



## POINTS AND AUTHORITIES

<b>Interest of Amicus Curiae</b> .....	1
<b>Argument</b> .....	1
<b>I. The Illinois Sex Offender Registration Act Is Based on     False Premises and Does Not Advance Public Safety</b> .....	1
<i>Does v. Snyder</i> , 834 F.3d (6th Cir. 2016) (certiorari denied No. 16-768, 2017 WL 4339925 (Oct. 2, 2017) .....	1
Bureau of Justice Statistics, <i>Criminal Victimization</i> , Washington, D.C., U.S. Department of Justice (2002) .....	4
Bureau of Justice Statistics, <i>Sex Offenses and Offenders:         An Analysis of Data on Rape and Sexual Assault</i> , Washington, D.C., U.S. Department of Justice (1997) .....	4
Radley Balko, <i>The Big Lie About Sex Offenders</i> , Washington Post, March 9, 2017 .....	3
Berliner, L., Schram, D., Miller, L., & Milloy, C.D., <i>A Sentencing         Alternative for Sex Offenders: A Study of Decisionmaking and         Recidivism</i> , Journal of Interpersonal Violence, 10(4) (1995) .....	4
Melissa Hamilton, <i>Briefing The Supreme Court: Promoting         Science Or Myth?</i> , Emory L.J. (Forthcoming 2017) .....	3
Harris, A.J.R., Phenix, A., Hanson, R. K., & Thornton, D., Static-99 Coding Rules (2003).....	3
Langan, P., Schmitt, E., & Durose, M., <i>Recidivism of Sex Offenders         Released From Prison in 1994</i> , Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics (2003) .....	2
Adam Liptak, <i>Did the Supreme Court Base a Ruling on a Myth?</i> N.Y. Times, March 6, 2017 .....	3
J.J. Prescott & Jonah E. Rockoff, <i>Do Sex Offender Registration         and Notification Laws Affect Criminal Behavior?</i> 54 J.L. & Econ. 161 (2011) .....	2

Sandler, J.C., Freeman, N. J., & Socia, K. M., <i>Does a Watched Pot Boil? A Time-Series Analysis of New York State’s Sex Offender Registration and Notification Law</i> , Psychology, Public Policy and Law, (2008) .....	2
<b>II. Numerous Courts Have Held that Registration Schemes Such as SORA Violate Registrants’ Constitutional Rights .....</b>	<b>5</b>
<i>Does v. Snyder</i> , 834 F.3d (6th Cir. 2016) (certiorari denied No. 16-768, 2017 WL 4339925 (Oct. 2, 2017) .....	5
<i>Doe v. State</i> , 111 A.3d 1077 (N.H. 2015) .....	5
<i>Millard v. Rankin</i> , __ F.3d __, (D. Colo., August 31, 2017) (Matsch, J.) .....	5
<i>State v. Letalien</i> , 985 A.2d 4 (Maine, 2009) .....	5
<b>III. The Stories of Registrants Show that SORA Imposes Severe Penalties on Registrants and their Families.....</b>	<b>6</b>
<b>Conclusion.....</b>	<b>11</b>
<b>Certificates.....</b>	<b>12</b>

## INTEREST OF AMICUS CURIAE

Amicus Curiae Illinois Voices for Reform is a non-profit 501(c)(4) organization that advocates for the elimination of sexual abuse and the preservation of civil rights for all individuals through the use of effective, evidence-based legislation grounded in empirical research. Illinois Voices for Reform advocates against the use of public registries and seeks to educate public officials about their ineffectiveness as crime prevention tools and the harmful effect they have on the individuals and families subject to them. Many of Illinois Voices' volunteers are themselves on public registries, and as such Illinois Voices is intimately aware of the human costs associated with the registration scheme mandated by Illinois' Sex Offender Registration Act. In evaluating the legal issues at stake in this matter, Illinois Voices urges this Court to take into account the damage public registration causes for registrants and their loved ones.

## ARGUMENT

### **I. The Illinois Sex Offender Registration Act Is Based on False Premises and Does Not Advance Public Safety**

The Illinois Sex Offender Registration Act (SORA) is premised on the belief that all individuals who have been convicted of a sex offense pose a grave risk to public safety such that a public registry displaying their residential addresses, photographs and identifying details is necessary to protect the public and prevent crime. But a growing body of research shows

that registration laws such as SORA do not advance their ostensible public safety goals.

In *Does v. Snyder*, 834 F. 3d (6th Cir. 2016) (certiorari denied No. 16-768, 2017 WL 4339925 (Oct. 2, 2017), the Sixth Circuit Court of Appeals noted numerous empirical studies calling into question the effectiveness and rationality of sex offender registration schemes, noting that such laws may actually disserve public safety by “exacerbat[ing] risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities.” *Snyder*, at 704–05 (citing Lawrence A. Greenfield, *Recidivism of Sex Offenders Released from Prison in 1994* (2003); J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 *J.L. & Econ.* 161 (2011)).

Not only do public registration laws fail to reduce the risk that people with previous convictions will reoffend, but the evidence also shows that such laws are putting their focus in the wrong place when it comes to crime prevention. In particular, studies reveal that the vast majority of sex offenses are committed not by past offenders but by individuals without prior sex offense convictions. One analysis showed that 95 percent of people arrested for sex offenses had no prior sexual offense conviction. Sandler, J. C., Freeman, N. J., & Socia, K. M., *Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law*, *Psychology, Public Policy and Law*, 14(4), 284-302 (2008)).

Likewise, data does not support the assumption that recidivism rates are particularly high among individuals convicted of sex offenses as opposed to other types of crimes. The largest-ever study of sex offense recidivism, which was conducted for the U.S. Department of Justice Bureau of Justice Statistics in 2003, showed a 5.3 percent rate of sex offense recidivism among sex offenders within three years of their release from prison compared to a 17.1 percent re-arrest rate for violent offenders and 43 percent overall re-arrest rate for the same period. Langan, P., Schmitt, E., & Durose, M., *Recidivism of Sex Offenders Released From Prison in 1994*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2003).<sup>1</sup>

Most researchers have concluded that a previous conviction is not a good predictor of the risk of future offenses. Rather, the most significant factors in recidivism rates are the age of the offender and the time that the

---

<sup>1</sup> A great deal of recent scholarship also has been devoted to debunking the often-repeated claim from the Supreme Court decision in *Smith v. Doe* that recidivism rates among sex offenders are “frightening and high” such that registration is justified. See, e.g., Adam Liptak, *Did the Supreme Court Base a Ruling on a Myth?*, N.Y. Times, March 6, 2017 (“there is vanishingly little evidence for the Supreme Court’s assertion that convicted sex offenders commit new offenses at very high rates.”); Melissa Hamilton, *Briefing The Supreme Court: Promoting Science Or Myth?*, Emory L.J., 2017 (“[P]olicies that target sex offenders which are not based on some empirical reality are unlikely to be effective.”); Radley Balko, *The Big Lie About Sex Offenders*, Washington Post, March 9, 2017 (“Much of the destructive, extra-punishment punishment we inflict on sex offenders is due to the widely held belief that they’re more likely to re-offend than the perpetrators of other classes of crimes. ...The problem ... is that the claim just isn’t true.”)

ex-offender has been living in the community offense-free. In particular, research shows that the risk of re-offending is reduced by half when a person has spent more than five years offense-free in the community, and the risk continues to decline the more time the person spends offense-free. The risk for recidivism also declines substantially with age. Harris, A.J.R., Phenix, A., Hanson, R. K., & Thornton, D., *Static-99 Coding Rules*, at 24 (Figure showing Age Distribution of Sexual Recidivism in Sexual Offenders) (available at: [http://www.static99.org/pdfdocs/static-99-coding-rules\\_e.pdf](http://www.static99.org/pdfdocs/static-99-coding-rules_e.pdf)).

In addition, by focusing on the dangers posed to children by strangers living in their communities, SORA directs attention away from the reality of how most child victimization occurs. According to the Department of Justice Bureau of Justice Statistics, 93 percent of child victims of sexual abuse are victimized by a relative or trusted family acquaintance rather than by a stranger. About 40 percent of sexual assaults take place in the victim's own home, and 20 percent take place in the home of someone known to the victim, such as a trusted friend, neighbor, or relative. Bureau of Justice Statistics, *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault*, Washington, DC: U.S. Department of Justice (1997). Only 7 percent of child sex abusers are strangers to their victims. *Id.* (citing Berliner, L., Schram, D., Miller, L., & Milloy, C.D., *A sentencing alternative for sex offenders: A study of decision-making and recidivism*, *Journal of Interpersonal Violence*, 10(4),

487-502 (1995); Bureau of Justice Statistics, *Criminal Victimization*, Washington, D.C., U.S. Department of Justice (2002).

## **II. Numerous Courts Have Held that Registration Schemes Such as SORA Violate Registrants' Constitutional Rights**

Simply put, a public registry listing the names, addresses, photographs and identifying information of people who have been convicted of sex offenses in the past does little to prevent child victimization in the future. In fact, laws such as Illinois' registration scheme often frustrate the rehabilitation of ex-offenders by making it difficult, if not impossible, for them to find and keep employment; to obtain stable housing; and to access needed sources of community support. Worse still, Illinois law subjects ex-offenders to the burdens attached to public registration without regard to whether the individual poses a current risk to the community. No matter how long an individual lives offense-free in the community, and no matter how low his risk of re-offense, Illinois law provides no mechanism for a person to seek relief from being listed on the public registry.

Such circumstances have led many courts to conclude that registration schemes such as SORA are unconstitutional. See, *e.g.*, *Snyder*, 834 F.3d at 705 (“SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins...”); *Doe v. State*, 111 A.3d 1077, 1090 (N.H. 2015) (“When [registration] requirements are imposed ... with no consideration given to how dangerous any particular registrant may be to public safety, that



restriction begins to look far more like retribution for past offenses than a regulation intended to prevent future ones.” ); *Millard v. Rankin*, \_\_ F.3d \_\_, (D. Colo., August 31, 2017) (Matsch, J.) (Colorado’s registration scheme violated Eighth and Fourteenth Amendments because it exposed those required to register to “random vulnerability ... to false accusations, innuendo, and public humiliation”); *State v. Letalien*, 985 A.2d 4, 23–24 (Maine, 2009) (“No statistics have been offered to suggest that ... a substantial majority of the registered offenders will pose a substantial risk of re-offending long after they have completed their sentences .... The registry, however, makes no such distinctions. For the public, the substantiality of the risk every registrant poses is suggested by the government’s initiative in establishing the registration, verification, and community notification requirements in the first place. All registrants, including those who have successfully rehabilitated, will naturally be viewed as potentially dangerous persons by their neighbors, co-workers, and the larger community.”)

### **III. The Stories of Registrants Show that SORA Imposes Severe Penalties on Registrants and their Families**

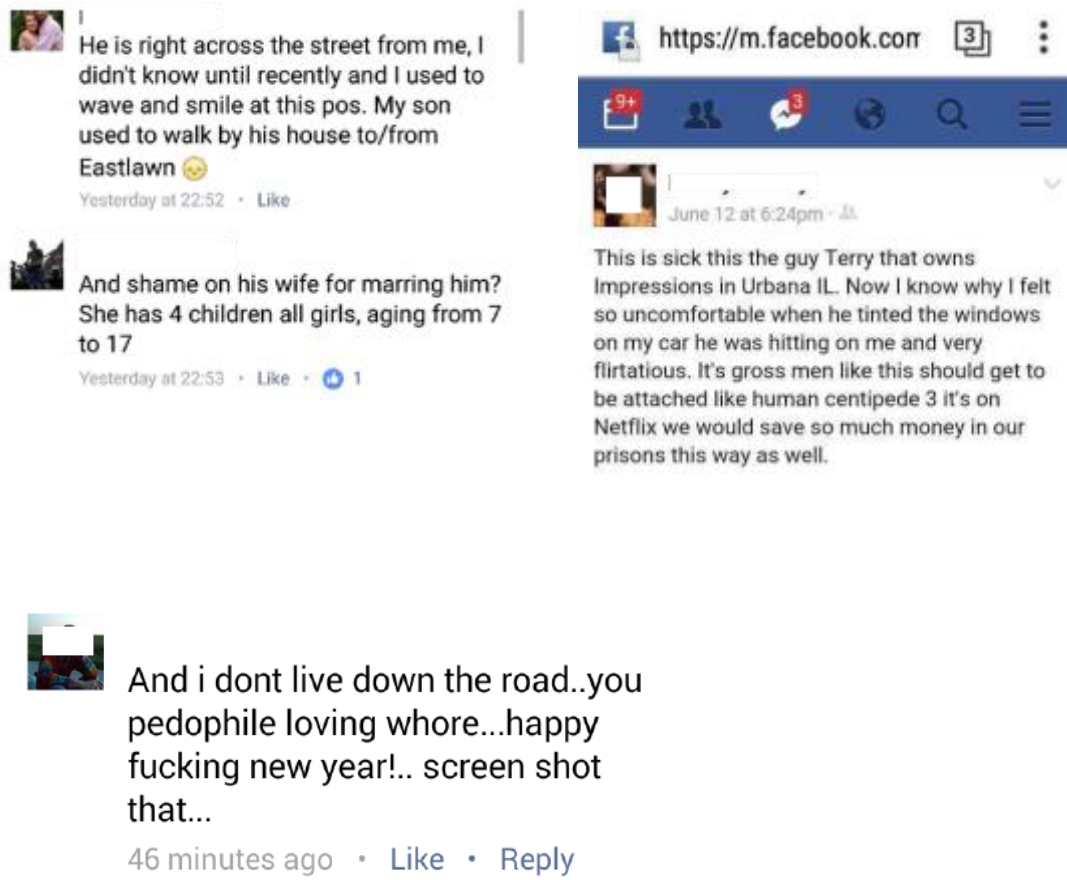
As the stories below reveal, public registration has destabilizing effects on those who have to register and on their families and loved ones, who are often subjected to harassment, threats and ostracism. Like Mr. Bingham, the people whose stories are recounted below have sought to lead productive lives and care for themselves and their families after having committed serious crimes and served their sentences. Yet their efforts to rehabilitate are

hampered by public registration, which exposes them and their families to employment insecurity, difficulty finding housing, and public ridicule.

**A. Marlena Lorbach Gordon**

Marlena Lorbach Gordon lives in Paxton, Illinois with her husband, Terry Gordon, and two daughters (aged 13 and 16) of whom Terry is the adoptive father. Terry is required to register as a sex offender due to a 2001 conviction. Terry completed his prison sentence in 2003. He has not committed another offense and has complied with the registration requirements and housing restrictions to which he is subject. For the past 12 years, Terry has owned and operated a small auto detailing and window tinting business called CU Impressions Plus in Urbana, Illinois.

Terry's wife and daughters have been subjected to a barrage of abusive and threatening online harassment and ridicule from members of the community who have discovered Terry's listing on the sex offender registry. Neighbors have posted photos of the Gordons' house in a neighborhood Facebook group, advising other members that a "pervert" lives there. Others have left harassing comments on the CU Impressions Plus Facebook page, telling people not to patronize the business. Several people have posted lewd and abusive messages about Marlena, implying that she is a bad mother. The Gordon's minor children have also been harassed via social media. Screen shots of several of the public Facebook posts are included below:



## B. John Doe I<sup>2</sup>

John Doe I has been listed as a “sexual predator” on the sex offender registry for 16 years, having been convicted of one count of possession of child pornography in 2001. John Doe I and his wife have been harassed online and in person because his information appears on the sex offender registry. For example, a person who knows John Doe I’s wife posted on Facebook that anyone who knows her should be aware that she is married to a “sexual predator” and a “child molester.” Two neighbors smeared dog feces on the

---

<sup>2</sup> The John Does herein fear harassment and/or retaliation in their workplaces and communities if they proceed using their real names, so they offer their stories anonymously.

rear window of John Doe I's car and placed dog feces under the mat outside his apartment door. When John Doe I confronted them, they yelled at him in the presence of other neighbors that John Doe I was a pedophile and deserved what they did and much worse.

### **C. John Doe II**

John Doe II has been on the registry for 11 years due to a one-year relationship he had with a 15-year-old girl when he was 19. He did not know at the time he pled guilty that he would be required to register as a sex offender. At the time of his plea, state law required him to register as a sex offender for 10 years. However, the law was retroactively changed to require lifetime registration.

Upon his release from his 2.5-year prison term, John Doe II was fortunate to have a friend who allowed him to live with her in her home. Without her help, John Doe II was facing a near certainty of homelessness. Due to his being listed on the public registry as a sex offender, John Doe II was unable to find a landlord who was willing to rent to him. Being listed on the registry caused problems for both John Doe II and the friend who offered him a place to stay. When a neighbor found out that John Doe II was registered as a sex offender, he sent out 200 letters to all of the residents in the community with Doe's address and told them there was a sex offender living in the neighborhood. This made both John Doe II and his friend feel

isolated and unwanted in the community to the point that they decided to move.

At their new home, John Doe II continues to face harassment. Over the summer, he was in his yard when a group of teenagers drove by and yelled out their window “Fucking Sex Offender” and sped off. Many neighbors ostracize John Doe II and his friend and refuse to talk to them.

**D. Michael Edwards**

Michael Edwards is required to register as a “sexual predator” due to a 2013 conviction for which he served two years in prison. Edwards takes responsibility for his crime and deeply regrets his actions. Since his release from custody, he has sought to reintegrate into society and has found gainful employment at a bakery and a kitchen. He disclosed his conviction to the employers and they agreed to give him a chance. However, Edwards has faced harassment at work since his coworkers have discovered that he is on the registry. Someone wrote on the walls of the kitchen where Edwards works that Edwards is a “child rapist.” A co-worker also copied Edwards’ information from the registry and posted it to Facebook and sent it to both of Edwards’ employers. Edwards fears losing his jobs because of this.

**E. Marcus Sabo**

Marcus Sabo is required to register as a “sexual predator” due to a 2013 conviction for possession of child pornography. Sabo currently resides in Aurora, Illinois at Wayside Cross Ministries. Despite his efforts to find

employment, he has been unable to find an employer willing to hire him. In addition, he does not have \$100 to pay the City of Aurora's annual registration fee. Accordingly, he is required to register his residence with the Aurora police department in person every 90 days. He has been informed that even if he does obtain sufficient funds to pay the \$100 fee, he will be considered in arrears and required to register every 90 days until such time as he has enough money to pay off all of the past years' \$100 registration fees.

### **CONCLUSION**

There is a profound lack of evidence that SORA is an effective tool to prevent child victimization. What is abundantly clear is that the law subjects ex-offenders and their loved ones to myriad harmful side effects, including housing and employment insecurity and social ostracism. The Court should take notice of the harmful impact the law has on people required to register and on their loved ones when evaluating whether this law is a rational and proportionate means of advancing Illinois' public safety goals.

For the foregoing reasons, amicus Illinois Voices for Reform respectfully requests that this Court reverse the appellate court and hold that retroactive application of SORA violates due process and the federal and state Ex Post Facto Clauses.

Respectfully submitted,

/s/ Adele D. Nicholas

/s/ Mark G. Weinberg

*Counsel for Amicus Curiae  
Illinois Voices for Reform*

Law Office of Adele D. Nicholas  
5707 W. Goodman Street  
Chicago, Illinois 60630  
847-361-3869

Law Office of Mark G. Weinberg  
3612 N. Tripp Avenue  
Chicago, Illinois 60641  
(773) 283-3913

### **CERTIFICATE OF COMPLIANCE**

I, Adele D. Nicholas, certify that this brief conforms to the requirements of Supreme Court Rule 341. The length of this brief, excluding the cover, the statement of points and authorities, and the certificate of compliance and the certificate of service, is 2,822 words.

/s/ Adele D. Nicholas

No. 122008  
**IN THE SUPREME COURT OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, First Dist., Sixth Division, No. 1-14-3150
	)	
Respondent-Appellee,	)	
	)	
v.	)	_____
	)	
JEROME BINGHAM,	)	Appeal from the Circuit Court of Cook County, No. 14-CR-11336
	)	
Petitioner-Appellant.	)	
	)	_____
	)	
	)	Hon. Bridget Jane Hughes, Judge Presiding.
	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, mglick@atg.state.il.us, cc: twhatley-conner@atg.state.il.us, jescobar@atg.state.il.us, lbendik@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Deborah Nall, Assistant Appellate Defender, Office of the State Appellate Defender, 203 N. LaSalle St., 24th Floor Chicago, IL 60601; (312) 814-5472; 1stdistrict.eserve@osad.state.il.us;

Mr. Jerome Bingham, 2054 N Nagle, Chicago, IL 60707

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 24, 2017, the foregoing Amicus Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause.

Undersigned counsel has served a copy of the Amicus Brief on the persons named above with identified email addresses by email and will mail one copy to the defendant-appellant in an envelope deposited in a U.S. mail



box in Chicago, Illinois, with proper postage prepaid.

If the motion for leave to file is granted, the undersigned will send 13 copies of the Amicus Brief to the Clerk of the above Court.

/s/ Adele D. Nicholas