THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT

No. 118049

IN THE

SUPREME COURT OF ILLINOIS

IN THE INTEREST OF M.A., a minor, (PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellant. v. M.A., Respondent - Appellee.)	Appeal from the Appellate Court of Illinois, First District, Third Division, No. 1-13-2540 — There Heard on Appeal from the Circuit Court of Cook County, Juvenile Division, No. 12 JD 4659 — The Honorable Stuart P. Katz, Judge Presiding.

REPLY/CROSS-APPELLEE BRIEF FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

C.

ARGUMENT

VOYRA IS CONSTITUTIONAL AS A RATIONAL AND NECESSARY PART OF THE LEGISLATURE'S REGULATORY POWER TO ADDRESS SERIOUS VIOLENCE AGAINST CHILDREN.

To the appellate court's holdings that VOYRA violates procedural due process and equal protection, respondent adds a claim for cross-relief asserting that the law violates substantive due process. However, given the risk to the public, the General Assembly has rationally identified certain violent juvenile offenders who are subject to register in VOYRA, including M.A., who threatened to kill her 14 year-old brother and then forcefully attacked him with a knife, causing him bodily harm. The General Assembly has also rationally determined a reasonable mechanism for when the public can access registry information and how respondent's registration will terminate. Because the means are rationally related to the goals of the registry, VOYRA comports with substantive due process.

Regarding procedural due process, respondent and amici contend that VOYRA is stigmatizing and unfairly "labels" offenders as "violent youth." (R.Br.12) However, respondent cannot establish a protected liberty interest in her "transitory qualities" or her "amenability to rehabilitation." (R.Br.29-30) Moreover, respondent's reputational interest is not sufficient to invoke the procedural protection of the due process clause where the trigger for her inclusion into VOYRA is truthful information: her adjudication of juvenile delinquency for aggravated domestic battery. Respondent has received all of the process she is due. Respondent is not entitled to a dangerousness hearing prior to being subject to the registry or at age 17, nor is she entitled to an avenue to pursue early

removal from the registry, because "individualized dangerousness" is irrelevant to the statutory scheme. Finally, VOYRA comports with equal protection principles because sex offenders and violent offenders are not similarly situated. Even if the juveniles share some similar characteristics, the General Assembly had a rational basis for permitting early removal for juvenile SORA registrants who can demonstrate that they pose no risk of harm, while requiring juvenile VOYRA registrants whose juvenile adjudications demonstrate that they pose a risk of harm to register for the entire term.

A. VOYRA Targets Vulnerable Child Victims. (Reply to Respondent's Argument "A")

Respondent begins her argument with a seven-page detailed description of how VOYRA operates. (R.Br.10-16) But as she admits, SORA incorporates much of the same language and registry provisions as VOYRA, *id.* at 15, and the remainder of her brief does not raise a constitutional challenge to this language or these provisions, *id.* at 16-54.

Although respondent claims that the State makes misleading statements about SORA and VOYRA (R.Br.10), the State's recitation is accurate. In an effort to "clarify" VOYRA, she, herself, provides a distorted description of the law as applicable to relatively minor offenses that are not "necessarily violent." (R.Br.12) However, of the offenses that trigger registration in VOYRA, the overwhelming majority involve a serious risk of violence: three result in death; two involve firearms where the risk of death is always present; seven involve bodily harm; and the remainder: home invasion, kidnapping and unlawful restraint and the associated attempt crimes against children under 18 are clearly crimes that involve actual or a real risk of physical violence to

children. *See* 730 ILCS 154/5(b) (listing crimes). The only offenses that qualify for VOYRA registration that are arguably "non-violent" are either narrowly targeted as involving particularly vulnerable child victims or include conduct that puts children at risk of much greater harm: involuntary manslaughter qualifies only if the case included the death of the child where baby shaking was the proximate cause, 730 ILCS 154/5(b)(4.1); only some forms of aggravated battery qualify, 730 ILCS 154/5(b)(4.4), and the only arguably non-violent qualifying forms involve victims who were pregnant or were children with a physical handicap, 720 ILCS 5/12-3.05(d)(2); 720 ILCS 5/12-4(b)(14), or use of a deadly weapon, 720 ILCS 5/12-3.05(f)(1); 720 ILCS 5/12-4(b)(1). Similarly, the only qualifying misdemeanors (R.Br.12), include violent conduct or conduct on the cusp of causing much greater harm to child victims: attempted child abduction, 720 ILCS 5/10-5(b)(1); 720 ILCS 5/8-4(c)(5); attempted unlawful restraint, 720 ILCS 5/10-3; 720 ILCS 5/8-4(c)(5); and domestic battery resulting in bodily harm, 720 ILCS 5/12-3.2. 730 ILCS 154/5(b)(1)-(5). Ultimately, the line-drawing by the legislature need not be a perfect exercise, just a rational one. *Vance v. Bradley*, 440 U.S. 93, 108 (1979) (neither "perfection" nor "mathematical nicety" are required for state line-drawing).

In fact, respondent identifies only two differences that are "important to this appeal": that only juvenile VOYRA registrants must register on the adult registry at age 17, and that juvenile VOYRA registrants cannot petition for early removal from the registry in a manner comparable to §3-5 of SORA. *Id.* at 15-16. As explained below, these two differences do not raise due process or equal protection concerns.

B. VOYRA Comports with Substantive Due Process.
(Response to Respondent's Argument "D": cross-appeal issue)

Respondent argues that VOYRA violates substantive due process principles because it bears no rational relationship to a legitimate governmental interest, and because it fails to recognize juveniles' "transitory qualities and amenability to rehabilitation" and thus is not reasonably related to protection of the public. (R.Br.46-47) Specifically, respondent and amici argue that VOYRA is not reasonably related to the public interest because juvenile delinquents are different from adults and therefore should not be required to register in VOYRA. (R.Br.46-53, Amicus Br. 8-14) Relying on recent United States Supreme Court jurisprudence on the application of eighth amendment principles to sentences of natural life without parole and of death for juveniles, respondent and amici essentially seek from this Court a wholesale adoption and transfer of such principles to the civil regulation imposed by VOYRA. (R.Br.47-49 (arguing that juveniles are particularly susceptible to rehabilitation); Amicus Br. 8 (arguing that VOYRA "forswears altogether the rehabilitation ideal" as stated in *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012)). But as the People argued in their opening brief (P.Br.15-17), the act of registration and updating one's information and address as required by the regulation in VOYRA cannot be remotely equated with natural life or death sentences.

In considering respondent's substantive due process argument, respondent must bear the burden of clearly establishing that VOYRA violates the constitution, in the face of the general presumption that all statutes are constitutional. *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011). The constitutional guarantee of substantive due process provides that a person may not be deprived of liberty without due process of law. *Id.* When the

statute in question does not affect a fundamental constitutional right – and respondent never argues that it does (R.Br.46-53) – the statute's constitutionality is analyzed under the "highly deferential" rational basis test. *Madrigal*, 241 Ill. 2d at 466. Under that test, a statute will be upheld if it "bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective." *Id.* (internal quotation marks omitted). In applying this test, the reviewing court determines the purpose of the statute and whether the statute adopts a reasonable means of implementing that purpose. *Id.* at 466-67.

Respondent recognizes that, as the People argued (P.Br.32), an appellate court has already followed this Court's guidance in finding that VOYRA serves a similar purpose to SORA – to facilitate law enforcement monitoring and to protect the public. *See* R.Br.46-47, citing *Miranda v. Madigan,* 381 Ill.App.3d 1105, 1108-09 (4th Dist. 2008), citing *People v. Malchow*, 193 Ill. 2d 413, 420 (2000) (SORA was intended to "protect the public"); *People v. Adams,* 144 Ill. 2d 381, 386 (1991) (precursor law to SORA created an additional method of protection for children and "was designed to aid law-enforcement agencies"). Thus, respondent contests only whether VOYRA provides a reasonable means of promoting public safety, accepting that that the general purpose of public safety is important and significant. (R.Br.49)

And for good reason. VOYRA legitimately reflects the General Assembly's rational concern with the risk to public safety posed by violent juvenile offenders. Although there is no national uniformity in the collection of statistics or in measures tracking recidivism of juveniles, and so no national recidivism rate for juveniles (*see* Sickmund, Melissa, and Puzzanchera, Charles (eds.), *Juvenile Offenders and Victims:*

2014 National Report (2014). Pittsburgh, PA: National Center for Juvenile Justice, avail. at: *http://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf*, available studies provide sobering data. In a sample of 3052 juvenile offenders from 2005-2007, juveniles averaged five arrests before they were incarcerated in the Illinois Department of Juvenile Justice (IDJJ); 86% of those juveniles were re-arrested within three years of release; and 48% had returned to the IDJJ within three years of release with others moving into the adult justice system. *See* Bostwick, L., Boulger, J., & Powers, M. *Juvenile Recidivism: Exploring Re-arrest and Re-incarceration of Incarcerated Youth in Illinois* (2012). Chicago, IL: Illinois Criminal Justice Information Authority (describing problems defining and identifying juvenile recidivism and the underrepresentation of criminal offending caused by the difficulties of following juvenile offenders into the adult criminal justice systems), avail. at: http://www.icjia.state.il.us/public/pdf/researchreports/idjj_recidivismdelinquents_082012.pdf. Similarly, Redeploy Illinois, a state-funded diversion program designed to develop programs to reduce the high rate of recidivism and commitments to IDJJ/IDOC, identified that 72% of juvenile offenders in its programs were on probation or parole for a prior offense at the time of admission. *See Redeploy Illinois Annual Report 2012 – 2013* (March 26, 2014), avail. at: *http://www.dhs.state.il.us/page.aspx?item=70551*. Thus, ameliorating the risk to the public posed by violent juvenile offenders is a rational and important purpose.

Respondent, however, asserts that VOYRA is not a reasonable means to promote public safety because there is no basis to conclude that a violent offender, such as respondent, will remain a threat when she turns 17, nearly four years after her offense, after which she must register as an adult and be included on the VOYRA public website.

(R.Br.52-53) But the General Assembly has chosen to make the determination on the basis of the category of offense, not on the basis of individual characteristics. It is rational for the General Assembly to be concerned with the risk of violence for a period of 10 years after adjudication of these offenses. In a summary of final study reports, published as part of the National Institute of Justice Study Group on the Transition from Juvenile Delinquency to Adult Crime, several scholars examined the issue of persistence of juvenile crime and found that serious juvenile offenders do not desist criminal activity until their mid-twenties and that for those who did persist, "the transition from adolescence to adulthood is a period of increasing severity of offenses and an increase in lethal violence." National Institute of Justice, Study Group on the Transition from Juvenile Delinquency to Adult Crime: *From Juvenile Delinquency to Young Adult Offending* (last updated Mar. 2014) (noting that The Pittsburgh Youth Study found that 52 to 57 percent of juvenile delinquents continue to offend up to age 25), avail. at: *http://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx*. *See also* Laurence Steinberg, Elizabeth Cauffman, and Kathryn C. Monahan, *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*, (Mar. 2015) Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention (study of males who make up the largest category of violent juvenile offenders found desistance in early twenties), avail. at: *http://www.ojjdp.gov/pubs/248391.pdf*. Establishing a 10-year registration term in VOYRA is a reasonable means of providing for increased law enforcement monitoring throughout the time of greatest risk of re-offending, and permitting the public access to information at age 17 includes the peak years of risk to the public.

Respondent contends that the means are not related to the purpose of public safety because VOYRA "hinder[s] the very rehabilitative efforts of the juvenile court system," which provides an individualized assessment of each juvenile. (R.Br.50-51) Respondent and amici argue that youth should be considered differently than adults. (R.Br.48, citing *Roper v. Simmons*, 543 U.S. 551, 570 (2005) ("it would be misguided to equate failings of a minor with those of an adult"); Amicus Br. 8, citing *Miller v. Alabama*, 132 S. Ct. 2455, 2470 (2012) ("children cannot be viewed simply as miniature adults")). However, respondent does not address this Court's decision in *Patterson*, in which this Court has clearly rejected an effort to use these same eighth amendment sentencing principles to support a due process argument. *See People v. Patterson*, 2014 IL 115102, ¶97 (rejecting a due process challenge to the automatic juvenile transfer statute because "the applicable constitutional standards differ considerably between due process and eighth amendment analyses").

Ultimately, respondent's argument fails to consider that VOYRA has an independent regulatory purpose, which, while still protective of young offenders, also concerns public safety as an equally important goal. Respondent's analysis also ignores the evolution of the juvenile justice system. Rehabilitation is a worthy goal and remains an integral part of the juvenile justice system, but since 1999, reform efforts have demonstrated the legislature's fundamental shift from having only the singular goal of rehabilitation of juvenile offenders to instead include the need to protect the public and the desire to hold juveniles accountable for violations of the law. *See, e.g., In re Jonathon C.B.*, 2011 IL 107750, ¶87 (noting recent changes in Juvenile Court Act "to hold juveniles accountable for their actions and to protect the public," but rejecting notion that

juveniles are entitled to jury trials); *In re A.G.*, 195 Ill. 2d 313, 317 (2001) (noting that legislature has included protection of public and accountability as policy goals in Juvenile Court Act). Thus, while respondent was treated in a more protective manner through the juvenile court process than she would have been in criminal proceedings, she is still subject to VOYRA's independent regulations. Moreover, VOYRA treats juveniles under 17 differently than adults, considerably limiting access to registration information while an offender is under 17. 730 ILCS 154/100. Respondent claims that it is unreasonable to permit the public to access registry information after she turns 17. (R.Br.51) However, compilation of material without any access by the public fails to consider the interest in public safety. Thus, in drawing the line at the balance of interests, once a violent offender turns 17 and can move more freely about the community, the General Assembly has rationally chosen to permit public access to registry information.

Respondent and amici finally contend that the means fail constitutional scrutiny because the General Assembly has essentially usurped the judicial function to determine dangerousness after a hearing. (R.Br.51; Amicus Br.12) However, the General Assembly is not required to incorporate an individualized dangerousness finding in VOYRA. *See People v. Bombacino*, 51 Ill. 2d 17, 20 (1972) (where Juvenile Court Act did not vest discretion for a transfer hearing in a court, due process required no hearing). As a matter of separation of powers, the legislature is entitled to determine that entry and exit from the registry should be automatic and without judicial review. *Cf. Derrico G.*, 2014 IL 114463, ¶¶77-79 (recognizing the legislature's constitutional power to determine removal process in juvenile court proceedings).

In arguing that the goal of public safety could be better served through court

hearings, respondent and amici raise policy arguments, not constitutional ones. In discussing a challenge to the mandatory juvenile transfer laws, this Court has explained: "[w]hether [mandatory transfer] is the most effective means [of combating violent juvenile crime] is not relevant." *People v. P.H.*, 145 Ill.2d 209, 233 (1991). *See also People v. Pacheco*, 2013 IL App (4th) 110409, ¶67 ("[W]e cannot find a statute unconstitutional simply because we believe it creates bad policy. 'In relation to the judicial branch, the General Assembly, which speaks through the passage of legislation, occupies a superior position in determining public policy.'"), quoting *Reed v. Farmers Ins. Group,* 188 Ill.2d 168, 175 (1999).

Illinois has rationally initiated a multi-pronged approach to manage the risk to the public posed by violent juvenile offenders. Some juveniles who commit violent crime will be transferred, tried, and convicted as adults and immediately be subject to VOYRA's "adult registry" and public access website. Some juveniles will be held accountable for their actions through the juvenile justice system and experience limited dissemination of registry information until they turn 17. Given that the Illinois Department of Juvenile Justice has identified that one of its long-term goals is to "significantly reduce the use of confinement for juvenile offenders," the increased efforts to keep juveniles in the community or to return them to the community as soon as practicable means that they will have greater freedom to move about in the community. *See* Illinois Department of Juvenile Justice Annual Report at 12. (Dec. 1, 2014), avail. at: *https://www.illinois.gov/idjj/Documents/2014_12_01_DJJAnnual%20Report_Final(4).pdf*. Thus, part of the General Assembly's multi-pronged approach is to provide increased law enforcement monitoring while violent juveniles are within the community. As

already explained, it is rational for the General Assembly to determine that the regulatory aims of protecting public safety and facilitating law enforcement are served by ensuring that VOYRA offenders remain registered for ten years and that disclosure of registry information serves the purpose of protecting children from violent offenders during the peak years of offending. Thus, under the "highly deferential" rational basis test, VOYRA promotes the indisputably valid purpose of promoting public safety, and it does so through reasonable means.

Moreover, this Court should refuse to find that VOYRA is facially unconstitutional in violation of substantive due process principles because it can be applied validly under at least some circumstances, as respondent herself admits. While respondent challenges as "hyperbolic" the People's point that she cannot establish that murder is not a public threat (R.Br.31), respondent later admits that murder and kidnapping do present threats to the public (R.Br.50). This concession dooms her facial due process claim because it is well-established that a statute is facially unconstitutional only if "no set of circumstances exists under which the statute would be valid." *In re Derrico G.*, 2014 IL 114463, ¶57; *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). "[S]o long as there exists a situation in which a statute could be validly applied, a facial challenge must fail." *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002).

And "if a statute is constitutionally applied as to the challenger, [her] facial challenge necessarily fails." *Derrico G.*, 2014 IL 114463, ¶57. Respondent claims that she poses no threat to the public because the target of her attack was a family member, and she characterizes her offense as merely a "family squabble" (R.Br.33) and "an act of desperation and not an accurate reflection of her threat to society as a whole." (R.Br.52)

But, the record belies her claim that she was acting out of desperation, and Illinois has long recognized that domestic violence is a threat to the public. *See People v. Wilson*, 214 Ill. 2d 394, 402-03 (2005) (domestic battery statute seeks to curb the serious problem of domestic violence).

Respondent and her brother victim, Muhammad, had argued "for about a minute" during which Muhammad had punched respondent two or three times on her arm. (R1.107) Afterward, Muhammad walked away and into a bedroom where his two younger cousins were and closed the door. (R1.108-09) Respondent was angry, so she went into the kitchen, and, while threatening to kill her brother, picked out a knife. (R1.153) Her aunt saw M.A. bring the knife out of the kitchen and ordered M.A. to put the knife down, but M.A. ignored her. (R.1.138-39) Muhammad remained in the bedroom with the door closed and tried to keep her out, but respondent forced her way inside and attempted to stab him, slashing Muhammad twice on his face and his arm, causing injuries that required 13 stitches. (R1.119) The aunt called the police and M.A.'s father and then went to check on the younger children in the bedroom. (R1.131, 138-39) By the time police arrived, respondent had slashed several items in the living room, and she was still in possession of the knife. (R1.117-18) Although, respondent claimed that she was just "mad" and "trying to scare" Muhammad, the court found Mohammad's account "more credible." (R1.169-71)

M.A.. chose to attack Muhammad with serious, life-threatening violence. That the object of her fury was her sibling does not minimize the seriousness of the offense. M.A. was charged with aggravated domestic battery, which would be a serious felony if she were an adult. See 720 ILCS 5/12-3.3 (Class 2 felony). Her acts bordered on

attempted murder, given her stated intent to "kill" Muhammad and her efforts to stab him after forcing her way in through the closed door to slash him with a knife, but she was charged with the lesser aggravated domestic battery. *Cf. Coram v. State (Ill. Dep't of State Police)*, 2013 IL 113867, ¶46 (Theis, J., dissenting) (observing that federal firearm disability law treats even misdemeanor acts of domestic violence as violent crimes because of the recognition that "domestic abusers often commit acts that would be charged as felonies if the victim were a stranger, but that are charged as misdemeanors because the victim is a relative") (further citation omitted). Respondent's offense involved exactly the type of serious violence that appropriately triggered the application of VOYRA to her.[1]

C. VOYRA Comports with Procedural Due Process. (Reply to Respondent's Argument "B")

Respondent argues that VOYRA's procedures are deficient in that procedural due process requires a hearing procedure (1) before a juvenile violent offender can be required to register (R.Br.9); (2) before being required to register on the "adult registry" after turning 17 years old; and (3) as a mechanism to permit early removal from the registry. (R.Br.30-33) However, a juvenile violent offender has no constitutional right to additional process to establish "individual dangerousness" where it is not relevant to the statutory scheme. Further, respondent fails to establish that she has a liberty interest in her reputation, potential employment and education, or her freedom from criminal

[1] Part of respondent's argument is based on the premise that "there is absolutely no basis to conclude that she will remain a threat" after this case was adjudicated and cites as "fact" that she "has not committed any other offenses." (R.Br.53) However, respondent does so by citing to a record that ends with the sentencing in this case and does not reflect any further information about any delinquent activities after her adjudication.

penalties. That the General Assembly has created a mechanism for the judiciary in providing for potential early removal of SORA registrants who can demonstrate they pose no risk of harm does not establish a procedural due process entitlement for violent juvenile offenders who the legislature could rationally assume are more likely to pose such a risk.[2]

As explained in the People's opening brief (P.Br.21), procedural due process claims challenge the constitutionality of the procedures implemented to deny a person's life, liberty, or property. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009). In evaluating such a claim, courts consider several factors: the interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural

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[2] Respondent contends that "VOYRA applied as soon as the child is adjudicated delinquent, and regardless of whether the child is made a ward of the court," (R.Br.27), but this is a misreading of the statute. VOYRA makes clear that, for its purposes, "'convicted' shall have the same meaning as 'adjudicated.'" 730 ILCS 154/5(a)(2). In a criminal case, a "conviction" includes a finding of guilt and a sentence. 720 ILCS 5/2-5; 725 ILCS 5/102-14. A finding of delinquency and a finding of guilty in adult court "are one and the same." *In re Veronica C.*, 239 Ill. 2d 134, 145 (2011). The juvenile sentencing proceeding includes the adjudication phase where the trial court determines whether it is in the best interest of the minor and the public to make the minor a ward of the court. *In re Samantha V.*, 234 Ill. 2d 359, 365 (2009); *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 453 (2007); 705 ILCS 405/5-705(1). Section 5-705(1) requires the court to close the case if it determines that the minor should not be made a ward of the court. 705 ILCS 405/5-705(1). If the minor is made a ward of the court, the case then advances to the dispositional phase where the trial court "fashions an appropriate sentence that will best serve the minor and the public." *Samantha V.*, 234 Ill. 2d at 365-366; *Stralka*, 226 Ill. 2d at 453; 705 ILCS 405/5-705(1). Therefore, respondent is incorrect in arguing that if the juvenile court decides not to make respondent a ward of the court or makes no disposition, VOYRA would nonetheless apply. (R.Br.27)

requirement would entail. *Lyon v. Dep't of Children & Family Servs.*, 209 Ill. 2d 264, 277 (2004), citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also* P.Br. 28; R.Br. 17-18.

Respondent's procedural due process claim fails at the threshold because she has not demonstrated that she has a protected liberty interest that is implicated by VOYRA's registration. (R.Br.21-27) Respondent admits that this Court has "yet to address the issue" and "has never squarely addressed" the issue of whether VOYRA implicates a liberty interest. (R.Br.20, 22) Citing to *People v. Cardona*, 2013 IL 114076, respondent contends that by not reaching the issue of whether SORA registration implicates a liberty interest, this Court "indicated that a registration requirement does implicate liberty interests." (R.Br.23) However, positive law is not made in the absence of findings, holdings or even commentary on a subject.

Respondent attempts to distinguish the People's citation to cases that have construed SORA and have found that the registry does not implicate a liberty interest by arguing that those cases were decided before this Court's decisions in *In re Jonathon C.B.*, 2011 IL 107750 and *Konetski*, 233 Ill. 2d 185. (R.Br.22) However, again, respondent admits that she is relying on what she characterizes as a "suggestion" of a liberty interest in *Jonathon C.B* and *Konetski*. (R.Br.22) (admitting that neither case expressly reaches issue but find SORA registration procedures in those cases were not sufficiently burdensome to implicate liberty interest should one exist). *Jonathon C.B.* followed *Konetski*, in holding that the SORA registration requirement was not so burdensome as to require the additional procedure of a jury trial for juveniles. *Jonathon C.B.*, 2011 IL 107750, ¶106; *Konetski*, 233 Ill. 2d at 203. In doing so, this Court

compared the severity of consequences for adults convicted of sex offenses to those for juveniles and found that SORA was less burdensome for juveniles than adults in part based on the early termination provision and the lack of registry as an adult upon turning 17 – both of which are concededly not in VOYRA. 2011 IL 107750, ¶106, citing *Konetski*, 233 Ill. 2d at 203. But it also cited the limited dissemination of juvenile information – which *is* in VOYRA. *Id.* Thus, it is far from clear that under *Konetski* and *Jonathon C.B.*, these two differences alone would lead this Court to recognize a constitutionally-protected liberty interest because this Court declined to expressly address the question in those cases and because those registrants were challenging the absence of different procedures.

It is respondent's burden to identify the particular liberty interest that is impaired by VOYRA, but she has failed to do so. Respondent does not claim a privacy interest. (R.Br.25) Instead, respondent claims a due process right to pursue "happiness," citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). (R.Br.17) However, *Meyer* involved a law banning teaching in foreign languages to children under 10 to increase the civic quality of young Nebraskans, but the Court found that while it was a laudable goal, it was not within the state's power. *Meyer* provides no support because the safety of children is assuredly within Illinois' police power.

Next, citing the *M.A.* appellate majority, respondent also argues that VOYRA "impact[s] juveniles' liberty interests" in that it hinders them from "maintaining a good reputation," "pursuing employment and education," and "avoiding criminal penalties." (R.Br.17-18, 23, citing *M.A.*, 2014 IL App (1st) 132540, ¶¶46, 54, 56-60, 65). Respondent's assertions fail. First, there is no constitutional liberty interest in reputation

in and of itself. Respondent relies on *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), for the view that laws that have the potential to influence an individual's reputation or standing in society clearly affect "liberty." (R.Br.18 citing *Constantineau*, 400 U.S. at 436-37). *Constantineau* held that "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." 400 U.S. at 437. *Constantineau*, however, was a very different case; there the law permitted a local police chief to post a notice at city retail liquor outlets forbidding the sale of liquor to a person that police decided was dangerous due to excessive drinking. *Id.* at 435. The determination that the statute violated procedural due process was made, in part, because a determination of "dangerousness" was relevant to the law, yet the posting was made without *any* process before the person was barred from purchasing liquor. *Id.* at 437.

Five years later, the Supreme Court clarified that a reputational interest alone does not trigger procedural due process protection because, as it explained, "reputation" has no "special protection over and above other interests that may be protected by state law." *Paul v. Davis*, 424 U.S. 693, 701 (1976); *see also* P.Br.24. Respondent has not addressed the People's argument that *Paul* established that it is only where the stigma of damage to a reputation is coupled with another interest – called the "stigma-plus" test – that a liberty interest that must be protected by procedural due process protection exists. *Id.* at 706, 711-12 (in addition to stigmatizing statement, defendant must also establish some tangible and material state-imposed burden or alteration of status or right).

Paul explained that, in *Constantineau*, the flyer served to alter the legal status of a person who, prior to the posting, had the legal right to buy liquor. 424 U.S. at 708-09.

But in *Paul*, the plus prong of the stigma-plus test was not met because there was no alteration of a previous legal status where Davis' name and photograph appeared on an "Active Shoplifters" flyer distributed by police to local merchants. *Id.* at 697, 709. While adults have a right to buy liquor – a right that was compromised in *Constantineau* – no one has a right to shoplift. Here, as in *Paul*, respondent has no right to commit aggravated domestic battery, so any injury or stigma to her reputation by virtue of the truthful information on the registry is as a result of her own unlawful conduct.

Nonetheless, in an effort to meet the "alteration of a previous legal status" for the plus prong of *Paul*'s stigma-plus test, respondent argues that VOYRA limits her opportunities for employment or education. (R.Br.23) But this argument, too, fails because VOYRA imposes no State impairment nor does it directly bar or regulate any particular employment or educational opportunity. While Illinois protects as a property and liberty interest the right to pursue a trade, occupation, business or profession, it does not protect a general right to be employed at any particular job. *See* e.g., *Coldwell Banker Residential Real Estate Services, Inc. v. Clayton*, 105 Ill. 2d 389, 397 (1985); *Lawson v. Sheriff of Tippecanoe County*, 725 F.2d 1136, 1138 (7th Cir. 1984) ("This liberty [interest] must not be confused with the right to a job . . . but if a state excludes a person from a trade or calling, it is depriving him of liberty, which it may not do without due process of law."). The same infirmity undermines respondent's claimed impairment of her potential future admission into college. (R.Br.19) Colleges and universities accept students based on many factors and respondent does not establish that her adjudication would affect any potential future application. Adult prison inmates and incarcerated juveniles are eligible for financial aid to attend college, and most restrictions on financial

aid are removed once an inmate is released. *See Federal Student Aid Eligibility for Students Confined in Adult Correctional or Juvenile Justice Facilities* (Dec. 2014), U.S. Dep't of Education, avail. at: https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf. It defies common sense to believe that federal financial aid would be readily available if such persons were barred from seeking higher education. Thus, respondent has failed to establish that the potential to attend college qualifies as a "plus" factor for the stigma-plus test.

Respondent also argues that she has a liberty interest in avoiding criminal penalties. (R.Br.20, citing *Marks v. U.S.*, 430 U.S. 188, 191 (1977)). But *Marks* is inapposite because it involved the application of *ex post facto* principles in an obscenity conviction. Respondent will not face potential criminal penalties unless she fails to register and comply with VOYRA and then only after a future successful, separate action requiring proof of additional elements. 730 ILCS 154/60. Thus this case is unlike *Marks*. *Cf. Doe v. Fortenberry*, 2006 U.S. Dist. LEXIS 53912 (S.D. Miss. 2006) (finding no standing to raise due process challenge based upon a claimed liberty interest in avoiding criminal penalties because they apply only if registrant fails to register as a sex offender).

Citing out-of-state case law, respondent claims that other states have recognized liberty interests implicated by their SORA statutes. (R.Br.20-21) However, as the People noted in its opening brief (P.Br.17-19), each state's scheme is different. For example, respondent cites a lifetime-SORA-registration case in which the Supreme Court of Pennsylvania found a deprivation of the Pennsylvania Constitution's fundamental liberty interest in reputation. *In the Interest of J.B.*, 107 A.3d 1, 41-42 (Pa. 2014). But

respondent has not been subjected to SORA, nor is she subject to lifetime registration in VOYRA, nor does the Illinois constitution include a due process interest in "reputation" as does Pennsylvania's constitution.

Respondent also cites several other out-of-state cases involving *ex post facto* challenges under state constitutional principles that are more restrictive in application than the federal constitution. (R.Br.20-21, citing *Wallace v. State*, 905 N.E. 2d 371 (Ind. 2009) (Indiana interprets *ex post facto* principles more restrictively than federal constitution); *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 62 A.3d 123, 133 (Md. 2013) (Maryland constitution more restrictive in its application of *ex post facto* laws than federal constitution); *Doe v. State*, 189 P.3d 999, 1012 (Alaska 2008) (Alaska's state constitution's *ex post facto* principles depart from the United States Supreme Court's); *State v. Williams*, 952 N.E.2d 1108, 1113 (Ohio 2011) (application of Ohio's state constitutional *ex post facto* principles); *State v. Letalien*, 985 A.2d 4, 24-25 (Me.2009) (Maine's version of SORA is part of the criminal sentence rather than an independent requirement for state's application of *ex post facto* principles). However, this Court has interpreted the *ex post facto* clause in the Illinois constitution to be in lockstep with the federal constitution (*Konetski*, 233 Ill. 2d at 209), and the U.S. Supreme Court has held that SORA-type registration requirements are not punitive for purposes of the federal *Ex Post Facto* Clause. *Smith v. Doe*, 538 U.S. 84, 95 (2003).

Ultimately, *ex post facto* principles are not at issue in this case. And, as the People argued in its opening brief (P.Br.16), VOYRA is not a part of the sentence. This Court has repeatedly held that Illinois' SORA is not punitive in nature and should decide similarly in this case. *See* P.Br. 16 (citing cases); *Konetski*, 233 Ill. 2d at 210, citing

People v. Cornelius, 213 Ill. 2d 178, 208 (2004) (applying *Smith v. Doe*, 538 U.S. 84, 103 (2003). Accordingly, respondent has not proven that she has a liberty interest that triggers procedural due process protections.

Even if VOYRA implicates a constitutionally-protected liberty interest, respondent received all the procedural protections she was due in the juvenile delinquency proceeding, including proof of guilt beyond a reasonable doubt. Respondent does not contest in this appeal any of those procedures or her adjudication of guilt. And applying the *Mathews* factors, respondent has not demonstrated that the procedures provided were constitutionally inadequate.

The concerns respondent raised when asserting a liberty interest – about her reputation and potential impacts on her future educational or vocational opportunities – are also relevant to the private interest affected by the official action, the first *Mathews* factor. Although effects on these potential future opportunities are too speculative to satisfy the "plus" part of the stigma-plus test discussed above, the People acknowledge that they may lend some weight to the first factor. Nonetheless, the balance of the remaining factors shows that the extent of the procedures provided in VOYRA passes constitutional muster. As to the second *Mathews* factor, the risk of an erroneous deprivation is minimal. Respondent contends that the risk of erroneous deprivation is high because "VOYRA comes into play without any opportunity whatsoever to be heard" (R.Br.25-26), but that is precisely the point. Because VOYRA registration is required upon adjudication of guilt for a qualifying offense, and nothing more, there is no additional finding whose accuracy can be questioned. And this Court has already found that the juvenile procedures leading to an adjudication satisfy procedural due process. In

Konetski, this Court considered whether additional process (a jury trial) was required before a juvenile could be required to register in SORA. 233 Ill. 2d 185. This Court held that because juveniles received "several important procedural safeguards," including the right to notice, the right to counsel, the right to confront witnesses, the privilege against self-incrimination, and the standard of proof beyond a reasonable doubt, no further process was due prior to mandating automatic registration in SORA as a result of the adjudication. *Id.* at 201-02, citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 533 (1971).

Similarly, in VOYRA, before a juvenile is required to register, the juvenile must be adjudicated delinquent of a designated violent crime and will have had the right to notice, the right to counsel, the right to confront witnesses, the privilege against self incrimination, and the standard of proof beyond a reasonable doubt – all of the same important procedural safeguards that this Court held were sufficient to comport with procedural due process in *Konetski*. Because the prior adjudication occurred through a proceeding that itself complied with due process, the rights to adequate notice and a fair adjudication have already been satisfied. As with SORA, no further process should be required.

The General Assembly has also limited dissemination until the registrant turns 17, after which the registrant must register as an adult. 730 ILCS 154/10, 100. This limitation is a reasonable balance of the competing interests because heightened concerns about juveniles warrant limiting dissemination until the registrant turns 17, but the public interest in receiving the information grows once the registrant becomes older and can move about the community more freely. Additionally, Illinois has a procedure in place to guard against factual errors in the registry, because the Illinois Administrative Code

provides that a registrant may appeal directly to the Illinois State Police, the administrator of VOYRA, to request an administrative hearing. *See* 20 Ill.Admin.Code §1200.30 (setting out review procedures); *Honzik v. Dep't of State Police*, 2013 IL App (3d) 120103 (administrative decision to extend SORA registration period reversed based upon factual error). As an added measure, Illinois State Police has a disclaimer on the public access website to make clear that it has not individually assessed the dangerousness of any particular registrant:

> The Violent Offender Against Youth Registry was created in response to the Illinois Legislature's determination to facilitate access to publicly available information about persons convicted of certain offenses against youth. ISP has not considered or assessed the specific risk of re-offense with regard to any individual prior to his or her inclusion on this Registry and has made no determination that any individual included in the Registry is currently dangerous. Individuals included on the Registry are included solely by virtue of their conviction record, Illinois state law and proof the offense was not sexually motivated. The primary purpose of providing this information is to make the information easily available and accessible, not to warn about any specific individuals.

See Illinois State Police, VOYRA "Disclaimer," avail. at: http://www.isp.state.il.us/cmvo.

As VOYRA's structure and this disclaimer illustrate, registration is not dependent on an *individualized* determination of dangerousness. No additional process or hearing is due or required because there is no factual issue about dangerousness to be resolved prior to placing the registry information on the website. Respondent does not address the People's argument in its opening brief that procedural "due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme." *See* P.Br.30, citing *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 8 (2003) ("States are not barred by principles of 'procedural due process' from drawing such [categorical

registration] classifications"). Therefore, respondent has failed to make the requisite showing to proceed with the analysis on this basis.

Nonetheless, respondent contends that the sentencing judge should have "some authority to determine whether an offender should be on the registry" and points out that the legislature has given some power in SORA cases for judges to permit early termination of the registration requirement for registrants who "pose no risk to the community" after two or five years (depending on the classification of the offense committed). (R.Br.28) However, the assessment of different procedures, penalties and consequences for different types of criminal conduct is a matter within the province of the legislature. There is no entitlement to a judicial, rather than a legislative assessment. *Mathews*, 424 U.S. at 334 (no entitlement to a hearing because "due process is flexible and requires only such procedural protections as the particular situation demands").

The required hearing envisioned by respondent is a "dangerousness" hearing, but the legislature has removed the individualized "risk of harm" consideration from VOYRA. It is not necessary to hold a dangerousness hearing at age 17 or in five years or at some other arbitrary time in cases under VOYRA, because the legislature has already determined by categorization of the qualifying offenses as "violent" that they do pose a risk of harm. In other words, if the legislature had made VOYRA registration dependent on the individualized dangerousness of each registrant, then there would be a constitutional obligation to provide due-process-compliant procedures for determining individualized dangerousness. But because the legislature instead created a scheme in which it enumerated qualifying offenses that it determined necessarily posed the level of risk that warranted registration, registrants can only raise a procedural due process

challenge about the proceedings leading to their adjudication of guilt for the qualifying offenses themselves. Respondent raises no such challenge. To argue an entitlement to an individualized dangerousness hearing within a statutory scheme in which individualized dangerousness is irrelevant to the registration requirement is, in effect, a substantive due process argument disguised as a procedural due process one. But VOYRA does not violate substantive due process principles, as discussed above. *See* Part B, *supra*.

In contrast to VOYRA's categorical approach, the fact that the legislature created an early termination hearing process in SORA demonstrates that the legislature concluded that some of the offenses requiring SORA registration may not involve violent conduct or a long-term risk of harm. Even so, it is not enough that a SORA registrant claim that s/he poses no risk, the General Assembly has required the passage of a period of time before a petition can be filed – no earlier than five years if the offense was a felony or two years if a misdemeanor. 730 ILCS 150/3-5(c). Further, the General Assembly established an extensive list of factors that are relevant to whether the SORA registrant poses a risk: (1) a risk assessment; (2) sex offender history; (3) evidence of rehabilitation; (4) age at the time of the offense; (5) the mental, physical, education, and social history; (6) victim impact statements; and (7) any other relevant factors. 730 ILCS 150/3-5(e).

Such a process cannot be imported cleanly into VOYRA. The first two factors in particular are specific to sex offenders, and the first, especially, has no established analogue applicable to violent offenders. Moreover, unlike a SORA petitioner who may face lifetime registration, a juvenile registrant in VOYRA faces only a 10-year period. After the waiting period to file the petition for early termination, the court's consideration

of the hearing factors may require lengthy, protracted proceedings that, even if successful, would shave minimal time off the remaining five years of registration in felony-level cases. Thus, the second *Mathews* factor – the risk of an erroneous deprivation of the interest affected – weighs in favor of finding the proceedings sufficient. Precisely because individualized dangerousness is not a part of a person's eligibility for VOYRA registration, the risk of erroneous deprivation is minimal. Respondent does not challenge the sufficiency of the procedures provided before she was adjudicated delinquent of the offense that triggered her obligation to register.

Additionally, the final *Mathews* factor – the government interest – also weighs heavily in favor of upholding VOYRA as enacted. In fact, Illinois has two interests at stake. First, as the People argued in its opening brief, the State's interest in public safety, especially for children, is compelling. (P.Br.31-32) And this interest is promoted by the maintenance and dissemination of the VOYRA registry. Second, "the Government's interest, and hence that of the public, in conserving scarce fiscal and administrative resources is a factor that must be weighed." *Mathews*, 424 U.S. at 348. Illinois has a fiscal and administrative interest in reducing the cost and burden of additional juvenile court proceedings. *See In re D.T.*, 212 Ill. 2d 347, 365 (2004).

It is true that there are fiscal and administrative burdens caused by provision of the early termination hearings for SORA registrants, but these are tempered by the fact that relatively few such hearings will occur. For example, between 2004 and 2010, "[y]outh arrested for sex offenses comprised less than one percent of all juvenile arrests." *See Improving Response to Sexual Offenses Committed by Youth: Recommendations for Law, Policy and Practice* at 15, Illinois Juvenile Justice Commission, Illinois Dep't of

Human Services (Mar. 2014), avail at: http://ijjc.illinois.gov/youthsexualoffenses. Of that number, some juvenile arrestees may not enter the juvenile justice system at all or may be subject to diversionary supervision after which their cases will be dismissed (705 ILCS 405/5-615), so they will never trigger SORA registration. Some juvenile sex offenders who commit violent sex offenses may be transferred to criminal courts where they will be ineligible to seek such hearings. 730 ILCS 154/3-5(i). Thus, it is likely that only a fraction of the less-than-one-percent of all juvenile arrests will even be eligible for such hearings.

However, about 31% of juveniles are arrested for crimes against a person, many of these offenses are trigger offenses for VOYRA. *See Juvenile Justice System and Risk Factor Data for Illinois: 2012 Annual Report, 42.* The Illinois Criminal Justice Information Authority: Chicago, IL., avail at: *http://www.icjia.state.il.us/public/pdf/ResearchReports/JJSRFDIL2012_Annual_Report_082914.pdf* (In calendar year 2012, 29,443 juveniles were arrested, 31% for offenses against a person, including homicide). In that same year, 34% of court-committed juveniles ages 13 to 16 were committed for offenses against a person. *Id.* at 72. And, approximately 26% of juvenile probationers have committed a violent offense. *See* 2013 Annual Report of the Illinois Courts, avail. at: *http://www.state.il.us/court/SupremeCourt/AnnualReport/2013/StatsSumm/2013_Statistical_Summary.pdf.* Providing such a process to *all* the juveniles who commit serious battery offenses, including aggravated domestic battery and aggravated battery with a firearm or machine gun, forcible detentions, child abductions, endangering the life or health of a child offenses, kidnappings, home invasions and involuntary manslaughters

and murders of children, among other VOYRA trigger offenses, would unreasonably increase the state's fiscal and administrative burdens. For every VOYRA registrant, such burdens would include resources needed to allow every juvenile offender to have the opportunity to file a petition and demand a hearing, to meet with his or her counsel for the proceeding, review counsel's advice, and decide how to proceed in the hearing.

If a "risk assessment" factor is imported from SORA into VOYRA, then substitute "risk assessment" procedures would first need to be developed because the current evaluation procedure in SORA is specific to sex offenders. *See* 730 ILCS 150/3-5(e)(1) (risk assessment about juvenile sex offenders must be performed by evaluator licensed under Sex Offender Evaluation and Treatment Provider Act). Inevitably, some hearings will become protracted, necessarily prolonging the process. In sum, the State's two significant interests weigh heavily against requiring respondent's proposed additional proceedings.

Finally, citing to *Miller v. Alabama*, 132 S. Ct. 2455 (2012) and *Graham v. Florida*, 560 U.S. 48 (2010), respondent argues generally that juvenile offenders should be afforded "more protections" to comport with procedural due process. (R.Br.17) However, respondent again fails to address the fact that the principles that underlie eighth amendment jurisprudence do not provide a basis to "justify a similar ruling brought pursuant to another constitutional provision." *People v. Patterson*, 2014 IL 115102, ¶97, citing *People v. Davis*, 2014 IL 115595, ¶45.

Thus even if there is a liberty impairment, as respondent claims, any impairment is diminished by the procedural safeguards in place during the adjudicatory process, and the comparatively short (10 years for VOYRA versus up to lifetime in SORA) period of

increased law enforcement monitoring with limited dissemination of registry information until the registrant turns 17. Additionally, the probable value of the additional procedures would not outweigh the fiscal and administrative burdens required. Respondent has failed to establish that additional process is constitutionally required.

D. VOYRA Comports With Equal Protection. (Reply to Respondent's Argument "C")

Equal protection principles require similarly situated individuals to be treated by the government in a similar manner, unless the State can demonstrate an appropriate reason to treat them differently. *People v. Breedlove*, 213 Ill. 2d 509, 518 (2004). Under the rational basis test that respondent acknowledges applies here (R.Br.36-37), the statute should be upheld if there is any conceivable set of facts that show a rational basis for it. *People v. Johnson*, 225 Ill. 2d 573, 584-85 (2007). As the People explained in the opening brief, VOYRA survives respondent's equal protection challenge because juvenile VOYRA registrants are not similarly situated to juvenile SORA registrants, (P.Br.41-42), and because even if similarly situated, their different treatment is justifiable under this deferential standard of review (*id.* at 43-44).

First, juvenile SORA registrants are not similarly situated to juvenile VOYRA registrants. Respondent groups all juvenile offenders into one class, regardless of individual or group characteristics. But as this Court noted in *Derrico G.*, "if individual and group characteristics and circumstances do not matter, if uniformity were the only goal and the requisite to satisfy guarantees of equal protection, then all juvenile offenders could be rendered subject to the provisions of the Code of Corrections, and equal protection would be satisfied." 2014 IL 114463, ¶93 (rejecting the argument that all

adults and juveniles on supervision comprised a single class). The determination of what is a distinct class resides in the General Assembly. "A legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill." *People v. Adams*, 149 Ill. 2d 331, 353 (1992) (rejecting classification challenge, finding that the legislature rationally selected only certain convictions as mandating HIV testing in 730 ILCS 5/5-5-3(g)).

And the legislature had good reason to conclude that juvenile SORA and VOYRA registrants were not similarly situated. Respondent argues that "nothing in the legislative history indicates that the legislature intentionally distinguished between SORA registrants and VOYRA registrants." (R.Br.44) However, the General Assembly's division of the registries in 2006 provides strong evidence that it determined that sex offenders and violent offenders comprise two different classes of offenders that are not similarly situated. *See* P.A.94-945 (eff. June 27, 2006). The General Assembly established different schemes for early-removal and public access through the public-access adult website differently in SORA and VOYRA, and the legislative history shows that this was the result of General Assembly's policy decisions.

In 2006, the legislature passed House Bill 2067, amending SORA by removing the adult-registry-after-17 provision formerly in 730 ILCS 150/3(a) (2006) and adding §3-5 to allow for petitions for early termination of registration. In that same session, House Bill 4193 was passed, which established VOYRA *without* a comparable §3-5 and without removing the adult-registry-after-17 provision. *See* P.A. 94-945, §1025 (eff.

June 27, 2006). In fact, the Senate considered and voted to pass the two bills on the same day.[3] While House Bill 4193 was signed into law as Public Act 94-945, the governor vetoed House Bill 2067. More than six months after the effective date of Public Act 94-945 (adding VOYRA), Senator Raoul introduced the second attempt to amend SORA by adding §3-5 and removing the adult-registry-after-17 provision in Senate Bill 121. Even though VOYRA would have been in effect for about a year by the time Senate Bill 121 completed its passage through the legislative process, no effort was made to include the early removal provision or to exclude the adult-registry-after-17 provision in VOYRA. *See* P.A. 95-658 (eff. Oct. 11, 2007). Thus, the legislative history demonstrates that the General Assembly was well aware of the two different schemes, even at one point considering them on the same day, and yet made intentional choices to create two different paths to termination – an opportunity for early judicial termination for nonviolent teens in SORA while retaining a categorical full registration term for violent teens in VOYRA with public access at age 17.

While respondent contends that it is a "false dichotomy" to argue that the legislature chose to distinguish between registrants on the basis of the risk of harm that they pose (R.Br.42), the legislature has done just that. The conduct that brings a registrant to the VOYRA registry is substantially different from that which brings a registrant to the SORA registry. All SORA registrants have attempted or completed sexual or sexually-motivated offenses or are designated as sexually dangerous or sexually

[3] The transcript of proceedings identify that there were just a few pages and a short discussion on a couple of bills between consideration of the bills. *Compare* 94th Ill. Gen. Assem., Senate Proceedings, March 30, 2006, p.51 (vote on H.B. 2067) *with* p. 56 (H.B. 4193 is called).

violent persons. In contrast, all VOYRA registrants have attempted or completed violent offenses. *Compare* 730 ILCS 150/2(B) (listing "sex offenses") *with* 730 ILCS 154/5(b) (listing "violent offense[s] against youth"). Thus, each law is directed at a separate category of offenses and includes regulations related to the unique risks posed by the registrants within the registry.

In an effort to claim a "similarly situated" status, respondent attempts to parse out the State's reference, in its opening brief, that *sexual predators* pose a particularly unique risk of recidivism. (R.Br.43, citing P.Br.33) However, Illinois' approach to sex offenders is tailored to the fact that when they reoffend they are most likely to commit another sex offense. *See Skinner v. Oklahoma*, 316 U.S. 535, 540 (1942) ("a State is not constrained in the exercise of its police power to ignore experience which marks a class of offenders or a family of offenses for special treatment").

That these two groups are not similarly situated is further illustrated in notable distinctions between SORA and VOYRA. Registration duties in SORA for sex offenders reflect the General Assembly's concern with registrants' access to children. For example, more registration information is required of sex offenders, such as DNA, social media information and vehicle registration information, than is required of VOYRA registrants. 730 ILCS 150/8. The growth of the Internet and digital media provide new opportunities to sex offenders and SORA attempts to limit sex offenders from approaching children online by requiring that registration information include "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." 730 ILCS 150/3. The General Assembly has not required VOYRA registrants to provide such information.

To keep sex offenders away from where children congregate at schools and parks, Illinois also regulates where sex offenders can work and live. *See* 720 ILCS 5/11-9.3 (subject to stated exceptions, child sex offenders may not be present, loiter, reside, approach, contact, work or volunteer in certain programs, or drive certain vehicles). One criminal offense adopts SORA's definition to ban "sexual predators" from presence or loitering in parks. 720 ILCS 5/11-9.4-1 (adopting SORA definition of sexual predator).

Perhaps most clearly, the General Assembly has designated the term of registration based upon the classification of offender. Even within SORA, with the exception of criminal sexual abuse, which has a 10-year registration period, adjudication of all the major sex crimes (720 ILCS 5/11-1.20, 1.30, 1.60) results in a designation of "sexual predator," which requires lifetime registration for juveniles as well as adults. 730 ILCS 150/2(E). No offense by a juvenile, not even murder, triggers lifetime registration under VOYRA. *Compare* 730 ILCS 150/7 *with* 730 ILCS 154/10.

In these several ways – requirement of registration information about DNA, social media, and vehicles; regulation about where the registrant works and lives; and potential lifetime registration terms – SORA registration is *more onerous* than VOYRA registration. But respondent is not claiming that VOYRA is unconstitutional for differing from SORA in these ways. The absence of this argument speaks volumes. It shows that respondent, like the General Assembly, acknowledges that there are important differences between the offenses that trigger registration under the two regimes that reasonably

justify differential treatment. If respondent instead argued that VOYRA registration must be *in all ways* identical to SORA registration, perhaps her assertion that SORA and VOYRA registrants are similarly situated would be more persuasive. But she is not. This flaw in her own argument is reason enough for this Court to conclude that the two groups are not similarly situated and that the equal protection challenge fails.

In other words, it is the General Assembly's prerogative to distinguish between juvenile sex offenders and juvenile violent offenders because of the substantially different conduct involved and to consider the interests of the public in creating the different strategies to manage the risk of harm from these offenders. Employing a kind of "cross-comparison" analysis – by comparing the relative "dangerousness" of juvenile sex offenders versus juvenile violent offenders – respondent seeks to call into question the legislative choices of the General Assembly. She further seeks to upend those legislative choices as somehow "irrational" simply because the choices made by the General Assembly do not comport with her own assessment of who the more "serious" or "dangerous" juvenile offenders are. What she attempts to do, however, is not consistent with a legitimate equal protection (or due process) analytical framework.

On the contrary, respondent's justification for critiquing the absence of an early removal provision and the end of registration at 17 in VOYRA like in SORA simply because both groups of registrants are all "juveniles" is unworkable and would, if accepted, call into question other equal protection decisions from this Court. For example, as the People noted in its opening brief, this Court has held that persons subject to the Sexually Dangerous Persons Act (SDPA) and those subject to the Sexually Violent Persons Commitment Act (SVPA) were not similarly situated. *See* P.Br.41, citing *People*

v. Masterson, 2011 IL 110072. In part, this holding rested on the facts that the legislature restricted the scope of SVPA proceedings to a limited number of sexual violent offenses whereas SDPA proceedings were much broader and included those that were sexually-motivated or those that demonstrated sexual propensities. *Masterson*, 2011 IL 110072, ¶36. Yet, under respondent's theory of analysis, *all* sexually violent and *all* sexually dangerous offenders would be grouped into a single class of "sex offenders." This Court has rejected such overarching generalization in equal protection analysis to more correctly focus on the *legislative* distinctions made. And here, those legislative distinctions carve out two different classes of juvenile offenders. Thus, respondent's claim that juvenile SORA registrants and juvenile VOYRA registrants are similarly situated just because they are all juveniles should be rejected.

Even assuming the two groups are similarly situated, their different treatment is reasonable. As the People argued in its opening brief (P.Br.36-37), because Illinois does not have specialized "Romeo & Juliet" type of offenses – for consensual activity by young offenders – juvenile sex offenders can be convicted of any of the major sex offenses. As a result, identifying non-violent cases involving juvenile respondents who pose "no risk of harm" to the public could not be accomplished by specifying offenses alone but instead necessitated individualized hearings. 730 ILCS 150/3-5. Because the passage of §3-5 allows for early removal from registration for some juveniles who had been ensnared in SORA, potentially for life,[4] due to essentially non-threatening conduct,

[4] At various points in her brief, respondent speculates that she also faces a potential "lifetime" registration in VOYRA, but she does so by hypothesizing that she will commit multiple violations that will be followed by multiple administrative extensions. (R.Br.15, 36, 49) However, respondent, like all other VOYRA registrants, faces a 10-year term.

the legislature rationally allowed the juvenile SORA registrant to establish that s/he posed no risk of harm in order for a court to grant a petition for early removal from SORA. But there are no juvenile VOYRA registrants whose offenses inherently show a potential lack of risk of harm to the public, so there is no need for the early removal process in VOYRA. There are no "consensual" or "age-inappropriate" crimes in VOYRA. All of the VOYRA crimes involve a risk of harm, and most involve a grave risk, including death. This is a rational reason to treat the two groups differently.

Respondent nonetheless argues that if she had violently raped her brother, she could petition for early removal from the registry after five years, she would never have to register as an adult, and her information would not be publicly accessible. (R.Br.36) However, those who pose a risk – and violent rape would surely qualify – cannot establish the required factors to show that they qualify for early removal. In fact, if respondent had violently raped her 14-year-old brother, she could have been charged with aggravated criminal sexual assault and transferred to criminal court where she would face lifetime registration under SORA as an adult, and she would be ineligible to file an early removal petition. 730 ILCS 150/3-5(i) (§3-5 procedures does not apply to minors prosecuted as adults in criminal court). While respondent claims that juveniles under SORA have "far less onerous burdens" (R.Br.38) than those under VOYRA, she does not address the fact that had her crime been a sexually violent one, she could actually be subject to a far more severe lifetime registration period under SORA with her information on the publicly accessible website for the entire period, and experience further SORA-

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730 ILCS 154/5 (c-5) (lifetime duration for a first-time registrant is required only where offender is over 17 and commits murder of a victim under 18).

unique limits such as being banned from parks and regulated in where she might live and work.

Finally, respondent argues that there is no reasonable justification for the fact that juvenile VOYRA registrants must register as adults at 17 whereas juvenile SORA registrants do not have to do so and thus information about juvenile sex offenders "will never be disclosed to the public at large." (R.Br.38) But this ignores that, as already noted, juveniles who commit violent sex offenses may be transferred to adult court and, if so, will be treated as adults under SORA. Moreover, even if adjudicated in the juvenile justice system, respondent does not address that juvenile adjudication records "based upon *** sex offenses which would be felonies if committed by an adult" are statutorily barred from being sealed or expunged. 705 ILCS 405/5-915; *Duncan v. People ex rel. Brady*, 2013 IL App (3d) 120044, ¶18 (early termination of SORA registration requirement did not entitle petitioner to sealing or expungement of eligible sex offense adjudication or SORA registry records where "legislature clearly did not intend for records of sexual offenses [or their indicia] to be sealed"). Thus, juvenile adjudication records for serious sex offenses are not protected from the public at large, so respondent's proposed differential treatment is largely illusory.

Ultimately, respondent's criticisms should be directed to a legislative, rather than a judicial, forum. The General Assembly's classification is not arbitrary and the procedures are addressed "to those classes of cases where the need is deemed to be clearest," something well within the purview of legislative policymaking. *See Skinner*, 316 U.S. at 540 (state can single out a family of offenses for special treatment); *Maddux v. Blagojevich*, 233 Ill. 2d 508, 547 (2009) ("a law does not offend equal protection just

because the legislature could have proceeded farther than it did"). This Court should reject respondent's equal protection challenge.

Alternatively, if this Court holds that the requirement of adult registry at age 17 creates a constitutional problem, the infirmity resides specifically in a portion of section 10(a) of VOYRA (730 ILCS 154/10(a)), and not in the entirety of the registration provisions of section 5(a)(2) and 10 as the appellate court found. *M.A.*, 2014 IL App (1st) 132540, ¶75. In other words, the effect of such a finding should be to strike the specific language in section 10(a) to the extent that it requires adult registration at age 17 while leaving the rest of VOYRA in effect. *See In re Jonathon C.B.*, 2011 IL 107750, ¶ 79 (courts should construe statutes to preserve their constitutionality when reasonably possible).

Moreover, if this Court also finds a constitutional problem is created by the absence of a provision allowing juveniles to petition for early removal from the registry, this Court should give the General Assembly the opportunity to consider and add a provision to create such a procedure that is tailored to the VOYRA context. Respondent invites this Court to simply import section 3-5 into VOYRA. (R.Br.41-42, citing *S.B.*, 2012 IL 112204, ¶31 (reading section 3-5 of SORA to apply to juveniles found not not guilty at discharge hearing, and not just to juvenile delinquents, to avoid absurdity)). But as explained above, important differences between sex offenses and violent offenses complicate the issue. *See supra* pp. 25-28. It should be left to the purview of the legislature to determine: whether only a smaller subset of qualifying offenses should be eligible for seeking early removal; and what factors courts should consider when evaluating such a petition. Because invalidating the whole of VOYRA for a short period

would create issues that would likely spur litigation – such as whether offenses committed in this interim are exempt from registration – this Court could stay the mandate for a period such as 180 days to allow for the legislative fix to be enacted without any interruption in VOYRA's application. *See, e.g., Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012).

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court reverse the judgment of the Illinois Appellate Court, and uphold the juvenile trial court's judgment that respondent must register.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this Reply/Cross-Appellee Brief conforms to the requirements of Rules 341 (a) and (b). The length of this Reply/Cross-Appellee Brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 40 pages.

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