

The following are prejudicial statements made in the proposed rule:

- 1) Page 49340, (left column, page center), : "...because sex offenders may, for example, **provide false date of birth information** in seeking employment that would provide access to children or other potential victims. See 73 FR at 38057."

Where are the statistics to support that example? Because registrants are more likely to commit fraud by falsifying a document more than the rest of the population? Falsifying a document is a separate crime. The DOJ is illegally trying to enforce fraud through registration.

- 2) Page 49340 (left column, 2nd paragraph) : "...By providing basic information about who a sex offender is, where **he** is, how **he** gets around, and what **he** is authorized to do, these requirements implement SORNA and further its public safety objectives."

"He" is stated 3 times. That's obvious sex discrimination, the pronouns must be corrected. And, specifically what are these "public safety objectives" that are supported by statistics?

- 3) Page 49340 (center column, 1st paragraph) : "...The Attorney General has exercised the same authority to require telephone numbers—a requirement also already appearing in the SORNA Guidelines—for a number of reasons, including facilitating communication between registration personnel and sex offenders, and addressing the potential use of **telephonic communication by sex offenders in efforts to contact or lure potential victims**. See 73 FR at 38055."

"Telephonic communication by sex offenders in efforts to contact or lure potential victims", again, what statistics support that registrants are more likely than the rest of the population to do this? More unfounded prejudice.

- 4) Page 49340 (center column, last paragraph) "...Paragraph (c)(2) of § 72.6 requires a sex offender to provide information about temporary lodging while away from his residence for seven or more days. In the SORNA Guidelines, and now in this rule, the Attorney General has adopted this requirement because **sex offenders may reoffend** at locations away from the places in which they have a permanent or long-term presence, and indeed **could be encouraged** to do so to the extent that information about their places of residence is available to the authorities but

information is lacking concerning their temporary lodgings elsewhere. The benefits of having this information include facilitating the successful investigation of *crimes committed by sex offenders* while away from their normal places of residence and *discouraging sex offenders from committing crimes* in such circumstances. See 73 FR at 38056.”

“... because sex offenders may reoffend...”, “could be encouraged ”, “...crimes committed by sex offenders...” Registration was specifically intended to be purely an administrative - civil function. Now, making a blatant prejudicial statement like those are outside the jurisdiction of the DOJ.

"...discouraging sex offenders from committing crimes..." the prejudice continues; "discouraging"; law takes care of discouraging, but the DOJ just has to go further by admitting in the open that it is not just registration but a vehicle of "discouragement". Discouragement is an element of punishment which is unconstitutional for a collateral consequence of a conviction. The DOJ enforces law, it is not in the business of “discouraging”, that is specifically in the jurisdiction of the legislature and the Justice department (sentencing) to provide that function.

All this points to the DOJ exceeding its jurisdiction to impose its prejudicial biased position, appealing to general public prejudice. The DOJ has to be put in check. Separation of powers is required.

Recommendation:

I ask that the DOJ's rules be revised and instructed to remove the above noted prejudicial unconstitutional comments regarding motivation and tendencies, unless they provide specific statistics to support their prejudicial statements.

- 5) Page 49335: (center column, last paragraph), the DOJ calls out the US Supreme Court case law, *Smith v. Doe*, 538 U.S. 84 (2003), conveniently failing to mention that 3 of the 9 justices, or 33% of the US Supreme Court dissented - contradicted the DOJ's statement; "Section 72.3, and its modification by this rulemaking, are constitutionally sound." Where the dissenting Court stated:

"The registration and reporting duties imposed on convicted sex offenders are comparable to the duties imposed on other convicted criminals during periods of supervised release or parole. And there can be no doubt that the "[w]idespread public access," ante, at 99 (opinion in No. 01-729), to this personal and constantly updated information has a **severe stigmatizing effect**. See Brief for the Office of the Public Defender for the State of New Jersey et al. as Amici Curiae 7–21 (providing examples of threats, assaults, loss of housing, and loss of jobs experienced by sex offenders after their registration information was made widely available). In my judgment, these statutes unquestionably affect a constitutionally protected interest in liberty. Cf. *Wisconsin v. Constantineau*, 400 U. S. 433 (1971). It is also clear beyond peradventure that these unique consequences of conviction of a sex offense are **punitive**. They share three characteristics, which in the aggregate are not present in any civil sanction. The sanctions (1) constitute a **severe deprivation of the offender's liberty**, (2) are imposed on everyone who is convicted of a relevant criminal offense, and (3) are imposed only on those criminals. Unlike any of the cases that the Court has cited, a criminal conviction under these statutes provides both a sufficient and a necessary condition for the sanction."

The majority opinion concluded registration is "not sufficiently punitive", "not an affirmative disability" ¹

"**severe stigmatizing effect**", "punitive", "**severe deprivation of the offender's liberty**" This is precisely what the other comments demonstrate through their stories. (and certainly my own experience) The collateral consequence of a collateral consequence of a conviction, i.e. the public's view of registration, results in punishment. But the government will say it

¹ This in opposition to the same Courts's decision in *Carafas v. LaVallee*, 391 U.S. 234 (1968), stating: "It is clear that petitioner's cause is not moot. In consequence of his conviction, he cannot engage in certain businesses; [Footnote 4] he cannot serve as an official of a labor union for a specified period of time; [Footnote 5] he cannot vote in any election held in New York State; [Footnote 6] he cannot serve as a juror. [Footnote 7] **Because of these "disabilities or burdens** [which] may flow from" petitioner's conviction, he has "a **substantial stake** in the judgment of conviction which survives the satisfaction of the sentence imposed on him." *Fiswick v. United States*, 329 U. S. 211, 329 U. S. 222 (1946). On account of these "**collateral consequences**," [Footnote 8] the case is Page 391 U. S. 238 not moot."

"Collateral consequences" are "disabilities or burdens", and all this was written long before registration became a new controversial collateral consequence of a conviction. This demonstrates the majority's ruling is in conflict with its earlier ruling.

is not responsible for the public's reaction to registration, citing registration is required for "public safety". I challenge the government to provide the statistical evidence for the *effectiveness of registration*, it is never produced.

I note that when *I have to appear* for registration bi-annually, during that time, I am in custody, even though it may be a 1-3 hour wait process, multiplied by 2 times a year, times 25 years, that's 50-150 hours (2-6 days) of custody. (not including the additional times required to appear for changes in employment, automobile, etc.) This results in an accumulative violation of my "constitutionally protected interest in liberty" as the above dissenting opinion stated. Because 2-6 days is spread out over a longer period of time, suddenly it's not considered a violation of liberty? 2-6+ days of custody is punishment.

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