SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

G.H. v. Township of Galloway (A-64/65-08)

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in the written opinion below.)

Argued March 24, 2009 -- Decided May 7, 2009

PER CURIAM

At issue before the Court in this consolidated appeal is the validity of two municipal ordinances prohibiting convicted sex offenders from living within a designated distance of schools, parks, playgrounds and daycare centers.

The Galloway Township (Galloway) ordinance at issue prohibits a person over the age of eighteen who has been convicted of a sexual offense against a minor as statutorily provided and who is required to register with the authorities pursuant to Megan's Law, N.J.S.A. 2C:7-1 to -19, from living within 2500 feet of any school, park, playground, or daycare center in Galloway. On notice from Galloway, such a person must move within sixty days, or be subjected to a fine of $1250 to $5000, imprisonment up to six months, and community service up to ninety days. The ordinance contains a grandfather clause, exempting anyone who established residence prior to the introduction date of the ordinance.

G.H., a twenty year-old college freshman at Richard Stockton College, in Galloway Township, moved into a dormitory on campus after the effective date of the ordinance's grandfather clause. G.H. had been adjudicated delinquent for an offense committed when he was fifteen years old, which, if committed by an adult, would constitute fourth-degree criminal sexual contact. The victim was a thirteen-year-old girl. G.H. served two years of probation. He had no other criminal history. G.H. was designated as a Tier 1 (low risk of reoffense) sex offender pursuant to Megan's Law. Galloway sent him a notice advising him that he was required to move within sixty days and could not live within 2500 feet of the campus.

G.H. brought a complaint in lieu of prerogative writs challenging the Galloway ordinance. After a hearing on a motion for summary judgment filed by G.H., the trial court issued an opinion declaring the ordinance invalid on the grounds that it was preempted by state law and violated the due process, ex post facto and double jeopardy clauses of the New Jersey Constitution. Galloway appealed to the Appellate Division.

The other municipal ordinance at issue, adopted by Cherry Hill Township (Cherry Hill), is similar to the Galloway ordinance. The only significant difference is the penalty provisions. It designates each day of continuing violation a separate and distinct offense, and provides for a fine not to exceed $1250 per offense, together with imprisonment up to ninety days or community service up to ninety days.

James Barclay and Jeffrey Finguerra were convicted sex offenders (CSO), over age eighteen, who moved into the Hillside Motel in Cherry Hill, which is located within 2500 feet of Camden Catholic High School. They moved to the motel after the effective date of the ordinance's grandfather clause. Barclay and Finguerra were both recipients of a Section 8 housing allowance from the State and they moved into the motel after approval of the residence by their parole or probation officers. Each notified the Cherry Hill Township Police Department of the location of the residence. The men were notified by Cherry Hill that they were in violation of the ordinance and were required to move within sixty days. They did not move because they were awaiting Section 8 housing and approval of a new residence by their parole or probation officers. After the passage of the sixty days, Cherry Hill issued citations against both of them for violating the ordinance.

The matter came before the Cherry Hill Township municipal court, which denied Barclay's and Finguerra's motions to dismiss based on the invalidity of the ordinance. The cases were tried and both men were found guilty

and sentenced to a fine of $50 plus &33 costs for each day beyond the sixty-day period after which they were notified. The municipal court suspended imposition of sentence on all but one of the charges for Barclay and Finguerra. On appeal to the Law Division, the trial judge invalidated the Cherry Hill ordinance on the same bases as cited in the Galloway ordinance dispute. Cherry Hill appealed to the Appellate Division.

The Appellate Division affirmed the decision of the trial courts, concluding that Cherry Hill's and Galloway's residency restriction ordinances conflict with the policies and operational effect of the statewide scheme implemented by Megan's Law, which was intended, both expressly and impliedly, to be exclusive in the field. The appellate panel noted that the subject matter reflects a need for statewide uniformity. The scheme chosen by the Legislature, refined by the judiciary, and firmly entrenched for more than a decade on a uniform statewide basis, is pervasive and comprehensive, precluding the coexistence of municipal regulation. The panel noted the far-reaching scope of Megan's Law and its multilayered enforcement and monitoring mechanisms, constituting a comprehensive system chosen by the Legislature to protect society from the risk of reoffense by CSOs and to provide for their rehabilitation and reintegration into the community. The appellate panel considered the system all-encompassing in respect of the activities of CSOs living in the community. The Appellate Division held that the Cherry Hill and Galloway Township ordinances interfere with and frustrate the purposes and operation of the statewide scheme and conflict with the expressed and implied intent of the Legislature to exclusively regulate this field, and are, therefore, preempted.

The Supreme Court granted certification.

HELD: Judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in Judge Lisa's written opinion. Cherry Hill Township's and Galloway Township's ordinances, establishing residency restrictions that formed buffer zones for convicted sex offenders living within their communities, are precluded by the present, stark language of Megan's Law.

1. At oral argument, the Court was urged to provide guidance about the limits to Megan's Law's preemption of municipal action in respect of convicted sex offenders. The judicial function operates best when there is a concrete dispute presented. The only matter before the Court is the validity of the challenged ordinances. That is all that was before the Appellate Division and that is all the Court can address. Accordingly, the Court declines the municipalities' requests that it answer hypothetical questions about un-enacted ordinances or that we provide advisory opinions to function in the abstract. (Pp. 2-4)

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, RIVERA-SOTO and HOENS join in this PER CURIAM opinion. JUSTICE WALLACE did not participate.

SUPREME COURT OF NEW JERSEY
A-64/65 September Term 2008

G.H.,

Plaintiff-Respondent,

v.

TOWNSHIP OF GALLOWAY,

Defendant-Appellant.

TOWNSHIP OF CHERRY HILL,

Plaintiff-Appellant,

v.

JAMES BARCLAY and JEFFREY FINGUERRA,

Defendants-Respondents.

Argued March 24, 2009 – Decided May 7, 2009

On certification to the Superior Court, Appellate Division, whose opinion is reported at 401 N.J. Super 392 (2008).

William F. Cook argued the cause for appellant Township of Cherry Hill (Brown & Connery, attorneys; Mr. Cook, William M. Tambussi, and Abigail M. Green, on the briefs).

Demetrios K. Stratis argued the cause for appellant Township of Galloway (Mr. Stratis and Stuart J. Roth, a member of the District of Columbia bar, attorneys).

Frank L. Corrado argued the cause for respondent G.H. (Barry, Corrado, Grassi & Gibson and Edward L. Barocas, attorneys).

Scott T. Schweiger argued the cause for respondents James Barclay and Jeffrey Finguerra.

Lynette Siragusa argued the cause for amicus curiae Legal Services of New Jersey (Melville D. Miller, Jr., President, attorney).

Michael Z. Buncher, Deputy Public Defender, submitted a letter in lieu of brief on behalf of amicus curiae Office of the Public Defender (Yvonne Smith Segars, Public Defender, attorney).

Stephen M. Latimer submitted a letter in lieu of brief on behalf of amicus curiae New Jersey Chapter of the Association for the Treatment of Sexual Abusers (Loughlin & Latimer, attorneys).

Joan D. Van Pelt, Deputy Public Advocate, submitted a letter in lieu of brief on behalf of amicus curiae Department of the Public Advocate (Ronald K. Chen, Public Advocate, attorney).

PER CURIAM

We granted certification in this consolidated appeal to review an Appellate Division determination that Megan's Law, see N.J.S.A. 2C:7-1 to -19, preempted and required the invalidation of municipal ordinances enacted by Cherry Hill Township and Galloway Township. The challenged ordinances each operated to prohibit convicted sex offenders from living within a designated distance of any school, park, playground, public library, or daycare center in its respective municipal jurisdiction. We now affirm the judgment of the Appellate Division substantially for

the reasons expressed in Judge Lisa's comprehensive opinion. G.H. v. Twp. of Galloway, 401 N.J. Super. 392 (2008). Accordingly, we hold that Cherry Hill Township's and Galloway Township's ordinances, establishing residency restrictions that formed buffer zones for convicted sex offenders living within their communities, are precluded by the present, stark language of Megan's Law. It is that language which controls.

That said, we add the following. At oral argument, this Court was urged to provide guidance about the limits to Megan's Law's preemption of municipal action in respect of convicted sex offenders. Cherry Hill also sought to have this Court address hypothetical variations of its present ordinance, presumably to glean advice that might salvage an ordinance to replace the one invalidated. We cannot answer abstract questions or give advisory opinions. See Crescent Pk. Tenants Ass'n v. Realty Eq. Corp. of N.Y., 58 N.J. 98, 107 (1971); N.J. Tpk. Auth. v. Parsons, 3 N.J. 235, 240 (1949). The judicial function operates best when a concrete dispute is presented to the courts. All that is before us is the viability of the challenged ordinances. That was all that was before the Appellate Division and that is all we can address. Accordingly, we decline the municipalities' requests that we answer hypothetical questions about un-enacted ordinances or that we provide advisory opinions to function in the abstract.

The judgment of the Appellate Division is affirmed.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, RIVERA-SOTO and HOENS join in this opinion. JUSTICE WALLACE did not participate.

SUPREME COURT OF NEW JERSEY

NO. A-64/65 SEPTEMBER TERM 2008

ON CERTIFICATION TO Appellate Division, Superior Court

G.H.,

Plaintiff-Respondent,

v.

TOWNSHIP OF GALLOWAY,

Defendant-Appellant.

TOWNSHIP OF CHERRY HILL,

Plaintiff-Appellant,

v.

JAMES BARCLAY and JEFFREY FINGUERRA,

Defendants-Respondents.

DECIDED May 7, 2009

Chief Justice Rabner PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY

DISSENTING OPINION BY

CHECKLIST	AFFIRM	
CHIEF JUSTICE RABNER	X	
JUSTICE LONG	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE WALLACE	----------	----------
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
TOTALS	6	