NO. 118049
IN THE
SUPREME COURT OF ILLINOIS

	On Appeal from the Appellate Court of Illinois, Third Division, Case No. 1-13-2540
	There Heard on Appeal from the Circuit Court of Cook County, Juvenile Division No. 12 JD 4659
***In re* M.A.** Respondent-Appellee	The Honorable Stuart P. Katz Judge Presiding.

JUVENILE LAW CENTER, CHILDREN & FAMILY JUSTICE CENTER, ET AL.'S AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT-APPELLEE

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TABLE OF POINTS AND AUTHORITIES

IDENTITY AND INTEREST OF THE AMICI

The organizations submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. *Amici* are advocates and researchers who have a wealth of experience and expertise in litigating issues related to the application of the law to children in those systems. *Amici* understand that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* also know that a core characteristic of adolescence is the capacity to change and mature and believe that the developmental differences between youth and adults warrant distinct treatment. *Amici* respectfully submit this brief for the purpose of expanding upon Respondent-Appellee's argument that Sections 154/5(a)(2) and 154/10 of Illinois' Violent Offender Against Youth Act (VOYRA) are unconstitutional both facially and as applied to M.A.

Amicus Curiae Juvenile Law Center is the oldest public interest law firm for children in the United States. Founded in 1975, Juvenile Law Center pays particular attention to the rights and needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to juvenile correctional facilities or adult prisons, or children in placement with specialized service needs. Juvenile Law Center works to ensure that children are treated fairly by systems that are supposed to help them, and that children receive the proper treatment and services. Juvenile Law Center also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult

criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

Amicus Curiae the Children and Family Justice Center (CFJC), part of Northwestern University Law School's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth and families, as well as a research and policy center. Currently, clinical staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of delinquency and crime, immigration/asylum and fair sentencing practices. In its 22-year history, the CFJC has served as *amici* in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

The Civitas ChildLaw Center is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

The Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School, created in 1957, is one of the oldest law school clinical programs in the country. The Clinic's mission: to teach students effective advocacy skills, professional ethics, and the effect of legal institutions on the poor; to examine and apply legal theory while serving as

advocates for people typically denied access to justice; and to reform legal education and the legal system to be more responsive to the interests of the poor. The Clinic's Criminal & Juvenile Justice Project provides law and social work students the supervised opportunity to engage in policy analysis and reform while providing quality legal representation to the indigent in juvenile and adult criminal court.

The James B. Moran Center for Youth Advocacy ("Moran Center") is a nonprofit organization dedicated to providing integrated legal and social work services to low-income Evanston youth and their families to improve their quality of life at home, at school, and within the community. Founded in 1981 as the Evanston Community Defender, the Moran Center has worked to protect the rights of youth in the criminal justice and special education systems for decades. Because of the Moran Center's critical position at the nexus of both direct legal and mental health services, we are uniquely positioned to advocate for the distinct psycho-social needs presented by youth. Accordingly, many of our clients are directly impacted by current VOYRA requirements.

The Juvenile Justice Initiative (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers, and child advocates supported by private donations from foundations, individuals and legal firms. JJI as a coalition establishes or joins broad collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing a comprehensive continuum of community based

resources throughout the state. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure that fairness and competency developments are public and private priorities for youth in the justice system.

The National Juvenile Defender Center is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a permanent and enhanced capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination.

The mission of the National Juvenile Justice Network (NJJN) leads and supports a movement of state and local juvenile justice coalitions and organizations to secure local, state and federal law, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises forty-one members in thirty-three states, all of which seek to establish effective and appropriate juvenile justice

systems. NJJN recognizes that youth are fundamentally different from adults and should be treated in a developmentally appropriate manner focused on their rehabilitation. Youth should not be transferred into the punitive adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole, and are exposed to serious, hardened criminals. NJJN supports a growing body of research that indicates the most effective means for addressing youth crime are rehabilitative, community-based programs that take a holistic approach, engage youth's family members and other key supports, and provide opportunities for positive youth development.

SUMMARY OF ARGUMENT

By imposing registration as a violent offender on youth without consideration of either the characteristics that distinguish youth from their adult counterparts or a youth's individualized circumstances, Illinois' Violent Offender Against Youth Registration Act (VOYRA) violates both state and federal constitutional guarantees of equal protection and due process because it is inconsistent with recent United States Supreme Court case law recognizing how kids are different from adults in the application of our criminal laws and constitutional provisions. *See* U.S. Const. Amends. V, XIV; Ill. Const. Art. 1, § 2; *see e.g.*, *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011); *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

As the site of the nation's first juvenile court over a century ago, Illinois was the first state to establish a system that treated children differently than adults and prioritized rehabilitation over punishment. Towards that end, Illinois has shielded children in juvenile court from adult consequences, such as criminal stigma, so that children may become productive members of society. Because of the rehabilitative aims of the juvenile court, juvenile offenders are not afforded the full panoply of procedural rights that criminal defendants receive. They lack, for example, the right to trial by jury. Yet M.A. faces potential lifetime stigmatization, harm to her reputation and serious adult consequences as a result of an isolated incident in her childhood that requires her to register for ten years as a violent offender. As a result, M.A. and others in her position receive "the worst of both worlds." *See In re Gault*, 387 U.S. 1, 18 n.23 (1967) (expressing concern for those in a juvenile system where the child "gets neither the

protections accorded to adults nor the solicitous care and regenerative treatment postulated for children").

The Illinois General Assembly recognized that juveniles in M.A.'s position should not be subject to a lifetime of harsh restrictions from a simple childhood incident when it amended the similar Sex Offender Registration Act (SORA), to allow for petitions to terminate registration after five years and eliminated provisions requiring juvenile sex offenders to register as adults at age 17. *See* 730 ILCS 150. Yet VOYRA maintains an adult registration provision and does not include any discharge provision violating juveniles' right to equal protection.

Given the immediate and long-term harm to a child's reputation at stake, VOYRA's registration requirements can only stand if they provide the notice and meaningful opportunity to be heard necessary to comport with state and federal due process requirements. VOYRA does not meet this standard. The Act provides no opportunity for juveniles to rebut the presumption of their dangerousness either during the adjudication hearing, at the initial order to register, at adult registration at 17, or at the imposition of a mandatory ten-year extension if any of the Act's strict provisions are violated. Furthermore, research and findings from the Illinois Juvenile Justice Commission show that registration of juvenile offenders neither improves public safety nor rehabilitates youth. For these reasons, *Amici* urge this Court to affirm the appellate court's decision and find sections 730 ILCS 154/5(a)(2) and 730 ILCS 154/10 unconstitutional for all juvenile registrants.

ARGUMENT

I. BOTH U.S. SUPREME COURT AND ILLINOIS JURISPRUDENCE, HOLDING THAT CHILDREN ARE LESS CULPABLE THAN ADULTS, PROSCRIBE THE APPLICATION OF VIOLENT OFFENDER REGISTRATION TO JUVENILES.

In *Miller v. Alabama*, the United States Supreme Court, relying on well-established scientific evidence of developmental differences between children and adults and as reflected in its recent jurisprudence, wrote that "children cannot be viewed simply as miniature adults." *Miller v. Alabama*, 132 S. Ct. 2455, 2470 (2012) (citing *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2404 (2011)). The *Miller* Court thus held that mandatory life without parole sentences for youth under the age of 18 were unconstitutional because they removed the sentencing court's ability to consider the youth's age and its "hallmark features" before imposing that sentence. *Miller*, 132 S. Ct. at 2468. In declaring unconstitutional the registration provisions of the Violent Offender Against Youth Registration Act (VOYRA), the First District Appellate Court below aptly relied on *Miller* and the Court's other recent decisions, as well as decisions of the Illinois courts, in finding "the Supreme Court's observations about the nature of juvenile offenders particularly applicable" to its analysis. *In re M.A.*, 2014 IL App (1st) 132540 ¶¶ 28-29. Because Illinois' VOYRA statute makes no distinction between children and adults and, indeed, "forswears altogether the rehabilitative ideal," *see Miller*, 132 S. Ct. at 2465 (citing *Graham v. Florida*, 560 U.S. 48, 74 (2010)), by imposing lengthy registration requirements without accounting for youth-specific factors, the appellate court's decision should be upheld.

In the last decade, the United States Supreme Court has cemented the notion that children are different from adults in ways that affect their culpability and ruled that they should be treated accordingly. In *Roper v. Simmons*, the Court, in banning the imposition of the death penalty on children under the age of 18, held that children are "categorically less culpable" than adults. *Roper v. Simmons*, 543 U.S. 551, 567 (2005). Five years later, in *Graham v. Florida*, the Court emphasized that "criminal procedure laws that fail to take [a child's] youthfulness into account at all would be flawed." *Graham*, 560 U.S. at 76 (finding the sentence of life without parole unconstitutional for a child who does not commit homicide). In *J.D.B. v. North Carolina*, the Court extended the "children are different" analysis beyond the sentencing context to find that a child's age was relevant in determining whether the child was "in custody," observing that there exists a "settled understanding that the differentiating characteristics of youth are universal." *J.D.B.*, 131 S. Ct. at 2397.

Most recently, in *Miller v. Alabama*, the Court, in requiring individualized consideration before imposing life without parole sentences on children, reiterated its findings in *Graham* and *Roper* — that scientific and psychological findings in children "of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and normal neurological development occurs, his 'deficiencies will be reformed.'" *Miller*, 132 S. Ct. at 2464-65 (quoting *Graham*, 130 S. Ct. at 2026; *Roper*, 560 U.S. at 48). In so holding, the *Miller* Court recognized several "gaps" in the thinking of children as opposed to adults: a "'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking"; greater vulnerability to

"negative influences and outside pressures, including from their family and peers"; "limited 'contro[l] over their own environment' and the inability to "extricate themselves from horrific, crime-producing settings"; and a character that "is not as 'well formed' as an adult's," such that the child's actions are less likely to be "evidence of irretrievabl[e] deprav[ity]." *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S. at 569, 570). Thus, the *Miller* Court surmised, "a sentencing rule permissible for adults may not be so for children." *Id*. at 2470.

Illinois, meanwhile, forged its own path in recognizing the special place that children occupy in the law. Home of the first juvenile court in the country established in 1899, this state has been a leader in holding children who are in conflict with its laws to a standard befitting their minority. *See In re Armour*, 15 Ill. App.3d 529, 534-35 (1st Dist. 1973). While the juvenile court system has shifted in recent years to include goals of ensuring public safety and holding the minor accountable, it has not altogether lost its focus on rehabilitation. *In re Jonathon C.B.*, 2011 IL 107750, ¶108 ("While recognizing that the [1999] amendments to the [Juvenile Court] Act included concerns of protecting the public and holding juvenile offenders accountable for violations in the law, this court has repeatedly reaffirmed that 'rehabilitation of the minor remains one of the chief goals of the Act'") (quoting *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 457 (2007)). Indeed, Illinois courts have announced their commitment to rehabilitation and to treating children as distinct from adults in a variety of contexts. *See, e.g.*, *People v. Davis*, 2014 IL 115595 (noting this Court's previous recognition of "special status" of juveniles in examining the constitutionality of mandatory juvenile life without parole sentences); *In re G.O.*, 191 Ill. 2d 37, 54 (2000) (noting that the taking of a juvenile's confession is a

"sensitive concern" such that the "greatest care" must be taken to ensure that it is "not the product of ignorance of rights, or of adolescent fantasy, fright, or despair.").

These noted differences between children and adults are now well-documented as a matter of science and social science. *See Miller*, 132 S. Ct. at 2464-65 (citing Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)); Brief of American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amicus Curiae in Support of Petitioners, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 WL 174239, *4 ("[E]ven after their general cognitive abilities approximate those of adults, juveniles are less capable than adults of mature judgment and decision-making, especially in the social contexts in which criminal behavior is most likely to arise."); Brief of the American Medical Association and the American Association of Child and Adolescent Psychiatry as Amicus Curiae in Support of Neither Party, *Miller*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647), 2012 WL 121237, *2 ("[t]he adolescent's mind works differently from ours" and "the average adolescent cannot be expected to act with the same control or foresight as a mature adult"). Undesirable behaviors, such as risk-taking, impulsivity and poor judgment, all common in adolescents, are closely related to one another, and may stem from incomplete development of the brain's frontal lobes, known as the "CEOs" of the brain because they control complex processes related to reasoning and decision-making. *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Development Review 78 (2008).

Given all that is now known about adolescent development and the United States Supreme Court's insistence that, in light of children's unique needs, vulnerabilities, and their immense potential for rehabilitation, they require *individualized* consideration, it is only logical that such consideration apply to the type of registration requirements imposed upon children under VOYRA. M.A.'s situation clearly illustrates the point. M.A. was 13 years old at the time of the altercation—a fight with her brother—that led to her finding of guilt and order to register. *M.A.*, 2014 IL App (1st) 132540, ¶¶3-6. That incident, however, was not without context. M.A. had experienced behavioral and disciplinary problems since the age of eight or nine for which she had not received therapy or any mental health services; had been evaluated for special education services; was surrounded by "turbulent" family relationships, including the relationship with her brother; suffered beatings at the hands of her abusive and drug abusing mother, as well as at the hands of her brother; and had recently lost her grandfather, a powerful and positive influence in her life. *See M.A.* at ¶¶8-15. In other words, many of the factors so important to the *Miller* Court—age and development, circumstances under which the offense occurred, and importantly, home environment, from which a child typically "cannot. . . extricate [her]self," are especially relevant with regard to M.A.'s offense. *See Miller*, 132 S. Ct. at 2468. Under VOYRA, the sentencing judge was forced to treat M.A. as if she were an adult; he was unable consider M.A.'s unique situation, or even her likely rehabilitation given the proper services prior to requiring her to register for at least a decade. *M.A.* at ¶¶ 16, 19, 23. By requiring courts to impose stigmatizing registration – which is actually counterproductive to the goal of rehabilitation (as discussed further below and in Section III, *infra*) – without regard for the differences between children and

adults, VOYRA fails to provide youth with the enhanced protections required by both U.S. and Illinois law.

The State, in its brief, finds the United States Supreme Court's jurisprudence pertaining to children "inapplicable" to the case at hand, and instead, relies upon this Court's language in the context of DNA collection and storage to argue that "the observation that juveniles are less responsible or more impulsive is an argument *for* registration of violent juveniles." (St. Br. at 20 (citing *In re Lakisha M.*, 227 Ill. 2d 259, 274 (2008))). According to the State, VOYRA's registration requirements promote rehabilitation by keeping the juvenile under the "watchful eyes of law enforcement" and providing needed "structure and discipline." (St. Br. at 20). The State's argument on this point strains credulity. As the Illinois Juvenile Justice Commission found in its recent report in the context of sex offender registries, which is discussed at length in Section III *infra*, "surveillance-only strategies can disrupt youth rehabilitation and even increase recidivism when they are applied to low- and moderate-risk youth." Illinois Juvenile Justice Commission, Improving Response to Sexual Offenses Committed by Youth (2014) at 45, available at http://ijjc.illinois.gov/youthsexualoffenses [hereinafter "IJJC Report"]. Indeed, as the Commission further pointed out and as the appellate court noted, while individualized restrictions and support mechanisms that account for the youth's specific needs and strengths may promote rehabilitation, "treating youth like adults and categorically applying registries and other barriers to stable housing, education, family relationships, and employment does not promote public safety." *Id.* at 50; *see also* Section III, *infra*. On the contrary, employing these strategies is much more likely to *undermine rehabilitation* . . . ." IJJC Report at 50; *M.A.* at ¶41.

Both the United States Supreme Court and Illinois' courts have recognized a simple premise—children are not the same as adults and the law should reflect those differences. VOYRA ignores these differences in two critical respects. First, VOYRA violates juveniles' rights to equal protection because it treats juveniles subject to its requirements *more* harshly than similarly-situated juvenile sex offenders who have the ability to petition a judge for discharge from the registry and who are not mandated to register as adults at 17. Second, VOYRA violates juveniles' due process rights because it imposes harsh, long-term consequences on juveniles' reputations and futures without heightened procedural protections befitting their minority, such as a meaningful opportunity to consider youth's individual circumstances or likelihood of endangering society. Because VOYRA fails to reflect the special status granted to children by both Illinois and federal constitutional law, this Court should declare it unconstitutional on its face and as applied to M.A.

II. VOYRA VIOLATES EQUAL PROTECTION BECAUSE IT TREATS JUVENILE OFFENDERS SUBJECT TO VOYRA AND SORA DIFFERENTLY

As noted above, juveniles are developmentally different and more amenable to rehabilitation than their adult counterparts. *See* Section I, *supra*. These basic differences inspired Illinois reformers to create a separate court system for children, premised on individualized justice and rehabilitation, which rejected the more retributive goals and one-size-fits-all sentencing schemes of the adult criminal justice system. Special consideration of children's minority is also relevant to the state's exclusion of youthful offenders on its public registries as these policies implicate many of the same protective concerns. Illinois has extended protections to youth subject to its sex offender registry,

SORA, without extending the same protections to similarly situated youth under VOYRA. Because the legislative history of both Acts and recent studies demonstrate how youth subject to both VOYRA and SORA should be treated equally, VOYRA violates juvenile offenders' right to equal protection.

A review of the legislative history of both VOYRA and SORA reveal their common purpose, demonstrating why the appellate court was correct to find juvenile registrants under either act to be similarly situated. *M.A.* at ¶69-73. The State now seeks to overturn the appellate court's well-reasoned opinion, which recognized a flaw in VOYRA registration that treats youth indistinguishably from adults by automatically requiring juvenile offenders to register as violent offenders without any individualized assessment of whether the youth poses any continuing risk to the public. *M.A* at ¶¶53-54, 73. This flaw is particularly evident when VOYRA is compared to Illinois' Sex Offender Registration Act (hereinafter SORA), which has a similar goal to VOYRA but includes provisions that are more protective of youths' developmental differences. It is these more protective provisions and the rationales that inspired them which form the basis for M.A.'s equal protection and due process challenges to VOYRA.

Illinois' sound policy surrounding its heightened treatment and protection of juveniles, *see* Section I *supra*, and recent evidence-based findings of the Juvenile Justice Commission, *see* Section III *infra*, also compel affirmance of the appellate court's holding. To require a juvenile to register for ten years, and to permit the record of a mistake made by a 13-year-old to enter into the public domain, flies in the face of both the letter and spirit of the Illinois Juvenile Court Act. *See* 705 ILCS 405/1-2 (holding that "[t]he purpose of [the] Act is to secure for each minor subject hereto such care and

guidance… as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community). Because VOYRA does not distinguish among offenders based on the risk they pose to society, nor provides an opportunity for the juvenile to challenge that risk assessment in a court hearing, nor allows the juvenile to revisit the scope of the registration and notification requirements before she is required to register as an adult – yet makes these protections available to youth required to register under SORA– it violates equal protection.

A. Youthful offenders under VOYRA and SORA are similarly situated

The State claims that a juvenile registrant under VOYRA is not similarly situated to a juvenile registrant subject to SORA. (St. Br. at 42) citing *Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535, 539-40 (1942) ("Under our constitutional system the States in determining the reach and scope of particular legislation need not provide 'abstract symmetry'. They may mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience"). A review of the creation of registration requirements under VOYRA and SORA reveals that one does not need to seek "abstract symmetry." The Illinois legislature has expressly recognized the direct relation of these registrants. The respective Acts were drafted and enacted to mirror one another – albeit to differentiate between offenses that brings an individual within the ambit of the respective acts. *See* Illinois Senate Transcript, 2006 Reg. Sess. No. 95 at 56-57, *available at* http://www.ilga.gov/senate/transcripts/strans94/09400095.pdf (noting that "the [VOYRA] registry is modeled on the sex offender registry and would be subject to the same requirements and restrictions....").

Ostensibly to serve the public interest by protecting children from sexual predators the legislation which we now refer to as SORA was first enacted in 1986. *See* Pub. Act 84-1279; *see also In re J.W.*, 204 Ill.2d 50, 67 (2002) (citing *People v. Adams*, 144 Ill.2d 381, 390 (1991)). However, in its earlier forms, some individuals were required to register as a sex offender, even where the crime involved no sexual conduct, motivation, or intent. Recognizing that classifying such individuals as sex offenders was "unfairly stigmatizing," the legislature enacted VOYRA. Marion Buckley, et al., "'Sex Offenders' But No Sex Crime," 95 Ill. B.J. 482, 483 (2007). As explained by Rep. Fritchey during floor debate:

> What a lot of you may not recognize is that there are a number of individuals that are on that registry whose crimes have nothing to do with the sexual offense. They may have had to do with a murder if the victim was a minor. It may have to do with aggravated kidnapping with certain offenses along those lines. What this piece of legislation does is clean up, 10 years too late, the sex offender registry to make sure that only those individuals that've committed sex offenses remain on that registry. What is does not do is take these people out of the purview of law enforcement. It simply shifts them over into a new registry which will be called the Violent Offender against Youth Registry.

Illinois House Transcript, 2006 Reg. Sess. No. 97 at 13, *available at* http://www.ilga.gov/house/transcripts/htrans94/09400097.pdf. In subsequent debate in the Senate, Sen. Del Valle explained, "[t]he registry is modeled on the sex offender registry and would be subject to the same requirements and restrictions, and would be available to the public through the State Police Internet homepage." Illinois Senate Transcript, 2006 Reg. Sess. No. 95 at 56-57, *available at* http://www.ilga.gov/senate/transcripts/strans94/09400095.pdf. These remarks and the unanimous passage of this legislation in both houses, reveal the legislative intent to serve the same public purpose with both Acts, albeit with a clarifying offense-specific label.

Not only do the two registries serve a common purpose, the legislature modeled the language of VOYRA on the previously enacted SORA. For these reasons, the appellate court was correct to recognize that juvenile offenders required to register with law enforcement authorities under either Act are similarly situated. *See M.A* at ¶69.

B. Reforms to SORA that Treat Juvenile Offenders Differently from their Adult Counterparts Support VOYRA's Unconstitutionality

Given that juvenile registrants under VOYRA and SORA are similarly situated, subsequent reforms of SORA aimed at juvenile registrants are of critical import to the question before this Court. In reaction to media attention – and at the urging of a concurrence following a challenge to SORA registration in this Court – the Illinois' legislature in 2007 eliminated provisions requiring juvenile sex offenders to register as adults after reaching 17 years of age. Pub. Act 95–0658, § 5, eff. October 11, 2007 (amending 730 ILCS 150/2(A)(5), 3(a)); *see also In re J.W.*, 204 Ill.2d at 84 (McMorrow, C. J., concurring) (inviting the legislature to "reconsider the wisdom" of requiring lifetime registration on juveniles). This bill also added section 3–5 to the Act, entitled "Application of Act to adjudicated juvenile delinquents." Pub. Act 95–0658, § 5, eff. October 11, 2007 (adding 730 ILCS 150/3–5). Section 3–5 allows a minor adjudicated delinquent for a felony offense to petition for termination of registration after five years. *Id.* The court may terminate a juvenile's registration 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 the statute. *Id.* It is these provisions – both the elimination of automatic registration as an adult upon turning 17 and the ability to petition a judge for removal from the registry – that form the basis for M.A.'s equal protection and due process challenges before this Court. The legislative history of Pub.

Act. 95-658 supports these challenges. *See* Illinois House Transcript, 2007 Reg. Sess. No. 159 at 41-48, *available at* http://www.ilga.gov/House/transcripts/Htrans95/09500159.pdf.

Contrary to the State's repeated assertion that this reform measure was only aimed at the "Romeo and Juliet" scenario (*see, e.g.* St. Br. at 36), the plain language of the Act makes clear that it applies to all juveniles adjudicated delinquent facing the registration requirement – particularly the broader public dissemination of that registration upon turning 17. Senator Raoul began by suggesting "that we were a bit overzealous when we passed a law requiring juvenile sex offenders, no matter the nature of the offense, to register as adult sex offenders when they turn the age of majority." Illinois Senate Transcript, 2007 Reg. Sess. No. 33 at 14, *available at http://www.ilga.gov/senate/transcripts/strans95/09500033.pdf*. Senator Raoul concluded with comments that can and should apply equally to M.A.'s argument and contentions before this Court:

> …oftentimes we consider what's in the best interest of the State. But, quite frankly, oftentimes we consider what's in our best interests politically. And I think sometimes we have to set that aside to do what is right, and certainly set it aside to do what – what is right with regards to minors and giving them an opportunity to thrive in life, particularly in cases like the case of the thirteen-year-old boy who had never been involved in -- with the criminal justice system prior to that one offense and never afterwards. He took advantage of what we're given as – what we're given as young people, what is a greater likelihood of being rehabilitated. And that's why we separate juvenile justice from criminal justice. I think I said to all of you all last year that as a thirteen-, fourteen-, fifteen-year-old boy, I made a lot of mistakes, some of which I'd admit to you today and some of which I wouldn't admit to you. And I assume that many of you all made mistakes when you were youngsters as well. And if you didn't, if you were such innocent people that you made no mistakes, some of you may have children or grandchildren that made mistake – may make mistakes. And God forbid that any of your children or your grandchildren be labeled for the next ten years of their life or, worst-case scenario, for the

> rest of their life as a result of a mistake that they made because we, in the interest of being politically expedient and not reasonable, did not want to trust the same judges - the same judges who are going to make the determination as to delinquency…

Id. at 24-25. In describing the bill before the House, Rep. Brosnahan concluded, "what we found out over the last couple of years is that this one-size-fits-all approach [to juvenile registration] just did not work." Illinois House Transcript, 2007 Reg. Sess. No. 63 This logic is equally relevant to VOYRA, as recent research shows that serious juvenile offenders tend to desist from crime regardless of offense. *See* Models for Change, *Research on Pathways to Desistance: December 2012 Update*, available at http://www.modelsforchange.net/publications/357.[1] This suggests that vast majority of juvenile offenders will desist from reoffending and grow up to become mature, law-abiding adults, calling into question the public safety and rehabilitation rationales of registration for youth in both the violent and sexual offender contexts. While admittedly these reforms were directed at SORA, the legislature's rationale is just as relevant to offenders subject to VOYRA. Given the lessons learned under SORA, and the ever-expanding array of policy arguments, case law, and social science research decrying the treatment of youth as adults, this Court should agree that VOYRA's one-size-fits-all approach to juvenile registration is unconstitutional.

[1] *See* Models for Change, *Research on Pathways to Desistance: December 2012 Update, available at* http://www.modelsforchange.net/publications/357. *Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders* followed more than 1300 serious offenders for seven years between ages 16 and 23. *See* Carol Schubert, Edward Mulvey and Laurence Steinberg, et al, *Operational Lessons from the Pathways to Desistance Project*, Youth Violence and Juvenile Justice 2: 237 – 255 (2004) (hereinafter "*Pathways Study*"). By following these serious juvenile offenders through adolescence and young adulthood, the *Pathways Study* examined how developmental processes and social context affect juveniles' desistance from crime and likelihood of reoffending. The study concluded that juvenile offenders recidivate at similar rates, regardless of the type of offense, proving that original crime is not a good predictor of a juvenile's likelihood to reoffend.

III. VOYRA VIOLATES A JUVENILE'S RIGHT TO PROCEDURAL DUE PROCESS

Mandating registration as a violent offender under VOYRA may cause serious harm to a juvenile's reputation, leading to stigma and potential emotional disruption to the child and his or her family. Moreover, VOYRA may erect obstacles to a child's education, employment, housing, and other important interests and opportunities, both upon registration and on into adulthood – potentially lasting for his or her entire life. And yet the state imposes these harsh consequences without providing proper procedural protections that confirm that inclusion on the registry is necessary, either at the initial imposition of the registration requirement or when the juvenile is required to register as an adult at age 17. The State relies on a presumption of the juvenile's dangerousness and violence as the reason for inclusion on the registry without offering an opportunity for the individual to rebut this presumption. By imposing such a harsh burden on juvenile offenders subject to VOYRA without offering a proper opportunity to be heard, Illinois' VOYRA violates both state and federal due process guarantees.

A. Registration under VOYRA Imposes Stigma, Harm and Onerous Restrictions on Juvenile Registrants

Although it does not require registration as an adult until age 17, *see* 730 ILCS 154/10, VOYRA does not exempt juveniles from all its reporting requirements. A juvenile's information may be released and accessible to the public even before she turns 17, causing both immediate and long-term damage to her reputation and the potential for harsh collateral consequences.

1. VOYRA Causes Harm to a Child's Reputation

The right to reputation has earned special constitutional protections. The United States Supreme Court has recognized that "where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971) (addressing the posting of an individual's name in retail liquor outlets as one to whom intoxicating beverages should not be sold). Likewise, Illinois has a long history of providing protection for one's reputation, especially as a result of being placed on state registries. *See Cavarretta v. Dep't of Children & Family Servs.*, 277 Ill. App. 3d 16, 24 (2d Dist. 1996) (holding that registration on the state registry of suspected child abusers implicated due process interests.)

For children, the right to reputation has a heightened importance. As discussed above in Section I *supra*, a child's character is not fully formed and children are subject to an array of influences – sometimes negative – from which they are ill-equipped or unable to escape, and they generally bear less culpability than adults due to their age. *See, supra*, Section I; *Miller v. Alabama*, 132 S. Ct. at 2464. The need to be aware of the potential long-term impact of just one incident of impulsivity and immaturity is evident in the instant case in which M.A. In this case, a first time offender received a disposition of 30 months of probation, (*see* Brief and Argument for Respondent-Appellee at 7), but must register as a violent offender for at least ten years. The appellate court understood the severity of the sanction, recognizing that, M.A.'s registration under VOYRA "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." *See M.A.* at ¶ 65. Because of the potential harm to M.A.'s reputation as a result of registration under

VOYRA, application of the Act must comply with state constitutional standards of due process.

a. VOYRA's provisions do not sufficiently protect disclosure of sensitive information

First, and most disturbingly, nothing in the VOYRA statute exempts juvenile offenders from Section A of the community notification of violent offenders provision, 730 ILCS 154/95, which requires the sheriff to disclose the name, address, date of birth, place of employment, school attended, and offense or adjudication of all violent offenders against youth to the boards of institutions of higher education, school boards of public school districts, child care facilities and libraries located in the county where the juvenile registrant is required to register or is employed. 730 ILCS 154/95. This provision effectively nullifies the limited dissemination of registry information the State argues is protective of juvenile offenders. *See* (St. Br. at 20).

Second, VOYRA requires disclosure of the registrant's registration form to school officials. 730 ILCS 154/100. The statute requires provision of a copy of the juvenile's registration form "to the principal or chief administrative officer of the school and any guidance counselor designated by him or her [which] shall be kept separately from any and all school records maintained on behalf of the juvenile." *See id*. The information contained in the registration form is irrelevant to the juvenile's current school enrollment, evidenced by the requirement that it be kept separately from any and all of the juvenile's school records.

Finally, VOYRA allows unlimited discretion to law enforcement as to whom a juvenile's violent offender registration is revealed. Government records containing stigmatizing information about an individual are a threat to that person's reputation. *See*

Cavarretta, 277 Ill.App.3d at 64. This remains true even if the records are kept confidential and only available to limited individuals within the State. *See id*. The list of persons with access to a juvenile's VOYRA registration information includes state police, law school enforcement agencies, school officials and to "any person when that person's safety may be compromised for some reason related to the juvenile offender against youth." *See* 730 ILCS 154/100. The determination as to whether someone's safety may be compromised for "some reason related to the juvenile offender against youth" is in the full discretion of the Department of State police and the law enforcement agency. *See id.*

Other than restricting the Department of State police and the law enforcement only to their discretion, VOYRA does not prohibit, penalize or discourage the release of registry information. *See* 730 ILCS 154 *et seq.* Historically, when registries have been ostensibly private, the general police practice is to "treat these records in much the same manner as other police data… [with] disclosure of material vary[ing] from one police department to another." Note, *Criminal Registration Ordinances: Police Control Over Potential Recidivists*, 103 U. Pa. L. Rev., 60, 81 (1954). There is anecdotal evidence in the context of juvenile sex offender registries that once a child's status as a registered violent offender is released to a few members of the public, it may be widely distributed without penalty. *Cf. Pittman, Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, pp. 43-44 (2013) [hereinafter "Raised on the Registry"], available at http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf (detailing the harm public registration laws cause for youth sex offenders). Consequently, VOYRA fails to provide any protection to the juveniles' reputation caused by disclosure of

sensitive registration information to the community, school officials or those included based on law enforcement's discretion.

b. VOYRA Labels a Juvenile Offender as a Violent Offender, Then Maintains and Communicates that Defamatory Message

VOYRA's harm to the youth's reputation lies also in the defamatory nature of the label "violent offender against youth." As discussed generally in Section II *supra*, the goal of the VOYRA registry was to "avoid further stigmatizing those individuals who have already been punished for their crimes by calling them sex offenders when they really aren't." *See* Illinois House Transcript, 2006 Reg. Sess. No. 97 at 13, *available at http://www.ilga.gov/house/transcripts/htrans94/09400097.pdf*. The Illinois legislature recognized that being on the sex offender registry would have long-term implications and label the offender for the rest of their lives for a youthful mistake. *See* Illinois Senate Transcript, 2007 Reg. Sess. No. 33 at 14-16, *available at* http://www.ilga.gov/senate/transcripts/strans95/09500033.pdf. However, with automatic adult registration at age 17, *see* 730 ILCS 150, and without the benefit of the discharge provisions now present in SORA, the effect of the "violent offender" label is compulsory for at least ten years for youth who must register under VOYRA. Given the similar situations of youth subject to registration under both VOYRA and SORA, see Section II, *supra*, the well-documented lessons learned under SORA are particularly instructive to the violent offender context.

In holding unconstitutional retroactive application of Maine's sex offender registration statute to adult offenders, the Supreme Court of Maine was persuaded by the reputational harm of registries to adult offenders, stating:

> No statistics have been offered to suggest that every registered offender or a substantial majority of the registered offenders will pose a substantial risk of re-offending long after they have completed their sentences and probation, including any required treatment. The registry, however, makes no such distinctions. For the public, the substantiality of the risk every registrant poses is suggested by the government's initiative in establishing the registration, verification, and community notification requirements in the first place. All registrants, including those who have successfully rehabilitated, will naturally be viewed as potentially dangerous persons by their neighbors, co-workers, and the larger community. It is unknown to what extent this reality will impair the opportunity for rehabilitated offenders to reintegrate and become productive members of society.

See State v. Letalien, 985 A.2d 4, 23-24 (Maine 2009) (internal citations omitted.) The Court's analysis of reputational harms is not offense or age specific and would apply equally to youth on violent offender registries. Research supports the argument that the label of a registered offender may send a message far more deleterious than a juvenile record. *See* Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 Analyses of Soc. Issues and Pub. Pol'y, 1, 10-13 (2007) (generally discussing the public perception of registered sex offenders). *See also* Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 La. L. Rev. 509, 519 (2013); Eric Janus, *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventative State*, Cornell Univ. Press (2006). Registration sends a message that the registered offender is likely to re-offend and is dangerous. *See, generally* Sarah W. Craun & Matthew Theriot, *Misperceptions of Sex Offender Perpetration: Considering the Impact of Sex Offender Registration.* 24 J. of Interpersonal Violence, 2057-2072 (2009). As discussed in Section II, *supra*, because juvenile offenders tend to desist as they mature, these messages are likely to be false and

defamatory to a child's reputation. Indeed, registries' future harm to reputation is even more distressing when one considers that in cases like M.A.'s, an individual may be subject to these prejudices and impairments ten years after committing an act as a minor, after spending time in a juvenile justice system that is aimed at her rehabilitation.

The "violent offender" label may also be detrimental to the youth herself. In the juvenile sex offender context, neurological studies have shown that adolescents are "especially vulnerable to the stigma and isolation that registration and notification create," and because youth who are labeled as "sex offenders" often experience rejection from peer groups and adults, they are less likely to attach to social institutions like schools and churches. Justice Policy Institute, *Registering Harm: How Sex Offense Registries Fail Youth and Communities*, p. 24 (2008), *available at* http://www.justicepolicy.org/images/upload/08-11_RPT_WalshActRegisteringHarm_JJ-PS.pdf. This lack of attachment is detrimental to the juvenile's rehabilitation and development. Candace Kruttscnitt, et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls,* 17 Justice Quarterly 61 (2000). Labeling a 13-year-old like M.A. with the label "violent offender against youth" may have a similar isolating effect among her peers.

2. VOYRA Burdens Juveniles with Long-term Stigma and Collateral Consequences.

Any policy consideration of juvenile registration should be informed by the Illinois Juvenile Justice Commission's (IJJC) 2014 report, *Improving Response to Sexual Offenses Committed by Youth, available at* http://ijjc.illinois.gov/youthsexualoffenses [hereinafter "IJJC Report"]. After the first-ever comprehensive review of Illinois' laws

concerning sexual delinquency and related registration requirements and despite the available relief of petitions for removal from the registry, the Commission recommended abolishing the practice of placing juvenile offenders on a sex offender registry. IJJC Report at 59.[2]

> In short, the 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.

Id. at 50. Most of the Commission's reasons for abolishing the juvenile sex offender registry are equally applicable to youth on the VOYRA registry; some even more so given that juvenile VOYRA registrants do not have the right to petition for removal.

In developing its recommendation, the Commission recognized that "Illinois registration and community notification laws impose mandatory, categorical collateral consequences on youth behavior." *Id.* at 39 (describing community notification provisions and noting that failure to complete registry requirements is a public, adult

[2] "'Recommendation 3: Remove young people from the state's counter-productive sex offender registry and the application of categorical restrictions and 'collateral consequences.' After careful consideration and analysis of data, interviews, and social science research, the Commission has determined that, unlike community-based, family-focused, evidence-based interventions, offense-based registration strategies do not show positive results. There is no persuasive evidence that subjecting youth to registries and restrictions enhances public safety or prevents reoffending. In fact, research demonstrates that these statutory strategies do not improve community safety and can actually increase risk of reoffending and exacerbate harms to victims, particularly when they are siblings or other family members of the youth. Further, as discussed in this report, a growing number of state legislatures and courts—including the U.S. Supreme Court—are recognizing that the imposition of lifelong consequences for acts committed as a child are unnecessary and counter-productive." *Id* at 59-60.

felony offense for late teens). Given the similar situation of SORA and VOYRA registrants, the well-documented collateral consequences of SORA registries will likely apply to juvenile offenders subject to VOYRA. For example, studies have shown that false assumptions about the re-offense rates of juvenile sex offenders harm a child's ability to obtain stable housing, employment and schooling. *Id.* at 50. Children subject to registration continuously report that finding or keeping employment is one of the most constant challenges relating to registration. *See Id.* In its report, the IJJC included a "lengthy" 20-page list of the collateral consequences to sex offender registration as "Appendix J," which details all the restrictions registered offenders face in Illinois as a result of their registrations under the categories of housing, entitlements, employment, education, military professions that may refuse licensure, disconnects, conflation of adults and juveniles, confidentiality, effects of failure to register, and treatment disruption. *See* IJJC Report at 45, 128-147. False assumptions about a juvenile violent offender's likelihood of reoffending will likely have a similar effect on the future peers, landlords, employers and school officials for juveniles who are required to register under VOYRA.

The IJJC Report recognized that "categorical responses misjudge public safety risks and undermine the goals of juvenile court." *Id*. at 38 (noting that youth adjudicated delinquent for sex and non-sex offenses are more similar to one another than to adult offenders). The Commission discovered that due to the lengthy registration periods, Illinois' juvenile registry continues to grow even as offenses have decreased. *Id*. at 43. It also detailed that offense-driven registries are poor at forecasting risk and that

surveillance-only strategies can disrupt youth rehabilitation and even increase recidivism when applied to low- and moderate-risk youth. *Id.* at 43-45.

The IJJC also looked to the experience of other states and concluded that the majority of other states either do not have a registry or do not uniformly place youth on it. *Id.* at 52 (eleven states and the District of Columbia "choose to exercise individualized supervision over youth in juvenile court – these states do not have a juvenile registry and only require youth who have been tried and convicted as adults to participate on the sex offender registry. Another 19 states require registry for some juvenile cases but impose registry requirements with some degree of individualized consideration"). The report noted that states which have registry laws similar to Illinois' are now facing successful constitutional challenges. *Id.* at 52-53. It determined that Illinois law and practice concerning registration requirements and collateral consequences arising out of adjudications are "baffling or even contradictory" and difficult or impossible for youth to navigate without legal assistance, which the state does not provide. *Id.* at 45-48; Appendices J-K at 128-150 (e.g., at 46: "Several common restrictions can be simultaneously imposed even though they are self-contradictory; for instance, youth may be both required to attend school and barred from school grounds, with violation of either condition potentially resulting in incarceration").

VOYRA may also have a particularly negative impact on juvenile domestic violence or abuse cases. Under VOYRA, juveniles must register in person within 5 days of notification of the requirement to register, s*ee* 730 ILCS 154/10, and "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," *see* 20

Ill. Adm. Code 1283.40. Juvenile registrants must provide personal and detailed information, including "a current photograph, current address, current place of employment, the employer's telephone number, [and] school attended." *See* 730 ILCS 154/10. A youth must report where he resides "for an aggregate period of time of 5 or more days during any calendar year." *See id*. If a juvenile registrant fails to comply with any provision of the Act, the period of registration is automatically extended by 10 years. *See* 730 ILCS 154/40.

While the provision of this highly personal, detailed and transitory information would be taxing to any registrant, these requirements may be particularly burdensome in domestic violence or abuse cases like M.A.'s. The IJJC observed that registries (and the restrictions and community notifications that derive from them) not only fail to respond to the needs of family abuse victims, but can continue their victimization. *See* IJJC Report at 10. "It is critical to note that many restrictions can also stigmatize and destabilize the families of the youth offender, since the youth's family more often than not includes the victim of the sexual offense." *Id.* at 46. The onerous nature of the requirement that a juvenile be accompanied by a parent, guardian or other adult to register is particularly evident in the circumstances of this case, where M.A. must register because of an adjudication of a violent offense against her brother. Her troubled and inconsistent home life is documented in the record, *see M.A.* ¶ 9-14, and the trial court heard negative evidence from her probation officer, *see M.A.* ¶ 15. Yet any failure to comply with these terms results in an automatic extension of the registration period for another ten years, subject to the same onerous reporting requirements, which imposes automatic long-term involvement with the criminal justice system on juvenile offenders.

See 730 ILCS 154/40. The instant case speaks to the need for the strictures of VOYRA registration to be limited in at least the same way that SORA has been.

B. VOYRA is Sufficiently Burdensome to Violate a Juvenile's Right to Procedural Due Process.

Whether or not VOYRA is punitive in nature is irrelevant to the question whether its registration requirements are sufficiently burdensome to mandate enhanced constitutional procedural protections for juveniles. The United States Supreme Court has held that stigmatization plus the loss of some tangible interest is sufficient to rise to the level of a protectable liberty interest. *See Paul v. Davis*, 424 U.S. 693, 701 (1976); *see also Cavarretta*, 277 Ill.App.3d at 63. As discussed above, because registration under VOYRA impacts juvenile offenders' reputation and the "violent offender" label may stigmatize a juvenile and burden future housing, employment, and scholastic opportunities, the state must comport with principles of due process. The fundamental right to due process is met "by having an orderly proceeding wherein a person is served with notice […], and has an opportunity to be heard and to enforce and protect his rights. *Tri-G, Inc. v. Burke, Bossselman & Weaver*, 222 Ill. 2d 218, 244 (2006). The right to be heard must be in a manner appropriate to the nature of the case. *Bell v. Burson*, 402 U.S. 535, 541-42 (1971) (stating that cost does not justify denying a hearing meeting the ordinary standards of due process in the context of a drivers' license revocation.)

In 2003, the United States Supreme Court held that a Connecticut sex offender registration statute, which provided no hearing on the issue of future dangerousness prior to imposing community notification provisions on convicted sex offenders did not implicate procedural due process. *See Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003). Connecticut's scheme, however, explicitly "made no determination that any

individual included in the registry is currently dangerous," *see id.* at 5 (citations and quotations omitted), nor did it send such a message to the public. In contrast to the statutory scheme at issue in *Doe*, juvenile offenders subject to VOYRA are presumed to be, in the State's words, "by definition, a narrow group of seriously violent offenders." (*See* St. Br. at 13). The instant case also involves children who have rehabilitative potential and whose reputations ought to be shielded by the law.

However, VOYRA provides no hearing for the child to have his status as a violent offender approved or reviewed. The adjudicatory hearing at which VOYRA is automatically imposed is not a substitute for a risk assessment. At the adjudicatory hearing, the court must determine whether or not the child is delinquent, but makes no findings as to her dangerousness. *See* 705 ILCS 405/5-605. There is no opportunity to be heard on the risk of recidivism. Furthermore, in Illinois an adjudicatory hearing does not encompass the full panoply of criminal protections. *See, e.g.*, *In re Jonathon C.B.*, 2011 IL 107750, ¶ 107 (2011). As the appellate court noted, due to the absence of a jury trial before being required to register as adults, VOYRA's application to juvenile offenders means that juveniles are afforded "*less* procedural protections than their adult counterparts." *See M.A* at ¶ 53.

1. VOYRA Denies Procedural Due Process under the *Mathews v. Eldridge* Test

Whether the lack of notice and opportunity to be heard renders VOYRA constitutionally deficient requires an analysis of the governmental and private interests affected. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). *See also Arnett v. Kennedy*, 416 U.S. 134, 167-68 (1974) (Powell, J., concurring); *Goldberg v. Kelly*, 397 U.S. 254, 263-66 (1970). This Court must consider three distinct factors: the private interest that

will be affected by the official action; the government interest; and the risk of an erroneous deprivation of the private interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 277 (2004) (quoting *Eldridge*, 424 U.S. at 335).

Petitioner contends that this Court has already held that imposing the sex offender registration requirements on a juvenile under Illinois' SORA without providing for a jury trial does not violate procedural due process, *see People ex rel. Birkett v. Konetski*, 233 Ill.2d 185 (2009). However, in finding no violation of procedural due process in *Konetski*, this Court was persuaded by the elimination of "provisions that would have required the minor to register as an adult when he reached 17 years of age, the resulting availability of the minor's information "only to a very limited group of people" in contrast to the adult registry, and the ability of the minor to "petition for termination of his registration after five years," which "significantly reduce[d] the impact of the minor's registration requirement." *See Konetski*, 233 Ill. at 203 -04. The combination of all these factors led the Court to conclude "the minor's registration obligation is not sufficiently burdensome to mandate […] additional procedural protection […]." *See id*. VOYRA requires all the obligations this Court would have found to be sufficiently burdensome to youth in *Konetski*. VOYRA mandates ten-year registration upon adjudication, registration of juveniles as adults at the age 17, public notification upon registration as an adult, which results in widespread dissemination of sensitive and previously confidential information, and no process that allows the minor to petition off the registry at any point. Furthermore, any failure to comply with any of the registration requirements results in an

automatic ten-year extension of the registration period. *See* 730 ILCS 154, *et seq*. Because VOYRA provides for none of the 'safeguards' present in SORA, it significantly and unconstitutionally burdens the minors' interests without sufficient due process.

In the instant case, like *Konetski*, the private interest at stake is the right to reputation of all juvenile registrants because private and sensitive information will be released and accessible by the public under VOYRA. As discussed in Section III. *supra*, under VOYRA's requirements, the harm to a child's reputation will stem both from the defamatory character of the label of "violent offender," the requirement to disseminate information identifying the juvenile as a violent offender to the juvenile's school and community, and the eventual publication of the information on the registry. The statute also jeopardizes the anonymity of family victims and condemns juveniles to a lifetime of harsh collateral consequences as discussed in Sections II and III, *supra*. This is so regardless of the facts of the individual offense, a youth's individual circumstances, their success in treatment, their low risk of re-offense, or the effectiveness of registration in promoting public safety – none of which the juvenile is allowed to present evidence. At no time is a juvenile given an individualized determination about her likelihood to re-offend, nor is she allowed the opportunity to challenge his or her registration. The government interest here is in public safety. *See generally* Illinois House Transcript, 2006 Reg. Sess. No. 95. While theoretically significant, there is no evidence that VOYRA achieves the purported interest. Indeed, the Illinois legislature has characterized SORA's requirement that juveniles register as adult sex offenders no matter the nature of the offense as "overzealous." *See* statements of Senator Syverson and Senator Raoul, Illinois Senate Transcript, 2007 Reg. Sess. No. 33 at 14, *available at*

http://www.ilga.gov/senate/transcripts/strans95/09500033.pdf. Given the similarity between the two registries, *see* Section II supra, there is no indication that VOYRA's maintenance of the automatic adult registration is any less "overzealous." *Id*.

As to the third criterion, the risk of an erroneous deprivation of the liberty interest through the procedures used, and the probable value, if any, of additional or substitute procedures, the balance favors M.A.. M.A. has shown that VOYRA risks the loss of reputation of all registrants, despite the likelihood that the overwhelming majority will never reoffend. *See* Section II, *supra*. Thus, the risk of erroneous deprivation is severe and as the appellate court recognized, additional process in the form of an individualized determination presents only a minimum burden for Illinois. In fact, The Illinois Juvenile Act has as one of its general principles:

> To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to rehabilitate and to prevent further delinquent behavior through the development of competency in the juvenile offender. As used in this Section, "competency" means the development of educational, vocational, social, emotional and basic life skills which enable a minor to mature into a productive member of society.

705 ILCS 405/5-101. However, youthful offenders required to register under VOYRA are denied an individualized assessment of their suitability for the violent offender registry and likelihood to reoffend, which could go a long way towards their rehabilitation and becoming productive members of society. *See id*.

2. VOYRA Unconstitutionally Relies on the Non-rebuttable Presumption that Juveniles are Dangerous and are Likely to Commit Further Violent Acts

VOYRA presumes that a juvenile offender is dangerous and provides no meaningful opportunity to challenge this presumption. The Supreme Court has found that irrebuttable presumptions violate due process when "the presumption is deemed not

universally true" and a "reasonable alternative means" of ascertaining that presumed fact are available." *Vlandis v. Kline*, 412 U.S. 441, 452 (1973); *see also In Re Amanda D.*, 349 Ill.App.3d 941, 948 (2d Dist. 2004) ("[P]ermanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments"). In *Stanley v. Illinois*, the United States Supreme Court held unconstitutional an Illinois law that authorized the removal of children from the custody of their unwed fathers without requiring any showing of the father's unfitness. 405 U.S. 645, 649 (1972). The statute was "constitutionally repugnant" as it relied on the non-rebuttable presumption that unwed fathers were unfit. *Id*. at 649. "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him." *Id.* at 649.

Under Illinois law, all mandatory presumptions are considered to be *per se* unconstitutional. *See People v. Pomykala*, 203 Ill.2d 198, 204 (2003) (holding language in jury instructions that presumed recklessness when the defendant was under the influence of alcohol or drugs created an unconstitutional irrebuttable presumption that violated the defendant's due process rights). While this Court has usually discussed this doctrine in criminal contexts, it has applied the United States Supreme Court analysis of the irrebuttable presumption doctrine to civil contexts that contemplate important interests, holding that to satisfy due process presumptions cannot foreclose "determinative issues" simply because it is cheaper and easier than providing an individualized determination. *See In re D.W.*, 214 Ill. 2d 289, 316-17 (2005) (citing *Stanley*, 405 U.S. at 656-57) (applying the irrebuttable presumption to a presumption on

parental fitness.) Such a foreclosure "needlessly risks running roughshod over […] important interests [and] therefore cannot stand." *See id.*

In *In re D.W.*, this Court found unconstitutional a mandatory conclusive (irrebuttable) presumption that a person who is convicted of aggravated battery, heinous battery, or attempted murder of a child is an unfit parent because the parent was unable to present evidence to rebut this presumption. *In re D.W*, 214 Ill. 2d 289 at 312- 13. The Court found particularly persuasive that, under other sections of the same statute, a parent could rebut the presumption of unfitness for more serious offenses like murder. *See id.* For example, a parent would have the opportunity to offer rebuttal evidence of parental fitness at a fitness hearing if she had been convicted of killing one of her children but not if she had been convicted of offenses such as attempted murder of that child. *See id*. Once a parent was convicted of aggravated battery or attempted murder of his or her child, for example, the statute provided no opportunity for the parent to present on issues of competence and care or evidence of fitness. *See id.* at 312-13. Consequently, there was "no logic to this statutory scheme, much less the use of narrowly tailored least restrictive means consistent with the attainment of [the State's] goal." *See id*. (internal quotation marks and citations omitted). To comply with due process requirements, the parent who was convicted of aggravated battery or attempted murder of the child had to be given equal opportunity to offer evidence to rebut the presumption.

Other courts have applied the irrebuttable presumption doctrine specifically to the context of juvenile registration, holding automatic classification or registration of juveniles as sexual offenders unconstitutional. *See In re. W.Z.*, 957 N.E.2d 367, 376-80 (Ohio Ct. App. 2011); *In re J.B.*, No. 87 MAP 2013, 2014 WL 7369785 (Pa. Dec. 29,

2014). The Ohio court found that classifying juveniles as sex offenders at adjudication was inappropriate because it disregarded the ameliorative impact of juvenile placement and treatment on the likelihood of re-offense. *See id.* at 376-80. By imposing registration and notification at adjudication "without any other findings or support of the likelihood of recidivism, a child who commits a one-time mistake is automatically, irrebuttably, and permanently presumed to be beyond redemption or rehabilitation." *See id* at 377. The Ohio Court of Appeals found compelling that the automatic and irrevocable classification as a sex offender meant that the youthful offender "suffers the same consequences as his adult counterpart, with a designation that will forever taint his future and restrain his freedom to pursue a productive place in society." *See id*.

Most recently, the Pennsylvania Supreme Court held that mandatory lifetime registration of juveniles adjudicated delinquent of certain sex crimes under Pennsylvania's Sex Offender Registration and Notification Act (SORNA) violated their due process rights because it utilized the irrebuttable presumption that all juvenile sex offenders posed a high risk of committing additional sexual offenses. *In re J.B.*, No. 87 MAP 2013, 2014 WL 7369785 (Pa. Dec. 29, 2014). The court found particularly instructive that (1) SORNA did not provide juvenile offenders a meaningful opportunity to challenge the presumption, noting that "the delinquency hearing does not consider the relevant question of whether the juvenile offender is at risk of re-offense, *see id.* at page 10;" (2) "studies suggest that many of those who commit sexual offenses as juveniles do so as a result of impulsivity and sexual curiosity, which diminish with rehabilitation and general maturation," which negated that sexual offenders pose a high risk of recidivating as a universal truth, *see id.* at page 11; and (3) that an individualized risk assessment

"provides a reasonable alternative means of determining which juvenile offenders pose a high risk of recidividating." *See id.*

Similar to the unconstitutional presumptions at issue in *D.W.*, *W.Z.*, and *J.B.*, VOYRA's automatic registration requirement burdens a juvenile's right to reputation by presuming juvenile offenders adjudicated delinquent of certain offenses are inherently dangerous without giving them an opportunity to rebut the determinative issues of individual dangerousness and future recidivism. *See Section II.* Like the statute at issue in *W.Z.*, VOYRA does not distinguish a juvenile from her adult counterpart despite a youth's distinguishing characteristics, *see* Section I, and treats juvenile and adult offenders the same. *See* 730 ILCS 154/5. Neither does VOYRA provide a meaningful opportunity to consider the youth's capacity to be rehabilitated at the initial point of registration or at any point of the registration period. Every juvenile subject to the Act is required to register as an adult at age 17. *See* 730 ILCS. 154/10. Moreover, like the two prongs of the statute at issue in *D.W.* that provided similarly situated parents with different procedural opportunities to rebut the same presumption, VOYRA provides none of SORA's procedural opportunities to fight or discontinue registration for similarly situated juvenile offenders, *see* Section II, *supra*. M.A. and other juveniles required to register under VOYRA should have a meaningful opportunity to contest registration both at the time of the initial order to register and prior to registering as an adult.

Two other elements relied upon by the Pennsylvania Supreme Court in finding SORNA unconstitutional due to its irrebuttable presumption are also present here. Given the evidence that juvenile offenders desist as they mature and are unlikely to reoffend, *see* Section II *supra*, studies suggest that automatic ten-year registration under VOYRA

is ineffective. There is no universal truth and more than reasonable doubt to the assumption that youth subject to VOYRA will continue to pose a threat to the public. Finally, as the Appellate Court recognized, the alternative of providing M.A. an individualized hearing that offers her the opportunity to rebut VOYRA's presumption would impose no undue burden, as she will already have regular status hearings during her probation that could serve as her individualized assessment for registration. *See M.A.* at ¶ 60. In fact, such an individualized determination comports with the guiding principles of the Illinois Juvenile Justice System. *See* 705 ILCS 405/5-10.

VOYRA has the potential to cause great harm to a juvenile's interest in his or her reputation and may put into effect harsh, long-term collateral consequences for the rest of the juvenile's life. Yet, it imposes these burdens without any opportunity for the juvenile to challenge its imposition or rebut the mandatory presumption of his or her dangerousness. Because VOYRA fails to provide juvenile registrants with a meaningful opportunity to be heard – whether at the initial requirement to register, when the juvenile is required to register as an adult at 17, or at the mandatory imposition of an additional ten-year registration period upon violation of any term of the Act – VOYRA violates Illinois's guarantees of due process.

CONCLUSION

For the foregoing reasons, Amici Curiae Juvenile Law Center, The Children and Family Justice Center, Civitas ChildLaw Clinic, Edwin F. Mandel Legal Aid Clinic at the University of Chicago, the James B. Moran Center for Youth Advocacy, the Juvenile Justice Initiative of Illinois, the National Juvenile Defender Center, and the National Juvenile Justice Network respectfully request that this Court uphold the decision of the appellate court and find the Violent Offender Against Youth Registration Act unconstitutional both facially and as applied to M.A.

Respectfully,

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DATED January 16, 2015

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 42 pages.

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CERTIFICATE OF ELECTRONIC FILING

I, Marsha Levick, on oath, state that on the 16th of January, 2015, I caused to be filed the above AMICUS BRIEF IN SUPPORT OF RESPONDENT-APPELLEE M.A. by filing it with the Clerk of the Illinois Supreme Court via the Court's electronic filing system.

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No. 118049
IN THE
SUPREME COURT OF ILLINOIS

	)	Appeal from the Appellate
	)	of Illinois, First District,
	)	No. 1-13-2540
	)	
	)	There heard on Appeal from the
In re M.A.	)	Circuit Court of Cook County,
Respondent-Appellee	)	Juv. Division, No. 12 JD 4659
	)	
	)	Honorable
	)	Stuart P. Katz
	)	Judge Presiding

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The undersigned certifies that an electronic copy of the Brief for *Amici Curiae* Instanter in the above-entitled cause was submitted to the Clerk of the above Court for filing on January 16, 2015. On that same date, we caused to be served three copies to the Attorney General of Illinois, three copies to the Cook County State's Attorneys' Office, and three copies to Respondent-Appellee's counsel in envelopes deposited in a U.S. mail box in Philadelphia, Pennsylvania with proper prepaid postage.

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