

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

LASHUN GRAY,)	
)	No. 2:17 CV 1057
Plaintiff,)	
)	
v.)	
)	
CITY OF FRANKLIN, WISCONSIN,)	Judge
)	
Defendant.)	Jury Demand

COMPLAINT

Plaintiff LaShun Gray, through counsel, complains against the Defendant City of Franklin, Wisconsin, as follows:

Nature of the Case

1. This is an action pursuant to 42 U.S.C. §1983 and 28 U.S.C. §2201 challenging the constitutionality of certain provisions of §11.41 of the Municipal Code of the City of Franklin, Wisconsin (the “Ordinance”).

2. The Ordinance regulates where and whether individuals classified as “Sex Offenders” may live in the City of Franklin (the “City” or “Franklin”).

3. Plaintiff LaShun Gray is subject to the restrictions set forth in the Ordinance. Gray owns a house in Franklin where, until recently, he lived with his wife and three children. Pursuant to the terms of the Ordinance, Gray is banned from living in Franklin and is not allowed to sleep at his own house.

4. Plaintiff challenges the following two provisions of the Ordinance both on their face and as applied to him:

- (1) **The Residency Restriction (§167-3):** This section makes it illegal for a person subject to the Ordinance's restrictions to "reside within 2,000 feet" of schools; day-care centers and day care providers; group homes; public parks, parkways and park facilities; public swimming pools; public libraries; recreational trails; public playgrounds; athletic fields used by children; movie theaters; ski hills open to the public; specialized schools for children, such as gymnastics academies, dance academies or music schools; and public or private golf courses or ranges.
- (2) **The Original Domicile Provision (§167-5):** The "Original Domicile" clause makes it illegal for anyone subject to the Ordinance to reside in the City of Franklin "unless such person was domiciled in the City of Franklin at the time of the offense resulting in the person's most recent conviction." §167-5.

5. Plaintiff contends that the challenged provisions, individually and in combination, violate the Ex Post Facto Clause of the U.S. Constitution because they retroactively increase the punishment for people convicted of certain offenses by effectively banishing them from Franklin.

6. Plaintiff also contends that the Original Domicile restriction violates the Equal Protection clause for two reasons: (1) the distinction it draws between those who were domiciled in the City at the time of their offense and those who were domiciled elsewhere is irrational; and (2) the distinction interferes with Plaintiff's fundamental right to maintain a custodial relationship with his children and is not necessary to achieve a compelling state interest.

7. Plaintiff seeks compensatory damages, injunctive relief and declaratory relief on the grounds that the Ordinance is unconstitutional on its face and as applied.

Jurisdiction and Venue

8. Jurisdiction is proper in this court pursuant to 28 U.S.C. §1331 because this action arises under federal law. Specifically, this case arises under 42 U.S.C. §1983 and alleges violations of the Ex Post Facto Clause and the Fourteenth Amendment to the United States Constitution.

9. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), as the events giving rise to Plaintiff's claims occurred in the Eastern District of Wisconsin.

10. Declaratory relief is authorized under 28 U.S.C. §2201. A declaration of law is necessary and appropriate to determine the respective rights and duties of parties to this action.

Relevant Facts

11. In 1998, Plaintiff LaShun Gray was convicted of one count of violation of Wisconsin Statutes §948.02(2) (second degree sexual assault of a minor) for having sex with a teenaged girl he met through mutual friends.

12. The incident occurred two months after LaShun's 17th birthday. LaShun was nonetheless charged as an adult.

13. LaShun has never committed another offense.

14. LaShun has been married to Kate Gray since 2008. LaShun owns and operates a small moving company and Kate is a nurse.

15. The Grays live with their three children, a 15-year old son, an eight-year-old daughter, and a five-year old son.

16. The Grays' youngest son, Kavi, was born with a genetic condition

called x-linked myotubular myopathy (XLMTM), which causes life-threatening complications that require close monitoring and constant care.

17. Kavi has limited mobility and often relies on breathing machines to keep him alive. If he gets a minor cold or allergies, he often ends up in the emergency room with breathing problems. Kavi has been hospitalized for extended periods on five different occasions, the longest being for a three-month stretch when his lungs collapsed. His last hospitalization was in Spring 2017 for three weeks.

18. LaShun and Kate have always shared the responsibility for caring for Kavi and their other children. It is impossible for one parent to shoulder all of this responsibility alone. Caring for Kavi is a time consuming and emotionally taxing job. Not only do the Grays share the responsibility of providing for their son's medical care, they also provide essential emotional support for each other and for their children.

19. In June 2017, Kate and LaShun bought a single-family house in Franklin, Wisconsin, located at 3601 W. Drexel Avenue.

20. They sold their house in Milwaukee to move to Franklin to have more space and to live in a better school district for their children. They bought a wheelchair accessible ranch house, which was essential due to Kavi's limited mobility.

21. When the Grays bought the house in Franklin, they reviewed Wisconsin law concerning the restrictions on where individuals classified as sex offenders are allowed to live. It was their understanding that the house they bought

complied with Wisconsin law.

22. They were not aware that the City of Franklin had its own, more restrictive, local residency Ordinance.

23. On July 21, 2017, a Franklin police officer came to the Grays' house and asked their 15-year-old son, who was home at the time, for LaShun's phone number.

24. The officer called LaShun and asked to meet with him. LaShun met with the officer around noon on July 21. The officer told LaShun that he had to move out of his house by that night because he was living in violation of Franklin's local ordinance regulating the residency of people classified as sex offenders.

25. This was the first time the Grays learned that Franklin had a local ordinance that regulated where LaShun would be allowed to live.

26. After being ordered to move out of his house, LaShun spent eight nights in a hotel. The expense of an extended stay in the hotel room is a financial burden that the family cannot afford. As a result, since July 29, LaShun has been sleeping in his truck, which he parks near the Milwaukee airport to be outside of the zones restricted by any ordinances that would make it illegal for him to be there. Unless something changes, he will have to keep sleeping outside in his car.

27. LaShun is desperate to return home to live with his wife and family and participate in the care and upbringing of his children.

28. Both LaShun and Kate are terrified that Kavi will become ill while LaShun is not home at night. If he needs emergency medical care, LaShun will not

be available to help Kate with providing emergency aid, transporting Kavi to the emergency room, or caring for their other children. Kate spends every night terrified that she will be left to deal with a life-threatening emergency alone.

The Challenged Ordinance

29. Chapter 165 of the Municipal Code of the City of Franklin (titled “Sex Offenders”) regulates where and whether individuals who have been convicted of certain crimes may live in the City of Franklin.¹

30. The Original Domicile Clause (§167-5) of this Ordinance makes it illegal for anyone subject to the Ordinance to reside in the City of Franklin “unless such person was domiciled in the City of Franklin at the time of the offense resulting in the person’s most recent conviction.” §167-5.

31. The Ordinance defines “residence (reside)” as any “place where a person sleeps, which may include more than one location and may be mobile or transitory.” *Id.* at §167-2.

32. The Residency Restriction (§167-3) of the Ordinance makes it illegal for a person subject to the Ordinance’s restrictions to “reside within 2,000 feet” of a long list of prohibited locations, only some of which provide services to minors:

- schools;
- day-care centers and day care providers;
- group homes;
- public parks, parkways and park facilities;
- public swimming pools;
- public libraries;
- recreational trails;

¹ §167-2 of the municipal code sets forth the convictions that subject a person to the restrictions of this Ordinance.

- public playgrounds;
- athletic fields used by children;
- movie theaters;
- ski hills open to the public;
- specialized schools for children, such as gymnastics academies, dance academies or music schools;
- public or private golf courses or ranges; and
- aquatic facilities open to the public.

The Impact of the Ordinance on Plaintiff and on the Availability of Housing in Franklin

33. The Ordinance permanently bans Plaintiff LaShun Gray from ever living in the City of Franklin, or even spending one night there. This is so because LaShun did not live in Franklin at the time of his offense.

34. Even if Plaintiff were not subject to the Original Domicile restriction, the Ordinance would still functionally ban Plaintiff from living in the City.

35. This is so because the 2,000-foot prohibited zones effectively put off limits all of the residential housing in the City, including the Plaintiff's home, which is located approximately 800 feet from a small park.

36. The City has published a map of the prohibited locations and the 2,000-foot prohibited zones. This map shows that over 80 percent of the total land area of Franklin is off limits under the Ordinance.

37. In reality, the effect of the Ordinance on the availability of housing is greater than the City's map indicates. This is because most of the parts of Franklin that are not off limits under the Ordinance are industrial or commercial areas or are undeveloped. The Ordinance ultimately puts over 95 percent of the residential housing in the City off limits.

38. After LaShun was forced to move out of his home, Kate contacted her real estate agent, Carol Simon at Shore West Realtors, and asked her to find out whether there were any residential properties for sale in the City that were not in a prohibited zone.

39. Carol conducted a search and informed Kate that there are currently 75 residential properties for sale in Franklin and only one of them appears to be outside of a restricted zone.

40. The one property that is for sale that is not in a restricted zone is listed for more than \$300,000, which is prohibitively expensive for Plaintiff's family.

COUNT I
42 U.S.C. §1983: EX POST FACTO CLAUSE

41. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation above.

42. The Ordinance, through its residency restrictions and original domicile clause, effectively banishes Plaintiff and other people classified as sex offenders from the City of Franklin by over 95 percent of the residential housing in the City off limits.

43. The Ordinance violates the Ex Post Facto Clause of the U.S. Constitution, Art. I, § 10, cl. 1, because it makes more burdensome the punishment imposed for offenses committed prior to enactment of the Ordinance and it applies retroactively—that is, it applies to all individuals deemed “Sex Offenders” who committed their offenses before enactment of the Ordinance.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) issue a preliminary and then permanent injunction prohibiting enforcement of the Ordinance;
- (b) issue a declaratory judgment that states that retroactive application of the Ordinance violates the prohibition in the United States Constitution against ex post facto laws;
- (c) award compensatory damages to Plaintiff;
- (d) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- (e) grant Plaintiff any other relief the Court deems appropriate.

COUNT II
42 U.S.C. §1983: EQUAL PROTECTION

44. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation above.

45. The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which the Supreme Court has explained means that “all persons similarly situated should be treated alike” unless the difference in treatment is “rationally related to a legitimate state interest.”

46. The Original Domicile clause of the Ordinance prohibits anyone subject to the Ordinance from residing in the City of Franklin unless he or she lived in the City of Franklin at the time of his or her most recent conviction.

47. This clause permanently bans Plaintiff from living in the City of Franklin.

48. The Ordinance's different treatment of people who were domiciled in

Franklin at the time of their offense and people who were not domiciled in Franklin at the time of their offense violates the Equal Protection clause for two reasons.

First, the distinction it draws between those who were domiciled in the City at the time of their offense and those who were domiciled elsewhere is irrational. Second, the Ordinance interferes with Plaintiff's fundamental right to maintain a custodial relationship with his children and the distinction it draws between those who were domiciled in the City at the time of their offense and those who were domiciled elsewhere is not necessary to achieve a compelling state interest.

49. Whether analyzed under a strict scrutiny standard or rational basis review, the Ordinance fails.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) issue a preliminary and then permanent injunction prohibiting enforcement of the Ordinance;
- (b) issue a declaratory judgment that states that the Ordinance violates the Fourteenth Amendment to the United States Constitution;
- (c) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- (d) grant Plaintiff any other relief the Court deems appropriate.

Plaintiff demands trial by jury.

Respectfully submitted,

/s/ Adele D. Nicholas
/s/ Mark G. Weinberg
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