

[Cite as *Means v. State*, 2010-Ohio-3082.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 92936 - 92939 and 92941 - 92945

LAWRENCE E. MEANS, ET AL.

PLAINTIFFS-APPELLANTS

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Civil Appeals from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-665385, CV-665201, CV-655531,
CV-655724, CV-659833, CV-671221,
CV-675596, CV-664278, and CV-667009

BEFORE: Celebrezze, J., Gallagher, A.J., and Stewart, J.

RELEASED: July 1, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} All nine appellants in this consolidated case challenge their reclassification under Ohio's version of the Adam Walsh Act ("AWA"), codified in R.C. 2950 et seq., enacted by Am. Sub. S.B. No. 10 ("S.B. 10"). Based on the Ohio Supreme Court's decision in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, we find merit in appellants' arguments.

{¶ 2} All appellants were previously classified under Ohio's Megan's Law, codified in former R.C. 2950 et seq. Eight of the appellants were previously classified as sexually-oriented offenders, the lowest classification, and were not subject to community notification. The ninth appellant was previously classified as a sexual predator and was subject to community notification.

{¶ 3} Appellants were reclassified according to the new tier system imposed by the AWA. The Ohio Attorney General, pursuant to R.C. 2950.031(A) and 2950.032(A)(1), reclassified appellants and sent them notices of the right to appeal the reclassification. Appellants filed pro se petitions challenging their reclassifications. The trial court appointed counsel and held a consolidated hearing on appellants' petitions. The trial court rejected all of appellants' arguments and held that the application of the AWA to them was constitutional. The trial court also refused to relieve any of appellants

from community notification requirements under R.C. 2950.11(F)(2) without holding a hearing. Appellants then brought the instant appeal assigning seven errors.

{¶ 4} In light of the Ohio Supreme Court's holding in *Bodyke*, we will address only the third assignment of error.¹ App.R. 12(A)(1)(c).

{¶ 5} Appellants argue that "[t]he retroactive application of Senate Bill 10 violates the separation of powers doctrine." The Ohio Supreme Court agreed when it held in *Bodyke* that "R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments." *Id.* at paragraph three of the syllabus. This assignment of error is therefore sustained.

{¶ 6} In accordance with the Ohio Supreme Court's holding in *Bodyke*, the reclassifications of the within appellants by the attorney general are invalid, and the prior judicial classifications and community-notification and registration orders previously imposed by judges should be reinstated.

{¶ 7} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellants recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR
APPENDIX

Appellants' remaining assignments of error:

I. "The retroactive application of Senate Bill 10 violates the Ex Post Facto clause of the United States Constitution."

II. "The retroactive application of Senate Bill 10 violates the retroactivity clause of the Ohio Constitution."

IV. "Senate Bill 10 violates the Double Jeopardy clause of the United States Constitution and Section 10, Article I of the Ohio Constitution."

V. "Senate Bill 10, as applied to appellant, violates the United States and Ohio Constitutions' prohibitions against cruel and unusual punishment."

VI. "The retroactive application of Senate Bill 10 constitutes a breach of appellants' plea agreements and impairs the obligation of contract protected by Article 1, Section 10, Clause 1 of the United States Constitution and Section 28, Article II of the Ohio Constitution."

VII. "The trial court erred by categorically denying appellants relief from community control notification pursuant to R.C. 2950.11(F)(2)."

¹The other assignments of error are included in the appendix to this opinion.

