relation to the issue of retroactivity.

{¶75} Appellant's second assignment of error is overruled.

{¶76} Appellant's fourth assignment of error asserts:

{¶77} "The trial court erred in determining that reclassification of appellant did not constitute impermissible multiple punis[h]ment[s] under the Double Jeopardy clauses of the United States and Ohio Constitutions."

{¶78} "The Double Jeopardy Clause states that no person shall 'be subject for the same offence to be twice put in jeopardy of life or limb.'" *Williams*, supra, at 527-528, citing the Fifth Amendment to the United States Constitution; see, also, Section 10, Article I, Ohio Constitution. The double jeopardy clauses in both the United States and Ohio Constitutions prevent states "from punishing twice, or from attempting a second time to criminally punish for the same offense." *Williams*, supra, at 528, citing *Kansas v.*

Hendricks, 521 U.S. 346. Consequently, the preliminary question in a double jeopardy analysis is whether the government's actions entail criminal punishment. *Hudson v. United States* (1997), 522 U.S. 93.

{¶79} We point out that our opinion in *Swank* did not specifically address the Double Jeopardy argument; however, one can easily deduce from the substantive conclusions this court drew in *Swank,* as well as additional analysis of this opinion, S.B. 10 is non-punitive and therefore does not violate constitutional protections against Double Jeopardy.

{¶80} Appellant's fourth assignment of error lacks merit.

{¶81} For his fifth assignment of error, appellant argues:

{¶82} "The Trial court erred in determining that the residency restrictions under Ohio's AWA do not violate due process."

{¶83} Appellant contends the statute infringes upon his fundamental liberty to live where he wishes as it categorically bars him from residing within 1000 feet of a school, pre-school, or child day-care center. See R.C.2950.034. We disagree.

{¶84} Rights are fundamental in the substantive due process framework when they are "deeply rooted in this Nation's history and tradition," *Moore v. City of East Cleveland* (1977), 431 U.S. 494, 503, and so "implicit in the concept of ordered liberty," that "neither liberty nor justice would exist if they were sacrificed." *Palko v. Connecticut* (1937), 302 U.S. 319, 325-326. The United States Supreme Court has recognized that fundamental rights include those guaranteed by the Bill of Rights as well as certain penumbra rights implicit in the Due Process Clause. *Washington v. Glucksberg* (1997), 521 U.S. 702, 720.

{¶85} Against this backdrop, we point out that appellant has failed to allege, let alone establish, he has experienced the actual deprivation of his rights by virtue of his classification. That is, appellant has provided no evidence that he owns or resides in property within 1000 feet of any school or day-care facility. Appellant does not even proclaim any intention of moving within 1000 feet of the proscribed areas. As a result, appellant has failed to provide any evidence indicating he suffered an injury in fact or an actual deprivation of his liberty or property. "'The constitutionality of a state statute may not be brought into question by one who is not within the class against whom the operation of the statute is alleged to have been unconstitutionally applied and who has not been injured by its alleged unconstitutional provision.'" *State v. Brown*, 8th Dist. No. 86577, 2006-Ohio-4584, quoting *Palazzi v. Estate of Gardener* (1987), 32 Ohio St.3d 169, syllabus. As appellant's argument is premised upon hypothetical, "would-be" scenarios, he lacks standing to assert this issue.

{¶86} Appellant's fifth assignment of error lacks merit.

{¶87} Appellant's sixth assignment of error alleges:

{¶88} "The trial court erred in determining that appellant is subject to the community notification requirements under Ohio's AWA when R.C. 2950.11(F) provides an exception to the community notification requirement for individuals, such as appellant, who were not subject to community notification under pre-AWA law."

{¶89} Appellant contends that because his former classification did not require community notification, he is excepted from community notification under S.B. 10 by operation of R.C. 2950.11(F)(2). However, pursuant to R.C. 2950.11(F)(1), community notification requirements do not attach to a Tier II classification. See *State v. Charette,*

11th Dist. No. 2008-L-069, 2009-Ohio-2952, at ¶11. Appellant's argument is therefore off-point because he is not subject to community notification.

{¶90} Appellant's sixth assignment of error lacks merit.

{¶91} For his seventh assignment of error, appellant argues:

{¶92} "The trial court erred in determining that Ohio's AWA does not violate the Equal Protection [Clause] of the Fourteenth Amendment of the United States Constitution."

{¶93} Appellant asserts S.B. 10 retroactively applies to some individuals convicted of specified offenses occurring prior to its passage, but not others. In doing so, appellant concludes, S.B. 10 unreasonably separates one class of felons, viz., sex offenders, from other felons in violation of the Equal Protection Clause.

{¶94} "When legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies. If neither a fundamental right nor a suspect class is involved, a rational-basis test is used. * * * This test requires that a statute be upheld if it is rationally related to a legitimate government purpose." (Citations omitted.) *Arbino v. Johnson and Johnson*, 116 Ohio St.3d 468, 481, 2007-Ohio-6948.

{¶95} Appellant has neither alleged a violation of a fundamental right nor has he directed us to any authority indicating that sex offenders have ever been designated a suspect class for an equal protection analysis. We shall therefore analyze whether the S.B. 10 classification scheme is rationally related to a legitimate purpose.

{¶96} The purpose clause of R.C. Chapter 2950 articulates that sex offenders have a higher rate of recidivism and sets forth a statutory purpose of protecting the public against future offenses. Such a goal cannot be considered illegitimate.

Moreover, in light of the statistically heightened risk of recidivism sex offenders pose, see *Smith,* supra, at 103, it is reasonable to believe that the newly enacted classification system will assist in meeting the legislature's goal of protecting the public. S.B. 10 and its requirements are therefore rationally related to the legitimate governmental purpose of protecting the public from future offenses.

{¶97} Appellant's seventh assignment of error is overruled.

{¶98} Appellant's eighth assignment of error asserts:

{¶99} "The trial court erred in determining that Ohio's AWA is not a bill of attainder."

{¶100} Appellant insists, in his eighth assignment of error, that the application of S.B. 10 to him constitutes a bill of attainder prohibited by Section 9, Article I of the United States Constitution. We disagree.

{¶101} Bills of attainder are "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial ***." *U.S. v. Lovett* (1946), 328 U.S. 303, 316. In light of this definition, there are several problems with appellant's position. First, as discussed at length above (as well as in *Swank*), S.B. 10 is a remedial law which does not inflict punishment. Moreover, S.B. 10's application is limited to sex offenders with an antecedent conviction which necessarily precipitated from either a judicial trial or a plea of guilty. Classification under S.B. 10 does not occur "without a judicial trial" but only after the demands of due process are met through the constitutional administration of criminal justice. Thus, S.B. 10 does not fit the Supreme Court's definition of an unconstitutional bill of attainder.

{¶102} Appellant's eighth assignment of error is without merit.

{¶103} Appellant's ninth assignment of error contends:

{¶104} "The trial court erred in determining that reclassification of appellant under Ohio's AWA does not constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution."

{¶105} Appellant's argument presupposes S.B. 10 imposes punishment. As we have previously concluded, S.B. 10 is a civil, remedial law and therefore non-punitive in its essence. As the punishment element is lacking, S.B. 10 cannot violate the Eighth Amendment.

{¶106} Appellant's ninth assignment of error is overruled.

{¶107} Appellant's tenth assignment of error provides:

{¶108} "The trial court erred in determining that appellant's reclassification under Ohio's AWA does not constitute a breach of contract and violation of the right to contract under the Ohio and United States constitutions."

{¶109} The Supreme Court of Ohio has held that "any change in the law which impairs the rights of either party, or amounts to a denial or obstruction of the rights accruing by contract, is repugnant to the Constitution." *Kiser v. Coleman* (1986), 28 Ohio St.3d 259, 263. Here, appellant contends that the retroactive application of S.B. 10 constitutes a breach of his plea agreement. He argues his classification as a sexually oriented offender, with its attendant duties, was a material part of his plea and therefore reclassifying him as a Tier II offender constitutes a breach of the agreement into which he entered with the state. We disagree.

{¶110} The record does not include a copy of appellant's plea agreement nor does it include a transcript of his guilty plea hearing. Without some objective evidence indicating appellant's classification was a part of the state's offer, its subsequent recommendation to the court, and the court's ultimate acceptance of the agreement, we cannot conclude appellant had a then-existing expectancy interest in his classification. Because, appellant offers no evidence that his plea agreement included a promise that his sexual offender classification would not change (and we are dubious such a term would have been approved by the court), the argument he advances assumes what he needs to establish; namely, that his former classification was a material term of the original agreement.

{¶111} As discussed above, convicted sex offenders have no reasonable right to expect that their conviction will never be subject to future remedial versions of R.C. 2950. *Cook,* supra, at 412. Because the record does not indicate appellant had a contractual right to remain classified a sexually oriented offender, we conclude he had no vested expectancy interest in his former classification or the terms and obligations it imposed. Thus, S.B. 10 does not violate the contract clause as applied to appellant's case.

{¶112} Appellant's final assignment of error is overruled.

{¶113} For the reasons discussed in this opinion, appellant's ten assignments of error lack merit. We therefore hold the judgment of the Lake County Court of Common Pleas is affirmed.

MARY JANE TRAPP, P.J., concurs with Concurring Opinion,

DIANE V. GRENDELL, J., dissents with Dissenting Opinion.

MARY JANE TRAPP, P.J., concurs with Concurring Opinion.

{¶114} The appellant's ex post facto and retroactive claims are rejected based on the Supreme Court of Ohio's prior determination that the registration and notification statute is civil and remedial in nature, and not punitive. I write separately to note as we did in *State v. Charette*, 11th Dist. No. 2008-L-069, 2009-Ohio-2952, that the Supreme Court of Ohio has become more divided on the issue of whether the registration and notification statute has evolved from a remedial and civil statute into a punitive one. As Justice Lanzinger stated in her concurring in part and dissenting in part opinion in *Wilson*: "I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions." See, also, *Ferguson* (Lanzinger, J., dissenting). I believe Senate Bill 10 merits review by the Supreme Court of Ohio to address the issue of whether the current version of R.C. Chapter 2950 has been transformed from remedial to punitive law. Before that court revisits the issue, however, we, as an inferior court, are bound to apply its holdings in *Cook* and *Wilson*, as we did in *Swank*.

DIANE V. GRENDELL, J., dissents with Dissenting Opinion.

{¶115} Appellant, Robert L. Hungerford's, reclassification as a Tier III Sex Offender pursuant to the Adam Walsh Act, unconstitutionally nullifies his prior classification in a final order of a court of competent jurisdiction as a sexually oriented offender, in violation of the doctrine of separation of powers. Accordingly, I respectfully dissent. Hungerford's obligations to register as a sexual offender should continue as set forth in the September 12, 2000 Judgment Entry of the Cuyahoga County Court of Common Pleas.[1]

{¶116} "It is well settled that the legislature has no right or power to invade the province of the judiciary, by annulling, setting aside, modifying, or impairing a final judgment previously rendered by a court of competent jurisdiction." *Cowen v. State ex rel. Donovan* (1922), 101 Ohio St. 387, 394; *Bartlett v. Ohio* (1905), 73 Ohio St. 54, 58 ("it is well settled that the legislature cannot annul, reverse or modify a judgment of a court already rendered"). This limit on the legislature's power is part of the separation of powers doctrine. "The administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers." *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, at paragraph one of the syllabus.

{¶117} In effect, the separation of powers doctrine applies the principle of res judicata, typically used as a bar to further litigation by parties, to legislative action. Cf. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, at paragraph one of the syllabus ("a valid, final judgment rendered upon the merits bars all subsequent actions

1. Contrary to the majority's assertion, this court did not consider the separation of powers doctrine in *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059, with respect to the legislature's authority to annul, reverse, or modify final judgments. Rather, the sex offender in *Swank* argued "that in enacting a

based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action").

{¶118} In the present case, the trial court's September 12, 2000 Judgment Entry, finding that Hungerford was not a sexual predator and notifying him of his duty to register as a "sexually oriented offender," constituted such a final judgment. Once the period for appeal had passed, Hungerford's classification became a settled judgment, which neither Hungerford nor the State could challenge. *Armstrong v. Marathon Oil Co.* (1990), 64 Ohio App.3d 753, 757 ("when a reviewable final determination has also become final in the sense that the time for review has expired, its effect cannot be challenged in a later appeal on another matter"). As such, Hungerford had every reasonable expectation that his duty to register was fixed by that judgment entry.

{¶119} The majority states that "S.B. 10 does not require the Attorney General *** to reopen final judicial judgments," but "merely changes the classification and registration requirements for sex offenders." I disagree. Hungerford's reclassification as a Tier III Sex Offender nullifies that part of the trial court's September 12, 2000 Judgment Entry classifying him as a sexually oriented offender. As the United States Supreme Court has observed, "[w]hen retroactive legislation requires its own application in a case already finally adjudicated, it does no more and no less than 'reverse a determination once made, in a particular case.'" *Plaut v. Spendthrift Farm, Inc.* (1995), 514 U.S. 211, 225, quoting The Federalist No. 81 (J. Cooke ed. 1961), at 545.

{¶120} The majority relies on prior appellate decisions holding that "the classification of sex offenders into categories has always been a legislative mandate,

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system of registration and notification based solely on the offense committed by the sex offender, S.B. 10 divested Ohio courts of the power to sentence a defendant." 2008-Ohio-6059, at ¶99.

not an inherent power of the courts. *** Therefore, *** the power to classify is properly expanded or limited by the legislature." *In re Smith*, 3rd Dist. No. 1-07-58, 2008-Ohio-3234, at ¶39.

{¶121} This response does not address the problem raised by Hungerford's classification as a sexually oriented offender being the settled judgment of the trial court, a judgment in which Hungerford had a reasonable expectation of finality. The General Assembly's authority to classify sex offenders and impose notification/registration requirements is not the issue. The Adam Walsh Act does not "merely" alter the classification scheme for persons sentenced on or after January 1, 2008, but mandates that all prior classifications be altered to conform to the new legislation. "Having achieved finality *** a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." *Plaut*, 514 U.S. at 227 (emphasis sic).

{¶122} The majority then asserts that a final prior judicial adjudication is not abrogated when a party has "no reasonable 'settled expectations' or vested rights" in the prior adjudication. In support of this position, the majority emphasizes that the new registration scheme is merely a "collateral consequence of the offender's criminal acts rather than a form of punishment per se." *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶34; *State v. Linville*, 4th Dist. No. 08CA3051, 2009-Ohio-313, at ¶24 ("sex offender classification is nothing more than a collateral consequence arising from his criminal conduct").

{¶123} Initially, there is no exception to the separation of powers doctrine or res judicata for "collateral consequences." It would be a peculiar and dangerous precedent in constitutional law if substantive matters contained in a final judicial judgment could be winnowed into direct and "collateral consequences"; the former accorded the attributes of finality while the latter remained vulnerable to legislative revision.[2]

{¶124} Moreover, the majority's citation to *Ferguson* is misleading. The Supreme Court did not hold, as the majority opinion implies, that offenders have no reasonable expectation of finality in collateral consequences. Rather, it held that "Ferguson has not established that he had any reasonable expectation of finality in a collateral consequence **that *might* be removed**." *Ferguson*, 2008-Ohio-4824, at ¶34 (italics in original; bold-face added). Ferguson, as a sexual predator, was required to register for the rest of his life, although he could petition the court to remove his sexual predator classification. Subsequent amendments to the Sex Offender Act rendered the sexual predator designation permanent, without the possibility of subsequent judicial review. Since there was never any guarantee that Ferguson could alter his status as a sexual predator, the Supreme Court properly acknowledged that he had no reasonable expectation in its eventual removal.

{¶125} This is a far different situation than the present one. According to the September 12, 2000 Judgment Entry, Hungerford's duty to register was to end after ten

2. One might suppose that court costs are a similar "collateral consequence" of conviction. The Ohio Supreme Court, however, has ruled otherwise. *State v. Clevenger*, 114 Ohio St.3d 258, at ¶5 ("a motion by an indigent criminal defendant to waive payment of costs must be made at the time of sentencing *** [o]therwise, the issue is waived and costs are res judicata") (citation omitted). In the analogous situation where a defendant has been resentenced to impose a term of postrelease control, the Ohio Supreme Court allowed the resentencing to occur because the original was "void." Thus, there was no constitutional violation and the doctrine of res judicata did not apply. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶36 ("[w]here *** the sentence imposed was unlawful and void, there can be no

years as a matter of law. It was not a future contingency, such as the possibility of Ferguson petitioning the court to remove his sexual predator designation. Whereas Ferguson was unable to present any "argument" or "evidence that would support a reasonable conclusion that [he] was likely to have his classification removed," Hungerford had every right to expect the removal of his classification after ten years based upon the November 12, 2000 Judgment Entry and former R.C. 2950.07(B)(3).

{¶126} Finally, it is important to note that in *Ferguson*, the Supreme Court did not consider any argument based on the finality of the original judgment or principles of res judicata. *Ferguson* stands in a line of cases beginning with *State v. Cook*, 83 Ohio St.3d 404. The *Cook*/*Ferguson* line of cases is distinguishable from the present situation in that, when Cook was classified as a sexually oriented offender, there was no classification system operative in Ohio for sex offenders. Cook's classification was an initial classification that did not upset some prior determination. Thus, the Supreme Court could properly declare that sex offenders had "no reasonable right to expect that their conduct will never thereafter be made the subject of legislation." *Cook*, 83 Ohio St.3d at 412 (citation omitted). Such a declaration does not carry the same import where the offender's conduct is already the subject of legislation and the court's final judgment.

{¶127} The General Assembly's stated purpose in enacting the Adam Walsh Act, "to provide increased protection and security for the state's residents from persons who have been convicted of, or found to be delinquent children for committing, a sexually oriented offense or a child-victim oriented offense," is properly realized in its application

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reasonable, legitimate expectation of finality in it"). Conversely, where, as in the present case, the original sentence was lawful and valid, there is a reasonable, legitimate expectation of finality.

to cases pending when enacted and those subsequently filed. Section 5, S.B. No. 10. Hungerford's sentence, however, had become final prior to the Adam Walsh Act. As such, it is beyond the power of the Legislature to vacate or modify.[3] The United States Supreme Court has stated that the principle of separation of powers is violated by legislation which "depriv[es] judicial judgments of the conclusive effect that they had when they were announced" and "when an individual final judgment is legislatively rescinded for even the *very best* of reasons." *Plaut*, 514 U.S. at 228 (emphasis sic). To the extent the Adam Walsh Act attempts to modify existing final sentencing judgments, such as Hungerford's sentence, it violates the doctrines of separation of powers and finality of judicial judgments, despite the good intentions of the Legislature. As such, that portion of the Act is invalid, unconstitutional, and unenforceable.

{¶128} For the foregoing reasons, I would reverse the decision of the court below and reinstate the trial court's September 12, 2000 Judgment Entry, requiring Hungerford to register as a sexually oriented offender.[4]

3. Moreover, as a final judgment, Hungerford's sentence also is beyond the authority of the courts to vacate or modify. *State v. Smith* (1989), 42 Ohio St.3d 60, at paragraph one of the syllabus; *Jurasek v. Gould Elecs., Inc.*, 11th Dist. No. 2001-L-007, 2002-Ohio-6260, at ¶15 (citations omitted).

4. It must be recognized that Hungerford's obligation to register as a sexually oriented offender pursuant to a prior final judgment would remain despite the Legislature's repeal of the earlier law. "The *** repeal of a statute does not *** [a]ffect any *** proceeding *** in respect of any such *** obligation ***; and the *** proceeding *** may be instituted, continued, or enforced, as if the statute had not been repealed or amended." R.C. 1.58(A)(4). Furthermore, the Ohio Supreme Court has held that "[w]hen a court strikes down a statute as unconstitutional, and the offending statute replaced an existing law that had been repealed in the same bill that enacted the offending statute, the repeal is also invalid unless it clearly appears that the General Assembly meant the repeal to have effect even if the offending statute had never been passed." *State v. Sullivan*, 90 Ohio St.3d 502, 2001-Ohio-6, at paragraph two of the syllabus. There is no evidence that the General Assembly intended the repeal of Ohio's Sex Offender and Registration and Notification Act to have effect apart from the enactment of the Adam Walsh Act.