

INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
INDIANA UNIVERSITY SCHOOL OF  
LAW—INDIANAPOLIS



*STATE OF INDIANA v. ANTHONY W. POLLARD*

**Appeal from:**  
Blackford Superior Court  
The Honorable John W.  
Forcum, Judge

**Oral Argument:**  
Monday, March 31, 2008  
2:30—3:30 p.m.  
30 minutes each side

**CRIMINAL LAW**

Is Indiana Code section 35-42-4-11, the sex offender residency offense statute, unconstitutional as applied to Mr. Pollard?

**CASE SYNOPSIS**

**Facts and Procedural History**

On April 4, 1997, Pollard was convicted of committing a sex-related offense against a child. On the date of his conviction, Pollard owned and resided in a home that was within 1000 feet of a school property, a youth program center, or a public park. He has resided there with his wife for more than twenty years.

The sex offender residency statute (“statute”), Indiana Code section 35-42-4-11, came into effect on July 1, 2006. On January 26, 2007, the State charged Pollard with a Class D felony sex offender residency offense for residing within 1000 feet of a

school property, a youth program center or a public park. On March 2, 2007, Pollard filed a motion to dismiss.

The trial court Pollard’s granted the motion to dismiss. The court determined that Indiana Code section 35-42-4-11, as applied to Pollard, violated the *ex post facto* prohibition contained in Article 1, Section 24 of the Indiana Constitution. The trial court reasoned that Pollard has had an ownership interest in his residence for approximately twenty years. Moreover on the date of his criminal conviction, he was not required to vacate his residence as part of his sentence or as a consequence of his conviction. The trial court also found that the *ex post facto*

*State of Indiana v. Anthony W. Pollard***CASE SYNOPSIS**

principle applied to criminal proceedings and that the application of Indiana Code section 35-42-4-1 served to retroactively increase the punishment for the crime committed. Therefore, the trial court concluded that the statute was unconstitutional as applied to “a person who has been an owner and resident of a particular piece of property prior to the adoption of [Indiana Code section] 35-42-4-11.” The State appeals.

**The Parties’ Arguments**

Under Indiana Code section 35-42-4-11, an offender against children is not allowed to knowingly or intentionally reside within 1,000 feet of school property, a youth program center, or a public park. If the offender does so then he or she commits a Class D felony.

The State argues that the statute is not an *ex post facto* law and that it does not impair Pollard’s contractual obligations in violation of Article 1, Section 24 of the Indiana Constitution. First, the State argues that the only limitation of the statute is that on residency in the house

and does not violate Pollard’s contractual obligations. Also, the State has the right to put in place regulations to promote order, safety, health, morals, and general welfare of society. Even if the statute does impair Pollard’s contractual obligations, the State may exercise its police power provided that the statute is not arbitrary and is reasonably appropriate to safeguard the welfare of children and society in general. Also, the State argues that the statute is not an *ex post facto* law because Pollard is being charged with behavior after the implementation of the statute not before implementation. The statute focuses on Pollard’s conduct after the statute was enacted.

Pollard argues that the statute, as applied to him, is unconstitutional because it interferes with his ownership rights in his residential property and punishes him again almost ten years later for his past offense.

## TODAY'S PANEL OF JUDGES

### Hon. Ezra H. Friedlander (Hamilton County), Presiding

- Judge of the Court of Appeals since January 1993

**Ezra H. Friedlander** was appointed to the Court of Appeals by Governor Evan Bayh and took his seat on January 7, 1993. A native of New Jersey, Judge Friedlander graduated from Indiana University in 1962 with a BA in History and Government. He earned his law degree from the Indiana University School of Law in 1965.

Judge Friedlander practiced law for 27 years before being appointed to the bench. His practice was primarily in the area of civil law, but he also served as a deputy prosecutor in Lake and Marion counties and as corporate counsel to the Secretary of State's Office.

Judge Friedlander is chair of the Indiana Supreme Court's Commission on Race and Gender Fairness. He is a member of the Indiana State and American bar associations; American Judicature Society; the Indiana Judges Association; and the Indiana Court of Appeals External Relations Committee. He is a graduate of New York University's Appellate Judges Institute of Judicial Administration. Judge Friedlander is a past member of the Board of Managers of the Indiana State Bar Association and past chair of its Young Lawyers Section. He is also a Fellow of the Indiana State Bar Foundation. He has previously been active in the American Bar

Association's Judicial Division as well as many other areas of the bar, including the Indianapolis Bar Association and the Indianapolis Bar Foundation.

Judge Friedlander stays actively involved at his alma mater by serving on the Dean's Advisory Board of the College of Arts and Sciences, including as chairman of the Committee on Directors. He also serves on the Board of Directors of the Indiana University Foundation, chairs its Committee on Directors, and is a member of the Foundation's Executive Committee. Judge Friedlander was honored by the IU School of Law as a member of its Academy of Law Alumni Fellows.

Judge Friedlander also remains actively involved in Hamilton County community efforts. He was a member of the local organizing committee for the 2005 Solheim Cup; the 2002 World Basketball Championships; and is a founder of the Carmel Youth Soccer Association.

Judge Friedlander, who was retained on the Court of Appeals by election in 1996 and 2006, is married and has three children.

### **"Appeals on Wheels"**

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## TODAY'S PANEL OF JUDGES

### Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis

Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the U.S. Navy.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



## TODAY'S PANEL OF JUDGES

### Hon. Paul D. Mathias (Allen County)

- Judge of the Court of Appeals since March 2000



**Paul D. Mathias** was appointed to the Court by Governor Frank O'Bannon in March, 2000. Judge Mathias is a fifth generation Hoosier and grew up in Fort Wayne. He graduated from Harvard University, *cum laude*, in 1976 and from Indiana University School of Law – Bloomington in 1979, where he was a member of the law school's Sherman Minton Moot Court Team and *Order of Barrister*.

Judge Mathias practiced law for six years in Fort Wayne, concentrating in construction law, personal injury and appellate practice. In 1985, he was appointed Referee of the Allen County Small Claims Court,

where he served until his appointment as Judge of the Allen Superior Court – Civil Division by Governor Evan Bayh in 1989.

Judge Mathias served as an officer of the Indiana Judges Association from 1993 to 1999 and as its president from 1997 to 1999. He received the Centennial Service Award from the Indiana State Bar Association in 1996, and a Sagamore of the Wabash Award from two governors.

Judge Mathias, who was retained on the Court of Appeals by election in 2002, is married and has two sons.

## **ATTORNEYS FOR THE PARTIES**

### **For Appellant, State of Indiana:**

**Cynthia Ploughe**  
**Deputy Attorney General**  
**Indianapolis**

After graduating from Tipton High School, **Cynthia Ploughe** moved to Washington, D.C. to work for the Federal Bureau of Investigation, which trained her to be a fingerprint examiner. Four years later, she returned to Indiana, and began her collegiate studies at Indiana University in Kokomo. She eventually transferred to Ball State University, earning a bachelor's degree in 1986 with a major in political science and a minor in journalism.

Following graduation, Ms. Ploughe entered Indiana University Law School in Indianapolis and began working at the Office of the Attorney General at the end of her first year. In 1990, after graduating from law school and passing the Indiana bar exam, she was sworn in as a Deputy Attorney General. She conducted research and responded to briefs submitted by defendants in cases such as murder, child molestation, and theft. She regularly presented cases in oral argument before the Indiana Supreme Court and the Indiana Court of Appeals.

In 1997, she left the Attorney General's office to become a deputy prosecutor in Marion County. She first prosecuted misdemeanor crimes — minor drug possession, operating a vehicle while intoxicated, prostitution, shoplifting — but soon began prosecuting felony offenses, including major drug cases, such as dealing cocaine and methamphetamine.

Ms. Ploughe returned to the Indiana Attorney General's office in 2001 and became Section Chief of Criminal Appeals in 2004. She supervises more than a dozen attorneys and acts as an appellate liaison for Indiana's 90 elected prosecutors and their deputies. Prosecutors who obtain a trial court ruling they don't like confer with Ms. Ploughe to determine whether the State will appeal. If a case is appealed, Ms. Ploughe compiles the case record and prepares the Brief of Appellant.

### **For Appellee, Anthony W. Pollard:**

**Chris M. Teagle**  
**Chris M. Teagle Law Firm**  
**Muncie**

**Chris M. Teagle** graduated from Taylor University in 1982 and received his JD from the Valparaiso University School of Law in 1985.

Mr. Teagle has maintained a solo practice in Muncie for the past 20 years, specializing in both civil and criminal law.