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Supreme Court No. 97617-1
(Court of Appeals No. 78341-6-I)
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

BENJAMIN BATSON,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT BENJAMIN BATSON

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TABLE OF CONTENTS

TABLE OF AUTHORITIES III

A. INTRODUCTION 1

B. ISSUES PRESENTED..... 1

C. STATEMENT OF THE CASE 3

D. ARGUMENT 5

 1. Mr. Batson’s duty to register is based on an unconstitutional
 delegation of the legislative function..... 5

 2. Registration requirements are punitive and violate the
 prohibition on ex post facto laws. 8

 a. Registration is an affirmative disability and restraint. 9

 b. Public condemnation has historically been seen as punitive. . 12

 c. Registration promotes retribution and deterrence, the
 traditional aims of punishment..... 14

 d. Registration is excessive in relation to its purpose. 15

 e. Registration is punitive for homeless registrants. 17

 3. The punitive registration requirements violate double jeopardy. . 17

 4. There is no rational basis for requiring Mr. Batson to register
 and thus his duty to register violates equal protection..... 18

E. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Brower v. State, 137 Wn.2d 44, 969 P.2d 42 (1998) 6

Calder v. Bull, 3 U.S. 386, 1 L. Ed. 648 (1798) 9

Commonwealth v. Muniz, 164 A.3d 1189 (Pa. 2017) (plurality) 14, 16

Diversified Inv. P’ship v. Dep’t of Soc. & Health Serv., 133 Wn.2d 19, 775 P.2d 947 (1989)..... 7

Doe v. Dep’t of Pub. Safety and Corr. Servs., 62 A.3d 123 (Md. 2013) . 15, 16

Hudson v. United States, 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997)..... 21

In re Arseneau, 98 Wn. App. 368, 989 P.2d 1197 (1999) 22

McKune v. Lile, 536 U.S 24, 122 S. Ct. 2017, 153 L.Ed 2d 47 (2002) 18

Morris v. Blaker, 118 Wn.2d 133, 821 P.2d 482 (1992) 24, 25

Smith v. Doe, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003) .. 16, 18

Starkey v. Oklahoma Dep’t of Corr., 305 P.3d 1004 (Okla. 2013) ... 16, 17, 20

State v. Batson, 9 Wn. App. 2d 546, 447 P.3d 202 (2019) 6, 8, 9

State v. Boyd, 1 Wn. App. 2d 501, 408 P.3d 362 (2017) 12

State v. Coria, 120 Wn.2d 156, 839 P.2d 890 (1992)..... 23

State v. Dougall, 89 Wn.2d 118, 570 P.2d 135 (1977)..... 7

State v. Hunley, 175 Wn.2d 901, 287 P.3d 584 (2012)..... 3

State v. Letalien, 985 A.2d 4 (Me. 2009)..... 15

<i>State v. Manussier</i> , 129 Wn.2d 652, 921 P.2d 473 (1996)	23, 24
<i>State v. Noltie</i> , 116 Wn.2d 831, 809 P.2d 190 (1991)	21
<i>State v. Reynolds</i> , No. 51630-6-II & 52376-4-II (Feb. 4, 2020) (slip opinion).....	8
<i>State v. Smith</i> , 117 Wn.2d 263, 814 P.2d 652 (1991).....	23
<i>State v. Smith</i> , 93 Wn.2d 329, 610 P.2d 869 (1980).....	23
<i>State v. Wadsworth</i> , 139 Wn.2d 724, 991 P.2d 80 (2000).....	6
<i>State v. Ward</i> , 123 Wn.2d 488, 869 P.2d 1062 (1994)	passim
<i>Winchester v. Stein</i> , 135 Wn.2d 835, 959 P.2d 1077 (1998)	22
<i>Yakima Cty. Deputy Sheriff's Ass'n v. Bd. of Com'rs for Yakima Cty.</i> , 92 Wn.2d 831, 601 P.2d 936 (1979).....	25

Statutes

RCW 4.24.550	4
RCW 9.41.010	20
RCW 9.94A.030.....	20
RCW 9.94A.525.....	20
RCW 9A.44.079.....	3
RCW 9A.44.128.....	3, 6
RCW 9A.44.130.....	3, 4, 6, 10
RCW. 9A.44.132.....	11

Session Laws

Laws of 1990, ch. 3.....	passim
Laws of 1999, 1 st Spec. Sess., ch. 6	4
Laws of 2001, ch. 169.....	4

Laws of 2001, ch. 283.....	4
Laws of 2010, ch. 265.....	4
Laws of 2010, ch. 267.....	19

Constitutional Provisions

Const. art. I, § 12.....	18
Const. art. I, § 23.....	8
Const. art. I, § 9.....	17
Const. art. II, § 1	5
U.S. Const. amend XIV	18
U.S. Const. amend. V.....	17
U.S. Const. art. I, § 10.....	8

Other Authorities

Adam Liptak, “Did the Supreme Court Base a Ruling on a Myth?” N.Y. Times (Mar. 6, 2017)	18
Amanda Y. Agan, 54 "Sex Offender Registries: Fear without Function?" 54 J. Law & Econ. 207 (2011).....	20
Donna Gordon Blankinship, “Man held in sex offender killings, says he found victims on Web,” The Seattle Times (Sept. 6, 2005).	5
E.K. Drake & S. Aos, “Does sex offender registration and notification reduce crime? A systematic review of the research literature,” Washington State Institute for Public Policy (2009)	19
Elizabeth Esser-Stuart, <i>The Irons are Always In the Background: The Unconstitutionality of Sex Offender Post-Release Laws as Applied to the Homeless</i> , 96 Tex. L. Rev. 811 (2018)	12
Human Rights Watch, “No Easy Answers: Sex Offender Laws in the US” (2007).....	7

J.J. Prescott & Jonah E. Rockoff, “Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?” 54 J. L. & Econ. 161(2011).....	19
Lexi Pandell, “The Vigilante of Clallam County,” The Atlantic (Dec. 4, 2013)	5
Maine Statistical Analysis Center, “Sexual Assault Trends and Sex Offender Recidivism in Maine” (2010)	19
Richard G. Zevitz, “Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration,” 19 Crim. Justice Studies 193 (2006).....	20
Senate Committee on Human Services & Corrections, Senate Bill Report 6414, 61st Leg. (Jan. 19, 2010).....	24
Stan Orchowsky & Janice Iwama, Justice Research and Statistics Association, “Improving State Criminal History Records: Recidivism of Sex Offenders Released in 2001” (Nov. 2009).....	19
State of Connecticut, Office of Policy and Management, “Recidivism among sex offenders in Connecticut” (Feb. 2012)	19
U.S. Dep’t of Justice, Bureau of Justice Statistics, “Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005–14) (May 2019)	19
Washington Association of Sheriffs & Police Chiefs, sheriffalerts.com ...	5

A. INTRODUCTION

Thirty-five years ago, Arizona convicted Benjamin Batson for engaging in sexual conduct with a 16-year-old. This conduct is not criminal in Washington. Regardless, Washington requires Mr. Batson to register as a sex offender because of Arizona registration requirements.

Mr. Batson is homeless. To register, he must report to his local sheriff every week of the year and maintain a daily log of his whereabouts. The government maintains a website that labels him as a sex offender. Registration creates a massive burden for Mr. Batson. These burdens have resulted in three failure to register convictions since his move to Washington about a decade ago.

This Court should hold the duty to register violates Mr. Batson's constitutional rights, running afoul of the nondelegation doctrine, ex post facto, double jeopardy, and equal protection.

B. ISSUES PRESENTED

1. The non-delegation doctrine prohibits the legislature from delegating its power to define crimes. The registration statute states that anyone convicted of an "out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction" is required to register in Washington. Mr. Batson was convicted for conduct that is not criminal in Washington but must

register as a sex offender. Did our legislature unconstitutionally delegate its power to define the crime of failure to register to other states?

2. A criminal law violates the ex post facto doctrine if it imposes a greater punishment than applied when the crime was committed. Current registration laws require homeless registrants to report in-person weekly and keep a daily log of their whereabouts. They face felony charges if they fail to comply. Registrants' personal information also appears on a government website, imposing a severe stigma and limiting registrants' ability to reintegrate into their communities. Do Washington's current sex offender registration laws violate ex post facto?

3. Double jeopardy protects defendants from multiple punishments for the same offense. Whether registration violates double jeopardy presents the same question as whether it violates ex post facto: is registration punitive?

4. Equal protection requires persons similarly situated to receive like treatment. Mr. Batson engaged in conduct that is not criminal in Washington. Unlike similarly situated individuals who have engaged in legal sexual activity in Washington, Mr. Batson is subject to stringent registration laws. Is there a rational basis for requiring people like Mr. Batson to register, when similarly situated individuals escape the same burden and stigma?

C. STATEMENT OF THE CASE

Three decades have passed since Mr. Batson pled guilty to sexual conduct with a 16-year-old in Arizona. CP 246, 248, 250–53. The act was consensual. RP 166-67. Racial bias might have contributed to the criminal charges. *Id.* Mr. Batson has not been convicted of a sex offense since.¹ CP 402–403. The conduct is not illegal in Washington. *See* RCW 9A.44.079.

Before 2010, Washington only required registration for out-of-state convictions comparable to a Washington sex offense. Laws of 1990, ch. 3, § 602. Accordingly, Mr. Batson had no duty to register. That changed in 2010 when the law was amended to require registration for “[a]ny out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction.” RCW 9A.44.128(10)(h); RCW 9A.44.130(1)(a).

Mr. Batson has spent two decades in Florida and Washington, struggling to maintain steady employment and housing because of his registration status. RP 168–69. He was unable to use housing vouchers due to his registration, despite being a veteran. RP 171–72. As a result, Mr. Batson has been homeless, living in shelters and on the streets, for most of his adult life. RP at 171–73.

¹ The State has repeatedly made unsupported allegations concerning the underlying conviction and Mr. Batson’s criminal history. These assertions should not be considered by this Court. *State v. Hunley*, 175 Wn.2d 901, 912–13, 287 P.3d 584 (2012).

In 1999, Washington began requiring registrants who lacked a “fixed residence” to report in-person at their local sheriff monthly or weekly, based on their assessed risk level. *See* Laws of 1999, 1st Spec. Sess., ch. 6, § 2. In 2001, Washington began requiring all homeless registrants to report weekly. Laws of 2001, ch. 169, § 1. In 2010, Washington added another requirement, mandating that homeless registrants provide the sheriff with an “accurate accounting” of where they stayed during the week. Laws of 2010, ch. 265, § 1.

These requirements create a huge burden for Mr. Batson. Because he is homeless, he is required to report in person fifty-two times per year and track his daily whereabouts. RCW 9A.44.130(6)(b). Unsurprisingly, he has not always been able to comply with these requirements and has been convicted for failure to register three times in Washington.

In 2001, the State built a searchable, public database of sex offenders. Laws of 2001, ch. 283, § 2. It initially only included high risk registrants. Now, however, the website contains information about all homeless registrants. RCW 4.24.550(5). The site includes photographs, names, ages, identifying characteristics, and mappable addresses.²

² *See* Washington Association of Sheriffs & Police Chiefs, sheriffalerts.com.

Mr. Batson has family in Washington but does not live with them because he fears vigilantes will find his address and threaten his family with harm. RP 171. This fear is not irrational, as sex offender registries have repeatedly been used by vigilantes to locate and murder people.³ Mr. Batson has also been forced out of shelters when he was found on the State’s sex offender website. RP 172.

The Court of Appeals concluded Mr. Batson’s duty to register violated the non-delegation doctrine. *State v. Batson*, 9 Wn. App. 2d 546, 447 P.3d 202 (2019). This Court accepted review of the government’s petition and the issues raised in Mr. Batson’s answer.

D. ARGUMENT

1. Mr. Batson’s duty to register is based on an unconstitutional delegation of the legislative function.

“The legislative authority of the state of Washington shall be vested in the legislature.” Const. art. II, § 1. “[I]t is unconstitutional for the Legislature to abdicate or transfer its legislative function to others.” *Brower v. State*, 137 Wn.2d 44, 54, 969 P.2d 42 (1998). This function includes defining the elements of crimes and setting punishments. *See State v. Wadsworth*, 139 Wn.2d 724, 734 & n.56, 991 P.2d 80 (2000).

³ See Lexi Pandell, “The Vigilante of Clallam County,” *The Atlantic* (Dec. 4, 2013); Donna Gordon Blankinship, “Man held in sex offender killings, says he found victims on Web,” *The Seattle Times* (Sept. 6, 2005).

Conviction of a “sex offense” is an element of the crime of failure to register. *See* RCW 9A.44.130(1)(a). In 2010, the legislature revised the definition of a “sex offense” to include “[a]ny out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction.” RCW 9A.44.128(10)(h). Tying this element to the registration requirements of other states is an unconstitutional delegation of legislative power.⁴

“A statute must be complete in itself when it leaves the hands of the Legislature.” *Diversified Inv. P’ship v. Dep’t of Soc. & Health Serv.*, 133 Wn.2d 19, 24, 775 P.2d 947 (1989). In *State v. Dougall*, this Court applied the “rule of completeness” to the controlled substances statute. 89 Wn.2d 118, 122–23, 570 P.2d 135 (1977). The statute incorporated by reference federally designated controlled substances. *Id.* at 120. Because the federal designation of controlled substances could change at any time, this Court held that “legislation which attempts to adopt or acquiesce in future federal rules, regulations or statutes is an unconstitutional delegation of legislative power and thus void.” *Id.* at 122–23.

Dougall controls here. *Batson*, 9 Wn. App. 2d at 551. By incorporating the impermanent laws of another state, “the substance of the

⁴ The statute also permits values of other states to dictate what is criminal in Washington. For example, some states require registration for public urination and streaking. *See* Human Rights Watch, “No Easy Answers: Sex Offender Laws in the US” 38–40 (2007).

law [was] incomplete when it passed the Legislature, thus transferring the power to render judgment on an issue to [another] government.”

Diversified, 113 Wn.2d at 25. “As in *Dougall*, the sex offender registration statute permits future Arizona law to define an element of the crime.”

Batson, 9 Wn. App. 2d at 552; see also *State v. Reynolds*, No. 51630-6-II & 52376-4-II (Feb. 4, 2020) (slip opinion) (adopting *Batson*’s reasoning).

The State asserts this case is analogous to *Diversified*, which concerned legislation that voided state statutes in conflict with federal law. 113 Wn.2d at 24–25. Unlike *Dougall*, the legislation at issue in *Diversified* was not an unconstitutional delegation to the federal government, because “[c]onditioning the operative effect of a statute upon the happening of a future specified event can be distinguished from a statute which attempts to adopt future federal law.” *Id.* at 28. “The sex offender registration statute does not provide that it becomes ineffective or inoperative if some event occurs in the future.” *Batson*, 9 Wn. App. 2d at 553. Rather, “it transfers to Arizona the power to define whether *Batson* has an ongoing duty to register in Washington.” *Id.* *Diversified* has no application here.

The registration statutes impose a duty to register based on out-of-state convictions that are not Washington sex crimes. The legislature cannot abdicate its duty to define the elements of a crime to the ever-shifting laws of other states. The Court of Appeals should be affirmed.

2. Registration requirements are punitive and violate the prohibition on ex post facto laws.

A criminal law violates ex post facto prohibitions if it “changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.” *State v. Ward*, 123 Wn.2d 488, 497, 869 P.2d 1062 (1994) (quoting *Calder v. Bull*, 3 U.S. 386, 390, 1 L. Ed. 648 (1798) (emphases omitted); U.S. Const. art. I, § 10; Const. art. I, § 23. In evaluating whether a law violates ex post facto, courts determine whether the law “is substantive, as opposed to merely procedural; (2) is retrospective (applies to events which occurred before its enactment), and (3) disadvantages the person affected by it.” *Ward*, 123 Wn.2d at 498 (emphasis and citations omitted). The “sole determination of whether a law is ‘disadvantageous’ is whether the law *alters the standard of punishment* which existed under prior law.” *Id.* (emphasis in the original).

Ward recognized that sex offender registration was retrospective and assumed it was substantive. 123 Wn.2d at 498 & n.5. *Ward* further held that registration was not punitive because it served a regulatory function, and thus did not violate ex post facto. *Id.* at 510. Today’s registration requirements are significantly more burdensome and have more severe consequences than the requirements considered by *Ward* in 1994. Accordingly, *Ward*’s analysis is outdated.

To determine whether a law is punitive or merely “regulatory,” this Court first examines legislative intent. *Ward*, 123 Wn.2d at 499. In passing the original registration laws, the legislature found “sex offenders often pose a high risk of reoffense,” and indicated registration would assist law enforcement agencies in protecting their communities. Laws of 1990, ch. 3, § 401. *Ward* concluded this evinced a regulatory purpose but that this intent could be overcome if “the actual *effect* of the statute is so punitive as to negate the Legislature’s regulatory intent.” 123 Wn.2d at 499 (emphasis in the original).

Four factors determine whether a law is punitive in effect: if the sanction involves an affirmative disability or restraint, if it has historically been regarded as punishment, if its operation will promote retribution and deterrence, and if it appears excessive to its non-punitive purpose. *Ward*, 123 Wn.2d at 500–11. This test demonstrates that the increasingly burdensome nature of registration is punitive and violates *ex post facto*.

a. Registration is an affirmative disability and restraint.

In *Ward*, this Court determined the registration laws in effect “imposed no significant additional burdens on offenders” because they only required providing identifying information, photographs, and fingerprints. *Ward*, 123 Wn.2d at 500. This information was routinely obtained at sentencing. The Court concluded, “it is inconceivable that

filling out a short form with eight blanks creates an affirmative disability. Registration alone imposes burdens of little, if any, significance.” *Id.* at 501.

By contrast, today’s registration statutes require all individuals lacking a “fixed residence” to report in person every week—52 times a year. RCW 9A.44.130(6)(b). These registrants must “keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request.” *See id.* This is far from “filling out a short form.” *Ward*, 123 Wn.2d at 501.

Washington’s registration requirements for the homeless are some of the most burdensome in the country. *See State v. Boyd*, 1 Wn. App. 2d 501, 525, 408 P.3d 362 (2017) (Becker, J., dissenting). Only North Dakota has a more demanding registration law. Elizabeth Esser-Stuart, *The Irons are Always In the Background: The Unconstitutionality of Sex Offender Post-Release Laws as Applied to the Homeless*, 96 Tex. L. Rev. 811, 835, 856 & n. 160 (2018). The weekly reporting requirement “can readily lead to an unending cycle of imprisonment for transient offenders,” which is “the paradigmatic affirmative disability or restraint.” *Boyd*, 1 Wn. App. 2d at 525 (Becker, J., dissenting) (citation omitted). Mr. Batson’s cyclical incarceration typifies the punitive nature of these requirements.

In addition to placing a more onerous reporting burden on registrants, the legislature has increased the punishments for non-compliance. When it was first criminalized, failure to register was, at most, a Class C felony. Laws of 1990, ch. 3, § 402. Now, however, a third failure to register conviction is a Class B sex offense. RCW. 9A.44.132(1).

Ward also held registration was not punitive because “[t]he Legislature placed significant limits on (1) whether an agency may disclose registrant information, (2) what the agency may disclose, and (3) where it may disclose the information.” 123 Wn.2d at 502. “[I]n many cases, both the registrant information and the fact of registration remain confidential.” *Id.* Disclosure was only warranted where an agency had “some evidence of dangerousness in the future,” and *Ward* noted that the “geographic scope” of the disseminated information could be limited “only to the surrounding neighborhood, or to schools and day care centers.” *See id.* at 503–04. *Ward* concluded “[t]his statutory limit ensures that disclosure occurs to prevent future harm, not to punish past offenses.” *Id.* at 503.

The Internet age entirely undercut the privacy safeguards cited by *Ward*. In 2001, the state began to maintain a searchable database of sex offenders. Laws of 2001, ch. 283 § 2. In contrast to the carefully measured dissemination of information *Ward* envisioned, Mr. Batson’s mugshot is

now the first thing that appears when searching for his name. Disclosure is now the presumption, regardless of whether such information is “relevant and necessary” to prevent future threats. *Compare* 123 Wn.2d at 503–04.

Other courts recognize that in-person reporting, increased punishments, and searchable online databases place a significant disability and restraint on registrants. The Sixth Circuit concluded that Michigan’s registration laws were “direct restraints” and thus punitive. *See Does #1–5 v. Snyder*, 834 F.3d 696, 697–98, 703, 705 (6th Cir. 2016). Pennsylvania, New Hampshire, Maryland, Indiana and Maine also held that quarterly and annual in-person requirements are punitive. *See Commonwealth v. Muniz*, 164 A.3d 1189, 1211 (Pa. 2017) (plurality); *Doe v. State*, 111 A.3d 1077, 1096 (N.H. 2015); *Doe v. Dep’t of Pub. Safety and Corr. Servs.*, 62 A.3d 123, 139 (Md. 2013); *Wallace v. State*, 905 N.E.2d 371, 379–80 (Ind. 2009); *State v. Letalien*, 985 A.2d 4, 18 (Me. 2009).

Weekly in-person registration, coupled with an online database, constitutes an affirmative disability and restraint and is punitive in nature.

b. Public condemnation has historically been seen as punitive.

Ward held that “[r]egistration has not traditionally or historically been regarded as punishment.” 123 Wn.2d at 507. *Ward* compared registration to providing an address change to DMV, concluding

registration was “a traditional governmental method of making available relevant and necessary information to law enforcement agencies.” *See id.*

The Internet age changed the nature of sex offender registration. Registration is more like public shaming than providing a change of address to DMV. “Widespread dissemination of offenders’ names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to disable offenders from living normally in the community.” *Smith v. Doe*, 538 U.S. 84, 109, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003) (Souter, J., dissenting). The “internet is our town square. Placing offenders’ pictures and information online serves to notify the community, but also holds them out for others to shame or shun.” *Doe*, 111 A.3d at 1097.

Additionally, several courts recognize sex offender registration is like probation or parole—historical forms of punishment—as registration involves continued government supervision and monitoring. *See Muniz*, 164 A.3d at 1211–13; *Synder*, 834 F.3d at 703; *Starkey v. Oklahoma Dep’t of Corr.*, 305 P.3d 1004, 1022–23 (Okla. 2013); *Dep’t of Pub. Safety and Corr. Servs.*, 62 A.3d at 139; *Wallace*, 905 N.E.2d at 380.

In light of the similarities to public shaming, parole, and probation, sex offender registration is akin to a historical means of punishment.

c. Registration promotes retribution and deterrence, the traditional aims of punishment.

In *Ward*, this Court found “the Legislature’s primary intent is to aid law enforcement agencies’ efforts to protect their communities.” 123 Wn.2d at 508. Deterrence was merely a “secondary effect.” *Id.* Even assuming the promotion of retribution and deterrence are “secondary effects” of registration, these effects are still substantial enough to be punitive. In striking down its registration statute, the Indiana Supreme Court found it “strains credulity to suppose that the Act’s deterrent effect is not substantial, or that the Act does not promote ‘community condemnation of the offender,’ both of which are included in traditional aims of punishment.” *Wallace*, 905 N.E.2d at 382 (citations omitted). Additionally, sex offender laws use “past crime as the touchstone, probably sweeping in a significant number of people who pose no real threat to the community, serv[ing] to feed suspicion that something more than regulation of safety is going on.” *Starkey*, 305 P.3d at 1027–28 (citations and quotation marks omitted). Further, the registration law’s deterrent and retributive effects are even more powerful since online databases provide personal information about registrants to the public.

The duty to register is both retributive and a deterrent, and thus promotes the goals of punishment.

d. Registration is excessive in relation to its purpose.

Ward held that registration was not excessive, finding “the Legislature has spoken clearly that public interest demands that law enforcement agencies have relevant and necessary information about sex offenders residing in their communities.” 123 Wn.2d at 509. This Court rejected arguments that registration would “burden former offenders by making them the focus of every sex crime investigation” or would result in “a lifelong badge of infamy.” *Id.*

The legislative history of the registration statutes reveals that legislators were driven by concerns about the “high” risk of sex offender recidivism. Laws of 1990, ch. 3, § 401. Subsequent social science demonstrated that sex offender registration does not reduce recidivism, and is inherently excessive in relation to its purpose.

The legislature was wrong in declaring that sex offenders “pose a high risk of reoffense.”⁵ Sex offenders have low sex crime recidivism rates; the Department of Justice recently put the statistic at 7.7 percent,⁶

⁵ The State may assert that sex offenders pose a high risk of recidivism, relying on *Smith*, 538 U.S. at 103 and *McKune v. Lile*, 536 U.S. 24, 33, 122 S. Ct. 2017, 153 L. Ed 2d 47 (2002). Both *Smith* and *McKune*’s proclamations were based on a widely debunked non-academic and unsourced article. *See, e.g.*, Adam Liptak, “Did the Supreme Court Base a Ruling on a Myth?” N.Y. Times (Mar. 6, 2017).

⁶ *See* U.S. Dep’t of Justice, Bureau of Justice Statistics, “Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005–14) (May 2019).

and study after study has found similarly low recidivism rates.⁷ Further, the Washington State Institute for Public Safety has concluded that registration laws “have no statistically significant effect on recidivism,”⁸ a finding that is backed up by numerous studies.⁹ At least one study has found that registration databases have the potential to *increase* recidivism, perhaps due to their stigmatizing effect.¹⁰

Other courts have reached similar conclusions, holding that broad sex offender registration laws are an excessive response to the need for public safety. The Sixth Circuit concluded that “the requirement that registrants make frequent, in-person appearances before law enforcement” “appears to have no relationship to public safety at all.” *Snyder*, 834 F.3d at 705. Similarly, the Supreme Court of Oklahoma held that registration was excessive to the purpose of protecting the public because it was “imposed on a wide variety of crimes of which the severity of the crime

⁷ See, e.g., State of Connecticut, Office of Policy and Management, “Recidivism among sex offenders in Connecticut” 4 (Feb. 2012); Maine Statistical Analysis Center, “Sexual Assault Trends and Sex Offender Recidivism in Maine” 12 (2010); Stan Orchowsky & Janice Iwama, Justice Research and Statistics Association, “Improving State Criminal History Records: Recidivism of Sex Offenders Released in 2001” 17 (Nov. 2009).

⁸ E.K. Drake & S. Aos, “Does sex offender registration and notification reduce crime? A systematic review of the research literature,” Washington State Institute for Public Policy (2009).

⁹ See J.J. Prescott & Jonah E. Rockoff, “Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?” 54 J. L. & Econ. 161, 192 (2011); Amanda Y. Agan, 54 “Sex Offender Registries: Fear without Function?” 54 J. Law & Econ. 207, 235 (2011); Richard G. Zevitz, “Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration,” 19 Crim. Justice Studies 193 (2006).

¹⁰ See Prescott, *et. al.*, *supra* at note 9, at 192.

and circumstances surrounding each crime can vary greatly.” *Starkey*, 305 P.3d at 1029; *see also Wallace*, 905 N.E.2d at 384; *Doe*, 111 A.3d at 410.

Registration is excessive in relation to its proposed purpose of reducing recidivism.

e. Registration is punitive for homeless registrants.

The *Ward* factors demonstrate a punitive effect. Registration is an affirmative disability and restraint. It is akin to public condemnation and promotes the traditional aims of punishment. It is excessive to its stated purpose of reducing recidivism. Washington’s registration requirements, as applied to homeless registrants, violate the ex post facto doctrine.

3. The punitive registration requirements violate double jeopardy.

The double jeopardy clauses of the Fifth Amendment and Article I, § 9 protect “a defendant from a second trial for the same offense and against multiple punishments for the same offense.” *State v. Noltie*, 116 Wn.2d 831, 848, 809 P.2d 190 (1991). The duplicate punishments must be criminal in nature, as opposed to a “civil penalty.” *Hudson v. United States*, 522 U.S. 93, 99, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997).

To evaluate whether a particular punishment is criminal, courts first examine legislative intent and determine “whether the statutory scheme was so punitive either in purpose or effect . . . as to transform what was clearly intended as a civil remedy into a criminal penalty.” *See*

id. (internal citations, quotation marks, and alterations omitted) . This is the same analysis that applies to ex facto challenges. *See In re Arseneau*, 98 Wn. App. 368, 379–80, 989 P.2d 1197 (1999) (citing *Ward*, 123 Wn.2d at 499). If this Court concludes that registration violates ex post facto, it must also find it violates the right not to be subject to double jeopardy.

4. There is no rational basis for requiring Mr. Batson to register and thus his duty to register violates equal protection.

Under the equal protection clause of the Fourteenth Amendment and the privileges and immunities clause of Article I, § 12, “persons similarly situated with respect to the legitimate purpose of the law must receive like treatment.” *State v. Manussier*, 129 Wn.2d 652, 672, 921 P.2d 473 (1996). These two clauses are “substantially identical and considered by this [C]ourt as one issue.” *State v. Smith*, 117 Wn.2d 263, 281, 814 P.2d 652 (1991).

Laws that do not infringe on fundamental rights or create a suspect classification must, at a minimum, be supported by a rational basis. *State v. Smith*, 93 Wn.2d 329, 336, 610 P.2d 869 (1980). Under rational basis, “the law being challenged must rest upon a legitimate state objective, and the law must not be wholly irrelevant to achieving that objective.” *State v. Coria*, 120 Wn.2d 156, 169, 839 P.2d 890 (1992).

In evaluating statutes under the rational basis test, this Court applies a three-part test: “1. Does the classification apply alike to all

members within the designated class? 2. Does some rational basis exist for reasonably distinguishing between those within the class and those outside the class? and 3. Does the challenged classification bear a rational relation to the purpose of the challenged statute?” *Morris v. Blaker*, 118 Wn.2d 133, 149, 821 P.2d 482 (1992) (citations omitted).

Here, the designated class is defined as all individuals who are required to register in Washington for out-of-state conduct that is not criminal in Washington. This class is “similarly situated” to individuals who have engaged in legal sexual activity in Washington. *Manussier*, 129 Wn.2d at 672. Before 2010, both groups “receive[d] like treatment,” *id.*, because registration requirements only applied to individuals convicted of comparable offenses. *See* Laws of 1990, ch. 3, § 602.

That similar treatment ended when the legislature eliminated the comparability requirement. Now, people with out-of-state convictions are required to register even if their offense is not a crime in Washington. Laws of 2010, ch. 267, § 1. The legislature made the change in part due to concerns over the time required to perform a “comparability” analysis under the old law. *See* Senate Committee on Human Services & Corrections, Senate Bill Report 6414, 61st Leg. at 4 (Jan. 19, 2010).

The concern about comparability analyses is not a rational basis for requiring Mr. Batson to register. Comparability analyses are performed in

almost every single instance where out-of-state crimes are considered. *See* RCW 9.41.010(8), (4); (27); RCW 9.94A.030(22)(c); (26)(b); RCW 9.94A.525(3). Far from a complex task, Washington's statutory scheme demonstrates that comparability analyses are performed daily, and thus do not provide a rational basis for Mr. Batson's unequal treatment.

Even assuming the revised statute saves time, classifying individuals like Mr. Batson differently bears no rational relation to this purpose. *See Morris*, 118 Wn.2d at 149. Any gains in administrative efficiency are lost by the time, money, and other resources the State spends monitoring and then prosecuting Mr. Batson.

There is no rational basis for treating Mr. Batson differently than others who have engaged in legal sexual conduct in Washington State. His right to equal protection is thus violated by the duty to register.

E. CONCLUSION

This Court should hold that Mr. Batson's duty to register is unconstitutional.

DATED this 7th day of February, 2020.

Respectfully submitted,

/s Jessica Wolfe

State Bar Number 52068

Washington Appellate Project (91052)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Petitioner,)
) NO. 97617-1
 v.)
)
 BENJAMIN BATSON,)
)
 Respondent.)

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SIGNED IN SEATTLE, WASHINGTON THIS 7TH DAY OF FEBRUARY, 2020.



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