

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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DEC 29 2014

APPEAL FROM GREENWOOD COUNTY

S.C. Supreme Court

Donald B. Hocker, Circuit Court Judge

Case Number: 2013-CP-24-00167

Edward Dean and Nolan Brown

Appellants

v.

Mark Keel in his official capacity as
Chief of the South Carolina Law
Enforcement Division

Respondent

Notice of Appeal

Edward Dean and Nolan Brown appeal the order of the Honorable Donald B Hocker dated September 10, 2014 denying the appellants declaratory relief. This appeal is taken from Judge Hocker's written order, filed on December 5, 2014, denying the appellants Rule 59(e), SCRPC motion.

Pursuant to Rule 203(d)(1)(A)(ii), this appeal is filed in this Court because appellants challenge the constitutionality of the South Carolina Sex Offender Registry.

Respectfully Submitted,

By



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December 22, 2014
Greenwood, South Carolina

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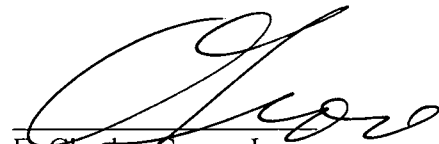
Mark Keel in his official capacity as
Chief of the South Carolina Law
Enforcement Division

Respondent

Certificate of Service

I certify that I have served the Notice of Appeal on The South Carolina Department of Probation Parole and Pardon Services, by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

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December 22, 2014
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Subsequent to Mr. Dean's Family Court adjudication, South Carolina enacted the Sex Offender Registry Act. Section 23-3-490(D)(1)(c) requires that a person adjudicated delinquent in family court for criminal sexual conduct with a minor in the first degree must register as a sex offender, and that the information be available to the public. Accordingly, SLED determined that Mr. Dean was required to register as a sex offender, and his sex offender registration information is public and can be found on the SLED sex offender website.

Nolan Brown is a citizen and resident of Greenwood County, South Carolina. On May 22, 1991, the Greenwood Country Family Court adjudicated Mr. Brown delinquent of first-degree criminal sexual conduct with a minor. He was fourteen (14) years old.

Subsequent to Mr. Brown's Family Court adjudication, South Carolina enacted the Sex Offender Registry Act. Section 23-3-490(D)(1)(c) requires that a person adjudicated delinquent in family court for criminal sexual conduct with a minor in the first degree must register as a sex offender, and that the information be available to the public. Accordingly, SLED determined that Mr. Nolan was required to register as a sex offender, and his sex offender registration information is public and can be found on the SLED sex offender website.

ANALYSIS

The Complaint seeks declaratory relief alleging that requiring Mr. Dean and Mr. Brown to register as sex offenders under the applicable law:

1. violates the *ex post facto* prohibitions in the United States and South Carolina Constitutions;
2. violates the substantive and procedural due process provisions of the United States and South Carolina Constitutions;
3. is an improper application of the statutory language regarding residency restrictions;

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4. violates the equal protection provisions of the United States and South Carolina Constitutions; and,
5. violates the cruel and unusual punishment provisions of the United States and South Carolina Constitutions.

As a threshold matter, the Court notes that “[w]hen the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution.” *State v. Walls*, 348 S.C. 26, 29, 558 S.E.2d 524, 525 (2002) (citing *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001)). All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. *Davis v. Cnty. of Greenville*, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996). “This presumption places the initial burden on the party challenging the constitutionality of the legislation to show it violates a provision of the Constitution.” *State v. White*, 348 S.C. 532, 536–37, 560 S.E.2d 420, 422 (2002). The desirability of the legislation is not the issue before this Court. See *Keyserling v. Beasley*, 322 S.C. 83, 470 S.E. 2d 100 (1996). The Court “does not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.” *Id.* at 86, 470 at 101. Furthermore, “[a] legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt.” *Westvaco Corp. v. S.C. Dep’t of Revenue*, 321 S.C. 59, 62, 467 S.E.2d 739, 741 (1995).

As discussed below, after full consideration of the facts and law the Court finds the arguments of the Plaintiffs unpersuasive and they have failed to meet their burden, and therefore the relief sought in the Complaint must be denied.

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I. The South Carolina Sex Offender Registry is not punitive and does not violate the ex post facto laws under the Constitutions of the United States and South Carolina.

The Constitutions of the United States and of South Carolina specifically prohibit the passage of *ex post facto* laws. U.S. Const. art. 1, § 10; S.C. Const. art. 1, § 4. For a law to fall within *ex post facto* prohibitions, two critical elements must be present: (1) the law must be retrospective so as to apply to events occurring before its enactment; and (2) the law must disadvantage the offender affected by it. *State v. Wilson*, 315 S.C. 289, 292, 433 S.E.2d 864, 866 (1993) (internal citations omitted).

The Plaintiffs allege that *ex post facto* prohibitions are violated by registration as sex offenders. Plfs. Compl. ¶¶24-30. However, precedent establishes that this argument is without merit because the registry is rationally related to achieving a legitimate objective. *In re Ronnie A.*, 355 S.C. 407, 409-10, 585 S.E.2d 311, 312 (2003) (internal citations omitted). Thus, the Registry and any amendments are Constitutional and are not meant to punish, but are intended for investigative, statistical, and public safety purposes.

The South Carolina Code provides:

The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.

The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re-offending. Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

S.C. Code Ann. § 23-3-400 (2007 & Supp. 2013).

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The South Carolina Supreme Court considered whether requiring sex offender registration based on a 1973 conviction was unconstitutional as a violation of the *ex post facto* clauses of the United States and South Carolina Constitutions. *Walls*, 348 S.C. at 30, 558 S.E.2d at 525. In order for a law to be prohibited by the *ex post facto* clause, two elements must be present: (1) the law must be retrospective so as to apply to events occurring before its enactment; and (2) the law must disadvantage the offender affected by it. *Miller v. Florida*, 482 U.S. 423, 430 (1987). However, before this two part analysis can even begin, the statute in question must be found to be punitive in nature such that it inflicts punishment merely by requiring the conduct called for in the law. *Walls*, 348 S.C. at 30, 558 S.E.2d at 526. Without such a finding, the *ex post facto* clause has not been violated. *Smith v. Doe*, 538 U.S. 84, 106 (2003).

While the Court in *Walls* found that the act met the first prong of determining whether it falls within *ex post facto* prohibitions as it applied to events occurring prior to the enactment, the Court upheld the constitutionality of the act, finding that sex offender registration requirements did not “disadvantage the offender affected by it” as required by the second prong of the test. *Walls*, 348 S.C. at 31, 585 S.E.2d at 526. In reaching its decision, the Court considered the statutory construction and legislative history of the Registry, and found that “it is clear that the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the General Assembly’s intention to create a non-punitive act.” *Id.* “Thus, a likelihood of re-offending lies at the core of South Carolina’s civil statutory scheme.” *State v. Dykes*, 403 S.C. 499, 507, 744 S.E.2d 505, 510 (2013). Requiring registration as a sex offender is non-punitive, such that the length of time an individual is required to register is non-punitive, and thus the length of time on the Registry was not a deprivation of a

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constitutionally protected liberty interest for purposes of a due process analysis. *Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Thus, binding precedent on this Court dictates that the Plaintiffs have failed to establish that the legally mandated registration is punitive for purposes of the *ex post facto* prohibition.

Moreover, the sex offender registry is rationally related to the stated goals of protecting the public and assisting law enforcement because the likelihood to re-offend is inherent and universally recognized for the type of offenders required to register. *Smith*, 538 U.S. at 103 (“The legislature’s findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness *as a class*. The risk of recidivism posed by sex offenders is ‘frightening and high.’” (citing *McKune v. Lile*, 536 U.S. 24, 33-34 (2002) (“When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault” (citing U.S. Dep’t of Justice, Bureau of Justice Statistics, *Sex Offenses and Offenders* 27 (1997); U.S. Dep’t of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983* (1997))).

With regard to the Plaintiffs’ requirement to register with the Registry, Section 23-3-460(A) of the South Carolina Code of Laws states in pertinent part:

A person required to register pursuant to this article is required to register biannually *for life*.... The person required to register *shall register and must reregister at the sheriff’s department in each county where he resides, owns real property, is employed, or attends any public or private school*, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school....

S.C. Code Ann. Section 23-3-460(A) (2013) (emphasis added). Furthermore, the Plaintiffs are classified as Tier III offenders pursuant to the Sex Offender Registration and Notification Act (“SORNA”) based on their adjudicated offense of criminal sexual conduct with a minor in the

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first degree. Therefore, the Plaintiffs must register *quarterly* instead of biannually. S.C. Code Ann. § 23-3-460(B) (“A person classified as a Tier III offender ... is required to register every ninety days.”).

Additionally, as part of registration, “[t]he State Law Enforcement Division may charge a reasonable fee to cover the cost of copying and distributing sex offender registry lists as provided for in this section...the sole purpose of offsetting the cost of providing sex offender registry lists.” S.C. Code Ann. Section 23-3-490(B).

Plaintiffs claim that legislative amendments to the Registry, since its inception in 1994, have made it “increasingly punitive,” but have not demonstrated that these amendments transform the Registry from a regulatory scheme to a criminal penalty, particularly where several of the allegedly “punitive” effects do not apply in this case, such as the registration process. Plfs. Compl. ¶¶24-30; Plfs. Br. at 4-12. The Defendant contends that as Tier III offenders, which includes those adjudicated delinquent of criminal sexual conduct with a minor in the first degree, South Carolina law requires the Plaintiffs to register, in person, at the Sheriff’s Department “every ninety days.” Defs. Br. at 7; S.C. Code Ann. § 23-3-460(B). The Court agrees with the Defendant.

As a matter of law, the length and manner of registration in and of itself cannot be punitive, nor can it be a post-sentence obligation or probation, as these are mere administrative implementations of the Registry. Additionally, there is a reasonable and rational basis between juvenile sex offender registration and protecting the public and aiding law enforcement. The duration of the registration requirement is not excessive in relation to the legitimate non-punitive purpose. And the intended purpose is to protect the public from those sex offenders who may re-

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offend; therefore, protecting the public now or in the future accomplishes the purpose of the sex offender registry.

The Court finds that the South Carolina Sex Offender Registry is not punitive and as a result does not violate the *ex post facto* laws under the Constitutions of the United States or South Carolina.

II. The South Carolina Sex Offender Registry does not violate substantive and procedural due process under the Constitutions of the United States and South Carolina.

The Plaintiffs argue that required lifetime sex offender registration violates their right to due process because, as juveniles, they were not afforded the same constitutional safeguards that would have been afforded to an adult who was convicted of the same crime (criminal sexual conduct with a minor in the first degree), before being subject to the requirements of the Registry. Plfs. Compl. ¶¶32-35; Plfs. Br. at 23-24. Using a combination of substantive and procedural due process theories, the Plaintiffs contend the Registry has, through legislative changes, become increasingly punitive and deprives the Plaintiffs of an alleged protected liberty interest. Plfs. Compl. ¶¶14-23; Plfs. Br. at 3-6.

As the South Carolina appellate have determined on prior occasions, the Registry requirements for juvenile sex offenders who have been adjudicated delinquent are in accordance with both substantive due process and procedural due process under the Constitutions of the United States and South Carolina.

A. Substantive Due Process

The Constitutions of the United States and South Carolina provide that “no person shall be deprived of life, liberty, or property without due process of law.” U.S. Const. Amend. XIV, § 1, S.C. Const. Art. I, § 3. The *first* step in any substantive due process analysis is “to determine



whether the claimed violation involves one of ‘those fundamental rights and liberties which are, objectively, deeply rooted in the Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.’ *Hawkins v. Freeman*, 195 F.3d 732 (4th Cir. 1999) (citing *Washington v. Glucksberg*, 521 U.S. 702 (1997) & *Palko v. Connecticut*, 302 U.S. 319 (1937)).

The next step depends for its nature upon the result of the first. *Id.* at 739. If the asserted interest has been determined to be “fundamental,” it is entitled in the second step to the protection of strict scrutiny judicial review of the challenged legislation. *Id.* If the interest is determined not to be “fundamental,” it is entitled only to the protection of rational-basis judicial review. *Id.* Accordingly, the South Carolina Supreme Court has noted that, at a minimum, “the substantive due process guarantee requires a rational basis for legislation depriving a person of life, liberty or property.” *In re Ronnie A.*, 355 S.C. at 409, 585 S.E.2d at 312.

The United States Supreme Court in *Washington v. Glucksberg* noted “we [the court] ha[ve] always been reluctant to expand the concept of substantive due process because guideposts for responsible decision-making in this unchartered area are scarce and open-ended.” 521 U.S. at 720 (citing *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125). “By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore ‘exercise the utmost care whenever we are asked to break new ground in this field,’ lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court.” *Id.* at 720 (citing *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 502 (1977)).

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The Plaintiff contends that South Carolina did not convene a hearing to determine whether the Plaintiffs met the specified criteria in order to be required to register as sex offenders thereby violating substantive due process which “protects citizens against arbitrary or capricious actions by the government regardless of the procedures used to carry out that action.” Plfs. Compl. ¶¶62-3. Moreover, the Plaintiffs cite *Dykes* arguing that “the lifetime sex offender registration violates due process unless South Carolina offers plaintiffs’ a hearing to determine whether they should be required to continue registering as sex offenders.” Plfs. Compl. ¶¶64. This due process analysis discussed in *Dykes* was in regard to GPS monitoring, *not registration*.

With regard to the GPS monitoring, the Sex Offender Accountability and Protection of Minors Act, also known in South Carolina as “Jessica’s Law,” was enacted in part as a result of the abduction, rape, and murder of Jessica Lunsford by a convicted sex offender in Florida. *Dykes*, 403 S.C. at 502, 744 S.E.2d at 507. After considering the circumstances surrounding the Lunsford case, the Florida legislature and subsequently the South Carolina legislature and other states created laws that heightened criminal sentences and post-release monitoring of child sex offenders. *Id.* Therefore, in 2006 the Sex Offender Accountability and Protection of Minors Act (Jessica’s Law) was enacted, S.C. Code Ann. § 23-3-540(A) (Supp. 2013).

Pursuant to Jessica’s Law, any person convicted or adjudicated delinquent for the offenses of criminal sexual conduct in the first degree with a minor or committing or attempting a lewd act on a child under sixteen, with an *offense date on or after July 1, 2006*, was required to be ordered by the court to be monitored with an active electronic monitoring (GPS) device for the duration of the time that individual was required to register as a sex offender. S.C. Code Ann. § 23-3-540(A) (Supp. 2013). Further, as recently as August of 2013, the South Carolina Supreme Court held that the imposition of lifetime electronic monitoring for a juvenile did not constitute

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punishment. *In re Justin B.*, 405 S.C. at 406, 747 S.E.2d at 782. In that case, the court specifically noted that “Section 23-3-540’s electronic monitoring requirement is a civil obligation similar to other restrictions the state may lawfully place upon sex offenders.” (internal citations omitted). *Id.*, 405 S.C. at 395-96, 747 S.E.2d at 776.

In *Dykes*, the South Carolina Supreme Court found that only the non-reviewable lifetime monitoring requirement in Section 23-3-540(H) is unconstitutional. *Dykes*, 403 S.C. at 509, 744 S.E.2d at 510. “Notwithstanding the absence of a fundamental right, we do find that lifetime imposition of satellite monitoring implicates a protected liberty interest to be free from permanent, unwarranted governmental interference.” *Id.*, 403 S.C. at 506, 744 S.E.2d at 509. In that case, the Court found that other similarly situated sex offenders must comply with the monitoring requirement mandated by Section 23-3-540(C), but “persons convicted of [criminal sexual conduct in the first degree and lewd act] on a minor are entitled to avail themselves of the Section 23-3-540(H) judicial review process as outlined for the balance of the offenses enumerated in Section 23-3-540(G).” *Id.*, 403 S.C. at 510, 744 S.E.2d at 511.

The GPS monitoring of the Sex Offender Accountability and Protection of Minors Act *does not apply* to the Plaintiffs as they were adjudicated delinquent on July 31, 1990 and May 22, 1991, for criminal sexual conduct with a minor in the first degree. However, this Court finds that even if the Plaintiffs were required to wear the GPS monitoring, Section 23-3-540(A) of the Sex Offender Registry would not violate the Plaintiffs substantive due process.

This Court holds that the Registry does not violate the Plaintiffs’ substantive due process under the Constitutions of the United States or South Carolina.

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B. Procedural Due Process

Procedural due process claims challenge the constitutionality of the specific procedures used to deny a person's life, liberty or property. The fundamental requirements of due process are fair notice and standards for adjudication. *State v. Green*, 397 S.C. 268, 279, 724 S.E.2d 664, 669 (2012). Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and, (4) the right to confront and cross-examine witnesses. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical, and no particular form of procedure is necessary. *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 485, 636 S.E.2d 598, 615 (2006). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *Id.* The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

The United States Supreme Court has held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971). Several procedural safeguards applicable to criminal proceedings are also constitutionally mandated in juvenile delinquency proceedings, including the right to notice, the right to counsel, the right confront witnesses, the privilege against self-incrimination, and the standard of proof beyond a reasonable doubt. *Id.* at 532. Therefore, the Court reasoned that a juvenile delinquency proceeding is fundamentally different from a criminal proceeding and cannot be equated to a criminal prosecution within the meaning of the Sixth Amendment. *Id.* at 541-51.

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Furthermore, the United States Supreme Court has held that injury to reputation, does not implicate a liberty interest for the purposes of due process analysis. *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. at 1-2 (2003). The Registry does not render the entire juvenile adjudication process public. Juvenile sex offenders can still avail themselves of closed hearings, sealed records, and the other procedural protections of the juvenile process.

Most recently, the South Carolina Supreme Court held that the "...the South Carolina Constitution **does not entitle** juveniles to a jury trial in family court adjudication proceedings." *In Re Stephen W.*, Op. No. 27413, Shearouse Adv. Sh. No. 28 at 29-34 (S.C. Sup. Ct. July 16, 2014) (emphasis added). The Court turned to *McKeiver v. Pennsylvania*, which held that juveniles are not constitutionally entitled to a jury trial in adjudication proceedings. *Id.* (citing *McKeiver*, 403 U.S. at 530-57).

The Plaintiff alleges that lifetime public registration and residency restrictions exceed the ordinary scope of the family court and "any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt." Plfs. Compl. ¶¶33. The Plaintiffs rely in part on the distinction recognized by the South Carolina Supreme Court in *Ronnie A.* that Ronnie's registry information "will not be made available to the public because of appellant's age at the time of his adjudication." Plfs. Compl. ¶¶18; Plfs. Br. at 4; *In re Ronnie A.*, 355 S.C. at 410, 585 S.E.2d at 312.

However, *Ronnie A.* is clearly distinguishable as the Court's due process analysis depended upon Ronnie being under the age of twelve (12) at the time of his adjudication. The Court relied upon S.C. Code Ann. Section 23-3-490(D)(3) holding that Ronnie's registry requirement does not violate due process and his information would not be made public due to his age. In contrast, and in this case, the Plaintiffs were *13 and 14 years of age* at the time of

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adjudication, obviously over the age of twelve; therefore, their registry information would be made public. Moreover, in 2013 the South Carolina Supreme Court affirmed that a juvenile's sex offender registration does not violate rights to due process and equal protection. *In Re David L.*, Op. No. 2013-MO-013, 2013 WL 8600262 (S.C. Sup. Ct. April 24, 2013) (unpublished).

While the Plaintiffs may be subject to the same sex offender registration requirements as an adult convicted of criminal sexual conduct with a minor in the first degree, the impact on their liberty is simply not comparable to the actual punishment an adult would receive for a conviction. Criminal sexual conduct with a minor in the first degree is a class A felony and has been deemed by the General Assembly to be a "violent" and a "most serious" offense. S.C. Code Ann. §§ 16-1-60, -90(A), 16-3-655(A), & 17-25-45 (2003 & Supp. 2013). When the victim is less than eleven (11) years of age, an adult convicted of criminal sexual conduct with a minor in the first degree "must be imprisoned for a mandatory minimum of twenty-five years, no part of which may be suspended or probation granted, or must be imprisoned for life." S.C. Code Ann. § 16-3-655(C) (Supp. 2013). An *adult felony conviction* for the offense involved carries a much greater punishment than the adjudication imposed on the Plaintiffs, or any possible sanction that could be imposed on a juvenile.

If the purpose of due process is to ensure that specific procedures used to deny a person's liberty are sufficient as the particular situation demands, a juvenile's rights are protected at their adjudication by the "fundamental fairness" standard when the juvenile is required to register. *United States v. Juvenile Male*, 670 F.3d 999, 1014 (9th Cir. 2012) (citing *McKeiver*, 403 U.S. at 543).

This Court holds that the Registry does not violate the Plaintiffs' procedural due process under the Constitutions of the United States or South Carolina.



III. The residency restriction prohibiting sex offenders from residing in campus student housing at a public institution of higher learning (Section 23-3-465) does apply to juvenile adjudications and such restrictions are a proper application of the statutory language of the Registry.

As stated previously, the Constitutions of the United States and South Carolina provide that “no person shall be deprived of life, liberty, or property without due process of law.” U.S. Const. Amend. XIV, § 1, S.C. Const. Art. I, § 3.

With regard to residency, the Registry only limits sex offenders from residing in campus student housing at a public institution of higher learning (Section 23-3-465), and adult sex offenders from residing within one thousand (1,000) feet of certain proscribed areas (Section 23-3-535). The student housing restriction would apply to the Plaintiffs as “any person required to register under this article.” S.C. Code Ann. §§ 23-3-465, -535 (2007).

The Plaintiffs do not argue that the residency requirement was a burden or unconstitutional, but only that the residency requirement did not apply to sex offenders who were adjudicated since the statute states those “convicted” of an offense and that sometimes the Greenwood Sherriff’s Department applies residency restrictions. Plfs: Compl. ¶¶68-69; Plfs. Br. at 28. As stated above on Page 6 of this Order, Section 23-3-460(A) of the South Carolina Code of Laws states in pertinent part:

A person required to register pursuant to this article is required to register biannually *for life*.... The person required to register *shall register and must reregister at the sheriff’s department in each county where he resides, owns real property, is employed, or attends any public or private school*, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school....

S.C. Code Ann. Section 23-3-460(A) (2013) (emphasis added). Furthermore, the Plaintiffs are classified as Tier III offenders pursuant SORNA based on their adjudicated offense of criminal sexual conduct with a minor in the first degree. Therefore, the Plaintiffs must register *quarterly*

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instead of biannually. S.C. Code Ann. § 23-3-460(B) (“A person classified as a Tier III offender ... is required to register every ninety days.”).

The Defendant agrees that the Plaintiffs are correct insofar as the 1,000 foot restriction would *not* apply here because it only applies to “a sex offender that has been *convicted* of any of the following offenses to reside within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground....” Defs. Br. at 8-9; S.C. Code Ann. § 23-3-535(B) (Supp. 2013) (emphasis added). Since juveniles are adjudicated delinquent rather than convicted, the residency restrictions in Section 23-3-535 complained of by the Plaintiffs do not appear to apply to offenders (such as the Plaintiffs) that are required to register due to juvenile adjudications. Moreover, as a matter of law, these residency restrictions are constitutional.

The Court finds that the Plaintiffs’ requirement to register and the residency restriction prohibiting sex offenders from residing in campus student housing at a public institution of higher learning (Section 23-3-465) do apply under the plain language of the law.

IV. The South Carolina Sex Offender Registry does not violate the Equal Protection Clause under the Constitutions of the United States and South Carolina.

The Equal Protection Clauses of the Constitutions of the United States and South Carolina provide that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1, S.C. Const. Art I, § 3. Equal protection requires that “all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed.” *G.T.E. Sprint Communications Corp. v. Pub. Serv. Comm’n*, 288 S.C. 174, 181, 341 S.E.2d 126, 129 (1986).

“If a statutory provision ‘does not involve a suspect classification or a fundamental right ... the question under equal protection analysis is whether the legislation is rationally related to a legitimate state purpose.’” *Hendrix*, 353 S.C. at 549, 579 S.E.2d at 323 (citing *Curtis v. State*,

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345 S.C. 557, 574, 549 S.E.2d 591, 600 (2001)). Convicted sex offenders are not a suspect class. *Id.* Likewise, delinquent juvenile sex offenders would not be a suspect class. Age is not a suspect classification. *Gregory v. Ashcroft*, 501 U.S. 452, 453 (1991); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976), *Arnold v. Ass'n of Citadel Men*, 337 S.C. 265, 272, 523 S.E.2d 757, 761 (1999).

The Court in *Hendrix* explicitly rejected the argument of a fundamental right to privacy in the context of the sex offender registry, reasoning that “[a]lthough the U.S. Supreme Court has recognized a right to privacy in limited circumstances, the privacy protections do not extend to information about a sexual offense ... which became a matter of public record when Appellant registered as a sex offender....” *Hendrix*, 353 S.C. at 549, 579 S.E.2d at 324.

Thus, as the statute does not impact a suspect class or burden a fundamental right, equal protection is satisfied if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis. *Skyscraper Corp. v. County of Newberry*, 323 S.C. 412, 417, 475 S.E.2d 764, 767 (1996); *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 94, 326 S.E.2d 395, 402 (1985). “The fact that the classification may result in some inequity does not render it unconstitutional.” *Davis v. County of Greenville*, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994).

A. The classification bears a reasonable relation to the legislative purpose sought to be effected.

The South Carolina Supreme Court has previously found that the registration of juvenile sex offenders is rationally related to achieving a legitimate legislative purpose. *In re Ronnie A.*, 355 S.C. at 409, 585 S.E.2d at 312. The Court in *Ronnie A.* rejected the claim by a juvenile offender that the lifelong “stigma” of sex offender registration violates the due process clause. *Id.*

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The Court reasoned that “[t]he intent of the legislature in enacting the sex offender registry law is to protect the public from those offenders who may re-offend. The registration of offenders, *including juveniles* who have proved themselves capable of certain sex offenses, is rationally related to achieving this legitimate objective.” *Id.* (emphasis added).

B. The members of the class are treated the same under the same or similar circumstances.

All persons who are twelve (12) years of age and older at the time of adjudication for a first offense of any offense listed in 23-3-430(C) are treated the same; they are required to register as sex offenders, and their information is available to the public. Moreover, since the Plaintiffs are classified as Tier III offenders pursuant to Section 23-3-460(B) of the South Carolina Code, the Plaintiffs must register quarterly.

C. The classes rest on a reasonable basis.

The purpose of Section 23-3-490 reasonably relates to the stated goals of protecting the public and assisting law enforcement because the likelihood to re-offend is inherent and universally recognized for the type of offenders required to register. South Carolina Code Section 23-3-400 found that “[s]tatistics show that sex offenders often pose a high risk of reoffending. S.C. Code Ann. Section 23-3-400 (2013). Additionally, law enforcement’s efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency’s jurisdiction.” *Id.* Ultimately, there is a reasonable relationship as the General Assembly has related the Registry to protecting the public.

This Court holds that the Registry does not violate the Plaintiffs right to equal protection under the Constitutions of the United States or South Carolina.

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V. The South Carolina Sex Offender Registry does not violate the cruel and unusual punishment clauses under the Constitutions of the United States and South Carolina.

The Eighth Amendment to the United States Constitution provides: “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. Amend. VIII. Similarly, the South Carolina Constitution provides: “[e]xcessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel, nor corporal, nor unusual punishment be inflicted....” S.C. Const. Art. I, § 15. The bar for cruel and unusual punishment is high. *Juvenile Male*, 670 F.3d at 1010. The United States Supreme Court notes that the core of the Eighth Amendment prohibits excessive sanctions. *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). Punishment is “excessive,” and therefore prohibited by Eighth Amendment, only if it is not graduated and proportioned to the offense. *Id.* at 304.

Thus, for Eighth Amendment purposes, the court conducts a proportionality analysis to determine whether the punishment is disproportionate to the crime committed. *Id.* at 311; *Solem v. Helm*, 463 U.S. 277, 285 (1983) (instructing that it is a precept of justice that punishment for a crime should be graduated and proportioned to the offense). Likewise, in analyzing the prohibition against cruel and unusual punishment in the South Carolina Constitution, our courts have recognized the concept of requiring a sentence to be in proportion to the crime. *Jones*, 344 S.C. at 55, 543 S.E.2d at 545; *Stockton v. Leeke*, 269 S.C. 459, 462, 237 S.E.2d 896, 897 (1977). Indeed our Courts have held that a sentence, though not cruel and unusual in kind, may be so severe in duration as to be cruel and unusual. *State v. Kimbrough*, 212 S.C. 348, 353, 46 S.E.2d 273, 275 (1948). However, the prohibitions of the Eighth Amendment only forbid extreme sentences that are grossly disproportionate to the crime. *Harmelin v. Michigan*, 501 U.S. 957,

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1001 (1991); *State v. McKnight*, 352 S.C. 635, 652, 576 S.E.2d 168, 177 (2003) (must determine if the duration of the sentence is not grossly disproportionate with the severity of the crime).

The South Carolina Supreme Court has previously concluded that the Registry is not so punitive in purpose or effect so as to constitute a criminal penalty. *Walls*, 348 S.C. at 31, 558 S.E.2d at 526. The non-punitive “purpose” of the statute is certainly no different whether the Registry is applied to an adult or a juvenile.

The mere fact that the Legislature enacted a law requiring lifetime registration for all individuals, adult or juvenile, who were found to have committed a sex crime is not punishment. Even if it were deemed punishment, lifetime registration is not excessive and is graduated and proportioned to the offense. Moreover, when viewing an adult’s conviction of the same crime as the Plaintiffs, criminal sexual conduct with a minor in the first degree, appearing on the Registry due to a juvenile adjudication creates less of a burden to reputation than appearing due to an adult conviction.

Therefore, the Court finds registration, even by juveniles, does not constitute punishment of any kind, much less unconstitutional cruel and unusual punishment clauses of the United States or South Carolina Constitutions.

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As discussed below, after full consideration of the briefing, motion, responsive pleadings and for the reasons set forth below, the Court denies the Plaintiffs' Motion.

STIPULATED FACTS

The underlying facts were stipulated by the Parties and are not in dispute. Plaintiff Edward Dean is a citizen and resident of Greenwood County, State of South Carolina. On July 31, 1990, the Family Court for Greenwood County adjudicated Mr. Dean delinquent for first-degree criminal sexual conduct with a minor. Mr. Dean was thirteen (13) years old.

Subsequent to Mr. Dean's Family Court adjudication, South Carolina enacted the Sex Offender Registry Act Section 23-3-490(D)(1)(c) requires that a person adjudicated delinquent in family court for criminal sexual conduct with a minor in the first degree must register as a sex offender, and that the information be available to the public. Accordingly, SLED determined that Mr. Dean was required to register as a sex offender, and his sex offender registration information is public and can be found on the SLED sex offender website.

Nolan Brown is a citizen and resident of Greenwood County, South Carolina. On May 22, 1991, the Greenwood Country Family Court adjudicated Mr. Brown delinquent of first-degree criminal sexual conduct with a minor. He was fourteen (14) years old.

Subsequent to Mr. Brown's Family Court adjudication, South Carolina enacted the Sex Offender Registry Act. Section 23-3-490(D)(1)(c) requires that a person adjudicated delinquent in family court for criminal sexual conduct with a minor in the first degree must register as a sex offender, and that the information be available to the public. Accordingly, SLED determined that Mr. Nolan was required to register as a sex offender, and his sex offender registration information is public and can be found on the SLED sex offender website.

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ANALYSIS

The Plaintiffs' Motion is rejected for two principle reasons. First, the Motion reargues the same claims that were rejected by this Court and have been repeatedly rejected by the South Carolina Supreme Court. This Court is bound to follow Supreme Court precedent.² Second, the Plaintiffs cling to a footnote which is *dicta* in a recent South Carolina Supreme Court opinion, ~~but~~ but a review of the Supreme Court's opinion reveals that it fully supports this Court's order and decision and rejects the arguments proffered by the Plaintiffs.

The Motion states that "[a]lthough citing our Supreme Court's recent decision in *In re Stephen W.*, 409 S.C. 73, 761 S.E.2d 231 (2014), this Court overlooked that Court's more recent observation in *Kevin R.*" and then quotes footnote 10 of the opinion. Motion at 5. The Plaintiffs rely heavily on the footnote, but the fundamental problem is that the opinion, taking the footnote in context rather than in isolation as presented by the Plaintiffs, fully supports the Order. For example, the very next sentence in the opinion states: "[W]e reaffirm the analysis in *Stephen W.* that addressed the issues raised by Appellant in the instant case." *In re Kevin R.*, 409 S.C. 297, 762 S.E.2d 387, 391 (2014).

Further, the Plaintiffs attempt underscore the *parens patriae* language in the footnote—which is mere *dicta* in any event—as creating a contradiction with governing law. However, the Supreme Court directly addressed the "apparent tension" claim by the Plaintiffs.

The apparent tension between the State's power as *parens patriae* and a juvenile's state constitutional right to a jury trial must be reconciled. ***Reconciliation is found by recognizing that the two are not mutually exclusive*** and that they are in fact dual tracks for

² The Plaintiffs' cite to Rule 268 for the proposition that memorandum opinions should not be cited. Motion at 4, fn. 2. However, while that rule is found in the Appellate Court Rules (as opposed to the Rules of Civil Procedure applicable in this Court), the citation is not offered for precedential value so much as to show that the Supreme Court has consistently rejected the Plaintiffs' arguments time and time again.

handling juvenile transgressions. Although a juvenile is not entitled to a jury trial in an adjudication proceeding, the juvenile should be permitted to remove his case from the family court to a court of competent jurisdiction where a jury trial may be conducted. However, when this election is made, the juvenile forfeits the benevolent treatment of the *parens patriae* adjudication proceeding.

In re Kevin R., 409 S.C. 297, 762 S.E.2d 387, 394 (emphasis added).

Moreover, the Motion tries to direct the Court to follow law from other states where a jury trial is required, but here again, the South Carolina Supreme Court has rejected such arguments on the basis of the *parens patriae* doctrine that the Plaintiffs underscored, and did so most recently in *Kevin R.*

Furthermore, as analyzed in *Stephen W.*, the General Assembly has created a system for juveniles that is distinctly different from adult offenders based on the premise that "South Carolina, as *parens patriae*, protects and safeguards the welfare of its children." ... *The continued recognition of the parens patriae doctrine distinguishes South Carolina from those jurisdictions that have found a juvenile is constitutionally entitled to a jury trial.*

409 S.C. 297, 762 S.E.2d 387, 390-91 (emphasis added) (internal citations omitted).

The Plaintiffs claim the "Order does not address the implications related to South Carolina not offering Plaintiffs a jury trial." Motion at 7; *but see* Motion at 5 ("[T]he Court addresses Plaintiffs' complaint that South Carolina requires them to register as sex offenders without ever having offered them a jury trial."). But there are no implications to address, because the Plaintiffs are not entitled to a jury trial, and on this point the Order goes into great detail. Specifically, the Order stated that the "United States Supreme Court has held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement" and that "the South Carolina Supreme Court held that the "the South Carolina Constitution *does not entitle* juveniles to a jury trial in family court adjudication proceedings." Order at 13 (citing *McKeiver v.*

Pennsylvania, 403 U.S. 528 (1971) and *In re Stephen W.*, 409 S.C. 73, 761 S.E.2d 231, 234 (2014) (“Because the federal and state constitutions do not entitle a juvenile to a jury trial in a family court delinquency proceeding, the judgment of the family court is affirmed.”)).

In fact, *Kevin R.* affirmed the South Carolina Supreme Court’s prior holdings and offered additional precedential authority for the Court’s order in holding that “*any assertion that juveniles should be entitled to a jury trial because they are subject to registering as a sex offender if they are adjudicated delinquent for certain sex offenses is without merit*” and reaffirmed the analysis in *Stephen W.*, which was relied upon as authority by this Court in its Order. 409 S.C. 297, 762 S.E.2d 387, 391 (emphasis added).

But while the complaint alleges and the briefs argued a right to a jury trial, now the Plaintiffs concede that it is not really an issue they are concerned with. The Motion states that “[i]t is not so much that Plaintiffs want a jury trial. Under the circumstances of their cases, it is too late to offer them one anyway.” Motion at 5. In other words, the Plaintiffs concede that they lack standing because there is no redressability to raise the claim in the first instance.

The Plaintiffs also complain that the Court did not address their claims of “adequate and independent state grounds,” but this argument is confused. The Court held that under the South Carolina Constitutions and South Carolina law the regulatory scheme was lawful. The adequate and independent state grounds doctrine is used by *Federal* courts as a limitation on jurisdiction. See *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983). In other words, it is nonsensical for the Plaintiffs to try and use a Federal court jurisdictional doctrine as a sword in a state complaint against a state official under state law in state court. The Order unequivocally applies South Carolina Supreme Court precedent in finding South Carolina’s statute constitutional.

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As discussed below, after full consideration of the facts and law the Court finds the arguments of the Plaintiffs unpersuasive and they have failed to meet their burden, and therefore the Motion must be denied.

I. **The South Carolina Sex Offender Registry is not punitive and does not violate the ex post facto laws under the Constitutions of the United States or South Carolina.**

The Constitutions of the United States and of South Carolina specifically prohibit the passage of ex post facto laws. U.S. Const, art. 1, § 10; S.C. Const, art. 1, § 4. For a law to fall within *ex post facto* prohibitions, two critical elements must be present: (1) the law must be retrospective so as to apply to events occurring before its enactment; and (2) the law must disadvantage the offender affected by it. *State v. Wilson* , 315 S.C. 289, 292, 433 S.E.2d 864, 866 (1993) (internal citations omitted).

The South Carolina Supreme Court considered whether requiring sex offender registration based on a 1973 conviction was unconstitutional as a violation of the *ex post facto* clauses of the United States and South Carolina Constitutions. *State v. Walls*, 348 S.C. 26, 30, 558 S.E.2d 524, 525 (2002). The Court in *Walls* upheld the constitutionality of the act, finding that sex offender registration requirements did not “disadvantage the offender affected by it” as required by the second prong of the test. *Id.* at 31, 585 S.E.2d at 526.

The Plaintiffs state that “[a]lthough not cited in the order, our [South Carolina] Supreme Court decided *State v. Nation*, 408 S.C. 474, 759 S.E.2d 428 (2014), during the briefing process in this case.” Motion at 1. The Plaintiffs failed to address the issue before the South Carolina Supreme Court in *State v. Nation*, which was whether the mandatory imposition of global positioning system (GPS) monitoring on a sex offender convicted prior to a statute’s effective date violates the South Carolina and United States Constitutions. 408 S.C. 474, 478-79, 759

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S.E.2d 428, 430 (2014). The Court ultimately rejected each of the constitutional challenges. *Id.* at 481, 759 S.E.2d at 432.

The Court finds that the South Carolina Sex Offender Registry is not punitive and as a result does not violate the *ex post facto* laws under the Constitutions of the United States or South Carolina.

II. The South Carolina Sex Offender Registry does not violate due process under the Constitutions of the United States or South Carolina.

The Constitutions of the United States and South Carolina provide that “no person shall be deprived of life, liberty, or property without due process of law.” U.S. Const. Amend. XIV, § 1, S.C. Const. Art. I, § 3.

The Plaintiffs acknowledge that the Court addressed the issue and simply disagrees. Motion at 4 (“[T]he Court addresses Plaintiffs’ complaint that they were denied due process because the statute does not provide an individualized determination to determine whether they should be required to register as sex offenders.”). Disagreeing with the outcome, especially when the outcome is based on United States and South Carolina Supreme Court precedent, is insufficient to warrant reconsideration.

While the Plaintiffs state that this Court erred by concluding that South Carolina’s Sex Offender Registry is not punitive, there is an overwhelming number of precedential South Carolina cases that support the Order. For example, the South Carolina Supreme Court has held that the sex offender registry is *not* considered punitive; therefore, due process does not apply. *Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Requiring registration as a sex offender is non-punitive, such that the length of time an individual is required to register is non-punitive, and thus the length of time on the registry was not a deprivation of a constitutionally protected liberty interest for purposes of a due process analysis. *Id.*

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This Court holds that the Registry does not violate the Plaintiffs' due process under the Constitutions of the United States or South Carolina.

III. The South Carolina Sex Offender Registry does not violate the Equal Protection Clause under the Constitutions of the United States or South Carolina.

The Equal Protection Clauses of the Constitutions of the United States and South Carolina provide that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1, S.C. Const. Art I, § 3. Equal protection requires that “all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed.” *G.T.E. Sprint Communications Corp. v. Pub. Serv. Comm’n*, 288 S.C. 174, 181, 341 S.E.2d 126, 129 (1986).

The Plaintiffs allege that the “Order never addresses the distinction between juveniles and adults”; however, the Court specifically addresses this distinction in its Order. The impact on the Plaintiffs' liberty is simply *not* comparable to the actual punishment an adult sex offender would receive for a conviction. Criminal sexual conduct with a minor in the first degree is a class A felony and has been deemed by the General Assembly to be a “violent” and a “most serious” offense. Order at 14; S.C. Code Ann. §§ 16-1-60, -90(A), -3-655(A), & 17-25-45 (2003 & Supp. 2013). When the victim is less than eleven (11) years of age, an adult convicted of criminal sexual conduct with a minor in the first degree “must be imprisoned for a mandatory minimum of twenty-five years, no part of which may be suspended or probation granted, or must be imprisoned for life.” S.C. Code Ann. § 16-3-655(C) (Supp. 2013). An *adult felony conviction* for the offense involved carries a much *greater punishment* than the adjudication imposed on the Plaintiffs, who committed criminal sexual conduct with a minor under the age of 11—or any possible sanction that could be imposed on a juvenile.

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This Court holds that the Registry does not violate the Plaintiffs right to equal protection under the Constitutions of the United States or South Carolina.

IV. The South Carolina Sex Offender Registry does not violate the cruel and unusual punishment clauses under the Constitutions of the United States or South Carolina.

The Eighth Amendment to the United States Constitution provides: “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. Amend. VIII. Similarly, the South Carolina Constitution provides: “[e]xcessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel, nor corporal, nor unusual punishment be inflicted...” S.C. Const. Art. I, § 15. The bar for cruel and unusual punishment is high. *Juvenile Male*, 670 F.3d at 1010. The United States Supreme Court notes that the core of the Eighth Amendment prohibits excessive sanctions. *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). Punishment is “excessive,” and therefore prohibited by Eighth Amendment, only if it is not graduated and proportioned to the offense. *Id.* at 304.

The South Carolina Supreme Court has previously concluded that the Registry is not so punitive in purpose or effect so as to constitute a criminal penalty. *Walls*, 348 S.C. at 31, 558 S.E.2d at 526. The non-punitive “purpose” of the statute is certainly no different whether the Registry is applied to an adult or a juvenile.

Furthermore, Plaintiffs cite to *State v. Nation*, which affirmed the South Carolina Supreme Court’s previous decision in *Justin B.* where the Appellant argued that GPS monitoring constituted cruel and unusual punishment in violation of the Eighth Amendment. *Nation*, 408 S.C. at 481, 759 S.E.2d at 432 (citing *In re Justin B.*, 405 S.C. 391, 394-95, 747 S.E.2d 774, 776 (2013)). The Court held in *Justin B.* that the legislative intent behind Jessie’s Law and in applying the *Mendoza-Martinez* factors, the “electronic monitoring is *not a punishment*,” but a civil requirement. *Justin B.*, 405 S.C. at 404–08, 747 S.E.2d at 781–83 (emphasis added).

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Therefore, the Court finds registration, even by juveniles, does not constitute punishment of any kind, much less unconstitutional cruel and unusual punishment clauses of the United States or South Carolina Constitutions.

V. **The Plaintiffs' right to privacy is not violated by being required to register on the South Carolina Sex Offender Registry.**

The Supreme Court in *Hendrix* explicitly rejected the argument of a fundamental right to privacy in the context of the sex offender registry, reasoning that “[a]lthough the U.S. Supreme Court has recognized a right to privacy in limited circumstances, the privacy protections do not extend to information about a sexual offense ... which became a matter of public record when Appellant registered as a sex offender...” *Hendrix*, 353 S.C. at 549, 579 S.E.2d at 324.

This Court finds that the Registry does not violate the Plaintiffs' right to privacy under the Constitutions of the United States or South Carolina.

VI. **The Plaintiffs are not entitled to removal from the South Carolina Sex Offender Registry through equitable relief.**

South Carolina law is equally clear that “[e]quitable relief is generally available only where there is no adequate remedy at law.” *Santee Cooper Resort, Inc. v. South Carolina Pub. Service Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). “Whether an individual must be placed on the sex offender registry is a question of law.” *Lozada v. South Carolina Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing *Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989)).

Plaintiffs are not entitled to the equitable relief sought because the statute governing removal from the Registry provides an adequate remedy at law. The mechanism for both placement on and removal from the Registry is provided by statute. *See* S.C. Code Ann. § 23-3-430 (Supp. 2013). Under Section 23-3-430(E), SLED shall remove a person from the Registry if

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that person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered. S.C. Code Ann. § 23-3-430(E) (Supp. 2013). Other subsections provide for removal if the person receives a pardon based on a finding of not guilty specifically stated in the pardon, or if he or she receives a new trial following the discovery of new evidence and a verdict of acquittal is returned. S.C. Code Ann. § 23-3-430(F), (G) (Supp. 2013).

Plaintiffs are not entitled to equitable relief merely because they do not qualify for removal under the current law. Here, the Plaintiffs' conviction has not been reversed, overturned, or vacated on appeal nor has he received a pardon or been acquitted after receiving a new trial. S.C. Code Ann. § 23-3-430(E), (F), (G) (Supp. 2013).

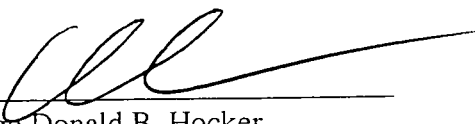
This Court finds the Plaintiffs' Motion for equitable relief is in contradiction to the statute and must be denied.

Accordingly, it is hereby,

ORDERED for the reasons set forth above, the Plaintiffs' Motion to Alter or Amend Judgment is **DENIED**.

AND IT IS SO ORDERED.

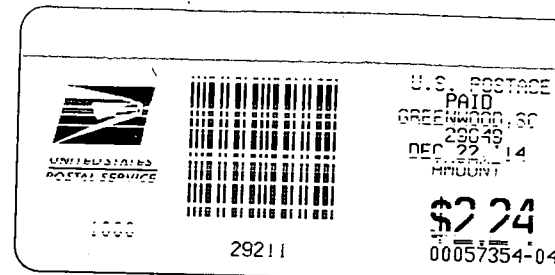
November 19, 2014
Greenwood, South Carolina



Judge Donald B. Hocker
Eighth Judicial Circuit

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