Preliminary Statement

The Superintendent of the Missouri State Highway Patrol, Colonel James F. Keathley, admits that he infringed upon the respondent's Constitutional right to be free from the retrospective application of laws. He argues, though, that he still should be able to avail himself of the fruits of that infringement. He suggests that it was error for the trial court to order otherwise. The law of Missouri and, indeed, basic principles of equity and American Constitutional law answer that the trial court did not err.

The respondent in this case pleaded guilty to possession of child pornography in 2003, pursuant to a plea agreement. He was granted a suspended execution of sentence contingent on two years' probation. At the time, the law of Missouri did not consider that crime a "sex offense". Defendants who were convicted of that crime were not required to register as "sex offenders".

Several years later, the General Assembly amended the Sex Offender Registration Act to make retroactively the respondent's crime a sex offense. His county sheriff informed the respondent that he would have to begin registering as a sex offender. Respondent Doe reluctantly submitted to registration.

The Circuit Court of Greene County entered a declaratory judgment against the Greene County Sheriff, the Greene County Prosecutor, and Colonel Keathley. The court declared that requiring the respondent to register as a sex offender was

an unconstitutionally retrospective application of law. It also ordered the defendants to expunge the respondent's information and photograph from their sex offender registries and to delete any information they illegally received as a result of his one registration.

Of the three defendants, only Colonel Keathley appeals. Although he fully acknowledges that requiring the respondent to register as a sex offender is and always was unconstitutional, he argues that he should be allowed to keep the information he obtained from the respondent illegally and use it as if it had not been obtained solely as a result of his unconstitutional actions. The trial court, however, correctly understood that equity acts to afford complete justice, and there can be no complete justice to the respondent unless Colonel Keathley is denied the fruits of his violation of the Constitution of Missouri.

Colonel Keathley ignores the central truth of this case. Further, he invokes an incorrect standard of review. The trial court's injunction was not an abuse of its discretion. Colonel Keathley's appeal is without merit.

Table of Contents

Table of Authorities

Cases

Revised Statutes of Missouri

Missouri Supreme Court Rules

Constitution of Missouri

Constitution of the United States

Treatises

Statement of Facts

In 2003, the respondent pleaded guilty in the Circuit Court of Christian County to fifteen misdemeanor counts of possession of child pornography (Legal File 8-9, 29, 32, 48-51, 53-68, 101). The circuit court sentenced him to one year of imprisonment in the Christian County Jail on each count, to be served concurrently, but suspended the execution of the sentences contingent on two years of probation, psychiatric treatment, and ten days' "shock time" in the Christian County Jail (L.F. 9, 32, 48-51, 53). At the time of his guilty plea, the law of Missouri did not consider the respondent to a "sex offender" and did not require that he register as one (L.F. 8-9).

Effective August 28, 2004, the Missouri General Assembly broadened the Sex Offender Registration Act, §§ 589.400, R.S.Mo., *et seq.*, to include retroactively among those who must register as "sex offenders" any "person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or *nolo contendere* to committing, or attempting to commit … possession of child pornography" (L.F. 10). Shortly thereafter, the respondent was informed by the Sheriff of Greene County that he would have to submit to sex offender registration (L.F. 36). The respondent complied (L.F. 36).

On October 12, 2006, the respondent filed suit in the Circuit Court of Greene County (L.F. 7). He named as defendants the Greene County Prosecutor, the

Sheriff of Greene County, and the Superintendent of the Missouri State Highway Patrol (referred to in this Brief as Colonel Keathley) (L.F. 7). The respondent sought a declaratory judgment that Article I, Section 13, of the Constitution of Missouri prohibited the requirement that he register as a sex offender (L.F. 7, 12). He also sought injunctive relief preventing the distribution or dissemination of any information which the defendants had obtained from the respondent's registration (L.F. 12). The defendants moved to dismiss (L.F. 4). On February 21, 2008, after argument in open court, the circuit court overruled the defendants' motions to dismiss, entered a protective order, and called for motions for summary judgment (L.F. 4-5). Shortly thereafter, the respondent moved for summary judgment (L.F. 28-42).

On August 21, 2007, the circuit court granted summary judgment to the respondent (L.F. 6, 133). The court declared,

> In *Doe v. Blunt*, SC87786 (Mo. banc June 12, 2007), the Supreme Court of Missouri held that offenders convicted before §589.400.1(2) was amended to include the applicable offense are not criminally liable for failing to register. Applying that precedent to the facts of this case, this Plaintiff John Doe never was required to register as a sex offender.
>
> …

> The Court orders that this Plaintiff John Doe immediately and permanently is relieved of any requirement to register.

(L.F. 133). The court also incorporated permanent injunctive relief into its Judgment:

> The defendants are ordered immediately and permanently to expunge this Plaintiff John Doe from all Sex Offender Registries. Because the Court holds that there was, and is, no duty for this Plaintiff to register, the defendants also are ordered immediately and permanently to delete from their records any personal information pertaining to this Plaintiff John Doe related to the registration, including photographic images.

(L.F. 133).

Colonel Keathley filed two timely post-judgment motions: a Motion to Amend Judgment and a Motion to Stay Judgment Pending Appeal (L.F. 134-138, 139-143). The other two defendants did not file any post-judgment motions. The trial court made no ruling on the post-judgment motions (L.F. 6).

Colonel Keathley filed a timely Notice of Appeal to this Court (L.F. 6, 163).

Argument

The trial court did not abuse its discretion in permanently enjoining the defendants from publicly disseminating any of the respondent's sex offender registration material and ordering the defendants to delete any of the respondent's registration material because the defendants never would have been provided with the registration material without the unconstitutionally retrospective application of the Sex Offender Registration Act to the respondent, and the balance of the equities weighs strongly in favor of Constitutional compliance.

Standard of Review

As the standard of review, Colonel Keathley cites the standard for summary judgment enunciated in *ITT Commercial Fin. Corp. v. Mid-Am Marine Supply Corp.*, 854 S.W.2d 371 (Mo. banc 1993) (Brief of the Appellant 11). That is, in an appeal from a grant or denial of summary judgment, this Court reviews the record "in the light most favorable to the party against whom judgment was entered. Facts set forth by affidavit or otherwise in support of a party's motion are taken as true unless contradicted by the non-moving party's response to the summary judgment motion." 854 S.W.2d at 376. The Court accords "the non-movant the benefit of all reasonable inferences from the record." *Id.* The "propriety of summary judgment is purely an issue of law" and the standard of review "is essentially *de novo*." *Id.*

While *ITT* does recite the standard of review for summary judgment, in this case, it is not the end-all, be-all of the Court's inquiry. Although this case was decided on summary judgment, it is a declaratory action seeking an injunction. A declaratory action seeking an injunction is an action in equity. *Southern Star Central Gas Pipeline, Inc. v. Murray*, 190 S.W.3d 423, 429 (Mo. App. 2006) (citing *Systematic Bus. Servs. Inc. v. Batten*, 162 S.W.3d 41, 46 (Mo. App. 2005)). This Court will affirm a trial court's judgment in a court-tried equity action "so long as it is supported by substantial evidence, is not against the weight of the evidence, and does not erroneously declare or apply the law." *Hamer v. Nichols*, 186 S.W.3d 884, 886 (Mo. App. 2006) (quoting *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)). When reviewing a court-tried case, this Court views "all evidence and inferences in the light most favorable to the judgment and disregard[s] all contrary evidence and inferences." *Ortmann v. Dace Homes Inc.*, 86 S.W.3d 86, 88 (Mo. App. 2002).

Colonel Keathley's appeal deals only with the injunctive portion of the trial court's Judgment. Whether an injunction should be granted is a question within the trial court's discretion in balancing the equities. *Southern Star*, 190 S.W.3d at 432 (citing *Heinrich v. Hinson*, 600 S.W.2d 636, 640 (Mo. App. 1980)). Accordingly, the trial court's judgment granting an injunction is reviewed for

abuse of the trial court's discretion. *Id.* at 429 (citing *Colbert v. Nichols*, 935 S.W.2d 730, 734 (Mo. App. 1996)). That is,

> "The issuance of injunctive relief, along with the terms and provisions thereof, rests largely within the sound discretion of the trial court." The trial court "is vested with a broad discretionary power to shape and fashion the relief it grants to fit particular facts, circumstances, and equities of the case before it."

Id. at 432 (quoting *Edmunds v. Sigma Chapter of Alpha Kappa Lambda Fraternity, Inc.*, 87 S.W.3d 21, 29 (Mo. App. 2002)).

A trial court abuses its discretion when its "ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Lowdermilk v. Vescovo Bldg. & Realty Co.*, 91 S.W.3d 617, 625 (Mo. App. 2002). Simply put, "If reasonable people can differ about the propriety of the action taken by the trial court, the trial court did not abuse its discretion." *Id.*

Although Colonel Keathley admits that this was a declaratory action resulting in injunctive relief (Br. of the Appellant 11-12), he makes no mention of any discretionary analysis. His Brief does not recite any argument as to how the trial court abused its discretion in granting injunctive relief. Colonel Keathley has

the burden of establishing that the trial court abused its discretion in his opening Brief. He has not met this burden.

* * *

Colonel Keathley presents three Points Relied On. In all three, he argues that the trial court's Judgment ordering the defendants to expunge the respondent from all sex offender registries and to delete any material pertaining to the respondent obtained as a result of his past sex offender registration was error because Colonel Keathley's dissemination and use of the material does not violate the prohibition on the retrospective application of laws contained in Article I, Section 13, of the Constitution of Missouri. He argues that this is for three reasons: (1) the respondent already provided the information, so continuing to use the material and disseminating it to the public does not require the respondent to take any new action or fulfill any new obligation (Br. of the Appellant 12); (2) the information is available from other sources (Br. of the Appellant 19); and (3) retention of the information in files accessible only to law enforcement is "procedural only" (Br. of the Appellant 21).

This Court already has ruled against Colonel Keathley on all three of his arguments. *See Doe v. Phillips*, Case No. WD68066, 2008 Mo. App. LEXIS 432 (Slip op. April 1, 2008). That case was the second appeal in the original *Doe v. Phillips* case, 194 S.W.3d 833 (Mo. banc 2006). In the first appeal, the Supreme

Court held that applying the sex offender registration requirements under §§ 589.400 through 589.425, R.S.Mo., to persons who were convicted prior to the enactment of the law violated the Missouri Constitution's prohibition on retrospective laws. 194 S.W.3d at 852. The Supreme Court subsequently applied that holding to persons such as the respondent in this case, whose crimes later were added to § 589.400. *Doe v. Blunt*, 225 S.W.3d 421, 422 (Mo. banc 2007). On remand from the Supreme Court in Phillips, the Circuit Court of Jackson County entered a permanent injunction against Colonel Keathley prohibiting him from "publishing the photographs of plaintiffs on websites on the Internet[,] or otherwise disseminating such photographs … and identifying information of persons registered under SORA whose convictions predated January 1, 1995." *Phillips*, 2008 Mo. App. LEXIS 432 at *3.

As in this case, Colonel Keathley appealed the circuit court's judgment to the Western District of this Court. *Id.* On appeal, this Court held that Colonel Keathley's

> argument misses the point of the injunctive relief granted. The circuit court did not enjoin the dissemination of the plaintiffs' photos because such conduct directly violated the constitution; rather, the court concluded that the dissemination was improper because the photos were obtained as a result of an unconstitutional statutory provision.

Id. at *4-*5. As such, "the circuit court reasonably exercised its discretion in attempting to fully address the wrongs suffered by the pre-1995 offenders, who were unlawfully required to register under SORA." *Id.* at *5.

This Court affirmed the trial court's injunction in part and reversed it in part. *Id.* at *10. The only improper part of the injunction in that case was that it was not limited to the publication of information which "was obtained as a result of" the respondents' sex offender registrations. *Id.* This Court remanded the case back to the circuit court for entry of an injunction which was limited to prohibiting Colonel Keathley from publishing information and photographs which was obtained as a result of the registrations. *Id.*

In this case, however, the circuit court did not make that mistake. Here, the circuit court expressly limited its injunction to the facts before it and declared that its injunction was limited to "personal information pertaining to this Plaintiff John Doe *related to the registration*, including photographic images" (L.F. 133) (emphasis added). Accordingly, "the circuit court was within its broad discretionary power in formulating the injunction to fit the facts before it and prevent injustice." *Phillips*, 2008 Mo. LEXIS 432 at *10. Colonel Keathley's arguments are without merit, particularly in light of this new decision.

Colonel Keathley admits that under *Doe v. Phillips*, 194 S.W.2d 833 (Mo. banc 2006) and *Doe v. Blunt*, 225 S.W.3d 421 (Mo. banc 2007), requiring the

respondent to register as a sex offender under the Sex Offender Registration Act, §§ 589.400, *et seq.*, was an unconstitutional retrospective application of law (Br. of the Appellant 13-14). In arguing that the fruits of the respondent's unconstitutionally-required registration should remain available to him for public dissemination, Colonel Keathley discusses only the standard of what constitutes a retrospective application of law. He makes virtually no mention of the effects of an unconstitutional action by the government and how equity deals with these effects so as to afford justice to make the plaintiff whole. This also was where he "missed the point" in *Phillips*, 2008 Mo. App. LEXIS 432 at *4. The law of Missouri and, indeed, the whole of American Constitutional law are clear that when the government engages in an unconstitutional action, any fruits it gains from that action equitably should be denied to it – no matter where those materials are.

In this case, when weighing the balance of the equities, the trial court correctly understood that compliance with Article I, Section 13, of the Constitution of Missouri outweighs any interest which Colonel Keathley and the Highway Patrol may have under the Sex Offender Registration Act. The respondent never should have been required to register, as Colonel Keathley acknowledges. Because of the respondent's one unconstitutionally required submission to registration, Colonel Keathley was provided with personal information and photographs which he otherwise would not have possessed. Accordingly, the trial court correctly

decreed that this material must be deleted because "there was, and is, no duty for this Plaintiff to register" (L.F. 133).

In his second Point Relied On, Colonel Keathley argues that the trial court's injunction was error because the respondent's "name and offense are openly available from sources other than the information he has provided as part of the registration process" (Br. of the Appellant 19). But it is neither this other public information which Colonel Keathley seeks to keep, nor, indeed, was it some other public information which he was ordered to delete. The trial court's Judgment concisely limited the subject matter of its injunction to "personal information pertaining to this Plaintiff John Doe related to the registration, including photographic images" (L.F. 133). Shorn of superfluous language, Colonel Keathley's second Point Relied On reads:

> The trial court erred in … ordering defendants to expunge plaintiff from all sex offender registries and to delete any personal information pertaining to plaintiff *obtained as a result of his past registrations as a sex offender* … in that continued inclusion on sex offender registries of such information that is publicly available from sources other than plaintiff's past registrations does not require …

(Br. of the Appellant 20) (emphasis added). So, Colonel Keathley essentially argues that he should be allowed to keep and display *the unconstitutionally*

obtained material because he could display some other material which is available somewhere.

The respondent did not ask that the trial court prohibit the defendants from disseminating information which is publicly available and which was obtained by means other than his unconstitutional registration. Indeed, that would have been outside the scope of the trial court's jurisdiction in this case. But the respondent's current address and current photograph could not have been obtained if it were not for his unconstitutional registration. Moreover, this Court held that even the individual's name was within the scope of enjoinable material, as this Court was "unable to imagine a single class of information more identifying than that of a person's name." *Phillips*, 2008 Mo. App. LEXIS 432 at *9. The respondent acknowledges that the plain language of the trial court's order extends only to material obtained as a result of his unconstitutional registration, and nothing more (L.F. 133).

Of course, if Colonel Keathley wishes to publish information obtained from other public records, he would be obligated to ensure that such disseminated information is truthful. § 509.210, R.S.Mo. As well, since Colonel Keathley admits that once the respondent has completed his period of probation the records of his underlying conviction will be sealed under Chapter 610, R.S.Mo. (Br. of Appellant 21), Colonel Keathley would have to cease publishing any information

obtained from the trial court's sealed files immediately once the probation is complete. Should Colonel Keathley fail or refuse to do so, the respondent would have to enter into further litigation to prevent *that* injustice.

Throughout his Brief, Colonel Keathley recites that in *Phillips*, the Supreme Court rejected the plaintiffs' claim that publishing true information about them in itself violated the Constitutional prohibition on retrospective laws (Br. of Appellant 16-17, 21, 23). Indeed, it is true that in *Phillips*, the Supreme Court did not view "publication of true information about the Does" as affecting "a past transaction to their substantial detriment by imposing a new obligation, adding a new duty, or attaching a new disability in respect to transactions and considerations already past." 194 S.W.2d at 852. The Court concluded that publication "merely looks back at antecedent actions" and rejected the publication of true information submitted by a retrospective registrant as a basis for holding the Sex Offender Registration Act to be retrospective. *Id.*

Contrary to Colonel Keathley's argument, however, rejecting publication as the *basis* for retrospectivity does not, in itself, automatically imply that, having determined that registration was unconstitutionally retrospective in application, the Supreme Court would conclude that disseminating the fruits of those unconstitutional registration does not violate Article I, Section 13. Indeed, the Court has held the exact opposite. The "new obligation and new duty" which the

Supreme Court prohibited was "to register and to maintain and update the registration … ." *Phillips*, 194 S.W.2d at 852.

The supplying of sex offender registration information and the publication of that information are inexorably intertwined. Maintaining and updating one's sex offender registration includes providing updated personal and identifying information, as well as being photographed. §§ 589.402, 589.407, and 589.414, R.S.Mo. Similarly, any person whose information is removed from a sex offender registry by court order "shall no longer be required to fulfill the registration requirements." § 589.400.11, R.S.Mo. As well, removal from the sex offender registry is required when "all offenses requiring registration are reversed, vacated or set aside." § 589.400.3, R.S.Mo.

The Supreme Court also has held that a person no longer required to register because his registration is unconstitutional should be removed from sex offender registries. In *State ex rel. Kauble v. Hartenbach*, the Supreme Court unanimously held that a defendant convicted of a registrable offense which later was found to be unconstitutional "should no longer be required to register as a sex offender," and granted its Writ of Mandamus accordingly. 216 S.W.3d 158, 161 (Mo. banc 2007). That defendant also argued that "he is entitled to removal from the sex offender registry." *Id.* As to that argument, the Court held,

> Because there is no party to this proceeding that maintains the registry, this Court cannot grant Kauble's requested relief ordering that his name be removed from the registry. If Kauble's request to those who maintain the registry is denied, his remedy may be to bring an action against the parties responsible for maintaining the registry.
>
> …
>
> Kauble's petition for an order that Respondent remove his name from the sex offender registry is denied because the party against whom it is brought does not maintain the registry, without prejudice to his requesting removal from the registry from those who maintain it and without prejudice to his right to seek relief in mandamus should they refuse to do so.

Id. Had the defendant in *Kauble* named his county sheriff and Colonel Keathley as respondents in his mandamus petition, then the Supreme Court indeed would have granted mandamus relief to have him removed from the list. As it stood, however, the defendant named only the circuit judge who presided over his criminal conviction.

In this case, however, the respondent did name Colonel Keathley, Superintendent of the Highway Patrol, and Jack Merritt, Sheriff of Greene County, as defendants (L.F. 4). Colonel Keathley and Sheriff Merritt are charged with

maintaining the two sex offender registries on which the respondent's information appeared. §§ 589.402 and 589.410, R.S.Mo. Under the same rationale as the Supreme Court in *Kauble*, and as provided by statute, the trial court correctly understood that Colonel Keathley and Sheriff Merritt must be denied the fruits of the respondent's unconstitutionally acquired sex offender registration information.

Plainly, if Colonel Keathley can continue to publish the respondent's illegally obtained photographs and information, the collateral impact of the illegal registration will continue indefinitely. If this were true, the respondent would have no remedy at law. If this Court reverses the trial court's injunction prohibiting the publication of the illegally obtained information, the respondent's relief would be incomplete and compliance with the Constitution would be defeated.

Whether to grant an injunction is a matter of the trial court balancing the equities before it. *Southern Star Central Gas Pipeline, Inc. v. Murray*, 190 S.W.3d 423, 429 (Mo. App. 2006). In this case, the balance must weigh the fact that the respondent never should have been required to register to begin with. Colonel Keathley never should have been provided in the first place with the information and photographs he seeks to disseminate publicly under the Sex Offender Registration Act. To remedy the respondent's submission to the unconstitutional requirement that he register, declaring that he not be required to register or update

his registration in the future is not enough. Colonel Keathley must be enjoined from disseminating the material which he obtained unconstitutionally.

The law is replete with examples of parties being prevented from using material which it obtained unconstitutionally. Of course, the most common example of this is the Fourth Amendment exclusionary rule and its "fruit of the poisonous tree" doctrine. In the seminal case *Weeks v. United States*, the Supreme Court of the United States weighed whether property seized by the Government in violation of the Fourth Amendment still may be retained by the Government. 232 U.S. 383, 393 (1914). The Court's answer is particularly illuminating as to the main issue in this case:

> If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value and, so far as those thus placed are concerned, might as well be stricken from the Constitution.

Id. For, were it otherwise, "To sanction such proceedings would be to affirm by judicial decision a manifest neglect if not an open defiance of the prohibitions of the Constitution, intended for the protection of the people against such unauthorized action." *Id.* at 394.

Several years later, in *Silverthorne Lumber Co. v. United States*, the Court again visited the question of what was to be done with materials illegally seized by the government in violation of the Fourth Amendment. 251 U.S. 385, 391 (1920). Justice Holmes's opinion pertinently illustrates the precise point which the respondent raises in this case:

> The Government now, while in form repudiating and condemning the illegal seizure, seeks to maintain its right to avail itself of the knowledge obtained by that means which otherwise it would not have had.
>
> The proposition could not be presented more nakedly. It is that although of course its seizure was an outrage which the Government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge that it has gained to call upon the owners in a more regular form to produce them; that the protection of the Constitution covers the physical possession but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act. *Weeks v. United States*, 232 U.S. 383, to be sure, had established that laying the papers directly before the grand jury was unwarranted, but it is taken to mean only that two steps are required instead of one. In our opinion such is not the law.

> *It reduces the Fourth Amendment to a form of words*. 232 U.S. 393. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court *but that it shall not be used at all*.

Id. at 391-392 (emphasis added).

The Court stated the same rationale in *Nardone v. United States*, 308 U.S. 338, 341 (1939), and *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Indeed, in *Wong Sun*, the Court held that the important question is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id.*

In this case, Colonel Keathley insists on the opposite conclusion. He grants that the requirement that respondent register was itself illegal, but he still insists on exploiting that illegality. If this Court were to accept his position and sanction his request to publish the respondent's illegally obtained material, the Court would affirm by judicial decision a manifest neglect, if not an open defiance of, the Constitutional prohibition on retrospective applications of law, which was intended by its drafters in 1820 for the protection of the people against such unauthorized action. *See Phillips*, 194 S.W.3d at 850. In effect, the Court would be holding that this prohibition, which declares the retrospective application of laws to be

unconstitutional, would be of no value and might as well be stricken from the Constitution. Colonel Keathley's argument deprives Article I, Section 13, of any substance, instead reducing it to Justice Holmes's "foam of words."

Of course, this is not a criminal case, and both the exclusionary rule and the "fruit of the poisonous tree" doctrine have a variety of exceptions. *See, e.g.*, *United States v. Ceccolini*, 435 U.S. 268, Syllabus (1978). But those Fourth Amendment doctrines have numerous corollaries in the Rules of Civil Procedure. In Missouri, courts may refuse to admit evidence when a party has failed to observe the rules of discovery or pretrial disclosure deadlines. Supreme Court Rule 61.01. Failure to comply with other evidentiary requirements also may result in a party being denied the use of evidence. *See, e.g., Jackson v. Jackson*, 875 S.W.2d 590, 592 (Mo. App. 1994). If it is reasonable to preclude one from using evidence because one failed to observe a court's rules, then surely it is reasonable to preclude Colonel Keathley from using material obtained in violation of our Constitution.

Equity acts so as to afford complete justice. *Townsend v. Maplewood Inv. & Loan Co.*, 351 Mo. 738, 744, 173 S.W.2d 911, 914 (Mo. banc 1943) (quoting 30 C.J.S. 506 § 104). That justice is not by halves. *Id.* Full justice in this case entails not merely declaring that the requirement that the respondent register as a sex offender was unconstitutional – which Colonel Keathley admits was the case – but

to uphold compliance with the Constitution and to restore the respondent to the status he occupied before he submitted to the unconstitutional registration by enjoining Colonel Keathley from using the fruits of his illegality.

At the very least, this evidently is something on which reasonable minds could disagree. Colonel Keathley believes that the balance of equities weighs in his favor. The trial court (and the respondent) see the balance of equities differently. As such, it cannot be said that in this case, the trial court abused its discretion in directing that the fruits of the unconstitutional requirement that the respondent register as a sex offender be denied to the officials charged with enforcing that unconstitutional registration and publishing the information gained from it. The trial court's Judgment enjoining Colonel Keathley from disseminating the fruits of the respondent's one unconstitutional registration and ordering that such material be deleted is not "clearly against the logic of the circumstances" and is not "so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." If anything, it indicates very careful consideration.

The trial court did not abuse its discretion in fashioning its relief. Accordingly, the Court should hold as its Western District did in *Doe v. Phillips*, 2008 Mo. App. LEXIS 432, and affirm the trial court's Judgment.

Conclusion

The trial court did not abuse its discretion when it granted injunctive relief requiring that the fruits of the respondent's one unconstitutional registration as a sex offender be denied to Colonel Keathley. As such, this Court should affirm the trial court's Judgment.