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SUPREME COURT TO HEAR INTERNET SEX OFFENDER REGISTRY CASE

By Lara I. Vaive

Last year, the Court of Appeals for the Ninth Circuit addressed the constitutionality of Alaska's sex offender registry laws when it asked the question, "How can society protect itself against future offenses and at the same time safeguard the constitutional rights of persons who have fully paid the price imposed by law for their crimes?" *Otte v. Doe*, 259 F.3d 979, 982 (9th Cir. 2001). The U.S. Supreme Court agreed to answer that controversial question next term when it hears *Otte v. Doe*, a challenge to Alaska's Sex Offender Registration Act (the "Act") brought by convicted sex offenders who have already completed their punishment. *Otte v. Doe*, 122 S. Ct. 1062 (2002).

In *Otte*, the Ninth Circuit found that the Act violated the Ex Post Facto Clause of the U.S. Constitution because it applied to people who committed crimes before enactment of the law. Although the court did not find that the Alaska legislature intended the Act to be punitive, it found that its effect classified it as such for Ex Post Facto Clause purposes. The court further found that the Act "imposes more substantial burdens on those subject to its registration and notification requirements than does any legislation enacted by any other state." *Otte*, 259 F.3d at 993.

The plaintiffs in *Otte* included two convicted sex offenders who had completed their sentences before 1994, but were forced to add their names to Alaska's Internet registry after passage of the Act on May 12, 1994. The Act was passed at a time when Alaska was worried about its high rate of child

sexual abuse. According to the court in *Otte*, Alaska had the highest rate of child sexual abuse in the country and one-quarter of all state prisoners were charged with sexual crimes.

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The Act requires registrants to be photographed and fingerprinted as well as provide their name and all aliases used, date of birth, address, place of employment, any identifying features, driver's license number, description and license number of all automobiles to which registrant has access, and all conviction information. Alaska Stat. § 12.63.010 (2000). Depending on the severity of the offense, convicts are either required to register in person at the police station four times a year for the remainder of their lives or register in person annually for fifteen years. Alaska Stat. § 12.63.020 (2000). Since 1998, Alaska has published this information on the Internet.

One plaintiff, Doe I, was released from prison in 1990 after being sentenced to 12 years in prison (four years of which were suspended) after a court found that he had sexually abused his daughter. Upon release, the court determined that he had been rehabilitated and he was granted custody of his

daughter. Another plaintiff, Doe II, was released from prison in 1990 after being incarcerated for the sexual abuse of a minor. He subsequently completed a two-year sex offender treatment program.

Most state registration and notification laws were passed as a result of the brutal 1994 rape and murder of seven-year-old Megan Kanka of New Jersey, by her neighbor, Jesse Timmendequas. Unknown to Megan's family and community, Timmendequas had been convicted of two sexual assaults prior to Megan's murder. New Jersey quickly passed its sex offender statute and it became a model for many other states. Presently, all states have some type of sex offender registry law, now commonly known as "Megan's Law." According to the FBI, 34 states currently have their sex offender registries posted on the Internet, including Illinois, Michigan, New York, and Texas.

According to the *Columbus Dispatch*, 22 states have joined to sign an *amicus curiae* brief, arguing that such laws serve an important public need and do not violate the U.S. Constitution. Some states like Ohio support the law and argue that "registries serve a valuable public-safety purpose that should outweigh a sex criminal's right to privacy."

Rick Schatz of the National Coalition for the Protection of Children and Families admits that laws such as Alaska's cause "pain on the side of those that have gone to prison and paid that price," yet he hopes that "the Court will come down on the side of the young people and children."