No. 119563

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the
	)	Circuit Court of the
	)	Eleventh Judicial Circuit,
Plaintiff-Appellant,	)	McLean County, Illinois
	)	No. 14 CF 1076
	)	
v.	)	
	)	
	)	
MARK MINNIS,	)	The Honorable
	)	Robert Freitag,
Defendant-Appellee.	)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE ACTION

Defendant Mark Minnis was charged with violating 730 ILCS 150/3(a) (2014) by failing to disclose his Facebook page during sex offender registration. C10.[1] The Circuit Court of McLean County granted defendant's motion to dismiss, finding the statute unconstitutional under the First Amendment. C115-17; A4-6.

The People then filed a notice of appeal to this Court. C118. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether, under the First Amendment, the State may require that registered sex offenders disclose the Internet aliases under which they interact with the public and the Internet sites on which they interact with the public.

2. Whether, under the First Amendment, the State may require that defendant, as a registered sex offender, disclose a Facebook page to which he uploaded a photograph.

JURISDICTION

Because the Circuit Court of McLean County declared 730 ILCS 150/3(a) unconstitutional, jurisdiction lies under Supreme Court Rules 302(a), 603, and 612(b). The circuit court granted defendant's motion to dismiss on July 7, 2015, C115-17; A4-6; and the People filed a timely notice of appeal on July 13, 2015, C118.

[1] Citations to the common law record proceedings appear as "C__"; to the report of proceedings as "R__"; and to the appendix to this brief as "A__."

STATUTE INVOLVED

In relevant part, the Sex Offender Registration Act provides:

Section 3. Duty to register.

> (a) A sex offender, as defined in Section 2 of this Act, or sexual predator shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include a current photograph, current address, current place of employment, the sex offender's or sexual predator's telephone number, including cellular telephone number, the employer's telephone number, school attended, all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information, extensions of the time period for registering as provided in this Article and, if an extension was granted, the reason why the extension was granted and the date the sex offender was notified of the extension. . . .

730 ILCS 150/3(a) (2014). Under 730 ILCS 150/10 (2014), "[a]ny person who is required to register under this Article who violates any of the provisions of this Article . . . is guilty of a Class 3 felony."

STATEMENT OF FACTS

On September 12, 2014, defendant was arrested for failing to register as a sex offender pursuant to 730 ILCS 150/3(a). C7. Officers determined that in his most recent registration, defendant had disclosed two email addresses, but failed to disclose his Facebook page, to which he had uploaded a photograph shortly before registering. *Id.* Defendant was indicted for failure to register as a sex offender pursuant to 730 ILCS 150/3(a) because he "knowingly failed to register in accordance with the Sex Offender Registration Act" when

he "did not register an Internet site, a Facebook page, which he had uploaded content to." C10.

Defendant moved to dismiss the indictment, raising two constitutional challenges to 730 ILCS 150/3(a)'s requirements that sex offenders register

> all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information . . . .

Defendant argued that (1) the registration requirement is unconstitutionally vague because the terms "URL" and "other Internet Communication Identities" are undefined, and (2) the registration requirement is unconstitutionally overbroad because it "reaches and regulates protected speech." C28-29. On July 7, 2015, the circuit court granted defendant's motion, finding that 730 ILCS 150/3's registration requirement is not unconstitutionally vague, C115; A4; but that it is unconstitutional under the First Amendment, both "on its face and as applied," C116; A5; because it "has no limitations on the type of speech or communication which the offender is required to report and register, regardless of whether that speech is in any way related to the legitimate purpose of the statute," and is "'therefore insufficiently narrow,'" C116; A5 (quoting *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1120 (D. Neb. 2012)).

SUMMARY OF ARGUMENT

Prior to the advent of the Internet, information regarding sex offenders' real-world identities and whereabouts — their names, photographs, and addresses, etc. — was adequate to protect the communities with which they interacted. But the growing role of the Internet in daily life (and accompanying increase in sex crimes committed using the Internet) required

additional disclosures to protect the public. The expanded reach and anonymity afforded by the Internet gives rise to a variety of sexual offenses that could be initiated, or even committed in their entirety, online. For example, a sex offender may solicit a child online, arranging a later physical encounter, or persuade a child to e-mail him nude photographs. Knowledge of a sex offender's real-world identity and physical whereabouts alone is no longer sufficient to enable law enforcement to monitor sex offenders or alert the public to the presence of sex offenders in the community; additional information is necessary to protect the public from sex offenders on the Internet. Accordingly, the Illinois General Assembly amended the Sex Offender Registration Act (the Act) the Act to supplement the disclosures of sex offenders' real-world identities and physical whereabouts with disclosures of their virtual identities and virtual whereabouts.

The purpose of the Sex Offender Registration Act (the Act) is to protect the public from the danger of recidivist sex offenders, which is a substantial government interest. It does so in two ways. First, the information disclosed during sex offender registration aids law enforcement agencies by allowing them to locate the potential recidivists. Second, when disseminated to the public in accordance with the Sex Offender Community Notification Law, 730 ILCS 150/101, *et seq.*, the information disclosed during sex offender registration protects the public by alerting them to the presence (and potential risk) of sex offenders in their community. To serve either function, the registry must include information regarding sex offenders' identities and whereabouts, for law enforcement cannot investigate recidivism by sex offenders of whom it is unaware. Nor can the public be alert to sex offenders in the community if it does not know there are sex offenders in the community.

The circuit court erred when it found the Internet-related disclosure requirements of Section 3(a) of the Act unconstitutionally overbroad under the First Amendment. First, because defendant was charged with failure to comply with only one of the requirements, the court lacked jurisdiction to rule on the constitutionality of the other requirements. Second, none of the requirements are unconstitutionally overbroad. They are narrowly tailored to collect only the information necessary to protect the public: sex offenders' virtual identities and virtual whereabouts. The requirement that offenders disclose their "e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use," 730 ILCS 150/3(a) (2014), exists to collect the virtual aliases used by sex offenders in their online interactions with the public. And the requirement that sex offenders disclose the "Uniform Resource Locators (URLs) registered or used by the sex offender" and "all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information," *id.*, collects the virtual locations where the public is likely to encounter and interact with sex offenders. These disclosure requirements are content neutral. They make no inquiry into the contents of sex offenders' speech. They place no restrictions on sex offenders' speech: sex offenders are free to say whatever they like to whomever they like, whenever and wherever they like. All Section 3(a) requires is that offenders disclose information regarding the identities under which they speak and the forums in which they have already spoken — *i.e.*, the information required to identify them and their whereabouts in the online community.

Accordingly, this Court should reverse the judgment of the circuit court finding Section 3(a)'s disclosure requirements unconstitutional under the First Amendment.

ARGUMENT

I. Standard of Review and Governing Principles

This Court reviews de novo the circuit court's determination that the disclosure requirements of the Act are unconstitutional under the First Amendment. *See People ex rel. Ryan v. World Church of the Creator*, 198 Ill. 2d 115, 120 (2001) (reviewing de novo circuit court's determination that statute violated First Amendment). "All statutes are presumed to be constitutionally valid," and the Court will "construe a statute in a manner upholding its constitutionality, if such construction is reasonably possible." *Id.*

II. The Circuit Court Lacked Jurisdiction to Rule on the Constitutionality of Section 3(a) Disclosure Requirements Other Than The Disclosure Requirement Before the Court.

The second sentence of Section 3(a) imposes a number of disclosure requirements upon a registered sex offender. In addition to providing a current photograph, he must disclose:

1) his "current address";

2) his "current place of employment";

3) his "telephone number, including cellular telephone number";

4) his "employer's telephone number";

5) the school he attends;

6) "all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use";

7) "all Uniform Resource Locators (URLs) registered or used by the sex offender"; and

8) "all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information."

730 ILCS 150/3(a). Defendant was charged with violating only the eighth of these disclosure requirements: failing to "register an Internet site, a Facebook page, which he had uploaded content to." C10. Therefore, the circuit court lacked jurisdiction to declare the other disclosure requirements unconstitutional.

As this Court recently reaffirmed, a circuit court lacks jurisdiction to rule on the constitutionality of a statute under which the defendant was not charged:

> Article VI, section 9 of the Illinois Constitution grants circuit courts original jurisdiction over all justiciable matters. "Generally speaking, a 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.'" More importantly, courts do not rule on the constitutionality of a statute where its provisions do not affect the parties, and decide constitutional questions only to the extent required by the issues in the case.

People v. Mosley, 2015 IL 115872, ¶ 11 (internal citations omitted); *see also Excelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 296 (2009) ("A court cannot rule on the constitutionality of a statute that is not before it, nor can the court rule on the merits of a case over which it lacks jurisdiction.") (J. Thomas, specially concurring). The circuit court apparently recognized that the disclosure requirements are separate and severable, finding unconstitutional only the last three requirements listed by Section 3(a)'s second sentence, rather than striking down all eight listed requirements. *See* C123; 730 ILCS 150/10.9 (providing that "an invalid provision or application of this Article is declared to be

severable). But two of the three invalidated requirements — the requirements that a sex offender disclose "all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use" and "all Uniform Resource Locators (URLs) registered or used by the sex offender" — were no more before the court than the requirements that a sex offender disclose his current address and telephone number; defendant was not charged with a violation of those requirements. Accordingly, the circuit court had jurisdiction to rule only on the constitutionality of the requirement that a sex offender disclose "all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information," and its order must be vacated to the extent it finds any other requirement unconstitutional *See Mosley*, 2015 IL 115872, ¶ 12 (vacating circuit court orders to extent they find statutory provisions not before the court unconstitutional).

III. In Any Event, None of Section 3(a)'s Internet-Related Disclosure Requirements Are Unconstitutionally Overbroad Under the First Amendment Because They Are Narrowly Tailored to Serve the Substantial Governmental Interest of Protecting the Public from Recidivist Sex Offenders.

The circuit court found all of Section 3(a)'s disclosure requirements relating to the Internet to be unconstitutionally overbroad under the First Amendment. C116. The First Amendment overbreadth doctrine is an exception to the normal standard for facial challenges. *Virginia v. Hicks*, 539 U.S. 113, 118 (2003) (citing *Members of City Counsel of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984)), under which the challenger "would have to establish that no set of circumstances exist under which the statute would be valid," *People v. Clark*, 2014 IL 115776, ¶ 11 (citing *United States v. Stevens*, 559 U.S. 460, 472 (2010)). Under the overbreadth doctrine, however, "a law may be invalidated as

overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Clark*, 2014 IL 115776, ¶ 11 (citing *Stevens*, 559 U.S. at 473). The doctrine "seeks to strike a balance between competing social costs" — on the one hand, the risk that an overbroad statute will deter some people from engaging in constitutionally protected speech, and on the other, the "obvious harmful effects" of invalidating a law that is perfectly constitutional in many of its applications. *United States v. Williams*, 553 U.S. 285, 292 (2008). Because "[i]nvalidation for overbreadth is strong medicine that is not to be casually employed," *id.* at 293, to maintain the "appropriate balance," *id.* at 292, the United States Supreme Court has "vigorously enforced the requirement that a statute's overbreadth be *substantial*, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep," *id.*

"The first step in an overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *Williams*, 553 U.S. at 293. Once the limits of the statute's coverage have been mapped, the question becomes whether those limits are appropriately tailored to the governmental purpose that the statute serves. *See Clark*, 2014 IL 115776, ¶ 20.

A. Section 3(a)'s Disclosure Requirements Cover Sex Offenders' Real-World Identities and Whereabouts and Their Virtual Identities and Whereabouts.

Section 3(a) requires that sex offenders disclose certain information about their real-world identity and whereabouts — "a current photograph, current address, current place of employment, the sex offender's or sexual predator's telephone number, including cellular telephone number, the employer's telephone number, [and] school attended" — as well as

analogous information regarding their virtual identities and whereabouts — "all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, [and] all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information." 730 ILCS 150/3(a). Because the Act does not define the terms used in Section 3(a), *see* 730 ILCS 150/1 (2014), *et seq.*, dictionary definitions may be used to ascertain the scope of the disclosure requirements. *See Poris v. Lake Holiday Prop. Owners Ass'n*, 2013 IL 113907, ¶ 48.

1. The requirement that sex offenders disclose "all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use" is limited to virtual identities through which the sex offender interacts with the public.

The requirements that sex offenders disclose their "e-mail addresses, instant messaging identities, and other Internet communication identities" are analogous to the requirements that offenders disclose their current photographs and telephone numbers. *See* 730 ILCS 150/3(a). Disclosure of an offender's e-mail address serves to identify e-mails sent by that offender, just as disclosure of an offender's telephone number serves to identify telephone calls placed by that offender. Of course, e-mail is not the only means by which one may communicate using a virtual identity. An "instant message" is "a message sent via the Internet that appears on the recipient's screen as soon as it is transmitted," *New Oxford Am. Dictionary* 900 (3d ed. 2010), and a "chat room" is "an area on the Internet or other computer network where users can communicate, typically limiting communication to a

particular topic," *id.* at 294. Accordingly, the requirement that sex offenders disclose their instant messaging and chat room identities, 730 ILCS 150/3(a), serves to identify them in their interactions with the public in those virtual forums. Finally, sex offenders must disclose all "other Internet communication identities." 730 ILCS 150/3(a). Just as "instant messaging identities" are identities used to communicate over instant messaging and "chat room identities" are identities used to communicate in chat rooms, "other Internet communication identities" are all other identities used to communicate on the Internet. This catch-all requirement allows the Act to capture new types of virtual identities as they arise, preventing the Act from being made obsolete by the rapid pace of technological development. Together, these disclosure requirements cover the virtual aliases under which sex offenders will be communicating with the public.

2. The requirements that sex offenders disclose "all Uniform Resource Locators (URLs) registered or used by the sex offender" and "all blogs and other Internet sites maintained by the sex offender" are limited to Internet sites used by the sex offender as the offender's virtual "residence."

The requirement that sex offenders disclose "all Uniform Resource Locators (URLs) registered or used by the sex offender" and "all blogs and other Internet sites maintained by the sex offender" is limited to Internet sites owned or operated by the sex offender; it is analogous to the Act's requirement that the offender disclose his current address and current place of employment. A Uniform Resource Locator (or URL) is "the letters and symbols (such as http://www.Merriam-Webster.com) that are the address of a website." *Merriam-Webster Dictionary*, http://www.merriam-webster.com/dictionary/url (last visited Feb. 1, 2016). A URL is "registered" to someone if it "ha[s] the owner's name entered in an official

list or register." *Merriam-Webster Dictionary*, http://www.merriam-webster.com/dictionary/registered (last visited Feb. 1, 2016); *see New Oxford American Dictionary* 1470 (defining "register" as "to enter or record on an official list or directory"); *see also Del Monte Int'l GmbH v. Del Monte Corp.*, 995 F. Supp. 2d 1107, 1119 (C.D. Cal. 2014) (explaining website registration system, under which registrant of website is website's owner). In other words, the requirement that sex offenders disclose the URLs registered to them requires that they disclose the URLs that they own. The term "use" is defined broadly as to "take, hold, or deploy (something) as a means of accomplishing a purpose or achieving a result; employ." *New Oxford American Dictionary* 1907. The word "used" must be read in context. In conjunction with "registered," the other verb in the phrase, it means "to use in the manner of an registrant," the equivalent of "operated" in the common phrase "owned or operated." *Cf. Petroliam Nasional Berhad v. GoDaddy.com, Inc.*, 737 F.3d 546, 553 (9th Cir. 2013) (explaining that in context of Anticybersquatting Consumer Protection Act, term "uses" in phrase "registers, traffics in, or uses" a website is narrow); 15 U.S.C. § 1125(d)(1)(D) (person is liable for "using" domain name if person is domain name registrant or registrant's licensee).[2]

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[2] Construing "used" as colored by "registered" is appropriate under the doctrine of *noscitur a sociis*, under which "[t]he meaning of questionable words or phrases in a statute may be ascertained by reference to the meaning of words or phrases associated with it" in order to "avoid the giving of unintended breadth to a legislative act." *People v. Qualis*, 365 Ill. App. 3d 1015, 1020 (5th Dist. 2006) (internal quotation marks omitted). Construing the term more broadly is contrary to the legislative intent of the disclosure requirements, which is to collect information about the Internet sites that sex offenders use to interact with the public, rather than every site a sex offender may "use" by mere passive viewing. *See infra* §§ III.B.2, III.B.3. The narrowing construction is also compelled to avoid unconstitutionality. *See Broadrick v. Oklahoma*, 413 U.S. 601, 614 (1973) (overbreadth not invoked when challenged statute susceptible to limiting construction).

The disclosure requirement regarding "all blogs and other Internet sites maintained by the sex offender" requires disclosure of any other sites that the offender operates. A "blog" is "a personal website or webpage on which an individual records opinions, links to other sites, etc. on a regular basis." *New Oxford Am. Dictionary* 183. And "to maintain" a blog or Internet site is "to keep [it] in existence or continuence." *Webster's Unabridged Dictionary* 1160 (2d ed. 2001); *see New Oxford American Dictionary* 1060 (defining "maintain" as "to keep in existence or continuance; preserve; retain"). Thus, one who maintains an Internet site operates that site.

In other words, the requirements that a sex offender disclose "all Uniform Resource Locators (URLs) registered or used by the sex offender" and "all blogs and other Internet sites maintained by the sex offender" requires that he disclose all websites that are "his." In that sense, they are analogous to the requirement that he disclose his current address and place of employment. Just as the public can expect a sex offender to answer the door if they knock on the door of a registered sex offender's home or business, they can expect to encounter a sex offender if they visit a website registered to, used by, or maintained by a registered sex offender. These sites are the virtual locations where the public can expect to encounter a sex offender. And the public can assume that if they avoid such locations, virtual or otherwise, the likelihood of interacting with a sex offender will be reduced.

3. The requirement that sex offenders disclose "all blogs and Internet sites . . . to which the sex offender has uploaded any content or posted any messages or information" is limited to Internet sites where the sex offender has interacted with the public — the virtual equivalent of sex offenders' whereabouts.

The requirement that a sex offender disclose "all blogs and Internet sites . . . to which the sex offender has uploaded any content or posted any messages or information" requires disclosure of the offender's virtual whereabouts in the community — *i.e.*, where the public is likely to interact with him. The term "upload" is defined as "to move or copy (a file, program, etc.) from a computer or device to a usually larger computer or computer network)." *Merriam-Webster Dictionary*, www.merriam-webster.com/dictionary/upload (last visited Feb. 1, 2016); *see also Webster's Unabridged Dictionary* 2093 (defining "upload" as "to transfer (software, data, character sets, etc.) from a smaller to a larger computer"); *New Oxford Am. Dictionary* 1904 (defining "upload" as "transfer (data) to another computer system; transmit data"). And "content" is defined as "something that is expressed through some medium, as speech, writing, or any of various arts." *Webster's Unabridged Dictionary* 439; *see also New Oxford Am. Dictionary* 375 (defining "content" as "information made available by a website or other electronic medium" and "the substance or material dealt with in a speech, literary work, etc., as distinct from its form or style"). Thus, the requirement that a sex offender disclose "blogs and Internet sites . . . to which the sex offender has uploaded any content" means that the offender must disclose locations on the Internet to which he has transferred expressive material — be it a document, picture, video, audio file, or program — from a computer.

But sex offenders' interactions with the public online are not limited to the transfer of files. The requirement that sex offenders disclose "blogs and Internet sites . . . to which the sex offender has . . . posted any messages or information" identifies the locations where sex offenders have engaged in these other kinds of interactions. 730 ILCS 150/3(a). The term "post" is defined as "to affix to a post, wall, or the like," and connotes some degree of public visibility. *Webster's Unabridged Dictionary* 1510 (defining "post" and providing "announce, advertize, [and] publicize" as synonyms); *Black's Law Dictionary* 1186 (7th ed. 1999) (defining "post" as "[t]o publicize or announce by affixing a notice in a public place"); *New Oxford Am. Dictionary* 1365 (defining "post" as "display (a notice) in a public place," "make (information) available on the internet," and "submit (a message) to an internet message board or blog"); *Fair Hous. Counsel of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1161 n.3 (9th Cir. 2008) ("In the online context, 'posting' refers to providing material that can be viewed by other users, much as one 'posts' notices on a physical bulletin board."). Accordingly, the requirement that sex offender disclose "blogs and Internet sites . . . to which the sex offender has . . . posted any messages or information" means that the offender must disclose any virtual locations where the offender has made a message or information available to that location's community.

B. Section 3(a)'s Requirements that Sex Offenders Disclose Their Virtual Identities and Whereabouts Withstand Intermediate Scrutiny Because They Are Narrowly Tailored to Collect the Information Necessary to Protect the Public from Recidivist Sex Offenders, Which Is a Substantial Government Interest.

1. Section 3(a)'s disclosure requirements are subject to intermediate scrutiny because they are content-neutral.

When a statute may burden First Amendment rights, the applicable level of scrutiny depends on whether the statute is content-neutral; content-based regulations on speech are subject to strict scrutiny, *People v. Alexander*, 204 Ill. 2d 472, 476 (2003), whereas content-neutral regulations are subject to intermediate scrutiny, *World Church of the Creator*, 198 Ill. 2d at 120. Under Section 3(a) of the Act, sex offenders are free to say (1) whatever they like (2) to whomever they like, (3) whenever and (4) wherever they like; they simply must disclose certain information regarding the identities under which they speak and the forums in which they have spoken. *See* 730 ILCS 150/3(a); *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010) ("'[D]isclosure requirements may burden the ability to speak, but they . . . do not prevent anyone from speaking.'") (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366 (2010)). These disclosure requirements are content-neutral — to the extent they may affect sex offenders' speech, they do so "without reference to the ideas or views expressed," *see Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 643 (1994); 730 ILCS 150/3(a) (making no reference to content of sex offenders' speech) — and therefore they are subject to intermediate scrutiny.[3] Under intermediate scrutiny, the disclosure requirements

[3] That Section 3(a) makes a speaker-based distinction — requiring only sex offenders and sexual predators to make the required disclosures, *see* 730 ILCS 150/3(a) — does not dictate more exacting scrutiny. Speaker distinctions are permitted, provided they "are not a subtle means of exercising a content preference." *Turner Broad. Sys.*, 512 U.S. at 645.

are constitutional if they "'(1) serve[ ] a substantial governmental interest and (2) [are] narrowly drawn to serve that interest without unnecessarily interfering with First Amendment freedoms.'" *World Church of the Creator*, 198 Ill. 2d at 121 (quoting *Am. Target Adver., Inc. v. Giani*, 199 F.3d 1241, 1247 (10th Cir. 2000)) (internal quotation marks omitted); *Clark*, 2014 IL 115776, ¶ 19 ("A content-neutral regulation will be sustained under the first amendment if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.") (citing *Turner Broad. Sys.*, 520 U.S. at 189). "To satisfy this standard, a regulation need not be the least speech-restrictive means of advancing the Government's interest." *Turner Broad. Syst.*, 512 U.S. at 622. "'Rather, the requirement of narrow tailoring is satisfied so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" *Id.* (quoting (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)) (internal quotation marks omitted).

2. The governmental purpose of Section 3(a)'s disclosure requirements is to protect the public against recidivist sex offenders by providing law enforcement with the information needed to investigate them and providing the public with the information needed to be on guard against them.

"The risk of recidivism posed by sex offenders is 'frightening and high,'" *Smith v. Doe*, 538 U.S. 84, 103 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)); *McKune*,

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Because the Act does not target sex offenders in a way that suggests that the disclosure requirements are a proxy for content-regulation, "the appropriate standard by which to evaluate the constitutionality of [the Act] is the intermediate level of scrutiny applicable to content-neutral restrictions that impose an incidental burden on speech." *Id.* at 662; *see also World Church of the Creator*, 198 Ill. 2d at 122 (applying intermediate scrutiny to statute requiring every "charitable organization" that solicits or intends to solicit donations to file registration statement disclosing certain information).

536 U.S. at 33 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault.") (citing U.S. Dep't of Justice, Bureau of Justice Statistics, *Sex Offenses and Offenders* 27 (1997); U.S. Dep't of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners released in 1983* 6 (1997)). The purpose of the Act is to protect the public from the danger of recidivist sex offenders. *People v. Johnson*, 225 Ill. 2d 573, 585 (2007) ("The purpose of the Act is to aid law enforcement by facilitating ready access to information about sex offenders and, therefore, to protect the public."). And this government interest in protecting the public is substantial. *See People v. Wealer*, 264 Ill. App. 3d 6, 16 (2d Dist. 1994) (State's "legitimate interest in deterring and prosecuting recidivist acts committed by sex offenders" is "especially compelling" because "sex offenders frequently target children as their victims"); *Doe v. Biang*, 494 F. Supp. 2d 880, 892 (N.D. Ill. 2006) (interest in protecting public against recidivism by providing it with information about sex offenders is compelling) (citing *Paul P. v. Verniero*, 170 F.3d 396, 404 (3d Cir. 1999)).

3. Section 3(a)'s requirements that sex offenders disclose their virtual identities and whereabouts is narrowly tailored to the governmental interest in protecting the public from recidivist sex offenders.

The Act is designed to protect the public from recidivism in two ways. First, the information disclosed during sex offender registration aids law enforcement agencies in their investigations of recidivist sex crimes by "allowing them to 'monitor the movements of [sex offenders].'" *People v. Cornelius*, 213 Ill. 2d 178, 194 (2004) (quoting *People v. Adams*, 144 Ill. 2d 381, 388 (1991)). Second, when disseminated to the public in accordance with the provisions of the Sex Offender Community Notification Law, 730 ILCS 150/101, *et seq.*, the

information disclosed during sex offender registration protects the public by "alerting the public to the risk of sex offenders in their communit[y]." *Smith*, 538 U.S. at 103 (internal quotations omitted) (alteration in original). For the Act to protect the public in these ways, the sex offender registry must contain two types of information: sex offenders' identities and their whereabouts. Law enforcement agencies cannot effectively investigate crimes of recidivism if they cannot identify and locate the potential recidivists in the area. Nor can the public be on guard against the risk of recidivism posed by sex offenders in their community if they do not know who those offenders are and where they are likely to be encountered. Accordingly, Section 3(a) requires sex offenders to disclose the information necessary to identify and locate them. *See* 730 ILCS 150/3(a).

Prior to the advent of the Internet, only information regarding sex offenders' real-world identities and physical whereabouts was necessary to create a sex offender database sufficient to assist law enforcement investigations and alert the public to the presence of sex offenders in the community, and the required disclosures were correspondingly limited. *See* 730 ILCS 150/3(a) (eff. Jan. 1, 2007 to Aug. 15, 2007) (requiring disclosure of sex offender's current photograph, current address, current place of employment, school attended, and license plate numbers for every vehicle registered in sex offender's name). A sex offender's name and current photograph were sufficient to definitively identify him, especially in conjunction with the prohibition against a sex offender changing his name. *See* 730 ILCS 150/10 (prohibiting sex offender from changing name). Similarly, a sex offender's current address and place of employment, together with his license plate, sufficed to reveal his physical whereabouts, already cabined by statutory exclusions from school zones and public

parks, *see* 720 ILCS 5/11-9.3; 720 ILCS 5/11-9.4-1. Armed with this information, law enforcement could investigate sex crimes and the public could guard against the risk of recidivism by sex offenders in the community.

But the growing role of the Internet in daily life (and the accompanying increase in sex crimes committed using the Internet) requires additional disclosures to protect the public. The expanded reach and anonymity that the Internet affords gives rise to a variety of sexual offenses that can be initiated, or even entirely committed, online. *See*, *e.g.*, 720 ILCS 5/11-6(a-5) (indecent solicitation of a child); 720 ILCS 5/11-6.5 (indecent solicitation of an adult); 720 ILCS 5/11-6.6 (solicitation to meet a child); 720 ILCS 5/11-9.1 (sexual exploitation of a child); 720 ILCS 5/11-20.1 (child pornography); 720 ILCS 5/11-23 (posting of identifying or graphic information on a pornographic Internet site or possessing graphic information with pornographic material); 720 ILCS 5/11-24 (child photography by sex offender); 720 ILCS 5/11-25 (grooming). Knowledge of a sex offender's real-world identity and physical whereabouts is thus no longer sufficient to enable law enforcement to monitor sex offenders or alert the public to the presence of sex offenders in the community; by accessing the Internet, a sex offender can interact with the public anywhere in the world without ever leaving his home or exposing his true identity. Additional information is therefore necessary to protect the public from sex offenders on the Internet. Accordingly, Illinois General Assembly amended the Act to supplement the disclosures of sex offenders' real-world identities and physical whereabouts with disclosures of their virtual identities and virtual whereabouts. *See* 95th Ill. Gen. Assem., Senate Proceedings, February 23, 2007, at 46 (Sen. Harmon) ("Senate Bill 14 is a modest, but critical expansion of the Sex Offender

Registration Act. . . . Today we require sex offenders to register their real identities — their name and their address, their employer, their automobile — but we don't ask them to register their virtual identities. This bill changes that. It would require a sex offender to register their e-mail addresses, their instant messaging identities, the websites they maintain and use to communicate.").

Pursuant to this amendment, in addition to disclosing information regarding his real-world identity and physical whereabouts, a sex offender must disclose:

> all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, [and] all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information . . . .

730 ILCS 150/3(a) (eff. Aug. 16, 2007). These new virtual disclosure requirements closely track the disclosure requirements regarding sex offenders' real identities and physical whereabouts: they seek the information necessary to aid law enforcement agencies in their investigations of recidivist sex crimes and to alert the public to the presence of sex offenders in the community. Therefore, they are narrowly tailored to the substantial governmental interest in protecting the public from recidivist sex offenders.

a. The requirement that sex offenders disclose "all e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities that the sex offender uses or plans to use" is narrowly tailored to collect the information required to identify sex offenders in their virtual interactions with the public.

Although it is not clear that the circuit court intended to strike down the requirement that sex offenders disclose their "e-mail addresses, instant messaging identities, chat room

identities, and all other Internet communication identities" — the court made no mention of those particular disclosures in its order, *see* C115-17, and defendant was not charged with violating them, *see* supra § II — the court nonetheless held that requirement to be unconstitutionally overbroad, *see* C116. But that requirement is narrowly tailored to the purpose of aiding law enforcement investigations of recidivist sex crimes and alerting the public to the risk of recidivism posed by sex offenders in the community because it is directed at collecting sex offenders' virtual identities. *See supra* § III.A.1. Just as the sex offender's name, current photograph, and telephone number serve to identity the offender to law enforcement and the community in the physical world, the sex offender's e-mail addresses, instant messaging identities, chat room identities, and other Internet communication identities serve to identify him in the virtual world. Without compiling a list of the aliases under which sex offenders interact with the public online, law enforcement would be less able to effectively investigate sexual offenses committed online, and the public would be less able to avoid interacting with sex offenders. Because disclosure of sex offenders' virtual identities is necessary to effect the purpose of the sex offender registry, the disclosure requirement directed at that information is narrowly tailored the statute's purpose.

b. The requirements that sex offenders disclose "all Uniform Resource Locators (URLs) registered or used by the sex offender" and "all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information" are narrowly tailored to collect information identifying the virtual community within which the public is likely to encounter sex offenders.

The requirements that sex offenders disclose "all Uniform Resource Locators (URLs) registered or used by the sex offender" and "all blogs and other Internet sites maintained by

the sex offender" — requirements that were not properly before the circuit court, *see supra* § II — serves to identify the websites owned or operated by sex offenders. *See supra* § III.A.2. These are the virtual locations where the public is sure to encounter a sex offender. Without knowing what virtual locations are owned and operated by sex offenders, the public cannot make informed decisions as to whether they wish to visit those virtual locations, just as they cannot make informed decisions about where to live or shop if they wish to avoid sex offenders without knowing the locations of those offenders' homes and places of business. *See Cornelius*, 213 Ill. 2d at 201 (out-of-state family with young children seeking to relocate to Illinois might use State Police website to locate residences of sex offenders and plan their move accordingly) Accordingly, these disclosures are narrowly tailored to the governmental interest in protecting the public.

Although identifying those websites actually owned and operated by sex offenders informs the public as to where they are *sure* to encounter sex offenders, it is insufficient to adequately inform the public as to the perimeter of the online community within which they are *likely* to encounter sex offenders. Information about a sex offender's real-world residence and place of employment not only serves to identify the two specific locations where the public is *sure* to encounter a sex offender, it also serves to identify the broader geographic community in which the public is likely to encounter that offender; after all, the vast majority of people spend the vast majority of their time within a reasonable distance from their home or workplace. *See People v. Kayer*, 2013 IL App (4th) 120028, ¶ 17 (disclosure of change of employment "serves to alert those near the new place of employment that a sex offender is now employed in the neighborhood"). And if a sex offender ranges far

enough from home to compromise the ability of his address to identify his community to the public, he must register in that new community, alerting law enforcement and the public to his temporary presence there. *See* 730 ILCS 150/3(a) (providing that sex offender "who is temporarily absent from his or her current address of registration for 3 or more days shall notify the law enforcement agency having jurisdiction of his or her current registration, including itinerary for travel"). But a sex offender's virtual presence is not similarly limited by the locations of his personal website and business website. The public cannot infer the perimeter of the sex offender's virtual community from those two points as it can the perimeter of his physical community from his home and work addresses because Internet sites do not share physical relationships to one another; travel from one site to another is unconstrained by time or distance. Accordingly, the only way for the public to identify the virtual communities within which it should expect to encounter a sex offender is to define those communities narrowly as each website that the offender uses to interact with the public. To the extent a sex offender's virtual whereabouts require more comprehensive disclosures than the offender's physical whereabouts, the difference in scope is dictated by the fundamental difference between physical and virtual geography.

The last requirement — that a sex offender disclose "all blogs and Internet sites . . . to which the sex offender has uploaded any content or posted any messages or information" — is the only requirement that was properly before the circuit court, *see supra* § II, and collects the information necessary to inform the public as to where they are likely to encounter sex offenders, and thus, where they should be on their guard. A list of the "blogs and Internet sites . . . to which the sex offender has uploaded any content" identifies the locations on the

Internet to which the sex offender has transferred expressive material from his computer, and thus locations where he has interacted with the community. Should the public wish to avoid such interactions, these disclosures empower it to make the informed decision to do so. Similarly, the requirement that sex offenders disclose "blogs and Internet sites . . . to which the sex offender has . . . posted any messages or information" provides the information the public needs to make an informed decision to avoid those virtual locations where sex offenders are known to have interacted in manners other than the transfer of files from their computers. Accordingly, these disclosure requirements are narrowly tailored to the substantial governmental interest in protecting the public by alerting it to the presence of sex offenders in their community. *See People v. Malchow*, 193 Ill. 2d 413, 420 (2000) (explaining that Sex Offender and Child Murderer Community Notification Law "is carefully tailored so that the information is disseminated in such a way as to protect the public" where it makes registration information available "to anyone likely to encounter a sex offender").

The circuit court's concern that these virtual location disclosure requirements require disclosure of Internet sites that a sex offender uses to interact with the public "regardless of whether the speech [made on those sites] is in any way related to the legitimate purpose of the statute," C116, rests on a misapprehension of the purpose of the sex offender registry. As discussed, *see supra* §§ III.B.2, III.B.3, the purpose of the registry is to aid law enforcement's investigations of recidivist sex crimes and to alert the public to the presence of sex offenders in the community, neither of which can be effected without collecting information regarding the physical and virtual locations in which the public will encounter sex offenders. Any place the public may encounter a sex offender is "related to the

legitimate purpose of the statute" because those are the places that are relevant to law enforcement investigations of recidivist sex crimes and those are the places where the public must be on its guard against sex offenders. In addition to running afoul of the First Amendment's prohibition against content-based regulations, any attempt to more narrowly tailor the disclosures of sex offenders' whereabouts to exclude virtual communities relating to "innocent" subjects would defeat the statute's purpose. An elementary school during school hours is an exceedingly unlikely place for a sex offender to commit an offense against a child — after all, schools provide very few opportunities for an adult who is not affiliated with the school to interact with a child outside of the supervision of a school employee — yet there is no question that barring sex offenders from school zones is related to the legitimate governmental interest in protecting children. *See People v. Stork*, 305 Ill. App. 3d 714, 722 (2d Dist. 1999) ("[I]t is apparent that prohibiting known child sex offenders from having access to children in schools, where they are present in large numbers, bears a reasonable relationship to protecting school children from such known child sex offenders."). Innocuous interactions with a child in an innocuous environment are generally a necessary first step toward more harmful interactions elsewhere after the child's trust has been gained. A police investigation of a child abduction begins at the often innocuous place where the child was last seen. If those places are in close proximity to a registered sex offender's home or workplace, or if the sex offender's license plate was seen in the area, that information aids investigations into whether the abduction may have been a crime of recidivism.

The information required for the public to protect itself is equally broad. A sex offender employed on the production line at a meat packing plant is unlikely to abduct a child while at work, yet there is no question that the community surrounding the factory has a legitimate right to know that a sex offender works at that location; it alerts them to his presence in their community. *See*, *e.g.*, *Kayer*, 2013 IL App (4th) 120028, ¶ 17 (disclosure of change of employment "serves to alert those near the new place of employment that a sex offender is now employed in the neighborhood"). For the same reason, no website used by a sex offender to interact with the public is "unrelated" to the purpose of the disclosure requirements. If, while investigating a missing child, police discover that shortly before her disappearance she had a conversation on www.InnocuousCubsWebsite.com with "Harmless_Cubs_Fan_1980" who invited her to meet him at a local park to see his baseball card collection, it is invaluable for investigators to be able to search known sex offenders' Internet communication identities and the Internet sites to which they are known to have posted messages to determine whether "Harmless_Cubs_Fan_1980" is a sex offender known to have posted messages to www.InnocuousCubsWebsite.com, notwithstanding the fact that baseball websites are not generally perceived as hotbeds of sexual criminality. And the interest in alerting the public to the presence of sex offenders in the community is not lessened in communities organized around a shared interest like baseball. After all, the hypothetical missing child might still be home had she known that the seemingly-harmless, apparently baseball-related invitation was extended by a sex offender.

Doe v. Nebraska, 898 F. Supp. 2d 1086 (D. Neb. 2012), the federal case relied upon by the circuit court, *see* C116, similarly misapprehended the purpose of disclosure

requirements. In striking down similar requirements, the federal district court concluded that Nebraska could not constitutionally compel sex offenders to disclose "all blogs and Internet sites maintained by the [them] or to which [they] ha[ve] uploaded any content or posted any messages or information" because "[b]logs are by their nature open to the public and pose no threat to children" and "[a] site publicly available on the Internet poses no threat to children" because "every police officer in the world can see it." *Id.* at 1121. Setting aside the district court's unsupported and incorrect assumption that all blogs and Internet sites are necessarily open to the general public, the greater error was its assumption that no criminal would commit a crime in public, an assumption belied by the inexhaustible supply of such cases. *See*, *e.g.*, *United States v. Price*, 711 F.3d 455, 457 (4th Cir. 2013) (defendant posted images of child pornography on website and posted request for child pornography on blog); *People v. Johnson*, 376 Ill. App. 3d 175, 177 (1st Dist. 2007) (defendant solicited police officer posing as fourteen-year-old girl in chat room); *People v. Quintana*, 332 Ill. App. 3d 96, 98 (1st Dist. 2002) (defendant kidnapped victim by grabbing her off public street); *United States v. Allen*, 605 F.3d 461, 463 (7th Cir. 2010) (undercover FBI agent "logged into a chatroom and observed an advertisement for a file server, operated by someone calling himself 'kidbot,' that allowed people to trade child pornography with kidbot"). Moreover, even if a sex offender's crime is not public, important circumstantial evidence of the crime often will be; an offender's car may have been seen near the location where a missing child was last seen, or the child's lunch box may lie in plain view in the alley behind the offender's house. Or, returning to the hypothetical missing Cubs fan, a sex offender's invitation to meet at a park, made under the name "Harmless_Cubs_Fan_1980," might be visible in the

comment section of an article on www.InnocuousCubsWebsite.com, visited by the child shortly before her disappearance. In short, the government interest in investigating recidivist sex crimes and alerting the public to the risk of recidivism posed by sex offenders in the community extends to anywhere the public is likely to encounter a sex offender.[4] Thus, disclosure requirements that identify those locations, without requiring that sex offenders indicate with whom they interacted at those locations or how, are sufficiently narrowly tailored.

IV. The Disclosure Requirements of 730 ILCS 150/3(a) Are Constitutional as Applied to Defendant's Failure to Disclose a Facebook Page to Which he Uploaded a Photograph.

Defendant did not raise an as-applied challenge to Section 3(a), *see* C28-29, C44-48, and the circuit court's sua sponte finding that Section 3(a) is unconstitutional as applied to defendant's conduct was therefore premature because there was no hearing to establish what that conduct was.[5] *See Mosley*, 2015 IL 115872, ¶ 47 ("A court is not capable of making an

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[4] Other federal cases finding sex offender registration requirements overbroad under the First Amendment similarly fail to recognize that one of the purposes of disclosure requirements is to alert the public to the risk posed by sex offenders in the community, thereby allowing the public to make an informed decision regarding whether to subject themselves to that risk. *Doe v. Harris*, 772 F.3d 563, 577 (9th Cir. 2013) (identifying purpose of California registration requirement that sex offenders disclose their "Internet identifiers" and Internet service providers as "'allow[ing] law enforcement to track and prevent online sex offenses and human trafficking'") (quoting Proposition 35, Californians Against Sexual Exploitation Act, § 3(3)); *White v. Baker*, 696 F. Supp. 2d 1289, 1308 (N.D. Ga. 2010) (identifying purpose of Georgia registration requirement that sex offenders disclose their E-mail addresses, usernames, and user passwords as "protecting against internet abuse of children").

[5] Had defendant raised an as-applied challenge in addition to his overbreadth challenge, the circuit court's overbreadth ruling itself would have been premature. Overbreadth is a "departure from the traditional rules of standing," *Broadrick*, 413 U.S. at 613, to enable parties who themselves are unharmed by a statute's defect challenge a statute

'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact.'") (quoting *In re Parentage of John M.*, 212 Ill. 2d 253, 268 (2004); *Vuagniaux v. Dep't of Prof'l Regulation*, 208 Ill. 2d 173, 191 (2003) (explaining that without developed factual record there was no basis to evaluate plaintiff's as-applied First Amendment challenge). But should the evidence at trial have proven the conduct alleged in the indictment — that defendant failed to disclose a Facebook page to which he had uploaded content, C10 — Section 3(a) would be constitutional under the First Amendment as applied to that conduct.

As demonstrated above, the requirement that defendant disclose the Internet sites to which he has uploaded content is narrowly tailored to the governmental interest in aiding law enforcement investigations of recidivist sex crimes and alerting the public to the risk of recidivism posed by sex offenders in the community. *See supra* Section III.B.3.b. Defendant's Facebook page is a perfect example of a location where a sex offender interacts with the public and thus where the public should be on its guard. Social media sites like Facebook frequently provide evidence of crime. *See Sublet v. State*, 113 A.3d 695, 711-12 (Md. 2015) (collecting cases). And Facebook in particular has been used to commit sex crimes. *See*, *e.g.*, *United States v. Reichling*, 781 F.3d 883, 885 (7th Cir. 2015) (defendant, posing as fourteen-year-old, solicited and received hundreds of naked photographs of

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that violates the First Amendment rights of others not before the court, *id.* at 610. But a finding of overbreadth is unnecessary when the challenged statute is unconstitutional as-applied, and thus courts should decide as-applied challenges first, to avoid "convert[ing] use of the overbreadth doctrine from a necessary means of vindicating plaintiff's own right not to be bound by a statute that is unconstitutional into a means of mounting gratuitous wholesale attacks upon state and federal laws." *Bd. of Tr. of State Univ. of New York v. Fox*, 492 U.S. 469, 484-85 (1989).

fourteen-year-old victim, threatening to disseminate them if she stopped); *United States v. Anderson*, 759 F.3d 891, 893 (8th Cir. 2014) (defendant sent sexually explicit messages and images to eleven-year-old victim over Facebook)*; State v. Esarey*, 67 A.3d 1001, 1003-04 (Conn. 2013) (defendant youth minister engaged in sexually explicit messaging conversations and exchanged nude photographs with fifteen-year-old victim over Facebook). In fact, not only have sex offenders used Facebook to commit their crimes, they used it to commit those crimes in the same way that defendant used it — by uploading a photograph. *See*, *e.g.*, *United States v. Smasal*, No. CRIM. 15-85 JRT/BRT, 2015 WL 4622246, at *9 (Dist. Minn. June 19, 2015) (defendant uploaded images of child pornography to Facebook account). Accordingly, assuming the truth of the charged conduct, Section 3(a)'s disclosure requirements are constitutional as applied to defendant.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the circuit court.

February 1, 2016

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is thirty-two.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

The undersigned certifies that on February 1, 2016, the **Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois using the Court's electronic filing system, and three copies were served upon the following, by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, in an envelope bearing sufficient first-class postage:

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Additionally, upon the brief's acceptance by the Court's electronic filing system, the undersigned will mail the original and twelve copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

APPENDIX

***** Electronically Filed *****

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02/01/2016

Supreme Court Clerk

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Table of Contents of the Record on Appeal

A. Common Law Record

B. Report of Proceedings

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

THE PEOPLE OF THE STATE OF ILLINOIS,

VS. CASE NO. 14 CF 1076

MARK MINNIS,
DEFENDANT.

ORDER

THIS CAUSE having come on for hearing on defendant's Motion To Dismiss, filed 14 May 2015, the court having heard the arguments of counsel and now being fully advised, DOES HEREBY FIND AND ORDER:

1. That the court has jurisdiction of the parties and subject matter;

2. That the motion seeks dismissal of the indictment based upon the defendant's argument that the statute under which he has been indicted is unconstitutionally vague and/or overbroad;

3. That the court first finds that the statute as applied to defendant's alleged conduct herein is not unconstitutionally vague. In order to invalidate a statute as vague, the statute must be impermissibly vague in all of its applications, (People v. Law, 202 Ill.2d 578 (2002). If the conduct alleged to have been committed by the relevant defendant is clearly proscribed by the statute challenged, then that defendant cannot complain that the statute is vague as it may be applied to some other person's conduct, (Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)). Here, the indictment alleges, in relevant part, that the defendant "...did not register an internet site, a Facebook page, which he had uploaded content to." The challenged statute, 730 ILCS 150/3, states, in relevant part, that a person required to register as a sex offender must provide accurate information, to include all "...Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information." A reasonable person can understand this to mean that if the sex offender has uploaded content or posted messages or information to an Internet site then the sex offender must report this Internet site. That is precisely what the indictment alleges the defendant herein failed to do. The statute is therefore not facially vague;

4. That the court finds that the statute is unconstitutionally overbroad under the First Amendment. To succeed on an over breadth challenge the defendant must demonstrate that the statute, despite serving a legitimate State interest, prohibits constitutionally protected speech and is not sufficiently narrowly tailored to serve that legitimate purpose, (Ward v. Rock

Against Racism, 491 U.S. 781 (1989)). In the instant case, defendant concedes that the challenged portion of the statute at issue serves a legitimate State interest, that being protecting the public, and in particular minors, from improper sexual comments and/or solicitation from convicted sex offenders on the internet. While not bound by a decision of a federal district court, the court finds the reasoning of the court in Doe v. Nebraska, 898 F.Supp.2d 1086, (D.Nebraska 2012) to be persuasive and sound. That case addressed a Nebraska statute with language very similar to that in the instant statute. 730 ILCS 150/3 requires, in relevant part, that a sex offender report "...*all* e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses *or plans to use*, *all* Uniform resource Locators (URLs) registered or used by the sex offender, *all* blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information," (emphasis added). By its terms, the statute has no limitations on the type of speech or communication which the offender is required to report and register, regardless of whether that speech is in any way related to the legitimate purpose of the statute. As noted in defendant's brief, the statute requires a sex offender to report things such as use of banking, restaurant or hotel reviews, or political sites to which the offender may have uploaded content, posted a comment or sent a message. As noted by the federal district court in Doe, this broad requirement "...clearly chills offenders from engaging in expressive activity that is otherwise perfectly proper, and the statute is therefore insufficiently narrow," (Doe v. Nebraska, 898 F.Supp.2d 1086 at 1120). The court therefore finds that the provisions of 730 ILCS 150/3 referenced above are plainly overbroad and facially unconstitutional under the First Amendment;

5. That in compliance with Supreme Court Rule 18, the court specifically finds:

(a) That this finding of unconstitutionality is being made in this written order;

(b) That the portion of 730 ILCS 150/3 that is being held unconstitutional is the language referred to above, found in subsection (a), as follows:

...all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information...;

c) (1) That the constitutional provision upon which the finding of unconstitutionality is based is the First Amendment of the United States Constitution;

(2) That the portion of the statute cited above is being found unconstitutional on its face and as applied;

(3) That the portion of the statute being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

(4) That the finding of unconstitutionality made herein is necessary to the judgment rendered in this order, and that such judgment cannot rest upon an alternative ground;

(5) That the notice required by Rule 19 has been served, and that those served with such notice were given adequate time and opportunity under the circumstances to defend the statute challenged, and in fact did appear and argue the against the motion;

WHEREFORE, the Motion to Dismiss the indictment is allowed.

DATE: 7 JULY 2015

CIRCUIT JUDGE