A1-039

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IN THE SUPREME COURT OF GEORGIA

ANTHONY MANN,	:	
	:	
Appellant,	:	
	:	
vs.	:	
	:	
THE STATE OF GEORGIA; GEORGIA DEPARTMENT OF CORRECTIONS; ANGELA QUARTERMAN, in her Official Capacity as a Probation Officer, Department Of Corrections, Probation Division,	:	CASE NO. S04A1454
	:	
Appellee.	:	

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BRIEF OF APPELLANT

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ATTORNEYS FOR APPELLANT:

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S04A1454

IN THE SUPREME COURT OF GEORGIA

ANTHONY MANN Appellant, v. THE STATE OF GEORGIA; GEORGIA DEPARTMENT OF CORRECTIONS; ANGELA QUARTERMAN, in her Official Capacity as a Probation Officer, Department of Corrections, Probation Division, Appellee.	)	SUPREME COURT CASE NO. S04A1454

BRIEF OF APPELLANT

Anthony Mann ("Mann") brings his Brief of Appellant and shows this Court as follows

Summary of Argument

O.C.G.A. Section 42-1-13 is unconstitutional because: (1) it provides for a regulatory taking of Mann's interest in property without just compensation; (2) it is unconstitutionally overbroad; (3) it is unconstitutionally vague; (4) it violates the separation of powers doctrine of the Georgia Constitution; and (5) it is an ex post facto law. Because the code section is unconstitutional, the trial court should have declared O.C.G.A. Section 42-1-13 (2003) to be unconstitutional.

Statement of Facts

This case involves an order from Mann's probation officer directing him to move out of his home because he is a registered sex offender who currently resides within one thousand feet of a "place where minors congregate" as defined by O.C.G.A. Section 42-1-13 (2003)[1].

In March of 2002, Mann entered a Nolo Contendre plea to the charge of Taking Indecent Liberties with a Child and was convicted in the General Court of Justice, Superior Court Division, Forsyth County, North Carolina. Mann, a resident of Georgia, returned home to serve out his sentence on probation under the direction of the State Office of Probation. He also registered, as required by law, on the Georgia Sex Offender Registry.

[1] The facts, as alleged in this Brief, were stipulated by both parties without testimony at the hearing on the interlocutory injunction (T-12). Mann proffered the facts on pages one through twelve of the hearing on the motion for an interlocutory injunction. Furthermore, the lower court based its findings on those fact in its order denying the Declaratory judgment (R-68-72).

Mann is currently supervised on probation by the Office of State Probation for Clayton County, Georgia. Angela Quarterman ("Quarterman") is his probation officer. Mann leased his home from his parents. In exchange for working around the house and for sharing in household expenses, his parents allow him to live in the home and have his own space there. On August 8, 2003, Quarterman served him with notice that his home was not in compliance with O.C.G.A. Section 42-1-13. Quarterman gave him seven days to find a different place to live. Quarterman next had seven days to approve the new living arrangement. Now, Mann has now been given ten days to move to a new residence. After the Court's ruling, Mann was forced to move to a new residence

Enumeration of Errors

1. The Lower Court Erred in its Failure to Declare O.C.G.A. Section 42-1-13 to be Unconstitutional.

Statement of Jurisdiction

Jurisdiction is proper in this Court. Under Article VI, Section VI, Paragraph II of the Constitution of the State of Georgia, this Court has exclusive appellate jurisdiction over "all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn into question."

Standard of Review

This Court may declare a statute unconstitutional whenever it manifestly infringes upon a constitutional provision or violates the rights of the people. Bohannon v. State, 269 Ga. 130 (1998).

Argument and Citation of Authorities

1. The Lower Court Erred in its Failure to Declare O.C.G.A. Section 42-1-13 to be Unconstitutional.

O.C.G.A. Section 42-1-13 is unconstitutional at several levels, and Mann is confident that the Court will ultimately declare it to be unconstitutional. Specifically, the statute provides for a regulatory taking of Mann's property without just compensation. It is unconstitutionally over broad. It is unconstitutionally vague. It violates the constitutional doctrine of separation of powers. Finally, it is an unconstitutional ex post facto law as applied to Mann. For each of these reasons, the Lower Court should have declared the statute to be unconstitutional.

A. O.C.G.A. Section 42-1-13 Provides for a Regulatory Taking without Just Compensation in Violation of the

Takings Clause of the Fifth Amendment of the Constitution of the United States of America and under Similar Provision of the Georgia Constitution.

While the State did not appropriate Mann's home for governmental use, the regulation has deprived Mann's property interest of any substantial value. It has further prevented him from the right to reside within his own home. To date, the defendants have not offered to compensate Mann for harm to the value of his property. A regulation is a taking either when it "denies an owner economically viable use of his land," Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978) or when it does not substantially advance legitimate state interests. Nectow v. Cambridge, 277 U.S. 183 (1928).

(a) The State's Action has deprived Mann of economically viable use of his home.

Though Mann has moved to a residence, in compliance with the State's order, that appears currently to conform to the law, the State's action is easily capable of repetition. Mann requests that the Court consider the merits of this case given the likelihood that his current residence could violate the statute, depending upon what types of neighbors might move within a thousand feet of his current residence.

As a preliminary matter, the takings clause is applicable to the States through the Fourteenth Amendment of the United States Constitution. Chicago B. & Q.R. Co. v. Chicago, 166 U.S. 226 (1897). Furthermore, a plaintiff need not show that the government has occupied his property to prevail on a takings case. In Pennsylvania Coal Co. v. Mahon, the United States Supreme Court held that "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking." 260 U.S. 393 (1922). The question for the Court here is whether O.C.G.A. 42-1-13 "goes too far."

The Takings Clause "in certain circumstances allows a landowner to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation." Palazzolo v. Rhode Island, 533 U.S. 606 (2001). Whether a taking has occurred by state regulation depends on a "complex of factors" including (a) the regulation's economic effect on the landowner; (b) the extent to which regulation interferes with reasonable investor-backed expectations and (c) the character of the government action. Id. at 617. Each factor weighs on the side of Mann.

The Economic Effect on Mann

The State's action placed an enormous financial burden on Mann. O.C.G.A. Section 42-1-13 contains no provision for

economic relief to homeowners. Further, the law does not provide moving expenses. Mann was saddled with the responsibility for an emergency move and with the costs of living in some other place that the defendants deem to be in compliance with the law.

Mann is concerned with the likelihood of even further economic impacts. Though he has found another place to live that apparently complies with the law presently, he does not know how much longer the proposed residence will comply with the law. The moment that a neighbor puts up a basketball goal and invites minors to use it, Mann could have to move again. Mann does not know when or if the new neighborhood might put in a swingset or sliding board for use of minors. He cannot anticipate when someone in the area might begin babysitting children to supplement her income. He does not know when or whether someone might open a daycare near his new home.

As a result, Mann is subject to a future noncompliance notice, possibly on the day that he moves into his new home. As soon as his boxes are unpacked, he may be asked to move again. Should Mann sign a lease, then he may face the additional prospect of paying out the lease. Should he purchase a home, he may one day be forced to leave it.

In short, the nomadic lifestyle Mann and his family may now be forced to live may be prohibitively expensive. The greater

irony is that the law may forbid him from moving to a homeless shelter if such places provide programs or activities for minors.

Interference with Reasonable Investor-Backed Expectations

Mann is not in the real estate business, and he has never intended to develop his property. He has invested in the household expenses of his home, and he has invested his labor into its upkeep. Mann never expected, even when he entered his nolo plea in North Carolina, that he would be forced to do anything else with his property.

The Appellee will likely argue that Mann's home still has economic value to him even if he cannot live there. They will likely argue that he could sell his home or that he can rent it out. However, "a State may not evade the duty to compensate on the premise that the landowner is left with a token interest." Id. at 611.

The key issue is not whether economic value remains; rather, it is important to consider that the defendants wish to destroy the reasonable expectations that Mann had in his home over all the time that he has invested in it.

The Character of the Governmental Action

Georgia courts have long held almost as sacred the concept of individual property rights. The State may not "dictate, control, and limit" the use of private property without compensating the owners of that property. State Highway Dept. v. Branch, 222 Ga. 770 (1966). In Branch, a property owner sued to enjoin the State Highway Dept. from removing outdoor signs on his property. Id. On appeal, the Supreme Court struck down the law, reasoning that "Georgia courts, to their eternal credit, have never allowed taking or damaging private property without first paying therefore, and this court stands ready to strike down this legislative attempt to do so." Id. at 771.

In Branch, the mere removal of outdoor signs from private property was viewed as a taking. The defendants here have ordered something far more invasive. They have ordered that he not be allowed to live in his home. If the removal of signs is a taking, the removal of the lease-owner himself should be, without a doubt, a taking that requires compensation. While registered sex offenders are not politically popular people, their constitutional right to property is important. As the Supreme Court reasoned in it discussion of highway beautification, "[t]hose whose ox is not being gored by this Act might be impatient and complain of this decision, but if the Court yielded to them and sanctioned this violation of the

Constitution we would thereby set a precedent whereby tomorrow when the critics are having their own ox gored, we would be bound to refuse them protection." Id. at 772.

(b) The Law Does Not Substantially Advance Legitimate State Interests.

Finally, the defendants may attempt to argue that the regulation in analogous to a zoning regulation and is necessary to promote the government's interest in protecting the public from persons on the sex offender registry. However, even zoning regulations can be considered a taking when they do not "substantially advance legitimate state interests." The court must balance any claimed substantial state interest against the likelihood of irreparable injury to the landholder. Euclid v. Ambler Co., 272 U.S. 365 (1926).

The defendants will likely argue that they have an interest in keeping registered sex offenders away from minors. Hence, they would like the Court to conclude that the scheme enacted in O.C.G.A. Section 42-1-13 substantially advances that interest. It is difficult, however, to discern exactly how the statutory scheme prevents contact between sex offenders away from minors. Daycare centers are heavily regulated by the State. The children at daycare centers are required to have constant adult supervision, and most such facilities are secured with locked

doors and fences. Furthermore, because Mann is a registered sex offender who lived in his home before the daycare center began operating, the owners should have had notice of his presence before they moved into the neighborhood.

In addition, the State has other means available that are not as draconian as O.C.G.A. Section 42-1-13. Judges could impose, as a condition of probation, that defendants not live within a thousand feet of areas where minors congregate. Also, the sex offender registry gives parents of minors notice of where sex offenders live. It is difficult to imagine that the State of Georgia has a substantial interest in imposing a regulatory taking of the property of sex offenders. Should the State believe so strongly in the law, then it must be prepared to compensate the affected property owners.

Comparatively, the regulation caused irreparable harm to Mann's economic interests. Mann has lived in his home for thirty-seven years. He now has ten days to leave. Aside from the immeasurable cost of banishment from home, Mann faces economic costs associated with moving. Should the State wish to cause such harm to Mann, then it must be willing to compensate him.

B. The Law is Unconstitutionally Overbroad in Violation of the Due Process Clause and Equal Protection

Clause of the Fifth and Fourteenth Amendments of the Constitution of the United States of America and Similar Provisions of the Georgia Constitution.

O.C.G.A. Section 42-1-13 is unconstitutionally overbroad and violates the due process and equal protection clauses of the Fourteenth and Fifth Amendments of the U.S. Constitutions. A statute is unconstitutionally overbroad whenever "it prohibits much conduct that there is no rational basis to prohibit." State v. Café Erotica, 269 Ga. 486 (1998); Miller v. Medical Assoc. of Georgia, 262 Ga. 605 (1992); Sanders v. Georgia, 231 Ga. 608 (1974).

The Court must strike down a statute whenever it is impossible to discern a single interpretation that would effectuate the legislative intent of enacting it without criminalizing otherwise legal conduct. Miller v. Medical Assoc. of Georgia, 262 Ga. 605 (1992). In Miller, the legislature enacted a statute allowing only doctors, dentists, podiatrists, and veterinarians to perform medical procedures that involved cutting or piercing human tissue. Id. The Supreme Court of Georgia concluded that the statute was unconstitutional because it prohibited nurses from drawing blood or even giving insulin shots to patients. It also prevented embalming and the piercing of ears. Hence, the entire statute was ruled unconstitutional because it irrationally banned protected conduct.

More specifically, though the legislature may regulate specific illegal conduct, it "must use the deft, the precise and remedial incision of the surgeon rather than the bludgeoning blow of the butcher." Sanders v. State, 231 Ga. 608 (1974). In Sanders, the legislature prohibited adult bookstores and adult movie houses from operating within 200 yards of "any church, church bookstore, public park, public housing project, hospital, school, college, recreation center, or private residence." Id. at 609. Sanders ran an adult bookstore within 200 yards of a church and church bookstore until the State successfully won an injunction and had the store padlocked and declared a public nuisance.

The Supreme Court reversed, reasoning that "one obscene book on the premises of a bookstore does not make an entire store obscene." Id. at 156. Because the law allowed the State to close any store that sold obscene material, it threatened to chill free speech in general. Ultimately, the Court held that the State could prosecute the store for each and every obscene publication it sold; however, it could not prevent the store from operating near a church or church bookstore. See also State v. Café Erotica, 269 Ga. 486 (1998)(holding that a statute intended to protect minors was overbroad because it also prevented adults from going to a club featuring nude dancing)

The statute here is unconstitutionally overbroad. Though the legislature may make it illegal for Mann to harass, assault, or molest minors, it cannot make it illegal for him to reside near a place where minors congregate. Just as the bookstore's owner in Sanders could face prosecution for the obscene material that he sold but could not be put out of business for locating near a church of school, Mann can be prosecuted for illegal conduct in the future but cannot be evicted from his home because he is a registered sex offender. Just as freedom of speech was an important right in Sanders, the right to property is an important right here. In an effort to minimize potential contact between registered sex offenders and minors, the legislature invaded Mann's legal right to continue living in his home of thirty-seven years.

Further, just as the State in Sanders had a narrower remedy available in the form of individual prosecutions for individual violations of obscenity laws, the defendants here have narrow and effective remedies to govern Mann's behavior. It can prosecute him for future illegal action. More importantly, Mann is on probation and is now supervised by a probation officer. If Mann engages in inappropriate behavior, then his probation officer can seek a warrant and ask a court to revoke his entire probated sentence.

Ultimately, by enacting O.C.G.A. Section 42-1-13, the State has employed the butcher's bludgeon rather than the surgeon's precise cut. It has enacted a statute that snares legal conduct and constitutional rights in the same net that it has set to capture illegal conduct.

C. O.C.G.A. Section 42-1-13 is Unconstitutionally Vague in Violation of the Due Process Clause of the Fourteenth and Fifth Amendment of the United States Constitution and Similar Provisions of the Georgia Constitution.

"A criminal statute is sufficiently definite if its terms furnish a test based on normal criteria which men of common intelligence who come in contact with the statute may use with reasonable certainty in determining its command." Caby v. State, 249 Ga. 32 (1982). Put another way, a statute is unconstitutionally vague if "men of common intelligence must guess at its meaning." Jekyll Island Authority v. Jekyll Island Citizens Association, 266 Ga. 152 (1996). Under that standard, the law at issue in this case is unconstitutionally vague.

Under O.C.G.A. Section 42-1-13(b) (2003), "No individual required to register [with the sex offender registry] shall reside within 1,000 feet of any child car facility, school, or area where minors congregate." The law is vague in three

important ways: (1) it does not limit any definition of "areas where minors congregate;" (2) the definition it provides is vague; and (3) its definition of a "child care facility" is vague.

(a) The Law Fails to Limit the Definition of an "Area Where Minors Congregate."

The code section includes a definition of an "area where minors congregate" that does very little to guide "men of common intelligence." Under O.C.G.A. Section 42-1-13(a)(1), " 'Area where minors congregate' shall include all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, and similar facilities providing programs or services toward persons under 18 years of age." (emphasis supplied).

The statute does not limit its definition of "areas where minors congregate" to the items listed in Section 42-1-13(a)(1). The legislature did not say that the definition is limited to the items in the code section or that the items comprise an exclusive list. The law says that the definition shall include the listed items. By contrast, the legislature limited its definition of a "child care facility" by saying hat " 'child care facility' shall mean all public and private pre-kindergarten facilities, day care facilities, and preschool

facilities." O.C.G.A. § 42-1-13(a)(2)(emphasis supplied). A " 'school' shall mean all public and private kindergarten, elementary, and secondary schools." O.C.G.A. § 42-1-13(a)(2)(emphasis supplied).

The code section provides men of common intelligence of what an "area where minors congregate" is. Minors suggests that two or more minors must be involved. Congregate suggests that the plural minors must remain in a place for some period of time. Hence, if Mann's next-door neighbor puts a basketball goal in his driveway where two or more children could shoot hoops, then the law might require that he immediately vacate his home. Similarly, if a neighbor puts a sandbox in his front yard, then Mann may face criminal prosecution. If someone in the neighborhood with two children puts a playroom in their basement, then Mann may violate the law. If the fire department opens up a fire hydrant in the street near Mann's home, then Mann is subject to felony prosecution if it causes children to gather. An even more sinister possibility is that an adult could collect two minors and have them picket in front of Mann's home to make him be in violation of the code section.

Ultimately, because the law does not limit its definition of an area where minors congregate to the terms listed in O.C.G.A. Section 42-1-13(a)(1), neither Mann nor any other person required to register is on notice whether a chosen

residential area complies with the code section. Furthermore, even if Mann moves to a conforming residence, his neighbors can place him in violation by causing minors to congregate within 1,000 feet of his property. Such a statutory scheme is void for vagueness.

(b) The Definition of "Area Where Minors Congregate" is Unconstitutionally Vague.

Even setting aside the issues raised above, the definition provided in Section 42-1-13(a)(1) is vague. According to the statute, the definition includes "all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, and similar facilities providing programs or services directed toward persons under 18 years of age." The statute, however, never defines any of the terms specifically.

Public and Private Parks and Recreation Facilities

The meaning of the term, "public and private parks and recreation facilities" is not apparent on its face. A neighbor could presumably set up a "private park" if he puts a swing, sliding board, or basketball goal in his yard. Further, a private park could include a pool table in a private home where

children are allowed to play. In addition, "recreation facilities" could mean a video or computer game in a person's home. Absent more specific guidance, almost anything could be a private park, public park, or recreation facility.

Playground

It is also difficult to discern what the statute means by "playground." Presumably, a neighbor's decision to put a slip and slide in his front yard would create a playground. A neighbor could also create a playground within a thousand feet of Mann's home by building a treehouse in the yard. As written the statute does not put Mann on notice of what area to avoid.

Skating Rink

"Skating rink" also defies definition without a further word of explanation. In a residential neighborhood, a homeowner could potentially set up a skating rink by digging up an area in the yard for skateboarders. Even a bike path or sidewalk could be considered a skating rink if minors chose to skate on it. Under the law, as written, Mann is not on notice of what area is or is not a skating rink.

Neighborhood Center

The statute does nothing to suggest what a neighborhood center is. Presumably, it could mean some sort of clubhouse or facility that serves children. Yet, it could also mean a place in the neighborhood where children choose to play. Mann, before buying property, has no way to know where those areas are. Further, he has no way to determine whether a place where he moves might later become a "neighborhood center." If the children in the neighborhood choose to center their activities within a thousand feet of his home, he faces either criminal prosecution or the prospect of moving someplace else.

Gymnasium

A gymnasium is literally a place where people exercise. Hence, if a neighbor with children buys a treadmill or weightlifting bench and allows children to use it, he has constructed a gym. Further, a basketball goal could be a gymnasium. Mann has no way to govern his behavior to avoid "gymnasiums" where children congregate since the statute does not tell him what a gymnasium is.

(c) The Definition of "Child Care Facility" is Unconstitutionally Vague.

Under O.C.G.A. Section 42-1-13, a child care facility "shall mean all public and private pre-kindergarten facilities, daycare facilities, and preschool facilities." Since the statute says nothing more, Mann does not know what kinds of places to avoid. A residence where parents home-school their young children is technically a "private preschool facility." Further, if a neighbor decides to make extra money by babysitting children, then her home may be defined as a "private daycare facility as defined by the statute. Even a parent who keeps his children during the day may operate a private daycare facility. Without a more specific definition of the terms in O.C.G.A. Section 42-1-13(a)(2), the statute is unconstitutionally vague.

D. O.C.G.A. Section 42-1-13, as applied to Mann, is an ex post facto law in Violation of Article I, Section 10, Clause 1 of the Constitution of the United States of America.

Under Article I, Section 10, Clause 1, of the Constitution of the United States of America, no state can pass an ex post facto law. Georgia courts have held that "a law is ex post facto if it inflicts upon the party being tried a greater

punishment than the law annexed to the crime at the time it was committed or it alters the situation of the accused to his disadvantage." O.C.G.A. Section 42-1-13, as applied to Mann, is an ex post facto law.

Mann was convicted in North Carolina on March 22, 2002. After his conviction, he continued to live in his home of thirty-seven years. When he entered his plea, he did not and could not know that the Georgia legislature would expand his sentence and force him later to leave his home. On June 4, 2003, the legislature enacted O.C.G.A. Section 42-1-13. In August, Mann's probation officer informed him that he needed to leave his own property. The defendants seek to enlarge Mann's sentence and to "alter the situation of the accused to his disadvantage."

(a) The Law Enlarges Mann's Sentence.

The sentencing court in North Carolina never imposed any restriction on where Mann could live. It never told Mann that, as a result of his sentence, he would be forced to leave his own home. Though he is supervised on probation in Georgia, he is serving a probationary sentence imposed by a court in North Carolina. The defendants, under the color of their authority from O.C.G.A. Section 42-1-13, are attempting to impose new conditions to Mann's North Carolina sentence over a year after

that sentence was imposed. Because they now attempt to add to his sentence by using a law that was enacted a year after Mann's conviction, they are violating the ex post facto doctrine.

(b) The Law Alters the Situation of the Accused to his Disadvantage.

The Defendants are likely to argue that they have not actually imposed a greater sentence but have simply added a collateral consequence to Mann's conviction. Even if this argument were compelling, the Defendants cannot avoid the fact that they are altering Mann's situation to his disadvantage. Mann was convicted in 2002. The new law was enacted on 2003. With the aid of that new law, the Defendants have banished Mann from his own home. Mann could not have anticipated the situation he faces when he was originally convicted. Had he known that the Defendants would evict him from his home, he likely would have gone to trial on his criminal case. As applied to Mann O.C.G.A. Section 42-1-13 is an ex post facto law in violation of the Constitution of the United States of America and the Constitution of the State of Georgia.

E. O.C.G.A. Section 42-1-13, as Enacted and as Applied to Mann, is an Unconstitutional Violation of the Separation of Powers Doctrine.

Under the law, as enacted and as it is being applied, the legislative branch of government has delegated judicial authority to the executive branch of government without first amending the constitution to allow it to do so. In enacting O.C.G.A. Section 42-1-13 (2003), the legislature has apparently empowered the Defendants, members of the executive branch of government, to make a judicial determination that Mann's home fails to comply with the law. The defendants have interpreted the terms of the statute, inspected Mann's neighborhood, and judicially determined that he does not comply. Further, the defendants have inspected Mann's proposed move site, interpreted the law again, and determined that it presently complies with the statute. The Defendants seek to violate the letter and the spirit of the separation of powers doctrine.

Under Article 1, Section 2, Paragraph 3 of the Georgia Constitution, "[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided." The Georgia Constitution contains no special provision empowering probation officers to function as judicial

officers. Further, the Georgia Constitution contains no provision empowering the legislature to vest members of the executive branch of government with judicial power.

In Brugman v. State, 255 Ga. 407, the Appellant challenged a law that granted prosecutors the ability to ask a judge for a lower sentence for defendants who provide substantial assistance to the State. Specifically, he argued that the law was a delegation of judicial authority to the executive branch by the legislative branch. Id. Though the Court ultimately rejected the argument, reasoning that the decision to impose a sentence was ultimately still in the hands of the judge. Id. at 414.

By contrast, the Defendants here are performing a strictly judicial function. They have interpreted O.C.G.A. Section 42-1-13, applied their interpretation of the law to the facts, and determined that Mann must move away from his home of thirty-seven years. The Defendants have also judicially interpreted the statute, applied the law to the facts of his proposed new residence, and judicially determined that his new home presently complies with the statute.

The Defendants have overstepped their authority as members of the executive branch of government. The legislature has failed to set up an administrative court to oversee O.C.G.A. Section 42-1-13. Hence, probation officers have become ex officio judges. Such a scheme of enforcement is

unconstitutionally prohibited. Hence, the court should strike down the law as unconstitutional unless and until the legislature enacts a new statute that properly establishes a court that shall her alleged cases of noncompliance. As things stand now, however, the defendants cannot constitutionally interpret the statute and dispossess Mann and other persons similarly situated.

F. Mann was Entitled to a Declaratory Judgment Holding O.C.G.A. Section 42-1-13 to be Unconstitutional.

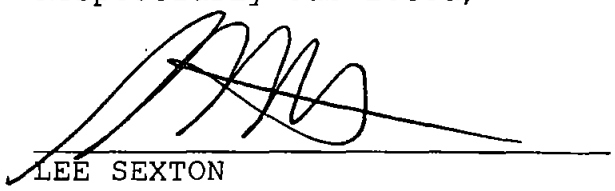
Under O.C.G.A. Section 9-4-2 (2003), the Mann is entitled to a declaratory judgment regarding the constitutionality of the statute. There is an actual controversy. The ends of justice require that the Court declare O.C.G.A. Section 42-2-13 to be unconstitutional. Specifically, Mann is looking to the Court for guidance about whether the Defendants can evict him from his home in less than a week. Further, should Mann be forced to move, he will need guidance about whether there is any neighborhood that exists where he can legally reside in the State of Georgia.

Mann is entitled to have the Court "declare rights and other legal relations of any interested party petitioning for the declaration." O.C.G.A. Section 9-4-2 (2003).

Conclusion

For all the reasons cited above, the Court reverse the decision of the lower court.

Respectfully Submitted,



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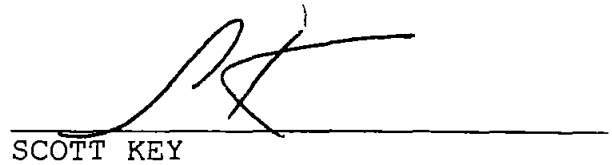

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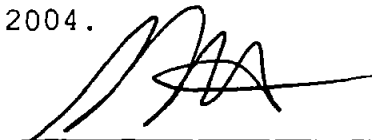
CERTIFICATE OF SERVICE

This is to certify that I have this date served opposing counsel with a true and correct copy of the within and foregoing BRIEF OF APPELLANT by depositing a copy of the same in the United States Mail, bearing sufficient postage thereon, properly addressed to:

HON. J. JAYSON PHILLIPS
ASSISTANT ATTORNEY GENERAL
40 CAPITOL SQUARE, S.W.
ATLANTA, GEORGIA 30332-1300

This the 24th day of May, 2004.



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