

No. 122034

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF)	Appeal from the Appellate
ILLINOIS,)	Court of Illinois, Third Dist.,
)	No. 3-14-0627
Petitioner-Appellant,)	
)	
v.)	_____
)	
MARC PEPITONE,)	Appeal from the 12th Judicial
)	Circuit, Will County, 13 CM 844
Defendant-Appellee.)	
)	_____
)	
)	
)	Hon. Carmen Goodman,
)	Judge Presiding.
)	

**BRIEF OF ILLINOIS VOICES FOR REFORM, *AMICUS CURIAE* IN
SUPPORT OF DEFENDANT-APPELLEE MARC PEPITONE**

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INTEREST OF AMICUS CURIAE

Amicus Curiae Illinois Voices for Reform is a non-profit 501(c)(4) organization that advocates for the elimination of sexual abuse and the preservation of civil rights for all individuals through the use of effective, evidence-based legislation grounded in empirical research.

Illinois Voices for Reform seeks to educate public officials about the harmful collateral consequences of the restrictive laws that regulate the lives of people who have been convicted of sex offenses. Many of Illinois Voices' volunteers are themselves registrants or have loved ones who are registrants, and as such, Illinois Voices is intimately aware of the human costs associated with onerous restrictions imposed under Illinois law. In evaluating the legal issues at stake in this matter, Illinois Voices urges this Court to take into account the damage these restrictions cause to registrants, their families, and their loved ones.

ARGUMENT

720 ILCS 5/11-9.4-1(b) (2012) (hereinafter “the parks restriction”) makes it a crime for any individual classified as 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.” The statute does not require the state to make any showing that the individual entered the park for an improper purpose (such as to contact minors) or even that any minors were present in the park property at the time.

In finding the statute failed rational basis review, the appellate court took note of the troubling fact that the statute criminalizes “countless types of innocent conduct, much like walking a dog as [Defendant] was doing at the time he was arrested.” *People v. Pepitone*, 2017 IL App (3d) 140627, ¶ 20.¹

Indeed, as the stories below demonstrate, the parks restriction exposes people to potential criminal prosecution for engaging in all kinds of innocent—and oftentimes constitutionally protected—conduct such as attending government meetings that take place on park district property; visiting museums and other cultural institutions located on park district property; supervising their own children at parks and playgrounds; and participating in adult recreation activities at which no children are present.

This extremely broad restriction has little meaningful relationship to protecting minors from the risk of victimization or promoting public safety. Meanwhile, it subjects registrants and their families to a lifetime of exclusion from productive, pro-social activities of parenting and community

¹ Likewise, in *Packingham v. North Carolina*, ___ U.S. ___, 137 S.Ct. 1730 (2017), the Supreme Court recently cautioned that courts must apply constitutional scrutiny to “sweeping restrictions” enacted for the “preventative purpose of keeping convicted sex offenders away from vulnerable victims.” *Id.* at 1737 (finding a North Carolina law that made it a crime “for a registered sex offender to access a commercial social networking Web site” violated the First Amendment. The Court observed that while “it is clear that ... a legislature may pass valid laws to protect children and other sexual assault victims ... the assertion of a valid governmental interest ‘cannot, in every context, be insulated from all constitutional protections.’” *Id.* at 1736 (quoting *Stanley v. Georgia*, 394 U.S. 557, 563 (1969)) (internal citations omitted).

engagement that studies have shown are beneficial to rehabilitation and the prevention of recidivism. See, Amicus Brief of National Association for Rational Sexual Offense Laws (“NARSOL”) at 15–17 (citing studies showing that restrictions may exacerbate risk factors for recidivism and do not reduce recidivism rates); *Does 1-5 v. Snyder*, 834 F.3d 696, 704-05 (6th Cir. 2016) (noting numerous empirical studies suggesting that restrictive laws regulating sex offenders disserve public safety by “exacerbat[ing] risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities.”)

I. The Stories of Registrants Show That 720 ILCS 5/11-9.4-1(b) (2012) Criminalizes Innocent Conduct and Imposes Severe, Lifelong Penalties on Registrants and their Families

Like Mr. Pepitone, who was arrested for walking his dog, the people whose stories are recounted below seek access to public park property for lawful reasons that pose no threat to the community. Yet, Illinois law subjects them to criminal penalties if they so much as step onto park property. Illinois Voices for Reform urges the Court to take into account these stories when considering the constitutionality of Illinois’ extremely broad parks restriction.

A. Carol Nesteikis

Carol Nesteikis is the mother of a 30-year-old son, Adam, who is classified as a child sex offender. Adam has intellectual and developmental disabilities and functions at the level of a 10-year-old. Adam is classified as a

child sex offender because of a misdemeanor conviction for violation of 720 ILCS 5/11-9.1(a)(2) for which he was sentenced to probation. Adam was sexually molested by a neighbor who coerced him to expose himself to an underage female in the home. Adam received the same conviction and punishment as his own molester.

Before his arrest and conviction, Adam was an active participant in Special Olympics and special recreation programs for adults with disabilities. He participated in softball, swimming, weightlifting, bocce ball, and track and field, and had earned medals for his athletic achievements. Special Olympics and special recreation were Adam's primary source of social engagement. These teams enabled Adam to meet other adults with disabilities, stay physically fit and active, and have positive interactions with coaches and other people the community.

Because of his conviction, Adam is permanently prohibited from ever again engaging in Special Olympics or special recreation because these events take place on public park property. Adam is only required to register as a sex offender for ten years, but the restriction on entering public parks will apply for the rest of his life. Carol has watched her son regress as he is cut off from the support, socialization and services that once helped him thrive.

B. Tammy Bond

Due to a 2013 conviction, Tammy Bond is classified as a “child sex offender” and is subject to the parks restriction for life. Tammy works as a peer mentor coordinator at a Champaign, Illinois-based organization called First Followers Reentry, a non-profit that provides support and guidance to formerly incarcerated citizens seeking assistance with all aspects of reentry. First Followers operates a drop-in center at which ex-offenders can get help with finding housing, obtaining access to mental health and substance abuse treatment, looking for employment opportunities and applying for jobs, and obtaining vital documents (such as ID cards). First Followers also operates a workforce development program for men ages 18 to 24 that provides math and reading classes, financial literacy education, and mental health counseling.

The director of First Followers has asked Tammy and her colleagues to attend the Champaign City Council’s budget meetings to testify about the needs of First Followers’ clients. Tammy wants to go to these meetings to observe the budget process and advocate for her organization and its clients, but she is prohibited from attending because the Champaign City Council’s budget meetings take place at a recreation center that is situated on park district property.

Tammy has also been prevented from attending work-related community coalition meetings and outreach programs because these events

often take place in public parks. For example, First Followers conducted an outreach campaign at Champaign-Urbana Days (a community festival) this fall at which it provided information about its services to members of the community. Tammy couldn't attend because the event took place in a public park.

C. Wayne Greiter

Wayne Greiter is a 51-year-old resident of Morton Grove, Illinois. He has four adult children and two young grandchildren. As the result of a 2001 conviction, Greiter is classified as a "child sex offender" and is permanently banned from stepping foot in a public park under Illinois law.

Greiter treasures his relationships with his grandkids, and seeks the opportunity to take them to important educational and cultural institutions in Chicago such as the Field Museum and the Museum of Science and Industry. However, Greiter is prohibited from ever going to these museums because they are situated on Chicago Park District property.

D. Jenna Hough

Jenna Hough lives in Marseilles, Illinois, with her husband and four children. Due to a 2001 misdemeanor offense, Jenna's husband, Daniel, is classified as a "child sex offender" and is subject to the parks restriction for life although he has been off the state registry since 2015.

The prohibition on Daniel's being allowed to enter a park has had a harmful impact on the entire family. Jenna couldn't adequately supervise

four young children at a park alone, so her children missed out on the opportunity to enjoy the public playground and pool. Likewise, they had to stop going on family camping trips, which they used to enjoy. The Hough family has been excluded from attending family-friendly events that take place in parks, including farmers markets, movies in the park, and the Marseilles Renaissance Faire. The entire family has missed out on family reunions and picnics because they took place on park district property.

CONCLUSION

Illinois' sweeping parks restriction criminalizes a wide array of innocent conduct that poses no risk to public safety. The Court should take notice of the harmful impact the law has on both ex-offenders and on their loved ones when evaluating whether this law is a rational and proportionate means of advancing Illinois' public safety goals.

For the foregoing reasons, amicus Illinois Voices for Reform respectfully requests that this Court affirm the appellate court and hold that 720 ILCS 5/11-9.4-1(b) (2012) is unconstitutional.

Respectfully submitted,

/s/ Adele D. Nicholas

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CERTIFICATE OF COMPLIANCE

I, Adele D. Nicholas, certify that this brief conforms to the requirements of Supreme Court Rule 341. The length of this brief, excluding the cover, the statement of points and authorities, and the certificate of compliance and the certificate of service, is 1,560 words.

/s/ Adele D. Nicholas

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NOTICE OF FILING AND PROOF OF SERVICE

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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 November 15, 2017, the
foregoing Amicus Brief was filed with the Clerk of the Supreme Court of
Illinois using the court's electronic filing system in the above-entitled cause.

Undersigned counsel has served a copy of the Amicus Brief on the
persons named above with identified email addresses by email and will mail
one copy to the defendant-appellant in an envelope deposited in a U.S. mail
box in Chicago, Illinois, with proper postage prepaid.

If the motion for leave to file is granted, the undersigned will send 13 copies of the Amicus Brief to the Clerk of the above Court.

/s/ Adele D. Nicholas

