Sex Offender Registration and Community Notification Challenges: The Supreme Court Continues Its Trend

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All states and the District of Columbia have passed sex offender registration and community notification laws. While the specific provisions of these statutes vary, all have public safety as a primary goal. The authors discuss two recent cases heard by the United States Supreme Court that challenged the constitutionality of Alaska's and Connecticut's statutes. The laws were challenged as violations of the United States Constitution's prohibition on *ex post facto* laws and its Fourteenth Amendment guarantee of procedural due process. In both cases, the statutes were upheld. As it has found in challenges to sexually violent predator statutes, the Court emphasized that the registration and community notification schemes are civil and not criminal in nature. The article concludes with a discussion of possible implications for clinicians involved in evaluating or treating sex offenders.

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Since 1990, mandatory sex offender registration and community notification laws have become ubiquitous. These laws resulted, in large part, from public outrage at shocking crimes committed by sex offenders who were living in communities in anonymity. Two cases in particular provided the momentum for many of these statutes. The first involved a crime that was never solved. On October 22, 1989, Jacob Wetterling, an 11-year-old boy, was returning home from a convenience store in Minnesota with his brother and friend when an armed masked man approached all three children. The gunman instructed Jacob's brother and friend to run into the woods. As the two fled, they briefly observed the stranger grabbing Jacob's arm. During the ensuing investigation, a background check of possible suspects showed that nearly 300 known sex offenders were living in the four-county area around Jacob's home. This information, previously unknown to the community, outraged the public.

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Although neither Jacob nor the perpetrator was ever located, Jacob's disappearance resulted in Congress's passing the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Jacob Wetterling Act).[1] The Jacob Wetterling Act provides financial incentives for states to establish 10-year registration requirements for persons convicted of sexually violent offenses and certain crimes against minors. In addition, this legislation established a more stringent set of registration requirements for sexually violent predators. In its final guidelines regarding the Act,[2] the Department of Justice emphasized that states were free to develop registration systems that were more stringent than those required by the Act. Further, they explicitly stated that states have wide latitude in designing registration programs that best meet their public safety needs, to include the release of relevant information through community notification programs.

The second case that spurred national sex offender registration and community notification legislation involved a seven-year-old girl named Megan Kanka. On July 29, 1994, Megan disappeared from her neighborhood in Hamilton Township, New Jersey. During a door-to-door search, the police interviewed neighbor Jesse Timmendequas, a 33-year-old land-

scaper with two prior sexual offense convictions. At police headquarters, Mr. Timmendequas confessed to the kidnapping, rape, and murder of Megan and led police to her body, which he had dumped in some weeds at a nearby park. Local residents were unaware that a sex offender had been living in their midst.

In response, New Jersey passed "Megan's Law," a registration law that identified convicted sex offenders.[3] All 50 states and the District of Columbia have now passed sex offender registration and community notification laws.[4] However, statutes vary in their definition of a sex offender, information required to be disclosed by registrants, schemes to classify registrants, and the means by which information is disseminated to the community.[5] Most states ($n = 31$) use a discretionary system for community notification. Under this approach, a case-by-case analysis is employed to decide whether a specific sex offender is required to register and submit to relevant community notification laws. This system generally requires a hearing before a court or administrative board where information regarding the individual's risk of recidivism is considered before a decision is made about the extent of community notification. In contrast to the discretionary system, 19 states have laws that specify mandated community notification for an enumerated list of sex offenses without a determination of the individual's risk of recidivism.[5]

Community notification is accomplished through several methods, including making the information available on the Internet. As of February 7, 2003, 32 states have state-sponsored Internet access, 6 states have limited or local access, and 8 states have no Internet access to information about sex offender registrants.[6]

Constitutional challenges to sex offender registration and community notification statutes include allegations that they violate the *Ex Post Facto* Clause or the due process guarantees of the United States Constitution. In English, *ex post facto* means "from a thing done afterward" and is specifically prohibited by Article I of the United States Constitution.[7] Generally, this clause prohibits making conduct criminal retrospectively—that is, when it was not a crime at the time of the conduct. According to the U.S. Supreme Court, the intent of the *Ex Post Facto* Clause also encompasses "every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed."[8] Sex offenders who were convicted of an offense before the relevant state's reporting statute was passed argue that mandated registration and community notification should be unenforceable for them. Specifically, they argue that reporting and other requirements of the statute, in effect, impose additional punishment for their crimes and that the punishment is beyond the punishment permitted by state statute for the crime at the time of sentencing. Therefore, they argue, the statutes are unconstitutional violations of the *Ex Post Facto* Clause.

The Fourteenth Amendment to the United States Constitution guarantees that states shall not deprive citizens of life, liberty, or property without due process of law. Due process includes both substantive due process and procedural due process. Sex offender registration and community notification laws have been challenged on both of these grounds.

The doctrine of Substantive Due Process is complicated, but at its most basic, it guarantees that individual rights and liberties guaranteed by the Constitution cannot be taken away without proper justification. The inquiry focuses on determining under what, if any, circumstances a state can impinge on a citizen's rights. The first step is to determine whether the right the individual alleges has been violated is indeed a right protected by the Constitution. The second step is to determine the specific circumstances under which the right can be compromised. Sex offender registration laws have been challenged on the ground that they are unjustified intrusions of the offender's rights to privacy, liberty, and anonymity.

Procedural due process involves a determination of what legal process is due to individuals before their rights can be infringed on. This involves a balancing of the individual's interest against the state's interest and the risk of erroneous deprivation of the right by the procedures currently in place.[9] Sex offenders challenging registration and community notification statutes argue that these laws result in substantial stigmatization and loss of liberty and that the state's interest is not sufficient to justify this deprivation without providing them with certain procedural protections (such as a hearing, notice, assistance of counsel) before imposing the statute's requirements.

In 2003, the United States Supreme Court heard two cases challenging the constitutionality of sex offender registration/community notification statutes. In both cases, the plaintiffs argued that the relevant statutes violated the *Ex Post Facto* Clause of the Con-

stitution and the Fourteenth Amendment's guarantee of procedural due process. The substantive due process argument was not raised in either case.

Connecticut Department of Public Safety v. Doe, 2002

Case Background

In 1998 and 1999, the Connecticut legislature revised their version of Megan's Law under legislation known as the Connecticut Sex Offender Registry Act (CT-SORA).[10] CT-SORA applies to all persons convicted or found not guilty by reason of mental disease or defect of criminal offenses against a minor, violent and nonviolent sexual offenses, and felonies committed for a sexual purpose. On release into the community, covered sex offenders must register with the Connecticut Department of Public Safety (DPS). The registration process requires that the offenders provide to DPS the following: name, address, photograph, DNA sample, any change in residence, and updated photographs periodically. Failure to comply with any of the registration requirements constitutes a class D felony, punishable by up to five years in prison. In most cases, these registration requirements last 10 years; however, persons convicted of violent sexual offenses must register for life. According to CT-SORA, DPS must post a sex offender registry on an Internet Web site that is available to the public in identified state offices to include local police departments. Members of the general public can obtain a sex offender's name, address, photograph, and description by entering the name of a town or ZIP code. The first page of the Web site posts a disclaimer that reads:

> [DPS] has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law [Ref. 11, p 251].

John Doe was convicted of a sexual offense based on conduct that preceded CT-SORA's effective date. On February 22, 1999, John Doe filed suit under 42 U.S.C. § 1983 alleging that CT-SORA failed to provide him adequate procedural due process, in violation of the Fourteenth Amendment. He specifically argued that the he was entitled to a hearing on his current dangerousness before being subject to the law's requirements. His suit also claimed that CT-SORA violated the *Ex Post Facto* Clause of the Constitution. On March 31, 2001, the federal district court granted Doe's motion for summary judgment on the due process claim, but rejected his *Ex Post Facto* claim.[12] With respect to due process, the court stated:

> The State has not provided him with any opportunity to challenge the stigmatizing allegation, implied by his inclusion in the publicly available registry, that he is a dangerous sex offender. The implied allegation, which plaintiff contends is false, arises from the undifferentiated nature of the registry, in which dangerous and nondangerous registrants are grouped in a single classification and no information is provided regarding any registrant's dangerousness. Because there can be no doubt that some registrants are dangerous, Connecticut's single classification falsely suggests that nondangerous registrants are a threat to public safety [Ref. 12, p 62].

The district court reasoned that the "registry suggests that plaintiff is currently dangerous" despite the Web site's caution that no actual determination of dangerousness had been made (Ref. 12, p 63). The district court wrote, "Because there is no classification system, the viewer has neither absolute nor relative information regarding the dangerousness of the registrant. Without such information, the viewer could reasonably conclude that the registrant is likely to reoffend" (Ref. 12, p 64). The district court emphasized that registration requirements altered Mr. Doe's legal status under the law, and as a result, the required registration deprived Mr. Doe of liberty without adequate procedural due process.

The state of Connecticut appealed the decision on the procedural due process claim to the Second Circuit Court of Appeals. The state argued that procedural due process did not require an assessment of dangerousness, because the Web site specifically stated that DPS had made no determination that those registered were currently dangerous. The appeals court, however, rejected this argument and affirmed the decision of the district court noting:

> [P]ublication of the registry in its present form implies that persons listed on the registry are particularly likely to be currently dangerous. Unless everyone on the registry is particularly likely to be dangerous, a proposition that the State neither asserts nor embraces, that implication is not true [Ref. 13, p 57].

The state of Connecticut appealed and the United States Supreme Court granted *certiorari* to determine whether CT-SORA's legislative requirements violated the procedural due process guarantees of the United States Constitution.

The Decision

The U.S. Supreme Court, in a unanimous decision, reversed the judgment of the court of appeals.[14] The state of Connecticut argued that Doe had failed to show that he had been deprived of a liberty interest that necessitated due process protection. Doe claimed that he had a liberty interest in his reputation that the statute unfairly damaged. The state pointed the Court's attention to its ruling in *Paul v. Davis*.[15] In that case, the Supreme Court reviewed whether a Kentucky statute that allowed the distribution of shoplifter's names and photographs to local businesses was an unconstitutional violation of the shoplifter's procedural due process rights because it stigmatized the affected individual. The Court ruled that injury to reputation, even if defamatory, does not constitute a deprivation of a liberty interest, stating that "reputation alone, apart from some more tangible interests such as employment, was neither 'liberty' or 'property' by itself sufficient to invoke the procedural protection of the due process clause" (Ref. 15, p 693). According to *Paul v. Davis*, a successful challenge to a statute must include damage not only to reputation, but to a right or status previously provided by the state. The state of Connecticut argued that the statute did not affect Doe in any way other than by potentially damaging his reputation and that this alone was insufficient under the "stigma plus" test of *Paul v. Davis*.

The Supreme Court, however, found that it was unnecessary to address this question. *In dicta*, the majority opinion implied that Doe may have a valid substantive due process claim but because the question was not properly before the Court, they elected to express no opinion whether Connecticut's Megan's Law violated this principle (Ref. 15, p 1164). In addition, in a concurring opinion, Justices Souter and Ginsburg raised the possibility that the statute may violate the equal protection clause of the Fourteenth Amendment (Ref. 15, p 1165). That clause requires that similarly situated groups be treated similarly. The justices noted that CT-SORA distinguishes a specific group of sex offenders who are deemed not to present the same risk of dangerousness as other offenders. These offenders' names are not posted on the Internet. The justices questioned whether the different treatment of this group compared with other sex offenders rendered the statute vulnerable to an equal protection challenge. Although these two justices raised the possibility of this challenge to CT-SORA, they also stated:

> Today's case is no occasion to speak either to the possible merits of such a challenge or the standard of scrutiny that might be in order when considering it. I merely note that the Court's rejection to respondents' procedural due process claim does not immunize publication schemes like Connecticut's from an equal protection challenge [Ref. 15, p 1166].

Smith v. Doe, U.S. Supreme Court, 2003

Case Background

On May 12, 1994, Alaska enacted the Alaska Sex Offender Registration Act (the Act),[16] which contains two retroactive components: a registration requirement and a community notification system. The Act requires any sex offender or kidnapper of a child in Alaska to register with the Department of Corrections (if incarcerated) or local law enforcement agency (if at liberty).[17] The Act also requires the offender to provide identifying information, ranging from name and aliases to postconviction treatment history. This information is forwarded to the Alaska Department of Public Safety, the agency responsible for maintaining a central registry of sex offenders.[18]

Although some of the offender's identifying information is kept confidential, the following information is made available to the public, primarily through the Internet: name, aliases, address, photograph, physical description, motor vehicle identification numbers, place of employment, date of birth, crime for which convicted, date of conviction, length and conditions of sentence, a statement of whether the offender is in compliance with the Act's requirements, and a statement if the offender cannot be located.[19] The state can seek criminal prosecution of any sex offender who knowingly fails to comply with the Act.

Respondents John Doe I and John Doe II were convicted of sexual abuse of a minor, an aggravated sex offense in the State of Alaska. In 1990, both were released from prison, and they subsequently completed a sex offender rehabilitation program. Although Alaska did not have a mandatory sex offender registration or community notification requirement at the time of their release, the 1994 Act was retroactive and required both to register, to submit quarterly verifications, and to notify authorities of any changes in their submitted information.

John Doe I (along with his wife) and John Doe II brought a U.S.C. § 1983 claim, arguing that the requirements violated procedural due process and the *Ex Post Facto* Clause of the Constitution. The federal district court granted summary judgment for the state of Alaska. The decision was appealed and the Ninth Circuit Court of Appeals disagreed. It held that the Act violated the *Ex Post Facto* Clause because its effects were punitive despite the legislature's stated intent to the contrary.[20] The U.S. Supreme Court granted *certiorari* on this appeal.

The Decision

In a six-to-three decision, the U.S. Supreme Court held that because the Alaska Sex Offender Registration Act is civil and nonpunitive, its retroactive application could not violate the *Ex Post Facto* Clause, which applies only to criminal proceedings.[21]

Writing for the majority, Justice Kennedy first outlined the framework for the Court's inquiry into whether a given law constitutes retroactive punishment in violation of the *Ex Post Facto* Clause. First, the Court must determine whether the legislature intended the statute to be criminal, as opposed to civil. If the intention of the legislature was to impose punishment, the statute is deemed criminal and the inquiry ends. If however, the legislature intended to enact a civil and nonpunitive legislative scheme, the Court must proceed to a second step. It must determine if the statute is so punitive either in purpose or effect as to negate the state's intention to deem it civil. Finally, because the Court ordinarily defers to the legislature's stated intent, only the clearest proof that the statute is *de facto* criminal suffices to override the legislature and convert the statute to a criminal one.

In this case, Justice Kennedy noted that the Alaska Legislature expressly stated that the objective of the statute was to "protect . . . the public from sex offenders" and that the "release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety" (Ref. 16, p 1147 citations omitted). Citing *Kansas v. Hendricks*,[22] the Court commented that imposition of restrictive measures on sex offenders deemed dangerous is "a legitimate nonpunitive governmental objective and has been historically so regarded" (Ref. 16, p 1147). The Court majority concluded that the Alaska legislature intended the scheme to be civil and nonpunitive. It is significant that the Court found this despite the fact that certain provisions of the statute were enforced not through the civil code, but through the Alaska Criminal Code.

Second, the Court analyzed whether the Act is so punitive in "either purpose or effect as to negate [the State's] intention to deem it civil" (Ref. 16, p 1147, internal citations omitted). The Court majority used five of seven factors outlined in *Kennedy v. Mendoza-Martinez*[23] as a framework for determining whether the Act was actually punitive despite its stated civil intent.

First, the Court reviewed whether the Act's registration requirements were consistent with historical punishments that involved shaming or public humiliation. Justice Kennedy distinguished the required registration of sex offenders from such historical punishments, noting "our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment" (Ref. 16, p 1150). He added, "In contrast to the colonial shaming punishments, however, the State does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme" (Ref. 16, p 1150). In reference to the dissemination of the information on the Internet, Justice Kennedy commented, "Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation" (Ref. 16, p 1150).

Second, the Court considered whether the Act subjected the respondents to an "affirmative disability or restraint" and noted that if the "disability or restraint is minor and indirect, its effects are unlikely to be punitive" (Ref. 16, p 1151). The Court reasoned that the Act did not impose a significant disability or restraint because there was no actual physical restraint, no restrictions placed on activities (such as particular job or residence), and no requirement of an actual appearance to update the registry. The majority distinguished the monitoring requirements of the registration system for criminal probation, in that offenders under the Act could move where they wanted and work without supervision.

The third factor considered by the Court was whether the Act promoted the traditional aims of punishment (such as deterrence and retribution) rendering the overall scheme punitive in nature. The respondents argued that this Act was designed to deter others and therefore was punitive. In response to this claim, Justice Kennedy wrote, "This proves

too much" and citing *Hudson v. U.S.*[24] he added, "To hold that the mere presence of a deterrent purpose renders such sanctions 'criminal'. . .would severely undermine the Government's ability to engage in effective regulation" (Ref. 16, p 1152). The Court majority rejected the court of appeal's conclusion that the Act's registration requirements were retributive because the Act imposed longer registration requirements based on the seriousness of the offense. The Court responded that the corresponding length of the reporting requirement was reasonably related to the danger of recidivism and was therefore consistent with the regulatory nonpunitive objective.

The fourth factor considered by the Court involved an evaluation of the Act's rational connection to a nonpunitive purpose. The Court emphasized that a regulatory statute does not require a close or perfect fit with the nonpunitive aims it seeks to advance. Furthermore, a legitimate nonpunitive purpose of this Act was public safety.

The final factor considered by the Court was whether the Act was excessive in relation to its regulatory purpose. The court of appeals found the Act excessive in relation to its regulatory purpose because it applied to all convicted sex offenders without regard to their future dangerousness and because it placed no limits on the number of persons who have access to the registration information. Justice Kennedy dismissed these concerns. He noted there are "grave concerns" regarding the high rate of recidivism among convicted sex offenders and their dangerousness as a class and therefore the Act is not excessive in its regulation.[16] He emphasized that *Ex Post Facto* Clause does not "preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences" (Ref. 16, p 1153). He added, "The States' determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment under the *Ex Post Facto* Clause" (Ref. 16, p 1153). The majority also rejected the argument that the Act was excessive in its regulation because offender information was listed on the Internet. The Court reasoned that the notification system is a passive one and requires an individual to take active steps to access the information.

The Court concluded by stating that the respondents had failed to show that the Act's actual effects negate the Alaska legislature's intention to establish a civil regulatory scheme. They emphasized that they had fallen far short of the required "clearest proof" necessary to override the legislative intent.

Justice Souter concurred in the judgment, but wrote a separate opinion. He stated, "the majority comes to that conclusion by a different path from mine" (Ref. 16, pp 1154–5). He pointed out that this case was a close one and that the legislature's intent was not clear. In such a case, he did not believe "the clearest proof," a heightened standard of proof, should be necessary to override legislative intent. Justice Souter stated that there was evidence pointing in both directions with respect to legislative intent. Factors that indicated a punitive intent included the failure of the Act to expressly designate the imposed requirements as civil, the inclusion of the registration requirement in the governing criminal procedure, the requirement of written notification of the registration requirement as a necessary condition of any guilty plea, the inclusion of a mandated statement regarding the registration requirement as an element of the actual judgment of conviction for covered sex offenses, and the obligation of offenders to register initially with state and local police. Justice Souter emphasized that the Act's legislative history was designed to prevent repeated sex offenses and to aid the investigation of reported offenses. Justice Souter concluded, "When a legislature uses prior convictions to impose burdens that outpace the law's stated civil aims, there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones" (Ref. 16, p 1156).

Justice Souter viewed these indications of punitive character to be roughly equal to the civil indications that the majority had weighted heavily. He stated, "Certainly the formal evidence of legislative intent does not justify requiring the 'clearest proof' of penal substance in this case,. . .and the substantial evidence does not affirmatively show with any clarity that the Act is valid" (Ref. 16, p 1156). Nevertheless, he voted to uphold the Act, stating, "What tips the scale for me is the presumption of constitutionality normally accorded a State's law. That presumption gives the State the benefit of the doubt in close cases like this one, and on that basis alone I concur in the Court's judgment." (Ref. 16, p 1156).

In his dissent, Justice Stevens reasoned that the Act involved a protected liberty interest because it required registration for a lengthy period, notifica-

tion to DPS of changes in the sex offender's appearance or residence, and a lifetime of stigmatization. He concluded that the Act was punitive because it imposed "significant affirmative obligations and a severe stigma on every person to whom they apply. The registration and reporting duties imposed on convicted sex offenders are comparable with the duties imposed on other convicted criminals during periods of supervised release or parole" (Ref. 16, p 1157). According to Justice Stevens, further evidence that the law was punitive in nature and thereby violated the *Ex Post Facto* Clause, included its retroactive application and the fact that it was passed, in part, to deter future criminal acts.

Justice Ginsburg wrote a separate dissent joined by Justice Breyer. She did not agree with the majority's application and interpretation of the *Mendoza-Martinez* factors. In contrast, she concluded that the Act was punitive because it exposed sex offenders to humiliation and shaming reminiscent of colonial punishments, and the requirements were imposed only on individuals subject to parole and supervised release. In addition, Justice Ginsberg argued that because a person's past criminal behavior rather than current dangerousness triggered the requirements of the Act, deterrence of future acts was not advanced as purported by the Act.

Discussion

In its ruling on the constitutional challenges to Alaska's and Connecticut's sex offender registration and mandatory community notification statutes, the U.S. Supreme Court has shut two doors, at least partially, on future legal claims. As with previous challenges to sexually violent predator statutes, the Court emphasized that registration and community notification schemes are civil, serve the purpose of protecting the public, and are not subject to *ex post facto* claims. The Court also removed the possibility for procedural due process claims for statutes similar to CT-SORA, in which the statute explicitly states that no determination of dangerousness has been made. However, the Court does not appear to preclude future procedural due process challenges against those state statutes that make a determination of likelihood of recidivism without appropriate procedural protections.

Many states require a risk assessment of future dangerousness for registered sex offenders. These laws generally have a three-tiered system of community notification based on the risk of recidivism. Tiered levels are a method of assessment designed by the state to predict the likelihood that an offender will reoffend. In general, the higher the assigned tier number, the greater the expanse of community notification required and the specific information released.[25] State statutes also specify which agency is responsible for making the risk assessment, as well as those factors that are considered in assigning the risk level.

In some states, mental health professionals play a minimal role in the actual assessment of reoffense risk. For example, in New Jersey, the prosecutor determines risk of reoffense based on an assessment instrument titled the Registrant Risk Assessment Scale (RRAS), which was developed by the Division of Criminal Justice with input from county prosecutors, Department of Corrections, treatment staff, and psychologists.[26] In this scheme, the offender is assigned a risk level based on a particular score. In contrast, other states use evaluations by mental health clinicians, along with input from law enforcement and victim's services, in the decision-making process. When conducting evaluations of sex offenders, clinicians should know those clinical risk factors associated with an increased risk of sexual reoffense, and the use and limitations of actuarial instruments in predicting sexual recidivism.

Clinicians involved in the assessment and/or monitoring of registered sex offenders should also familiarize themselves with their state's registration requirements, as they vary significantly. In general, sex offender registration statutes address the statutory definitions of offenders required to register, penalties for noncompliance, access to information, limits of confidentiality, and specific information collected about the offender. Common personal information required for registration purposes includes the offender's name, date of birth, home address, vehicle license number, social security number, fingerprints, physical description (including scars, marks, tattoos), photo, aliases, place of employment, occupation, telephone numbers, jurisdiction of conviction, DNA samples, place of school attendance, and citizenship. A few states require offenders to submit a statement regarding whether they have had treatment for a mental abnormality or personality disorder since the date of their conviction.[27,28] New York specifically requires registrants to submit all Internet accounts

and screen names in addition to basic registrant information.[29]

Despite the ruling by the U.S. Supreme Court in these cases, the debate regarding the punitive aspects versus the protective aspects of these statutes is likely to continue. Critics of these laws argue that they are costly, demonize offenders,[30] and deter offenders from seeking necessary treatment. Proponents believe they are valuable because they protect the public and save the lives of children.

Although the Supreme Court may have shut the door on constitutional challenges to these statutes, they also opened two windows to future legal claims. First, in *Connecticut Department of Public Safety v. Doe*,[10] the majority suggested *in dicta* that a substantive due process claim challenging the constitutionality of these statutes could be raised. Second, in a concurring opinion, two justices noted that states that impose mandated community notification on one group of offenders and not others, without a reasonable basis on which to distinguish the two groups (e.g., an actual determination of recidivism risk), may violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

It remains uncertain how the Court will rule on new challenges to sexual offender registration and community notification laws. Given the current composition of the Supreme Court, a break from the current trend seems unlikely. Perhaps, insight into future holdings may be gained when considering the Court's repeated reluctance to overturn sexually violent predator legislation. Those laws are, in many ways, more clearly criminal than the community notification and registration laws, and they have continually withstood challenge.

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