Nos. 127464, 127487 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

MARTIN KOPF, Plaintiff-Appellee, v. BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, and JOE McMAHON, in his official capacity as Kane County State's Attorney, Defendants-Appellants, and HAMPSHIRE POLICE DEPARTMENT, Defendants.	)	On Direct Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois No. 19-CH-000883 The Honorable, KEVIN T. BUSCH, Judge Presiding.

COMBINED APPELLANTS' REPLY BRIEF AND CROSS-APPELLEES' RESPONSE BRIEF OF STATE DEFENDANTS-APPELLANTS

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ARGUMENT ON APPEAL

The circuit court erred as a matter of law when it determined that section 11-9.3(b-10) of the Illinois Criminal Code, which prohibits a child sex offender from residing within 500 feet of a home day care, *see* 720 ILCS 5/11-9.3(b-10) (2020) ("residency restriction") was unconstitutional, and entered a permanent injunction that prohibited defendants from refusing to allow Plaintiff-Appellee Martin Kopf to use his home address when registering as a sex offender, or from taking any action to force plaintiff to move from his house, based solely on the house's proximity to a home day care. The circuit court further erred when, on remand from this Court to allow it to enter an order that complied with Ill. Sup. Ct. R. 18, it held that the residency restriction was facially unconstitutional.

Plaintiff must register as a sex offender under Illinois Sex Offender Registration Act, 730 ILCS 150/7 (2020) ("SORA"), after pleading guilty to aggravated criminal sexual abuse in 2003 arising from an incident involving a minor. C309, C381; A12, 84.[1] Plaintiff's second amended complaint, which is the operative complaint here, challenged SORA, the residency restriction, the

[1] The common law record, filed in this Court on September 21, 2021, is cited as "C__." The report of proceedings, also filed on September 21, 2021, is cited as "R__." The supplemental record filed on February 17, 2022, is cited as "Sup C___," the supplemental record filed on March 1, 2022, is cited as "Sup3 C___," and supplemental report of proceedings, filed on February 25, 2022, is cited as "Sup 2 R ____." State Defendants-Appellants' Opening Brief is cited as "AT Br.___" and State Defendants-Appellants' Appendix is cited as "A__." Plaintiff-Appellee/Cross-Appellant's Opening Brief and Response Brief is cited as "AE Br. __."

Sex Offender Community Notification Law, 730 ILCS 152/101, *et seq*. (2020) ("notification law "), and section 5-5-3(*o*) of the Criminal Code, which requires individuals convicted of sex offenses to annually renew their driver's licenses, 730 ILCS 5/5-5-3(*o*) (2020) (collectively, "statutory scheme"). C307-08; A11-12.

Plaintiff raised several claims, including (1) a negligence claim against the Illinois State Police Director and the Hampshire Police Department, and against all defendants: (2) an equal protection claim under the United States and Illinois Constitutions, (3) a claim that SORA's registration requirements and the residency restriction were void for vagueness, (4) a claim that SORA created an unconstitutional rebuttable presumption that plaintiff was likely to commit further criminal sexual acts, (5) procedural and substantive due process claims under the United States Constitution, (6) a claim that the residency restriction violated the *ex post facto* clause of the United States and Illinois Constitutions, (7) an as-applied claim under the Eighth Amendment to the United States Constitution, and (8) a claim that the residency restriction violated the proportionate penalties clause of the Illinois Constitution. C318-75; A21-78.

The circuit court granted in part defendants' motions to dismiss, dismissing plaintiff's negligence, *ex post facto*, procedural due process, proportional penalties, Eighth Amendment, and void for vagueness claims. C590-91; A187-88. But it determined that "the SORA provisions at issue

(specifically the definition of Day Care Home and its impact) violate both the equal protection clause as well as substantive due process," concluding that "as applied to the plaintiff," the residency restriction was not rationally related to the State's interest in protecting children from sex offenders. C591; A188.[2] The next day, the circuit court entered an order clarifying that its order had disposed of all claims and was a final and appealable order. C 595; A189.

Defendants appealed directly to this court, C608, 621; A193, 195, and plaintiff filed a cross-appeal from the portions of the circuit court's order dismissing his claims. Thereafter, defendants moved this Court to vacate the circuit court's orders and remand for further proceedings because those orders failed to comply with Ill. Sup. Ct. R. 18, and because there was no evidence in the record to support the finding that the statutory provisions were unconstitutional as applied to plaintiff. This Court granted the motion in part, remanding the case "for the limited purpose of making and recording findings in compliance with Supreme Court Rule 18." Sup3 C12. On remand, the circuit court clarified that its ruling was "primarily facial because the defect is in the statutory scheme itself," Sup2 R19, and it found the residency

[2] Although the circuit court described "the SORA provisions at issue" as including "the definition of Day Care Home and its impact," the residency restriction appears not in SORA but in the Criminal Code, *see* 720 ILCS 5/11-9.3(b-10) (2020).

restriction was unconstitutional, Sup C 4; A201. It added that "[t]o some extent . . . the decision was also as applied to Mr. Kopf." SupC 5-6; A202-03.

The circuit court erred as a matter of law in holding that the residency restriction was facially unconstitutional. Under rational basis review, the residency restriction is reasonably related to the legitimate — and compelling — state interest of protecting children. It is reasonably conceivable that preventing child sex offenders from residing within 500 feet of a home day care would protect some children. Plaintiff misapplies this test by arguing that the residency restriction is irrational because he may still live next to children, so long as they are not in a home day care. But to survive rational basis review, the residency restriction need not protect *all* children from *any* possible harm. It is sufficient that it protects some children from harm — and here, the General Assembly reasonably chose to create a buffer between the residences of child sex offenders and home day cares, places guaranteed to contain concentrated groups of children.

Further, to the extent the circuit court meant to find that the residency restriction was unconstitutional as applied to plaintiff, the circuit court's orders must be vacated because there is no evidence in the record upon which the court could so decide. But despite this lack of evidence, the circuit court nevertheless determined that the residency restriction was unconstitutional as applied to plaintiff. C591; A188, 202-03; Sup C 5-6. This was error, and the circuit court's orders should be reversed by this Court. *People v. Bingham*,

2018 IL 122008, ¶ 22 (as-applied challenge "is not properly brought when there has been no evidentiary hearing and no findings of fact"); *People v. Minnis*, 2016 IL 119563, ¶ 19 (refusing to consider as-applied challenge where no evidentiary hearing was held).

I. The circuit court erred in holding that the residency restriction is facially unconstitutional.

As argued, AT Br. 29-35, the residency restriction survives rational basis review because the State has a legitimate interest in protecting children, *In re R.C.*, 195 Ill. 2d 291, 305 (2001), and it is reasonable to conclude that prohibiting child sex offenders from living within 500 feet of a home day care will protect at least some children. *See People v. Leroy*, Ill. App. 3d 530, 535 (5th Dist. 2005) ("it is reasonable to believe that a law that prohibits child sex offenders from living within 500 feet of a school will reduce the amount of incidental contact child sex offenders have with the children attending that school" and thus will reduce the opportunity for child sex offenders to commit offenses against children).

In support of the circuit court's conclusion that the residency restriction is facially unconstitutional, plaintiff notes that the circuit court found that the restriction produces "absurd results," and that "there are estimated to be over 50 children" living within 500 feet of plaintiff's house. AE Br. 74. He continues that the residency restriction does not survive rational basis review because it is legal for him to live next to a home where four children in the same family live, but would be illegal for him to live next to a home where one

child lives and the home "takes in three children from three separate households." *Id*. at 75. But as explained, AT Br. 30, the rational basis test does not require that a challenged statute achieve a legitimate state interest in every application. Instead, the statute will be upheld if there is "*any* conceivable set of facts to show a rational basis for the statute." *People v. Johnson*, 225 Ill. 2d 573, 584-85 (2007) (emphasis added); *Williamson v. Lee Optical of Oklahoma*, 438 U.S. 483, 489 (1955) (legislature may address a problem "one step at a time"). Because it is conceivable that the residency restriction could protect some children, even if not all children, it satisfies the rational basis test. *See Chi. Nat. League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 367 (1985) ("[a]n entire remedial scheme will not be invalidated simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked").

Plaintiff also cites studies regarding recidivism rates for sex offenders to argue that "residency restrictions place communities in more danger." AE Br. 79. But under the rational basis test, courts "will not question the wisdom" of General Assembly's choice in enacting legislation, as "a statute need not be the best method of accomplishing a legislative goal; it must simply be reasonable." *Johnson*, 225 Ill. 2d at 592; *see also People v. Howard*, 228 Ill.2d 428, 438 (2008) ("criticisms against the wisdom, policy, or practicability of a law are subjects for legislative consideration and not for the courts"); *Vasquez v. Foxx*, 895 F.3d 515, 525 (7th Cir. 2018) (court's role "is not to second-guess the

legislative policy judgment by parsing the latest academic studies on sex-offender recidivism") (overruled in part on other grounds by *Koch v. Vill. of Hartland*, 43 F.4th 747 (7th Cir. 2022)).

As to plaintiff's equal protection claim specifically, he argues that the residency restriction does not survive rational basis review because it allows some child sex offenders to remain in their homes, depending on when they purchased them. *See* AE Br. 76. But under rational basis review, there need only be a "reasonable relationship between [the governmental] interest and the means the legislature has chosen to pursue it." *People v. Johnson*, 225 Ill. 2d 573, 584 (2007). That the General Assembly chose to respect the reliance and property interests of child sex offenders who purchased their homes before the residency restriction went into effect does not render the restriction irrational. Although the result is that not all children will be protected, some will be, and so the residency restriction passes the rational basis test. *See Johnson*, 225 Ill. 2d at 584-85; *People v. Adams,* 144 Ill. 2d 381, 391-92 (1991) (SORA does not violate equal protection where it applies to some, but not all, individuals who are convicted of sex crimes); *see also Caulkins v. Pritzker*, 2023 IL 129453, ¶¶ 70-71 (rejecting equal protection claim brought by plaintiffs who did not own prohibited firearms before challenged law went into effect because they were not similarly situated to individuals who did own such firearms and thus had "a reliance interest" in previously purchased firearms).

Because individuals who purchased their homes after the residency restriction was enacted, like plaintiff, are not similarly situated to individuals who purchased their homes before the restriction was enacted, plaintiff's reliance on *Miller v. Carter*, 547 F.2d 1314 (7th Cir. 1977), *see* AE Br. 77, is misplaced. In *Miller*, the Seventh Circuit held that a city ordinance that prohibited people convicted of certain offenses from obtaining a public chauffeur's license violated equal protection because it treated similarly situated people differently. 547 F.3d at 1315. The court noted that the ordinance allowed people who already had such licenses to retain them if they were later convicted of the offenses. *Id*. at 1316. The result was that the plaintiff, who had been convicted of armed robbery 11 years prior, was "absolutely barred from obtaining a license," while "someone who already holds a license may be permitted to retain it, although convicted of armed robbery only yesterday." *Id*. But, the Seventh Circuit explained, that "[a]n applicant for a license who has committed one of the described felonies and a licensee who has done the same are similarly situated, and no justification exists for automatically disqualifying one and not the other." *Id*. at 1316. Here, by contrast, a sex offender who purchased a house before the residency requirement was enacted and one who purchased a house after that date are not similarly situated: the former would have purchased his home in reliance on the previously existing law but the latter would not. *See Caulkins*, 2023 IL 129453, ¶¶ 70-71. Thus, under rational basis review, the General Assembly

could decide to treat these two categories of individuals differently, and plaintiff's reliance on *Miller* fails.

Alternately, plaintiff argues that the circuit court should have treated him as a member of a "protected class," and thus applied strict scrutiny rather than rational basis review to his equal protection claim, because the Illinois Human Rights Act prohibits discrimination against individuals with conviction records. AE Br. 24. He is incorrect. That Act prohibits discrimination by an employer against an individual based on their conviction record. *See* 775 ILCS 5/2-103.1 (2020). But whether an individual is a member of a protected class for the purpose of an equal protection challenge is a distinct question. *See People v. Alcozer*, 241 Ill. 2d 248, 262-63 (2011) (prisoners are not a suspect class for purposes of equal protection claim); *People v. Donoho*, 204 Ill. 2d 159, 177 (2003) ("Sexual offense defendants are not a suspect class.").

Plaintiff also argues that his claims receive "heightened scrutiny" because the residency restriction (along with the other provisions he challenges) implicates several fundamental rights. AE Br. 11. He again is incorrect.

First, plaintiff argues that the statutory scheme violates his fundamental right to raise his children, providing examples of ways in which he or his family, are affected, such as his asserted inability to attend his childrens' graduation ceremonies and extra-curricular activities, and his son's purported inability to attend pre-school. *See* AE Br. 16-17. Relatedly, he cites

the Marriage and Dissolution of Marriage Act, 750 ILCS 5/101, *et seq*. (2020), which provides that a parent's status as a former sex offender should be considered when allocating parenting time. *Id*. But these arguments were not presented to the circuit court, *see* C334 (alleging only that residency restriction interferes with the "right to parent one's children"), and so they are forfeited, *Lazenby v. Mark's Const., Inc*., 236 Ill.2d 83, 92 (2010) (argument not raised in circuit court forfeited on appeal).

In any event, the fundamental right to raise one's children includes "the right of parents to make decisions concerning the care, custody, and control of their children without unwarranted state intrusion," including "decisions about a child's education, religion, and general upbringing." *Wickham v. Byrne*, 199 Ill. 2d 309, 316-17 (2002). As explained, *see* AT Br. 25-28, the residency restriction, which only governs where plaintiff may reside, does not implicate any of those decisions. Nor do the other statutory provisions plaintiff challenges. And aside from asking this Court to "revisit" its decision in *People v. Legoo*, 2020 IL 124965, plaintiff does not engage with state defendants' argument on this point. *See* AE Br. 17-18. *Legoo*, however, involved a challenge to section 11-9.4-1(b) of the Criminal Code, which prohibited child sex offenders from being in a public park. 2020 IL 124965, ¶¶ 1-3. This Court rejected that challenge, noting that there was "no fundamental right for any person to be present in a public park," *id*. at ¶ 32, and concluding that "the facts here simply do not establish that section 11-9.4-

1(b), as written, interfered with defendant's fundamental liberty interest in raising and caring for his child," *id*. at ¶ 35. That decision correctly determined that because being present at a park does not implicate a parent's ability to make decisions involving "the care, custody, and control of their children," *Wickman*, 199 Ill. 2d at 316-17, the restriction did not infringe on a fundamental liberty interest, *Legoo*, 2020 IL 124965, ¶¶ 31-32. Moreover, plaintiff did not allege that he was charged with violating section 11-9.4-1(b), *see* C308-75; A11-78, and thus, the facts of this case do not provide a basis to reconsider *Legoo*. As a result, plaintiff has not "specially justified," *People v. Colon*, 225 Ill. 2d 125, 146 (2007), overruling a decision issued by this Court three years ago.

Second, in the circuit court, plaintiff alleged that the residency restriction violated his right to intrastate travel, C334, but he does not respond to state defendants' argument that the restriction does not impact this right, *see* AT Br. 27-28. Instead, plaintiff makes another new argument on appeal, claiming that SORA's requirement that he advise law enforcement of travel plans restricts his right to travel more broadly, *see* AE Br. 31, and possibly implicates the Fourth Amendment, *see id*. Having not presented these arguments in the circuit court, they too are forfeited. *See Lazenby*, 236 Ill. 2d at 92.

And in any event, such a claim would fail because a law implicates the right to travel when it "actually deters such travel, when impeding travel is its

primary objective, or when it uses any classification which serves to penalize the exercise of that right." *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986). Plaintiff proposes three hypothetical scenarios in which his right to travel may be impacted by SORA's requirement that he inform law enforcement before he travels, *see* AE Br. 31, but those hypotheticals do not show that the requirement *actually* deterred him from travelling, that impeding travel is the primary objective of the requirement, or that the requirement uses a classification to penalize that right. Instead of impeding or penalizing travel, SORA's notification requirement allows law enforcement to "monitor the movement" of child sex offenders "by allowing ready access to crucial information." *Adams*, 144 Ill. 2d at 388.

Third, plaintiff asserts in passing that he "will forever have limited property rights" and that his "property rights are less than that of others." AE Br. 48-49. But again, he does not respond to state defendants' argument that whatever property interest he had in the land that he purchased in 2017 and the house that he built in 2018 was limited by the residency restriction, which was enacted nine years earlier. AT Br. 27 (citing *Vasquez*, 895 F.3d at 524 (because residency restriction was "on the books" when home was purchased, it was "necessarily part of any property-rights expectations" plaintiff could have held), overruled in part on other grounds by *Koch*, 43 F.4th 747).; *see also Caulkins*, 2023 IL 129453, ¶¶ 70-71 ("grandfathered

individuals have a reliance interest based on their acquisition before the restrictions took effect").

Fourth and finally, plaintiff argues for the first time on appeal that the restrictions impacts fundamental right to practice his religion, AE Br. 11-16, and to privacy, *id*. at 19-23, and interferes with his "fundamental reputation right," *id*. at 27-30, and a right to be free from harassment and physical attacks, *id*. 32-34. But he did not present these arguments in the circuit court, either, *see* C307-75, 555; A10-79, so he has forfeited them on appeal, *see Lazenby*, 236 Ill. 2d at 92. In any event, this Court has already determined that the challenged provisions requiring plaintiff to register as a sex offender do not violate his right to privacy, *see People v. Cornelius*, 213 Ill. 2d 178, 193-94 (2004), or implicate a fundamental reputational right, *id*. at 204 ("damage to an individual's reputation does not constitute a deprivation of the fundamental right to life, liberty, or property"). Plaintiff has not explained why the residency restriction, which merely prohibits him from residing in certain areas, requires a different result. And plaintiff's claim that the statutory scheme implicates his right to practice his religion (presumably under the First Amendment) also fails. The statutory text is neutral, applying to all individuals who have been convicted of sex offenses regardless of their religion, and plaintiff has presented no argument that "the object of [the statutes] is to infringe upon or restrict practices" because of any "religious motivation." *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 498 (2008).

In sum, the circuit court erred when it held that the residency restriction was facially unconstitutional under rational basis review. The residency restriction ensures that child sex offenders will not reside near a home day care, a space where young children congregate. Creating space between child sex offenders and children is rationally related to a legitimate state interest in protecting children. Further, plaintiff failed to show in the circuit court, or on appeal, that the residency restriction implicates a fundamental liberty or property interest or a suspect class. As a result, his request for heightened scrutiny fails.

II. The circuit court erred in holding the residency restriction was unconstitutional as-applied to plaintiff.

Although "facial and as-applied constitutional challenges are both intended to address constitutional infirmities, they are not interchangeable." *People v. Thompson*, 2015 IL 118151, ¶ 36. While the "specific facts related to the challenging party are irrelevant" in a facial challenge, *id*., this Court requires that the factual record be developed where a plaintiff brings an as-applied challenge, *Minnis*, 2016 IL 119563, ¶ 19; *Bingham*, 2018 IL 122008, ¶ 22. Because the circuit court suggested that the residency restriction is unconstitutional as-applied to plaintiff, C591; A188, without evidence in the record upon which it could make such a finding, to the extent that the circuit court held that the restriction is unconstitutional as applied to plaintiff, its decision should be reversed.

Plaintiff was aware of this Court's requirement that a record must be sufficiently developed with evidence for a circuit court to make factual findings in as-applied challenge since at least December 2021, when state defendants filed their motion to vacate, which explained this requirement. Even so, after this Court remanded this matter to the circuit court to allow it to make factual findings, Sup3 C12, plaintiff objected to the introduction of evidence into the record, Sup2 R9; A203. Thus, plaintiff invited any error that led to the record lacking evidence to support an as-applied challenge. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) ("party cannot complain of error which that party induced the court to make or to which that party consented").

For his part, plaintiff argues that "objected to an evidentiary hearing only as it pertained to the remand to comply with Supreme Court Rule 18." AE Br. 70. Plaintiff concedes, however, that he "did object to an evidentiary hearing and/or stipulated facts." *Id*. at 73. And even if, as plaintiff states, AE Br. 70, the circuit court decided that an evidentiary record was not required, plaintiff did not object, explain that he meant to bring an as-applied challenge, or otherwise seek to develop the record. Given that no evidentiary record exists here, and that plaintiff invited any error by objecting to the introduction of evidence into the record, he should not now be permitted to request the opportunity to introduce facts or request an evidentiary hearing. *See* AE Br. 51 (seeking "remand to the circuit court for further proceedings, including an evidentiary hearing").

ISSUES PRESENTED ON CROSS-APPEAL

1. Whether the circuit court properly dismissed plaintiff's procedural due process claim, where plaintiff identified no protected liberty or property interest warranting due process protections.

2. Alternatively, whether plaintiff's procedural due process claim would fail even if plaintiff could identify a protected liberty or property interest because he seeks procedures that would allow him to establish that he is not likely to reoffend, but that is not relevant to whether he is subject to the registration requirement or the residency restriction, as those statutes operate by virtue of plaintiff's conviction.

3. Whether the circuit court properly dismissed plaintiff's *ex post facto* claim, where neither the registration requirement nor the residency restriction impose punishment on plaintiff.

4. Whether plaintiff has forfeited any as-applied challenge on his procedural due process and *ex post facto* claims because he objected to the introduction of evidence in the circuit court, and in any event, there is no evidence in the record upon which a circuit court could make factual findings to support an as-applied challenge.

5. Whether plaintiff has forfeited any challenge to the circuit court's dismissal of his negligence, void for vagueness, proportional penalties, and Eighth Amendment claims by not raising any arguments about them in his brief.

ARGUMENT ON CROSS-APPEAL

The circuit court properly dismissed plaintiff's procedural due process and *ex post facto* claims. First, plaintiff's procedural due process claim fails because he identified no protected liberty or property interest that require due process protections. And even if plaintiff had identified such an interest, plaintiff is required to register as a sex offender and is precluded from residing within 500 feet of a home day care by virtue of his conviction. Allowing plaintiff a process to show he has a low likelihood of reoffending thus would address no question relevant to whether he is subject to the registration requirement and the residency restriction.

Second, the circuit court properly dismissed plaintiff's *ex post facto* challenge because this Court has repeatedly held that the registration requirement does not constitute punishment, and plaintiff identified no reason to revisit those decisions. And the residency restriction does not violate the *ex post facto* clause because it too does not constitute punishment. Even taking the factual allegations in the operative complaint as true, plaintiff failed to plead, or otherwise show, that the residency restriction was imposed to punish, rather than to protect children.

Further, plaintiff asserts throughout his brief that he intended to bring an as-applied challenge. But, as explained, *see supra* 14-15, in the circuit court, plaintiff presented no evidence to support his substantive due process and equal protection claims that would have allowed the circuit court to make factual findings in support of its conclusion that the residency restriction was

unconstitutional as applied to plaintiff. Presumably, that evidence would have also supported his claims that the registration requirement and residency restriction violated procedural due process and the *ex post facto* clause. As a result, even if this Court were to hold that plaintiff adequately alleged a procedural due process and *ex post facto* claim, it should decline to allow plaintiff to proceed on those claims where there is no evidence in the circuit court to support them.

Finally, plaintiff has forfeited any argument that the circuit court erred in dismissing his negligence, void for vagueness, proportionate penalties, and void for vagueness claims by not raising any argument about them in his opening brief.

I. This Court reviews *de novo* a circuit court's order granting a motion to dismiss.

A motion to dismiss under section 2-619.1 of the Code of Civil Procedure, 735 ILCS 5/2-619.1 (2020), "allows a party to combine into one pleading motions to dismiss under section 2-615 and section 2-619." *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶ 23.[3] "A motion to dismiss under section 2-615 challenges the legal sufficiency of the plaintiff's claim, while a motion to dismiss under section 2-619 admits the legal sufficiency of the claim but asserts defenses or defects outside the pleading to

[3] State defendants moved to dismiss under section 2-619.1 because they argued that plaintiff's negligence claim was subject to dismissal under section 2-619, as affirmatively barred by sovereign immunity, and that his remaining claims were subject to dismissal under section 2-615 for failure to state a claim. C518-35.

defeat the claim." *Id*. Under either section, the motion "admits as true all well-pleaded facts and all reasonable inferences from those facts," and the court "must construe the pleadings and supporting documents in the light most favorable to the nonmoving party." *Id*. at ¶ 24. This court reviews dismissal under either section *de novo*. *Id*.

II. The circuit court properly dismissed plaintiff's procedural due process claim.

The circuit court properly dismissed plaintiff's procedural due process claim. First, plaintiff failed to allege that he had a protected liberty or property interest that required due process protections. Second, even if plaintiff had a protected liberty or property interest, no process was due because he is subject to the residency restriction and registration requirement by virtue of his conviction, not based on his individual likelihood to reoffend. In any event, even if plaintiff could proceed on the procedural due process claim, he brought it as an as-applied challenge, he failed to offer evidence to support an as-applied challenge as to his substantive due process and equal protection claims, and there is no reason to think he could present such evidence as to his procedural due process claim.

A. Plaintiff failed to allege a protected property or liberty interest warranting due process protections.

A procedural due process claim "challenge[s] the constitutionality of the specific procedures used to deny a person's life, liberty, or property." *People ex rel. Birkett v. Konetski*, 223 Ill.2d 185, 201 (2009). The "starting point in any procedural due process analysis is a determination of whether one of those protectable interests is present, for if there is not, no process is due." *Hill v. Walker*, 241 Ill. 2d 479, 485 (2011) (cleaned up).

As explained, *see* AT Br. 25-28, the circuit court correctly determined, when addressing plaintiff's substantive due process claim, that he had identified no fundamental liberty or property interest. C591; A188; *see also In re A.C.*, 2016 IL App (1st) 153047, ¶ 63 ("SORA and the Notification Law do not implicate protected liberty or property interests") (collecting cases); *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶ 75 ("reject[ing] the notion that employment or residency restrictions on sex offenders violate their fundamental rights"). Because plaintiff identified no protected liberty or property interest, his procedural due process claim failed as a matter of law, and thus was properly dismissed. *See Hill*, 241 Ill. 2d at 485 ("Procedural due process protections are triggered only when a constitutionally protected liberty or property interest is at stake, to which a person has a legitimate claim of entitlement.").

B. The requirement that plaintiff register as a sex offender and the residency restriction were caused by his conviction, not by an individualized risk of reoffending.

Even if plaintiff had established that the registration requirement and residency restriction implicated a fundamental liberty or property interest, his procedural due process claim would still fail as a matter of law. He alleged that "deeming him a child sex offender and sexual predatory, without any notice, hearing, or individualized determination on any threat he may pose to society" violated his procedural due process rights. C370; A73. However, the Illinois Appellate Court, relying on precedent from the United States Supreme Court, has correctly rejected similar challenges, and this Court should do the same here.

In *People v. Avila-Briones*, 2015 IL App (1st) 13221, the defendant challenged the constitutionality of SORA, the notification law, the residency restriction, and section 5-5-3(*o*) of the Criminal Code. In support of his procedural due process claim, the defendant argued that "the missing procedure . . . is a mechanism by which the state should evaluate his risk of reoffending," as "such a procedure would ensure that the burdensome restrictions of these laws are only placed on those who actually pose a risk of committing additional sex crimes." *Id*. at ¶ 90. Relying on *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003), the appellate court properly rejected this argument. *Id*. at ¶¶ 91-92.

In *Doe*, the plaintiff had challenged Connecticut's sex offender registration statute, which required individuals convicted of sex offenses to register with the Connecticut Department of Public Safety, and charged the Department with publishing the registry on the internet for public access. 548 U.S. at 5-6. The plaintiff claimed that the law deprived him of a liberty interest without due process. *Id*. at 6. But the Supreme Court noted that what the plaintiff sought to prove (that he was not likely to reoffend or otherwise dangerous) was "of no consequence" under Connecticut's law because its "requirements turn on an offender's conviction alone — a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest." *Id*. at 7.

In *Avila-Briones*, the appellate court reasoned that "Illinois's [registration] system, like Connecticut's, is based entirely on the offense for which a sex offender has been convicted." 2015 IL App (1st) 132221, ¶ 92. As a result, "[a] sex offender's likelihood to reoffend is not relevant to that assessment," and so the defendant "had no right to a procedure where he could prove a fact that had no relevance to his registration." *Id*. Similarly here, the requirement that plaintiff register as a sex offender is based entirely on his conviction. *See* 730 ILCS 150/3 (2020). Thus, he is not entitled to a process to prove something that is legally irrelevant. The circuit court, accordingly, properly dismissed this claim.

The same holds true for plaintiff's challenge to the residency restriction. Plaintiff is prohibited from residing within 500 feet of a home daycare by virtue of his conviction. *See* 720 ILCS 5/11-9.3(b-10) (unlawful for child sex offender to reside within 500 feet of day care home); *id*. § 11-9.3(d)(1) (defining "child sex offender" as any person who has been "charged under Illinois law . . . with a sex offense" and is "*convicted* of such an offense") (emphasis added). Thus, a process to allow plaintiff to establish that he is not likely to reoffend would be irrelevant because he is restricted from residing within 500 feet of a home daycare merely based on the fact of his conviction.

Plaintiff spends much of his opening brief arguing that the statutory scheme creates an unconstitutional irrebuttable presumption that he is likely to reoffend. *See* AE Br. 1-11, 34-45. Plaintiff argues that his irrebuttable presumption arguments apply not only to his procedural due process claim, *id*. at 1, but also his substantive due process and equal protection claims, *id*. at 6-10. But as explained *supra* at 21-22, even if the statutes create an "irrebuttable presumption" that he is likely to reoffend, that assumption would not establish a fact that is relevant to whether plaintiff is subject to the statutes, which are triggered based on his conviction. As to plaintiff's substantive due process claim, plaintiff has not identified a fundamental right without the scope of substantive due process protections. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (describing fundamental rights and liberty interests as the rights to marry, have children, "direct the education

and upbringing of one's children," to marital privacy, to use contraception, and to bodily integrity, and explaining that courts are "reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended"). And as explained, AT Br. 25-28, *supra* at 9-13, plaintiff has not shown that the residency restriction or registration requirement implicates a fundamental liberty or property interest.

C. Alternately, this Court should decline to allow plaintiff to proceed on his procedural due process claim where he has raised an as-applied challenge but failed to introduce evidence in support of any of his claims in the circuit court.

Even if plaintiff properly alleged a procedural due process claim, this Court may affirm the circuit court's judgment because plaintiff has made clear that he is mounting an as-applied challenge. *See* AE Br. 1, 14, 52. But he failed to introduce evidence in the circuit court to support an as-applied equal protection or substantive due process claim. *See supra* 13-14. Given that the evidence plaintiff would present to establish a violation of his substantive due process and equal protection rights as applied to him would likely overlap with any evidence in support of his procedural due process claim, this Court should decline to allow plaintiff to proceed on this as-applied challenge where he presented no evidence in the circuit court, despite multiple chances to do so. *See supra* 13-14.

For his part, plaintiff points to *Avila-Briones*, noting that there, the circuit court found that the defendant could "point to no evidence in the record showing that he is unlikely to recidivate"; plaintiff argues that, in contrast, he "has proven that he doesn't possess any recidivist characteristics," AE Br. 7; *see also id.* (describing his "20+ year record proving that he has been rehabilitated with no felony, misdemeanor or probation violations"). But plaintiff proved no such thing. As noted, AT Br. 32-34; *supra* p. 13-14, plaintiff provided no sworn testimony or other evidence in the circuit court. Instead, he presented only his unverified allegations, *see* C306-75; A9-78, which are not evidence, *Browning v. Jackson Park Hosp.*, 163 Ill. App. 3d 543, 547 (1st Dist. 1987). Indeed, the circuit court acknowledged that it lacked specific facts related to plaintiff. *See supra* p. 13-14.

In addition, plaintiff advances several arguments regarding his claim that the statutory scheme violated his procedural due process rights because it purportedly creates an irrebuttable presumption that he will reoffend. AE Br. 1-2, 34-40, 66. But again, any arguments plaintiff makes regarding an irrebuttable presumption are nonstarters because he brought an as-applied challenge, AE Br. 2 (statutory scheme creates "unconstitutional irrebuttable presumption as-applied to plaintiff"), but then presented no evidence in the circuit court that would allow it to make the factual findings necessary to support an as-applied claim. *See supra* at 13-14.

For each of these three reasons, this Court should affirm the dismissal of plaintiff's procedural due process claim.

III. The circuit court correctly dismissed plaintiff's *ex post facto* challenge.

This Court should affirm the circuit court's dismissal of plaintiff's *ex post facto* challenge. Plaintiff identified no reason to depart from this Court's decisions holding that the registration requirement does not constitute punishment, or from the Seventh Circuit's decision holding that the residency restriction does not constitute punishment, for purposes of an *ex post facto* analysis.

The United States and Illinois Constitutions prohibit the passage of *ex post facto* laws, U.S. Const. art. I, §§ 9, 10; Ill. Const. art. I, § 16, and this Court interprets Illinois' *ex post facto* clause in lockstep with the federal constitution, *People v. Cornelius*, 213 Ill. 2d 178, 207 (2004); *see also People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 209 (2009) (Illinois *ex post facto* clause "does not provide greater protection than that offered under the United States Constitution"). A law is *ex post facto* if it "is both retroactive and disadvantageous to the defendant." *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). "A law disadvantages a defendant if it criminalizes an act that was innocent when done, increases the punishment for a previously committed offense, or alters the rules of evidence by making a conviction easier." *Id.*[4]

[4] The first and third factors are not implicated here, nor has plaintiff argued that they are. *See* AE Br. *generally*.

A. The registration requirement does not violate *ex post facto* principles.

This Court has held that the registration requirement does not constitute punishment, and thus does not violate the *ex post facto* clause of either the Illinois or federal constitution. *Malchow*, 193 Ill. 2d at 419-25; *see also In re J.W.*, 204 Ill. 2d 50, 73-76 (2003) (SORA and notification law not punishment as applied to juvenile classified as sexual predator); *Konetski*, 233 Ill. 2d at 210-11 (SORA not punishment with respect to minor whose length of registration increased after amendment to statute).

In *Cornelius*, 213 Ill. 2d at 209, the Court rejected an *ex post facto* challenge to an amendment to SORA and the notification law that allowed an individual's information to be disclosed to the wider public. In doing so, the Court considered the United States Supreme Court's decision in *Smith v. Doe*, 538 U.S. 84, 89 (2003), which concerned Alaska's sex offender registration and notification statutes. Alaska's statutes required individuals convicted of sex crimes to register for 15 years or life, depending on the offense. *Id*. at 90. To determine whether the statutes violated the United States Constitution's *ex post facto* clause, the Supreme Court considered whether the regulatory scheme:

> has been regarded in our history and traditions as punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose.

Smith, 538 U.S. at 97 (considering factors set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963)).

As to the first factor, the *Smith* Court determined that the registration and notification statutes did not resemble punishment because they concerned the "dissemination of accurate information about a criminal record, most of which is already public." *Id*. at 98. Next, it decided, the statutes imposed "no physical restraint, and so do[ ] not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." *Id*. at 100. The Court also concluded that the statutes were not akin to probation or supervised release because registrants were free to move, live, and work "with no supervision." *Id*. at 101. And the statutes were rationally related to a non-punitive purpose because they had a "legitimate nonpunitive purpose of public safety, which is advanced by alerting the public to the risk of sex offenders in their community." *Id*. at 102-03. As the Court explained, "Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism." *Id*. at 103. Furthermore, "[t]he legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class," and "[t]he *ex post facto* clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." *Id*. Finally, the Court found that the statutes were not excessive with respect to their purpose. *Id*. at 104.

In *Cornelius*, this Court determined that "the registration and notification provisions of the Alaska act are similar to those of the Illinois' Registration Act and Notification Law," and relying on the analysis of *Smith*, held that SORA did not violate the *ex post facto* clauses of the United States or Illinois Constitution. 213 Ill. 2d at 208-09. And the Court reaffirmed *Cornelius* in *Konetski*. 233 Ill. 2d at 210-11.

Plaintiff asks this Court to overrule these decisions holding that the registration requirement does not constitute punishment and thus does not implicate *ex post facto* principles, *see* AE Br. 60-70, but it should decline to do so. For one thing, plaintiff asks this Court to apply the *Mendoza-Martinez* framework to the registration requirement. *See id*. at 60. But as explained, this Court has already considered SORA and the notification law, and the United States Supreme Court has considered Alaska's analogous provisions, in light of the *Mendoza-Martinez* factors and concluded that these statutes do not inflict punishment. *See Cornelius*, 213 Ill. 2d at 208-09; *Smith*, 538 U.S. at 97-103. Plaintiff identifies no reason that warrants applying these factors anew.

Indeed, overruling "a decision of this court, let alone an entire body of case law, necessarily implicates *stare decisis* principles." *People v. Sharpe*, 216 Ill. 2d 481, 519 (2005). *Stare decisis* "expresses the policy of the courts to stand by precedents and not to disturb settled points," and it "enables both the people and the bar of this state to rely upon this court's decisions with assurance that they will not be lightly overruled." *Id*. (cleaned up). Thus, this

Court "will not depart from precedent merely because it might have decided otherwise if the question were a new one." *People v. Colon*, 225 Ill. 2d 125, 146 (2007). Instead, departure from *stare decisis* must be "specially justified," and prior decisions should not be overruled "absent good cause or compelling reasons." *Id*.

Here, plaintiff has identified no good cause or compelling reasons for revisiting this Court's decisions rejecting *ex post facto* challenges to SORA and the notification law. Relying on *Commonwealth v. Muniz*, 640 Pa. 699 (Pa. 2017), plaintiff argues that the registration requirement causes "shaming" and stigmatization because technology has advanced, allowing for broader dissemination of his registration status and, he argues, ostracization of himself and his family. AE Br. 64. But in *Smith*, the Supreme Court rejected a similar argument, explaining that historically, "[e]ven punishments that lacked the corporal component, such as public shaming, humiliation, and banishment, involved more than the dissemination of information." 538 U.S. at 98. Moreover, here, as in *Smith*, "the stigma . . . results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public." *Id*. In fact, in *Smith*, the Supreme Court considered the impact of the Internet when deciding whether registration requirements impose punishment for purposes of an *ex post facto* challenge, *id.* at 99 (acknowledging that "the geographic reach of the Internet is greater than anything which could have been designed

in colonial times"), and concluded that "[t]hese facts do not render Internet notification punitive," *id*. Instead, the Court explained, "[t]he purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender." *Id.*

Finally, even if this Court were inclined to revisit its prior decisions holding that neither SORA nor the notification law implicate *ex post facto* concerns, it should not do so where, as here, plaintiff presses an as-applied challenge. *See* AE Br. 66 (defendants "cannot logically claim that there is a rational purpose for the Scheme, as-applied to the Plaintiff"). Again, at no point in the circuit court did plaintiff seek to introduce evidence to support his assertions that the registration requirement constitutes punishment as applied to him. As a result, this Court has no basis to conclude that the requirement violates *ex post facto* principles as applied to plaintiff. *See supra* p. 13-14.

For similar reasons, although plaintiff cites non-precedential decisions striking down other States' statutes governing sex offenders, *see* AE Br. 60, this Court should decline his invitation to find the statutes challenged here unconstitutional as applied to him, where, again, no evidence was presented in the circuit court to support his claim. That is particularly true because at least one of the cases that plaintiff cites also presented an as-applied challenge, *see Muniz*, 640 Pa. at 708 (defendant challenged statute as unconstitutional "as applied to someone like him whose conviction predated its enactment"), and where many state courts to have addressed the issue have found that

registration and notification requirements similar to Illinois's do not violate *ex post facto* principles, *see Parkman v. Sex Offender Screening Comm.*, 307 S.W.3d 6, 15-17 (Ark. 2009); *People v. Castellanos*, 21 Cal. 4th 785, 799 (Cal. 1999); *State v. Kelly*, 256 Conn. 23, 95 (Conn. 2001); *Smith v. State*, 919 A.2d 539, 541 (Del. 2006); *State v. Guidry*, 96 P.3d 242, 256 (Haw. 2004); *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997); *State v. Harris*, 284 Neb. 214, 230 (Neb. 2012).

B. The residency restriction does not violate *ex post facto* principles.

The circuit court also properly dismissed plaintiff's claim that the residency restriction violated *ex post facto* principles. In doing so, the circuit court relied on the Seventh Circuit's decision in *Vasquez*, 895 F.3d 515. C590; A187. There, the court considered whether Illinois's residency restriction violated the United States Constitution's *ex post facto* clause. *Vasquez*, 895 F.3d at 517. The court analyzed the factors the Supreme Court considered in *Smith*, and concluded that the residency restriction was "neither retroactive nor punitive" and thus did not violate the *ex post facto* clause. *Id*. at 522.

Plaintiff correctly notes that *Koch*, 43 F.4th 747, overturned part of *Vasquez*'s holding. AE Br. 53. But this does not save his *ex post facto* claim. *Koch* overturned *Vasquez*'s ruling "governing the retroactivity inquiry" of an *ex post facto* analysis. *Koch*, 43 F.4th at 756. *Koch* did not disturb *Vasquez*'s holding that the residency restriction was not punitive. *See id*. at 756-57. And the Seventh Circuit's reasoning on this point remains sound. As the court

explained, the residency restriction "merely keeps child sex offenders from living in very close proximity to places where children are likely to congregate; it does not force them to leave their communities." *Id*. at 521. And because the residency restriction "does not resemble the punishment of imprisonment," it does not impose an affirmative disability or restraint. *Id*. at 521-22. Finally, although like plaintiff here, the plaintiffs in *Vasquez* asserted that "sex offenders do not reoffend more than other criminals," the court explained that even if it accepted as true that proposition, "similar recidivism rates across different categories of crime would not establish that the nonpunitive aim of this statute — protecting children — is a sham." *Id*.

Applying the *Vasquez* here, and taking plaintiff's factual allegations as true, his *ex post facto* challenge to the residency restriction failed because he did not alleged facts to support an inference that the residency restriction constitutes punishment. Plaintiff alleged that he was told that he could not reside at his home because "he was in violation of the residency restrictions and must move." C318; A21; *see also* C384; A87 (Hampshire Police Department report explaining that plaintiff was informed he must move because his residence was within 500 feet of home daycare). Thus, plaintiff's allegations show that he was told to move not to punish him but because the General Assembly has determined that there must be space between child sex offenders and home day care homes. Plaintiff's allegations therefore do not show that the residency restriction constitutes punishment.

Indeed, applying the *Mendoza-Martinez* factors here confirms that the residency restriction does not amount to punishment. As to the first factor, plaintiff argues that the residency restriction constitutes punishment because it "promotes banishment." AE Br. 65. But plaintiff faces limitations as to where he may live; he is not banished from the community entirely. *Compare Vasquez*, 895 F.3d at 521 (residency requirement keeps child sex offenders from "living in very close proximity to places where children are likely to congregate; it does not force them to leave their communities"), *with Koch*, 43 F.4th at 748-49 (ordinance prohibited "any new sex offenders" from residing within village limits).

Plaintiff argues as to the second factor that the residency restriction and other challenged requirements impose a disability and restraint on him because they undermine his rights to privacy and to travel, limit his ability to establish a home, and impose "probation/parole-like conditions" (such as by requiring him to register each year). *See* AE Br. 61-63. But *Smith* explained that this factor considers whether a restriction "resemble[s] the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." 538 U.S. at 99. The residency restriction does not resemble imprisonment; it merely limits where plaintiff may reside. As *Vasquez* noted, even accepting that a convicted sex offender may "have had difficulty finding suitable compliant housing in their neighborhoods," that did not mean the residency restriction imposed a disability or restraint. 895 F.3d at 522. The other

challenged requirements do not rise to the level of imprisonment, either. And, in any event, whether any requirement constitutes an affirmative disability or restraint is but one factor in the analysis and, as such, not dispositive. *See Smith*, 538 U.S. at 97 *(Mendoza*-Martinez factors are "neither exhaustive nor dispositive").

Plaintiff also argues that the residency restriction promotes the traditional aims of punishment because it "promotes general deterrence through the threat of negative consequences." AE Br. 66. But that a restriction may have a deterrent effect does not transform it into punishment because "[a]ny number of governmental programs might deter crime without imposing punishment." *Smith*, 538 U.S. at 102. To hold otherwise would "severely undermine the Government's ability to engage in effective regulation." *Id*. (cleaned up). And although plaintiff asserts that the residency restriction is retributive because it "looks back at the offense, and nothing else, in imposing restrictions," AE Br. 66, the Supreme Court in *Smith* rejected this argument, explaining that "[t]he *ex post facto* clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." *Id*. at 103.

In short, plaintiff identified no reason to depart from the Seventh Circuit's holding in *Vasquez* that the residency restriction does not inflict punishment. Thus, the circuit court properly dismissed plaintiff's *ex post facto*

challenge. And, in any event, as explained *supra* at 13-14, 23-24, even if this Court determines that plaintiff had adequately alleged an *ex post facto* claim, in the circuit court plaintiff presented no evidence to support any of his claims in his as-applied challenge, and so this Court should decline to allow plaintiff to proceed on this claim.

IV. Plaintiff forfeited any challenge to the circuit court's dismissal of his negligence, void for vagueness, proportionate penalties clause, and Eighth Amendment claims by failing to include any argument with respect to those claims on appeal.

Finally, plaintiff makes no argument that the circuit court erred when it dismissed his negligence, void for vagueness, proportionate penalties clause, and Eighth Amendment claims. *See generally* AE Br. As a result, plaintiff has forfeited any argument that the circuit court erred in dismissing these claims. Ill. Sup. Ct. R. 341(h)(7) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.").

CONCLUSION

State Defendants-Appellants Brendan Kelly, in his official capacity as Director of the Illinois State Police, and Kwame Raoul, in his official capacity as Illinois Attorney General, request that this Court: (1) reverse and vacate the circuit court's June 22 and 23, 2021 orders to the extent that they found that the residency restriction violates plaintiff's substantive due process and equal protection rights; (2) reverse and vacate the circuit court's permanent injunction entered in its June 22, 2021 order; (3) reverse and vacate the circuit court's January 28, 2022 and February 16, 2022 orders finding that the

residency restriction is facially unconstitutional and violates plaintiff's substantive due process and equal protection rights; and (4) affirm the portions of the circuit court's June 22 and 23, 2021 orders that granted in part state defendants' motion to dismiss.

Respectfully submitted,

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August 18, 2023

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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 8,989 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 18, 2023, I electronically filed the foregoing Reply Brief of State Defendants-Appellants with the Clerk of the Court for the Supreme Court of Illinois, by using the Odyssey eFileIL system.

I further certify that the other participants in this action, named below, are registered contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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