THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY

Donald B. Hocker, Circuit Court Judge

Appellate Case Number: 2014-002721

Edward Dean and Nolan Brown — Appellants

v.

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

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Initial Brief of Appellants

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Statement of Case

On February 22, 2013, the appellants, Edward Dean and Nolan Brown, filed a declaratory judgment action pursuant to S.C. Code Ann. §15-53-130, *et. seq.* to determine their rights under the South Carolina Sex Offender Registry, S.C. Code Ann. §23-3-400 *et. seq.*, and various provisions of the United States and South Carolina Constitutions.[1] This lawsuit also seeks to enjoin the South Carolina Law Enforcement Division (hereinafter "SLED") from requiring plaintiffs to register as sex offenders.

On April 30, 2013, the defendant, Mark Keel, in his official capacity as Chief of SLED filed an answer to the complaint.

Because this matter presents questions of law, the parties stipulated facts, R. *, and agreed for the court below to decide the matter based on written briefs. On July 2, 2014, appellants submitted their written brief. R. *. On August 1, 2014, the respondent submitted his written brief. R. *.

By written order dated September 10, 2014, the Honorable Donald B. Hocker ruled in favor of appellants that the residency restrictions of S.C. Code Ann. §23-3-535 do not apply to them. Judge Hocker, however, denied all other relief requested by the appellants. R. *.

On September 18, 2014, the appellants served a Rule 59(e), SCRCP motion. R. *. On September 29, 2014, SLED responded. R. *. Also on September 29, 2014, the appellants replied to SLED's response. R. *. By written order dated November 19, 2014, Judge Hocker denied the Rule 59(e) motion. R. *. This appeal follows.

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[1] See *Hazel v. State*, 377 S.C. 60, 63, 659 S.E.2d 137, 139 (2008) (Court of Common Pleas has jurisdiction to adjudicate rights related to the sex offender registry).

Statement of Issues on Appeal

I. Does retroactively requiring Dean and Brown to register as sex offenders violate due process under the United States and South Carolina Constitutions because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

II. Does retroactively requiring Dean and Brown to register as sex offenders violate equal protection process the United States and South Carolina Constitutions because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

III. Does retroactively requiring Dean and Brown to register as sex offenders violate the *ex post facto* clauses of the United States and South Carolina Constitutions because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

IV. Does retroactively requiring Dean and Brown to register as sex offenders violate due process under the United States and South Carolina Constitutions because South Carolina did not convene a hearing to make an individualized determination of whether they should be required to register as sex offenders.

V. Does retroactively requiring Dean and Brown to register as sex offenders violate the prohibition against cruel and unusual punishment under the United States and South Carolina Constitutions because South Carolina did not convene a hearing to make an individualized determination of whether they should be required to register as sex offenders.

VI. Does retroactively requiring Dean and Brown to register as sex offenders violate the Right to Privacy guaranteed by the South Carolina Constitution because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

VII. Are Dean and Brown entitled to equitable relief because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

Stipulated Facts[2]

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 Dean delinquent for first-degree criminal sexual conduct with a minor. Dean was thirteen (13) years old. Subsequent to 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, 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. South Carolina requires Dean to register as a sex offender based solely on a juvenile adjudication for criminal sexual conduct with a minor, first degree.

Nolan Brown is a citizen and resident of Greenwood County, South Carolina. On May 22, 1991, the Greenwood Country Family Court adjudicated Brown delinquent of first-degree criminal sexual conduct with a minor. He was fourteen (14) years old. Subsequent to 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, Brown 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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[2] R. *.

South Carolina requires Brown to register as a sex offender based solely on a juvenile adjudication.

Mark Keel is the Chief of SLED, duly appointed by the Governor. He is sued in his official capacity. The Sex Offender Registry "is under the direction of the Chief of the State Law Enforcement Division (SLED)" in his official capacity. S.C. Code Ann. §23-3-410(A).

Arguments

I. Retroactively requiring Dean and Brown to register as sex offenders violates due process under the United States and South Carolina Constitutions because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

This appeal presents important public policy concerns regarding the relationship of the doctrine of *parens patriae* in juvenile adjudications to our state's public, lifetime Sex Offender Registry. *Harris v. Harris*, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992) ("South Carolina, as *parens patriae*, protects and safeguards the welfare of its children. Family Court is vested with the exclusive jurisdiction to ensure that, in all matters concerning a child, the best interest of the child is the paramount consideration."); *State v. Cagle*, 111 S.C. 548, 96 S.E. 291, 292 (1918) ("The state is vitally interested in its youth, for in them is the hope of the future. It may therefore exercise large powers in providing for their protection and welfare.").

When the Family Court adjudicated Edward Dean and Nolan Brown delinquent of first-degree criminal sexual conduct with a minor, then existing South Carolina law created an expectation that their juvenile adjudications would remain private. This privacy protection is consistent with the doctrine of *parens patriae*. Our state subsequently created a sex offender registry, applied it to juveniles, and published it on the Internet. As Tier III offenders, Dean and Brown must register quarterly, in person, at the Sheriff's Office. South Carolina has never offered the appellants a jury trial or even a hearing to determine whether they should be required to register as sex offenders. Following the doctrine of *parens patriae* in juvenile adjudications is the only constitutionally permissible way our state could deny the appellants a jury trial.

This Court steadfastly holds every sex offender registry condition is civil and not punitive. *State v. Nation*, 408 S.C. 474, 759 S.E.2d 428 (2014); *In re Justin B.*, 405 S.C. 391, 747 S.E.2d 774 (2013); *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013); *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003); *In re Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003); and *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002). Because the appellants' registration requirements are based on juvenile adjudications, this appeal presents larger policy issues. In their complaint, Dean and Brown pointed out that, at the time of their adjudications, our state's laws protected the confidentiality of juvenile adjudications. Complaint ¶¶ 4 and 9. R. *. This Court observed during the lower court briefing process of this case:

> Although the issue is not before the Court, we note the inconsistent positions of the General Assembly to limit the negative civil parameters of adjudication proceedings but permit the consequences of an adjudication to continue for the lifetime of one who is adjudicated delinquent for sex offenses. If this state retains the doctrine of *parens patriae* in juvenile proceedings, then the consequences of these proceedings should expire when the individual reaches the age of twenty-one years old. *See* S.C.Code Ann. § 63–19–1410(A)(5) (2010) (providing that commitment "must be for an indeterminate period but in no event beyond the child's twenty-first birthday").

In re Kevin R., 2012-212655, 2014 WL 3844076 (fn. 10) (S.C. Aug. 6, 2014). Thus, even if this Court continues to view the juvenile Sex Offender Requirement as purely civil, retroactive application of this breach of "the doctrine of *parens patriae* in juvenile proceedings" disadvantages Plaintiffs and is fundamentally unfair. The public polices supporting the continued application of this doctrine are deeply routed in our nation's history. *E.g. Kent v. U.S.*, 383 U.S. 541 (1966) and *Application of Gault*, 387 U.S. 1 (1967).

To be clear, Dean and Brown do not ask this Court to turn back the clock and offer them a jury trial. Rather, the appellants ask this Court to restore them to the position they were in at the time of their adjudication – protect the confidentiality of their juvenile records, remove information about their adjudications from the Internet, limit the consequences of their adjudications to their twenty-first birthdays, and extinguish the registration requirement.

After reviewing the history of our state's Sex Offender Registry, the appellants will explain why their due process rights were violated because South Carolina requires registration without ever having provided them the constitutional safeguards ordinarily afforded to adults.

A. History of South Carolina's Sex Offender Registry.

When South Carolina first enacted a sex offender registry in 1994, the legislative intent was "to promote the State's fundamental right to provide for public health, welfare and safety of its citizens." 1994 Act 497, Part II §112A (S.C. Code §23-3-400). The registry was "not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws." *Id.* "[T]he General Assembly . . . 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 indicate[d] the General Assembly's intention to create a non-punitive act." *State v. Walls*, 348 S.C. at 31, 558 S.E.2d at 526.

South Carolina Sex Offender Registry's registration requirement is for life. 1994 Act 497, Part II §112A (S.C. Code §23-3-460). *See also Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003) (since sex offender registration is non-punitive, no liberty interest is implicated regardless of the length of time registration is required).

Initially, the Sex Offender Registry applied only to "convictions," and not juvenile adjudications. 1994 Act 497, Part II §112A (S.C. Code §23-3-430). *See State v. Ellis*, 345 S.C. 175, 179, 547 S.E.2d 490, 492 (2001) (a juvenile adjudication is not the same as a conviction).

In 1996, when the General Assembly began requiring juveniles adjudicated of certain offenses to register as sex offenders, the juvenile's information remained confidential. 1996 Act 444 §16 (S.C. Code §23-3-430, 490). It wasn't until 1998 that the General Assembly authorized release of juvenile sex offender information under certain circumstances. 1998 Act 384 §1 (S.C. Code §23-3-490). This Court has held requiring a juvenile to register as a sex offender does not violate due process, ***in situations where the juvenile's "registry information will not be made available to the public*** because of appellant's age at the time of his adjudication." *In re Ronnie A.*, 355 S.C. at 410, 585 S.E.2d at 312 (emphasis added).

Since this Court's decisions in *Walls*, *Hendrix*, and *Ronnie A.* in 2002 and 2003, South Carolina's Sex Offender Registry has become increasingly punitive.

In 2005, the General Assembly began requiring lifetime Global Positioning Satellite (GPS) monitoring for an offender convicted or adjudicated delinquent of certain offenses, including criminal sexual conduct with a minor and lewd act. 2005 Act 141 §8 (S.C. Code §23-3-540). Although this requirement does not apply to the appellants, it applies to juveniles prospectively. *In re Justin B.*, *supra*.

Also in 2005, the General Assembly began restricting residency by prohibiting sex offenders "from living in campus student housing at a public institution of higher

learning supported in whole or in part by the State." 2005 Act 94 §2 (S.C. Code §23-3-465).

In 2008, the General Assembly prohibited sex offenders convicted of certain offenses from residing "within one thousand feet of a school, daycare center, children's recreational facility, park, or public playground." 2008 Act 333 §1 (S.C. Code §23-3-535). The court below ruled that these residency restrictions do not apply to the appellants.

Likewise, the actual registration requirement has become harsher. Initially, a sex offender was required to register annually in the offender's county of residence. 1994 Act 497, Part II §112A (S.C. Code §23-3-460). Both of these requirements have been expanded. Offenders are now required to register biannually and, in some cases, quarterly. S.C. Code Ann. §23-3-460(B) provides, "A person classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), is required to register every ninety days." This quarterly registration requirement applies to Dean and Brown.

In addition to the country of residence, offenders must register in any county where the offender works, attends school, or owns property. S.C. Code §23-3-460.

Finally, they must pay an annual fee as S.C. Code Ann. §23-3-490, provides, "The 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."

Thus, sex offender registration is the same as lifetime probation for the appellants.

B. United States Constitution.

Juveniles are entitled to due process protections under the Fourteenth Amendment. These protections include notice, an opportunity to be heard, and the right to counsel. *Gault, supra.* In South Carolina, a juvenile adjudication is not the same as a conviction. *Ellis, supra.* Juveniles are prosecuted in Family Court, and the "family court does not conduct jury trials." *In re Vincent J.*, 333 S.C. 233, 237, fn. 3, 509 S.E.2d 261, 263, fn. 3 (1998). The Family Court's "objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment." *Kent v. U.S.*, 383 U.S. at 554. The Family Court, therefore, is required to consider the best interests of the juvenile, and the consequences of a juvenile adjudication typically do not extend beyond the twenty-first birthday. *See* S.C. Code §§63-19-1410, 1440.

Lifetime, public registration exceeds the ordinary scope of the Family Court. "[A]ny 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." *State v. McGrier*, 378 S.C. 320, 331, 663 S.E.2d 15, 20-21 (2008) (emphasis supplied by the Court) (citing *Cunningham v. California,* 549 U.S. 270, 127 S.Ct. 856, 863-64, 166 L.Ed.2d 856 (2007)).

The Sixth Amendment of the United States Constitution protects the right to a jury trial. The Sixth Amendment right to a jury trial is applicable to the states through the Fourteenth Amendment. *Faretta v. California*, 422 U.S. 806 (1975); *State v. Schmidt*, 288 S.C. 301, 342 S.E.2d 401 (1986); *McGrier, supra.* Because South Carolina's Sex Offender Registry requires lifetime, public registration for juveniles without offering a

jury trial—thereby breaching the doctrine of *parens patriae* in juvenile proceedings—this Court should declare that juvenile sex offender registration violates the United States Constitution.

C. South Carolina Constitution.

It is well settled that a state can decide a constitutional issue on adequate and independent state grounds. *Michigan v. Long*, 463 U.S. 1032 (1983). South Carolina has a tradition of deciding constitutional issues based on adequate and independent state grounds. *Eg. State v. Brown*, 284 S.C. 407, 326 S.E.2d 410 (1985) (chemical castration is cruel and unusual punishment pursuant to S.C. Const Art I, §15); *State v. Forrester*, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001) ("The South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.")

S.C. Const. Art. I, §3 guarantees due process of law, and Art. I, §14 protects the right to a jury trial. Because South Carolina's Sex Offender Registry requires lifetime public registration and residency restrictions for juveniles without offering a jury trial, this Court should declare that juvenile sex offender registration violates the South Carolina Constitution.

D. Prejudice.

For every other juvenile adjudication, South Carolina has a public policy of maintaining the confidentiality of juvenile records, with very limited, narrow exceptions. S.C. Code Ann. §63-19-2010 *et. seq.* South Carolina provided that protection to the plaintiffs in 1990 and 1991 when the Family Court adjudicated them delinquent of first-

degree criminal sexual conduct with a minor. South Carolina took away those protections in 1998 when it retroactively required them to publically register as sex offenders, thereby breaching the doctrine of *parens patriae.*

Additionally as Human Rights Watch pointed out in *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, R. *, the lifetime consequences of requiring juveniles to register as sex offenders is devastating and extremely prejudicial. This report details the enormous prejudice that results from requiring lifetime, public, juvenile sex offender registration. Because of our state's interest in youth—our hope for the future—the doctrine of *parens patriae* militates in favor of limiting the consequences of juvenile sex offender registration to childhood, thus allowing the child to enter adulthood with a clean slate.

E. Summary.

Lifetime, public sex offender registration, based solely on a juvenile adjudication, is contrary to the doctrine of *parens patriae* in juvenile proceedings. This Court should declare that lifetime sex offender registration for juveniles violates the due process clause of the United States Constitution because South Carolina did not offer the plaintiffs a jury trial before requiring lifetime registration. In the alternative, the Court should declare that lifetime sex offender registration for juveniles violates the due process clause of the South Carolina Constitution because the state did not offer the plaintiffs a jury trial before requiring lifetime registration.

II. Retroactively requiring Dean and Brown to register as sex offenders violates equal protection process the United States and South Carolina Constitutions because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

A. United States Constitution.

South Carolina's Sex Offender Registry creates two classes of people subject to the same registration requirements. These are:

a) Adult offenders who are required to register following a conviction of a crime. Adult offenders are offered a jury trial prior to conviction.

b) Juvenile offenders who are required to register as a result of a juvenile adjudication. Juvenile offenders are not offered a jury trial prior to adjudication.

The right to trial by jury is a fundamental right." *Lane v. Gilbert Const. Co., Ltd.* 383 S.C. 590, 600, 681 S.E.2d 879, 884 (2009). *See also State v. Thrift*, 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994) ("prohibition against compelled self-incrimination is a basic constitutional mandate which is not a mere technical rule, but rather, a fundamental right of every citizen in our free society."). Juveniles are also part of a suspect class entitled to special protections. *E.g. Graham v. Florida*, ___ U.S. ___, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012).

Denying a juvenile the right to a jury trial is a violation of equal protection that cannot withstand strict scrutiny. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 634, fn. 3, 699 S.E.2d 699, 704, fn. 3 (Ct. App. 2010) (strict scrutiny, not rational basis, applies when a fundamental right is affected).

This Court should declare lifetime juvenile sex offender registration violates equal protection because a juvenile, unlike an adult, is not offered a jury trial prior to adjudication.

B. South Carolina Constitution.

It is well settled that a state can decide a constitutional issue on adequate and independent state grounds. *Michigan v. Long, supra.* South Carolina has a tradition of deciding constitutional issues based on adequate and independent state grounds. *Eg. Brown* and *Forrester, supra.*

S.C. Const. Art. I, §3 guarantees equal protection of law, and Art. I, §14 protects the right to a jury trial. Because South Carolina's Sex Offender Registry requires lifetime public registration and residency restrictions for juveniles without offering a jury trial, this Court should declare that juvenile sex offender registration violates the equal protection clause of the South Carolina Constitution.

C. Prejudice.

See Section I(D), *supra.*

D. Summary.

The only constitutionally protected way to treat juveniles differently is based on the doctrine of *parens patriae* in juvenile proceedings. But, lifetime, public sex offender registration, based solely on a juvenile adjudication, is contrary to the doctrine of *parens patriae* in juvenile proceedings. This Court should declare that lifetime sex offender registration for juveniles violates the equal protection clause of the United States Constitution because South Carolina did not offer Dean and Brown a jury trial before requiring lifetime registration. In the alternative, the Court should declare that lifetime sex offender registration for juveniles violates the equal protection clause of the South Carolina Constitution because the state did not offer the plaintiffs a jury trial before requiring lifetime registration.

III. Retroactively requiring Dean and Brown to register as sex offenders violates the *ex post facto* clauses of the United States and South Carolina Constitutions because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

A. United States Constitution.

Clause three of Article I, §9 of the United States Constitution prohibits Congress from passing *ex post facto* laws. Clause one of Article I, §10 of the Unites States Constitution prohibits the states from passing *ex post facto* laws.

As a threshold matter, this case is the perfect opportunity for this Court to determine an issue left unresolved by the Supreme Court of the United States, to wit: whether the mandatory, in person, reporting requirement, combined with the annual fee, renders the sex offender registration requirement punitive, thereby implicating *ex post facto* clauses and the Eighth Amendment. As Tier III offenders, South Carolina requires Dean and Brown to register, in person, at the Sheriff's Department "every ninety days." S.C. Code Ann. §23-3-460(B). They also must pay an annual registration fee of $150.00. Sex offender registration in South Carolina is for life, and the statute does not allow any opportunity to apply to be removed from the registry. South Carolina's sex offender registry, therefore, is equivalent to lifetime probation.

In *Smith v. Doe,* 538 U.S. 84 (2003), the Supreme Court of the United State considered an *ex post facto* challenge to Alaska's adult sex offender registry. The majority noted, "The Alaska statute, on its face, does not require these updates to be made in person." *Id.* at 101. That Court, therefore, reserved for another day "[w]hether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved." *Id.* at 102. Alaska, however, subsequently

recognized that its sex offender registration requirement "treats offenders not much differently than the state treats probationers and parolees subject to continued state supervision." *Doe v. State*, 189 P.3d 999, 1009 (Alaska 2008) (holding sex offender registry violates *ex post facto* clause of state constitution).

Other states have reached the same conclusion as Alaska. Oklahoma applied the "analytical framework used in *Smith v. Doe* and later in *Doe v. State*" and held retroactive application of punitive provisions of that state's sex offender registry violated the *ex post facto* prohibition. *Starkey v. Oklahoma Dep't of Corr.*, 2013 OK 43, 305 P.3d 1004, 1019 (2013). Maryland, likewise, held, "The application of the statute has essentially the same effect upon Petitioner's life as placing him on probation and imposing the punishment of shaming for life, and is, thus, tantamount to imposing an additional sanction for Petitioner's crime." *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 535, 568, 62 A.3d 123, 143 (2013).

The nationwide evolution of sex offender registration requirements is significant. Ohio recognized, "The statutory scheme has changed dramatically since this court described the registration process imposed on sex offenders as an inconvenience 'comparable to renewing a driver's license'" and held its statute violated the *ex post facto* clause of the Ohio Constitution. *State v. Williams*, 129 Ohio St. 3d 344, 348, 952 N.E.2d 1108, 1112 (2011).

Maine held retroactive application of SORNA[3] of 1999 violated *ex post facto* prohibitions by increasing the registration duty of certain offenders from 15 years to their entire lifetimes and imposing a quarterly an in-person verification requirement, without

[3] Sex Offender Registration and Notification Act, 42 U.S.C.A. §16911, *et. seq.*

affording an opportunity for relief from those duties at discretion of sentencing court. *State v. Letalien*, 2009 ME 130, 985 A.2d 4 (2009).

The nature of the requirement under review is also important. In *State v. Myers*, 260 Kan. 669, 923 P.2d 1024 (1996), Kansas held registration requirements of its Sex Offender Registration Act remedial and thus constitutional, but retroactive application of the public disclosure provision of the act imposed punishment in violation of *ex post facto* clause.

Applying the seven factors listed in *Kennedy v. Mendoza–Martinez*, 372 U.S. 144 (1963), Indiana held retroactive application of sex offender registry "violates the prohibition on *ex post facto* laws contained in the Indiana Constitution because it imposes burdens that have the effect of adding punishment beyond that which could have been imposed when his crime was committed." *Wallace v. State,* 905 N.E.2d 371, 384 (Ind., 2009). The Indiana statute is very similar to the South Carolina scheme. The Indiana Supreme Court's consideration of the seven *Mendoza–Martinez* factors are discussed below, along with an analysis of how those factors apply to our state's law.

First, the Indiana statute imposes "significant affirmative obligations and a severe stigma on every person to whom it applies." *Id.* at 379. The law imposes affirmative, post-sentence duties "under threat of prosecution." *Id.* Dean and Brown had discharged their juvenile dispositions before South Carolina ever imposed the registration requirement on them. For them, the registry is entirely a post-sentence obligation. Now, their failure to comply with the registry requirements can result—and it has for both—in criminal prosecution. They "must re-register for the rest of their lives," every ninety

days. *Id.* at 379-80. The requirement "exposes registrants to profound humiliation and community-wide ostracism." *Id.* at 380.

Second, Indiana held its statue resembles sanctions that have been historically considered punishment. "Aside from the historical punishment of shaming, the fact that the Act's reporting provisions are comparable to supervised probation or parole standing alone supports a conclusion that the second *Mendoza–Martinez* factor favors treating the effects of the Act as punitive when applied in this case". *Id.* at 380-81. South Carolina's scheme, likewise, is lifetime probation, especially for the plaintiffs who must report, in person, quarterly, and pay and the annual fee.

Third, Indiana's statute "overwhelmingly applies to offenses that require a finding of scienter for there to be a conviction." *Id.* at 381. Likewise, our state's requirement applies only in the context of criminal convictions or juvenile adjudications for offenses that would be crimes if the child were an adult.

Fourth, when considering the traditional aims of punishment, the Indiana Supreme Court considered the statutory scheme's focus on rehabilitation. "Nonetheless it strains credulity to suppose that the Act's deterrent effect is not substantial, or that the Act does not promote community condemnation of the offender, both of which are included in the traditional aims of punishment." *Id.* at 382 (internal citations and quotations omitted). Thus, that Court concluded, the fourth *Mendoza–Martinez* factor slightly favors treating the effects of the Act as punitive when applied to Wallace." *Id.* at 382. These same considerations exist in South Carolina.

Fifth, in Indiana "it is the determination of guilt of a sex offense, not merely the fact of the conduct and potential for recidivism, that triggers the registration

requirement." *Id.* Here, the adjudication for first-degree criminal sexual conduct with a minor triggered the registration requirement for Dean and Brown without any consideration of their likelihood of reoffending.[4]

Sixth, the Indiana Court recognized a non-punitive interest for the registration requirement, "as a measure to give the community notification necessary to protect its children from sex offenders." *Id.* at 383. Although considering this factor regulatory, that Court observed the "expansion [of the Act] supports the view that the effects of the Act are punitive." *Id.* As seen in Section III, *supra*, the expansion of South Carolina's sex offender registry points towards this same conclusion.

Seventh, in considering whether the Act was excessive in relation to its articulated purpose, the Indiana Supreme Court observed, "In those jurisdictions that have rejected *ex post facto* challenges to sex offender registration statutes, courts have specifically noted that disclosure was limited to that necessary to public safety, and/or that an individualized finding of future dangerousness was made." *Id.* Indiana, like South Carolina, "makes information on all sex offenders available to the general public without restriction and without regard to whether the individual poses any particular future risk." *Id.* at 384. "Thus, the non-punitive purpose of the Act, although of unquestioned importance, does not serve to render as non-punitive a statute that is so broad and sweeping." *Id.* As seen in Section III, supra, South Carolina initially maintained a private registry. There is no provision for the plaintiffs' information to remain private.

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[4] Compare South Carolina's sex offender registry with our state's Sexually Violent Predator Act, S.C. Code Ann. § 44-48-10 *et. seq.*, which provides for a hearing for the Court to consider whether the person suffers from a condition that increases their likelihood to reoffend. The absence of these procedural safeguards militates in favor of finding the sex offender registry punitive.

Finally, the Indiana Supreme Court summarized:

> [O]f the seven factors identified by *Mendoza–Martinez* as relevant to the inquiry of whether a statute has a punitive effect despite legislative intent that the statute be regulatory and non-punitive, only one factor in our view—advancing a non-punitive interest—points clearly in favor of treating the effects of the Act as non-punitive. The remaining factors, particularly the factor of excessiveness, point in the other direction.

Id. at 384. This Court should reach the same conclusion about South Carolina's sex offender registration requirement.

Additionally, at least two states hold requiring children to register as sex offenders to be punitive and violate the prohibition against cruel and unusual punishment. *People v. Dipiazza,* 286 Mich. App. 137, 778 N.W.2d 264 (2009) (requiring sex offender registration in a public registry constituted punishment of defendant, who had successfully completed a juvenile diversion program for criminal defendants under the age of 21); *In re C.P.*, 131 Ohio St. 3d 513, 967 N.E.2d 729 (2012) (held that its statute that imposed automatic, lifelong registration and notification requirements on juvenile sex offenders who were tried within the juvenile system violated prohibition against cruel and unusual punishment.). *In re C.P.'s* analysis will be discussed in more detail in Section V, *infra.*

Finally, the Supreme Court of the United States is monitoring this issue. In *U.S. v. Juvenile Male*, 131 S.Ct. 2860 (2011), that Court declined to consider a challenge to the juvenile sex offender registry. The Eighth Circuit Court of Appeals had found the juvenile sex offender registry sufficiently punitive to invoke the *ex post facto* clause. *U.S. v. Juvenile Male*, 590 F.3d 924, 938 (9th Cir. 2010) *vacated by U.S. v. Juvenile Male*,

131 S.Ct. 2860 (2011) (issue rendered moot when juvenile was no longer required to register as a sex offender).

Thus, *Smith v. Doe* does not apply to registries, like South Carolina's, that effectively place the offender on lifetime probation.

B. South Carolina Constitution.

It is well settled that a state can decide a constitutional issue on adequate and independent state grounds. *Michigan v. Long, supra.* South Carolina has a tradition of deciding constitutional issues based on adequate and independent state grounds. *Eg. Brown* and *Forrester, supra.*

S.C. Const. Art. I, §4 prohibits the legislature from passing *ex post facto* laws. This Court should declare that requiring plaintiffs to register as sex offenders for the rest of their lives violates the *ex post facto* provisions of Art. I, §4.

C. Prejudice.

See Section I(D), *supra.*

D. Summary.

The only constitutionally protected way to treat juveniles differently from adults is based on the doctrine of *parens patriae* in juvenile proceedings. But, lifetime, public sex offender registration, based solely on a juvenile adjudication, is contrary to the doctrine of *parens patriae* in juvenile proceedings. This Court should declare the South Carolina's juvenile sex offender registry requirement, as applied to Dean and Brown, violates the *ex post facto* provisions of the United States constitution. In the alternative, this Court should find that our state's sex offender registry violates the *ex post facto* provisions of the South Carolina Constitution.

IV. Retroactively requiring Dean and Brown to register as sex offenders violates due process under the United States and South Carolina Constitutions because South Carolina did not convene a hearing to make an individualized determination of whether they should be required to register as sex offenders.

A. United States Constitution.

No person should be deprived of life, liberty or property without due process of law. U.S. Const. Amend XIV. Due process protects citizens against arbitrary or capricious actions by the government regardless of the procedures used to carry out that action. *In Re Care and Treatment of Luckabaugh*, 351 S.C. 122, 140 (2002). *See Cleveland Board of Education v. Lafleur*, 414 U.S. 632 (1974) (A state may not presume a teacher incapable of continuous service in the classroom merely because she is four or five months pregnant or has a child under age three).

South Carolina did not convene a hearing to determine whether plaintiffs meet specified criteria in order to be required to register as sex offenders. This Court should declare that 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.

In the context of satellite monitoring, this Court addressed the due process requirement of an individualized determination after ten years to determine whether monitoring is warranted. *State v. Dykes*, 398 S.C. 351, 728 S.E.2d 455 (2012) (hereinafter "*Dykes I*") was the first of three opinions issued by this Court in that case. The controlling opinion held due process required a hearing before a person could be placed on satellite monitoring and review of the monitoring requirement after ten years. Counsel for the respondent, South Carolina Department of Probation, Parole, and Pardon

Services petitioned the Court to rehear *Dykes I*. The Court granted rehearing in *Dykes I* on July 12, 2012.

On May 22, 2013, the Court issued a second opinion in Ms. Dykes case (hereinafter "*Dykes II*"). In *Dykes II*, the Court reversed course and held the initial imposition of satellite monitoring was constitutional but maintained the portion of the decision holding that due process requires periodic review. *Dykes II* did not address other constitutional issues raised by Ms. Dykes in her brief, to wit violations of the *ex post facto* clause, procedural due process, equal protection, and unlawful search and seizure. Ms. Dykes, accordingly, moved to reconsider. On July 24, 2013, the Court withdrew *Dykes II* and issued *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013) (hereinafter "*Dykes III*").[5]

The doctrine of *parens patriae* in juvenile proceedings recognizes the extraordinary capacity of juveniles for rehabilitation. Due process, like the Eighth Amendment, requires an individualized determination before a juvenile should be required to register as a sex offender as an adult. Alternatively, due process requires periodic review to determine whether continued registration should be required. *See e.g. Dykes III.*

B. South Carolina Constitution.

It is well settled that a state can decide a constitutional issue on adequate and independent state grounds. *Michigan v. Long, supra.* South Carolina has a tradition of

[5] *Dykes III* added footnote 9, summarily dismissing these constitutional arguments. This footnote relied on *Smith v. Doe* as "rejecting an *ex post facto* challenge where sex offender registration and monitoring requirements are civil in nature." 403 S.C. at 510 (fn. 9), 744 S.E.2d at 511 (fn. 9). As seen in Section IV(A), *supra*, reliance on *Smith v. Doe* is not applicable based on the expansion of South Carolina's sex offender registry.

deciding constitutional issues based on adequate and independent state grounds. *Eg. Brown* and *Forrester*, *supra.*

No person should be deprived of life, liberty or property without due process of law. S.C. Const. Art. I, §3. South Carolina did not convene a hearing to determine whether plaintiffs meet a specified criteria in order to be required to register as sex offenders. This Court should declare that lifetime sex offender registration violates the due process clause of the South Carolina Constitution.

The doctrine of *parens patriae* in juvenile proceedings recognizes the extraordinary capacity of juveniles for rehabilitation. Due process, like Article I, §15, requires an individualized determination before a juvenile should be required to register as a sex offender as an adult. Alternatively, due process requires periodic review to determine whether continued registration should be required.

C. Prejudice.

See Section I(D), *supra.*

D. Summary.

This Court should declare that lifetime sex offender registration for juveniles violates the due process clause of the United States Constitution in the absence of an individualized determination to determine whether registration should be required. In the alternative, the Court should declare that lifetime sex offender registration for juveniles violates the due process clause of the South Carolina Constitution in the absence of an individualized determination to determine whether registration should be required.

The doctrine of *parens patriae* in juvenile proceedings recognizes the extraordinary capacity of juveniles for rehabilitation. At a minimum, the due process

clauses of the United States and/or South Carolina Constitutions require an individualized determination before a juvenile should be required to register as a sex offender as an adult. Alternatively, due process requires periodic review to determine whether continued registration should be required.

V. Retroactively requiring Dean and Brown to register as sex offenders violates the prohibition against cruel and unusual punishment under the United States and South Carolina Constitutions because South Carolina did not convene a hearing to make an individualized determination of whether they should be required to register as sex offenders.

A. The United States Constitution (Eighth Amendment).

> Adolescence is a developmental period characterized by identity formation. Labels stick and can last a lifetime. The label of "sex offender," . . . can cause profound damage to a child's development and self-esteem. Stigmatization can also lead to fear or mistrust by others, suspicion, rejection, or isolation from family and friends.
>
> These harms are compounded by the shame that comes with registration and notification, which often lacks an endpoint. Subjecting alienated and confused youth sex offenders to long-term public humiliation, stigmatization, and barriers to education and employment exacerbates the psychological difficulties they already experience.

Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US, Human Rights Watch, May 2013, pp. 50-51. The lifelong impact of juvenile sex offender registration, therefore, is undeniable.

The law treats juveniles differently. The Family Court "adjudicates" rather than "convicts" a juvenile for unlawful conduct. *Ellis, supra.* The Family Court is required to consider the best interests of the juvenile. Lifetime sex offender registration runs afoul of this widely held public policy. At a time when juveniles are entering the workforce, the sex offender registry calls public attention to the adjudication that would otherwise not be public. The registry, thus, undermines employment opportunities. In this manner, the registry restricts the juvenile's potential. Restricting potential could have the adverse

effect of interfering with the juvenile's best interest. Society loses when the registry prevents a juvenile from becoming a working, tax-paying citizen.

In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court created a categorical prohibition against imposing the death penalty on a person with intellectual disabilities (also know as mental retardation). In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court categorically prohibited imposing the death penalty on a defendant who committed the crime before age eighteen.

In *Graham v. Florida*, ___ U.S. ___, 130 S.Ct. 2011 (2010), the Supreme Court held that sentencing a juvenile who did not commit a homicide to life imprisonment without the possibility of parole violated the Eighth Amendment. *Roper* and *Graham* recognized that juvenile brain development is not complete. "[A] categorical rule gives all juvenile . . . offenders a chance to demonstrate maturity and reform. The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Graham*, 130 S.Ct. at 2032.

Graham's reasoning was extended to mandatory life without parole sentences for juveniles in *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012).[6] The reasoning of *Graham and Miller* should be applied to lifetime juvenile sex offender registration. As the Supreme Court observed in *Smith v. Doe*, the consequences of the sex offender registry flow from the conviction.

[6] This Court outlined procedures for following *Miller* in our state in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Despite this lifelong impact, the Sex Offender Registration and Notification Act (SORNA) provision of the Adam Wash Act[7] includes juvenile adjudications as a conviction requiring sex offender registration." 42 U.S.C.A. §§16911(8) and 16913. Failure to comply with these requirements will cause a state to lose ten percent of its federal criminal justice funds by not complying. 42 U.S.C. §16925(a). Despite this sanction, some states decline to require children to register as sex offenders based on a juvenile adjudication. Georgia, for example, excludes "conduct which is adjudicated in juvenile court" from its sex offender registration requirements." Ga. Code Ann. §42-1-12(9)(C) and (10)(C).

"Texas juveniles are required to register for 10 years after they leave the juvenile system. The state, however, gives judges discretion to waive or remove a juvenile from the register. They also can defer a decision until after the juvenile successfully completes therapy." Because those options would be removed under the federal law, Texas did not implement SORNA. Renee Lee, "Texas Won't Participate in National Sex Offender Registry," *Houston Chronicle*, Oct. 5, 2012;[8] Tex. Crim. Proc. Code Ann. art. 62.351, *et. seq.* (providing exemption from registration for certain juveniles).

As discussed in Section III(A), *supra*, Ohio held its sex offender registration requirement punitive in 2011. *Williams*, *supra*. *In re C.P.*, *supra*, later held the sex offender registry that imposed automatic, lifelong registration and notification

[7] The "Adam Walsh Child Protection and Safety Act of 2006," PL 109–248, July 27, 2006, 120 Stat 587, codified at 42 U.S.C.A. §16901, *et seq.*

[8] Available at http://www.chron.com/default/article/Texas-won-t-participate-in-national-sex-offender-3923910.php (last viewed June 30, 2014).

requirements on children who were tried within the juvenile system violated prohibition against cruel and unusual punishment under the Ohio and United States Constitutions.

The Ohio Supreme Court, moreover, observed that nationwide concerns about juvenile sex offender registration led the United States Attorney General to issue "Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed.Reg. 1630. . . . not[ing] that one of the largest barriers to compliance by states was the fact that SORNA includes as covered sex offender[s] juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses." *In re C.P.*, 131 Ohio St. 3d at 521, 967 N.E.2d at 738 (internal quotations omitted). Additionally "[i]n 2008, the Council of State Governments promulgated a resolution against the application of SORNA to juveniles, stating that "[t]he Council of State Governments strongly opposes SORNA's application to juvenile sex offenders and urges Congress to revise the law to more accurately address the needs of juvenile offenders." *Id.* *In re C.P.* thus concluded, "The assumption that a national consensus favored publication of juvenile sex offenders' personal information had collapsed." 131 Ohio St. 3d at 522, 967 N.E.2d at 739.

The Governmental Accountability Office confirmed the Ohio Supreme Court's conclusion. In a recent study, sixteen (16) jurisdictions identified applying the juvenile registration requirements as a major challenge to not implementing SORNA. An additional five (5) jurisdictions identified the juvenile registration requirements as a minor challenge to implementing SORNA. Of these 21 jurisdictions, seven opposed registering sex offenders because of "policy differences." GAO-13-211, Report to the Subcommittee on Crime, Terrorism, and Homeland Security, Sex Offender Registration

and Notification Act, Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects, February 2013, pp. 22, 46.

In re C.P. reviewed the Ohio statute under *Roper* and *Graham*.[9] Although recognizing that death or life imprisonment without the possibility of parole did not apply, the Ohio Supreme Court concluded, "Registration and notification requirements for life, with the possibility of having them lifted only after 25 years, are especially harsh punishments for a juvenile." 131 Ohio St. 3d at 525, 967 N.E.2d at 741. The Court continued:

> [T]he registration and notification requirements are different from such a penalty for adults. For juveniles, the length of the punishment is extraordinary, and it is imposed at an age at which the character of the offender is not yet fixed. Registration and notification necessarily involve stigmatization. For a juvenile offender, the stigma of the label of sex offender attaches at the start of his adult life and cannot be shaken. With no other offense is the juvenile's wrongdoing announced to the world. Before a juvenile can even begin his adult life, before he has a chance to live on his own, the world will know of his offense. He will never have a chance to establish a good character in the community. He will be hampered in his education, in his relationships, and in his work life. His potential will be squelched before it has a chance to show itself. A juvenile—one who remains under the authority of the juvenile court and has thus been adjudged redeemable—who is subject to sex-offender notification will have his entire life evaluated through the prism of his juvenile adjudication. It will be a constant cloud, a once-every-three-month reminder to himself and the world that he cannot escape the mistakes of his youth.

Id. 131 Ohio St. 3d at 525-27, 967 N.E.2d at 741-43.

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[9] The Ohio Supreme Court decided *In re C.P.* less than three months before the Supreme Court decided *Miller*.

The Court then considered the penological justifications of the registration requirement in the context of "the goals of juvenile disposition," concluding "[l]ifetime registration and notification requirements run contrary to . . . goals of rehabilitating the offender and aiding his mental and physical development." Following the reasoning of *Graham*, retribution and deterrence did not justify the application of such a harsh penalty, and incapacitation was not applicable to the analysis. *Id.*

Some jurisdictions require special procedures before the state can place a child on the sex offender registry. In New Jersey, the sex offender registration requirement for a child under age fourteen at the time of the offense cannot extend into adulthood. *In re Registrant J.G.*, 169 N.J. 304, 777 A.2d 891 (2001). For older children, "[t]he level of disclosure is carefully geared to the level of danger posed to the public, based on the seriousness of the offense and the characteristics and proclivities of the offender. . . . subject to a case-specific determination by the Superior Court by clear and convincing evidence." *State ex rel. J.P.F.*, 368 N.J. Super. 24, 44, 845 A.2d 173, 185 (N.J. Super. Ct. App. Div. 2004).

Virginia prohibits sex offender registration, except for children "over the age of 13 at the time of the offense" but only "upon motion of the attorney for the Commonwealth" and if the court "find[s] that the circumstances of the offense require offender registration" after "consider[ing] . . . the age and maturity of the offender . . . and any other . . . mitigating factors relevant to the case." Va. Code Ann. §9.1-902(G). The Virginia statute, thus, mirrors the Supreme Court's requirement of "individualized sentencing decisions" that "consider mitigating circumstances" prior to sentencing a child to life imprisonment without parole. *Miller,* 132 S. Ct. at 2475.

The Supreme Court has long recognized the public policy goals promoting juvenile rehabilitation. *Kent, supra,* observed that juvenile court jurisdiction "confers special rights and immunities" including being "shielded from publicity," detention under limited circumstances "but only until he is 21 years of age," and protection "against consequences of adult conviction such as the loss of civil rights, the use of adjudication against him in subsequent proceedings, and disqualification for public employment." *Gault, supra,* noted historical differences between adult and juvenile court systems were tolerated because of the juvenile courts' goal of rehabilitation and not affixing punishment. *Gault* recognized children enjoy due process rights with only limited exceptions, such as the right to a jury trial.

The reasoning of *Roper, Graham,* and *Miller* should also prohibit states from mandating children to publically register as sex offenders for life. This Court should declare that lifetime juvenile sex offender registration is cruel and unusual punishment.

B. South Carolina Constitution.

It is well settled that a state can decide a constitutional issue on adequate and independent state grounds. *Michigan v. Long, supra.* South Carolina has a tradition of deciding constitutional issues based on adequate and independent state grounds. *Eg. Brown* and *Forrester, supra.*

S.C. Const. Art. I, §15 prohibits cruel and unusual punishment. This Court should declare that lifetime juvenile sex offender registration is cruel and unusual punishment.

C. Prejudice.

See Section I(D), *supra.*

D. Summary.

This Court should declare the South Carolina's juvenile sex offender registry requirement, as applied to Dean and Brown, violates the Eighth Amendment of the United States Constitution. In the alternative, this Court should find that our state's sex offender registry violates S.C. Const. Art. I, §15.

VI. Retroactively requiring Dean and Brown to register as sex offenders violates the Right to Privacy guaranteed by the South Carolina Constitution because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

Our state Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects against . . . unreasonable invasions of privacy shall not be violated." S.C. Const. Art. I, §10. This right is broader then the Fourth Amendment protections. *See Forrester, supra.* As seen, the modern sex offender registry subjects the registrant to public shame and humiliation. *See e.g. Wallace, supra.*

For every other juvenile adjudication, South Carolina has a public policy of maintaining the confidentiality of juvenile records, with very limited, narrow exceptions. S.C. Code Ann. §63-19-2010 *et. seq.* Thus, the doctrine of *parens patriae* in juvenile proceedings in embodied in our state's Code of Laws. This statutory requirement created an expectation of privacy for Dean and Brown regarding their records of juvenile adjudications. In promising to keep the records of there juvenile adjudications private, South Carolina promised Dean and Brown to use the might of the state to protect them and secure their future. Retroactively applying the Sex Offender Registry to Dean and Brown not only breached doctrine of *parens patriae*, but also violated their right to privacy.

This Court should declare that Art. I, §10 requires the state to maintain the confidentiality of juvenile records, absent the State showing a compelling interest for a narrowly tailored disclosure. This Court, additionally, should declare the right to privacy prohibits public dissemination of juvenile sex offender registration information.

For a discussion of prejudice, *see* Section I(D), *supra.*

VII. Dean and Brown are entitled to equitable relief because, at the time of their juvenile adjudications, South Carolina guaranteed the confidentiality of their juvenile records and limited the consequences of their adjudications to their twenty-first birthdays under the doctrine of *parens patriae*, which also deprived them of the constitutional right to a jury trial.

"Equitable relief is generally available only where there is no adequate remedy at law. An adequate legal remedy may be provided by statute. An 'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). *See Johnson v. Lloyd*, 407 S.C. 610, 757 S.E.2d 705 (2014) (affirming trial court requiring SLED to remove person from sex offender registry based on equitable grounds).

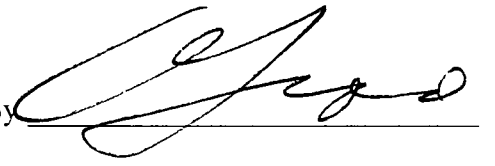
Here, while the statute provides possible avenues for removal from the sex offender registry, most are not even procedurally available to the plaintiffs. This Court should identify circumstances and establish guidelines for when the Circuit Courts may exercise equitable powers and remove individuals from the sex offender registry.

For a discussion of prejudice, *see* Section I(D), *supra*.

Conclusion

This Court should declare South Carolina's sex offender registry, as applied to the plaintiffs, violates the United States and South Carolina Constitutions. This Court should further enjoin SLED from requiring the plaintiffs to register as sex offenders.

Respectfully Submitted,

By 

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March 23, 2015
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY

Donald B. Hocker, Circuit Court Judge

Appellate Case Number: 2014-002721

Edward Dean and Nolan Brown — Appellants

v.

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

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Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

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