Received 12/14/2022 4:08:20 PM Supreme Court Middle District

Filed 12/14/2022 4:08:00 PM Supreme Court Middle District
97 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA

No. 97 MAP 2022

COMMONWEALTH OF PENNSYLVANIA
Appellant

V.

GEORGE J. TORSILIERI

Appellee

# PENNSYLVANIA STATE POLICE'S *AMICUS CURIAE* BRIEF IN SUPPORT OF THE COMMONWEALTH OF PENNSYLVANIA

Appeal from the Court of Common Pleas of Chester County's Order dated August 23, 2022, at No. CP-15-CR-0001570-2016, finding SORNA unconstitutional both facially and as applied to Appellee

Gregory B. Schwab
General Counsel

Nolan B. Meeks
Chief Counsel

Stevan Kip Portman
Assistant Counsel
Attorney ID No.: 38493

John J. Herman
Assistant Counsel
Attorney ID No.: 207043

Pennsylvania State Police
Office of Chief Counsel
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
T: 717-783-5568
F: 717-772-2883

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases:**

**Federal Statutes:**



**State Statutes:**



**The National Guidelines for Sex Offender Registration & Notification:**

**Rules of Court:**



**Miscellaneous:**

**BRIEF OF AMICUS CURIAE**
**PENNSYLVANIA STATE POLICE**
**IN SUPPORT OF APPELLANT**

Pursuant to Pa. R.A.P. 531, the Pennsylvania State Police (PSP) respectfully submits this *amicus curiae* brief in support of Appellant, Commonwealth of Pennsylvania.

## IDENTITY AND INTEREST OFAMICUS CURIAE, THE PENNSYLVANIA STATE POLICE

The PSP is an executive agency of the Commonwealth of Pennsylvania and is under the jurisdiction of the Governor of the Commonwealth of Pennsylvania, currently Tom Wolf. Under the leadership of PSP's Commissioner, Colonel Robert Evanchick, more than four thousand sworn troopers and supporting civilian personnel of the PSP provide police services for many communities within the Commonwealth, including specialized services such as aviation, bomb disposal, forensic support, and special emergency response teams. In addition, as an executive agency of the Commonwealth, the PSP has been tasked by the Legislature with administering certain laws that concern public safety, including various duties under the multiple iterations of Pennsylvania's sex offender registration and notification statutes.

Specifically, the PSP has administered the Commonwealth's sex offender registry since its inception in the 1990s to the present. Further, the PSP worked with the Governor's Office and the Pennsylvania Legislature in the passage of Act 2011-111 (S.B. 1183), the law which became the Pennsylvania Sex Offender Registration & Notification Act, 42 Pa. C.S. § 9799.10-.42 (PA SORNA), and administered the same, after it was passed. PA SORNA was enacted to comply with the 2006 Adam Walsh Child Protection and Safety Act (Walsh Act).

This Court previously declared SORNA unconstitutional as "it violated adult offenders' ex post facto rights due to its retroactive application to those convicted prior to its effective date of December 20, 2012. *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1189 (Pa. 2017) (plurality)." *Commonwealth v. Torsilieri*, 232 A.3d 567, 580 (Pa. 2020). In response to *Muniz* and the Pennsylvania Superior Court's decision in *Commonwealth v. Butler*, 173 A.3d 1212 (Pa. Super. 2017) (Butler I), the General Assembly enacted the Act of Feb. 21, 2018, P.L. 27, No. 10, effective immediately (Act 10). The Court described Act 10 thus:

> Act 10 split SORNA, which was previously designated in the Sentencing Code as Subchapter H into two subchapters. Revised Subchapter H applies to crimes committed on or after December 20, 2012, whereas Subchapter I applies to crimes committed after April 22, 1996, but before December 20, 2012. In essence, Revised Subchapter H retained many of the provisions of SORNA, while Subchapter I imposed arguably less onerous requirements on those who committed offenses prior to December 20, 2012, in an attempt to address this Court's conclusion in Muniz that application of the original provisions of SORNA to these offenders constituted an *ex post facto* violation.

*Torsilieri*, 232 A.3d 580-81. On June 12, 2018, the General Assembly enacted Act 29, the Act of June 12, 2018, P.L. 140, No. 29, effective immediately (Act 29). Act 29 reenacted and amended Act 10. Subchapter H of Act 29 is the subject of the current litigation in this matter, *Commonwealth v. Torsilieri*.

Since the inception of sexual offender registration and tracking in Pennsylvania, the PSP has worked alongside local law enforcement, state and federal

prosecutors, and federal law enforcement (particularly the U.S. Department of Justice, Office of Sexual Offender Monitoring, Apprehension, Registration and Tracking [SMART Office], and United States Marshal's Service), to protect citizens of the Commonwealth by registering, tracking, and apprehending sexual offenders.

In sum, the PSP submits that its institutional knowledge and experience in registering and tracking sex offenders, and investigating violations of the registration laws, allows the PSP to provide meaningful argument and perspective for this Honorable Court's consideration of this matter.[1]

[1] The attorneys who drafted, prepared, and supervised this matter and the filing of this *Amicus Curiae* Brief are salaried employees of the Commonwealth of Pennsylvania, Pennsylvania State Police and the Governor's Office of General Counsel. PSP has no disclosures to make under PA RAP 531(b)(2)(i)-(ii).

## SUMMARY OF THE ARGUMENT

If this Honorable Court affirms the trial court, the PSP will likely be forced to remove **9,649**[2] sexual offenders from the Commonwealth's sexual offender registry. Additionally, affirming the lower court's decision will prevent or hinder public notification regarding the significant threat these individuals pose to the public, and may encourage sexual offenders to come to Pennsylvania to avoid their required sexual offender registration obligations in other states.

With respect to the trial court's decision, it is deficient in several critical regards. First, the trial court did not fully consider the impact of its own conclusions. Second, the trial court failed to recognize the body of widely available contrary evidence. Third, the trial court failed to explicitly consider anything specific to Pennsylvania, including the practical consequences. Finally, the trial court failed to recognize that much of the critical case law it relies upon either supports finding the law constitutional or does not support the trial court's conclusions.

[2] As of 10/14/22.

## ARGUMENT

### I. The holding of the trial court in *Commonwealth v. Torsilieri* fails to respect the legislative findings and purposes of SORNA, materially hindering Pennsylvania's efforts to protect the public, both within the Commonwealth, and as part of the national network of sex offender registries.

The Pennsylvania General Assembly has provided for sexual offender registration laws to protect the public and prevent the sexual victimization of children, women and men who reside in this Commonwealth. In particular, the General Assembly has stated that "Sexual Offenders pose a high risk of committing additional sexual offenses and protection of the public from this type of offender is a paramount governmental interest." 42 Pa. C.S. § 9799.11(a)(4). This is further supported by both the legislative findings and policy found in § 9799.11, which make clear the law's purpose to provide knowledge and notice to the public to allow for informed decision making and public protection. *See, e.g.,* 42 Pa. C.S. § 9799.11(a)(6)-(8), (b)(2).

In passing PA SORNA, the Legislative Journal of Pennsylvania's Senate records that:

> Various legal treatises, studies, and experts have shown that there are about 200,000 to 250,000 sexual predators who migrate from one State to another, based on the laws that the State has on record to address sexual predators. Today, with this monumental step in compliance and through adoption of the Adam Walsh Act, Pennsylvania is taking a major step to close that horrific loophole. Pennsylvania will be moving forward to adopt uniform laws pertaining to sexually violent predators,

> and reporting requirements so that Pennsylvania, like other States across this nation, has uniform laws so that these predators will no longer migrate from State to State.

2011 Pennsylvania Legislative Journal-Senate No. 67, at 1203 (statement of Senator Orie, November 15, 2011). It is therefore clear the legislature intended to protect public safety and made its own findings and policy choices regarding the best way to protect the public, as is its role.

If this Honorable Court affirms the trial court, the PSP will be forced to likely remove nearly 10,000 sexual offenders, who have committed their registerable offense(s) on or after December 20, 2012, from this Commonwealth's sexual offender registry. Additionally, affirming the lower court will prevent or hinder public notification regarding the significant threat these individuals pose to the public, especially as it will benefit sex offenders who can come to Pennsylvania to potentially avoid their federal, military, or out-of-state, required sexual offender registration obligations.

In fact, this Honorable Court has held that "[t]he legislature must be respected in its attempt to exercise the State's police power and the power of judicial review must not be used as a means by which the courts might substitute its judgment as to public policy for that of the legislature." *Parker v. Children's Hospital of Philadelphia*, 394 A.2d 932, 937 (Pa. 1978). It is also axiomatic that a "legislative enactment enjoys a presumption in favor of its constitutionality and will not be

declared unconstitutional unless it clearly, palpably, and plainly violates the Constitution." *Id.* In this case, the trial court ruled that the Pennsylvania SORNA, Subchapter H of Title 42, was unconstitutional both as it created an irrebuttable presumption and violated the state and federal constitutions, including being an *ex post facto* law, and that it constitutes cruel and unusual punishment, citing the multitude of harms suffered by sexual offenders. However, when one reads the opinion, it is clear that the trial court inappropriately substituted its judgment for that of the legislature, disregarding the authority of the legislature to set public policy and ignoring the strong presumption of constitutionality a law enjoys.

The Legislature is the body tasked with the task of setting public policy, as the elected representatives of the people. While this is axiomatic, this bedrock principle is critical to assessing the lower court's ruling in this case and understanding its fundamental error. As noted above, the trial court simply listened to competing experts and decided it believed those experts which dispute the effectiveness of sex offender registration laws, rather than recognizing that the existence of credible and competing evidence is sufficient to sustain the actions of the legislature.

### *A. Conclusions of the Trial Court*

The trial court notes that, based on the evidence, anywhere from 80%-95% sexual offenders do not reoffend. *See Trial Court Opinion, pg. 10.* Put another way,

the court concludes that anywhere from 5%-20% of offenders will reoffend. This is a fairly broad range, but assuming for arguments sake that 15%-20% reoffend, this is a significant percentage, as it means as many 1 in 5 people on the registry may reoffend, as the trial court itself finds. It also does not account for the acknowledged, but indeterminate, "dark figure" of unreported offenses. *See Trial Court Opinion, pg. 10.* At a minimum, this finding of the trial court as to recidivism supports the proposition that the legislature reached, that notice to the public of a group (sex offenders) where potentially as many as 1 in 5 people may recidivate, is certainly rational and reasonable.

The action of the legislature is also consistent with a statement of this Court, which while recognizing that there is conflicting evidence regarding sex offender recidivism, noted that "**[t]here is little question that the threat to public safety and the risk of recidivism among sex offenders is sufficiently high to warrant careful record keeping and continued supervision.**" *Commonwealth v. Lee,* 935 A.2d 865, 885 (Pa. 2007) (***emphasis added***); *see also discussion of In re: J.B.*, 107 A.3d 1 (Pa. 2014), *supra.* In fact, the ***Lee*** decision noted in 2008 that all evidence cited by the Appellant did was provide a "counter-narrative to the evidence that the General Assembly relied upon in gauging the necessity and formulating the provisions of Megan's Law, which is also supported by empirical evidence and numerous studies[,]" citing to U.S Supreme Court precedent. *Lee*, 935 A.2d at 885.

It is also critical at this juncture to understand what presumption is being challenged as being irrebuttable. The trial court suggests that SORNA's presumption is that "all sex offenders pose a high risk of reoffending sexually." *See Trial Court Opinion at pg. 6.* PSP respectfully submits this creates an impossible bar for the Commonwealth—not every sex offender will reoffend, and PSP does not understand anyone to be arguing to the contrary. The question that is proper to consider as universally true, as discussed in a Commonwealth Court opinion, is whether registrants pose "no higher risk to commit a future crime than people not currently on the [r]egistry[,]" which would justify the actions of the Legislature if it can be shown that registrants are more likely to recidivate. *R.C. v. Evanchick*, 252 A.3d 698, *10 (Pa. Cmwlth. 2021) (*unreported*). PSP respectfully submits that the conclusions of the trial court, that potentially as much as 20% of registrants may reoffend, by itself shows the presumption (if framed correctly) is accurate as registrants are more likely to reoffend, as much evidence would suggest.[3]

### *B. Strong Evidence supports SORNA*

Similarly, reference to the United State Department of Justice, SMART Office website, reveals a number of authoritative materials regarding sexual offenders. Research briefs issued by the SMART Office touch upon the recidivism of sexual

[3] PSP notes the existence of other case law as well which finds SORNA to create an irrebuttable presumption, as least in an as-applied context. *See, e.g., Commonwealth v. Muhammad*, 241 A.3d 1149 (Pa. 2020).

offenders, including statistics regarding child sex offenses. Overall, one research brief found that a study showed a 5.3% sexual recidivism rate for adult sexual offenders during a three-year follow-up period (as opposed to a 1.3% sexual crime arrest rate for prior non-sexual offenders), and a 24% sexual recidivism rate for rapists at a fifteen year follow up (as opposed to 14% sexual recidivism rate for rapists at a five year follow up in the same study). Roger Przybylski, Recidivism of Adult Sexual Offenders, pg. 2, Sex Offender Management Assessment and Planning Initiative, SMART Office, United States Department of Justice (July 2015) (https://www.smart.gov/pdfs/RecidivismofAdultSexualOffenders.pdf). These statistics suggest both that an individual with a prior sex offense is more likely to commit another sex offense and that, at least for individuals convicted of rape, the passage of time increases the likelihood of recidivism, therefore supporting longer registration periods.

The same study also touched upon the recidivism of sexual offenders who had molested children and cited studies that noted recidivism rates ranging from 23% to 52% for such offenders (there were variances in the size of population monitored, and the period of monitoring, in these studies). *Id.* at 3. A separate research brief also issued in July 2015 found that almost ten percent of children were sexually victimized in their lifetime. Jane Wiseman, Incidence and Prevalence of Sexual Offending (Part I), pg. 3, Sex Offender Management Assessment and Planning

Initiative, SMART Office, United States Department of Justice (July 2015) (https://www.smart.gov/pdfs/IncidenceandPrevalenceofSexualOffending.pdf). While this limited snapshot of information regarding sexual offenders is obviously not definitive, it provides a clear picture of the potential threat to the public, in particular children, posed by sexual offenders and would certainly support the actions of the Legislature in passing Revised Subchapter H.

It should also be noted that even more recent research published under the auspices of the U.S. Department of Justice, Office of Justice Programs, noted that as of 2020, much of the published research as to the impact on registration on offenders was often indeterminate, suffered from methodological flaws, and failed to conclusively link claimed impacts on employment, housing, etc., to registration. Meaghan Flattery & Wm. Nöel Nöel, *Sexual Offender Registration and Notification Policies: Summary and Assessment of Research on Claimed Impacts to Registered Offenders*, Federal Research Division, Library of Congress, (October 2020) (https://www.ojp.gov/pdffiles1/smart/255959.pdf). This is in many ways consistent with the conclusions of the Dr. Richard McCleary, Ph.D., as to the shortcomings of the defense expert's conclusions. *See Trial Court Opinion at pg. 7.*

Finally, it is also worth noting that there is little, if any, discussion in the trial court's opinion that relates to research or data sets which are specific to the Commonwealth of Pennsylvania. There is no discussion in the opinion of the actual

sex offender registry maintained by PSP for the Commonwealth and the numbers of offenders thereon. In particular, there is no analysis or consideration evident of the number of employed individuals listed thereon, or the number of those who have a fixed address or are transient. In other words, there appears to be no consideration of available information specific to Pennsylvania and collected under Revised Subchapter H. *See, e.g.,* 42 Pa. C.S. § 9799.16(b)(5)-(6), (9)-(10).

PSP recognizes that there is competing evidence which draws different conclusions as to the implications and effectiveness of sexual offender registration schemes, but that is exactly the point. In treating this case as a "battle of the experts," the trial court used a flawed analytical framework to consider whether there was a sufficient basis for the actions of the Legislature. The trial court did nothing more than substitute its own judgment for that of the Legislature, despite the longstanding admonition of this Court to not utilize judicial review as a "means by which the court might substitute its judgment as to public policy for that of the legislature." *Parker*, 394 A.2d at 937.

In fact, in its 2020 decision in this very case, this Court found a colorable claim may exist, but also continued to caution that "it will be the **rare** situation where a court would reevaluate a legislative policy determination, which can only be justified in a case involving the infringement of constitutional rights **and a consensus of scientific evidence undermining the legislative determination**."

*Commonwealth v. Torsilieri,* 232 A.3d 567, 596 (Pa. 2020). While PSP certainly recognizes that a "scientific consensus" often exists based on well informed opinions, this is often an ill-defined and slippery concept.

Based on the conflicting evidence available as noted above (much of which is publicly available), it is not clear to PSP that a "consensus" clearly exists, and the trial court did not explore in any meaningful way whether such a consensus existed with specific findings.[4] Regardless, and more importantly in this case, PSP submits that when there is a strong body of contrary evidence long acknowledged previously by the courts of this Commonwealth (*see, e.g., Commonwealth v. Lee*) and it relates to a determination made by an independent branch of government, that must be enough to sustain the actions of the Legislature as rational and constitutional. Otherwise, anytime there is conflicting evidence, or a judge finds one side more credible, then there is a risk of a legislative determination being overturned. This neither respects an independent branch of government nor provides the legislation the strong presumption of constitutionality it is supposed to enjoy. The consensus in this case is clearly lacking and it is not simply enough for the trial court to decide which experts it found credible when to do so will overturn a legislative determination for which there is significant support.

[4] PSP notes the court did discuss the "scientific and academic consensus" in its trial opinion, but did not specifically contrast it with, or discuss, evidence to the contrary, in the opinion, in any meaningful way.

### *C. The practical implications of thwarting public policy*

Similarly, the trial court did not consider the impact of its decision on the efforts of the Pennsylvania State Police in administering the law, which bear on the factors considered by the trial court in finding revised Subchapter H unconstitutional *i.e.* is there a rational connection assignable to the registration and notification provisions. The passage of the Walsh Act in 2006 was designed to take the patchwork of existing sex offender registration laws and "make those systems more uniform and effective." *Reynolds v. U.S.*, 565 U.S. 432, 435 (2012). Specifically, the current codification of the Walsh Act provides that "[e]ach jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter." 34 U.S.C. § 20912.

The essential goal of tracking sex offenders was further reflected in the Attorney General Guidelines for the Walsh Act, which were issued in 2008. "While sex offender registration…in the United States [is] generally carried out…by the individual states…their effectiveness depends on also having effective arrangements for tracking of registrants as they move among jurisdictions and some national baseline of registration and notification standards." *The National Guidelines for Sex Offender Registration and Notification,* 73 Fed. Reg. 38045 (July 2, 2008).

Clearly, the tracking of offenders within and across U.S. jurisdictions was and is a primary goal of the Walsh Act from the beginning. Pennsylvania law provides

specific direction to the PSP to effectuate this goal. In particular, 42 Pa. C.S. § 9799.18 directs the information sharing activities of the PSP. This section directs PSP to share the registration information it receives with local police and prosecutors, and if the offender is coming from another jurisdiction, to notify all jurisdictions where the individual is required to register, the jurisdiction the individual left, and the federal authorities (including the U.S. Marshals Service) of the information PSP possesses. See 42 Pa. C.S. § 9799.18(a)(1)-(5).

Other related duties in this section also include notifying other agencies, including the U.S. Marshals Service, of international residences and travel, as well as providing information in the registry to other jurisdictions for employment checks under the National Child Protection Act of 1993. See 42 Pa. C.S. § 9799.18(c)-(e); see also 42 Pa. C.S. § 9799.22 (relating to PSP's criminal enforcement and notification duties); 42 Pa. C.S. § 9799.32 (relating to the overall duties of the PSP). It is these obligations that PSP must carry out which ensure that sexual offenders and predators are seamlessly tracked from state to state, and even internationally, as part of Congress' goal to ensure that the whereabouts of dangerous sexual offenders are known.

In potentially removing all the Revised Subchapter H offenders and preventing the PSP from registering similarly situated offenders from other states,[5] affirmance of the trial court's decision may leave a gaping hole in the national network. This creates two interrelated but distinct problems. First, if an offender is not required to register with the PSP when arriving from another state, even if that state notifies the PSP, the offender will not be required to register his or her information with the PSP, encouraging offenders to move to Pennsylvania, thereby potentially making the Commonwealth a haven for sexual offenders.

Second, even if an offender does not ultimately intend to remain in Pennsylvania, he or she will be able to "launder" themselves through the Commonwealth. For example, assume that PSP receives notification from the state of Vermont that a sex offender who would be registerable under Revised Subchapter H is moving to Pennsylvania. Upon review of the information, the PSP realizes that it cannot register the individual due to the full affirmance of the trial court's *Torsilieri* decision. This individual will now have effectively, and lawfully, shed his or her registration obligations in Pennsylvania and will be free to return to Vermont or any other state after a short stopover in the Commonwealth. While it may be a

[5] Equal Protection principles would seem to dictate that if Pennsylvania cannot register an offender for an offense under its own laws, similarly it could not register an out of state offender who committed the same or similar offense. *See, e.g., Doe v. Pa. Bd. of Probation & Parole, et. al*, 513 F.3d 95 (3rd Cir. 2008) (finding equal protection was violated by a prior version of Pennsylvania's Megan's Law which contained different notification requirements for in-state and out-of-state offenders).

crime to not register upon returning to, or visiting, the other state, there is no mechanism to ensure compliance because the PSP cannot provide information it does not have. This creates a deeply problematic scenario for Pennsylvania and the United States as a whole.

Further, the Walsh Act created the Dru Sjodin National Sex Offender Public Website (National Website). See 34 U.SC. § 20922 (formerly 42 U.S.C. § 16920). Pennsylvania's sex offender registry website is a participant in the National Website, as required by statute. See 42 Pa. C.S. § 9799.28(a)(1)(iii). If offenders are eliminated from Pennsylvania's website, they will also likely be unavailable elsewhere, including the National Website, further widening the hole in the national network designed to track offenders. The Pennsylvania Supreme Court previously acknowledged, regarding a prior version of Megan's Law, that the law "serves a vital purpose in protecting our Commonwealth's citizens and children, in particular, from victimization by sexual predators." *Commonwealth v. Neiman*, 84 A.3d 603, 615 (Pa. 2013). PA SORNA, through Revised Subchapter H, has continued this salutary purpose. However, the trial court's decision would hobble efforts by Pennsylvania's prosecuting attorneys and state police to provide information to the public to prevent these abuses.

### *D. The trial court did not follow or properly consider existing precedent*

Finally, the trial court relied on case law such as *In re: J.B.*, 107 A.3d 1 (Pa. 2014).[6] This Court in its prior *Torsilieri* decision, while noting the *In re: J.B.* decision and the utility of the framework it provided, recognized the distinction between juvenile and adult development, and found that *In re: J.B.* did not control given "its focus on juvenile development." *Torsilieri*, 232 A.3d at 584. PSP respectfully submits that the trial court did little more than apply the *J.B.* framework without regard for the important differences between the this case and that one. *See, e.g., Trial Court Opinion* at pg. 12. The trial court seemed to, in regard to application of *J.B.* to this case, disregard that this Honorable Court, explicitly stated that "distinctions between adults and juveniles are particularly relevant in the area of sexual offenses, where many acts of delinquency involve immaturity, impulsivity, and sexual curiosity rather than hardened criminality, or in the words of the United States Supreme Court, 'irretrievable depravity.' " *J.B.*, 107 A.3d at 19.

The trial court also draws unwarranted distinctions between this Court's holding in *Commonwealth v. Lacombe*, 234 A.3d 602 (Pa. 2020), and Revised Subchapter H. While PSP acknowledges that as a general proposition, the trial court is not bound by *Lacombe* as it pertains to a different part of Title 42 (Subchapter I),

[6] The PSP notes that *J.B.* has been extended in some instances, including to juveniles convicted as adults for conduct occurring as a juvenile. *Commonwealth v. Haines*, 222 A.3d 756 (Pa. 2019).

and that Revised Subchapter H includes more offenses and different requirements, they are a fundamentally consistent scheme in that both require the registration of sexual offenses and public notice.

The trial court attributes little weight to the fact that Subchapter H, in its current iteration, potentially reduces the number of in-person appearances required for Tier II and Tier III offenders and restores the ability to be removed from the registry after twenty-five years. *See Trial Court opinion at pg. 19.* In fact, the trial court finds that every factor it must review results in a finding that the law is punitive. *See Trial Court Opinion at pg. 27.* This departs from even *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017), in which this Court held that the original Pennsylvania SORNA constituted punishment but did not find every factor to be punitive. *See, e.g., Muniz,* 164 A.2d at 1217 ("there is a purpose other than punishment to which the statute may be rationally connected and this factor weighs in favor of finding SORNA to be nonpunitive.").

When SORNA itself has been amended to be less onerous by the changes made in Act 29, it defies the precedent of this Court in *Muniz* to find every factor to be punitive. The onus for this departure seems to be solely the evidence adduced at the trial, which as demonstrated above is certainly not without evidence to the contrary. This decision by the trial court thus demonstrates the danger in simply treating this as a "battle of the experts" without due regard given to this being a

decision by a coequal branch of government on a matter of policy. *See discussion in parts A & B, supra.* Just as this Honorable Court rightly guards its role as an independent and coequal branch of government when the legislature intrudes on its province, PSP respectfully submits that this Court must recognize there was a sufficient basis for the actions of the Legislature and reverse the ruling of the trial court in this matter and uphold SORNA, Revised Subchapter H, as passed in Act 29, as constitutional.

## CONCLUSION

WHEREFORE, for all the foregoing reasons, and the reasons as advanced by the Commonwealth of Pennsylvania, the Pennsylvania State Police respectfully requests this Honorable Court reverse the decision of the Court of Common Pleas of Chester County, in this matter and uphold Subchapter H of Title 42 as constitutional and appropriate.

Respectfully submitted:

Gregory G. Schwab
General Counsel

Nolan B. Meeks
Acting Chief Counsel
Pennsylvania State Police

By: _____
Stevan Kip Portman
Assistant Counsel
Attorney ID No.: 38493

John J. Herman
Assistant Counsel
Attorney ID No.: 207043

Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
Phone: 717-783-5568

Date: 12/14/2022

## CERTIFICATE OF COMPLIANCE

1-I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

2-I hereby certify that this filing comports with the word count limits imposed by the Pennsylvania Rules of Appellate Procedure upon briefs.

Stevan Kip Portman
Attorney ID No.: 38493
Office of Chief Counsel
Pennsylvania State Police
1800 Elmerton Avenue
717-783-5568

Date: 12/14/2022