

IN THE  
MISSOURI SUPREME COURT

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STATE OF MISSOURI,                    )  
  )  
                                  Respondent,    )  
  )  
                          vs.                    )        No. SC89635  
  )  
WILLIAM HOLDEN,                    )  
  )  
  )  
                                  Appellant.    )

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APPEAL TO THE MISSOURI SUPREME COURT  
FROM THE CIRCUIT COURT OF MARION COUNTY, MISSOURI  
TENTH JUDICIAL CIRCUIT, DISTRICT II  
THE HONORABLE ROBERT M. CLAYTON II, JUDGE

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APPELLANT'S REPLY BRIEF

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## **JURISDICTIONAL STATEMENT**

William Holden appeals his conviction for failure to register, §589.425, RSMo Cum. Supp. 2006, in that he failed to comply with the requirements of §589.414, RSMo 2006, after a jury trial in Marion County. The Honorable Robert M. Clayton II sentenced Mr. Holden to a term of four years imprisonment. The appeal was filed in the Eastern District Court of Appeals and transferred to this Court before opinion. Rule 83.01. This Court has exclusive jurisdiction in this case which challenges the constitutionality of a statute. Missouri Constitution, Article V, §3 (as amended 1982).

## **STATEMENT OF FACTS**

The statement of facts appearing on pages through 5-8 of appellant's opening brief is incorporated herein by reference.

## REPLY

**The statute requiring sex offenders to register is retroactive as applied to those whose offenses predated the effective date of the statute and who were convicted after it became effective because it imposes a new obligation, the duty to register, on those whose offense did not require registration at the time it was committed.**

*A retrospective law is one which creates a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already past. It must give to something already done a different effect from that which it had when it transpired. Doe v. Phillips, 194 S.W.3d 833, 850 (Mo. banc 2006). The obligation to register by its nature imposes a new duty or obligation. Id. at 852. Article I, §13 of the Missouri Constitution prohibits laws that are retrospective in operation.*

The registration requirements of Megan's Law, §589.400 *et seq.* became effective on January 1, 1995. The requirement to register did not exist when Mr. Holden offended in 1994. Applying the registration requirement to Mr. Holden gives the pre-enactment offense that resulted in

his post-enactment conviction a different effect than the offense had when he committed it.

The plain language of §589.400 RSMo Cum. Supp. 2006, requires any person “convicted of, been found guilty of, or pled guilty to committing or attempting to commit” sex offenses and other enumerated offenses since July 1, 1979, to register as sex offenders. In **Phillips**, this Court exempted those whose convictions<sup>1</sup> antedated the effective date of the statute after finding the law retrospective as to them. 194 S.W.3d 833 (Mo. banc 2006).

At issue in this case is whether the Court in **Phillips** intended to include those convicted after the effective date of the statute for pre-enactment offenses in the class of those who are exempt from registration requirements because the law is retrospective as to them. **Phillips** and subsequent cases have contained language indicating that the statute is retrospective as applied to those with pre-enactment offenses culminating in post-enactment convictions.

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<sup>1</sup> Appellant uses the word “convictions” to include convictions after trial and those following a plea of guilty.

**Phillips** addressed the Does claim of retrospectivity:

[The Does] are complaining about application of the registration requirement to them, based solely on their pre-act criminal conduct. As to all but Jane Doe III, who was not convicted until 1998, the application of that requirement truly is retrospective in its operation. It looks solely at their past conduct and uses that conduct not merely as a basis for future decision-making by the state, in regard to things such as the issuance of a license, or as a bar to certain future conduct by the Does, such as voting. Rather, it specifically requires the Does to fulfill a new obligation and imposes a new duty to register and to maintain and update the registration regularly, based solely on their offenses prior to its enactment. This violates the standard set out in *Bliss* and violates our constitutional bar on laws retrospective in operation.

**Phillips**, 194 S.W.3d at 852 (emphasis added.)

The Court summarized **Phillips** in **Doe v. Blunt**, 225 S.W.3d 421 (Mo. banc 2007):

In *Phillips*, the Court determined that a law requiring registration as a sex offender for an offense that occurred prior to the registration law's effective date was retrospective in operation in violation of Mo. Const. article I, section 13.

**Blunt**, 225 S.W.3d at 422 (emphasis added.) Respondent notes that later in the opinion the Court stated “When he pleaded guilty, Doe had no duty to register ...” (Resp. Br. at 16.) Doe’s plea meant that the language above did not apply to him; it does not mean that it did not apply to anyone.

Finally, the Court referenced **Phillips** again in **R.L. v. State of Missouri Dept. of Corrections**, 245 S.W.3d 236 (Mo. banc 2008):

The same long-standing principles applied in *Phillips* apply in this case. As with the registration requirements in *Phillips*, the residency restrictions at issue in this case impose a new obligation upon R.L. and those similarly situated by requiring them to change their place of residence based solely upon offenses committed prior

to enactment of the statute. Attaching new obligations to past conduct in this manner violates the bar on retrospective laws set forth in article I, section 13.

**R.L.**, 245 at 237-238 (emphasis added.)

Respondent argues that **State ex rel. Sweezer v. Green**, 360 Mo. 1249, 232 S.W.2d 897 (Mo. banc 1950) and **Jerry-Russell Bliss, Inc. v. Hazardous Waste Management Comm.**, 702 S.W.2d 77 (Mo. banc 1985), reason against interpreting **Phillips** to mean that the exemption from registration applies to those who were convicted after the effective date of the statute for offenses antedating it (Resp. Br. 18-19). Respondent is correct. But this appeal questions whether the Court intended to change the law; it is based on the Court's repeated statements of the meaning of **Phillips**, statements which indicate that the statute is retrospective as to that class of convicted persons.

In each of the excerpts above, the Court could have used the word "conviction" instead of "offense" or "past conduct," but did not. If the passages cited are inadvertent misstatements, they are persistent ones, and Mr. Holden's case gives the Court an opportunity to clarify what it intended in **Phillips** and subsequent cases.



## CONCLUSION

This Court should reverse Mr. Holden's conviction for failing to register because applying the registration statutes to Mr. Holden is unconstitutionally retrospective in that it gives the pre-enactment offense that was the basis for his post-enactment conviction a different effect than the offense had when he committed it, that is, the offender is required to register as a sex offender.

Respectfully submitted,

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## Certificate of Compliance and Service

I, Irene Karns, hereby certify:

- ✓ The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word 2007, in Book Antiqua size 14 point font, and includes the information required by Rule 55.03. Excluding the cover page, the signature block, and this certificate of compliance and service, the brief contains 1,194 words, which does not exceed the number of words allowed for an appellant's brief.
- ✓ The floppy disks filed with this brief and served on opposing counsel contain a complete copy of the brief, and have been scanned for viruses using McAfee VirusScan 4.5.1, SP1, updated in November, 2008. According to that program, the disks are virus-free.
- ✓ Two true and correct copies of the attached brief and a disk containing a copy of this brief were shipped by United Parcel Service this 21<sup>st</sup> day of November, 2008, to Daniel M. McPherson, Assistant Attorney General, 221 W. High St., Jefferson City, Mo 65102.

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Irene Karns