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## ARGUMENT

**The doctrine of Res judicata frankly does not apply to Appellant's claims.**

Appellee is attempting to mislead (or perhaps has misunderstood Appellant's claims) this court by claiming Appellant is challenging (in a direct appeal) his original sexual offender classification hearing. Appellant is not challenging the Jan. 20, 2004 hearing and the resulting judgement entry. Appellant is challenging his right to have his legal status reconsidered in a "new hearing" that was petitioned for due to the change in Appellant's "current" likelihood to recidivate sexually and appeals the judgement entry filed on March 19, 2006; Exhibit # 2 Appellant's brief. While Appellant may make brief references to the Jan. 20, 2004 hearing, these are only for the demonstrative purposes concerning the effects of the issues being discussed, NOT to challenge the results of the initial hearing; also see Procedural Posture, Appellant's and Appellee's briefs. Res judicata simply is not applicable in this situation.

Appellee cites two cases referring to Britton<sup>1</sup>. First, it should be noted that in the final Britton #2<sup>2</sup> case was decided on July 2, 2003 prior to the enactment of S.B.5 on July 31, 2003. The Constitutional challenges in Britton<sup>2</sup> lacks relevance to Appellant arguments and Constitutional claims as Appellee is surely attempting to show.

Appellant's situation differs from Britton in two ways. First, his initial classification was not challenged in any way, counsel may have been present, but offered no challenge, nor did Appellant's counsel on direct appeal. Appellant in this appeal is also in no way challenging the finding of the initial hearing. Second Britton #2 asked to have his sexual predator status terminated because he believed the sexual predator status, in his situation (crime was committed without a sexual intent) was unconstitutional, not the fact that he was likely or unlikely to sexually recidivate. Nevertheless, as discusses above Res judicata is irrelevant to in this case.

Now Britton #2<sup>2</sup> and the instant appeal are similar interesting enough when the Appellate Court stated he could petition the court for a determination that he was no longer a sexual predator. Res judicata did not apply to that portion of Britton's appeal. Additionally, Britton notes Dunwoody as why the trial court's decision was affirmed in denying the petition to reconsider the sexual predator status.

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<sup>1</sup> State v Britton #1 (July 18, 2001), Lorain App.No. 00CA007723, unreported, 2001 WL 808973 and State v Britton #2 (July 2, 2003), Lorain App.No. 03CA008221, unreported, 2003 WL 21508781, 2003-Ohio-3502

<sup>2</sup> State v Britton #2 (July 2, 2003), Lorain App.No. 03CA008221, unreported, 2003 WL 21508781, 2003-Ohio-3502

"[N]oting that an offender who has been adjudicated as a sexual predator may petition the court to reclassify him based on subsequent remedial behavior, such as the completion of sexual offender programs" **State v Britton #2** (July 2, 2003), Lorain App.No. 03CA008221, unreported, 2003 WL 21508781, 2003-Ohio-3502, noting **State v Dunwoody** (August 30, 1999), 5th Dist.No. CA-97-65

Appellant is asking to have his status reconsidered because he has received sexual offender treatment and other relevant programming while incarcerated that has reduced his risk to sexually recidivate. This could not have been submitted during the initial hearing or on direct appeal simply because, Appellant had yet to have the opportunity to participate and complete the programming. Appellant could also not have raised his constitutional challenges on account of he had yet to be denied the opportunity to have his status reconsidered. Res judicata absolutely is not applicable to this appeal.

### **R.C. CHAPTER 2950 DOES INDEED VIOLATE THE CONSTITUTIONS OF BOTH OHIO AND THE UNITED STATES.**

#### **I) FIRST ISSUE PRESENTED FOR REVIEW AND ARGUMENT:**

**R.C. Chapter 2950 denies Appellant the Fundamental right to Access the Courts and Substantive Due Process, therefore it is clearly incompatible with the constitution.**

As appellant demonstrates in his brief, R.C. 2950 does implicate a fundamental right. This occurred along with the enactment of S.B.5<sup>3</sup> on July 31, 2003. Prior to the enactment of S.B.5 this fundamental right was not being denied. The single ruling that Appellee relies on concerning a fundamental right is **State v Williams**<sup>4</sup>. **Williams** was decided on April 28, 2000, over three years prior to the enactment of S.B.5 and is inapplicable for the reasons stated in Appellant's brief (page 6 last paragraph and first paragraph page 7). Additionally, in **Williams** the specific right that Appellant is being denied is cited as being allowed, therefore the finding in **Williams** cannot be relied on concerning the fundamental right at issue in Appellant's brief;

"An offender who has been adjudicated a sexual predator may also petition the trial court, after the expiration of an applicable period of time, to obtain an entry indicating that the offender is no longer a sexual predator. R.C. 2950.09(D)." **Id** (2000), 88 Ohio St. 3d @ 519

There is no doubt that R.C. as of the enactment of S.B.5 violates the Ohio and United States Constitutions. Substantive Due Process is violated, additionally strict scrutiny is required where a fundamental right is implicated. These constitutional violations are new, require judicial review, and should not be passed over because it was once decided no fundamental right was implicated prior to the right being denied. Finally, the specific claims Appellant makes have not been reviewed by an Ohio Court to date in any reported case.

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<sup>3</sup> Sub. Am. S.B. 5 of the 125<sup>th</sup> Ohio General Assembly

In Randall<sup>5</sup>, which Appellee relies on concerning Substantive Due Process is based on Lee<sup>6</sup> that also recognizes the right to petition the court for a review of the sexual predator status.<sup>7</sup> Appellants brief page 7. Appellant also notes he is not complaining of any privacy (or Double Jeopardy, Ex Post Facto, Bill of Attainder, or Vagueness) issues that Appellee mentions in a misleading manner. Appellant's only claims the right to have his legal status, which as occurred as the result of a judicial decision, reconsidered since the only basis (likelihood of sexual recidivism and warning the public of that likelihood) for the status is no longer present.

**II) SECOND ISSUE PRESENTED FOR REVIEW AND ARGUMENT:  
R.C. Chapter 2950 violates Equal Protection.**

Appellee cites several unreported cases claiming these there is no Equal Protection violation. In not one of these cases was there the denial of the fundamental right that Appellant is claiming. Worst<sup>8</sup>, Meredith, Nagel<sup>9</sup>, and Cooper<sup>10</sup> all differ from Appellant because they were making claims concerning "sexual oriented offenders and registration" that occur by operation of law, see Hayden<sup>11</sup>. Not the fact of a change in legal status that results from the burdens, duties, restrictions, and the notification of dangerousness (even is Appellant is no longer dangerous) imposed until death resulting from a judicial decision that are not imposed on other citizens. Appellant's brief page 11. Clingerman<sup>12</sup> was also only about the same issues repeatedly claimed and denied many times before, not the new claims and violations that Appellant raises. Appellee's arguments lack relevance and merit.

**III) THIRD ISSUE PRESENTED FOR REVIEW AND ARGUMENT:  
R.C. Chapter 2950 infringes upon Appellant's "Liberty Interest."**

Appellee needs to do more than state there is no "Liberty Interest" implicated by R.C. Chapter 2950. Additionally, an Ohio precedent concerning Appellant's Liberty Interest arguments and the prerequisite Stigma-Plus test in regards to sexual predators is unavailable. Additionally, Appellant's brief demonstrates that nearly every Federal Court when presented with the Liberty Interest along with the Stigma-Plus test is satisfied

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<sup>4</sup> State v Williams (2000), 88 Ohio St. 3d 513,520, 728 N.E.2d 342

<sup>5</sup> State v Randall (2001), Ohio App.3d 160,163, 750 N.E.2d 615,617

<sup>6</sup> State v Lee (1998), 128 Ohio St. 3d 710,716, 716 N.E. 2d 751,755; State v Lance (Feb 13, 1998), Hamilton App. Nos. C-970280, C-970283, & C-970301, unreported, 1998 WL 57359, Affirmed, 84 Ohio St.3d 17

<sup>7</sup> Id., 128 Ohio St. 3d 710,716, 716 N.E. 2d 751,755; noting Lance, Hamilton App. Nos. C-970280, C-970283, & C-970301, pg26 fn. 96, unreported, 1998 WL 57359, Affirmed, 84 Ohio St.3d 17

<sup>8</sup> State v Worst (Dec. 12, 2005), Butler App.No. CA-2004-10-0270, unreported, 2005 WL 3358917, 2005-Ohio-6550

<sup>9</sup> State v Nagel (May 1, 2006), Brown App.No. CA-2005-06-0012, unreported, 2006 WL 1132856, 2006-Ohio-2135

<sup>10</sup> State v Cooper (Dec. 3, 2004), Hamilton App.No. C-030921, unreported, 2004 WL 2757193, 2004-Ohio-6428

<sup>11</sup> State v Hayden (2002), 96 Ohio St.3d 211,213-14, 2002-Ohio-4169, 773 N.E.2d 502

concerning sexual offenders and notification that Liberty Interest is implicated. See Appellant's brief pages 9-13. Appellee simply cannot counter Appellant's arguments because there is a undeniable "Liberty Interest" in having the sexual predator status reconsidered once Appellant is no longer dangerous. Nevertheless, Appellee's arguments as demonstrated above once again lack relevance and merit.

**IV) FORTH ISSUE PRESENTED FOR REVIEW AND ARGUMENT:**

**There is no rational basis in notification of dangerousness where dangerousness no longer exists.**

Appellant asserts that strict scrutiny review is required due to a fundamental right being implicated. Appellant also demonstrates that there is no rational basis in having a non-dangerous (or a person unlikely to recidivate sexually) person register and then the government notify the public that person (Appellant) is dangerous.

Once again, Appellee has offered *nothing* countering Appellant concerning how rational basis is not satisfied in relation to Appellant's unique arguments and facts Appellant briefed. Appellee first needs to demonstrate how strict scrutiny or rational basis is not met. As stated in Appellee's brief (page 7) if indeed there is no fundamental right implicated then rational basis review is required<sup>13</sup> to determine if there is a legitimate state interest. It is the lack of meeting strict scrutiny or rational basis test that demonstrates there is no Constitutional claim, not that there is no Constitutional claim therefore rational basis does not apply.

Appellee does not attempt to demonstrate how there is a rational or legitimate state interest to have a non-dangerous person (Appellant) register as such, then disseminate to the public, the unconfirmed (or false) message of dangerousness. Appellee's arguments continue to lack merit and relevance to the instant case.

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<sup>12</sup> **State v Clingerman** (Sept. 30, 2004), Trumbull App.No. 2004-T-0054, unreported, 2005 WL 2416543, 2005-Ohio-5282

<sup>13</sup> **State v Small** (2005), 162 Ohio App.3d 375,380 & 382, 2005-Ohio-3813, 833 N.E.2d 774; which reversed and remanded 162 Ohio App.3d 325, 2005-Ohio-2291, 833 N.E.2d 736

## CONCLUSION

Appellee states, "Bettis' conviction [should] be affirmed." Appellant is NOT questioning the conviction or initial sexual offender classification hearing in any manner. Therefore, Res judicata is irrelevant. Appellant raises the issue in his brief that he has Fundamental Constitutional right to Meaningful Access the Courts to for a Redress of Grievances, any denial of that right violates Substantive Due Process and Equal Protection. Appellee also offers no challenge to Appellant's claim that Access to the Courts is being denied. Once again Appellee relies "primarily" on Williams which was decided prior to the enactment of S.B.5 which even cites a registrant can petition for reconsideration of the sexual predator status.<sup>14</sup>

Additionally, no challenge if offered to Appellant's legal analysis or test (stigma-plus, strict scrutiny, or rational basis) for meeting Constitutional challenges. Instead, Appellee offers only irrelevant case law decided prior to when these Constitutional violations occurred. Appellee wants this Court to forget any required legal analysis because there is no reasonable challenge. Appellee must demonstrate that these analyses are not met before Appellant's claims can be said to not violate the Constitution, not that other way around. Appellee's arguments concerning Appellant's brief lacks any relevance and merit as demonstrated above, therefore the relief stated in Appellant's brief should be granted by this Honorable Court.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a full copy of the within was sent by regular U.S. Mail to; Butler County Prosecuting Attorney, Government Services Center, 315 High Street, 11<sup>th</sup> Floor, Hamilton, OH 45011 on this Third day of November 2006.

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Daniel J. Bettis

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<sup>14</sup> State v Williams (2000), 88 Ohio St. 3d 513,519, 728 N.E.2d 342