

-----	:	SUPERIOR COURT OF NEW JERSEY
G.H.,	:	APPELLATE DIVISION
	:	DOCKET NO. A-003235-06T1
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action
	:	
	:	ON APPEAL FROM AN ORDER OF
TOWNSHIP OF GALLOWAY,	:	FEBRUARY 5, 2007, SUPERIOR
	:	COURT, LAW DIVISION,
	:	ALTANTIC COUNTY
	:	
Defendant.	:	SAT BELOW:
	:	HON. VALERIE H. ARMSTRONG,
	:	J.S.C

BRIEF OF AMICUS CURIAE LEGAL SERVICES OF NEW JERSEY
AND CERTIFICATION OF LYNETTE SIRAGUSA

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INTRODUCTION

This Court is being asked to consider the validity of Galloway Township's Ordinance 1616, which prohibits sex offenders from living in certain areas of Galloway Township ("Galloway"). Ordinance 1616 is just one of an estimated 118 sex-offender exclusion zone ordinances enacted by municipalities throughout New Jersey in the past two years. As a result of Ordinance 1616 and others like it, sex offenders are banned from living in large portions of New Jersey.

The purported goal of Ordinance 1616 is public safety, but there is no evidence that sex offender residency restrictions prevent recidivism. To the contrary, research indicates that there is no relationship between sex offense recidivism and the proximity of sex offenders' residences to schools, parks or other places where children congregate.

Moreover, these ordinances may actually increase the risk of recidivism. Research has shown that stable housing and social support are critical factors in reducing re-offense. Residency restrictions, however, interfere with access to these crucial stabilizing forces. In addition, sex offenders who become homeless as a result of these restrictions will be more difficult to supervise and monitor in the community.

Municipalities that have passed residency restriction ordinances have failed to consider the impact of the ordinances beyond their own boundaries. In the landmark decision of Southern Burlington County N.A.A.C.P v. Mount Laurel, 67 N.J. 151 (1975), the New Jersey Supreme Court held that housing is of such basic importance that municipal actions that "preclude or substantially hinder" an individual's ability to obtain housing trigger a presumption of a violation of substantive due process and equal protection rights. Id. at 181. The Court further held that municipalities, in the name of protecting their own interests, cannot shirk their responsibility to provide their fair share of appropriate housing for all. With significant portions of the state off-limits for sex offenders, municipalities without residency restrictions are forced to bear the burden of providing housing to these individuals. This parochial, not-in-my-backyard scheme is contrary to New Jersey law.

Because there is no clear public interest being furthered by Ordinance 1616, Ordinance 1616 cannot be upheld.

INTEREST OF AMICUS CURIAE

Legal Services of New Jersey ("LSNJ") is a non-profit corporation that provides legal assistance in civil legal matters to thousands of low-income people every year. (Siragusa Cert.¹ ¶ 2.) LSNJ is dedicated to promoting equal access to the legal system for all individuals regardless of income. (Id. ¶ 3.) One primary goal is to address recurrent legal problems affecting low-income individuals. (Id. ¶ 4.)

Among the clients LSNJ and other Legal Services offices have assisted are sex offenders who have been notified that they must move from their residences as a result of a sex offender exclusion zone ordinances. (Id. ¶¶ 5-6.) In each of those cases, the municipalities have threatened the sex offender to either relocate or face criminal punishment including fines and jail time for violating the ordinance. (Id. ¶ 7.) All of those individuals faced imminent homelessness because they did not have the financial resources to relocate. (Id. ¶ 8.) Furthermore, many of those clients feared being displaced from their families, losing their jobs and losing access to treatment they were receiving. (Id. ¶ 9.)

¹ "Siragusa Cert." refers to the Certification of Lynette Siragusa, submitted herewith.

For example, one client resided in a municipality for over seven years without incident. (Id. ¶ 11.) Upon her annual registration pursuant to Megan's Law, the local police provided her with a copy of the ordinance and instructed her that she had to vacate her home within sixty days. (Id.) This client, who suffered from physical and mental disabilities, had been able to maintain a full-time job within her town of residence. (Id. ¶ 12.) Additionally, her social support and family support were located in the municipality. (Id. ¶ 13.) By being forced to move, she faced the prospect of permanent separation from her family and losing her job. (Id.)

In another case, the client could no longer afford her rent. (Id. ¶ 14.) The client received approval from her parole officer to move to a new apartment, for which she signed a new lease, in a different municipality. (Id.) To her surprise, when she registered with the local police, she was given a copy of the town's sex offender exclusion zone ordinance and was instructed to vacate her apartment within sixty days. (Id. ¶ 15.) Her parole officer did not appear to be aware of this ordinance. Again, this individual faced significant repercussions for breaching her lease, including being sued for rent arrearages and losing her security deposit. (Id. ¶¶ 14, 16.) She was also faced with the daunting prospect of finding

another apartment outside an exclusion zone. (Id. ¶ 17.) She feared that, as a result of that move, she would lose her job. (Id.)

In another matter, a client had lived in his home for more than sixteen years without incident. (Id. ¶ 18.) Physically disabled and living on Social Security Disability income, the client lived in a region where several surrounding towns had passed sex-offender exclusion zone ordinances. (Id. ¶¶ 18-19.) When the client was served with the notice that he must vacate his home or risk serving jail time, he was unable to find housing alternatives in his county. (Id. ¶ 19.) This client, who had undergone extensive treatment in prison, nevertheless believed returning to jail might be his only option. (Id. ¶ 20.)

Other clients have advised that they are faced with the difficult choice of moving the entire family outside an exclusion zone or separating the family so that spouses or children can remain closer to jobs and schools. (Id. ¶ 21.) Innocent family members experience psychological and financial hardships as a result of these ordinances.

All of these clients ask where they can live. (Id. ¶ 22.) There is little guidance that can be given because exclusion zones vary by size, nature of prohibited areas, and topography

of the town. Many towns do not provide clear maps of the exclusion zone areas. Of course, even if an affected individual or family moves, there is no guarantee that the town to which an individual moves will not pass a sex-offender exclusion zone ordinance in the future or that a school or playground will be built nearby and render the residence illegal.

BACKGROUND

LSNJ will rely upon the Procedural History and Statement of Facts set forth in plaintiff-respondent's brief. In addition, LSNJ provides the following background on sex offender residency restriction ordinances passed throughout New Jersey as well as background on research on the effectiveness of such ordinances.

Since May of 2005, approximately 118 municipalities in New Jersey have passed sex offender residency prohibitions similar to Ordinance 1616.² (See Aca1-264.³) Three of those ordinances have been repealed or overturned through litigation; 115 such ordinances remain in effect. (See Aca1-264.) The municipalities that have enacted the sex offender exclusion zone ordinances are located throughout the state, in each of New

² This information is based on the research conducted by LSNJ. It is difficult to track the passage of these ordinances because there is no central registry or database to search; thus, there may be ordinances that have been passed that were not found.

³ "Aca" will be used to refer to the appendix attached to this brief; "Ja" refers to the joint appendix.

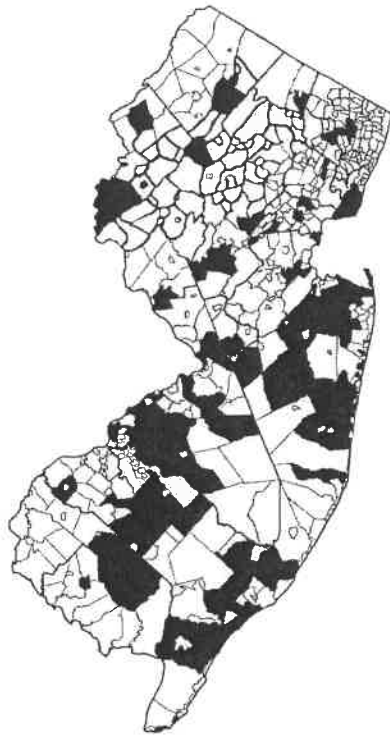
Jersey's twenty-one counties. The towns with sex offender exclusion zone ordinances are listed below.

- In Atlantic County, eight municipalities - Egg Harbor City, Egg Harbor Township, Galloway, Hammonton, Linwood, Longport, Margate City and Ventnor City - have sex offender residency restriction ordinances. (See Aca1-5; Aca11-16.) Brigantine had enacted such an ordinance, but it has since been repealed.
- In Bergen County, three municipalities - Fair Lawn, Paramus and Rochelle Park - have sex offender residency restriction ordinances. (Aca6-10.)
- In Burlington County, seventeen municipalities - Cinnaminson, Delran, Delanco, Edgewater Park, Evesham, Florence, Hainesport, Lumberton, Medford, Moorestown, Mount Laurel, Maple Shade, Palmyra, Pemberton, Riverton, Shamong and Springfield - have sex offender residency restriction ordinances. (Aca17-56.)
- In Camden County, eleven municipalities - Berlin, Brooklawn, Camden, Gibbsboro, Gloucester City, Haddon Heights, Haddonfield, Merchantville, Mt. Ephraim, Voorhees and Winslow - have sex offender exclusion zone ordinances. (See Aca61-73; Aca76-84; Aca114-115.) Cherry Hill had enacted an ordinance, but it was overturned in litigation. See Cherry Hill v. Barclay, Nos. 66-2006, 67-2006, letter op. (Law Div. February 23, 2007) (Aca299-312).
- In Cape May County, five municipalities - Cape May, Dennis, Ocean City, Upper and Wildwood - have sex offender exclusion zone ordinances. Aca85-97; Aca102-03. Lower had enacted an ordinance, but it was overturned in litigation. Elwell v. Township of Lower, No. CPM-651-05, 2006 WL 3797974 *1 (Law Div. Dec. 22, 2006) (Aca98-101; Aca313-320).
- In Cumberland County, four municipalities - Bridgeton, Deerfield, Millville and Vineland - have sex offender exclusion zone ordinances. (Aca104-109.)

- In Essex County, one municipality - Bloomfield - has a sex offender exclusion zone ordinance. (Aca110-111.)
- In Gloucester County, four municipalities - Franklin, Glassboro, Monroe and Woolwich - have sex offender exclusion zone ordinances. (Aca112-122; Aca127-130.)
- In Hudson County, two municipalities - Bayonne and Jersey City - have sex offender exclusion zone ordinances. (Aca131-134.)
- In Hunterdon County, one municipality - West Amwell - has a sex offender exclusion zone ordinance. (Aca135-137.)
- In Mercer County, two municipalities - Hamilton and Washington - have sex offender exclusion zone ordinances. (Aca138-141.)
- In Middlesex County, three municipalities - Carteret, Middlesex and Sayreville - have sex offender exclusion zone ordinances. (Aca142-146.)
- In Monmouth County, nineteen municipalities - Atlantic Highlands, Bradley Beach, Colts Neck, Eatontown, Fair Haven, Freehold Township, Highlands, Holmdel, Keansburg, Manalapan, Manasquan, Marlboro, Matawan, Middletown, Neptune City, Spring Lake, Spring Lake Heights, Tinton Falls and Upper Freehold - have sex offender exclusion zone ordinances. (Aca147-194.)
- In Morris County, one municipality - Mount Olive - has a sex offender exclusion zone ordinance. (Aca195-196.)
- In Ocean County, eleven municipalities - Beachwood, Berkeley, Brick, Island Heights, Jackson, Lakewood, Ocean, Ocean Gate, Point Pleasant Borough, Seaside Heights and Toms River - have sex offender exclusion zone ordinances. (Aca197-219.)

- In Passaic County, three municipalities - Paterson, Pompton Lakes and Wanaque - have sex offender exclusion zone ordinances. (Aca220-226.)
- In Salem County, one municipality - Pittsgrove - has a sex offender exclusion zone ordinance. (Aca227.)
- In Somerset County, three municipalities - Hillsborough, Millstone and Warren - have sex offender exclusion zone ordinances. (Aca228-231.)
- In Sussex County, four municipalities - Franklin, Ogdensburg, Sparta and Sussex - have sex offender exclusion zone ordinances. (Aca232-242.)
- In Union County, four municipalities - Cranford, Garwood, Plainfield and Union - have sex offender exclusion zone ordinances. (Aca243-251.)
- In Warren County, eight municipalities - Alpha, Belvidere, Blairstown, Greenwich, Lopatcong, Phillipsburg, Pohatcong and Washington Borough - have sex offender exclusion zone ordinances. (Aca252-266.)

For the Court's convenience, LSNJ has prepared a map indicating which portions of the state currently have sex offender residency restrictions. The areas marked in black indicate the municipalities that currently have sex-offender exclusion zone ordinances. (Siragusa Cert. ¶ 23.)



The 115 municipal ordinances currently in effect vary greatly in terms of the radius of their restricted areas and the prohibited locations identified as areas where children congregate. A majority of these municipalities (seventy-four) prohibit sex offenders from living within 2,500 feet of locations identified as those where children congregate. (See Aca1-264.) Thirty-four have restriction zones with a radius of 1,000 feet. (See Aca1- 264.)

Though no New Jersey municipal ordinance expressly bans sex offenders from living everywhere within its borders, some ordinances effectively ban sex offenders from the entire town.

For example, Brooklawn's Ordinance No. 18-05 prohibits sex offenders from living within 2,500 feet of any school, park, playground, or daycare center. (Aca70.) This 2,500 foot restricted radius translates to a prohibited zone of 0.704 square miles for each exclusion zone. The Borough itself, however, is only 0.5 square miles. Though it is possible that all schools, parks, playgrounds, and daycare centers in Brooklawn are situated such that sex offenders may live in some portion of the municipality, it is much more likely that these locations are spread to a degree that effectively exclude sex offenders completely.

Similarly, under Seaside Height's Ordinance No. 05-19, sex offenders may not live within 2,500 feet of secondary schools, childcare centers or playgrounds. (Aca219.) Again, each exclusion zone is an area of 0.704 square miles. As with Brooklawn, Seaside Heights effectively bans sex offenders from living within its borders because the exclusion zones are almost as large as the town, which has a total area of 0.8 square miles.

In other towns, adjacent and intersecting exclusion ones can effectively bar a sex offender from living within town limits. (See, e.g., Aca245-246).

Township of Franklin Ordinance has different distance ranges depending on whether an individual is a Tier 1, Tier 2 or Tier 3 offender. (Aca116-122.) For instance, if an individual is registered as a Tier 3 offender, then the individual may not live within 3,000 feet of any of the restricted areas.

(Aca118.) If an individual is registered as a Tier 2 offender, the individual may not live within 2,500 feet of any of the restricted areas. (Id.) If an individual is registered as a Tier 1 offender, the individual may not live within 1,000 feet of any of the restricted areas. (Id.)

Ventnor's Ordinance No. 2006-07 simply prohibits sex offenders from living an "area adjacent to any school, park, playground or day care center." (Aca1.) It does specify the distance that constitutes "adjacent."

The 115 sex-offender exclusion zone ordinances also vary significantly in what is defined as an exclusion zone area. Areas near schools, parks, playgrounds, recreation areas, school bus stops and daycare facilities are common exclusion zones. (See, e.g., Aca191-194; Aca198-199; Aca200-202.) However, municipalities across the state have opted to prohibit sex offenders from living near other public accommodations or facilities.

For example, Franklin's Ordinance O-17-05 includes restricted areas such as: commercial recreational facilities (including theaters, bowling alleys, sports fields, exercise facilities, "sporting" facilities and skating rinks), convenience stores, public libraries, public beaches, and places of worship. (Aca118.) Similarly, Jersey City's Ordinance 06-145 prohibits residence near convenience stores, public libraries, commercial recreation facilities, exercise facilities and sporting facilities. (Aca133-134.) Spring Lake Heights' Ordinance 23-2005 prohibits residence near a firehouse or a community center. (Aca189-190.) Upper Freehold's Ordinance 165-06 prohibits residence near horse farms and riding stables. (Aca147-151.) Edgewater Park's Ordinance 18-2005 includes a prohibition from residing near cemeteries. (Aca35-39.) The Township of Florence's Ordinance 2006-01 prohibits residence near the municipal building and "open space." (Aca40-43.)

An overwhelming majority of residence restrictions have a grandfather clause exempting homeowners or "established" residents. Of the 115 municipalities with residency restrictions currently in effect, 110, or approximately 95 percent, have an exemption for people who have established residence in a restricted area prior to a particular date,

typically the effective date of the ordinance.⁴ (See Aca1-264.) For example, 75 municipalities exempt people who have "established residence" prior to a particular date. (See Aca1-264.) An additional fourteen municipalities exclude people who have "purchased property to be used as his/her primary residence which is located within the prohibited area" prior to a particular date. (See Aca1-264.) Nevertheless, because only twenty-nine of the 110 municipalities with residence exemptions define residence, the applicability of these exemptions is unclear in many towns, cities, and boroughs. (See Aca1-264.) Of the municipalities that do define "residence," twenty-two define it as "the place where a convicted sex offender sleeps, which may include more than one location and may be mobile or transitory." (See Aca1-264.) The seven remaining municipalities define residence in other ways. (See Aca1-264.) Both Millville and Deerfield, for example, define "resides/lives" as "the location or residence where a sex offender actually resides or the location of residence reported by the sex offender to the proper authorities." (Aca105; Aca107.)

⁴ Information on exemptions for Egg Harbor City and Ventnor City is currently unavailable.

Generally, the ordinances provide the sex offender sixty days to relocate. (See Aca1-264.) The Township of Franklin's ordinance provides different relocation periods. For instance, if a Tier 1 has established residence prior to the enactment of the ordinance, then he may remain at his residence. (Aca118.) If however, the individual is a Tier 2, the individual is given 12 months to relocate to another area. (Id.) If the individual is a Tier 3, the individual is given 6 months to relocate to another area. (Aca119.)

1. The Minnesota Department of Corrections Study

There have been few studies examining the potential value of sex offender residency restrictions, but those that have been conducted strongly suggest that they are ineffective. For example, in April 2007, the Minnesota Department of Corrections ("MDOC") released a report entitled "Residential Proximity & Sex Offense Recidivism in Minnesota." MINNESOTA DEP'T OF CORR., RESIDENTIAL PROXIMITY & SEX OFFENSE RECIDIVISM IN MINNESOTA (2007) (Aca271-298). MDOC conducted the study to determine whether residential restrictions would have a deterrent effect on sexual re-offense throughout the state. Id. (Aca269-298.) Only two of Minnesota's 854 municipalities - Taylor Falls and Wyoming - currently have offender residency restrictions. Id. (Aca275.)

MDOC's data consisted of the 224 offenders released between 1990 and 2002 who had been reincarcerated for a sex offense following their initial release and prior to January 1, 2006. Id. (Aca271.) Four criteria were used to determine whether residency restrictions might have prevented a sex crime from occurring. Id. (Aca279.) First, because residency restrictions are primarily geared towards deterring sex offenders from initiating contact with minor victims (as opposed to being related to the victim or having some other social connection like dating the victim's mother), the offender must have been a "direct contact offender." Id. (Aca279.) Second, the distance between the offender's residence at the time of re-offense and the location where he first established contact with the victim must have been less than one mile. Id. (Aca279-280.) Third, the offender must have established contact with the victim at a school, park, playground, daycare center, or other location where children are known to congregate because these are the types of locations identified in residency prohibitions. Id. (Aca280.) Fourth, the victim must have been under the age of eighteen at the time of the offense. Id. (Aca280.)

After analyzing all relevant data, the MDOC concluded that "none of the 224 incidents of sex offender recidivism fit the criteria of a known offender making contact with a child victim

at a location within any of the distances typically covered by residential restriction laws." Id. (Aca293.) Rather, the MDOC found that residential proximity had very little impact on the 224 sex offenses. Id. (Aca294-296.) Instead, more than half of the 224 cases were offenses that involved offenders who gained access to their victims through another person, typically an adult. Id. (Aca275.) Generally, the MDOC found that the sex offenders were more likely to go to an area relatively close to home (within 20 miles of their residence) but far enough away (more than one mile) to decrease their chances of being recognized. Id. (Aca282-295.)

Following the gathering of the analytical data, MDOC found that residency restrictions would, at best, likely have only a marginal effect on sexual recidivism. Id. (Aca269-298.) In fact, MDOC found that the housing restrictions may work against the goal of lowering sexual recidivism by fostering conditions that exacerbate sex offenders' reintegration into society such as increased isolation, decreased stability and greater emotional and financial stress. Id. (Aca276-277.)

Furthermore, MDOC concluded that results provide very little support for the notion that residency restriction laws would lower the incidence of sexual recidivism. The MDOC noted that "over the 16 years not one sex offender released from

Minnesota Corrections Facility has made contact with a juvenile victim near a school, park, or daycare center close to his home." Id. (Aca295 (emphasis added)). The report also noted that residency restriction ordinances have unintended consequences that include limiting employment prospects, impeding access to mental health and substance abuse treatment, and compromising the reliability of the sex offender registry as sex offenders instead go underground and stop notifying the authorities of their whereabouts. Id. (Aca295-296.) Moreover, MDOC found that the forced removal of offenders from established residences also appear to have an adverse impact on family members, such as children being pulled out of school and away from friends, job loss and loss of community connections for spouses. Id. (Aca296.) Minnesota ultimately determined that the potential benefits of such legislation do not seem to outweigh the possible negative consequences.

In Illinois, where a statewide restriction prohibits sex offenders from living within 500 feet of any school or school property, the chairman of the Prisoner Review Board reports that there is "cyclical incarceration" of more than 400 sex offenders who are serving their parole terms in prison because they have no place to live. Wendy Koch, "Sex-offender Residency Laws Get Second Look," USA Today (February 26, 2007) (Aca267-270.)

Research demonstrates that housing stability and social support increase the likelihood of successful reintegration and decrease the likelihood of recidivism. See, e.g., JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY (Urban Institute Press 2001). "Housing, therefore, has been appropriately characterized as the 'lynchpin that holds the reintegration process together.'" Id. at 219 (quoting Bradley, Katharine, et al. "No Place Like Home: Housing and the Ex-Prisoner," (Community Resources for Justice 2001)). With sex offenders in particular, residency restrictions increase isolation, create financial and emotional hardship and lead to decreased stability. Studies have shown that lack of positive social support and stability are associated with sex offender recidivism. Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?*, 49 INT'L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 168 (2005).

2. Other Housing Restrictions

It is well known that there is a dearth of affordable housing in New Jersey. Sex offenders face even more barriers to obtaining affordable housing because they are precluded from residing in public housing. Under the HUD Regulations, public housing authorities ("PHAs") are permitted to obtain sex

offender registration information from any state or local agency responsible for the collection and maintenance of such information, e.g., the local police department. See 24 C.F.R. §5.905(a). If an offender is subject to a lifetime registration under the state sex offender registration program, the PHA must deny admission to public housing, and Section 8 programs. See 42 U.S.C.A. § 13663; 24 C.F.R. 5.856 (federally assisted housing); 882.518(a)(2) (Section 8 moderate rehabilitation); 960.204(a)(4) (Public Housing); 982.553(a)(2)(i) (Voucher).

Furthermore, as discussed above, residency restriction ordinances often exempt sex offenders who are homeowners. This creates a disparate impact on low income individuals. It is estimated that 74.1% of low income individuals rent, while only 25.9% of low income individuals own their own home. On the other hand, according to the survey, 78.2% individuals whose income is above the poverty level own their own home. U.S. Census Bureau, Table C17019, *American Community Survey* (2005).⁵

⁵ Hudson County has the highest percentage of low income renters (91.8%), followed by Passaic County at 85.2% and Essex County at 85.3%. Id. In Monmouth County where there nineteen municipalities that have residency restrictions, 64.2% of low income individuals are renters. Id. In Burlington County where there are seventeen municipalities that have residency restrictions, 53.1% are low income renters. Id. In Camden County where there are eleven municipalities that have residency restrictions, 70.1% are low income renters. Id. In Ocean County

In addition, four ordinances have facilitation provisions. (See Aca1-264.) For example, Edgewater Park's Ordinance 18-2005 prohibits landlords from renting to sex offenders. (Aca35-39.) Such provisions are likely to make landlords fearful to lease an apartment or house to a sex offender, even if the apartment is outside of the restricted zone.

LEGAL ARGUMENT

I. Ordinance 1616 Violates the Principle of Mount Laurel that Each Municipality Has an Obligation to Provide a Reasonable Opportunity to Live Within Its Borders.

In Southern Burlington County N.A.A.C.P. v. Mount Laurel, 67 N.J. 151, 178 (1975) ("Mt. Laurel I"), the New Jersey Supreme Court held that Art. I, par. 1 of the New Jersey Constitution requires municipal zoning laws and regulations, "like any police power enactment, [to] promote public health, safety, morals or the general welfare." Id. at 174-75. The Court further held that the "general welfare" municipalities must consider "extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality." Id. at 179.

At the heart of the Court's opinion is a commitment to the "basic importance of appropriate housing for all." Id. at 180.

where there are eleven municipalities that have residency restrictions, 61.5% are low income renters. Id.

The Court held that "[t]here can not be the slightest doubt that shelter, along with food are the most basic human needs." Id. at 178. Therefore, "[i]t is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare." Id. at 179.

[T]he universal and constant need for such housing is so important and of such broad public interest that the general welfare . . . extends beyond their boundaries and cannot be parochially confined to the claimed good of a particular municipality. It has to follow that, broadly speaking, a presumptive obligation arises for each such municipality affirmatively to plan and provide . . . the reasonable opportunity for an appropriate variety and choice of housing . . . to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries. Negatively, it may not adopt regulations or policies which thwart or preclude that opportunity.

Id. at 179-80 (emphasis added). The Court cautioned that a municipality may not "build a wall around itself." Id. at 171.

In Mount Laurel I, the municipality had adopted land use regulations with the purpose and effect of excluding categories of persons from residing in the township because of their limited income and resources. Id. at 159. The municipality argued that the regulations were in the fiscal interest of its

citizens and therefore promoted the general welfare of its residents. Id. at 160-61. The municipality wanted to keep local property taxes down by limiting public education costs and increasing revenue from industrial and commercial ratables. Id. at 170-71.

Mount Laurel I reveals the strength of the Supreme Court's commitment to the "basic importance of appropriate housing for all." Id. at 180. The Court clearly defended the right of all people to reside in municipalities of their choice. Specifically, the Court held that when a municipality has imposed "restrictions which preclude or substantially hinder" an individual's ability to live within a town, "a facial showing of violation of substantive due process or equal protection under the state constitution has been made out and the burden, and it is a heavy one, shifts to the municipality to establish a valid basis for its action or non-action." Id. at 180-81 (citing Robinson v. Cahill, 62 N.J. 473, 491-92 (1973)).

Mt. Laurel I sets forth an affirmative obligation on municipalities to provide all people with a realistic opportunity for housing within their boundaries. It also requires municipalities to take a "broader view of the general welfare" and look beyond its boundaries to serve the general welfare of the State's residents - not just their own. Id. at

180. Thus, the Court requires individual municipalities to "bear its fair share of the regional burden" of housing needs of all. Id. at 189.

The Court affirmed its mandate that individuals should not be "forever zoned out of substantial areas of the state" in its subsequent decision, Southern Burlington County N.A.A.C.P. v. Mount Laurel, 92 N.J. 158, 260-61 (1983) ("Mount Laurel II"). In Mt. Laurel II, the Court cautioned that if certain residents were "forever zoned out of substantial areas of the state, not because housing could not be built for them but because they are not wanted," id. at 209, the result would be "not only at variance with the requirement that the zoning power be used for the general welfare but with all concepts of fundamental fairness and decency that underpin many constitutional obligations." Id. at 209-10.

This Court has anticipated the insidiousness of and potential parochialism that could result from sex offender residency restrictions. In Mulligan v. Panther Valley Property Owners Association, 337 N.J. Super. 293 (App. Div. 2001), a homeowner in a residential community challenged an amendment adopted by the defendant association excluding Tier 3 offenders from residing in Panther Valley. Id. at 297-98. Though the court reversed the lower decision and denied remand because of

the plaintiff's failure to develop a sufficient record, the court considered the implications of such residency prohibitions in dicta. Id. at 305. The Court stated that sex offender residency restrictions could "make a large segment of the housing market unavailable to one category of individuals and indeed perhaps to approach 'the ogre of vigilantism and harassment,' the potential dangers of which the Supreme Court recognized even while upholding the constitutionality of Megan's Law." Id. (citing Doe v. Poritz, 142 N.J. 1, 110 (1995)). Noting that Tier 3 registrants are neither protected group under New Jersey's Law Against Discrimination nor considered handicapped, the Court nevertheless stated "it does not necessarily follow, however, that large segments of the State could entirely close their doors to such individuals, confining them to a narrow corridor" Id. at 306.

Sex offender residency restrictions like Ordinance 1616 deny a category of people - Megan's Law registrants - the reasonable opportunity for an appropriate variety and choice of housing. And, as indicated above, these restrictions may actually deny sex offenders housing in municipalities wholesale by barring sex offenders from entire towns. As such, they directly conflict with the Mount Laurel mandate because they are parochial in nature in that they seek to protect the interests

of the municipality without protecting the general welfare of the state residents as a whole.⁶ By designating expansive stretches of land as prohibited zones, municipalities like Galloway are pushing the burden of housing the sex offenders on other municipalities. Galloway cannot build a wall around itself.

Further, the experiences of other states with sex offender residency prohibitions demonstrate the catastrophic consequences of these restrictions related to housing. As noted previously, the chairman of the Illinois Prisoner Review Board reports that there is "cyclical incarceration" of more than 400 sex offenders who are serving their parole terms in prison because they have no place to live. Wendy Koch, "Sex-offender Residency Laws Get Second Look," USA Today (February 26, 2007) (Aca267-270). Because parolees cannot be released without a place to go, even if it is only temporarily, offenders who have served their time in prison and jail are forced to remain incarcerated due to the statewide prohibitions. Id.

⁶ Regardless of whether Ordinance No. 1616 is a zoning ordinance, the principles articulated in the Mount Laurel decisions are applicable. As noted in Howell Properties, Inc. v. Township of Brick, 347 N.J. Super. 573, 581 (App. Div. 2002), the Mount Laurel mandate applies to municipal actions that are not zoning ordinances but are nevertheless "undergirded" by zoning considerations.

II. Municipal Sex Offender Residency Restrictions are Preempted by State Law

Because state law preempts municipal sex offender residency prohibitions, the court should invalidate Ordinance No. 1616.

The New Jersey Supreme Court defines preemption as "a judicially created principle based on the proposition that a municipality, which is an agent of the State, cannot act contrary to the State." Overlook Terrace Management Corp. v. Rent Control Bd., 71 N.J. 451, 461 (1976) (citing Summer v. Teaneck, 53 N.J. 548, 554 (1969)).

The court in Overlook Terrace provided the following questions for consideration in determining whether a municipal law has been preempted:

1. Does the ordinance conflict with state law, either because of conflicting policies or operation effect (that is, does the ordinance forbid what the Legislature has permitted or does the ordinance permit what the Legislature has forbidden)?
2. Was the state law intended, either expressly or impliedly, to be exclusive in the field?
3. Does the subject reflect a need for uniformity?
4. Is the state scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation?
5. Does the ordinance stand as an 'obstacle to the accomplishment and execution of the full purposes and objectives' of the Legislature?

Overlook Terrace, 71 N.J. at 461-62 (citations omitted). Each of these components has been aptly addressed, by the opinion below, G.H.'s brief, and by the amicus briefs written on behalf of G.H. However, the need for uniformity and the ordinances as obstacles to the accomplishment of the Legislature's objectives, specifically the reintegration of sex offenders into society, deserve further discussion to address the particular challenges facing indigent Megan's Law registrants.

In a preemption analysis, due consideration must be given to whether the subject matter demands uniformity and whether the challenged ordinance acts as an obstacle to the achievement of the Legislature's objectives. Overlook Terrace, 71 N.J. at 461. In this case, these two considerations overlap considerably because it is the current lack of uniformity that thwarts, in due part, the accomplishment of the Legislature's objective to "foster rehabilitation." N.J.S.A. 2C:43-6.4(b); Senate No. 320-L. 1994, c. 130.

As discussed in great detail above, the lack of uniformity has created a patchwork of inconsistent laws that vary in the nature of the exclusion zones, size of the exclusion zones, and exemptions from exclusion zones. As discussed previously, there is little to no uniformity among residency restrictions, either

in prohibited distance from identified sites, or in the identification of sites where children are likely to congregate. Once they are notified that they must move, sex offenders are faced with the near-impossible task of being assured that the next place they move will be outside an exclusion zone. Even if an offender establishes a residence that complies with local law, a new residency restriction may render his residence illegal. Similarly, if a new school or playground is built, an individual's residence may become illegal.

Community supervision is required for most New Jersey sex offenders under N.J.S.A. 2C:43-6.4. Subsection (b) provides in pertinent part that ". . . Persons serving a special sentence of parole supervision for life . . . shall be subject to conditions appropriate to protect the public and foster rehabilitation." (emphasis added). The Senate Judiciary Committee Statement attached to this provision reiterates that ". . . persons on community supervision . . . would be subject to conditions appropriate to protect the public and foster rehabilitation . . ." Senate No. 320-L.1994, c.130. This language indicates that successful rehabilitation of sex offenders is a legislative objective in New Jersey.

The rehabilitation of sex offenders and ex-offenders, generally, follows from successful reintegration into society.

The community interest in successful reintegration cannot be overstated; offenders who reenter society are significantly less likely to recidivate. Lower rates of recidivism translate into fewer crimes committed and, most importantly, fewer victims, families, and communities afflicted by crime.

It is widely accepted that successful reintegration primarily rests upon three pillars: supportive social networks; employment; stable housing. For those sex offenders reentering society after incarceration, their sex offender reentrants seriously impinges upon their ability to find housing.

Local sex-offender residency prohibitions force sex offenders into narrow strips or pockets, or even forcing them into neighboring municipalities. This forcing-out cuts against the rehabilitative efforts of community supervision, mental and health treatment providers, and family and friends. Because the planning and coordination of prohibited zones is not occurring at a county, regional, or state level, municipalities are being allowed to build barriers within their boundaries. Due to the geographic clustering of municipalities with residency prohibitions, sex offenders may be forced miles from prior employment, rehabilitation service providers, family and friends, and other supportive social networks.

III. Municipal Residency Restrictions Violate the Substantive Due Process Rights of Megan's Law Registrants

Ordinance No. 1616 violates the substantive due process rights of Megan's Law registrants and should therefore be invalidated. In New Jersey, the right to substantive due process is derived from the expansive language of Article I, Paragraph 1 of the Constitution, which reads

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

N.J. Const. Art. I, ¶ 1. Under the New Jersey Constitution, a statute shall be invalidated on substantive due process grounds if it "seeks to promote [a] state interest by impermissible means." Greenberg v. Kimmelman, 99 N.J. 552, 562 (1985).

New Jersey courts assess substantive due process challenges with a balancing test. Caviglia v. Royal Tours of America, 178 N.J. 460, 472-73 (2004) (citing Sojourner v. The New Jersey Dep't of Human Servs., 177 N.J. 318, 332 (2003)); Greenburg v. Kimmelman, 99 N.J. 552, 567 (1985); Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 107 N.J. 355, 368 (1987). The courts weigh the nature of the affected right

and the extent to which the law in question intrudes upon it against the public need for the law. Caviglia, 178 N.J. at 473 (citing Greenburg, 99 N.J. at 567; Barone, 107 N.J. at 368). Further, the means selected by the legislative body must "bear a real and substantial relationship to a permissible legislative purpose." Caviglia, 178 N.J. at 473 (citing Taxpayers Ass'n of Weymouth v. Weymouth Township, 80 N.J. 6, 44 (1976)). That is to say, the legislative action must not be "arbitrary." Sojourner, 177 N.J. at 333 (citing Robinson v. Cahill, 62 N.J. 473, 492 (1973)).

The nature of the right affected by these ordinances and the extent of the intrusion upon this right outweigh the public need for municipal sex offender residency prohibitions. The significance of the right affected by residency prohibitions, the right to a "reasonable opportunity . . . to live within [the] boundaries" of a municipality, is rooted in the Mount Laurel decisions and has been witnessed by over two decades of judicial commitment to the "basic importance of appropriate housing for all."⁷ Mount Laurel I, 67 N.J. at 179-80.

⁷ See, e.g., Bi-County Development of Clinton, Inc. v. Borough of High Bridge, 174 N.J. 301 (2002); Fair Share Housing Center, Inc. v. Township of Cherry Hill, 173 N.J. 393 (2002); Toll Bros., Inc. v. Township of West Windsor, 173 N.J. 502 (2002); Southern Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel, 92 N.J. 158 (1983).

Municipal sex offender residency restrictions deny to Megan's Law registrants the right to have a reasonable opportunity to reside in the municipalities of their choice. As mentioned above, the length of the restricted radii and the multiplicity of locations designated as the focal points of prohibited zones severely limit the ability of Megan's Law registrants to find housing in municipalities with these ordinances, if they are in fact permitted to live anywhere in the municipality. Thus, the intrusion upon this right is nearly complete; in many municipalities, sex offenders may be absolutely prohibited from living within their bounds. Such restrictions go beyond exclusionary economic regulations; they are clear, direct geographic exclusions that deny a category of people the reasonable opportunity to reside. As such, sex offender residency restrictions violate Megan's Law registrants' right to substantive due process because the nature of and the extent of the intrusion upon the right affected outweigh the public need.

In a substantive due process analysis, following an assessment of the nature of and extent of intrusion upon the affected right, the public need for the challenged law must be considered. This is to ensure that the means selected by the legislative body "bear a real and substantial relationship to a

permissible legislative purpose." Caviglia, 178 N.J. at 473 (citing Taxpayers Ass'n of Weymouth v. Weymouth Township, 80 N.J. 6, 44 (1976)).

As with the choices made by certain municipalities in selecting places like cemeteries and firehouses as focal points for prohibited areas, these residence exemptions call into question the "fit" between the purported purpose of the ordinances and the actual measures taken pursuant to the ordinances. The imposition of exclusion zones surrounding places of worship, convenient stores, municipal buildings, open space, cemeteries, exercise facilities and firehouses suggest that municipalities may be pursuing other goals beyond protecting "the health, welfare and safety of children."

As discussed above, research suggests there is little to no public need for offender residency prohibitions because they do not have an impact on sexual re-offense against minor victims. While it is undisputed that protecting children and enhancing community safety are legitimate goals that municipalities should pursue with vigor, these particular ordinances cannot withstand the balancing test demanded by a substantive due process challenge. Given the questionable provisions included by many municipalities (e.g., homeowner exemptions) and the lack of any supportive evidence, the public need for these ordinances cannot

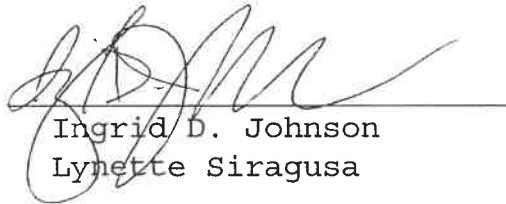
outweigh the nature of the affected rights and the substantial intrusion on those rights.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court affirm the trial court's ruling that Ordinance 1616 is invalid.

LEGAL SERVICES OF NEW JERSEY
Amicus Curiae

By:



Ingrid D. Johnson
Lynette Siragusa

Dated: September 4, 2007

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 G.H., :
 : SUPERIOR COURT OF NEW JERSEY
 : APPELLATE DIVISION
 Plaintiff, : DOCKET NO. A-003235-06T1
 :
 vs. : Civil Action
 :
 : ON APPEAL FROM AN ORDER
 TOWNSHIP OF GALLOWAY, : OF FEBRUARY 5, 2007, SUPERIOR
 : COURT, LAW DIVISION,
 : ATLANTIC COUNTY
 Defendant. :
 : SAT BELOW:
 : HON. VALERIE H. ARMSTRONG,
 : J.S.C.
 - - - - -

CERTIFICATION OF LYNETTE SIRAGUSA, ESQ.

OF COUNSEL AND ON THE BRIEF:
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 Lynette Siragusa
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 (732) 572-9100

I, LYNETTE SIRAGUSA, hereby certify:

1. I am an attorney with Legal Services of New Jersey ("LSNJ"). I am the Assistant Supervising Attorney of the Prisoner Reentry Project. I make this certification in support of the motion for leave to appear as amicus curiae in the above-captioned matter. I have personal knowledge of the facts set forth herein.

2. LSNJ is a non-profit corporation that provides legal assistance in civil legal matters to thousands of low-income people every year.

3. LSNJ is dedicated to promoting equal access to the legal system for all individuals regardless of income.

4. One primary goal is to address recurrent legal problems affecting low-income individuals.

5. Prior to working at LSNJ, I worked at Legal Services of Northwest Jersey as a Staff Attorney. While working at Legal Services of Northwest Jersey, I represented a number of sex offenders who were affected by sex offender residency restriction ordinances.

6. Now I work for LSNJ. LSNJ also provides advice and representation to individuals affected by these ordinances.

7. In each of those cases, the municipalities have threatened the sex offender to either relocate or face criminal punishment-jail time for violating the ordinance.

8. All of these clients face imminent homelessness because they did not have the financial resources to relocate.

9. Furthermore, these clients fear being displaced from their families and losing their jobs and access to treatment they were receiving.

10. In one instance, the sex offender was served with a copy of the ordinance; the local police then went to the sex offenders' place of employment threatening to have him placed in jail for violating the residency restriction ordinance if he did not move out of his apartment.

11. In another case, the sex offender resided in the municipality for over seven years without incident. Upon her annual registration pursuant to Megan's Law, the local police provided her sex offender with a copy of the ordinance and instructed her that she had to vacate within sixty days.

12. This client, who suffered from physical and mental disabilities, was able to maintain a full-time job within the municipality.

13. Additionally, all of her social support and family support was located in the municipality. She faced the prospect of permanent separation from her family and losing her job.

14. In another case, the sex offender was forced to move from a municipality that did not have a residency restriction ordinance because she could no longer afford her rent. She received approval from her parole officer to move to a new apartment in a different municipality, and she signed a one-year lease.

15. To her surprise, when she registered with the local police, she was given a copy of the town's sex offender exclusion zone ordinance and was instructed to vacate her apartment within sixty days.

16. She faced significant repercussions for breaching her lease, including being sued for rent arrearages and losing her security deposit.

17. Already having had difficulty finding another affordable housing, she was also faced with the prospect of finding another apartment outside the exclusion zone and paying another security deposit. She feared that she would need to move outside the municipality and would lose her job.

18. Colleagues in my office have handled other residency restriction cases. In one such case, a sex offender resided in

his home for more than sixteen years without incident. He was physically disabled and living on social security disability income.

19. He was served with a notice stating that he would have to vacate his home within sixty days or risk serving jail time. He lived in a region where several surrounding towns had passed sex offender exclusion zone ordinances, and he was unable to find housing alternatives in his county.

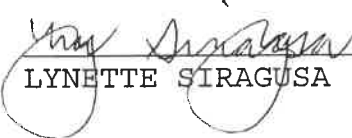
20. He had undergone extensive treatment in prison, but he believed returning to jail might be his only option.

21. Other clients have indicated that they are faced with the difficult choice of moving the entire family outside an exclusion zone, or splitting up the family so that spouses or children can remain closer to jobs and schools.

22. All of these clients seek guidance on where they can live.

23. Based on LSNJ's data gathered, LSNJ prepared a map indicating which portions of the state currently have sex offender residency restrictions.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



LYNETTE SIRAGUSA

Dated: September 4, 2007