



requiring registration by such offenders constitutes "a new obligation and imposes a new duty to register . . . ." *Id.* at 852. The Court then emphasized that its "ruling applies only to the registration requirements. All other provisions of Megan's Law remain in effect as to these and all other persons subject to it." *Id.*

On remand, plaintiffs/respondents moved to bar defendants/appellants – including the Superintendent of the Missouri State Highway Patrol, which is charged with maintaining a searchable internet site of registered sex offenders, including photographs (§ 43.650, RSMo) – from using and publishing the photographs obtained during registration of sex offenders who, under the *Doe* decision, should not have been required to register because their convictions occurred before January 1, 1995. Plaintiffs (those convicted before January 1, 1995) asserted that because they should not have been required to register, the photographs they provided during their registration should never have been obtained by law enforcement authorities. Because the photographs should never have been obtained, these plaintiffs continued, the law enforcement authorities should be prohibited from using those photographs now.

On January 16, 2007, the trial court in this case entered its Order Granting Permanent Injunction (Judgment) prohibiting appellant Keathley, the Superintendent of the Missouri State Highway Patrol, and his successors "from publishing the photographs of plaintiffs on websites on the Internet or otherwise disseminating such photographs to the public of the plaintiffs, except Jane Doe III" and directing defendant Keathley to immediately "cease and

desist from publishing photographs and identifying information of persons registered under SORA whose convictions predated January 1, 1995.” This judgment is currently on appeal.

**Standard for Assessing Motion to Stay.** Appellant Keathley requests this Court to stay implementation of the trial court’s injunctive order and judgment pending the outcome of this appeal. The factors to be considered in determining whether to issue a stay pending appeal are: (1) whether the movant is likely to succeed on the merits; (2) whether movant will suffer irreparable injury unless the stay is granted; (3) whether others will be harmed if the stay is granted; and (4) whether, and what, the public’s interest is. *See State ex rel. Director of Revenue v. Gabbert*, 925 S.W.2d 838, 839-40 (Mo. banc 1996) (assessing propriety of stay of an agency order); *State ex rel. Director of Revenue v. Conklin*, 997 S.W.2d 121, 123 (Mo. App. S.D. 1999) (same). In reaching its decision on a motion to stay, the Court is to balance these factors to determine the equitable result. *James River Flood Control Ass’n v. Watt*, 680 F.2d 543, 545 (8th Cir. 1982) (regarding comparable federal standard of assessing propriety of stay).

**Likelihood of Success.** By issuing the judgment it did, the trial court has shown that it concluded that appellant Keathley is not likely to succeed on the merits in his defense against the plaintiffs’/respondents’ claim that information they have provided during their registrations as sex offenders should be removed from the state’s sex offender registry. But in his defense to this claim in the trial court, appellant Keathley raised (and will raise in this appeal) arguments that he believes should have resulted in no injunctive order and judgment being entered against him.

As appellant Keathley argued below, the *Doe* decision does not require removal from the registry of persons that the Court found could no longer be required to register. Rather, the Supreme Court concluded only that requiring persons convicted of sex offenses before the effective date of SORA to register as sex offenders was inconsistent with Missouri's constitutional prohibition (Mo. Const., art. I, § 13) on laws retrospective in operation. 194 S.W.3d at 852. The Court specifically emphasized that the prohibition on retrospective laws barred application of SORA's registration requirements to sex offenders convicted before January 1, 1995, because this "obligation to *register* by its nature imposes a new duty or obligation." *Id.* (Emphasis by Court.)

The Court's emphasis on the obligation to register as a new duty is telling. It is the imposition of a new duty obligating a person to take some action that caused the constitutional problem that the Court found with SORA. Nothing about continued use of the information previously obtained from persons who may no longer be required to register involves any duty or obligation on their part. The registrations of these persons at which the information was obtained is past. The information is in the public record and its use requires no new act on the part of former registrants. Because continued use of the information does not obligate former registrants in any way, such use does not raise the same concerns that led the Supreme Court to determine that the continuing duty to register under SORA, as applied to persons convicted before 1995, was constitutionally prohibited.

Moreover, the Supreme Court expressly stated: "this Court rejects the claim that publication of true information about the Does affects a past transaction to their substantial

detriment by imposing a new obligation, adding a new duty or attaching a new disability in respect to transactions or considerations already past." *Doe*, 194 S.W.3d at 852. Continued inclusion in the sex offender registry of persons who may no longer be required to register is nothing other than the publication of true information about them that has been specifically approved by the Court. *See also id.* at 838 ("even as to those Does who may not be required to fulfill the affirmative duties imposed directly on them by Megan's Law, Missouri's constitutional prohibition on laws retrospective in their operation does not prohibit others from publishing information about them in the manner permitted by Megan's Law.")

The *Doe* decision plainly shows the Supreme Court's intent that the information held by law enforcement agencies, including the Highway Patrol, may be used and disseminated without violation of the Missouri Constitution. The Court drew no distinction between use and dissemination of information obtained during registration of offenders who now will no longer have to register due to its decision and information otherwise in the possession of the law enforcement agencies.

Even if this Court ultimately disagrees with appellant Keathley's position in this case, he at least raises serious legal issues that could be ruled in his favor. The raising of serious legal issues is a factor that, together with the other factors, is sufficient for the entry of a stay.

*Id.*

**Assessment of Harms and Interests.** Turning to the other factors used in assessing whether a stay pending appeal should be entered, appellant Keathley and the Missouri State Highway Patrol may have already suffered irreparable harm in that the information the

injunctive order requires removed from the registry has been removed. If the appellant Keathley eventually succeeds on appeal, he will have already expended the resources necessary to remove information from the sex offender registry.

Other interested parties will not be substantially harmed if a stay pending appeal is entered. The plaintiffs and other persons with sex offenses predating 1995 will have had their photographs and identifying information on the sex offender registry for some time already. Allowing this information to remain on the registry for the remaining time needed to pursue the issue raised here through finality should not add greatly to any detriment they face. Further, the information at issue is accurate, and thus does not result in any misrepresentation. The information is also available from other sources such as court records and the memories of persons involved.

The public's interest in the grant of a stay here is great. As the Supreme Court stated in *Doe*, the purpose of registration of sex offenders is to protect children from harm and to respond to the known danger of recidivism among sex offenders. 194 S.W.3d at 839. The serious harm that Megan's law seeks to curtail applies with regard to all sex offenders, including those whose convictions occurred before 1995. There are few, if any, interests of parents that can be stronger than their desire to protect their children. The inclusion of as much information as possible on the sex offender registry promotes this strong interest.

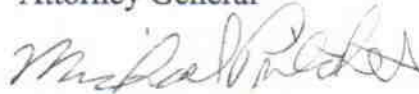
**Conclusion.** Upon assessment of these factors, especially the strong interest of parents to have as much information as possible to assist them in taking steps to safeguard

their children, the balance of equities favors the entry of a stay in the application of the injunctive order in this case.

WHEREFORE, appellant Keathley prays this Court to issue a stay in the application of the trial court's injunctive order in this case pending this Court's decision on appeal

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General



MICHAEL PRITCHETT  
Assistant Attorney General  
Missouri Bar No. 33848

P. O. Box 899  
Jefferson City, Missouri 65102  
Telephone No. (573) 751-3321  
Fax No. (573) 751-9456


ATTORNEYS FOR APPELLANT  
KEATHLEY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 6th day of March, 2007, to:

Arthur A. Benson II  
Jamie Kathryn Lansford  
Arthur Benson & Associates  
4006 Central Avenue  
P.O. Box 119007

Lisa N. Gentleman  
Jackson County Counselor's Office  
415 East 12th Street, 2d Floor  
Kansas City, MO 64106

  
Assistant Attorney General