RECEIVED by MSC 10/17/2025 4:11:33 PM

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Maldonado, J., Cavanagh and Jansen, JJ.

PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. 167736
Plaintiff-Appellee,	Court of Appeals No. 361488
v	Tuscola County Circuit Court No. 15-13521-FH
GARY SHAVER,	
Defendant-Appellant. /	

BRIEF OF APPELLANT PEOPLE OF THE STATE OF MICHIGAN

ORAL ARGUMENT REQUESTED

Erica Walle
Tuscola County Prosecutor

B. Eric Restuccia (P49550)
Deputy Solicitor General
Attorneys for the People
P.O. Box 30212
Lansing, Michigan 48909
(517) 335-7628

Dated: October 17, 2025

RECEIVED by MSC 10/17/2025 4:11:33 PM

TABLE OF CONTENTS

Page

Index of Authorities iii

Counter-Statement of Jurisdiction viii

Counter-Statement of Question Presented ix

Constitutional Provisions Involved x

Introduction 1

Counter-Statement of Facts and Proceedings 3

A. Shaver is adjudicated for committing a sex offense, is required to register, and then violates SORA and sentenced to prison. 3

B. The same conduct that was required of Shaver in 2015 remains under the new SORA as revised effective March 24, 2021. 4

C. The trial court grants Shaver's relief without asking for a response from the Tuscola County Prosecutor's Office. 13

D. The Court of Appeals reverses the circuit court's decision and reinstates Shaver's conviction. 13

Standard of Review 14

Argument 15

I. Gary Shaver committed his registrable sexual offense in 2003 and is not entitled to relief under *People v Betts*. 15

A. Shaver is not entitled to relief because the change was not substantive in nature for him under state or federal law. 18

1. The decision in *Betts* did not rule that the SORA law cannot impose a duty on a sex offender to update one's address under the state definition of substantive. 19

2. The decision in *Betts* did not rule that the SORA law cannot charge a person with a failure to update one's address, nor exclude a class of persons from such a duty, under the federal definition of substantive. 22

B. Shaver is also not entitled to relief under the *Hampton* factors. 26

1. The purpose of the decision in *Betts* does not support the retroactive application of the rule to Gary Shaver. 27

2. The prosecutors and other institutions in Michigan have relied significantly on the validity of the 2011 SORA law. 29

3. The administration of justice weighs against granting Shaver relief. 32

Conclusion and Relief Requested 34

Word Count Statement 34

RECEIVED by MSC 10/17/2025 4:11:33 PM

RECEIVED by MSC 10/17/2025 4:11:33 PM

INDEX OF AUTHORITIES

Cases

Bousley v United States,
523 US 614 (1998) 23

Danforth v Minnesota,
552 US 264 (2008) 15

Doe v Snyder (*Does II*),
449 F Supp 3d 719 (ED Mich 2020) 5, 9, 21, 30

Does 1–5 v Snyder,
834 F3d 696 (CA 6, 2016) (*Does I*) 9

Does v Whitmer,
69 F4th 300 (CA 6, 2023) 5, 10, 31

Does v Whitmer,
751 F Supp 3d 761 (ED Mich, 2024) 31

Edwards v Vannoy,
593 US 255 (2021) 15, 18

In re Contempt of Henry,
282 Mich App 656 (2009) 20

In re Harder,
___ Mich App ___; 2025 WL 825907 (2025) 31

Linkletter v Walker,
381 US 618 (1965) 17

Montgomery v. Louisiana,
577 US 190 (2016) 16, 19, 22

People v Barnes,
502 Mich 265 (2018) 17, 26, 28

People v Betts,
507 Mich 527 (2021) ..... ix, 6, 11, 12, 19, 20, 23, 26, 27, 28

People v Bush,
an unpublished per curiam opinion, released on May 9, 2017 21

RECEIVED by MSC 10/17/2025 4:11:33 PM

People v Gay,
407 Mich 681 (1980) 16

People v Golba,
273 Mich App 603 (2007) 11, 19, 25

People v Hampton,
384 Mich 669 (1971) 2, 17

People v Haynes,
512 Mich 930 (2023) 33

People v Kiczenski,
___ Mich App ___, 2024 WL 4595174 (2024) 31

People v Maxson,
482 Mich 385 (2008) 14, 15, 27

People v Poole,
___ Mich ___; 2025 WL 978646 (2025) 15, 16, 17, 18, 19, 27, 29, 31, 32

People v Sexton,
458 Mich 43 (1998) 17, 29

People v Shaver,
___ Mich App ___; 2024 WL 4094354 (2024) 13, 14, 15, 21

People v Temelkoski,
307 Mich App 241 (2014) 30

Reynoldsville Casket Co v Hyde,
514 US 749 (1995) 27

Schriro v Summerlin,
542 US 348 (2004) 16, 22, 23

Smith v Doe,
538 US 84 (2003) 5, 11, 19, 29, 30

Teague v Lane,
489 US 288 (1989) 15

Welch v United States,
578 US 120 (2016) 22, 23, 24

Willman v Attorney General of United States,
972 F3d 819 (CA 6, 2020) 7

RECEIVED by MSC 10/17/2025 4:11:33 PM

Statutes

1994 PA 295 ..... 5, 6
1996 PA 494 6
1999 PA 85 ..... 5, 6, 27, 28
2002 PA 542 6
2004 PA 240 6
2005 PA 121 ..... 6, 12
2005 PA 127 ..... 6, 7
2005 PA 132 6
2006 PA 46 6
2011 PA 17 ..... 6, 8, 9, 12
2011 PA 18 ..... 6, 8, 12
2020 PA 295 ..... 6, 7
34 USC 20901 *et seq.* 5, 7
34 USC 20927(a) 7
34 USC 20927(d) 7
MCL 28.722 12
MCL 28.722(r)–(w) (2011) 8
MCL 28.725(1) 12, 21
MCL 28.725(1) (1999) 5, 27
MCL 28.725(1) (2011) 3, 8, 9, 23
MCL 28.725(1) (2021) 11
MCL 28.725(1)(a) 3, 7
MCL 28.725(10)–(12) (2011) 8

MCL 28.725(2) 10
MCL 28.725(6) 5
MCL 28.725a(1) 10
MCL 28.725a(3) (2011) 8
MCL 28.725a(3)(b) (2011) 6
MCL 28.725a(3)(c) (2011) 8
MCL 28.725a(4) (1999) 6
MCL 28.727 12
MCL 28.728(2) 6, 10
MCL 28.728(4)(a) 6
MCL 28.729(1) (2011) 23
MCL 28.729(1)(a) (1999) 29
MCL 28.729(1)(a) (1999, 2021) 28
MCL 28.729(2) 21
MCL 28.733–736 10
MCL 28.733–736 (2006) 7
MCL 28.733–MCL 28.736 12
MCL 600.1715 20
Public Act 17 of 2011 6
Public Act 295 of 2020 ..... 21, 31
Public Act 85 of 1999 7
Public Act 85 of 1999(4)(a) 6
Public Act 85 of 1999(4)(b) 6

RECEIVED by MSC 10/17/2025 4:11:33 PM

RECEIVED by MSC 10/17/2025 4:11:33 PM

Other Authorities

72 Fed Reg 8894–8897 (Feb 28, 2007) 8

73 Fed Reg at 38046 8

75 Fed Reg 27632–27366 (May 14, 2010) 8

76 Fed Reg 1630–1640 (Jan 11, 2011) 8

81 Fed Reg 50552–50558 (Aug 1, 2016) 8

86 Fed Reg 69856–69887 (Dec 8, 2021) 8

National Guidelines for Sex Offender Registration and Notification 10 (July 2008) 8

Rules

MCR 2.119(F) 13

MCR 6.501 *et seq.* 13

MCR 6.504(B)(4) 13

MCR 7.303 viii

Constitutional Provisions

Const 1963, art 1, § 10 x

US Cons, art 1, § 10 x

COUNTER-STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal. See MCR 7.303.

RECEIVED by MSC 10/17/2025 4:11:33 PM

RECEIVED by MSC 10/17/2025 4:11:33 PM

COUNTER-STATEMENT OF QUESTION PRESENTED

In an order granting leave on April 23, 2025, this Court asked the following question in relation to Michigan Sex Offenders Registration Act (SORA):

1. Whether this Court's decision in *People v Betts*, 507 Mich 527 (2021), applies retroactively to cases that have become final after the expiration of the period for direct review.

Shaver's answer:	Yes.
The People's answer:	No.
Trial court's answer:	Yes.
Court of Appeals' answer:	No.

RECEIVED by MSC 10/17/2025 4:11:33 PM

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, art 1, § 10:

> No Bill of Attainder or ex post facto Law shall be passed.

Michigan Constitution, art 1, § 10:

> No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

RECEIVED by MSC 10/17/2025 4:11:33 PM

INTRODUCTION

Gary Shaver was convicted of failing to update his address under the 2011 SORA. His conduct was a crime then. It is a crime now. Nothing has changed in that regard. And the sentence for that crime remains the same. Again, nothing has changed. It is a core violation that strikes at the heart of the SORA – the registry's listing of the correct addresses of registrants. A sex offender has a duty to keep the registry's address updated. Shaver knowingly and willfully failed to do so here. The decision in *People v Betts* does not apply retroactively to him and others like him whose convictions were based on the purely regulatory provisions of SORA.

That is because this Court's decision in *Betts* was predicated on its ruling that the increasing number of obligations imposed on sex offenders, primarily the student safety zones and the duty to report in-person minor changes to their circumstances, turned SORA's regulatory framework into a punitive one. For that reason, in 2021 the Legislature eliminated the student safety zones and now allows minor life changes, such as a new vehicle, to be reported in a manner prescribed by the Michigan State Police, i.e., by mail. But these changes had no bearing on the conduct underlying Shaver's conviction, which the law continues to require. It is a violation of one of the central features of SORA, new and old, to fail willfully to update one's address. For Shaver, the ruling in *Betts* was not a substantive change, because his conduct continues to be a requirement in the same way today as it did then. In that way, the considerations of finality govern Shaver and the thousands of other criminal defendants whose convictions for violating the key element of the SORA were no longer pending.

RECEIVED by MSC 10/17/2025 4:11:33 PM

On the chief issue, whether the decision in *Betts* was substantive, for Shaver it was not. As outlined by the federal and state cases, the application of new substantive rules to cases that are final makes sense, because the law should not continue to punish someone whose conduct is not criminal or who is serving a sentence that the law could not or did not impose at the time it was committed. That does not apply here. This Court in *Betts* did not find that the duty under SORA as of 1999 to update one's address was by itself constitutionally infirm, but only that it could not be severed. And Shaver knew he had to update the registry with a new address and willfully failed to do so. This is not a situation in which the punishment for the specific conduct in which he engaged – the willful failure to update his address – was subject to a higher punishment based on a subsequent change in law. It has been a four-year felony since 1999 and remains so. There was nothing unfair about Shaver's conviction. Applying the factors under *People v Hampton,* 384 Mich 669 (1971) yields the same result: no retroactive application.

The issue is significant not just for Shaver but for criminal defendants more generally who were convicted under the 2011 SORA as here. At the beginning of 2022, there were 143 other offenders like Gary Shaver who were serving sentences for old SORA convictions (see People's App'x, Exs 1 and 2), and another 263 probationers and parolees serving a sentence for old SORA convictions (see People's App'x, Ex 3). And there are likely thousands of other offenders not serving sentences who could attempt to seek relief from final convictions entered years ago. The considerations of finality counsel against the retroactive application of *Betts*.

RECEIVED by MSC 10/17/2025 4:11:33 PM

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

The necessary background to the case includes both the factual basis for Gary Shaver's conviction in 2015 and also the changes that have occurred to Michigan Sex Offenders Registration Act (SORA) since 2003, the year he committed his sex offense.

A. Shaver is adjudicated for committing a sex offense, is required to register, and then violates SORA and sentenced to prison.

Gary Shaver was adjudicated in 2004 under the Probate Code for three counts of third-degree criminal sexual conduct against a 12-year-old girl when he was 15 years old. (People's App'x, Ex 4, Juvenile Commitment.) His duties to register were triggered by the version of Michigan's SORA in place before 2006.

In 2015, Shaver was charged for failing to update his address to the keep the registry current, (People's App'x, Ex 5, Crim Info), which was required under the 2011 SORA, MCL 28.725(1) (2011). This same provision remains basically unchanged today and continues to be a crime. See MCL 28.725(1)(a). In 2015, Shaver pled guilty and was originally sentenced to six months in jail (with 174 days of credit), but after violating probation, he was sentenced in 2016 to 40 months to 15 years in prison. (People's App'x, Ex 6, Register of Actions.) The trial court granted relief in 2022 on collateral review.

At his 2015 sentencing, the trial court engaged in a colloquy that established that Shaver willfully violated his duty to update his address under the 2011 SORA and that he failed in that duty knowing that he had the obligation to update the correct address. (See Shaver's App'x, 34–40, Plea Transcript, Nov 23, 2015, pp 10–16.) The violation related to a 19-day period, from September 10, 2015, to September 29, 2015, in which he willfully failed to update his correct address.

RECEIVED by MSC 10/17/2025 4:11:33 PM

This was Shaver's second conviction for violating the Michigan SORA for failing to update his address, which enhanced the crime from a four-year felony to a seven-year felony. (Shaver's App'x, 30–31, 32, Plea, pp 6–7, 8.) In his initial colloquy with the Court, Shaver suggested that he may have misunderstood his duty:

> I knowingly registered an address that I wasn't currently living at with the – with the state police. It was under – I was under the impression from the person I got permission from that owned the place that I'd be able to move in, but that didn't happen due to the current occupants not wanting to move out. [Shaver's App'x, 34, Plea Transcript, p 10.]

But the trial court explored this exact point, to ensure that Shaver was properly pleading guilty to his willful failure to update his address during this almost three-week period of time. Through the court's inquiry, Shaver confirmed that he knew that he was supposed to update his address and knew that the address he gave was not correct, but he just hoped that no one "noticed" during the intervening time:

> THE COURT: You just didn't do it [update your address] waiting to expect to be moving into the house?
>
> [SHAVER]: Yes, sir. I was hoping to move in before it kind of got noticed. [Shaver's App'x, 36, Plea Transcript, p 12.]

The trial court then accepted the plea and set the matter for sentencing. (*Id.*)

B. The same conduct that was required of Shaver in 2015 remains under the new SORA as revised effective March 24, 2021.

Since its enactment in 1994, the Michigan SORA has been amended as many as fifteen times, but the key revisions occurred in four different years: (1) in 1999, when the periodic reporting was added; (2) in 2006, when the student safety zones were added; (3) in 2011, when the Legislature revised the law to add obligations consistent with the federal Sex Offender Registration and Notification Program

RECEIVED by MSC 10/17/2025 4:11:33 PM

(SORNA), 34 USC 20901 *et seq*.; and (4) in 2021, when the Legislature revised the law to ensure that it was not punitive, responding to the federal district court's decision in *Doe v Snyder* (*Does II*), 449 F Supp 3d 719 (ED Mich 2020), removing the ways in which Michigan's SORA extended beyond SORNA, including the student safety zones. As the Sixth Circuit explained, "Michigan passed a new (fourth) version of SORA, which became effective on March 24, 2021. This new SORA removed or modified the provisions that *Does II* had declared unconstitutional." *Does v Whitmer*, 69 F4th 300, 303 (CA 6, 2023).

In 1994, Michigan enacts SORA, which goes into effect in October 1995.

Michigan first enacted its SORA in 1994. 1994 PA 295. That same year, Congress passed a federal act, which "conditions certain federal law enforcement funding on the States' adoption of sex offender registration laws and sets minimum standards for state programs." *Smith v Doe*, 538 US 84, 89 (2003).

Because Shaver was adjudicated in 2004 for third-degree criminal sexual conduct he committed in 2003 against a victim under 13 years old, he was required to register as a sex offender. See MCL 28.725(1) (1999); 1999 PA 85 ("Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located"). SORA required Shaver to notify law enforcement of any address change, among other changes, and it required him to register for 25 years. *Id*. at § 5(6).

RECEIVED by MSC 10/17/2025 4:11:33 PM

In the years since it was first enacted, SORA has undergone a series of amendments.[1] In 1996, Michigan amended SORA to require law-enforcement agencies to make offender information available to the public. 1996 PA 494. Certain information on Michigan's registry is now available to the public on the internet. MCL 28.728(2). By 2011, however, the registry did not require a juvenile adjudication to be on the public registry. See MCL 28.728(4)(a); 2011 PA 18. In other words, Shaver's duty to report is non-public.

In 1999, Michigan adds the periodic in-person reporting.

In order to keep the registry up to date, the Legislature added the requirement that offenders were required to report periodically in person either annually or quarterly, depending on the nature of their offense. See MCL 28.725a(4) (1999); Public Act 85 of 1999(4)(a)(requiring a registrant to "*report in person*" for listed misdemeanor "not earlier than January 1 or later than January 15 of each year"); (4)(b) (requiring a registrant to "*report in person*" for a listed felony "each April, July, October, and January following initial verification or registration.") (emphasis added).[2]

---

[1] See, e.g., 1994 PA 295; 1996 PA 494; 1999 PA 85; 2002 PA 542; 2004 PA 240; 2005 PA 121; 2005 PA 127; 2005 PA 132; 2006 PA 46; 2011 PA 17; 2011 PA 18; 2020 PA 295.

[2] This Court in *People v Betts,* 507 Mich 527 (2021) mistakenly indicated that this periodic in-person reporting requirements were added in 2011. See *id.* at 535 ("The 2011 amendments further added a periodic reporting requirement that instructed registrants to present themselves to law enforcement, in person, one or more times a year, even if registrants had no changes to report. MCL 28.725a(3), as amended by 2011 PA 17.") As noted, these periodic in-person reporting were present since 1999, the change in 2011 being the addition of biannual reporting for Tier II offenders. See MCL 28.725a(3)(b) (2011); Public Act 17 of 2011.

RECEIVED by MSC 10/17/2025 4:11:33 PM

In addition, the Legislature required offenders to update not just their address but also update their work location or place of education within 10 days to the local law enforcement agency. See MCL 28.725(1)(a); Public Act 85 of 1999.

In 2006, Michigan adds student safety zones to the SORA.

The Legislature amended SORA in 2006 to create "student safety zones," which generally prohibited offenders from residing, working, or loitering within 1,000 feet of school property. See MCL 28.733–736 (2006); 2005 PA 127. As noted, in response to the federal district court decision in *Does II*, the Legislature repealed these provisions effective March 24, 2021. See 2020 PA 295.

In 2006, Congress enacts SORNA and conditions federal funding for states on substantial compliance with its minimum standards for the state registries.

In 2006, Congress enacted the Sex Offender Registration and Notification Act (SORNA) to strengthen the nationwide network. 34 USC 20901 *et seq*. In addition to updating the federal registry law, SORNA established minimum standards for state registries in order to qualify for funding, and it also created its own obligations for sex offenders under federal law. See, e.g., *Willman v Attorney General of United States*, 972 F3d 819, 821 (CA 6, 2020).

To avoid a reduction in federal funding, states must "substantially implement" SORNA's requirements. 34 USC 20927(a) & (d). To assist the states in their implementation efforts, in 2008 the U.S. Attorney General issued guidelines that describe the minimum standards a state must meet to achieve substantial compliance. See National Guidelines for Sex Offender Registration and Notification

RECEIVED by MSC 10/17/2025 4:11:33 PM

10 (July 2008) (Guidelines), 73 Fed Reg 38030-38070.[3] SORNA and the Guidelines "set[] a floor, not a ceiling," for state registry programs. *Id.,* 73 Fed Reg at 38046. By establishing its own duties, SORNA also "directly prescribes registration requirements that sex offenders must comply with." *Id.* at 38034.

In 2011, Michigan amends its registry law to comply with federal standards.

To comply with SORNA's minimum standards, Michigan again amended its registry law in 2011. See 2011 PA 17; 2011 PA 18. Among other changes, the law imposed additional requirements not previously present in Michigan's SORA law:

(1) now classified offenders into three tiers according to their underlying offenses, MCL 28.722(r)–(w) (2011), see also 2011 PA 17 and 2011 PA 18;

(2) independent of the periodic in-person reporting established in 1999, now required in-person reporting for updates within three business days for certain changes, including changes to residence, place of employment or education, and name as well as vehicle use or ownership, and e-mail address or other designations used in Internet postings, MCL 28.725(1) (2011), MCL 28.725a(3)(c) (2011), see also 2011 PA 17 and 2011 PA 18; and

(3) now required tier-III offenders to register for life, MCL 28.725(10)–(12) (2011) and MCL 28.725a(3) (2011); see also 2011 PA 17, 2011 PA 18.

[3] These guidelines may be found at the following web address:

https://www.federalregister.gov/documents/2008/07/02/E8-14656/office-of-the-attorney-general-the-national-guidelines-for-sex-offender-registration-and (last accessed October 16, 2025). There have been five other supplemental guidelines provided by the U.S. Attorney General: 86 Fed Reg 69856–69887 (Dec 8, 2021), 81 Fed Reg 50552–50558 (Aug 1, 2016), 76 Fed Reg 1630–1640 (Jan 11, 2011), 75 Fed Reg 27632–27366 (May 14, 2010), and 72 Fed Reg 8894–8897 (Feb 28, 2007).

RECEIVED by MSC 10/17/2025 4:11:33 PM

The duty to register and update an address otherwise remained basically the same, although the time period was shortened from 10 days to 3 days. See MCL 28.725(1) (2011); 2011 PA 17 ("An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately [within three business days] after any of the following occur: (a) The individual changes or vacates his or her residence or domicile.").

In 2016 and 2020, the federal courts rule that Michigan's 2011 SORA law violates the Ex Post Facto Clause based on the 2006 and 2011 amendments.

In 2016, the Sixth Circuit reviewed an ex post facto challenge brought by six plaintiffs who committed their registerable offenses before 2006, and they argued that Michigan's SORA – as it existed pre-2021 – constituted punishment and therefore was unconstitutional. *Does 1–5 v Snyder*, 834 F3d 696, 703–706 (CA 6, 2016) (*Does I*), cert den 138 S Ct 55 (2017). The Sixth Circuit agreed, and it emphasized three statutory features that it found rendered the 2011 SORA statute punitive: (1) the student safety zones; (2) the public classification of offenders into tiers without an individual assessment; and (3) the requirements on offenders to appear in person to report even minor changes. See *Does 1–5*, 834 F3d at 702–705.

In 2020, the federal district court then ruled that *Does I* rendering the 2011 SORA unconstitutional on ex post facto grounds applied to all the pre-2011 sex offenders and was prepared to enjoin the law, but it provided a window of time for the Legislature to remedy Michigan law. *Does II*, 449 F Supp 3d at 729, 737.

RECEIVED by MSC 10/17/2025 4:11:33 PM

In 2020, the Michigan Legislature revises the 2011 SORA to eliminate the ways in which it extends beyond the federal SORNA by eliminating student safety zones, the public tiering, and the requirement for in-person reporting for minor changes.

In December 2020, the Legislature revised Michigan's SORA laws to address the federal court rulings that found Michigan's SORA laws unconstitutional. The Legislature did so by repealing the student safety zones, MCL 28.733 through 736, removing the public nature of the tiering in MCL 28.728(2), and allowing for the Michigan State Police to provide another means to update information rather than doing so in person for minor changes such as a new motor vehicle under MCL 28.725(2) ("in the manner prescribed by the department"). They took effect on March 24, 2021. Consistent with the MSP's duty to notify registrants of changes to the law, see MCL 28.725a(1), the MSP provided notice to registrants that they may update minor changes under MCL 28.725(2) by mail. (See People's App'x Ex 7, MSP Notice, p 2.)

In a claim that state officials acted in violation of their constitutional duties by continuing to apply the 2011 SORA after the Sixth Circuit's 2016 decision in *Does I,* the Sixth Circuit explained that this 2021 legislation "removed or modified" the challenged provisions, as noted above. But the point bears repeating:

> Michigan passed a new (fourth) version of SORA, which became effective on March 24, 2021. *Ibid. This new SORA* ***removed or modified*** *the provisions that Does II had declared unconstitutional.*
>
> [*Does,* 69 F4th at 303.]

And with the changes to Michigan law, the obligations under state law and under federal SORNA are now virtually the same.

RECEIVED by MSC 10/17/2025 4:11:33 PM

The duty for an offender, such as Shaver, to update a change to one's address remained basically the same. See MCL 28.725(1) (2021) ("An individual required to be registered under this act who is a resident of this state shall report in person, or in another manner as prescribed by the department, and notify the registering authority . . . not more than 3 business days after any of the following occur: (a) The individual changes or vacates his or her residence or domicile.").

In 2021, this Court rules in People v Betts *that the 2011 SORA law is an ex post facto violation by finding that the Michigan 2011 SORA is punitive.*

In July 2021, this Court ruled that Michigan's 2011 SORA violated the prohibition against ex post facto laws, when reviewed in aggregate, finding that its obligations were punishment and applying this ruling to offenders who committed their offenses before July 1, 2011. See *People v Betts,* 507 Mich 527, 574 (2021). This ruling was predicated on three points.

First, the Court ruled that the law was different in character from the Alaska law, which was affirmed by the U.S. Supreme Court in *Smith v Doe,* 538 US 84 (2003). *Betts,* 507 Mich at 547 ("Michigan's SORA as initially enacted was similar to the Alaska sex-offender registry at issue in *Smith*"). The Michigan SORA before 2006 did not include an individual assessment, but it imposed a duration of registration obligations based on the crime. This was also true of Alaska's registry law. *Smith,* 538 US at 90. Before *Betts,* in 2007 the Court of Appeals ruled that "compliance with SORA is not a punishment." *People v Golba*, 273 Mich App 603, 616 (2007). See *id.* at 620 ("SORA is a remedial regulatory scheme furthering a legitimate state interest of protecting the public; it was not designed to punish sex offenders.").

RECEIVED by MSC 10/17/2025 4:11:33 PM

Second, this Court then reviewed the five factors that the U.S. Supreme Court examined in *Smith* to determine whether Michigan's 2011 SORA was punitive. *Betts*, 507 Mich at 561–562. This Court summarized its analysis that the 2011 SORA law was excessive, identifying the lack of "individualized assessment," the student safety zones, and the in-person reporting, including for even "minor life changes," in finding it punitive in "aggregate." *Id.*

Third, this Court then rejected the severance arguments advanced by the prosecution. In doing so, it explained that a "a majority of the former SORA provisions underlying *our conclusion that the 2011 SORA constitutes punishment* ***were added by its 2006 and 2011 amendments***." *Betts,* 507 Mich at 564 (emphasis added). It then listed these duties added by the amendments as follows:

> See, e.g., MCL 28.733 to MCL 28.736, as amended by 2005 PA 121 (creating the student-safety zones excluding registrants from living, working, or loitering within 1,000 feet of a school);
>
> MCL 28.727, as amended by 2011 PA 18, and MCL 28.725(1), as amended by 2011 PA 17 (adding events triggering an in-person reporting requirement and decreasing the reporting period to three days);
>
> MCL 28.722, as amended by 2011 PA 17 (creating the tiered classification system and basing SORA's requirements on those tiers). [*Id.* at 564.]

These changes did not disturb the obligation to report a change to an address that was required by the Michigan SORA before 2006. The Court also stated that "even assuming that the retroactive application of the 2011 SORA without the specific provisions added by the 2006 and 2011 amendments would not violate constitutional ex post facto protections, the 2006 and 2011 amendments, in whole, cannot be excised from retroactive application because doing so renders the statute unworkable." *Id.*

RECEIVED by MSC 10/17/2025 4:11:33 PM

C. The trial court grants Shaver's relief without asking for a response from the Tuscola County Prosecutor's Office.

On March 28, 2022, Gary Shaver sought relief under MCR 6.501 *et seq.*, arguing that he is entitled to relief under *Betts*. Without awaiting a response from the People, the trial court granted that motion on April 4, 2022. (Shaver's App'x, p 4.) This action was taken contrary to MCR 6.504(B)(4), which requires that the Court order the prosecuting attorney to file a response. Also in this April 4, 2022 order, the trial court directed the Department of Corrections to release Shaver. (*Id.*)

On April 19, 2022, the People sought reconsideration of that decision under MCR 2.119(F). On April 29, 2022, the trial court denied this motion without explanation. (Shaver's App'x, p 6.)

D. The Court of Appeals reverses the circuit court's decision and reinstates Shaver's conviction.

After granting the People's application for leave, the Court of Appeals reversed. It reviewed the issue of retroactivity both under the federal and the state rules of retroactivity. *People v Shaver*, ___ Mich App ___; 2024 WL 4094354, at *4 (2024).

Under the federal rules, the Court ruled that this new rule from *Betts* neither "prohibit[ed] a certain class of primary conduct," nor did it "establish a watershed rule of criminal procedure." *Id.* Specifically, in ruling that *Betts* did not create a "substantive rule of constitutional law" here, the Court of Appeals concluded that Betts "would be required to register his address under any iteration of SORA in existence since 1999." *Id.* at *5. Regarding procedure, the Court held that "*Betts* did not establish a procedural rule because its application has no bearing on the process through which criminal convictions are obtained." *Id.*

RECEIVED by MSC 10/17/2025 4:11:33 PM

Under the state rules of retroactivity, the Court of Appeals also applied the three *Hampton* factors and ruled they all weighed against retroactive application, the first one "clearly" so and the other two were "slightly" against (*id.* at *7):

- "Application of *Betts* has no bearing on 'the integrity of the fact-finding process' "; "the purpose of the rule weighs in favor of prospective application." *Id.* at *6;

- "[I]n *Betts,* the Supreme Court 'overrule[d] settled law' by upending the 2011 SORA. Every time a court sanctioned somebody who was convicted of a sex offense prior to implementation of the 2011 SORA for violating the 2011 SORA, it did so in reliance upon the old rule." *Id.* at *7 (citation omitted);

- "This 'amount of past reliance' could 'have a profound effect on the administration of justice' because everybody convicted of violating the 2011 SORA whose underlying offense was committed before its implementation would be entitled to reversal." *Id.*

With respect to the analysis on the disruptive effect on the administration of justice, Judge Maldonado noted for the Court that Shaver carried the burden here, that the number of convictions at issue from the class of offenders pre-2011 were in the hundreds if not thousands, and as a consequence "it is clear that this would cause some strain on the administration of justice." *Id.* at *7.

STANDARD OF REVIEW

"Whether a decision of the United States Supreme Court applies retroactively under either federal or state retroactivity rules poses a question of law that is reviewed de novo." *People v Maxson*, 482 Mich 385, 387 (2008). The same standard applies – de novo review – for whether decisions of this Court apply retroactively.

RECEIVED by MSC 10/17/2025 4:11:33 PM

ARGUMENT

I. Gary Shaver committed his registrable sexual offense in 2003 and is not entitled to relief under *People v Betts*.

For determining whether a ruling on federal constitutional grounds applies retroactively to cases final on direct review, the Michigan courts have examined the issue both under the federal rules of retroactivity and the state rules of retroactivity. See, e.g., *Maxson*, 482 Mich at 387–392, 392–399. That is because the federal rules only create "minimum requirements" for relief and that the states may provide for a greater retroactive application. *Danforth v Minnesota*, 552 US 264, 288 (2008). The federal test for retroactivity is generally outlined in *Teague v Lane*, 489 US 288, 311–313 (1989) (Justice O'Connor's plurality opinion). The "state courts are not required to adopt *Teague*'s retroactivity framework for state retroactivity purposes." *People v Poole*, ___ Mich ___; 2025 WL 978646, at *3 (2025).

Under the federal rules, the first question is whether the rule is new, and the second is then whether that rule should apply retroactively. See *Edwards v Vannoy*, 593 US 255, 264–265, 276 (2021). As the Court of Appeals ruled below, see *Shaver,* 2024 WL 4094354, *4 ("*Betts* creates a new rule") and as the parties agree, the rule at issue here is a new one. The second question then under the federal test is whether the rule at issue is a substantive one or a procedural one, because "new procedural rules do not apply retroactively on federal collateral review." *Vannoy,* 593 US at 276. In contrast, "new substantive rules apply to cases pending in trial courts and on direct review, and they also apply retroactively on federal collateral review." *Id.*

RECEIVED by MSC 10/17/2025 4:11:33 PM

The threshold question is whether the new rule is a substantive rule or a procedural one, both for the rules of federal retroactivity and state retroactivity. In *Vannoy,* the U.S. Supreme Court digested the metric for substantive rules as being those that "alter the range of conduct or the class of persons that the law punishes." *Id.* at 276 (cleaned up), quoting *Schriro v Summerlin*, 542 US 348, 353 (2004). On the other hand, "new procedural rules alter only the manner of determining the defendant's culpability." *Id.* at 276, quoting *Summerlin,* 542 US at 353.

This Court has relied on the federal definition of the distinction between substantive and procedure in its state rules for these categories, most recently in *Poole* released last term. In *Poole,* this Court noted that the U.S. Supreme Court's analysis in *Montgomery* provided a "helpful" analysis of this distinction, i.e., "substantive rules set forth categorical constitutional guarantees that place certain criminal laws and *punishment altogether beyond the State's power to impose*." *Poole,* at *5 (cleaned up, emphasis added), quoting *Montgomery v Louisiana,* 577 US 190, 201 (2016). And as just stated, this Court quoted from *Montgomery* regarding "procedural rules" as those that "are designed to enhance the accuracy of a conviction or sentence by regulating the *manner of determining* the defendant's culpability." *Poole,* at *5 (emphasis in original), quoting *Montgomery,* 577 US at 201. Under the state rules of retroactivity, just as in the federal rules, substantive rules that are constitutionally required "normally" are given retroactive application. *Poole,* at *5, citing *People v Gay,* 407 Mich 681, 706 (1980) ("when non-procedural or substantive rights of a fundamental nature are affected, they are normally to be accorded retrospective application").

RECEIVED by MSC 10/17/2025 4:11:33 PM

This Court made clear that for substantive rules the traditional Michigan three-factor test identified in *People v Hampton,* 384 Mich 669 (1971) (drawn from *Linkletter v Walker,* 381 US 618 (1965)), would be "greatly circumscribed" where "substantive rules" "are implicated." *Poole,* at *3; *id.* at *6 ("a substantive rule might not be applied retroactively if the *Linkletter-Hampton* factors strongly indicate otherwise."). In *Poole,* this Court reiterated that three-factor test:

> (1) the purpose of the new rule,
>
> (2) the general reliance on the old rule, and
>
> (3) the effect [of retroactive application of the new rule] on the administration of justice.
>
> [*Poole,* at *2, citing *Hampton*, 384 Mich at 674. See also *People v Barnes,* 502 Mich 265, 273 (2018); *People v Sexton*, 458 Mich 43, 60–61 (1998).]

As noted, Shaver expressly acknowledges that the rule at issue here is a new one. (Shaver's Br, p 6.) But Shaver argues that the rule articulated in *Betts* is a substantive rule and that even applying the *Hampton* factors, this Court should apply *Betts* retroactively. (*Id.* at 10–15.) He also argues that under the federal standard, it applies retroactively. (*Id.* at 16–18.) Shaver's claims fail under both theories.

The decisive point is that the ruling in *Betts* was not a substantive one here. Gary Shaver was fully aware of his obligations under the 2011 SORA in 2015. For offenders like him whose crime was the failure to update his address, his conduct was a crime then and it is a crime now. To reiterate,

- any failure to update his address was a crime under the SORA in 1999;
- his failure to update his address was a crime in 2015 for the 2011 SORA; and
- any failure to update his address now would be a crime under the 2021 SORA.

RECEIVED by MSC 10/17/2025 4:11:33 PM

The fact that the Legislature introduced other obligations that were found to be punitive, most notably the student safety zones in 2006 and the in-person reporting for minor life changes in 2011 (both of which were repealed or revised), said nothing in principle about the substantive validity of the core obligation that he violated. In this way, for the duty to update a registrant's address, the decision in *Betts* did not "alter the range of conduct or the class of persons that the law punishes," see *Vannoy,* 593 US at 276*,* and it does not "place certain criminal laws and punishment altogether beyond the State's power to impose," *Poole,* at *5. And applying the three-factor test from *Hampton,* Michigan law forecloses relief.

A. Shaver is not entitled to relief because the change was not substantive in nature for him under state or federal law.

Relying on the state definitions of substantive, the decision in *Betts* was not substantive because the duty here – to update one's address as a registrant – remains within the power of the law to require. The same applies for the federal definition: *Betts* did not exclude the duty to register from the range of conduct that may be subject to punishment, nor did it exclude a class of persons from that duty.

While a ruling that a decision imposes an ex post facto punishment is ordinarily a substantive decision, here it was not, where the duty at issue – updating one's address – was a regulatory duty both before and after the decision in *Betts*. The decision was not substantive for Shaver for his duty to update his address.

RECEIVED by MSC 10/17/2025 4:11:33 PM

1. The decision in *Betts* did not rule that the SORA law cannot impose a duty on a sex offender to update one's address under the state definition of substantive.

As noted, Michigan law defines a substantive rule as one that a decision that recognizes that there is a "significant risk that a defendant faces a punishment that the law cannot impose upon him." *Poole,* at *5, quoting *Montgomery*, 577 US at 208–209. Shaver argues from this point that *Betts* did that very thing by ruling that the pre-2011 offenders could not be subject to the 2011 SORA as an ex post facto violation. (Shaver's Brief, p 9.) But this misunderstands the standard in *Poole* that forbids a defendant from facing a punishment that the law cannot impose.

In *Poole*, relying on *Montgomery,* the key holding is that the law cannot constitutionally impose a mandatory life sentence for either an 18-year-old offender or a juvenile. For everyone in that category, the sentence was "invalid." *Poole,* at *6. But that was not the basis for the decision in *Betts*.

This Court in *Betts* ruled that the increasing number of duties transformed the regulatory set of laws under SORA into a punitive system. See *Betts,* 507 Mich at 547 ("Michigan's SORA as initially enacted was similar to the Alaska sex-offender registry at issue in *Smith*"). As found by the Court of Appeals, the prior SORA law pre-2011 was not punitive. See *Golba*, 273 Mich App at 616. While it is true that all pre-2011 registrants received relief, this Court did not rule that the SORA could not impose a duty to update one's address as a registrant as a part of a regulatory system of registration. Indeed, that was one of the core features of the Alaska registration law upheld by the U.S. Supreme Court. See *Smith,* 538 US at 90

RECEIVED by MSC 10/17/2025 4:11:33 PM

(noting that for aggravated offenses an offender in Alaska must verify his address quarterly and "must notify his local police department if he moves"). It was the *additional* obligations that the Legislature imposed, according to this Court's ruling, which made the SORA punitive. See *Betts,* 507 Mich at 564 ("It is apparent, however, that a majority of the former SORA provisions underlying our conclusion that the 2011 SORA constitutes punishment *were added by its 2006 and 2011 amendments*.") (Emphasis added.)

Typically, an ex post facto ruling that a set of offenders had their punishment increased from one punishment to a higher one after their crime would invalidate all of the sentences that were imposed on those offenders and thus would be substantive. See, e.g., *In re Contempt of Henry*, 282 Mich App 656, 684 (2009) (invalidating an increased fine under MCL 600.1715 for criminal contempt where increase took effect after the conduct at issue occurred). But that is not what happened here. The punishment at issue was not a sentence or a fine. Rather, in *Betts* the Court reviewed a set of duties imposed by law from the sex offense conviction, many or most of which were regulatory. But *all* of the duties were struck for the pre-2011 offenders due to the additional duties that transformed the registry into a form of punishment. *Id.* at 562 ("aggregate punitive effects"). But the Court did not rule that all of the duties could in principle not be imposed, only that it could not sever the constitutional regulatory elements from those that caused it to be punitive. See *Betts,* 507 Mich at 564 ("the 2006 and 2011 amendments, in whole, cannot be excised from retroactive application because doing so renders the statute unworkable.").

RECEIVED by MSC 10/17/2025 4:11:33 PM

Consider the example of a hypothetical statute to illustrate the difference:

> **MCL 750.AAA – Regulatory Law for Certain Convictions**
>
> Sec. 1. Under law, if any offender was convicted of a certain crime on or before January 1, 2025, the offender will have the following duties:
>
> (A) Regulatory reporting duty;
>
> (B) Punitive duty that significantly burdens the offender.

Under the *Betts* decision, both the duties of law from this hypothetical statute cannot be enforced, but that is only because of this Court's *severance* ruling. A severance ruling, however, does not indicate anything about the ability of the law to impose a regulatory duty, such as here, which is the duty to update one's address. As noted by the Court of Appeals, that duty was in place since 1999, before Shaver sexually assaulted the 12-year-old victim in 2003. See *Shaver,* 2024 WL 4094354, at *5 ("Defendant would be required to register his address under any iteration of SORA in existence since 1999.") To paraphrase the standard from *Poole,* the duty to register is a duty that the SORA law continues to have the authority to impose. It is a requirement under current law under the SORA. See MCL 28.725(1).[4]

---

[4] Shaver argues that other prosecutors acquiesced to relief in other cases on this issue of the retroactivity of *Betts*. (See Shaver's Brief, p 13 n 4.) But this argument fails to consider that some of these offenders were not positioned like Gary Shaver.

For example, in the Barry County case, Donald Bush pled guilty for his failure to appear for his periodic reporting. (See People's App'x, Ex 8, *People v Bush*, an unpublished per curiam opinion, released on May 9, 2017 ("Defendant pled guilty to one count of failing to update sex offender registration, MCL 28.729(2)"). The version of the law in place in 2017 of MCL 28.729(2) did not require that the violation be "willful," which was added in 2021. See Public Act 295 of 2020. This change was in response to Judge Cleland's ruling that the failure to require a scienter in MCL 28.729(2) violated due process. See *Does II,* 449 F Supp 3d at 724 ("SORA violates the due process clause by imposing strict liability for violations").

In other words, for Donald Bush, his conduct *may* ***not*** *have been a violation of the law* in 2015 because the People should have had to prove his violation was willful.

RECEIVED by MSC 10/17/2025 4:11:33 PM

2. The decision in *Betts* did not rule that the SORA law cannot charge a person with a failure to update one's address, nor exclude a class of persons from such a duty, under the federal definition of substantive.

As noted, under the federal definitions of "substantive," a "rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes." *Welch v United States,* 578 US 120, 128 (2016), citing *Summerlin*, 542 US at 353. See also *Montgomery*, 577 US at 198 ("Substantive rules include rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.") (cleaned up). "This includes decisions that narrow the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." *Summerlin,* 542 US at 351–352 (cleaned up). *Betts* does not do either. Rather, *Betts* (1) did not alter a range of conduct that the law punishes here (2) nor did it exclude a class of persons from being subject to the duty at issue here, which is the duty for a registrant to update one's address. The fact that Shaver would have been entitled to relief on direct review does not answer the issue in this case, which is whether Shaver stands convicted for an act that the law did not make a crime. He is not innocent and was rightly convicted for failing to update his address.

First, the decision in *Betts* did not alter the range of conduct for which a person may be convicted for someone like Shaver who was convicted of failing to update his address. The U.S. Supreme Court explained in *Welch* that "if a new rule changes the scope of the underlying criminal proscription, the balance is different"

RECEIVED by MSC 10/17/2025 4:11:33 PM

because in that circumstance it will "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal." 578 US at 131, citing *Bousley v United States*, 523 US 614, 620 (1998). The conduct at issue – Shaver's failure to update his address – was criminal at the time he committed it, and he knew of the law. The ruling in *Betts* on ex post facto grounds did not affect the underlying scope of the law for his conduct, only the ability to enforce the law as a result of the additional obligations imposed that this Court found to be punitive. That *Betts* was decided on ex post facto grounds does not invalidate the ability of the SORA in principle to require a registrant to update the registrant's address. The 2011 SORA law was clear in its requirement that Shaver update his address and that he would be subject to prosecution if he willfully failed to do so. See MCL 28.725(1) (2011) (duty to update address); MCL 28.729(1) (2011) (willful violations).

By comparison, the Court in *Betts* ruled the 2011 SORA increased the punishment for the pre-2011 offenders based on the nature of some of the additional obligations the Legislature imposed on them. See *Betts,* 507 Mich at 561–562, 564 (referencing the 2006 and 2011 amendments). And because these earlier duties could not be severed, the entire 2011 SORA could not be enforced against pre-2011 offenders. See *id.* at 562–574. Thus, the ruling in *Betts* was not a substantive decision about the scope of conduct that the law may impose in this case. The "function of the rule" was not to change "the scope of the underlying criminal proscription" to prevent the "significant risk that a defendant stands convicted" for an act that "the law does not make criminal." See *Welch,* 578 US at 131, citing *Bousley,* 523 US at 620.

RECEIVED by MSC 10/17/2025 4:11:33 PM

While it is true that Shaver would have been entitled to relief on direct review because the Court in *Betts* struck down the 2011 SORA, this case is analogous to the circumstance in *Welch* where it describes the possibility of the striking down of a "procedural statute." *Welch,* 578 US at 135 ("not every decision striking down a statute is ipso facto a substantive decision"). The ruling on ex post facto grounds was based on the increasing duties of the 2011 SORA. The 2011 SORA did not suffer a constitutional infirmity for requiring sex offenders to update their address, but for the other duties that this Court found transformed the registry into a form of punishment. Thus, even though the decision "struck down part of a criminal statute that regulates conduct and prescribes punishment," *id.* at 135, the ruling did not alter the range of conduct that may be subject to punishment, i.e., his duty to update his address remains in principle to be a valid requirement.

In this way, the fundamental concern of this definition of "substantive" is not at issue here. The U.S. Supreme Court digested the divide between substance and procedure, predicated on this foundation that a rule is substantive "where the conviction or sentence in fact is not authorized by substantive law." See *Welch,* 578 US at 130–131 ("then finality interests are at their weakest"). The conviction here was authorized by the 2011 SORA, i.e., in principle Shaver could be required to update his address and the law did require it. The specific element of the law at issue here could not be enforced, however, due to the other added duties, and because the constitutionally permissible regulatory duties – including this one – could not be severed from the others. In short,

RECEIVED by MSC 10/17/2025 4:11:33 PM

Shaver was not innocent. His willful failure to update his address was a crime then and is now. It was a duty as of 1999, and the penalty for violating the law has not changed.

Second, the decision in *Betts* did not alter the class of persons, like Shaver, who may be convicted of failing to update his address. This is the central argument of Shaver, both under the federal rules of retroactivity and the state rules. (See Shaver's Brief, p 18 ("[a] specific class of people can no longer be punished for violating 2011 SORA after *Betts*") ; *id.* at 11 ("an entire class"). This point is not applicable here.

It is clear that the ex post facto decision bars the application of the 2011 SORA to the class of pre-2011 registrants. That is not in dispute. But that point does not answer the question here.

Instead, the difference between the class of offenders in *Poole* and the class of pre-2011 offenders in *Betts* answers the point. In *Poole,* all of the life-without-parole sentences were "invalid" for the 18-year-olds, *id.* at *6, because they were given a punishment that the law did not allow, i.e., a mandatory life sentence without consideration of other possible punishments. In contrast, for the pre-2011 offenders, the law would allow SORA to require the duty to update one's address (even one that required it to occur in person). See *Golba,* 273 Mich App at 616 (affirming the validity of the pre-2011 SORA). Thus, the infirmity found here for the pre-2011 offenders did not mean that they should not have had to update their addresses. There was nothing constitutionally infirm about this duty being asked of them after they had committed their sexual offense because that duty was regulatory in nature.

RECEIVED by MSC 10/17/2025 4:11:33 PM

Stated otherwise, there is nothing unfair to Shaver in allowing his conviction for failing to update his address to remain (since the law prohibited it and he violated it) whereas allowing the LWOP sentences for the 18-year-old offenders would be.

Shaver's misunderstanding is in part related to his analysis of *Betts* in which he argues that the "rule was not about the requirements of a statute" but that the rule was the statute was unconstitutional "as a whole" as punishment. (Shaver's Br, p 18.) This argument misapprehends a critical feature of the analysis in *Betts*.

This Court's analysis in *Betts* was deeply engaged in the requirements of the law, suggesting that the pre-2006 SORA was constitutionally valid, as isolated from some of the new duties imposed by the 2006 and 2011 amendments. Cf. *Betts,* 507 Mich at 547 ("Michigan's SORA as initially enacted was similar to the Alaska sex-offender registry at issue in *Smith*") with *id.* at 564 ("a majority of the former SORA provisions underlying our conclusion that the 2011 SORA constitutes punishment were added by its 2006 and 2011 amendments"). The consideration of severance is predicated on this very idea. And the refusal of the Court to sever the law in *Betts* does not invalidate in principle the authority of the law to require a registrant to update one's address, which is a core element of SORA. This duty remains, and any willful failure to meet it is a crime under the 2021 SORA now, and *Betts* did not strip the law's ability to require it.

B. Shaver is also not entitled to relief under the *Hampton* factors.

As this Court has explained, the rule that "judicial decisions are to be given complete retroactive effect" does not apply for judicial decisions that "express new rules," which "normally are not applied retroactively to other cases that have become final." *Barnes*, 502 Mich at 268 (citations omitted).

RECEIVED by MSC 10/17/2025 4:11:33 PM

That is because "at some point, the rights of the parties should be considered frozen and a conviction final." *Id.* (cleaned up), citing *Reynoldsville Casket Co v Hyde*, 514 US 749, 758 (1995). In this way, the Michigan rules of retroactivity disfavor the application of new non-substantive rules to cases that are final on direct review. See, e.g., *Maxson,* 482 Mich at 392–393 ("Michigan law has regularly declined to apply new rules of criminal procedure to cases in which a defendant's conviction has become final.").

Under the three-factor *Hampton* test, this Court should rule that *Betts* does not apply retroactively. There is nothing unfair in denying Shaver collateral relief.

1. The purpose of the decision in *Betts* does not support the retroactive application of the rule to Gary Shaver.

Under the first prong of the *Hampton* test, this Court examines "the purpose of the new rule." See *Poole,* at *7. The ruling in *Betts* basically determined that some elements of the 2006 and the 2011 amendments transformed Michigan's regulatory framework into a punitive one, as the pre-2006 law was similar in character to the Alaska registry. See *Betts,* 507 Mich at 547. The conduct for which Shaver was prosecuted in 2015 violated the standards of law present in the pre-2006 SORA law, because the obligation to update one's address was present in the SORA as it existed in 1999. See MCL 28.725(1) (1999); 1999 PA 85 ("Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency . . . having jurisdiction where his or her new residence or domicile is located"). There was no surprise here for Shaver.

RECEIVED by MSC 10/17/2025 4:11:33 PM

Under law, the prosecution had to prove that his conduct was willful then (and now). See MCL 28.729(1)(a) (1999, 2021); 1999 PA 85. And Shaver pled guilty in 2015, demonstrating that his violation was willful. (See Shaver's App'x, 36.)

In his brief, Shaver argues that "an unconstitutional conviction is wrongful." (Shaver's Brief, p 11.) But that claim proves too much. According to that principle, any ruling that a statute was unconstitutional would then have to be applied retroactively. But this Court has not ruled that way. See, e.g., *Barnes,* 502 Mich at 274–275 (finding that this Court's decision in *People v Lockridge* ruling that Michigan's guidelines were unconstitutional did not apply retroactively).

Moreover, while *Betts* found Michigan's SORA to be punitive, the lion's share of the analysis related to either the student safety zones, which were repealed, or the duty to report in person within just a few days for minor life changes, which also have been changed. See *Betts,* 507 Mich at 561–562. It is true the Court took aim at the lack of an "individualized assessment" regarding the determination of risk, *id.* at 561, but that feature was present in the Alaska law found to be constitutionally valid. The further duties added to Michigan's SORA in 2006 and 2011 did not change the duty to update his address. While there was a "substantial shortening" of the time period from 10 to 3 days to report, see *Betts,* 507 Mich at 535, such a change did not affect his plea here (see Shaver's App'x 34–36, Plea Transcript, pp 10–12) (willful violation for failing to update his address from September 10, 2015, to September 29, 2015). His conviction was valid at the time, and the decision in *Betts* does not undermine his conviction in substance.

RECEIVED by MSC 10/17/2025 4:11:33 PM

That is because there is nothing unconstitutional about requiring a sex offender to update that offender's address as a part of a regulatory system by creating a duty retroactively after the sexual offense has been committed. That is the basic holding of the U.S. Supreme Court's in *Smith v Doe*, 538 US at 105–106 in affirming the Alaska's sex offender registration law's constitutionality. *Id.* ("The Act is nonpunitive, and its retroactive application does not violate the Ex Post Facto Clause."). The offenders there had already committed their sex offenses. *Id.* at 92 ("Although convicted before the passage of the Act, respondents are covered by it.").

Notably, this is also not a case in which Shaver is serving a sentence for a crime whose sentence has been increased. The four-year penalty for his SORA violation for willfully failing to update his address has not increased since his registrable sex offense – third degree criminal sexual conduct – in 2003. See MCL 28.729(1)(a) (1999). Rather, *Betts* identified other duties the Legislature imposed on him – not at issue here – that it found made the 2011 SORA unfairly punitive. But that had no direct bearing on the conduct at issue here. The purpose of *Betts* is not furthered by granting Shaver relief.

2. The prosecutors and other institutions in Michigan have relied significantly on the validity of the 2011 SORA law.

In examining the second *Hampton* factor, it examines the "general reliance on the old rule." *Poole,* at *2. Related to this point, this Court has explained that when a decision overrules settled law, more reliance is likely to have been placed in the old rule "than in cases in which the law was unsettled or unknown." *Sexton,* 458 Mich at 63–64.

RECEIVED by MSC 10/17/2025 4:11:33 PM

At the time of this plea in 2015, the prosecutors and other officials who enforce the registry had relied on the core validity of the SORA for identifying sexual offenders in Michigan and maintaining their known address. It is one of the central features of the registry. The same was true of the Alaska registry at issue in *Smith*. 538 US at 90 ("The Alaska law . . . contains two components: a registration requirement and a notification system."). There is no basis to conclude that Shaver in 2015 would have any reason to think his obligation to register a new address was somehow an unfair burden on him.

Shaver argues that at the time this Court reached its decision in *Betts* in 2021 that Michigan law on ex post facto was "unsettled." (Shaver's Brief, p 12.) This argument advanced by Shaver is unpersuasive for at least two independent reasons.

First, the logically relevant point of reference is the time of Shaver's crime under SORA, which occurred in 2015. At that time, Michigan's law was clear that there was no ex post facto violation for the 2011 SORA. See *People v Temelkoski*, 307 Mich App 241, 270–271 (2014) ("as applied to defendant, SORA does not violate the Ex Post Facto Clause"), reversed on other grounds, 501 Mich 960 (2018).

Second, the issue of severability was only resolved in 2020 and 2021. The federal district court in *Does* rejected the severance argument in its opinion and order in February 2020, but even that decision noted that the State could revisit the issue if this Court ruled differently. See *Does II,* 449 F Supp 3d at 730 n 6 ("Should the *Betts* court reach the issue of the of severability of the 2011 amendments and

RECEIVED by MSC 10/17/2025 4:11:33 PM

that ruling runs somehow contrary to this court's determination, this court can modify its judgment to conform with *Betts*.").[5] The idea that a conviction like Shaver's would not be sustained only became an issue *after* he committed his SORA violation and after he pled guilty in 2015.

This Court insightfully noted in *Poole* that it is really the Legislature that had created the law at issue there. *Id.* at *6 ("[i]t was the Legislature, not the prosecutors, that mandated life without parole"). That insight weighs against retroactive application of the law here, where it is clear that any earlier ruling of this Court would have resulted in a revision to the law maintaining the core element of the SORA of requiring a registrant to update one's address. See Public Act 295 of 2020. No one should doubt the Legislature's commitment to this law.[6]

---

[5] As an aside, insofar as Shaver questions whether the State honored the Sixth Circuit's ruling in *Does I* (see Shaver's Brief, p 12, n 3), the law was in conflict until this Court's decision in *Betts*. Cf. *Does*, 69 F4th at 307 ("*Does I* and *Does I* on appeal established only that Michigan had violated four individual plaintiffs' rights, not that MSP was continuing to violate the rights of other sex offenders, and final judgment in *Does II* (August 4, 2021) was not issued until after Michigan had amended SORA to remove the challenged provisions (March 24, 2021).").

[6] In fact, more recently the Michigan Senate has acted to respond to the federal district's decision in *Does III,* which ruled that the 2021 SORA is punitive. See *Does v Whitmer*, 751 F Supp 3d 761, 795 (ED Mich, 2024) ("SORA 2021 constitutes punishment"). But see *In re Harder*, ___ Mich App ___; 2025 WL 825907, at *8 (2025) ("the 2021 SORA amendments did not impose a criminal punishment on offenders convicted of sex-related offenses."), citing *People v Kiczenski*, ___ Mich App ___, 2024 WL 4595174 (2024). In particular, on June 17, 2025, in a 20-to-4 vote the Michigan Senate passed SB 424 to address the district court's decision in *Does III* before the June 21, 2025 deadline. See https://legislature.mi.gov/documents/2025-2026/billengrossed/Senate/pdf/2025-SEBS-0424.pdf (last accessed October 15, 2025.) The Sixth Circuit, however, stayed the effect of *Does III* on June 20, 2025. See *Doe v Whitmer (Does III* on appeal), No. 25-1413, order entered on June 20, 2025. The stay obviated any need for further immediate legislative action.

RECEIVED by MSC 10/17/2025 4:11:33 PM

3. The administration of justice weighs against granting Shaver relief.

Under the third and final *Hampton* prong, this Court considers the retroactive application of the *Betts* rule "on the administration of justice." *Poole,* at *2. This factor also supports the People's position.

This arguably raises one of the paramount considerations, that is, the issue of fairness. As noted, Shaver contends that his "conviction is wrongful." (Shaver's Brief, p 11.) But this claim is not well taken. It may be the most important point of the case.

Shaver's conduct was a crime then and is a crime now. He knew of his obligations – this was his second conviction for a SORA violation – and he pled guilty to the crime in 2015. (See Shaver's App'x 36.) The *Betts* Court ruled that Michigan's 2011 SORA was punitive, and thus ex post facto, but that ruling related primarily to other obligations the Legislature continued to add to the registrants, i.e., student safety zones and in-person report for minor changes, but they in the main had nothing to do with the basis of his charge and conviction here, i.e., failing to update his address. That is the core of the SORA, and it existed before 2006 and continues to be in place now. Shaver was guilty then, and the fact that he would be entitled to relief if this case were pending on direct review is based on considerations extraneous to his criminal conduct and actual guilt here. The fact that this Court rejected the argument that the law was severable is not the kind of protection that is contemplated by the standards in *Hampton.* There is nothing unfair about denying him relief.

RECEIVED by MSC 10/17/2025 4:11:33 PM

Additionally, Shaver argues that the reach of the *Betts* ruling only applies to "a narrow set of people." (Shaver's Brief, p 14.) Not so.

As noted above, where a majority of the approximately 44,000 registrants are pre-2011 sex offenders, if Shaver is entitled to relief here then the decision in *Betts* (as of January 2022) would affect hundreds of SORA violators under the jurisdiction of the Department of Corrections alone. (See People's App'x) (Exs A and B – 143 offenders in prison); (Ex C – 263 offenders on probation or parole.) And the number of those with convictions that were final and no longer under the jurisdiction of the MDOC is unknown, and likely numbers in the thousands. Consider the cases in which a person challenges habitual status based on prior SORA convictions or on the scoring of prior offense variables based on prior convictions. See, e.g., *People v Haynes*, 512 Mich 930 (2023) (order remanding) ("he claims that the trial court erred in calculating his prior record variables because it relied on three past convictions for failing to register under the 2006 version of [SORA]"). This factor cuts the other way.

The retroactive application of the rule to cases final on direct review implicates more than just a narrow set of people. The settled expectations weigh in favor of denying relief to those like Shaver whose same conduct was criminal before the 2006 and 2011 legislative changes and continues to be today.

* * *

The question at issue here is one about whether it is fair to allow Shaver's conviction for his knowing failure to update his address from 2015 to remain in place. The duty was in place in 1999 when he committed his sexual assault. And his willful failure to register was crime then and it is a crime now. This Court should affirm.

RECEIVED by MSC 10/17/2025 4:11:33 PM

CONCLUSION AND RELIEF REQUESTED

This Court should affirm the decision below that *People v Betts* does not apply retroactively to cases final on direct review where, as here, the same conduct at issue – a registrant's failure to update one's address – was criminal then and now.

Respectfully submitted,

Erica Walle
Tuscola County Prosecutor

/s/ B. Eric Restuccia

B. Eric Restuccia (P49550)
Deputy Solicitor General
Attorneys for the People
P.O. Box 30212
Lansing, Michigan 48909
(517) 335-7628

Dated: October 17, 2025

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.312(A) and 7.212(B) because, excluding the part of the document exempted, this **merits brief** contains no more than 16,000 words. This document contains 10,000 words.

/s/ B. Eric Restuccia

B. Eric Restuccia (P49550)
Deputy Solicitor General
Attorneys for the People
P.O. Box 30212
Lansing, Michigan 48909
(517) 335-7628