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.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

IN THE
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IN THE INTEREST OF Makia 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.

POINT AND AUTHORITIES

THE "MURDERER AND VIOLENT OFFENDER AGAINST YOUTH REGISTRATION ACT" COMPORTS WITH PROCEDURAL DUE PROCESS AND EQUAL PROECTION AS A RATIONAL AND NECESSARY PART OF THE LEGISLATURE'S REGULATORY POWER TO ADDRESS SERIOUS VIOLENCE AGAINST CHILDREN **11**

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NATURE OF THE CASE

The appellate court majority held that a section of the Illinois Murderer & Violent Offender Against Youth Registration Act ("VOYRA") (730 ILCS 154/1 *et seq.*) violates the procedural due process and equal protection rights of juveniles. With respect to procedural due process, the court held that VOYRA does not provide for individualized assessment or provide the juvenile offender with the opportunity to demonstrate "that the public safety will not be served by requiring her to register as an adult." The court also held that VOYRA's requirement that a registrant register as an adult within 10 days after turning 17 years old violates equal protection because juvenile sex offenders who must register under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.*) are similarly situated, but are permitted to petition for removal from SORA's registry after 2 or 5 years (depending on the offense). *In re M.A.*, 2014 IL App (1st) 132540, ¶65 (attached in Appendix). The People filed a petition for rehearing that the appellate majority denied. No question is raised on the pleadings.

JURISDICTION

On August 22, 2014, this Court allowed the People's petition for leave to appeal. Jurisdiction lies under Supreme Court Rules 317 and 612(b) or, alternatively, under Rule 315.

STATUTES INVOLVED

In relevant part, VOYRA states:

(a) As used in this Act, "violent offender against youth" means any person who is:

* * *

(2) adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in subsection (b) or (c-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, or found guilty under Article V of the Juvenile Court Act of 1987 [705 ILCS 405/5-1 et seq.] of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in subsection (b) or (c-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law.

730 ILCS 154/5.

A person who has been adjudicated a juvenile delinquent for an act which, if committed by an adult, would be a violent offense against youth shall register as an adult violent offender against youth within 10 days after attaining 17 years of age.

730 ILCS 154/10

The notification portion of VOYRA states in relevant part:

Notification regarding juvenile offenders. (a) The Department of State Police and any law enforcement agency having jurisdiction may, in the Department's or agency's discretion, only provide the information specified in subsection (b) of Section 95 [730 ILCS 154/95], with respect to an adjudicated juvenile delinquent, to any person when that person's safety may be compromised for some reason related to the juvenile violent offender against youth.

(b) The local law enforcement agency having jurisdiction to register the juvenile violent offender against youth shall ascertain from the juvenile violent offender against youth whether the juvenile violent offender against youth is enrolled in school; and if so, shall provide a copy of the violent offender against youth registration form only to the principal or chief administrative officer of the school and any guidance counselor designated by him or her. The registration form shall be kept separately from any and all school records maintained on behalf of the juvenile violent offender against youth.

730 ILCS 154/100.

ISSUES PRESENTED FOR REVIEW

Whether the majority erred in finding that VOYRA violated procedural due process principles because eighth amendment precedent encouraging individualized assessment is not applicable to evaluation of a civil, non-punitive regulation like VOYRA in a due process analysis, because VOYRA does not implicate liberty or privacy interests, and because VOYRA provides all the process that is due.

Whether the majority erred in finding that VOYRA violated equal protection principles because juvenile VOYRA registrants are not similarly situated to juvenile SORA registrants and because there is a rational reason for the different treatment.

STATEMENT OF FACTS

On November 24, 2012, 13-year-old respondent M.A. got into an argument with her 14-year-old brother Muhammad in their aunt's living room. Muhammad punched respondent, but after a few minutes, the two separated. Respondent, still angry, went into the kitchen, and, while threatening to kill her brother, got a large knife. Muhammad went into a bedroom and closed the door to get away from respondent. Respondent, however, forced her way inside and slashed her brother twice on his face and his arm, causing injuries that required 13 stitches. Their aunt called 911. When police arrived, respondent was pacing in circles in the living room, still holding the knife; the aunt noticed that several items in the room had been slashed with a knife. Respondent was charged in a delinquency petition with aggravated domestic battery, domestic battery, aggravated battery and battery. (C.5-6, 23-24)

Pending trial, respondent was initially held at a residential facility, but later was

placed with an aunt[1]; her continued aggression and behavioral issues led to her repeated placement in residential facilities (Saura Center and Neon House). Then, when she was non-compliant, disruptive, and aggressive in those facilities and her school, respondent was placed in the juvenile detention center. At a later date, the public defender objected to continued custody and a woman named Tineeka Reed, one of respondent's "aunts" (no actual relation), told the judge that she was willing to take respondent in, but wanted her in counseling. (R1.85) The judge explained that he could not force counseling, but placed M.A. on electronic home monitoring (EHM) and the Evening Reporting Center. (R1.88-93) A later report from the Sheriff's EHM program showed non-compliance, and several unexplained absences from the home. (C.31-32)

At trial, respondent's brother, Muhammad testified that he was in the eighth grade. (R1.102) On November 24, 2012, around 11 a.m., he and his sister, respondent M.A., were in the front room of their "auntie" Johanne Saintsurin's house. (R1.103-04) He was playing a video game. (R1.105-06) When their aunt brought up that a shower cap had gone missing, respondent swore on her grandfather's life that she had not taken it. (R1.106) Muhammad got mad because he believed that respondent was lying. (R1.106) He and M.A. argued, and Muhammad punched her two or three times on her arm. (R1.107) The fight ended after about a minute, and he left the front room and went into a back bedroom. (R1.108-09) Respondent went into the kitchen, and then tried to force her way into the bedroom. (R1.109) Muhammad tried to keep her out, because she was yelling "[s]omething like I want to kill you," and she had a large kitchen knife in her

[1] Respondent ran away and the court had to issue a shelter warrant. Respondent was charged in a new juvenile petition with theft of her aunt's property. (R.1.58-74; C.27)

hand. (R1.110) M.A. forced her way in and began swinging the knife at Muhammad, trying to stab him; she cut Muhammad on his face and his arm. (R1.111, 114-15) Muhammad tried to grab the knife, but was unable to get it from her. (R1.113-14)

After respondent left, he went into the kitchen to wrap a towel around his bleeding arm. (R1.116-17) Muhammad testified that he had no weapon during respondent's attack. (R.116-17) Their aunt called police, and when they arrived, respondent was in the front room, walking around in circles with the knife in her hand. (R1.117-18) Muhammad was taken to the hospital by ambulance; he received three stiches on his face and ten stitches on his arm. (R1.119)

Johanne Saintsurin, respondent's and Muhammad's aunt testified to the argument over the shower cap on the morning of November 24, 2012. (R1.130-32) According to Saintsurin, Muhammad "pushed [respondent] on the couch and he got on top of her, was punching her everywhere, I couldn't really see where exactly." (R1.132) Muhammad stopped and respondent walked to the kitchen, saying "she was going to kill him, something like that." (R1.133) Saintsurin told Muhammad he "should leave" because respondent "looked upset." (R1.132) Muhammad went into the bedroom and closed the door. (R1.134) Saintsurin saw respondent come back with a knife from the kitchen. (R1.135-36) Saintsurin told M.A. to put the knife down and when respondent didn't, Saintsurin called respondent's father and then went to the bedroom to check on the younger children and saw Muhammad, who was bleeding from his arm and his nose. (R1.138-39) She then called 9-1-1. (R1.139) When police arrived, M.A. was in the living room, still holding the knife. (R1.140) Saintsurin then noticed that several items in the living room, including a medicine ball and a pillow, had been cut open. (R1.140) The

People admitted the knife into evidence and rested their case. (R1.143)

Respondent testified on her own behalf that she was 13 years old. She confirmed that she was at her Aunt Johanne's house on November 24, 2012 with her brother, Muhammad, and her cousins. (R1.147) M.A. also confirmed that she had an argument with Muhammad over the shower cap that led to Muhammad coming over to the couch where respondent was sitting and punching respondent multiple times while pulling her hair and "hollering and cussing" and "grabbing" her. (R1.148-52) When the fight ended, Muhammad got up and respondent ran to the kitchen and grabbed a knife, but claimed at trial that "I wasn't trying to cut him; I was trying to scare him." (R1.152-53) Respondent admitted that she followed Muhammad to the bedroom, and when he opened the door "a little bit" (three inches), "I slashed the knife in there to scare him." (R1.154) She then ran back into the living room, because she was mad and crying. (R1.155) On cross-examination, respondent admitted that Muhammad had no weapon, and she also admitted that she was talking about "killing him." (R1.159)

At the conclusion of evidence, the judge noted that respondent was not entitled to use deadly force with a knife in self-defense, and also stated that he did not believe respondent had just made one pass of the knife through the door. The court instead found Mohammad's account "more credible" and entered a finding of guilty on all counts. (C.36; R1.169-71) Pending disposition, the court allowed respondent to remain with her aunt, but noted that respondent had gotten suspended for talking back to her teachers and had several EHM violations and a negative EHM report. (R1.172-76) The court extended the EHM order based on the violations, ordered a psychological evaluation for respondent, and continued the matter. (R1.176)

Several reports tendered to the court pending sentencing reflected continuing problems in respondent's behavior. Progress reports reflected that respondent refused to complete her work, cursed, made verbal threats toward the teacher, and engaged in "physical and verbal aggression (including holding scissors & pens in a threatening manner)." (C. 38, 57) Another report reflected several violent incidents involving respondent and other residents and staff. (C.48, 49, 53) Several other reports reflected that respondent was intimidating other girls, instigating violence, and also was disrespectful to others. (C.50-52) A clinical report, prepared by a licensed psychologist detailed several past incidents involving respondent's aggression. (C.68-88) The clinical report noted that respondent's behavioral problems first began at age eight or nine when she would provoke her brother Muhammad by hitting him, and when he hit her back, she would run and tell her mother, getting Muhammad in trouble. (C.76, 83) At school, respondent was suspended "a lot" for disruptive behavior, showing defiance, ripping up assignments, and engaging in peer fights. (C.77) At home, she destroyed property in the home as early as the age of 12. (C.83) Respondent also was "verbally and physically aggressive, had emotional outbursts, and attempted to intimidate others. Her peers often retreated from [her] as [she] could be rude to them and they were fearful of her becoming angry." (C.84) Respondent "was described as manipulative and at times dishonest to gain attention and to avoid consequences where there were notable inconsistencies in her account of events." (C.84) The report concluded that "the degree of risk factors significantly outweighs the degree of protective factors such that [M.A.] is at risk for recidivism." (C.86)

Respondent's probation officer told the court that "[M.A.] is seriously going down a

downward spiral fast" and suggested a DCFS hotline call to get respondent immediately "in services." (R1.204) Ultimately, the court removed respondent from Tineeka Reed's home and placed her in the Saura Center because of her behavioral issues; she was subsequently removed from the Saura Center and placed in the Juvenile Detention Center because of her aggression and noncompliance. (R1.172-73, 174-76, 185, 201-09, 220)

On August 6, 2013, after the defense motion to reconsider the finding of delinquency was denied (C.41-45; R1.237-38), the matter proceeded to disposition. (R1.239-46) Considering all of the information provided, the court sentenced respondent to 30 months of probation, 40 hours of community service, attendance at community-impact panel, no gang, gun, or drug activity, attendance in school every day, DNA testing, counseling, and ordered her to undergo a psychiatric evaluation. (R1.249) Without objection, the court also ordered her to register pursuant to VOYRA. (R2.3)

Respondent appealed, challenging the constitutionality of VOYRA on the bases that it improperly restricted a juvenile's liberty interests, violated procedural and substantive due process principles, violated the equal protection clause, and was an "unreasonable invasion" of a juvenile's right to privacy. A majority of the Appellate Court reversed the order to register. *In re M.A.*, 2014 IL App (1st) 132540 (Pucinski, J., dissenting).

The appellate majority characterized the regulation as a sentencing statute (*see id.* at ¶18), and then applied sentencing principles derived from eighth amendment cases that "recognized that the unique characteristics of juveniles warrant heightened scrutiny in the context of convictions for criminal offenses." *Id.* at ¶28. Although the appellate majority found that there was no impermissible restriction on life, liberty or property and thus rejected respondent's substantive due process claims (*id.* at ¶¶44, 48), and that VOYRA

did not impermissibly infringe on respondent's privacy (*id.* at ¶45), the appellate majority nonetheless found that VOYRA violated procedural due process because it mandated a registration term of 10 years and required respondent to register as an adult upon turning 17 years old. *Id.* at ¶53. The appellate majority held VOYRA unconstitutional because it failed to provide juveniles with an "individualized assessment" of "whether the offender poses any continuing risk to the public" prior to including the registrant's information on the statewide public registry. *Id.* Additionally, the appellate majority found that VOYRA impermissibly provided less procedural protection to minors than adults in that juveniles had no right to a jury trial prior to being ordered to register as adults upon turning 17. *Id.*

The appellate majority also found an equal protection violation, holding that all juvenile registrants in VOYRA and SORA were similarly situated, and that juveniles under VOYRA were treated more harshly than juvenile SORA registrants in two ways: (1) they had to register as adults upon turning 17, and (2) they could not petition after five years for early removal from the SORA registry. *Id.* at 69. The appellate majority found such "disparate treatment" had no rational relationship to the purpose of "protection of the public," given the goals of the Juvenile Court Act. *Id.* at ¶¶70-72.

Justice Pucinski concurred that there was no substantive due process violation (*id.* at ¶78) but dissented in part, finding no procedural due process or equal protection violations. *Id.* at ¶79. Justice Pucinski reasoned that juveniles under 17 are afforded adequate dissemination protections under VOYRA (*id.* at ¶¶82-84), and that the legislature had shortened the time that registrants would appear on the statewide registry by subtracting the difference of years between 17 and their age at the time of

adjudication. *Id.* at ¶85 (citing 730 ILCS 154/5(a) (registration of juveniles upon attaining 17 does not extend the original 10-year term). Given these concessions to juvenile offenders, Justice Pucinski found that respondent had received all the process she was due in the "fair and full adjudication hearing" and rejected the notion that eighth amendment principles should be applied to a procedural due process analysis of a nonsentencing regulation. *Id.* at ¶¶97-98. Justice Pucinski also disagreed that the lack of a right to a jury trial violated due process, because juvenile delinquency proceedings are fundamentally different than criminal prosecutions. *Id.* at ¶99. Finally, Justice Pucinski found no equal protection violation, since the legislature had a rational basis to provide "different remedies to juvenile offenders whose crimes are different" and that the "sexually inappropriate" juveniles were not in the same class as violent ones. *Id.* at ¶¶100-105.

ARGUMENT

THE "MURDERER AND VIOLENT OFFENDER AGAINST YOUTH REGISTRATION ACT" (VOYRA) COMPORTS WITH PROCEDURAL DUE PROCESS AND EQUAL PROECTION AS A RATIONAL AND NECESSARY PART OF THE LEGISLATURE'S REGULATORY POWER TO ADDRESS SERIOUS VIOLENCE AGAINST CHILDREN.

Thirteen-year-old Respondent was adjudicated delinquent because she threatened to kill and then twice slashed her 14-year-old brother with a knife, causing injuries necessitating 13 stitches to his face and arm. After she was found guilty of aggravated domestic battery, domestic battery, aggravated battery and battery, the juvenile court judge ordered her to register for 10 years under VOYRA. 730 ILCS 154/1 *et seq*. Under VOYRA's reporting requirements, respondent, a juvenile found guilty of one of the enumerated violent felonies, was required to register for 10 years (until she is 23) with local law enforcement. Until she turns 17, respondent is afforded the protection of limited dissemination of registry information; upon turning 17, she will be required to register as an "adult," which means that she is subject to community notification on VOYRA's public Website. 750 ILCS 154/100.

A majority of the appellate court reversed the trial court's judgment, characterizing VOYRA as a sentencing statute and applying eighth amendment cases to hold that procedural due process entitled VOYRA registrants to an "individualized" dangerousness assessment as to "whether those minors in fact, pose a danger to the public" before being required to register as adults once they turn 17 to "justify" the "ensuing disclosure of registration information to the public at large." *In re M.A.*, 2014 IL App (1st) 132540,

¶¶54-57 (reasoning that categorical determination or "stale clinical evaluation" is insufficient to avoid "risk of error" in predicting which violent offender will be continuing danger to society). The appellate majority also decided that principles of procedural due process entitled respondent to an early removal hearing.

As a matter of equal protection, the appellate majority found that *all* juveniles subject to *all* registries were similarly situated, and it violated equal protection principles for juvenile registrants under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.*) to be afforded the right to petition for early removal from the registry while VOYRA registrants could not. *M.A.*, 2014 IL App (1st) 132540, ¶73; *but see id.* at ¶104 (Pucinski, J., dissenting, finding that VOYRA and SORA registrants are not similarly situated and legislature need not provide exact same remedy to juveniles whose crimes are different).

Several analytical errors underlie the appellate majority's erroneous decision. First, the appellate majority fundamentally mischaracterized the statute: VOYRA is not a sentencing statute; it is a non-penal law subject to deferential rational basis review. Next, the appellate majority improperly applied eighth amendment cases to find that the statute violated procedural due process and equal protection principles. *Id.* at ¶¶28-29. *See People v. Patterson*, 2014 IL 115102, ¶97 ("a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision"). Then, borrowing from this disparate eighth amendment analysis, the majority assumed that all juveniles should receive an "individualized assessment." *M.A.* at ¶¶53-54. The majority invalidated VOYRA's mandate of a ten-year period on the registry, including registration as an adult, with concomitant dissemination of information, after the juvenile turned 17,

believing that such a period and dissemination carried a "risk of error" because of the lack of individualized assessment once the juvenile turned 17. *Id.* at ¶57 ("stale clinical evaluation" insufficient to predict dangerousness).

As explained in detail below, the majority's holdings should be reversed because they fail to consider that VOYRA was created by the legislature to address the unique risk to the public from violent juveniles while tailoring public disclosure of their crimes only after they reach the age of majority. This consideration of the balance between protecting the public and disclosure of information about a juvenile's crime is the legislature's exclusive function. The legislature is entitled to limit dissemination of truthful registry information when the juvenile violent offender is under 17, and then to remove those limits when the offender has potentially greater freedom to move amongst the public. Illinois is not constitutionally required to provide an individualized dangerousness assessment prior to removing those limits once a violent juvenile offender turns 17 for the remainder of the 10-year term.

Additionally, the appellate majority misconstrued both SORA and VOYRA and incorrectly determined that all juveniles placed on reporting registries were similarly situated. In reality, the types of juveniles addressed in VOYRA involve, by definition, a narrow group of seriously violent offenders, whereas SORA does not. As this Court has noted, SORA permits some juveniles to petition a judge for early removal from the SORA registry, because the registry includes offenses that involve no force or violence and the juveniles are subject to the registry solely due to their consensual acts with an age-inappropriate partner. *In re S.B.,* 2012 IL 112204, ¶29 (noting that the early termination provision in SORA permits some juveniles the opportunity to demonstrate

that they "engage[d] in *sexually inappropriate behavior *** because of immaturity rather than predatory inclinations*" and thus "to prove that they do not pose a safety risk to the community."). In contrast, VOYRA applies solely to a narrow set of violent offenses. In this respect, the legislature has rationally decided that because violent juveniles have been proven beyond a reasonable doubt to actually demonstrate a risk of harm to the public, they must complete their full 10-year registration term. As a result, respondent is not similarly situated to those nonviolent juvenile sex offenders who can petition for early termination of their registration term. Simply put, a violent juvenile is not in the same class as a nonviolent juvenile. Accordingly, the appellate majority erred when it found all juvenile delinquent registrants of VOYRA or SORA to be in the same "class." 2014 IL App (1st) 132540, ¶69. Moreover, even if they are similar, the legislature may draw rational distinctions in the treatment of nonviolent and violent juvenile delinquents.

Finally, while there is a legitimate debate surrounding juvenile registration policy, it is within the purview of the legislature to enact such regulatory measures. The appellate majority should not have read into VOYRA "exceptions, limitations, or conditions not expressed by the legislature." *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 212 (2009). VOYRA is a constitutional regulatory exercise of the legislature and its provisions comport with procedural due process and equal protection principles.

A. Standard of Review

Whether a statute is constitutional is a question of law that is reviewed *de novo*. *People v. Garvin*, 219 Ill. 2d 104, 116 (2006); *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). "Constitutional challenges carry the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional. In addition, courts have a duty

to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of its validity." *Patterson*, 2014 IL 115102, ¶90. The party challenging the statute bears the "heavy burden of demonstrating a clear constitutional violation." *Garvin*, 219 Ill. 2d at 116 (citation omitted); *People v. Cornelius*, 213 Ill. 2d 178, 189-90 (2004) (challenging party must "clearly establish a constitutional violation").

B. VOYRA Comports With Procedural Due Process

1. Eighth amendment and out-of-state jurisprudence is inapplicable

As a threshold matter, the appellate majority erred when it categorized VOYRA as a sentencing statute (*id.* at ¶18) and analyzed the legislature's "justification" for the challenged VOYRA provisions under the eighth amendment principles relied on by the juvenile death penalty and life-without-parole cases. *Id.* at ¶28, citing *Roper v. Simmons*, 543 U.S. 551, 574-75 (2005) (eighth and fourteenth amendments forbid death penalty for offenders under 18 at time of offense); *Graham v. Florida*, 560 U.S. 48, 74-75 (2010) (eighth amendment forbids life sentence for juvenile convicted of non-homicide offense); *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012) (eighth amendment forbids mandatory life sentence for juvenile convicted of homicide).

As this Court recently noted in *Patterson*, while the United States Supreme Court has "emphasized the distinctive nature of juveniles, the applicable constitutional standards differ considerably between due process and eighth amendment analysis. A ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another constitutional provision." *Patterson*, 2014 IL 115102, ¶97, citing *People v. Davis*, 2014 IL 115595, ¶45. As this Court concluded in refusing to extend eighth

amendment scrutiny to a claimed substantive and procedural due process violation involving the automatic juvenile transfer statute, "a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id.* at ¶97; *see also People v. Pacheco*, 2013 IL App (4th) 110409, ¶¶62-63 leave to appeal granted, No. 116402 (declining to extend *Miller* to due process arguments concerning excluded juvenile jurisdiction scheme); *People v. Salas*, 2011 IL App (1st) 091880, ¶¶77, 80 (refusing to apply *Roper* and *Graham* to juvenile transfer proceeding).

Moreover, the appellate majority court did not cite to any Illinois authority for the premise that VOYRA is a sentencing statute, because there is none. Every reviewing court has repeatedly construed Illinois registration laws as non-punitive civil regulations that are not related to the length or nature of the sentence imposed for the criminal offense. *See People v. Cardona*, 2013 IL 114076, ¶24 ("it is worth repeating that sex offender registration is not punishment"); *Konetski*, 233 Ill. 2d at 203 ("This court has repeatedly held, though, that [SORA's] requirements do not constitute punishment . . . it is a regulatory scheme designed to foster public safety"); *In re J.W.*, 204 Ill. 2d 50, 73 (2003) (same); *People v. Malchow,* 193 Ill. 2d 413, 420 (2000) (same); *Miranda v. Madigan*, 381 Ill. App. 3d 1105, 1109 (4th Dist. 2008) (VOYRA is not punitive; it places no "affirmative disability or restraint" on registrants). *Cf. United States v. Young*, 585 F.3d 199, 204-05 (5th Cir. 2009) (citing cases and agreeing with the 4th, 6th, 8th, 9th, 10th and 11th Circuits that have found federal sex offender registration law to be civil and not punitive).

So, while it is true that cases such as *Graham*, *Miller* and *Roper* express concern about criminal procedure and sentencing statutes that fail to consider youthfulness

(*Graham*, 560 U.S. at 76, *Miller*, 132 S.Ct. at 2464, *Roper*, 543 U.S. at 569), such analysis is simply inapplicable to the civil, nonpunitive VOYRA statute. As such, the appellate majority's reliance on these cases is therefore inapt. *M.A.*, 2014 IL App (1st) 132540, ¶28, ¶52, quoting *Graham*, 560 U.S. at 76, quoting *Miller*, 132 S.Ct. at 2464, quoting *Roper*, 543 U.S. at 569. *See Patterson*, 2014 IL 115102, ¶97 (refusing to import eighth amendment constitutional standards into substantive and procedural due process claims regarding automatic juvenile transfer provisions).

The appellate majority correctly recognized that this Court has held that SORA was not transformed from civil to penal in its purpose even for lifetime registration of juveniles (*M.A.*, 2014 IL App (1st) 132540, ¶40, citing to *J.W.*, 204 Ill. 2d 50), and that *J.W.* governs the substantive due process analysis. *Id.* at ¶¶42-43. Nonetheless, seeking support for the view that VOYRA is punitive, the appellate majority turned to an Ohio case construing Ohio's lifetime enhanced registration and notification for juvenile sex offenders in its version of SORA. *Id.*, citing *In re C.P.*, 967 N.E.2d 729 (Ohio 2012) (lifetime enhancements are punitive and subject to eighth amendment review). However, the question of lifetime registration at issue in the Ohio case is not present in this case as respondent's registration term is 10 years.[2] 730 ILCS 154/10.

Moreover, there is no standard or uniformity in the state registries. Indeed, as long as they are consistent with federal minimum standards, states can structure their registries in

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[2] Lifetime registration under VOYRA is limited to persons guilty of murder of a victim under 18 (730 ILCS 154/5(c-5) or persons previously required to register under VOYRA or SORA who become subject to VOYRA a second time. 730 ILCS 154/10.

a variety of ways.[3] *See* U.S. Dep't of Justice, SMART (Office of Sex Offender, Sentencing, Monitoring, Apprehending, Registering, & Tracking), "Sex Offender Registration and Notification in the United States: Current Caselaw and Issues," (Sept.2014) available at: http://www.smart.gov/caselaw/handbook_sept2014.pdf. The majority of states require juveniles to register in their SORA registries. *See* Nicole I. Pittman & Quyen Nguyen, *A Snapshot of Juvenile Registration and Notification Laws: A Survey of the United States* 44-53 (2011), avail at: http://www.njjn.org/uploads/digital-library/SNAPSHOT_web10-28.pdf. (listing 35 states that require juveniles to register, about half of which disclose information to the public).

In some schemes, juvenile registration periods automatically expire; others allow juveniles to petition for removal if they meet certain conditions. *See e.g.*, Ariz. Rev. Stat. Ann.§13-3821(D) (duty to register for juveniles automatically expires at age 25); La. Rev. Stat. 15:542, 15:544 (juveniles over 14 adjudicated for serious sex offenses required to register for 15 years may petition to reduce the term to 10 years with a clean record

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[3] The Adam Walsh Child Protection and Safety Act of 2006 revised the national minimum standards for sex offender registration and notification required of the states to require the inclusion of some juveniles in the registries and notification systems. *See* 42 U.S.C. 16901 *et seq.* (requires juveniles 14 or older who are adjudicated delinquent for sexually assaultive crimes to register; allows states to reduce the registration period to which the juvenile is subject from life to 25 years if certain conditions are satisfied under §111(1), (8), and §115(b)(3)(B)). States are free to impose greater restrictions than the federal minimums. *See* "Juvenile Offenders Required to Register Under SORNA: A Fact Sheet," U.S. Dep't of Just., OJP: Sex Offender Sentencing, Monitoring, Apprehension, Registration and Tracking (SMART) Office, available at: http://ojp.gov/smart/pdfs/factsheet_sorna_juvenile.pdf. The Attorney General's guidelines give states discretion on whether to include juvenile registrants on the public Websites of their registries. *See National Guidelines for Sex Offender Registration and Notification*, U.S. Dep't of Just., Atty.Gen. (July 2, 2008) available at: http://ojp.gov/smart/pdfs/final_sornaguidelines.pdf.

while on the registry; those who must register for life may be reduced to 25 years for a clean record). Some, like Illinois, limit dissemination and notification of registry information for juveniles; others provide that such information is to be available on the state's public Website. *See e.g.*, Ind. Code Ann.§11-8-8-1 (all juvenile registrants over 14 listed on public Website); Mass.Gen.Laws ch.6§178I (juveniles may be listed on the public Website depending on the tier of the registerable offense). Montana has a combined "Sexual or Violent Offender Registration Act" that requires juveniles adjudicated guilty of designated crimes to register: sex offenders for life and violent offenders for 10 years. Mont. Code Ann. 46-23-506.

Ultimately, states have considerable discretion in their statutory registration schemes. In fact, this Court upheld the constitutionality of SORA as applied to juveniles before the legislature included §3-5 that permits petitions for early removal version, noting this discretion. *J.W.*, 204 Ill. 2d at 84 (McMorrow, J., specially concurring) ("the laws in other jurisdictions which limit registration and notification requirements with respect to juveniles are the result of policy determinations made by the governing bodies of those states . . . [and] the authority to determine appropriate public policy for this state is vested in our legislature and not with this court"). Thus, Illinois need not imitate Ohio's or any other state's scheme to meet constitutional standards.

Additionally, the appellate majority's efforts to extend the *Roper-Graham-Miller* eighth amendment principles and discussion to VOYRA must fail where the duties of registration are *de minimis. See e.g., People v. Logan*, 302 Ill. App. 3d 319, 329 (2d Dist. 1998) ("the [SORA] registration process is a *de minimis* administrative requirement"). And contrary to the appellate majority's view, registration under VOYRA does not

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function as a punitive restriction on a registrant's "freedom to live, work or attend school." *M.A.*, 2014 IL App (1st) 132540, ¶46. Under Illinois' scheme, respondent is subject to a 10-year registration term, four years of which will be under the umbrella of limited dissemination protections for juveniles. 730 ILCS 154/100. The requirement that juveniles register in a violent offender database for 10 years because they committed a serious violent felony-level offense does not expose juveniles to any risk of incarceration or threat of physical harm. Since registration is a prophylactic, designed to protect the public, it is reasonable that the legislature would subject violent offenders against youth to a period of law enforcement monitoring. In fact, the appellate majority's substantive due process finding—agreeing that the legislative protective purpose is met via the statute—is in discord with its later procedural due process analysis finding that the statute falls short.

Indeed, the observation that juveniles are less responsible or more impulsive is an argument *for* registration of violent juveniles, not against, as the appellate majority held. *See Id.* at ¶28 (citing *Miller*, 132 S.Ct. at 2464). Requiring mandatory reporting is a reasonable means of furthering the goal of rehabilitating a violent juvenile offender by keeping her or him under the watchful eyes of law enforcement, thus providing some impetus and incentive to control her or his violent behavior. It also provides a juvenile registrant with structure and discipline by requiring compliance with VOYRA's mandates, in order to stop the juvenile from entering the pipeline leading to chronic criminality, *i.e.*, the precise goal of rehabilitation. *See In re Jonathon C.B.*, 2011 IL 107750, ¶103 (quoting *In re Lakisha M.,* 227 Ill. 2d 259, 274 (2008), noting that DNA sampling "'has a deterrent and rehabilitating effect because it identifies those at risk of

reoffending,' and thus is consistent with the Act's purpose of rehabilitating juveniles to prevent further delinquent behavior"; and finding that reduced confidentiality of court records and prohibition of expungement for juvenile sex offenders "would have the deterrent and rehabilitating effect, of identifying those at risk of reoffending, consistent with the rehabilitative purposes of the Act to prevent further delinquent behavior").

In any case, the legislature did take into account the youthfulness of the offender in VOYRA in the fact that juveniles under 17 are afforded greater confidentiality than adults on the VOYRA registry. 730 ILCS 154/100; *see also M.A.*, 2014 IL App (1st) 132540, ¶82 (Pucinski, J., dissenting, noting that the legislature limited community notification while the juvenile is under 17). Thus, the application of VOYRA to juveniles is a proper civil regulation and eighth amendment and out-of-state jurisprudence is simply inapposite.

2. VOYRA does not impair liberty or privacy interests of juvenile delinquents

Procedural due process claims challenge the constitutionality of the specific procedures used to deny a person's life, liberty, or property. *Konetski*, 233 Ill. 2d at 201. For procedural due process, "[p]rotected liberty interests may arise from two sources—the Due Process Clause itself and the laws of the States." *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989); *Hill v. Walker*, 241 Ill. 2d 479, 485 (2011).

Here, the appellate majority found that VOYRA "burdened" respondent's liberty and privacy interests for the following reasons: "the freedom to live, work or attend school is accompanied by the requirement to register"; there was no early removal procedure; the failure to register carries "significant criminal penalties"; VOYRA "mandate[s] disclosure of information normally deemed confidential under the Juvenile Court Act";

and VOYRA registrants, upon turning 17, had to complete their registration term as adults without individualized assessment of their dangerousness. *M.A.*, 2014 IL App (1st) 132540, ¶¶46-47, 53-54. The majority's concerns are unfounded.

Registration does not impair the right to live, work or attend school. In VOYRA, the legislature has expressed a reasonable policy decision that certain information will not remain subject to limited dissemination protections after a respondent reaches age 17. But VOYRA does not render the whole juvenile adjudication process public. Juveniles who are violent youth offenders receive closed hearings, sealed records, and have the other procedural protections of the juvenile process, and, in any event, respondent has no heightened privacy interest in her delinquency adjudication. In VOYRA, the legislature has expressly determined that after age 17, the public interest in safety outweighs a violent offender's claimed privacy interest. *See In re Lakisha M.*, 227 Ill. 2d 259, 266 (2008) (expectation of privacy is diminished for delinquent juveniles). Further, while the appellate majority views an early removal procedure as more protective of minors, it is of no constitutional significance that VOYRA does not provide procedures for individualized risk assessment or judicial termination of the registration period. *Cf. Konetski*, 233 Ill. 2d at 205 (noting that statutory jury trial right afforded to some juveniles does not implicate procedural due process concerns).

Illinois courts have already found that the SORA does not deprive sex offenders of a protected liberty or property interest. *See In re T.C.*, 384 Ill. App. 3d 870, 874 (1st Dist. 2008) (SORA registration does not implicate juvenile's liberty or privacy interests); *People v. Grochocki*, 343 Ill. App. 3d 664, 669 (3d Dist. 2003) (dissemination of SORA information does not involve interest under due process clause); *People v. Malchow*, 306

Ill. App. 3d 665, 672 (2d Dist. 1999) (registration does not implicate liberty interest); *People v. Logan*, 302 Ill. App. 3d 319, 332 (2d Dist. 1998) (SORA merely compiles truthful, public information and does not implicate liberty interest). *See also Konetski*, 233 Ill. 2d at 201-02 (not expressly reaching the question but implying that even if there might be liberty interest at stake, interests of juvenile required to register as a sex offender, if any, are not as great as those of adult who is required to register as sex offender); *Cornelius,* 213 Ill. 2d at 181 (defendant's conduct created public records in SORA).

The appellate majority cites no authority for the notion that registration impairs the freedom of a registrant to live, work or travel. *M.A.*, 2014 IL App (1st) 132540, ¶46. Nor could it. Registration does not impair a VOYRA registrant's choice of where to live, work or attend school. Moreover, the legislature could rationally decide that once an offender reaches 17, attendant freedoms to travel, contract, and move about the community entitle the public to be aware of the risk of harm for the remainder of the registration period. *See* 730 ILCS 154/10(a).

The "residency impairment" argument has been made and rejected in the context of SORA. *See Logan*, 302 Ill.App.3d at 329 (SORA does not disable registrant's choice of residence). It is not SORA, but separate criminal statutes that apply work or residency restrictions upon a specific class of child sex offenders or sexual predators. *See e.g.*, 720 ILCS 5/11-9.3 ("Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited."); 720 ILCS 5/11-9.4-1 ("Sexual predator and child sex offender; presence or loitering in or near public parks prohibited"). And these

residency restrictions do not apply to VOYRA registrants. Moreover, the claim that respondent will be exposed to potential discrimination by colleges and employers (*M.A.*, 2014 IL App (1st) 132540, ¶65) is inaccurate as any "impairment" is due to the offenses committed and not to VOYRA.

As to any "privacy impairment," respondent has no constitutionally-protected or heightened privacy interest simply because she is a juvenile delinquent. *Lakisha M.*, 227 Ill. 2d at 270-71 (noting "diminished expectation of privacy" for delinquent juveniles). The "zone of privacy" that is recognized under the federal constitution is very limited. *See Carey v. Population Serv. Int'l*, 431 U.S. 678, 684-85 (1977) (only personal decisions relating to marriage, procreation, contraception, family relationships, child-rearing and education are within 'zone of privacy' under federal constitution). Further, the "stigma" of registration does not implicate a protected liberty or property interest under the fourteenth amendment. *See Paul v. Davis*, 424 U.S. 693, 701 (1976) (in addition to stigmatizing statement, defendant must also establish some tangible and material and state-imposed burden or alteration of status or right); *Grochocki*, 343 Ill. App. 3d at 673 (following *Paul* in finding that any stigma suffered from SORA registration arises from offender's own acts); *In re J.R.*, 341 Ill.App.3d 784, 799 (1st Dist. 2003) ("[a]ny stima that may occur is a result of the offender's status as being adjudicated as a delinquent sex offender and not as a direct result of the notification").

While the Illinois Constitution provides a more expansive privacy protection, it only protects against "unreasonable invasions of privacy" (*Kunkel v. Walton*, 179 Ill. 2d 519, 538 (1997)), and does not include a right to remain an anonymous and private violent juvenile offender. *See e.g.*, *Cornelius*, 213 Ill. 2d at 195-96, citing Ill.Const. 1970, art. I,

§6 (although there is "zone of privacy" protected in Illinois Constitution, sex offender does not have cognizable privacy interest in his registry information, and there is no invasion of privacy in disseminating that information as provided in notification law); *In re Phillip C.*, 364 Ill. App. 3d 822, 827 (1st Dist. 2006) (in juvenile offender case, court notes that Illinois has rejected argument that SORA implicates right to privacy under state or federal constitutions).

The express legislative will in VOYRA is to identify and monitor those juveniles who have committed the most serious crimes. Consistent with this principle, several Illinois statutes expressly allow for the use of juvenile adjudications as elements, enhancements and aggravations to later offenses, or as exemptions to rehabilitative programs. *See, e.g.,* 720 ILCS 5/24-1.6 (a)(1)-(2), (3)(D) (an aggravating factor under aggravated UUW statute is that "the person possessing the weapon was previously adjudicated a delinquent minor *** for an act if committed by an adult would be a felony"); 730 ILCS 5/5-5-3.2(b)(7) (listing a previous adjudication of delinquency on a Class X or Class 1 felony as extended-term sentencing factor for felony committed by 17-year-old or above); 730 ILCS 5/5-6-3.3(a-2) (excluding from "Offender Initiative Program" any individual adjudicated delinquent for commission of violent offense); 730 ILCS 5/5-6-3.4(a-1) (excluding from "Second Chance Probation" program any individual adjudicated delinquent for commission of a violent offense). These statutes apply to juveniles after the age of 17, and expose those juveniles to having their prior juvenile adjudications made public.

Such laws represent the legislature's fundamental shift from the singular goal of rehabilitation of juvenile offenders to include the overriding concerns of protecting the

public and of holding juveniles accountable for violations of the law. *See, e.g., In re Jonathon C.B.*, 2011 IL 107750, ¶P87 (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).

Ultimately, then, respondent has no constitutionally-protected or heightened privacy interest simply because she is a juvenile delinquent. *In re Lakisha M.*, 227 Ill. 2d at 270-71 ("when a minor, like respondent here, is found guilty of committing a felony offense and is made a ward of the court *** her identity is a matter of state interest and, as a result, she can no longer have the same expectation of privacy enjoyed by ordinary, law-abiding citizens"). Thus, the appellate majority erred when it relied upon the Juvenile Court Act to conclude that there was an impairment of a constitutional right to privacy implicated by registration under VOYRA. *M.A.*, 2014 IL App (1st) 132540, ¶46.

Moreover, any privacy expectation respondent might claim in the Juvenile Court Act's confidentiality provisions that limit the dissemination of, and accessibility to, juvenile court records (705 ILCS 405/1-7; 705 ILCS 405/1-8), is purely statutory. This Court has repeatedly held that the Juvenile Court Act "is a purely statutory creature whose parameters and application are defined solely by the legislature." *People v. P.H.*, 145 Ill. 2d 209, 223 (1991). Consequently, this Court has found that juveniles have neither a common law nor a constitutional right to adjudication under the Juvenile Court Act. *Id.* Likewise, juvenile offenders adjudicated under the Juvenile Court Act do not have an independent common law or constitutional right to privacy in their juvenile

records beyond what the legislature provides. For example, 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").

Similarly, here, the legislature has properly and reasonably exercised its prerogative to reconfigure the privacy afforded to those violent juvenile offenders covered by VOYRA. Under the scheme of VOYRA, respondent has additional privacy protection during her years of minority, but when she turns 17, and then has, arguably, greater freedom to go about in public, she is considered as an adult under the notification provisions. In light of the current legislative scheme, respondent does not have a privacy right regarding her adjudication of guilt or on her status as violent juvenile offender. Accordingly, VOYRA does not impair respondent's liberty or privacy interests, so the procedural due process claim fails at the threshold.

3. VOYRA Affords Registrants All The Procedures They Are Due

Alternatively, even if the respondent has some liberty or privacy interest implicated by VOYRA, respondent has been accorded adequate process. See *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003) ("due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme"). Respondent cannot show that such an interest is violated by the procedures already in place; nor can she show that additional procedures providing "individualized assessment" are

constitutionally required in every instance.

"The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *People v. R.G.*, 131 Ill. 2d 328, 342, 354 (1989), quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Essentially, due process requires "notice of the proceeding and an opportunity to present any objections." *Konetski,* 233 Ill. 2d at 201. Due process is a flexible concept, and "'not all situations calling for procedural safeguards call for the same kind of procedure.'" *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 272 (2004), quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

Courts consider the following factors in evaluating a procedural due process claim: 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Lyon*, 209 Ill. 2d at 277, citing *Mathews*, 424 U.S. at 335.

To prove facial invalidity, a challenger must prove that the statute has no legitimate constitutional application. *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶33 ("A facial challenge to a legislative act is the most difficult challenge to mount successfully because the challenger must establish that under no circumstances would the challenged act be valid."). To meet her burden of proving the statute facially unconstitutional, respondent must show that the statute is unconstitutional in all its applications, including to juveniles found guilty of the most serious violent crime: child

murderers. This, she cannot do. Nor can she show that the statute as applied to her is unconstitutional, given her continued and uncontrolled aggression towards her teachers, peers and family members.

The appellate majority erred when it held that because juveniles have "no right to a jury trial before being ordered to register as adults," VOYRA "affords minors less procedural protection than their adult counterparts." *M.A.*, 2014 IL App (1st) 132540, ¶53. This Court has expressly found that juveniles are not constitutionally entitled to a jury trial in juvenile delinquency adjudications. *In re Jonathon C.B.*, 2011 IL 107750, ¶¶83-84. Similarly, as a non-penal consequence of conviction, the right to jury trial is not a component of procedural due process for inclusion in VOYRA or in the adult-registry-at-17 provision. And there is no procedural due process problem in (1) the mandatory 10-year length of registration; and (2) the automatic requirement of registration on the adult registry at age 17. *See M.A.*, 2014 IL App (1st) 132540, ¶53.

Here, the "meaningful time and meaningful manner" is respondent's procedurally safeguarded opportunity to challenge the charges against her in court. The record confirms that she was given full and adequate notice of all the charges against her and all of the subsequent proceedings. Throughout, she was represented by appointed counsel who, among other things, advocated zealously on her behalf, thoroughly cross-examined the State's witnesses, opposed the State's evidence regarding great bodily harm and intent, and later filed a motion to reconsider again contesting intent and injury. Respondent had the statutory right to present evidence and call witnesses on her behalf, was protected at all times from conviction by the standard of proof of beyond a reasonable doubt, and had the right to appeal any finding other than acquittal. She also

had the opportunity to argue that, based on her unique individual characteristics, the court should not make her a ward of the court and should instead close the case. *See* 705 ILCS 405/5-620; 705 ILCS 405/5-705(1). In short, respondent received the full spectrum of procedural safeguards before being required to register under VOYRA. *See Konetski,* 233 Ill. 2d at 201-02 (it was sufficient that juvenile adjudicated delinquent received "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" prior to being required to register under SORA); *cf. Cardona*, 2013 IL 114076, ¶21 (noting that unfit defendant found not not guilty at a discharge hearing received several important procedural safeguards prior to being required to register in SORA). Thus, VOYRA's requirements of a 10-year registration and adult registration at age 17 do not raise constitutional concerns, given all the procedural safeguards respondent received when she was adjudicated delinquent.

Finally, the appellate majority erred when it found that the failure to permit a violent juvenile to petition for early removal from the registry violates procedural due process. *M.A.*, 2014 IL App (1st) 132540, ¶65. Categorical procedures are constitutionally sufficient and procedural due process considerations do not require an individualized early judicial termination provision. *See Connecticut Dep't of Public Safety*, 583 U.S. at 8 ("states are not barred by principles of 'procedural due process' from drawing such [categorical registration] classifications"). *See also In re J.R.*, 341 Ill. App. 3d 784, 797-800 (1st Dist. 2003) (finding no procedural due process concerns in version of SORA that lacked early removal provision). Thus, VOYRA meets state and federal standards of procedural due process for juvenile registrants.

C. VOYRA Comports With Equal Protection Principles

The appellate majority also erred in finding that all juveniles required to register with law enforcement as a result of a juvenile adjudication are similarly situated for equal protection purposes. *M.A.*, 2014 IL App (1st) 132540, ¶69. Because registration is intended to reduce the risk of harm to the public, the differences in types of offenses between violent offenders and sex offenders is significant. The relevant classification, therefore, is not simply "registrant" but "violence." The legislature may reasonably choose to classify juveniles who commit violent crimes against youths differently than nonviolent juvenile sex offenders and establish distinct criteria for registration and termination for each as VOYRA and SORA do. *Cf. People v. R.G.*, 131 Ill. 2d 328 (1989) (Juvenile Court Act rationally distinguishes between juveniles who are dependent, addicted, or in need of supervision as they face different situations and are not similarly situated).

1. The SORA And VOYRA Regulations

Registration laws are designed to prevent future danger to the public. It is beyond dispute that crime prevention is a compelling government interest. *Schall v. Martin*, 467 U.S. 253, 264-65 (1984). Preventing harm is a proper regulatory goal. *United States v. Salerno*, 481 U.S. 739, 747 (1987) ("There is no doubt that preventing danger to the community is a legitimate regulatory goal."). Illinois has traditionally exhibited an "acute interest" in the well-being of minors. *People v. Huddleston*, 212 Ill. 2d 107, 133 (2004) (quotation omitted). Indeed, "the welfare and protection of minors has always been considered one of the State's most fundamental interests." *Id.* at 133 (citation

omitted). It is against this backdrop that Illinois has enacted the regulatory registration schemes of SORA and VOYRA.

Both SORA and VOYRA extend a level of law enforcement monitoring to selected categories of offenders that the legislature believes pose particular risks to public safety. The registries facilitate law enforcement's immediate access to crucial information of the identity and location of a person who has been proven guilty beyond a reasonable doubt of an offense that shows that he or she is a public safety risk. *In re J.W.*, 204 Ill. 2d 50, 67 (2003), citing *People v. Adams*, 144 Ill. 2d 381, 390 (1991) (identifying purpose of SORA as providing officers ready access to information on known sex offenders); *Miranda v. Madigan*, 381 Ill. App. 3d 1105, 1109 (4th Dist. 2008) (like SORA, "the legislature's intent in enacting [VOYRA] was to provide additional protection to the public").

Both SORA and VOYRA are offense-based; *i.e.*, the legislature decided that commission of designated offenses, rather than an assessment of the dangerousness of an individual offender should trigger registration. It is well-established that a legislature has the power to make "reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." *Smith v. Doe*, 538 U.S. 84, 103 (2003) (construing Alaska's categorical sex offender registration statute). Further, States have the power to make a universal assessment without a corresponding risk assessment. *Id.* at 104. As such, states may choose to regulate certain offenders as a class. *Id.* (citing as an example a case that upheld the denial of right to practice medicine to all felons).

Although VOYRA and SORA have a functional similarity, they are not identical. Registrants must register their name, address and contact information, current

photograph, employment and school information with local law enforcement in the jurisdiction where he or she lives, works, or attends school, but more information is required under SORA, such as DNA (§150/8), social media information and vehicle registration information. 730 ILCS 150/3 (SORA); 730 ILCS 154/10 (VOYRA). To ensure compliance with the regulatory obligations, a violation can result in an administrative extension by State Police. 730 ILCS 150/7 (SORA); 730 ILCS 154/40 (VOYRA). Additionally, failure to register is a Class 3 felony. 730 ILCS 150/10 (SORA includes additional penalties); 730 ILCS 154/60 (VOYRA).

There are significant differences in the categories of offenses and offenders subject to SORA and VOYRA and in the levels of monitoring and consequences of registration. 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. The evolution of SORA indicates the legislative goal of a broad application of the regulation of those whose conduct poses the highest risk of sexual harm to the public and includes a broad array of sex offenses against adults and children and certain sexually motivated crimes against minors. *See People v. Johnson*, 225 Ill. 2d 573, 588 (2007) (noting that SORA requires registration for "precursor" crimes where there is a high risk of sexual exploitation to children); *People v. Malchow*, 193 Ill. 2d 413, 419 (2000) (SORA protects the public, especially children, from sex offenders and assists law enforcement in apprehension of those offenders).

Sex offenders, especially predatory ones, present a particularly unique risk of recidivism. *See, e.g., McKune v. Lile*, 536 U.S. 24, 33, 34 (2002) (sex offenders "are much more likely than any other type of offender to be rearrested for a new rape or

sexual assault"). Accordingly, registrants in SORA are divided into two categories: sexual predators and sexual offenders. "Sexual predators" include persons who are convicted, adjudicated or found sexually dangerous or sexually violent after committing the most serious sex offenses and include repeat sex offenders and sexually-motivated murders of children. 730 ILCS 150/2(E), (E-5). Sexual predators who have been adjudicated to be sexually dangerous or sexually violent must report in person to law enforcement every 90 days for life. 730 ILCS 150/2(E), 150/6, 150/7. All other registrants are defined as "sex offenders" and must register annually, and upon request of law enforcement up to four times yearly for the duration of their 10-year registration term. 730 ILCS 150/2(A), 150/6, 150/7.

In contrast to SORA's broader sweep, VOYRA limits its scope to a small number of the most serious and violent but nonsexual crimes committed primarily against a victim under 18 years of age, including murder, attempt murder, aggravated domestic battery (great bodily harm), aggravated battery (great bodily harm or use of a dangerous weapon/firearm), heinous battery, and home invasion.[4] 730 ILCS 154/5(b) (listing "violent offense[s] against youth"). A person is required to register under VOYRA, whether adult or juvenile, when convicted, adjudicated, found unfit and not not guilty at a discharge hearing or not guilty by reason of insanity of the specified violent offenses. 730 ILCS 154/5. With few exceptions, the registration period in VOYRA is a term of 10 years. 730 ILCS 154/40.[5]

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[4] First degree murder of an adult is a registerable offense. 730 ILCS 154/5(b-5).
[5] Lifetime registration is required only when a person who has previous been required to register under VOYRA or SORA becomes subject to VOYRA a second time (730 ILCS 154/10) or when the offender who is at least 17 years old murders a victim under 18. 730

Both registries allow law enforcement the same discretion to limit the dissemination of information on registrants adjudicated as juveniles. 730 ILCS 152/121(a),(b) (SORA allows any law enforcement agency discretion to limit disclosure of personal information of juvenile offenders to relevant school personnel and those whose safety may be compromised); 730 ILCS 154/100(a),(b) (VOYRA - same). However, the registries differ in providing public access to information after the registrant turns 17.

P.A. 94-166 added a provision to SORA requiring juvenile registrants to register on the adult registry upon turning 17. A few months later, the same language was included in the newly-created VOYRA. *See* P.A. 94-945 (eff. June 27, 2006); 730 ILCS 154/5.[6] Soon after, however, the legislature in H.B. 2067 responded to a concern raised by Justice McMorrow in her concurrence in *J.W.,* 204 Ill. 2d at 67, which upheld lifetime registration for juvenile sex offenders but questioned the wisdom of doing so in certain cases. *See* 94th Ill. Gen. Assem., Senate Proceedings, March 30, 2006, p.48. In *J.W.*, the 12 year-old offender was adjudicated delinquent on two counts of aggravated criminal sexual assault for engaging in oral-genital contact with two seven year-olds. 204 Ill. 2d at 55. Under SORA, such an offender is designated as a sexual predator and must register for life. *Id.* at 64-65.

ILCS 154/5(c-5).

[6] Although there was some disagreement in the reviewing court regarding the registration procedure (*compare* 2014 ILApp(1st) 132540 ¶¶31-33 *with* ¶¶82-86), VOYRA requires that juveniles must register in person within 5 days of adjudication for a covered offense (730 ILCS 154/5(a)(2) ("'convicted' shall have the same meaning as adjudicated"), but within 10 days of turning 17, a registrant adjudicated as a juvenile must register as an "adult" (730 ILCS 154/5(a)) which, in effect, removes the limits on dissemination of registry information for the remainder of the registration term, and the registrant's information becomes available on the public VOYRA Website. 20 Ill.Admin.Code 1283.50(j).

Senator Kwame Raoul explained that H.B. 2067 proposed a case-by-case rather than a "one case fits all" approach on the question of whether teens having consensual sex should be required to register as adult sex offenders in SORA. *Id.* He explained that the early removal procedure was "targeted towards the type of kind of Romeo and Juliet cases *** where a sixteen-year-old and a fifteen-year-old engage in consensual sex." *See* 94th Ill. Gen. Assem., Senate Proceedings, March 30, 2006, p.48-51 (comments of Senator Raoul). After H.B. 2067 was vetoed, Senator Raoul re-introduced the early removal process for juvenile sex offenders in S.B. 121, again explaining that the bill addressed "[t]he worst potential situation ... involv[ing] consensual sex . . . the Romeo & Juliet scenario involving a sixteen – and a fourteen-year-old [in which] a minor would have to spend all of his adult life registered as a sex offender." *See* 95th Ill.Gen.Assem., Senate Proceedings, May 1, 2007, p.14. Senate Bill 121 became law in P.A. 95-658 (eff. Oct.11, 2007).

Illinois law contains no "Romeo and Juliet" or "age gap" provisions decriminalizing certain consensual teen sexual behaviors; in fact, "[a]ll sexual conduct involving youth under 17 is unlawful per se, including any manner of sexual contact between peers without the use of force." *See Improving Response to Sexual Offenses Committed by Youth: Recommendations for Law, Policy and Practice*, Illinois Juvenile Justice Commission, Illinois Dep't of Human Services (March 2014) (hereafter "*Juvenile Justice Commission Report*") at 18 (noting that the major sex offenses in Illinois encompass a wide range of harm and "do not differentiate between nature, harm, or severity of unlawful sexual conduct"). As the *Juvenile Justice Commission Report* noted, force is not always required to establish any of the four major sex offenses in Illinois. *Id.* Thus,

juvenile sex offenses that require SORA registration can be committed simply on the basis of age of the victim or an age disparity between the offender and victim without any force. *See e.g.*, 720 ILCS 5/11-1.60 (juveniles can commit aggravated criminal sexual abuse, a Class 2 felony, if they engage in sexual conduct with a victim under 9 years of age). Even minor consensual conduct between teens is a registerable sex offense. 720 ILCS 5/11-1.50 (juveniles can commit criminal sexual abuse, a Class A misdemeanor, if they engage in consensual sexual penetration or sexual conduct with other juveniles); 730 ILCS 150/2(B) (registration required for 10 years).

Public Act 95-658 added §3-5 to SORA, requiring all juveniles adjudicated delinquent for a covered sex offense to register, but allowing a court to grant early removal after a term of years (two years for misdemeanors and five years for felonies) for registrants who a court finds by a preponderance of the evidence "pose no risk to the community." 730 ILCS 150/3-5 (a),(c). In making the "no risk" finding, the court is directed to consider the following factors: (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). This Court recognized the primary legislative purpose of §3-5 in *In re S.B.,* 2012 IL 112204, ¶29, stating that SORA's judicial termination provisions addressed "juveniles who engage in *sexually inappropriate behavior* *** *because of immaturity rather than predatory inclinations*. The purpose of the termination provisions of section 3-5 is to afford juveniles the opportunity to demonstrate this is true in an individual case, and to prove that they do not pose a safety risk to the community." (emphasis added).

Public Act 95-658 also removed the adult-registry-after-17 provision from §3(a) of SORA; however, the effect of this amendment in sex offense cases is limited by the fact that the special protections for juveniles, including the §3-5 early removal procedure, do not apply to minors who are prosecuted as adults under the criminal laws. 730 ILCS 150/3-5(i) (excludes juveniles tried as adults). This includes all juveniles who are at least 15 years old and commit the most serious sex offense a minor can commit - the Class X offense of aggravated criminal sexual assault (720 ILCS 5/11-1.30) - because these offenders are automatically tried as adults. 705 ILCS 405/5-130. Further, juveniles who are at least 15 years old and commit a covered Class X felony are subject to presumptive transfer, and if transferred, will also be treated as adults for SORA. 705 ILCS 405/5-805(2)(a)(i) (presumptive transfer based, in part, upon the seriousness of offense).[7]

Thus, the legislature has clearly expressed that serious, violent sex offenders should mandatorily or presumptively be tried as adults, and where a minor is tried as an adult, the minor will be treated as an adult in the SORA registry and registration information will be publicly available for such offenders. Such juveniles would not be eligible to be removed from the adult registry at age 17 or through an early removal petition – their registry information from the outset would be fully public and disseminated like adult registrants. On the other hand, the legislature has demonstrated its intent that only serious, violent offenses be subject to VOYRA, notably in its removal of misdemeanor domestic battery from the list of covered VOYRA offenses in P.A. 97-432 (eff. Aug.1, 2011, amending 730 ILCS 154/5). *See* 97th Ill. Gen. Assem., Senate Proceedings, April

[7] Prosecutors also have discretion to seek to transfer to adult court any juvenile 13 years and older who commits an offense that requires SORA registration. 705 ILCS 405/5-805(3) (discretionary transfer based, in part, upon seriousness of offense).

15, 2011, p.39 (Senator Sandack noted that the bill sought to "reduce some of the over-registration for juvenile offenses"). This demonstrates that only juveniles guilty of less serious or nonviolent sex offenses are eligible for early removal. As such, the legislature is well aware of the unique risks posed by the violent and less serious or nonviolent classes of juvenile registrants and has carefully chosen to provide the distinct monitoring schemes and termination provisions based upon the risk posed by violent and nonviolent registrants.

2. Equal Protection Principles

Constitutional challenges to statutes are subject to only the minimal scrutiny of the "rational-basis" test unless they affect a fundamental constitutional right or involve a suspect class. *People v. Reed*, 148 Ill. 2d 1 (1992). Juvenile offenders are not in a suspect class and no fundamental rights are implicated by registration laws. *See In re J.W.*, 204 Ill. 2d 50, 67 (2003) (analyzing SORA using rational basis test); *People v. Beard*, 366 Ill.App.3d 197 (1st Dist. 2006) (rational relationship analysis applies to SORA); *People v. Fuller*, 324 Ill. App. 3d 728, 731-732 (1st Dist. 2001) (SORA will be upheld "as long as there is a conceivable basis for finding a rational relationship"); *cf. United States v. Juvenile Male*, 670 F.3d 999, 1009-10 (9th Cir. 2012) (rational basis review applies to federal sex offender registration act (SORNA) as applied to juvenile sex offenders), *cert. denied*, 568 U.S. ___, 133 S. Ct. 234 (2012). The appellate majority correctly identified that rational basis review applies to respondent's equal protection challenge. *M.A.*, 2014 IL App (1st) 132540, ¶68.

Under this test, review is limited and deferential, asking whether the means employed by the legislature are rationally related to the legislative purpose of the statute. *Id.* A

court must first determine whether there is a legitimate state interest or goal sought to be achieved by the statute, and, if so, whether there is a reasonable relationship between that goal and the means the legislature chose to obtain it. *People v. Johnson*, 225 Ill. 2d 573, 584-85 (2007). Under rational basis review, the statute will be upheld if there is any conceivable set of facts to show a rational basis for the statute. *Id.* at 585.

Where a party challenges a statute as violative of the equal protection guarantees of both the United States Constitution (U.S. Const., amend. XIV), and the Illinois Constitution of 1970 (Ill. Const. 1970, Art. I, §2), the same analysis applies. *People v. Breedlove,* 213 Ill. 2d 509 (2004). Equal protection requires the government to treat similarly situated individuals in a similar manner, unless the State can demonstrate an appropriate reason to treat them differently. *Id.* at 518; *People v. Whitfield*, 228 Ill. 2d 502, 512 (2007).

Although the State may not afford different treatment to persons placed by statute in different classes on the basis of criteria wholly unrelated to the statute's purpose, *Breedlove*, 213 Ill. 2d at 509, the legislature may draw proper distinctions in legislation among different classes of people. *Id.* For example, this Court has held that the legislature may rationally distinguish between civil and criminal litigants (*In re Samuelson*, 189 Ill. 2d at 563-64); litigants under the same Act who faced different situations (*People v. R.G.*, 131 Ill. 2d 328 (1989) (Juvenile Court Act); and those who are civilly committed under the Mental Health Code as compared to those brought under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.*) ("SVPA") and the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.*) ("SDPA"). *In re Samuelson*, 189 Ill. 2d 548, 563-64 (2000). *See also People v. Pembrock*, 62 Ill. 2d 317,

321-22 (1976) (persons subject to the [SDPA] possess characteristics which set them apart from the greater class of persons who fall within the Mental Health Code, and such persons present different societal problems); *People v. Masterson*, 2011 IL 110072, ¶36 (persons subject to SDPA and those subject to SVPA are not similarly situated, in part, because SVPA applies to only limited number of criminal offenses).

3. VOYRA and SORA juvenile registrants are not similarly situated

That VOYRA registrants and SORA registrants are not "similarly situated" is evident. SORA casts a very broad net over all individuals who commit *all* forcible and nonforcible sex offenses against adults *and* children, and includes sexually-motivated crimes, even those whose crimes involved consensual conduct in the case of juveniles. 730 ILCS 150/1 *et seq*. VOYRA, in contrast, deals only with the most serious and violent nonsexual felonies committed almost exclusively against children: murder,[8] involuntary manslaughter, kidnapping, home invasion, unlawful restraint, aggravated battery (great bodily harm or deadly weapon or firearm), heinous battery, and domestic battery (great bodily harm). 730 ILCS 154/1 *et seq*. Thus, a small class of violent juveniles fall within VOYRA, while a more general and larger class of offenders, including nonviolent juvenile "sex offenders" is subject to SORA.

Unlike some of the sex offenses listed in SORA, all of the violent and serious felonies addressed by VOYRA present a far greater risk to the public because the offenses involve bodily injury and death usually to children. *See, e.g., In re Estate of Swiecicki*, 106 Ill. 2d 111, 124 (1985) (Simon, J., partially concurring and dissenting) (identifying children

[8] In 2012, the legislature added murder of an adult as a registerable offense, requiring a 10-year term of registration. 730 ILCS 154/5(c-6).

as one of "society's most helpless and vulnerable members"). By definition, any offender who has been adjudicated guilty of one of VOYRA's enumerated crimes has been proven beyond a reasonable doubt to "actually present a threat." For example, in this case M.A. is a violent juvenile who has been *proved beyond a reasonable doubt to be a serious risk of harm.* She is not in the same class as a juvenile registrant who is subject to SORA simply by virtue of an inappropriately-aged sexual partner. *See Skinner v. Oklahoma*, 316 U.S. 535, 540 (1942) (equal protection does not mean "abstract symmetry," and States are free to "mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience" in determining classifications).

In light of the differences between the VOYRA and SORA registrants in terms of the type of offenses covered, the appellate majority erred in holding that juvenile VOYRA registrants are similarly situated to juveniles required to register under SORA. *M.A.*, 2014 IL App (1st) 132540, ¶68. Because they are not similarly situated, the claim fails that this threshold. *See People v. Whitfield*, 228 Ill. 2d 502, 512 (2007) (court finds that it cannot reach "the rational basis test . . . because defendant cannot meet the threshold requirement for an equal protection claim-demonstrating that he and the group he compares himself to are similarly situated"); *In re Jonathon C.B.*, 2011 IL 107750, ¶¶ 117-20 (court finds that it need not consider rational basis test issue where juvenile sex offender is not similarly situated to juveniles subject to extended juvenile jurisdiction prosecutions or to adult sex offenders).

4. Alternatively, different procedures in VOYRA and SORA for juvenile registrants bear a rational relationship to the legitimate State interest in promoting public safety

Additionally, irrespective of whether juveniles subject to SORA are similarly situated to those subject to VOYRA, the appellate majority's equal protection analysis fails because the rational basis standard "does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made." *Baxstrom v. Herold*, 383 U.S. 107, 111 (1966). If the different procedures in the two registration schemes bear a rational relationship to a legitimate state interest, then there is no equal protection violation. *In re Bushong*, 351 Ill. App. 3d 807, 815 (2d Dist. 2004).

Under §3-5 of SORA, the court can terminate a juvenile's registration only if it finds by a preponderance of the evidence that the juvenile poses *no risk* to the community based upon specific factors set forth in §3-5(e). 730 ILCS 150/3-5(d),(e). But none of the offenses under VOYRA can be discounted as mere "inappropriate behavior" simply due to "immaturity" as or as posing "no risk." Indeed, respondent's offense falls far from an "immaturity" or "inappropriate" characterization, given the serious injury she inflicted on her brother. In contrast, SORA addresses some of the less serious, even consensual, but age-inappropriate, sexual crimes committed by juveniles, and this fact was at the heart of the SORA amendment that added the early removal process. *See* 730 ILCS 150/3-5. The purpose driving §3-5 is not applicable to those juveniles who commit the most serious sex offenses and are thus excluded from juvenile court or for those violent offenders covered by VOYRA. Thus, the legislature rationally distinguished between these classes of offenders and provided for different termination procedures in VOYRA

and SORA as a reasonable means to effectuate the monitoring goals of registration, and yet also to recognize that "Romeo & Juliet," *i.e.*, registrants are a matter of immaturity and perhaps childish sexual irresponsibility, but may not present a risk of danger to the public.

While the appellate majority casts respondent as a "textbook" illustration of an abused child that could be expected to "lash out" at family (2014 IL App (1st) 132540, ¶58), the record shows that respondent's aggression and violence "persisted over time and across settings." (C.84) As Justice Pucinski noted in her partial dissent, the appellate majority's reweighing of the evidence in constitutional analysis to make M.A. more sympathetic was improper as it usurped the role of the trial judge. 2014 IL App (1st) 132540, ¶105 (noting that "[w]hile the majority finds it understandable that M.A. stabbed her brother due to her toxic environment and abuse at the hands of her brother, there are many abused children who do not resort to violence") (emphasis omitted).

All of the crimes listed in VOYRA are serious felony offenses, and most involve grave violence to children and youth. Mandating a ten-year period of registration without providing for early removal are rational and necessary protective responses to violent juvenile delinquents whose behavior has placed other minor children in serious and grave danger. Thus, VOYRA does not violate equal protection principles.

D.

Exclusion Of Violent Juveniles From Individualized Removal Procedures And The Removal Of Limits on Dissemination of Registry Information Once a Registrant Reaches Age 17 Reflect Clear Policy Choices To Protect Children

The appellate majority's analysis is based upon policy choices related to juveniles, and, in approaching the issue that way, it substituted its own judgment for that of the legislature under the guise of constitutional analysis. 2014 IL App (1st) 132540, ¶¶28-29, 35-42. For example, it relied upon a *Juvenile Justice Commission Report* to support its policy view that a better course is to exempt juveniles from registration because of the "harshness" of registration. 2014 IL App (1st) 132540, ¶41, citing *Juvenile Justice Commission Report*. But, as the Juvenile Justice Commission freely noted, its goals were to "identify evidence-based best practices," and to make "recommendations to ensure the effective treatment and supervision of youth who are adjudicated delinquent for a sex offense." *See Juvenile Commission Report* at 6.

Unlike the *Juvenile Justice Commission Report*, with its heavy focus on the best interests of juvenile sex offenders, the legislature must also examine what is also in the interest of public safety and potential risk to future victims of violent juvenile offenders. It is the legislature's purview to determine the policies that best protect children from the dangers posed by dangerous juveniles. Whether to consider the *Juvenile Justice Commission Report's* recommendations or engage in further legislative activity on SORA or VOYRA are not matters of constitutional magnitude or within the court's role.

Rarely should a court, favoring one policy over another, use its power to undermine the will of the legislature. Proper application of the rational basis test does not require that a statute be the *best* means of accomplishing the legislature's objectives. *In re J.W.*, 204 Ill. 2d 50, 72 (2003) ("It is best left to the legislature and not the courts to determine whether a statute is wise or whether it is the best means to achieve the desired result"); *Thillens, Inc. v. Morey*, 11 Ill. 2d 579, 593 (1957) ("honest conflict of serious opinion" on legislative enactments "does not suffice to bring them within the range of judicial cognizance").

VOYRA's mandatory reporting period is limited in duration and directed to only the most serious and violent felonies committed almost exclusively against children; as such, it is rationally related to the legislative goal of protecting society's most vulnerable citizens. As long as the means are rationally related to the goals of the registration law, the majority was bound to uphold the statute. By facially invalidating VOYRA's application to *all* juveniles, the appellate majority has effectively called into question *all* reporting statutes that include juvenile registrants. This far-reaching, analytically-infirm holding, requires reversal.

CONCLUSION

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

Respectfully Submitted,

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

NO. 118049

IN THE

SUPREME COURT OF ILLINOIS

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

APPENDIX TO BRIEF FOR PETITIONER-APPELLEE

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Appellate Court

In re M.A., **2014 IL App (1st) 132540**

Appellate Court Caption	*In re* M.A., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. M.A., a Minor, Respondent-Appellant).
District No.	First District, Third Division Docket No. 1-13-2540
Filed Rehearing denied	May 28, 2014 June 23, 2014
Held *(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)*	The automatic requirements of the Illinois Murderer and Violent Offender Against Youth Registration Act that juveniles adjudicated delinquent for certain offenses register as violent offenders against youth for a minimum of 10 years following the adjudication is unconstitutional, since the Act violates procedural due process by failing to allow a juvenile offender an opportunity to petition to be taken off the registry and it violates equal protection to the extent that juveniles required to register as sex offenders are treated more leniently than juveniles required to register as violent offenders against youth, especially when the sex offenders are not required to register as adults upon turning 17 and they have an opportunity to demonstrate that their obligation to register should be terminated after 5 years.
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 12-JD-4659; the Hon. Stuart P. Katz, Judge, presiding.
Judgment	Reversed.

No. 118049 App. A-7

Counsel on Appeal	Michael J. Pelletier, Alan D, Goldberg, and Rachel Moran, all of State Appellate Defender's Office, of Chicago, for appellant. Anita M. Alvarez, State's Attorney, of Chicago (Alan J. Spellberg, Veronica Calderon Malavia, and Annette Collins, Assistant State's Attorneys, of counsel), for the People.
Panel	JUSTICE MASON delivered the judgment of the court, with opinion. Presiding Justice Hyman concurred in the judgment and opinion. Justice Pucinski concurred in part and dissented in part, with opinion.

OPINION

¶ 1 In her first referral to juvenile court, 13-year-old respondent-appellant, M.A., was adjudicated delinquent of certain charges arising out of an altercation with her older brother. As a result of this adjudication, M.A. was ordered to register for a minimum of 10 years under the Illinois Murderer and Violent Offender Against Youth Registration Act (Act) (730 ILCS 154/1 *et seq.* (West 2012)). The Act automatically requires juveniles adjudicated delinquent for certain offenses to register as violent offenders against youth for a minimum of 10 years following adjudication. There are no exceptions to the registration requirement and juveniles are automatically required to register as adults when they turn 17. M.A. challenges the Act's application on a number of grounds, including substantive and procedural due process and equal protection. We determine that the Act results in a violation of procedural due process and equal protection and, therefore, reverse the trial court's order requiring M.A. to register pursuant to the Act.

¶ 2 Background

¶ 3 We summarize only so much of the evidence at trial as is necessary to an understanding of the issues presented on appeal. The incident that gave rise to these proceedings occurred on November 24, 2012. M.A. was at that time 13 years old. On the morning of November 24, M.A. and her older brother, age 14, were at their aunt's house in Chicago. M.A. and her brother got into an argument that morning about a missing shower cap. After her brother accused M.A. of being the last person to be seen with the shower cap, M.A. swore "on my grandfather" that she had not used it. The reference to the siblings' deceased grandfather angered M.A.'s brother and he went to the couch where M.A. was sitting and began punching her with his fists and pulling out her hair. Although the siblings' aunt tried to break up the fight, she was pushed away.

¶ 4 M.A.'s brother then went into a bedroom and closed the door. M.A. went into her aunt's kitchen, grabbed a knife and pushed her way into the bedroom. Although the manner in

which the injuries were inflicted and M.A.'s intent to inflict those injuries were contested at trial, it is undisputed that M.A. cut her brother twice on his face and arm, injuries that required 13 stitches. M.A.'s aunt then called the police. M.A. was thereafter charged in a juvenile petition with aggravated domestic battery, aggravated battery, battery and domestic battery.

¶ 5 Between the date of M.A.'s first court appearance and the sentencing hearing, M.A. was placed in a variety of residential placements, including with relatives and in group homes. M.A. could not continue to reside with her mother and brother because the Department of Children and Family Services (DCFS), which was conducting an investigation, prohibited her from having any contact with her brother. M.A. was generally noncompliant with court orders and house rules. She ran away from her various placements on a number of occasions, encountered disciplinary and attendance problems at school, and was charged in a new petition for stealing money from an aunt. Ultimately, in April 2013, after all other placement options had been exhausted, a family friend offered to take M.A. Reports following that placement indicated M.A.'s continued noncompliance with court-imposed restrictions as well as unexplained absences from the home, but the family friend reported that she was prepared to have M.A. reside with her until she turns 18 and that she is attempting to provide M.A. a more structured environment.

¶ 6 On May 2, 2013, the trial court adjudicated M.A. delinquent on all charges. On the same date, the court ordered a clinical evaluation for purposes of sentencing.

¶ 7 The clinical evaluation ordered by the trial court was prepared by psychologist Priscilla DuBois of the Cook County Juvenile Court Clinic. DuBois reviewed certain records and interviewed M.A. on two occasions, once for an hour and 15 minutes and later for 40 minutes. DuBois also interviewed M.A.'s mother for an hour and 45 minutes.

¶ 8 The report detailed a history of turbulent relationships among M.A.'s family members, and particularly between M.A. and the brother involved in the November 24, 2012 altercation.

¶ 9 M.A. is the youngest of three children born to her mother. At the time of the evaluation, she had an 18-year-old half-brother and a 15-year-old biological brother, the victim in this case. M.A.'s maternal grandfather also lived with the family until his death on March 25, 2011. M.A.'s mother admitted that her father's death hit her (the mother) hard and that she "pushed [her children] away emotionally." DCFS previously investigated M.A.'s mother on allegations of abuse on three occasions in the year prior to the incident involving M.A.'s brother, but determined the charges were unfounded.

¶ 10 M.A.'s mother reported to DuBois that she did not currently have a residence, but did not elaborate. She also told DuBois that M.A. and the brother involved in the altercation argued daily and "always fought" because the older brother tried to "be the boss of her." M.A. and her brother, according to their mother, punched, slapped and pushed each other. On two prior occasions, their fights left M.A. with a black eye. M.A. reported that fights with her brother often involved objects including an iron, skillet, bat, fork, spoon and crutches, but their fights have resulted in only minor scrapes and cuts. For her part, M.A.'s mother admitted that up until about a year before the altercation with her brother, she disciplined M.A. by giving her "woopins" involving spanking her with a belt or slapping her in the mouth. M.A.'s mother also applied a "rule of three" approach to discipline: if one child misbehaved, all three received a "woopin."

¶ 11 M.A. first began displaying behavior problems around the age of eight or nine. School reports indicated that she had frequent conflicts with peers, was confrontational with adults and had difficulty following school rules. Although she has had an "Individual Education Plan" to address a learning disability since the fifth grade and has received services from school counselors, she has never been evaluated by any mental health professional or received any formal mental health services or other therapy. M.A.'s mother reported that two of M.A.'s paternal aunts died in "mental institutions" and that she, her sisters and her mother have a history of suicide attempts. Most recently, M.A.'s mother attempted suicide about four years earlier. Although M.A. has on occasion threatened to harm herself, she has consistently denied any serious intention to do so.

¶ 12 M.A.'s mother believes M.A. would benefit from "Multi-Systemic Therapy"–an intensive, community-based network of "wrap-around" social services–and admitted that her whole family has "anger issues" and that they know how to trigger one another's anger. At the time of the evaluation, M.A. was not interested in attempting to repair her relationship with her mother.

¶ 13 M.A.'s mother admitted to smoking cannabis several times a month but denied that she smoked in front of her children. M.A. reported that her mother smoked "every other day" and had done so in front of her. The family friend who agreed to take M.A. in reported that M.A.'s mother smokes "every day." DuBois believed that M.A.'s mother's substance abuse would likely impede her ability to provide M.A. with consistent and effective parenting and the close monitoring necessary to reduce M.A.'s risk for engaging in negative behaviors.

¶ 14 DuBois concluded that M.A. had developed "poor coping skills" for managing "chronic family conflict" and "ineffective discipline and limited monitoring in the home." She observed that M.A.'s coping skills consist of "aggression directed at others" or "avoidance" by leaving her home. DuBois recommended individual therapy for M.A., eventual family therapy (while recognizing that implementation of the recommendation is hampered by the DCFS policy prohibiting M.A. from having contact with her brother and M.A.'s lack of desire to improve her relationship with her mother), substance abuse evaluation and grief counseling for M.A.'s mother, and a psychiatric evaluation for M.A. Given M.A.'s history of (i) impulsivity and aggression, (ii) family conflict and ineffective discipline, (iii) residential instability, and (iv) placement in care outside the family, as well as the family history of mental illness, DuBois concluded that M.A. is at risk for recidivism.

¶ 15 The court also received a social investigation from M.A.'s probation officer in which M.A.'s mother reported that M.A. and her brother have been "beating each other up since they were little kids." M.A.'s mother also admitted that when her children were younger, she was often out with her friends instead of spending time at home. According to M.A., the beatings she received from her brother increased after their grandfather died in 2011 because no one was ever around.

¶ 16 The trial court sentenced M.A. to 30 months' probation with certain conditions, one of which was to register under the Act. At the sentencing hearing, the trial court, in response to questions raised by M.A.'s mother regarding registration, stated: "[T]his is required under the law. This is not my order. Because of what you were found guilty of, you have to register." When discussing whether the obligation to register would terminate after five years, the trial court commented: "[T]hey do it for sex offenders with kids, you would think they would do it with this." After her sentencing, M.A. signed a form acknowledging her obligation to

register within five days. M.A.'s motion to reconsider the finding of delinquency was denied and she timely appealed.

¶ 17 The Act

¶ 18 The Act, which became effective June 27, 2006, is a sentencing statute. As it applies to juveniles, the Act defines a "violent offender against youth" as a person who is adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses enumerated in section 5(b) or (c-5).[1] 730 ILCS 154/5(a)(2) (West 2012). Subsection 5(b) defines a "violent offense against youth" to include a variety of offenses when the victim is under the age of 18, including aggravated domestic battery and aggravated battery. 730 ILCS 154/5(b)(4.4) (West 2012). The Act uses "conviction" and "adjudication" interchangeably. See 730 ILCS 154/5(a) (West 2012) ("For purposes of this Section, 'convicted' shall have the same meaning as 'adjudicated'."). The Act requires initial registration within five days after entry of the sentencing order based on the juvenile's adjudication (730 ILCS 154/10(c)(2) (West 2012)) and further provides that, within 10 days of attaining the age of 17, the offender must register as an adult (730 ILCS 154/5(a), 10(a) (West 2012)).

¶ 19 There is no provision in the Act for a juvenile offender to petition to be taken off the registry prior to the expiration of the 10-year period nor is there any provision that excuses the requirement to register as an adult. As a practical matter, therefore, any juvenile adjudicated delinquent of any of the enumerated offenses who is eight years old or older at the time of the adjudication will be required to register as an adult violent offender against youth. The older the juvenile is at the time of the offense, the longer the juvenile will remain on the statewide registry.

¶ 20 The offender must register in person and provide accurate information as required by the State Police, including "a current photograph, current address, current place of employment, the employer's telephone number, [and] school attended." 730 ILCS 154/10(a) (West 2012). The Act requires law enforcement to send the name, address, date of birth, school, place of employment and title of the offense to the school board in the offender's school district, the principal and guidance counselor at the offender's school and all child care facilities, institutions of higher learning and libraries in the county. 730 ILCS 154/95(a-2), (a-3), 100(b) (West 2012). There is no exception in the foregoing provisions for juvenile offenders. The Act also vests in law enforcement the discretionary authority to disclose the offender's information and any "other such information that will help identify the violent offender" to "any person likely to encounter a violent offender." 730 ILCS 154/95(b) (West 2012).

¶ 21 For offenses committed within the City of Chicago, the offender must register at Chicago police department headquarters. 730 ILCS 154/95(a-3) (West 2012). If the offender is employed or attends an institution of higher learning, he or she must register with the chief of police in the municipality where the offender is employed or attends school. 730 ILCS 154/10(a)(2)(i) (West 2012). If the offender is temporarily domiciled outside the jurisdiction

[1]Section 5(c-5) deals with first degree murder convictions of persons at least 17 years of age at the time of the offense and is not relevant to this discussion. 730 ILCS 154/5(c-5) (West 2012).

of registration for an aggregate period of five or more days during any calendar year, he or she must separately register in that jurisdiction. 730 ILCS 154/10(a)(2) (West 2012).

¶ 22 A violation of any of the registration requirements carries with it an automatic extension of the 10-year registration period measured from the date of the violation. 730 ILCS 154/40 (West 2012). Failure to register is a Class 3 felony (730 ILCS 154/60 (West 2012)) and any subsequent violations are Class 2 felonies (*id.*).

¶ 23 Nothing in the Act defines "registration" differently for juveniles compared to adults. A fair reading of the Act–and one adopted by the parties as well as the trial court–is that the Act's registration provisions apply equally to both. Information in the registry is maintained on a statewide database and is publicly accessible via a website. 730 ILCS 154/85(a)-(b) (West 2012). Anyone accessing the public registry can obtain the name, date of birth, address, photograph and other personal information about the offender, the title of the conviction or adjudication and a summary of the offense. *Id.* Although there are separate "notification" provisions regarding juvenile offenders (730 ILCS 154/100 (West 2012)), from which it might be inferred that something less than inclusion on the statewide registry is contemplated, no provision of the Act expressly so states. It is only by consulting the Illinois Administrative Code that one can discern that placement on the statewide registry will not occur until after the juvenile offender registers as an adult after turning 17. 20 Ill. Adm. Code 1283.50(j) (2010) ("Upon registering as an adult, the juvenile offender will be placed on the Illinois State Police Violent Offender Against Youth Registry website after an authorization letter is signed by the offender and received by the Illinois State Police.").

¶ 24 Analysis

¶ 25 M.A. does not challenge on appeal her adjudication or the sufficiency of the evidence to support that adjudication. The issues M.A. raises are limited to constitutional challenges to the Act. M.A. contends that the automatic application of the Act to juvenile offenders violates both substantive and procedural due process rights. She further claims that the Act, as applied to juvenile offenders, results in a denial of equal protection given that the Act treats juvenile violent offenders more harshly than juvenile sex offenders. We address each argument in turn.

¶ 26 At the outset, we note that the constitutional arguments M.A. raises on appeal were not raised in the trial court. But given that the constitutionality of a statute may be raised for the first time on appeal (*In re J.W.*, 204 Ill. 2d 50, 61 (2003)), we will nevertheless consider these issues. The constitutionality of the Act is an issue of first impression in Illinois.

¶ 27 "Statutes are presumed constitutional," and "[t]he party challenging the constitutionality of a statute carries the burden of proving that the statute is unconstitutional." *People v. Hollins*, 2012 IL 112754, ¶ 13. "Moreover, this court has a duty to construe the statute in a manner that upholds the statute's validity and constitutionality, if it can reasonably be done." *People v. Aguilar*, 2013 IL 112116, ¶ 15; see also *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 33 ("when assessing the constitutional validity of a legislative act, we must begin with the presumption of its constitutionality"). The constitutionality of a statute presents a question of law. *Aguilar*, 2013 IL 112116, ¶ 15.

¶ 28 In recent years, the United States Supreme Court has recognized that the unique characteristics of juveniles warrant heightened scrutiny in the context of convictions for criminal offenses. In a series of decisions, the Court has determined that the eighth

amendment's proscription against cruel and unusual punishment prevents imposition of the death penalty for offenses committed by juveniles (*Roper v. Simmons*, 543 U.S. 551, 574-75 (2005)), a sentence of life imprisonment without the possibility of parole for juveniles convicted of nonhomicide offenses (*Graham v. Florida*, 560 U.S. 48, 74-75, (2010)), and a mandatory sentence of life without the possibility of parole for homicide committed by a juvenile (*Miller v. Alabama*, 567 U.S. ___, ___, 132 S. Ct. 2455, 2469 (2012)). In each of these cases, the Supreme Court relied on the results of scientific and sociological studies documenting the fundamental differences between juvenile and adult offenders convicted of the same crimes. As summarized by the Court in *Miller*:

> "First, children have a ' "lack of maturity and an underdeveloped sense of responsibility," ' leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569. Second, children 'are more vulnerable ... to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].' *Id.*, at 570." *Miller*, 567 U.S. at ___, 132 S. Ct. at 2464.

Youth "is a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness.' " *Id.* at ___, 132 S. Ct. at 2467 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). These "signature qualities" of youth are all "transient." *Johnson*, 509 U.S. at 368. See also *People v. Davis*, 2014 IL 115595, ¶ 39 (recognizing that *Miller* declares a new substantive rule that applies retroactively).

¶ 29 The State dismisses the foregoing authorities as inapposite because they concern the issue of whether sentences imposed on juveniles violate the eighth amendment's prohibition against cruel and unusual punishment whereas this case deals with a registration requirement similar to one our supreme court has determined does not constitute "punishment." *In re J.W.*, 204 Ill. 2d 50, 75 (2003) (finding that requiring a juvenile to register under the Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2000)) for the rest of his natural life did not constitute "punishment"). But as discussed in more detail below, we find the Supreme Court's observations about the nature of juvenile offenders particularly applicable in the context of this case.

¶ 30 M.A.'s Obligation to Register

¶ 31 We first address the Act's registration requirement in light of the dissent's conclusion that registration is "postponed" until the offender reaches 17, a fact the dissent characterizes as a legislative "concession" that ameliorates the effect of the Act on juvenile offenders. The dissent reasons, based on section 5(a)'s "shall be considered as having committed" language, that a juvenile offender is not considered to have committed a violent offense against youth until the offender turns 17 and only then is "registration" required. 730 ILCS 154/5(a) (West 2012) ("a person who is defined as a violent offender against youth as a result of being adjudicated a juvenile delinquent *** upon attaining 17 years of age shall be considered as having committed the violent offense against youth on or after the [offender's] 17th birthday"). Acknowledging that nothing in the Act distinguishes between adults and juveniles in terms of registration requirements, the dissent nevertheless concludes that "registration"

for juveniles is something different and urges trial judges to "clarify" this point, perhaps by using different language in requiring juveniles to "register." Neither the parties nor the trial court interprets the Act in this manner.

¶ 32 We, too, are unable to reconcile this interpretation with the Act's plain language. In unambiguous terms, the Act requires a juvenile adjudicated delinquent of an offense constituting a "violent offense against youth" to "register" within five days of her adjudication and to provide the Illinois State Police the information specified in section 10 of the Act, the same information adult offenders are required to provide. 730 ILCS 154/10(a) (West 2012). The form M.A. signed after her sentencing advised her of her obligation to "register." Our supreme court has determined that similar provisions of the Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2000)) (Registration Act) apply to juveniles. See *In re J.W.*, 204 Ill. 2d at 66 ("Clearly, then, juvenile sex offenders do fall within the purview of section 3 of the Registration Act and are required to register."); *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009) ("[T]he minor is required to register under the Act as a result of his delinquency adjudication of criminal sexual assault.").[2] The Act does not exempt juvenile offenders from penalties, including an automatic extension of the 10-year registration period, for failing to register. 730 ILCS 154/60 (West 2012). If M.A., like any other offender on the registry, leaves the jurisdiction of her registration for an aggregate period of five days or more during a calendar year, she must register in the new jurisdiction. 730 ILCS 154/10(a)(2) (West 2012).

¶ 33 Thus, although M.A.'s information may not be available to the general public via the Internet until after she reaches 17 and is automatically required, without any further hearing, to register as an adult, she is nonetheless subject to the Act's registration requirements, including the penalties for failing to comply with those requirements. What is postponed is not registration, but public dissemination of the information contained on the registry. With the registration framework in mind, we now address M.A.'s constitutional arguments.

¶ 34 Substantive Due Process

¶ 35 M.A first contends that the Act violates substantive due process. M.A. argues that the automatic application of the Act to juveniles ignores the transitory qualities and capacity for rehabilitation that distinguish juveniles from adults. Further, M.A. urges that the Act's registration requirements actually hinder rehabilitative efforts since they guarantee that juvenile adjudications labeling juveniles "violent offenders against youth" will hinder the offender's ability to obtain employment or pursue higher education, particularly after the offender is automatically required to register as an adult.

¶ 36 A substantive due process challenge is appropriate where a statute impermissibly restricts a person's life, liberty or property interest. *People v. R.G.*, 131 Ill. 2d 328, 342 (1989). The

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[2]Contrary to the dissent's conclusion, the court in *People v. Evans*, 405 Ill. App. 3d 1005 (2010), did not determine that a juvenile convicted of murder was exempt from the Act's registration requirements. Rather, the court declined to decide the issue given that the adult defendant's obligation to register was not excused: "Whether [the juvenile principal] is required to register under the Violent Offender Act is disputed, *but we need not decide the question*, because even if [the juvenile principal] is not required to register ***, defendant has presented nothing that excuses him from registering simply because he was convicted on an accountability theory." (Emphasis added.) *Id.* at 1009.

showing required to justify governmental intrusion depends on the nature of the right involved. Where a statute substantially infringes on an individual's freedom of choice with respect to "certain basic matters of procreation, marriage, and family life" (*Kelley v. Johnson*, 425 U.S. 238, 244 (1976)), "then any statute limiting that right 'may be justified only by a "compelling state interest," [citations] and *** must be narrowly drawn to express only the legitimate state interests at stake' " (*People v. R.G.*, 131 Ill. 2d at 342 (quoting *Roe v. Wade*, 410 U.S. 113, 155 (1973))). In the absence of a fundamental right, the statute need only bear a rational relationship to the legislative purpose prompting its enactment. *People v. R.G.*, 131 Ill. 2d at 342.

¶ 37 In *In re J.W.*, our supreme court addressed a substantive due process challenge to the registration provisions of the Registration Act. In that case, a 12-year-old boy was adjudicated delinquent of aggravated criminal sexual assault. As a condition of his five-year probation, he was required to register as a sex offender. Given the nature of the offenses involved, the juvenile offender was classified under the Registration Act as a "sexual predator" and required to register for the rest of his natural life.

¶ 38 The minor in *In re J.W.* did not claim that the Registration Act infringed on a fundamental right. Analyzing the impact of the Registration Act under the rational basis test, the court observed that "a statute need only bear a rational relationship to the purpose the legislature sought to accomplish in enacting the statute." *In re J.W.*, 204 Ill. 2d at 67. Where the statute bears a reasonable relationship to the public interest to be served and "the means adopted are a reasonable method of accomplishing the desired objective," the statute must be upheld. (Internal quotation marks omitted.) *Id.* The statute need not be the best means of accomplishing the stated objective and courts will not second-guess the wisdom of legislative enactments or dictate alternative means to achieve the desired result. *Id.* at 72 (citing *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998)).

¶ 39 Applying the foregoing principles to the Registration Act, the court concluded that "there is a rational relationship between the registration of juvenile sex offenders and the protection of the public from such offenders." *In re J.W.*, 204 Ill. 2d at 72. The court further found that the lifetime registration requirement was reasonable in light of the "strict limits placed upon access to [the juvenile's] information. Whether there are better means to achieve this result, such as limiting the duration of registration for all juvenile sex offenders, including juvenile sexual predators, is a matter better left to the legislature." *Id.*

¶ 40 Since our supreme court decided *In re J.W.*, other courts have reached contrary conclusions. See *In re C.P.*, 131 Ohio St. 3d 513, 2012-Ohio-1446, 967 N.E.2d 729 (concluding that automatic lifetime registration for juveniles violates the eighth amendment's prohibition against cruel and unusual punishment and the fourteenth amendment's guarantee of due process); *In re J.B.*, No. CP-67-JV-0000726-2010, 1, 34 (Pa. Ct. Comm. Pl. of York County Nov. 4, 2013) ("[L]ifetime registration *** is particularly harsh for juveniles in light *** of *** the detrimental effects that registration can have on all aspects of their lives and livelihood.").

¶ 41 We further note that the Illinois Juvenile Justice Commission has recently released its report, "Improving Response to Sexual Offenses Committed by Youth" (Report), in which the Commission recommends a reassessment of Illinois' current practice of requiring juveniles to register as sex offenders. The Report analyzes extensive data regarding the efficacy of registration to enhance public safety and details collateral adverse consequences

of registration requirements for juvenile sex offenders, summarizing its conclusions as follows: "[T]he evidence is clear and growing: treating youth like adults and categorically applying registries and other barriers to stable housing, education, family relationships, and employment does not protect public safety. On the contrary, employing these strategies is much more likely to undermine youth rehabilitation, harm intrafamilial victims of sexual abuse, stigmatize families, and produce poor outcomes for communities." Illinois Juvenile Justice Commission, Improving Response to Sexual Offenses Committed by Youth 50 (2014), *available at* http://ijjc.illinois.gov/youthsexualoffenses. The Report also points out that Illinois is among a minority of states that imposes categorical registration requirements on all juveniles convicted of sex offenses, regardless of the juvenile's age at the time of the offense. *Id.* at 52. The Commission recommends removing juveniles from the state's sex offender registry. *Id.* at 59.

¶ 42 Whether the legislature will act on the Commission's recommendations remains to be seen. Unless and until that happens, *In re J.W.* guides the analysis of the issue of whether the Act's provisions bear a rational relationship to the protection of the public.

¶ 43 While in *In re J.W.*, the juvenile offender did not claim that the Registration Act impaired any fundamental constitutional right, here M.A. claims that the Act infringes on two fundamental constitutional rights: her right to liberty under the federal and state constitutions and her right to privacy under the Illinois Constitution. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, §§ 2, 6. If M.A. is correct, the constitutionality of the Act would be subject to the more rigorous strict scrutiny test. See *People v. R.G.*, 131 Ill. 2d at 342.

¶ 44 We do not agree that the Act impairs fundamental constitutional rights. First, regarding M.A.'s claim that the Act impairs her interest in "liberty," nothing in the requirement that juvenile offenders register deprives them of their freedom. See *In re T.C.*, 384 Ill. App. 3d 870, 875 (2008) ("T.C. has failed to show how the requirements of [the Sex Offender Registration Act] deprive him of a protected liberty interest ***."). Registration does not impair an offender's ability to work or go to school, although, as we discuss below, it may make the ability to do either more difficult. By the same token, an offender required to register is free to move anywhere, again subject to the Act's ongoing requirements to register in another jurisdiction. Thus, the requirement to register does not, in and of itself, impair an offender's liberty.

¶ 45 Likewise, M.A.'s argument that the Act infringes on her right to privacy under the Illinois Constitution is misplaced. The right to privacy made explicit in the Illinois Constitution affords protection against "unreasonable" invasions of privacy. See *Kunkel v. Walton*, 179 Ill. 2d 519, 538 (1997) ("The text of our constitution does not accord absolute protection against invasions of privacy. Rather, it is *unreasonable* invasions of privacy that are forbidden." (Emphasis in original.)). As we have discussed above, as it impacts juvenile offenders prior to the time they reach 17, the Act contemplates limited dissemination of registry information by law enforcement authorities. Given the need to protect the public from violent offenders against youth, whether such offenders are adults or juveniles, we cannot say that the intrusion on the privacy of juvenile offenders contemplated by the Act is unreasonable. See *In re Lakisha M.*, 227 Ill. 2d 259, 280 (2008) (minimally intrusive nature of privacy invasion required for buccal swab coupled with juvenile's diminished expectation of privacy as a result of her delinquency adjudication rendered invasion of privacy reasonable; court also noted limited dissemination of collected information). Further,

assuming the validity of the automatic requirement to register as an adult upon reaching 17–an issue we discuss in detail below–the Act does not unreasonably impair an adult offender's right to privacy given the important countervailing considerations of public safety. See *People v. Cornelius*, 213 Ill. 2d 178, 196 (2004) (adult required to register under the Registration Act has no "cognizable privacy interest in his sex offender registry information"). Consequently, we decline to apply a strict scrutiny analysis to the Act's registration requirements.

¶ 46 But despite the conclusion that the Act does not deprive juveniles required to register of a fundamental constitutional right, the Act's registration requirements burden a juvenile offender's liberty in that the freedom to live, work or attend school is accompanied by the requirement to register with law enforcement authorities and the failure to comply carries with it significant criminal penalties. And although the Act does not eliminate completely a juvenile's right to privacy, it does mandate disclosure of information normally deemed confidential under the Juvenile Court Act of 1987 (705 ILCS 405/1-7, 1-8 (West 2012)).

¶ 47 Further, the persons to whom such information is disclosed–principals, school counselors and others–are not themselves under any statutory mandate to maintain its confidentiality, allowing for potentially broader dissemination than contemplated under the Act. Thus, because the Act undeniably affects a juvenile offender's liberty and privacy (without depriving the offender of those rights altogether), we will determine whether the Act survives scrutiny against a substantive due process challenge under the rational basis test.

¶ 48 We believe the decision in *In re J.W.* compels the conclusion that the Act's registration requirements pass the rational basis test. Just as our supreme court concluded that there is a rational relationship between the registration requirements for sex offenders, regardless of age, and the protection of the public from those offenders (*In re J.W.*, 204 Ill. 2d at 72), the same reasoning compels the finding that a rational relationship exists in the context of this case. The public requires protection from violent offenders against youth; this is true whether the offender is an adult or a juvenile. The degree of protection required may vary given, among other things, the age of the offender at the time the offense is committed. In recognition of this fact and consistent with the Juvenile Court Act's statutory confidentiality provisions (705 ILCS 405/1-7, 1-8 (West 2012)), the legislature has deemed it appropriate to limit those who have access to a juvenile offender's information contained on the registry, while making the same information for adult offenders widely available. Given our conclusion that under the rationale of *In re J.W.*, the Act's registration requirements are rationally related to public safety, we reject M.A.'s substantive due process challenge.

¶ 49 Procedural Due Process

¶ 50 M.A. also contends that the Act results in a deprivation of procedural due process. Pointing to the mandatory 10-year minimum period of registration and the automatic requirement to register as an adult on reaching 17, she argues that the Act deprives her of any meaningful sentencing hearing before being required to register as a juvenile and, later, as an adult. Again, given our conclusion that the Act's registration provisions do not infringe on fundamental rights, we will analyze them under the rational basis test.

¶ 51 "Procedural due process claims challenge the constitutionality of the specific procedures used to deny a person's life, liberty, or property." *Konetski*, 233 Ill. 2d at 201. The hallmarks of procedural due process are notice and the opportunity to be heard. *Tri-G, Inc. v. Burke*,

Bosselman & Weaver, 222 Ill. 2d 218, 244 (2006). Courts considering procedural due process challenges consider the following factors:

> " 'First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.' " *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 277 (2004) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

¶ 52 As we have noted, the Act requires juveniles adjudicated as violent offenders against youth to automatically register as adults upon turning 17 regardless of the nature and circumstances of the adjudication, which, in many cases, will have occurred several years prior to the minor's seventeenth birthday. As the Supreme Court recognized in *Miller*, "[O]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults. *** [I]t is the odd legal rule that does *not* have some form of exception for children." (Emphasis in original and internal quotation marks omitted.) *Miller*, 567 U.S. at ___, 132 S. Ct. at 2470. "[C]riminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham*, 560 U.S. at 76.

¶ 53 Consideration of the foregoing factors compels the conclusion that the Act, with its mandated registry for 10 years and its requirement that juvenile offenders automatically register as adults upon turning 17, denies minors procedural due process. The Act's registration requirements are mandatory and admit of no exceptions. Once a juvenile is adjudicated delinquent of any of the offenses enumerated in the Act, registration is required regardless of the circumstances of the offense. Further, without any individualized assessment of whether the offender poses any continuing risk to the public, the Act automatically requires offenders to register as adults, with the attendant inclusion of their information on the statewide public registry. Unlike adults, juveniles have no right to a jury trial before being ordered to register as adults. Thus, in its application to juvenile offenders required to register as adults, the Act affords minors *less* procedural protection than their adult counterparts. Finally, as in M.A.'s case, adult registration may occur several years after the delinquency adjudication and is required without any opportunity for further hearing.

¶ 54 While the rational basis test might support an initial registration requirement for all juvenile offenders classified as "violent offenders against youth" under the Act without an individualized assessment as to whether those minors, in fact, pose a danger to the public (particularly in light of the limited dissemination of registration information), it does not likewise justify the requirement that all such offenders automatically register as adults, with the ensuing disclosure of registration information to the public at large. This is particularly true given that no hearing is conducted prior to mandated adult registration. While our supreme court has recognized that amendments to the Juvenile Court Act (705 ILCS 405/5-101 (West 2012)) were designed to shift the exclusive focus in juvenile proceedings from rehabilitation to include protection of the public and accountability of juvenile offenders, delinquency proceedings remain protective in nature. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 94 (" '[E]ven as the legislature recognized that the juvenile court system should protect the public, it tempered that goal with the goal of developing minors into productive adults, and gave the trial court options designed to reach both goals.' " (quoting

In re Rodney H., 223 Ill. 2d 510, 520 (2006))); *In re Rodney H.*, 223 Ill. 2d at 520 (Even after amendments to the Act, " 'the purpose of the Act is to correct and rehabilitate, not to punish.' *In re W.C.*, 167 Ill. 2d 307, 320 (1995); [citations]."). Further, one of the Juvenile Court Act's express purposes is "[t]o provide due process, as required by the Constitutions of the United States and the State of Illinois, through which each juvenile offender and all other interested parties are assured fair hearings at which legal rights are recognized and enforced." 705 ILCS 405/5-101 (West 2012). The Act's automatic requirement that juvenile offenders register as adults without exception runs counter to these goals.

¶ 55 M.A.'s circumstances illustrate the issue perfectly. Having been classified as a "violent offender against youth" at age 13, M.A. was the subject of a clinical evaluation provided to the trial court. The psychologist who prepared the evaluation interviewed M.A. for just under two hours and conducted no psychological tests. The report is replete with conflicting and incomplete information regarding M.A.'s family (*e.g.*, the reason for her mother's reported homelessness and the frequency of her substance abuse, the family's history of mental illness) and M.A. (whether M.A. has herself abused alcohol or other substances, the nature of M.A.'s learning disability–the report refers to M.A. receiving "academic support under an emotional disorder," and how frequently she was beaten by her brother). While the report was certainly sufficient for purposes of sentencing a 13-year-old, it is clearly insufficient to support any conclusions or predictions about M.A. several years into the future.

¶ 56 Prior to M.A.'s being required to register as an adult, no court will have an opportunity to determine whether the services recommended for M.A., her mother and her family in the clinical evaluation have been beneficial; no court will inquire whether the more structured environment provided by the family friend has lessened M.A.'s tendencies toward oppositional behavior and aggression; no court will determine whether M.A.'s anger and aggression are symptomatic of undiagnosed mental health conditions, a product of her dysfunctional home environment or a combination of both. And most importantly, M.A. will have no opportunity to be heard on the issue. Simply put, were the issue presented anew on M.A.'s seventeenth birthday, no court would reasonably rely on a four-year-old clinical evaluation to justify a decision of any significance to M.A.'s future, much less one that would expose her juvenile history to the public at large. But that is the result the Act mandates.

¶ 57 The risk of error in the statutory scheme is obvious. A stale clinical evaluation prepared after brief interviews cannot reasonably support any conclusions about a juvenile offender's development since her adjudication or serve as a basis to predict that she either is or will continue to be a danger to the public. There is also no basis to conclude–on a wholesale basis–that minors adjudicated delinquent of offenses defined to constitute "violent offenses against youth" will continue throughout their adolescence and early adulthood to present a continuing danger to society.

¶ 58 Again, M.A.'s circumstances present a textbook example of the risk of error posed by the Act's broad brush approach. Despite her many behavior problems, this was M.A.'s first referral to juvenile court. The altercation that brought her there was not with a classmate or a stranger on the street, but with an older brother who, according to the clinical evaluation, physically assaulted her on a regular basis for years. M.A.'s mother could be deemed largely responsible for this learned behavior given her reported use of physical discipline on her children, her regular substance abuse, her admitted absences from the home and her

emotional distance from M.A. after her father died. Although M.A. has had the benefit of special education and school counseling services, these are woefully inadequate to offset her toxic home environment. And as far as the record shows, M.A. has never been fully assessed by a mental health professional competent to determine whether treatment, alone or in combination with medication, could address her behavior problems.

¶ 59 It is not difficult to understand that a child suffering regular beatings at the hands of family members would lash out. We would also expect a child who has been removed from her home and placed in a variety of group homes or relative placements because of a fight she did not start to experience a fair amount of anger and acting out. But in its mechanical application to all juveniles in M.A.'s circumstances, the Act takes none of this into account. This cannot be reconciled with due process protections. See *Graham*, 560 U.S. at 76 (laws that fail to take youthfulness into account are "flawed"); *Miller*, 567 U.S. at ___, 132 S. Ct. at 2470 ("a sentencing rule permissible for adults may not be so for children"). "It is the youth's lack of maturity and experience, impetuosity, and ill-considered decisions which mandate special consideration by the court in determining the protections available to minors in juvenile proceedings, and the avenues for review and relief where the minor's rights are violated." *In re J.T.*, 221 Ill. 2d 338, 380-81(2006) (Freeman, J., dissenting).

¶ 60 It is likewise apparent that putting in place procedures to assure that juvenile offenders who do not pose a danger to society are not required to register as adults would entail no administrative burdens. The court presiding over M.A.'s delinquency matters will no doubt conduct regular status hearings to gauge M.A.'s compliance with the conditions of probation and whether the services recommended in the clinical evaluation have been made available to M.A. and her family. Requiring the court to conduct a hearing prior to M.A.'s seventeenth birthday in order to determine whether M.A. should be required to register as an adult and, more significantly, allowing M.A. the opportunity to be heard on the issue, will impose no undue burden.

¶ 61 The truth of this conclusion is best illustrated by the amendments to the Registration Act applicable to juvenile sex offenders. In 2007, the Registration Act was amended to (i) eliminate the requirement for juvenile sex offenders to register as adults upon turning 17 (730 ILCS 152/121 (West 2008)) and (ii) allow juvenile sex offenders to petition to be taken off the sex offender registry after five years (730 ILCS 150/3-5(c) (West 2008)). In connection with the latter amendment, juvenile sex offenders are afforded the right to counsel during such hearings and to demonstrate by a preponderance of the evidence, including an independent risk assessment, that they pose no risk to the community. *Id.* Our supreme court has recognized that these amendments "significantly reduce the impact of the minor's registration requirement." *Konetski*, 233 Ill. 2d at 203; see also *In re Jonathon C.B.*, 2011 IL 107750, ¶ 106.

¶ 62 The supreme court has also recognized that the amendments to the Registration Act were prompted by the legislature's recognition that "in many instances, juveniles who engage in sexually inappropriate behavior do so because of immaturity rather than predatory inclinations. The purpose of the termination provisions of [the Registration Act] is to afford juveniles the opportunity to demonstrate this is true in an individual case, and to prove that they do not pose a safety risk to the community." *In re S.B.*, 2012 IL 112204, ¶ 29. Although the dissent points to the legislative history of the amendments indicating that they were designed to ameliorate the negative collateral effects of sex offender registration in the

context of consensual sex between minors, nothing in the language of the amendments so limits their application.

¶ 63 Again, the circumstances of M.A.'s case illustrate perfectly why such procedural protections are required. That M.A. is indeed immature is obvious; the clinical evaluation establishes that like most 13-year-olds she is impulsive, reactive and unable to appreciate the risks associated with her behavior. On the other hand, the record contains no basis to conclude that she will retain these immature qualities for the next four years and that, as a young adult, she will pose any danger to the public at large. We can discern no reason why juveniles classified as violent offenders against youth are not entitled to an individualized hearing prior to the expiration of the 10-year registration period and prior to being required to register as adults.

¶ 64 Significantly, the court in *Konetski* determined that the amendments allowing minor sex offenders to remain on the juvenile registry as well as to seek termination of their registration obligation altogether were "sufficient to satisfy the minor's constitutional right to procedural due process." *Konetski*, 233 Ill. 2d at 206. Given that the legislature has already determined that these additional protections for juvenile sex offenders are warranted, it follows that affording them to juvenile violent offenders against youth would not unduly burden the juvenile justice system. The corollary is also true: failing to provide these protections to minors adjudicated violent offenders against youth results in a denial of procedural due process to this class of offenders.

¶ 65 As the United States Supreme Court recognized in *Roper*, *Graham*, and *Miller*, the hallmark of youth is its transitory nature. By automatically carrying over the consequences of a juvenile adjudication into M.A.'s adult life, the Act guarantees that the qualities of recklessness and irresponsibility that characterized her conduct as a 13-year-old will haunt M.A. well into her adulthood. Inclusion on the publicly available adult registry will no doubt burden M.A.'s efforts to obtain employment and pursue higher education. Although the Juvenile Court Act protects the confidentiality of law enforcement and court records relating to juvenile adjudications (705 ILCS 405/1-7, 1-8 (West 2012)), information regarding M.A.'s offense now "considered as having [been] committed" as an adult (730 ILCS 154/5(a) (West 2012)) will be publicly available. That this result is accomplished without any opportunity for M.A. to demonstrate that public safety will not be served by requiring her to register as an adult cannot be reconciled with due process protections and bears no rational relationship to the Act's purpose. Consequently, we find that the Act's provisions mandating registration of juvenile violent offenders against youth as adults and the failure of the Act to provide any means by which a juvenile offender can petition to be taken off the registry are unconstitutional.

¶ 66 Equal Protection

¶ 67 Finally, M.A. argues that the Act denies juvenile offenders against youth equal protection compared to juvenile sex offenders. U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2. Pointing to the 2007 amendments to the Registration Act referenced above, M.A. contends that the Act treats juvenile violent offenders against youth differently and much more harshly than similarly situated juvenile sex offenders.

¶ 68 An equal protection challenge to legislation asks whether the government is treating similarly situated individuals in a similar manner. *People v. Breedlove*, 213 Ill. 2d 509, 518

(2004). "[T]he equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people." *Id.* In cases where fundamental rights are not at issue, the classification need only bear a rational relationship to the purpose of the statute. *People v. Whitfield*, 228 Ill. 2d 502, 512 (2007). A court need not reach the rational basis test where the party challenging the classification cannot meet the threshold requirement of demonstrating that she and the group she compares herself to are similarly situated. *Id.* at 512-13.

¶ 69 The State contends that M.A. cannot meet the threshold requirement of similarity between groups because juvenile violent offenders against youth are not "similarly situated" to juvenile sex offenders. Clearly, the offenses with which the two groups of juveniles are charged are different and require proof of different elements and in that sense, the two groups are not similarly situated. But for purposes of M.A.'s equal protection argument, we believe the appropriate class of persons is juvenile offenders who, as a result of a juvenile adjudication, are required to register with law enforcement authorities. In this context, it is apparent that juveniles required to register as sex offenders under the Registration Act are treated differently–and much more leniently–than juveniles required to register as violent offenders against youth. One group is relieved of the obligation to register as adults on turning 17 and is afforded the opportunity to demonstrate after five years that their obligation to register should be terminated because continuing registration does not serve public safety; the other group is not.

¶ 70 Because we find that M.A. satisfies the threshold showing of disparate treatment of similarly situated juveniles, we must next consider whether there is a rational relationship between that treatment and the purpose of the Act. The goal of the registration requirements for sex offenders and violent offenders against youth is the same: protection of the public. As applied to juveniles required to register under either act, we must also take into account the stated purposes of the Juvenile Court Act, which, as noted, in addition to holding juveniles accountable for their conduct, seeks to (i) rehabilitate and develop minors into productive adults and (ii) provide constitutionally required due process and "fair hearings at which legal rights are recognized and enforced." 705 ILCS 405/5-101 (West 2012).

¶ 71 If the disparate treatment is at odds with the stated legislative purposes, the classification violates equal protection. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 328 (1996) (finding that provisions of the Illinois Public Aid Code requiring parents of 18- to 21-year-olds living at home to reimburse the Department of Public Aid for welfare benefits paid to the children, while parents of children not living at home were not required to reimburse the Department, ran contrary to Public Aid Code's goal of maintaining and strengthening the family unit: "[T]he distinction drawn by [the challenged section] provides households with a direct financial incentive to cast out their 18- through 20-year-old children who are in need. *** There is no conceivable way such an arrangement can serve to strengthen family unity.").

¶ 72 The goals of protecting the public as well as the stated purposes of the Juvenile Court Act are served by the amendments to the Registration Act excusing juvenile sex offenders from registering as adults on turning 17 and enabling those juveniles to petition to be taken off the registry after five years. Such provisions allow for the possibility of rehabilitation and maintain the confidentiality of juvenile adjudications, while simultaneously permitting a

court in an appropriate case to determine that protection of the public justifies requiring the offender to remain on the registry.

¶ 73 We can see no rational basis for concluding that those same legislative purposes would not be equally well-served by affording these identical procedural protections to juvenile violent offenders against youth. Stated differently, we cannot discern any rational basis related to protection of the public served by requiring every juvenile offender against youth to register as an adult on turning 17 and in prohibiting such offenders from ever demonstrating to a court that public safety is not served by requiring them to remain on the registry. We therefore find that the legislature's disparate treatment of juvenile offenders required to register as the result of a delinquency adjudication of a violent offense against youth results in a denial of equal protection and, for this additional reason, those provisions are unconstitutional.

¶ 74 CONCLUSION

¶ 75 For the foregoing reasons, we declare that the registration provisions of the Violent Offender Against Youth Registration Act (730 ILCS 154/5(a)(2), 10 (West 2012)) are unconstitutional as a violation of procedural due process and equal protection and, therefore, reverse the trial court's order requiring M.A. to register under the Act.

¶ 76 Reversed.

¶ 77 JUSTICE PUCINSKI, concurring in part and dissenting in part.

¶ 78 I concur only in the majority's holding that the Act does not violate substantive due process.

¶ 79 I dissent from the majority's holdings that the Act violates procedural due process and equal protection.

¶ 80 First, however, I set forth provisions of the Act and the Illinois Administrative Code to clarify how the Act actually functions, as it is less than clear.

¶ 81 Adult violent offenders against youth are required to register on the *statewide registry*, and adult violent offenders are also subject to *community* notification. Section 10(c)(2) of the Act requires that "any person convicted on or after the effective date of this Act shall register in person within 5 days after the entry of the sentencing order based upon his or her conviction." 730 ILCS 154/10(c)(2) (West 2012). Section 10(b) also provides that "[a]ny violent offender against youth *** shall, within 5 days of beginning school, or establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5)." 730 ILCS 154/10(b) (West 2012). When adult violent offenders register, their information is input into the Illinois State Police Law Enforcement Agencies Data System (LEADS) by local law enforcement. See 730 ILCS 154/10(a)(1), (a)(2)(i), (a)(2)(ii) (West 2012). The Illinois State Police then examines its LEADS database to identify violent offenders against youth and places them on the "Statewide Murderer and Violent Offender Against Youth Database," which is publicly available on the Internet. See 730 ILCS 154/85 (West 2012). The Illinois State Police maintains the "Statewide Murderer and Violent Offender Against Youth Database for the purpose of identifying violent offenders against youth and making that information available to the persons specified in

Section 95." 730 ILCS 154/85(a) (West 2012). For adults, upon registering and being placed on the statewide registry, there is also *community* notification of the identity of adult violent offenders. 730 ILCS 154/95 (West 2012).

¶ 82 Section 95 requires community notification of adult violent offenders against youth on the statewide registry and directs that, for the City of Chicago, the community notification provision under the Act mandates the Chicago police department to disseminate this same information, the name, address, date of birth, place of employment, school attended, and offense or adjudication of violent offenders against youth, to the same entities, namely, the school boards of public school districts and the principals of nonpublic schools within Cook County, child care facilities, boards of institutions of higher education and libraries, concerning violent offenders against youth required to register under section 10. 730 ILCS 154/95(a-3) (West 2012). Section 95 only applies, however, to the "violent offenders against youth required to *register* under Section 10 of this Act [(730 ILCS 154/10)]." (Emphasis added.) 730 ILCS 154/95(a), (a-2), (a-3) (West 2012).

¶ 83 Unlike adults, youth violent offenders face a two-step process under the Act for both registration and notification: (1) first, for juveniles under 17; and then (2) once juveniles attain the age of 17.

¶ 84 First, juveniles under 17 are not required to actually "register" on the statewide, publicly available, Illinois Murderer and Violent Offender Against Youth Registry, and their information is not subject to community-wide notification, until they reach the age of 17. Prior to the age of 17, the juvenile provides his or her registration information in a "registration form" to local law enforcement only for purposes of limited local notification to their school or any individuals whose safety is threatened by the juvenile. This is the first step.

¶ 85 The second step is when a juvenile violent offender attains the age of 17. The second step of the process is actual registration on the statewide registry, along with the attendant required community notification, and this is not required until the youth violent offender turns 17 years old. Under the Act, when juvenile offenders register upon attaining the age of 17, they must then register for placement on the statewide registry, but they are allowed the concession of shortening the required 10-year registration period by the difference of years between 17 and their age and the time of the adjudication of their offense. Section 5(a) provides: "Registration of juveniles upon attaining 17 years of age shall not extend the original registration of 10 years from the date of conviction." 730 ILCS 154/5(a) (West 2012). The mandatory registration period is 10 years from the date of conviction or adjudication of the offense. 730 ILCS 154/40 (West 2012). The "date of conviction" for juveniles is the date of their adjudication. See 730 ILCS 154/5(a) (West 2012) ("For purposes of this Section, 'convicted' shall have the same meaning as 'adjudicated'."); 730 ILCS 154/40 (West 2012) ("Any other person who is required to register under this Act shall be required to register for a period of 10 years after conviction or adjudication ***.").

¶ 86 Although the Act generally requires all violent offenders against youth to "register," sections 5(a) and 10(a) contain a specific exception governing juveniles under the age of 17. Where a statute contains both a general and a specific provision relating to the same subject, the more specific provision prevails. *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002). See also *People v. Botruff*, 212 Ill. 2d 166, 175 (2004) ("A fundamental rule of statutory construction is that where there exists a general statutory provision and a specific

statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied."). Subsection 5(a) of the Act provides specifically for juveniles under 17 as follows:

> "For the purposes of this Act, a person who is defined as a violent offender against youth as a result of being adjudicated a *juvenile delinquent* under paragraph (2) of this subsection (a) upon attaining 17 years of age *shall be considered as having committed the violent offense against youth on or after the 17th birthday of the violent offender against youth.* Registration of juveniles *upon attaining 17 years of age* shall not extend the original registration of 10 years from the date of conviction." (Emphases added.) 730 ILCS 154/5(a) (West 2012).

¶ 87 Subsection 5(a)(2) makes it even clearer that a juvenile offender is not even "considered as having committed the violent offense against youth" until "on or after the 17th birthday of the violent offender against youth." 730 ILCS 154/5(a) (West 2012).

¶ 88 Subsection 10(a) of the Act also provides:

> "A person who has been adjudicated a juvenile delinquent for an act which, if committed by an adult, would be a violent offense against youth shall register as an adult violent offender against youth *within 10 days after attaining 17 years of age*." (Emphasis added.) 730 ILCS 154/10(a) (West 2012).

See also *People v. Evans*, 405 Ill. App. 3d 1005, 1006, 1009 (2010) (noting that the principal juvenile murderer was only 15 years old and not yet subject to registration under the Act, but his accomplice was already 17 and therefore was subject to registration).

¶ 89 Under the Illinois Administrative Code implementing the Act, juvenile violent offenders under 17 must provide their information to the police department, which then inputs the juvenile's information into the LEADS system. See 20 Ill. Adm. Code 1280.30 (2010). The Illinois Administrative Code somewhat confusingly refers to this act of the juvenile providing his or her information to the police for entry into LEADS for local school notification as "registration:"

> "f) Registration of Juveniles
>
> The parent, legal guardian, probation or parole supervisor, or other court-appointed custodian shall accompany juveniles to the agency of jurisdiction for the purpose of registering as a violent offender against youth." 20 Ill. Adm. Code 1283.40(f) (2010).

¶ 90 But section 1283.50(j) goes on to clearly repeat the language of the Act that a juvenile under 17 does not actually register on the statewide registry until he or she attains 17 years of age and is actually required to "register" for placement on the statewide registry:

> "j) Juvenile Registration
>
> A person who has been adjudicated a juvenile delinquent for an act that, if committed by an adult, would be a violent offense against youth *shall register as an adult violent offender* against youth *within 10 days after attaining 17 years of age. Upon registering as an adult, the juvenile offender will be placed on the Illinois State Police Violent Offender Against Youth Registry website* after an authorization letter is signed by the offender and received by the Illinois State Police." (Emphases added.) 20 Ill. Adm. Code 1283.50(j) (2010).

¶ 91 Section 1283.40(c)(1) provides generally that:

> "The agency of jurisdiction will complete the Child Murderer and Violent Offender Against Youth *Registration Form*; ensure the violent offender against youth reads and signs the form, provide one copy of the form to the violent offender against youth, keep the original signed copy until the requirement to register has expired, and, within 3 days, *enter registration information into LEADS*; and *forward a copy of the violent offender against youth's photograph to the Department*." (Emphases added.) 20 Ill. Adm. Code 1283.40(c)(1) (2010).

¶ 92 This "registration form" is merely the form filled out and given to local law enforcement. 20 Ill. Adm. Code 1283.40(c)(1) (2010). It does not accomplish actual registration on the statewide registry, which as noted above, is done by the Illinois State Police, which determines which violent offenders must be placed on the statewide registry and community-wide notification. 730 ILCS 154/85, 95 (West 2012).

¶ 93 Although this act of providing information as a juvenile to local law enforcement is also called "registering," it is clear that there is no registration on the actual statewide registry. Rather, this information is only input into the LEADS system and then used for local notification. There is only one statewide database for the Illinois Murderer and Violent Offender Against Youth Registry, which is a statewide online database established and maintained by the Illinois State Police. See 730 ILCS 154/85 (West 2012). There is no separate "juvenile registry," as M.A. contends.

¶ 94 "Notification regarding juvenile offenders" under 17 is governed by section 100, which is not a registration provision. 730 ILCS 154/100 (West 2012). Section 100 contrasts with section 95, governing adults, which mandates that adults required to register on the statewide registry are subject to mandatory community notification. 730 ILCS 154/95 (West 2012). Section 100 provides only for limited notification: (1) to the juvenile's school; and (2) pursuant to police discretion, to specific individuals whose safety is compromised by the juvenile violent offender. Local law enforcement, not the juvenile, is responsible for forwarding this information to the juvenile's school and any individuals whose safety may be compromised. Under section 100 of the Act, juvenile offender information is only used for limited notification to the juvenile's school and individuals whose safety is threatened. See 730 ILCS 154/100 (West 2012). The Act specifically limits the juvenile's information to "only to the principal or chief administrative officer of the school and any guidance counselor designated by him or her" and "to any person when that person's safety may be compromised for some reason related to the juvenile violent offender against youth." 730 ILCS 154/100 (West 2012). The Act provides that: "The registration form shall be kept separately from any and all school records maintained on behalf of the juvenile violent offender against youth." 730 ILCS 154/100 (West 2012).

¶ 95 Unfortunately, both the Act and the Illinois Administrative Code provisions are less than clear because they both refer to all phases of this process also as "registration." For purposes of clarity, I suggest that trial courts specify in their orders regarding adjudicated juvenile violent offenders under the age of 17 that the "registration form" is only for the purpose of local law enforcement entering their information into LEADS and for the limited local notification under section 100 of the Act, not for the statewide registry. Simply using the word "register" on an order regarding a juvenile is confusing and can lead to an inference of being subject to actual registration on the public Illinois Murderer and Violent Offender

Against Youth Registry. It would be less confusing to use different terms to distinguish the two different processes and refer to the provisions for juveniles under 17 as required "notification" and to refer to the mandatory registration upon turning 17 as actual "registration."

¶ 96 In this case, M.A. signed a "Registration Form," which is in the record. The registration form is titled "Illinois Child Murderer and Violent Offender Against Youth Registration Form." There are checkboxes in the upper left-hand corner for "Juvenile Delinquent," "Child Murderer," and "Other Violent Offender." Apparently, the same "Registration Form" is used for both adults and juvenile offenders not yet required to register on the statewide registry, but a distinction is clearly made to identify juvenile violent offenders, as opposed to adult violent offenders. M.A.'s form was clearly checked "Juvenile Delinquent." It was entered by the court on August 6, 2013, the date of her adjudication. There is no evidence in the record that M.A.'s information was entered into LEADS as anything other than a *juvenile* violent offender.

¶ 97 I do not agree that the Act violates procedural due process. While cases such as *Roper* and *Graham* afford juveniles some additional protections in terms of punishment in the context of the eighth amendment, the same has not been held in terms of other constitutional guarantees. First, registration is a collateral consequence to the determination of adjudication of delinquency and is not considered a penalty or punishment. See *People v. Cardona*, 2013 IL 114076, ¶ 24 ("it is worth repeating that sex offender registration is not punishment"); *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 203 (2009) ("This court has repeatedly held, though, that the [Sex Offender Registration Act's] requirements do not constitute punishment. [Citations.]"). The Illinois Supreme Court and our courts have recognized that the similar sex offender registration requirement is a collateral consequence and is not punishment. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 185; *People v. Black*, 2012 IL App (1st) 101817, ¶ 19. The Act's registration requirement for violent offenders against youth is also a collateral consequence.

¶ 98 M.A. received all the process she was due for her adjudication of delinquency, which resulted in the mandatory triggering of the Act's requirements. Procedural due process in the context of juvenile delinquency requires that the adjudicatory hearing of a juvenile delinquency proceeding must comport with the essential requirements of procedural due process, which are: notice of the charges; right to counsel; right of confrontation; and the right of protection against self-incrimination. *In re Fucini*, 44 Ill. 2d 305, 308-09 (1970) (citing *In re Gault*, 387 U.S. 1, 13 (1967)). Due process is a flexible concept, and " ' "not all situations calling for procedural safeguards call for the same kind of procedure." ' " *People v. Cardona*, 2013 IL 114076, ¶ 15 (quoting *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 272 (2004), quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). M.A. received notice of the charges, her right to counsel, her right of confrontation, and her right of protection against self-incrimination. She received all her due process rights and had a fair and full adjudication hearing.

¶ 99 The Illinois Supreme Court has noted that the United States Supreme Court has held that the due process clause does not require the right to a jury trial in juvenile delinquency proceedings because a juvenile delinquency proceeding is fundamentally different from a criminal proceeding and cannot be equated to a criminal prosecution within the meaning of the sixth amendment. *Konetski*, 233 Ill. 2d 185 at 201-02 (citing *McKeiver v. Pennsylvania*,

403 U.S. 528, 541-51 (1971) (plurality op.)). A minor is entitled to a jury trial in only several limited instances. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 80.

¶ 100 I also do not agree that the Act violates equal protection. Under the rational basis test, our review is limited and deferential. *Hudson v. YMCA of Metropolitan Chicago, LLC*, 377 Ill. App. 3d 631, 638 (2007) (citing *People v. Cully*, 286 Ill. App. 3d 155, 163 (1997)). Even if a statute's construction is doubtful, we must resolve those doubts in favor of its validity. *Hudson*, 377 Ill. App. 3d at 638 (citing *Rockford Memorial Hospital v. Department of Human Rights*, 272 Ill. App. 3d 751, 763 (1995)).

¶ 101 The State argues that the Sex Offender Registration Act's early termination provision is different because the legislative intent was solely to shield youthful sexually inappropriate behavior because of immaturity rather than predatory inclinations, and I agree. M.A.'s comparison of the two acts, the Illinois Murderer and Violent Offender Against Youth Registration Act and the Sex Offender Registration Act, is not correct. Juvenile sex offenders still are required to register and remain on the sex offender registry for a minimum of five years before they can petition for early termination. See 730 ILCS 150/3-5(a), (c) (West 2012).

¶ 102 The legislature has not expressed any concern regarding any similar innocent indiscretion for juvenile offenders who have been proven to be *violent*, that is, without being sex offenders too. Clearly, there is a rational basis to treat the two categories of juvenile offenders differently.

¶ 103 I highlight the fact that the operation of the Act already provides a concession to juvenile offenders, giving an automatic reduction of the required time on the registry in proportion to how young the juvenile offender was at the time of his or her offense. The mandatory 10-year registration period begins running at the time of the adjudication, not at the time of registration. 730 ILCS 154/5(a) (West 2012). In M.A.'s case, she was 13 at the time of her adjudication, and so upon being required to register after turning 17 she will be required to remain on the statewide registry for six years.

¶ 104 The legislature had a rational basis to provide these different remedies to juvenile offenders whose crimes are different. There is no support for requiring the exact same remedy for juveniles who are not similarly situated.

¶ 105 I also do not agree with reweighing the evidence in M.A.'s case to find the Act unconstitutional. While I do have sympathy for M.A.'s background, the fact remains that the trial court heard all the testimony and observed her and was in the best position to determine her guilt or innocence and any mitigating factors. For us to reweigh the evidence before the trial judge and the trial judge's determination that M.A. in fact was guilty of stabbing her brother is improper. While the majority finds it understandable that M.A. stabbed her brother due to her toxic environment and abuse at the hands of her brother, there are many abused children who do *not* resort to violence. The legislature is well within its authority in determining that juveniles who commit violence against other children should register as adults when they turn 17, if they indeed committed the violent offense. Protecting other innocent children is a legitimate state interest, and requiring that juvenile violent offenders register as adults when they turn 17 to complete the 10-year mandated registration period is rationally related to that state interest.

¶ 106 Finally, I note that M.A. does not challenge the Act's provisions requiring providing information to local law enforcement and requiring local notification for juveniles under 17.

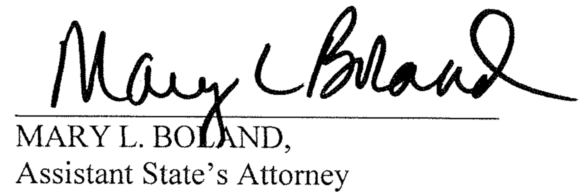
In fact, she argues in *favor* of allowing for such local notification, misapprehending that she is instead subject to registration on the actual *statewide registry* and *community* notification when that is not the case. M.A. specifically argues that the limitations on the dissemination of juvenile offenders' information for limited notification should be the same as under the Sex Offender Registration Act. They in fact are. The very relief M.A. seeks in limiting the dissemination of her information has already been provided in the Act. Thus, any argument by M.A. regarding the notification provisions is moot, because the Act already provides the very relief she is seeking–limited local notification.

¶ 107 The provisions of the Act for juveniles under 17 requiring providing information to law enforcement and local notification, as well as the provisions automatically requiring registration on the statewide registry and community notification upon attaining the age of 17, do not violate procedural due process or equal protection, as they do not implicate any fundamental right, and they are rationally related to the State's interest in protecting the safety of its citizens.

¶ 108 There is also nothing unconstitutional about the way the Act has been applied to M.A., and she already has the remedy she is seeking under the Act. Therefore, I would uphold the constitutionality of the Act and affirm.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 47 pages.

By: 

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