

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

KARSTEN KOCH, individually and on behalf of all others similarly situated Plaintiff	) ) ) )	Case. No. 21-cv-503
v.	) )	Judge _____
VILLAGE OF HARTLAND	) )	
Defendant.	) )	Jury Demand

**COMPLAINT**

Plaintiff, by his attorneys, brings this action against Defendant Village of Hartland, Wisconsin, and alleges as follows:

**Nature of the Case**

1. This case arises under 42 U.S.C. §1983 and challenges the constitutionality of §66-12 of the Village of Hartland’s Code of Ordinances.<sup>1</sup> Plaintiff contends that the challenged Ordinance violates the Ex Post Facto Clause of the United States Constitution because it totally bans Plaintiff from living anywhere in the Village.

2. In particular, Plaintiff challenges §1(3) of the Ordinance, titled “Moratorium.” This section imposes a moratorium prohibiting “Designated Offenders,” as defined by the Ordinance, from moving into the Village.

3. Plaintiff seeks preliminary and permanent injunctive relief, as well as declaratory relief, on the grounds that this section of the Ordinance is unconstitutional on its face and as applied. Plaintiff also seeks nominal and

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<sup>1</sup> The Ordinance is available at <http://villageofhartland.com/DocumentCenter/View/4157/Ord-850-18-Moratorium-Sex-Offenders> (last visited April 14, 2021).

compensatory damages for the injuries associated with the deprivation of his constitutional rights.

### **Jurisdiction and Venue**

4. Jurisdiction for Plaintiff's claims is based on 28 U.S.C. §§1331 and 1343(a).

5. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), in that the events giving rise to the Plaintiff's claims arose in this district.

### **The Parties**

6. Defendant Village of Hartland is a municipal corporation located in Waukesha County, Wisconsin. Defendant is governed by an elected Village Board, which, among other things, is empowered to enact ordinances.

7. Plaintiff Karsten Koch is a resident of Nashotah, Wisconsin. He is a "Designated Offender" as that term is defined by the Ordinance, and thus subject to its restrictions. He seeks to live in the Village of Hartland but is prohibited from doing pursuant to the Ordinance.

### **Facts Relevant to the Plaintiff**

8. Plaintiff Karsten Koch, 34, is required to register as a sex offender because of a 2007 conviction. He was sentenced to seven years in prison and released in 2014. He is currently on extended supervision, which ends in 2034.

9. Koch currently lives with his parents in Nashotah, Wisconsin, in a home owned by his father. He seeks to move to Hartland, but he is prohibited from doing so due to the restrictions imposed by the Ordinance.

10. Plaintiff has sought to reside in a one-story ranch house in Hartland located

at 447 Merton Ave. In December of 2020, Plaintiff called the landlord of the house and asked if it was available for rent and whether he would rent to person on the sex offender registry. The landlord said he had one unit available and would rent to someone on the registry.

11. There are many reasons Plaintiff seeks to live in Hartland. One, it is located near his job. Plaintiff works full time at Midwest Composite Technologies located in Hartland as a laborer in shipping and receiving. He has worked there since June 2020. Two, Hartland is close to where his family (his mother, father and cousin) resides. Three, he has been unable to find an apartment or housing rental in Nashotah.

12. Plaintiff was told as recently as April 12, 2021, via e-mail by the Chief of the Hartland Police Department, Torin J. Misko, that the moratorium on Designated Offenders is still in place. Thus, even Plaintiff could find a home in Hartland, he cannot move there.

### **Facts Relevant to the Ordinance**

13. The Ordinance went into effect on September 24, 2018.

14. The Ordinance defines a “Designated Offender” to include anyone who convicted of an offense for which sex offender registration is required under Wis. Stat. §301.45.

15. Having found that the so-called “saturation level” of Designated Offenders residing in the Village is 6.75 times higher than in other communities in Waukesha County, the Ordinance “declares a moratorium” on any additional Designated Offenders’ establishing a residence in the Village “until such time as the saturation

level for Designated Offenders in the Village of Hartland reaches a factor of 1.1. or lower.” §1(3)

16. The Ordinance defines saturation level as follows: “[S]aturation level is determined by adding the number of Designated offenders per square mile in Hartland plus the number of Designated Offenders per 1,000 population in Hartland and dividing the resulting figure by the sum of the number of Designated Offenders per square mile in Waukesha County net of Hartland plus the number of Designated Offenders per 1,000 population in Waukesha County net of Hartland.”

### **Class Allegations**

17. Plaintiff brings this action on behalf of himself and all others similarly situated, pursuant to Federal Rule of Civil Procedure 23(b)(2). The named Plaintiff seeks to represent a class of similarly situated individuals, defined as follows: “All individuals classified as ‘Designated Offenders’ as that term is defined in the Ordinance who seek to live in Hartland but are prohibited from doing so by the Ordinance’s moratorium provision.”

18. Plaintiff meets the requisites for filing a class action. Certification of this case as a class action pursuant to Rule 23(b)(2) is the most efficient means of adjudicating Plaintiff’s claims because (1) the classes are so numerous that joinder of all members is impractical; (2) there are questions of law or fact common to the classes; (3) the claim of the representative Plaintiff is typical of the claim of the class; and (4) the representative Plaintiff will fairly and adequately protect the interests of the class.

- a. **Numerosity:** The members of the proposed class are so numerous that their joinder is impracticable. The class includes all individuals who are required to register as sex offenders who wish (now or in the future) to reside in the Village of Hartland, Wisconsin and thus are subject to the Ordinance’s moratorium. Rule 23(b)(2)’s injunctive class provision was designed specifically for civil rights cases seeking “broad declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons.” W. Rubenstein, A. Conte, H. Newberg, 2 Newberg on Class Actions §4.26, at 99 (5th Ed. 2013).
- b. **Commonality:** Because this lawsuit is a facial challenge to the Ordinance, the central question of law—whether the Ordinance’s moratorium violates the U.S. Constitution’s Ex Post Facto Clause—is common to the class.
- c. **Typicality:** Plaintiff’s claim is typical of the claims of the members of the class because Plaintiff and the class members all seek to reside in Hartland but are prohibited from doing so pursuant to the Ordinance.
- d. **Adequacy:** Plaintiff is an adequate representative of the class because his interests overlap with and are not in conflict with the interests of the class. Plaintiff has retained counsel competent and experienced in class action litigation, and Plaintiff intends to prosecute this action vigorously. The interests of the class will be fairly and adequately protected by Plaintiff and his counsel.

**COUNT I  
EX POST FACTO**

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

19. 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 classified as “Designated Offenders” who committed their offenses before enactment of the Ordinance.

WHEREFORE, Plaintiff requests that this Court:

- a. Enter a declaration that §1(3) of the Ordinance, which imposes a moratorium prohibiting “Designated Offenders” from moving into the Village, violates the Ex Post Facto Clause of the U.S. Constitution;
- b. Enter a preliminary and then a permanent injunction barring Defendant Village and its agents, servants, employees and attorneys from enforcing §1(3) of the Ordinance which imposes a moratorium prohibiting “Designated Offenders” from moving into the Village;
- c. Award Plaintiff compensatory and/or nominal damages;
- d. Enter judgment for reasonable attorney’s fees and costs incurred in bringing this action; and
- e. Grant Plaintiff any and all other relief as law and justice demand.

Respectfully submitted,

/s/ Mark G. Weinberg

/s/Adele D. Nicholas

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