

CONSTITUTIONAL LAW AND THE ROLE OF SCIENTIFIC EVIDENCE: THE TRANSFORMATIVE POTENTIAL OF *DOE v. SNYDER*

MELISSA HAMILTON*

Abstract: In late 2016, U.S. Court of Appeals for the Sixth Circuit's concluded in *Does #1-5 v. Snyder* that Michigan's sex offender registry and residency restriction law constituted an ex post facto punishment in violation of the constitution. In its decision, the Sixth Circuit engaged with scientific evidence that refutes moralized judgments about sex offenders, specifically that they pose a unique and substantial risk of recidivism. This Essay is intended to highlight the importance of *Snyder* as an example of the appropriate use of scientific studies in constitutional law.

INTRODUCTION

In late 2016, the U.S. Court of Appeals for the Sixth Circuit ruled in *Does #1-5 v. Snyder* (“*Doe v. Snyder*” or “*Snyder*”) that Michigan's civil sex offender law was unconstitutional.¹ The Sixth Circuit's decision attracted commentary across the legal, policy, and media worlds.² The ruling concludes that a state's sex offender registry and residency restriction law constitutes an ex post facto punishment in violation of the constitution. The Sixth Circuit's stance in *Snyder* conflicts with the judgments of nearly all other courts, which have largely rejected various constitutional challenges to specialized sex offender laws and policies.

Several criminal law experts and news reporters anticipate that *Snyder* signals much more than an ex post facto issue.³ These commentators are likely

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* Visiting Criminal Law Scholar, University of Houston Law Center; J.D., The University of Texas School of Law; Ph.D (criminology), The University of Texas at Austin.

¹ *Does #1-5 v. Snyder*, 834 F.3d 696, 705-06 (6th Cir. 2016).

² See, e.g., Fred Barbash, *Court Says Michigan Sex Offender Registry Laws Creating “Moral Lepers.”* WASH. POST (Aug. 26, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/08/26/court-mich-treating-sex-offenders-as-moral-lepers-restrictions-struck-down/> [https://perma.cc/LNR5-RHAD]; Jesse Singal, *Judges Are Starting to Question Overzealous Sex-Offender Laws*, N.Y. MAG. (Aug. 29, 2016, 3:35 PM), <http://nymag.com/daily/intelligencer/2016/08/judges-are-questioning-overzealous-sex-offender-laws.html> [https://perma.cc/UA76-3D6G].

³ See, e.g., Mark Joseph Stern, *Federal Appeals Court Strikes Down Absurdly Repressive North Carolina Sex Offender Law*, SLATE (Dec. 2, 2016, 1:25 PM), http://www.slate.com/blogs/xx_factor/2016/12/02/federal_appeals_court_strikes_down_north_carolina_sex_offender_law.html [https://perma.cc/RA9U-D3W8]; Jacob Sullum, *Two Federal Courts Call BS on Banning Sex Offenders from*

correct to highlight the opinion's potential to invite other courts to take a stand against sex offender registration and residency restriction regimes that have been myopically enacted by politicians.

What this conversation is missing, however, is an appreciation of the Sixth Circuit's engagement with relevant statistical studies within its constitutional analysis. The common legislative presumption underlying sex offender registry laws and residency restrictions is that sex offenders remain a highly dangerous group, and are far more likely to recidivate than other types of offenders. The *Snyder* opinion, instead, severely criticizes specialized sex offender laws, declaring them ill-suited to their intended purpose of protecting the public. To this end, the Sixth Circuit expressly recognizes scientific studies showing that sex offenders as a group do not pose a significant recidivism risk.

This Essay is intended to highlight the importance of *Snyder* as an example of the appropriate use of scientific studies in constitutional law. In other words, *Snyder* makes a contemporary case for the relevance in constitutional decision-making of data gathered from interdisciplinary scientific fields, particularly where such data conflict with legislative assumptions.

I. "CIVIL" SEX OFFENDER LAWS

In the United States, sex offenders are uniquely regarded as moral lepers, in need of constant supervision and forced to the margins of society. The public's fear of persons who have committed crimes of a sexual nature is so extreme that policymakers across jurisdictions have become convinced that traditional criminal law and sentencing regimes are inadequate to protect public safety. Thus, legislatures have adopted a variety of statutes—purportedly civil in nature—to manage sex offenders beyond their prison terms.

Every state and the federal government now maintain a sex offender registry.⁴ Typically, registration requirements are triggered by a criminal conviction for a sex-related offense. Individuals required to register must provide identifying information about themselves, often including (at a minimum) their names, home and work addresses, details about their current physical appearance, and vehicle identification. Registered names and much of the other personally-identifying information generally are made publicly available. The idea is to warn innocent civilians that dangerous sexual predators are in their midst. Many states and communities have also enacted residency restrictions for convicted sex offenders, which typically prohibit these individuals from

"*Child Safety Zones*," REASON (Dec. 5, 2016, 10:30 AM), <http://reason.com/blog/2016/12/05/two-federal-courts-call-bs-on-banning-se> [<https://perma.cc/G2NK-27F7>].

⁴ Matt Mellema et al., *Sex Offender Laws Have Gone Too Far*, SLATE (Aug. 11, 2014, 12:20 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/08/sex_offender_registry_laws_have_our_policies_gone_too_far.html [<https://perma.cc/6QHW-9ERZ>].

living near schools, parks, and other locations where potential victims may be present.

Laws of this type, purportedly civil by their statutory terms, result in the inapplicability of the strict constitutional protections ordinarily afforded to criminal defendants, despite the laws' intrusiveness upon individual privacy, liberty, and security. Courts have generally found these civil laws constitutional as serving the government's interest in protecting public safety.⁵ A foundational principle underlying these policies is the assumption that sex offenders pose a uniquely high risk of recidivism. In enacting such laws, policymakers baldly assert that the need to protect the public justifies the special treatment of sex offenders.⁶ Courts have mostly rubberstamped this assertion without paying much heed to whether the presumption of future dangerousness is factually accurate.⁷ These decisions align with the perceptions of politicians, the media, and the public who have simply taken it on faith that sex offenders pose an extreme risk to the public, one that criminal sanctions fail to sufficiently thwart.⁸

This presumption, however, has little basis in legitimate scientific study. In fact, the relevant statistics consistently support just the opposite—i.e., that sex offenders are not a singular and exceptional group that poses more than a negligible likelihood of sexually reoffending. Judges who ignore this evidence are complicit in perpetuating unnecessary, unfair, and arbitrary laws that negatively impede upon the lives of individuals to whom they apply. The Sixth Circuit's decision in *Snyder* therefore represents a transformative venture, opening the door for judges to decide important constitutional issues by examining relevant interdisciplinary research findings, to the benefit of defendants and the judiciary alike.

II. *SNYDER*'S CONSTITUTIONAL ANALYSIS

Michigan's Sex Offender Registration Act ("SORA") contains a laundry list of both affirmative duties and restrictions on convicted sex offenders.⁹ In brief, SORA requires qualifying sex offenders to register and provide a host of personal information. The legislation also significantly restricts where individuals can live, work, and even loiter. A violation of any of the myriad provisions

⁵ See generally MICHAEL L. PERLIN & HEATHER ELLIS CUCULO, 1-5 MENTAL DISABILITY LAW: CIVIL AND CRIMINAL § 5-6 (3d ed. 2015) (discussing the history and effects of sex offender registry laws in the United States).

⁶ See CAL. PENAL CODE § 290.03(a)(1) (West 2016); NEB. REV. STAT. § 29-4002 (2002).

⁷ See, e.g., *Gautier v. Jones*, 2009 WL 1444533, at *8 (W.D. Okla. May 20, 2009), *rev'd on other grounds*, 364 F. App'x 422 (10th Cir. 2010); *Wallace v. State*, 905 N.E.2d 371, 383 (Ind. 2009).

⁸ See, e.g., *Parker v. King*, 2008 WL 901087, at *4 (M.D. Ala. Mar. 31, 2008); *State v. Trosclair*, 89 So. 3d 340, 351 (La. 2012).

⁹ See MICH. COMP. LAWS § 28.723 *et seq.* (2011).

is itself a criminal offense, carrying a severe penalty, likely involving a new prison sentence.¹⁰

In *Doe v. Snyder*, the anonymous plaintiffs argued that various provisions of SORA were unconstitutionally vague, should not be enforced under strict liability standards, infringed upon freedom of speech, and hobbled their rights to parent, work, and travel.¹¹ In addition, the plaintiffs alleged that any SORA requirements enacted after their crimes amount to ex post facto punishments in violation of the Constitution.¹² At the trial level, the United States District Court for the Eastern District of Michigan found that certain provisions in SORA were vague, that offenders could not be held strictly liable for violations, and that a requirement to register online aliases infringes free speech. However, the court did not find that the law imposed an ex post facto punishment.¹³ The Sixth Circuit reversed, holding that, despite being purportedly civil in nature, SORA did embody an ex post facto punishment.¹⁴

Interestingly, the court engaged with originalist arguments in addition to modern, empirically driven studies. The *Snyder* opinion refers twice to the Federalist Papers, noting that the Ex Post Facto Clause was part of the “constitutional bulwark in favor of personal security and private rights,”¹⁵ and that punishment in the guise of civil regulation represented an ugly vestige of tyranny.¹⁶ The opinion noted, too, that the Supreme Court in 1810 signaled that the framers of the Constitution intended for federal courts to proactively act to check state sovereignty when state officials might “punish socially disfavored persons without prior notice.”¹⁷ To more discretely define what ex post facto punishment entails, the Sixth Circuit drew upon the 1798 Supreme Court ruling in *Calder v. Bull* for the proposition that the Ex Post Facto Clause prohibits retroactive punishment.¹⁸

In analyzing whether SORA constituted punishment, the Sixth Circuit drew upon several factors enumerated by the Supreme Court in *Smith v. Doe*, a case upholding the constitutionality of Alaska’s sex offender registration law.¹⁹ The

¹⁰ See MICH. COMP. LAWS § 28.729 (2011).

¹¹ See *Does #1–5 v. Snyder*, 834 F.3d 696, 698 (6th Cir. 2016). Based on these grounds, the Sixth Circuit declined to rule on the merits of the district court’s other constitutional rulings. See *id.* at 706. However, the court approvingly commented that plaintiffs’ arguments concerning their other constitutional challenges “are far from frivolous and involve matters of great public importance.” See *id.*

¹² U.S. CONST., art. I, § 10, cl. 1; *Snyder*, 834 F.3d at 698. In 2003, in *Smith v. Doe*, the U.S. Supreme Court ruled that Alaska’s sex offender registration law did not constitute an ex post facto punishment. See 538 U.S. 84, 105–06 (2003).

¹³ See *Doe v. Snyder*, 101 F. Supp. 3d 722, 727 (E.D. Mich. 2015).

¹⁴ See *Snyder*, 834 F.3d at 705–06.

¹⁵ See *id.* at 699. (quoting THE FEDERALIST NO. 44, at 232 (James Madison)).

¹⁶ See *id.* at 706 (citing THE FEDERALIST NO. 84, at 44 (Alexander Hamilton)).

¹⁷ See *id.* at 699 (citing *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 137–38 (1810)).

¹⁸ See *id.* (citing *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388 (1798)).

¹⁹ See *Smith*, 538 U.S. 105–06.

Sixth Circuit distinguished Michigan's registry law from the Alaska regime, finding Michigan's law far stricter.²⁰ First, the Sixth Circuit found that SORA's provisions inflict a kind of "banishment" that has been traditionally regarded as punishment, as the residency and loitering restrictions make it difficult for sex offenders to find places to live and to travel in the course of employment. The publication of personal information serves as a traditional shaming punishment. In addition, SORA's multiple regulations resemble criminal parole/probation. The court also found that the law imposes an affirmative restraint, as it limits where registrants reside, work, and loiter, substantively impeding how they live their lives. According to the court, SORA promotes the traditional punitive aims of incapacitation, retribution, and deterrence. Finally, the court examined whether the law had a rational connection to a non-punitive purpose, and whether the law was excessive with respect to such purpose. With respect to these last two findings, the court drew upon relevant scientific data to bolster its judgment.

III. THE SCIENTIFIC EVIDENCE

In *Smith v. Doe*, the United States Supreme Court found that Alaska's sex offender registry was necessary for public safety because, it asserted, the recidivism rate of sex offenders is "frightening and high."²¹ In *Doe v. Snyder*, the United States Court of Appeals for the Sixth Circuit was not so convinced that the scientific evidence supported this assertion. Instead, the court determined that empirical research failed to establish that Michigan's SORA law was rationally related to the purpose of protecting public safety. The court looked to a statistical study indicating that sex offenders are actually *less* likely to recidivate than other types of criminals.²² It also referred to other research findings that laws such as SORA might in reality disserve their aims by *increasing* the risk of recidivism via barriers they present for registrants to successfully reenter society and to secure safe housing and decent jobs.²³

The Sixth Circuit also found SORA excessive in degree. The court expressed concern that the record contained no scientific support that the multitude of restrictions resulted in greater benefits than the law's many obvious detriments. It specifically took Michigan authorities to task for their failure to even study whether registries and residency restrictions actually reduced recid-

²⁰ See *Snyder*, 834 F.3d at 700.

²¹ See *Smith v. Doe*, 538 U.S. 84, 103 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)).

²² See *Does #1-5 v. Snyder*, 834 F.3d 696, 704 (6th Cir. 2016) (citing LAWRENCE A. GREENFIELD, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994* (2003)).

²³ See *id.* (citing J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J. L. & ECON. 161, 164 (2011)).

ivism.²⁴ In the end, the foregoing factors led the Sixth Circuit to conclude SO-RA is punitive in nature.

Indeed, there is evidence that the Supreme Court's decision in *Smith* rests on specious science. The *Smith* opinion cited only one earlier Supreme Court opinion in the 2002 case of *McKune v. Lile* to support the proposition that sex offenders have a high rate of recidivism. In *McKune*, a convicted sex offender challenged the constitutionality of Kansas's treatment program for sex offenders.²⁵ The Court deemed Kansas's scheme appropriate to reduce the "frightening and high" rate of recidivism among sex offenders.²⁶ The Court's only data put forth in *McKune* in support of this proposition was a citation to a sex offender treatment article produced by the National Institute of Corrections ("NIC").²⁷

For its part, the NIC article also did not publish any statistical analysis; instead, it referred only to a 1988 article published in a popular trade magazine *Psychology Today*.²⁸ In turn, the *Psychology Today* piece simply contains the following statement: "Most untreated sex offenders released from prison go on to commit more offenses – indeed, as many as 80% do."²⁹ This extreme statistic was not supported by any empirical evidence. The authors were therapists in a sex offender treatment program with no apparent academic research credentials or statistical training.³⁰ Evidently, the authors' "statistic" was simply based on personal observations from their local treatment program.³¹ This makes their offered percentage inherently not generalizable outside of that program, meaning that it is scientifically improper to believe it has broader applicability.

In sum, a principal foundation on which the Supreme Court approved the existence of specialized sex offender policies rested upon virtually no scientific grounds showing that sex offenders are actually at high risk of reoffending. Unfortunately, the Supreme Court's scientifically dubious guidance on the actual risk of recidivism that sex offenders pose has been unquestionably repeated by almost all other lower courts that have upheld the public safety need for

²⁴ See *id.* at 705 ("Michigan has never analyzed recidivism rates despite having the data to do so.").

²⁵ See *McKune*, 536 U.S. at 29.

²⁶ See *id.* at 47.

²⁷ See *id.* at 33.

²⁸ NAT'L INST. CORR., A PRACTITIONER'S GUIDE TO TREATING THE INCARCERATED MALE SEX OFFENDER 44 (Barbara K. Schwartz ed., 1988).

²⁹ See Ira Mark Ellman & Tara Ellman, "Frightening and High": *The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 CONST. COMMENT. 495, 498–99 (2015); Robert E. Freeman-Longo & R. Wall, *Changing a Lifetime of Sexual Crime*, PSYCHOL. TODAY, Mar. 1986, at 58.

³⁰ See Ellman & Ellman, *supra* note 29 at 498.

³¹ See *id.*

targeted sex offender restrictions.³² The Sixth Circuit panel in *Snyder* does not make that same mistake.

IV. *SNYDER'S* TRANSFORMATIVE EFFECTS

Snyder's engagement with scientific evidence has the potential to change the jurisprudence surrounding sex offender laws. *Doe v. Snyder* cannot be dismissed on ideologically liberal grounds: the judge who wrote the opinion, appointed by President George H. W. Bush, is considered conservative.³³ Shortly after the *Snyder* opinion issued, the Eleventh Circuit published a ruling regarding a challenge to Florida's sex offender residency restriction act and recognizes *Snyder*.³⁴ The Eleventh Circuit reversed the lower court's summary dismissal of the suit because two of the plaintiffs had raised plausible claims that it was an ex post facto law. As this opinion acknowledges, such statistics illustrate that the law's lifetime residency restrictions may be excessive in relation to the need to protect public safety.³⁵ Similarly, a district court opinion issued in December 2016 finding Indiana's sex offender restrictions to be an ex post facto law cites *Snyder* and refers to statistical measurements of recidivism risk as being a relevant inquiry.³⁶ There, the judge found the law to be excessive since there was no effort to assess the likelihood of reoffending that was particularized to the individual.³⁷

Other litigators have evidently taken notice of the Sixth Circuit's interest in *Snyder* in engaging the empirical literature. For example, lawyers recently filed suit challenging Idaho's registry statute on numerous constitutional grounds, including an ex post facto challenge.³⁸ Their strategy is likewise to provide support from interdisciplinary research circles for the various ways that public registries fail to protect the public because of the already low recidivism rate of sex offenders.³⁹

On another front, in November 2016, the Fourth Circuit found a provision of North Carolina's sex offender residency restriction law unconstitutional.⁴⁰ That case was not based on the Ex Post Facto Clause, but the case is still rele-

³² See, e.g., *Clark v. Ryan*, 836 F.3d 1013, 1018 (9th Cir. 2016); *Doe v. Miller*, 405 F.3d 700, 721 (8th Cir. 2005).

³³ See Jack Lessenberry, *Politics & Prejudices: How About a Financial Offender List?*, DETROIT METRO TIMES (Aug. 31, 2016), <http://www.metrotimes.com/detroit/politics-and-prejudices-how-about-a-financial-offender-list/Content?oid=2462658> [<https://perma.cc/3KKP-RH6J>].

³⁴ *Doe v. Miami-Dade Cnty.*, 2017 U.S. App. LEXIS 1303, at *5 (11th Cir. Jan. 25, 2017).

³⁵ See *id.* at *8.

³⁶ See *Valenti v. Hartford City*, 2016 U.S. Dist. LEXIS 165618, at *22 (N.D. Ind. Dec. 1, 2016).

³⁷ See *id.*

³⁸ Complaint for Injunctive and Declaratory Relief at 61, *Does v. Wasden*, No. 1:16-cv-00429-BLW (D. Idaho Sept. 22, 2016).

³⁹ See *id.* at 50.

⁴⁰ *Doe v. Cooper*, 842 F.3d 833, 847 (4th Cir. 2016).

vant because the court expressly looked for scientific evidence that the law served public safety.⁴¹ The court found the residency restriction to be overbroad because it prohibited individuals from visiting a variety of public places where people tend to exercise their First Amendment rights.⁴² Significantly, the state had declined to offer any scientific evidence or data that sex offenders pose a high risk of reoffending.⁴³ The district judge and the appellate panel both expressed their consternation that the state's representatives chose instead to argue that it was simply "common sense" to realize that sex offenders would likely reoffend.⁴⁴ Thus, these new cases following the publication of *Snyder* already provide hints of a sea change in constitutional decision-making, fueled by a new emphasis upon empirically-led analysis.

Because *Snyder* is among the first cases to negatively assess civil sex offender laws, some commentators speculate that the Supreme Court may now be interested enough to grant certiorari in the *Snyder* case to resolve the conflict.⁴⁵ Shortly after the Sixth Circuit's ruling, the State of Michigan formally requested that the Supreme Court stay the effect of the *Snyder* ruling.⁴⁶ The state's request was swiftly rejected, presumably because there was either not a substantial question or because there was no good cause for the stay as required by the appellate procedural rule permitting a stay of a lower court order.⁴⁷ This rejection suggests there may be some interest by the high court to revisit the efficacy of sex offender policies that operate alongside the normal criminal adjudicative process. The stage may already be set. The State of Michigan recently filed a petition for certiorari, specifically noting the very recent splits among federal and state courts on the constitutionality of sex offender civil laws.⁴⁸

CONCLUSION

Several commentators have noted the importance of *Doe v. Snyder* for challenging "civil" sex offender legal regimes. Professor Doug Berman, a

⁴¹ See *id.* at 846–47.

⁴² See *id.* at 845.

⁴³ See *id.* at 846–47.

⁴⁴ See *id.*

⁴⁵ See Andrew Fleischman, *Sixth Circuit: Michigan's Sex Offender Registry Is Punitive*, MIMESIS LAW (Aug. 26, 2016), <http://mimesislaw.com/fault-lines/andrew-fri-sixth-circuit-sex-offender-registry-is-punitive/12483> [<https://perma.cc/7YB2-ZU8U>]; Scott H. Greenfield, *The 6th Circuit Finally Said the Magic Word: Punitive*, SIMPLE JUST. (Aug. 27, 2016), <https://blog.simplejustice.us/2016/08/27/the-6th-circuit-finally-said-the-magic-word-punitive/> [<https://perma.cc/B3N6-N5J5>].

⁴⁶ See *Justice Denies Michigan's Appeal to Halt Sex Offender Ruling*, WZZM (Nov. 15, 2016, 11:18 AM), <http://www.wzzm13.com/news/local/michigan/justice-denies-michigans-appeal-to-halt-sex-offender-ruling/352369233> [<https://perma.cc/A93M-HFCK>].

⁴⁷ See *id.*; see also FED. R. APP. P. 41(d)(2)(A); SUP. CT. R. 23.

⁴⁸ See Petition for Writ of Certiorari, *Snyder v. Does #1–5*, 2016 U.S. S. Ct. Briefs LEXIS 4621 (2016) (No. 16-768).

well-known sentencing law and policy blogger, labels the Sixth Circuit's ruling "significant."⁴⁹ A *Slate* reporter calls it a "vitaly important" decision that rightfully conceptualized such laws as "unconstitutional monstrosities."⁵⁰ Similarly, a commentator at *Reason* magazine indicates that the opinion reasonably recognizes that these sex offender laws are simply "stupid" and that "the court offered a scathing assessment that suggests such laws make little sense."⁵¹

Snyder is a shining example of a court actually engaging with scientific evidence that refutes moralized judgments about a particularly disfavored group. Equally important, a reasonable interpretation of the Sixth Circuit's opinion by many is that more of Michigan's civil sex offender law, and other state laws like it, are now subject to a broader invalidation.⁵² Time will soon tell whether this specific case attracts the attention of the Supreme Court and its willingness to revisit its mistaken assumptions about the dangerousness of sex offenders collectively. Yet, whether or not the Supreme Court does so in the near future, the effect of the *Snyder* decision on the engagement of scientific data in constitutional analysis has already been influential.

Preferred Citation: Melissa Hamilton, *Constitutional Law and the Role of Scientific Evidence: The Transformative Potential of Doe v. Snyder*, 58 B.C. L. REV. E. SUPP. 34 (2017), <http://lawdigitalcommons.bc.edu/bclr/vol58/iss6/5>.

⁴⁹ See Douglas A. Berman, *Sixth Circuit Panel Concludes Michigan Sex Offender Registration Amendments "Imposes Punishment" and Thus Are Ex Post Unconstitutional for Retroactive Application*, SENT'G L. & POL'Y (Aug. 25, 2016, 12:29 PM), http://sentencing.typepad.com/sentencing_law_and_policy/2016/08/sixth-circuit-panel-concludes-michigan-sex-offender-registration-amendments-are-punitive-and-thus-ar.html [https://perma.cc/BWB4-8U8Q].

⁵⁰ See Mark Joseph Stern, *Appeals Court Strikes Scathing Ruling Against Michigan Sex Offender Penalties*, SLATE (Aug. 26, 2016, 4:36 PM), http://www.slate.com/blogs/xx_factor/2016/08/26/appeals_court_strikes_down_michigan_sex_offender_penalties.html [http://web.archive.org/web/20170107020447/http://www.slate.com/blogs/xx_factor/2016/08/26/appeals_court_strikes_down_michigan_sex_offender_penalties.html].

⁵¹ See Jacob Sullum, *6th Circuit Says Mich. Sex Offender Registry Is Punitive and, Not Incidentally, Stupid*, REASON (Aug. 26, 2016, 10:12 AM), <http://reason.com/blog/2016/08/26/6th-circuit-says-michigans-sex-offender> [https://perma.cc/QW4N-E7UA].

⁵² See, e.g., Jack Lessenberry, *Michigan's Sex Offender Law Is Unfair and Probably Unconstitutional*, MICH. RADIO (Aug. 26, 2016), <http://michiganradio.org/post/michigans-sex-offender-law-unfair-and-probably-unconstitutional> [https://perma.cc/55YN-HU34]; David Post, *Sex Offender Laws and the 6th Circuit's Ex Post Facto Clause Ruling*, WASH. POST (Sept. 7, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/09/07/sex-offender-laws-and-the-6th-circuits-ex-post-facto-clause-ruling/?utm_term=.5d492f89b4bc#comments [https://perma.cc/F8CU-28BY]; Stern, *supra* note 50.