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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
	)	No. 14 CF 1076
vs.	)	
MARK MINNIS,	)	
Defendant.	)	

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS

NOW COMES the Defendant, MARK MINNIS, by and through his attorneys, SKELTON & WONG, P.C., and as his Brief in Support of the Motion states as follows:

I. Introduction and Facts:

The Defendant was adjudicated as a delinquent minor for the offense of Criminal Sexual Abuse, a class A misdemeanor. The Sex Offender Registration Act (SORA) requires Defendant to register as a sex offender for 10 years. The Defendant is charged with the offense(s) of Failure to Register under (SORA) by failing to register his Facebook page, an internet site to which Defendant uploads information.

II. Argument

A. *SORA Reporting Requirements for Social Media/Electronic Communications is Unconstitutionally Overbroad*

Under SORA, a 'sex offender" includes a juvenile adjudicated for the misdemeanor offense of Criminal Sexual Abuse. Among other information, the sex offender is required to register "all E Mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information...."

The First Amendment of the United States Constitution, which guarantees the right to free speech applies to the states through the Fourteenth Amendment. *Elfbrandt v. Russell,* 384 U.S. 11, 18, 86 S.Ct. 1238, 1241–42, 16 L.Ed.2d 321, 325–26 (1966).
As a corollary, the Court has altered its traditional rules of standing to permit — in the First Amendment area—"attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with .the requisite narrow specificity." Dombrowski v. Pfister, 380 U. S., at 486. Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. *Hill v. Colorado*, 530 U.S. 703, 731-732 (2000).

A Statute is "overbroad" if in its reach it prohibits constitutionally protected conduct. "any law burdening the exercise of free speech must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society" *Broadrick v. Oklahoma,* 413 U.S.601 (1973). *Grayned v. City of Rockford,* 408 U. S., 104 at 116-117 (1972).

There is no question that government has a compelling interest in protecting individuals from violence and sexual abuse, however the Internet/social media reporting provisions are not "narrowly tailored" to carry out the government's legitimate interest and in fact, the Internet/ social media reporting requirements have no boundaries at all.

Under the current statute, a registrant would be required to notify law enforcement if he currently conducts or *wishes to engage* in banking online, pay any bills online, post any comments on restaurant websites, hotel sites, travel sites. Some of the most common and mundane social media activities engaged by the general public, Pay Pal, including EBay, Hotmail, AOL, Youtube, Amazon, newspaper sites such as the Pantagraph, Huffington Post, ABC, MSNBC, FOX etc... Social communications sites such as Twitter, Instagram, Facebook, Flickr, Shutterfly, Google, Yahoo, Pinterest, Vine, Reddit, Tumblr, Kik, to name a few, would be required to be registered under the current statute. The provision under SORA and specifically as to 150/3(a) creates an insurmountable hurdle should a registrant wish to post any content on any website or forum. This blanket coverage of all "internet communications identities" that a registrant "uses or plans to use" poses at least two problems: 1) the blanket coverage includes

sites that have no relationship to the State's interest in protecting individuals from violence and sexual abuse and 2) the registrant is left to guess at what must be registered.

The State cites to two cases which specifically addresses SORA statutes; *Doe v. Shurtleff* 628 F1217 (10th Cir. 2010) and *Doe v. Prosecutor, Marion Cnty., Indiana* 705 F.3d 694 (7th Cir. 2013). *Shurtleff* is inapposite to the facts in this case in that the registrant argued that his right to engage in anonymous speech was burdened/violated due to the use of internet information collected by law enforcement officers and how that information was shared with others. Additionally, the statute in *Shurtleff* was far narrower that Illinois's statute in that exceptions were made for internet identifiers in the course of employment or financial accounts. In *Marion Cnty,* the SORA statute prohibited a registrant from using a social networking site, instant messaging or chat room program that the offender knows allows access or use by a person under 18 years of age. In that case, the court held the statute to be unconstitutional in that it was not narrowly tailored to serve the state's interest.

The State does not mention *Doe v. Nebraska* 898 F. Supp 2d 1086 (D. Neb. 2012), which deals with a statute virtually identical in wording with Illinois' SORA statute. The relevant statute in Nebraska is sec. 29-4006 (s) which reads: "All 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".

In finding that Nebraska's SORA statute was unconstitutional, the court pointed out that a state may regulate content neutral speech if the regulation is narrowly tailored and if the regulation leaves open ample alternative channels for communication of information. (citing *Ward v. Rock Against Racism* 491 U.S. 781, 791 (1989). The Court found however, that Nebraska's statute "clearly chills offenders from engaging in expressive activity that is otherwise perfectly proper, and the statute is therefore insufficiently narrow". Interestingly, the Court determined that the Nebraska statute chilled too much speech where the statute required registration of "all blogs and internet sites maintained by the person or to which the person has uploaded any content or posted any messages or information". This language is identical to the language in Illinois' SORA, and would require registrants to notify the government as to where and when content was uploaded.

The statute in its current form improperly restricts protected speech by placing an unreasonable burden upon the registrant. A registrant must decide whether it is worth the risk of criminal prosecution any time he wishes to communicate with a restaurant website, engage in political discussion, rate a hotel or a vendor etc..

B. *SORA Reporting Requirements for Social Media/Electronic Communications is Unconstitutionally Vague*

Related to the issue of overbreadth, 730 ILCS 150/3(a) is also impermissibly vague under the Due Process Clauses of the Federal and State Constitutions because it fails to give fair notice to the ordinary citizen that the prohibited conduct is illegal and it lacks minimal legislative guidelines, thereby permitting arbitrary enforcement . As enunciated in *Grayned v. City of Rockford,* 408 U.S. 104, 108-109 (1972) "a vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications".

Doe v. Harris 772 F. 3d 563, 9th. Cir. 2014 addresses a California SORA law requiring sex offenders to register "a list of any and all Internet identifiers established or used by the person and a list of any and all internet service providers used by the person". The law also contained a 24 hour reporting requirement which is not present in Illinois' act and will not be addressed. The Court of Appeals for the Ninth Circuit found the California law to be facially unconstitutional in that the law was vague and overbroad. The District court interpreted the Act's requirement that Internet identifiers be reported to require only reporting of identifiers used to engage in "interactive communication" and not for shopping or reading content. The Court of Appeals rejected the interpretation by the lower court and noted that even the lower court found "the uncertainty surrounding what registrants must report – and the resultant potential chilling effect – is greater in this case because the district court's interpretation of the Act is not definitive guidance to registrants about what they must report... it is not binding on state courts, where registrants would face prosecution for failure to register".

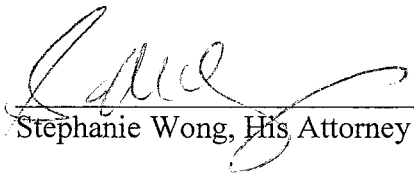
This vagueness is noted in the the State's own brief, since they note that Defendant was not charged with failing to register his E Bay account "because police and/or prosecutors believed that such conduct fell outside SORA's reporting requirement", (p.

5) however, a plain reading of the statute does not lead to that conclusion. Furthermore, as noted previously in *Shurtleff*, the Utah SORA statute also required registrants to provide "all internet identifiers and addresses used for routing or self identification in Internet communications or postings " but the drafters of that legislation believed it necessary to exempt internet identifiers used in employment and financial accounts.

Lastly, Illinois SORA provides no guidance regarding the definition of "Internet Communications identities. Specifically as it pertains to this Defendant, does his identity include his name and date of birth which is already listed in his registration? The Defendant's Facebook identity at issue in this case, is in fact his name and date of birth which is listed on his annual registration.

Illinois' SORA statute, specifically 730 ILCS 150/3(a) requiring registration of all Internet communications identities that a registrant uses or plans to use, broadly prohibits substantial protected speech rather than specifically targeting the evil that it seeks to address. Furthermore, Illinois' SORA statute is so standardless that it authorizes or encourages discriminatory enforcement and leaves registrants to guess at what they must register.

Respectfully submitted,
MARK MINNIS, Defendant

By: 
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CERTIFICATE OF DELIVERY

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The undersigned hereby certifies under penalties of perjury as provided by law pursuant to Section 1–109 of the Code of Civil Procedure, that the above Motion to Vacate were :

[ ]placed in the U.S. Mail properly addressed and mailed with first class postage prepaid, on this ____ day of June, 2015.

[✓]sent via facsimile 6 pages, from the office of Skelton & Wong, P.C., sender's facsimile number (309) 820-9799, to recipients' facsimile number (309) 862-8314 and (312) 814.2253 on the 16th day of June, 2015, before the hour of 5:00 p.m.

[ ]sent via E Mail from _____to recipient's E Mail: on the ____ day of June, 2015, before the hour of 5:00 p.m.

[✓]hand delivered on the 16th day of June, 2015.

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