THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Grace Gilchrist Knie
Circuit Court Judge

Appellate Case No.: 2019-000691

John Doe Appellant,

v.

Mark Keel, Chief, State Law Enforcement Division, and the State of South Carolina Respondents.

INITIAL BRIEF OF RESPONDENTS

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ATTORNEYS FOR RESPONDENTS

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STATEMENT OF THE FACTS AND STATEMENT OF THE CASE

The South Carolina Sex Offender Registry Act (SORA) was initiated in 1994 and officially codified into the South Carolina Code of Laws in 1996. *See* 1994 Act No. 497, Part II, § 112A; 1996 Act No. 444 § 16. The initial codification of SORA enumerated a number of mandatory registry offenses in S.C. Code Ann. § 23-3-430(C) and also provided in S.C. Code Ann. § 23-3-430(D) that "[u]pon conviction, adjudication of delinquency, guilty plea or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor." 1996 South Carolina Laws Act 444 (S.B. 1286). In 1998, South Carolina Legislature specifically authorized SLED to publish SORA registry information via the "use of computerized or electronic transmission of date or other electronic or similar means" and SLED did so. 1998 Act No. 384 § 1.

Thereafter, in 2005, Appellant pled guilty to Assault and Battery of a High and Aggravated Nature (ABHAN). *See* Complaint ¶ 16 (R. p.). At that time, "upon good cause shown by the solicitor", the presiding circuit court judge ordered that Appellant register in accordance with S.C. Code Ann. § 23-3-430(D). The Appellant did not challenge this order and has not even alleged that he or she meets any of the statutory criteria for removal from the SORA registry, which are set forth in S.C. Code Ann. §§ 23-3-430(E), (F), and (G). *See* Complaint (R. pp.).

Nevertheless, fourteen (14) years after being ordered to register in accordance with SORA, Appellant filed this present action seeking declaratory relief. *See* Complaint (R. pp.). Respondents answered and filed a motion for summary judgment. *See* Answer and Motion for Summary Judgment and Memorandum in Support Thereof (R. pp.). The Honorable Grace Knie heard this motion on December 19, 2018 and subsequently granted summary judgment to Respondents. *See* Order Regarding Defendants' Motion for Summary Judgment (R. pp.). Appellant filed a timely motion for reconsideration and Respondents' filed a response in opposition. *See* Motion to Reconsider Order Granting Defendants' Motion for Summary Judgment and Response in Opposition to Plaintiff's Motion to Reconsider Order Granting Defendants' Motion for Summary Judgment (R. pp.). Ultimately, Judge Knie denied Appellant's reconsideration motion. *See* Final Order Regarding Motion for Reconsideration (R. pp.). This appeal follows.

STANDARD OF REVIEW

South Carolina law mandates that "all statutes are presumed constitutional and, if possible, will be construed to render them valid." Curtis v. State, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001); Joytime Distributors and Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999); Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996).

"A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." Joytime Distributors and Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

ARGUMENT

I. The trial court did not err in applying South Carolina's clear and unambiguous statutes and binding jurisprudence in finding that Respondents are entitled to judgment as a matter of law in this matter.

The trial court did not err in applying clear and unambiguous South Carolina law and binding South Carolina jurisprudence in this matter and, as such, the trial court's grant of summary judgment should be affirmed. The most compelling recitation of the binding precedent applicable to this action was provided by this Court in the *In Interest of Justin B.* case decided in 2017, which Appellant does not even attempt to distinguish or address. *See* Initial Brief of Appellant. Nevertheless, in the 2017 *Justin B.* this Court held:

> As the family court indicated, we have already addressed many of the issues Justin B. raises in his challenge to the imposition of sex offender registration and electronic monitoring requirements. In *State v. Walls,* 348 S.C. 26, 558 S.E.2d 524 (2002), we considered whether the sex offender registry violated the *ex post facto* clauses of the state and federal constitutions. 348 S.C. at 29, 558 S.E.2d at 525. We stated, "For the *ex post facto* clause to be applicable, the statute or the provision in question must be criminal or penal in purpose and nature." 348 S.C. at 30, 558 S.E.2d at 526. We then held the sex offender registry did not violate the *ex post facto* clause because **"it is clear 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."** 348 S.C. at 31, 558 S.E.2d at 526.
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> **In *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003), we considered whether requiring a convicted Colorado sex offender to register in South Carolina violated the equal protection and due process clauses of the state and federal constitutions. 353 S.C. at 547, 579 S.E.2d at 322. As to the equal protection challenge, we found classifying an out-of-state sex offender as a sex offender in South Carolina "did not affect a fundamental right," and therefore we applied the "rational relationship" test. 353 S.C. at 550, 579 S.E.2d at 324. Under that test, a statutory classification will be constitutional if the "classification bears a reasonable relation to the legislative purpose," "the members of the class are treated alike under similar circumstances and conditions," and "the classification rests on some reasonable basis." *Id.* (quoting Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 600 (2001)). We held requiring an out of state offender to register in**

South Carolina was "reasonably related to the legitimate state purpose of protecting the public and aiding law enforcement in limiting the risk that sex offenders pose to communities." *Id.* As to the due process challenge, we followed our holding in *Walls* that the sex offender registry is non-punitive and did not implicate a liberty interest, and therefore held there was no due process violation. 353 S.C. at 552, 579 S.E.2d at 325 (citing Walls, 348 S.C. at 31, 558 S.E.2d at 526).

Later that year, we decided *In re Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003), in which an eleven-year-old challenged the mandatory lifetime registration requirement after he was found to have committed criminal sexual conduct with a minor. **We followed *Hendrix*, and held "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated." 355 S.C. at 409, 585 S.E.2d at 312 (citing Hendrix, 353 S.C. at 552, 579 S.E.2d at 325).**

We reiterated our holding in *Walls* that the legislative purpose for the sex offender registry "is to protect the public from those offenders who may re-offend." *Id.* (citing Walls, 348 S.C. at 31, 558 S.E.2d at 526). We then concluded, **"The registration of offenders, including juveniles who have proved themselves capable of certain sex offenses, is rationally related to achieving this legitimate objective. Appellant has offered no valid basis upon which to distinguish juvenile sex offenders for purposes of due process."** 355 S.C. at 409-10, 585 S.E.2d at 312.

Finally, we considered an Eighth Amendment challenge to the section 23-3-540 requirement that juveniles submit to electronic monitoring for life in *In re Justin B.*, 405 S.C. 391, 747 S.E.2d 774 (2013). We held "the General Assembly intended section 23-3-540 as a civil scheme for the protection of the public." 405 S.C. at 405, 747 S.E.2d at 781. We concluded, "Section 23-3-540's electronic monitoring scheme bears a clear and rational connection to a non-punitive purpose," and stated "the continuous monitoring of these offenders supports the General Assembly's valid purpose of aiding law enforcement in the protection of the community." 405 S.C. at 407, 747 S.E.2d at 782-83. We held, however, "sex offenders ... are entitled to 'avail themselves of the section 23-3-540(H) judicial review process.' " 405 S.C. at 408, 747 S.E.2d at 783 (quoting *State v. Dykes*, 403 S.C. 499, 510, 744 S.E.2d 505, 511 (2013))....

Justin B.'s age and the resulting public registration does not change our constitutional analysis. The Supreme Court held that an adult does not have a constitutionally protected liberty interest in his reputation. *See* Paul v. Davis, 424 U.S. 693, 712, 96 S.Ct. 1155, 1166, 47 L.Ed.2d 405, 420 (1976) (stating an "interest in reputation ... is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law"). A delinquent juvenile's reputation may be in

greater need of protection than the reputation of an adult convicted of a felony sex crime, but the juvenile's interest in that reputation is still neither liberty nor property. The responsibility of balancing the need to protect a juvenile's reputation against the need to "to promote the state's fundamental right to provide for the ... safety of its citizens," § 23-3-400, falls to the Legislature, not the courts, S.C. Const. art. I, § 8.

V. Conclusion

The requirement that adults and juveniles who commit criminal sexual conduct must register as a sex offender and wear an electronic monitor is not a punitive measure, and the requirement bears a rational relationship to the Legislature's purpose in the Sex Offender Registry Act to protect our citizens—including children—from repeat sex offenders. The requirement, therefore, is not unconstitutional. If the requirement that juvenile sex offenders must register and must wear an electronic monitor is in need of change, that decision is to be made by the Legislature—not the courts. The decision of the family court to follow the mandatory, statutory requirement to impose lifetime sex offender registration and electronic monitoring on Justin B. is AFFIRMED.

In Interest of Justin B., 419 S.C. 575, 580–82, 586-87, 799 S.E.2d 675, 677–78, 681, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017) (internal citations omitted) (emphasis added). This decision is determinative and ends any argument in this case as a matter of law. Accordingly, the trial court's decision should be upheld and affirmed it its entirety.

In addition, the South Carolina Legislature has determined in a sovereign policy decision that all SORA registration in South Carolina is for life. *See* S.C. Code Ann. § 23-3-460 (mandating registration "for life".). This lifetime mandate is set forth in clear and unambiguous statutory language. In addition, the Legislature has also provided the only avenues for removal from lifetime registration in South Carolina in yet another sovereign policy decision. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). However, in this case, there is no genuine issue of material fact to suggest that Appellant meets any of these statutory

criteria and, in fact, Appellant concedes that he or she does not. *See* Complaint (R. pp.). As such, this specific statutory language is determinative and leaves no room for judicial interpretation. *See* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."); In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.") (internal citations omitted).

In addition, this Court has specifically held that "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly"). Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007). This entire action seeks for this Court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute based upon Appellant's policy considerations. Essentially, Appellant argues that the Legislature should amend SORA, and has asked this Court to amend Legislative policy. Any such request must fail as it would clearly run afoul of the South Carolina Constitution's mandate for the separation of powers and force this Court to legislate. *See* S.C. Const. art. I, § 8. The policy determination as to the duration of SORA registration and the avenues of relief therefrom are purely matters of legislative prerogative and, as such, this action must fail. *See* In

Interest of Justin B., 419 S.C. 575, 580–82, 586-87, 799 S.E.2d 675, 677–78, 681, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017).

Furthermore, Appellant's reliance on the federal Sexual Offender Registration and Notification Act (SORNA) is misplaced. In 2006, Congress passed the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248). However, since its inception, SORNA compliance has never been mandatory for individual states. Rather, SORNA simply provides baseline compliance standards and guidelines that **may** be adopted by individual states' respective legislative bodies, and SORNA makes certain federal grant funding contingent on substantial compliance with such baseline standards and guidelines. However, SORNA is merely the floor suggested by federal law and states are certainly authorized to enact more stringent laws. To that end, the South Carolina Legislature remains constitutionally empowered to enact laws applicable to South Carolina sex offenders regardless of the requirements of SORNA. *See* S.C. Const. art. III; S.C. Const. art. I, § 8.

Moreover, despite no legal requirement to be SORNA compliant, South Carolina did in fact achieve SORNA substantial implementation status in 2011, and South Carolina has maintained such since that time. *See* Motion for Summary Judgment (R. pp.). Specifically, the United States Department of Justice, through the Office of Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), reviewed South Carolina's SORNA implementation, and determined that South Carolina "correctly places its statutes within at least the minimum appropriate SORNA tiers." *Id.* Therefore, South Carolina is SORNA compliant and the trial court was correct to reject Appellant's arguments on this issue. Accordingly, the trial court should be affirmed.

II. The trial court did not err in applying South Carolina's clear and unambiguous statutes and binding jurisprudence in finding that the South Carolina Sex Offender Registry Act (SORA) does not affect a fundamental right.

The binding precedent of this State indicates that the Appellant is not part of a suspect class, nor does his or her placement on the SORA registry affect a fundamental right. *See* Hendrix v. Taylor, 353 S.C. 542, 549-50, 579 S.E.2d 320, 324 (2003). In fact, South Carolina jurisprudence conclusively and authoritatively rejects the Appellant's claim that SORA affects a fundamental right and that a strict scrutiny analysis applies, and the trial court's decision in this regard should be affirmed. *See* In Interest of Justin B., 419 S.C. 575, 799 S.E.2d 675, cert. denied sub nom. J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017) (specifically acknowledging that sex offender classification "did not affect a fundamental right" and upholding the application rational relationship test); 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 fact, this Court held in the 2017 that lifetime public SORA registration does not offend a juvenile's fundamental rights. *See* In Interest of Justin B., 419 S.C. 575, 799 S.E.2d 675, cert. denied sub nom. J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017). As such, there is no conceivable argument that lifetime SORA registration offends an adult's fundamental rights and this argument must fail.

The fact that ABHAN is not an offense specifically enumerated in S.C. Code Ann. § 23-3-430(C) is of no consequence to this determination. South Carolina law specifically requires registration in several circumstances beyond a conviction of an offense enumerated in S.C. Code Ann. § 23-3-430(C). *See* S.C. Code Ann. § 23-3-430(A); S.C. Code Ann. § 23-3-430(D); In re Shaquille O'Neal B., 385 S.C. 243, 251–52, 684 S.E.2d 549, 554 (2009). Specifically, S.C. Code Ann. § 23-3-430(A) provides that,

> Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in any comparable court in the United States, or a foreign country, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article.

In that regard, this Court has previously acknowledged that

> there are several bases on which to predicate registration in South Carolina: (1) the defendant was convicted in South Carolina of an offense delineated in South Carolina's registry statute, (2) the defendant was convicted of an offense in another jurisdiction for which registration is required in the jurisdiction where the offense occurred, or (3) the defendant was convicted in another jurisdiction of an offense that is similar to a South Carolina offense requiring registration.

In re Shaquille O'Neal B., 385 S.C. 243, 251–52, 684 S.E.2d 549, 554 (2009). It is axiomatic that any person convicted of a "similar offense" in another jurisdiction was not convicted of an offense enumerated in S.C. Code Ann. § 23-3-430(C). However, South Carolina law and the binding and authoritative jurisprudence of this state still requires lifetime SORA registration in that instance. *See* Lozada v. South Carolina Law Enforcement Division, 395 S.C. 509, 719 S.E.2d 258 (2011) (upholding registration requirement for individual convicted of unlawful restraint in Pennsylvania, which did not require registration in Pennsylvania and is not specifically enumerated in S.C. Code Ann. § 23-3-430(C); *see also* Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003) (upholding the constitutionality of lifetime registration for a Colorado conviction of an offense that is not enumerated in S.C. Code Ann. § 23-3-430(C)).

Accordingly, the fact that Appellant was convicted of ABHAN and ordered to register in accordance with S.C. Code Ann. § 23-3-430(D) does not change the analysis or the binding nature of the jurisprudence in this matter. *See* Hendrix v. Taylor, 353 S.C. 542, 549, 579 S.E.2d 320, 323–24 (2003); In Interest of Justin B., 419 S.C. 575, 799 S.E.2d 675, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017). Therefore, the trial court properly applied binding South Carolina jurisprudence and ruled that the "rational relationship" test should be applied and this decision should be upheld and affirmed.

III. The trial court did err in applying South Carolina's clear and unambiguous statutes and binding jurisprudence in finding that SORA does not violate Appellant's right to equal protection under the law.

As noted above, the "rational relationship" test is properly applied to determine whether SORA violates the Appellant's right to equal protection in this matter. Hendrix v. Taylor, 353 S.C. 542, 550, 579 S.E.2d 320, 324 (2003); *supra*. Under this test, Appellant's classification as a sex offender in South Carolina is justified and does not violate equal protection 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." *Id.* (quoting Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 599, 600 (2001)).

However, the "initial inquiry in any equal protection analysis is whether the plaintiff made 'a showing that similarly situated persons received disparate treatment.'" State v. Walker, 422 S.C. 89, 92, 810 S.E.2d 38, 40 (2018). There is no argument in this matter that Appellant is treated differently that other South Carolina registrants, rather Appellant's complaint is that Appellant **SHOULD** be treated differently than all other

similarly situated South Carolina registrants. This is a perversion of equal protection and cannot form the basis for the decision in this matter. As such, this argument must fail.

In addition, this Court has previously ruled that the SORA Registry "complies with the first prong of the test, as the legislative purpose is clearly defined" in the text of the law. Hendrix v. Taylor, 353 S.C. 542, 550, 579 S.E.2d 320, 324 (2003) (citing S.C. Code Ann. § 23-3-400). Classifying an individual as a sex offender is "reasonably related to the legitimate state purpose of protecting the public and aiding law enforcement in limiting the risk that sex offenders pose to communities." *Id.*; *see also* In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003). Appellant attempts to divert the analysis away from this recognized and established purpose; however, this attempt should be rejected. Registration as a sex offender is not a punishment, but rather a regulatory requirement imposed to promote public safety. Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (2008); *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Thompson v. State, 415 S.C. 560, 564 n. 3, 785 S.E.2d 189, 191 n. 3 (2016). As such, the Appellant unequivocally fails on the first prong.

In addition, all members of the Appellant's class, *i.e.* those persons required to register biannually for life in South Carolina, are treated identically. And, all members of the class "are subject to uniform administrative and legal procedures." Hendrix v. Taylor, 353 S.C. 542, 550, 551, 579 S.E.2d 320, 324 (2003). It is indisputable that the Appellant is in fact treated identically to all similarly situated South Carolina registrants, and the Appellant does not even attempt to allege otherwise. As such, the Appellant unequivocally fails on the second prong.

And, as to the third and final component of the test, this Court has determined in binding precedent that classification of the Plaintiff as a sex offender "is reasonable because the purpose of the law is to protect the public welfare and to assist law enforcement in accomplishing that goal." Hendrix v. Taylor, 353 S.C. 542, 551, 579 S.E.2d 320, 324 (2003). This Court has specifically held that SORA "reasonably protects South Carolinians because the registry notifies them of Appellant's sex offense." *Id.* As such, this Court has unequivocally held that providing notice and information about sex offenders to the public is a vital intent and purpose of SORA. This Court has also noted that the "purpose of the sex offender registry has nothing to do with retribution, and any deterrent effect of registration derives from the availability of information, not from punishment." In the Interest of Justin B., 419 S.C. 575, 583, 799 S.E.2d 675, 679, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017). As such, as has been acknowledged in this Court's precedent, public access to sex offender information is SORA's mechanism to protect the public health, welfare, and safety of South Carolina citizens, which is the stated purpose of the entire SORA scheme. *See* S.C. Code Ann. § 23-3-400; Hendrix v. Taylor, 353 S.C. 542, 551, 579 S.E.2d 320, 324 (2003); In the Interest of Justin B., 419 S.C. 575, 583, 799 S.E.2d 675, 679, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017).

In addition, the U.S. Supreme Court has specifically noted:

> It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. **The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the**

> **efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.**
>
> The State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath his record. An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. The Internet makes the document search more efficient, cost effective, and convenient for Alaska's citizenry.

Smith v. Doe, 538 U.S. 84, 99, 123 S. Ct. 1140, 1150-51 (2003).

In sum, the South Carolina Legislature has determined unequivocally that the SORA registry is the appropriate mechanism by which to provide for the public health, welfare, and safety of South Carolina citizens; that the SORA registry provides law enforcement with tools needed to investigate; and that sex offenders as a class pose a risk of re-offending. *See* S.C. Code Ann. § 23-3-400 *et seq.* And, according to the United States Supreme Court, the Legislature has the authority to do this:

> Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism. 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**.

Smith v. Doe, 538 U.S. 84, 103, 123 S.Ct. 1140, 1153 (2003) (emphasis added) (rejecting an argument that the Alaska registry law was excessive because it applies to all convicted sex offenders without regard to their future dangerousness). Accordingly, the South Carolina Legislature has enacted a registry that protects all South Carolinians and aids law enforcement by providing certain information. As such, the Appellant unequivocally fails the third prong. Accordingly, the trial court's decision should be upheld and affirmed in its entirety.

IV. The trial court did not err in applying South Carolina's clear and unambiguous statutes and binding jurisprudence in finding that SORA does not violate Appellant's right to due process.

"The substantive due process guarantee ensures that legislation which deprives a person of a life, liberty, or property right [has], at a minimum, a rational basis, and not be arbitrary or overly vague." In re Treatment and Care of Luckabaugh, 351 S.C. 122, 139-40, 568 S.E.2d 338, 346 (2002). The most compelling recitation of the argument on this specific precedent was provided by this Court in *In Interest of Justin B.* from 2017 in which the court noted,

> **As to the due process challenge [in *Hendrix*], we followed our holding in *Walls* that the sex offender registry is non-punitive and did not implicate a liberty interest, and therefore held there was no due process violation. 353 S.C. at 552, 579 S.E.2d at 325 (citing *Walls*, 348 S.C. at 31, 558 S.E.2d at 526).**
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> Later that year, we decided *In re Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003), in which an eleven-year-old challenged the mandatory lifetime registration requirement after he was found to have committed criminal sexual conduct with a minor. **We followed *Hendrix*, and held "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated." 355 S.C. at 409, 585 S.E.2d at 312 (citing Hendrix, 353 S.C. at 552, 579 S.E.2d at 325).**
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> **Justin B.'s age and the resulting public registration does not change our constitutional analysis. The Supreme Court held that an adult does not have a constitutionally protected liberty interest in his reputation.** *See* Paul v. Davis, 424 U.S. 693, 712, 96 S.Ct. 1155, 1166, 47 L.Ed.2d 405, 420 (1976) (**stating an "interest in reputation ... is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law**"). A delinquent juvenile's reputation may be in greater

> need of protection than the reputation of an adult convicted of a felony sex crime, but **the juvenile's interest in that reputation is still neither liberty nor property**. The responsibility of balancing the need to protect a juvenile's reputation against the need to "to promote the state's fundamental right to provide for the ... safety of its citizens," § 23-3-400, falls to the Legislature, not the courts, S.C. Const. art. I, § 8.
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> **V. Conclusion**
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> **The requirement that adults and juveniles who commit criminal sexual conduct must register as a sex offender** and wear an electronic monitor is not a punitive measure, and the requirement bears a rational relationship to the Legislature's purpose in the Sex Offender Registry Act to protect our citizens—including children—from repeat sex offenders. **The requirement, therefore, is not unconstitutional.** If the requirement that juvenile sex offenders must register and must wear an electronic monitor is in need of change, that decision is to be made by the Legislature—not the courts. The decision of the family court to follow the mandatory, statutory requirement to impose lifetime sex offender registration and electronic monitoring on Justin B. is **AFFIRMED**.

In Interest of Justin B., 419 S.C. 575, 580–82, 586-87, 799 S.E.2d 675, 677–78, 681, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017) (emphasis added). This decision is precedent and ends the argument in this matter.

Accordingly, there is no viable due process claim based on the lack of individual judicial review of Appellant's registration requirement. It is also notable that this Court had previously rejected this argument. *See* State v. Dykes, 403 S.C. 499, 510 n. 9, 744 S.E.2d 505, 511 n. 9 (rejecting Dykes' procedural due process claim under Rule 220, SCACR). In addition, the United States Supreme Court has also rejected this argument. *See* Connecticut v. Doe, 538 U.S. 1, 8 (2003) ("rejecting sex offender's due process argument requesting a hearing on his current level of dangerousness, and stating those 'who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in the hearing are relevant to the statutory scheme'").

In South Carolina, "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated." In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (emphasis added); Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003); In Interest of Justin B., 419 S.C. 575, 580–82, 586-87, 799 S.E.2d 675, 677–78, 681, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017). As such, the Appellant's due process claim fails as a matter of law and the trial court's decision should be affirmed.

V. The trial court did not err in applying South Carolina's clear and unambiguous statutes and binding jurisprudence in finding that SORA is not punitive.

In addition, this Court has consistently, uniformly, and conclusively held that registration pursuant to SORA is **not** punishment. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (finding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."); In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding that "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated."); In Interest of Justin B., 419 S.C. 575, 580–82, 586-87, 799 S.E.2d 675, 677–78, 681, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017); Thompson v. State, 415 S.C. 560, 564 n. 3, 785 S.E.2d 189, 191 n. 3 (2016) ("As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state."). The out-of-state cases proffered by the Appellant do not affect or change this binding precedent.

The South Carolina Legislature makes abundantly clear that the intent of SORA is "to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and to "provide law enforcement with the tools needed in investigating criminal offenses." S.C. Code Ann. § 23-3-400. In that regard, this Court has held that registration as a sex offender is not a punishment, but rather is a regulatory requirement imposed to promote public safety. *See* Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (2008). And, the Registry accomplishes this stated intent. As such, any claim asserting that SORA registration constitutes punishment of any kind, much less excessive punishment, fails as a matter of law and the trial court's decision should be upheld and affirmed.

In addition, any argument that the internet publication of SORA information somehow affects this determination is without merit. In fact, every South Carolina appellate decision upholding the constitutionality of SORA, including all of the decisions finding that SORA is a civil and non-punitive statute, also found that SORA does not violate the equal protection or due process clauses of the constitution, and those decisions finding that SORA is not punishment (much less cruel and unusual punishment) were issued and decided after the Legislature specifically authorized SLED's online publication of Registry information on the internet. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (finding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."); In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding that "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty

interest is implicated."); Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (2008) (holding that registration as a sex offender is not a punishment, but rather is a regulatory requirement imposed to promote public safety); In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 799 S.E.2d 675 (2017) *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017) (reaffirming the constitutionality of SORA, even as related to online publication of juvenile Registry information, and reaffirming unequivocally that SORA is not punishment).

It is incomprehensible to believe that these decisions were issued and decided without this Court's knowledge and appreciation that SLED publishes SORA Registry information on the internet. Tellingly, the very decisions themselves belie this contention. *Id.* In 2003, this Court specifically acknowledged internet publication in *Hendrix v. Taylor* noting,

> when the South Carolina Law Enforcement Division ("SLED") registers a sex criminal due to his conviction of a sexual offense in another state, the agency must correctly state the offense the criminal committed in that jurisdiction. **Accordingly, under the "Offense" heading on the registry**, SLED should provide (1) the state where the offense was committed; (2) the citation of that state's statute that was violated; (3) the name of the crime committed; and (4) the date of conviction. **For example, in this case, Appellant's offense would appear under the "Offense" heading as follows**....

Hendrix v. Taylor, 353 S.C. 542, 551–52, 579 S.E.2d 320, 325 (2003) (emphasis added). It is clear that the "Offense" heading referenced therein is the heading on the publically accessible SORA registry website and cannot be argued otherwise.

Moreover, in 2017, this Court again acknowledged internet publication in the context of juvenile registration on the publically accessible SORA online registry in the case of *In the Interest of Justin B.* noting,

> Justin B.'s age and the resulting **public registration** does not change our constitutional analysis. The Supreme Court held that an adult does not have a constitutionally protected liberty interest in his reputation. *See* Paul v. Davis, 424 U.S. 693, 712, 96 S.Ct. 1155, 1166, 47 L.Ed.2d 405, 420 (1976) (stating an "interest in reputation ... is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law"). A delinquent juvenile's reputation may be in greater need of protection than the reputation of an adult convicted of a felony sex crime, but the juvenile's interest in that reputation is still neither liberty nor property. The responsibility of balancing the need to protect a juvenile's reputation against the need to "to promote the state's fundamental right to provide for the ... safety of its citizens," § 23-3-400, falls to the Legislature, not the courts, S.C. Const. art. I, § 8.

In Interest of Justin B., 419 S.C. 575, 586, 799 S.E.2d 675, 681, *cert. denied sub nom.* J.D.B. v. South Carolina, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017) (emphasis added). As such, it is factual and legal error to argue that the internet changes any of the existing precedent in this State, which remains absolutely authoritative. *See* W. E. B. DuBois Clubs of Am. v. Clark, 389 U.S. 309, 312, 88 S. Ct. 450, 452, 19 L. Ed. 2d 546 (1967) (acknowledging that courts do not decide constitutional questions in a vacuum). Accordingly, the Appellant cannot properly rely on internet publication to avoid the binding jurisprudence in this matter, and there is nothing in the record that could justify changing the precedent. Therefore, the trial court's decision should be affirmed.

CONCLUSION

In conclusion, based on the foregoing, the clear and unambiguous sovereign laws of the State of South Carolina applicable to this matter, and the existing authoritative jurisprudence applicable to this matter; Respondents respectfully request that this Court uphold and AFFIRM the trial court's decision to grant Respondents' judgment as a matter of law. As this Court has previously acknowledged, if SORA "is in need of change, that decision is to be made by the Legislature—not the courts".

Respectfully submitted

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