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*Rt civil misc*

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**ORIGINAL**

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MAY 21 2010

**SC Court of Appeals**

Appeal From Florence County  
Ralph King Anderson, Jr , Circuit Court Judge

Case No 2009-CP-21-1573

In the Matter of the Care and Treatment of

Jeremy Lane Edwards

Respondent

vs

State Law Enforcement Division (SLED)

Appellant

**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA            )  
   ) COURT OF COMMON PLEAS  
 COUNTY OF FLORENCE                )  
   ) 2009-CP-21-1573  
   )  
   )  
   )  
 In the Matter of Jeremy Edwards)   )  
   )  
   ) TRANSCRIPT OF RECORD  
   )  
   ) )  
   )

July 30, 2009  
 Florence, South Carolina

B E F O R E

THE HONORABLE RALPH KING ANDERSON, JR

A P P E A R A N C E S

DANIEL GRIGG, Assistant Attorney General  
 Attorney for the State

MARK W BUYCK, JR , ESQ  
 WALKER WILLCOX, ESQ  
 Attorney for the Defendant

KESHIA REED  
 Circuit Court Reporter



I N D E X

(There were no witnesses introduced )

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1 THE COURT Counsel give the court reporter the  
2 full caption of the case I don't have the original file up  
3 here

4 MR BUYCK We have done so before we came in

5 THE COURT And the appearances you have that,  
6 Miss Court Reporter?

7 COURT REPORTER Yes, sir

8 THE COURT All right Mr Buyck, you're  
9 recognized

10 MR BUYCK Thank you, Your Honor Sitting with  
11 me is one of my law partners Walker Willcox And Jeremy  
12 Edwards is here, he wanted to be here as well And then his  
13 parents, Mr and Mrs John Edwards, are here as well

14 THE COURT Yes, okay Thank you

15 MR BUYCK Your Honor, we appreciate you hearing  
16 this matter This happened -- Jeremy Edwards was sentenced  
17 amazingly enough 11 years ago today in this very court on  
18 July 30th 1998, by Judge Harwell And at that time, he  
19 pled guilty to peeping tom He was walking from his car  
20 where he had parked at his apartment to his apartment and he  
21 walk by and a woman had her window open and he -- with no  
22 shades and he stopped and looked And unfortunately, a  
23 neighbor saw him and reported it, that's the offense

24 In 1998, the -- we contend and I think it's right  
25 that the law did not require insofar as pardon is concern



1 involved a -- somebody who had been pardoned from all legal  
2 consequences of crimes and all civil rights are restored  
3 The pardon was text style petition and it says that, that  
4 Jeremy Edwards be pardon effective June 2, 2004, and by this  
5 action is absolved from all legal consequences of the above  
6 state crime and conviction and all his civil rights are  
7 restored In 2000, The State vs Baucom case that we cite  
8 in our brief held that a pardon absolves individuals from  
9 all legal consequences and all civil rights are restored  
10 Now, Your Honor, I like to pass up that case

11 THE COURT I'm familiar with that case, Mr  
12 Buyck I wrote that case for the Court of Appeals and then  
13 it went to the higher authorities, the high five as they are  
14 called, so I'm familiar with Baucom

15 MR BUYCK Then the legislature or somebody got  
16 concerned because the statute at that time did not require  
17 that anybody who was pardon would be required to be on the  
18 sex offender list as the Baucom case cited, involve case  
19 cited So in 19 -- in 2008, the legislature appealed -- the  
20 legislature in response to that case I believe, they enacted  
21 a new amendment to section 23-3-430

22 THE COURT Saying that the pardon was not to  
23 encapsulate the sex offender registry

24 MR BUYCK No, sir

25 THE COURT Yes, it did It said -- what it said



1 was the pardon would not remove one from the sex offender  
2 registry

3 MR BUYCK Right, that's exactly what it said  
4 But what they were worried about was that the pardon  
5 according Baucom had removed the offenders So what we  
6 contend, Your Honor, is that since this offense occurred in  
7 1998 and the pardon was given in 2004, that the act in 2004  
8 did not require that the pardon not absolve him and restore  
9 all his civil rights This young man, who is about 35 years  
10 old now, he has two children and to have his name on the  
11 sexual offender list, you know, nobody gone let their  
12 children come visit him It's just an overreaching statute  
13 and fortunately for him, I believe, he was not covered in  
14 2004 when he received a pardoned and that's our position,  
15 Your Honor

16 THE COURT All right What say you, Mr Attorney  
17 General?

18 MR GRIGG Thank you, Your Honor I did kind of  
19 walk in last minute My name Dean Grigg, I'm with the  
20 attorney general's office just wanted to make sure I told  
21 you, I don't know if I had or not Also just real quick if  
22 I may and I've already spoken with Mr Buyck about pretty  
23 much everything I'm going to say and I think I'm going to be  
24 brief It's my opinion, Your Honor, I think this should be  
25 -- and I don't think it will unduly delay anything I just



1 want to make sure we have it right I believe this should  
2 be in common pleas as oppose to general sessions I was  
3 looking and I thought I had case law on that I know there  
4 is a case on it, I thought I brought it with me I will  
5 continue to look, but I do know that the sexual offender  
6 registry statute is a civil statute and therefore I think  
7 ---

8 THE COURT Let's remove all doubt Monday  
9 morning in Marion the first case set before me on common  
10 pleas is the State's petition to put someone on the sex  
11 offender registry and that's for trial in civil court This  
12 is a civil proceeding

13 MR GRIGG That's what I'm saying

14 THE COURT That's what I'm saying too

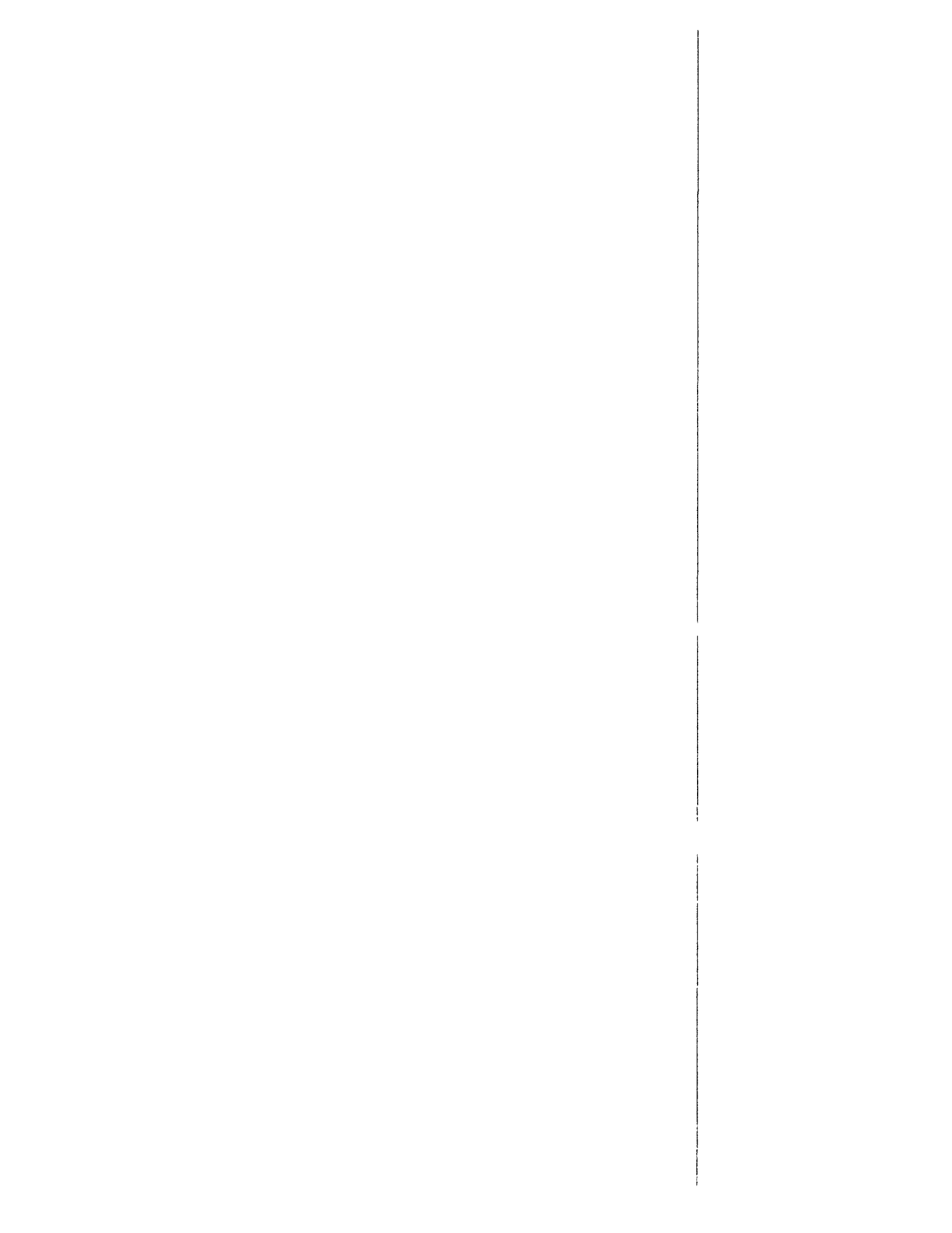
15 MR GRIGG Well, and that's fine and I don't  
16 think it should delay anything I just want to make sure we  
17 have it right and the reason I'm saying that is because  
18 everything I've got addressed is in general sessions ---

19 THE COURT Let's change that now by agreement

20 MR GRIGG That's all I want to make sure

21 THE COURT Mr Buyck, would you agree let's place  
22 this particular case in the court of common pleas?

23 Miss Clerk, what is the requirement now we have  
24 some many technical rules what can we do to move this from  
25 the general sessions venue to the court of common pleas/



1 THE CLERK Just order it, Judge

2 THE COURT It's done

3 MR BUYCK We certainly consent, Your Honor

4 THE COURT It's done

5 MR GRIGG The only reason I even ask that, Your  
6 Honor, and I explain this to Mr Buyck is if by chance -- I  
7 don't make the decisions on whether or not to appeal  
8 something depending on how Your Honor rules, my supervisor  
9 do And I just want to make sure everything's in working in  
10 order if I get told that's what I have to do

11 THE COURT Well, if you get told that's what you  
12 have to do, don't worry about it For 13 years, that's what  
13 I did, I got paid for it I got paid for working and I hope  
14 they're working up there now, I'm not sure Maybe, they are  
15 the Court of Appeals

16 MR GRIGG Thank you very much, Judge After  
17 that, again, I explain to Mr Buyck exactly what I was going  
18 to say Mr Buyck was kind enough to provide me a copy of  
19 the pardon, I've looked at it and to that extent I agree  
20 It says exactly what Mr Buyck says it says However, my  
21 question and what I would submit to the Court is I would  
22 disagree on what that means under statute 23-3-430

23 THE COURT Well, why did the General Assembly  
24 come forward and amend it if the matter was crystal clear?  
25 Why did the General Assembly need to amend the law so as to

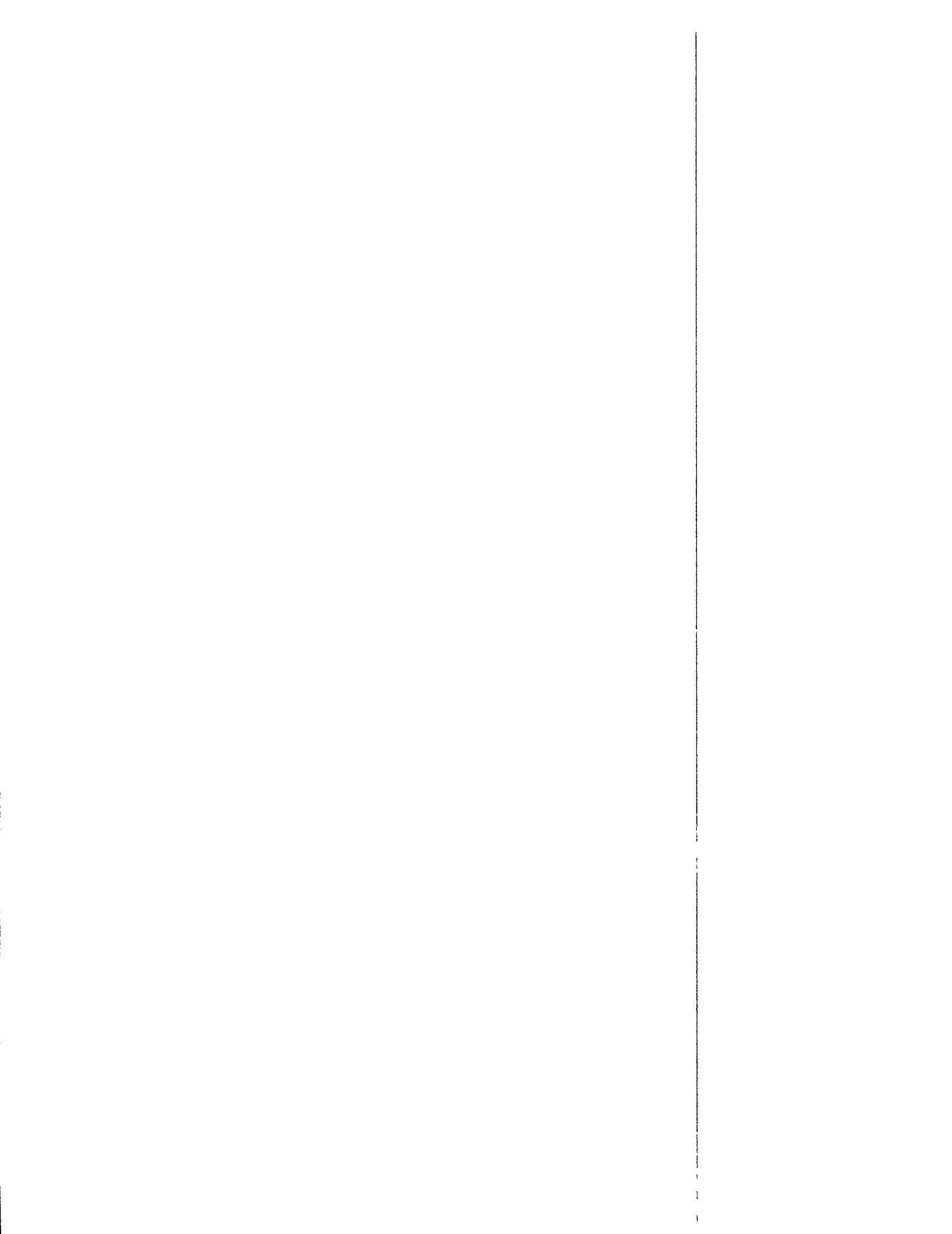


1 specifically provide that a certificate of pardon did not  
2 remove a person from the registry? Why did they need to do  
3 that if that was the old law?

4 MR GRIGG Well, now one thing first of all, I  
5 will say that I don't know that it was crystal clear, Your  
6 Honor Secondly, I can't speak for the legislature and why  
7 they would have chosen to do something However, I don't  
8 know that that matters, it's clear that this statute even  
9 the amendment that Mr Buyck spoke of And, Your Honor,  
10 obviously is well versed on that basically says a pardon  
11 unless it specifically states that it's vacating a  
12 conviction or overturning a conviction is not sufficient to  
13 take someone off the registry applies retroactively and that  
14 would be my argument to, Your Honor

15 THE COURT How can it apply retroactively? What  
16 is the normal statutory rule of construction? Isn't the  
17 normal general rule that it apply prospectively unless the  
18 statute itself says it is to be retroactive inefficacy

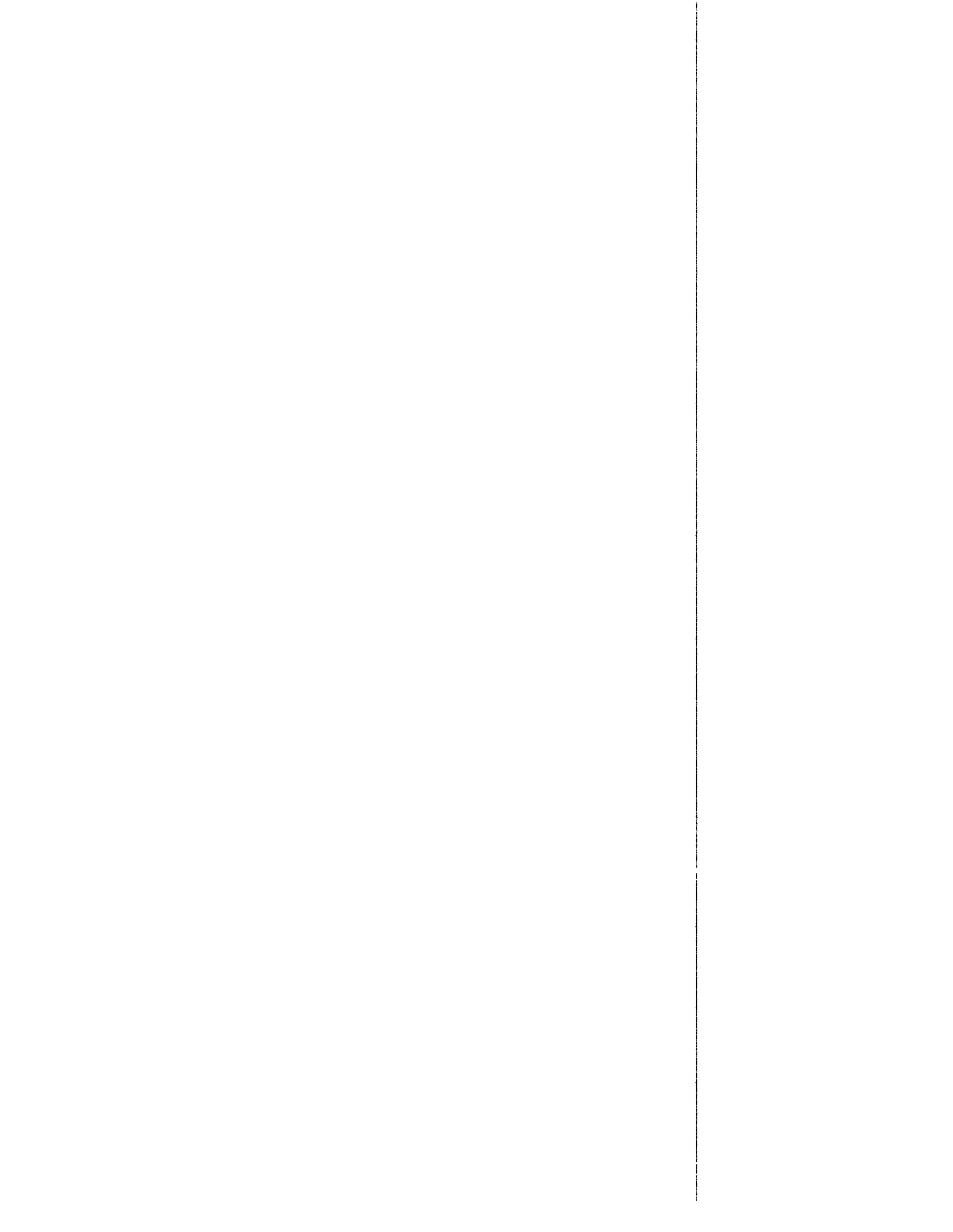
19 MR GRIGG Well, and actually, Your Honor, I  
20 believe that the Wiesart vs Stewart, which is June, 2008,  
21 Court of Appeals case, Your Honor, is probably familiar with  
22 that as well, but it states the statute for remedial if they  
23 were procedure in nature and will apply retroactively as  
24 statute remedial and apply retroactively when it creates new  
25 remedies for existing rights or enlarges rights of persons



1 under the statutes So I think there's some case law that  
2 suggest that this statute itself is the sex offender  
3 registry apply retroactively I believe that's been  
4 consistent in the holdings of our Court of Appeals and our  
5 Supreme Court over the recent years Hazel vs State, State  
6 versus -- I hope I am saying this right Taub T A U B , which  
7 is another Court of Appeals case I do believe that it's  
8 pretty clear it is a retroactive and a remedial statute  
9 Now, having said that, I certainly don't blame Mr Edward's  
10 for his position I would want the same result if I were  
11 him I'm going to leave that decision up to you I'm just  
12 submitting to, Your Honor, that my understanding of the  
13 statute is that the facts of his case and the fact that the  
14 statute is remedial, the facts do not warrant the remedy  
15 he's seeking under the statute It is clear to me ---

16 THE COURT What do you say that supports a  
17 conclusion that the statute is in fact remedial? What is  
18 there that demonstrates that with clarity?

19 MR GRIGG Well, it's a civil statute that on its  
20 face is not intended to punish someone, it states in it that  
21 it's intended to protect the citizens of the state case and  
22 the citizens within our community And again, I think the  
23 case law some of which I've cited, I think there's more out  
24 there, but I think it's clear that it states that  
25 sub-statutes are remedial in nature, are retroactive in



1 nature Again, if it was a situation that's trying to  
2 punish someone for a past crime, you got no argument from me  
3 absolutely not, those are not retroactive unless there's  
4 some reason the legislature is specifically state that it  
5 is But when you have a civil statute that the purpose of  
6 the statute which I believe in this statute it states out  
7 with clarity on its face is to protect a group of people  
8 versus to punish someone And it is procedural in nature as  
9 the case, the Wiesart case that I referred you to, Your  
10 Honor I think it's clear that those are intended to be  
11 retroactive

12 THE COURT What about that, Mr Buyck, in terms  
13 of the remedial aspect of the statute?

14 MR BUYCK Your Honor, we've quoted that case in  
15 our brief and I'm gone have Walker Willcox address that  
16 We've discussed it in length

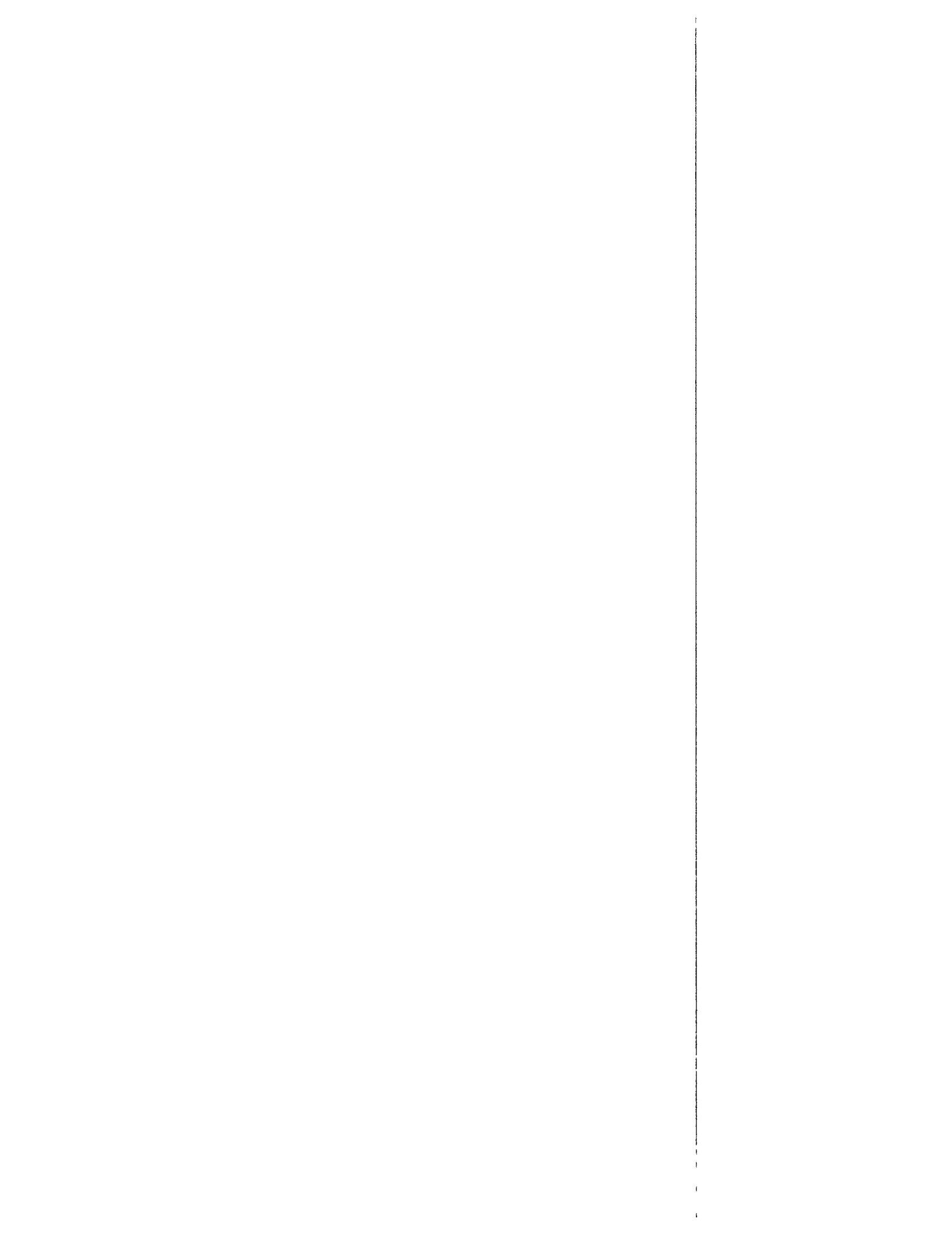
17 MR WILLCOX Your Honor, the Wiesart case, the  
18 facts of that case were different than what we looking at  
19 here today Wiesart case involved an amendment to the Sex  
20 Offender Act 430 taking off -- taking a criminal violation  
21 off of the sex offender requirement And I believe it was  
22 a -- not disorderly conduct but indecent exposure The  
23 legislature, I think, in -- after the individual in the  
24 Wiesart case was convicted of indecent exposure, the  
25 legislation took that conviction off of the sex offender



1 statute And instead they gave the Court the discretion to  
2 put an individual on the sex offender statute if the Court  
3 wanted to and that's clearly procedural provision They --  
4 Wiesart did not say the whole sex offender statute was a  
5 procedural statute

6 In fact, if the attorney general's position is  
7 accepted, then every single person that has been convicted  
8 of an offense put on the sex offender statute after they've  
9 already been convicted for the crime, would have to go back  
10 and retroactively enlist under the sex offender statute  
11 And I don't think that's the intent of Wiesart I think if  
12 Wiesart was just stating that that procedure, the Court  
13 could put somebody on the sex offender statute if they  
14 wanted to was clearly procedure It's also remedial to the  
15 individual Wiesart because the sex offender statute applied  
16 to him was a remedy, it helped him It got him off the sex  
17 offender statute In this case, it will be applied to hurt  
18 our client to keep him on the sex offender statute and  
19 that's clearly not a remedy and it's not procedural So I  
20 don't think Wiesart -- we cited Wiesart for that reason  
21 because clarify how that case had not applied to this And  
22 I don't think they made a blanket statement that the whole  
23 statute is procedural or remedial

24 THE COURT I've got the gist in gravamen of the  
25 issue ---



1 MR GRIGG Your Honor

2 THE COURT Yes

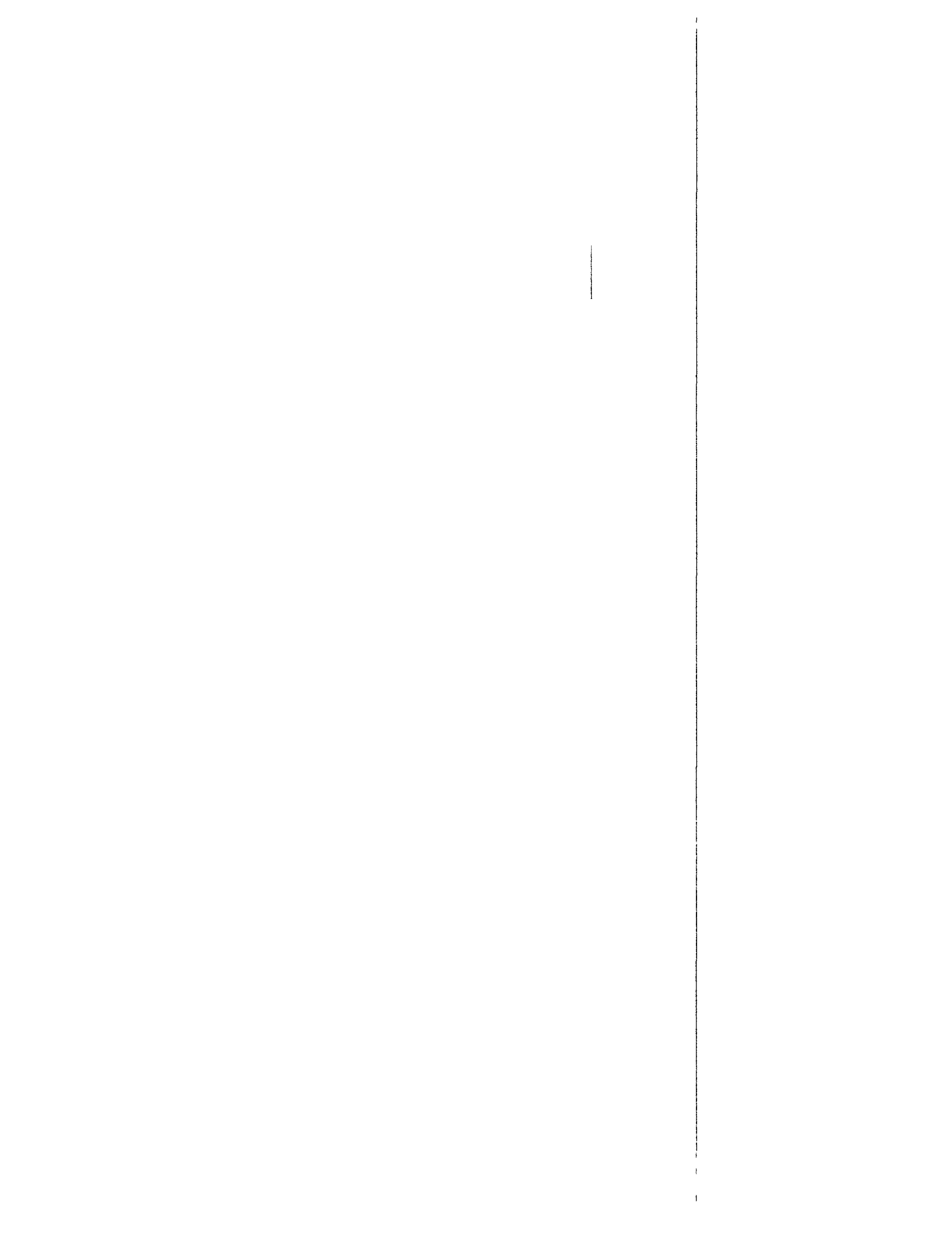
3 MR GRIGG If I may reply briefly to that

4 THE COURT Yes

5 MR GRIGG If you're finish, I apologize One  
6 thing that I do agree with the facts to Wiesart to the  
7 extent that it's dealing with indecent exposure And so the  
8 facts reference are different, but I would submit I knew I  
9 had one other case that I was having trouble finding and I  
10 apologize, but I would submit that Wiesart does set forth  
11 exactly the premises I was saying it set forth

12 If, Your Honor, will also look at State vs Walls,  
13 which is a 2002 Supreme Court case It states -- and you  
14 can also find this at the end of statute section 23-3-440  
15 It states Sex Offender Registry Act does not violate ex post  
16 facto clause In this case, in the Wall case the offender  
17 had to sign it after 25 years after he had committed the  
18 offense It states that the act is civil rather than  
19 criminal, which I also think the Wiesart states on these  
20 other Wiesart cases and some of these other cases say It's  
21 civil rather than criminal It's not intended to punish the  
22 sex offender as I said, but to protect the public from the  
23 sex offenders who may reoffend and to aid law enforcement in  
24 solving sex crimes

25 Now, by no means am I suggesting that Mr Edwards



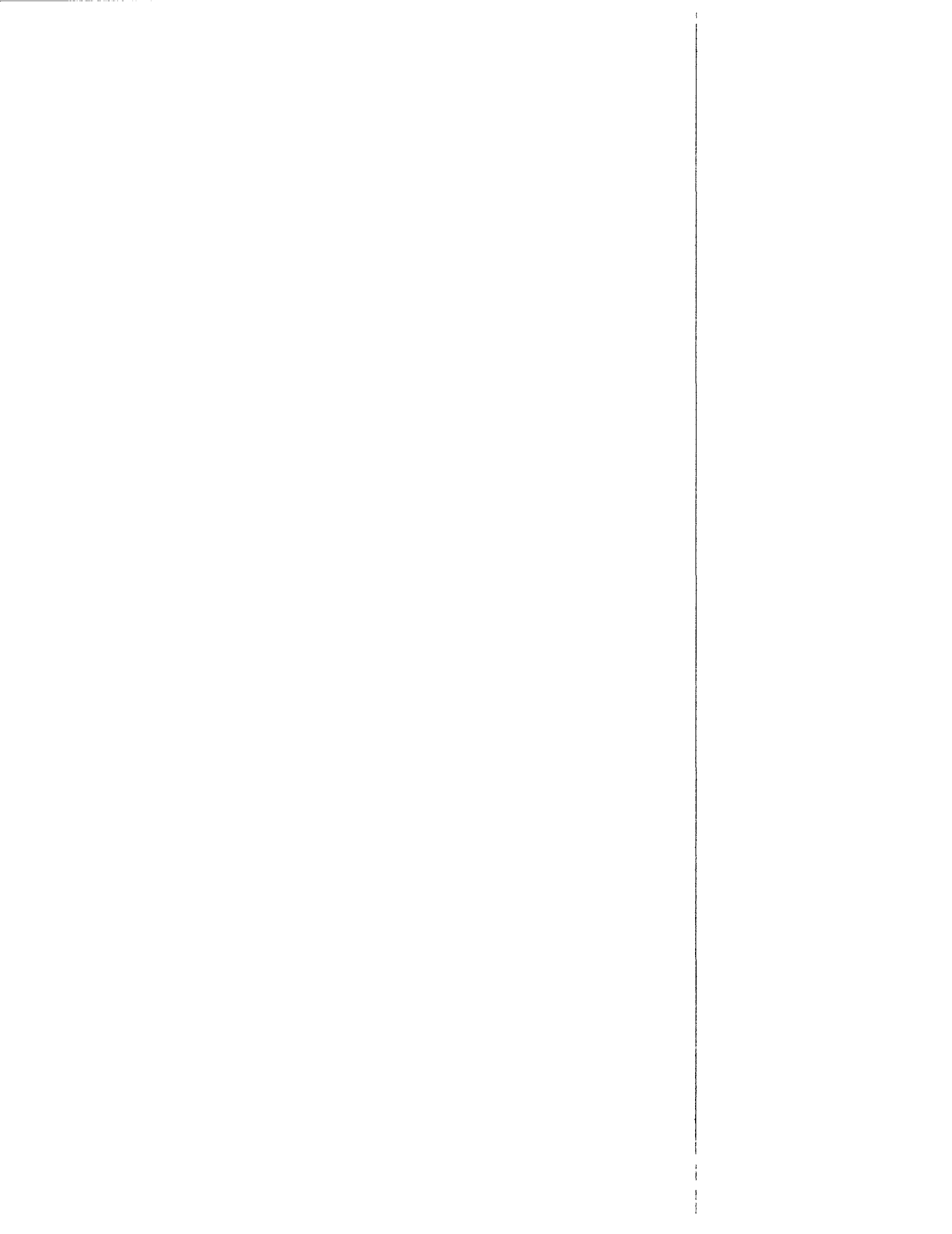
1 is going to go out and do anything that would cause him to  
2 have to deal with law enforcement in any manner again, but  
3 State vs Walls, Wiesart all these cases no matter what fact  
4 pattern you place into them clearly state As again, I  
5 believe it's clear in the statute in 430 and section 440,  
6 that it is retroactive in nature I believe if, Your Honor,  
7 looked at Walls, you'll find that to be clearly the case

8 THE COURT All right, anything further?

9 MR BUYCK Yes, Your Honor I would like to on  
10 that issue remind the Court that sort of handbook law that  
11 statutes are always -- the State has the duty to prove that  
12 statutory liberally construed in favor of the individual

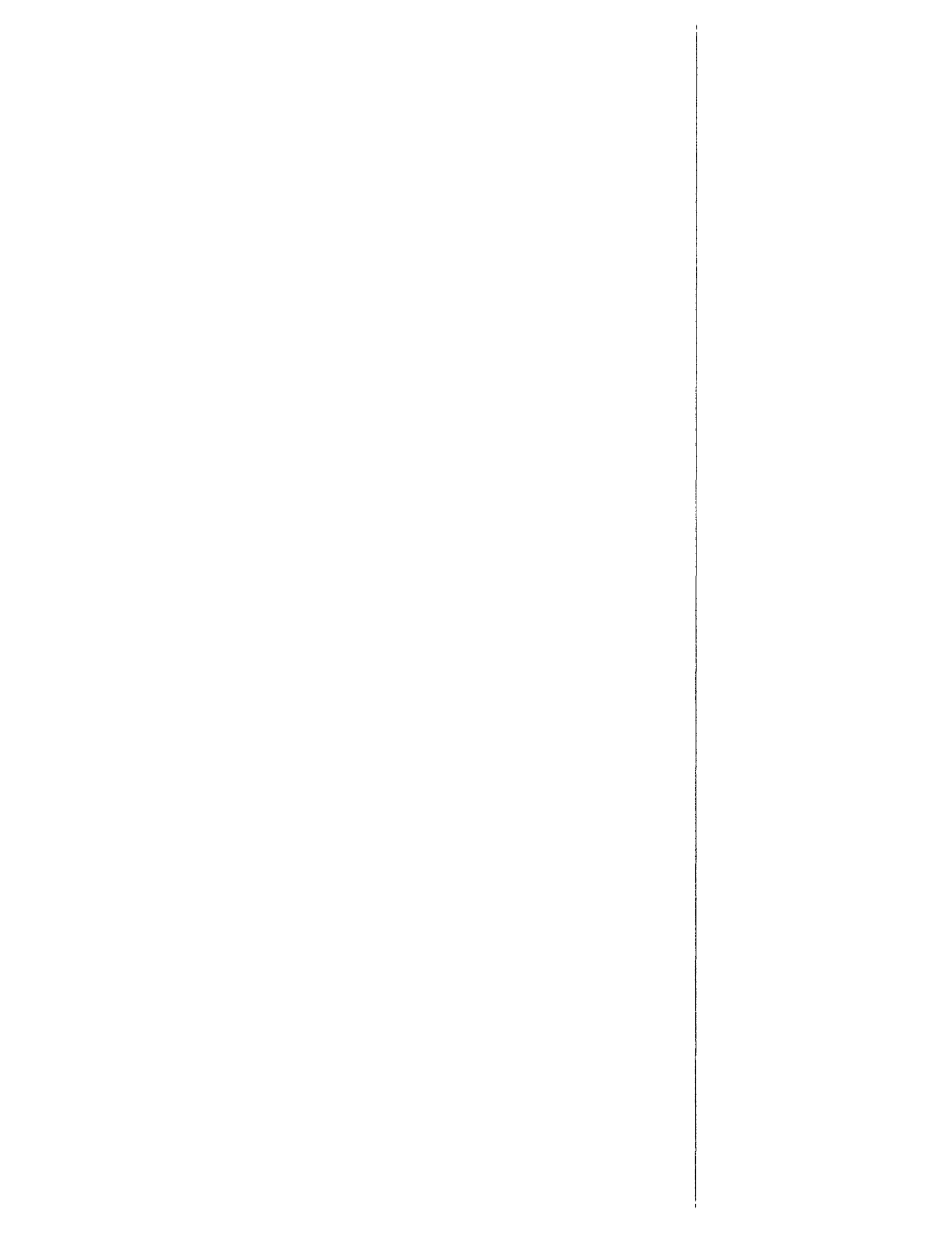
13 Now, in connection with the 2008 amendment in the  
14 legislative history, the history said the amendment to -- to  
15 the act was effective June 16, 2008, to 2000 amendment was  
16 added as follows Quote must register as provided by  
17 section 23-3-460 So that was not in the statute before  
18 2008 that he must register as a sex offender It's obvious  
19 to me that that's why the legislature pass the act in 2008

20 THE COURT All right, lawyers I now occupy a  
21 different position as of January the 2nd, 2009 The chief  
22 justice gave me a full-time law clerk if I would come back  
23 as a full-time circuit judge Tomorrow is the last day of  
24 my law clerk She has given me a replacement law clerk, but  
25 she, the new law clerk, does not come on board until three



1 weeks down the road In the meantime, I have no person but  
2 me, myself, and I to run the office I'm not a great  
3 typist on the computer, so I have no one to really type  
4 anything I can type a little but very little, so it brings  
5 me to this One, I'm going to let you do me a proposed  
6 order in this case What you send to me must be sent to  
7 opposing counsel at the same time by the same transmission  
8 efforts Under no circumstances are you to send me  
9 anything, unless you send it to opposing counsel at the same  
10 time Whatever you send to me if you expect to get it back,  
11 you probably need to send me a self-addressed stamped  
12 envelope because I do not get any office expense money any  
13 longer, that's stop December 31, and I'm not putting my  
14 personal stamps on your mail I love you all but just not  
15 gone do it And we will follow this procedure, don't start  
16 out an order of mine like this matter came before me in  
17 Florence, South Carolina, on July the 30th at 4 00 p m ,  
18 for God sake don't put any of that kind of stuff Do it  
19 like an opinion And I don't like paraphrases, I don't like  
20 paraphrase, point blank don't do it Quote the thing with  
21 exactitude or certitude And quote it in depth with  
22 specificity

23 In regard to rules of statutory construction, I've  
24 written some short billy do's in that regard and some of  
25 them about 40 pages in length I don't know how they got



1 that long South Carolina Coastal Conservation League vs  
2 South Carolina Department of the Health Environmental  
3 Control, I wrote that It's a lengthy presentation, inside  
4 the opinion called rules of statutory construction It's  
5 reported at 380 S C 349 669 S C Second 899 I wrote State  
6 vs Sweat in regard to 379 S C 367 665 S C Second 645  
7 Once again dealing with the interpretation of a statute  
8 And I wrote Enos vs John Doe vs The Insurance Company 380  
9 S C 295 669 S C Second 619 And statutory construction if  
10 you expect to see my signature or my John Hancock, you  
11 better quote my stuff And the certificate of pardon  
12 should be quoted in haec verba It reads as has already  
13 been stated into the record, but please quote it for the  
14 record In the opinion, please quote it

15 Now, I like rather lengthy detailed orders I  
16 would like to get this matter out before three weeks, but if  
17 you can't get it out by then, I'll have this new law clerk  
18 coming on three weeks from now Probably, the only thing  
19 she can find is the telephone and the bathroom, but don't  
20 tell her I said that, Ms Clerk

21 How many days you need to do it, Mr Attorney  
22 General?

23 MR GRIGG I can get it done in probably week,  
24 ten days, Your Honor

25 THE COURT Ten days, that's suitable ten days



1 from today?

2 MR GRIGG Make sure Mr Buyck has plenty of  
3 time

4 MR BUYCK That's fine

5 THE COURT All right, send it to post office box  
6 1562 Florence, of course, 29503, 29503 And once again, I  
7 just remind you about your self-addressed stamped envelope  
8 Correspondence seem get lost without steps to carry it back  
9 to another site All right, anything else you lawyers need?

10 MR GRIGG Your Honor, if I may again, I mention  
11 this to Mr Buyck I don't know what I did wrong, but for  
12 some reason my answer came back with my check, so I just  
13 want to try it again

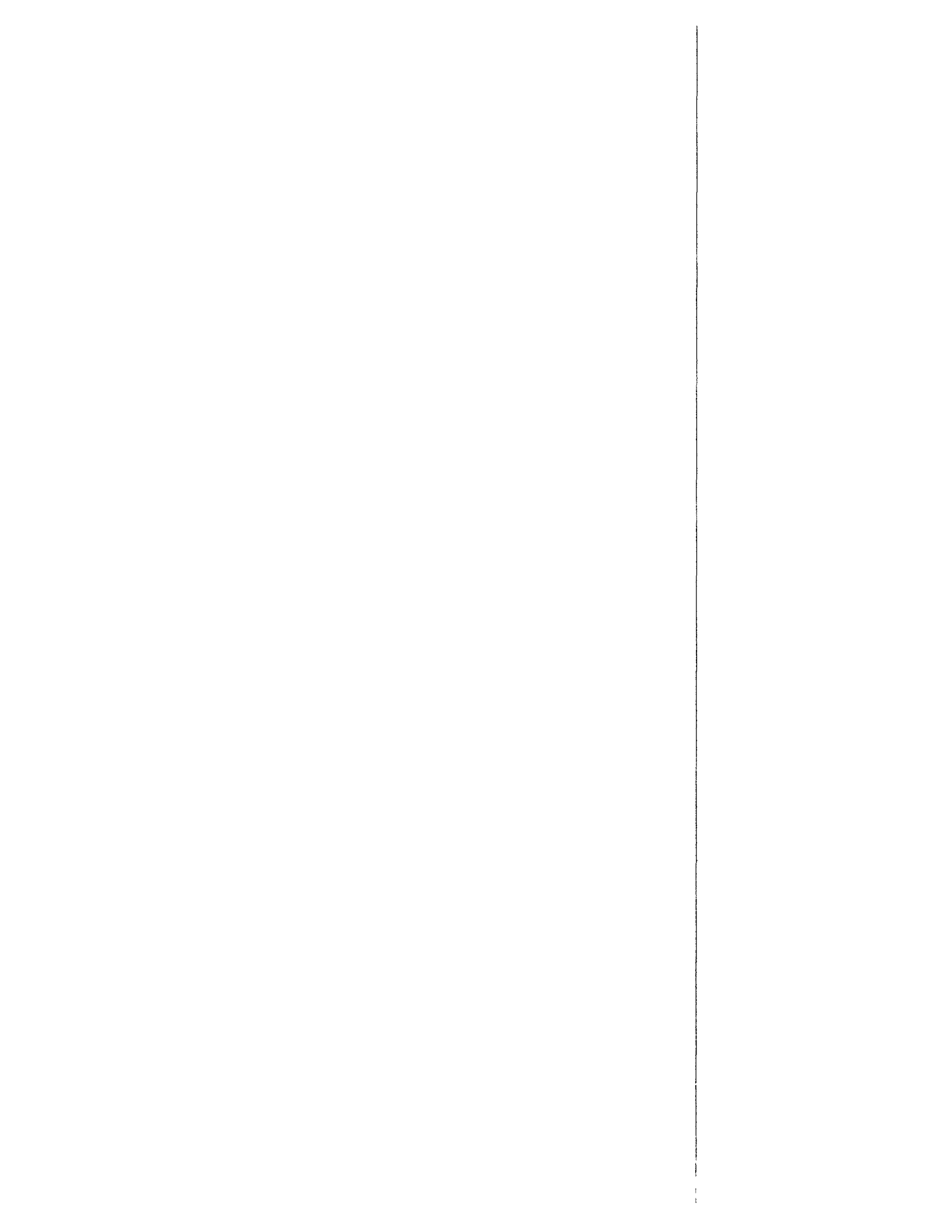
14 THE COURT Well, I don't know why we send checks  
15 back

16 MR GRIGG It may be possible that my answer beat  
17 their petition here or something because I got it back with  
18 a note that said this file Florence case

19 THE COURT Is that a state check from the  
20 attorney general's office?

21 THE CLERK No, sir, it says because it's 43  
22 It's not Florence County

23 MR GRIGG I had the wrong -- maybe that's what I  
24 had wrong You know what and that's my mistake There's  
25 not one that's been assign to this that I received, so it is



1 right on my answer I just messed up on my cover sheet I  
2 apologize for that

3 THE COURT Change it and let's keep his check

4 MR GRIGG Yes, at least keep the check, but I  
5 been trying to give it to you

6 THE COURT Well, I say cash it

7 MR GRIGG I apologize

8 THE COURT No problem All right Is that take  
9 care of it, counsel?

10 MR BUYCK I hope so

11 THE COURT Okay

12 END OF REQUESTED TRANSCRIPT

13

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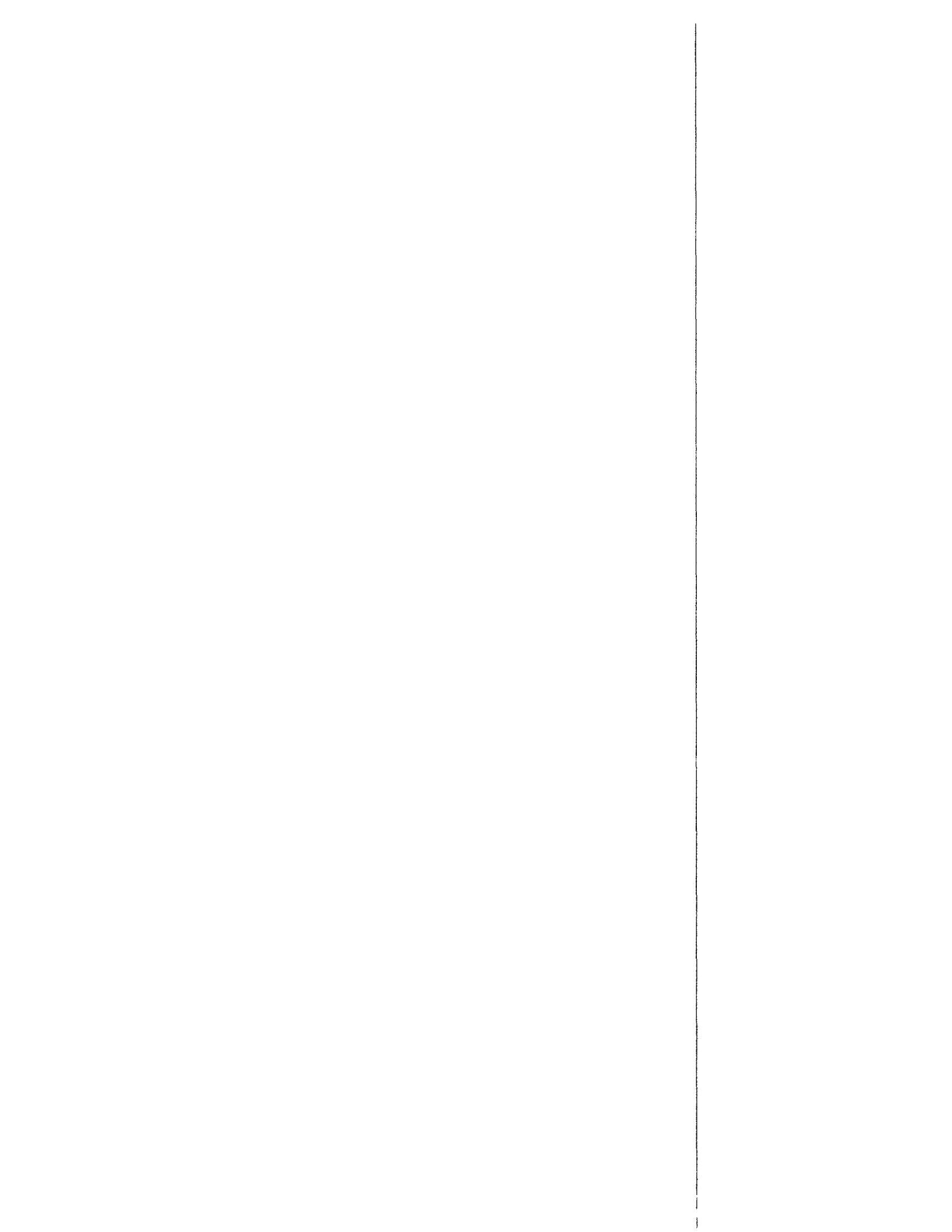
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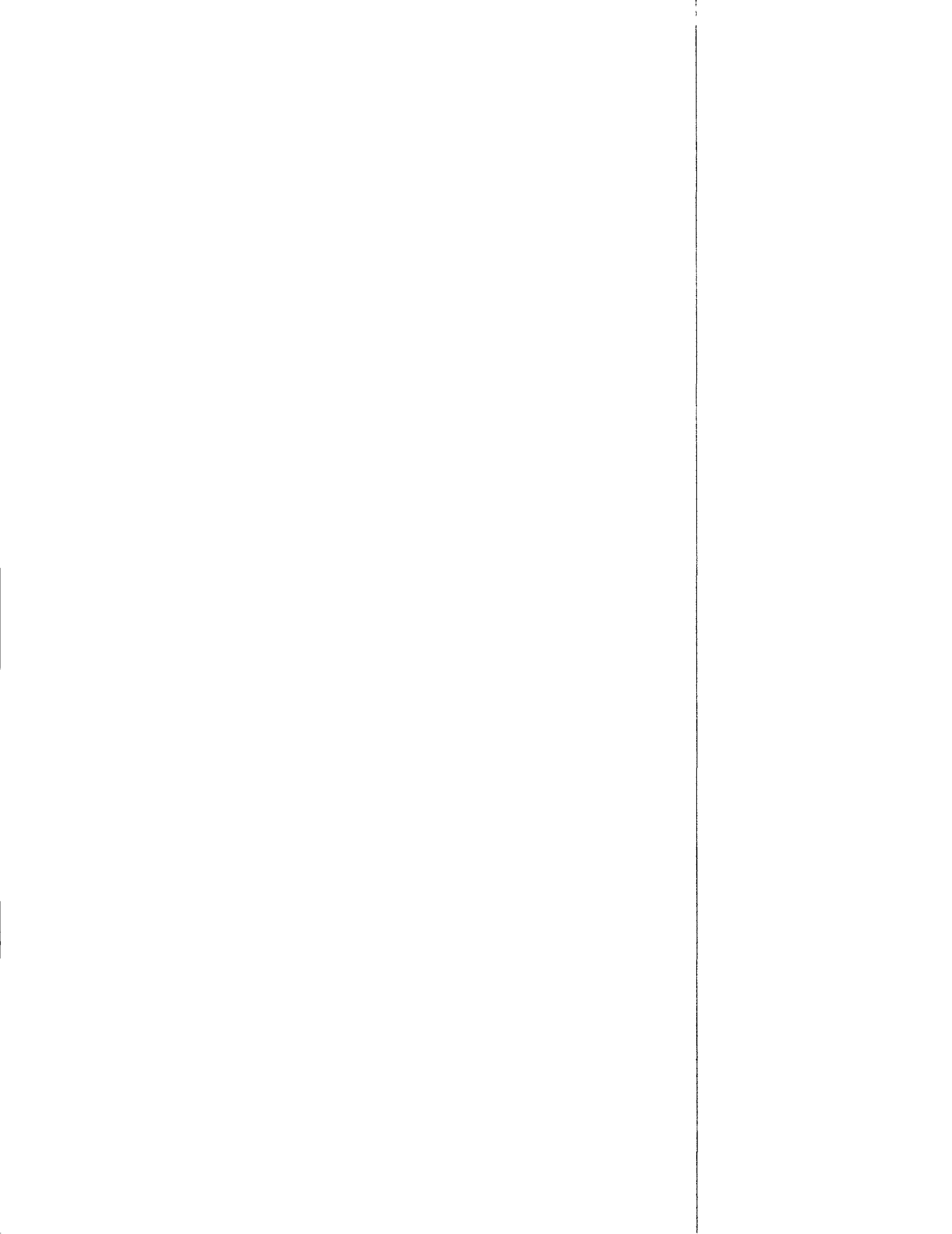
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

I, Keshia Reed, Court Reporter and  
Notary Public in and for the State of South Carolina At  
Large, do hereby certify that the above-entitled cause was  
heard as hereinafter set out, that I was authorized to and  
did transcribe the said proceedings, and that the foregoing  
and annexed pages, numbered 1 through 18, inclusive,  
constitute a true and accurate transcription of my  
stenographic report of the said cause taken during the said  
hearing

In witness whereof, I have hereunto  
affixed my signature this 24th day of November, 2009

  
Keshia Reed, Court Reporter  
My Commission Expires 6-5-2010



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )  
 )  
IN THE MATTER OF )  
 )  
Jeremy Lane Edwards )  
 )  
\_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

C/A NO 2009 \_\_\_\_\_

2009 JUN 10 PM 4 L

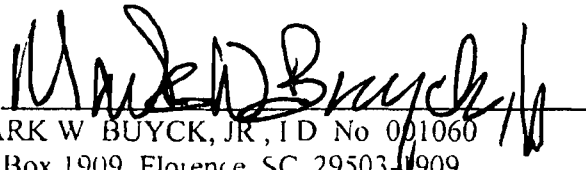
PETITION

FL CP & GS  
FLORENCE COUNTY, S.C.

NOW COMES your Petitioner, Jeremy Lane Edwards by and through his undersigned attorney who petitions the Court that as a consequence of a pardon issued to him by the South Carolina Department of Probation, Parole and Pardon Services dated June 4, 2004 that he is removed from the Sexual Offender Registry for the efficacy of the pardon which reads in pertinent part: It is therefore Ordered that said Jeremy Edwards be pardoned effective June 2, 2004 and by this action is absolved of all legal consequences of the above stated crime and conviction and all of his civil rights are restored, a copy of which is attached hereto. A copy of this Petition is being filed herewith with the Twelfth Circuit Solicitor's Office and the Office of the Sheriff of Horry County where Petitioner previously resided and the office of Greenville Sheriff's office where Petitioner presently resides requesting that said offices respond as desired.

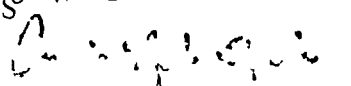
WHEREFORE, your Petitioner prays that the Court consider this matter and Order that Jeremy Lane Edwards is no longer required to register as a sex offender in any South Carolina jurisdiction where he resides.

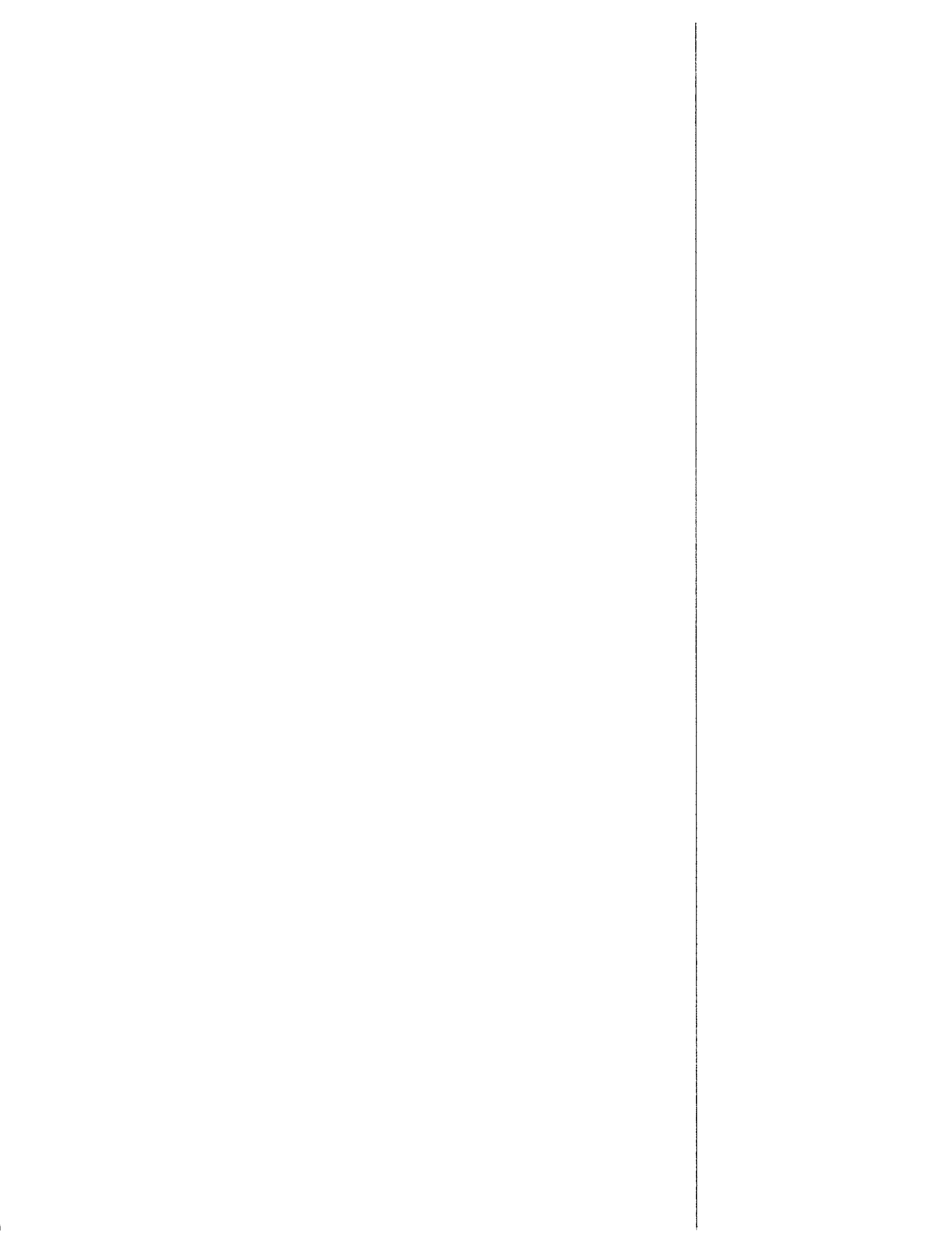
WILCOX BUYCK & WILLIAMS P A

By   
MARK W. BUYCK, JR., I.D. No. 001060  
PO Box 1909 Florence, SC 29503-0909

(843) 662 3258 Tel  
(843) 662 1342 Fax  
ATTORNEYS FOR PETITIONER JEREMY LANE EDWARDS

June 10, 2009

RECEIVED AT DE COPY  
  
CLERK OF COURT CP & GS  
FLORENCE COUNTY, S.C.



Pardon # 9219



SOUTH CAROLINA  
DEPARTMENT OF PROBATION, PAROLE,  
AND PARDON SERVICES  
COLUMBIA, SC



# CERTIFICATE OF PARDON

KNOW ALL MEN BY THESE PRESENTS

*It having been made to appear to the SOUTH CAROLINA BOARD OF PROBATION PAROLE AND PARDON SERVICES that Jeremy Edwards SS# 247-75-5075 and SID # 1205128 who was convicted of Peeping Tom (2cts) on August 13, 1998 in the county of Florence has lived as a law abiding citizen since completing Probation and it being the opinion of the said South Carolina Board of Probation Parole and Pardon Services that the Pardoning of this prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied he will abide by all laws of this State*

*It is therefore ORDERED that said Jeremy Edwards BE PARDONED, effective June 2, 2004 and by this action, is absolved from all legal consequences of the above stated crime and conviction, and all his civil rights are restored*

In witness whereof this Certificate bearing the approval of the South Carolina Board of Probation Parole and Pardon Services is issued this date, June 4, 2004

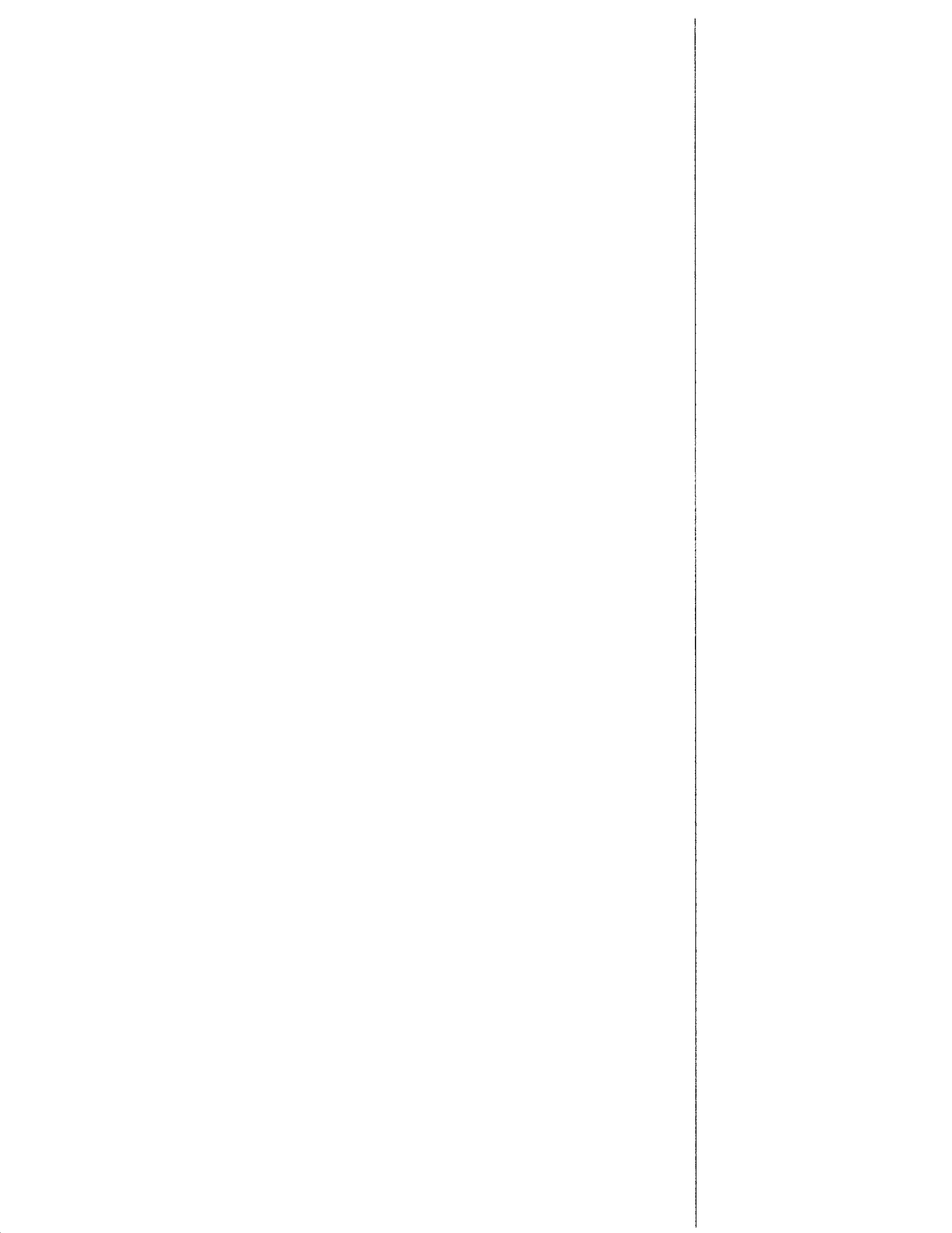
By order of

SOUTH CAROLINA BOARD OF PROBATION,  
PAROLE AND PARDON SERVICES

By Quenddyn A. Feight  
Director of Parole Board Support Services

FILED  
JUN 10 PM 4 48  
SECRETARY  
SOUTH CAROLINA

*Quenddyn A. Feight*



STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
C/A NO 2009-CP-21-1573

IN THE MATTER OF )  
 )  
Jeremy Lane Edwards )  
 )

ORDER

FILED  
2009 AUG 18 AM 11:02  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

**FACTUAL/PROCEDURAL BACKGROUND**

On August 13 1998, Jeremy Lane Edwards (hereinafter referred to as "Petitioner") pled guilty to two counts of "peeping tom " After serving his probationary sentence and 100 hours of community service, on June 4, 2004, the petitioner received a pardon from South Carolina Board of Probation, Parole and Pardon Services Exhibit A, Certificate of Pardon The pertinent provision of the pardon is as follows

Jeremy Edwards has lived as a law abiding citizen since completing Probation and it being the opinion of the said South Carolina Board of Probation, Parole and Pardon Services that the Pardoning of the prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied he will abide by all laws of this State

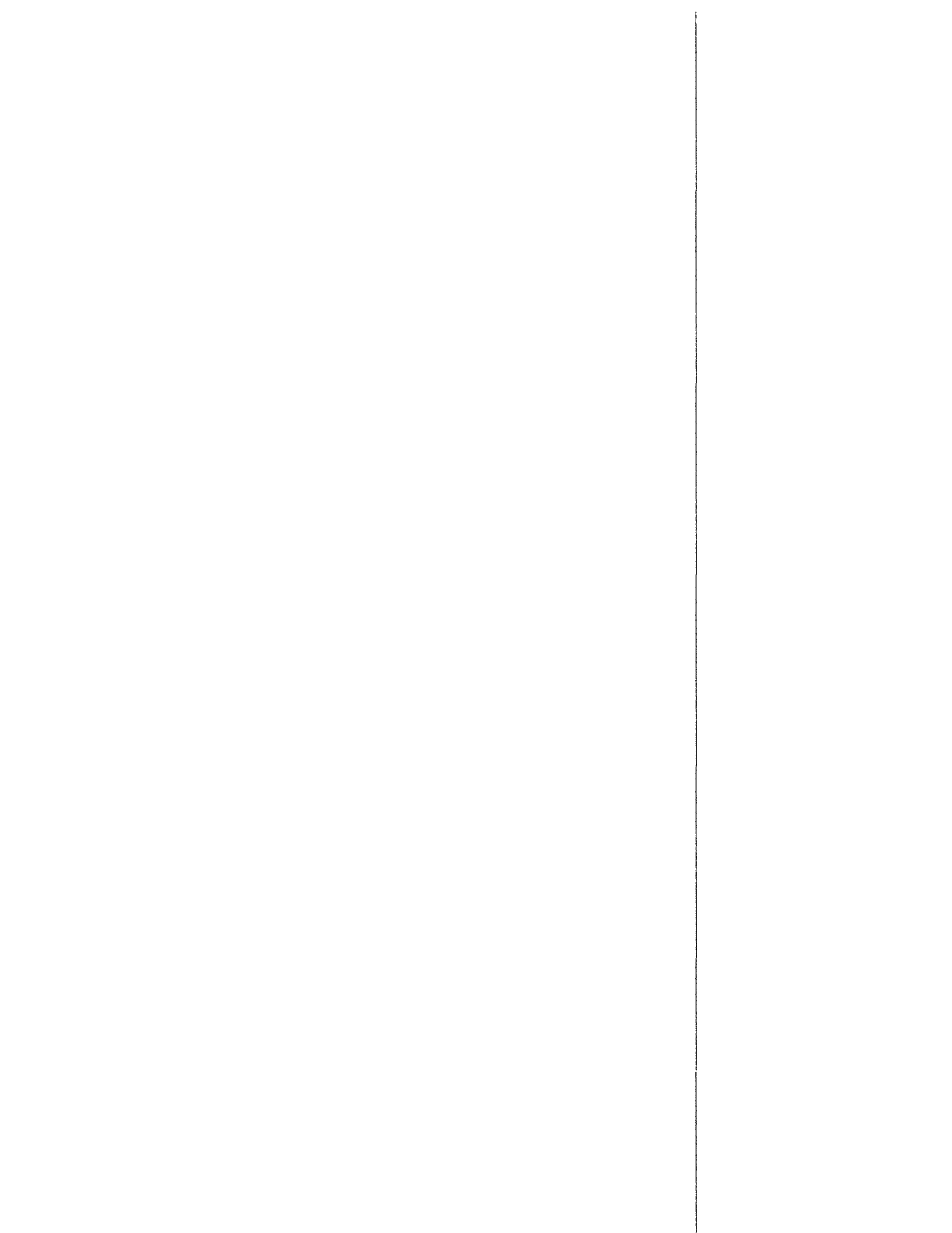
It is therefore ORDERED that said Jeremy Edwards BE PARDONED, effective June 2, 2004 and by this action, is absolved from all legal consequences of the above stated crime and conviction, and all his civil rights are restored

On June 10, 2009, the Petitioner filed a Petition requesting that the Court issue an Order mandating that the Petitioner is no longer required to register as a sex offender in any South Carolina jurisdiction where he resides The Petition was served on the Horry County Solicitor, the Greenville County Solicitor, and the Florence County Solicitor The solicitor offices for Horry County and Greenville accepted service and did not issue objections to the Petition However, the Office of Solicitor for Florence County was unable to consider the matter based on

**CERTIFIED: A TRUE COPY**

*Connie Rob Shearin*  
CLERK OF COURT C P & G S  
FLORENCE COUNTY, S.C.

*RKAG P9I*



a conflict, and referred the case to the South Carolina Attorney General (hereinafter referred to as the "Attorney General")

On July 7, 2009, the Attorney General submitted a response and answer in opposition to the Petition. The Attorney General argues, *inter alia*, that, pursuant to S C Code Ann § 23-3-430(f), the pardon does not relieve the petitioner from the requirement that he register as a sex offender.

At the call of the case, the Court considered the Petition to be in the form of a Motion for Declaratory Judgment.

The Petitioner responded with a Memorandum in Opposition. The Petitioner contends that, pursuant to S C Code Ann § 24-21-940(A), the pardon in 2004 relieved him from the requirement that he register as a sex offender and that S C Code Ann § 23-3-430(f) was enacted in 2008 after he received his pardon, thus the statute is inapplicable to limit the remedy afforded to him by the pardon.

To resolve the issues presented by the parties, the Court must determine whether the 2004 pardon relieved the Petitioner from the sex offender registration requirements and whether, assuming the answer to the first issue is in the affirmative, S C Code Ann § 23-3-430(f) retroactively imposes the registration requirements on the Petitioner.

I S C Code Ann § 24-21-940(A) (2004)

The effect of the pardon in 2004 was governed by S C Code Ann § 24-21-940 (2004), which states

[A]n individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided.

RKAJ Pg II

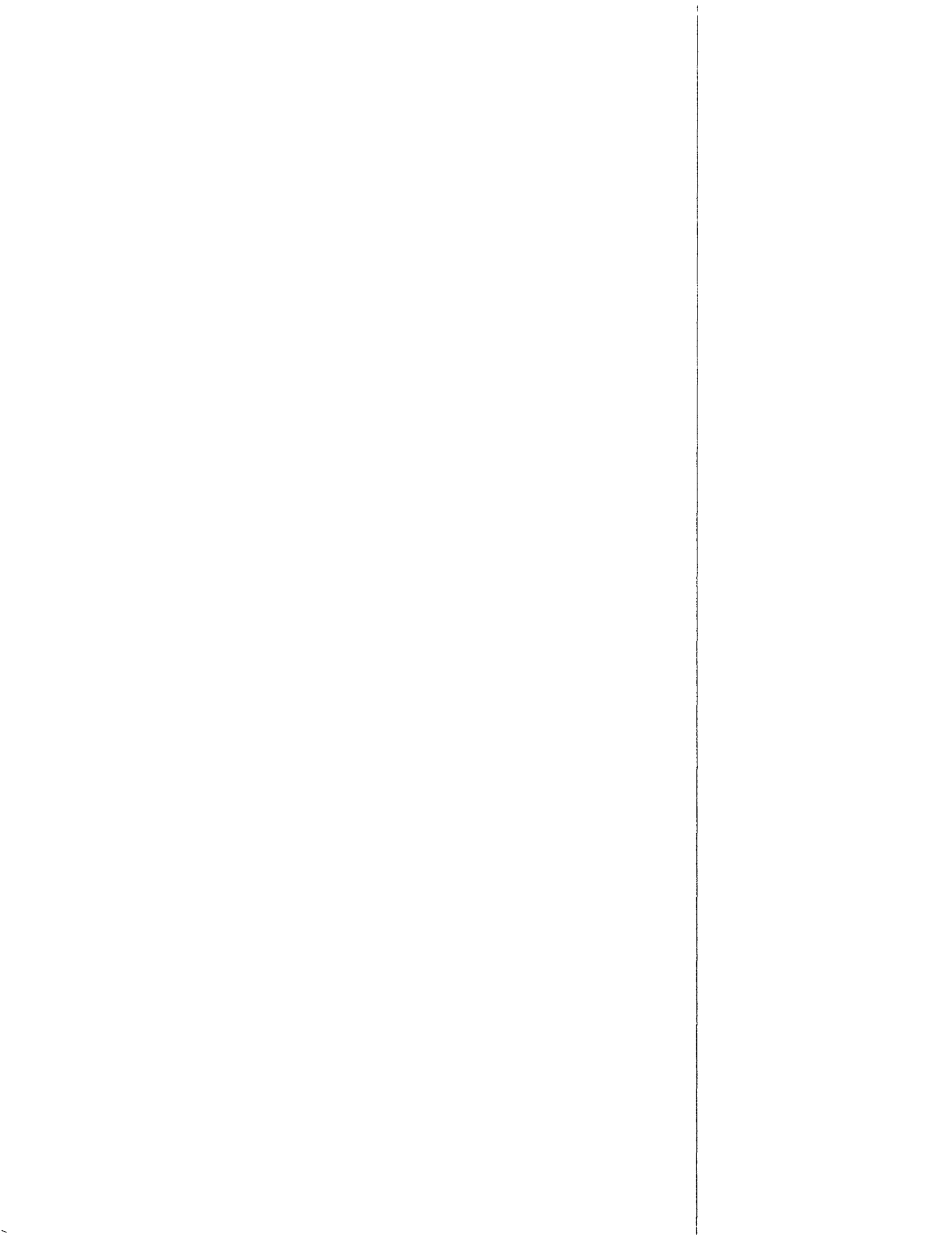


South Carolina case law provides that the requirement to register as a sex offender is a civil consequence of a crime. See Hazel v State, 377 S C 60, 65, 659 S E 2d 137, 140 (2008) (describing the sex offender requirements under S C Code Ann § 23-3-430 as civil consequences and not punitive). Consequently, the Court must determine whether S C Code Ann § 24-21-940(A) relieved the Petitioner from the civil consequence of registering as a sex offender.

A Statutory Construction of S C Code Ann § 24-21-940(A) (2004)

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v Isochem, 365 S C 454, 459, 617 S E 2d 369, 377 (Ct App 2005), Georgia-Carolina Bail Bonds, Inc v County of Aiken, 354 S C 18, 22, 579 S E 2d 334, 336 (Ct App 2003), Smith v. S C Ins Co, 350 S C 82, 87, 564 S E 2d 358, 361 (Ct App 2002), see also Gordon v Phillips Utils, Inc, 362 S C 403, 406, 608 S E 2d 425, 427 (2005) (“The primary purpose in construing a statute is to ascertain legislative intent.”) All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v Richland County Council, 350 S C 433, 438, 567 S E 2d 240, 242 (2002), Ray Bell Constr Co. v Sch Dist of Greenville County, 331 S C 19, 26, 501 S E 2d 725, 729 (1998), State v Morgan, 352 S C 359, 365-66, 574 S E 2d 203, 206 (Ct App 2002), State v. Hudson, 336 S C 237, 246, 519 S E 2d 577, 581 (Ct App 1999) “Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.” S C Farm Bureau Mut Ins Co. v Mumford, 299 S C 14, 19, 382 S E 2d 11, 14 (Ct App 1989)

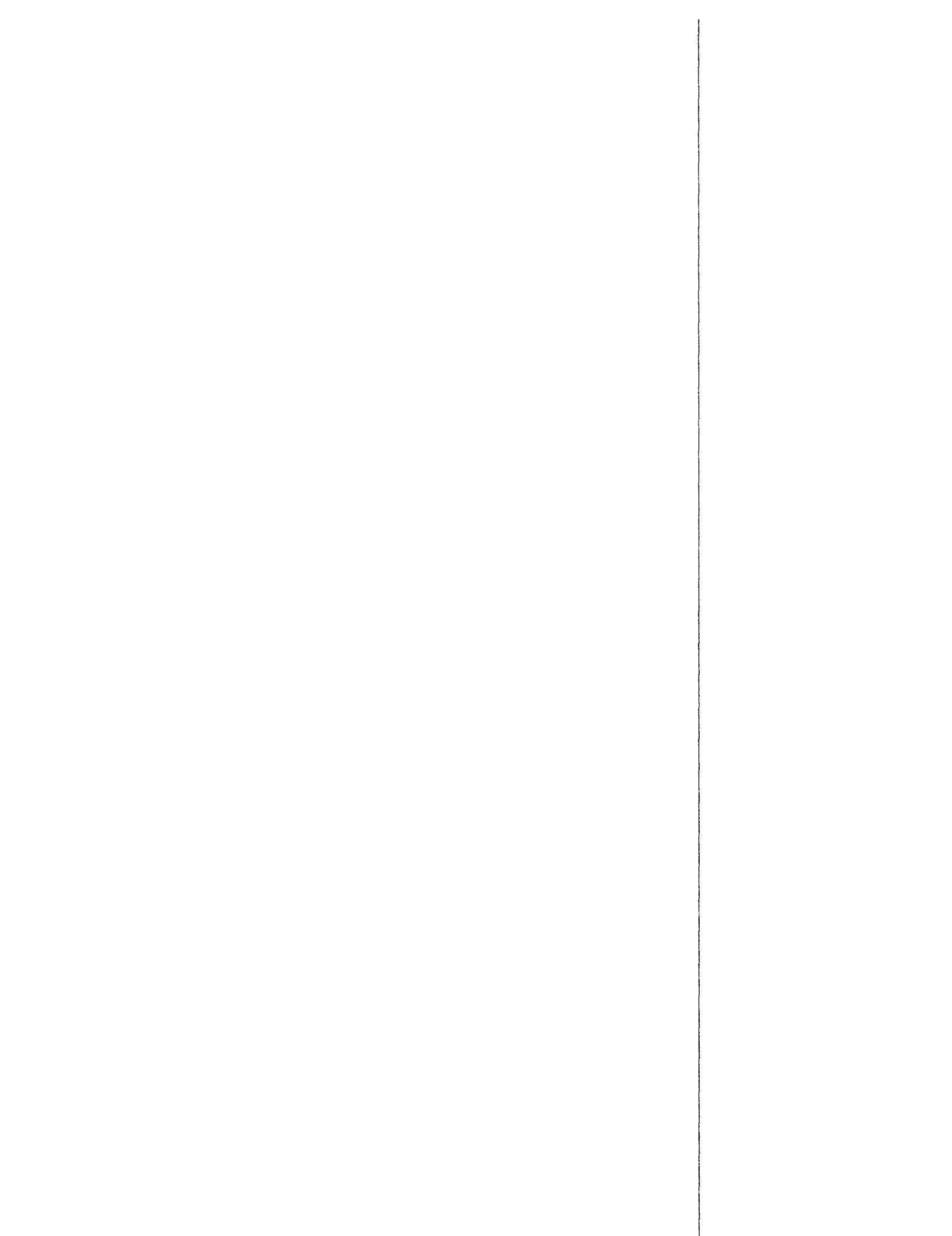
RKHJ P9 III



The legislature's intent should be ascertained primarily from the plain language of the statute State v Landis, 362 S C 97, 102, 606 S E 2d 503, 505 (Ct App 2004), Morgan, 352 S C at 366, 574 S E 2d at 206, Stephen v Avins Constr Co , 324 S C 334, 339, 478 S E 2d 74, 77 (Ct App 1996) The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose Mun Ass'n of S C v AT & T Commc'ns of S States, Inc., 361 S C 576, 580, 606 S E 2d 468, 470 (2004), Hitachi Data Sys Corp v Leatherman, 309 S C 174, 178, 420 S E 2d 843, 846 (1992), Morgan, 352 S C at 366, 574 S E 2d at 206, Hudson, 336 S C at 246, 519 S E 2d at 582

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning Miller v Aiken, 364 S C 303, 307, 613 S E 2d 364, 366 (2005), Carolina Power & Light Co v City of Bennettsville, 314 S C 137, 139, 442 S E 2d 177, 179 (1994) If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning Tilley v Pacesetter Corp., 355 S C 361, 373, 585 S E 2d 292, 298 (2003), Paschal v State Election Comm'n, 317 S C 434, 436, 454 S E 2d 890, 892 (1995), see also City of Camden v Brassell, 326 S C 556, 561, 486 S E 2d 492, 495 (Ct App 1997) ("Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language ") What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will Bayle v S C Dep't of Transp., 344 S C 115, 122, 542 S E 2d 736, 740 (Ct App 2001) The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction Durham v United Cos Fin Corp., 331 S C 600, 604, 503 S E 2d 465, 468

RKAG Pg. IV



(1998), Adkins v Comcar Indus., Inc., 323 S C 409, 411, 475 S E 2d 762, 763 (1996), Worsley Cos v S C Dep't of Health & Env'tl Control, 351 S C 97, 102, 567 S E 2d 907, 910 (Ct App 2002), *see also* Timmons v S C Tricentennial Comm'n, 254 S C 378, 402, 175 S E 2d 805, 817 (1970) (observing that where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language) Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute Hodges v Rainey, 341 S C 79, 85, 533 S E 2d 578, 581 (2000), Bayle, 344 S C at 122, 542 S E 2d at 739

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself Morgan, 352 S C at 367, 574 S E 2d at 207, *see also* Wade v Berkeley County, 348 S C 224, 229, 559 S E 2d 586, 588 (2002) (“[W]here a statute is ambiguous, the Court must construe the terms of the statute”) An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law Hudson, 336 S C at 247, 519 S E 2d at 582, Brassell, 326 S C at 561, 486 S E 2d at 495, City of Sumter Police Dep't v One 1992 Blue Mazda Truck, 330 S C 371, 376, 498 S E 2d 894, 896 (Ct App 1998) In construing a statute, the court looks to the language as a whole in light of its manifest purpose State v Dawkins, 352 S C 162, 166, 573 S E 2d 783, 785 (2002), Adams v Texfi Indus., 320 S C 213, 217, 464 S E 2d 109, 112 (1995), Brassell, 326 S C at 560, 486 S E 2d at 494

A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers Wieters v Bon-Secours-St. Francis Xavier Hosp., Inc., 378 S C 160, 170, 662 S E 2d 430, 436 (Ct App 2008), *see also*

RKAG PqV



Georgia-Carolina Bail Bonds, 354 S C at 22, 579 S E 2d at 336 (“A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute”) The real purpose and intent of the lawmakers will prevail over the literal import of the words Browning v Hartvigsen, 307 S C 122, 125, 414 S E 2d 115, 117 (1992)

The South Carolina Supreme Court on at least two occasions has addressed the issue of whether a pardon relieves an individual from the civil consequences of his crime In Bay v South Carolina Highway Department, the plaintiff argued that the South Carolina Highway Department was required to reinstate his drivers license due to the pardon he had received for reckless homicide 266 S C 9, 221 S E 2d 106 (1975) The South Carolina Supreme Court refused to order the reinstatement of the plaintiff’s drivers license, and it held

While the pardon relieved [plaintiff] of his punishment, it did not operate to restore his driver's license, which his conviction forfeited Under Parker<sup>1</sup>, the suspension of [plaintiff's] license was a civil consequence of his convictions of reckless homicide and leaving the scene of an accident The suspension constituted, in effect, a finding, that by reason of [plaintiff's] convictions, he was no longer qualified to enjoy the privileges granted under the license to operate a motor vehicle Consequently, the public safety required that his license be suspended The suspension was to protect the public and not to punish [plaintiff]

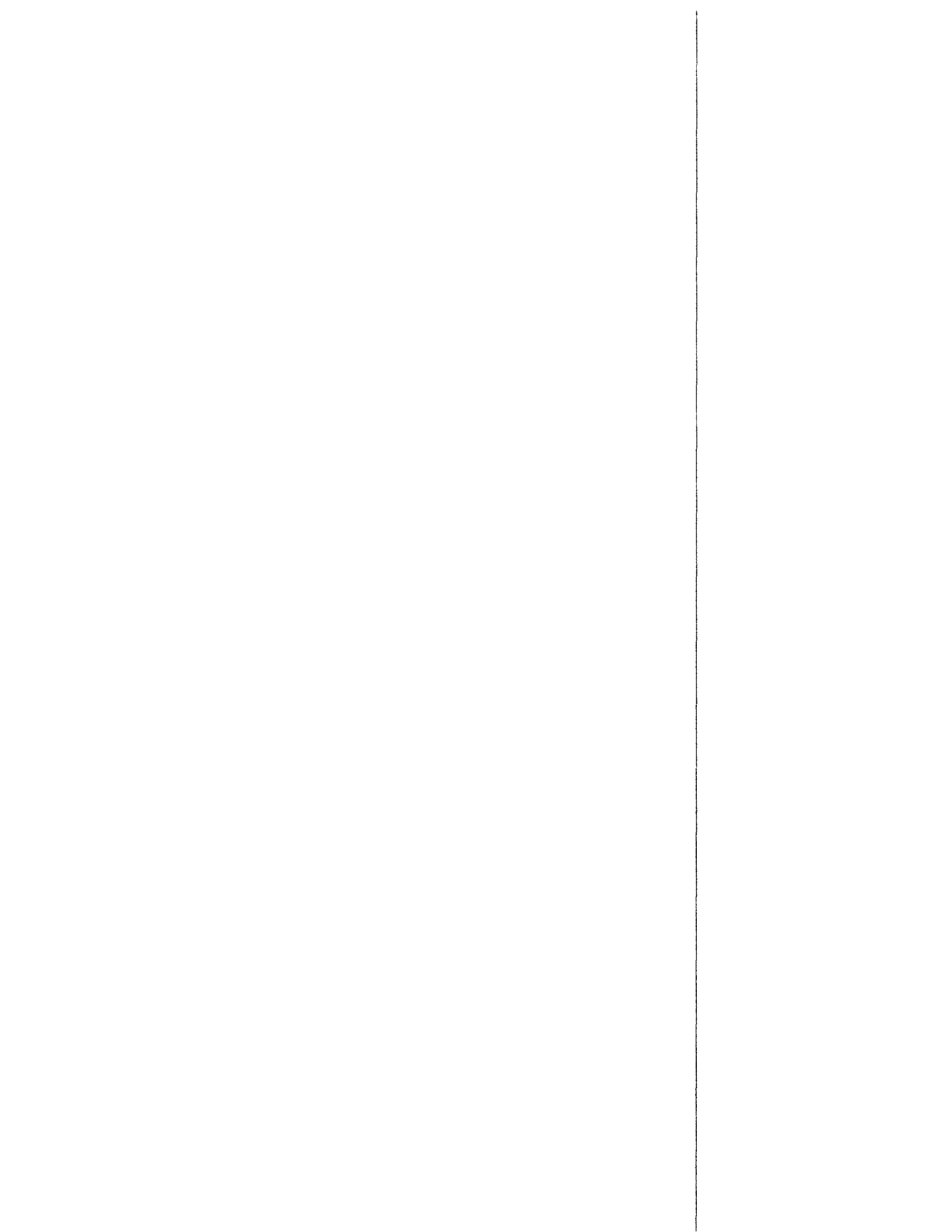
266 S C 9, 13, 221 S E 2d 106, 107-108

After the Supreme Court issued its decision in Bay v South Carolina Highway Department, the General Assembly enacted S C Code Ann § 24-21-940(A) The Supreme Court, in State v Baucom, subsequently revisited the issue of whether a pardon relieves an

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<sup>1</sup> The Supreme Court is referring to an earlier decision Parker v State Highway Department which held that “a suspension [of a license] constitutes no part of the punishment fixed by the court, nor is it an added punishment for the offense committed, [i]t is civil and not criminal in nature” 224 S C 263, 78 S E 2d 382, 386 (1953)

RKAJ Pg III



individual of the civil consequences of his crime under direction of the new statute 340 S C 339, 531 S E 2d 922 (2000)

In State v. Baucom, the South Carolina Supreme Court stated that S C Code Ann § 24-21-940(A) “indicated the General Assembly’s intent to overrule Bay” The Supreme Court held that “the statute absolves a pardoned convict of all legal consequences not just criminal consequences, [s]ince suspension of Bay’s driver’s license was a civil consequence of his conviction, Bay is no longer good law ” 340 S C at 345, 531 S E 2d at 925 The South Carolina Supreme Court also noted

This interpretation is supported by the specific exceptions by the legislature to the general rule that a pardon relieves the convict of all legal consequences of his conviction these exceptions are noteworthy because they demonstrate the General Assembly’s readiness to expressly address pardons in situations where the legislature does not wish them to have full effect

340 S C at 345, 531 S E 2d at 924

In 2004, S C Code Ann § 23-3-430 did not include a specific exception preventing a pardon from relieving an individual from registering as a sex offender Therefore, pursuant to the clear and express language in S C Code Ann § 24-21-940(A) and the Supreme Court’s interpretation of the statute in State v. Baucom, the Court holds that the pardon issued in 2004 relieved the Petitioner from the civil requirement that he register as a sex offender

II S C Code Ann § 23-3-430(f) (2009)

The Court must also determine whether S C Code Ann § 23-3-430(f) (2009), which was inserted by amendment in 2008, retroactively restricts the effect of the Petitioner’s pardon and

RKAG 09 VII



reinstates his duty to register as a sex offender S C Code Ann § 23-3-430(f) provides as follows

If an offender receives a pardon for the offense for which he was required to register, the offender must reregister as provided by Section 23-3-460 and may not be removed from the registry except

- (1) as provided by the provisions of subsection (E), or
- (2) if the pardon is based on a finding of not guilty specifically stated in the pardon

The preamble of the 2008 Amendment that created S C Code Ann § 23-3- 430(f) states

To amend Section 23-3-430, relating to the establishment of the State's Sex Offender Registry, so as to provide that a sex offender who receives a pardon for an offense which required him to register as an offender, or files a Petition for Habeas Corpus or a Motion for a New Trial must register annually for the remainder of his life

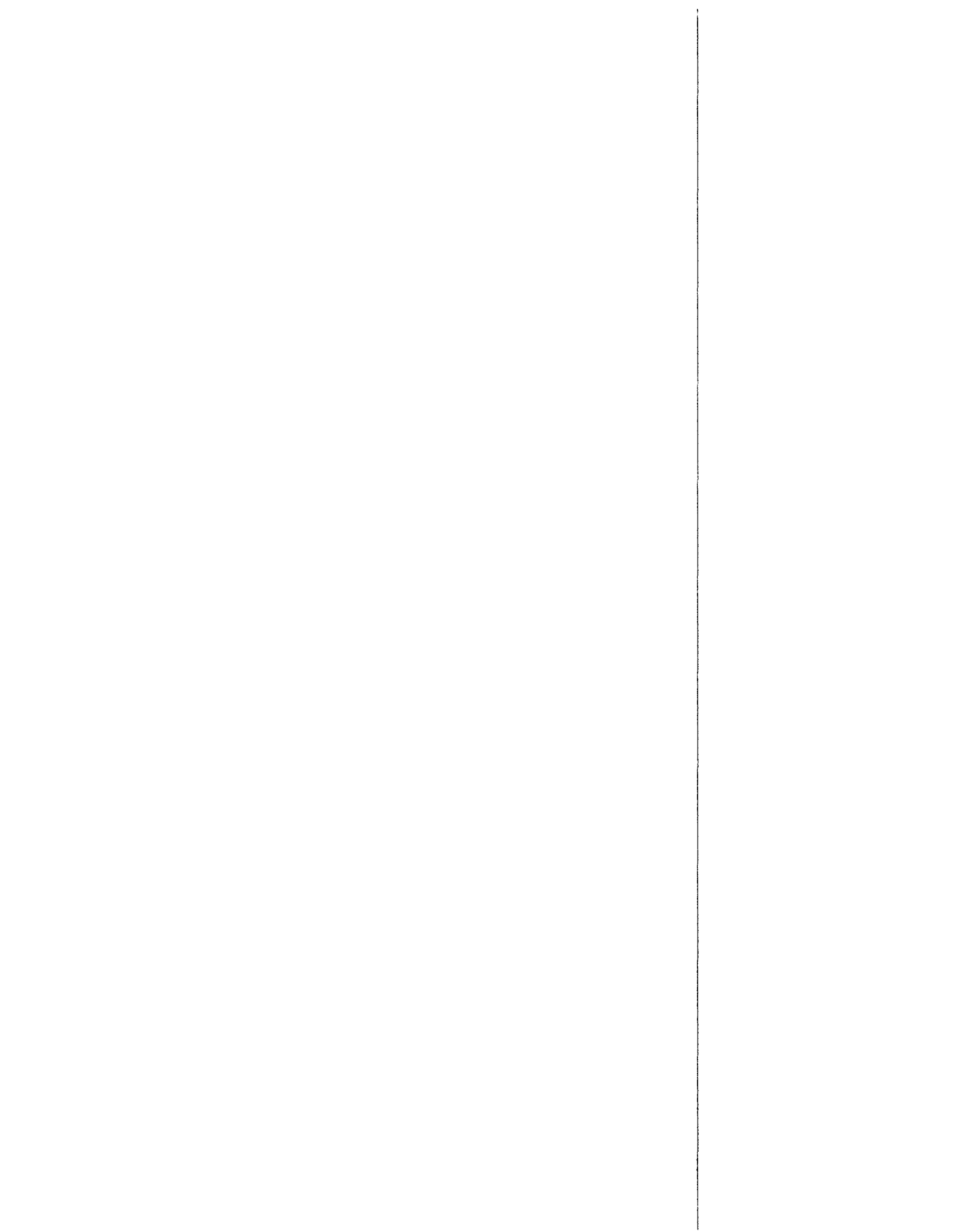
S C Legis 335 (2008)

"In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary South Carolina Department of Revenue v Rosemary Coin Machines, 339 S C 25, 28, 528 S E 2d 416, 418 (2000) Neither the 2008 Amendment nor S C Code Ann § 23-3-430(f) include language expressing an intent to retroactively apply the Amendment

"Statutes that are remedial or procedural in nature, however, operate retroactively " Weisert v Stewart, 379 S C 300, 303 665 S E 2d 187, 188 (App 2009) "A statute is remedial and applies retroactively when it creates new remedies for existing rights or enlarges rights of persons under disability " Id

S C Code Ann § 23-3-430(f) neither imposes nor alters any procedural requirements to S C Code Ann § 23-3 430 Consequently, the amendment is not procedural in nature In

RKAG Pg VIII



addition, the amendment does not “create new remedies for existing rights to persons under disability” Weisert, 379 S C at 303, 665 S E 2d at 188 Rather, retroactive application of the amendment would remove the remedy afforded by pardons prior to 2008

Moreover, “[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers” Wieters, 378 S C at 170, 662 S E 2d at 436 Interpreting S C Code Ann § 23-3-430(f) not to apply retroactively prevents the impractical and unfair result of imposing a duty on every individual who was pardoned from a covered crime prior to 2008 to register as a sex offender

In sum, the pardon in 2004, pursuant to S C Code Ann § 24-21-940(A) (2004), relieved the Petitioner from the sex offender registration requirements In addition, the 2008 Amendment creating S C Code Ann § 23-3-430(f) does not retroactively apply to strip the Petitioner of the remedy afforded to him by the pardon in 2004

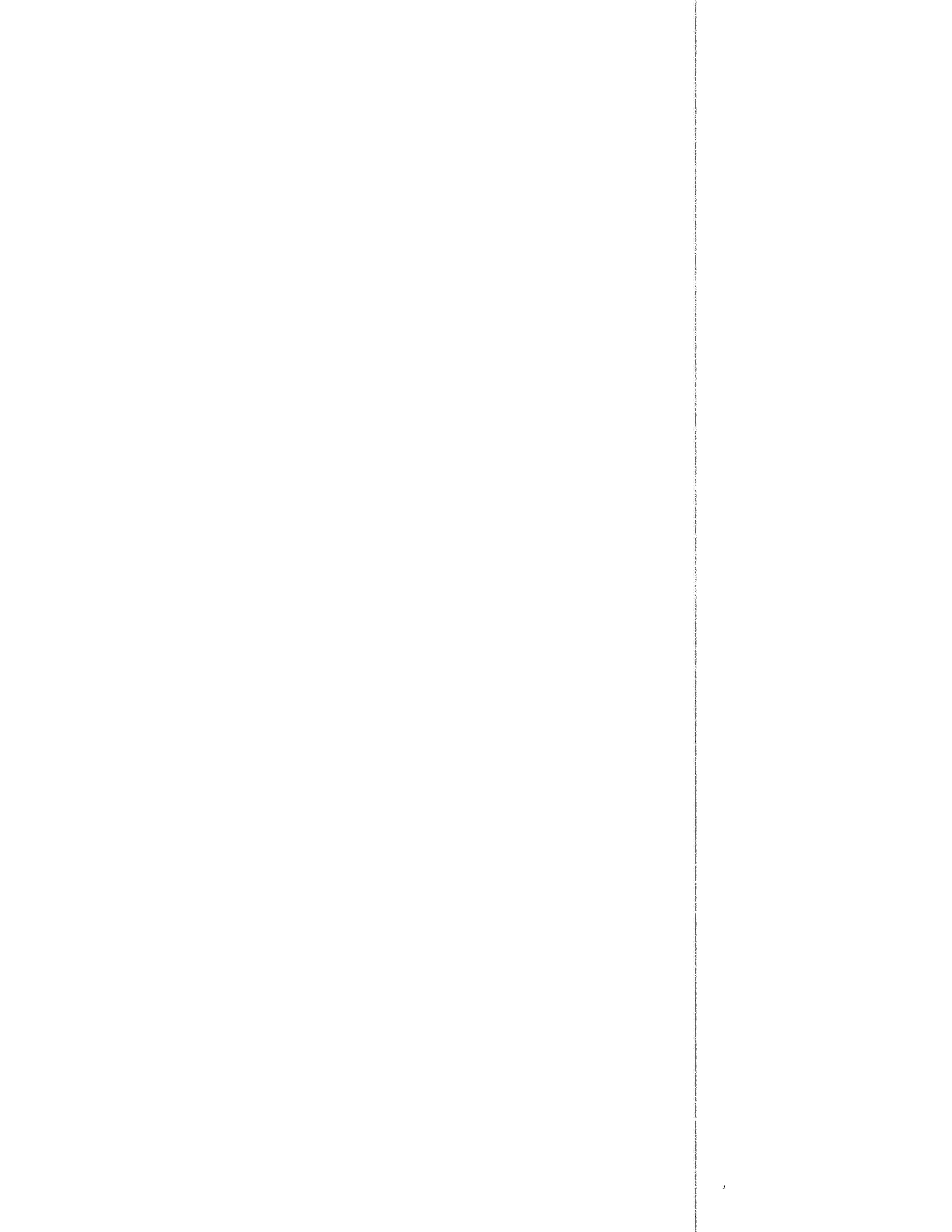
ACCORDINGLY, the Petition is hereby GRANTED and the Court Orders that the Petitioner be removed from the Sex Offender Register and that the Petitioner is relieved from any further duty to register as a sex offender

IT IS SO ORDERED

August 18, 2009

*Ralph King Anderson, Jr.*  
Ralph King Anderson, Jr.  
*Circuit Judge*

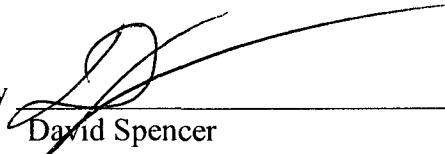
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FEDERAL CIRCUIT SC



**CERTIFICATE OF COUNSEL**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material

By

A handwritten signature in black ink, appearing to read "David Spencer", is written over a horizontal line. The signature is stylized with a large loop and a long, sweeping tail that extends to the right.

David Spencer  
Assistant Attorney General

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR APPELLANT



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County  
Ralph King Anderson, Jr , Circuit Court Judge

Case No 2009-CP-21-1573

RECEIVED

MAY 21 2010

SC Court of Appeals

In the Matter of the Care and Treatment of

Jeremy Lane Edwards

Respondent

vs

State Law Enforcement Division (SLED)

Appellant

**CERTIFICATE OF SERVICE**

I, Ashley Buchanan, certify that I have served the within Final Brief of Appellant and Record on Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to

Walker H Willcox, Esquire  
Willcox, Buyck & Williams  
PO Box 1909  
Florence, SC 29503-1909

I further certify that all parties required by Rule to be served have been served

This 21 day of May, 2010



ASHLEY BUCHANAN  
Legal Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3704



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