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residence, it is rational to require such persons to update their registration more frequently than other registrants.

In his as-applied challenge, Harris contends that because he travels frequently for work, he is more heavily burdened than other registrants by frequent registration requirements. However, in terms of equal protection analysis, Harris' travel profile makes the classification more compelling. Measured against Harris' facts, the classification is rationally related to SORA's purpose.

We conclude that Harris has not met his burden to show that § 29-4004(9) violates equal protection standards. The district court did not err when it rejected Harris' equal protection challenge to the statute.

CONCLUSION

We conclude that the district court did not err when it rejected the constitutional challenges that were properly raised by Harris in this criminal proceeding that implicated §§ 29-4004(9) and 29-4011. We therefore affirm Harris' Class IV felony conviction under § 29-4011(1) based on his failure to comply with § 29-4004(9) of SORA.

AFFIRMED.

STEPHAN, J., participating on briefs.

STATE OF NEBRASKA, APPELLEE, V.
TIMOTHY GASKILL, APPELLANT.
817 N.W.2d 754

Filed July 27, 2012. No. S-11-528.

1. **Constitutional Law: Statutes: Judgments: Appeal and Error.** The constitutionality and construction of a statute are questions of law, regarding which an appellate court is obligated to reach conclusions independent of those reached by the court below.
2. **Constitutional Law: Statutes: Presumptions.** A statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality.

Appeal from the District Court for Lancaster County: ROBERT R. OTTE, Judge. Affirmed.

Joshua W. Weir, of Dornan, Lustgarten & Troia, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and Stacy M. Foust for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

MILLER-LERMAN, J.

NATURE OF CASE

Timothy Gaskill appeals his Class IV felony conviction under Neb. Rev. Stat. § 29-4011(1) (Cum. Supp. 2010) based on his failure to comply with certain registration provisions of Neb. Rev. Stat. § 29-4004(9) (Cum. Supp. 2010) of the Sex Offender Registration Act (SORA), Neb. Rev. Stat. §§ 29-4001 through 29-4014 (Reissue 2008, Cum. Supp. 2010 & Supp. 2011). Gaskill claims that the district court for Lancaster County erred when it rejected his constitutional challenges to SORA. We conclude that the challenges asserted by Gaskill are without merit, and we therefore affirm Gaskill's conviction.

STATEMENT OF FACTS

Gaskill was convicted of attempted first degree sexual assault in 1995. He was sentenced by the district court for Buffalo County to 45 days in jail and probation for 2 years. SORA had not been enacted at the time of Gaskill's conviction, but because he was still on probation on January 1, 1997, he became subject to then newly enacted SORA. See § 29-4003. Gaskill was released from probation in April 1997. In 2009, Gaskill was notified that because of changes to SORA effective January 1, 2010, he would be subject to lifetime registration.

Since approximately July 2007, Gaskill, his wife, and their two daughters lived in an apartment in Lincoln, Nebraska, on a year-to-year lease. Gaskill asserted that they never missed a rent payment and had not received complaints or had any problems. However, on April 1, 2010, Gaskill and his family

received a notice to vacate their apartment and were given 3 days to move out. Gaskill was told by the apartment manager that the family was being evicted because other tenants had complained after learning that he was listed on the Nebraska sex offender registry. Gaskill had not previously been listed on the sex offender Web site because he was determined to be at low risk to reoffend, but because of changes to SORA, he had been listed on the Web site since January 1, 2010.

On April 4, 2010, the family went to an extended-stay hotel while they searched for a new home. On April 9, they were informed that they could no longer stay at the extended-stay hotel because Gaskill was listed on the sex offender registry, and they were given 1 hour to leave. They stayed at another hotel on the night of April 9, and on April 10, they moved into a new residence.

On April 30, 2010, deputies with the Lancaster County sheriff's office attempted to locate Gaskill at the apartment for a compliance check to verify his last registered address. Deputies were told that Gaskill had been evicted but had not left a forwarding address. Deputies contacted Gaskill by telephone on May 1 and asked him to come to the sheriff's office to update his registration. Gaskill complied and completed a form reporting his new address. Gaskill was then arrested for failing to timely report his change of address and his transient status after being evicted from the apartment. Under § 29-4004(9), a registrant "who no longer has a residence, temporary domicile, or habitual living location shall report such change in person to the sheriff of the county in which he or she is located, within three working days after such change in residence, temporary domicile, or habitual living location."

The State filed an information in the district court for Lancaster County charging Gaskill under § 29-4011(1), which provides that "[a]ny person required to register under [SORA] who violates the act is guilty of a Class IV felony." Although the State did not cite § 29-4004(9) in the information, it used the language of § 29-4004(9) when it alleged that when Gaskill "no longer ha[d] a residence, temporary domicile, or habitual living location," and he had "fail[ed] to report such change in person to the sheriff of the county in which he [was] located,

within three working days after such change in residence, temporary domicile, or habitual living location."

Gaskill filed a motion to quash the information because "the statutory scheme from which the criminal complaint arises is unconstitutional on its face and as applied to [Gaskill]." In the motion, he asserted two constitutional challenges to certain sections of SORA: an ex post facto challenge to §§ 29-4001.01 through 29-4006 and 29-4009 through 29-4013, and a due process challenge to §§ 29-4009 and 29-4013. Gaskill generally challenged amendments made to SORA by two legislative enactments—2009 Neb. Laws, L.B. 97, which became operative on May 21, 2009, and 2009 Neb. Laws, L.B. 285, which became operative on January 1, 2010. With regard to the ex post facto challenge, Gaskill contended that the 2009 amendments imposed retroactive and additional punishment for his 1995 conviction. With regard to the due process challenge, Gaskill contended that the 2009 amendments violated his due process rights by eliminating the individual assessment to determine the level of community notification and by imposing Web site notification for all registrants.

The district court overruled Gaskill's motion to quash. In its order ruling on the motion, filed November 16, 2010, the court noted a case pending in the U.S. District Court for Nebraska, in which the federal court had preliminarily enjoined the State of Nebraska from enforcing certain provisions of SORA as amended by L.B. 97 and L.B. 285 as to those previously convicted of sex crimes but not on probation, parole, or court-monitored supervision after January 1, 2010. See *Doe v. Nebraska*, 734 F. Supp. 2d 882 (D. Neb. 2010). The court noted in particular that the federal court had enjoined the enforcement of § 29-4006(2) (requiring consent to search and installation of monitoring hardware and software) and Neb. Rev. Stat. § 28-322.05 (Cum. Supp. 2010) (making it crime to use Internet social networking sites accessible by minors by person required to register under SORA). The district court noted that in a subsequent order, the federal court had ordered that a trial was necessary to determine the constitutionality of § 29-4006(1)(k) and (s) (requiring disclosure of certain identifiers, e-mail addresses,

electronic domains, and Internet sites); § 29-4006(2) (requiring registrant to consent to search and monitoring of hardware and software); and § 28-322.05 (making it crime to use social networking sites or chat room services accessible by minors). See *Doe v. Nebraska, supra*. The court finally noted that the federal court had concluded in *Doe* that there was no merit to the plaintiffs' constitutional challenges to all other statutory provisions enacted or amended by L.B. 97 and L.B. 285. See *Doe v. Nebraska, supra*. Based on the federal court's rulings in *Doe*, the court concluded that Gaskill's motion to quash should be overruled.

Thereafter, Gaskill entered a plea of not guilty. After the State rested its case in a stipulated bench trial, Gaskill renewed the objections he made in the motion to quash and the district court overruled the motion. After Gaskill rested his defense, he moved the court to dismiss the action as unconstitutional because it violated the Ex Post Facto and Due Process Clauses as applied to him. The court overruled the motion, and thereafter, the court found Gaskill guilty of violating SORA, a Class IV felony under § 29-4011, because he had failed to report a change in his residence, temporary domicile, or habitual living condition to the sheriff within 3 working days after such change in violation of § 29-4004(9). The court sentenced Gaskill to pay a fine of $250 and costs of the action and to serve 200 hours of community service.

Gaskill appeals his conviction.

ASSIGNMENTS OF ERROR

Gaskill claims that the district court erred when it rejected his constitutional challenges to SORA as amended in 2009. He specifically asserts that SORA as amended violates the Ex Post Facto and Due Process Clauses of the U.S. and Nebraska Constitutions on its face and as applied to him.

STANDARD OF REVIEW

[1] The constitutionality and construction of a statute are questions of law, regarding which we are obligated to reach conclusions independent of those reached by the court below. *State v. Perina*, 282 Neb. 463, 804 N.W.2d 164 (2011).

ANALYSIS

[2] We note first that a statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012). We note further that Gaskill filed a motion to quash raising facial challenges to SORA based on the Ex Post Facto and Due Process Clauses that was substantially the same as the motion to quash filed by the defendant in *State v. Harris, ante* p. 214, 817 N.W.2d 258 (2012), a decision filed this same day. Similar to the defendant in *Harris*, Gaskill also raised as-applied challenges based on the Ex Post Facto and Due Process Clauses. Unlike the defendant in *Harris*, Gaskill did not raise as-applied challenges based on the Equal Protection and Commerce Clauses.

Similar to our analysis in *Harris*, we conclude that Gaskill had standing in this criminal action to challenge only those statutes under which he was being prosecuted—§§ 29-4004(9) and 29-4011. See *State v. Cushman*, 256 Neb. 335, 589 N.W.2d 533 (1999). In *Harris*, we concluded that a facial due process challenge was not properly before us because the motion to quash did not assert such a challenge to the statutes at issue. In addition, in *Harris*, we concluded that § 29-4011 was prospective and § 29-4004(9) was not punitive and that therefore, the statutes at issue were not facially violative of ex post facto principles under the intent-effects framework articulated in *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011), *cert. denied* 565 U.S. 919, 132 S. Ct. 341, 181 L. Ed. 2d 214. We reject Gaskill's facial challenges to §§ 29-4004(9) and 29-4011 based on due process and ex post facto grounds for the same reasons we rejected the same challenges in *Harris*. Because the present case involves a different set of facts than those in *Harris*, we separately analyze Gaskill's as-applied challenges.

As was the case in *Harris*, Gaskill makes no as-applied challenge based on the due process clause with regard to §§ 29-4004(9) and 29-4011; his due process arguments focus on the notification provisions of §§ 29-4009 and 29-4013, which are not the subject of this prosecution. We therefore

conclude that the district court did not err when it rejected Gaskill's as-applied due process challenge.

Gaskill claims that § 29-4004(9) violated ex post facto principles as applied to him. Gaskill argues that § 29-4004(9) was punitive under the circumstances of his case and therefore unconstitutional as applied to him, because § 29-4004(9) required him to report his change to transient status within 3 working days after he no longer had a residence. He contends that such timeframe was too stringent because he was evicted from his apartment, had to leave immediately, and could not meet the 3-day timeframe.

The record shows that Gaskill received an eviction notice on April 1, 2010, and moved out of his residence on April 4. Gaskill did not report the change until May 1, after being contacted by the sheriff's office. Gaskill failed to comply with § 29-4004(9) for several weeks. Therefore, whether or not the 3-day requirement of § 29-4004(9) might be too stringent as applied to another registrant who was unable to comply or whose compliance was interfered with, Gaskill did not report his change until nearly 30 days after required to do so, and he has not demonstrated facts that show that the effect of § 29-4004(9) was punitive as applied to him. We therefore reject Gaskill's as-applied ex post facto challenge to § 29-4004(9).

CONCLUSION

We reject Gaskill's facial constitutional challenges based on due process and ex post facto grounds on the same basis we rejected these challenges in *State v. Harris, ante* p. 214, 817 N.W.2d 258 (2012), generally for the reasons that his due process challenge is not before us and the statutes at issue were either prospective or not punitive and thus not violative of ex post facto principles. Regarding Gaskill's as-applied challenges, Gaskill did not make an as-applied due process challenge to the statutes at issue and for reasons explained above, we reject Gaskill's as-applied ex post facto challenge. The district court did not err when it rejected the constitutional challenges that were properly raised by Gaskill in his criminal proceeding that implicated §§ 29-4004(9) and 29-4011. We

therefore affirm Gaskill's Class IV felony conviction under § 29-4011(1) based on his failure to comply with § 29-4004(9) of SORA.

AFFIRMED.

STEPHAN, J., participating on briefs.