

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-6, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

RICHARD SNYDER, Governor of the
State of Michigan, and COL. KRISTE
ETUE, Director of the Michigan State
Police, in their official capacities,

Defendants.

CASE NO. 2:16-cv-13137

HON. Robert H. Cleland

MAG. David R. Grand

**DEFENDANTS RICHARD SNYDER AND COL. KRISTE ETUE'S
ANSWER TO SECOND AMENDED VERIFIED CLASS ACTION
COMPLAINT**

Defendants Richard Snyder and Col. Kriste Etue, by and through
their attorney, Assistant Attorney General Jared D. Schultz, answer
Plaintiff's second amended verified class action complaint as follows:

1. Defendants admit that Plaintiffs have filed a class action
complaint on behalf of individuals required to register under Michigan's
Sex Offenders Registration Act (SORA), Mich. Comp. Laws § 28.721 *et*
seq. Defendants further admit that Plaintiffs are seeking declaratory

and injunctive relief. But Defendants deny any liability for any alleged constitutional violations.

2. Defendants admit that the United States Court of Appeals for the Sixth Circuit held, in *Does #1-5 v. Snyder*, 834 F.3d 696 (2016), *cert denied*, 138 S. Ct. 55 (2017), that the 2006 and 2011 amendments to the SORA impose punishment and that retroactive application of those amendments is a violation of the Ex Post Facto Clause.

3. Defendants deny that they, or “the State of Michigan” has continued to subject registrants to retroactive punishment.

4. Defendants admit that, in multiple opinions, this Court held that certain provisions of the SORA were unconstitutional. But the Sixth Circuit’s *Does #1-5* opinion found only that the retroactive application of the 2006 and 2011 amendments to the SORA were unconstitutional, and this Court entered judgment on that basis, rendering its findings based on other constitutional provisions superseded and vacated.

5. Defendants admit that, in multiple opinions, this Court held that certain provisions of the SORA were unconstitutional. But the Sixth Circuit’s *Does #1-5* opinion found only that the retroactive

application of the 2006 and 2011 amendments to the SORA were unconstitutional, and this Court entered judgment on that basis, rendering its findings based on other constitutional provisions superseded and vacated.

6. Defendants deny any liability for any alleged constitutional violation.

7. Defendants admit that Plaintiffs, as part of a class action, are seeking enforcement of the Sixth Circuit's ruling that retroactive enforcement of the 2006 and 2011 amendments is unconstitutional. Defendants deny any liability for any alleged constitutional violation.

8. Defendants admit that Plaintiffs are seeking to certify a class of registrants who are similarly situated as them, but Defendants deny that such a class should be certified at this time.

9. Defendants admit that Plaintiffs are also seeking to certify a subclass related to their ex post facto claims, but Defendants deny that such a class should be certified at this time.

10. Defendants admit that jurisdiction is proper in this Court and that Plaintiffs have brought an action under 42 U.S.C. § 1983.

11. Defendants admit this Court has jurisdiction to issue declaratory and injunctive relief.

12. Defendants admit that venue is proper in this Court.

13. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

14. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

15. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

16. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

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19. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

20. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

21. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

22. Defendants lack knowledge sufficient to form a belief about the truth of the factual aspect of this allegation. Any remaining allegations contained in this paragraph are conclusory statements of law to which no reason is required.

23. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

24. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

25. Defendants lack knowledge sufficient to form a belief about the truth of whether the plaintiff in question has been subjected to SORA requirements. Defendants deny that they have unconstitutionally enforced SORA.

26. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

27. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

28. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

29. Defendants admit that Plaintiffs have correctly cited provisions of the Holmes Youthful Trainee Act, Mich. Comp. Laws § 762.11 *et seq.*, but state that the law speaks for itself and no other response is required.

30. Defendants admit that Plaintiffs have correctly cited provisions of the Holmes Youthful Trainee Act, Mich. Comp. Laws § 762.11 *et seq.*, except that convictions under the Holmes Youthful Trainee Act are still accessible to courts and law enforcement personnel.

31. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

32. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

33. Defendants lack knowledge sufficient to form a belief about the truth of this allegation with respect to whether Doe #2 is such an offender.

34. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

35. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

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67. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

68. Defendants admit that Richard Snyder is the Governor of Michigan and that Plaintiffs have brought an action against him in his official capacity.

69. Defendants admit that Plaintiffs have correctly cited provisions of the Michigan Constitution.

70. Defendants admit that Richard Snyder has executive power in Michigan and supervises its departments.

71. Defendants admit that the Governor is an appropriate defendant for this action, but Defendants deny that any constitutional violation occurred.

72. Defendants admit that Colonel Kriste Etue is the director of the Michigan State Police and that Plaintiffs have brought an action against her in her official capacity.

73. Defendants admit that the Michigan State Police maintains Michigan's sex offender registry.

74. Defendants admit that the Michigan State Police maintains Michigan's sex offender registry, but Defendants deny that the Michigan State Police is responsible for "enforcing SORA."

75. Defendants admit that the director of the Michigan State Police is an appropriate defendant for this action, but defendants deny that any constitutional violation occurred.

76. Defendants admit that *Does #1-5* found that the SORA imposes punishment, but Defendants deny that any provisions of the SORA are unconstitutional except for the limited holding in *Does #1-5*.

77. Defendants admit that the SORA was first enacted in 1994.

78. Defendants admit that the original SORA statute provided only for a law enforcement database not available for inspection by the public. Defendants also admit that the original statute did not require regular reporting.

79. Defendants admit that the original SORA statute required registrants to notify law enforcement within 10 days of an address change. Defendants also admit that the original statute provided for registration for 25 years for individuals convicted of one listed offense and registration for life for registrants convicted of multiple listed offenses.

80. Defendants admit the Michigan Legislature has amended the SORA multiple times, but Defendants deny that any provision of any amendment is unconstitutional, except as provided by the limited holding in *Does #1-5*.

81. Defendants admit that the 2006 amendments imposed restrictions on registrants from working, residing, or loitering within a school safety zone. Defendants also admit that the 2006 amendments provided for electronic notification regarding registration to subscribing members of the public.

82. Defendants admit that the SORA was amended in 2011.

83. Defendants admit that the 2011 amendments to the SORA retroactively imposed certain reporting requirements.

84. Defendants admit that the 2011 amendments retroactively categorized registrants into tiers. Defendants deny that the tier classifications do not correspond to the registrants' risk of reoffending or danger to the public.

85. Defendants admit that before the 2011 amendments, some registrants were required to register for 25 years, but other registrants were required to register for life even before the amendments.

Defendants admit that some registrants, as a result of the amendments, were required to extend their registration for life. Defendants deny that the registration period does not correspond with the risk posed by the registrants.

86. Defendants admit that other registrants previously challenged the constitutionality of SORA on numerous grounds in this Court.

87. Defendants admit that, in the previous case, this Court dismissed the plaintiffs' ex post facto claim. This Court's ex post facto ruling was reversed by the Sixth Circuit's opinion in *Does #1-5*, and a

consistent judgment was entered that superseded this Court's other rulings.

88. Defendants admit that, in the previous case, this Court issued multiple opinions holding that various provisions of the SORA were unconstitutional. This Court's ex post facto ruling was reversed by the Sixth Circuit's opinion in *Does #1-5*, and a consistent judgment was entered that superseded this Court's other rulings.

89. Defendants admit that, in *Does #1-5*, the Sixth Circuit held that the SORA imposes punishment and that the retroactive enforcement of the 2006 and 2011 amendments violates the Ex Post Facto Clause.

90. Defendants deny that the Sixth Circuit's opinion did not vacate this Court's other rulings. The opinion remanded for entry of judgment consistent with its opinion. This Court entered such a judgment, enjoining the defendants from enforcing the 2006 and 2011 amendments against the plaintiffs because doing so would violate the Ex Post Facto Clause. Because the provisions could no longer be enforced against the plaintiffs, their remaining challenges were

rendered moot. This Court's final judgment specifically stated that it superseded the Court's previous final judgment.

91. Defendants admit that the state defendants in the previous SORA case petitioned for certiorari and that the petition was denied.

92. Defendants admit that the Michigan Legislature has not amended SORA since the *Does #1-5* decision.

93. Defendants admit that the Michigan Legislature has not amended the SORA since the *Does #1-5* decision.

94. Defendants admit that meetings have occurred to discuss amending SORA and that no legislation has been introduced, but Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

95. Defendants deny liability for any alleged constitutional violation.

96. Defendants admit that *Does #1-5* held that retroactive enforcement of the 2006 and 2011 amendments to the SORA are unconstitutional as applied to those Plaintiffs but state that the opinion speaks for itself.

97. Defendants deny liability for any alleged constitutional violation.

98. Defendants deny liability for any alleged constitutional violation.

99. Defendants admit that either the Michigan State Police or the Michigan Department of Corrections must provide each registrant with notice explaining their duties under the SORA.

100. Defendants deny liability for any alleged constitutional violation and state that police agencies have been informed of *Does #1-5* and that any enforcement action for non-registration against a registrant should be reviewed by the appropriate person so that any action is proper.

101. Defendants admit that the form that Plaintiffs have attached to their complaint classifies offenders into tiers.

102. Defendants admit that the form that Plaintiffs have attached to their complaint provides that offenders are subject to criminal prosecution if they do not comply with the SORA's provisions, including provisions contained in the 2006 and 2011 amendments.

103. Defendants admit that Plaintiffs have cited language included on the form that they have attached to their complaint.

104. Defendants deny liability for any alleged constitutional violation.

105. Defendants lack knowledge sufficient to form a belief about the truth of whether plaintiffs are subject to certain provisions of the SORA. Defendants admit that SORA prohibits many registrants from residing, working, or loitering within a student safety zone.

106. Defendants admit that, in the previous case, this Court issued multiple opinions holding that various provisions of the SORA were unconstitutional. This Court's ex post facto ruling was reversed by the Sixth Circuit's opinion in *Does #1-5*, and a consistent judgment was entered that superseded this Court's other rulings.

107. Defendants deny liability for any alleged constitutional violation.

108. Defendants deny liability for any alleged constitutional violation and no such maps are constitutionally required.

109. Defendants deny liability for any alleged constitutional violation and states that SORA speaks for itself and a "student safety

zone” would apply regardless of the size of a municipality or where the school is located.

110. Defendants deny liability for any alleged constitutional violation and states that SORA speaks for itself and a “student safety zone” would apply regardless of the size of a municipality or where the school is located.

111. Defendants deny liability for any alleged constitutional violation and states that SORA speaks for itself and a “student safety zone” would apply regardless of the size of a municipality or where the school is located.

112. Defendants deny liability for any alleged constitutional violation and states that SORA speaks for itself and a “student safety zone” would apply regardless of the size of a municipality or where the school is located.

113. Defendants deny this allegation as untrue.

114. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

115. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

116. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

117. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

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124. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

125. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

126. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

127. Defendants deny that the SORA severely impairs offenders' family relationships and parenting, and defendants deny that the SORA's prohibition on loitering within a student safety zone is unconstitutionally vague.

128. Defendants admit that Plaintiffs have provided the correct definition of loiter within the SORA and that it speaks for itself.

129. Defendants lack knowledge sufficient to form a belief about the truth of this allegation. Defendants deny that the SORA's prohibition on loitering within a student safety zone is unconstitutionally vague.

130. Defendants lack knowledge sufficient to form a belief about the truth of this allegation. Defendants deny that the SORA's prohibition on loitering within a student safety zone is unconstitutionally vague.

131. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

132. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

133. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

134. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

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138. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

139. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

140. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

141. Defendants admit that, in the previous case, this Court issued multiple opinions holding that various provisions of the SORA were unconstitutional. This Court's ex post facto ruling was reversed by the Sixth Circuit's opinion in *Does #1-5*, and a consistent judgment was entered that superseded this Court's other rulings.

142. Defendants deny liability for any alleged constitutional violation and state that Plaintiffs' Exhibit H speaks for itself.

143. Defendants deny that the SORA's reporting requirements are unconstitutionally vague.

144. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

145. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

146. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

147. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

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152. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

153. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

154. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

155. Defendants admit that the SORA requires offenders to register e-mail addresses and other internet identifiers. Defendant denies that these provisions amount to a First Amendment violation.

156. Defendants admit that, in the previous case, this Court issued multiple opinions holding that various provisions of the SORA

were unconstitutional. This Court's ex post facto ruling was reversed by the Sixth Circuit's opinion in *Does #1-5*, and a consistent judgment was entered that superseded this Court's other rulings.

157. Defendants deny liability for any alleged constitutional violation.

158. Defendants lack knowledge sufficient to form a belief about the truth of this allegation. Defendants deny that these provisions amount to a First Amendment violation or that SORA is unclear.

159. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

160. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

161. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

162. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

163. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

164. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

165. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

166. Defendants admit that the SORA imposes punishment of up to ten years in prison for violating its provisions.

167. Defendants deny that the SORA unconstitutionally provides for strict liability offenses.

168. Defendants lack knowledge sufficient to form a belief about the truth of this allegation. Defendants deny liability for any alleged constitutional violation.

169. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

170. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

171. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

172. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

173. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

174. Defendants lack knowledge sufficient to form a belief about the truth of this allegation.

175. Defendants admit that Plaintiffs have brought an action on behalf of themselves and all similarly situated persons.

176. Defendants admit that Plaintiffs are seeking class certification.

177. Defendants admit that Plaintiffs are seeking certification of a subclass but deny that a single subclass is proper and that, if the class is certified, there should be a total of three classes involved.

178. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

179. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

180. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

181. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

182. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

183. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

184. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

185. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

186. Defendants admit that several offenders required to register under the SORA have filed actions in both state and federal court challenging various provisions of the SORA. But Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

187. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

188. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

189. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

190. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

191. Defendants deny that either the primary class or the subclass satisfy the requirements of Fed. R. Civ. P. 23(a) at this time.

192. Defendants incorporate the answers contained in Paragraphs 1 through 191 as if fully restated herein.

193. Defendants deny that any of SORA's provisions are unconstitutionally vague and any remaining allegations are conclusory statements of law and no further response is warranted.

194. Defendants deny that any of SORA's provisions are unconstitutionally vague.

195. Defendants admit that Plaintiffs are bringing a vagueness challenge for themselves and on behalf of all others similarly situated.

196. Defendants deny that the SORA imposes any unconstitutional strict liability or that any of its provisions are unconstitutional because it imposes strict liability.

197. Defendants admit that, in the previous case, this Court issued multiple opinions holding that various provisions of the SORA were unconstitutional. This Court's ex post facto ruling was reversed

by the Sixth Circuit's opinion in *Does #1-5*, and a consistent judgment was entered that superseded this Court's other rulings.

198. Defendants admit that Plaintiffs are bringing a claim that the SORA unconstitutionally imposes strict liability for themselves and on behalf of all others similarly situated.

199. Defendants deny that any provisions of the SORA are unconstitutional under the First Amendment and any remaining allegations are conclusory statements of law and no further response is warranted.

200. Defendants deny that any provisions of the SORA are unconstitutional under the First Amendment.

201. Defendants admit that Plaintiffs are bringing a First Amendment claim for themselves and on behalf of all others similarly situated.

202. Defendants deny liability for any alleged constitutional violation and lack specific information about the Plaintiffs in this case to answer more fully at this time.

203. Defendants deny liability for any alleged constitutional violation and lack specific information about the Plaintiffs in this case to answer more fully at this time.

204. Defendants deny that any alleged unconstitutional provisions of the SORA cannot be severed.

205. Defendants deny liability for any alleged constitutional violation. Defendants also deny that any unconstitutional provisions of the SORA cannot be severed. Defendants lack specific information about the Plaintiffs in this case to answer more fully at this time.

206. Defendants admit that Plaintiffs are bringing an ex post facto claim for themselves and on behalf of all others similarly situated.

207. Defendants deny that Plaintiffs are entitled to declaratory or injunctive relief.

208. Defendants deny that Plaintiffs are entitled to declaratory or injunctive relief.

WHEREFORE the Defendants respectfully request this Court to dismiss the case, with prejudice, costs, and any other relief this Court deems necessary or equitable.

AFFIRMATIVE DEFENSES

Defendants give notice that they may rely upon the following affirmative defenses in this matter:

1. To the extent Plaintiffs may be seeking monetary damages against the Defendants in their official capacity, some or all of their claims may be barred by the Eleventh Amendment.
2. Plaintiffs' claims may be barred due to estoppel, res judicata, waiver, and/or laches.
3. To the extent Plaintiffs' claims rely upon plea agreements they voluntarily accepted, such claims may be barred due to release, settlement, and/or accord and satisfaction.
4. Some or all of Plaintiffs' claims may be barred by the doctrine of abstention because a state court ruling clarifying state law may make a federal court ruling on constitutionality unnecessary.
5. Plaintiffs' claims are barred by the Rooker-Feldman doctrine.
6. Some or all of Plaintiffs' claims are barred by the statute of limitations.
7. Plaintiffs are not being restricted by SORA from engaging in any of the constitutionally protected conduct alleged in this Complaint.

RELIEF REQUESTED

Defendants respectfully request that this Honorable Court enter an order dismissing Plaintiffs' complaint in its entirety and with prejudice, together with any other relief the Court finds appropriate under the circumstances.

Respectfully Submitted,

BILL SCHUETTE
Attorney General

s/Jared D. Schultz
Jared D. Schultz (P80198)
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SchultzJ15@michigan.gov
P80198

Dated: August 2, 2018

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on August 2, 2018, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

s/Jared D. Schultz

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