

NARSOL is excited to report on another win in the state of Tennessee. In fact, this is the second favorable decision in Tennessee in recent months. We previously reported on another challenge regarding retroactive application of registration requirements in Tennessee which was decided favorably. *See Doe v. Rausch*, 3:17-CV-504 (TNEDC).

This case, *Ronald Reid v. William Lee*, is pending in the United States District Court for the Middle District of Tennessee. See Case No. 3:20-cv-00050. On August 5, 2020, an Injunction was granted to challenger/plaintiff Ronald Reid who committed a sexual offense in the state of Tennessee prior to the existence of registration. An injunction is an order of the court awarding a party relief prior to the determination of the case on the merits. The legal standard for a court to grant injunctive relief is exceedingly difficult to meet, which means the prospects are favorable for Mr. Reid as the case moves forward.

Plaintiff Background

In 1991, Ronald Reid broke into a woman's home in Shelby County, Tennessee, and raped her. He was sixteen at the time, and she was an adult. He was prosecuted as an adult, and, on February 4, 1992, he pleaded guilty to especially aggravated burglary and rape. He was sentenced to ten years in prison and was released from prison in 1998 based on good time credits. By the time of his release, Tennessee's first version of registration was operational. Prior to 1994, individuals in Tennessee convicted of sexual offenses faced formal consequences that were mostly similar to those borne by individuals convicted of similarly serious non-sexual offenses. There may have been unique collateral consequences for sexual offenses in some areas, such as in family law proceedings, and defendants convicted of sexual crimes may have suffered especially severe extralegal reputational harms in their communities.

Registration History in Tennessee

In 1994, the Tennessee General Assembly enacted a sexual offender registration and verification information statute. The initial registration system was relatively undemanding and mostly concerned with ensuring the accuracy of registry information. A person convicted of a covered offense was required to register with the Tennessee Bureau of Investigation (TBI) by paper form within ten days of being placed on probation or release from incarceration. At that time, the information in the registry was generally considered confidential, but the TBI or a local law enforcement agency could release relevant information deemed necessary to protect the public concerning a specific sexual offender. After ten years, a registrant could petition a court to order his or her removal from the registry.

In the ensuing decades, however, the Tennessee General Assembly repeatedly returned to the sexual offender registration statutes to change whom they covered, what they required, and the protection allowed to registered offenders' privacy. Tennessee's sexual offender registration

system progressed from a relatively simple system, dedicated to information gathering and tracking, into a far-reaching structure for regulating the conduct and lifestyles of registered sexual offenders after their punishments were complete and, in many cases, for the rest of their lives.

The Tennessee General Assembly could not help itself, so it continued its pattern of expanding the requirements of the registration regime by amendment, particularly with regard to restrictions related to children, regardless of the age of the offender's victim. For example, restrictions about entering schools, playgrounds and other facilities were added in 2008. *See* 2008 Tenn. Pub. Acts, ch. 1164, § 11. Restrictions related to libraries were added in 2011. *See* 2011 Tenn. Pub. Acts, ch. 287. The Act's residence restrictions regarding schools and other facilities were extended to offenders whose victims were adults in 2014. *See* 2014 Tenn. Pub. Acts, ch. 992, § 1. The prohibition on being alone with children other than one's own in a "private area" were added in 2015. *See* 2015 Tenn. Pub. Acts, ch. 516.

Plaintiff's Complaint

Reid complains that he is especially distressed by the ways in which his registration status has interfered with his parenting. For example, he is unable to take his young children to playgrounds, an activity he had done with his older child before the Act was amended to make it unlawful. His children's principals have been unwilling to grant Reid permission to come onto school premises, so, while he can drop his children off and pick them up, he cannot go inside or attend school events. For that reason, he missed his daughter's kindergarten graduation and his stepson's high school graduation last year. His daughter recently wanted to go to a fair, but he was not able to take her because he believed it to be unlawful under the Act. On top of these restrictions, a police detective has informed Reid that he cannot decorate his house for Halloween, cannot take his children trick-or-treating, and cannot hand out candy himself.

The Court concluded that its analysis in this case would be based on the decision in the case *Does v. Snyder* decided by the United States Court of Appeals for the Sixth Circuit. *See Does v. Snyder*, 834 F.3d 696 (6th Cir. 2016). The court determined it should conduct its analysis using the *Mendoza-Martinez* factors. *See Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). Those factors are:

[1] Whether the sanction involves an affirmative disability or restraint, [2] whether it has historically been regarded as a punishment, [3] whether it comes into play only on a finding of scienter(intent), [4] whether its operation will promote the traditional aims of punishment-retribution and deterrence, [5] whether the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the alternative purpose assigned.

In *Does v Snyder*, the court accordingly found that the Michigan law was punitive in effect and could not be imposed retroactively. The Snyder court forcefully explained:

A regulatory regime that severely restricts where people can live, work, and “loiter,” that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by -at best- scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska's first-generation registry law. SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to school zone restrictions, they may not even live. It directly regulates where registrants may go in their daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their information.

In this case, the court cautioned, “Reid may want and ultimately need to present a good deal more evidence. For now, however, the court can take judicial notice of some basic facts. For example, while the court has no evidence of the full number of parks, schools, child care facilities, and recreation areas in Nashville, the court can take judicial notice of what anyone else in the city can see: that those locations are numerous and spread throughout at least much of the city.” The court noted, “Reid offered at least three examples of instances in which the Act was used against him, none of which gives any indication of having benefited public safety at all. First, Reid, who appears to have been harming no one, was prosecuted for a simple failure to update his information. Then, later, he was arrested and charged again simply for trying to do a job that required him to be on school premises. Third, he was targeted in Halloween-related restrictions which included demanding that he comply with conditions that the state defendants concede appear nowhere in the Act. The court noted that the mistaken imposition of Halloween restrictions demonstrates that placement on the registry makes one a potential target for law enforcement scrutiny over and above what the law actually requires. The court also stated, “The undisputed evidence in the record, therefore, supports the conclusion that the punitive effects of the Act outweigh any civil benefit.”

NARSOL is excited about this case because it is another step in building the body of case law, which will help us in our long-term goal of elimination of the nightmare of public registration. It is worthwhile to note that the court in *Doe v. Rausch* mentioned that the Tennessee Supreme Court had fired a warning shot several years ago which the legislature chose to ignore. The court in *Rausch* stated, “. . . the possibility that an amendment to the registration act imposing further restrictions may be subject to review on the grounds that the additional requirements render the effect of the act punitive.” As we stated in our previous article, the lesson for lawmakers would be to stop while you are ahead. Unfortunately, we do not expect that to happen because the political pressure is significant due to widespread public support of registries.