

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLES FROSS, M. DOE, D. DOE,  
SHAWN CZERWIEN, CHARLES METER,  
and CHRISTOPHER HAIGH,

Civil Action No. 08-

Plaintiffs,

v.

COUNTY OF ALLEGHENY,

Defendant.

**COMPLAINT**

AND NOW, come Plaintiffs above named, by their undersigned counsel, and file the within Complaint against Defendant, County of Allegheny: (a) seeking a declaratory judgment that Ordinance No 3281-07 of Chapter 275 of the Allegheny County Code of Ordinances, entitled "Residence Requirements: Registered Sex Offenders" (hereafter "Residency Restriction Ordinance" or "Ordinance") is invalid and unconstitutional; and (b) an injunction, both preliminarily and permanently, enjoining enforcement of the Ordinance. In support of their Complaint, Plaintiffs allege as follows:

1. The jurisdiction of this court to adjudicate Plaintiffs' claims is premised upon: (a) 28 U.S.C. §§ 1331 and 1343, which give federal district courts jurisdiction to adjudicate federal questions, as well as authority to award appropriate relief from the violation, under color of state law, of any constitutional right or federal statute providing for the protection of civil rights; (b) 28 U.S.C. §§ 2201 and 2202, which give federal district courts jurisdiction to enter declaratory judgments; and (c) 28 U.S.C. § 1367(a), which invests the Court with supplemental jurisdiction to adjudicate Plaintiffs' related state law claims.

2. Defendant, County of Allegheny ("County"), is a political subdivision of the Commonwealth of Pennsylvania, which is located at Courthouse, 436 Grant Street, Pittsburgh, PA 15219. Specifically, the County is a Second Class County, which has adopted home rule pursuant to the Second Class County Charter Law, 16 P.S. §6101-C et seq. Pursuant to its Home Rule Charter, the legislative function of the County is vested in a 15-member County Council.

3. On October 23, 2007, County Council passed the Residency Restriction Ordinance, which was signed by the County's Chief Executive, Dan Onorato, on October 29, 2007. A copy of the Ordinance is attached hereto as Exhibit "A."

4. The stated purpose of the Ordinance is, "the addition of a new Chapter 275, entitled 'Residence Requirements; Registered Sex Offenders,' in order to augment the provisions of Pennsylvania's Megan's Law and better provide for the safety of the County's residents."

5. The Residency Restriction Ordinance provides, inter alia, and with limited exceptions, that registered sex offenders in the County cannot live within 2500 feet (approximately one-half mile) of any Child Care Facility, Community Center, Public Park or Recreational Facility, or School, as those terms are defined in the Ordinance.

6. At the same time, Pennsylvania's Megan's Law, 42 Pa. C.S.A. § 9791, et seq., which is similar to those enacted throughout the country, requires sexual offenders to register their residence and employment locations with the State Police and provides for dissemination to the public of information concerning the sexual offenders and their crimes.

7. Megan's Law additionally provides for three tiers of offenders based on offense and risk of reoffending and prescribes varying levels of assessment, reporting, monitoring, notification and commensurate treatment.

8. The Pennsylvania State Police, the Pennsylvania Board of Probation and Parole and its staff and a Sex Offender Assessment Board are largely charged with Megan's Law administration.

9. The Ordinance was to be fully effective by March 1, 2008, by which time the County Manager was required to "have prepared and placed on the Allegheny County website a map of Allegheny County depicting the areas where sex offenders are restricted from residing." To date, such a map has not been published.

10. It is believed that, if and when published, the map will reflect that registered sex offenders will not be permitted to live virtually anywhere in the County, including the City of Pittsburgh. In those areas where residency is nominally permitted, the areas have no housing, only very expensive housing, few or no rental properties, or are principally industrial; zoning prohibits residential use; public transportation is non-existent; and/or other practical impediments preclude sex offenders from living there.

11. Pending publication of the map, professionals charged with overseeing parolees and probationers are interpreting the Ordinance to preclude sex offenders from living anywhere in the County.

12. Plaintiff Charles Fross ("Fross"), a life-long Allegheny County resident, is on parole for a 1982 sex offense involving an adult victim whom he knew.

13. He was released from prison into a halfway house. Even though the typical stay for such a facility is 90 days, he has now been in the halfway house for

seven months because he cannot locate a home that meets the requirements of the Residency Restriction Ordinance.

14. He desires to move into his family home with his elderly mother.

15. This home, which had been approved by his parole agent prior to the October 2007 enactment of this Ordinance, has now been unapproved.

16. Others in need of transitioning out of prison on probation or parole cannot do so because the halfway house, in which Fross is living but from which he is unable to move, is full.

17. Fross's conditions of parole, as determined by the Department of Probation and Parole following considerable professional input, do not in any way limit the contact he may have with children. He is employed in a supermarket.

18. Fross's successful reintegration into society depends on his living in close proximity to his job and a counseling program he attends.

19. Plaintiff, M. Doe, also is and has been a resident of the County. He is on parole for a 1988 sex offense involving an adult victim with whom he lived in the same household.

20. While in prison, M. Doe underwent drug and alcohol and anger management rehabilitation programs and believes he is a changed person. He has been out on parole since 2002.

21. He has five children and fourteen grandchildren, whom he sees often and babysits.

22. Mr. Doe is employed, supervising an assembly line crew at a local manufacturing facility. He needs to maintain access to his job and to a counseling program he attends.

23. He has been living with and paying rent to his ex-girlfriend. However, he desires to move and may soon be required to do so. He seeks to move into a home owned by his present girlfriend. However, a school is nearby and his parole agent will not approve a home plan because it will not comply with the Residency Restriction Ordinance.

24. M. Doe has not been able to locate an alternative residence, which would be compliant with the Ordinance.

25. If he must move but does not have an approved home plan, he will be returned to prison.

26. M. Doe also is not restricted by the conditions of his parole from having contact with children.

27. Plaintiff D. Doe is on parole for a sex offense involving a 17-year-old victim, which occurred soon after he became 18.

28. He has been on parole for over two years after having been incarcerated for eight and one half years.

29. He has been required to move due to the Ordinance and has not succeeded in locating an approved residence that meets his needs.

30. D. Doe is now engaged to be married and his fiancée is expecting a child in January 2009. Because she is employed, they need to be near one of their families. Due to the Ordinance, he may not be able to reside with his family after his child is born.

In addition, it is essential that he and his fiancée live within access to their places of employment as well as to his treatment program.

31. D. Doe is employed at a local mall and participates in an ongoing counseling program in Pittsburgh.

32. The conditions of D. Doe's parole also do not restrict his contact with children.

33. Plaintiff, Shawn Czerwien, was convicted of a sex offense for which he was sentenced to ten months house arrest followed by a probationary period of five years.

34. At the time of his conviction in May of 2008, he was living in his family home with his parents.

35. Pursuant to a notice from the Allegheny County Police in July of 2008 that this residence did not comply with the Residency Restriction Ordinance, he moved to a rental home in a sparsely populated area in O'Hara Township. This move was with the knowledge of his Allegheny County Probation Officer who believed the residence to be ideal.

36. Nevertheless, he is again being required to move. He has nowhere else to move to and now lacks the financial means to do so.

37. His present residence is near his family, treatment and his place of employment. It is important that this be maintained.

38. Plaintiff, Charles Meter, is presently incarcerated in the State Correctional Institution at Albion, Pennsylvania. In September of 2005, he was sentenced for a sex

offense to a two and one-half to five year prison term, followed by four years of probation.

39. In March of 2008, Meter was approved for parole. However, he has not been able to obtain a placement in a community correction center, nor otherwise obtain an approved home plan.

40. Though he has successfully completed a series of sex offender treatment programs and is not regarded as a risk to the community, Meter has been informed that he will likely have to serve his maximum term in prison and is at risk of remaining incarcerated during the probation period due to his lack of an approved residence.

41. Upon information and belief, Meter's predicament is a result of the Residency Restriction Ordinance and other similar ordinances.

42. Plaintiff, Christopher Haigh, presently needs to move from his rental home with his wife because of its structurally deficient condition. He also needs to locate a residence near his employment and treatment. Due to the Ordinance, however, he has been unable to do so.

43. Haigh had been convicted of a sex offense involving an adult whom he knew.

44. All of the Plaintiffs, except for Meter, who is not yet required to do so, have properly registered pursuant to Megan's Law.

45. The Ordinance's effects are harmful and numerous, adversely affecting not just sex offenders, but also public safety. Among the effects are the following:

- Pennsylvania's General Assembly has, through a series of statutes regulating sentencing and post-release supervision, expressly granted

responsibility and authority to the sentencing courts and to the Board of Probation and Parole to determine how best to protect public safety by promoting offenders' successful reintegration into society, which includes determining where sex offenders may live and under what terms of supervision. The Ordinance compromises the Commonwealth's carefully designed system to reintegrate sex offenders and to promote public safety.

- The purposes of relevant *state* legislation are fourfold: public safety, rehabilitation of the offender, reintegration of the offender into the community, and reducing prison population demand. In each instance, the Ordinance impedes, if not outright prevents, achievement of the state objectives.
- Desperate for places to live, sex offenders will choose not to register under Megan's Law, which will place the public at greater risk.
- Few, if any, sex offenders registered in Pennsylvania will be able to live in the County.
- If every county enacted similar legislation, virtually no sex offender could reside in Pennsylvania, and certainly not in metropolitan areas where most jobs, counseling, and treatment services are available.
- If other states and their municipalities followed suit, sex offenders could live nowhere in this country.
- Offenders will swell the ranks of the homeless living under bridges, in culverts and in shelters.

- Those offenders who comply with Megan's Law and the Ordinance will be relegated to living in remote areas—far from public transportation, employment opportunities, and treatment centers, diminishing the chances that the offender will be able successfully to reintegrate into society and increasing the chances that he or she will re-offend.
- Offenders who have completed their prison sentences or who have been granted parole and who are scheduled to be released on probation or parole, will be forced to remain in jail or prison because they have no place to live due to the Ordinance.
- The professional judgment of sentencing judges and probation and parole officials, who tailor each offender's post-release plan to maximize rehabilitation and successful reintegration into society, will be adversely restricted because of the Ordinance's severe limitations on where sex offenders can live.
- The Ordinance determines where sex offenders may or may not live without regard to whether the Parole Board or its agents determines that approval of a particular residence for a specific offender is consistent with public safety and furthers the rehabilitation and reintegration needs of the offender.

46. The Ordinance is expressly intended to provide protection to children from offenders who present a high risk of reoffending. Even though only approximately 1% of presently registered sex offenders in Allegheny County have been assessed as

“sexually violent predators” with an identified propensity toward repeating such offenses, the Ordinance applies to all registered offenders.

47. Many, if not most, registered sex offenders have never committed a sex offense that involves a minor. Nevertheless, even persons whose crimes involved adults are effectively barred from residing in Allegheny County due to the ubiquity of locations where minors are or may be present.

48. Pennsylvania’s Megan’s Law provides a vehicle for gaining exemption from certain notification requirements based on a lengthy period of non-reoffense and a professional assessment that such individuals are “not likely to pose a threat to the safety of any other person.” 42 Pa. C.S. § 9795.5. Such exempt individuals, however, remain barred by the Ordinance from living in most, if not all, locations in Allegheny County due to supposed risk.

49. The Residency Restriction Ordinance is based upon a public misconception that all Megan’s Law registrants pose a continuing risk, despite required treatment, of predatory behavior due “to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.” 42 Pa. C.S.A. §9792.

50. The Ordinance panders to the public stereotype that all sex offenders are violent predators who target children and who cannot be rehabilitated. The Ordinance fails to accommodate the individualized assessment of risk based on comprehensive factors already called for by Megan’s Law, 42 Pa.C.S. § 9795.4, or the individualized assessment of public safety need that the Pennsylvania Board of Probation and Parole

carries out in setting conditions of parole, including where offenders may or may not live.

51. The Pennsylvania Legislature has placed the responsibility to determine where offenders may or may not live with the sentencing court and with the Pennsylvania Board of Probation and Parole and has required that both public safety and the rehabilitative needs of such offenders be taken into account. The Ordinance directly interferes with the required decision making of courts and of the Board.

52. The Ordinance is void, illegal and violates Plaintiffs' constitutional rights for the following reasons:

a. Because it has the effect of keeping convicted sex offenders in prison after the expiration of their judicially imposed sentences, and because it effectively banishes sex offenders from living in Allegheny County, constituting a new, after-the-fact punishment, the Ordinance violates the *ex post facto* clause of Article 1, Section 10 of the United States Constitution, and it subjects defendants to double jeopardy in violation of the Fifth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

b. Because it effectively deprives registered sex offenders of any place to live, and because it is not reasonably related to the ends it seeks to achieve, the Ordinance violates substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

c. The Ordinance's denial of housing accommodations to those who are handicapped, including those having or regarded as having a mental disability, is contrary to the Fair Housing Act, 42 USC § 3601 et seq.

d. In the absence of publication of a map designating where registered sex offenders are and are not permitted to live, the Ordinance is excessively vague and thus does not provide adequate notice of prohibited conduct and, therefore, the Ordinance violates Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

e. The Ordinance's regulation of sex offenders is preempted, both individually and collectively, by the Pennsylvania Sentencing Code, 42 Pa.C.S. § 9701 et seq., which includes Pennsylvania's Megan's Law and the Pennsylvania Probation and Parole Board Law, 61 P.S. § 331.1 et seq.;

f. The Ordinance's true character as a zoning ordinance is expressly prohibited by Section 602 of the Municipalities Planning Code, 53 P.S. § 10602, which provides in pertinent part that:

"The powers of governing bodies to enact . . . zoning ordinances shall be limited to land in those municipalities, wholly or partly within the county, which have no zoning ordinance in effect at the time a zoning ordinance is introduced before the governing body of the county . . . ."

Most of the County's 130 municipalities have enacted their own zoning ordinance.

g. The Ordinance violates Art. XXII of The Second Class County Code, 16 P.S. § 5220, which limits Allegheny County's zoning authority. As a consequence, the County is without power to adopt this Ordinance, as provided in The Second Class County Charter Law, 16 P.S. § 6107-C, the Pennsylvania Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901 et seq., and the County's own Home Rule Charter.

53. Plaintiffs are adversely affected by operation of the Ordinance, an actual and existing bona fide controversy exists between Plaintiffs and the County as to the constitutionality of the Ordinance, and the rights of the Plaintiffs can only be determined by a declaratory judgment.

54. Absent injunctive relief, preliminary and permanent thereafter, Plaintiffs will be irreparably harmed by the ordinance, and no adequate remedy at law exists to compensate Plaintiffs for the harm being caused to them by the Ordinance.

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court:

- a. Enter a declaratory judgment that the Ordinance is void, illegal, unconstitutional and of no force and effect;
- b. Preliminarily and, after final hearing, permanently enjoin the County from enforcing the Ordinance;
- c. Award Plaintiffs their costs in this proceeding, including the payment of reasonable attorney's fees; and
- d. Grant such other and further relief as is deemed appropriate.

Respectfully submitted,

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