

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	*	Supreme Court Case No. 2022-0603
Plaintiff-Appellee,	*	On Appeal from the Lucas County
v.	*	Court of Appeals, Sixth Appellate
	*	District
TYREE DANIEL,	*	
Defendant-Appellant.	*	Court of Appeals Case No. L-21-1104

---

**REPLY BRIEF OF DEFENDANT-APPELLANT TYREE DANIEL**

---

Edward J. Stechschulte (0085129)

**KALNIZ, IORIO & REARDON CO.,  
L.P.A.**

5550 W. Central Avenue  
Toledo, Ohio 43615  
Phone: (419) 537-4821  
Fax: (419) 535-7732  
Email: [estechschulte@ioriolegal.com](mailto:estechschulte@ioriolegal.com)  
*Counsel for Appellant Tyree Daniel*

Steven L. Taylor 0043876  
Legal Research and Staff Counsel  
Ohio Prosecuting Attorneys Association  
196 East State Street, Suite 200  
Columbus, Ohio 43215  
Phone: 614-221-1266  
Fax: 614-221-0753  
E-mail: [taylor@ohiopa.org](mailto:taylor@ohiopa.org)  
Counsel for Amicus Curiae Ohio  
Prosecuting Attorneys Assn.

**Julia R. Bates, Prosecuting Attorney  
Lucas County, Ohio**

Evy M. Jarrett (0062485)  
700 Adams Street, 2<sup>nd</sup> Floor  
Toledo, Ohio 43604  
Phone: (419) 213-4700  
Fax: (419)-213-4595  
[EJarrett@co.lucas.oh.us](mailto:EJarrett@co.lucas.oh.us)  
*Attorney for Appellee State of Ohio*

Office of the Ohio Public Defender  
R. Jessica Manungo, #0094077  
Assistant State Public Defender  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 644-0702  
(614) 752-5167 – Fax  
[jessica.manungo@opd.ohio.gov](mailto:jessica.manungo@opd.ohio.gov)  
Counsel for Amicus Curiae Office of the  
Public Defender

DAVE YOST (0056290)  
Attorney General of Ohio

BENJAMIN M. FLOWERS\* (0095284)

Solicitor General \*

Counsel of Record

DIANE R. BREY (0040328)

Deputy Solicitor General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

(t) 614-466-8980

(f) 614-466-5087

[benjamin.flowers@ohioago.gov](mailto:benjamin.flowers@ohioago.gov)

Counsel for Amicus Curiae Ohio Attorney  
General Dave Yost

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	iii
REPLY ARGUMENT .....	1
CONCLUSION .....	6
CERTIFICATION .....	6

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PAGE(S)</b>
<i>Hudson v. United States</i> , 522 U.S. 93, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) .....	2
<i>Kansas v. Hendricks</i> , 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) .....	1
<i>Kennedy v. Mendoza-Martinez</i> , 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963) .....	2, 3, 4, 5
<i>State v. Cook</i> , 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570 .....	1, 2
<i>State v. Hubbard</i> , 167 Ohio St.3d 77. 2021-Ohio-3710, 189 N.E.2d 720 .....	1, 4, 5
 <b>CONSTITUTIONS, STATUTES AND RULES</b>	
Ohio Revised Code §2909.13 .....	2, 3
Ohio Revised Code §2909.14 .....	1, 2
Ohio Revised Code §2909.15 .....	1, 3, 5
Ohio Revised Code §2909.15(D)(2) .....	5
Ohio Revised Code §2909.15(H) .....	3, 4

## REPLY ARGUMENT

Appellee State of Ohio misapplies the intents-effects test in reliance on *State v. Hubbard*, 167 Ohio St.3d 77, 2021-Ohio-3710, 189 N.E.2d 720. Properly applying the factors from the *Hubbard* test supports the finding that the registration is punitive.

### A. Legislative Intent

The Arson Registry does not expressly state that its requirements are “civil” in nature or are intended to be “nonpunitive” or “remedial.” *See* R.C. 2909.14 and R.C. 2909.15. That makes this statute different from past cases concerning Ohio's sex-offender-registration laws where this Court relied heavily on the General Assembly's explicit statements that its intent was to enact civil, nonpunitive, and regulatory laws. *See, e.g., State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570 at 416-417, 700 N.E.2d 570. “The fact that the General Assembly knows how to make its intent clear when it comes to criminal-registration statutes but failed to do so here indicates that it did not harbor the same nonpunitive intent when it established” the arson registry. *See Hubbard*, at ¶81(Stewart, J., Dissenting).

Further, the General Assembly chose to place the Arson Registry in Title 29 of the Revised Code, which contains criminal statutes, rather than in Title 37, which relates to “Health-Safety-Morals,” or any number of other titles in which a nonpunitive, civil law might be found. While not dispositive, “it does indicate that the General Assembly may have meant the law to be punitive in nature and degree as opposed to merely remedial and civil in nature. *See Hubbard*, at ¶82 (Stewart, J., Dissenting) citing *Kansas v. Hendricks*, 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) (“Kansas’[s] objective to create a civil proceeding is evidenced by its placement of the [Sexually Violent Predator] Act within the Kansas probate code, instead of the criminal code”).

The fact that the reporting period is for a mandatory lifetime period, and that it can only be reduced by a recommendation of the prosecutor and the investigative agency is further evidence of punitive nature of the registry. Moreover, that the defendant cannot ask for a reduction and the court cannot grant a reduction below the mandatory lifetime registry period, without permission of the executive branch evidences the punitive nature.

#### B. The Arson Registry Is Punitive in Effect

This Court must next determine whether the statutory scheme is so punitive in either purpose or effect that it overrides any suggestion that the legislature's intent was to create a civil, remedial law. *See Cook, supra*, 83 Ohio St.3d at 415-418. Where, as here, the legislative intent is, at best, ambiguous, the evidence showing that a law is civil in nature should not be given the same weight. *See Hudson v. United States*, 522 U.S. 93, 114, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (Souter, J., concurring in the judgment).

This Court has adopted the seven factor “effects” test analysis from *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963) to determine if a law is punitive in purpose or effect. An analysis of the *Mendoza-Martinez* factors leads to the conclusion that Arson Registry is punitive in purpose and effect and is therefore unconstitutional.

First, the behavior that the Arson Registry concerns is already criminalized. A person is not considered a “arson offender” and subject to reporting under the law unless he has been convicted of a specified criminal offense. See R.C. 2909.13 and 2909.14. Second, the operation of the Arson Registry promotes the traditional aims of punishment. Once a person is convicted of a registration-eligible offense, he immediately goes from being merely a person who has been convicted of an arson offense to a person who is presumed to be an arson offender for life. The person will have to register for his lifetime and the person is subject to a number of reporting

obligations. In other words, the Arson Registry serves to increase police and community monitoring of people who have been convicted of certain offenses and to punish, particularly by requiring lifetime reporting.

Further, the Arson Registry comes into play on a finding of scienter. A person is not subject to the law unless he is convicted of one of several specified offenses, each of which requires proof of scienter. *See* R.C. 2909.13.

Together, those three factors suggest a punitive purpose or effect that weighs heavily against interpreting the Arson Registry to be civil in nature.

#### C. Whether the Law Involves an Affirmative Disability or Restraint

Another factor to be considered is whether the law involves an affirmative disability or restraint. *Mendoza-Martinez*, 372 U.S. at 168-69. The Arson Registry does. The law requires an arson offender to register annually with the local sheriff's office for lifetime, in person, and within ten days of the anniversary of his or her enrollment in the database. R.C. 2909.15. If a change of address results in the person living outside the jurisdiction of the sheriff with whom he originally enrolled, then the person must re-enroll with the sheriff in the new jurisdiction and notify the sheriff in the previous jurisdiction of the move. R.C. 2909.15. Compliance with those provisions is no small burden. And the Arson Registry includes even more requirements, see R.C. 2909.15(C)(listing personal information that must be disclosed) and requiring a photograph each year. Failing to satisfy any of the requirements results in actual criminal liability, R.C. 2909.15(H).

If the arson offender misses his deadline to enroll or re-enroll, the law states that he has committed a felony. *See* R.C. 2909.15(H). Because of that criminal liability, and because the failure to comply with the requirements also “shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised

release,” R.C. 2909.15(H) the failure may trigger a separate felony charge and a violation of the original arson offense. It is disingenuous to argue that the Arson Registry does not involve an affirmative disability or restraint.

#### D. Whether the Punitive Aspects of the Law Are Historically Regarded as Punishment

The next factor to be considered is whether the type of sanction imposed has been historically regarded as punishment. *Mendoza-Martinez*, 372 U.S. at 168-169. While the historical factor generally favors the State, Justice Stewart’s dissent in *Hubbard* correctly points out that this Court’s historical analysis is based upon outdated understanding of the case law. This case law is in need of reconsideration based upon the arguments raised by Justice Stewart.

#### E. Whether the Law Is Excessive in Relation to its Remedial Purpose

The final two *Mendoza-Martinez* factors are related to each other: does the law advance a legitimate, regulatory purpose and is the law excessive in relation to the alternative purpose assigned to it. *Mendoza-Martinez* at 169.

As to the first factor, there may be a legitimate regulatory purpose behind the Arson Registry. But as noted above, it is difficult to say what the legislature intended, because the law does not include a statement of purpose and some aspects of the law are undoubtedly punitive whereas others evince a remedial purpose aimed at public safety. “In short, there are grounds for saying that the legislature might have intended to remediate a perceived public-safety risk posed by people who have been convicted of arson offense by providing law enforcement with information about them. But again, the lack of any evidence or legislative findings showing that such people are likely to recidivate and the lack of any evidence showing the efficacy of such a registration scheme weakens the legitimacy of any remedial aim of the law.” *See Hubbard*, at ¶104 (Stewart, J., Dissenting).



The final *Mendoza-Martinez* factor asks whether the law appears excessive in relation to its assigned remedial purpose. *Id.* at 169. The Arson Registry satisfies that criterion. As the dissent in *Hubbard* stated, “the time has come for us to reevaluate the legitimacy of such laws. But nevertheless, even when in the past a class of people was deemed to have a high risk of recidivating, if registration and public-disclosure requirements were not tied to a public-safety risk, an implication of excessiveness arose.” *See Hubbard*, at ¶ 105 (Stewart, J., Dissenting).

The Arson Registry requires people convicted of certain offenses to annually report a significant amount of personal information to law enforcement for *life*. *See* R.C. 2909.15. An arson offender is not allowed to present any evidence to the court of his low risk of recidivism and the court is not permitted to consider any such information. Additionally, a person is required to register for life, regardless of whether he actually poses a risk to the public and regardless of any mitigating circumstances surrounding the underlying offense. *See* R.C. 2909.15(D). Moreover, unlike any other registration scheme that this Court has considered, the Arson Registry requires that a person's reporting obligation be for a lifetime and can only be reduced upon the prosecutor's request. *See* R.C. 2909.15(D)(2). The court has zero discretion to reduce the arson offender's reporting obligations absent a request from the prosecutor.

Based upon the foregoing, this Court should find that the Arson Registry is excessive in relation to its purported remedial purpose of protecting the public.

Moreover, an assessment of the *Mendoza-Martinez* factors demonstrates that Arson Registry is punitive in effect and therefore unconstitutional. Accordingly, this Court should hold that Arson Registry is punitive and therefore unconstitutional.

**CONCLUSION**

For the foregoing reasons, and as set forth in Appellant’s Merit Brief, Appellant Tyree Daniel respectfully submits that the judgment of the Sixth District Court of Appeals is improper pursuant to the above-state proposition of law and this Court should reverse the lower court’s decision

Respectfully Submitted,

**KALNIZ, IORIO & REARDON CO., L.P.A.**

/s Edward J. Stechsulte  
Edward J. Stechsulte (0085129)  
**KALNIZ, IORIO & REARDON  
CO., L.P.A.**  
5550 W. Central Avenue  
Toledo, OH 43615  
Phone: 419/537-4821  
Fax: 419/535-7732  
estechschulte@ioriolegal.com  
*Attorney for Appellant Tyree K. Daniel*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing ***Reply Brief of Defendant-Appellant*** was served this 20th day of December 2022 via electronic mail upon:

Evy M. Jarrett  
Assistant Prosecuting Attorney  
Lucas County Prosecutor’s Office  
700 Adams Street  
Lucas County Courthouse  
Toledo, Ohio 43604  
Attorney for State of Ohio

Office of the Ohio Public Defender  
R. Jessica Manungo, #0094077

Assistant State Public Defender  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
jessica.manungo@opd.ohio.gov

Benjamin Flowers  
Solicitor General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
benjamin.flowers@ohioago.gov  
Counsel for *Amicus Curiae*  
Ohio Attorney General Dave Yost

Steven L. Taylor  
Ohio Prosecuting Attorneys Association  
196 East State Street, Ste. 200  
Columbus, Ohio 43215  
taylor@ohiopa.org  
Counsel for *Amicus Curiae*  
OPAA

*/s Edward J. Stechschulte*

Edward J. Stechschulte (0085129)  
**KALNIZ, IORIO & REARDON  
CO., L.P.A.**

5550 W. Central Avenue  
Toledo, OH 43615

Phone: 419/537-4821

Fax: 419/535-7732

estechschulte@ioriolegal.com

*Attorney for Appellant Tyree K. Daniel*