
NOTE

ALL POLITICS IS LOCAL: STATE PREEMPTION AND MUNICIPAL SEX OFFENDER RESIDENCY RESTRICTIONS IN NEW YORK STATE

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INTRODUCTION

“All politics is local.”¹

Local governments take responsibility for many important public functions, from trash collection to local law enforcement training. Simultaneously, state constitutions – like New York’s – reserve certain areas of regulation for the state. This sounds like a sensible arrangement. On certain issues, however, a confluence of state and local government regulation might create more trouble

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¹ TIP O’NEILL WITH GARY HYMEL, ALL POLITICS IS LOCAL (1994).

than it is worth. State and local laws might conflict if they govern the same area. Even if they do not conflict, individuals might face confusion or additional costs if they must comply with local and state laws that may reflect separate policies and interests.

Yet broad state law may reflect policy distinct from local interests. Sex offender residency restriction laws present a study in this divergence. Since the emergence of state and federal “memorial laws,” like Megan’s Law or the Jacob Wetterling Act, both state and federal governments have wrestled with the appropriateness and effectiveness of schemes designed to manage sex offenders, from their capture and conviction to eventual release from prison. Sex offenses, particularly those against children, are among the most heinous crimes imaginable. At the federal and state levels, legislators play to the visceral reaction most have to such crimes and enact legislation designed to look tough on these unsavory crimes. Social scientists and those who treat sex offenders argue – convincingly – that much of this legislation is a knee-jerk response to a perceived problem that is more complex than either legislators or their constituents admit. Accordingly, as sex offender regulatory schemes mature, one might expect that states would develop a nuanced approach to sex offender management that responds to restrictions that are either too strident or too lax.

New York State, for one, has had a sex offender management scheme in place for several years. Sex offenders who live in New York after their release must register with local law enforcement officials and are sometimes subject to post-release supervision. Sex offenders who are thought to have a heightened likelihood of reoffense are also precluded from living within one thousand feet of public or private schools or day care centers.

Although this scheme seems comprehensive, many municipalities across New York have found its restrictions unsatisfactory. Counties, cities, and towns have attempted to supplement state restrictions with their own requirements. In the last few years, municipalities in upstate New York have experimented with more stringent residency restrictions than the state imposes. Larger municipalities, like counties and cities, have seen some of these restrictions challenged in court, sometimes for broader constitutional issues, but often also based upon the doctrine of state preemption.

This Note focuses on the nature and effects of state and municipal registered sex offender residency restrictions. Such restrictions create a unique problem for municipalities because they simultaneously lead to untoward results for both large, densely-populated areas as well as suburban and rural areas. In cities, sex offenders face difficulty finding housing, given state residency restrictions. This forces many sex offenders into suburban and rural areas. Municipalities in these areas may object to this “clustering” of sex offenders.

Specifically, this Note focuses upon Albany County, situated in upstate New York, where state, county, and town law all sought to address this issue. A county law that was more expansive than the state’s residency restriction was recently invalidated based upon the doctrine of state preemption. The town

law has not yet been challenged, but this Note suggests that such a challenge would lead to a similar invalidation. Although this town law adopts a unique approach to address what is arguably an issue that state law does not address – sex offender concentration in suburban areas – the state sex offender management scheme clearly demonstrates the state’s intent to be the sole regulator in this area.

Yet a ruling that this town law is preempted by state law is not the end of the relevant inquiry. Through local media accounts of the state, county, and town laws, one may infer a sort of domino effect that led to the town law in question. Citizens and legislators may receive a good deal of their information about sex offenders from the media, and local coverage of the later-invalidated county law may have helped to arouse a sentiment that municipal law had failed at the county level and that towns and cities must fill the gap. This Note suggests that some of the state preemption challenges may merely have decapitated a hydra.

This Note proceeds in four parts. It offers an overview of state home rule provisions in Part I, and then proceeds to give a brief history of the progression of laws that regulate sex offenders in Part II.A, including the Jacob Wetterling Act, Megan’s Law, and the Adam Walsh Act. Parts II.B and II.C address sex offender residency restrictions as particular iterations of sex offender management laws, especially the effects and efficacy of these restrictions, while Part II.D discusses a potential substantive due process issue in this area. Part III details the progression of sex offender residency restrictions in New York State, Albany County, and the Town of Colonie, including the state preemption challenges some of these restrictions faced in state courts. Part IV then addresses the viability of the Town of Colonie’s hotel and motel licensure law on state preemption grounds. The Conclusion reflects upon the usefulness of state preemption doctrine in the area of sex offender management.

I. MUNICIPAL HOME RULE IN STATE CONSTITUTIONS

Home rule has its origins in the colonial era. As the American Colonies became the United States, approximately sixteen municipal corporations – cities or boroughs – existed.² These municipal corporations were formed when colonial governors, acting under the crown’s authority, granted them charters.³ Charters, of course, function as governing documents for the municipalities.⁴ After the Revolution, state legislatures inherited the crown’s power to charter municipal corporations.⁵ Commenters have suggested that legislatures did not

² HOWARD LEE MCBAIN, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* 3 (1916).

³ *Id.*

⁴ BALLENTINE’S *LAW DICTIONARY* 195-96 (3d ed. 1969) (defining a charter as “the organic law of a city or town, and representing a portion of the statute law of the state”).

⁵ MCBAIN, *supra* note 2, at 3. Several states incorporated this power into their state constitutions. *See, e.g.*, MD. CONST. of 1776, art. XXXVII (“[T]he city of Annapolis ought

tinker much with municipal charters until cities grew to be large entities that provided services to their residents – and thus became targets for any “political spoilsman in the state legislature.”⁶ Once state legislators realized that they could, for example, award municipal contracts to political allies, they began to alter municipal charters accordingly.⁷ Growing municipalities began to push back against state legislatures; some of them successfully lobbied for provisions in their state constitutions that reserved certain powers to municipalities. Today, several state constitutions feature home rule provisions.⁸

to have all its rights, privileges and benefits, agreeable to its Charter, and the acts of Assembly confirming and regulating the same, subject nevertheless to such alteration as may be made by this Convention, or any future Legislature.”); N.Y. CONST. of 1777, art. XXXVI (“[N]othing in this constitution contained shall be construed . . . to annul any charters to bodies-politic by [the King or his predecessors]. . . . And further, that all such of the officers described in the said charters respectively as, by the terms of the said charters, were to be appointed by the governor of the colony of New York, with or without the advice and consent of the council of the said King, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this State, until otherwise directed by the legislature.”); PA. CONST. of 1776, § 9 (“The general assembly of the representatives of the freemen of Pennsylvania . . . shall have power to . . . grant charters of incorporation . . .”).

⁶ MCBAIN, *supra* note 2, at 6-9 (describing, as an example, the legislature’s frequent amendment of the New York City charter).

⁷ *Id.* at 5-6.

⁸ ALA. CONST. art. X, § 11 (“A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.”); ARIZ. CONST. art. XIII, § 2; CAL. CONST. art. XI, § 3(a); COLO. CONST. art. XX, § 6 (“The people of each city or town of this state . . . are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.”); FLA. CONST. art. VIII, § 1(g); GA. CONST. art. IX, § 2, para. 1; HAW. CONST. art. VIII, § 2; IOWA CONST. art. III, §38A (“Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government”); KAN. CONST. art. XII, § 5 (“Cities are hereby empowered to determine their local affairs and government”); LA. CONST. art. VI, § 5 (“Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section.”); ME. CONST. art. VIII, § 1 (“The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.”); MD. CONST. art. XI-E, § 3; MASS. CONST. amend. art. II, § 2 (“Any city or town shall have the power to adopt or revise a charter or to amend its existing charter”); MICH. CONST. art. VII, § 22; MINN. CONST. art. XII, § 4 (“Any local government unit when authorized by law may adopt a home rule charter for its government.”); MO. CONST. art. VI, § 19; MONT. CONST. art. XI, § 5; N.H. CONST. pt. I, art. 39; N.M. CONST. art. X, § 6(c); N.Y. CONST. art. IX, § 2(c) (“[E]very local government shall have power to adopt and amend local laws not inconsistent

Although “home rule” has proved a difficult term to define, it is thought to encompass a collective’s ability to create a charter, amend or repeal that charter, and govern on issues of local concern.⁹ The latter ability – local self-government – animates the legal issues in this Note.

II. A BRIEF HISTORY OF SEX OFFENDER REGULATION

Crimes against children are the worst sort of offenses; sexually-based crimes against children are rightly-considered worse still. According to the Bureau of Justice Statistics, about one in five inmates in state prisons in 1991 said they had committed offenses against children, and seven in ten of those offenders reported that their crimes were sexual in nature.¹⁰ Three quarters of the victims of child sexual abuse were female; three quarters of all child victims were abused in their homes.¹¹ Most insidious, one third of all relevant inmates had abused their own children, while half of the inmates were friends, acquaintances, or relatives other than parents of their victims.¹² Only about one of every seven sex offenders were strangers to their victims.¹³ Startling

with the provisions of this constitution or any general law relating to its property, affairs or government and . . . every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to [certain] subjects”); N.D. CONST. art. VII, § 6; OHIO CONST. art. XVIII, § 7; OKLA. CONST. art. XVIII, § 3(a) (“Any city [of a certain size] may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State”); OR. CONST. art. VI, § 10 (“[V]oters of any county . . . may adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern.”); PA. CONST. art IX § 2 (“Municipalities shall have the right and power to frame and adopt home rule charters.”); R.I. CONST. art. XIII, § 2; S.D. CONST. art. IX, § 2 (“Any county or city or combinations thereof may provide for the adoption or amendment of a charter.”); TENN. CONST. art. XI, § 9 (“Any municipality may by ordinance submit to its qualified voters in a general or special election the question: ‘Shall this municipality adopt home rule?’”); TEX. CONST. art XI, § 5; UTAH CONST. art XI, § 5; WASH. CONST. art. XI, § 4 (“Any county may frame a ‘Home Rule’ charter for its own government subject to the Constitution and laws of this state”); W. VA. CONST. art VI, § 39(a); WIS. CONST. art. XI, § 3(1) (“Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village.”).

⁹ Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 644-45 (discussing confusion over a concrete definition of home rule, but couching the political definition as “synonymous with local autonomy” and the legal definition as “a particular method for distributing power between state and local governments”).

¹⁰ LAWRENCE A. GREENFIELD, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *CHILD VICTIMIZERS: VIOLENT OFFENDERS AND THEIR VICTIMS*, at iv (1996).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

though these statistics may be, they do not reflect the most common perceived profile of a sexual offender. Horrific crimes, like those against Jacob Wetterling or Megan Kanka,¹⁴ perpetuate the perception that strangers lurking in one's neighborhood constitute the most significant threat to children.¹⁵

American society responded to this perceived threat most vociferously in the 1990s, although criminal law has addressed sexually-based crimes in a variety of ways throughout the twentieth century.¹⁶ Psychologists became interested in "sexual psychopaths" in the 1930s and their research had an important influence on civil commitment laws,¹⁷ which remain controversial as applied to sex offenders.¹⁸ Yet sex offender laws as we know them did not develop in earnest until the 1990s – and these laws emerged in response to well-publicized crimes against children.¹⁹ In 1990, Washington State became the first state to enact a comprehensive scheme for regulating sex offenders.²⁰ Many states, including New York,²¹ followed suit over the next two decades.

A. *The Jacob Wetterling Act & Its Progeny*

In 1994, the United States Congress enacted the first federal scheme governing sex offender registries.²² Tucked into that year's Violent Crime Control and Law Enforcement Act, the Jacob Wetterling Act required states to

¹⁴ See Karen J. Terry & Alissa R. Ackerman, *A Brief History of Major Sex Offender Laws*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 65, 79-80 (Richard G. Wright ed., 2009).

¹⁵ For an overview of the varieties of sexual offender diagnoses, see William L. Marshall, *Diagnosis and Treatment of Sexual Offenders*, in *THE HANDBOOK OF FORENSIC PSYCHOLOGY* 790, 791-95 (Irving B. Weiner & Allen K. Hess eds., 3d ed. 2006).

¹⁶ Terry & Ackerman, *supra* note 14, at 67 (describing women's advocacy during the Progressive Era as an early influence on rape law).

¹⁷ See *id.* at 67-72.

¹⁸ See e.g., *United States v. Comstock*, 551 F.3d 274, 276 (4th Cir. 2009), *rev'd*, 130 S. Ct. 1949 (2010) (describing how civil commitment statutes for sex offenders had "divided trial courts across the nation").

¹⁹ See Terry & Ackerman, *supra* note 14, at 74-86 (detailing several of these well-known offenses and the legislation that followed).

²⁰ See *id.* at 74. Washington's law, like those that would follow, came in response to shocking crimes against young children. Both of the offenders involved had made statements prior to their offenses that they intended to commit such acts, and [one] even noted that if he had the chance he would do it again. Because both men had served finite sentences, the state of Washington could do nothing to keep them incapacitated or to monitor their whereabouts in the community.

Id.

²¹ See *infra* Part III.

²² Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038 (1994) (codified at 42 U.S.C. § 14071 (2006)).

create and maintain registries to track “sexually violent predator[s]”²³ or those convicted of “sexually violent offenses.”²⁴ A court, informed by relevant experts, decides whether an individual qualifies as a sexually violent predator.²⁵ Upon a qualifying sex offender’s release from prison, the individual must register with the state where he plans to reside and inform the state of any changes in his address.²⁶ Furthermore, the statute requires states to pass along offenders’ registration information to both state and national databases, which are designed to aid law enforcement officers.²⁷

As enacted in 1994, the Jacob Wetterling Act was merely a registration statute.²⁸ That changed after a released sex offender raped and murdered seven-year-old Megan Kanka in New Jersey.²⁹ Megan’s murderer lived in her neighborhood, and although he had committed sex crimes before, neither Megan’s parents nor the wider community knew about his criminal history.³⁰ New Jersey enacted “Megan’s Law,”³¹ which allows law enforcement officials to release information about registered sex offenders “when the release of the information is necessary for public protection.”³² Congress followed New Jersey’s lead and integrated Megan’s Law into the Jacob Wetterling Act in 1996.³³

²³ 42 U.S.C. § 14071(a)(3)(C) (2006) (defining “sexually violent predator” as “a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses”).

²⁴ § 14071(a)(3)(B) (defining “sexually violent offenses” as “any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse . . .”).

²⁵ § 14071(a)(2)(A).

²⁶ § 14071(b)(1) (outlining information that the state must provide to qualifying sex offenders); *id.* § 14071(d) (creating a penalty for offenders who fail to register).

²⁷ § 14071(b)(2).

²⁸ Caroline Louise Lewis, *The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act: An Unconstitutional Deprivation of the Right to Privacy and Substantive Due Process*, 31 HARV. C.R.-C.L. L. REV. 89, 90 (1996).

²⁹ See Terry & Ackerman, *supra* note 14, at 79.

³⁰ *Id.* at 80 (describing the crusade of Maureen Kanka, Megan’s mother, to bolster the Jacob Wetterling Act’s effect by informing communities where sex offenders lived).

³¹ Megan’s Law, 1994 N.J. Sess. Law Serv. ch. 133 (Assembly 84) (West) (codified at N.J. STAT. ANN. §§ 2C:7-1 to 2C:7-23 (West 2010)).

³² Megan’s Law § 2C:7-5(a).

³³ Megan’s Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345, 1345 (1996) (codified at 42 U.S.C. § 14071(e)(1) (2006)) (“The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.”). In 2002, a registered sex offender unsuccessfully challenged a state community notification statute. *Conn. Dep’t of Pub. Safety v. Doe*, 538 U.S. 1, 7-8 (2002). For criticism of the efficacy of community notification statutes, see Brief for Association for the Treatment of Sexual Abusers as Amicus Curiae Supporting Respondents, *Connecticut Department of Public*

Ten years later, the Jacob Wetterling Act and Megan's Law were integrated into the Adam Walsh Child Protection and Safety Act of 2006, a comprehensive sex offender supervision and management scheme.³⁴ The Sex Offender Registration and Notification Act ("SORNA") that composes Title I of the Adam Walsh Act classifies sex offenders by "tiers" based upon the gravity of the crimes of which they were convicted.³⁵ SORNA imposes more rigorous punishments upon sex offenders who fail to register or do so inaccurately³⁶ and also requires more intensive information gathering and dissemination on the part of the states.³⁷

B. *Sex Offender Residency Restrictions*

The 1990s saw a progression of laws designed to manage the problem of sex offenders in communities: the Jacob Wetterling Act required states to keep track of sex offenders, Megan's Law allowed law enforcement officials to inform communities about sex offenders who lived nearby, and the Adam Walsh Act consolidated and strengthened those provisions. Residency restrictions were the next logical step in this progression. Once states and communities knew where sex offenders lived, they took steps to keep those offenders from living too close to vulnerable populations.

Residency restrictions, broadly, forbid individuals who have been convicted of sex crimes from living within a certain distance of places where children are thought to congregate.³⁸ One authority posits that the most common distance requirements are between 1000 and 2000 feet, while the areas protected usually include "schools, parks, playgrounds, and day care centers, [although] some laws include other facilities such as arcades, amusement parks, movie theaters, youth sports facilities, school bus stops, and libraries."³⁹ Legislators

Safety, 538 U.S. 1 (2003) (No. 01-1231), 2002 WL 31120959, at *9-14 [hereinafter ATSA Brief].

³⁴ Pub. L. No. 109-248, 120 Stat. 587 (codified as amended in scattered sections of U.S.C.).

³⁵ 42 U.S.C. §§ 16911(2)-(4) (2006).

³⁶ § 16913(e) (requiring states to punish sex offenders' failures to appropriately register by at least one year's imprisonment).

³⁷ § 16914 (requiring a sex offender to provide and states to retain information concerning, among other things, the sex offender's residence, places of employment or education as well as the sex offender's photograph, fingerprints, and DNA sample). See Robin Morse, Note, *Federalism Challenges to the Adam Walsh Act*, 89 B.U. L. REV. 1753 (2009) for a thoughtful analysis of the Act's interaction with the Commerce Clause of the United States Constitution.

³⁸ Jill Levenson, *Sex Offender Residence Restrictions*, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS*, *supra* note 14, at 267, 267 ("Residence restrictions typically prohibit individuals convicted of sex crimes from residing within 500 to 2,500 feet of schools, parks, playgrounds, day care centers, bus stops, and other places where children are commonly present.").

³⁹ *Id.* at 268. For a discussion of the nature and breadth of sex offender residency

seem to respond to a public need for such restrictions, although it is less than clear that residency restrictions are either necessary or effective.⁴⁰

Indeed, both legislators and private individuals seem to assume – wrongly – that sex offenders are incorrigible recidivists and, therefore, are exceedingly likely to reoffend once they are released from prison.⁴¹ A study that surveyed Floridians about sex offenders found that

[t]hose surveyed appeared to believe that sex offenders have high recidivism rates, that many sex offenses are committed by strangers, and that nearly half of sex offenses are reported to authorities. They appeared to be somewhat skeptical about the value of psychological therapy in preventing recidivism, were concerned that sex crime rates are rising, and viewed sex offenders as more likely to reoffend than other types of criminals.⁴²

The study's authors also found that community members dramatically overestimated sex offender recidivism rates, perhaps doubling or tripling the actual rates.⁴³ A meta-analysis of eighty-two different studies of sex offender recidivism rates found that the average rate of sexual recidivism was about 13.7% over five to six years.⁴⁴

Furthermore, evidence is scant regarding sex offenders' habits once they are released from prison. A review of the relevant literature – which is, again,

restrictions across the United States, see Michelle L. Meloy, Susan L. Miller & Kristin M. Curtis, *Making Sense out of Nonsense: The Deconstruction of State-Level Sex Offender Residence Restrictions*, 33 AM. J. CRIM. JUST. 209, 214-20 (2008).

⁴⁰ Levenson, *supra* note 38, at 273; *see also* ATSA Brief, *supra* note 33, at *9 (“Popular and political mythology lumps all sex offenders together. . . . The reality is that there are many distinct categories of sex offenders, with different motivations and different prognoses.”).

⁴¹ Levenson, *supra* note 38, at 273-74. For example, Levenson points out that while some politicians claim that sex offenders have a 49% recidivism rate, the study upon which that claim is based did not distinguish between sex offenders who committed new sex crimes and those who committed non-sex crimes. *Id.* The data revealed that only 6% of those sex offenders who were arrested for new crimes committed new *sex* crimes. *Id.* at 274.

⁴² Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 ANALYSES OF SOC. ISSUES & PUB. POL'Y 137, 148 (2007). The study authors concluded that, “[t]he hypothesis that community members hold inaccurate beliefs about sex offenders was supported.” *Id.* at 153.

⁴³ *Id.* Although the authors did not ask respondents for the sources of information for their beliefs, the authors speculated that the media is the most likely source of such information for most people. *Id.*

⁴⁴ R. Karl Hanson & Kelly E. Morton-Bourgon, *The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies*, 73 J. CONSULTING & CLINICAL PSYCHOL. 1154, 1156-57 (2005). The aggregated studies originated in the United States, Canada, the United Kingdom, Austria, Sweden, Australia, France, the Netherlands, and Denmark. *Id.* at 1155.

sparse – revealed no compelling correlation between a sex offender’s likelihood to commit another sex crime and his proximity to potential victims.⁴⁵ One authority concludes that “[n]o empirical evidence exists to suggest that residential restrictions are likely to be a successful strategy for deterring sex crimes, preventing recidivism, or protecting children.”⁴⁶

C. *The Effects & Efficacy of Residency Restrictions*

Residency restrictions create significant logistical problems for sex offenders in search of places to live.⁴⁷ For example, the County of Rensselaer, New York, formerly restricted sex offenders from living within 2000 feet of several locations.⁴⁸ In December of 2006, the local sheriff’s department demonstrated that, given the restriction, there was literally no place within the city limits of Troy, the county’s seat and most populous city,⁴⁹ where level two or level three sex offenders could live without violating the law.⁵⁰ One might respond that keeping sex offenders away from populous areas, where populations of children are more concentrated, might keep them from temptation and, concomitantly, protect children. However, sex offenders, when released, already face a significant – and not undeserved – social stigma. Accordingly, their transitions back into society are likely made easier when they are surrounded by supportive friends and family. Residency restrictions can thus have the perverse effect of isolating sex offenders.

The plight of Lee Chang, a sex offender registered in Florida, proves instructive on this point. In anticipation of her son’s release, Chang’s mother looked at hundreds of potential dwellings, nearly all of them off-limits given

⁴⁵ Levenson, *supra* note 38, at 277. For a review of recent social science research regarding the efficacy of residency restrictions, see Meloy et al., *supra* note 39, at 211-12.

⁴⁶ Levenson, *supra* note 38, at 278.

⁴⁷ See *Doe v. Miller*, 405 F.3d 700, 706 (8th Cir. 2005), *cert. denied*, 546 U.S. 1034 (2005) (observing that Iowa residency restrictions may have exacerbated some registered sex offenders’ difficulties finding housing).

⁴⁸ Rensselaer Cnty., NY, Local Law No. 6, § 3 (2006), available at <http://www.rensselearcounty.org/Local%20Laws/2006%20Local%20Laws.pdf> (“A sex offender as herein defined shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility . . .”). The New York State Supreme Court later found that this law was preempted by state sex offender residency restrictions. *Doe v. Cnty. of Rensselaer*, No. 223240, 2009 WL 2340873, at *3 (N.Y. Sup. Ct. June 29, 2009).

⁴⁹ See National Association of Counties, *Find a County*, NACO.ORG, <http://www.naco.org/Counties/Pages/FindACounty.aspx> (accessed by clicking on New York State and selecting Rensselaer in the list of counties) (last visited Mar. 27, 2011).

⁵⁰ See Bob Gardinier, *Law Leaves Sex Offenders Little Room*, THE TIMES UNION (Albany, N.Y.), Dec. 1, 2006, at B3 (“When the new restrictions on where level 2 and 3 sex offenders may live in the county was fed into . . . software developed by the Bureau of Research Information Services, the whole city of Troy was off-limits.”).

her son's status as a sex offender.⁵¹ She eventually settled on a house only to learn from Chang's parole officer that the dwelling was too close to a school.⁵² Chang's mother told a local newspaper that she had hoped to help ease her son's transition from incarceration; she had planned to require Chang to pay rent and see a counselor.⁵³ Unable to live with his mother, Chang began living out of his car.⁵⁴

Chang suffered a transient, isolated existence when a supportive family environment was available. On its face, this arrangement seems to undermine the stated purpose of many sex offender residency restrictions – to prevent these individuals from offending again. Indeed, the social science literature suggests that housing instability is an important predictor of parolee misbehavior.⁵⁵ Similarly, the Colorado Department of Public Safety concluded that sex offenders who had social support systems, like families or employment relationships, had fewer parole violations than their unsupported peers.⁵⁶ These findings support the inference that sex offenders face a negative social stigma upon their release. One sex offender reflected upon the difficulties that mere notification requirements would pose for him upon release:

How in heaven's name is a pedophile going to stand a chance to change if when he gets out, everyone is notified about him? How can he get a job? How is he going to find a place to live? . . . Take me, for instance. My daughter has two children, so it would be inappropriate for me to move nearby when I got out of prison. . . . So, now, instead of being close to my family, having the security of my family around me – which would be

⁵¹ Georgia East, *Man Sues To Live with Mother*, SUN-SENTINEL (Fort Lauderdale, Fl.), Oct. 30, 2007, at 1B.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Levenson, *supra* note 38, at 280; see also ATSA Brief, *supra* note 33, at *13 (“Indiscriminate notification can contribute to unnecessary vilification of individuals who do not pose a risk Notification may result in loss of housing or employment and social stigmatization and condemnation that could impair the offender’s ability to successfully function in and contribute to the community.”); Meloy et al., *supra* note 39, at 212-13 (“The community reentry data on sex offenders and non-sex offenders argues that deleterious outcomes on these influential factors are likely to *increase* reoffending and *decrease* offender success.”). But see Conn. Dep’t Pub. Safety v. Doe, 538 U.S. 1, 6-7 (2002) (suggesting that the harm a registered sex offender suffers from notification is merely harm to her reputation and is thus not likely a “deprivation of a liberty interest”).

⁵⁶ COLO. DEP’T PUB. SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 3-4 (2004), available at <http://dcj.state.co.us/ors/pdf/docs/FullSLAFinal.pdf> (finding that high-risk sex offenders who had shared living arrangements were less likely to violate parole than their peers who did not have such arrangements and that their roommates tended to report violations to parole officers).

very helpful – I couldn't do it. I'd have to get the hell away, move down someplace into a metropolitan area where I'm more anonymous. So I'd be all alone. I'd make it, but that's not the way to start me off on the right track.⁵⁷

D. *The Right To Live Where One Wants?*

The Supreme Court has not yet recognized a right to live where one pleases as part of Fourteenth Amendment substantive due process. In a posture similar to *Wray v. County of Albany* and *People v. Blair*, several released sex offenders in Iowa challenged a state residency restriction on constitutional grounds, among them the substantive due process right to live where they desired.⁵⁸ The district court in that case did not address the “right to reside” argument, although it may have subsumed some of that reasoning in its holding that the relevant statute *did* violate the plaintiffs’ right to travel.⁵⁹ On appeal to the Eighth Circuit, the plaintiffs-appellees argued that there was such a right, although they cited only two cases in support of this argument.⁶⁰ The Eighth Circuit Court of Appeals rightly characterized this argument as undeveloped.⁶¹

Even so, the plaintiffs-appellees in *Doe v. Miller* laid some groundwork that suggests a substantive due process right to live where one pleases. The Supreme Court will recognize an unenumerated right as part of the Fifth and Fourteenth Amendments to the Constitution only if the specified right is, “objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’”⁶² The Court also requires a “careful description” of the liberty interest at issue.⁶³

The right at issue for individuals like the Does in Iowa and *Wray* and *Blair* in New York might be traced to the cases that appellees in *Miller* cited. *United States v. Wheeler*, the earlier of the two, was a privileges and immunities

⁵⁷ PAMELA D. SCHULTZ, NOT MONSTERS: ANALYZING THE STORIES OF CHILD MOLESTERS 63 (2005).

⁵⁸ See *Doe v. Miller*, 298 F. Supp. 2d 844, 847 (S.D. Iowa 2004).

⁵⁹ See *id.* at 875 (“As the term is defined, sleep is the only condition for establishing a residence that would be subject to the two thousand foot restriction. Thus, a person may have innumerable transitory residences that are newly established each time he is unfortunate enough to fall asleep.”).

⁶⁰ Brief for Appellee at 46-47, *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) (No. 04-1568), 2004 U.S. 8th Cir. Briefs LEXIS 273 at *46-47 (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1922); *United States v. Wheeler*, 254 U.S. 281 (1920)).

⁶¹ *Miller*, 405 F.3d 700, 714 (8th Cir. 2005), *cert. denied* 546 U.S. 757, 757-58 (2005) (citing *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Moore v. E. Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion); *Palko v. Conn.*, 302 U.S. 319, 325-26 (1937)).

⁶² *Glucksberg*, 521 U.S. at 720 (quoting *Moore*, 431 U.S. at 503; *Palko*, 302 U.S. at 325-26; *Snyder v. Mass.*, 291 U.S. 97, 105 (1934)).

⁶³ *Reno v. Flores*, 507 U.S. 292, 302 (1993); see *Glucksberg*, 521 U.S. at 720.

decision following the *Slaughter House Cases*.⁶⁴ There, several Arizonans challenged their forcible deportation from Arizona to New Mexico.⁶⁵ The Court reasoned:

In all the States from the beginning down to the adoption of the Articles of Confederation the citizens thereof possessed the fundamental right, inherent in citizens of all free governments, *peacefully to dwell within the limits of their respective States*, to move at will from place to place therein, and to have free ingress thereto and egress therefrom, with a consequent authority in the States to forbid and punish violations of this fundamental right.⁶⁶

Similarly, in *Meyer v. Nebraska*, the Court dropped a dictum that indicates that the Constitution guarantees the right to reside in a place of one's choosing.⁶⁷ In *Meyer*, a schoolteacher appealed his conviction for teaching German in a parochial school, an act that state law forbade.⁶⁸ Although the Court ultimately articulated the relevant rights in that case as those of the teacher to teach and of parents to educate their children,⁶⁹ the Court here reasoned:

Without doubt, [the term "liberty"] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, *establish a home* and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.⁷⁰

⁶⁴ *Wheeler*, 254 U.S. 281, 296 (1920) (citing *The Slaughter House Cases*, 83 U.S. (16 Wall.) 36, 55 (1872) ("Now, what are 'privileges and immunities' in the sense of the Constitution? They are undoubtedly the personal and civil rights which usage, tradition, the habits of society, written law, and the common sentiments of people have recognized as forming the basis of the institutions of the country. The first clause in the fourteenth amendment does not deal with any interstate relations, nor relations that depend in any manner upon State laws, nor is any standard among the States referred to for the ascertainment of these privileges and immunities. It assumes that there were privileges and immunities that belong to an American citizen, and the State is commanded neither to make nor to enforce any law that will abridge them.")).

⁶⁵ *Wheeler*, 254 U.S. at 292 ("[T]he overt acts alleged were: The arming of the conspirators; the seizure and holding of the persons named until by means of a railway train procured for that purpose they were forcibly transported into New Mexico and in that State released under threat of death or great bodily harm should they ever return to the State of Arizona.").

⁶⁶ *Id.* at 293 (emphasis added).

⁶⁷ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1922).

⁶⁸ *Id.* at 396.

⁶⁹ *Id.* at 400.

⁷⁰ *Id.* at 399 (emphasis added).

Both cases, of course might be written off – the Privileges and Immunities Clause is now dead-letter⁷¹ and the rights articulated in *Meyer* involved the family and children, interests distinguishable from the right to choose the actual location to reside. Moreover, neither case yields language specific enough to serve the interests of individuals in states like Iowa or New York, where the individuals are not banished from the state but are, instead, severely restricted in their choices of residence.

Additionally, the fact that banishment, as a form of punishment, has a long history in the common law⁷² may undermine the argument that the right to live where one pleases has “deep roots” in our history and tradition. This point, of course, raises the problem of defining the right narrowly or generally: Is this the right of convicted sex offenders, post-release, to live within 2000 feet of schools and day care centers or the right of individuals to live where they choose? If the former, the fact that English and American common law has used banishment as a punishment for convicts for some time would seem to undermine the narrowly-drawn right. Additionally, the right to choose where one lives has affinities with the right to accumulate property – a right that the Court has never recognized as part of substantive due process.

III. NEW YORK STATE’S SEX OFFENDER LAWS & THE MUNICIPAL RESPONSE TO THE THREAT OF SEX OFFENDERS IN NEW YORK

A. *New York State’s Sex Offender Management Scheme*

The New York State Legislature enacted a comprehensive sex offender management scheme in 1996 – the Sex Offender Registration Act (SORA)⁷³ – to bring New York into compliance with the Jacob Wetterling Act.⁷⁴ SORA, Article 6-C of the Correction Law, incorporates the requirements of the Adam Walsh Act, including the enhanced information-gathering requirements for the state⁷⁵ as well as heightened penalties for non-complying sex offenders.⁷⁶

⁷¹ Rumblings at oral argument in *McDonald v. City of Chicago* notwithstanding. See Transcript of Oral Argument at 3-12, *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) (No. 08-1521).

⁷² See Peter D. Edgerton, Comment, *Banishment and the Right to Live Where You Want*, 74 U. CHI. L. REV. 1023, 1028-43 (2007) for an excellent history of the use of banishment in the United States. See also Kari White, Note, *Where Will They Go? Sex Offender Residency Restrictions as Modern-Day Banishment*, 59 CASE W. RES. L. REV. 161, 171-74 (2008).

⁷³ N.Y. CORRECT. LAW § 168 (McKinney 2009); see also An Act to Amend the Correction Law, in Relation to Enacting the “Sex Offender Registration Act”, 1995 N.Y. Sess. Laws ch. 192 (S. 11-B) § 1 (McKinney 1995).

⁷⁴ 1995 N.Y. Sess. Laws ch. 192 (S. 11-B) § 1.

⁷⁵ N.Y. CORRECT. LAW § 168-b (McKinney 2009) (requiring that the state collect fingerprints, physical descriptions, and photographs, among other things, to keep a proper sex offender registry).

⁷⁶ § 168-f.

SORA also empowers a board of examiners of sex offenders to assess the likelihood that any given individual will reoffend and to assign that individual a level of notification to reflect that likelihood.⁷⁷ After assessing a number of factors relevant to an individual's likelihood to reoffend, the board assigns an individual a designation of level one, two, or three; each designation corresponds to a predicted likelihood of reoffense.⁷⁸ Roughly, level one sex offenders are thought least likely to reoffend, while level three sex offenders are judged most likely to reoffend.⁷⁹

These designations become important in the context of New York's state residency restriction. New York State conditions certain sex offenders' release from prison on certain restrictions, including residency restrictions.⁸⁰ These restrictions are mandatory for individuals convicted of any of a number of sex offenses, including sexual assault, incest, and obscenity; individuals whose victims were younger than eighteen years old; and any sex offenders given a level three designation pursuant to section 168-1 of the Correction Law.⁸¹ An individual who has committed a qualifying offense or has been given a level three designation may not "knowingly enter[] into or upon any school grounds . . . or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present."⁸² On its face, this does not appear to be a residency restriction, but the statute imports the definition of "school grounds" from Article 220 of the Penal Law, which governs Controlled Substances Offenses.⁸³ The relevant definition of "school grounds" forbids the implicated sex offenders from "knowingly entering"

any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or . . . any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public"

⁷⁷ § 168-1(1), (6).

⁷⁸ § 168-1(6)(a)-(c).

⁷⁹ *Id.* It is worth noting that this scheme is distinct from the "tier" classification that the Adam Walsh Act establishes – the Adam Walsh Act assigns "tiers" based upon the severity of the offense, while New York's SORA assigns "designations" based upon the likelihood of reoffense. See 42 U.S.C. §§ 16911(2)-(4) (2006); see also *supra* text accompanying note 35.

⁸⁰ N.Y. PENAL LAW § 65.10(4-a) (McKinney 2009).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* (using the definition of "school grounds" found in N.Y. PENAL LAW § 220.00(14) (McKinney 2009)).

shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.⁸⁴

Effectively, this statute precludes sex offenders in New York State from living within one thousand feet of any school or day care center. The State Legislature added the residency restriction to section 65.10 in 2005.⁸⁵

Beyond residency restrictions, New York does have programs designed to manage sex offenders once they finish their sentences.⁸⁶ As aforementioned, sex offenders are subject to post-release supervision through the parole board. Moreover, the parole board must notify local Departments of Social Services (DSS) upon the release of level two or three sex offenders who are likely to need homeless intervention services.⁸⁷ The Office of Temporary Disability Assistance promulgates rules designed to help local DSS place those level two and three sex offenders in need of housing.⁸⁸

In the shadow of New York State's regulatory program, municipalities and counties across the state designed their own laws to restrict where sex offenders may live or travel. Twenty-one counties have passed such laws (three have been challenged or repealed) and municipalities in twenty-seven counties have enacted their own laws.⁸⁹ All told, thirty-seven counties either enacted county-level residency restrictions at one time or encompass municipalities that have independently enacted residency restrictions.⁹⁰ As of December 3, 2009, ninety-six New York municipalities – sixteen cities, forty-eight towns, and thirty-four villages – have passed their own versions of such laws.⁹¹

⁸⁴ § 220.00(14) (emphasis added).

⁸⁵ Assemb. B. 8894, 228th Legis. Sess. (N.Y. 2005) (enacted). The State added this restriction to its sex offender scheme while several municipalities in upstate New York pondered similar laws. *See infra* notes 96-98 and accompanying text.

⁸⁶ *See* N.Y. STATE DIV. OF PROB. AND CORR. ALTS., NEW YORK STATE PROBATION SEX OFFENDER MANAGEMENT PRACTITIONER GUIDANCE 31-35 (2009), available at <http://dpc.state.ny.us/pdfs/sompractitionerguidanceluly2009.pdf> (detailing best practices for post-release supervision of sex offenders).

⁸⁷ N.Y. EXEC. LAW § 259-c(17) (McKinney 2010).

⁸⁸ N.Y. COMP. CODES R. & REGS. tit. 9, § 365.3 (2009) (“These regulations further the State’s coordinated and comprehensive policies [in sex offender management, placement, and housing], and are intended to provide further guidance to relevant state and local agencies in applying the State’s approach.”). In its statement of purpose, the state regulation records guiding principles for several agencies, which illustrates a nuanced understanding of the difficulties sex offenders face. § 365.3 (d)(i)-(vi); § 365.4 (outlining procedures a probation officer ought to follow when considering approval for housing for a level one or two sex offender).

⁸⁹ N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., NYS SEX OFFENDER RESIDENCY RESTRICTION LAWS 1 (2009).

⁹⁰ *Id.*

⁹¹ *Id.* at 2.

B. *County Residency Restrictions*

In July of 2005, several municipalities in upstate New York began to develop plans to address the presence of sex offenders in their communities.⁹² During this time, United States Senator Charles Schumer appeared across New York to stump for a Senate Bill designed to streamline sex offender programs nationally.⁹³ Perhaps spurred by this campaign,⁹⁴ several county legislatures began considering enhanced restrictions on released sex offenders, including global positioning system (GPS) tracking⁹⁵ and, more prescient, residency restrictions.⁹⁶

Albany County, for one, considered a residency restriction plan that would preclude certain sex offenders from living within 2000 feet of certain areas, ostensibly to keep dangerous individuals from places in which children congregate.⁹⁷ Simultaneously, the New York State Legislature was at work

⁹² See Bob Gardinier, *County To Offer a Closer Watch on Sex Offenders*, THE TIMES UNION (Albany, N.Y.), July 21, 2005, at F3.

⁹³ See Press Release, Senator Charles Schumer, *Schumer: Thousands of Sex Offenders are Unlisted and Undetected Living in NYC – Patchwork of State Sex Offender Laws Create Massive Loopholes* (July 10, 2005), available at http://schumer.senate.gov/new_website/record.cfm?id=260682&. Senator Schumer joined district attorneys from upstate New York to advocate a national sexual offender registry with accompanying community notification provisions. See Paul Grondahl, *New Sex-Crime Registry Sought*, THE TIMES UNION (Albany, N.Y.), July 6, 2005, at B3 (recording positive commentary on the bill from district attorneys of Albany, Rensselaer, and Schenectady counties). The Senate passed the bill, the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Grant Act, in May of 2006. See S. 1086, 109th Cong., 152 CONG. REC. S4079-89 (as passed by Senate, May 4, 2006).

⁹⁴ One local paper quoted Senator Schumer indirectly: “Schumer said sex offenders merited special treatment because the vast majority cannot be rehabilitated and their recidivism rate is higher than other criminals’.” Grondahl, *supra* note 93, at B3. This assertion reflects wide-spread beliefs about sex offenders, but does not reflect reality. See Hanson & Morton-Bourgon, *supra* note 44, at 1156-57, and accompanying text.

⁹⁵ The Albany County Legislature funded the purchase of GPS devices in 2005 and resolved to direct the county Probation Department to establish a voluntary GPS monitoring program in 2007. Albany County Leg. Res. 329 (N.Y. 2007), available at <http://albanycounty.com/departments/legislature/resolutions/2007/0709/07-329.pdf>

⁹⁶ See, e.g., Carol DeMare, *City Seeks Public Input on Sex Offender Plan*, THE TIMES UNION (Albany N.Y.), Aug. 23, 2005, at B1 (describing hearing of Albany County Legislature regarding sex offender residency plan proposed about three months earlier).

⁹⁷ *Id.* (describing the proposal, which was apparently crafted to resemble a similar Iowa statute that survived review in the Eighth Circuit Court of Appeals); see also IOWA CODE § 692A.114(2) (2010) (“A sex offender shall not reside within two thousand feet of the real property comprising a school or a child care facility.”); *Doe v. Miller*, 418 F.3d 950, 950 (8th Cir. 2005) (denying appeal from sex offenders who wished to stay the effect of an Iowa residency restriction statute that, they argued, was unconstitutional), *cert. denied* 546 U.S. 1034, 1034 (2005).

crafting its own residency restriction.⁹⁸ One local critic argued that, without a comprehensive, state-wide plan to govern where sex offenders may live, “what we’ll have is a handful of counties with restrictions. . . . And in the others? Children will be molested.”⁹⁹ Meanwhile, the Albany County Legislature’s proposal stalled as similar laws across the state were challenged.¹⁰⁰ Several months after the proposal was made, the legislature faced potential state and federal preemption problems with the law.¹⁰¹ Beyond legal challenges, legislators wrestled with the implications a residency restriction of 2000 feet from the listed landmarks would have on suburban areas.¹⁰² Legislator Shawn Morse, one of the bill’s sponsors, spoke to *The Times Union* in May of 2006 about the changes: “We wanted to accomplish two things. . . . We want to keep sex offenders away from children and comfort some legislators. [The revised bill allows] for places where [sex offenders] can live and it’s not sending them all to one spot.”¹⁰³ The new bill, which the legislature eventually passed, precluded sex offenders from living within only 1000 feet – as opposed to the previously-proposed 2000 feet – of the selected areas.¹⁰⁴

Just a few months later, on July 19, 2006, the Albany County Legislature passed Local Law Number 8 for 2006: “A local law . . . establishing residency restrictions in the County of Albany for sex offenders who have committed criminal offenses against minors.”¹⁰⁵ The law precluded sex offenders from living within 1000 feet of any elementary or secondary school or child care

⁹⁸ Michele Morgan Bolton, *State Urged to Regulate Sex Offenders’ Housing*, THE TIMES UNION (Albany N.Y.), Aug. 25, 2005, at A3 (describing then-pending proposals in both houses of the New York State Legislature). For an overview of the information that State Counsel to the Governor prepared related to this bill, see N.Y. Bill Jacket, 2005 A.B. 8894, ch 544 at 3-20, available at <http://image.iarchives.nysed.gov/images/images/81751.pdf>. Notably, New York City Mayor Michael Bloomberg thought that the bill was not rigorous enough to be meaningful. *Id.* at 11-13.

⁹⁹ Bolton, *supra* note 98, at A3. In the same article, a law professor responded, “What are you going to do with [the sex offenders], send them to Australia? They have to be left enough room to live their lives. Children are everywhere.” *Id.* (quoting Professor Dan Moriarty of Albany Law School).

¹⁰⁰ See Carol DeMare, *Sex Offender Proposal Faces a Delay*, THE TIMES UNION (Albany N.Y.), Sept. 12, 2005, at B1 (describing several legislators’ hesitancy to pass a law that might subject the county to a lawsuit).

¹⁰¹ See Carol DeMare, *Legal Issues Stall Sex-Offender Bill*, THE TIMES UNION (Albany N.Y.), Feb. 13, 2006, at B3.

¹⁰² Carol DeMare, *County Sex Offender Bill Revised*, THE TIMES UNION (Albany N.Y.), May 9, 2006, at B1.

¹⁰³ *Id.* More thoughtful legislatures have considered where, if anywhere, sex offenders may live after such residency restrictions become law. See *infra* note 50 and accompanying text.

¹⁰⁴ See DeMare, *supra* note 100, at B1.

¹⁰⁵ Albany, N.Y., Local Law No. 8 (2006).

facility, and punished violations of the law as misdemeanors.¹⁰⁶ Thirty-three legislators voted for the law, while only two voted against.¹⁰⁷

C. *State Preemption Challenges*

Local Law No. 8 became effective on September 1, 2006.¹⁰⁸ Two years later, James Blair, a registered sex offender, challenged the law.¹⁰⁹ Blair had been charged with a violation of the statute in May of 2008 and moved to dismiss the charge, alleging that New York State Law preempted the law.¹¹⁰ Blair alleged multiple defects with the law, but Judge Thomas Keefe disposed of the County Law based solely upon state preemption.¹¹¹

City Court first examined the New York State Constitution's Home Rule Clause, which allows municipalities to make local laws "not inconsistent with the provisions of this constitution or any general law."¹¹² Despite this seemingly-broad deference to municipal law-making, state law may preempt municipal law.¹¹³ The State may preempt an entire field of regulation simply by demonstrating its intent to do so; in such cases, state law trumps local laws in the same field.¹¹⁴ Indeed, local law need not run counter to state law – so long as the State has demonstrated its desire to regulate an entire area of law, local laws have no place.¹¹⁵

Furthermore, the State Legislature need not state that it intends to preempt municipal law on a particular issue. Courts will infer the State's intent to occupy a field of law-making if the Legislature enacts a "comprehensive or detailed [regulatory] scheme in a given area."¹¹⁶ Judge Keefe reasoned that New York's Sex Offender Registration Act (SORA) was just such a

¹⁰⁶ *Id.* § 3. Interestingly, the law defined "residence" as "the place where a person sleeps, which may include more than one location, and may be mobile or transitory." § 2(c). While this point is now moot, one might have challenged this law based merely upon its breadth – overnight guests, hotel patrons, or those dozing while waiting in line for concert tickets could all fall under the purview of this provision.

¹⁰⁷ *Id.* § 7.

¹⁰⁸ *Id.*

¹⁰⁹ *See* *People v. Blair*, 873 N.Y.S.2d 890, 891 (Albany City Ct., 2009).

¹¹⁰ *Id.*

¹¹¹ *See id.* at 893.

¹¹² N.Y. CONST. art. 9, § 2(c) (the Home Rule Clause); *see also* N.Y. MUN. HOME RULE LAW § 10(1)(i) (McKinney 2009) .

¹¹³ *See Jancyn Mfg. Corp. v. Suffolk Cnty.*, 518 N.E.2d 903, 905 (N.Y. 1987).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *See Inc. Vill. of Nyack v. Daytop Vill., Inc.*, 583 N.E.2d 928, 930 (N.Y. 1991); *see also* *N.Y. State Club Ass'n, Inc. v. City of N.Y.*, 505 N.E.2d 915 (N.Y. 1987). Mere overlap between state and local laws is not, however, enough to find preemption. *See Inc. Vill. of Nyack*, 583 N.E.2d at 930.

comprehensive and detailed regulatory scheme.¹¹⁷ As discussed, in response to the federal mandate created by the Jacob Wetterling Act,¹¹⁸ New York enacted several statutes designed to manage sex offenders upon their release from prison.¹¹⁹ More presciently, Judge Keefe noted the growing suburban dissatisfaction with the effects of county residency restrictions:

The need for State-wide uniformity in the regulation and management of sex offenders is underscored by the recent publicized news reports that in response to a “clustering” of sex offenders in certain motels in the Town of Colonie, the Town Board has approved the creation of a task force to evaluate whether the Town can pass a more restrictive residency restriction than the existing Local Law No. 8. As was noted by Supreme Court, such County versus Town local legislative scrambling to pass the most restrictive residency laws is presently occurring, unchecked, throughout the State. As easily imagined and as was already noted by the Legislature, these “not in my backyard” local residency restrictions create great difficulties for the Division of Parole, local probation and social service agencies to locate appropriate housing for sex offenders.¹²⁰

All of this is to say that the county laws create more problems than they solve. They impose duplicative restrictions upon sex offenders, they undermine a state scheme of regulation that the state intended to be comprehensive, and they foment tension between urban and suburban areas when the concentrations of sex offenders shift in response to the regulations. Finally, and most perniciously, competing local regulation and its concomitant problems make it more difficult for the state to track and treat released sexual offenders.

The state supreme court addressed Local Law No. 8 a few months later, in July of 2009.¹²¹ Three registered sex offenders – Ethan Wray, a level two sex offender, Clark Carter, a level three sex offender, and James Goldston, a level two sex offender – sued Albany County after they were charged with violating Local Law No. 8.¹²² In a motion for summary judgment, the plaintiffs contended that the law should be invalidated because it had been preempted by state law.¹²³ Plaintiffs made arguments similar to those that Judge Keefe identified in *Blair*, pointing to a variety of state statutes to demonstrate state preemption of sex offender regulation.¹²⁴ The county, as defendant, conceded

¹¹⁷ *People v. Blair*, 873 N.Y.S.2d 890, 893 (Albany City Ct. 2009) (citing *People v. Oberlander*, No. 02-354, 2009 WL 415558, at *3 (N.Y. Sup. Ct. Jan. 22, 2009)).

¹¹⁸ See *supra* Part II.A.

¹¹⁹ See *supra* Part III.A.

¹²⁰ *Blair*, 873 N.Y.S.2d at 896-97 (citations omitted).

¹²¹ See *Wray v. Cnty. of Albany*, No. 2622-08, slip op. at 5 (N.Y. Sup. Ct. July 10, 2009) (on file with author).

¹²² *Id.* at 1-2.

¹²³ *Id.*

¹²⁴ *Id.* at 2-3.

that the law had been preempted but asserted that the preemption was limited to sex offenders who were subject to some kind of post-release supervision.¹²⁵ The county argued that the law was *not*, therefore, preempted as to those unsupervised sex offenders who might live within one thousand feet of schools or day care centers in Albany County.¹²⁶ The supreme court was not persuaded – the law was written broadly, to apply to all level two and three sex offenders, and the county’s new gloss on the language could not hold.¹²⁷

New York State Supreme Court heard a similar challenge, also in the summer of 2009, though this time Rensselaer County’s law faced the legal challenge.¹²⁸ The Rensselaer County Law was stricter than the recently-stricken Albany Law: level two or three sex offenders could not live within 2000 feet of elementary or secondary schools or child care facilities.¹²⁹ Judge Henry Zwack, echoing Judge Keefe, noted that this law created difficulties for released sex offenders because the county law was more stringent than the state law.¹³⁰ Specifically, the county law might keep paroled sex offenders from living in housing that state parole boards approved pursuant to state law.¹³¹

Moreover, the Rensselaer law applied even to sex offenders who were no longer supervised by the parole board, and who were thus not subject to the state residency restriction.¹³² The county law, therefore, cast a broader net than the state law. The supreme court ultimately relied upon the same reasoning that the Albany City Court articulated in *Blair*. Given the State’s expansive and detailed scheme for regulating sex offenders, New York clearly intended to occupy this particular field of regulation. Accordingly, the supreme court found the Rensselaer County law unenforceable.¹³³

¹²⁵ *Id.* at 4.

¹²⁶ *Id.* at 3-4.

¹²⁷ Moreover, Judge McDonough pointed to portions of the Executive Law and the Social Services Law, which impose certain restrictions on sex offenders not currently subject to post-release supervision. *Id.* at 2-3; see N.Y. EXEC. LAW § 259-a(9-a) (McKinney 2009); N.Y. SOC. SERVS. LAW § 20(8) (McKinney 2009). A state regulation filed with the Secretary of State after *Wray* mirrored this reasoning. See N.Y. COMP. CODES R. & REGS. tit. 9, § 365.3 (2009); *supra* note 88 and accompanying text.

¹²⁸ See *Doe v. Cnty. of Rensselaer*, No. 223240, 2009 WL 2340873 at *1 (N.Y. Sup. Ct. June 29, 2009).

¹²⁹ Rensselaer, N.Y., Local Law No. 6 § 3 (2006), available at <http://www.rensselaercounty.org/Local%20Laws/2006%20Local%20Laws.pdf>.

¹³⁰ *Doe*, 2009 WL 2340873, at *3.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

D. *The Suburban Push-back: The Next Generation of Sex Offender Residency Restrictions*

To many residents of upstate New York, sex offender residency restrictions may seem like failures, no matter one's opinion of the efficacy of the laws themselves. Those in favor of the policy that underpinned the laws were no doubt dissatisfied with their failure to stand up to state constitutional scrutiny. However, many residents might retort that the laws, though no longer controlling, worked too well. One of the untoward effects of residency restrictions is that they tend to push registered sex offenders away from population centers, where schools and other targeted areas tend to be numerous and clustered together, toward suburban and rural areas.¹³⁴ Predictably, suburban and rural residents object to this arrangement.

The obvious problem with residency restrictions is that sex offenders must live *somewhere*. In this way, residency restrictions promote something of a race to the bottom – the first municipalities to enact strict residency restrictions will manage to displace sex offenders most effectively. Communities that do not act quickly are left with higher concentrations of sex offenders.¹³⁵ Additionally, law enforcement resources tend to be spread thin in suburban and rural areas.¹³⁶ Cities may have more and better law enforcement resources to check up on resident sex offenders. Finally, some research suggests that individuals released from prison who move to more isolated areas, often somewhat removed from their families, may be more likely to violate parole.¹³⁷

At least one town has responded to these issues by attempting to address not so much sex offender residency but, purportedly, *concentration*. Both the State and the county laws, which create a one-thousand foot radius around protected spaces, prompted sex offenders to move away from the local city center – Albany – and into its less densely-populated suburb, the Town of Colonie. Colonie, accordingly, experienced an influx of sex offender residents.¹³⁸ These residents tended to live in a cluster of low-rent motels. To

¹³⁴ See Meloy, *supra* note 39, at 213.

¹³⁵ Professor Richard Wright identifies two paradoxical results of sex offender residency restrictions: “disappearing sex offenders” and “sex offender clusters.” Richard G. Wright, *Sex Offender Post-Incarceration Sanctions*, 34 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 17, 45 (2008).

¹³⁶ See Tim O'Brien, *Town Seeks Limited Room for Sex Offenders*, THE TIMES UNION (Albany N.Y.), July 12, 2009, at D1.

¹³⁷ See *supra* notes 55-56 and accompanying text.

¹³⁸ See O'Brien, *supra* note 136, at D1 (suggesting that the state residency restriction has driven registered sex offenders to “small, rundown hotels that line Central Avenue in Colonie”). The newspaper quoted the Town's attorney, who stated, “Out of [the] 211 [sex offenders in Albany County], 119 were living in the town of Colonie. The vast majority are in the motels along Central Avenue.” *Id.* A similar phenomenon has occurred in Iowa, where “sex offender motels” have also roused community ire. See Monica Davey, *Iowa's Residency Rules Drive Sex Offenders Underground*, N.Y. TIMES, Mar. 15, 2006, at A1.

address this issue, the Town decided to limit the kinds and numbers of sex offenders that could reside in a hotel or motel.¹³⁹ The Town of Colonie passed Local Law No. 8¹⁴⁰ on August 6, 2009, which creates a licensure mechanism that aims to keep sex offenders from clustering in particular “hotels or motels.”¹⁴¹

Within the law, however, “hotel or motel” includes not only hotels and motels as commonly-understood but also

any other inn, tourist home, trailer park, trailer camp, boarding house, rooming house, halfway house, rehabilitation facility, prison transitional facility, or any structure, building or part of a building used in the business of renting rooms, individual or several, or similar establishment where sleeping accommodations are furnished for pay to guests, lodgers, tourists, transients or travelers¹⁴²

Because the law expressly includes halfway houses, one might suspect that the law is designed to capture facilities that might receive sex offenders upon release from prison. In fact, if there is a unifying element among the facilities listed in the Colonie law, it is that the housing specified is short-term, low-rent housing.

The letter of the law requires hotel or motel owners to apply for a license from the town if they wish to house registered sex offenders.¹⁴³ “Registered sex offenders” include individuals designated a level one, two, or three sex offender under New York State law as well as any individual who must register as a sex offender “under any other state or federal law.”¹⁴⁴ The breadth of this statute exceeds the Albany County law to which it responds. The statute expressly covers not just level two and three sex offenders, but also level one sex offenders – those with the lowest predicted likelihood of reoffense.¹⁴⁵ Furthermore, the Town of Colonie charges a fee for the license.¹⁴⁶ A local newspaper reported that the town planned to charge licensees with fifty or fewer units \$1500 each year, while licensees with more than fifty units would pay \$3000.¹⁴⁷

¹³⁹ Town of Colonie, N.Y., Local Law No. 8 § 119-1 (2009) (“It is the purpose and intent of this chapter to promote the public health, safety and general welfare of the guests of hotels and motels located within the town and that of the general citizenry of the town.”).

¹⁴⁰ *Id.*

¹⁴¹ See Robert Gavin & Jordan Carleo-Evangelist, *Lawyer: Colonie Law “Defects” Likely*, THE TIMES UNION (Albany N.Y.), Aug. 8, 2009, at B1.

¹⁴² Colonie, Local Law No. 8 § 119-2(A).

¹⁴³ § 119-3.

¹⁴⁴ § 119-2.

¹⁴⁵ N.Y. CORRECT. LAW § 168-L(6)(a)-(c) (McKinney 2009); see *supra* note 79 and accompanying text.

¹⁴⁶ Colonie, Local Law No. 8 § 119-7.

¹⁴⁷ See Gavin & Carleo-Evangelist, *supra* note 141, at B1.

Should a hotel or motel owner wish to obtain the “Registered Sex Offender Occupancy License,” she would have to display the license “prominently . . . in a conspicuous place in the lobby or registration area of the licensed premises.”¹⁴⁸ The owner would also have to keep records of the name, residence, and dates of arrival and departure of all of her patrons.¹⁴⁹ The register, though, will likely prove helpful for the proprietor of a regulated business in the Town of Colonie because she will have to keep track of the number and state designation of any sex offenders she houses.¹⁵⁰ The law institutes a “points” system designed to minimize the concentration of sex offenders in a building. Level one sex offenders are worth one point, level two offenders are worth two points, and level three offenders are worth three points.¹⁵¹ Any regulated business with fifty or fewer units may have no more than six occupancy points.¹⁵² The fairly simple arithmetic yields a few possible scenarios for these proprietors – they may house two level three sex offenders, six level one sex offenders, three level two sex offenders, or some other combination thereof. A proprietor of a regulated business with fewer than fifty units, therefore, could house no more than six sex offenders. A regulated business with more than fifty units may have no more than nine occupancy points¹⁵³ or, by the same logic, nine level one sex offenders.

One might make a plausible argument that this law is a transparent attempt to discourage hotel and motel proprietors, as defined, from renting space to sex offenders. The cost of the license required is prohibitive, given the low-cost nature of many of these facilities. Moreover, even should a proprietor purchase the license, she would risk alienating other customers who would surely see her prominently-displayed license in the check-in area. Because a proprietor could house, at most, nine sex offenders in a fifty-unit-plus facility, it seems obvious that the costs associated with housing so few individuals outweigh any potential benefit.¹⁵⁴

¹⁴⁸ Colonie, Local Law No. 8 § 119-8(B).

¹⁴⁹ § 119-11.

¹⁵⁰ § 119-12.

¹⁵¹ § 119-12(A).

¹⁵² § 119-12(B).

¹⁵³ *Id.*

¹⁵⁴ Town officials have attempted to refute this idea in local media; one official stated, “[Motel and hotel owners] are limited to the number of sex offenders they can house on any particular day. . . . We’re not prohibiting them from taking sex offenders.” O’Brien, *supra* note 136, at D1. Terence Kindlon, the attorney for the plaintiffs in *Wray* disagreed: “It’s just a subterfuge. . . . When the objective is exactly the same as those that have been rejected by the courts, the result is going to be the same.” *Id.* One motel owner agreed with Kindlon; he requested a refund just a few months after the licenses were available, stating, “I’m wasting money. . . . A small place like this, I am not going to make any income from that.” See Tim O’Brien, *Motel Owner: License a Bad Deal*, THE TIMES UNION (Albany N.Y.), Jan. 25, 2010, at B1.

Hotel and motel owners in the Town of Colonie have agreed. By and large, they have ceased renting to registered sex offenders, finding the venture unprofitable.¹⁵⁵

IV. POTENTIAL CHALLENGES TO SEX OFFENDER CONCENTRATION RESTRICTIONS

Despite this victory in efficacy,¹⁵⁶ the Town of Colonie should be concerned that its law will not stand up to a constitutional challenge in state court.¹⁵⁷ Because the county laws here examined were preempted by state law, the Town should be prepared for a similar challenge. If challenged, the key question will be whether this law is truly within the same field as the voluminous state regulations mentioned in *Blair, Wray, and Doe*.¹⁵⁸

Colonie may argue that because the law regulates short-term lodgers, it is more appropriately viewed as a regulation of health and safety standards. Indeed, the law's stated purpose and intent is "to promote the public health, safety and general welfare of the guests of hotels and motels . . . and that of the general citizenry of the town."¹⁵⁹ The Town thus appears to have adopted the posture that this law is not a sex offender residency restriction at all – perhaps it will argue that it aims to keep inns safe for visitors. If this is not really a sex offender residency restriction, then perhaps it falls beyond the ambit of the state law governing sex offenders.

This is a strained argument, at best. It seems obvious that the law was written to keep sex offenders from living in particular motels, in high concentrations or at all, and I suggest that a court would not need to look far to

¹⁵⁵ See Tim O'Brien, *Two Motels to Stop Housing Sex Offenders*, THE TIMES UNION (Albany N.Y.), Oct. 31, 2009, at B1 (after the Town notified affected proprietors about the licensure law, two decided to stop housing registered sex offenders); see also O'Brien, *supra* note 154 (stating that one of two hotel owners who purchased the license requested a refund). The motel owner who requested a refund claimed that his business decreased and suggested that this was primarily because he had to display the Registered Sex Offender Occupancy License. *Id.* Although this proprietor claimed he had never had problems with sex offenders who stayed in the hotel, he noticed that potential customers were frightened by the sign. *Id.*

¹⁵⁶ See O'Brien, *supra* note 154, at B1 (quoting Town Attorney Michael Magguilli) (reporting that the town's population of registered sex offenders dropped from a high of 148 to fewer than 30 after the licensure law).

¹⁵⁷ After Colonie passed its licensure law, Kindlon spoke once again with the local media: "This is a little bit more sophisticated an approach. . . . [But] I think it's probably going to have the same constitutional defects that affected the residency restrictions." See Gavin & Carleo-Evangelist, *supra* note 140, at B1.

¹⁵⁸ See *Wray v. Cnty. of Albany*, No. 2622-08, slip op. at 5 (N.Y. Sup. Ct. July 10, 2009) (on file with author); *Doe v. Cnty. of Rensselaer*, No. 223240, 2009 WL 2340873 at *3 (N.Y. Sup. Ct. June 29, 2009); *People v. Blair*, 873 N.Y.S.2d 890, 892-93 (Albany City Ct. Feb. 18, 2009).

¹⁵⁹ Town of Colonie, N.Y., Local Law No. 8 § 119-1 (2009).

find that this law is, in truth, a residency restriction. Although the Court of Appeals, New York's highest court, has not articulated a strict test to assess whether a given municipal law is preempted by state law, it has suggested that several factors aid in this analysis.¹⁶⁰ Generally, when "the State perceive[s] no real distinction between the particular needs of any one locality and other parts of the State with respect to the [legislative scheme], and thus create[s] a uniform scheme to regulate th[e] subject matter," the state has preempted local regulation.¹⁶¹ New York State's SORA scheme reflects the needs of state residents as a whole – sex offenders are problems for all localities, not just a few of them. Rather, SORA addresses universal issues: the risks that sex offenders pose to all communities upon release and the best ways to prevent released offenders from reoffending.¹⁶²

Additionally, the state supreme court in *Wray* rejected, without much sympathy, Albany County's position that because its law was broader than state law – in that it restricted sex offenders whom state law did not restrict – that those overbroad portions of the law were not preempted.¹⁶³ Colonie stands to make an analogous argument here. Because the state does not regulate the concentrations in which registered sex offenders may live, towns are free to do so despite the state's occupation of this field of regulation. While the state does not itself preclude sex offenders from living in high concentrations, state parole boards do consider whether living in close proximity with other registered sex offenders is appropriate for any given individual.¹⁶⁴ Furthermore, the Department of Social Services places many registered sex offenders in hotels and motels in the Town of Colonie pursuant to state Social Services Law.¹⁶⁵ Clearly the state created a system that was designed not only to account for where sex offenders live post-release, but also to help relevant social service agencies determine how best to place them. Such a scheme necessarily encompasses a consideration of the concentration of registered sex

¹⁶⁰ See *Jancyn Mfg. Corp. v. Suffolk Cnty.*, 518 N.E.2d 903, 906-07 (N.Y. 1987). In that case, the court examined a state environmental law to assess whether the legislature intended preemption. *Id.* at 905-06. The court found that the legislature's stated intent did not evince "any desire for across-the-board uniformity." *Id.* at 906-07. Moreover, the effect of the law did not impose any special requirements on municipalities, which illustrated the absence of a comprehensive scheme. *Id.*

¹⁶¹ *Albany Area Builders Ass'n v. Town of Guilderland*, 546 N.E.2d 920, 923 (N.Y. 1989). The court found that the legislature did intend to preempt local law given the "purpose, number and specificity" of the statutes it enacted as part of its scheme. *Id.*

¹⁶² See *supra* Part III for a discussion of New York's sex offender management scheme.

¹⁶³ See *Wray*, No. 2622-08, slip op. at 2-5.

¹⁶⁴ N.Y. COMP. CODES R. & REGS. tit. 9, § 365.4 (2009); see also Tim O'Brien, *When Sex Offenders Check In*, THE TIMES UNION (Albany N.Y.), Sept. 29, 2009, at A1 (describing the number of registered sex offenders that DSS sent to a particular hotel in the town of Colonie).

¹⁶⁵ See *supra* notes 87-88 and accompanying text.

offenders. Accordingly, I suggest that the Town of Colonie's law will likely run afoul of the state preemption doctrine in New York State.

CONCLUSION: DECAPITATING A HYDRA

According to the local media, the Town of Colonie enacted its licensure restriction in response to two major concerns. First, given the difficulties that county residency restrictions had been having in state courts, residents and legislators in Albany County may have felt that the existing state law and the challenged county laws were just not good enough. The Town law, then, may have been thought of as a replacement for ineffective state and county laws. Second, the town law addressed a slightly different concern than the county residency restriction. The county aimed to keep sex offenders away from places where children congregate; the town law aims to keep sex offenders from congregating. Combined with the state's residency restriction, the effect of the Colonie law might be seen as creating a buffer not just around vulnerable children but around sex offenders themselves.

Both responses reflect commonly-held assumptions about sex offenders, particularly that they pose significant threats to all children and that they cannot be rehabilitated. This is curious given the sophisticated understanding of sex offenders and their unique needs that New York's agencies have developed over the years. New York's SORA and broader management scheme, despite its flaws, reflect some judgments about the best ways to reintegrate sex offenders into society after they are released from prison. By contrast, both the county and town laws here cited reflect a desire to keep sex offenders out of local communities all together.

New York's preemption doctrine, thus, functions as an important check on a collective action problem. Left to their own devices, municipal legislatures might race to create the most restrictive residency laws that they can craft. Sex offenders would become increasingly isolated and excluded from communities, a result that might actually increase their risks of violating the terms of their parole. Municipalities, in this way, create a sort of social security dilemma – by enacting increasingly restrictive laws, and thus pushing sex offenders into one another's jurisdictions, municipalities may actually increase risk that sex offenders will reoffend. Put another way, these myopic actions make everyone worse off. The state's sex offender plan ameliorates this concern somewhat, foremost through its uniformity.

While Albany County's experience with this race to restrict sex offenders illustrates the wisdom of state preemption in this field, it also underscores the way in which communities respond to a perceived threat that has gone unaddressed. Between 2005 and 2006, the state and county were both crafting residency restrictions, which may have suggested that government was not doing enough to handle the problem of sex offenders in society. Municipal legislatures responded to this perception with more and more powerful sex offender restrictions at each level of government – the federal government requires only registration and notification, while the state forbade residency in

certain areas. Counties tried to expand the forbidden areas and also to include more sex offenders in the restriction. Towns have tried to address what they may see as the last component of a plan to banish sex offenders from their communities. I suggest that this sort of phenomenon is likely to recur wherever the perceived threat from sex offenders is high – after all, all politics is local.