

Nos. 25-1413 / 1414

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

JOHN DOE *et al.*,

Plaintiffs-Appellants/Cross-Appellees,

v.

GRETCHEN WHITMER and JAMES GRADY II,

Defendants-Appellees/Cross-Appellants.

On appeal from the United States District Court
for the Eastern District of Michigan

**APPENDIX TO TEN SCHOLARS' AMICI CURIAE
BRIEF IN SUPPORT OF PLAINTIFFS**

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Biographies of Amici

Alissa R. Ackerman, Ph.D., is an Associate Professor of Criminal Justice at California State University, Fullerton where her scholarly work focuses exclusively on topics related to sexual violence, including the failures of postconviction sex crimes policies. She writes extensively on these topics in Op-Eds, books, and academic journal articles and has published over 20 peer-reviewed journal articles on these topics.

Amanda Agan is Associate Professor of Economics at Cornell University. She received her Ph.D. in Economics from the University of Chicago. Her research focuses on the economics of crime, and her studies spotlight the unintended consequences of policies such as sex offender registration and ban-the-box laws. Her studies on the consequences of sex offender registration include papers in the *Journal of Law and Economics* and the *Journal of Empirical Legal Studies*.

Ira Ellman is Distinguished Affiliated Scholar, Center for the Study of Law and Society, University of California, Berkeley, and Emeritus Professor of Law and Psychology at Arizona State University. A former clerk for Justice William O. Douglas of the U.S. Supreme Court, he is a member of the Editorial Board of *Psychology, Public Policy, and Law*, a research journal published by the American Psychological Association. His empirical studies with social psychologists focused on family policy and laid the groundwork for his 2023 book, *When Laws Seem Fair: The Example of Family Law*. His 2015 article, *Frightening and High: The Supreme Court's Crucial Mistake About Sex Crime Statistics*, has been widely discussed in both legal publications and key national media.

Emily Horowitz is Professor of Sociology and Criminal Justice at St. Francis College. She received her Ph.D. in Sociology from Yale University. Her research focuses on the collateral consequences of conviction registries. She is the author of *Protecting Our Kids? How Sex Offender Laws Are Failing Us* (2015), voted an Outstanding Academic Title by the American Library Association, and *From Rage To Reason: Why We Need Sex Crime Laws Based On Facts, Not Fear* (2023).

Chrysanthi Leon, J.D., Ph.D., is Professor of Sociology and Criminal Justice at the University of Delaware. She received her J.D. and Ph.D. from the University of California, Berkeley. She is the author of *Sex Fiends, Perverts, and Pedophiles:*

Understanding Sex Crime Policy in America, and coeditor of *Challenging Perspectives on Street-Based Sex Work*.

Jill S. Levenson, Ph.D., is a Professor of Social Work at Barry University in Miami, Florida. She studies the impact and effectiveness of social policies and therapeutic interventions designed to reduce sexual violence. She has published over 100 articles about sex offender management policies and clinical interventions, including projects funded by the National Institutes of Justice and the National Sexual Violence Resource Center.

John Monahan is the Shannon Distinguished Professor of Law and Professor of Psychology at the University of Virginia. He is a member of the National Academy of Medicine and the American Academy of Arts and Sciences. Monahan is the founding president of the American Psychological Association's Division of Psychology and Law. He is the author or editor of 17 books and more than 300 articles and chapters. Monahan's work has been cited frequently by courts, including the California Supreme Court in the landmark case of *Tarasoff v. Regents*, and the United States Supreme Court in *Barefoot v. Estelle*, in which he was referred to as "the leading thinker on the issue" of violence risk assessment.

Michael H. Miner, Ph.D., L.P., is Professor Emeritus at the Eli Coleman Institute for Sexual and Gender Health within the Department of Family Medicine and Community Health, University of Minnesota. His research focuses on sex offender treatment, sexual abuse perpetration by adolescent males, risk assessment, and psychological and cognitive mechanisms underlying hypersexuality and sexual risk behavior. He is Past President of the Association for the Treatment of Sexual Abusers and Past Vice President of the International Association for the Treatment of Sexual Offenders.

Erin Murphy is the Norman Dorsen Professor of Civil Liberties at New York University School of Law. She was Associate Reporter for the Model Penal Code's newly revised article on Sexual Assault and Related Offenses. Her work focuses on forensic evidence and new technologies in the criminal legal system.

Stephen J. Schulhofer, Robert B. McKay Professor of Law Emeritus at New York University, is the Reporter for the Model Penal Code's newly revised article on Sexual Assault and Related Offenses. He is the author of more than fifty articles and

six books, including *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (2000), recently described in the New York Times as “one of the most important books on rape law published in the past 20 years.”

TABLE ONE:**STUDIES REFERENCED IN 2017 SMART OFFICE REPORT**

#	Rep Pg	Study	The Smart Office Report's Own Description of Study	Notes
		<i>1. STUDIES THE REPORT DESCRIBES AS FINDING NO EFFECT OF THE REGISTRY OR THE PUBLIC WEBSITE</i>		
		<i>Peer-Reviewed Studies</i>		
1	196	Prescott & Rockoff, <i>Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?</i> , 54 J.L. Econ. 161 (2011)	“Community notification did not appear to reduce recidivism for identified sex offenders.” Registration (not website notification) did reduce nonstranger victimization and recidivism.	
2	196	Walker et. al., <i>The Influence of Sex Offender Registration and Notification Laws in the United States: A Time-Series Analysis</i> , 54 Crime & Delinq. 175 (2008)	Data from the Uniform Crime Statistics Reports (UCR) showed “[n]o systematic influence of SORN implementation on the rate of reported rape.”	
3	197	Letourneau et al., <i>Effects of South Carolina’s Sex Offender Registration and Notification Policy on Adult Recidivism</i> , 21 Crim. Just. Pol’y Rev. 435 (2010)	Examined “registration status for 6,064 male offenders convicted of at least one sex crime in [S.C.] between 1990 and 2004. The study found that registration status did not predict recidivism.”	

4	197	Sandler et al., <i>Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law</i> , 14 Psych. Pub. Pol'y & L. 284 (2008)	Analysis of sex crime, assault, robbery, burglary, and larceny arrests in NY from 1986 through 2006 found that "sex offender registry did not decrease the rearrest rate for convicted sex offenders, deter nonregistered offenders from offending, or decrease the overall rate of sex crimes."	Also found that 94.1% of those arrested for child molestation had no prior offenses.
5	197	Letourneau et. al, <i>The Influence of Sex Offender Registration on Juvenile Sexual Recidivism</i> , 20 Crim. Just. Pol'y Rev. 136 (2009)	"[R]egistration was not associated with [sexual] recidivism; however, nonsexual, nonassault recidivism ... significantly decreased for those on the registry."	Year of publication mistakenly listed as 2010.
6	198	Zevitz, <i>Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration</i> , 19 Crim. Just. Stud. 193 (2006)	Compared "recidivism rates of [Wisconsin] sex offenders subject to registration and extensive notification between 1997 and 1999 ($n = 47$) ... with those of sex offenders who had limited notification requirements ($n = 166$). No statistically significant differences in sex crime rearrest rates over a four-year follow-up period were found, as 19 percent of the extensive notification group sexually recidivated, compared to	

			12 percent for the limited notification group.”	
7	198	Freeman, <i>The Public Safety Impact of Community Notification Laws: Rearrest of Convicted Sex Offenders</i> , 58 Crime & Delinq. 539 (2012)	This “study of New York sex offenders pre- and postcommunity notification ($N = 10,592$) ... found no significant differences in sexual (7 percent) or general (46.6 percent) rearrest rates based on an 8.2-year follow-up period.”	
		<i>Studies That Were Not Peer-Reviewed</i>		
8	196	Holmes, <i>An Empirical Analysis of Registration and Notification Laws for Juvenile Sex Offenders</i> (Working Paper, 2009)	UCR sex crime data from 47 states found that registering juveniles convicted as an adult produced no “statistically significant decrease in the rate of sex crime arrest,” nor did public notification of those registered.	This working paper is no longer on SSRN, where it was retrieved by the SMART Office, and a wider search found no published paper by this author that has this title or any similar title.
9	198	Adkins et al., Iowa Dep’t of Hum. Rts., <i>The Iowa Sex Offender Registry and Recidivism</i> (2000), available at https://publications.iowa.gov/1516/1/SexOffender-Report.pdf	Group of 233 sex offenders subject to registry compared with matched group of 203 who were not; no statistically significant difference in recidivism at 4.3 year follow-up	
10	198	Zgoba & Bachar, U.S. Dep’t of Just., Bureau of Just. Stat., <i>Sex Offender Registration and Notification: Limited Effects in New Jersey</i> (2009), available at https://-	These two studies by Zgoba were discussed and referenced together. “[R]esearchers compared the recidivism rates of offenders subject to SORN with those of	

		www.ojp.gov/pdffiles1/nij/225402.pdf	offenders who were not subject to this strategy ($n = 550$). Based on a 6.5-year follow-up period, offenders subject to SORN recidivated at a rate of 7 percent, compared to 11 percent for offenders who were not subject to SORN; however, these differences were not found to be statistically significant.”	
11	198	Zgoba et al., U.S. Dep’t of Just., Bureau of Just. Stat., <i>Megan’s Law: Assessing the Practical and Monetary Efficacy</i> (2008), https://-www.ojp.gov/pdffiles1/nij/grants/-225370.pdf		
12	198	Schram & Milloy, Wash. State Inst. for Pub. Pol’y, <i>Community Notification: A Study of Offender Characteristics and Recidivism</i> (1995)	“[R]ecidivism rates of sex offenders subject to SORN ($n = 139$) were compared with those of sex offenders not subject to SORN. Based on a 54-month follow-up, sex offenders subject to SORN were found to have a sex crime rearrest rate of 19 percent while the rate for the non-SORN group was 22 percent, a difference that is not statistically significant.”	

2. STUDIES THE REPORT CORRECTLY DESCRIBES AS FINDING AN EFFECT				
13	197	Wash. State Inst. for Pub. Pol’y, <i>Sex Offender Sentencing in Washington State: Has Community Notification Reduced Recidivism?</i> (2005), available at www.wsipp.wa.gov/rpt-files/05-12-1202.pdf	Study of 8,359 Washington sexual offenders found that those “subject to SORN sexually recidivated (defined as a new Washington state conviction for a felony sex crime) at a 2 percent rate, while the pre-SORN group recidivated at a 7 percent rate.”	Washington tiers offenders by individualized risk assessment relying primarily on the Static 99R. Tier I offenders, a majority, are not placed on the website, https://www.waspc.org/sex-offender-information . The authors cautioned that the study’s methodological limitations prevented it from identifying the cause of the decline in recidivism rates, which could have resulted, in whole or part, from factors other than SORN, such as the concurrent decline in crime rates generally and the concurrent increase in incarceration rates.
14	198	Duwe & Donnay, <i>The Impact of Megan’s Law On Sex Offender Recidivism: The Minnesota Experience</i> , 46 <i>Criminology</i> 411 (2008)	Study of 280 sexual offenders found that those subject to community notification (including the public website) had a statistically significant lower reconviction rate after three years.	Minnesota limits public notification to the 4.5% of registrants it classifies as high recidivism risk on the basis of individual assessments employing an actuarially

				validated risk assessment tool similar to the Static 99R. Minn. Stat. § 244.052(4)(b); Minn. Bureau of Criminal Apprehension, <i>Predatory Offender Registry Data</i>, https://dps.mn.gov/divisions/bca/bca-divisions/investigative-services/specialized-investigative-services/predatory-crimes/por/-por-data (last accessed July 2, 2025)
		3. STUDIES MISTAKENLY DESCRIBED IN REPORT AS FINDING AN EFFECT		
15	197	Letourneau et. al., <i>Effects of South Carolina's Sex Offender Registration and Notification Policy on Deterrence of Adult Sex Crimes</i>, 37 Crim. Just. & Behav. 537 (2010)	"[S]tudy found that the sex crime rate declined by 11 percent from pre- to post-SORN while the rates of assault and robbery did not, suggesting the possibility that SORN was a deterrent to sex crimes."	This statement described data on the effect of South Carolina's 1995 adoption of a registry without mentioning the study's separate analysis of the effect of S.C.'s 1999 adoption of a public website listing offenders. It found the website had <i>no</i> deterrent effect on sex crimes. "No results, however, suggested a general deterrent effect by the modification of South Carolina's policy [to] require[e] Internet-based notification."

16	197	Veysey et al., <i>A preliminary step towards evaluating the impact of Megan’s Law: A trend analysis of sexual offenses in New Jersey from 1985 to 2005</i>, 10 Just. Rsch. & Pol’y 1 (2008)	A “downward trend [in New Jersey] in the sex assault rate was observed both pre- and post-Megan’s Law (SORN), but the rate of decline increased after Megan’s Law was implemented.” However, later on this same page the SMART report notes that the study’s authors caution that this result might be a spurious statistical effect caused by “aggregation” effects in the data analysis.	This article (titled a “preliminary step” in evaluating Megan’s Law) was superseded by the later peer-reviewed article by the same authors, which employed a more sophisticated multivariate analysis to separate the impact of notification from concurrent confounding factors. The later article—published seven years before the SMART Office report—concluded that public notification has <i>no</i> effect on sexual reoffending: “[T]here is little evidence to date, including this study, to support a claim that Megan’s Law is effective in reducing either new first-time sex offenses or sexual re-offenses.” Zgoba et al., <i>An Analysis of the Effectiveness of Community Notification and Registration</i> 27 Just. Q. 667 (2010).
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TABLE TWO:**ARTICLES REFERENCED IN 2022 SMART REPORT**

#	Article	Finding/Description	Notes
1	Ass'n for the Treatment of Sexual Abusers, <i>Sex Offender Registration and Notification</i> (2008)	Two-page literature review removed from the ATSA website, superseded by 2022 letter supporting the ALI's Model Penal Code registry provisions. https://members.atsa.com/ap/CloudFile/Download/-pRqeNqRr	
2	Wright, <i>From Wetterling to Walsh: The Growth of Federalization in Sex Offender Policy</i> , 21 Fed. Sent'g Rep. 124 (2008)	Legal discussion of SORNA statute with no discussion of whether registries work.	Not empirical
3	Pittman, Hum. Rts. Watch, <i>Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.</i> , (2013), available at https://www.hrw.org/sites/default/files/reports/-us0513_ForUpload_1.pdf	Discusses the impact of registry on the lives of juvenile registrants. Does not address registry effectiveness.	Not empirical
4	Freeman & Sandler, <i>The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative?</i> , 21 Crim. Just. Pol'y Rev. 31 (2010)	Finds that SORNA tiers are uncorrelated with recidivism rates in a group of NY registrants.	
5	Zgoba et al., <i>A Multi-state Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act</i> (2012), available at https://www.ncjrs.gov/pdffiles1/nij/-grants/240099.pdf	Finds that SORNA tiers do not correlate with risk as measured by Static-99R.	Grant report

6	Letourneau & Armstrong, <i>Recidivism Rates for Registered and Nonregistered Juvenile Sex Offenders</i> , 20 Sexual Abuse 393 (2008)	Finds that recidivism rates for juveniles are so low that differences between groups cannot be detected.	
7	Wash. State Inst. for Pub. Pol'y, <i>Does Sex Offender Registration and Notification Reduce Crime? A Systematic Review of the Research Literature</i> (2009), available at http://www.wsipp.wa.gov/ReportFile/-1043/Wsipp_Does-Sex-Offender-Registration-and-Notification-Reduce-Crime-A-Systematic-Review-of-the-Research-Literature_Full-Report.Pdf	Literature review, no new data. Reviews seven studies of registry efficacy. Finds that only the two examining Washington's and Minnesota's registries, but none of the others, had a possible effect.	Not peer-reviewed

Model Penal Code, as revised September 2022

OFFICIAL STATUTORY TEXT

Section 213.11H

SECTION 213.11H. ACCESS TO REGISTRY INFORMATION

(1) *Confidentiality*

(a) Each law-enforcement agency that receives information from a registrant pursuant to Section 213.11D(5) must exercise due diligence to ensure that this registrant-supplied information remains confidential, except that relevant information about a specific registrant, including but not limited to registrant-supplied information, must be disclosed:

(i) to any government law enforcement agency that requests information to aid in the investigation of a specific criminal offense;

(ii) to any adult victim of the offense that gives rise to the registrant's duty to register and to any parent or guardian of a minor victim of that offense, if the either the victim or that parent or guardian resides, works, or is enrolled in a program of study in the [county] where the registrant resides, works, or studies; provided that such disclosure must be limited to the fact that the registrant resides, works, or is enrolled in a program of study in that [county];

(iii) to the United States Marshal's Service as required by International Megan's Law, Pub. L. No. 114-119, 130 Stat. 15 (2016), when that information involves the international travel plans of a registrant who has been convicted of a sexual offense involving a minor; and

(iv) to the [Department of Public Safety] as appropriate to enable the Department to provide the criminal history background check authorized by [Section xx/yy] of the [Code of Criminal Procedure] to any public or private agency, organization, or individual qualified to receive such a background check on the basis of serving, having access to, or screening others to serve or have access to minors, the elderly, or persons who are disabled or otherwise vulnerable; provided that any disclosure to the Department under this subparagraph must

comply with the terms of [Section xx/yy] of the [Code of Criminal Procedure]. See Annex, pp. 82-90, *infra*.

- (b) Any disclosure pursuant to paragraph (a) must include a warning that:
 - (i) the agency, organization, or individual receiving the information must exercise due diligence to ensure that the information remains confidential, except as provided in paragraph (a);
 - (ii) such information may be disclosed and used for the purposes specified in subparagraphs (a)(i)-(iv), but otherwise must not be disclosed to any person or public or private agency, except that any victim or parent or guardian of a victim who receives information pursuant to subparagraph (1)(a)(ii) may lawfully disclose such information to other persons living in the same household;
 - (iii) such information may not be used to injure, harass, or commit a crime against the registrant or anyone else; and
 - (iv) any failure to comply with the confidentiality and use-limitation requirements of this Section could result in civil or criminal penalties.

(2) *Unauthorized Disclosure of Registry Information.* An actor is guilty of Unauthorized Disclosure of Registry Information if:

- (a) the actor, having received registry information as provided in subsection (1), knowingly or recklessly discloses that information, or permits that information to be disclosed, to any person not authorized to receive it; or
- (b) the actor obtains access to registry information by computer trespassing or otherwise in violation of law and subsequently knowingly or recklessly discloses that information, or permits that information to be disclosed, to any other person.

Unauthorized Disclosure of Registry Information is a felony of the fourth degree [five-year maximum].

ALI COUNCIL AT THE TIME OF ITS APPROVAL OF THE MPC IN 2022

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