No. 123643

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- CONRAD ALLEN MORGER Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-17-0285. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 12-CF-1330. Honorable Scott D. Drazewski, Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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A complete ban on accessing "social networking websites" as a condition of probation is unreasonable and unconstitutional under the First Amendment.

The sentencing court required that Mr. Conrad Morger "refrain from accessing or using a social networking website ***" as a condition of probation. *People v. Morger*, 2018 IL App (4th) 170285, ¶ 33 (citing 730 ILCS 5/5-6-3(a)(8.9) (2012)). This condition violates his First Amendment right to freedom of speech. The appellate court disagreed because it mistakenly believed the probation officer could modify this condition. *Morger*, 2018 IL App (4th) 170285, ¶ 82. The appellate court interpreted *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017), to apply only to registered sex offenders, as different from probationers, and therefore determined its holding was inapplicable in this case. *Morger*, 2018 IL App (4th) 170285, ¶ 83.

The appellate court was incorrect, and so too is the State. The State argues that the probation condition does not violate the First Amendment because

probationers enjoy only conditional liberty; and it argues that the blanket ban on social networking is related to Mr. Morger's rehabilitation and is narrowly tailored. (St. br. at 7-20) However, the State does not answer why probationers and parolees should be treated differently, nor did the *Packingham* Court.

A probation condition that broadly bans all social networking access is unconstitutional under the First Amendment, applicable to the states through the Fourteenth Amendment, because the Constitution provides that "Congress shall make no law ... abridging the freedom of speech." U.S. Const., amends. I, XIV. "[T]o foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." *Packingham*, 137 S.Ct. at 1737.

A.

A condition banning all access to social networking websites is overbroad, unreasonable, and unconstitutional under the First Amendment.

Initially, this Court must address the mootness of Mr. Morger's claim. The State correctly identifies that Mr. Morger has completed his probation term. (St. br. at 7); see also (Sup. Vol. 1, C. 3, 15) Yet, the State concedes that this issue should be reviewed under the public interest exception or the "capable of repetition yet avoiding review" exception. (St. br. at 7) (citing *In re Shelby R.*, 2013 IL 114994, ¶¶ 15-16.) Mr. Morger agrees with the State that this Court should review this appeal under either the public interest mootness doctrine or the "capable of repetition yet avoiding review" exception. See *In re Shelby R.*, 2013 IL 114994, ¶¶ 15-16.

The public interest exception permits review of an otherwise moot question where the "'magnitude or immediacy of the interests involved warrant[s] action

by the court.'" *Id*., at ¶ 16 (citations omitted) To overcome mootness, the following criteria must be established: "(1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *Id*., (citations omitted). Mr. Morger raises a question of public nature; his question is about the First Amendment freedom of speech and the exercise of that freedom in the modern public sphere on social networking websites. A determination on his question will guide public officers because courts, and probation and parole officers need to know whether the restrictive conditions they enforce are constitutionally sound. See *In re Alfred H.H.*, 233 Ill.2d 345, 357-58 (2009) (citation omitted). Finally, Mr. Morger's question is likely to recur any time a court or officer employs the restrictive condition to refrain from exercising First Amendment speech rights on social networking websites while serving probation or parole.

Moreover, Mr. Morger's issue is capable of repetition, yet will avoid review due to the short lengths of probation and parole. "This exception has two elements. First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. Second, there must be a reasonable expectation that 'the same complaining party would be subjected to the same action again.'" *In re Alfred H.H.*, 233 Ill. 2d at 358 (citation omitted). Since Mr. Morger's challenge involves his 48-month probation term, and since these terms can be as short as the sentencing court decides, it is unlikely that a probationer could resolve a similar claim in the courts before the probation term had concluded. Finally, it is reasonable that Mr. Morger would be subjected to the same action again in the event that he is convicted of another sex offense; he does raise a constitutional argument and

challenges the interpretation of the statutory meaning of a "social networking website", for purposes of his First Amendment free speech rights, and so his claim is justiciable under this exception as well. See *Id.*, at 360.

Additionally, the State argues, without citation, that Mr. Morger's claim should not be addressed under the intermediate scrutiny standard of judicial review. (St. br. at 15) The State does cite to *In re J.W.* for the rational basis review proposition that "a condition is valid if it is 'reasonably related' to legitimate probationary purposes and is not 'overly broad' with respect to those goals." (St. br. at 15) (citing *In re J.W.*, 204 Ill.2d 50, 78 (2003).) However, *In re J.W.* applied the rational basis test because the probation condition at issue in that case was a broad geographic restriction; it was not a direct challenge that the condition violated First Amendment rights. See *In re J.W.*, 204 Ill.2d at 66-67. While Mr. Morger did cite to *In re J.W.*, it was for the purpose of comparing probation conditions, and their ability to be modified by probation officers, and not for guidance on judicial review. (Def. br. at 15)

Mr. Morger argued that blanket restrictions on social networking websites should be treated like broad geographic restrictions. Restrictions on a probationer's travel into a specified area is reasonable and constitutional if there is a valid purpose for the restriction *and if there is a means to obtain an exemption*. See *In re J.W.*, 204 Ill.2d at 80-81. In *In re J.W.*, the defendant was prohibited from residing in or going to the community where he lived and where the aggravated criminal sexual assaults occurred. *Id.*, at 54. This Court vacated the condition as overbroad because the statute allowed for exceptions to the geographic restriction, but the actual probation condition did not provide for any exceptions. *Id.*, at 76, 80-82.

Mr. Morger cited to *In re J. W.* to argue that his probation condition should be struck down because, in part, there is no way to obtain a limited exception because the law does not allow it. (Def. br. at 15) In other words, the probation condition here is not narrowly tailored. The probation condition at issue here is similar to the unconstitutional condition in *In re J.W.*, because the sentencing court provided for no exceptions in both cases. See *In re J.W.*, 204 Ill.2d at 80-82; see also *Morger*, 2018 IL App (4th) 170285, ¶ 33.

As to the question of judicial review, the statute here is quite similar to the statute struck down in *Packingham*, and that Court assumed that the statute was "content neutral and thus subject to intermediate scrutiny[. And so, the] *** law must be 'narrowly tailored to serve a significant governmental interest." *Packingham*, 137 S.Ct. at 1736 (citations omitted). The freedom of speech is a fundamental right protected by the due process clause, and so intermediate scrutiny is appropriate. See *McCullen v. Coakley*, 573 U.S. 464, 486 (2014); see also *Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989); and *Gitlow v. People of State of New York*, 268 U.S. 652, 666 (1925).

The State argues that the Illinois statute banning all access to social networking websites, even without the possibility for a probation officer's exception, is not violative of the First Amendment because probationers and parolees may be deprived of some freedoms as long as the deprivation is reasonably related to rehabilitation or protecting the public, and is not overly broad. (St. br. at 7-8) But if the North Carolina statute in *Packingham* was unreasonable and overly broad, so too is this statute.

In an attempt to narrow the Illinois law past the point of reasonable interpretation, the State misinterprets the *Packingham* decision when it states that "the Court assumed that the statute applied only to 'social networking sites commonly understood,' such as Facebook, Twitter, and LinkedIn." (St. br. at 8) (citations omitted). But that is not what the Supreme Court held:

> "It is necessary to make two assumptions to resolve this case. First, given the broad wording of the North Carolina statute at issue, it might well bar access not only to commonplace social media websites but also to websites as varied as Amazon.com, Washingtonpost.com, and Webmd.com. *** The Court need not decide the precise scope of the statute. It is enough to assume that the law applies (as the State concedes it does) to social networking sites 'as commonly understood'—that is, websites like Facebook, LinkedIn, and Twitter." *Packingham*, 137 S.Ct. at 1736–37 (citations omitted).

This *dicta* does not limit the scope of social networking websites that were prohibited by the statute, it instead exclaims that the statue was broad and could be read to include websites not commonly understood as social networking websites. Since the Illinois statute is even broader, it prohibits these websites as well.

The State argues that the Illinois statute would not prohibit access to Amazon.com, Washingtonpost.com, or WebMD.com, but these websites do meet the definition of a prohibited "social networking website". (St. br. at 8-9) The *Packingham* Court described that Amazon.com, Washingtonpost.com, and WebMD.com each allow a visitor to create a profile by submitting a name or nickname, upload pictures, and openly communicate between other members with

profiles. *Packingham*, 137 S.Ct. at 1741-42. Fortunately, neither the Supreme Court, nor this Court, need decide the exact interpretation of "social networking website" as that question is not before this Court.

The North Carolina statute was more limited and less broad than the one at issue here, which lends further credence to the opinion's applicability. That statute in *Packingham* prohibited access only to social networking websites which permitted minor children to become members or to create or maintain personal web pages. *See* N.C. GEN. STAT. § 14-202.5(a) (2009); *Packingham*, 137 S.Ct. at 1733. It was narrower than the Illinois statute but was still struck down because it violated the First Amendment.

The State argues that the Illinois statute is actually more narrow because it limits the definition of a "social networking website" to websites that require a profile and "links to other profile web pages on social networking websites of friends or associates of such members that can be accessed by other members or visitors to the website." (St. br. at 8) (citing 720 ILCS 5/17-0.5 (2012)) However, the State does not address whether a website "commonly understood" to be a "social networking website" under Illinois law, like Facebook.com, can instantaneously avoid statutory prohibition if a user simply changes the privacy settings to make that user's list of friends, and the links to their profile pages, completely private so that the profile does not include any links to any friends.[1] This problem is rooted in the difficulty of drafting clear statutes.

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[1] See "Control Who Can See What You Share", https://www.facebook.com/help/1297502253597210/?helpref=hc_fnav (viewed June 19, 2019); see also, "How do I change the audience of a post I've shared on my timeline?", https://www.facebook.com/help/233739099984085?helpref=faq_content (viewed June 19, 2019).

The court in *U.S. v. Holena* also considered confusion caused by drafting oversights, and said, "[b]ut we are not interpreting a statute. Due process requires district courts to give defendants fair warning by crafting conditions that are understandable." *U.S. v. Holena*, 906 F.3d 288, 291 (3rd Cir. 2018). This example illustrates why the Illinois statute is overly broad and poorly drafted.

The statute at issue here, 730 ILCS 5/5-6-3(a)(8.9), is broader than the North Carolina statue because it does not narrowly limit access to social networking websites which allow minors to become members; it is instead very broad, applying to all social networking websites, even sites where minors' profiles would not be expected, like LinkedIn.com, and even social networking websites where minors are entirely barred from accessing the service. The State counters this point by asserting that while minors' profiles may not be expected on a career networking website like LinkedIn.com, "the only social networking site [Mr. Morger] mentions as an example of such overbreadth is LinkedIn, which allows minors who are sixteen years of age or older to join." (St. br. at 18) In response, Mr. Morger asks this Court to consider the following list of social networking websites as examples of the statute's overbreadth because each website meets the statutory definition for prohibition, but does not allow minors to access the service:

- Travel & Accommodation Social Networking Websites
  - Airbnb.com, a website for booking lodging at private residences
  - Vrbo.com, a website for booking lodging at private residences
  - CouchSurfing.com, a website for booking lodging at private residences
  - Turo.com, a website for renting personal vehicles
- Dating & Relationship Social Networking Websites
  - eHarmony.com

- OKCupid.com
- ChristianMingle.com
- Tinder.com
- Grindr.com
- Bumble.com[2]

The North Carolina statute made it "unlawful for a sex offender *** to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages on the commercial social networking Web site." N.C. GEN. STAT. § 14-202.5(a) (2009); *see Packingham*, 137 S.Ct. at 1733. The Illinois statute is more broad because it prohibits access to websites where minors are not allowed access and because it does not allow for a probation or parole officer to grant exceptions. It is therefore in violation of the First Amendment, just as the narrower statute in *Packingham*.

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[2]

Travel & Accommodation Social Networking Websites Where Minors Are Prohibited

Airbnb	https://www.airbnb.com/terms
Vrbo	https://www.vrbo.com/legal/terms-and-conditions
Couch Surfing	https://www.couchsurfing.com/about/terms-of-use/
Turo	https://turo.com/en-us/policies/terms

Dating & Relationship Social Networking Websites Where Minors Are Prohibited

eHarmony	https://www.eharmony.com/about/terms/
OK Cupid	https://www.okcupid.com/legal/terms
Christian Mingle	https://about.christianmingle.com/en/legal-en/#termsofservice
Tinder	https://www.gotinder.com/terms/us-2018-05-09
Grindr	https://www.grindr.com/terms-of-service/
Bumble	https://bumble.com/en-us/terms

B.

Illinois law does not give probation officers the authority to modify the condition banning access to social networking websites.

The appellate court incorrectly held that the probation officer could allow for an exception to access social networking websites; this is contradicted by the letter of the law and the probation condition. *Morger*, 2018 IL App (4th) 170285, ¶¶ 33, 44, 82-83; 730 ILCS 5/5-6-3(a)(8.9) The State expressly admits that the appellate court committed this error of statutory interpretation. (St. br. at 6).

Therefore, the appellate court's conclusion that Mr. Morger's "access to social media is not foreclosed *altogether*, as was the case in *Packingham*, ***" is simply incorrect. *Morger*, 2018 IL App (4th) 170285, ¶ 83 (emphasis in original).

C.

The decision in *Packingham v. North Carolina* is not limited only to registered sex offenders, probationers should also enjoy its protection of First Amendment freedoms.

The State asserts that the *Packingham* decision should be limited only to parolees because of a single comment in *dicta* that the North Carolina statute applied to those who had "completed their sentences." (St. br. at 9) (quoting *Packingham*, 137 S.Ct. at 1737.) But the *Packingham* decision should not be interpreted this way. If the *Packingham* Court had meant to limit its holding to only post-imprisonment registered sex offenders, it would have clearly stated that limitation. Therefore, that decision should be applied without limitation even to cases involving probation conditions; to do otherwise would lead to incomprehensible and inconsistent results.

The appellate court quoted in full the following segment from *Packingham* to support the argument that the decision should not apply to probationers:

> "In sum, to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights. It is unsettling to suggest that only a limited set of websites can be used even by persons who have completed their sentences. Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, in particular if they seek to reform and to pursue lawful and rewarding lives." *Morger*, 2018 IL App (4th) 170285, ¶ 70 (citing *Packingham*, 137 S.Ct. at 1737.).

But that paragraph does not limit the applicability of the decision as interpreted by the appellate court; it clearly applies to the broad category of "convicted criminals" like Mr. Morger.

Two paragraphs earlier, the *Packingham* Court made the only other reference in the opinion that might lead a reader to believe that the decision was limited to a specific type of "convicted criminal." The Court stated that, "([o]f importance, the troubling fact that the law imposes severe restrictions on persons who already have served their sentence and are no longer subject to the supervision of the criminal justice system is also not an issue before the Court.)" *Id.*, at 1737.

However, this statement does not limit the decision's applicability. It is significant that the statement is presented in parentheses. Parentheses are used to signify an explanation or afterthought into a passage that is grammatically correct without it. The dictionary defines "parenthesis" as "a remark or passage

that departs from the theme of discourse[; a] digression[.]" Merriam-Webster Dictionary, "parenthesis", https://www.merriam-webster.com/dictionary/parenthesis (viewed June 19, 2019). An opinion should not be interpreted as limited when the proposed limitation is rooted in *dicta*, and not clearly communicated as part of the controlling opinion. See *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) (court not bound to follow *dicta* in case where point was not fully debated); see also, *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill.2d 217, 236 (2010) ("*Orbiter dictum*,' *** is a remark or opinion that a court uttered as an aside. *Exelon Corp. v. Dep't of Revenue*, 234 Ill.2d 266, 277 *** (2009).").

Mr. Morger does not argue that the *Packingham* Court "silently upended the well-established principle that probationers may be subject to restrictions on their constitutional rights[,] ***" as the State suggests. (St. br. at 9) The State relies on two cases, *Pa. Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 365 (1998), and *Farrell v. Burke*, 449 F.3d 470, 497 (2nd Cir. 2006), for this proposition, but those cases addressed limiting the rights of parolees, not probationers. See (St. br. at 9-10) Nonetheless, Mr. Morger concedes that his rights can be limited, just not to the extent mandated by Illinois law because that statute is overly broad and facially violates the First Amendment.

The State cites to limited, narrow examples of speech suppression in two cases to illustrate that a probation condition that limits speech is acceptable. (St. br. at 10-11) In *Commonwealth v. Power*, 420 Mass. 410, 415-16 (1995), the probation condition forbade the probationer from selling the story of her crime. And in *State v. K.H.–H.*, 185 Wash.2d 745, 748-51 (2016), the probation condition required the probationer to write a letter of apology to the victim. However, these

cases are inapplicable because their conditions are very narrow and directly related to rehabilitation, whereas the overly broad Illinois prohibition can blanket ban access to political, shopping, news, medical, travel, dating, and social networking websites.

The State relies on *U.S. v. Rock* and *U.S. v. Halverson*, but both are inapplicable because the supervised release conditions, which prevented the defendants from accessing any internet capable device, allowed for the grant of limited exceptions within the discretion of the probation officers. *U.S. v. Rock*, 863 F.3d 827, 831 (D.C. Cir. 2017); *U.S. v. Halverson*, 897 F.3d 645, 657 (5th Cir. 2018). Moreover, Rock and Halverson each pleaded guilty to using the internet to develop their collections of child pornography, and so the condition was directly related to their rehabilitation. *Rock*, 863 F.3d at 829; *Halverson*, 897 F.3d at 649. "[T]his court *** upheld an almost identical internet restriction where the defendant used the internet to facilitate his crime. Furthermore, *** this court found no plain error in imposing a qualified internet ban where the defendant used a computer for distribution of child pornography." *Id.*, at 831 (citations omitted). Mr. Morger's probation condition did not allow for exceptions, nor did he use a computer or the internet to facilitate his crime. (Def. br. at 13-14, 16-17)

The State relies on *U.S. v. Carson*, 924 F.3d 467 (8th Cir. 2019), but it is similarly inapplicable because the supervised release condition banning all use of a social networking websites was directly related to the defendant's rehabilitation after he pleaded guilty to using the internet to receive, possess, and distribute child pornography. *Carson*, 924 F.3d at 470, 472-73.

Though the State protests, *Holena* is on point because it explains that probation "conditions may not deprive the defendant of more liberty 'than is

reasonably necessary' to deter crime, protect the public, and rehabilitate the defendant." Compare *Holena*, 906 F.3d at 291 with (St. br. at 12-13) As the State highlights, it is true that the condition in *Holena* applied to the defendant for life, but that does not necessarily make Mr. Morger's probation term acceptable. (St. br. at 12-13) As the *Holena* court explained, the sentencing "[c]ourt must tailor any restrictions it imposes to Holena's conduct and history. *** To gauge whether an internet or computer restriction is more restrictive than necessary, we consider three factors: the restriction's length, its coverage, and 'the defendant's underlying conduct.'" *Id*., at 291-92 (citations omitted).

Here, while the 48 month duration of Mr. Morger's restrictive probation terms were shorter than Holena's lifetime restrictions, compare (Def. br. at 8) with *Holena*, 906 F.3d at 290, the Illinois statute's coverage is similarly quite broad in that it prohibits access to social networking websites for socializing, politics, shopping, news, medicine, travel, and dating. There is "no justification for stopping [Mr. Morger] from accessing websites where he will probably never encounter a child, like Google Maps or Amazon[,]" or the list discussed in Subsection A. *Id*., at 293. Furthermore, the restriction on social networking websites is not at all related to Mr. Morger's underlying conduct, whereas "Holena used the internet to solicit sex from a minor[,]" and that court still found the internet restriction unconstitutional because it restricted First Amendment rights more than reasonably necessary. *Id*., at 293-94.

Mr. Morger argues that his probation condition violates the First Amendment due to its overly broad scope and because it does not relate to his underlying conduct. (Def. br. at 7-21) The State cites to the *Rock* court because it upheld an even broader restriction, but there:

> "*Rock* used the internet to commit his crime. *** This distinction is supported by the cases cited by *Rock* *** where the defendant's crime was committed primarily over the internet, the conditions were upheld. By contrast, in the case cited by *Rock* where the defendant's crime was not committed primarily over the internet, the condition was struck down as an overbroad restriction of the defendant's liberty." *Mutter v. Ross*, 240 W.Va. 336, 341-42 (2018) (citing *Rock*, 863 F.3d at 829; *U.S. v. Legg*, 713 F.3d 1129, 1132 (D.C. Cir. 2013); *U.S. v. Malenya*, 736 F.3d 554 (D.C. Cir. 2013).) (other citations omitted).

The *Mutter* court noted that when courts uphold conditions prohibiting all use of the internet, "such conditions have been permitted in one of two scenarios: when use of the Internet was 'essential' or 'integral' to the offense of conviction, or when ... the defendant had a history of using the Internet to commit other offenses." *Mutter*, 240 W.Va. at 342 (citations omitted) Neither scenario applies in Mr. Morger's case.

The State attempts to argue the narrowness of the Illinois restriction by noting that the restriction only applies during the term of probation, "which generally will last no more than four years[.] ***" (St. br. at 18-19) But a limited temporal term of the restriction does not mean that the restriction is narrowly drawn. Mr. Morger raises a facial challenge to the probation condition, and he argues it is facially unconstitutional whether it restricts his rights for a week, or for years. Morever, because probation can be extended well beyond the original maximum term when there are violations, the State's argument is not persuasive. See *People v. Clark*, 48 Ill.2d 554, 558 (1971).

Similarly unpersuasive is the State's argument that the challenged restriction is acceptable because courts have the authority to impose restrictions even when not mandated or authorized by statute. (St. br. at 18) (citing 730 ILCS 5/5-6-3(b) (2012)) This statute does not apply in this case, because Mr. Morger challenges a probation condition that is statutory. 730 ILCS 5/5-6-3(a)(8.9) The State does not explain how the presence of a different statute with a reasonableness requirement can somehow legitimize the challenged restriction.

The State also responds that Mr. Morger's restrictive condition was appropriate because it addressed his risk of recidivism and his rehabilitation. (St. br. at 13, 16-18) But the State fails to rebut the fact that the *Packingham* Court dealt with the very same type of crime and, presumably, similar recidivism concerns, but still found the probation restriction to violate the First Amendment. Furthermore, the State's concern for Mr. Morger's rehabilitation is misplaced because "[t]he young adult brain is still developing, and young adults are in transition from adolescence to adulthood. Further, the ongoing development of their brains means they have a high capacity for reform and rehabilitation." *People v. House*, 2019 IL App (1st) 110580-B, ¶ 55. Due to the continuing brain development of young offenders that goes on until their mid-twenties, they are more likely to reform themselves than older offenders. *Miller v. Alabama*, 567 U.S. 460, 472 (2012) (citing *Graham v. Florida*, 560 U.S. 48, 68 (2010).).

The State cautions that convicted sex offenders have a "high rate" or "substantial risk of recidivism." (St. br. at 13) But its concern is misplaced. "The largest study of sexual recidivism to date, using a three-year follow-up period on 9,961 male sex offenders, found that sex offenders have lower rates of recidivism than non-sex offenders." Sex Offender Registration Task Force (2017), *Sex Offenses*

& Sex Offender Registration Task Force Final Report, December 2017, Springfield, IL: State of Illinois, p. 16, http://www.icjia.state.il.us/assets/articles/SOTF_report_final_12292017.pdf (viewed June 19, 2019). Moreover, "[m]ost youth who sexually offend never repeat their harmful conduct." Illinois Juvenile Justice Commission (2014), *Improving Illinois' Response to Sexual Offenses Committed by Youth, Recommendations for Law, Policy, and Practice*, March 2014, Department of Human Services, State of Illinois, p. 23, http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC%20-%20Improving%20Illinois%27%20Response%20to%20Sexual%20Offenses%20Committed%20by%20Youth%20updated.pdf (viewed June 19, 2019). Therefore, the State's analysis is flawed because it exaggerates the recidivism rates of sex offenders in general, and because it does not account for the fact that Mr. Morger was an emerging adult when the underlying offenses began. *Morger*, 2018 IL App (4th) 170285, ¶ 3.

The U.S. Supreme Court held that "[p]lacing this set of websites categorically off limits from registered sex offenders prohibits them from receiving or engaging in speech that the First Amendment protects and does not appreciably advance the State's goal of protecting children from recidivist sex offenders." *Packingham*, 137 S.Ct. at 1743. Under the same logic, this Court should find the Illinois probation condition facially unconstitutional as well.

CONCLUSION

For the foregoing reasons, Mr. Conrad Allen Morger, petitioner-appellant, respectfully requests that this Court vacate the probation condition and statute prohibiting access to social media websites and find that condition to be facially unconstitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Zachary A. Rosen, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is eighteen pages.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 19, 2019, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Linsey Carter
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