

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1189-21

IN THE MATTER OF
REGISTRANT M.H.

APPROVED FOR PUBLICATION

May 25, 2023

APPELLATE DIVISION

Argued March 8, 2023 – Decided May 25, 2023

Before Judges Vernoia, Firko and Natali.

On appeal from the Superior Court of New Jersey,
Law Division, Somerset County, Docket No.
ML-95-18-0024.

James H. Maynard argued the cause for appellant
(Maynard Law Office, LLC, attorneys; James H.
Maynard, on the briefs).

Lauren H. Fox, Assistant Prosecutor, argued the cause
for respondent (John P. McDonald, Somerset County
Prosecutor, attorney; Lauren H. Fox, of counsel and
on the brief).

The opinion of the court was delivered by

NATALI, J.A.D.

Registrant M.H. appeals from a Law Division order denying his motion to terminate his obligations under Megan's Law, N.J.S.A. 2C:7-1 to -23. Because M.H. committed a failure-to-register offense within fifteen years of his sex offense conviction, the court concluded he failed to satisfy the

termination requirements under N.J.S.A. 2C:7-2(f) (subsection (f)). Before us, M.H. contends he poses no greater risk of committing a sex offense than any other member of the general public and the obligations imposed upon him by Megan's Law therefore violate his due process and equal protection rights guaranteed by the New Jersey Constitution.

After carefully considering M.H.'s constitutional challenges against our Supreme Court's holding in Doe v. Poritz, 142 N.J. 1, 12 (1995), which upheld as constitutional the same registration and community notification laws M.H. contests, we reject his arguments. We further reject M.H.'s reliance on State in Interest of C.K., 233 N.J. 44, 47-48 (2018), as the facts of that case are materially distinguishable, and the Court's opinion did not call into question either the constitutionality of the statute's presumptively lifelong obligations as applied to adult offenders, or the Court's holding in Doe. Finally, although we recognize M.H. proffered evidence supporting his claim he no longer poses a risk to the community, we are also mindful that he is a Tier II registrant designated as a moderate risk of re-offense and does not challenge that designation before us. We accordingly affirm the order under review.

I.

On September 18, 1992, M.H. pled guilty to seven counts of second-degree sexual assault, N.J.S.A. 2C:14-2(c), and one count of fourth-degree

criminal sexual contact, N.J.S.A. 2C:14-3(b). He was sentenced to three concurrent indeterminate terms not to exceed five years, and he was released on parole in September 1993. While on parole, the Legislature enacted Megan's Law, subjecting him to its registration and community notification requirements. He was classified as a Tier II offender with a moderate risk of re-offense and has never petitioned for a reduction in that tier classification.

In January 2004, over eleven years after his initial conviction, M.H. pled guilty to a fourth-degree failure-to-register charge based on his violation of his Megan's Law reporting obligations, N.J.S.A. 2C:7-2(d). In light of this offense, M.H. is precluded from availing himself of subsection (f)'s termination procedures. Under the statute, a person subject to Megan's Law requirements may move to terminate that obligation only upon submission of proof the person "has not committed an offense within [fifteen] years following" the later of either the "person's conviction or release from a correctional facility" if a custodial sentence is imposed, and "is not likely to pose a threat to the safety of others." N.J.S.A. 2C:7-2(f).

Despite that legislative mandate, on October 23, 2020, M.H. filed a motion to terminate his registration obligations under subsection (f). As noted, M.H. contended requiring him to continue registering under Megan's Law

violates the substantive, procedural due process, and equal protection guarantees contained in our State Constitution.

The court conducted an evidentiary hearing wherein M.H. presented testimony and reports from three experts: (1) Dr. R. Karl Hanson, a psychologist and expert in sex offense risk assessment and recidivism; (2) Dr. Kristin Zgoba, an expert in "the field of scientific study of sex offense recidivism, sex offender management in the community, and criminology"; and (3) Dr. James Reynolds, a forensic psychologist. The State presented no expert testimony. According to M.H., the expert testimony, as well as scientific and sociological research, demonstrated "sex offense recidivism declines steadily over time that registrants live offense free in the community, to a point indistinguishable from that of non-sex-offending individuals."

Dr. Hanson provided a certification and report in which he explained the common belief in the 1990s that individuals convicted of sex crimes were likely to reoffend has since been refuted. Dr. Hanson testified that over half of Megan's Law registrants who live in the community offense free for at least ten years are likely to reach the "desistance threshold," a "concept in criminology that indicates a risk level that is sufficiently low that people with an offending history should be considered, based on risk, as no different from the general population."

Dr. Zgoba testified no relationship exists between a registrant's failure to register and subsequent re-offending. Dr. Reynolds similarly stated M.H.'s failure-to-register offense does not impact his recidivism risk. In his psychological evaluation and actuarial risk assessment of M.H., Dr. Reynolds concluded M.H. was unlikely to reoffend, "does not present a risk of harm to others in the community, and . . . his risk of harm, sexually or otherwise, will not increase if the [c]ourt determines that it is appropriate to relieve [him] of his obligation to register as a sexual offender."

Based on the expert testimony and scientific studies provided, M.H. argued "many common myths about sexual abuse and sex offense recidivism upon which Megan's Law was based" have since been "debunked." According to M.H., because he proved he no longer poses a risk to his community, subjecting him to lifelong registration and community notification requirements violates his constitutional rights.

The court rejected M.H.'s constitutional challenges and denied his application in a November 19, 2021 order and accompanying statement of reasons. It specifically rejected M.H.'s procedural due process challenge, as it concluded Megan's Law granted him the requisite notice and opportunity to be heard prior to the challenged deprivation of his rights and explained, "registrants are on notice that if they commit any offense they will be barred

from petitioning for relief under Megan's Law." The court also relied on Doe, 142 N.J. at 106-07, and considered: (1) M.H.'s privacy interests; (2) the value of additional or alternative safeguards; and (3) the State's interest. After considering and balancing those factors, the court determined Megan's Law's registration and community notification scheme does not unconstitutionally deprive registrants, like M.H., of procedural due process.

The court also rejected M.H.'s substantive due process claim, stating "the goals of the statute are closely related to M.H.'s" failure-to-register offense. It therefore rejected his contention that "it is arbitrary to keep a registrant beholden to Megan's Law when an offense is de minimis and not related to sex offending." The court acknowledged, however, "it might be time for the Legislature to revisit Megan's Law," but concluded it was not within its power to second guess the Legislature absent a finding the statute was arbitrary in intent or application.

The court also rejected M.H.'s equal protection challenge, concluding Megan's Law registrants are not a protected class and the challenged provisions were constitutional under rational basis review. This appeal followed.

II.

As M.H.'s constitutional challenges constitute issues of law, we review the court's order de novo. State v. Pimentel, 461 N.J. Super. 468, 480 (2019). We also note a "presumption of validity attaches to every statute," and "the party challenging the constitutionality of a statute . . . bears the burden of establishing its unconstitutionality." State v. Lenihan, 219 N.J. 251, 265, 266 (2014). We begin with a discussion of the Megan's Law registration and community notification requirements and the Court's opinion in Doe. We then address M.H.'s due process and equal protection arguments.

A.

"Megan's Law is intended 'to protect the community from the dangers of recidivism by sexual offenders.'" In re Registrant B.B., 472 N.J. Super. 612, 618 (App. Div. 2022) (quoting In re Registrant C.A., 146 N.J. 71, 80 (1996)). "The law's two components are registration and notification." In re Registrant T.T., 188 N.J. 321, 327 (2006); N.J.S.A. 2C:7-2; N.J.S.A. 2C:7-8. "The extent of community notification chiefly results from a registrant's designation as a Tier I (low), Tier II (moderate), or Tier III (high) offender." In re Registrant C.J., 474 N.J. Super. 97, 106 (App. Div. 2022) (citing N.J.S.A. 2C:7-8(a), (c)(1) to (3)). "Tier designations reflect a registrant's risk of re-offense, as determined by a judge assessing various information, including thirteen factors

referenced in the [registrant risk assessment scale (RRAS)]." Ibid. (citing In re Registrant A.A., 461 N.J. Super. 385, 394 (App. Div. 2019)).

The registration and community notification requirements mandated by Megan's Law are presumptively indefinite. C.K., 233 N.J. at 47-48. Under subsection (f), however, a registrant may successfully apply to terminate those obligations upon proof: (1) the registrant did not "commit[] an offense within [fifteen] years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later"; and (2) "is not likely to pose a threat to the safety of others." N.J.S.A. 2C:7-2(f).

The purposes of the registration and notification requirements are set forth in N.J.S.A. 2C:7-1, in which the Legislature found and declared:

- a. The danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children, and the dangers posed by persons who prey on others as a result of mental illness, require a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety.
- b. A system of registration of sex offenders and offenders who commit other predatory acts against children will provide law enforcement with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons.

[N.J.S.A. 2C:7-1.]

In Doe, our Supreme Court rejected challenges to the Megan's Law registration and community notification requirements under both the State and Federal Constitutions. 142 N.J. at 12. In doing so, the Court explained, "society has the right to know of" the presence of prior sex offenders "in order to protect itself" and the Legislature concluded the characteristics of some such offenders, "and the statistical information concerning them, make it clear that despite . . . integration, re[-]offense is a realistic risk, and knowledge of their presence a realistic protection against it." Id. at 13. It further observed:

The choice the Legislature made was difficult, for at stake was the continued apparently normal lifestyle of previously-convicted sex offenders, some of whom were doing no harm and very well might never do any harm, as weighed against the potential molestation, rape, or murder by others of women and children because they simply did not know of the presence of such a person and therefore did not take the common-sense steps that might prevent such an occurrence. The Legislature chose to risk unfairness to the previously-convicted offenders rather than unfairness to the children and women who might suffer because of their ignorance, but attempted to restrict the damage that notification of the public might do to the lives of rehabilitated offenders by trying to identify those most likely to reoffend and limiting the extent of notification based on that conclusion.

[Ibid.]

In upholding the registration and community notification requirements, Doe recognized "those are lifetime requirements," unless the registrant can satisfy subsection (f). Id. at 21. The Court concluded that the registration requirement, read together with "the provisions for notification, the [t]iers, and the many other related parts," are fairly designed to achieve the legislative purpose articulated in N.J.S.A. 2C:7-1 "to aid law enforcement in apprehending sex offenders and to enable communities to protect themselves from such offenders." Id. at 25. Additionally, the Court found the community notification laws, read together with the related Attorney General Guidelines, "provide a coherent system of notification calibrated to the degree of risk of re[-]offense[.]" Ibid.

The Court also acknowledged conflicting viewpoints with respect to the measures taken by the Legislature to combat sex offense recidivism, but nevertheless determined Megan's Law was reasonably calculated to achieve its legislative purpose. Ibid. It explained:

We are aware of the uncertainties that surround all aspects of the subject of sex offender recidivism and the effectiveness of preventive measures. Legislatures, despite uncertainty, must sometimes act to deal with public needs, basing such action on what they conclude, in a welter of conflicting opinions, to be the probable best course. Our Legislature could reasonably conclude that risk of re[-]offense can be fairly measured, and that knowledge of the presence of offenders provides increased defense against them.

Given those conclusions, the system devised by the Legislature is appropriately designed to achieve the laws' purpose of protecting the public.

[Ibid. (emphasis added).]

Against that backdrop, the Court rejected the registrant's facial, and as applied, constitutional challenges. Id. at 110-11. Specifically, the registrant contended the registration and community notification laws were unconstitutional as applied to him because he was a first-time offender, completed treatment and his parole, had not reoffended, and was "totally integrated in and accepted by the community[.]" Id. at 26. The Court concluded such characteristics and circumstances, even if accepted as true, did not "confer on him any constitutional or legal rights different from any other offender." Id. at 27. It explained "those characteristics are relevant only to his ultimate [t]ier classification" and "the fact that an offender may be able to prove an extremely low probability of re[-]offense does not exempt him from the law, or transform his facial attack to one as applied[.]" Ibid.

B.

M.H., like the registrant in Doe, contends the registration and community notification requirements violate his substantive due process rights guaranteed by the New Jersey Constitution. He specifically argues those obligations, which apply indefinitely upon a registrant's failure to satisfy the

requirements of subsection (f), are "arbitrary, if not wholly irrational," when applied to registrants, like himself, who committed an offense within the statutory fifteen-year period but can nevertheless present evidence they claim demonstrates they no longer pose a risk to their communities and have attained the desistance threshold.

Under the New Jersey Constitution, equal protection and due process rights derive from the same language, Pimentel, 461 N.J. Super. at 490, which provides: "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness," N.J. Const. art. I, ¶ 1. Although "Article I does not contain the terms 'equal protection' or 'due process,' . . . 'it is well settled that the expansive language of that provision is the source for both of those fundamental [state] constitutional guarantees.'" Pimentel, 461 N.J. Super. at 490 (second alteration in original) (quoting Sojourner A. v. N.J. Dep't of Human Servs., 177 N.J. 318, 332 (2003)).

"The guarantee of substantive due process requires that a statute reasonably relate to a legitimate legislative purpose and not impose arbitrary or discriminatory burdens on a class of individuals." C.K., 233 N.J. at 73. "Although all laws are presumed to be constitutional, no law can survive

scrutiny under Article I, Paragraph 1 unless it has a rational basis in furthering some state interest." Ibid. Our courts decide substantive due process challenges by considering "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." Pimentel, 461 N.J. Super. at 491 (quoting Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985)).

Applying that balancing test, Doe held the registration and community notification provisions did not violate the registrant's substantive due process rights under the New Jersey Constitution, concluding the State's "interest in disclosure substantially outweigh[ed] the interest in nondisclosure." 142 N.J. at 90. According to the Court, registrants do not have an expectation of privacy in the information disclosed under the registration law, but public disclosure of a registrant's home address under the community notification law implicates privacy interests. Id. at 79, 82. It concluded however, "the information requested is not deserving of a particularly high degree of protection." Id. at 88. Against the registrant's marginal privacy interests, the Court determined the State's "interest in protecting the public is legitimate and substantial[.]" and the incursion on a registrant's privacy interests "is necessary for the protection of the public, as the means chosen are narrowly tailored to that interest." Id. at 90-91.

The Court also considered "the degree and scope of disclosure is carefully calibrated to the need for public disclosure: the risk of re[-]offense." Id. at 89. The Court determined "[o]nly that information necessary to alert the public of, and protect the public from, the risk posed by the offender is released." Ibid.

We reject M.H.'s substantive due process challenge to the Megan's Law registration and community notification requirements substantially for the reasons expressed in Doe. We acknowledge Doe did not specifically address within its analysis whether either Megan's Law's presumption its requirements will apply indefinitely or the termination requirements of subsection (f) violate a defendant's substantive due process rights. We have explained, however, "[s]ubsection (f) was part and parcel of the Legislature's reasonable conclusion that 'the risk of re[-]offense can be fairly measured, and the knowledge of the presence of offenders provides increased defense against them.'" In re Registrant G.H., 455 N.J. Super. 515, 532-33 (App. Div. 2018) (citations omitted).

Additionally, in upholding Megan's Law's registration and community notification scheme, the Court was clearly mindful that the statute presumptively imposed those obligations indefinitely. Doe, 142 N.J. at 21. In this regard, the Court specifically acknowledged Megan's Law imposed

"lifetime requirements" unless a registrant can satisfy the termination provisions of subsection (f), ibid., and those requirements may subsume previous offenders who no longer pose a danger to their communities, id. at 13. It thereafter explained the registration and community notification provisions must be read as a comprehensive scheme, stating, "[t]ogether these laws are fairly designed to achieve" the legislative purpose, and "the system devised by the Legislature is appropriately designed to achieve the laws' purpose of protecting the public." Id. at 25.

As noted, the Court held the Megan's Law registration and notification requirements reflect a fair measure of a registrant's risk of re-offense. Ibid. The imposition of lifelong registration and community notification requirements on registrants who fail to satisfy subsection (f) therefore "reasonably relate[s] to a legitimate legislative purpose and [does] not impose arbitrary or discriminatory burdens on a class of individuals." C.K., 233 N.J. at 73. We discern no reason to depart from the Doe Court's reasoning notwithstanding M.H.'s contentions that he does not pose a risk to his community. See Bowser v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 165, 173 (App. Div. 2018) ("Appellate and trial courts consider themselves bound by [the] Court's pronouncements, whether classified as dicta

or not.") (alteration in original) (quoting State v. Dabas, 215 N.J. 114, 136-37 (2013)).

Additionally, M.H.'s contention he no longer poses a risk to his community is undermined by his status as a Tier II registrant. In reading the registration and community notification requirements as part of comprehensive legislation, Doe concluded the community notification requirements were adequately tailored to limit the burden on a registrant's due process rights based on the risk that the registrant posed to the community. 142 N.J. at 89. The Court also explained the evidence proffered by the registrant with respect to his risk of re-offense was relevant "only to his ultimate [t]ier classification," as opposed to his obligations under the statute in the first instance. Id. at 27. As best we can discern from the record, M.H. has never availed himself of the procedures provided for under the statute to reduce his burden as a Megan's Law registrant by seeking Tier I designation.

We find further support for our conclusion in In re Registrant A.D., 441 N.J. Super. 403, 420 (App. Div. 2015). In that case, the trial court denied the applications of three registrants to terminate their registration requirements because they had each committed a non-sex offense within the statutory fifteen-year period. Id. at 405. On appeal, they argued, in part, "interpreting the word offense in [subsection (f)] to mean a non-sex offense would not be

rationally related to the goal of Megan's Law." Id. at 419. Like M.H., the registrants in A.D. asserted "the psychological community believes that the commission of a non-sexual, technical parole violation does not increase one's risk, or danger, to recidivate," and it therefore could not "rationally be concluded that the State's interpretation of the word 'offense' is related to the objective of Megan's Law." Id. at 419-420.

We held Doe was dispositive and rejected their arguments. Id. at 419. Specifically, we explained Doe recognized Megan's Law imposed lifetime requirements unless the registrant could satisfy subsection (f) and nevertheless concluded the Legislature "could reasonably conclude that risk of re[-]offense can be fairly measured," and "the system devised by the Legislature is appropriately designed to achieve the laws' purpose of protecting the public." Ibid. (quoting Doe, 142 N.J. at 25). We therefore concluded the Legislature could rationally have concluded commission of a non-sex offense within the statutory period evinced a propensity to re-offend. See ibid.

We also recognize other jurisdictions have rejected substantive due process challenges to sex offender registry statutes that impose presumptive lifetime obligations, like Megan's Law. See e.g., Milliard v. Camper, 971 F.3d 1174, 1185 (10th Cir. 2020) (upholding Colorado's Sex Offender Registration Act, Colo. Rev. Stat. 16-22-101 to -115); Doe v. Moore, 410 F.3d 1337, 1345-

46 (11th Cir. 2005) (upholding Florida's sex offender registration and notification scheme, Fla. Stat. §§ 943.043, .0435, 944.606).

Similarly, other jurisdictions have rejected as applied substantive due process challenges to lifetime registration requirements for certain violent offenders. See e.g., People v. Parker, 70 N.E.3d 734, 749, 754-55 (Ill. App. Ct. 2016) (rejecting the registrant's claim his classification as a "sexual predator" under the Sex Offender Registry Act, 730 Ill. Comp. Stat. Ann. 150/1 to 150/13, and the accompanying lifetime reporting requirements violated his substantive due process rights because they were imposed "without regard for his rehabilitative potential"); State v. Germane, 971 A.2d 555, 582-83 (R.I. 2009) (rejecting the registrant's as applied substantive due process challenge to Rhode Island's Sexual Offender Registration and Community Notification Act, R.I. Gen. Laws § 11-37.1-1 to -21, and concluding "persons who have been convicted of serious sex offenses [do not] have a fundamental right to be free from the registration and notification requirements set forth in the [statute], even if those requirements are intrusive and remain in place indefinitely").

M.H. claims the research relied upon the Legislature in passing Megan's Law, and generally accepted when the Court decided Doe, has since been refuted. He argues the science now shows "[a]ll registrants, regardless of

initial risk, will eventually attain the desistance threshold if they remain offense-free in the community for a long enough period of time," and "there is no need to protect the public from registrants who have attained the desistance threshold." (emphasis omitted). M.H. urges us to accept these scientific and sociological advancements and determine he, and similarly situated registrants, can no longer be considered dangerous sex offenders as they once were. On this point, he relies on C.K., 233 N.J. at 74. We find his reliance misplaced, as the facts of that case are materially distinguishable.

In C.K., the registrant contended N.J.S.A. 2C:7-2(g) (subsection (g)) unconstitutionally imposed lifelong obligations on juveniles without providing any opportunity to demonstrate their redemption in the future. Id. at 56-57. Our Supreme Court agreed and held subsection (g)'s "lifetime registration and notification requirements as applied to juveniles violate the substantive due process guarantee of Article I, Paragraph 1 of the New Jersey Constitution." Id. at 48. In doing so, the Court considered United States Supreme Court cases which declared as unconstitutional statutory schemes that exposed juvenile defendants to capital punishment, life without parole, and mandatory life parole. Id. at 68.

The Court explained "the [United States Supreme] Court grounded its decisions on commonly accepted scientific and sociological notions about the

unique characteristics of youth and the progressive emotional and behavioral development of juveniles." Ibid. C.K. also recognized scientific and sociological research about youth development and capacity for change and recounted several decisions of "[o]ther state courts of last resort that have addressed the constitutionality of long-term registration and notification requirements imposed on juvenile sex offenders." Id. at 69-72.

Additionally, the Court reasoned "scientific and sociological studies have shined new light on adolescent brain development and the recidivism rates of juvenile sex offenders compared to adult offenders" since subsection (g)'s passage in 2002. Id. at 74. It further explained the "commonsense and historical understanding that children are different from adults is enshrined in our juvenile justice system and fortified by recent United States Supreme Court decisions" Ibid. Finally, the Court reasoned subsection (f) adequately prevents juveniles who reoffend or continue to pose a danger to their community from terminating their registration requirements. Id. at 75.

Although C.K. considered scientific and sociological research, its decision was based on commonly accepted "notions about the unique characteristics of youth." Id. at 68. Those characteristics were not only affirmed by scientific and sociological research but also accepted by the United States Supreme Court and other state courts of last resort. Id. at 70-72.

Finally, those notions were consistent with "commonsense and historical understanding." Id. at 74. Here, M.H. does not cite to any legal authority that has accepted his claim that all sex offenders who remain offense-free will eventually reach a point in which they no longer pose a greater risk of committing a sexual offense than other members of the general population. And, as evidenced by Megan's Law itself, his contentions are expressly contrary to the historical understanding with respect to recidivism rates of sex offenders. See N.J.S.A. 2C:7-1.

Finally, we reject M.H.'s contention that even if subsection (f) does not violate substantive due process on its face, it does so as applied to him. As noted, Doe rejected such an argument, concluding the registrant's alleged special characteristics, even if accepted as true, did not "confer on him any constitutional or legal rights different from any other offender." 142 N.J. at 27. Similarly, here, M.H. has alleged no facts which suggest he stands on different constitutional or legal grounds from other Tier II registrants who fail to satisfy one of the criteria for termination of their Megan's Law obligations under subsection (f). As noted by Doe, to the extent he has proffered evidence with respect to his risk of re-offense, that evidence is relevant to his tier status, which he has never challenged and does not challenge before us. Ibid.

C.

M.H. also argues Megan's Law violates procedural due process guaranteed by the New Jersey Constitution by imposing upon him indefinite registration and community notification obligations. He specifically maintains the fact that those requirements become indefinite upon a registrant's failure to satisfy the requirements of subsection (f) creates "an irrebuttable presumption of dangerousness . . . based solely on the commission of any offense[,] no matter how minor and unrelated to sex offense recidivism," thereby precluding registrants from demonstrating they no longer pose a risk to their communities. Relying on C.K. and Doe, M.H. contends such a presumption results in the erroneous deprivation of his fundamental rights and due process and is unnecessary in light of the "reasonable alternative means of achieving the State's interests," such as allowing registrants to demonstrate they no longer pose a risk to their communities. We disagree.

Doe recognized the registration and community notification requirements "implicate protectible liberty interests in privacy and reputation, and therefore trigger the right to due process." 142 N.J at 106. "The minimum requirements of due process . . . are notice and the opportunity to be heard."

Ibid. The following factors must be weighed to determine what process a given case requires:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and finally, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

[Id. at 106-07 (quoting Zinermon v. Burch, 494 U.S. 113, 127 (1990)).]

Applying those factors, Doe upheld the registration and community notification requirements, but held "a hearing is required prior to notification under Tiers [II] and [III]." Id. at 107.

Here, M.H.'s procedural due process claims fail, as Megan's Law provided him clear notice of his registration obligations and the consequences that would result if he violated those obligations. See N.J.S.A. 2C:7-2. Additionally, M.H. does not contend he was denied a meaningful opportunity to be heard with respect to the offenses resulting in his lifetime Megan's Law obligations, he was denied a hearing prior to being classified as a Tier II registrant, or that he would have been eligible for termination under subsection (f) had he received greater procedural safeguards. We are accordingly

satisfied M.H. was afforded the procedural due process guaranteed to him by our State Constitution prior to the challenged deprivation of his rights.

We also reject M.H.'s contention that the lifetime obligations triggered by a registrant's failure to satisfy the requirements of subsection (f) creates an irrebuttable presumption of dangerousness. As noted, M.H. relies on C.K., which held subsection (g) was unconstitutional as applied to juveniles because it created an irrebuttable presumption that juveniles who commit certain offenses are irredeemable, a proposition that was "not supported by scientific or sociological studies, our jurisprudence, or the record" 233 N.J. at 77. Notably, subsection (g) provides that registrants who commit certain offenses, or numerous offenses, can never terminate their Megan's Law obligations. N.J.S.A. 2C:7-2(g). The Court therefore distinguished subsection (f), as it explained:

Subsection (f) of N.J.S.A. 2C:7-2 subjects all sex offenders, including juveniles, to presumptive lifetime registration and notification requirements. Unlike subsection (g), however, subsection (f) allows a registrant to seek relief from those requirements fifteen years after his juvenile adjudication, provided he has been offense-free and is "not likely to pose a threat to the safety of others." Subsection (g) imposes an irrebuttable presumption that juveniles, such as defendant, are irredeemable, even when they no longer pose a public safety risk and are fully rehabilitated.

[C.K., 233 N.J. at 47-48 (first emphasis in original) (second emphasis added).]

Similarly, the Court noted, "[s]ubsection (f) imposes presumptive lifetime registration and notification requirements for sex offenses covered by subsection (g) but allows for a juvenile sex offender to be relieved of those requirements." Id. at 75. Additionally, the Court reasoned subsection (g)'s irrebuttable lifetime presumption was "not needed given the fifteen-year look back required by subsection (f)." Id. at 74-75.

Although the constitutionality of subsection (f) was not before the C.K. Court, it clearly distinguished subsection (f) from subsection (g) due to a registrant's ability to terminate their Megan's Law obligations under subsection (f). See id. at 75. As the Court made clear, all registrants, except those subject to subsection (g), can avail themselves of the relief provided in subsection (f). See ibid. Accordingly, as subsection (f) provides procedures by which a registrant can terminate their Megan's Law obligations, it does not create an irrebuttable presumption. Simply, except for those registrants subject to subsection (g), registrants can rebut any presumption of dangerousness imposed by Megan's Law by remaining offense-free for the statutory period and demonstrating they no longer pose a risk to their community. N.J.S.A. 2C:7-2(f).

D.

Finally, M.H. contends the Megan's Law lifetime registration and community notification requirements violate "the equal protection guarantee of the New Jersey Constitution, both facially and as applied to [him]." Specifically, he argues "[o]nce registrants attain the [d]esistance [t]hreshold, treating them differently from anyone else violates their equal protection rights." (emphasis omitted). Again, we disagree for the reasons stated in Doe.

The equal protection analysis "under the New Jersey Constitution slightly differs from [the] analysis of those fundamental rights under the United States Constitution." Pimentel, 461 N.J. Super. at 491. "When a statute is challenged on the ground that it does not apply evenhandedly to similarly situated people, [the State's] equal protection jurisprudence requires that the legislation, in distinguishing between two classes of people, bear a substantial relationship to a legitimate governmental purpose." Lewis v. Harris, 188 N.J. 415, 443 (2006). Similar to our substantive due process analysis under Article I, Paragraph 1, "[t]he test that we have applied to such equal protection claims involves the weighing of three factors: the nature of the right at stake, the extent to which the challenged statutory scheme restricts that right, and the public need for the statutory restriction." Ibid.

Applying that balancing test to the registrant's equal protection challenge, Doe concluded "the public need for information about dangerous

sex offenders greatly outweighs [the registrant]'s right to privacy and the intrusion of that right associated with registration and notification." 142 N.J. at 94. The Court also noted a registrant's classification within the statute's tier system "is not only rational, but closely related to a strong state interest," as registrants are "placed in a class that is carefully defined to reflect [their] specific characteristics that reasonably predict [their] specific risk of re[-]offense." Id. at 94-95. Accordingly, the Court held "the registration and notification requirements do not violate [the registrant]'s right to equal protection under either the Federal or State Constitution." Id. at 95.

We reject M.H.'s equal protection challenge as the intrusion on his privacy interests imposed by the registration and community notification requirements are "carefully defined" to reflect a reasonable prediction of his specific risk of re-offense as a Tier II registrant. See id. at 94-95. Again, we discern no reason to depart from the Doe Court's reasoning that the registration and community notification system devised by Megan's Law constitutionally classifies and intrudes upon individual registrant's privacy interests based on their level of risk of re-offense. See ibid. We also reiterate M.H. has not sought to reduce his community notification obligations by seeking designation as a Tier I registrant. See H.R. v. N.J. State Parole Bd., 242 N.J.

271, 294 (2020) ("[A] Megan's Law offender may file a motion with a judge for a change in tier designation based on a change in circumstances.").

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION