

No. _

IN THE SUPREME COURT OF THE UNITED STATES

—
M.Z.,

Petitioner,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.
—

EMERGENCY APPLICATION FOR STAY PENDING APPEAL

To the Honorable [Circuit Justice for the Third Circuit]
of the Supreme Court of the United States

APPLICATION FOR STAY

Petitioner, M.Z., respectfully applies for an emergency stay of a special condition imposed by the New Jersey State Parole Board that bans Petitioner from accessing all social media platforms, pending final resolution of Petitioner's appeal in the New Jersey Appellate Division.

This application arises from a condition that violates Petitioner's First Amendment rights. In *State v. R.K.*, 463 N.J. Super. 386 (App. Div. 2020), the New Jersey Appellate Division invalidated Parole's identical blanket social media ban, finding it to be facially unconstitutional under this court's holding in *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017).

The ongoing enforcement of this condition causes Petitioner irreparable harm. Courts have consistently held that 'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Am. Broad. Cos., Inc. v. Wells*, 669 F. Supp. 2d 483, 489 (D.N.J. 2009).

Moreover, the social media ban directly interferes with Petitioner's ability to seek and apply for employment, communicate with family, and participate in lawful online activity including use of dating applications. Petitioner is filing this application promptly after receiving notice of the New Jersey Supreme Court's denial of a motion for stay, which is dated May 6, 2025, but was not received until May 13, 2025.

Petitioner respectfully requests that this Court issue a stay of the challenged Parole condition pending the final disposition of Petitioner's appeal in the New Jersey Appellate Division.

STATEMENT OF THE CASE

Petitioner is a Tier One registrant under Megan's Law and is serving Parole Supervision for Life. On July 18, 2024, the New Jersey State Parole Board imposed a special condition barring Petitioner from accessing any social networking sites. Petitioner administratively appealed the condition. The Parole Board affirmed the restriction on November 27, 2024. The Parole Board denied a stay pending appeal on January 30, 2025.

Petitioner filed an appeal with the New Jersey Appellate Division, along with a motion for stay. The Appellate Division denied the stay on March 17, 2025. Petitioner promptly sought a stay from the New Jersey Supreme Court, which denied relief by order dated May 6, 2025. Petitioner did not receive that order until May 13, 2025. This application to the U.S. Supreme Court is therefore filed at the first practicable opportunity after exhausting all state court remedies.

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served a true and correct copy of the foregoing Emergency Application for Stay Pending Appeal on the following by email and/or first-class mail:

Office of the Attorney General
State of New Jersey
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Via email: CHRISTOPHER.JOSEPHSON@law.njoag.gov

Dated: May 14, 2025

Respectfully submitted,

M.Z., Pro Se



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

M.Z.,

Petitioner,

v.

NEW JERSEY STATE PAROLE BOARD,

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EMERGENCY APPLICATION FOR STAY PENDING APPEAL

To the Honorable [Circuit Justice for the Third Circuit]
of the Supreme Court of the United States

Petitioner, M.Z., respectfully applies for an emergency stay of a special condition imposed by the New Jersey State Parole Board that bans Petitioner from accessing all social media platforms, pending final resolution of Petitioner's appeal in the New Jersey Appellate Division.

This application arises from a condition that violates Petitioner's First Amendment rights. This Court established in *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017) that, in modern society, citizens - especially convicted sex offenders - have a First Amendment right to access social media, and that to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights. In *State v. R.K.*, 463 N.J. Super. 386, 232 A.3d 487 (App. Div. 2020), the New Jersey Appellate Division expanded the *Packingham* ruling to conclude that Parole's social media ban is "unconstitutional on its face because it completely denies access to R.K.'s ability to express himself in the protected forum of public debate through social networking." *Id.* at 411.

"The social networking bans imposed on R.K. are substantive because they infringe upon his constitutional right to free speech... Here, the parole officer should not be given the

authority to make the ban constitutional when we have determined it is unconstitutional... In light of *Packingham* and its progeny noted above, we are now constrained to conclude the social networking ban is unconstitutional on its face.” *Id.*

The ongoing enforcement of this condition causes Petitioner irreparable harm. Courts have consistently held that 'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Am. Broad. Cos., Inc. v. Wells*, 669 F. Supp. 2d 483, 489 (D.N.J. 2009).

Moreover, the harm is not limited to abstract constitutional deprivation. The social media ban directly interferes with Petitioner’s ability to:

- • Seek and apply for employment in the modern digital economy;
- • Communicate with family and support systems who primarily use these platforms;
- • Participate in lawful online activity, including use of dating applications vital to forming relationships as a member of the LGBTQ+ community.

This deprivation cannot be compensated by monetary damages. See *Croswell v. Shenouda*, 275 N.J. Super. 614, 628 (App. Div. 1994). The harm will persist and compound for the duration of the lengthy appellate process.

The New Jersey Supreme Court denied a stay by order dated May 6, 2025. However, Petitioner did not receive notice of this denial until May 13, 2025. This application is therefore being filed at the first practical opportunity following receipt of the denial, and is submitted in good faith and without delay.

This Court’s intervention is now the only available avenue to prevent further constitutional injury. Petitioner respectfully requests a stay of enforcement of the challenged parole condition pending the disposition of the state court appeal.

Respectfully submitted,

M.Z., Pro Se

Dated: May 14, 2025

SUPREME COURT OF NEW JERSEY
M-807/808/809 September Term 2024
090506

M.Z.,

Plaintiff-Movant,

v.

ORDER

New Jersey State Parole
Board,

Defendant-Respondent.

It is ORDERED that the motion for leave to file a reply brief (M-807) is granted; and it is further

ORDERED that the motion of M.Z. for oral argument (M-808) is denied; and it is further

ORDERED that the motion for stay (M-809) is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
6th day of May, 2025.


CLERK OF THE SUPREME COURT

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Exhibit A - Notice of Imposition of Special Condition - Social Media, July 18, 2024

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Exhibit G - Respondent's Motion Response

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Exhibit I - Appellate Division's denial of a stay, March 17, 2025

Exhibit J - Appellant's Motion to the NJ Supreme Court for a stay

Exhibit K - Respondent's Motion Response

Exhibit L - Appellant's Motion reply brief

Exhibit M - NJ Supreme Court's denial of a stay, May 6, 2025

Exhibit A

**NEW JERSEY STATE PAROLE BOARD
DIVISION OF PAROLE
NOTICE OF IMPOSITION OF SPECIAL CONDITION**

[REDACTED]

From: Nathaniel LHOWE
District Parole Supervisor, DO#02

Date:

The determination has been made to impose the following special condition in your case:

You are to refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in your name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee.

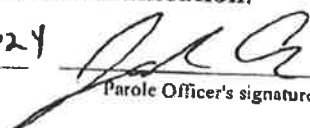
The following is provided for informational purposes:

"Social networking service" includes any Internet website or application, chat room, or peer-to-peer network, that:

1. Contains profile pages of the members of the social networking service that include the names or nicknames of such members, photographs placed on the profile pages by such members, or any other personal or personally identifying information about such members and links to other profile pages on social networking service of friends or associates of such members that can be accessed by other members of or visitors to the social networking service;
2. Provides members of or visitors to such social networking service the ability to leave messages or comments on the profile page that are visible to all or some visitors to the profile page;
3. Provides members of or visitors to the social networking service the ability to engage in direct or real time communication with other users, such as a chat room or instant messenger; or
4. Provides a form of electronic mail for members or visitors to the social networking service. For the purpose of this definition, social networking service does not include the use of e-mail exclusively for person to person communication.

[REDACTED]

7/18/2024
Date


Parole Officer's signature

7/18/2024
Date

C: Chairman (MSV/PSL/Parole)
Legal Support Unit (CSL)
District Office File

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**NEW JERSEY STATE PAROLE BOARD
DIVISION OF PAROLE
NOTICE OF IMPOSITION OF SPECIAL CONDITION**

[REDACTED]

From: Nathaniel LHOWE
District Parole Supervisor, DO#02

Date:

"Chat room" means any Internet website through which users have the ability to communicate via messaging and which allows messages to be visible to all users or to a designated segment of users.

"Internet website or application" means an Internet website or application that allows users, through the creation of Internet web pages or profiles or other similar means, to provide personal information to the public or other users of the Internet website or application, and facilitates online social interactions by offering a mechanism for communication with other users of the Internet website or application. An Internet application shall include any program utilized in conjunction with a mobile or electronic device that permits access to a social networking service.

"Peer-to-peer network" means a connection of computer systems whereby files are shared directly between the systems on a network without the need of a central server.

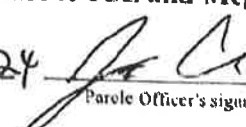
Examples of social networking services or chat rooms include, but are not limited to, Facebook, Match.com, Yahoo360, Yahoo Messenger, AOL Instant Messenger, Craigslist, Twitter, Tumblr and Instagram.

Social networking services or chat rooms also include online gaming platforms or applications that permit the user to engage in direct or real time communication with other users. Examples include, but are not limited to, Pokemon GO, Xbox Live, Play Station Network, Nintendo Network, STEAM and World of Warcraft

Violating this condition of PSL may subject you to arrest and prosecution or may result in the issuance of a parole warrant and the revocation of your parole status.

JUSTIFICATION

On 1/17/24, you received a suspended sentence to PSL and Megan's Law for EWC/Sexual

[REDACTED] 7/18/2024  7/18/2024
Date Parole Officer's signature Date

C: Chairman (MSV/PSL/Parole)
Legal Support Unit (CSL)
District Office File

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**NEW JERSEY STATE PAROLE BOARD
DIVISION OF PAROLE
NOTICE OF IMPOSITION OF SPECIAL CONDITION**

[REDACTED]
From: Nathaniel HOWE
District Parole Supervisor, DO#02

Date:

Conduct Impair/Debauch Morals of Child - Non-Caretaker - 3rd Degree. According to the class material, you held sexually explicit conversations with minors on more than one occasion. During the conversations, you set up a meet with one of the minors because you wanted to play with the minor and show him that you are a nice guy. The meet up with the minor was sabotaged by another adult party that became aware that the minor was communicating with you. The investigation revealed that you communicated with other 15 year old males and exchanged pornography to include self taken images of genitalia. All the communication occurred on Whatsapp which happens to be an encrypted texting app. Additionally, you shared photos of your own underage daughter in the bathtub. While on supervision and while having a no internet condition, you were found in possession of multiple internet capable devices only seven days after the condition was imposed. A search revealed that you were browsing titles such as "naked boys singing" which constitutes high risk behavior. Continued monitoring of your phone revealed that you have also been accessing social media. While accessing social media (Instagram), it has been noted that you have been following and liking images of what appears to be minors in underwear and shirtless. This leads to concerning behavior and considering your offense history, access to social media at this time poses a risk to public safety and is not conducive to your rehabilitation. Imposition of this condition will reduce your likelihood of recurring criminal behavior.

- ☐ I DO NOT contest the allegation(s), the conclusion(s) to be drawn or the above justification.
- ☒ I DO contest the allegation(s), the conclusion(s) to be drawn or the above justification.
- ☐ The District Parole Supervisor has determined that the special condition be imposed effective immediately based on the justification.

[REDACTED]
7/18/2024
Date


Parole Officer's signature

7/18/2024
Date

C: Chairman (MSV/PSL/Parole)
Legal Support Unit (CSL)
District Office File

Page 3 of 3

**NEW JERSEY STATE PAROLE BOARD
DIVISION OF PAROLE
NOTICE OF IMPOSITION OF SPECIAL CONDITION**



1. I hereby acknowledge that determination has been made to impose a special condition mandating that I refrain from using any computer and or device to create any social networking profile or to access any social networking service or chat room in my name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee (hereafter Social Networking special condition).
2. I understand that if the Social Networking special condition is imposed on an emergent basis then said condition shall take effect immediately.
3. I understand that if I do not contest the allegation(s), the conclusion(s) to be drawn or the justification that supports the basis for the imposition of the Social Networking special condition that said condition shall take effect immediately.
4. I understand that if I do contest the allegation(s), the conclusion(s) to be drawn or the justification that supports the basis for the imposition of the Social Networking special condition I must certify to the State Parole Board my denial of the allegation(s), conclusion(s) or justification and must submit a written certification with my comments or statements explaining why I am contesting the imposition of said condition in my case.
5. I understand that if I contest this matter my written certification with comments or statements must be submitted to the District Parole Office within ten (10) business days.
6. I understand that if I fail to provide my written certification within ten (10) business days, that the Social Networking special condition shall be deemed effective upon the expiration of the time period.
7. I understand that if I contest this matter and submit my written certification with my comments or statements within the prescribed time period, the State Parole Board will proceed to review the matter.
8. I understand that if I contest this matter and if the State Parole Board affirms the establishment of the Social Networking special condition I shall be required to comply with same upon receiving verbal or written notification of the State Parole Board's decision.



7-18-2024

Date


Signature of Parole Officer

Exhibit B

August 20, 2024

Dear The Full Parole Board,

Pursuant to N.J. Admin. Code § 10A:71-4.1(b)(1) and (3), and consistent with published case law, herein is my appeal seeking for reversal of the following:

- i) The Internet Special Condition which was imposed upon me by my Parole Officer on January 17, 2024
- ii) The modified internet restrictions which was imposed upon me on July 30, 2024 which restrict me from using WhatsApp for any purpose and from using YouTube for non-work purposes
- iii) The Social Media Special Condition which was imposed upon me by my Parole Officer on July 18, 2024 and whose imposition was affirmed by a Board Panel on July 31, 2024.
- iv) Consistent with published case law, along with seeking vacation of both special conditions, I am also seeking vacation of all related Parole violations¹.

“Whether the Parole Board's actions violate constitutional rights is a legal question, which we review "de novo." J.B. v. N.J. State Parole Bd., 229 N.J. 21, 159 A.3d 1267 (N.J. 2017).

“Although parolees do not enjoy the full panoply of constitutional rights, a court will invalidate, as unreasonable and arbitrary, conditions that do not meet these penological goals. J.I. v. N.J. State Parole Bd., 228 N.J. 204, 155 A.3d 1008 (N.J. 2017).

“The parole authorities do not have unbridled discretion to impose unnecessary or oppressive . . . conditions that do not advance a rational penological policy.” K.G.

¹ Although the internet condition was already modified and reduced, I am still challenging the original special condition for the purposes of being able to seek reversal and vacation of all Parole violations therefrom.

v. N.J. State Parole Bd., 458 N.J. Super. 1, 202 A.3d 636 (App. Div. 2019). (quoting J.I., 228 N.J. at 230). "Moreover, the Board's actions may not violate constitutional protections." Ibid.

The question of whether the condition is unconstitutionally overbroad "requires a more robust analysis." State v. R.K., 463 N.J. Super. 386, 232 A.3d 487 (App. Div. 2020). The crux of the issue is whether the special condition "'reach[es] farther than is permitted or necessary to fulfill the state's interests'" in "'reducing the likelihood of recidivism and fostering public protection and rehabilitation.'" Id. at 402, 404 (first quoting State v. Wright, 235 N.J. Super. 97, 103 (App. Div. 1989); and then quoting J.I., 228 N.J. at 221)

As established by the case ruling cited below, the internet and social media bans which were imposed upon me - including the modified internet ban - violate my constitutional protections, are unnecessary and oppressive, unreasonable and arbitrary, conditions that do not advance a rational penological policy

Moreover, the special conditions "reach farther than is permitted or necessary to fulfill the state's interests" in "reducing the likelihood of recidivism and fostering public protection and rehabilitation."

Consistent with the established case law set forth below, I am seeking for vacatur of the blanket ban on the use of all social media and vacatur of the blanket ban of WhatsApp and YouTube for non-work purposes and seek for "a more limited restriction directed at contacting minors."

In *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017), the United States Supreme Court declared social media to be the "modern public square" and that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights."

Accordingly, finding the statute violated the First Amendment and was overbroad, our highest court invalidated a North Carolina statute criminalizing access to a social media website where the sex offender knew the site allowed minors to be members.

The Court was clear in noting that child sexual abuse is a repugnant and serious crime for which our legislatures have the right to pass laws to protect children as well as others from being victimized. "But the assertion of a valid governmental interest 'cannot, in every context, be insulated from all constitutional protections.' " Ibid. (quoting *Stanley v. Georgia*, 394 U.S. 557, 563, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969)).

3 years later, in *State v. R.K.*, 463 N.J. Super. 386, 232 A.3d 487 (App. Div. 2020), the New Jersey Appellate Division concluded that the United States Supreme Court's recognition of significant First Amendment interests in access to social-networking websites extends to New Jersey parolee's as well.

The R.K. court established that a blanket social media prohibition is "*unconstitutional on its face* because it completely denies access to R.K.'s ability to express himself in the protected forum of public debate through social networking."

"In light of *Packingham* and its progeny noted above, we are now constrained to conclude the social networking ban is unconstitutional on its face.

"Even though parolees don't enjoy the "full panoply of due process rights," we still "think it plain that a special condition of parole that cannot pass constitutional muster in the same strict sense that we demand of other statutes with penal consequences must fail." Pazden, 374 N.J. Super. at 370, 864 A.2d 1136. **Here, the parole officer should not be given the authority to make the ban constitutional when we have determined it is unconstitutional.**

3 years later, on March 29, 2023, in *R.R. v. New Jersey State Parole Board* (App. Division 2023, Docket No. A-2236-21), the Appellate Division vacated Parole's internet special condition. Relying on the R.K. ruling, the court found a blanket internet ban to be "overly broad."

"The *Packingham* Court underscored the exponential expansion of internet use and social media in today's society protected by the First Amendment right to free

speech. The internet has become an indispensable tool for educational purposes, self-improvement, employment searches, work tasks, banking, and ever-expanding legitimate applications. We have recognized the internet and social media are essential resources to assist individuals reintegrate into society including attending school and locating employment. A blanket internet ban is overly broad.

“We conclude the Board's denial and blanket prohibition on internet and social media access prior to R.R. attending counseling sessions, runs afoul of our holding in R.K., 463 N.J. Super. at 418. We remand to the Board to reconsider the terms and conditions of R.R.'s internet and social media access under the criteria set forth in N.J.A.C. 10:72-14.1(b), consistent with our opinion and his needs to reintegrate into society. A blanket internet ban is overly broad,” the court concluded.

The R.K. court invalidated - *as unconstitutional on its face* - the exact same blanket social media special condition which was imposed upon me.

The R.R. court invalidated - *as overly broad* - the exact same blanket internet special condition which was imposed upon me (and for which I have received multiple violations).

The very “protected forum of public debate,” which the courts above recognized to be an “indispensable tool” and “essential resources to assist individuals reintegrate into society” is what the special conditions have unconstitutionally taken away from me.

Exactly what the R.K. court stated - that “the parole officer should **not** be given the authority to make the ban constitutional when we have determined it is unconstitutional” - is exactly the “undue hardship” which **has** been unconstitutionally imposed upon me.

Parole claims that access to social media “poses a risk to public safety,” yet, in all the time I have used social media, Parole has monitored my phone and not once have they found any “risks to public safety.”

Moreover, the very same “justifications” how me using social media “leads to concerning behavior and considering your offense history, access to social media at this time poses a risk to public safety and is not conducive to your rehabilitation. Imposition of this condition will reduce your likelihood of recurring criminal behavior” have been soundly **rejected** by all the case ruling relied upon by the R.K. court.

As R.K. successfully did, relying on *Packingham*, I assert that any more than a limited internet and social networking restriction directed at contacting minors is not “narrowly tailored” and in fact, will “burden substantially more speech than is necessary to further the government's legitimate interests.”

Furthermore, as R.K. successfully did, I contend that, under N.J.A.C. 10A:71-6.11(c), I am already prevented from contacting minors online, so the social networking ban and the modified internet ban is overly restrictive and unnecessary.

In analyzing the North Carolina statute's social media prohibition, the Supreme Court held “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.”

This finding resonates deeply with me. As a “late bloomer” in the LGBTQ community, meeting up with other gay males my age is challenging for me. Access to social media, including WhatsApp and YouTube, is helpful for me to “receive legitimate benefits from these means for access to the world of ideas, in particular [to] seek to reform and to pursue [a] lawful and rewarding life.”

In *Packingham*, the Court elaborated, “North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.” The Court stated that it had never “approved of a statute as broad in its reach.”

It is this very “access” and “speaking and listening in the modern public square” which was taken away from and from which I seek from you.

My offenses pertain to contacting minors on the internet via WhatsApp. Since being committed to PSL, my internet and social media use has **not** involved contacting any minors. It *has* included socializing with like-minded age-appropriate gay men as well as attempting to hopefully meet someone age-appropriate. All of these activities are legitimate benefits which *are* conducive to my rehabilitation and will actually reduce likelihood of recurring criminal behavior.

My Parole officers have also flip flopped regarding WhatsApp, claiming that they are concerned with me using it due its high encryption, yet, at the same time they have told me they are concerned with certain pictures I have shared - with consenting adults - over WhatsApp. Clearly, encryption is not the issue.

It seems to me that Parole is simply unhappy with me using social media which permits minors as members. However, the Packingham court soundly rejected this very argument, and R.K. expanded the Packingham ruling to New Jersey parolees.

Moreover, the YouTube ban for non-work purposes can't even be due to any concerns regarding minors as I can't even contact any minors via YouTube.

As I indicated in Exhibits I and K below, I believe that the imposition of the special conditions - regarding which I have relayed to my officers numerous times that they are unconstitutional - stem from anti-gay bias on the part of Sgt. Monge.

The record herein includes:

Exhibit A - Dated January 17, 2024, this is the Notice of Imposition of Internet Special Condition

Exhibit B - Letter I gave Officer Camy on May 20, 2024 contesting the Internet Special Condition

Exhibit C - On July 15, 2024, while my internet condition contest was pending - in compliance with the Notice of Imposition which stays the imposition pending

affirmation by the Parole Board - I purchased a laptop and I immediately brought it to Parole for installation of the app. Contrary to my compliance, Lt. Lhowe threatened to arrest me if I didn't immediately return the laptop. Dated July 15, 2024, this is the letter I gave Officer Christopher challenging Lt. Lhowe's unconstitutional threat.

Exhibit D - Dated July 18, 2024, this is Lt. Lhowe's response approving my "request" to purchase a laptop. This letter also lists off my internet violations

Exhibit E - My response to Lt. Lhowe dated July 25, 2024. In this letter I challenged every single violation listed in the July 18, 2024 correspondence.

Exhibit F - Dated July 30, 2024, this is Sgt. Monge's response to me modifying the Internet Special Condition to only restrict me from using WhatsApp for any purpose and from using YouTube for non-work purposes

Exhibit G - Dated August 2, 2024, this is the letter I sent to Lt. Lhowe contesting the modified internet restriction as to YouTube for non-work purposes. I did not receive any response to this letter.

Exhibit H - Dated July 18, 2024, this is the Notice of Imposition of Social Media Special Condition

Exhibit I - Dated July 26, 2024, this is the letter I gave to my Parole Officer challenging the Social Media Special Condition. That letter was then forwarded to a Board Panel.

Exhibit J - On July 31, 2024 I received a one sentence response from the Board Panel affirming the special condition².

Glaringly, while my appeal is largely constitutional based, the Board Panel's response does not contain any justification at all. The Board Panel failed to explain why they believe that an unconstitutional blanket social media ban is somehow constitutional as applied to me.

One more item for business:

In response to my May 20, 2024 appeal of the Internet Special Condition, Sgt. Monge permitted me to use Internet for both personal and work purposes with the

² My July 26, 2024 challenge regarding the social media special condition was based upon the very same case rulings that my May 10, 2024 challenge regarding the internet special condition was based upon. Oddly, while by letter dated July 30, 2024 my internet condition was modified, albeit with still overbroad restrictions, my social media special condition was not modified at all.

exception of YouTube which is limited to work purposes only, and WhatsApp which is completely prohibited.

I submitted my July 26, 2024 appeal after Sgt. Monge and Lieutenant Lhowe verbally told me that I am restricted from using WhatsApp. Consequently, I included the use of WhatsApp in my social media special condition appeal (as I believe that WhatsApp is considered a social networking service).

In response, Sgt. Monge and Lieutenant Lhowe told me that WhatsApp is not considered social media but rather falls under the internet special condition.

Herein I am faced with a massive contradiction: On the one hand, Sgt. Monge and Lieutenant Lhowe are arguing that a social media ban is “narrowly tailored” to me because my offense involves contacting minors on the internet over WhatsApp, yet at the same time, Sgt. Monge and Lieutenant Lhowe are also arguing that WhatsApp is not considered social media. If their second claim is indeed accurate, then how can they argue then a social media ban has nothing to do with my offense as I didn't use “social media” to contact any minors.

Either way, I believe that my reading of the Social Media Special Condition **does** include WhatsApp as a form of social media.

The Special Condition states in part:

“Social Networking Service” includes any... application... that:

3. Provides members of or visitors to the social networking service the ability to engage in direct or real time communication with other users, such as a chat room or instant messenger.

WhatsApp certainly does provide members “the ability to engage in direct or real time communication,” and it certainly is an “instant messenger.” Furthermore, WhatsApp does have chat groups which similarly falls into the category of “chat room” in the above paragraph.

Consequently, I believe that WhatsApp is considered “social media” as defined by the Social Media Special Condition and therefore my use of it is included in my social media special condition appeal.

In the alternative, if you believe that WhatsApp is not considered social media, then you need to agree that my offense was completely unrelated to the use of social media and therefore, consistent with the holding in R.K., your social media ban is additionally unconstitutional as applied to me.

Either way, Parole is going **way** overboard here.

I am hereby appealing these decisions to the full Parole Board pursuant to N.J. Admin. Code § 10A:71-4.1(b)(1) and (3), in that; 1) The condition of parole... will impose an undue hardship on the parolee; and 3) The condition of parole... will not reasonably reduce the likelihood of recurrence of criminal behavior.

Consistent with the published case rulings I cited at length in all my exhibits that “the conduct the Board seeks to eradicate is not addressed through the denial of my constitutionally cherished right to participate in the contemporary forum of First Amendment free speech rights: social media,” I am seeking for vacatur of the blanket ban on the use of all social media and vacatur of the blanket ban of WhatsApp and YouTube for non-work purposes and seek for “a more limited restriction directed at contacting minors.”

Consistent with the R.K. ruling, I am also seeking vacation of all Parole violations which were based on the unconstitutional orders I was imposed.

Yours Truly,



Exhibit C



PHILIP D. MURPHY
GOVERNOR

TAHESHA L. WAY
LT. GOVERNOR

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
P.O. BOX 862
TRENTON, NEW JERSEY 08625
TELEPHONE NUMBER: (609) 292-4257

SAMUEL J. PLUMERI, JR.
CHAIRMAN

RONALD L. SLAUGHTER
VICE-CHAIRMAN

Notice of Final Agency Decision

November 27, 2024



RE: Condition Appeal

Dear 

This is in response to your administrative appeal of the Division of Parole's January 31, 2024, imposition of the special condition mandating that you refrain from the possession and/or utilization of any computer and/or device that permits access to the Internet unless specifically authorized by the District Parole Supervisor or designated representative. If the District Parole Supervisor or designated representative permits use of a computer and/or device that is capable of accessing the Internet, you are subject to certain restrictions and conditions concerning your use; and the Division of Parole's July 31, 2024, imposition of the special condition mandating that you refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in your name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee.

The Board finds that on August 20, 2024, you submitted an administrative appeal requesting that the Internet Access special condition, imposed on January 31, 2024, the modified internet condition restricting access from "WhatsApp" and "YouTube," imposed on July 30, 2024, and the Social Networking special condition, imposed on July 31, 2024, be discharged and that any violations related to these conditions be discharged. You contended that these conditions of parole will impose an undue hardship on you; that these conditions of parole will not reasonably reduce the likelihood of recurrence of criminal or delinquent behavior; that the District Parole Office has been monitoring your phone and not once have they found any "risks to public safety;" and that these conditions are restricting your access to socializing with like-minded age-appropriate gay men which is conducive to your rehabilitation and will reduce the likelihood of recurrence of criminal behavior.

On September 25, 2024, the Board panel reviewed the administrative appeal you submitted and determined to affirm the Division of Parole's January 31, 2024, imposition of the special condition mandating that you refrain from the possession and/or utilization of any computer and/or device that permits access to the Internet unless specifically authorized by the District Parole Supervisor or designated representative. If the District Parole Supervisor or designated representative

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permits use of a computer and/or device that is capable of accessing the Internet, you are subject to certain restrictions and conditions concerning your use; and to affirm the Division of Parole's July 31, 2024, imposition of the special condition mandating that you refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in your name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee. Subsequently, this appeal followed. Within your September 27, 2024, appeal you note that it is your intention that your August 20, 2024, submission along with your September 11, 2024, supplemental submission serve as your administrative appeal for consideration by the Board.

You contended that these conditions of parole will impose an undue hardship on you; and that these conditions of parole will not reasonably reduce the likelihood of recurrence of criminal or delinquent behavior. You contend that the internet special condition imposed upon you by your Parole Officer on January 17, 2024, runs afoul of the Appellate Division's decision in R.R. v New Jersey State Parole Board (App. Division 2023, Docket No. A-2236-21), which found the blanket internet ban to be "overly broad." You contend that the social media special condition imposed upon you by your Parole Officer on July 18, 2024, runs afoul of the Appellate Division's decision in State v R.K., 463 N.J. Super. 386 (App. Div. 2020) which found the blanket social media ban to be "unconstitutional on its face." You assert that the modified internet special condition imposed on you on July 30, 2024, "reach (sic) farther than is permitted or necessary to fulfill the state's interests" in "reducing the likelihood of recidivism and fostering public protection and rehabilitation" and is unconstitutional as applied to you under the R.K. standard.

The issues you submitted in your appeal were presented to the Board at its meeting, conducted on November 27, 2024.

The Board finds that on January 17, 2024, you were sentenced to parole supervision for life for the commission of the offense of Endangering the Welfare of a Child – Sexual Conduct With Child by Non-Caretaker, third degree. The record reflects that you utilized the application WhatsApp to contact a juvenile male, engaged in very sexual conversation and attempted to meet up with the juvenile at the West Gate Shopping Plaza. Additionally, your phone was searched and found to contain multiple "WhatsApp" conversations in which sexually explicit content relating to sexual acts and preferences as well as photos both pornographic in nature and self-taken of male genitalia were shared with individuals who identified themselves as being under the age of eighteen (18). The search of your phone further revealed that you had also taken pictures of your toddler daughter in the bath and sent them to a juvenile. Further, upon investigation into one of your underage relationships, it was discovered that you provided pornographic photos and videos directly through WhatsApp and that the relationship progressed to you providing the victim with photos of your own genitalia as well as receiving photos from the victim.

On January 17, 2024, you commenced parole supervision for life and signed your parole supervision for life certificate. At that time, the District Parole Office imposed an Internet Access special condition and a No Pornography special condition, both were signed by you and you did not contest the Internet Access special condition.

On January 24, 2024, D.O. #2 officers conducted a home visit and found that you were in possession of three (3) internet capable smartphones, in violation of the Internet Access special condition. A subsequent search of the phones revealed an online search for the term "naked boys singing," which was determined to be indicative of high-risk behavior. In response to said violation, you were referred to a residential community program as a graduated sanction.

On January 31, 2024, a Board panel affirmed the District Parole Office imposed Internet Access special condition.

On April 1, 2024, you were discharged as successful from the Volunteers of America (VOA) program. You reported to D.O. #2 and were reminded of your Internet Access special condition and advised that you must agree to installing a monitoring software program on all devices.

On May 8, 2024, you were found to be in possession of an internet capable smartphone during a home visit.

On May 10, 2024, it was determined that you had been utilizing the smartphone without authorization from the parole supervisor, in violation of your Internet Access special condition. You were permitted to keep and utilize the smartphone provided that you submit a written request to utilize the smartphone as well as written verification of your employment.

On May 15, 2024, monitoring software was installed on your smartphone, however, you failed to provide the requested letters.

On May 20, 2024, you reported to the District Parole Office and provided a letter detailing your request for specific internet access for employment purposes and also submitted a letter from your employer, Burton Jacobovitch Law Group, which indicated that you were hired to assist with legal work. The main duties of your employment are to research lawsuits, research case law and draft documents for clients, which requires you to conduct online research. The letter also notes that you need access to YouTube in order to watch town meetings for the purpose of dealing with zoning and land use issues and that you will need access to Zoom and Microsoft Teams as well for civil court matters. The letter further notes that communication with you will be through email and WhatsApp; and that you will be working remotely as needed and will not meet with clients. Along with your employer letter, you submitted your own letter where you made specific requests for permission to utilize a number of internet applications which range from GPS to banking. With reference to your commitment offense the most concerning requests are related to AZ Screen Recorder which you would use to record videos for work and personal use, YouCut Video Editor which serves a similar purpose as AZ Screen Recorder and WhatsApp. You also requested permission to use the internet to help his friend run his news blog. It is noted that you included what you believed was relevant case law with reference to internet ban.

On June 27, 2024, a review of your monitoring software revealed that you attempted to visit several blocked websites, including, Twitter, jdate and reddit, however, you were prevented from doing so by the monitoring software.

On July 15, 2024, a review of your smartphone usage for the period of July 8, 2024 to July 15, 2024, revealed that your most used application was WhatsApp. This finding was notable as you utilized WhatsApp to commit the majority of your commitment offenses, specifically, you utilized WhatsApp to engage in sexually explicit conversations with several minor males and you acted as the administrator of two (2) WhatsApp groups which were used to share pornography, including two (2) instances of sharing child pornography.

On July 16, 2024, you reported to the parole office with a newly purchased laptop computer. You were not given prior permission to purchase the laptop. You were advised that you were in violation of your Internet Access special condition and were given the option to return the laptop or face removal from the community.

Additionally, on July 16, 2024, a search of your smartphone revealed that you were a member of numerous WhatsApp groups; and that you had shared the Instagram page of a 17-year-old boy, who claims to be a German dancer, with another WhatsApp user. This activity is concerning as it bears similarities to the online activities surrounding your commitment offense.

On July 16, 2024, you provided a letter to Parole Officer Christopher appealing the District Parole Office imposed Internet Access special condition which requires you to obtain authorization by a District Parole Supervisor, or designee prior to possessing and/or utilizing any internet capable device.

On July 18, 2024, Lt. Lhowe advised you that you are permitted to purchase and utilize one (1) computer for work purposes only; that you are authorized to utilize only the programs and applications approved by Sgt. Monge pursuant to your written request submitted on May 20, 2024; that you are to notify your parole officer immediately after purchasing a computer so that arrangements can be made to install monitoring software on the computer; that you are to abide by all other stipulations of your Internet Access special condition; that you are prohibited from purchasing any additional devices; and that any future parole supervision for life violations or deviations from approved internet use may result in the rescission of these privileges and/or other sanctions.

On July 18, 2024, your cellphone was searched and revealed that you had been accessing social media applications, specifically, Instagram; and that you had been following and liking images of what appear to be minors in underwear and shirtless. The District Parole Office determined that your behavior was concerning and was not conducive to your rehabilitation. The District Parole Office determined that prohibiting your access to social media is warranted at this time to provide a measure of public safety and imposed a Social Networking special condition. You contested the imposition of this condition and were advised that you had ten (10) business days to submit in writing the basis as to why you believed the special condition is not warranted in your case. The District Parole Office maintains that imposition of this condition will reduce the likelihood of recurring criminal behavior by you.

On July 26, 2024, you provided an eleven (11) page typed statement contesting the imposition of the Social Networking special condition. You indicated "[s]pecifically, my appeal includes the use of WhatsApp, Instagram, Facebook and JSwipe". You also indicated that "the imposition of the Social Media Special Condition is based primarily on Sgt. Monge's expressed anti-gay bias towards you and not because of my social media use 'leads to concerning behavior' and 'poses a risk to public safety and is not conducive to your rehabilitation.'" Your contesting statement contains multiple points, including your interpretations of J.I. v. NJ State Parole Board, K.G. v. NJ State Parole Board, State v. R.K., State v. Higginbotham, and pending Senate Bill No. 2652 (the latter having to do with modifications to statutory language concerning child pornographic material/displaying a child in a sexually suggestive manner).

On July 30, 2024, the District Parole Office provided its response noting your "failure to understand that those types of images [underage males in underwear] could trigger a relapse into sexually deviant behavior." The District Parole Office believes you have "thus far demonstrated [your] inability to control the impulses that could lead to recidivistic behavior." It is noted that the function of Parole is to promote public safety and foster successful rehabilitation to the best of its ability, and in keeping with the current applicable statutes, which specifically outline a yearly review of your "No Internet" and "No Social Networking" special conditions.

On July 31, 2024, a Board panel affirmed the District Parole Office imposed Social Networking special condition.

On August 2, 2024, you submitted a letter in regards to Sgt. Monge's review and approval of certain internet/social networking related activities, specifically, Sgt. Monge's determination to permit you to utilize YouTube for work purposes only, additionally, you requested to be permitted to use YouTube for personal purposes.

On August 12, 2024, Captain Andresen denied your request to have both your Internet Access Special Condition and Social Networking Special Condition discharged. Captain Andresen noted that, both the internet and social networking services were utilized in the commission of your offenses; and that the imposition of conditions restricting access to both the internet and social networking are consistent with New Jersey State Parole policy as well as the relevant case law.

August 20, 2024, you submitted an administrative appeal to the full Board of both your Internet Access Special Condition and your Social Networking Special Condition.

On September 10, 2024, Lt. Lhowe replied to your August 2, 2024, letter and affirmed the imposition of both your Internet Access Special Condition and Social Networking Special Condition. Lt. Lhowe noted that you consistently fail to recognize the deviant and concerning nature of your internet activity; that you have denied any wrong doing; and that you have accused Parole staff of harboring bias against you due to your sexual orientation. Lt. Lhowe advised that it has been explained to you several times that Parole's concerns have nothing to do with your sexual orientation, but rather the fact that you continue to specifically seek out content with sexualized images of underage boys. Despite Parole's attempts to impart these concerns, you continue to demonstrate a complete lack of insight into your actions and a complete lack of desire to change your behavior.

You contended that these conditions of parole will impose an undue hardship on you; and that these conditions of parole will not reasonably reduce the likelihood of recurrence of criminal or delinquent behavior. Be advised that in addition to the general conditions of parole, the District Parole Supervisor, or his or her designated representative, may impose additional special conditions of parole in an offender's case deemed reasonable in order to "reduce the likelihood of recurrence of criminal behavior," N.J.A.C. 10A:71-6.12(n). The Board concurs with the Division of Parole's assessment that the imposition of the special condition requiring you to refrain from the possession and/or utilization of any computer and/or device that permits access to the Internet unless specifically authorized by the District Parole Supervisor or designated representative; [and] if the District Parole Supervisor or designated representative permits use of a computer and/or device that is capable of accessing the Internet, you are subject to certain restrictions and conditions concerning your use; and the Division of Parole's July 31, 2024, imposition of the special condition mandating that you refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in your name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee was deemed reasonable in order to reduce the likelihood or recurrence of criminal behavior. As noted above, the imposition of these special conditions will prevent you from engaging in the sexually deviant behavior that is substantially similar to that of your commitment offenses. Therefore, the Board finds that your contentions are without merit.

You contend that the internet special condition imposed upon you by your Parole Officer on January 31, 2024, runs afoul of the Appellate Division's decision in R.R. v. New Jersey State Parole Board, which found the blanket internet ban to be "overly broad." The Board finds that on March 21, 2017, the New Jersey Supreme Court held in J.I. v. New Jersey State Parole Board, 228 N.J. 204, 211 (2017) that the "complete denial of access to the Internet implicates a

liberty interest, which triggers due process concerns" and that the imposition of an Internet ban calls for more process, including notice and an opportunity to be heard. The Board also finds that following the Supreme Court's decision in J.I., the Board adopted N.J.A.C. 10A:72-14, which codifies the procedures for the imposition of a special condition prohibiting a community or parole supervision for life offender from accessing the Internet, including the criteria, procedure, and review process. In accordance with N.J.A.C. 10A:72-14, the Board finds that the Division of Parole provided you with notice of the imposition of the no Internet special condition and the opportunity to contest the condition. In your case, the Board finds that the condition was imposed based on the nature of your commitment offense.

You contend that the social media special condition imposed upon you by your Parole Officer on July 18, 2024, runs afoul of the Appellate Division's decision in State v. R.K., which found the blanket social media ban to be "unconstitutional on its face;" and that the modified internet special condition imposed on you on July 30, 2024, "reach (sic) farther than is permitted or necessary to fulfill the state's interests" in "reducing the likelihood of recidivism and fostering public protection and rehabilitation" and is unconstitutional as applied to you under the R.K. standard. The controlling cases in New Jersey related to Internet restrictions on supervised sex offenders continue to be J.B. v. New Jersey State Parole Board, 433 N.J. Super. 327 (App. Div. 2013), and J.I. v. New Jersey State Parole Board. In J.B., the Appellate Division held that the Board's restrictions on online social networking, which permit supervised CSL/PSL offenders to request permission to gain access to a specified website for a benign purpose, are facially valid and pass constitutional muster under both the First Amendment and the New Jersey Constitution. In J.I., the New Jersey Supreme Court held that the Internet restrictions imposed on J.I., which prohibited him from accessing the internet altogether, were overbroad and arbitrary in light of the fact that his commitment offenses did not involve using a computer and the lack of evidence indicating that he had visited pornographic websites following his release from custody.

The Board also finds that upon being served the special condition mandating that you refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in your name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee, you contested same. Your contesting statement contains multiple points, including your interpretations of J.I. v. NJ State Parole Board, K.G. v. NJ State Parole Board, State v. R.K., State v. Higginbotham, and pending Senate Bill No. 2652 (the latter having to do with modifications to statutory language concerning child pornographic material/displaying a child in a sexually suggestive manner). The Board also finds that on July 31, 2024, the Board panel reviewed the imposition of the "social networking" special condition; the Division of Parole's justification for the imposition of the "social networking" special condition; your written objection to the "social networking" imposition; the Division of Parole's assessment of your objection; and that the Division of Parole's imposition of the "social networking" special condition was affirmed by the Board panel. The Board further finds that the Division of Parole granted you internet use for personal and employment purposes with specific limitations. You were granted use of the following internet applications without limitations: Capital One (banking), Straight Talk (services), Prime Video (movies), HebDate (calendar), Amazon music, Amex (banking), TD Bank, Notes, Files (file manager), Messaging, My files (file manager), Chrome, Drive, Gmail, Google, Maps, Venmo, Instacart, Adobe Acrobat, Add Watermark, Gpay, Wallet, Lyft, Uber, Docs, Geico mobile, Ringtone Maker, Google Voice and Monitoring software. In addition, you were denied use of Meet and WhatsApp. Therefore, for the above reasons the Board finds that the "no Internet" condition was reasonably tailored in your case to advance the goals of public safety and rehabilitation and that the condition is valid as challenged on an individual basis. Therefore, the Board finds your contention to be without merit.

Based upon consideration of the facts cited above, review of your record and your claims, the Board affirms the Division of Parole's January 31, 2024, determination to impose the special condition mandating that you refrain from the possession and/or utilization of any computer and/or device that permits access to the Internet unless specifically authorized by the District Parole Supervisor or designated representative; [once] the District Parole Supervisor or designated representative permits use of a computer and/or device that is capable of accessing the Internet, you are subject to certain restrictions and conditions concerning your use; and the Division of Parole's July 31, 2024, determination to impose the special condition mandating that you refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in your name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee.

Please note a final agency decision has now been rendered in this matter.

Sincerely,



Dina I. Rogers, Esq.
Executive Director

AGP: mjl

cc: Captain Andresen, DO #2

LI. Lhowe, DPS, DO #2
[REDACTED]

Exhibit D



To: New Jersey State Parole Board
Legal Support Unit
POB 862
Trenton, NJ 08624
Via email

December 22, 2024

To Whom It May Concern:

On November 27, 2024, you issued a Final Agency Decision ("FAD") affirming the imposition of internet and social media special conditions on me.

I have filed a Notice of Appeal to the New Jersey Appellate Division seeking to appeal the FAD.

Attached for your consideration is a request for a stay of the FAD pending the outcome of the Appellate Division appeal.

Sincerely yours,

A black rectangular redaction box covering the signature area.

Background History

On January 17, 2024 my Parole officer imposed the internet special condition upon me. Despite my repeated requests to be permitted to use internet with monitoring software, the officers refused and stated "nope, no internet at all."

Between January 2024 and May 2024, I received multiple Parole violations of the internet special condition. These include violations which were completely false and invented by Officer Horgan.

In May 2024, I submitted an appeal of the Internet Special Condition.

In response, on July 30, 2024, Sgt. Monge modified my internet condition. This modification:

- a) Permits me unrestricted use of certain apps
- b) Permits me to use YouTube for work purposes only
- c) Prohibits me completely from using WhatsApp
- d) Requires me to seek approval before using any app which was not included in the approved app list

On July 18, 2024, Officer Christopher served me with a special condition completely prohibiting my use of social media.

On August 20, 2024, I submitted to the Parole Board an administrative appeal of both special conditions, arguing inter alia that; a) under Parole's guidelines and definitions, WhatsApp is considered social media and not internet; b) the social media ban as well as the original blanket internet ban were unconstitutional on its face and therefore they and their violations should be vacated; and; c) the modified internet restrictions were not reasonably tailored and therefore they were unconstitutional as applied to me.

My administrative appeal cited all the relevant case law.

On November 27, 2024, the Parole Board issued a Final Agency Decision ("FAD") rejecting all my arguments and affirming imposition of both the internet and social media special conditions.

Parole's errors in the FAD are glaring.

- 1) The FAD erroneously ignores the United States Supreme Court's ruling in *North Carolina v. Packingham* and creates a "fatal problem[,] ... [because] its wide sweep precludes my access to a large number of websites that are most unlikely to facilitate the commission of a sex crime against a child."
- 2) The FAD erroneously ignores the Third Circuit's holding in *United States v. Holena* which found that restrictions which sweep too broadly, preventing him from reading the news or shopping online and from using websites where he cannot interact with others or view explicit materials, are not "tailored to the danger that he poses" and therefore faces the same flaw as in *Packingham*.
- 3) The FAD erroneously ignores my argument that Parole's guidelines consider WhatsApp social media because it has chat groups and it provides members "the ability to engage in direct or real time communication," and it certainly is an "instant messenger."
- 4) The FAD erroneously ignores my arguments that *State v. R.K.*, 463 N.J. Super. 386, 232 A.3d 487 (App. Div. 2020) found Parole's internet and social media bans - including the escape valve which permits usage of certain apps by prior permission only - to be unconstitutional on its face.
- 5) The FAD erroneously ignores my arguments that the modified internet restrictions are not "specifically tailored," therefore they are unconstitutional as applied to me.
- 6) On the one hand, the FAD doesn't attempt to justify the imposition of the original internet ban (upon which I received multiple Parole violations), rather the FAD only stands for the proposition that "the [modified] "no internet" condition was reasonably tailored in your case," yet, at the same time, the FAD rejected my request for vacatur of the Parole conditions regarding the original internet ban. That simply doesn't make any sense at all.
- 7) The FAD wholly misses the fact the holding in *J.I.*, 228 that Parole should not impose blanket internet bans where less restrictive options such as by using monitoring software are available.
- 8) Officer Camy's claim that encryption is the reason for the unconstitutional ban is obviously not the issue here.

- 9) The FAD erroneously ignores my argument that contacting an adult bears no similarity to contacting a minor.
- 10) The FAD erroneously ignores my argument that finding dates with consenting adults is neither a violation nor risky behavior.
- 11) Even if a complete social media ban were found to be constitutional (which it was not, as shown above), numerous courts have rejected the very same justifications given to me as a basis for the imposition of the unconstitutional complete social media ban.
- 12) The only remaining plausible basis for the imposition of the unconstitutional restrictions is Sgt. Monge's anti-gay bias.
- 13) The FAD erroneously ignores my argument that Lt. Lhowe's threat to arrest me for purchasing a laptop - despite that the special condition was in abeyance due to my pending appeal - was ultra vires.
- 14) The FAD erroneously ignores my argument that Lt. Lhowe's questioning why I was "researches case law instead of trusting Parole" is ultra vires.

I received this decision letter in the mail last Monday, December 16, 2024.

Until now, while my administrative appeal was pending before the Parole Board, the internet and social media special conditions were held in abeyance.

However, they have now been affirmed by the Parole Board.

Immediately, I filed a Notice of Appeal to the New Jersey Appellate Division seeking to reverse the FAD.

"The parole authorities do not have unbridled discretion to impose unnecessary or oppressive . . . conditions that do not advance a rational penological policy." *K.G. v. N.J. State Parole Bd.*, 458 N.J. Super. 1, 202 A.3d 636 (App. Div. 2019). (quoting *J.I.*, 228 N.J. at 230). "Moreover, the Board's actions may not violate constitutional protections." *Ibid.*

“Whether the Parole Board’s actions violate constitutional rights is a legal question, which we review “de novo.” J.B. v. N.J. State Parole Bd., 229 N.J. 21, 159 A.3d 1267 (N.J. 2017).

“In reviewing a final decision of the Board, the court considers: (1) whether the Board’s action is consistent with the applicable law; (2) whether there is substantial credible evidence in the record as a whole to support its findings; and (3) whether in applying the law to the facts, the Board erroneously reached a conclusion that could not have been reasonably made based on the relevant facts. Trantino v. N.J. State Parole Bd. (“Trantino IV”), 154 N.J. 19, 24 (1998).

The question of whether the condition is unconstitutionally overbroad “requires a more robust analysis.” State v. R.K., 463 N.J. Super. 386, 232 A.3d 487 (App. Div. 2020). The crux of the issue is whether the special condition “reach[es] farther than is permitted or necessary to fulfill the state’s interests” in “reducing the likelihood of recidivism and fostering public protection and rehabilitation.” Id. at 402, 404 (first quoting State v. Wright, 235 N.J. Super. 97, 103 (App. Div. 1989); and then quoting J.I., 228 N.J. at 221)

I now seek a stay from the Parole Board pending the outcome of my Appellate Division appeal.

Standard of Review

A request for a stay of judgment requires a balancing of equities, including: (1) a showing of irreparable harm; (2) existence of meritorious issue (i.e. the legal right underlying plaintiff’s claim is settled); (3) the likelihood of success on the merits; and (4) relative hardship to the parties in granting or denying relief. Garden State Equality v. Dow, 216 N.J. 314, 320-321 (2013); Crowe v. De Gioia, 90 N.J. 126, 132 (1982).

“The issuance of an interlocutory injunction is based upon the exercise of sound judicial discretion that may permit the court to place less emphasis on any particular Crowe factor if another factor greatly requires the issuance of temporary relief.” Waste Mgmt. of N.J., Inc. v. Union County Util. Auth., 399 N.J. Super. 508, 519 (App. Div. 2008).

Additionally, if a movant is only seeking to preserve the status quo, the court may “place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy.” *Brown v. City of Paterson*, 424 N.J. Super. 176, 183 (App. Div. 2012). The “legitimate object of a preliminary injunction, preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits[.]” *Mullins v. Merch. Drivers Local Union*, 120 N.J. Eq. 376, 387 (1936).

When seeking to preserve the status quo, therefore, the Crowe factors become “factors, among others” to be weighed in determining whether an injunction should issue. *General Elec. v. Gem Vacuum Stores*, 36 N.J. Super. 234, 236-37 (App. Div. 1955). This principle is typically applied when there is doubt as to likelihood of success on the merits but an injunction will allow those merits to be litigated. *Mullins*, 120 N.J. Eq. at 387 (status quo injunction properly issues, “although there may be serious doubt of the ultimate success of the complainant”).

In *Waste Mgmt. of N.J., Inc. v. Morris Cnty. Mun. Utilities Auth., & Solid Waste Servs., Inc.*, 80 A.3d 1169, 433 N.J. Super. 445 (App. Div. 2013), our Appellate Division set forth a less rigid test than the approach articulated by the Crowe decision. “This less rigid approach... permits injunctive relief preserving the status quo even if the claim appears to be doubtful when a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit would be impaired or destroyed.” *Id.* at 454.

The 2013 Waste Management decision provides New Jersey litigants with two potential arguments when seeking injunctive relief. Litigants can still argue that they are entitled to injunctive relief because they satisfy each of the factors set forth in Crowe. As a result of the Waste Management decision they may also argue they are entitled to injunctive relief to maintain the “status quo.”

Moreover, “when a case presents an issue of ‘significant public importance,’ a court must consider the public interest in addition to the traditional Crowe factors.” *Garden State Equality*, *supra*, 216 N.J. 314, 321 (2013); see also *New Jersey Election Law*

Enforcement Com'n v. DiVincenzo, 445 N.J. Super. 187, 196, 202-206 (App. Div. 2016) (denying stay after consideration of all factors, including the public interest).

The determination of whether a judgment should be stayed pending appeal is one that very much depends on the facts, circumstances and equities of each individual case. Cnty. of Sussex v. Merrill Lynch Pierce Fenner & Smith, 351 N.J. Super. 66, 67 (Law Div. 2001), *aff'd*, 351 N.J. Super. 1 (App. Div. 2002). This is particularly true in this case where my constitutional rights are being violated.

Point I - A stay is required to avoid irreparable harm

The "object of an interlocutory injunction is to prevent some threatening irreparable mischief which should be averted until opportunity is offered for a full and deliberate investigation of the case." Outdoor Sports Corp. v. Amer. Fed' of Labor, Local 23132, 6 N.J. 217, 230 (N.J. 1951).

"Irreparable harm in this context has been described as "injury to be suffered in the absence of injunctive relief [that] is substantial and imminent[.]" Waste Mgmt., 399 N.J. Super. at 520."

In *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017), the United States Supreme Court declared social media to be the "modern public square" and that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights."

3 years later, in *State v. R.K.*, 463 N.J. Super. 386, 232 A.3d 487 (App. Div. 2020), the New Jersey Appellate Division concluded that the United States Supreme Court's recognition of significant First Amendment interests in access to social-networking websites extends to New Jersey parolee's as well.

The R.K. court established that a blanket social media prohibition is "unconstitutional on its face because it completely denies access to R.K.'s ability to express himself in the protected forum of public debate through social networking."

"In light of *Packingham* and its progeny noted above, we are now constrained to conclude the social networking ban is unconstitutional on its face.

"Even though parolees don't enjoy the "full panoply of due process rights," we still "think it plain that a special condition of parole that cannot pass constitutional muster in the same strict sense that we demand of other statutes with penal consequences must fail." *Pazden*, 374 N.J. Super. at 370, 864 A.2d 1136. Here, the parole officer should not be given the authority to make the ban constitutional when we have determined it is unconstitutional," the R.K. court held.

The special conditions vacated by the R.K. court are the *exact* same conditions imposed upon me.

"Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages." *Croswell v. Shenouda*, 275 N.J. Super. 614, 628, 646 A.2d 1140, 1147 (Super. Ct. 1994). "In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief." *Crowe*, 90 N.J. at 133.

Both our federal courts and state courts have granted interlocutory relief against restrictions on First Amendment freedoms, finding such restrictions result in irreparable harm and warrant injunctive relief.

"It is well established that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Am. Broad. Cos., Inc. v. Wells*, 669 F. Supp. 2d 483, 489 (D.N.J. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Citizens United for Free Speech II v. Long Beach Twp. Bd. of Comm'rs*, 802 F. Supp. 1223, 1237 (D.N.J. 1992)).

"Generally, restrictions on public and political speech automatically qualify as irreparable harm if they violate the First Amendment." *Davis v. New Jersey Dep't of Law and Public Safety*, 327 N.J. Super. 59, 68-69 (Law Div. 1999).

Like the harm in *Crowe*, Parole's seizure of my freedom of speech cannot be adequately remedied through monetary damages awarded after a lengthy legal

process, nor can I ever regain the constitutional freedoms lost during the pendency of the appeal - thus necessitating equitable intervention now to prevent ongoing and irreparable injury.

Point II - In light of the record below, or lack thereof, a meritorious issue exists

My administrative appeal to the Parole Board cited the R.K. ruling. Parole ignored this case ruling and failed to provide any explanation as to why the R.K. ruling should somehow not apply to my case.

Clearly a meritorious issue exists as to the instant appeal.

Point III - Defendants are likely to succeed on the merits

Given the lack of a record from Parole upon which to find a legitimate public purpose to restrict my first amendment freedoms, I am likely to succeed on the merits.

The second and third Crowe factors also involve a fact-sensitive analysis that "requires a determination of whether the material facts are in dispute, and whether the applicable law is settled[.]" Waste Mgmt., 399 N.J. Super. at 528 (citation omitted). However, when considering this factor in the context of a preliminary injunction: doubt about a suit's merits does not entirely preclude the entry of an interlocutory injunction designed to preserve the status quo. So long as there is some merit to the claim, a court may consider the extent to which the movant would be irreparably injured in the absence of pendente lite relief, and compare that potential harm to the relative hardship to be suffered by the opponent if an injunction preserving the status quo were to be entered. If these factors strongly favor injunctive relief, the status quo may be preserved through injunctive relief even though the claim on the merits is uncertain or attended with difficulties.

[Id. at 535.]

Point IV - Balancing relative hardship to the parties in granting or denying relief

The hardship on me is the extraordinary restriction of my first amendment freedoms, while Parole Board is a state agency which would not suffer any hardship if I am granted a stay of Parole's orders.

Point V - It is in the public interest to grant a stay

Over 4 years ago, in the R.K. ruling, this Court made it crystal clear that Parole's internet and social media bans are unconstitutional on its face. In all this time, Parole baselessly ignores this Court's rulings and continues to violate Parolee's rights by imposing the unconstitutional internet and social media bans.

Exactly what the R.K. court stated - "the parole officer should not be given the authority to make the ban constitutional when we have determined it is unconstitutional" - is what Parole continues to this day to laugh and ignore.

The proof for this claim is that I was imposed these very same unconstitutional prohibitions!

It is therefore in the public's interest that this Court should grant an immediate stay of the Internet and social media special conditions, as well as a stay of all related Parole violations pending the final decision of this Court.

CONCLUSION

For the reasons stated above, I respectfully request that the Parole Board stay the FAD pending the outcome of the Appellate Division appeal.

Respectfully submitted,



Exhibit E



State of New Jersey

NEW JERSEY STATE PAROLE BOARD

P.O. BOX 862

TRENTON, NEW JERSEY 08626

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PHILIP D. MURPHY
GOVERNOR

TAHESHA L. WAY
LT. GOVERNOR

SAMUEL J. PLUMERI, JR.
CHAIRMAN

RONALD L. SLAUGHTER
VICE-CHAIRMAN

January 30, 2025



RE: Request for Stay

Dear 


This is in response to your letter dated December 22, 2024, requesting that the Board stay its November 27, 2024, determination to affirm the Division of Parole's January 31, 2024, determination to impose the special condition mandating that you refrain from the possession and/or utilization of any computer and/or device that permits access to the Internet unless specifically authorized by the District Parole Supervisor or designated representative; once the District Parole Supervisor or designated representative permits use of a computer and/or device that is capable of accessing the Internet, you are subject to certain restrictions and conditions concerning his use; and the Division of Parole's July 31, 2024, determination to impose the special condition mandating that you refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in his name or any other name for any reason unless expressly authorized by the District Parole Supervisor or designee.

Please be advised that on January 29, 2025, the Board reviewed the matter and determined to deny your request to stay the Board's November 27, 2024, determination pending the outcome of the appeal you filed with the Superior Court – Appellate Division. Accordingly, the abovementioned special conditions remain active at this time.

Sincerely,



Anthony G. Pegues, Esq.
Manager, Legal Support Unit

AGP: mjl
cc: SPB 

**Additional material
from this filing is
available in the
Clerk's Office.**