

1501010-3

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No. 75228-6

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

DIVISION ONE

—
JOHN DOE,
Appellant,

v.

STATE OF WASHINGTON,
Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S REPLY BRIEF

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COURT OF APPEALS DIVISION
STATE OF WASHINGTON

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I. ARGUMENT IN REPLY

A. SUMMARY

The State trivializes the right to travel abroad, treating it as merely a right which may be restricted without due process. “*Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.*”¹ The U.S. Supreme Court ruled the right to travel abroad is protected by the Fifth Amendment.² The Washington State Supreme Court made similar declarations regarding the right to travel.³ The State incorrectly reads case law as supporting the constitutionality of the travel notification and waiting requirements of RCW 9A.44.130(3), as amended by SB-5154-2015.

Doe challenges not prior rulings in Smith⁴ and Ward⁵ as the State claims, but argues his claims are distinguishable from those reviewed in Smith and Ward. This Court now has hindsight of other state⁶ and federal court rulings which have determined many amendments to state registry schemes to be punitive and not purely regulatory. The Sixth Circuit (August 2016) in Does v. Snyder⁷ called Michigan’s 2006 and 2011 amendments to their state registry “punitive” and

¹ Kent v. Dulles, 357 U.S. 116, 127.

² Kent v. Dulles, Id.

³ Eggert v. City of Seattle, 81 Wash. 2d 840, 505 P.2d 801 (Wa. 01/25/1973).

⁴ Smith v. Doe I, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003).

⁵ State v. Ward, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994).

⁶ See, e.g., Doe v. State, 111 A.3d 1077, 1100 (N.H. 2015); State v. Letalien, 985 A.2d 4, 26 (Me. 2009); Starkey v. Oklahoma Dep’t of Corr., 305 P.3d 1004 (Okla. 2013); Commonwealth v. Baker, 295 S.W.3d 437 (Ky. 2009); Doe v. State, 189 P.3d 999, 1017 (Alaska 2008).

⁷ Does v. Snyder, 15-1536, 15-2346, 15-2486 (6th Cir. 08/25/2016).

therefore could not be applied retroactively. The Sixth Circuit opinion called into question the State's claim that sex offenders have a high rate of re-offense. Though the Circuit Court ruled the law was an *ex post facto* violation as applied to Appellants, the Court called into question assumptions and application of the registry, however leaving those claims unaddressed, stating to address those would be dicta.

Doe claims the new travel notification requirements are a violation of Article I, Section 7 of the State constitution, for it forces Doe to provide law enforcement intimate details of his travel plans, including "purpose of travel," and requires he abide by those plans under the threat of prosecution for failure to register. The State admits the local Sheriff has the right to evaluate Doe's travel notification, to determine whether it requires 21-day notice or in-person written notification.⁸ This is akin to being on probation, requiring Doe to report to law enforcement of his plans in advance, seeking review and permission, and then require he not deviate from those plans without additional prior notification.

Doe has consistently argued RCW 9A.44.130(3) is too broad, is not narrowly tailored, and encompasses many more registered offenders (including Doe) than is reasonable. The Statute does not consider the dangerousness or assigned risk level of an offender,⁹ but collects all registered offenders under one umbrella, and is a violation of Doe's due process protections.

⁸ "Sheriffs and registered offenders can use that standard in evaluating whether to wait 21 days or to do 24 hours' in-person notice." Brief of Respondent, page 23.

⁹ RCW 4.24.550 and RCW 72.09.345 authorizes the End of Sentence Review

The State agrees RCW 9A.44.130(3) reaches beyond state boundaries, imposing requirements upon Doe when he is out-of-the state.¹⁰ When Doe is in a state that does not require travel notification or even require Doe to register as a sexual offender, Washington has no authority to restrict Doe's right to travel in any form. There is no compelling State interest or safety concern for Washington citizens when Doe is complying with the requirements of another state where he may be temporarily present.

Therefore, this Court should REVERSE the ruling of the Superior Court and declare RCW 9A.44.130(3) unconstitutional on its face and as applied to Doe.

B. The Right to Travel Abroad is a Strong Right

The right to travel, even travel abroad, is an important right that cannot easily be restricted. The State claims international travel does not have the same protections afforded that of interstate travel. However, there is no clear case law on how strong the right to international travel is. The federal courts have allowed restrictions when travel implicates national security or affected by war.

The Magna Carta established that subjects had a right to leave the kingdom and return.¹¹ The exceptions to the right to travel abroad in Magna Carta

Committee and law enforcement to evaluate the risk level of a registered sexual offender, however the statute does not consider this risk assessment in imposing the travel and waiting restriction.

¹⁰ Brief of Respondent FN 11 page 18.

¹¹ Magna Carta, ch. 42, in Samuel E. Thorne et al., *The Great Charter 129* (New American Library: Mentor Books, 1966).

were for "those imprisoned or outlawed" and for "a short period in time of war," a public policy reason relating to national security.

The Supreme Court held in Kent v. Dulles¹² that the "right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment."¹³ The Court held that curtailments of that right must be narrowly construed,¹⁴ because the right to travel is so "deeply engrained" in Anglo-American constitutional history.¹⁵ "Where activities or enjoyment, natural and often necessary to the well-being of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them."¹⁶ Congress has described the right to emigrate as "fundamental" in the Jackson-Vanik Amendment,¹⁷ which pressures communist countries to let their people go.

The Ninth Circuit in Eunique v. Powell,¹⁸ also cited by the State, provides controlling authority on a minimum level of scrutiny this Court must apply when reviewing the implications on the right to travel internationally. Here the Court reviewed a federal statute allowing the State Department to revoke or restrict a passport to a parent behind in child support. The three-judge panel in a 2-1 decision ruled the law constitutional. In Eunique each justice wrote a separate opinion. The lead opinion ruled only a rational basis was needed to restrict a passport, however

¹² Kent ET AL. v. Dulles, 78 S. Ct. 1113, 357 U.S. 116 (U.S. 06/16/1958).

¹³ Id. at 125.

¹⁴ Id. at 129.

¹⁵ Id. at 126.

¹⁶ Id.

¹⁷ 19 U.S.C 2432(a) (1999).

the concurring and dissenting opinions required a higher level of scrutiny. Judge McKeown in a concurring opinion wrote: “*As a consequence, considering the nature of the right to travel internationally, in my view intermediate scrutiny comes the closest to being the proper standard when First Amendment concerns are not implicated.*” Judge Kleinfeld in his dissent stated strict scrutiny was required.

The Washington State Supreme Court in *Eggert v. Seattle*¹⁹ referenced the Magna Charta and the Universal Declaration of Human Rights regarding travel:

“Concern over the right to travel has historically been a concern of both English and American people. The recognition of the importance of freedom of movement ranges from the declaration in the Magna Charta allowing every free man to leave England except during wars, to article 13, section 1 of the Universal Declaration of Human Rights of the United Nations which declares “Everyone has the right to freedom of movement and residence within the borders of each State.”²⁰

Section 2 of Article 13 of the Declaration of Human Rights also says: “*Everyone has the right to leave any country, including his own, and to return to his country.*”

In *Eggert* the Court included a footnote which has bearing here:

“An interpretation of the right to travel which would hold it comparable to First Amendment rights has been urged. The argument is that, inasmuch as freedom to gather information and of assembly depends on freedom to travel, travel should also receive the same degree of protection as the First Amendment. This could arguably lead to a right to challenge a restriction to travel on its face without showing personal injury from the law. If, in fact, it is related to First Amendment rights, a compelling state interest could be shown only by a clear

¹⁸ *Eunique v. Powell*, Id.

¹⁹ *Eggert v. City of Seattle*, Id.

²⁰ *Eggert*, Id.

and present danger to public safety.”²¹

Contrary to the State’s claim, Doe made a First Amendment claim, [CP @160], and argues the right to travel is important and intertwined with that of the right to travel abroad. Doe’s work requires he travel, however he has avoided doing so because the 21-day notice requirement is difficult for him to meet.²² His work and personal travel regime is not consistent with what an ordinary person would consider “routine” or an “emergency”. Doe must be able to travel with short notice, with lengths of stay varying depending on client needs. Also, Doe has relatives in states that border Mexico and he and his family when visiting like to impromptu travel across the international border. Just recently when Doe was visiting Arizona, he was precluded from travelling into Mexico for he was unable to provide Washington State notice. [CP @215, Line 2-6].

The Superior Court did not issue a written opinion, so one can only speculate what level of scrutiny the Court followed when ruling the law constitutional. However, this Court need not declare international travel a fundamental right in order to strike down RCW 9A.44.130(3), for it is only necessary to understand that the right at minimum is protected by the Fifth Amendment. Restricting that right requires an individualized due process procedure, which the statute does not do, therefore is unconstitutional both facially and as applied to Doe.

²¹ *Eggert*, Id.

²² [CP @47, 24, 178, 180, & 247]

C. Statute Unconstitutionally Reaches Beyond State Borders

Remarkably, the State agrees that RCW 9A.44.130(3) extends across the state border, imposing the requirement to provide notification and wait three weeks prior to travel, even when Doe is out of the state:

“Doe’s argument that he would be treated differently in other states makes no sense, where Doe remains a resident of Washington, subject to Washington’s registration requirements. Contra Doe Br. 23-24. And while it may be an annoyance for Doe to provide notice of impending international travel from another state, that does not mean it is a constitutional violation. Id.” See Brief of Respondent FN11

Doe is not required to register in all states he travels to. [See CP @167-168, 214, 224, and 249.] There are states which do not impose a notification of Registrant’s foreign travel plans. However, the State implies that Doe is subject to these requirements because of federal rules or statutes. The U.S. Department of Justice has already stated they cannot receive travel notifications directly from a registered offender, and therefore, offenders must make notice to their jurisdiction of registration. It is due to the laws of Washington State that forces Doe to provide international travel notification, not federal law. If Washington does not require it, then there is no way for Doe to make notification:

“The SMART Office is not authorized to collect or receive notifications of international travel from anyone, including individual offenders, attorneys, or registration officials. If an offender wishes to make a notification of international travel pursuant to IML’s

statutory requirements, that offender must report it to his or her registration agency.”²³

There is no single federal sex offender registry. The national registry is actually made-up of registries from each of the fifty states, territories, and complying native American tribes, with each jurisdiction determining who is required to register. In *Department of Public Safety and Correctional Services v. Doe*,²⁴ the Court of Appeals of Maryland ruled that irrespective of a federal obligation, a sex offender is only required to register under state law:

“In the instant appeal, however, the State asks us to consider sex offenders' "federal obligations" and whether a circuit court has the authority to direct the State to remove sex offender registration information in light of the provisions of SORNA specifically directing sex offenders to register in the state in which they reside, work, or attend school. We shall hold that, notwithstanding the registration obligations placed directly on individuals by SORNA, circuit courts have the authority to direct the State to remove sex offender registration information from Maryland's sex offender registry when the inclusion of such information is unconstitutional as articulated in *Doe I*”²⁵

If Doe travels internationally from another state that does not require notification, or even registration, Doe is therefore not required to provide such notice to that state. The State of Washington has no such power to compel Doe to comply or regulate conduct when Doe is not present within this State’s boundaries, therefore the statute is an unconstitutional reach outside its borders.

²³ <http://www.smart.gov/pdfs/IML-Dispatch-2016.pdf>

²⁴ *Department of Public Safety and Correctional Services v. Doe*, 94 A.3d 791, 439 Md. 201 (Md. 06/30/2014)

D. Doe's Claims Are Distinguishable from Smith²⁶ and Ward²⁷

Smith and Ward are settled law with regard to the simple act of registering. Both cases reviewed state registry laws that were much less onerous than exists in either state today. In Ward, our Supreme Court evaluated the simple requirement to provide local law enforcement eight pieces of information: "*The statute requires an offender to provide the local sheriff with eight pieces of information: name, address, date and place of birth, place of employment, crime for which convicted, date and place of conviction, aliases used, and Social Security number. In addition, the local sheriff must obtain two items: the offender's photograph and fingerprints.*"²⁸ The statute at that time did not include a travel notice and waiting period. In fact, the Ward Court made clear to say the registration requirements were not an affirmative restraint to travel, for notification was required after the fact of moving.

These two cases are distinguishable from Doe's complaint, for RCW 9A.44.130(3) now places a retroactive affirmative restraint to international travel, preventing activity until notice is given and a mandatory three-week waiting period has expired. The courts in these two cases made clear there was no restraint to travel, for notification was required after traveling.

²⁵ Department of Public Safety and Correctional Services v. Doe, Id.

²⁶ Smith v. Doe I, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003).

²⁷ State v. Ward, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994).

E. Article I, Section 7 Violation

The State argues that Doe has a diminished expectation of privacy due to his plea agreement and requirement to register. The requirement to provide advance notice and intimate travel details, including “purpose of travel”, was not part of the regulatory scheme when Doe pled guilty to the misdemeanor offense,²⁹ so therefore Doe did not agree to comply with this more onerous reporting requirement. The state added the requirement making it retroactive, which some would argue was a breach of contract by the State of Washington.

The State also argues in this case Article I, Section 7, does not provide any additional protection over that granted by the federal constitution, citing *Ino Ino Inc. v. City of Bellevue*.³⁰ Here the Court ruled on an adult establishment licensing ordinance for workers, requiring employee personal information such as employment history and criminal convictions be included in the licensing application. The Court distinguished between two different types of privacy rights; 1) “the right to autonomous decision making” and 2) “the right to nondisclosure of intimate personal information, or confidentiality.” The majority of the Court ruled the information requirement was constitutional, rationally related to the licensing scheme, however the 14 day waiting requirement for a license was deemed unconstitutional.

²⁹ In Brief of Respondent the State strangely made reference to Doe “*Having completed his prison term...*”. Doe is a misdemeanant offender and was never sentenced to prison.

³⁰ *Ino Ino Inc. v. City of Bellevue*, 937 P.2d 154, 132 Wash.2d 103 (Wash. 5/01/1997)

Ino Ino Inc is distinguishable from this case, due to the travel notification requirement not being part of a business licensing scheme and non-compliance subjects Doe to severe criminal penalty. There is no constitutional right to work in a particular establishment or field without regulation. However, one has a constitutional right to travel, and may only be individually restricted under due process. In addition, RCW 9A.44.130(3) requires not just personal information be handed over, but requires Doe to comply with what was reported as far as travel plans, meaning no variance from that scheme without prior notice. The information Doe must divulge include “*purpose of travel*”, a statement that one does not expect on a government licensing application, something that is not relevant to the basic registry scheme, and something that is strongly associated with the right to “autonomous decision making”. When providing 24-hr in-person notification, Doe must also provide an explanation of why he was unable to provide three-weeks notice prior to traveling and have it reviewed by law enforcement. This is another piece of personal information rooted in the right to “autonomous decision making”.

F. Ripe for Review

The State argues Doe's challenge is not ripe because he has not yet attempted to travel internationally, citing States v. Cates, 183 Wn.2d 531, 534, 354 P.3d 832 (2015) (challenge to community custody condition that an officer could search defendant's home for a computer not ripe where officers had yet to search his home). Interestingly the State, in support of their argument, would cite a probationary case here, when Doe claims the statute in question imposes conditions similar to

being on probation. Here Cates made a pre-enforcement challenge to a community custody provision, that might be implemented by his CCO, that he will not be subject to for at least 25 years from the date of sentencing. Given his convictions were for first degree rape of a child and two counts of first degree child molestation, which qualify for an indeterminate sentence, Cates may never be released and subject to the provisions in question.

Cates relies on the analysis employed in State v. Valencia³¹ to support the argument that pre-enforcement of a probation challenge is not ripe. Though Valencia was still incarcerated and had not been charged with violating the challenged condition of community custody, his claim regarding vagueness of a probation requirement was ruled ripe for review.

The Fifth Circuit in Duarte v. City of Lewisville,³² a sex offender challenging a city residency ordinance, ruled that Duarte had standing to challenge the ordinance though he was not currently living in the City. "But the Duartes need not show they were "legally foreclosed from purchasing or leasing residential premises due solely to the . . . City of Lewisville," as the district court apparently believed. Instead, they need only show that the ordinance treats them differently from other would-be renters or homebuyers making it "differentially *more burdensome*" for the Duartes to find a new place to live for standing purposes. *See Time Warner Cable*, 667 F.3d at 637 (quoting *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 588, 103 S.Ct. 1365, 75 L.Ed.2d 295

³¹ State v. Valencia, 239 P.3d 1059 (Wash. 09/09/2010)

³² Duarte v. City of Lewisville, 759 F.3d 514 (5th Cir. 07/22/2014).

(1983)).”³³ In *Duarte*, the Fifth Circuit ruled Duarte had standing even though he and his family had moved out of the City and was not then directly subject to the residency ordinance.

There is no ambiguity that Doe is subject to the notification and waiting requirements, and therefore has standing to challenge the requirements as a violation of his constitutional rights.

G. Ex Post Facto Violation

This Court has the hindsight of many other courts who have ruled that subsequent modifications to various state registration requirements were punitive. A very recent case (August 2016) by the Sixth Circuit in *Does v. Snyder*³⁴ ruled that Michigan’s 2006 and 2007 modifications were punitive and could not be retroactively applied to Appellants.

“We conclude that Michigan's SORA imposes punishment. And while many (certainly not all) sex offenses involve abominable, almost unspeakable, conduct that deserves severe legal penalties, punishment may never be retroactively imposed or increased. Indeed, the fact that sex offenders are so widely feared and disdained by the general public implicates the core counter-majoritarian principle embodied in the Ex Post Facto clause. As the founders rightly perceived, as dangerous as it may be not to punish someone, it is far more dangerous to permit the government under guise of civil regulation to punish people without prior notice. Such lawmaking has "been, in all ages, [a] favorite and most formidable instrument[] of tyranny." *The Federalist No. 84, supra* at 444 (Alexander Hamilton)”³⁵

³³ *Duarte v. City of Lewisville, Id.*

³⁴ *Does v. Snyder*, 15-1536, 15-2346, 15-2486 (6th Cir. 08/25/2016)

³⁵ *Does v. Snyder, Id.*

“The retroactive application of SORA's 2006 and 2011 amendments to Plaintiffs is unconstitutional, and it must therefore cease.”³⁶

“Intuitive as some may find this, the record before us provides scant support for the proposition that SORA in fact accomplishes its professed goals. The record below gives a thorough accounting of the significant doubt cast by recent empirical studies on the pronouncement in *Smith* that “[t]he risk of recidivism posed by sex offenders is ‘frightening and high.’” 538 U.S. at 103 (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)). One study suggests that sex offenders (a category that includes a great diversity of criminals, not just pedophiles) are actually less likely to recidivate than other sorts of criminals. See Lawrence A. Greenfield, *Recidivism of Sex Offenders Released from Prison in 1994* (2003). Even more troubling is evidence in the record supporting a finding that offense-based public registration has, at best, no impact on recidivism. [R. 90 at 3846-49]. In fact, one statistical analysis in the record concluded that laws such as SORA actually increase the risk of recidivism, probably because they exacerbate risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities. See Prescott & Rockoff, *supra* at 161”³⁷

“Many states confronting similar laws have said “yes.” See, e.g., *Doe v. State*, 111 A.3d 1077, 1100 (N.H. 2015); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009); *Starkey v. Oklahoma Dep’t of Corr.*, 305 P.3d 1004 (Okla. 2013); *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009); *Doe v. State*, 189 P.3d 999, 1017 (Alaska 2008). And we agree. In reaching this conclusion, we are mindful that, as *Smith* makes clear, states are free to pass retroactive sex-offender registry laws and that those challenging an ostensibly non-punitive civil law must show by the “clearest proof” that the statute in fact inflicts punishment. But difficult is not the same as impossible. Nor should *Smith* be understood as writing a blank check to states to do whatever they please in this arena.”³⁸

³⁶ *Does v. Snyder*, Id.

³⁷ *Does v. Snyder*, Id.

³⁸ *Does v. Snyder*, Id.

In an even more recent Sixth Circuit Court case (*Does v. Miami-Dade County*)³⁹ a different panel overturned a district court's dismissal of a complaint before trial by two registered sex offenders, claiming the residency restriction was an ex post facto violation.

“On appeal, the Plaintiffs argue that they pleaded sufficient facts to state a claim that the residency restriction is so punitive in effect as to violate the ex post facto clauses of the federal and Florida Constitutions. At this stage, we conclude that Doe #1 and Doe #3 have alleged plausible ex post facto challenges to the residency restriction. Therefore, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.”⁴⁰

The Superior Court in this case ruled and dismissed Doe's complaint prior to trial, therefore Doe was foreclosed from providing evidence of how the new statute unconstitutionally restricts his right to travel.

Recently the Pennsylvania Supreme Court⁴¹ ruled that a December 2012 revision to the State's sex offender law (SORNA modifying Megan's Law) could not be applied to defendants convicted prior to the change in law, based on terms of their plea deals. The new law increased a 10-year registration period to lifetime for some, and required others who previously had no requirement to register to register for 25-years. The court ruled using contract law, avoiding the issue of collateral consequence of their conviction. The high court stated as follows:

³⁹ *Does v. Miami-Dade County*, Sixth Circuit, 15-14336, (9/23/16)

⁴⁰ *Does v. Miami-Dade County, Id.*

⁴¹ *Commonwealth, Aplt. v. Shower, W.* - No. 34 MAP 2015 (9/28/2016)

“When a question arises as to whether a convicted criminal is entitled to specific performance of a term of his plea agreement, the focus is not on the nature of the term, e.g., whether the term addressed is a collateral consequence of the defendant’s conviction. Rather, quite simply, the convicted criminal is entitled to the benefit of his bargain through specific performance of the terms of the plea agreement. Santobello, 404 U.S. at 262; Spence, 627 A.2d at 1184. Thus, a court must determine whether an alleged term is part of the parties’ plea agreement. If the answer to that inquiry is affirmative, then the convicted criminal is entitled to specific performance of the term.⁴²

H. Statute is Void for Vagueness

The State admits that the Sheriff has a role in accepting and reviewing Doe’s in-person notification.

“While there may be scenarios that call into question whether 24 hours’ notice is permitted, there are scenarios, like visiting a parent abroad who suddenly became ill, where this provision could be constitutionally applied. The statute does not allow for arbitrary application because it allows the 24 hours’ in-person notice when there is a family or work emergency (or routine business travel) that makes regular written notice impractical. **Sheriffs and registered offenders can use that standard in evaluating whether to wait 21 days or to do 24 hours’ in-person notice.**” Brief of Respondent, page 23.

First, the definition of “routine” or “emergency” are not defined in the statute, and the State implies the Sheriff will use his understanding of the definition of “routine” and “emergency” when evaluating Doe’s in-person notification. This gives law enforcement the right to deny Doe’s notification, and is an impermissible delegation of power to law enforcement. First, it allows the thirty-nine county

⁴² Commonwealth, Aplt. v. Shower, W. Id.

sheriffs to each interpret the meaning of these requirements, leading potentially to vastly different interpretation of the in-person notification requirements. Given there was no trial, Doe was unable to show evidence of how, for example, Benton County Sheriff notifies each registered sex offender they must provide notification if they are away three days or more, contrary to *State v. Smith*⁴³: “Accordingly, RCW 9A.44.130 is not triggered by Smith's travel unless he does not intend to return to his registered address or unless he ceases to have a residence address.” This is one example how one county Sheriff is incorrectly informing registered offenders of the registration requirements.

Second, the statute requirement is akin to being on probation, requiring Doe to report in-person to law enforcement to provide written notice of why he was unable to provide 21-days notice. Given the Sheriff has the right to “evaluate”,⁴⁴ that places Doe in essence under the supervision of the Sheriff when petitioning permission to travel with short notice. At that moment Doe is under “custody” of law enforcement, for he would then not feel free to travel without the sheriff's approval.

This provision of the statute is sufficiently vague to give an ordinary person, especially one which grants law enforcement interpretive authority, clear understanding of what is required of Doe. The State claims that Doe has no standing for he has not yet been subjected to the in-person notification. However, *it is not*

⁴³ *State v. Smith*, 344 P.3d 1244, 185 Wn.App. 945 (Wash.App.Div.2 02/18/2015)

⁴⁴ State claims in Brief of Respondent the Sheriff will evaluate in-person notifications, page 23.

necessary that petitioner first expose himself to actual . . . prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." Steffel v. Thompson, 415 U.S. 452, 459, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974).

Given this in-person provision cannot be easily severed from the entire travel notification and waiting provision, RCW 9A.44.130(3), the entire paragraph must be stricken as unconstitutional.

III. CONCLUSION

What began decades ago as a requirement to simply provide law enforcement with information where a registrant lived has transformed, as the Sixth Circuit⁴⁵ described it, into a set of "byzantine" regulations burdening all who are required to register. Courts across the country are now stepping in and placing limits on how far state legislatures can go in restricting the rights of an offender long after the sentence has been served and all debts paid. Registration today in the state of Washington far exceeds the requirements reviewed in either the Smith or Ward cases, and the inclusion of the International Notification and Waiting Period requirement as codified in RCW 9A.44.130(3) has finally stepped across the line of what is constitutional.

If the facts presented by Doe are true, which this court must assume when reviewing a motion for summary judgment,⁴⁶ then this Court must reverse

⁴⁵ Does v. Snyder, Id.

⁴⁶ "We examine the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, in the light most favorable to the nonmoving party, drawing all reasonable inferences in the nonmoving party's favor,

the Superior Court's summary judgment order.

If this Court accepts the legal arguments that Doe has presented, and determines the statute in question is fatally flawed, then this Court must rule in favor of Doe's complaint, ruling the statute is unconstitutional and grant Doe injunctive relief.

Respectfully submitted,

Date: October 3, 2016.

AS 

John Doe, Appellant

to determine if a genuine material issue of fact exists.” *Kofmehl*, 177 Wn.2d at 594; CR 56(c).