IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOES 1-4 and JANE DOE,	)	
	)	
Plaintiffs,	)	
	)	No. 16 CV 4847
v.	)	
	)	Judge Charles R. Norgle
LISA MADIGAN, Attorney General of the State of Illinois and LEO P. SCHMITZ, Director of the Illinois State Police,	)	
	)	
Defendants.	)	

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants Lisa Madigan, the Illinois Attorney General; and Leo P. Schmitz, the Director of the Illinois State Police; by their attorney, the Illinois Attorney General, hereby answer Plaintiffs' Complaint as follows:

Nature of the Case[1]

1. This is an action pursuant to 42 U.S.C. §1983 and 28 U.S.C. §2201 challenging the constitutionality of certain provisions of the Illinois Criminal Code as set forth at 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1. In pertinent part, the challenged statutes restrict the locations where child sex offenders, as defined in 720 ILCS 5/11-9.3(d)(1), are permitted to be present. The law requires child sex offenders to remain away from a broad range of vaguely defined locations, thereby preventing those subject to its restrictions from going to church, going to public libraries, raising their families, and meaningfully participating in many recreational and social activities. The vagueness of the law's restrictions leaves its subjects, state officials, and the general public unsure of where and when simply being present constitutes a felony offense. Plaintiffs contend that the vagueness of the laws violates Plaintiffs' rights under the First and Fourteenth Amendment of the United States Constitution.

[1] All headings and sub-headings are reproduced from the Plaintiffs' Complaint for the convenience of the Court and the parties and are not admissions.

In particular, Plaintiffs challenge four sections of the law:

(1) 720 ILCS 5/11-9.3(c), which prohibits a child sex offenders from knowingly being present at any "facility providing programs or services exclusively directed toward persons under the age of 18";

(2) 720 ILCS 5/11-9.3(c-2), which makes it unlawful for a child sex offender "to participate in a holiday event involving children under 18 years of age";

(3) 720 ILCS 5/11-9.4-1(b) and (c), which make it unlawful for a child sex offender or a sexual predator to "knowingly be present in any public park building or on real property comprising any public park" or to "knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park."[2]; and

(4) 720 ILCS 5/11-9.3(b) which makes it unlawful for a child sex offender to "knowingly loiter within 500 feet of a school building or real property comprising any school while persons under the age of 18 are present in the building or on the grounds."

The Plaintiffs seek temporary and permanent injunctive relief, as well as declaratory relief, on the grounds that these four sections of the criminal code are unconstitutional on their face and as applied. Each statute is void for vagueness and violates Plaintiffs' rights to procedural and substantive due process.

ANSWER: Defendants admit that Plaintiffs purport to challenge the provisions listed in Paragraph 1, but denies that these provisions are unconstitutional, either on their face or as applied to Plaintiffs. Additionally, Defendants note that Plaintiffs have withdrawn their vagueness challenge to 720 ILCS 5/11-9.4-1(b). *See* Dkt. 36 at 15 n.7. Defendants further admit that Plaintiffs purport to bring this action pursuant to 42 U.S.C. § 1983 and 28

[2] The restrictions imposed by 720 ILCS 5/11-9.4-1 (b) and (c) overlap with restrictions imposed under another section of the Illinois Criminal Code — *e.g.*, 720 ILCS 5/11-9-3.1(b-2), which makes it unlawful for a child sex offender to "knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park while persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds." Plaintiffs are subject to both of these restrictions because they are defined as "child sex offenders" under the Illinois Criminal Code. As set forth herein, Plaintiffs challenge only 720 ILCS 5/11-9.4-1(c), which is broader than 5/11-9-3.1(b-2) and does not contain clarifying language about "approach[ing], contact[ing] or communicat[ing]" with minors.

U.S.C. §2201, and the First and Fourteenth Amendments to the United States Constitution, and admit that Plaintiffs seek injunctive and declaratory relief, but denies that Plaintiffs are entitled to relief under any of these authorities. Defendants deny all remaining allegations of Paragraph 1.

Jurisdiction and Venue

2. Jurisdiction is proper in this court pursuant to 28 U.S.C. §1331 because this action arises under federal law. Specifically, this case arises under 42 U.S.C. §1983 and alleges violations of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution.

ANSWER: Defendants admit that the United States District Court for the Northern District of Illinois has jurisdiction over proper lawsuits brought under 42 U.S.C. § 1983. Defendants deny all remaining allegations of Paragraph 2.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), as a substantial part of the events giving rise to Plaintiffs' claims occurred in the Northern District of Illinois.

ANSWER: Defendants admit that venue is proper.

4. Declaratory relief is authorized under 28 U.S.C. § 2201. A declaration of law is necessary and appropriate to determine the respective rights and duties of parties to this action.

ANSWER: Defendants admit that 28 U.S.C. § 2201 authorizes the Court to grant declaratory relief in appropriate cases, but denies that declaratory relief is appropriate in this case.

The Parties

5. Plaintiff John Doe 1 currently resides in Des Plaines, Illinois. He pled guilty to a qualifying offense in 2012, making him a child sex offender as defined in 720 ILLS 5/11-9.3(d)(1); he is registered as a sex offender in Illinois; and he is currently subject to the restrictions contained in 720 ILLS 5/11-9.3 and 720 ILLS 5/11-9.4-1.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 5.

6. Plaintiff John Doe 2 was previously a resident of Arlington Heights, Illinois and Romeoville, Illinois. He pled guilty to a qualifying offense in January 2000, making him a child

sex offender as defined in 720 ILCS 5/11-9.3(d)(1). John Doe 2 is registered as a sex offender in Illinois. John Doe 2 recently moved to Omaha, Nebraska. He plans to visit Illinois frequently to visit his daughter, granddaughter and great granddaughter who live in Romeoville, Illinois. Whenever John Doe 2 is in Illinois, he is subject to the restrictions contained in 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 6.

7. Plaintiff John Doe 3 currently resides in Morton Grove, Illinois. He pled guilty to a qualifying offense in 2001, making him a child sex offender as defined in 720 ILCS 5/11-9.3(d)(1); he is registered as a sex offender in Illinois; and he is currently subject to the restrictions contained in 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 7.

8. Plaintiff John Doe 4 currently resides in Freeport, Illinois. He pled guilty to a qualifying offense in 2005, making him a child sex offender as defined in 720 ILCS 5/11-9.3(d)(1); he is registered as a sex offender in Illinois; and he is currently subject to the restrictions contained in 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 8.

9. Plaintiff Jane Doe currently resides in Urbana, Illinois. She pled guilty to a qualifying offense in January 2014, making her a child sex offender as defined in 720 ILCS 5/11-9.3(d)(1). Jane Doe is registered as a sex offender in Illinois; and she is currently subject to the restrictions contained in 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 9.

10. Defendant Attorney General Lisa Madigan is sued in her official capacity as the Attorney General of the State of Illinois. The Attorney General of the State of Illinois is responsible for executing and administering the laws of the State of Illinois and is charged with advising state's attorneys throughout the state.

ANSWER: Defendants admit that the Attorney General is sued in her official capacity, and further admit that the Attorney General is charged with advising state's attorney's throughout the state. Defendants admit that the Attorney General is responsible for

enforcing certain laws as provided by statute, and for administering the provisions of certain laws; including the Crime Victims Compensation Act (740 ILCS 45/1 et seq.), Violent Crime Victims Assistance Act (725 ILCS 240/1 *et seq*.), Charitable Trust Act (760 ILCS 55/1 *et seq*.), Solicitation for Charity Act (225 ILCS 460/1 *et seq*.), and Franchise Disclosure Act of 1987 (815 ILCS 705/1 *et seq*.); but deny that the Attorney General is responsible for executing and administering every law of the State of Illinois.

11. Under Illinois law, Defendant Madigan has the authority to participate in and assist with criminal prosecutions, including charges under 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1. Defendant Madigan also has the authority to consult with and advise Illinois State's Attorneys concerning criminal prosecutions. (See 15 ILCS 205/4).

ANSWER: Defendants admit the allegations of Paragraph 11.

12. Defendant Madigan has been and continues to be directly involved in the enforcement of 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1 by defending the statutes in state court criminal appeals.

ANSWER: Defendants admit the allegations of Paragraph 12.

13. Defendant Leo P. Schmitz is the Director of the Illinois State Police, and is responsible for executing and administering the laws of the State of Illinois, including the statutes challenged herein. He is sued in his official capacity.

ANSWER: Defendants admit that Director Schmitz is sued in his official capacity as Director of the Illinois State Police ("ISP"). Defendants further admit that Director Schmitz is responsible for enforcing and administering various laws of the State of Illinois, including the statutes challenged herein. Defendants deny that Director Schmitz is responsible for executing and administering every law of the State of Illinois, and deny all remaining allegations of Paragraph 13.

The Particular Provisions of the Statutes at Issue in this Lawsuit

14. **720 ILCS 5/11-9.3(c):** This provision prohibits child sex offenders from being "associated with" or "present at" any facility that provides programs or services exclusively directed towards minors. It states in pertinent part as follows:

> It is unlawful for a child sex offender to knowingly operate, manage, be employed by, volunteer at, be associated with, or knowingly be present at any: (i) facility providing programs or services exclusively directed toward persons under the age of 18.

ANSWER: Defendants admit that Paragraph 14 includes a partial quotation of 720 ILCS 5/11-9.3(c) ("Section 9.3(c)"). Defendants admit that Section 9.3(c) prohibits child sex offenders from being present at any facility that *only* provides programs or services directed to minors, such as a children's museum, a Girl Scout camp, or a dance studio that only offers classes to children, but deny that the provision bars child sex offenders from being present in any facility that provides programs or services to children, but also provides other programs or services to adults.

15. **720 ILCS 5/11-9.3(c-2):** This provision makes it unlawful for a child sex offender to participate in "a holiday event" involving children under 18 years of age, except for one's own children. It reads in pertinent part as follows:

> It is unlawful for a child sex offender to participate in a holiday event involving children under 18 years of age, including but not limited to distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, being employed as a department store Santa Claus, or wearing an Easter Bunny costume on or preceding Easter...This subsection does not apply to a child sex offender who is a parent or guardian of children under 18 years of age that are present in the home and other non-familial minors are not present.

ANSWER: Defendants admit that Paragraph 14 includes a partial quotation of 720 ILCS 5/11-9.3(c-2) ("Section 9.3(c-2)"). Defendants further admit that Section 9.3(c-2) bars child sex offenders from participating in holiday events centered around children or primarily for children, but deny that the provision bars them from participating in all holiday events where children are present.

16. **720 ILCS 5/11-9.4-1(b) and (c):** These provisions make it unlawful for a child sex offender or a sexual predator to "knowingly be present in any public park" and/or to "knowingly loiter on a public way within 500 feet" of a public park. They read in pertinent part as follows:

> It is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park.
>
> It is unlawful for a sexual predator or a child sex offender to knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park.

ANSWER: Defendants admit the allegations of Paragraph 16.

17. **720 ILCS 5/11-9.3(b):** This provision makes it unlawful for a child sex offender to "knowingly loiter within 500 feet of a school building or real property comprising any school while persons under the age of 18 are present in the building or on the grounds." It reads in pertinent part as follows:

> It is unlawful for a child sex offender to knowingly loiter within 500 feet of a school building or real property comprising any school while persons under the age of 18 are present in the building or on the grounds, unless the offender is a parent or guardian of a student attending the school and the parent or guardian is: (i) attending a conference at the school with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion and notifies the principal of the school of his or her presence at the school or has permission to be present from the superintendent or the school board or in the case of a private school from the principal.[3]

ANSWER: Defendants admit the allegations of Paragraph 17.

18. Each of these provisions violates the Constitution by failing to provide sufficient clarity to allow a person of ordinary intelligence to understand and discern precisely what conduct is prohibited.

ANSWER: Defendants deny the allegations of Paragraph 18.

19. Each of these provisions violates the Constitution by failing to provide sufficient guidance to law enforcement officials and prosecutors, which thereby encourages arbitrary enforcement.

ANSWER: Defendants deny the allegations of Paragraph 19.

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[3] 720 ILCS 5/11-9.3(d)(11) defines "loiter" as follows: "(i) Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public park property; (ii) Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public park property, for the purpose of committing or attempting to commit a sex offense; (iii) Entering or remaining in a building in or around school property, other than the offender's residence."

20. The vague prohibitions set forth in these statutes unconstitutionally interfere with the Plaintiffs' fundamental rights, including their right to engage in free speech, their right to practice their religions, and their right to organize their family affairs.

ANSWER: Defendants deny the allegations of Paragraph 20. Additionally, Defendants note that Plaintiffs have withdrawn their vagueness challenge to 720 ILCS 5/11-9.4-1(b). ***See*** **Dkt. 36 at 15 n.7.**

21. No state agency or court has given a limiting construction to any of these provisions.

ANSWER: Defendants deny the allegations of Paragraph 21. On April 3, 2018, the Third District of the Appellate Court of Illinois decided *People v. Haberkorn*, 2018 IL App (3d) 160599. The Appellate Court reversed defendant's conviction of unlawful presence at a facility providing services exclusively directed toward children by a child sex offender [720 ILCS 5/11-9.3(c)]. Defendant was not present at a facility providing services "exclusively" directed toward children when he boarded a bus to accompany his cousin and her three children on a field trip offered as part of an Easter Seals parenting program. The parenting program was directed toward adults and families, and did not provide services exclusively for children. In reversing the defendant's conviction, the court stated that "

> **[T]he statute excludes a convicted sex offender from being present at a facility whose services are directed solely toward children. Had the legislature intended to exclude convicted sex offenders from a facility providing services directed toward children and adults, it would have omitted the term "exclusively." It did not.**
>
> **The statute under which the State charged defendant does not attempt to prohibit convicted sex offenders from being present at venues where children together with their parents congregate.**

Id. **¶¶ 30-31.**

Factual Allegations

JOHN DOE 1

22. John Doe 1 is a 58-year-old resident of Des Plaines, Illinois. He pled guilty in 2012 to one count of aggravated possession of child pornography (720 ILCS 5/11-20.1). Because of this conviction, John Doe 1 is classified as a "child sex offender" under 720 ILCS 5/11-9.3(d)(1).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 22.

23. John Doe 1 was sentenced to two years probation, which includes sex offender therapy, a curfew, a prohibition on Internet use, and two mandated polygraph tests. John Doe 1 has not been accused of committing any criminal conduct since his conviction.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 23.

24. John Doe 1 seeks to go to a public library to check out books, hear lectures and attend book signings, but he is afraid to do so because the public libraries he seeks to go to all have children's libraries within the main libraries.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 24.

25. When John Doe 1 was on probation, his probation officer told him that he was not permitted to go to any libraries even after probation ended.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 25.

26. In particular, John Doe 1 has sought to go to the Niles Public Library to hear a lecture on the music of the Beatles in 2015, and he presently seeks to attend a monthly philosophy discussion meeting that takes place at the Northbrook Public Library.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 26.

27. John Doe 1 currently wants to participate in activities at public libraries, but he is unable to do so for fear of violating 720 ILCS 5/11-9.3(c). He fears that he could be arrested or charged with a felony for even being present at a library.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 27.

28. John Doe 1 is unsure of the meaning or extent of the restrictions on being "associated with" or "present at" any facility that provides programs or services exclusively directed towards minors imposed under 720 ILCS 5/11-9.3(c).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 28.

29. In addition, John Doe 1 seeks to play golf at park-district owned golf courses, but he is unsure of the meaning or extent of the restrictions imposed under 720 ILCS 5/11-9.4-1(b) and (c). John Doe 1 is in fear of violating 720 ILCS 5/11-9.4-1 and is thus afraid he could be arrested or charged with a crime if he attempts to play golf at park-district owned facilities, even when no children are present.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 29.

JOHN DOE 2

30. John Doe 2 is a 77-year-old former resident of Arlington Heights, Illinois and Romeoville, Illinois. He currently lives in Nebraska. He pled guilty in 2000 to one count of indecent solicitation of a child (720 ILCS 5/11-6). John Doe 2 is thus classified as a "child sex offender" under 720 ILCS 5/11-9.3(d)(1).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 30.

31. John Doe 2 was sentenced to four years of probation, which he successfully completed. John Doe 2 has not been accused of committing any criminal conduct since his conviction.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 31.

32. John Doe 2's daughter owns a home in Romeoville, Illinois. She lives there with her daughter (John Doe 2's granddaughter) and her granddaughter (John Doe 2's great-granddaughter).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 32.

33. There is small set of playground equipment in the subdivision in which John Doe 2's daughter resides. The playground equipment is within 500 feet of John Doe 2's daughter's house.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 33.

34. John Doe 2 wishes to visit his family at their home in Romeoville to spend time with his daughter, granddaughter and great-granddaughter and to share meals and holidays with his family. John Doe 2 also wants to assist with taking care of his great-granddaughter, including driving her home from school, helping with her school work, and preparing meals while her mother is at work.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 34.

35. John Doe 2 is uncertain whether he is potentially violating 720 ILCS 5/11-9.4-1(c)'s prohibition on "knowingly loiter[ing]" within 500 feet of a public park when he visits with his family at their home.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 35.

36. John Doe 2 has received conflicting information from various law enforcement bodies about whether he is permitted to spend time at his daughter's house. Romeoville police told John Doe 2 that he is not permitted to even visit the house because of its proximity to a park. Illinois State Police said he can visit his family, but he cannot "loiter" outside of the home and cannot stay overnight.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 36.

37. John Doe 2 also wishes to assist with transporting his great-granddaughter home from school when her mother is working. John Doe 2 has been prohibited from picking up his great granddaughter from her bus stop because Romeoville police have deemed doing so "loitering" under 720 ILCS 5/11-9.3.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 37.

38. John Doe 2 is in fear that he could be arrested and/or charged with a crime for simply visiting his family, being present on his daughter's property, or picking up his great-granddaughter from her bus stop.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 38.

JOHN DOE 3

39. John Doe 3 is a 50-year-old male who currently resides in Morton Grove, Illinois. John Doe 3 pled guilty in 2001 to one count of attempted child luring (720 ILCS 5/10-5(b)(10)). As a result of his conviction, John Doe 3 is a lifetime registrant on the Sex Offender Registry and is classified as a "child sex offender" under 720 ILCS 5/11-9.3(d)(1).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 39.

40. John Doe 3 served two and a half years in state prison at Pinckneyville Correctional Center, followed by one year of mandatory supervised release.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 40.

41. There were and are no allegations that John Doe 3 ever engaged in any inappropriate contact with any minor. There is no evidence or suggestion that John Doe 3 has any sexual predilection for or interest in sexual activity with minors.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 41.

42. John Doe 3 is divorced and has four children, ages 19, 22, 24, and 26, and two grandchildren, ages two and three.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 42.

43. John Doe 3 seeks to go to his grandchildren's birthday parties where other children attend; he seeks to attend his town's Fourth of July parade with his grandchildren; and he seeks to attend his family's annual Fourth of July picnic, where other families and their minor children attend.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 43.

44. John Doe 3 currently wants to participate in these holiday activities, but he is unable to do so because he is unsure of the meaning or extent of the proscriptions imposed under

720 ILCS 5/11-9.3(c-2) and thus is in fear of violating 720 ILCS 5/11-9.3(c-2), in particular, the terms that prohibit his ability to "participate" in "a holiday event."

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 44.

45. John Doe 3 is fearful he will be arrested or charged with a crime while attending and or participating in these various activities.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 45.

46. In addition, John Doe 3 also seeks to take his grandchildren (a) to fast food restaurants like McDonalds that have playground areas for children; (b) Chuck E. Cheese-like family restaurants that have arcade areas for children; and (c) children's movies that are rated "PG."

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 46.

47. John Doe 3 currently wants to participate in these various activities, but he is unable to do so because he is unsure of the meaning or extent of the proscriptions on being "present at" a facility that provides "services exclusively directed to" minors under 720 ILCS 5/11-9.3(c).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 47.

48. John Doe 3 is fearful that he could be arrested and charged with a felony for attending and/or participating in these activities.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 48.

49. In addition, John Doe 3 also seeks to take his grandchildren to museums such as the Field Museum and the Museum of Science and Industry, which are on park district property.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 49.

50. John Doe 3 is unsure of the meaning or extent of the proscriptions of 720 ILCS 5/11-9.4-1(b) & (c), which prohibit him from being "present" at any "public park." He is in fear that he is violating the law by going to these museums with his grandchildren.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 50.

51. John Doe 3 is fearful he could be arrested and/or charged with a crime while attending and/or participating in these activities.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 51.

JOHN DOE 4

52. John Doe 4 is a 52-year-old resident of Freeport, Illinois. He pled guilty in 2005 to aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b)). As a result of his conviction, John Doe 4 is a lifetime registrant on the Sex Offender Registry and is classified as a "child sex offender" under 720 ILCS 5/11-9.3(d)(1).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 52.

53. John Doe 4 was sentenced to four years of probation, which he successfully completed.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 53.

54. John Doe 4 is a member of a church in Freeport. He has disclosed to the pastor that he is on the Sex Offender Registry. The pastor supports his attendance at the church and participation in its activities.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 54.

55. The church has playground equipment on its property that is available for the use of children of church members during or after services. The church also has a nursery for children of church members and has weekly youth ministries and children's services for children ages 4-12.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 55.

56. John Doe 4 wishes to be involved in several activities at his church, including (a) attending Sunday services, (b) participating in a weekly support group, and (c) volunteering to help maintain the grounds of the church when children are not present.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 56.

57. John Doe 4 is deterred from engaging in these activities because he is afraid that he is violating 720 ILCS 5/11-9.3(c)'s prohibition on being "present at," "volunteer[ing] at" or being "associated with" a facility that provides services exclusively directed to minors. He is unsure of the meaning or extent of the proscriptions of 720 ILCS 5/11-9.3(c) and thus is in fear of violating the law.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 57.

58. John Doe 4 is fearful he will be arrested or charged with a crime while attending and or participating in activities at his church.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 58.

JANE DOE

59. Jane Doe is a 48-year-old resident of Urbana, Illinois. Jane Doe pled guilty in 2014 to aggravated criminal sexual abuse, making her a "child sex offender" as defined in 720 ILCS 5/11-9.3(d)(1).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 59.

60. Jane Doe was sentenced to 48 months of probation. Since her conviction, Jane Doe has not been accused of committing any criminal conduct.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 60.

61. Prior to her conviction, Jane Doe was an active participant at a Baptist church in Champaign.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 61.

62. Jane Doe continues to attend this church, but she is uncertain whether her presence in this church might violate the law. Specifically, the church has a youth ministry that provides activities for minors (such as youth Bible study, children's church, and nursery during church service). Jane Doe does not know whether her attendance at this church violates the prohibition on being "associated with" or "present at" any facility that provides programs or services exclusively directed towards minors set forth in 720 ILCS 5/11-9.3(c).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 62.

63. Jane Doe also visits other Baptist churches in the Urbana-Champaign area, but does not know whether her presence in those churches might run afoul of the prohibition on "knowingly loiter[ing] within 500 feet of a school set forth in in 720 ILCS 5/11-9.3(b). Jane Doe is deterred from attending church services because of her uncertainty about whether she is violating the law by being on the church premises.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 63.

64. In addition, Jane Doe's church is part of a group of Baptist churches call a Baptist District. One of the churches in the District holds religious services in an auditorium that is attached to a school. Jane Doe would like to attend these services but is deterred from doing so because she does not know whether she would be in violation of the prohibitions set forth in 720 ILCS 5/11-9.3(b) and 720 ILCS 5/11-9.3(c).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations of Paragraph 64.

ALLEGATIONS COMMON TO ALL PLAINTIFFS

65. Each of the Plaintiffs is harmed by the vagueness of the challenged statutes. They cannot exercise fundamental liberties such as attending church, engaging in First Amendment-protected activities, or arranging their family affairs, without fear of accidentally committing a felony offense or being subject to arbitrary enforcement.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the Plaintiffs' subjective fears. Defendants deny that the challenged statutes are vague, and

deny all remaining allegations of Paragraph 65. Additionally, Defendants note that Plaintiffs have withdrawn their vagueness challenge to 720 ILCS 5/11-9.4-1(b). *See* Dkt. 36 at 15 n.7.

66. Each of the Plaintiffs in this case is harmed by the statute's undue restrictions on activities protected by the Constitution's guarantees of freedom of religion, freedom of association, freedom to raise one's children, and freedom of speech.

ANSWER: Defendants deny the allegations of Paragraph 66.

67. Each of the Plaintiffs is aware that the Illinois Attorney General has given no guidance, interpretation, or limiting construction to law enforcement, the public, or to registrants of these provisions under 720 ILCS 5/11-9.3 or 720 ILCS 5/11-9.4.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the Plaintiffs' awareness. Defendants deny all remaining allegations of Paragraph 65.

68. Each of the challenged provisions violates the Constitution by failing to provide sufficient guidance to law enforcement officials and prosecutors, encouraging arbitrary enforcement.

ANSWER: Defendants deny the allegations of Paragraph 68.

69. Each of the challenged provisions impermissibly interferes with fundamental liberties. The threat of enforcement severely limits Plaintiffs' participation in religious, political, and social life.

ANSWER: Defendants deny the allegations of Paragraph 69.

COUNT I
42 U.S.C. § 1983: FOURTEENTH AMENDMENT
PROCEDURAL DUE PROCESS
***(Monell* Express Policy Claim For Declaratory and Injunctive Relief)**

70. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above. Moreover, to the extent the heading for Count I asserts a "*Monell* Express Policy Claim," Defendants deny that *Monell* claims are applicable to state officials.

71. The Due Process Clause of the Fourteenth Amendment prohibits states from enforcing laws that are unconstitutionally vague. As a matter of due process, statutory requirements must be written with sufficient clarity that persons of ordinary intelligence need not guess at their meaning.

ANSWER: Defendants deny the allegations of Paragraph 71.

72. The challenged statutory provisions are invalid under the vagueness doctrine because those provisions fail to provide a person of ordinary intelligence fair notice of what is required and what is prohibited under the statute, making it impossible for the Plaintiffs to conform their conduct to the statutory requirements and making it likely that law enforcement officials will enforce the statutes in different ways in different places or against different people.

ANSWER: Defendants deny the allegations of Paragraph 72. Additionally, Defendants note that Plaintiffs have withdrawn their vagueness challenge to 720 ILCS 5/11-9.4-1(b). ***See*** **Dkt. 36 at 15 n.7.**

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) issue a preliminary and then permanent injunction prohibiting enforcement of 720 ILCS 5/11-9.3(c); 720 ILCS 5/11-9.3(c-2); 720 ILCS 5/11-9.4-1(b) and (c); and 720 ILCS 5/11-9.3(b);

(b) issue a declaratory judgment that 720 ILCS 5/11-9.3(c); 720 ILCS 5/119.3(c-2); 720 ILCS 5/11-9.4-1(b) and (c); and 720 ILCS 5/11-9.3(b) are unconstitutional both on their face and as applied to Plaintiffs;

(c) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

(d) grant Plaintiffs any other relief the Court deems appropriate.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

COUNT II
42 U.S.C. § 1983: FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS
***(Monell* Express Policy Claim For Declaratory and Injunctive Relief)**

73. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

Moreover, to the extent the heading for Count II asserts a "*Monell* Express Policy Claim,"

Defendants deny that *Monell* claims are applicable to state officials.

74. The Due Process Clause of the Fourteenth Amendment prohibits states from enforcing laws that impermissibly interfere with or inhibit the exercise of fundamental liberties unless those laws are narrowly tailored to serve a compelling state interest.

ANSWER: Defendants deny the allegations of Paragraph 74.

75. Freedom of personal choice in matters affecting family relationships is a liberty interest protected by due process.

ANSWER: Defendants deny the allegations of Paragraph 75.

76. The challenged statutes violate the Plaintiffs' fundamental rights because they impermissibly interfere with Plaintiffs' ability to organize their family affairs and are not narrowly tailored to serve a compelling state interest.

ANSWER: Defendants deny the allegations of Paragraph 76.

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) issue a preliminary and then permanent injunction prohibiting enforcement of 720 ILCS 5/11-9.3(c); 720 ILCS 5/11-9.3(c-2); 720 ILCS 5/11-9.4-1(b) and (c); and 720 ILCS 5/11-9.3(b);

(b) issue a declaratory judgment that 720 ILCS 5/11-9.3(c); 720 ILCS 5/119.3(c-2); 720 ILCS 5/11-9.4-1(b) and (c); and 720 ILCS 5/11-9.3(b) are unconstitutional both on their face and as applied to Plaintiffs;

(c) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

(d) grant Plaintiffs any other relief the Court deems appropriate.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

COUNT III
42 U.S.C. § 1983: FIRST AMENDMENT
***(Monell* Express Policy Claim For Declaratory and Injunctive Relief)**

77. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

ANSWER: Defendants incorporate by reference their answers to the paragraphs above.

Moreover, to the extent the heading for Count III asserts a "*Monell* Express Policy Claim,"

Defendants deny that *Monell* claims are applicable to state officials.

78. Subject to exceptions not applicable here, a law is overbroad when it impermissibly extends to substantially interfere with First Amendment liberties. With regard to such interference, the law must be narrowly tailored to serve a compelling state interest.

ANSWER: Defendants deny the allegations of Paragraph 78.

79. A law is subject to invalidation *in toto* when its overbreadth is substantial when judged in relation to its plainly legitimate sweep.

ANSWER: Defendants deny the allegations of Paragraph 79.

80. The challenged statutes are unconstitutional as applied to Plaintiffs' exercise of their First Amendment rights because they are not narrowly tailored to achieve a compelling state interest. The statutes are properly subject to invalidation *in toto* because this overbreadth is substantial when judged in relation to their plainly legitimate sweep.

ANSWER: Defendants deny the allegations of Paragraph 80.

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) issue a preliminary and then permanent injunction prohibiting enforcement of 720 ILCS 5/11-9.3(c); 720 ILCS 5/11-9.3(c-2); 720 ILCS 5/11-9.4-1(b) and (c); and 720 ILCS 5/11-9.3(b);

(b) issue a declaratory judgment that 720 ILCS 5/11-9.3(c); 720 ILCS 5/119.3(c-2);

(c) 720 ILCS 5/11-9.4-1(b) and (c); and 720 ILCS 5/11-9.3(b) are unconstitutional both on their face and as applied to Plaintiffs;

(d) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

(e) grant Plaintiffs any other relief the Court deems appropriate.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief whatsoever.

Plaintiffs demand trial by jury.

ANSWER: Defendants deny that a jury trial is appropriate in this case because the Complaint seeks only equitable relief.

GENERAL DENIAL

Defendants deny each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

Affirmative Defense No. 1: Waiver

Plaintiffs have withdrawn their vagueness challenge to 720 ILCS 5/11-9.4-1(b). *See* Dkt. 36 at 15 n.7. Accordingly, Count I should be dismissed as to 720 ILCS 5/11-9.4-1(b).

Affirmative Defense No. 2: Lack of Standing

To establish standing for their facial challenges, the Plaintiffs must demonstrate that they have "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [that] there exists a credible threat of prosecution thereunder.' *Schirmer v. Nagode*, 621 F.3d 581, 586 (7th Cir. 2010), *quoting Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 302 (1979). "When plaintiffs 'do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,' they do not allege a dispute susceptible to resolution by a federal court." *Id.*, *quoting Babbitt*, 442 U.S. at 298-99. To establish standing for a First Amendment claim, a plaintiff must show "an intention to engage in a course of conduct arguably

affected with a constitutional interest, but proscribed by a statute, and [that] there exists a credible threat of prosecution thereunder." *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 590-91 (7th Cir. 2012). For First Amendment challenges, the credible threat of prosecution can be established by the existence of the criminal statute itself. *Id.* at 591.

In this case, the only plaintiff with standing to raise a First Amendment challenge is Jane Doe, who challenges 720 ILCS 5/11-9.3(b) based on her desire to attend church services in a school. Dkt. 1 ¶ 63-64. Plaintiffs lack standing to raise their other First Amendment challenges because the activities they seek to pursue clearly fall outside the scope of the challenged statute. *Schirmer*, 621 F.3d at 587. While both Jane Doe and John Doe 4 allege First Amendment challenges to 720 ILCS 5/11-9.3(c) (Dkt. 1 ¶¶ 56-57, 62), neither of these Plaintiffs have standing to bring these challenges because the activities they allege clearly fall outside the scope of the statute. John Doe 1 similarly lacks standing to bring a First Amendment challenge to 720 ILCS 5/11-9.3(c) (Dkt. 1 ¶ 27) because the statute does not prohibit a child sex offender from visiting public libraries.

Plaintiffs have not alleged any credible threat of prosecution with respect to any of the other provisions. The only allegation that comes close to a threat of prosecution with respect to the other statutes is John Doe 2's allegation that Romeoville police have told him he is prohibited from visiting his daughter under 720 ILCS 5/11-9.4-1 due to its proximity to a park. Dkt. 1 ¶ 36. But, again, a plaintiff lacks standing if his activities clearly fall outside the statute's scope. John Doe 2's visits to his daughter's home clearly fall outside the scope of 720 ILCS 5/11-9.4-1 because visiting his daughter does not require loitering on a public way. To the extent John Doe 2 challenges either 720 ILCS 5/11-9.3(b) or 720 ILCS 5/11-9.4-1 based on his desire to pick up his great-granddaughter at a school bus stop (Dkt. 1 ¶ 37), it is unclear why that activity would

be prohibited by any of the challenged provisions. Similarly, Plaintiffs also lack standing to bring their as-applied challenges because the State has not sought to enforce any of the challenged provisions against them. *See Brandt v. Vill. of Winnetka, Ill.*, 612 F.3d 647, 650 (7th Cir. 2010) ("[I]t is hard to see how a court can evaluate an as-applied challenge sensibly until a law *is* applied, or application is soon to occur and the way in which it works can be determined.").

In sum, while Jane Doe has standing to raise a facial First Amendment challenge to 720 ILCS 5/11-9.3(b), none of the Plaintiffs have standing to raise a facial or as-applied challenge to 720 ILCS 5/11-9.3(c), 720 ILCS 5/11-9.3(c-2), or 720 ILCS 5/11-9.4-1. This Court should dismiss Counts I and II with respect to all four challenged provisions, and should dismiss Count III with respect to 720 ILCS 5/11-9.3(c), 720 ILCS 5/11-9.3(c-2), and 720 ILCS 5/11-9.4-1.

WHEREFORE, the Defendants request this Honorable Court deny the relief requested in Plaintiff's Complaint, and order any further relief the Court deems reasonable and just.

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Respectfully submitted,

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