
IN THE MISSOURI SUPREME COURT

CASE NO. SC88644

R. L.,

Respondent

v.

STATE OF MISSOURI DEPARTMENT OF CORRECTIONS,

Appellant.

Appeal from the Circuit Court of Cole County, Missouri

Honorable Patricia S. Joyce, Division IV

Cause No. 07AC-CC00269

BRIEF OF RESPONDENT

R. L.

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STATEMENT OF FACTS

While Respondent is largely in agreement with Appellant's Statement of Facts, several corrections are required. The 2006 School Residency Law does not make a distinction between persons who establish residency within one thousand feet of an existing school or child-care facility, and persons who have a school or child-care facility built within one thousand feet of their existing homes.

Appellant's Brief (hereinafter "App. Br.") 8. This was the distinction contained in the 2004 version of § 566.147 R.S.Mo., which prohibited a registered sex offender from establishing residency within one thousand feet of a school. Legal File (hereinafter "L.F.") 16. The 2006 version of § 566.147 R.S.Mo. prohibits a registered sex offender from residing within one thousand feet of a school, even if s/he established such residency before the 2006 amendment to § 566.147. L.F. 17.

While there is no evidence in the record that a local prosecutor had taken steps to prosecute Respondent,¹ there is no dispute that Respondent was instructed to relocate because he was committing a felony by residing where he has resided since 1997. L.F. 18. Cf. App. Br. 8. Respondent was also informed that he needed to relocate within the agreed upon timeframe to avoid the revocation of his probation. L.F. 18. Either a new criminal charge or the revocation of Respondent's probation would result in the loss of Respondent's liberty.

¹ While Appellant challenged the ripeness of this controversy below, this issue has not been preserved on appeal.

Moreover, there is no dispute that Respondent is required to move from his current home under the 2006 amendment to § 566.147.

The circuit court's equal protection analysis did not explore whether similarly situated persons were treated differently by distinguishing between sex offenders who establish residency within one thousand feet of an existing school and sex offenders who have a school built within one thousand feet of their home, as Appellant claims. App. Br. 10. As set forth above, the 2006 amendment to § 566.147 prohibits a registered sex offender from residing within one thousand feet of a school, even if s/he resided in that location before the effective date of the 2006 amendment. Prohibiting a registered sex offender from establishing residency within a certain distance of a school, as the 2004 enactment of § 566.147 prohibited, at least gives registered sex offenders notice that allows them to avoid illegal conduct.

POINTS RELIED ON

I. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS AN UNCONSTITUTIONAL RETROSPECTIVE LAW.

Jane Doe I v. Phillips, 194 S.W.3d 833 (Mo. banc 2006)

Jerry-Russell Bliss, Inc. v. Hazardous Waste Management Comm., 702 S.W.2d 77 (Mo. banc 1985)

II. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS AN UNCONSTITUTIONAL *EX POST FACTO* LAW.

Weaver v. Graham, 450 U.S. 24 (1981)

R.W. v. Sanders, 168 S.W.3d 65, 68 (Mo. banc 2005)

John Doe I v. Miller, 405 F.3d 700 (8th Cir. 2005)

Mikaloff v. Walsh, 2007 U.S. Dist LEXIS 65076 (N.D. Ohio 2007)

III. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSES OF THE MISSOURI AND UNITED STATES CONSTITUTIONS.

Jane Doe I v. Phillips, 194 S.W.3d 833 (Mo. banc 2006)

Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897)

IV. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSES OF THE MISSOURI AND UNITED STATES CONSTITUTIONS.

State ex rel. Yarber v. McHenry, 915 S.W.2d 325 (Mo. banc 1995)

Home Builders Assoc. of Greater St. Louis v. State of Missouri, 75 S.W.3d 267 (Mo. banc 2002)

ARGUMENT

I. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS AN UNCONSTITUTIONAL RETROSPECTIVE LAW.

Surprisingly lacking from Appellant’s analysis of whether § 566.147 R.S.Mo. is an unconstitutional retrospective law is this Court’s ruling in Jane Doe I v. Phillips, 194 S.W.3d 833, 852 (Mo. banc 2006). In Jane Doe I, this Court held that applying Missouri’s Sex Offender Registration Act to pleas or convictions for conduct committed prior to its enactment “violates Missouri’s constitutional prohibition of laws ‘retrospective in ... operation.’” *Id.* at 838. The Court further concluded that requiring this class of sex offenders to register imposed a new duty or obligation. *Id.* at 852. If the State’s registration requirements cannot be applied retroactively to sex offenders, certainly its residency requirements cannot be applied retroactively, because requiring an individual to move from his/her home imposes a much greater burden than registration.

As set forth above, when originally enacted § 566.147 prohibited certain sex offenders from establishing residency within one thousand feet of a school or child care facility. L.F. 16. When amended in 2006, § 566.147 prohibited sex offenders from residing within one thousand feet of a school or child care facility. L.F. 17. Because § 566.147 now requires Respondent to move from his home, Jane Doe I requires a finding that § 566.147 is an unconstitutional retrospective law in violation of Article I, Section 13 of the Missouri Constitution.

Appellant's reliance upon J.S. v. Beard, 28 S.W.3d 875,876 (Mo banc 2000), to argue that § 566.147 may be applied retroactively because necessary for the promotion of public health, safety, morals and welfare is misplaced. This Court made clear in J.S. that it was not addressing the sex offender's *ex post facto* law challenge because it had concluded that the registration law did not apply to him. Therefore, the Court's decision in J.S. cannot be used to negate this Court's ruling in Jane Doe I, which held that the retroactive application of Missouri's Sex Offender Registration Act violated Article, I, Section 13 of the Missouri Constitution.

Impermissible retrospective laws have been defined "as those which take away or impair vested rights acquired under existing law, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past." Jerry-Russell Bliss, Inc. v. Hazardous Waste Management Comm., 702 S.W.2d 77, 81 (Mo. banc 1985) (citations omitted). See also Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Educ., 34 S.W.3d 266, 284 (Mo. App. W.D. 2000), relied upon by Appellants. Therefore, it is clear that the prohibition against retrospective laws applies to more than laws which impair a vested right or affect a past transaction as Appellant claims.² App. Br. 14. If sex

² Because the prohibition against retrospective laws applies to those laws which create a new obligation or impose a new duty in addition to those which impair a vested right, Appellant's vested right analysis at pages 14-15 of its brief is not

offender registration imposed an impermissible new duty or obligation, requiring an offender to move clearly imposes an impermissible new duty or obligation.

Appellant attempts to avoid the impermissible retrospective application of § 566.147 by ignoring Jane Doe I and attempting to convince this Court that § 566.147 is procedural or remedial in nature. App. Br. 14-15. According to Missouri Nat'l Educ. Ass'n, relied upon by Appellant in support of this argument, “[a] procedural or remedial law relates to the machinery for process in the cause of action and prescribes the method of enforcing rights or obtaining redress for their invasion.” *Id.* A law that imposes criminal sanction is not procedural.

As set forth above, the impairment of a vested right is not the only criteria for determining whether a retroactive law violates Article I, Section 13 of the Missouri Constitution. A law that creates a new obligation or imposes a new duty also violates the Missouri Constitution. Even if Appellant were correct in its effort to limit the scope of this constitutional protection to the impairment of a vested right, Missouri law defines property for purposes of the constitution to include ownership and possession, as well as the right of use and enjoyment for lawful purposes. Home Builders Assoc. of Greater St. Louis v. State of Missouri, 75 S.W.3d 267, 271, n. 2 (Mo. banc 2002). In this case, § 566.147 deprives Appellant of a vested property right by depriving him of the right to possession, use and enjoyment. Cf. App. Br. 15. While Appellant argues that Respondent is

determinative of the issue before the Court.

deprived of “no benefit otherwise available to him with regards to the use of the property,” § 566.147 deprives him of the use of his property, a vested property right under Missouri law.

Appellant’s reliance upon Deimeke v. State Highway Comm., 444 S.W.2d 480, 482-83 (Mo. 1969), is equally misplaced. Appellant argues that the State can restrict the use of property through its police power when reasonably necessary for the promotion of public health, safety, morals or welfare. App. Br. 15. However, the statutes at issue in Deimeke contained a grandfather provision, and therefore, the law at issue did not operate retrospectively (at least not without just compensation). The issue of retrospective application was not addressed by this Court in Deimeke. Rather, this Court noted that the Act required the State Highway Commission to screen existing nonconforming uses at its expense, and if this was not feasible, the property at issue could be taken through condemnation, to include compensation, thereby recognizing the validity of a preexisting nonconforming use. In this case, § 566.147 operates retrospectively without recognition of Respondent’s preexisting property rights to use and possession and by imposing a new obligation and duty upon him in violation Article I, Section 13.

Finally, that two Courts of Appeals in Ohio that have rendered conflicting opinions as to whether a sex offender residency law violates an Ohio constitutional provision that prohibits the general assembly from passing retroactive laws cannot negate this Court’s decision in Jane Doe I. App. Br. 16-17. As set forth above, § 566.147 is not procedural or remedial in nature because it imposes a criminal

penalty. More importantly, the Missouri Supreme Court has interpreted Missouri's constitutional prohibition against retrospective laws to include laws that impose a new obligation or duty, not only those that impact a vested property right. Therefore, Jane Doe I controls the issue before this Court, not Ohio appellate court decisions.

The Missouri Legislature has retrospectively criminalized Respondent's residency in his own home. It has made conduct that was legal at the time Respondent entered his plea of guilty now criminal, based upon nothing that Respondent has done since he entered his plea. Section 566.147 requires Respondent to either move from his home of ten (10) years or face a new criminal charge and/or the revocation of his probation. Section 566.147 clearly imposes a new obligation or duty upon Respondent retrospectively in violation of Article I, Section 13 of the Missouri Constitution. Jane Doe I, 194 S.W.3d at 838.

II. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS AN UNCONSTITUTIONAL *EX POST FACTO* LAW.

A law is prohibited under the *Ex Post Facto* Clause of both the United States (Article I, § 10) and Missouri (Article I, § 13) Constitutions when it “provides for punishment for an act that was not punishable when it was committed or that imposes an additional punishment to that in effect at the time the act was committed.” R.W. v. Sanders, 168 S.W.3d 65, 68 (Mo. banc 2005) (citations omitted). Two elements must be present for a criminal law to be *ex post*

facto: it must be retrospective and it must disadvantage the offender affected by it. Weaver v. Graham, 450 U.S. 24, 30 (1981). According to the Supreme Court, the critical question is whether the law “changes the legal consequences of acts completed before its effective date.” *Id.* at 31.

Respondent’s sentence need not be increased for the statute to impose a greater punishment. *Id.* at 32, n. 17. Clearly, § 566.147 changes the legal consequences of the crime to which Respondent entered his plea of guilty by effectively banishing him from his home as a consequence of a conviction that occurred before the effective date of the statute. There also can be little doubt that this statute applies to Respondent’s detriment, as it worsens the conditions imposed upon him by requiring him to move from his home or risk imprisonment both for a probation violation and/or a new criminal charge. This is quite different from merely prohibiting Respondent from moving within one thousand feet of an existing school should he choose to move in the future. Therefore, R.W., in which the Court found that the State’s sex offender registration law was not an unconstitutional *ex post facto* law, is distinguishable because there the Court found that the registration law was a non-punitive civil regulation. R.W., 168 S.W.3d at 70.

If legislation is intended to be punishment, the legislative intent controls and the law is punitive. John Doe I v. Miller, 405 F.3d 700, 718 (8th Cir. 2005). Section 566.147 is located within Title XXXVIII, dealing with Crimes and Punishment, which is some evidence it was intended by the legislature to be

criminal and punitive. The legislative history also supports the conclusion that House Bill No. 1698 was intended to be criminal and punitive. The legislative history shows that supporters of the bill wanted to increase the penalties for certain sexual offenders. L.F. 34. The trial court found § 566.147 is punitive in nature. L.F. 59. Because § 566.147 was enacted as a criminal, punitive measure, it is an unconstitutional *ex post facto* law.

Even if the legislature intended the law to be civil and nonpunitive, a court must still determine whether the law is “so punitive in purpose or effect as to negate the State’s nonpunitive intent.” *Id.* When the punitive effect of a law is so severe, it is evidence that the law should be deemed to impose *ex post facto* punishment. *Id.* at 719. The Missouri Supreme Court applied the same five factor analysis to determine whether the State’s registration law constituted a punishment in violation of the *Ex Post Facto* Clause of the Missouri Constitution as the United States Supreme Court has applied when analyzing the United States Constitution, which was also applied by the Eighth Circuit in John Doe I, relied upon by Appellant. It is important to note that in John Doe I the statute at issue did not apply to offenders who had established their residence within two thousand feet of a school **prior** to the effective date of the statute, and therefore, the Eighth Circuit Court of Appeals was not confronted with the same issue as the one before

this Court.³

The factors used to determine whether a law is an impermissible *ex post facto* law are whether the new requirement: (1) has been regarded in our history and traditions as punishment; (2) promotes the traditional aims of punishment; (3) imposes an affirmative disability/restraint; (4) has a rational connection to a nonpunitive purpose; or (5) is excessive with respect to that purpose. R.W., 168 S.W.3d at 69. Banning an offender from his community/home was a traditional form of punishment. In this case, unlike John Doe I, the retroactive application of § 566.147 results in banishment, the statute does not merely limit new locations to which an offender can move. Banishment promotes the traditional aims of punishment – deterrence and retribution. As set forth above, requiring Respondent to move imposes an additional/greater punishment, which the Supreme Court has made clear is not limited to an increase in one’s sentence. Once Respondent moves from his home of the past ten (10) years, he will not be free to move into

³ Similarly, the Arkansas statute at issue in Weems v. Little Rock Police Dept., 453 F.3d 1010, 1017 (8th Cir. 2006), also relied upon by Appellant, exempted offenders residing in property s/he owned and occupied before the effective date of the statute unless another sexual offense was committed after the effective date of the statute, and therefore, the Eighth Circuit Court of Appeals has never considered the issue before this Court.

many other suitable residences because he cannot move into any other home within one thousand feet of a school, substantially limiting his options.

Unfortunately, every punitive measure can also advance the legitimate, non-punitive purpose of enhancing public safety. For example, removing the hand of a pickpocket also serves the non-punitive purpose of improving public safety, but there can be little doubt that this would be an impermissible punitive measure because excessive. Similarly, in this case, requiring people to move from their homes based upon conduct committed before the new statute was enacted is excessive in relation to its regulatory purpose, particularly when Respondent must already register as a sex offender, and therefore, the same purpose can be served by less punitive means. Therefore, the statute must be deemed to impose an *ex post facto* punishment, making it unconstitutional and unenforceable as to Respondent. The trial court did not err in finding that even if the legislature intended the 2006 amendment to § 566.147 to be nonpunitive, it remains so punitive in purpose that it is an unconstitutional *ex post facto* law. L.F. 59.

In Mikaloff v. Walsh, 2007 U.S. Dist LEXIS 65076 (N.D. Ohio 2007), an Ohio district court concluded that a residency restriction that prohibited an individual from residing within one thousand feet of a school was an unconstitutional *ex post facto* law using the five-part analysis set forth above. In Mikaloff, the court concluded that the legislature intended the law to be punitive, or at best, the legislative intent was unclear, and therefore considered whether the law was so punitive in purpose or effect that it should be considered to constitute

punishment. *Id.* at *22-23. The court noted that residency restrictions affect an individual's freedom to live in one's own property and further limit the ability to relocate. *Id.* at *24-25. It further held that such restrictions are punishment because analogous to the restrictions placed on those on probation and parole, except the restriction lasts for life. *Id.* at *26-28. The court further noted that such a restriction limits only an offender's place of sleep, it does not limit an offender's ability to go within one thousand feet of a school, and does not address the majority of child sex abuse cases that involve family members or acquaintances. *Id.* at *31-32. While the court was nonetheless willing to find that a residency restriction has some rational relation to restricting access to children, it concluded that such a restriction was excessive with respect to its stated purpose. *Id.* at *33. The court further concluded that because the law was so broad sweeping, it raised the suspicion that more than the regulation of safety was its intent. *Id.* at *34.

Appellant relies on two Georgia cases in an effort to convince this Court to reach a contrary result. Denson v. State, 600 S.E.2d 645 (Ga.Ct.App. 2004), involved an interpretation of the Georgia Constitution, not the Missouri or United States Constitutions. Moreover, § 566.147 was enacted with a punitive intent, and therefore, no further inquiry is required to subject the statute to the *ex post facto* prohibition. Mikaloff, 2007 U.S. Dist LEXIS 65076, at *11. In Doe v. Baker, 2006 U.S. Dist. LEXIS 67925 (N.D. Ga. 2006), the parties agreed that the legislature's intent in enacting its School Residency Law was to create a civil regulatory scheme. *Id.* at *8. The Court noted that if the legislative intent was to

impose punishment, its inquiry would end because the law would be an impermissible *ex post facto* law. *Id.* As set forth above, the legislative intent of § 566.147 is to impose punishment, and therefore, it constitutes an impermissible *ex post facto* law.

Appellant attempts to argue that § 566.147 is not an *ex post facto* law because Respondent can only be punished if he prospectively violates the law by failing to move from his current residence. App. Br. 21. However, as set forth above, a law is an impermissible *ex post facto* law if it is retrospective and disadvantages the offender affected by it. Weaver, 450 U.S. at 30. The critical question is whether the law “changes the legal consequences of acts completed before its effective date.” *Id.* at 31. There can be little doubt that § 566.147 changes the legal consequences of an act committed by Respondent before the effective date of the statute. To allow this law to stand criminalizes the act of Respondent living in his home, which was not a crime at the time he pled guilty in 2005.

III. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSES OF THE MISSOURI AND UNITED STATES CONSTITUTIONS.

Appellant claims that § 566.147 distinguishes between sex offenders who **establish** residence within one thousand feet of an existing school and sex offenders who reside within one thousand feet of a school built in the future. App.

Br. 22. Appellant makes this same argument throughout his Equal Protection Clause analysis. App. Br. 23-24. In actuality, the law distinguishes between those offenders who lived within one thousand feet of a school at the time the statute was enacted and those who at some future date have a school built within one thousand feet of their home. L.F. 59-60. Therefore, an offender who currently lives next to a school must move, while any offender (regardless of the risk s/he poses) may remain in his/her home if some time thereafter a school is built within one thousand feet of the offender's residence.

Under the equal protection clause, similarly situated individuals must be treated similarly. The law may not treat similarly situated persons differently, unless the differentiation is adequately justified. Jane Doe I, 194 S.W.3d 833 (Mo. banc 2006). Here offenders who lived near a school prior to the 2006 amendment to §566.147 and offenders who will live near a school built at some future date are similarly situated –they did not and could not plead guilty to an offense knowing that it would require them to move. Despite Appellant's claim that Respondent claims no fundamental right is affected, this classification impacts a fundamental right (the right to live where one chooses), and therefore, the classification is subject to strict scrutiny. Cf. App. Br. 23.

The Supreme Court has long held that the liberty recognized by the Fourteenth Amendment goes beyond the freedom of physical restraint to include: the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; **to live and work where he will**; to earn

his livelihood by any lawful calling; to pursue any livelihood or avocation,
... Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897) (emphasis added).

Therefore, the right to live where one chooses is recognized as a fundamental liberty interest protected by the Fourteenth Amendment. *Id.*⁴

Strict scrutiny requires the classification to be necessary to accomplish a compelling state interest and that the chosen method must be narrowly tailored to accomplish that purpose. Jane Doe I, 194 S.W.3d at 845. While the State interest herein is likely to be found to be compelling, the law is not narrowly tailored to serve such interest because more dangerous offenders than Respondent are permitted to remain in close proximity to a school/daycare center in the future. Therefore, § 566.147 violates the Equal Protection Clause.

Even if the equal protection analysis at issue herein is the rational basis test, the statute cannot withstand this lower level of scrutiny. A statutory classification offends the equal protection clause when it rests on grounds “wholly irrelevant” to achieving the State’s objective. *Id.* at 846. Here the State’s objective appears to

⁴ John Doe I, 405 F.3d at 714 should not be considered controlling on this issue because there is a big difference between placing restrictions on a future move and requiring someone to vacate their current home. The statute at issue in John Doe I specifically exempted those who lived near a school prior to its effective date, and therefore, it did not require any of the plaintiffs to move as the statute at issue herein requires.

be prohibiting sex offenders from living within close proximity to schools and day care centers in a way that does not offend the Missouri and United States Constitutions by exempting a class of offenders who are not currently subject to the law from being subjected to it in the future should a school or daycare center be built in proximity to their homes.⁵ However, the classification is wholly irrelevant to the State's objective because others similarly situated (those who were lawfully living within one thousand feet of an existing school at the time of the amendment to § 566.147) must move, thereby offending the Missouri and United States Constitution for the reasons set forth herein. Appellant's reliance upon Weems, 453 F.3d at 1015-16, is once again misplaced because the statute in Weems did not apply retroactively like § 566.147 at issue herein. App. Br. 23.

Appellant argues that the distinction at issue in this case is a rational one because it allows schools to make informed decisions about whether to build in proximity to a registered sex offender. App. Br. 24. However, the apparent purpose of the law is to prevent sex offenders from living within close proximity of a school or day care center. This purpose is not served if a school or day care center does not check to determine its proximity to registered sex offenders or does a check but decides to build at the same location any way due to other

⁵ In the case in which a school is built in the future, the statute also would only criminalize future conduct, the act of a sex offender remaining in his/her home after a school or day care center was built in close proximity.

considerations. Because the distinction is wholly irrelevant to serving the State's purported objective, § 566.147 violates the Equal Protection Clauses of the Missouri and United States Constitutions.

IV. THE TRIAL COURT PROPERLY HELD THAT THE SCHOOL RESIDENCY LAW IS UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSES OF THE MISSOURI AND UNITED STATES CONSTITUTIONS.

Appellant claims that § 566.147 does not constitute an unconstitutional taking without notice and an opportunity to be heard, as found by the trial court, because Respondent's property is not taken by the School Residency Law. App. Br. 25. However, as set forth above, Missouri law defines property for purposes of the Constitution to include ownership and possession as well as the right of use and enjoyment for lawful purposes. Home Builders Assoc. of Greater St. Louis, 75 S.W.3d at 271, n. 2. In the present case, the State intends to deprive Respondent of his right to possession and use of his property for a lawful purpose (residency) without due process of law. The Missouri Supreme Court has held that any governmental taking of a property right implicates the right to procedural due process, and therefore, the right to notice and an opportunity to be heard. State ex rel. Yarber v. McHenry, 915 S.W.2d 325 (Mo. banc 1995).

That neither this Court, nor the United States Supreme Court, require a hearing as to dangerousness with respect to a sex offender registration laws does

not resolve the issue before this Court: whether Respondent's right to possession and use of his property can be taken without notice and an opportunity to be heard. Clearly, Respondent was not provided with notice of the taking because when he pled guilty in 2005, he did not know that being forced from his home of ten (10) years in 2007 would be a consequence of his plea. He is provided with no opportunity to be heard with respect to this taking because it occurred without notice after he entered his plea of guilty.

Once again, Appellant relies upon John Doe I in an effort to convince this Court that § 566.147 does not violate the Due Process Clauses of the Missouri and United States Constitutions. However, as set forth above, John Doe I applied prospectively only, and therefore, offenders impacted by it were afforded notice that a plea of guilty to certain offenses could require the offender to move. Therefore, notice and an opportunity to be heard was afforded by the prospective application of the statute. Section 566.147 applies retroactively to the conduct of Respondent before the statute was enacted, and therefore, did not afford Respondent notice and an opportunity to be heard before depriving him of the possession and use of his property in violation of the Due Process Clause. Therefore, the trial court did not err in finding § 566.147 unconstitutional because it deprived Respondent of property without notice and an opportunity to be heard.

L.F. 60.

CONCLUSION

For all of the reasons set forth herein, the Order and Judgment of the trial court should be affirmed. Additionally, the trial court's permanent injunction against enforcing § 566.147 R.S.Mo., as amended in 2006, against Respondent and all other similarly situated offenders who resided within one thousand feet of a school or daycare center at the time of the statute's effective date should remain in full force and effect.

Respectfully submitted,

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CERTIFICATE PURSUANT TO RULE 84.06
AND CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document contains 4,956 words.

The undersigned further certifies that two (2) true and accurate copies of the foregoing document, the appendix thereto, and a floppy disk version of the same were sent by regular mail, postage prepaid, on this 2nd day of November, 2007, to:

Ryan Bertels
Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

The undersigned further certifies that the foregoing document complies with Rule 84.06(c) in that it includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b).
