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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY COURT OF COMMON PLEAS
Maite Murphy, Circuit Court Judge

Circuit Court Case Number 2017-CP-18-02001
Appellate Case Number 2020-001352
Published Opinion No. 2024-6053,
2024 S.C. App. LEXIS 22, 2024 WL 1081569 (March 13, 2024)

Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister. Respondents,

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PETITION FOR REHEARING

Counsel for Appellants:

Robert J. Butcher
Deborah J. Butcher
Foster Care Abuse Law Firm, PA

507 Walnut Street
Post Office Box 610
Camden, South Carolina 29021
Phone: (803) 432-7599
Cell: (803) 427-6117 (RJB)
Cell: (803) 900-0809 (DJB)
Email: rbutcher@camdensc-law.com
Email: dbutcher@camdensc-law.com
Attorneys for Appellants

Other Counsel of Record:

Attorneys for SCDSS, Michael Leach, and Jasmine Flemister
Kenneth P. Woodington
William H. Davidson
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
Telephone: (803) 806-8222
Email: kwoodington@dml-law.com
Email: wdavidson@dml-law.com

Attorneys for Dorchester School District Two
Susan M. Fittipaldi - 14225
Thomas K .Barlow - 8995
Post Office Box 11367
Columbia, South Carolina 29211
Telephone: (803) 254-4035
Email: sfittipaldi@hmwlegal.com
Email: tbarlow@hmwlegal.com

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Appellants Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., ask the Court to rehear this matter and reconsider its opinion issued March 13, 2024. *See*, *May, et al., v. Dorchester School District Two, et al.*, Opinion No. 2022-UP-033 (Ct. App. March 13, 2024). Pursuant to Rule 221, SCACR, Appellants must submit this petition within fifteen days after the filing of the Court's opinion.

I. The Court's finding that L.C.M. was removed from the home is erroneous and she was not sexually abused by her biological family before coming into care.

This is an error or misunderstanding by the Court. L.C.M. still resides with her adopted family. *May, et al., v. Dorchester School District Two*, *et al.*, 2024 S.C. App. LEXIS 22, fn. 2, 2024 WL 1081569 (Ct. App. March 13, 2024). J.H.M. and J.R.M. have been placed in the permanent custody of South Carolina Department of Social Services (SCDSS) and Kaci May voluntarily terminated her parental rights.

Appellants mistakenly wrote their brief that "Three of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017,…" It should have been two children, J.H.M. and J.R.M. L.C.M. should not have been included.

II. The Court's finding the Family Court ruled on Appellants' Motion to Restrain SCDSS from interrogating the children at school is erroneous.

The Family Court in the underlying case never ruled on Kasey May's Motion to Restrain SCDSS from interrogating the children at school. *May, et al., v. Dorchester School District Two*, *et al.*, 2024 S.C. App. LEXIS 22, *5, 2024 WL 1081569 (Ct. App. March 13, 2024). No evidence was presented in the Record on Appeal from the underlying Family Court action regarding the hearing of the motion and no order was issued by the Family Court on the motion.

III. The Court's finding there was no "likelihood of success on the merits" is erroneous.

On February 24, 2024, the Ninth Circuit relied upon *Calabretta v. Floyd*, 189 F.3d 808

(9th Cir. 1999)[1], which is still good law, in writing:

> Temporary seizures of children at school for investigatory purposes present a more nuanced instance of this problem. The school is not the home and, when the school has its own interests, the Supreme Court has sought to "strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985); *see also, Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 370-71 (2009). Here, we are not confronted with questions around seeking a balance between the interests of the child and those of her school but, rather, between the interests of the child and those of the state in securing the welfare of children at home. We have some history in this area. Although in general "[t]he Fourth Amendment protects a child's right to be free from unreasonable seizure by a social worker," *Dees*, 960 F.3d 1145, 1154 (citing *Kirkpatrick[v. County of Washoe*, 843 F.3d [784,] 790-91[(9th Cir. 2016)), the details surrounding the investigation have proven critical.

Scanlon v. Cnty. of Los Angeles, 92 F.4th 781, 806 (9th Cir. 2024).

At a minimum, the courts agree Fourth Amendment that removing a child from class to be questioned by a caseworker is seized for Fourth Amendment purposes. *Greene v. Camreta*, 588 F.3d 1011, 1022 (9th Cir. 2009); *In the Interest of Thomas B.D.*, 326 S.C. 614, 617, 486 S.E.2d 498 (Ct. App. 1997); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003) (a twenty-minute interview of an eleven-year-old conducted by a caseworker in the presence of a uniformed police officer violated the boy's Fourth Amendment rights); *Dees v. Cty. of San Diego*, 960 F.3d 1145, 1154 (9th Cir. 2020) (Citing *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 790-91 (9th Cir. 2016) (*en banc*)); *Michael C. v. Gresbach*, 526 F.3d 1008, 1018 (7th Cir. 2008) (holding that, in light of *Heck*, a social worker who interviewed minors at a private school was not entitled to qualified immunity); *Schulkers v. Kammer*, 955 F.3d 520 (6th Cir. 2020) ("[a]t a minimum, a social

[1] "The Supreme Court granted certiorari and vacated Greene's Fourth Amendment holding on mootness grounds. However, it left intact the qualified immunity determination. *Camreta[v. Greene]*, 563 U.S. [692,] 698, 714 n.11 (2011) ("We leave untouched the Court of Appeals' ruling on qualified immunity and its corresponding dismissal of S.G.'s claim because S.G. chose not to challenge that ruling."). The only surviving portion of our decision in *Greene* is that the Fourth Amendment "right of minor children to be free from unconstitutional seizures and interrogations by social workers [w]as not . . . clearly established" as of August 2015. *Capp[v.*

worker must have reasonable suspicion of child abuse before conducting an in-school interview without a warrant or consent."); *Barber v. Miller*, 809 F.3d 840, 845 (6th Cir. 2015) (holding the "Fourth Amendment right to avoid warrantless, in-school interviews by social workers on suspicion of child abuse not to have been clearly established in January 2011" and declining to rule on the constitutional merits of the claim); *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005) ("A social worker who lacks any legitimate justification for seizing a child, but nonetheless seizes the child and demands, in direct contravention of a court order, that she enter the custody of her abusive father, would clearly know that his conduct is unconstitutional."). "A 'seizure' triggering the Fourth Amendment's protections occurs only when government actors have, 'by means of physical force or show of authority,…in some way restrained the liberty of a citizen.'" *Camden v. Hilton*, 360 S.C. 164, 175, 600 S.E.2d 88 (Ct. App. 2004); *Dees*, 960 F.3d at 1154, (Citing *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). *See*, *Schulkers v. Kammer*, 955 F.3d 520, 536 (6th Cir. 2020) (Citing *O'Malley v. City of Flint*, 652 F.3d 662, 668 (6th Cir. 2011) (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Courts generally should take into account the child's age when determining if a reasonable person would have felt free to leave. *Schulkers*, at 536 (Citing *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005); *Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003)).

"When the actions of the [official] do not show an unambiguous intent to restrain or when an individual's submission to a show of governmental authority takes the form of passive acquiescence…a seizure occurs if, 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *Dees* 960 F.3d at 1154, (Citing *Brendlin v. California*, 551 U.S. 249, 255 (2007) (quoting. *Mendenhall* at 544, 554, (1980)). *See also*, *State v. Spears*, 429 S.C. 422, 434, 839 S.E.2d 450 (2020). Common sense

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County of San Diego], 940 F.3d [1046,] 1059. *See*, *Greene*, 588 F.3d at 1033."

dictates that a reasonable child would not have felt free to decline or otherwise resist going to the front office with a school official. *Williams v. Cty. of San Diego*, 2021 U.S. Dist. LEXIS 25711, *17 (S.D. Cal. February 10, 2021) (Citing *Neel v. Cty. of San Diego*, No. 18-CV-1764 W (MSB), 2019 U.S. Dist. LEXIS 70261, at *10-11 (S.D. Cal. Apr. 25, 2019)). *See also*, ROA 103-104, 108 (A.R.M. was given no choice about the interrogation and when she was interrogated, she didn't, "like to disobey adults and…I'm not comfortable when I disobey adults."); ROA 120-124 (C.B.M. was not given a choice and he did not feel free to leave); ROA 154-155 (Baird testified children who refused to speak with SCDSS could be given a referral for disobeying a teacher).

It seems here, the Court believes that traditional Fourth Amendment protections do not apply to child abuse investigations at all, as such investigations constitute administrative searches requiring neither probable cause nor a warrant, bolstering this assertion through reliance upon S.C. Code Ann. § 63-7-920. The statute provides no limitation upon SCDSS. There is no due process and there is no judicial oversight upon the SCDSS's executive use of this power. Under this Court's interpretation of S.C. Code Ann. § 63-7-920, knowing that SCDSS's investigation had been concluded for several months in this matter, SCDSS has license to interrogate every single child every single day about what goes on in their home. Or, in what occurs more commonly, SCDSS conducts school interrogations of children of parents it wishes to target, whether or not an investigation is in place.

But the majority of Courts across the country have found school children retain a fundamental right to be free from search and seizure by social services workers. "A reasonable nine-year-old child who is called out of class by school officials for the purpose of meeting with a social worker who has already disturbed the child's family life, and who is not advised that she may refuse to speak with the social worker, will feel compelled to talk to the social worker and

remain there until dismissed." *Dees v. Cty. of San Diego*, 302 F. Supp. 3d 1168, 1179 (D.S. Cal. October 10, 2017). *See also, Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003) (20-minute interview of eleven-year-old boy was a seizure where the child was escorted from class by the principal, caseworkers, and a uniformed police officer into church's empty nursery and questioned by the caseworkers, with the police officer present, about corporal punishment); *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005) (an "emotionally vulnerable" 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew "had the authority to determine her custodial care," confined her for an "hour or two" in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her father); *Schulkers v. Kammer*, 955 F.3d 520, 536 (6th Cir. 2020) (Social worker violated Plaintiffs' Fourth Amendment rights by seizing them from their classrooms and subjecting them to interrogation without any suspicion of child abuse, and without obtaining a warrant or consent. We hold that the Fourth Amendment governs a social worker's in-school interview of a child pursuant to a child abuse investigation).

There are several exceptions to the probable cause requirement, including consent, exigent circumstances, and in some instances, "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *Schulkers*, at 536 (Citing *Griffin v. Wisconsin*, 483 U.S. 868, 873, (1987)). None of these exceptions were present at any time during and subsequent to the SCDSS investigation. ROA 245-246, 401-459 (Plt. Tr. Ex. 1, Dictation); ROA 466-472 (Plt. Tr. Ex. 3, Intake); and ROA 473-478 (Plt. Tr. Ex.

4, Guided Supervision Staffing). The substantial record demonstrates that at any time, SCDSS could have sought relief with the family court had probable cause been present. *See also*, ROA 407 (meet with legal), ROA 409 (complete inspection warrant), ROA 411 (prepare for court intervention), ROA 417 (contacting Kaci's attorney), ROA 417 (contact legal), ROA 418 (email to Kaci's attorney), ROA 419 (contact legal), ROA 420-423 (email re Kaci's attorney), ROA 426 (send letter to Kaci's attorney and request children's records), ROA 427 (email between SCDSS attorney and Kaci's attorney), ROA 428 (email to Kaci's attorney), ROA 432 (email to Kaci's attorney), ROA 433 (email to Kaci about contacting her attorney), ROA 434 (email from Kaci's attorney), ROA 435 (email from Kaci about contacting her attorney), ROA 443 (court intervention), ROA 444 (follow up with legal); ROA 474 (meet with legal), 476 (complete inspection warrant), 478 (prepare for court intervention) (Plt. Tr. Ex. 4, Guided Supervision Staffing); ROA 479-498 (Plt. Tr. Ex.s 5-A & 5-B, Emails); ROA 506 (Plt. Tr. Ex. 8, SCDSS Case Transfer and/or Case Staffing ([Case Manager] was unable to gain access to the home. CM is preparing paperwork)); ROA 551, 569, 582-584, 618 (Plt. Tr. Ex. 18, SCDSS Policy). In fact, the record demonstrates that SCDSS had access to, policies related to, and the ability to seek a warrant or court order--and it considered seeking a warrant or court order.

Because SCDSS and Flemister were limited by the Mays, they contacted collateral sources and third parties, to learn information about the Appellant children. ROA 429, 430, 436, 442, 446, 447. SCDSS and Flemister also asked law enforcement to assist in entering the home. ROA 424, 426, 431, 441. Lastly, when SCDSS filed for family court intervention three months later, it never asked for access to the children because it never had probable cause to do so. ROA 519-527 (Tr. Ex. 12, Family Court Pleadings).

In *Scanlon v. Cnty. of Los Angeles*, the Ninth Circuit cited *Dees* in observing:

> [I]t is at least arguable whether a nine-year old girl with cognitive disabilities, called into the administrative office of her school by a woman who she knew had the authority to disrupt her family's life, would feel empowered to leave or could have consented to the discussion.

Scanlon v. Cnty. of Los Angeles, 92 F.4th 781, 807-808 (9th Cir. 2024) (Citing *Dees v. County of San Diego*, at 1156).

a. The Court's justification that SCDSS interrogations were conducted as part of the Child Protective Services investigation had an expiration date.

The Court's finding that "May's claim that either the School District or DSS unreasonably "seized" her children, or otherwise violated their constitutional rights by calling them from class and asking limited, basic questions for a short period of time" is wrong. *May, et al., v. Dorchester School District Two*, *et al.*, 2024 S.C. App. LEXIS 22, *9, 2024 WL 1081569 (Ct. App. March 13, 2024). In its opinion, the Court agreed with the trial court that:

> Based on the largely undisputed testimony, we agree with the circuit court that the interviews here were reasonable in inception and scope following May's own report of sexual abuse; her subsequent refusal to allow DSS to interview the children in their home necessitated that they be interviewed at school.

May, et al., v. Dorchester School District Two, *et al.*, 2024 S.C. App. LEXIS 22, *9, 2024 WL 1081569 (Ct. App. March 13, 2024). The problem with this logic is the investigation ended on May 12, 2017. Brief of Appellants, *8 (August 18, 2021). At a minimum, the interrogations of the children on September 19 (A.R.M., C.B.M., and J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.) were unlawful seizures outside of the scope of the investigation. SCDSS's time to investigate is limited by statute in S.C. Code Ann. § 63-7-920(A)(3):

> The finding must be made ***no later than forty-five days*** from the receipt of the report. A single extension of no more than fifteen days may be granted by the director of the department, or the director's designee, for good cause shown, pursuant to guidelines adopted by the department.

S.C. Code Ann. § 63-7-920(A)(3) (emphasis added). The next statute adds emphasis to the notion that a CPS investigation has an expiration date by requiring that any case that has not been determined by sixty days "All reports that are not indicated at the conclusion of the investigation and all records of information for which an investigation was not conducted pursuant to Section 63-7-350 must be classified as unfounded." S.C Code Ann. 63-7-930(C).

The following is a timeline of SCDSS's investigation, the Mays' appeal, and the filing of SCDSS's CPS action in family court:

March 28, 2017	SCDSS accepted the intake of the report against Kaci May.[2]
May 12, 2017	SCDSS indicated the investigation against the Mays.[3]
June 7, 2017	The Mays appealed the administrative decision.[4]
September 14, 2017	SCDSS filed *SCDSS v. May*, 2017-DR-18-01334.[5]
September 19, 2017	SCDSS Interrogation of A.R.M., C.B.M., and J.W.M.
September 22, 2017	SCDSS Interrogation of J.T.M.
November 20, 2017	SCDSS Interrogation of A.R.M., C.B.M., and J.W.M.

The fact that SCDSS waited three months to file the child protective services action in *SCDSS v. May*, 2017-DR-18-01334 demonstrates that there was little or no concern for the safety of the May children by SCDSS. SCDSS's own policy states that:

> In cases where treatment services are to be provided or are reasonably expected to be provided and the individual or family disagrees with the indicated decision and/or the decision to deliver services, those cases MUST be taken to Family Court. There can be little effective treatment and the safety of the child is in question when there is no acknowledgement of the abuse or neglect. The Administrative Appeals process cannot coerce treatment nor address child safety.

ROA 544, SCDSS Human Services Policy and Procedure Manual, Chapter 7, Child Protective and Preventative Services, Policy No. 701 (January 7, 2015).

Because the Mays asserted their actual innocence in appealing the indicated case, they did not consent for them and their children to be under the jurisdiction and authority of SCDSS.

[2] Brief of Appellants, *4 (August 18, 2021).
[3] Brief of Appellants, *7-8 (August 18, 2021).
[4] Brief of Appellants, *9 (August 18, 2021).

The only way for the agency to force services upon a South Carolina citizen, and in particular, the Mays, is through a family court order. The process has its own due process protections, found in Title 63, Chapter 7 of the South Carolina Children's Code.

Without a family court order, SCDSS does not have the unfettered right to interrogate children, enter the homes of families, require drug tests, require classes, or limit parental rights. If, and only if, a family court has determined that a child is abused and/or neglected, or there is probable cause for emergency protective custody, can the State intrude upon a family's privacy. S.C. Code Ann. §§ 63-7-620 (EPC); 63-7-710 (Probable cause hearing); 63-7-1640 (Family Preservation); 63-7-1650 (Services without removal); 63-7-1660 (Services with removal); and 63-7-1670 (Treatment Plan). None of the facts supported EPC and no judicial determination of abuse and/or neglect took place. The statues listed above are all due process protections where SCDSS must make a showing of abuse and/or neglect before the family court. Under the Court's ruling here, there are no protections or remedies for children and family until SCDSS files an action in family court.

This Court's application of S.C. Code Ann. § 63-7-920 to the latter interrogations that took place from September 14 through November 20, 2017, is misplaced, as time had expired. In addition, the Court's reliance upon *State v. Houey* is misplaced. In *Houey*, the State, at a minimum, had probable cause to seek HIV and STD testing of the defendant due to his arrest and indictment and with the State's stipulation that it would not use the test results in trial. *State v. Houey*, 375 S.C. 106 (2007). Similarly distinguishable, in *Wildauer v. Frederick County*, Ann Wildauer ran a care home for "fifteen children, most of whom were disabled", and refused to return four of the children to two sets of parents. This caused a county social worker and two deputies to go to Wildauer's home and demand release of the children to the legal custody of

[5] Brief of Appellants, *12 (August 18, 2021).

their parents. *Wildauer v. Frederick County*, 993 F.2d 369, 370-372 (4th Cir. 1993). While there, the county social worker and two deputies observed "that Wildauer's home was unhygienic and potentially unsuitable for disabled and sick children" and opened an investigation. *Id*.

b. The Court failed to consider the Appellants' claims under 42 U.S.C. §1983 or the South Carolina Constitution.

Plaintiffs' claims are grounded in the Constitution. 42 U.S.C. §1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

42 U.S.C. §1983. Plaintiffs assert the Defendants violated Amend. I, IV, V, VI, and XIV of the U.S. Const.

Similarly, Article I of the South Carolina Constitution contains three relevant sections:

> **§ 3. Privileges and immunities; due process; equal protection of laws.** The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> **§ 10. Searches and seizures; invasions of privacy.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.
>
> **§ 12. Double jeopardy; self-incrimination.** No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself.

S.C. Const. art. I. The Court should note that S.C. Const. art. I, §10 is much more stringent than the Fourth Amendment, as it includes and additional clause, "…unreasonable invasions of privacy shall not be violated,…"

These constitutional protections guarantee citizens' rights and privacy, whether they are guilty, or in the case of the Mays, innocent.

c. Parents have Fourteenth Amendment interest in the "companionship, care, custody and management of their children".

Parents have a cognizable liberty interest in the "companionship, care, custody and management of [their] children." *S.C. Dep't of Soc. Servs. v. Truitt*, 361 S.C. 272, 281, 603 S.E.2d 867 (Ct. App. 2004); *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N.C.*, 452 U.S. 18, 27 (1981). *See also*, *Wallis v. Spencer*, 202 F.3d 1126, 1137 (9th Cir. 2000). District Courts considering analogous circumstances found that a state official's seizure and subsequent interview of a minor on school grounds without judicial authorization, parental consent, or exigent circumstances amounted to unconstitutional interference with the parent-child relationship. *See*, *Williams v. County of San Diego*, 2017 U.S. Dist. LEXIS 210404, 2017 WL 6541251, at *7-8 (S.D.Cal. Dec. 21, 2017); *Rabinovitz v. City of Los Angeles*, 287 F.Supp.3d 933, 951 (C.D. Cal.2018). *See also*, *Doe v. Heck*, 327 F.3d at 524 ("[B]ecause the defendants had no evidence giving rise to a reasonable suspicion that the plaintiff parents were abusing their children, or that they were complicit in any such abuse, the defendants violated the plaintiffs' right to familial relations by conducting a custodial interview of [the child] without notifying or obtaining the consent of his parents and by targeting the plaintiff parents as child abusers.").

Appellants assert that S.C. Const. art. I, §10 is also applicable here, as, "unreasonable invasions of privacy shall not be violated". In this case, it is without dispute that actual deliberation of the Appellants' due process rights was not only practical, but it was considered, disregarded, and violated over and over and over again.

Courts have made it clear that neither peace officers nor social workers may dispense with constitutional constraints in their investigation of child abuse allegations when there is no

imminent threat of serious harm to the child. *Wallis v. Spencer*, 202 F.3d 1126, 1130-1131 (9th Cir. 2000); *Rogers v. County of San Joaquin*, 487 F.3d 1288 (9th 2007); *Calabretta v. Floyd*, 189 F.3d 808, 817 (9th Cir. 1999); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003); *Tenenbaum v. Williams*, 193 F.3d 581, 604 (2nd Cir. 1999); *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005); *Rabinovitz v. City of Los Angeles*, 287 F.Supp.3d 933 (C.D. Cal. 2018).

While the protection of children from abuse and neglect is vital, "the rights of families to be free from governmental interference and arbitrary state action are also important." *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1297 (9th Cir. 2007). It therefore follows that a balance must be struck, "on the one hand, the need to protect children from abuse and neglect and, on the other, the preservation of the essential privacy and liberty interests that families are guaranteed under both the Fourth and Fourteenth Amendments of our Constitution." *Id.*

> "Because the swing of every pendulum brings with it potential adverse consequences, it is important to emphasize that in the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural guarantees of the Constitution. The fact that the suspected crime may be heinous—whether it involves children or adults—does not provide cause for the state to ignore the rights of the accused or any other parties. Otherwise, serious injustices may result. In cases of alleged child abuse, governmental failure to abide by constitutional constraints may have deleterious long-term consequences for the child and, indeed, for the entire family. Ill-considered and improper governmental action may create significant injury where no problem of any kind previously existed."

Wallis v. Spencer, 202 F.3d at 1130-1131.

When responding to a report of abuse and neglect, SCDSS teaches its caseworkers to go to the child's school to interrogate the child and it is SCDSS's policy to interrogate children at school when school is in session at any time. ROA 220-221, 237; ROA 546-568 (Plt. Tr. Ex. 18, SCDSS Policy 719). *See also*, ROA 401-405, 412-413, 437-440, 445-446. SCDSS testified that it does not need to obtain parental permission to interrogate a child to gather evidence against the

parents. ROA 224-225. This information sought includes abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552 (Plt. Tr. Ex. 18, SCDSS Policy). After a Child Protective Services investigation has been completed, SCDSS testified that it can continue to interrogate children at school. ROA 229. The head of SCDSS Training was unaware of any legal authority that permitted SCDSS to interrogate children without permission of a parent after an investigation was completed. ROA 228.

There is no doubt SCDSS used the May children's school attendance to seize and interrogate the children against the wishes of the Mays and their children. SCDSS, the School District, and the trial court all believe that neither Kaci nor her children have constitutional protections in these settings.

IV. The Court's finding Appellants failed to show irreparable harm is erroneous.

In its opinion, the Court wrote:

> Before both the family and circuit courts, May failed to offer any evidence of threatened or pending DSS investigations or of further DSS plans to interview her children at a school. The three adopted children no longer live with the biological May family.[6]
>
> Significantly, May has not identified any injury aside from inconvenience or mild upset at the prospect of DSS returning to interview her children. The children testified that they knew they did not have talk to DSS, and some exercised their right not to answer questions. There is no evidence in the record that any of the children's grades suffered or that any of the children were harmed, much less to an extent that might have outweighed DSS's need to interview them regarding May's own report that one or more of her children had suffered sexual abuse by another child in the May home. Although May testified the children were upset by the DSS interviews, there is simply no evidence to support a claim that any of the May children have been harmed or would suffer harm in the absence of injunctive relief.
>
> The adopted children had significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with

[6] As stated above in §I, L.C.M. still lives with the May family.

> their biological family. These prior experiences caused stress and emotional harm far beyond any issue raised in the current matter. Thus, it is difficult to comprehend how the emotional difficulty alleged could be attributed to the DSS interviews which, as discussed below, were appropriate and authorized by statute. Notably, May failed to demonstrate that DSS returning to a school to interview her children was anything more than a hypothetical possibility insufficient to support her claim for injunctive relief. Accordingly, the circuit court properly found May failed to show the required irreparable harm.

May, et al., v. Dorchester School District Two, *et al.*, 2024 S.C. App. LEXIS 22, *5, 2024 WL 1081569 (Ct. App. March 13, 2024).

The Court's justification that the three adopted children had "significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with their biological family" in diminishing any harm for the violation of the Appellants' constitutional rights is, respectfully, not relevant to the legal standard or the case law.[7] The justification of a small harm to someone who has been grievously harmed in the past would eliminate any and all recourse for a large contingent of our population who had experienced such harms in the past. Similarly, just because a driver hits a pedestrian, it does not mean that the next car can drive over the pedestrian as well, without consequence.

The justification undermines our "eggshell plaintiff rule" where "[a] defendant takes the plaintiff as he or she is found, and the plaintiff is entitled to recover damages resulting from the aggravation of a pre-existing condition" *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 193, 691 S.E.2d 170 (Ct.App. 2010); *Waring v. Johnson*, 341 S.C. 248, 260, 533 S.E.2d 906, 913 (Ct. App. 2000); *Raino v. Goodyear Tire & Rubber Co.*, 309 S.C. 255, 259, 422 S.E.2d 98, 100 (1992) ("The defendant takes the plaintiff as he is found and the plaintiff is entitled to recover damages resulting from the aggravation of a pre-existing condition."). Merely because someone was horrifically, sexually abused in the past, it does not divest them of their constitutional rights,

[7] In addition, there is no evidence that L.C.M. was exposed to horrific sexual abuse in the Record

nor does it insulate them from being harmed by violation of those constitutional rights. Because of the children's PTSD and J.H.M.'s and J.R.M.'s sexual abuse history, the constitutional violation was ***more*** traumatizing to the children because of their history of PTSD and sexual assault. That makes the injury more irreparable, not less.

a. Evidence showing irreparable harm.

The trial court's finding that "Plaintiff[s] failed to produce any evidence supporting…irreparable harm" is without merit. Order, *3-4 (September 18, 2020). First, there are the numerous completed violations of each of the Appellants' constitutional and legal rights on March 29 (A.R.M.) and 30 (C.B.M., J.H.M., and J.R.M.), May 12 (J.H.M., J.R.M., A.R.M., and J.T.M.) and 25 (J.T.M. and C.B.M.), September 19 (A.R.M., C.B.M., and J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.). *See*, *Uzuegbunam v. Preczewski*, 209 L.Ed. 2d 94, 101, 141 S.Ct. 792 (2021).

It appears the trial court weighted harm on a scale of hysteria:

> CBM and ARM, testified that they were not upset about the meetings or interviews with DSS. They were not crying and did not observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case.

Order, ROA 14-15 (September 18, 2020).

It also appears that the nature of the seizures by SCDSS was a factor in the trial court determining that there were no Constitutional violations. But this is wrong. The official need not always "display an intimidating demeanor or use coercive language" for a suspect to believe he cannot decline an officer's requests or otherwise terminate the encounter. *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004). This is particularly true where, as here, the

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on Appeal or in the litigation that took place in the lower courts.

persons being confronted are young children who are well aware of the power of the social worker to disrupt her family. Children in adoptive families and children of low-income families view both law enforcement and social services differently than the rest of society. This comes from personal experience, parenting, and socialization. There is no "Officer Friendly" and the nice ladies from social services strike fear in many children who have seen their peers, relatives, and siblings disappear from school or home forever. The record was replete with evidence of harms. Well-founded fear and anxiety proximately caused by continuous unconstitutional governmental intrusions, which are irreparable harms.

The evidence shows A.R.M. testified that she was uncomfortable during the interrogations. ROA 103, 108-109. A.R.M. would distance herself and become angry at J.H.M. and J.R.M. because she thought they were to blame. ROA 331-332. C.B.M. testified that the SCDSS interrogations make him feel nervous and he was afraid that his siblings would be taken. ROA 120 (…like my siblings wouldn't be on the bus when I came home."). C.B.M. did not feel like he could have gotten up and walked out of the interrogation. ROA 123-124. C.B.M. remains afraid that SCDSS will come back to the school and try to interrogate him. ROA 124. C.B.M. was afraid, "DSS was trying to…dig up dirt and try to take everybody away…[a]nd trying to prove that our family was bad…" ROA 132.

Appellants demonstrated that when SCDSS came to the house on March 31, 2017, J.H.M. hid under her bed because she was afraid SCDSS was going to remove her. ROA 313-314. After J.H.M. was interrogated at school, she:

> "would stay up all night long and to into a state of mania where she would just – she would masturbate compulsively. She would harm herself masturbating. She would just pace her room all night long. She would talk to her self in the mirror. She would become extremely defiant and violent and destructive of house property. She would become very clingy on the other hand. Need extra reassurances that everything's fine. I'm still mom. I'm your parent. I'm your

> protector. And I've never failed you. You know, these are conversations that we would have to have over and over and over again to build this attachment, build the trust, and to remind her that she was safe in our home."

ROA 327-328. J.H.M. was distrustful of SCDSS and felt "frightened and violated" in the past by SCDSS. ROA 354-355. J.R.M. "would kill animals. And we would have dead birds in the yard. We would have birds from bird's nest in our yard. We had a lot of chickens and he would accidently break their backs." ROA 328. The frequency of killing animals, lying, and manipulation went up after the SCDSS interviews. ROA 328-329.

The Appellants also showed the other children became hypervigilant. ROA 329. C.B.M. would go into the yard and practice martial arts, go into the woods for hours, and pace because of the stress related to SCDSS. ROA 331. J.T.M. is "aware of the fallout, the observations in our house, the destruction of property, the killing of our animals…, and the cause of family tension. It causes the siblings to…have harsh feelings towards one another." ROA 332.

Kaci took A.R.M. and J.W.M. out of school because it affected C.B.M. and Kaci resigned from her employment to home school the children. ROA 329.

Two[8] of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. L.C.M. has psychiatric issues, which are probably biological, but there is no evidence that she was abused by her biological family. Kaci testified that there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. ROA 342. Kaci testified that she had witnessed J.H.M. sexually act out at school. ROA 362-363.

Kaci May's children have been diagnosed with PTSD. ROA 312. L.C.M., age 7, has

[8] Appellants misstated in their brief that "Three of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations". It should have been two, J.H.M. and J.R.M., and L.C.M. should not have been included.

psychiatric problems and has been committed to MUSC Institute of Psychiatry for thirteen days. ROA 315-316. There were subsequent SCDSS investigations involving J.H.M. when she was at Three Rivers Residential Treatment Facility and J.R.M. when he was at Palmetto Residential Treatment Facility. ROA 360-361. J.H.M. and J.R.M. both have issues, at each end of the spectrum, where they distrust others and unconditionally trust strangers. ROA 312-313. J.H.M. seeks her mother whenever she is in trouble or stressed. ROA 313. Kaci testified there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. ROA 342. Kaci testified that she had witnessed J.H.M. sexually act out at school. ROA 362-363.

Kaci would like to put all of the children back into school. ROA 334. The children would all like to attend public school. ROA 334. But because neither SCDSS nor the School District follow the law and the Constitution regarding SCDSS interrogations, she cannot safely allow the children to attend. ROA 335-336.

All of the children are traumatized by SCDSS because they are afraid that they will be removed from their home. ROA 311-313.

b. Legal argument.

As stated in the Appellants' brief[9], "[T]he denial of a constitutional right…constitutes irreparable harm for purposes of equitable jurisdiction." *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987). Where the Court has found a likelihood of success on Plaintiffs' due process claim, the deprivation of such a constitutional right alone would constitute irreparable harm. *See*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (finding that infringement on a First Amendment right, even for "minimal periods of time, unquestionably constitutes irreparable injury"); *Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir. 2014) ("[T]he

deprivation of constitutional rights unquestionably constitutes irreparable injury."). *See also*, *Am. Coll. of Obstetricians & Gynecologists v. United States FDA*, 472 F.Supp.3d 183 (D. Md. July 13, 2020).

Irreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993), *rev'd on other grounds*, *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995); While a finding of damages is not a prerequisite to the issuance of an injunction, the decision to issue injunctive relief must be based upon a balancing of the equities. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). Assessing harm to the opposing party and weighing the public interest "merge" when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Irreparable injury does not mean that the injury is beyond the possibility of compensation in damages. *Bethel Methodist Episcopal Church v. Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947). Irreparable injury has been found in many circumstances. For example, temporary relief was granted to prevent misappropriation of property[10] or to prevent trespass on property[11] or prevent violations of ordinances,[12] or the loss of a business.[13] The Supreme Court gave some insight into the considerations when it stated that "where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction."

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[9] Brief of Appellants, *35-41 (August 18, 2021).
[10] *Columbia Broadcasting Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 189 S.E.2d 305, *cert. denied*, 409 U.S. 1007 (1972).
[11] *South Carolina Elec. & Gas Co. v. Hix*, 306 S.C. 173, 410 S.E.2d 582 (Ct. App. 1991).
[12] *Beaufort County v. Butler*, 316 S.C. 465, 451 S.E.2d 386 (1994).
[13] *Levine v. Spartanburg Reg. Servs. Dist.*, 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2006); *Peek v.*

Carter v. Lake City Baseball Club, Inc., 218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950) (citation omitted).

Recently, the United States Supreme Court held, that "[t]o satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a remedy that is likely to redress that injury. *Uzuegbunam v. Preczewski*, 209 L.Ed. 2d 94, 101, 141 S.Ct. 792 (2021) (Citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). *See also*, *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018)). "[W]e conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Uzuegbunam v. Preczewski*, 209 L.Ed. 2d 94, 105, 141 S.Ct. 792 (2021). In other words, the United States Supreme Court held that even if all harms other than nominal harm from a completed constitutional violation exists, then the case will not become moot for failure to satisfy the redressability prong of standing.

"[A] constitutional injury—including alleged Fourth Amendment violations—may satisfy the irreparable harm component of this factor. *Williams v. Cty. of San Diego*, 2020 U.S. Dist. LEXIS 233539, 2020 WL 7318125 (S.D. Cal. December 11, 2020) (Citing, *e.g.*, *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996) ("Indeed, this circuit has upheld injunctions against pervasive violations of the Fourth Amendment.").

There is the highest public interest in the due observance of all the constitutional guarantees. *United States v. Raines*, 362 U.S. 17, 27 (1960). It is always in the public interest to prevent the violation of constitutional rights. *G & V Lounge v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

Spartanburg Regional Healthcare Sys., 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005).

V. The Court's finding that there was adequate remedy at law is erroneous.

While the Court was quick to point out that Kaci May relinquished her rights to J.H.M. and J.R.M., which, obviously took place in a CPS action in the family court, the Court then found that future contact with CPS was "speculative". *May, et al., v. Dorchester School District Two*, *et al.*, 2024 S.C. App. LEXIS 22, *10, 2024 WL 1081569 (Ct. App. March 13, 2024). This obviously meant that another SCDSS investigation had taken place. *See*, *SCDSS v. May*, 2021-DR-18-00552 (Dorchester County Family Court) and *SCDSS v. May*, 2021-DR-18-01099 (Dorchester County Family Court).

Counsel for Appellants is quite confident in stating that families of children with special needs and/or mental health issues are more susceptible to unnecessary CPS investigations due to increased chances of bumps, bruises, and physical injuries, misinterpreted statements by children, strange behaviors by these children, increased frequency of contact with well-meaning service providers who are mandatory reporters, and sadly, false reports by school special needs employees who are frustrated by parents' advocacy for their children.

The application of constitutional protections to school interrogations by SCDSS has not been seriously addressed in the two generations since the Children's Code was passed. Appellants assert that one of the main reasons is because a damages action for these constitutional violations almost always result in low damages and it would not worth an attorney's time and expense. Public interest law firms have many more serious constitutional issues to address. When the potential damage award for a multitude of violations is insufficient, lawsuits cannot be deemed adequate remedies at law. *Peabody Holding Co. v. Costain Group PLC*, 813 F. Supp. 1402, 1421 (E.D. Mo. 1993) ("Improper conduct for which monetary remedies cannot provide adequate compensation is sufficient to establish [irreparable] harm.").

The victims of these constitutional violations almost always belong to low-income, poorly educated families who have little sophistication to raise objections or little means to challenge the violations in a court of law.

Past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury. *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). SCDSS trains its caseworkers to interrogate children at school. SCDSS reported that there were 33,353 child protective services investigations in 2019-2020. SCDSS CPS Referrals for Investigations for State Fiscal Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-investigation-5-yr-history-2020.pdf on April 5, 2021. The number of unchecked civil rights violations is pervasive and staggering. Of those investigations, SCDSS may interrogate each child in each case on multiple occasions. Seven times in this matter. These are not isolated incidents.

Most SCDSS investigations do not end up in the family court. SCDSS CPS Referrals for Investigations for State Fiscal Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-investigation-5-yr-history-2020.pdf on April 5, 2020 (Founded cases for fiscal year 2019-2020 were 8,927 of the 33,353 investigations). And even fewer of the founded cases end up in family court. But even in family court, the seizures, searches, and interrogations of children at school has been institutionalized and our family courts either ignore the violations, *de minimis non curat lex*, or else endorse such unconstitutional acts. There are no judicial or administrative remedies.

Some families have no remedy except to remove their children from schools in order to protect their children and family from these constitutional violations.

There is no doubt that some of the Appellants have severe mental health and behavioral

challenges that dramatically increases the likelihood of additional reports of child abuse and neglect to SCDSS. The trial court acknowledged:

> Certainly, you have children that have been sexually abused and, obviously, they'll have to deal with that issue for their entire life. And if something happens in the future, certainly, I'm sure DSS will be involved. So I think the parties will probably even stipulate to that fact. And I think that if an allegation of abuse comes up in the future, I pretty much guarantee you they're not going to say that they're not going to investigate.

ROA 304.

In February 2019 J.H.M. sexually acted out at school by climbing the divider in a bathroom to try to see another student's private parts. ROA 301, 306-308, 362-363. Three of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. Kaci testified that there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. ROA 342. SCDSS even ran a secret investigation on the Mays beginning in December 2017. ROA 451-452, 454-457, 254.

When multiple actions are necessary for legal remedy, injunctive relief is necessary. *Lee v. Bickell*, 292 U.S. 415, 421 (1934) (necessity for multiplicity of actions for legal remedy was sufficient to uphold injunction); *Ecolab, Inc. v. Paolo*, 753 F. Supp. 1100, 1110 (E.D.N.Y. 1991) ("If a plaintiff can receive legal relief only through a multiplicity of lawsuits, plaintiff has suffered irreparable harm sufficient to warrant a preliminary injunction."); *Hill v. Wallace*, 259 U.S. 44, 62 (1922).

Repeated harmful actions require injunctive relief. *Northeast Women's Ctr., Inc. v. McMonagle*, 665 F. Supp. 1147, 1153 (E.D. Pa. 1987) ("The legal remedy is inadequate if the plaintiff's injury is a continuing one, where the last available remedy at law would relegate the plaintiff to filing a separate claim for damages each time it is injured anew.") (Citing 11 Wright

& Miller, at § 2944, at 398). The unchecked unconstitutional polices of SCDSS and the School District mean the Appellant children will have their constitutional rights violated as a matter of course when the next SCDSS intake occurs, until each child ages out, with L.C.M. turning eighteen in 2031.

The issues raised are capable of repetition but evading review. *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001). In *Byrd v. Irmo High School*, the Supreme Court observed that its prior decisions had taken a more restrictive approach when applying this exception, holding that the reviewing court could take jurisdiction under the exception only when the duration of the challenged action was too short to be fully litigated prior to its termination and when it was reasonable to expect that the same complaining party would be subjected to the action again. *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). The *Byrd* court adopted a less restrictive approach, however, which permitted the exception's operation when the issue raised was "capable of repetition but evading review, thereby no longer requiring courts to make a finding concerning the reasonable expectation that the same complaining party would be subjected to the action again. *Id*.. *See also*, *State v. Passmore*, 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005); *Sloan v. Greenville Cnty.*, 356 S.C. 525, 531, 590 S.E.2d 36, 38 (Ct. App. 2003) ("The party bringing the action need only show the issue raised is capable of repetition and is not required to prove there is a 'reasonable expectation the issue will arise again.'"). The action must be one which will truly evade review. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). *See also*, *Seabrook v. City of Folly Beach*, 337 S.C. 304, 523 S.E.2d 462 (1999) (just because an action is capable of repetition does not automatically imply it will evade review); *City of Charleston v. Masi*, 362 S.C. 505, 609 S.E.2d 301 (2005) (finding the exception inapplicable where the issues raised in the appeal could arise again but would not usually

become moot before the court had the opportunity to review them).

If a CPS investigation of an innocent family lasts forty-five days, but a common pleas case challenging the constitutional violation takes one year to get try, these unconstitutional interrogations will never be addressed without applying the mootness exception of, "capable of repetition but evading review". The record shows that SCDSS has received two subsequent reports and not interrogated the Appellant Children at school. The "voluntary cessation" exception to mootness stems from the concept that "a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior", which, in this case, is stopping its policy of interrogating the Appellant children in subsequent abuse and neglect cases in order to evade judicial review. *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001). *See*, ROA 450-452, 454-457.

This matter imposes questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. *Curtis v. State*, 345 S.C. 557,549 S.E.2d 591 (2001); *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (2002). In *Ashmore v. Greater Greenville Sewer District*, the Supreme Court explained the rationale behind the exception, opining:

> If this were an ordinary case, our opinion might well stop here…But the case is not an ordinary one: it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments: and raised on the record are earnestly argued public questions of importance. The last stated factor brings into play the principle, now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance. however abstract or moot they may have become in the immediate contest.

Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947). *See also*, *Sloan v. Greenville Cnty.*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (stating in regard to a matter concerning the stewardship of public funds, "[o]ur inability to provide any effective relief in this

case should not be a barrier to the courts consideration of this question of exceptional public interest").

In this matter, both SCDSS and the School District Defendants assert that SCDSS is allowed to interrogate any child at any time without reasonable suspicion or probable cause. They have operated this way since SCDSS was established. They are still doing it. They will continue to violate children's First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. They will continue to violate the privacy rights of the families of South Carolina. They will continue to violate rights of children under the South Carolina Constitution delineated in Article I, §§ 3, 10, and 12.

In *Mann v. Cty. of San Diego*, the United States District Court found, "Because the Mann children are still minors living in San Diego County, they remain subject to the possible jurisdiction of the County's child welfare system, and therefore it is not "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Mann v. Cty. of San Diego*, 907 F.3d 1154, 1164 n. 12 (9th Cir. 2018) (Citing *United States v. Concentrated Phosphate Export Ass'n, Inc.*, 393 U.S. 199, 203 (1968).).

The May children that were chronically abused before coming into SCDSS custody and while in SCDSS custody continue to have mental health and behavioral issues. These issues will ebb and flow as the children mature, physically, psychologically, and sexually. Whether SCDSS investigations will happen again has been answered – two subsequent investigations are mentioned in the record. There are more. That the Mays will be involved again with SCDSS, despite doing nothing wrong, has been proven. This is part and parcel with the adoption of children with special needs and prior abuse issues. It would be more shocking if there were no reports in the future.

VI. Conclusion and relief requested.

The unrestricted intrusion into the lives of South Carolina's children and families by SCDSS's interrogations must be limited by the Court. A bright line must be drawn to place SCDSS on notice that it must have probable cause to seize, search, and interrogate our children. The interrogations of the Appellant children were nothing short of state-sponsored fishing expeditions into the private affairs of the Appellants. SCDSS had nothing. SCDSS knew it was not allowed in the May home and it was not allowed to interrogate the Appellant children. Compulsory schooling should not be viewed as a means to skirt children's and families' constitutional protections, especially after families have affirmatively asserted their rights.

SCDSS, the School District, and the family courts already have the statutory procedures for the Defendants to follow the law. The Defendants have chosen not to follow the law and they have told the Appellants, the Courts, and all South Carolinians, "make us follow the law".

The Appellants ask the Court for the following relief:

1. Order a rehearing.
2. Reverse and remand this matter for a new trial.
3. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1983.

Respectfully submitted,

FOSTER CARE ABUSE LAW FIRM, PA

s//Robert J. Butcher
Robert J. Butcher - 74722
Deborah J. Butcher - 74029
507 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599

rbutcher@camdensc-law.com
dbutcher@camdensc-law.com

Camden, South Carolina
March 28, 2024

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that the Petition for Rehearing of Appellants complies with Rule 221 and 240, SCACR.

Respectfully submitted,

FOSTER CARE ABUSE LAW FIRM, PA

s//Robert J. Butcher
Robert J. Butcher - 74722
Deborah J. Butcher - 74029
507 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
rbutcher@camdensc-law.com
debutcher@camdensc-law.com

Camden, South Carolina
March 28, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Circuit Court Case Number 2017-CP-18-02001
Appellate Case Number 2020-001352
Published Opinion No. 2024-6053,
2024 S.C. App. LEXIS 22, 2024 WL 1081569 (March 13, 2024)

Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister. Respondents,

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CERTIFICATE OF SERVICE

I certify that I have served the following documents:

1. Petition for Rehearing.

upon Kenneth P. Woodington, counsel for SCDSS, Michael Leach, and Jasmine Flemister; and Susan Fittipaldi, counsel for Dorchester School District Two, by electronic mail at their respective email addresses, pursuant to the Order of the Supreme Court:

Susan Fittipaldi
Thomas K. Barlow
Halligan Mahoney and Williams
1301 Gervais Street

Columbia, South Carolina 29211
sfittipaldi@hmwlegal.com
tbarlow@hmwlegal.com

Kenneth Woodington
William H. Davidson, II
Davidson, Wren and Demasters, PA
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204
kwoodington@dml-law.com
wdavidson@dml-law.com

Respectfully submitted,

FOSTER CARE ABUSE LAW FIRM, PA

s/Robert J. Butcher
Robert J. Butcher
507 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599

Counsel for the Plaintiffs

Camden, South Carolina
March 28, 2024