STATEMENT OF THE CASE

This matter comes before the court on defendant-appellant's, Township of Galloway, decision to appeal the trial court's finding that the Township's Ordinance No.1616 (the Ordinance), which regulates where registered sex offenders can reside in the Township of Galloway, violated the New Jersey Constitution and all of plaintiff-respondent's, G.H., claims. The ordinance prohibits convicted sex offenders who are subject to tier classification under the *New Jersey Sex Offender Registration and Notification Statute*, N.J.S.A.2C:7-1, *et seq.* (Megan's Law) from "residing or living within 2,500 feet of any school, park, playground or day care center in Galloway Township."

Megan's Law requires that a convicted sex offender must register certain personal information, including his names and addresses with various authorities in the municipality where he resides. *See generally*, N.J.S.A. 2C:7-2, 3 & 4. At the age of 15, G.H. was "adjudicated delinquent for criminal sexual contact" under N.J.S.A. 2c:14-3(b) resulting from an encounter with a 13 year old victim. Therefore, G.H. is registered as a Tier 1 sex

offender pursuant to Megan's Law and falls under the purview of the Ordinance's requirements.

ARGUMENT

I. GALLOWAY TOWNSHIP ORDINANCE 1616, *ET SEQ*. DOES NOT VIOLATE RESPONDENT'S RIGHTS UNDER THE *EX POST FACTO* AND DOUBLE JEOPARDY CLAUSES OF THE NEW JERSEY CONSTITUTION.

A. New Jersey Laws Which Place Requirements on Convicted Sex Offenders Have Already Withstood Constitutional Challenges Similar to the Claims in the Case at Bar.

In *Doe v. Poritz*, 142 N.J. 1 (1995), the New Jersey Supreme Court held the purpose and implementation of registration and notification statutes[1] were completely remedial and any deterrent punitive impact did not impose punishment for purposes of constitutional challenges under *ex post facto*, double jeopardy, bill of attainder, and cruel and unusual punishment clauses. Speaking for the court, Justice Wilentz concluded:

> *The laws, as we have described them above, when measured against the standards of the cases that determine whether a provision, statute or sanction constitutes punishment, leave no doubt that they are remedial. The legislative intent, based on the history of the legislation and the recitals in the laws themselves, is clearly and totally remedial in purpose*

[1] N.J.S.A.2C:7-1, *et seq.*

> *and no challenge whatsoever is made to that proposition by any of the parties. They were designed simply and solely to enable the public to protect itself from the danger posed by sex offenders, such offenders widely regarded as having the highest risk of recidivism. Unarguably, as the Supreme Court pointed out in Salerno, supra, 481 U.S. at 747,"There is no doubt that preventing danger to the community is a legitimate regulatory goal."*

Id. at 73*; see also E.B. v. Verniero,* 119 F.3d. 1077, 1096-97 (3rd Cir. N.J. 1997)(holding that community notification provisions of Megan's Law did not violate the *ex post facto* clause since it was reasonably related to the legislature's nonpunitive goal and was not intended to be further punishment).

B. <u>The Ordinance is Civil in Nature and is Not Intended to be Punitive.</u>

The United States Supreme Court has held that in assessing whether a legislative enactment violates the Federal Constitution's Double Jeopardy and *Ex Post Facto* Clauses, the Court must initially ascertain whether the legislative body meant the law to establish a civil proceeding or to be punitive in nature. *Kansas v. Hendricks,* 521 U.S. 346, 361 (1997). When the intention of the legislative enactment is of a civil nature, such as protecting the health, safety and welfare of the community,

there is no violation. *Id.* If the intent of the statutory scheme is to punish an individual, then the law is at risk. *United States v. Ward,* 448 U.S. 242, 249 (1980). Deference is ordinarily given to the legislature's stated intent and the burden is placed on the challenging party to demonstrate with "the clearest proof" that such intention is negated by such punitive effects. *Hendricks,* 521 U.S. at 361.

The New Jersey Supreme Court addressed this issue in the case *In the Matter of Garay,* 89 N.J. 104 (1982), and rejected the double jeopardy/*ex post facto* attack by upholding New Jersey statutory law that imposed subsequent monetary penalties on an individual previously convicted and penalized for Medicaid fraud. In *Garay*, a physician was criminally convicted of filing false Medicaid claims. After the criminal proceedings were over, the State Division of Medical Assistance and Health Services, pursuant to state statutes,[2] directed him to pay a penalty of $121,603.41 for the same offenses. These penalty payments were designated under the law as "civil penalties."

Relying on the Court's holding in *Ward,* Justice Pashman, speaking for the New Jersey Supreme Court, noted:

[2] N.J.S.A. 30:4D-7(h) and 30:4D-17(e).

> *Where the legislature has labeled the penalty civil, that expression of legislative purpose is accorded substantial weight. Such a penalty will be deemed criminal only upon "the clearest proof" that the sanction is punitive either in purpose or effect.*

Id. at 112. The Court concluded that upon examining all factors, the purpose of the law was not to provide additional punishment to the person already convicted and sentenced. The intent of the law was civil in nature, and the claims of the physician petitioner must be denied.

Assessing the intention of the legislature is critical in determining whether a statute's scheme is civil or criminal. *Smith v. Doe,* 538 U.S. 84, 92 (2003). In *Smith,* the Alaska Sex Offender Registration Act (Alaskan Act), which required convicted sex offenders to publicly register their residence information, was challenged on the grounds that it created further punishment and therefore constituted an *ex post facto* law. *Id.* at 84. The Court held that the Alaskan Act was nonpunitive and its retroactive application did not violate the *Ex Post Facto* Clause of the Federal Constitution. *Id.* at 106. The Court reasoned that rather then punishing convicted sex offenders, it was the sole objective of the Alaskan Legislature to protect the public from harm based on the evidence that sex offenders pose a high risk of

reoffending. *Id.* at 93; *see also Hendricks,* 521 U.S. at 363 (holding the Kansas Sexually Violent Predator Act constitutional, which involuntarily confined persons who suffered from a mental abnormality or personality disorder that increased their chance of engaging in acts of sexual violence, because it was intended to protect the public's health and did not suggest a punitive purpose); *Doe v. Miller,* 405 F.3d. 700, 718 (8th Cir. 2005)(holding that a sex offender residency restriction of 2,000 did not violate the *ex post facto* clause since the statue was designed to be non-punitive and regulatory in nature and that the sex offender could not establish by "clearest proof" that the statute was excessive in its regulatory purpose).

In the instant matter case, the municipal ordinance imposed on G.H. is not intended to further punish the respondent for past convictions, but rather implement measures to protect the health and safety of Galloway Township's citizens.[3] The United States Supreme Court has stated that legislatures are correct to conclude "findings consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their

[3] Galloway Township Ordinance No. 1616 (Amended on September 27, 2005) sets forth reasons in part: "WHEREAS, the Township believes that it is in its residents' best interests to adopt additional regulations regarding convicted sex offenders, so as to protect the health, safety and welfare of the children of the municipality."

dangerousness as a class." *Smith,* 538 U.S. at 103. Therefore, it is understandable that the Township feels the need to implement preventive procedures to protect against such recidivism. The creation of a 2,500 foot zone around any "school, park, playground or day care center" that prohibits a convicted sex offender from establishing residence creates a temporary area of safety where children can play and learn.

At the very least, the Ordinance limits the chance of contact and encounters between children and a convicted sex offender. Such a restriction should not be viewed as punitive but rather precautionary and designed to help reduce recidivism. Furthermore, the inconvenience forced on the respondent to find residence outside the 2,500-foot zone should not be misconstrued as punishment. The Ordinance does not require G.H. to discontinue enrollment at Stockton College, rather only mandates that G.H.'s residence be moved off campus. It is entirely possible for the respondent to comply with the residency restrictions, maintain residence in Galloway Township, and still enjoy the benefits and rewards of completing his education at Stockton College.

In fact, in Georgia, where there is a 1000 foot restriction, its Supreme Court has stated, "a convicted sex

offender may still own property and lease it, visit it, or conduct any type of business upon it within the zone." *Mann v. State,* 278 Ga. 442, 444 (2004). Such behavior is also achievable with the Ordinance in this case and further evidences the legislature's intent to create a safe zone for its children, and not punish the Respondent through permanent banishment.

II. GALLOWAY TOWNSHIP ORDINANCE 1616, *ET SEQ.* DOES NOT VIOLATE RESPONDENT'S RIGHT OF SUBSTANTIVE DUE PROCESS.

A. Substantive Due Process is an Elusive Remedy, and it is Limited to the Most Egregious Government Abuses Against Liberty or Property Interests.

Lawsuits against governmental action often produce blanket claims of constitutional violations of "due process," "procedural due process," and "substantive due process." The terms are oftentimes used interchangeably and incorrectly. The Due Process Clause of the Fourteenth Amendment to the United States Constitution is "the source of the three different kinds of constitutional protection[s]" that fall under the rights of due process. *Rivkin v. Dover Township Rent Leveling Bd.,* 143 N.J. 352, 363 (1996).

Referring to the United States Supreme Court's decision in *Daniels v. Williams*[4], Justice O'Hern, speaking for the court, in *Rivkin* commented:

> *Justice Stevens explained that the Due Process Clause is the source of three different kinds of constitutional protection:*
>
> *First, it incorporates specific protections defined in the Bill of Rights···· Second, it contains a substantive component, sometimes referred to as "substantive due process," which bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them." Third, it is a guarantee of fair procedure, sometimes referred to as "procedural due process" [under which the State may not] take property without providing appropriate procedural safeguards.*

Rivkin, 143 N.J. at 363(citations omitted). Concluding that there is "considerable confusion surround[ing] the doctrine," Justice O'Hern further quoted other sources who have commented that the doctrine of "substantive due process" has been described as "an oxymoron if there ever was one," as "a linguistic monstrosity, if not a legal one," and "[s]ubstantive due process has resulted in 'obscure and . . . contradictory holdings, widespread debate, and general perplexity.'" *Id*. (citations omitted).

[4] *Daniels v. Williams*, 474 U.S. 327 (1986).

With the exception of fundamental rights, a governmental law or action does not violate substantive due process if it reasonably relates to a legitimate legislative purpose. *Greenberg v. Kimmelman,* 99 N.J. 552, 563 (1985). If the statute in question is supported by a conceivable rational basis it will survive a substantive due process attack. *Id.* The substantive due process doctrine does not protect from all governmental conduct but is reserved for the most egregious government abuses against liberty or property interest. *Rivkin,* 143 N.J. at 366.

Thus, the question becomes does the Ordinance in question relate to a "legitimate legislative purpose" and is it "supported by a conceivable rational basis"[5] or does it constitute one of the "most egregious government abuses against liberty or property interest."[6]

B. **Residency Restrictions, Such as the One in the Case at Bar, Do Not Violate Due Process Rights.**

Recent court decisions outside of New Jersey have held that an individual's interest in choice of residency is not a fundamental interest entitled to the highest protection

[5] *Greenberg,* 99 N.J. at 563.
[6] *Rivkin,* 143 N.J. at 366.

but only rational basis review. *State v. Seering,* 701 N.W.2d 655, 664 (Iowa 2005). In *Seering*, the defendant challenged Iowa Code §692A.2A that created a 2,000 foot residency restriction as interfering with his freedom in choice of residency. *Id.* at 660.[7]

In *Seering*, the Supreme Court of Iowa stated the substantive due process analysis that must be followed in order to assess "the nature of the individual right involved":

1. "If a fundamental right is implicated, we apply strict scrutiny analysis, which requires a determination of "whether the government action infringing the fundamental right is narrowly tailored to serve a compelling government interest." *Id.* at 662.
2. "If a fundamental right is not implicated, a statute need only survive a rational basis analysis, which requires us to consider whether there is "a reasonable fit between the government interest and the means utilized to advance that interest." *Id*.

The court in *Seering* rejected all attacks on the residency restriction provisions of the code, including the

[7] In *Searing*, the provision on the Iowa code restricting residency was attacked as violating the rights of substantive due process and procedural due process, the ex *post facto* clause, and the right against self-incrimination.

one involving substantive due process. *Id.* at 65. The court reasoned that there was a "reasonable fit between the government interest" of preventing recidivism of sex offenders by eliminating their residence within two thousand feet of any school or childcare facility. *Id*

In *Weems v. Little Rock Police Dept.,*[8] the Court of Appeals for the 8th Circuit was faced with the same issue as in the instant matter. In *Weems,* a sex offender challenged an Arkansas statute that prohibited child sex offenders from living within 2,000 feet of a school or daycare center as violating his substantive due process rights. *Id.* at 1015. Rather than apply the strict-scrutiny standard, the court held that the offender enjoyed no fundamental right "to reside in a certain place" and applied the rational basis analysis. *Id.* The court determined that the residency restriction as designed to reduce the close proximity between dangerous offenders and areas frequented by children was a rational legislative policy to protect the welfare of its citizens thus withstanding the constitutional challenge. *Id.; see also Mann*, 278 Ga. at 286 (holding that the State's interest in creating 1,000 foot residency restriction to safeguard against encounters

[8] *Weems v. Little Rock Police Dept.,* 453 F.3d. 1010, 1017 (8th Cir. Ark. 2006), cert. denied 127 S.Ct. 2128 (2007).

between minors and convicted sex offender substantially outweighed the defendant's property interest).

In the matter before this court, Galloway Township's residency restriction is reasonably related to its interest of protecting children from encounters with convicted sex offenders. The reaction by the Township's governing body is not driven by fear, but rather by the documented fact that convicted sex offenders pose a high risk of recidivism. The New Jersey Supreme Court has cited that forcing sex offenders to register when integrating them into the community was based on the conclusion that "the statistical information concerning [convicted offenders], make it clear that despite such integration, reoffense is a realistic risk". *Doe,* 142 N.J. at 13. Additionally, according to N.J.S.A. 2C:7-1 (2006), the Legislature found and declared that "the danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children . . . require a system of registration." Based on such information, the Township has a legitimate interest in making sure that such persons that possess a reasonable tendency to reoffend do not reside in close proximity to where children congregate. Establishing a 2,500 foot zone around public areas such as schools and playgrounds is a reasonable method for the Township to

protect this interest, in light of the fact that it is among the other thirteen states that have enacted a form of residency restrictions.

Although it is argued that there is no evidence that residency restrictions protect children from sexual assault, this does not diminish the legitimacy of the Township's interest. The Iowa Supreme Court defended such a claim stating that "although additional testimony revealed that the two-thousand-foot restriction was not necessarily a perfect protection against this threat, perfection is not necessary to meet the rational basis standard" *Seering,* 701 N.W.2d at 665. Additionally, the Illinois Appellate Court stated that "although the record is bare of any statistics or research correlating residency distance with sex offenses," it is reasonable to conclude that such restrictions would reduce incidental contact with sex offenders and children. *People v. Leroy,* 357 Ill. App. 3d 530, 535 (2005).

The goal of the Ordinance is to protect children by reducing their risk of being sexually assaulted, with the reasonable approach of reducing encounters from those who pose a high risk of re-offending. The objective of residency restrictions is not to destroy a convicted offender's social network, but rather help the

rehabilitation process by reducing temptation and opportunity for contact with children. The distance of 2,500 feet does not banish or make it impossible for the respondent to reside in Galloway Township or attend Stockton College, but it is an added safeguard to ensure that wherever G.H. resides, it will not be directly located near an area where children congregate.

III. GALLOWAY TOWNSHIP ORDINANCE 1616,*ET SEQ*.IS NEITHER PRE-EMPTED BY THE CRIMINAL CODE OF NEW JERSEY NOR BY COMMON LAW.

A. There is a Strong Presumption in the Law Against Preemption and in Favor of Upholding Municipal Ordinances.

All municipal ordinances enacted in New Jersey enjoy a presumption of validity under the New Jersey Constitution. *N.J.Const.*(1947), Art.4,§ VIII, ¶11. Municipal ordinances are to be liberally construed, and thus, a finding of preemption must be clear. *Kennedy v. Newark,* 29 N.J. 178, 187(1959). In order to successfully attack a duly enacted municipal ordinance on the basis of preemption, the proponent must demonstrate that there is an unresolvable conflict between the ordinance and the statute. *Id.*; *Cranberry Lake Quarry Co. v. Johnson*, 95 N.J. Super. 495,

511 (App. Div. 1967), cert. denied 50 N.J. 300(1967); *see also discussion in Chester Tp. v. Panicucci*, 116 N.J. Super. 229, 234-235 (1971).

B. The Preemption Provision of the New Jersey Criminal Code (N.J.S.A. 2c:1-5(D)) is Narrowly Construed by the Courts.

Respondent is attempting to paint a picture of preemption with a broad brush. He claims that if the municipal ordinance relates in any way to the conduct of sex offenders who are required to be registered under state law, then all municipalities must be precluded from taking any action, even though the state law is about registration and notification to the public, not conduct. Respondent's reliance on preemption is, however, misplaced. N.J.S.A. 2C:1-5 prohibits any ordinances that are "conflicting with, or preempted by" the criminal code. In *Borough of Belmar v. Buckley*, 187 N.J. Super. 107 (App.Div. 1982), the defendant was convicted by the Belmar Municipal Court of violating a borough ordinance prohibiting indecent exposure. The Superior Court, Law Division, Monmouth County, reversed and the Borough appealed. The Superior Court, Appellate Division, held that the statute concerning the disorderly persons offense of lewdness did not preempt

the ordinance. The municipal ordinance prohibited anyone from being in a public place in a "state of nudity or in an indecent or lewd dress or garment, or to make any indecent or unnecessary exposure of his or her person." *Id.* at 109. The provision of the State Criminal Code asserted by the defendant as preempting the ordinance provided:

> *A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other non-consenting persons who would be affronted or alarmed. "Lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.*[9]

In a *per curiam* opinion, the Appellate Division held that, although both the municipal ordinance and state statute proscribed public lewd conduct, the drastic measure of negating the municipal law as preempted could not occur. Referring to the preemption statute,[10] the court noted:

> *This provision is consistent with well settled case law principles by which municipalities are precluded from exercising their delegated police powers on preemption grounds only if a legislative enactment is intended to exclusively occupy the legislated area, or if the municipal ordinance conflicts with the objectives, policy or*

[9] N.J.S.A. 2C:14-4.
[10] N.J.S.A. 2C:1-5(d).

> *provision of state law, or if the subject matter is one requiring by its nature a uniform state-wide approach, or if the state law is so "pervasive or comprehensive that it precludes" coexistence of municipal regulation...[t]he ordinance here meets none of the tests of preemption.*[11]

C. <u>The Provisions of Megan's Law Differ From Residency Restrictions Ordinances</u>.

Megan's Law is a registration, reporting and notification statute.[12] It is designed to make the public aware of convicted sex offenders. The fact that it may extend terms of parole supervision, that all offenders may be subject to, is nothing more than part of the reporting requirement. It prohibits nothing.

Contrasting the Galloway Township Ordinance to the provisions of Megan's Law leads to the following conclusions:

1. Megan's Law regulates registration. The ordinance requires no registration.
2. Megan's Law regulates notification. The ordinance requires no notification.

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[11] *Id*. at 110-111 *citing Overlook Terrace Mgmt. v. West New York Rent Control Bd.,* 71 N.J. 451, 461-462(1976); *Dome Realty Inc. v. Paterson,* 83 N.J. 212 (1980); *Inganamort v. Fort Lee,* 62 N.J. 521 (1973); *Summer v. Teaneck,* 53 N.J. 548 (1969); *State v. Crawley,* 90 N.J. 241(1982).
[12] *See* N.J.S.A. 2C:7-1, et seq.

3. Megan's Law regulates reporting by convicted sex offenders. The ordinance requires no reporting to anyone.

4. Megan's Law determines who are to be classified as sex offenders subject to the act and establishes procedures for classification and review. The ordinance accepts and relies on this classification.

5. The ordinance prohibits the conduct of residing within a certain distance of a school, park, playground or day care facility. Megan's law does not prohibit conduct.

In *Borough of Belmar*, the court relied on the words of Justice Weintraub in *Inganamort v. Borough of Fort Lee,*[13] which remain applicable to the case at bar. His words state the strong policies in the State of New Jersey for giving deference to the municipalities in this State to have a strong voice in regulating those matters that affect the health, safety and welfare of their residents:

> *[T]he Legislature may invest in local government the police power to devise measures tailored to the local scene. The Legislature may decide to do so for sundry reasons. A problem may exist in some municipalities and be trivial or nonexistent in others. And if the evil is of statewide concern, still*

[13] *Borough of Belmar,* 187 N.J Super. at 111*, citing Inganmort v. Borough of Fort Lee, supra* n. 11.

practical considerations may warrant different or more detailed local treatment to meet varying conditions or to achieve the ultimate goal more effectively.[14]

D. **There are Practical Considerations Why The State of New Jersey Has Chosen Not to Legislate in the Area of Residence Restrictions and has Instead Left the Regulation to the Municipalities**.

The State of New Jersey has chosen not to legislate statewide in the area that is the subject matter of the Ordinance. If it did, there is little doubt that the statute would be declared unconstitutional for many of the reasons that G.H. asserts in the present lawsuit. Other states have recognized the need to have statewide residency regulations. For instance, a statewide law in Iowa[15] prohibiting sex offenders from residing within 2,000 feet of a residence or playground was deemed feasible because in Iowa there are only nineteen residents per square mile of land area.[16] Likewise, a statewide law in Illinois that prohibits similar residence within 500 feet[17] was also found reasonable because Illinois has just seventeen residents per square mile.[18] The same conclusion was reached with a

[14] Id. at 528.
[15] *See State v. Seering*, 701 N.W.2d 655 (Iowa 2005).
[16] United Census Bureau population and land statistics 2005.
[17] *See People v. Leroy,* 357 Ill.App.3d. 530 (2005).
[18] United Census Bureau population and land statistics 2005.

1,000 foot restriction in Georgia,[19] where there are 141 people residing per square mile.[20] These states however have different characteristics, making it feasible to enact statewide legislation. New Jersey, however, is much different in terms of location and composition. New Jersey is located in one of the most densely populated areas in the country. The average population density is 1,134 residents per square mile. There are however many congested cities with much higher densities such as: Camden City (9,000 residents per square mile [RPS]), East Orange (17,700 RPS), Jersey City (16,000 RPS), Newark (11,500 RPS), Paterson (17,600 RPS), Trenton (11,000 RPS), Union City (53,000 RPS) and West New York (45,000 RPS).[21] Due to the varying populations and congestion, it would be impractical to have one statewide residency law. Such a statewide regulation would rule out any permitted residence in the major municipalities throughout New Jersey and would most likely be found unconstitutional.

As recognized by the New Jersey judiciary, "[h]ome rule is basic in our government. It embodies the principle that the police power of the State may be invested in local government to enable local government to discharge its role

[19] *See Mann v. State,* 278 Ga. 442 (2004).
[20] United Census Bureau population and land statistics 2005.
[21] *Id.*

as an arm or agency of the State and to meet other needs of the community." *Inganamort*, 62 N.J. 521 at 528, citing *Bergen County v. Port of New York Authority*, 32 N.J. 303, 312-314 (1960). By leaving residency restrictions in the hands of local governments and municipalities to tailor to their individual population, the State has ensured that constitutional rights remain intact and that restrictions are not overbearing and unreasonable.

A comparison of the Galloway Township to other areas in New Jersey evidences the importance of locally enforced residency restrictions. Unlike major areas such as Camden, Newark and Trenton, the Galloway Township has a population of only 31,209[22] residents living on 90.5 square miles of land. This averages to just 344 residents per square mile. This stark contrast in terms of population density clearly adds to the need for local enforcement of residency restrictions. Were the State to enforce a regulation, it would be extremely difficult to ensure its equal and fair application throughout the State. Therefore, the State has a legitimate interest in allowing municipalities to enforce their own residency restrictions and the Galloway Township acted reasonably within its authority and duty to protect

[22] United States Census Bureau, *Census 2000 Data for the State of New Jersey* (April 1, 2000) http://www.Census.gov/census 2000/states/nj.html (accessed July 10, 2007).

the health, safety and welfare of its most vulnerable residents.

Lastly, the public policy considerations surrounding sex offender residency restrictions have not been overlooked when enacting ordinances like the one in question. There are numerous law review articles and treatises published that portray the sex offender's point of view when confronted with such residency restrictions.[23] Certainly, such robust arguments and dialogue are encouraged in our democratic society. Opponents to residency restrictions should be reminded that the policy arguments they sternly support were heavily weighed and considered by the Galloway Township legislatures while debating enactment of the Ordinance. However, opponents cannot rely on the courts to overturn these types of ordinances based solely on policy arguments, when it is the question of their constitutionality that is the subject of judicial review.

[23] For Example: Joseph L. Lester, Off To Elba! The Legitimacy Of Sex Offender Residence and Employment Restrictions, 40 Akron L. Rev. 339 (2007); Jill S. Levenson & Leo P. Cotter, The Impact of Sex Offender Residency Restrictions: 1000 Feet From Danger or One Step From Absurd?, 49 Int'l J. of Offender Therapy & Comp. Criminology 168 (2005).

CONCLUSION

Based on the foregoing it is respectfully requested that leave to appear as *amicus curiae* be granted to the New Jersey Crime Victims' Law Center and that respondent's complaint and amended complaint be dismissed.

New Jersey Crime
Victims' Law Center
Amicus Curiae

By_____
Richard D. Pompelio, Esq.

Dated: