No. 119563

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

MARK MINNIS,

Defendant-Appellee.

Appeal from the Circuit Court of the Eleventh Circuit,
McLean County, Illinois
No. 14 CF 1076
The Honorable Robert Freitag, Judge Presiding

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS AND THE ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF DEFENDANT-APPELLEE

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POINTS AND AUTHORITIES

INTERESTS OF AMICI

The American Civil Liberties Union of Illinois is the state affiliate of the American Civil Liberties Union ("ACLU"), a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution. Both nationally and in Illinois, the ACLU has long been a staunch defender of free speech, and has been at the forefront of protecting free speech on the Internet and other emerging technologies. *See, e.g.*, *Ashcroft v. ACLU*, 542 U.S. 656 (2004); *United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194 (2003); *Reno v. ACLU*, 521 U.S. 844 (1997); *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir.2012); *People v. Clark*, 6 N.E.3d 154 (Ill. 2014); *People v. Melongo*, 6 N.E.3d 120 (Ill. 2014).

The Electronic Frontier Foundation ("EFF") is a member-supported, nonprofit civil liberties organization that works to protect free speech and privacy rights in the digital world. Founded in 1990, EFF has over 26,000 members across the United States. EFF was co-counsel for anonymous plaintiffs in a First Amendment challenge to a similar California law hindering the ability of registered sex offenders to use the Internet. *See Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014).

SUMMARY OF ARGUMENT

Mark Minnis was adjudicated delinquent of a misdemeanor offense and was sentenced 12 months of probation, which he completed. Several years later, he was arrested and charged with a Class 3 felony punishable with a year in prison because he failed to mention to the police that he had posted a photograph to a Facebook page. This is shocking but not surprising given that Illinois law imposes cumbersome reporting

requirements on all Internet postings by all registered sex offenders, regardless of whether the Internet played any role in the underlying offense.

Crimes committed by registered sex offenders that involve the Internet account for a tiny fraction of arrests for sex offenses. Nonetheless, the Illinois Sex Offender Registration Act (SORA), 730 ILCS 150, imposes sweeping burdens on registrants who wish to exercise their First Amendment right to free speech on the Internet. Because the statute targets the speech of a particular set of people, it should be subject to strict scrutiny; that is, is unconstitutional unless it is necessary to serve a compelling governmental interest. The incredibly broad scope of the statute, however, is unjustifiable under any level of First Amendment analysis, including the intermediate scrutiny standard used for content-neutral regulations and the overbreadth standard applied by the Circuit Court to invalidate the statute.

Under both of those standards, the Court must compare the amount of speech the statute burdens to the amount of speech the state needs to burden in order to meet its objectives. In the case of the Illinois SORA, the result is clear. The statute severely burdens virtually all online speech of registrants and makes it impossible for them to speak anonymously on the Internet, with only a tenuous connection to the State's interest in protecting the public from crime.

The statute requires registered sex offenders to 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)[1] 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." 730 ILCS 150/3. Only one court has considered comparably broad reporting requirements, and that court found them unconstitutional. *See Doe v. Nebraska,* 898 F. Supp. 2d 1086 (D. Neb. 2012). Other courts have invalidated statutes that are narrower than the Illinois SORA. *See Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014) (finding statute requiring reporting Internet identifiers and Internet service providers unconstitutional); *Doe v. Shurtleff*, 1:08-CV-64 TC, 2008 WL 4427594 (D. Utah Sept. 25, 2008) (invalidating statute requiring reporting of Internet identifiers and the sites on which they are used, with no restriction on the dissemination of that information);[2] *Doe v. Snyder,* 101 F. Supp. 3d 672 (E.D. Mich. 2015), *appeal dismissed,* No. 15-1604 (6th Cir. June 5, 2015) (finding requirement that registered sex offenders report Internet identifiers in person violates the First Amendment); *White v. Baker,* 696 F. Supp. 2d 1289 (N.D. Ga. 2010) (invalidating Internet identifier reporting requirement). *See also Doe v. Prosecutor, Marion County, Indiana,* 705 F.3d 694 (7th Cir. 2013) (prohibiting registered sex offenders from using social networking sites or chatrooms that the offender knows is open to users under the age of eighteen). To the best of *Amici*'s knowledge, no court has upheld a statute as broad as the one challenged here.

[1] A Uniform Resource Locator or URL is essentially an address that uniquely identifies a website, such as http://www.illinoiscourts.gov.

[2] The Tenth Circuit upheld an amended version of the statute that strictly limited the dissemination of the information. *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2010). *But see Harris v. State,* 985 N.E.2d 767 (Ind. Ct. App. 2013) (upholding internet identifier reporting requirement without discussing how the information may be used or disseminating).

The reporting requirements in the Illinois SORA are overbroad in three ways: in the amount of speech they regulate, in the number of people they regulate, and in the number of people with access to the reported information.

The statute regulates enormous quantities of speech. As the cases cited above recognized, posting messages or information to sites on the Internet is a daily activity for millions of people. Such posts are nearly always constitutionally protected speech. They include political and religious speech at the core of the First Amendment and discussions of intensely personal matters such as medical and mental health issues. Sex offenders must report every website on which they post any message, and every identifier they use when doing so, building a detailed profile of their entire online life. The cases in which this information may be useful to law enforcement or the public are rare. Not only are registered sex offenders highly unlikely to commit a new offense using the Internet, those who do are unlikely to use a website and username they have already reported to the police.

The reporting requirements apply to all registered sex offenders, regardless of whether the registrant's original offense had anything to do with the Internet or with children. The statute's application to juvenile offenders is also problematic. Juvenile offenders like Mr. Minnis are particularly unlikely to reoffend, since their offenses typically reflect the poor impulse control of an incompletely developed brain, rather than a permanent character trait. Nonetheless, the Illinois SORA's severe burdens on Internet speech apply to all registered sex offenders, including juvenile offenders.

Finally, under the Illinois SORA, the Internet usage information reported by registered sex offenders is readily available to anyone who wants to see it, making

anonymous Internet speech impossible. Law enforcement agencies are required to disclose the information to a range of entities, such as libraries and social service agencies, and may further disclose it to any other person they deem likely to encounter a sex offender. They also must make the information available for inspection and copying at local police and sheriff's offices, treating the information as a public record. This nearly limitless intrusion on registrants' First Amendment activities does little or nothing to protect the public from harm.

In short, the Illinois SORA is far too broad to survive any level of First Amendment scrutiny, and the Circuit Court judgment should be affirmed.

ARGUMENT

I. THE ILLINOIS SORA SUBSTANTIALLY BURDENS FREE SPEECH AND THUS REQUIRES HEIGHTENED FIRST AMENDMENT SCRUTINY.

Although the reporting requirements of the Illinois SORA do not prohibit any speech, they impinge on First Amendment rights by directly targeting and imposing substantial burdens upon speech, and by chilling anonymous speech. "[B]ecause the Act imposes a substantial burden on sex offenders' ability to engage in legitimate online speech, and to do so anonymously . . . . First Amendment scrutiny is warranted." *Doe v. Harris*, 772 F.3d at 574.

A. <u>The Statute Burdens Speech.</u>

First Amendment scrutiny applies to laws "directed at speech itself" and also to laws that regulate "nonexpressive activity [but have] the inevitable effect of singling out those engaged in expressive activity" or that relate to "conduct with a significant expressive element." *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706-07 (1986) (citing

United States v. O'Brien, 391 U.S. 367 (1968) *and Minneapolis Star and Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983)); *see also Texas v. Johnson*, 491 U.S. 397, 406 (1989) ("A law *directed* at the communicative nature of conduct must, like a law directed at speech itself" satisfy First Amendment scrutiny) (emphasis in original) (citation omitted). Laws that "impose special obligations" or "special burdens" on people involved in expressive activities "are always subject to at least some measure of heightened First Amendment scrutiny." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 636-37, 640-41 (1994) (citing *Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488 (1986) and *Minneapolis Star*, 460 U.S. at 583). "There is no *de minimis* exception" to this rule. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 567 (2001).

The Illinois Constitution also guarantees the right to "speak, write and publish freely." Ill. Const. Art. I, Sec. 4. This state constitutional guaranty is even more protective of speech than its federal counterparts. *See Village of South Holland v. Stein*, 373 Ill. 472, 479 (1940) (the Illinois Constitution is "even more far-reaching . . . in providing that every person may speak freely"); *Montgomery Ward & Co. v. United Store Employees*, 400 Ill. 38, 46 (1948) (the Illinois Constitution "is broader"); *People v. DeGuida*, 152 Ill. 2d 104, 122 (1992) ("we reject any contention that free speech rights under the Illinois Constitution are in all circumstances limited to those afforded by the Federal Constitution").

The Internet is a "dynamic, multifaceted category of communication [that] includes not only traditional print and news services, but also audio, video, and still images," allowing "any person with a phone line [to] become a town crier with a voice that resonates farther than it could from any soapbox." *Reno v. ACLU*, 521 U.S. 844, 870

(1997). All of this, and much more that occurs on the Internet, is pure speech. The Illinois SORA requires registrants to report (1) "all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use"; (2) "all Uniform Resource Locators (URLs) registered or used by the sex offender"; and (3) "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. By specifically regulating the use of Internet identifiers and websites used for communicative purposes, the SORA singles out particular types of expressive activity for special burdens and obligations, and for that reason alone implicates the First Amendment. In fact, much of SORA's rationale is to prevent registrants from engaging in harmful speech with potential victims. *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 252-53 (2002) (law intended "to keep [online] speech from children … to protect them from those who would commit other crimes" violated First Amendment); *Buckley v. Valeo*, 424 U.S. 1, 17 (1976) (First Amendment scrutiny necessary whenever government's asserted interest "arises in some measure because the communication … is itself thought to be harmful.") (*quoting O'Brien*, 391 U.S. at 382).

The requirement that registrants report "all blogs and other Internet sites . . . to which the sex offender has uploaded any content or posted any messages or information" is particularly onerous, because it means that any time a registrant wants to make an innocuous comment on a legitimate online forum that he has not used before, he must report that he has done so to the police or face prison. The requirement would be burdensome enough if the offender simply had to send an email to the state reporting that

he had just posted a comment. Instead, however, registrants must present their updated list of websites and Internet identifiers to law enforcement whenever they report in person. For offenders like Mr. Minnis who are not deemed sexually dangerous or sexually violent, this takes place once a year, plus "such other times at the request of the law enforcement agency not to exceed 4 times a year," plus any time the registrant changes residence, phone number, workplace or school. 730 ILCS 150/6. So the registrant must take note every time he posts information to a new website, and make sure not to lose it before the next report, which may occur at some unpredictable time. Any error in completing this task comes with a high cost – up to a year in prison. This is a significant deterrent to any kind of speech on the Internet. As the *Doe v. Nebraska* court recognized, "[r]equiring sex offenders to constantly update the government about when and where they post content to Internet sites and blogs . . . is unnecessarily burdensome and . . . is likely to deter the offender from engaging in speech that is perfectly appropriate." 898 F. Supp. 2d at 1122.

B. <u>The Statute Eliminates the Right to Anonymous Speech on the Internet.</u>

The unique and onerous burdens that the SORA disclosure requirements impose on anonymous online speech provide an additional reason that heightened First Amendment scrutiny is essential, wholly apart from the reasons discussed above. "Under our constitution, anonymous [speech] … is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent," protected by the First Amendment. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995) (law prohibiting anonymous leafletting unconstitutional); *see also Talley v. California*, 362 U.S. 60, 64-65

(1960) (same); *People v. White*, 116 Ill. 2d 171, 176 (1987) ("Anonymous political literature was a key weapon in the arsenal of colonial patriots").

This protection allows Americans to express controversial or unpopular views without having to fear governmental retaliation akin to what the Framers experienced firsthand. *See id*. *See also John Doe No. 1 v. Reed*, 561 U.S. 186, 188-89 (2010). "Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." *McIntyre*, 513 U.S. at 342. Laws requiring speakers to identify themselves may be upheld only when the government can justify that infringement under the First Amendment. *See, e.g., Hadley v. Doe*, 2015 IL 118000, ¶ 26, 34 N.E.3d 549, 556 (noting, in the context of court-ordered disclosures of Internet speakers' identity in defamation cases, that courts must be cognizant of "the danger of setting a standard for disclosure that is so low that it effectively chills or eliminates the right to speak anonymously and fails to adequately protect the chosen anonymity of those engaging in nondefamatory public discourse.") (citations omitted).

The Illinois SORA makes it a crime for registrants to use a pseudonymous screen name and to participate in online speech without disclosing their real identity to the police. Most newspaper and other websites that allow comments require commenters to have a screen name, and commenters routinely use pseudonyms to maintain their anonymity. But under SORA, registrants cannot speak anonymously because they must report this pseudonym, along with the URL of the website on which they used it, to the police. This criminalizes anonymous online speech and therefore triggers First Amendment scrutiny. *Ashcroft*, 535 U.S. at 244 ("a law imposing criminal penalties on

protected speech is a stark example of speech suppression"). Moreover, as set forth in more detail in Part III.C below, once the police have collected this information, they must disclose it to a long list of persons and entities, they may disclose it to anyone else at their discretion, and they must make it available for anyone to inspect and copy. In order to comply with the SORA, an offender must completely surrender his right to anonymous speech on the Internet.

As other courts have recognized, statutes that compromise a registrant's ability to speak anonymously on the Internet implicate the First Amendment. *See Doe v. Harris*, 772 F.3d at 574 ("First Amendment scrutiny is . . . warranted because the Act burdens registered sex offenders' willingness to engage in anonymous online speech"); *id.* at 579-80 ("the Act . . .chills anonymous speech because it too freely allows law enforcement to disclose sex offenders' Internet identifying information to the public"); *Doe v. Nebraska*, 898 F. Supp.2d at 1121 ("That sex offenders—perhaps the most reviled group of people in our community—may 'blog' threatens no child, but the government reporting requirement—that puts a stake through the heart of the First Amendment's protection of anonymity—surely deters faint-hearted offenders from expressing themselves on matters of public concern.")

C. <u>Mr. Minnis Is Entitled to the Protection of the First Amendment.</u>

Notwithstanding his juvenile adjudication as a sex offender, Mark Minnis and others in his situation enjoy the complete protection of the First Amendment. Mr. Minnis has finished his sentence (12 months of probation), and accordingly "enjoys the full protection of the First Amendment." *Doe v. Harris*, 772 F.3d at 570. He is "no longer on the 'continuum' of state-imposed punishments" that may include restrictions on

constitutional liberties. "So while registered sex offenders suffer from the effects of their crimes, they are no longer subject to formal punishment," and, accordingly, "enjoy the full protection of the First Amendment." *Id.* at 572.

II. THE ILLINOIS SORA IS UNCONSTITUTIONAL BECAUSE IT CANNOT SATISFY STRICT JUDICIAL SCRUTINY.

Statutes regulating speech that are specifically directed at a particular class of speakers are presumptively unconstitutional. "By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340-41 (2010). Statutes that single out the speech of a disfavored class of speakers for special burdens must be analyzed under strict scrutiny; that is, such statutes are unconstitutional unless the government can prove they are narrowly tailored to further a compelling government interest. *Id.* at 340.

Here, the Illinois SORA singles out the speech of registered sex offenders for special regulation. It thus must be analyzed under strict scrutiny. As discussed below, *see infra* Part III, the Illinois SORA cannot survive intermediate scrutiny. It follows that it also cannot survive strict scrutiny.

III. THE STATUTE IS UNCONSTITUTIONAL BECAUSE IT IS NOT NARROWLY TAILORED AND REACHES SUBSTANTIAL AMOUNTS OF PROTECTED SPEECH IN RELATION TO ITS PLAINLY LEGITIMATE SWEEP.

Even if the Court declines to apply strict scrutiny, the Illinois SORA fails under the intermediate scrutiny applied to content-neutral statues. That standard requires that laws affecting speech be "'narrowly tailored' to advance the interest asserted by the State." *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 122 (1991). "Narrow tailoring . . . requires . . . that the means chosen do not 'burden substantially more speech than is necessary to further the government's legitimate interests.'" *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 662 (1994) (citation omitted). The intermediate scrutiny standard is similar to the standard for facial overbreadth, under which the Circuit Court invalidated the Illinois SORA's Internet notification requirements. "[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." *People v. Clark*, 2014 IL 115776, ¶ 11, 6 N.E.3d 154, 158 (citing *United States v. Stevens,* 559 U.S. 460, 473 (2010)). Both standards require the court to consider how much speech is burdened by the statute, as compared to how much speech needs to be burdened to effectuate the government's purposes.

In *Doe v. Nebraska*, the district court applied the intermediate scrutiny and overbreadth standards to invalidate a statute nearly identical to the one at issue here. The Nebraska statute required registered sex offenders to disclose "[a]ll email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the person uses or plans to use, all domain names registered by the registrant, and all blogs and Internet sites maintained by the person or to

which the person has uploaded any content or posted any messages or information." 898 F. Supp. 2d at 1093. The court found that the statute was "plainly overbroad under the First Amendment" and "facially unconstitutional." *Id.* at 1122. More recently, the Ninth Circuit struck down, under intermediate scrutiny, a statute that required only the disclosure of Internet identifiers. *Doe v. Harris*, *supra*. The reasoning of those cases should persuade this Court to reach the same conclusion about the statute at issue here.

The Illinois SORA requires registrants to disclose any Internet identifier they use and any web site on which they communicate. These requirements impose severe burdens on speech that go far beyond what is needed to serve the State's legitimate interest in protecting the public from recidivism by sex offenders. First, the kinds of Internet communications that are covered are nearly limitless, encompassing practically every aspect of a registrant's online life. Second, the statute imposes these Internet speech burdens on all registered sex offenders, regardless of whether the offense has any relation to the Internet or to children. Finally the statute requires disclosure of registrants' Internet information to anyone who wants it, making their anonymous Internet speech impossible and subjecting all of their Internet speech to a deep chill.

A. The Statute Is Unconstitutionally Overbroad Because It Encompasses a Broad Array of Speech.

1. The Range of Regulated Speech Is Virtually Unlimited and Includes "Core" First Amendment Speech.

"The first step in 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." *People v. Clark*, 2014 IL 115776, ¶ 14, 6 N.E.3d 154, 158 (quoting *United States v. Williams*, 553 U.S. 285, 293 (2008)). In this case, by requiring

disclosure of *every* site to which a registrant posts or uploads information, the statute reaches virtually every kind of speech. *Accord* Appellant's Br. at 14 ("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").

a. Political Speech

Because the free exchange of ideas is essential to democracy, political speech is at "the core of the protection afforded by the First Amendment." *McIntyre*, 514 U.S. at 346. The United States Supreme Court has recognized the importance of the Internet for political speech: "Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer." *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Since then, the Internet has become an essential tool of political discourse. For example, President Obama's use of the Internet was widely considered to be a major factor in his electoral successes in 2008 and 2012, and serious political campaigns now routinely make sophisticated use of online communications. *See, e.g.*, Claire Cain Miller, *How Obama's Internet Campaign Changed Politics*, N.Y. Times (Nov. 7, 2008), http://bits.blogs.nytimes.com/2008/11/07/how-obamas-internet-campaign-changed-politics.

The Internet is not merely an advertising medium for campaigns, but a platform for civic engagement. In a 2013 report, the Pew Research Center found that 39% of Americans took part in civic or political activity on social networking sites. Aaron Smith, *Civic Engagement in the Digital Age*, Pew Research Center (April 25, 2013),

http://www.pewInternet.org/~/media//Files/Reports/2013/PIP_CivicEngagementintheDigitalAge.pdf. These activities included: "'Like' or promote material related to political/social issues that others have posted"; "Post your own thoughts/comments on political or social issues"; and "Encourage others to take action on political/social issues that are important to you." *Id.* at 30. In 2007, CNN and YouTube received almost five thousand online questions in advance of a presidential primary debate. Jennifer L. Newman, *Keeping the Internet Neutral: Net Neutrality and Its Role in Protecting Political Expression on the Internet*, 31 Hastings Comm. & Ent. L.J. 153, 171 (2008). Online questions submitted by the public are now regular features of presidential debates. The websites of political parties and candidates routinely encourage viewers to participate in online surveys. Political articles on news websites often garner hundreds of comments.

The Illinois SORA requires registrants to report any website on which they post any political comments, questions, or information.

b. Religious Speech

Like political speech, "[r]eligious expression holds a place at the core of the type of speech that the First Amendment was designed to protect." *DeBoer v. Vill. of Oak Park*, 267 F.3d 558, 570 (7th Cir. 2001). In 2014, the Pew Research Center found that 20% of Americans share their religious faith online. Alan Cooperman, *Religion and Electronic Media: One-in-Five Americans Share Their Faith Online*, Pew Research Center (November 6, 2014), http://www.pewforum.org/files/2014/11/New-Media-07-27-for-web.pdf. Increasingly, much of religious life takes place online. *See* Matson Coxe, *Here Is the Church, Where Is the Steeple: Foundation of Human Understanding v.*

United States, 89 N.C.L. Rev. 1248, 1264 (2011). "Virtual churches" allow online spiritual communion. John D. Inazu, *Virtual Assembly*, 98 Cornell L. Rev. 1093, 1142 and n.46 (2013). For example, the LifeChurch.TV offers online church services, prayer, and chat. LifeChurch.TV, http://www.life.church/churchonline/. The Saddleback Church allows online participation in Communion. Saddleback Church, *Take Communion Online with Us*, http://saddleback.com/archive/blog/internet-campus/2014/01/24/take-communion-online-with-us.

Online religion is not limited to newly established churches. The United Methodist Church invites the submission of online questions about all aspects of the church; it even has a chat function. United Methodist Church, http://www.umc.org/contact. The Southern Baptist Convention provides daily devotions and allows members to sign up for "Bible Pathway Devotions" to add "study notes for each devotion" and "[k]eep track of your Bible reading progress." Southern Baptist Convention, http://www.sbc.net/devotions. Some religious organizations combine religious and political activism by offering Internet portals for sending messages to elected officials. *See, e.g.*, Religious Action Center of Reform Judaism, action.rac.org; United States Conference of Catholic Bishops Action Center, https://www.votervoice.net/USCCB/Campaigns. A Google search for "prayer request" yields countless websites allowing individuals to request prayers for particular persons, events, or causes. Many religious sites, like news media sites, post articles that are open for comment by viewers.

Under the Illinois SORA, registrants must disclose to law enforcement any websites on which they post such comments, or partake in communion, or make a "prayer request."

c. Medical Conditions, Mental Health, and Substance Abuse

The Internet is increasingly a forum to find information about and support for medical, mental health, and substance use issues. A 2011 Pew Research Center report found that 18% of Internet users "have gone online to find others who might have health concerns similar to theirs." Susannah Fox, *Peer-to-Peer Health Care*, Pew Research Center (February 28, 2011), http://www.pewInternet.org/~/media//Files/Reports/2011/Pew_P2PHealthcare_2011.pdf. The number rises to 23% of those with chronic health conditions, and 32% of those with less common chronic conditions. *Id.* at 7. Many (26%) Internet users caring for a loved one also sought out those in similar circumstances on the Internet.

Similarly, "the number of people using the Internet to access information and help regarding their mental health has proliferated exponentially, with trends indicating that online peer support services are among the principal health services accessed online." Belinda Melling & Terry Houguet-Pincham, *Online Peer Support for Individuals with Depression: A Summary of Current Research and Future Considerations*, 34 Psychiatric Rehabilitation Journal 252 (2011). *See also*, Marijke Schotanus-Dijkstra, et al., *What Do the Bereaved by Suicide Communicate in Online Support Groups?*, 35 Crisis 27, 34 (2014) (noting that "[o]nline support groups could be vital for those bereaved by suicide who could otherwise not share their experiences in their own social network.").

Online support groups are also becoming a staple for major organizations treating those struggling with addiction and their families. *See, e.g.*, Hazelden Betty Ford Foundation, 24/7 Recovery Communities, http://www.hazeldenbettyford.org/recovery/recovery-communities; Alcoholics Anonymous, Online Intergroup, http://www.aa-intergroup.org; NA Recovery, http://na-recovery.org (online chat); Al-Anon Family Group Message Board, http://alanon.activeboard.com.

Under the Illinois SORA, a registrant posting to any of these websites in order to seek support or provide information would need to report the URL to law enforcement.

d. All Other Possible Subjects

In addition to core First Amendment political and religious speech and association, and deeply private and important speech and association about medical, mental health, and substance use matters, people use various online forums, blogs, and websites to communicate about virtually everything else in their lives: hobbies, travel plans, volunteer work, favorite restaurants and shops, movies, and music, to name just a few examples. *See generally*, Susannah Fox & Lee Raine, *The Web at 25 in the U.S.*, Pew Research Center (February 27, 2014), http://www.pewinternet.org/files/2014/02/PIP_25th-anniversary-of-the-Web_0227141.pdf (describing centrality of the Internet in contemporary American life).

As the discussion above makes clear, the scope of Internet speech and association subject to the statutory disclosure requirements is nearly limitless. The Illinois SORA requires a registrant to report, under penalty of prison, not only his social media accounts, but also websites of political parties and political candidates and news websites on which

he comments; websites on which he participates in religious discussions or worship; websites on which he discusses his own or a loved one's medical or mental health issues; and the online forums on which he discusses his favorite jazz vocalists and which used car he should buy.

Just the list of such websites is intrusive enough, but registrants must also report all online identities that they use to communicate on them. Armed with a list of websites and a list of usernames, any person could discover not only that the registrant reads the National Review, but his specific reactions to the latest critique of Hillary Clinton; not only that he visits the Al-Anon discussion groups, but the specific issues he is having with his alcoholic sister.

2. The Vast Majority of Burdened Speech Has No Relevance to the State's Legitimate Purposes.

The State claims that law enforcement and the public at large must know these intimate details of a registrant's online life for two reasons. First, this information may aid law enforcement agencies in investigations "by allowing them to monitor the movements of sex offenders." Second, it may protect the public by "alerting the public to the risk of sex offenders in their community." Appellant's Br. at 18-19 (citations, internal quotations marks, and alterations omitted). But the disclosure requirements imposed by the statute dramatically and irrationally exceed what is actually needed for these purposes.

The State's interest in deterring and detecting sexual offenses does not support the sweeping regulation of Internet expression set forth in the Illinois SORA. Rather, such a regulation "must address the identifiers that are used in the kind of interactive communications that entice children into illegal sexual conduct and it must focus on

those sites and facilities where these kinds of interactive communications occur." *White v. Baker*, 696 F. Supp. at 1311.

As the Seventh Circuit has remarked in a similar context, "there is no disagreement that illicit communication comprises a minuscule subset of the universe of social network activity." *Doe v. Prosecutor, Marion County, Indiana*, 705 F.3d 694, 699 (7th Cir. 2013).[3] That "miniscule subset" becomes infinitesimal when the "universe" of speech at issue is the entire Internet (as here), rather than social network sites alone (as in *Marion County*). Thus, the Illinois SORA "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 at 1120. *See also, White v. Baker*, 696 F. Supp. 2d at 1311.

The State attempts to justify the limitless reach of its Internet monitoring by claiming that "no website used by a sex offender to interact with the public is 'unrelated' to the purpose of the disclosure requirements." Appellant's Br. at 27. This position simply does not reflect the facts about the use of the Internet to commit sex offenses.

First the particular types of crime targeted by this reporting requirement are very rare. In 2006, offenses facilitated by technology constituted only about 1% of arrests for sex offenses against children and, of those, only 4% involved registered sex offenders. Janis Wolak, David Finkelhor & Kimberly J. Mitchell, *Trends in Law Enforcement Responses to Technology-facilitated Child Sexual Exploitation Crimes: The Third*

[3] Although the *Marion County* case dealt with an outright ban on certain speech, rather than a reporting requirement, the Seventh Circuit's observation about the amount of speech regulated compared to the amount of speech relevant to the State's interests is pertinent here.

National Juvenile Online Victimization Study (NJOV-3), Crimes Against Children Research Center (2012), http://www.unh.edu/ccrc/pdf/CV268_Trends%20in%20LE%20Response%20Bulletin_4-13-12.pdf, at 2, 6. Moreover, online as well as in the physical world, the overwhelming majority of sex crimes against children are committed by family members and acquaintances known to the victim, not strangers who use the Internet to meet their victims. Thus, although the number of arrests for Internet-related sex offenses against children increased from 2000 to 2009, nearly all of that increase was due to "offenders who used technology to facilitate sex crimes against victims they already knew face-to-face." *Id.* at 2. When offenders do approach minors online whom they do not already know, they are typically open about their sexual motives. *Id.* at 4. Therefore, the scenario described in the State's brief, in which the police discover that a missing child had a conversation with "Harmless_Cubs_Fan_1980" on www.InnocuousCubsWebsite.com shortly before her disappearance (Appellant's Br. at 27), is exceedingly atypical.

Even if this scenario were commonplace, however, the utility of protecting children from such predators by requiring registrants to disclose the name of every website to which they upload files or post information is dubious. The State posits that in such a situation, it would be "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." *Id.* But this irrationally assumes, first of all, that a registered sex offender who intends to reoffend using the Internet will nonetheless comply with Internet reporting requirements. *Cf. Marion County*, 705 F.3d at 701 ("Perhaps the state suggests that prohibiting social networking deprives would-be

solicitors the opportunity to send the solicitation in the first place. But if they are willing to break the existing anti-solicitation law, why would the social networking law provide any more deterrence?")

Additionally, even if the abductor were in perfect compliance with his registration obligations, this information would help the police only if the offender had posted information to that website prior to his last report, which may take place as infrequently as once a year, depending on the type of offender. For the same reason, a list of websites on which sex offenders have posted information in the past is of little use to parents seeking to protect their children from online predators. Even offenders were likely to use a site they have already reported for nefarious purposes, the most diligent parent could not keep her child away from every website reported by every registrant. The number of websites would be massive, and would increase every day.

The State repeatedly analogizes the statute's Internet reporting requirements to the requirement that registrants report their physical residence, workplace, and school, but the analogy only serves to highlight the absurdity of the State's position. Just as the State claims that "no website used by a sex offender to interact with the public is 'unrelated' to the purpose of the disclosure requirements," Appellant's Br. at 27, it likewise insists that "[a]ny 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." *Id*. But registrants are not required to report all of those physical locations. Otherwise, offenders would need to report not only their home, work, and school addresses, but *also every other location at which they interact with*

other human beings—such as at church, a doctor's office, the post office, and a book club meeting. Just one registrant's list could cover the entire town, and would not give a wary parent any sense of how one might best avoid that person.

Thus, while one can hypothesize unusual situations in which it might be helpful to know all the websites on which a registered sex offender has uploaded files or posted information, the statistics cited above show that those situations are quite rare, especially in comparison with the unbounded extent of the speech burdened by the statute.

B. The Statute Is Overbroad Because It Allows the Dissemination of Registrant's Online Communication Information to Anyone, Rendering Anonymous Speech Impossible.

Illinois registrants are completely unable to engage in lawful, anonymous speech on the Internet, because Illinois law allows police to disclose registry information—including "e-mail addresses, instant messaging identities, chat room identities, other Internet communications identities, 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"—to anyone.

First, county sheriff's offices *must* disclose Internet usage information to a list of ten types of entities, including colleges and universities, school boards and school administrators, libraries, public housing authorities, and social service agencies that serve minors. 730 ILCS 152/120(a). There are no limits on those entities' ability to disseminate that information to others.

Second, law enforcement agencies *may* disclose this information "to any person likely to encounter a sex offender, or sexual predator," 730 ILCS 152/120(b); in other

words, to anyone. If that is not sufficient, they may also, at their discretion, "place the information . . . on the Internet or in other media." 730 ILCS 152/120(d).

Finally, the statute treats registrants' online information as public records: local sheriffs and police departments *must* make the information "open to inspection by the public" at their headquarters. 730 ILCS 152/120(c). They must "giv[e] the inquirer access to a facility where the information may be copied," as well as allow the inquirer "to copy this information in his or her own handwriting." *Id.* Again, there are no limits placed on the inquirer's use of this information. Any person can walk into a local police station and walk out with a list of all of the Internet identifiers and URLs reported by all of the registrants living in that municipality, then publish the list on the Internet or the local newspaper. Registered sex offenders simply have no ability to engage in anonymous online speech.

If there is any doubt regarding the interplay between the statutory command to registrants to disclose their information to the police (including their Internet activity), and the statutory command to police to disclose registration information to the general public, it is dispelled by the State's brief in this case. Specifically, the State explains: "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." *See* Appellant's Br. at 4.

The Illinois registry dissemination scheme is thus much broader than the California scheme struck down in *Doe v. Harris*. There, the law provided that, "in general, information provided by registered sex offenders 'shall not be open to inspection

by the public,'" but that law enforcement may disclose the information "when necessary to ensure the public safety." 772 F.3d at 580. The *Harris* court faulted the absence of "any constraining principle" to the disclosure of registry information, noting that "'[p]ublic safety' . . . is much too broad a concept to serve as an effective constraint on law enforcement decisions that may infringe First Amendment rights." *Id.*

Similarly, in *White v. Baker*, the court found overbroad a Georgia statute allowing registrant information, including Internet identifiers, to be disclosed to law enforcement agencies "for law enforcement purposes." 696 F. Supp. 2d at 1310. What the court found "most troubling," however, was a provision allowing law enforcement to release publicly any information "that is necessary to protect the public." *Id.*

> It is conceivable, if not predictable, that a person in law enforcement might determine that Internet Identifiers for offenders ought to be released so that the public can search for and monitor communications which an offender intends to be anonymous. . . . It is by definition a violation of the requirement that the state employ the least restrictive means to address its interests.

Id. at 1311. What was "conceivable" in *White* is a certainty in Illinois: Not only are Internet identifiers available to members of the public who wish to monitor the communications of registrants, such monitoring is made that much easier because the list of websites on which offenders have used those identifiers is also available.[4] The

[4] Accordingly, this case is very different from *Doe v. Shurtleff*, 628 F.3d 1217, 1221, 1225 (10th Cir. 2010) which upheld the constitutionality of a sex offender registration statute after it had been amended to limit allow the sharing of internet identifiers "among law enforcement agencies, not the public at large," and only for the purpose of "investigating kidnapping and sex-related crimes." *See also Doe v. Snyder*, 101 F. Supp. 3d 672, 703 (E.D. Mich. 2015), *appeal dismissed* (June 5, 2015) (concluding that requirement to report internet identifiers does not violate anonymous speech rights where the law "does unveil registrants' anonymity to law enforcement" but "does [not] unmask registrants' anonymity to the public"). Here, both the language of the Illinois statute and the State's brief make clear that the statute is meant to, and in fact does, completely

unlimited disclosure of registrants' online information prevents anonymous speech and is thus another reason the Illinois SORA violates the First Amendment.

CONCLUSION

The challenged provisions of the Illinois SORA imposes severe burdens on Internet speech for thousands of registered sex offenders, with tenuous benefits to public safety. *Amici* respectfully urge the Court to affirm the judgment of the Circuit Court.

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Respectfully submitted,

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eliminate registrants' anonymity online by ensuring that anyone may access their Internet identifiers and the websites that they use.

RULE 341(c) CERTIFICATE OF COMPLIACE

I, Rebecca K. Glenberg, certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding 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 26 pages.

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PROOF OF FILING AND SERVICE

The undersigned, an attorney, certifies that on April 6, 2016, she caused the foregoing Brief of *Amici Curiae* the American Civil Liberties Union of Illinois and the Electronic Freedom Foundation in Support of Defendant-Appellee to be filed with the Supreme Court of Illinois using the Court's electronic filing system. Upon the acceptance of the brief by the Court's electronic filing system, the undersigned will mail the original brief plus twelve copies via the United States Post Office with postage prepaid, addressed to:

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The undersigned also caused three copies of the foregoing brief to be served upon counsel for Plaintiff-Appellant and Defendant-Appellee by mailing said copies via the United States Post Office with postage prepaid, addressed to:

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