No. SC99310

IN THE SUPREME COURT OF MISSOURI

JOHN DOE,

Plaintiff-Appellant

vs.

KURT FRISZ, CHIEF LAW ENFORCEMENT OFFICER, ST. CHARLES COUNTY, MISSOURI,

Defendant-Respondent.

BRIEF OF MISSOURI ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (MACDL) AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

This brief is being filed with the consent of all parties.

CARLYLE PARISH, LLC

Kathryn B. Parish #61781
3407 Jefferson, #128
St. Louis, MO 63118
Phone: (314)392-0120
Kay@carlyleparishlaw.com

MUHLENKAMP & BERNSON

Tory Dowd Bernson, #62857
103 W. Lockwood, Suite 201
Webster Groves, MO 63119
Phone: (314) 737-2899
tbernson@mbstlcriminaldefense.com

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JURISDICTIONAL STATEMENT

Amici adopt the jurisdictional statement as set forth in Appellant's brief.

IDENTITY AND INTEREST OF AMICI CURIAE

The Missouri Association of Criminal Defense Lawyers (MACDL) is an organization dedicated to protecting the rights of persons accused of crimes in Missouri, and to fostering and enhancing the ability of Missouri lawyers to effectively represent those persons. Our statewide membership includes both private attorneys and public defenders as well as affiliated defense investigators, law professors, and other defense professionals. MACDL has an interest both in preserving and protecting the rights of the criminally accused and assuring that law is sufficient clear that defense attorneys may accurately advise our clients in the course of representing them.

STATEMENT OF FACTS

Amici adopt the statement of facts in appellant's opening brief and further state:

On December 3, 2019, Appellant plead guilty to four counts of Endangering the Welfare of a Child in the First Degree. (D14, p. 1-9; D17 p. 6-26). The charging Information alleged three counts of striking his children and a single count of leaving his child out in the cold without adequate clothing. (D14 p. 1-9; D17 p. 6-26). During the plea colloquy, the Defendant took the witness stand as was sworn to tell the truth. (D17 p.8). After the Court asked the Defendant certain questions about his biographical information and his understanding of the plea agreement, and the prosecutor read the charges stated the penalties, to following exchange took place:

> THE COURT: Sir, the substitute information in lieu of indictment alleges in Count 1 that you committed the offense of endangering the welfare of a child in the First Degree. Did you do that?
>
> THE DEFENDANT: Yes, Your Honor
>
> THE COURT: On this charge, how do you plead?
>
> THE DEFENDANT: Guilty.
>
> THE COURT: Did this occur between January 1st , 2016 , and August 10th , 2016 involving RC?
>
> THE DEFENDANT: Yes. Your Honor.
>
> THE COURT: Okay. Tell me what happened.
>
> THE DEFENDANT: She had skipped school
>
> . . .

THE COURT: What was her age at this time?

THE DEFENDANT: She would have been 12

THE COURT: Okay , what did you do?

THE DEFENDANT: I spanked her. She had skipped school that day.

THE COURT: Okay. Did that cause her mental anguish and physical injury?

THE DEFENDANT: Yes. Your Honor.

THE COURT: What was the physical injury?

THE DEFENDANT: Bruising from the spanking.

THE COURT: Okay. So was it a lengthy spanking? Did you use some sort of an instrument?

THE DEFENDANT: I used a paddle

THE COURT: You used a paddle. Was it severe?

THE DEFENDANT: Yes. Your Honor.

. . .

THE COURT: Okay. With regard to Count 2, the State's alleged you committed the C felony of endangering the welfare of a child First Degree. Did you do that?

THE DEFENDANT: Yes, Your Honor

THE COURT: On this charge , how do you plead?

THE DEFENDANT: Guilty.

THE COURT: Did this occur between March 1st and 31st of 2015 in St. Charles County , Missouri involving a victim with the initials HC?

THE DEFENDANT: Yes , Your Honor

THE COURT: Tell me what happened. First off, who is HC? . . .Your daughter?

THE DEFENDANT: Yes. Sir.

THE COURT: What was her age at this time?

THE DEFENDANT: She was 13.

THE COURT: What did you do to her?

THE DEFENDANT: I hit her. I smacked her in the face.

THE COURT: You hit her in the head?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Tell me about that.

THE DEFENDANT: I had caught her blocking the girls outside , so I was upset.

THE COURT: And what did you -- how did you hit her?

THE DEFENDANT: I slapped her in the face.

THE COURT: Slapped her in the head?

THE DEFENDANT: Across the face.

THE COURT: okay. Did that cause her mental anguish and physical injury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What was the physical injury?

THE DEFENDANT: Striking across the face.

THE COURT: What was the injury to her face?

THE DEFENDANT: Bruising.

THE COURT: Bruising. Is that a severe strike in the head if you cause bruising by a slap?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Was your fist closed?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay, with regard to Count 3, the State's charged you with the C felony of endangering the welfare of a child First Degree. Did you do that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: On this charge, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: Did this occur between January 1st and April 30th of 2017 in St. Charles County, Missouri?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Involving RC?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Tell me what you did.

THE DEFENDANT: We had an argument, and she went outside, and I locked the door behind her.

THE COURT: And was it cold outside?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What was the temperature? Do you remember?

THE DEFENDANT: I don't recall.

THE COURT: Below freezing?

THE DEFENDANT: No.

THE COURT: Was it in the 30s or 40s?

THE DEFENDANT: It could have been in the 30s.

THE COURT: Did she have a coat?

HE DEFENDANT: No. Your Honor.

THE COURT: And this is RC, correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What was her age at that time?

THE DEFENDANT: She would have been 13.

THE COURT: Okay. And so how long was she out there?

THE DEFENDANT: Maybe five minutes.

THE COURT: Maybe five minutes?

THE DEFENDANT: Yes,Your Honor.

THE COURT: Is that an extended period of time in your opinion?

THE DEFENDANT: Yes. Your Honor.

THE COURT: in the cold?

THE DEFENDANT: Yes, Your Honor.

THE COURT: with no coat?

THE DEFENDANT: Yes, Your Honor.

THE COURT: With regard to Count 4, did you -- the State's alleged you committed the C felony of endangering the welfare of a child First Degree. Did you do that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: On this charge, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: Did this occur between October 14th and December 15th of 2014 in St. Charles County, Missouri involving HC?

THE DEFENDANT: Yes, Your Honor.

THE COURT: okay. And what was HC's age at this time?

THE DEFENDANT: 16.

THE COURT: What did you do?

THE DEFENDANT: I spanked her.

THE COURT: Okay. And did that cause her mental anguish and physical injury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What was her injury?

THE DEFENDANT: Bruising.

THE COURT: Okay. Tell me that situation. What --

THE DEFENDANT: It was just --

THE COURT: Did you use the paddle again?

THE DEFENDANT: Yes. I used the paddle.

THE COURT: Okay. And the same injury you caused before with the paddle?

THE DEFENDANT: Yes, Your Honor.

HE COURT: You could see the bruises after that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: How many times did this occur over her lifetime, would you say?

THE DEFENDANT: I would say rarely but more so when she was younger. This incident was because she was just staying out too late.

Following this exchange, the court found there was a factual basis for the plea and accepted the plea of guilty. (D17 pp. 19-26). Appellant received a suspended imposition of sentence on all four counts. (D17 p. 34).

STATEMENT OF CONSENT

This brief is being filed with the consent of all parties.

ARGUMENT AND AUTHORITIES

POINT I

The Circuit Court Erred In Failing To Grant The Writ of Prohibition Because In Doing So It Expanded The Traditional "Non-categorical Approach" To Analyzing SORNA In A Manner That Is Inconsistent With Established Law And Violative Of Due Process. Basing A Registration Determination On Facts Outside Of The Conduct Of Conviction Is Inconsistent With Statutory Requirements, Not Generally Supported By Precedent, And Fails To Provide Potential Registrants With Notice And An Opportunity To Be Heard.

A. The Expanded Non-Categorical Approach Adopted by the Circuit Court and Court of Appeals Is Not Generally Supported by Precedent And Inconsistent With Statutory Requirements In That It Bases The Registration Determination On Facts That Are Not Part Of The Conviction Conduct.

Missouri Appellate Courts have adopted a non-categorical approach to determining whether an offender's conduct is "by its nature a sex offense against a minor," under 34 U.S.C. §20911(7)(I)(otherwise known as SORNA's "residual clause", finding, as the appellate court found in this case that such a determination requires "examination beyond the elements of the offense to the underlying conduct and facts of the offense." (Memorandum Supplementing Order p. 8). This Court has not yet ruled on whether a non-categorical approach is appropriate for this analysis.[1]

Should this Court adopt the non-categorical approach endorsed by Missouri Appellate Courts prior to the instant case, it will join at least four federal courts of appeals in doing so. These courts agree that the language in § 7(I) specifically referring to

[1] The Attorney General's "SMART Guidelines" recommend a categorical approach, as opposed to the non-categorical approach adopted by Missouri Courts. See Office of the Attorney General; National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,052 (July 2, 2008). Counsel is not aware of another jurisdiction that has adopted this approach with regard to the residual clause of SORNA.

the "conduct" of the offense requires that when analyzing whether a crime is a sex offense under this provision of the statute, a court should look beyond merely the elements of the offense of conviction. However, if it adopts the expanded non-categorical approach of the Circuit Court and Appellate Court in this case, Missouri would be the only one of these jurisdictions that looks beyond the conduct of conviction and requires a person to register based on alleged conduct of which he is presumed innocent and has never been found guilty of beyond a reasonable doubt, by a preponderance of the evidence, by clear and convincing evidence, or by any other legal standard of proof.

The federal statute at issue does not solely ask whether the offense conduct at issue was "conduct that by its nature is a sex offense against a minor" 34 U.S.C. § 20911(7)(I). First and foremost, it requires that a person be "convicted" of the conduct in question. § 20911(1)("The term sex offender means an individual who was ***convicted*** of a sex offense"). Accordingly, federal judicial circuits that have adopted the non-categorical approach have generally limited their query to the ***conduct of conviction,*** evaluating whether or not a person must register ***based on the facts that were the basis of the finding of guilt***. *United States v. Price*, 777 F.3d 700, 706 (4th Cir. 2015)(though the defendant's conviction was for an assault and battery that did not contain a sexual element, he had ***stipulated at the time of his guilty plea*** that the offense involved him forcing the minor victim to perform oral sex on him and was therefore required to register under the circumstance-specific approach); *United States v. Schofield,* 802 F.3d 722, 724 (5th Cir. 2015) (finding a defendant would be required to register under either the categorical or the non-categorical approach where ***the charged conduct to which he***

plead guilty was that he attempted transfer to a minor a video of an adult male masturbating); *United States v. Dailey,* 941 F.3d 1183, 1187 (9th Cir. 2019)(Though travel act conviction to which defendant plead did not contain a sexual element, under non-categorical approach, offense nonetheless required registration because the underlying conduct ***stipulated to during the plea colloquy*** involved driving a juvenile from Arizona to Nevada with the intent that the juvenile would engage in prostitution.") *United States v. Mi Kyung Byun,* 539 F.3d 982, 984 (9th Cir. 2008)(Finding the defendant must register under the non-categorical approach where ***the plea agreement in the case*** established that the defendant had solicited a minor to come to her club and perform sexual acts on patrons in exchange for money); *United States v. Dodge,* 597 F.3d 1347, 1354 (11th Cir. 2010)(defendant required to register under the non-categorical approach where ***the plea colloquy*** established that the defendant "transmitted nude photos of himself, including some of him masturbating, to a girl he thought was thirteen years old.")[2]

In this case, the process adopted by the Circuit Court and approved by the Court of Appeals did not base the finding of facts on the plea colloquy, the plea agreement, stipulated facts, the charged conduct to which Mr. Doe plead guilty or the conduct of conviction at all. Rather, it based it's finding on prior charges to which Mr. Doe had plead not guilty and on the unsworn and unexamined statement of one of the alleged

[2] The Eight Circuit has also considered documents outside of the plea record, and like Missouri, seems to be an outlier in that manner. *United States v. Hill,* 820 F.3d 1003 (8th Cir. 2016). But, as further discussed below, even the Eighth Circuit does not go as far as Missouri in doing so.

victims made at the time of the sentencing. The Appeals Court's justification for this approach seemed to be based on its earlier decision in *Doe v. Belmar*, 564 S.W.3d 415, 418 (Mo. App. E.D. 2018). As the Court stated in that case, "Rather than identifying specific sex offenses or referencing provisions of the criminal code, the use of words like 'conduct' and 'nature' suggests a reviewing court should consider the conduct and circumstances at issue and not limit itself to the ***conviction*** in determining what constitutes a 'sex offense' for purposes of SORNA's registration requirements." *Belmar, 5*64 S.W.3d at 419 (emphasis added). The *Belmar* Court was citing *U.S. v. Price* (777 F.3d 700, 709) for this proposition. But the focus of this discussion in *Price* was not the question of whether a court should limit itself to the ***conviction*** in determining whether the offense required registration, but rather whether a court should limit itself to an analysis of the statutory ***elements*** of the offense of conviction. 777 F.3d at 709.

These are two very different inquiries. The *Price* decision was in line with several other circuits and the Supreme Court on similar issues in ruling that because the statute at issue asks whether the ***conduct*** was by its nature sexual as opposed to whether the charge or offense simply was, the language would seem to focus on the particular facts of a case as opposed to the crime of conviction generically, and therefore required evaluation beyond merely the statutory definition of the elements of the crime. *See Nijhawan v. Holder,* 557 U.S. 29, 37 (2009)(discussing the distinction between an approach which focuses on the elements and one that focuses on conduct). However, the Missouri Appellate Court in *Belmar* was incorrect in its translation of this principal to mean that a non-categorical approach meant that a court's inquiry was not limited to the conduct of

conviction. In fact, because the first requirement of the statute is that a person be ***convicted*** of a sex offense, the statute itself clearly proscribes the consideration of conduct that is not the conduct of conviction. 34 U.S.C. § 20911(1).

Even the Eighth Circuit, a court on whose precedent Respondent profusely relied, does not take as an expansive of a view of the non-categorical approach taken by the circuit court and appellate court in this case. In *United States v. Hill,* the Eighth Circuit adopted the non-categorical approach, and specifically found that it could consider any "reliable evidence" in determining whether an offense was a sex offense under the residual clause. 820 F.3d 1003, 1005. However, in making its determination, what it actually relied on were prior judicial fact-findings made by some standard of proof. Specifically, the court acknowledged that an arrest affidavit would not normally be considered reliable information for these purposes. Instead, it relied on the fact that he had been required by the court in South Carolina to register as a sex-offender, a requirement, which under South Carolina law, required that the convicting court had found that the conduct on which the conviction was based "involved sexual or physical abuse of a child." *Id.* at 1006. Because the crime to which the defendant had plead guilty was indecent exposure, facts that were necessarily found by the convicting court established both the sexual nature of the crime and the fact of a minor's involvement.

This approach is not comparable to the approach taken by Respondent in this case. Unlike the finding that the court of conviction must have made to impose a registry requirement in South Carolina, the fact that the convicting court in this case ordered a psychosexual evaluation does not establish that the convicting court made a finding by

any legal standard that the underlying offense was sexual in nature. See *State ex rel. Doe v. Moore*, 265 S.W.3d 278, 279 (Mo. 2008)(discussing generally the wide discretion granted to circuit courts in determining conditions of probation). The fact of actual judicial fact-finding by the convicting court is essential in this analysis because, as further discussed below, the legal basis for upholding registration requirements against due process challenges despite the lack of process associated with that requirement is the idea that the registration is triggered by a conviction alone, which itself had attendant to it all the requirements of due process associated with a conviction. *See R.W. v. Sanders*, 168 S.W.3d 65, 72 (Mo. 2005).

Moreover, the Eight Circuit's idea that a court may rely on any reliable evidence and not be confined to the documents of conviction, stems from the Supreme Court's decision in *Nijhawan v. Holder*, 557 U.S. 29, 41, (2009), a case that originated in immigration court.[3] In *Nijhawan,* the Court adopted a non-categorical approach in determining whether for purposes of a deportation statute, an offense involved, "fraud or deceit in which the loss to the victim or victims exceeds $10,000. " *Id.* at 38. In evaluating the question of whether the court should be confined to the plea colloquy, plea agreement, indictment, and other documents of conviction, the Court declined, saying, "We agree with petitioner that the statute foresees the use of fundamentally fair

[3] The Eighth Circuit relied on dictum from *Price* for that proposition. *Hill,* 820 F.3d 1003, 1005 (8th Cir. 2016). The portion of *Price* referred to was citing to *Nijhawan* and stated as follows: "In utilizing the circumstance-specific approach, the reviewing court may consider reliable evidence concerning whether the prior offense involved conduct or circumstances that are required by the federal statute." *Price*, 777 F.3d at 705.

procedures, including procedures that give an alien a fair opportunity to dispute a Government claim that a prior conviction involved a fraud with the relevant loss to victims. But we do not agree that fairness requires the evidentiary limitations he proposes." *Id.* at 41. Among other things, the Court found that in an immigration proceeding, the Government must prove its claims to the immigration court by clear and convincing evidence, not by proof beyond a reasonable doubt.

The basis for allowing "reliable evidence" outside of the facts established in the convicting court has no applicability here. Unlike in the immigration context, there is no separate judicial proceeding in which a court determines whether a person must register as a sex offender or not. As well-established by Missouri law, the obligation to register is triggered by the conviction itself. *R.W. v. Sanders*, 168 S.W.3d 65. The obligation to register thus cannot be triggered by non-judicially determined facts outside of the conduct of conviction. To the extent the Eighth Circuit says otherwise, it is wrong, and this Court should not adopt its approach.

B. The Expanded Non-categorical Approach Applied In This Case Violates Procedural Due Process Rights.

In *R.W. v. Sanders*, this Court found that the registration requirement did not violate the petitioner's right to procedural due process because, "the ultimate fact determining whether a person had to register was conviction of sex crime" and because the petitioner had been, "notified of his legal obligation to register at the time of his plea and received all procedural safeguards attending a guilty plea" at that time. 168 S.W.3d at 71-72. In doing so, this Court adopted the general rule articulated by the United States

Supreme Court in upholding Connecticut's version of SORA, simply that there was no due process violation because the obligation to register "turn[ed] on an offender's conviction alone—a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest." *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 2 (2003).

However, several other jurisdictions have found that where registration was triggered by not just the conviction alone, but other facts or findings not established by the conviction, further process was due before a person may be required to register. *State v. Norman*, 282 Neb. 990, 1009, 808 N.W.2d 48, 63 (2012) ("Unlike the statute in Doe, Nebraska's SORA requires a finding of fact in addition to the fact of conviction as a predicate to registration for persons . . . who were convicted of an offense not sexual in nature. Given the liberty interest at stake, we conclude [that further proceedings are required]."); *State v. Guidry*, 105 Haw. 222, 232 (2004)(Where the statutory scheme required a showing of future dangerousness, a hearing was required to determine whether a convicted person had to register); *Doe v. Pryor*, 61 F.Supp.2d 1224 (M.D.Ala.1999)(finding that due process required notice and a hearing where the statute required a finding that the elements of a prior out-of-state conviction corresponded to the elements of one of Alabama's enumerated offenses); *State v. Briggs,* 2008 UT 83, ¶ 47, 199 P.3d 935, 948 (UT 2008)("current dangerousness" was not established by a past conviction and therefore further notice and hearing were required before a person's name could be published on a list of "currently dangerous offenders").

The approach endorsed by the appeals court and the circuit court in the instant case required registration based on facts not established by the conviction, but rather by facts found by a single police officer, specifically that Mr. Doe's actions were sexual in nature. This finding was not made by a preponderance of the evidence, a more likely than not standard, or any judicial standard. And it was made by a jury of one – i.e. a police officer who did not hear live testimony from a single witness. At the only opportunity that Mr. Doe had to contest the allegation that his conduct was sexual in nature – he clearly did so by pleading not guilty to the charges that involved sexual conduct. The State chose not to pursue those charges, and he therefore had no further opportunity to contest them.

An additional basis of this finding was probable cause statements and findings by the grand jury, but Mr. Doe was not afforded notice and the opportunity to be heard before the Grand Jury made its findings. An additional basis was the victim impact statement made at sentencing, but under this Court's jurisprudence a victim impact statement is neither meant to establish the truth of the matters asserted nor subject to cross-examination. *State v. Johnson,* 284 S.W.3d 561, 584 (Mo. 2009). The proceedings that formed the basis of the finding that Mr. Doe's conduct was sexual and nature were not proceedings for which Mr. Doe was given notice and an opportunity to be heard. The expanded non-categorical approach adopted by the courts in this case thus cannot be reconciled with the requirements of due process.

C. The Policy Adopted By The Lower Courts Puts Defense Attorneys In An Untenable Position.

The policy adopted by the lower courts in this case puts defense attorneys in an impossible scenario when representing a client charged with a registerable sex offense. Defense counsel's client authorized him to withdraw his previously entered plea of not guilty and enter a plea of guilty to the amended information. It was not ordered by the Court that the Defendant register as a sex offender at that time.

Respondent decided that Appellant was required to register as a sex offender, and Missouri Board of Probation and Parole told Mr. Doe he had to do so in turn. Placing such unilateral in the power of one person to make decisions based on anything s/he chooses to consider that is not subject to any evidentiary challenge or legal standard of proof creates unpredictable results. How can a defense attorney advise his or her client as to what the consequences of his or her plea will be? The answer is: counsel cannot. Should this Court affirm the judgment of the Eastern District Court of Appeals, defense attorneys state-wide will have to advise their clients that they could have to register as a sex offender no matter what they plead guilty to. This also raises the question of how defense counsel should advise their client if they should call and ask whether to comply with their probation officer's order to register? Defense counsel is unable to advise the client because they cannot advise their client to violate the court's order by not complying with their probation officer, even if they know there may be a legal defense.

Without a requirement that there be any kind of judicial finding that would support the registration "requirement," defense counsel is unable to advise his client. It's as

though Defendant is pleading guilty and hoping he gets lucky – and the attorney has to hold his or her breath too. Under the current interpretation of the law, Defense Counsel must advise the client based on unknown and unascertainable factors. Defense counsel must advise the client that unless they want to go to trial, and regardless of what they plead to or what facts are true, they might have to register as a sex offender based on the original charges. Defense attorneys and defendants are hostage to the unknown and under the current interpretation of the law, and criminal defendants have to hope they get lucky.

The Supreme Court has found that counsel is ineffective under the Sixth Amendment for failing to advise his client of at least one important collateral consequence of a conviction, specifically immigration consequences. *Padilla v. Kentucky*, 59 U.S. 356 (2010). While thus far, Missouri Courts have not expanded this finding to the context of advice regarding the collateral consequences specific to sex offenders in Missouri (*See McCoy v. State*, 456 S.W.3d 887 (Mo. Ct. App. 2015); *Allen v. State*, 484 S.W.3d 808 (Mo. Ct. App. 2015)), to the defense attorney attempting to assist a client in determining how to proceed with his/her case, that is of little consequence. As defense attorneys, some of whom have been representing persons accused of sexual crimes for longer than the Sex Offender Registry Exists, Amici are well-aware that for many people accused of crimes with a sexual component, the fundamental factor in determining whether or not they are willing to plead guilty is whether or not they will have to register or be subject to other collateral consequences certain sex offenders to are subjected to under the law. This is particularly true where, as here, the client maintains his innocence to the charged offenses, but is guilty of other legal violations which s/he is

willing to admit to for purposes of working out the case and avoiding the potential of the incredibly serious consequences associated with a sex offense conviction. In these situations, considering the real-life reputational and other consequences associated with these things, "I can't tell you if you'll have to register, that's up to whatever the head police officer in your jurisdiction decides" is simply not a tenable answer for a defense attorney to give to a client who is making a decision that will have profound effects on the rest of his/her life.

Nor should it be considered the right answer. Leaving the determination of who is a sex offender in the hands of whatever law enforcement officer happens to be in charge of a particular jurisdiction, with seemingly full and unchecked discretion as to what s/he considers reliable evidence in support of his/her determination and no judicially imposed standard of proof that must be met is no way of administering any aspect of our judicial system that is of any consequence, even one which the courts consider "collateral."

CONCLUSION

For the foregoing reasons, prays the Court to reverse the determination of the Missouri Court of Appeals, Eastern District, and order that the Writ of Prohibition be GRANTED.

Respectfully submitted,

CARLYLE PARISH LLC

/s/ Kathryn B. Parish, #61781
KATHRYN B. PARISH
3407 Jefferson, #128
St. Louis, MO 63118
Phone: (314) 392-0120
Kay@carlyleparishlaw.com

MUHLENKAMP AND BERNSON

/s/ Tory Dowd Bernson, #62857
TORY DOWD BERNSON
103 W. Lockwood, Suite 201
Webster Groves, Missouri 63119
Phone: (314) 737-2899
tbernsen@mbstlcriminaldefense.com

CERTIFICATE OF COMPLIANCE

This brief complies with the limitations contained in Sup. Ct. R. 84.06(b). It contains 5248 words.

/s/ Kathryn B. Parish
Kathryn B. Parish

CERTIFICATE REGARDING SERVICE

I hereby certify that on January 10, 2022, the foregoing was filed electronically with the clerk of the Court to be served by operation of that system on all attorneys of record.

/s/ Kathryn B. Parish
Kathryn B. Parish