

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No.2016-001700

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JUN 14 2017

SC Court of Appeals

Mark Anderko, Appellant,

vs.

South Carolina Law Enforcement Division, Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mark Edward Anderko)

Plaintiff(s))

vs.)

South Carolina Law Enforcement Division)

Defendant(s))

Submitted By: Christopher A. Wellborn
Address: 142 #C Oakland Ave., Rock Hill, 29730

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 46-039

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete.

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
 - Constructions (100)
 - Debt Collection (110)
 - General (130)
 - Breach of Contract (140)
 - Fraud/Bad Faith (150)
 - Failure to Deliver/Warranty (160)
 - Employment Discrim (170)
 - Employment (180)
 - Other (199)
- Torts - Professional Malpractice**
 - Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case #
20 -NI- _____
 - Notice/ File Med Mal (230)
 - Other (299)
- Torts - Personal Injury**
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Assault/Battery (370)
 - Slander/Label (380)
 - Other (399)
- Real Property**
 - Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
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 - PCR (500)
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 - Relief (820)
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Submitting Party Signature:

Date: 12-17-2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF YORK)
)
Mark Edward Anderko)
)
Plaintiff.)
)
vs.)
)
South Carolina)
Law Enforcement Division)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS


FILE NO. 2015-CP-46-03931

7/15/2015 11:10:27 AM
L/S

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Rock Hill, South Carolina
Dated: December 18, 2015



Plaintiff/Attorney for Plaintiff

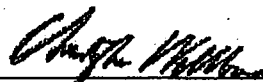
Address: 142 #C Oakland Avenue
Rock Hill, South Carolina 29731
(803) 366-1065

6. That on or about November of 2004 the Plaintiff moved to York County, South Carolina where he duly registered as a sex offender with the York County Sheriff, pursuant to Section 23-3-430(c) of the South Carolina Code.
7. That on or about January of 2012 the Plaintiff moved back to Washington State and notified the York County Sheriff of this move.
8. That since January of 2012 the Plaintiff has continually resided in and maintained his citizenship in the State of Washington.
9. That despite the fact that the Plaintiff is a citizen and resident of the State of Washington, he continues to remain of the sex offender registry in South Carolina.
10. That on January 9, 2014 the Plaintiff's sex offender registry requirements in his home state of Washington were terminated by an Order of the Kitsap County Superior Court, State of Washington, pursuant to Washington Law (RCW.9A.44.142) and the Plaintiff's name was duly removed from the sex offender registry in Washington State.
11. That the Plaintiff remains on the South Carolina sex offender registry and his attempts to be removed through the Defendants have not been successful.
12. That the Plaintiff is entitled to have his name removed from the South Carolina Sex Offender Registry and all records destroyed pursuant to Section 23-3-430(E) of the South Carolina Code and the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution.

WHEREFORE, the Plaintiff prays for an order of this court requiring the Defendants to remove the Plaintiff's name from the South Carolina Sex Offender Registry, notify the Sheriff of York County of this removal, destroy any records relating to the Plaintiff's inclusion on this registry and for such other and further relief as this court may deem just and proper.

Respectfully submitted:

December 17, 2015



Christopher A. Wellborn
142 #C Oakland Avenue
Rock Hill, South Carolina 29730
(803) 366-1065

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No.: 2015-CP-46-03931

Mark Anderko,)
)
Plaintiff,)

v.)

ANSWER

South Carolina Law Enforcement)
Division,)
)
Defendant.)

Defendant South Carolina Law Enforcement Division (SLED) hereby answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
Failure to State a Claim

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
Insufficient Service of Process

The Complaint in this matter was not served on Defendant in accordance with the South Carolina Rules of Civil Procedure. As such, pursuant to Rule 12(b)(5), SCRPC this action should be dismissed due to insufficiency of service of process.

FOR A THIRD DEFENSE
Improper Venue

The Defendant is headquartered in Richland County, South Carolina and the majority, if not the entirety, of the decision-making related to this Plaintiff occurred in Richland County. As such, pursuant to Rule 12(b)(3), SCRPC this action should be dismissed due to improper venue, or, in the alternative, venue in this matter should be transferred to Richland County.

FOR A FOURTH DEFENSE
Response to Allegations

1. The Defendant denies each and every allegation of the Plaintiff's Complaint not herein specifically admitted, qualified, explained, or addressed.
2. Paragraph one (1) is a statement of the nature and character of this action to which no response is required or necessary.
3. Paragraph two (2) is admitted upon information and belief.
4. Paragraph three (3) is admitted upon information and belief.
5. Paragraphs four (4) and five (5) are admitted upon information and belief.
6. Paragraph six (6) is admitted upon information and belief. The Defendant would further aver that the Plaintiff's registration was proper and in accordance with South Carolina law, which requires all individuals who have been convicted of an offense "for which the person was required to register in the state where the conviction or plea occurred" to register. *See* S.C. Code Ann. § 23-3-430(A)(emphasis added).
7. Paragraphs seven (7) and eight (8) are admitted upon information and belief.
8. Paragraph nine (9) is admitted insofar as it alleges that the Plaintiff's name still appears on the South Carolina Sex Offender Act (SORA) Registry; however, the Defendant would aver that the Plaintiff is not required to actively register in person in South Carolina during the time in which the Plaintiff resides out of state.
9. Paragraph ten (10) is admitted upon information and belief.
10. Paragraph eleven (11) is admitted insofar as it alleges that the Plaintiff's name still appears on the SORA Registry; however, the Defendant would aver that the Plaintiff is not required to actively register in person in South Carolina during the time in which the Plaintiff resides out of state. Further, the Defendant admits the Plaintiff's attempts to be removed through

the Defendants have not been successful insofar as the Defendant is informed and believes that the Plaintiff's name must continue to appear on the SORA Registry in accordance with South Carolina law.

11. Paragraph twelve (12) is denied. Further, the Defendant would aver that S.C. Code Ann. § 23-4-430(E) is not applicable to the Plaintiff because his conviction has not been reversed, overturned, or vacated on appeal. Moreover, the Defendant is informed and believes that the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution does not require removal in this instance. *See Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003); *In re Shaquille O'Neal B.*, 385 S.C. 243, 251, 684 S.E.2d 549, 554 (2009).

12. To the extent inconsistent with the foregoing, Defendant denies the requests for relief set forth in the "WHEREFORE" section of the complaint.

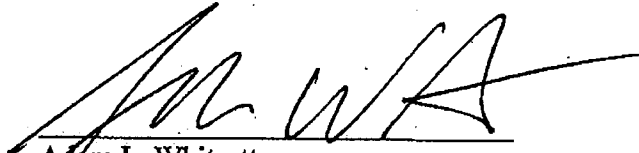
FOR A FIFTH DEFENSE
Proper Inclusion on the Registry

13. The Defendant would aver that because the Plaintiff was properly registered in South Carolina in accordance with S.C. Code Ann. § 23-3-430 at the time of his initial South Carolina SORA registration. Further, Defendant would aver that because the Plaintiff does not meet South Carolina's statutory criteria for removal from the registry, the continued inclusion of Plaintiff's name on the registry with an "out-of-state" designation is proper, constitutional, and in accordance with the applicable South Carolina law. Accordingly, the Defendant is informed and believes that the relief requested by the Plaintiff should be denied.

WHEREFORE, having fully answered the Plaintiff's complaint, Defendant prays that this Honorable Court:

- A. dismisses the Plaintiff's Complaint entirely;
- B. denies any and all relief sought by the Plaintiff; and
- C. grants such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



Adam L. Whitsett
General Counsel
South Carolina Law Enforcement Division
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S.C. Bar Number: 74888

ATTORNEY FOR THE DEFENDANT

COLUMBIA, SOUTH CAROLINA
JANUARY 13, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Mark Anderko,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Law Enforcement)
 Division,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2015-CP-46-03931

TRIAL BRIEF

Defendant South Carolina Law Enforcement Division (SLED) hereby asserts and alleges the following in opposition to this action for Declaratory Judgment:

STIPULATED FACTS

The Plaintiff, then a citizen and resident of Washington, was convicted in Kitsap County Superior Court, State of Washington, for the offense of communicating with a minor for immoral purposes (RCW.9.68A.090) on or about April 19, 2004. As a result of this conviction, the Plaintiff was required under the laws of the State of Washington to register as a sex offender (RCW.4.25.550). On or about November of 2004 the Plaintiff moved to York County, South Carolina where he duly registered as a sex offender with the York County Sheriff's Department, pursuant to S.C. Code Ann. § 23-3-430(A) of the South Carolina Code of Laws. In addition, between November 2004 and January 2012 Plaintiff actively registered as a sex offender in York County and was also listed on the South Carolina Sex Offender Registry.

However, on or about January of 2012 the Plaintiff moved back to Washington State and notified the York County Sheriff's Department of this move. Since January of 2012 the Plaintiff has continually resided in and maintained his citizenship in the State of Washington. As such, upon moving out of state, the Plaintiff was relieved of any obligation to actively register with the

York County Sheriff's Office and his listing on the South Carolina Sex Offender Registry was amended to list the Plaintiff as being "out of state."

Plaintiff's April 19, 2004 conviction has not been reversed, overturned, or vacated on appeal. Plaintiff has not received a pardon based on a finding of not guilty specifically stated in the pardon for the April 19, 2004 conviction. Plaintiff has not been granted a new trial or verdict of acquittal for his April 19, 2004 conviction.

APPLICABLE LAW

South Carolina's Sex Offender Registry Act (SORA) requires that any individual "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." S.C. Code Ann. § 23-3-430(A)(emphasis added). In addition, SORA mandates lifetime registration for all sex offenders properly registered in South Carolina. See S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").¹ Further, the South Carolina Supreme Court has held 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." Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Moreover, SORA also provides the only lawful avenues by which individuals can be removed from the registry.² See S.C. Code Ann. § 23-3-430(E), (F), (G).

¹ I note that South Carolina law requires registration every ninety days for persons "classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006"; however, this registration is also "for life".

² In fact, the mechanisms for both placement on and removal from the registry are provided by this same code section, S.C. Code § 23-3-430.

In South Carolina, Courts have also consistently and unequivocally held that registration pursuant to the South Carolina Sex Offender Registry Act (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 re Justin B., 405 S.C. 391, 409, 747 S.E.2d 774, 783 (2013) (finding that the electronic monitoring provisions of SORA constitutes a civil non-punitive remedy.) Rather, the South Carolina Legislature has made 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 State v. Walls, the Court noted the following

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. Hence, the language indicates the General Assembly’s intention to create a non-punitive act. We find the Act is not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions.

348 S.C. 26, 30-31, 558 S.E.2d 524, 525-26 (2002).

In addition, “[w]hether an individual must be placed on the sex offender registry is a question of law.” Lozada v. S. Carolina Law Enf’t Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing Noisette v. Ismail, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App.1989)).

ARGUMENT

It is undisputed that the Plaintiff was convicted of an offense for which he was required to register in the State of Washington to wit: "communicating with a minor for immoral purposes (RCW.9.68A.090)" and it is also undisputed that the Plaintiff did in fact so register in that state. As such, it is without question that the Plaintiff was properly registered as a sex offender in accordance with SORA when he moved to York County in 2004. *See* S.C. Code Ann. § 23-3-430(A) (requiring registration for anyone "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") (emphasis added). In addition, it is clear that the Plaintiff would in fact have to register were he to return to South Carolina tomorrow. *Id.* Notably, South Carolina's statute is written in the past tense such that any individual who has been convicted and was required to register in the state of conviction, as is the Plaintiff's case, must register. *Id.* As such, the intent of the South Carolina Legislature is clear, if an individual has ever been required to register in the state of conviction, the individual must register in South Carolina for life. *Id.* *see also* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").

As such, the decision in this matter turns on the available avenues of removal from the South Carolina SORA registry. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). However, there is no claim or argument that the Plaintiff meets any of these avenues. Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in

subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.” S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon “based on a finding of not guilty specifically stated in the pardon” shall be removed. S.C. Code Ann. § 23-3-430(F). And finally, pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(F). However, the stipulated facts demonstrate that the Plaintiff does not meet any of the statutory criteria that would entitle removal from the SORA registry. Therefore, the Plaintiff properly remains listed on such in “out of state” status and his action should fail.

Further, the jurisprudence in South Carolina mandates that South Carolina’s registration requirement is not affected by the registry laws in any other jurisdiction. The Lozada and Hendrix cases are particularly instructive on this issue. Lozada v. S. Carolina Law Enf’t Div., 395 S.C. 509, 719 S.E.2d 258 (2011); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Lozada is a case where registration was not mandated by the state of conviction. However, the South Carolina Supreme Court noted that registration was nevertheless proper in South Carolina in accordance with South Carolina law. Lozada v. S. Carolina Law Enf’t Div., 395 S.C. 509, 514-15, 719 S.E.2d 258, 261 (2011) (noting that registration in the state of conviction is one of several alternative basis for registration in South Carolina). In Hendrix, an individual challenged South Carolina’s lifetime registration requirement in the face of Colorado’s law that allows a petition for removal after five years. Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). The Supreme Court noted that “Appellant’s argument fails because this Court has ruled that registering as a sex offender is a non-punitive imposition. Therefore, 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. As such, Appellant has not shown a due process violation.” Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003)(citing State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002)). Put simply, Plaintiff is treated the same as all individuals who properly registered on the SORA registry in South Carolina.

In addition, the Plaintiff’s continued registration passes constitutional muster. Given the ease with which cross country travel can be undertaken in modern society, continuing to classify Plaintiff as an offender in South Carolina “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.” Hendrix v. Taylor, 353 S.C. 542, 550-51, 579 S.E.2d 320, 324 (2003). It is untenable to remove Plaintiff from the registry and simply hope that he will resume registration when he returns. Further, all persons who must register under the act are subject to uniform administrative and legal procedures. *Id.* Moreover, as has been specifically noted by the South Carolina Supreme Court, “[r]egistering persons who committed crimes in another state when they move to South Carolina is a reasonable method of achieving this goal [protecting the public and aiding law enforcement].” Hendrix v. Taylor, 353 S.C. 542, 550-51, 579 S.E.2d 320, 324 (2003). As such, the Plaintiff can claim no constitutional infirmity. He is treated the same as all individuals who are properly registered in the State of South Carolina and the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution does not require removal or have any bearing on this matter. *See* Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003); In re Shaquille O’Neal B., 385 S.C. 243, 251, 684 S.E.2d 549, 554 (2009).

CONCLUSION

Therefore, based upon the foregoing, the previously filed Answer, the Stipulated Facts, the statutory and common laws of the State of South Carolina, and any arguments that may be presented at a hearing on this matter, the Defendant asks that this Honorable Court deny any and all relief sought by the Plaintiff and find that the Plaintiff's out of state conviction for which he was required to register in the state of conviction, does in fact require continued SORA registration as an "out of state" offender.

Respectfully Submitted,



Adam L. Whitsett

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S.C. Bar Number: 74888

ATTORNEY FOR THE DEFENDANT

COLUMBIA, SOUTH CAROLINA
JUNE 20, 2016

P R O C E E D I N G S

1
2 THE COURT: As I stated, the defense -- defendant
3 SLED has made an answer -- in its answer asserted several
4 defenses that affect the jurisdiction and venue of the
5 case. And Mr. Whitsett, you want to put on the record
6 what your position is about that?

7 MR. WHITSETT: Yes, Your Honor. We put those in the
8 answer really just to preserve them in case they became
9 motions that would be argued. We are not asserting any of
10 those motions and would waive any challenge to this
11 court's jurisdiction to hear this case, and we are
12 prepared to move forward on the matter.

13 THE COURT: All right. On the merits?

14 MR. WHITSETT: Yes, Your Honor.

15 THE COURT: Okay. Now secondly, you all have handed
16 up a stipulation of facts. I'm going have that marked
17 as -- call it a Court's Exhibit 1.

18 MR. WHITSETT: Just for the record --

19 THE COURT: We don't have a record now because she's
20 putting a stickier on this thing.

21 (Court's Exhibit Number 1 was marked for
22 identification.)

23 THE COURT: Mr. Whitsett?

24 MR. WHITSETT: Judge, not to speak out of turn, I
25 believe the stipulated facts will cover all the

1 potentially disputed case facts in this case that would
2 really render this sort of legal issues to be decided. I
3 think that was the intent, and that is what we were all
4 present for was just to move forward on sort of the legal
5 arguments given the stipulated facts.

6 THE COURT: That's what I assumed. So there will be
7 no other record made on the facts is what you're telling
8 me, right?

9 You need to stand up.

10 MR. WELLBORN: Well -- and I apologize, Your Honor.
11 I actually was in the process. There will be no other
12 argument related to the facts. As far as a record on the
13 facts, I do have a copy of the court order which
14 Mr. Whitsett is in possession of from Washington state.

15 MR. WHITSETT: We could have included that in the
16 fact. I don't believe there's a dispute on that.

17 MR. WELLBORN: And I would if I may --

18 THE COURT: Sure.

19 MR. WELLBORN: Thank you.

20 THE COURT: We will call that --

21 MR. WELLBORN: It is alluded to in the stipulation of
22 facts. I just thought it was important for Your Honor
23 actually be in possession of the order itself.

24 THE COURT: We'll call that Plaintiff's Exhibit 1
25 without objection.

1 (Plaintiff's Exhibit Number 1 was marked for
2 identification.)

3 THE COURT: I don't think I have anything
4 procedurally ahead of time. Do you all have anything
5 else?

6 MR. WELLBORN: No, sir.

7 MR. WHITSETT: No, Your Honor.

8 THE COURT: Let me look through the stipulations of
9 facts so we won't have go over those over and over again.

10 Okay. I took the liberty of and amazed myself by
11 being able to do it of copying the two Washington statutes
12 that are referred to in the stipulation as well as in
13 plaintiff's complaint, and I think in the answer as well.
14 I don't know how they -- how they properly say it, but
15 looks like West Revised Code of Washington Annotated,
16 looks like to me, section 9.68A.090, Communication with
17 minor for immoral purposes-Penalties. And then West
18 Revised Code of Washington Annotated Section 9A.44.142
19 Relief from duty To register-Petition-Exceptions.

20 Are there any other Washington statutes we need to
21 deal with?

22 MR. WELLBORN: Not that I'm aware of.

23 MR. WHITSETT: Not that I'm aware of.

24 THE COURT: Okay. All right. Ready to proceed. So
25 this will be in the nature really of -- we agree that this

1 is really a question of law to apply South Carolina law
2 and/or Washington law as it is it. Right?

3 MR. WHITSETT: That's correct, Your Honor.

4 MR. WELLBORN: Yes, sir.

5 THE COURT: Mr. Wellborn, if you're ready, go ahead.

6 MR. WELLBORN: Thank you. Would you prefer I stand
7 for my --

8 THE COURT: Yes, sir.

9 MR. WELLBORN: Okay. Thank you, Your Honor. Your
10 Honor, it's really as you've suggested and as Adam and I
11 -- Mr. Whitsett and I have agreed, this is a question of
12 law. And quite frankly, I have couched it and I firmly
13 believe it to be an application and what should be a
14 proper application of the full faith and credit clause of
15 the United States Constitution. There is an order of the
16 court from the state of Washington, and it is a proper
17 order of the court. And although the order that Your
18 Honor has in front of you of January 15th of 2015
19 indicates ex parte, it was actually signed off on by the
20 prosecuting attorney for Kitsap county as well.

21 THE COURT: You know what? I didn't read that. Let
22 me skim that ahead of time.

23 MR. WELLBORN: Would you prefer I sit while --

24 THE COURT: It says amended order.

25 MR. WELLBORN: That's correct, because the first one

1 was dated December 22, 2014, and that one actually -- when
2 it was signed off it was signed by the prosecuting
3 attorney and the judge signed it later, so -- and it
4 wasn't. So we wanted one that was cleaned and signed by
5 everybody simultaneously. So we actually have two orders.
6 I'm happy to hand up the December 22 --

7 THE COURT: No, it's okay.

8 MR. WELLBORN: They're identical in terms of the
9 language. I think Adam has seen that one as well.

10 MR. WHITSETT: I didn't think there was any
11 difference.

12 MR. WELLBORN: There isn't. There isn't.

13 THE COURT: I have a copy of 44.130. That's this one
14 that has the time limits, is it?

15 MR. WELLBORN: Yes, sir.

16 THE COURT: After an expiration of a period of time
17 without being again convicted of a similar offense, you
18 can have the -- the party can have the name removed from
19 the offender registry.

20 MR. WELLBORN: Yes, sir. Yes, sir. So factually,
21 it's pretty simple. My client was convicted in Washington
22 state. He was placed on the sex offender registry
23 pursuant to Washington law. There's no question had he
24 not been placed on the sex offender registry in Washington
25 but moved to South Carolina having been -- well, actually

1 there is a question. Having been convicted -- what South
2 Carolina would have done with that, because the
3 communication statute could be similar, could be
4 interpreted as a contributing delinquency of a minor. I
5 could be considered, depending on what the communication
6 was, sending of or disseminating obscene materials. Some
7 of which would be discretionary whether the Court would
8 put somebody on the sex offender registry, some which
9 wouldn't have put him on the sex offender registry at all.
10 But regardless --

11 THE COURT: Where? Washington or South Carolina?

12 MR. WELLBORN: South Carolina. But regardless of
13 that, because he was placed on the sex offender registry
14 in Washington state, he was properly placed on the sex
15 offender registry here. No question about that. He moved
16 to York County. He resided in York County. There's no
17 question that he duly registered. He registered pursuant
18 to our state's requirements, which require a bi-annual
19 registration. He did all the stuff he was supposed to do.

20 He then chose to move back to Washington state. And
21 when he moved back to Washington state, he established
22 residence where he is today, and that's stipulated to
23 factually. He is a citizen and resident of the state of
24 Washington. Does not live in South Carolina, maintains no
25 residence here, owns no property here, has no intent to

1 come back to South Carolina for purposes of residing. In
2 fact, he is now married in Washington state, living, has a
3 business going in Washington state. Everything for him is
4 in Washington.

5 The only connection he has to York County, South
6 Carolina, quite frankly, are his parents reside here.
7 Parenthetically, his parents are here today. He then
8 thought, you know, everything was fine, he went through
9 the process in Washington of getting himself off of the
10 registry there, which he is entitled to do under
11 Washington law.

12 THE COURT: Is that -- was it a ten-year time period
13 in that, in 130?

14 MR. WELLBORN: Yes, sir. Yes, sir. And that was
15 done pursuant to an order of the court. You have a copy
16 of the order of the court. But he remains on the South
17 Carolina sex offender registry. So he is -- what he's
18 seeking to do is to say, you know, obviously we know that
19 the South Carolina sex offender registry has been
20 determined by the courts not to invoke or in any way
21 impinge on a liberty interest; however, it is, for
22 practical matters, it's the mark of Cain anybody
23 nationwide being on the sex offender registry. His home
24 state by order of the court has removed him pursuant to
25 Washington law. Our argument is South Carolina has no

1 reason -- as a practical matter, there is no rational
2 basis as a practical matter to keep him on the registry
3 here. But also applying the full faith and credit clause,
4 he should be removed from the South Carolina registry.

5 Now, the state or attorney general office has -- or
6 SLED, I'm sorry -- has cited the Hendrix case. And the
7 Hendrix case is different, and I'll tell you why the
8 Hendrix case is different. First of all, in Hendrix, Mr.
9 Hendrix moved from the state of Colorado. And although he
10 had never been convicted in Colorado of an offense that
11 under Colorado law required registry, South Carolina,
12 interpreting its own law -- which it certainly had a right
13 to do -- said, Well, if he had been convicted of this
14 offense here, given what the elements of the offense, he
15 would have been required to register, and therefore we're
16 requiring registry because is he now a citizen and
17 resident of South Carolina, and it serves the public
18 interest. It's important for the public to know. It's
19 for public safety that Mr. Hendrix be on the registry.

20 In the Hendrix case, Mr. Hendrix did not do two
21 things that my client has done. Number 1, he didn't leave
22 the state of South Carolina and say, I'm going back to
23 Colorado. So therefore -- and to a great extent, if not a
24 full extent, dissipating the need for South Carolina to
25 keep him on a registry from a rational perspective and a

1 public purpose perspective. Secondly, in the Hendrix
2 case, there was no order of the court, or of any court
3 from the state of Colorado that said he was to be removed
4 from any registry under Colorado law. Of course, as a
5 practical matter, they wouldn't need to do that because he
6 was never placed on the registry to begin with.

7 THE COURT: In Colorado.

8 MR. WELLBORN: That's correct. But in this case,
9 it's factually and legally differently. Factually
10 different because my client does not reside here. He's
11 not seeking to reside in South Carolina but be removed
12 from a registry. He's not -- he's not here. He is 3,000
13 plus miles away in the state of Washington where he
14 intends to reside. I think I would be in a different
15 posture if my client chose to come back and live in York
16 County or any place in South Carolina. I think at that
17 point, there was be a strong factual argument for SLED to
18 keep him on the registry. But, in fact, he has no such
19 intent, and he is -- as stipulated in the facts, he is a
20 citizen and resident in Washington state.

21 Furthermore, there is no rational reason or public
22 purpose to keep him on the South Carolina registry. If we
23 think of what the purpose of the registry is, it to
24 protect the citizens of South Carolina, to put them on
25 notice, to keep law enforcement on notice that someone who

1 is living in a certain spot where they register is a --
2 has been convicted of a sex offense; therefore, they can
3 monitor them, people are aware, people can keep their kids
4 away. These names are published on the internet. You can
5 go on the internet in any county --

6 THE COURT: I don't remember reading a case -- in
7 trying to teach myself some of this -- where -- that
8 discussed -- that analyzed a listing on the sex offender
9 registry in terms of a rational purpose for being on the
10 registry, as opposed to a rational purpose of the general
11 assembly in enacting the statute to begin with.

12 MR. WELLBORN: And you are correct. I don't think
13 there is any case. However, the cases that do discuss the
14 sex offender registry and address the legislative intent
15 discuss the need for public safety.

16 THE COURT: Yes.

17 MR. WELLBORN: And in this case that argument, that
18 argument, that particular need does not exist because
19 there is no safety issue for the public in York County or
20 any of the other 45 counties in our state for someone who
21 is living in Washington. Because -- I mean, realistically
22 were my client to do a drive-by through South Carolina
23 from Atlanta to Charlotte, even if he were on the
24 registry, it wouldn't make any difference because no one
25 would be able to go on the registry and say, Where is he

1 right now? They don't put GPS trackers on. So it really
2 is from a public safety standpoint -- which is what the
3 cases address -- that argument fails in this case because
4 we have a guy, again, who is living 3,000 plus miles away.

5 Then there is the issue of full faith and credit.
6 Again, in Hendrix there was no such issue.

7 THE COURT: Right.

8 MR. WELLBORN: Here we have a order of the court and
9 under the full faith and credit clause of the United
10 States Constitution, we don't get to choose in our state
11 or no other state gets to choose and say, Okay, we're not
12 going to obey this particular court, this particular order
13 if it's a valid order from a sister state, from a court
14 from a sister state. Obvious examples are judgments from
15 other states, which are enforceable in South Carolina,
16 child support orders in other states which are enforceable
17 in South Carolina, divorce orders from other states which
18 are enforceable in South Carolina.

19 We, by virtue of the United States Constitution and
20 by virtue of being a state that is a member of the United
21 States, we don't have that choice to say -- you know, and
22 from a historical perspective, that argument sort of was
23 addressed and ultimately something that was conceded
24 post-1865. You know -- it's -- some of our families were
25 actively involved in that and not necessarily happy with

1 that concession, but there is it. So I would argue
2 that --

3 THE COURT: Some would argue it was enforced.

4 MR. WELLBORN: Well, enforced or not, it was
5 something that was conceded to. And by virtue of the
6 14th Amendment, there was an argument that a
7 rejoining -- although some people would say there was no
8 legitimate separation -- but the rejoining the union
9 required us to actually adhere to the United States
10 Constitution.

11 THE COURT: I don't think there's any question about
12 that.

13 MR. WELLBORN: Right. So I would argue that
14 basically we've got a situation where it's a combination
15 of a full faith and credit clause argument, and this case
16 is opposite to Hendrix.

17 THE COURT: I tried to find cases that seemed to bear
18 on what I read from what I had just in the file yesterday.
19 And I don't remember -- I don't remember seeing a full
20 faith and credit case at all.

21 MR. WELLBORN: I don't think it's been argued, quite
22 frankly.

23 MR. WHITSETT: I'm not aware of any either.

24 MR. WELLBORN: I really think this is a case of first
25 impression, and part of the reason it's a case of first

1 impression is the facts are so unique. The prior cases
2 have involved somebody who is coming to live in our state
3 who either has or does not have a judgment from a sister
4 state or has or did not have a judgment alleviated in a
5 sister state. In the case because the person doesn't live
6 here, has no intent to live here, yet we continue to keep
7 him as of today on a registry, it's a unique fact
8 situation, and therefore something that just simply hasn't
9 been addressed to my knowledge within our state.

10 THE COURT: Let me ask you this: If Mr. Anderko had
11 remained in South Carolina but perceiving that Washington
12 law has a relief provision from the registration that
13 South Carolina does not have, as a citizen of South
14 Carolina had gone back to Washington and sought to --
15 successfully obtained the same result that he did as a
16 citizen there, would South Carolina not have -- and given
17 this was -- apparently it's conceded it was a similar
18 offense though I don't know what it was, communication of
19 a -- with a minor for immoral purpose.

20 MR. WELLBORN: Yes, sir, and based on continue title
21 of the statute, it's questionable whether that would have
22 meant mandated had he been sentenced -- first of all, we
23 don't have a similar-titled statute under South Carolina.

24 THE COURT: That would be this Lisotta (phonetic)
25 case that where SLED was -- the defendant where there was

1 some question some discussion at least of how similar they
2 were, but let me finish my thought. So -- so lives --
3 remains in South Carolina as a permanent resident, on the
4 registry in South Carolina, knows there's a Washington
5 procedure to get off the list in Washington, gets off the
6 list in Washington, comes back to -- and says South
7 Carolina full faith and credit. Does South Carolina --
8 and further assuming that the offense is sufficiently
9 similar to something that South Carolina has. Wouldn't
10 South Carolina still have its public health safety and all
11 of those policy arguments to keep him on the sex offender
12 registry?

13 MR. WELLBORN: I think it would. I don't think
14 there's any question about that. and I think that
15 absent -- in the situation that you have hypothesized, in
16 that situation, absent Mr. Anderko getting a pardon from
17 the state of Washington which, would then entitled him to
18 at least apply.

19 THE COURT: Depends on the pardon under South
20 Carolina law.

21 MR. WELLBORN: Well, that's correct. But
22 nonetheless, at least it would get him in the door. But
23 in that situation, were Mr. Anderko to remain in South
24 Carolina, if he had done exactly as you have posited, I
25 think there would be a strong public safety argument from

1 SLED to keep him on the registry. That's not the
2 situation as we know and as we've stipulated.

3 THE COURT: Really, not -- let me back up and ask one
4 more question about my hypothetical question. So
5 essentially the major premise of your argument is really
6 not -- let me back up one more question about my
7 hypothetical question. Would -- despite -- assuming he
8 remained a resident --

9 MR. WELLBORN: I'm sorry. For which state? South
10 Carolina?

11 THE COURT: Yeah.

12 MR. WELLBORN: Thank you.

13 THE COURT: Assuming he remained a resident of South
14 Carolina, and South Carolina still having its public
15 policy arguments, would it nevertheless have to give full
16 faith and credit to the Washington order, or would its
17 public policy arguments trump that?

18 MR. WELLBORN: That is a question I simply don't
19 know. I think it's an interesting question. And
20 fortunately, it's not one that I have to make. Because
21 factually, it's obviously not the case. But it is an
22 interesting question. There's no question that South
23 Carolina has to give full faith and credit to an
24 out-of-state order. Now the question --

25 THE COURT: Well, no, there are some exceptions to

1 that that have to do with -- I don't know them. I'm not a
2 constitutional lawyer, but have to do with policy
3 arguments, and I think old divorce law would be one
4 example of that.

5 MR. WELLBORN: Right. Well -- yeah. There are some
6 exceptions related to where other constitutional arguments
7 come into play, such as equal protection where perhaps a
8 couple that is same sex marriage is validated and we
9 refuse to validate it here. And as we've learned through
10 a long, tortuous process, that also applies in South
11 Carolina. That said, the one constitutional argument at
12 play here, of course, is the full faith and credit clause
13 argument, and the facts are so distinct in this case, we
14 really just don't have that public safety argument that
15 might otherwise apply.

16 THE COURT: That's where I'm kind of headed. It
17 seems to me essentially at the bottom of it all, your --
18 the major premise of your argument is that South Carolina
19 doesn't any longer have a reason to keep him on the
20 registry, and by the way, Washington has removed him.

21 MR. WELLBORN: That's correct. And it's not just
22 that Washington has removed him; Washington has removed
23 him by court order.

24 THE COURT: Yes. Yes.

25 MR. WELLBORN: It would be one thing if the statute

1 under Washington law said after so many years, everybody
2 drops off. But here it's even stronger because there's
3 been a determination, there's been an order of a court in
4 Washington state specifically removing this individual for
5 reasons presented to and ruled upon by a judge.

6 THE COURT: Well, which was pursuant the statute.

7 MR. WELLBORN: Which was pursuant the statute, but
8 the thing is it also required a factual review.

9 THE COURT: Yes. Yes, okay. All right.

10 MR. WELLBORN: Thank you, Your Honor.

11 THE COURT: Mr. Whitsett?

12 MR. WHITSETT: Thank you, Your Honor, may it please
13 the Court. Just for purposes of the record, I think
14 there's a little misunderstanding about the facts of
15 Hendrix. I think he was sort of applying some of the
16 facts of Lisotta, so -- and I'll touch on that in a
17 minute. I think candidly as counsel noted, there is no
18 other case law dealing with full faith and credit, because
19 I don't think that there's a -- the argument that a full
20 faith and credit even applies in a situation like this.
21 And I'll get to that and I think --

22 THE COURT: Let me ask you this: Is -- many times
23 like money judgments, for example -- no, not money
24 judgments -- well, money judgments is obviously full faith
25 and credit thing. I'm thinking -- is the recognition by

1 one state that another state has placed a person on the
2 sex offender registry in that other state, is that a
3 matter of full faith and credit in the first place, or is
4 it just a matter of reciprocity, or is it thirdly just a
5 matter of the construction of the statute by the general
6 assembly that says we're automatically going to put
7 somebody on the sex offender registry?

8 MR. WHITSETT: I think -- in my opinion, Your Honor,
9 it's the third. I think that this case boils down to the
10 operation of South Carolina state law. And I don't --

11 THE COURT: Is the -- and I didn't copy this, so help
12 me out. Is there -- in the list of sections that deal
13 with this, is there a specific provision that says that
14 South Carolina must or will automatically recognize the
15 sex offender designation from another state?

16 MR. WHITSETT: Yes, Your Honor.

17 THE COURT: Which one is it?

18 MR. WHITSETT: And if you look on page 2 of the trial
19 brief that I handed up --

20 THE COURT: Tell me the code section.

21 MR. WHITSETT: It's 23-3-430(a). It's the large
22 block quote. So if you look right in the middle of it,
23 and I quoted it specifically and bold and underline
24 because it tracks right along with my argument. And what
25 it says is, just says to quote it, "Any individual who has

1 been convicted of, adjudicated delinquent for, pled guilty
2 or nolo contendere or found guilty by reason of insanity
3 of to an offense for which the person was required" -- and
4 I think that's critically important. It's "was required"
5 -- that's even written in the past tense -- to register
6 in the state of conviction or plea shall be required to
7 register. And so --

8 THE COURT: So is that then a formal legislative
9 recognition of either A) full faith and credit or B) some
10 sort of reciprocity?

11 MR. WHITSETT: Your Honor, I don't know exactly
12 how --

13 THE COURT: Because I think that may make a
14 difference.

15 MR. WHITSETT: Your Honor, I'm not sure exactly how
16 that's a -- I mean, that's a recognition that if another
17 state -- if someone is registered in another state and
18 they move here, then that person is going to register.
19 That's a decision that our legislature has made is that
20 we're even not going to get into the similar offense. If
21 you are registered in another state, you are going to be
22 required to register here. And I think it's critically
23 important that if you were ever required to register,
24 which is a recognition by our legislature that we've got a
25 lifetime registration --

1 THE COURT: But it beg the questions, though,
2 Mr. Whitsett, it's based upon some reason to recognize the
3 decision of another state.

4 MR. WHITSETT: Yes, sir, and it's a recognition that
5 all states' laws regarding the registry --

6 THE COURT: Those are typically either full faith and
7 credit or reciprocity of some sort, which may be the same.

8 MR. WHITSETT: And I think maybe that's why I'm
9 struggling. I'm not sure there's necessarily a difference
10 between those two thought processes. It's just the
11 legislature saying if you're required to register and you
12 move to this state, you are required to register in
13 accordance with this state. And that's exactly what we've
14 got here. There's no argument or concern. It was
15 conceded that registration in the state of South Carolina
16 was proper. I think --

17 THE COURT: No question.

18 MR. WHITSETT: My argument would be taken one step
19 further, and this is somewhat dovetailing on a question
20 you asked Mr. Wellborn. If Mr. Anderko moved back
21 tomorrow, I believe by operation our statute, he would be
22 required to register. Because applying South Carolina law
23 for which the person was required to register. There's no
24 question that that applies in the case. And so when you
25 look at it from that perspective, there's not a full faith

1 and credit issue in applying South Carolina law.

2 What the Washington judge did was apply Washington
3 law in Washington. That does not, at the end of the day,
4 require the state of South Carolina with a lifetime
5 registration to do anything other than apply South
6 Carolina law, which is what we're talking about in the
7 case.

8 THE COURT: Let me ask you this: If this was a
9 support case, child support case, and divorce in
10 Washington, state of Washington, order for a certain
11 amount of child support, state of Washington. Anderko --
12 I'll just use him as the example, the name as the example.
13 Mr. Anderko moves to South Carolina. South Carolina
14 enforces Washington's support order. Thousand dollars a
15 month, whatever. Mr. Anderko goes back to Washington,
16 under Washington law is able to get his child support
17 reduced to \$500 a month, order of the court. Comes back
18 to South Carolina where he lives, and is not South
19 Carolina required to recognize that change in the
20 application of Washington law?

21 MR. WHITSETT: In that specific context, I would
22 argue yes. But I think that presents a very different
23 context to what we've got here in that there is no South
24 Carolina statute dealing with support written like this
25 registry law is written.

1 THE COURT: That may be true.

2 MR. WHITSETT: There is -- it's -- so we got to look
3 at it in the vacuum in which it exists. Registry is a
4 very specific, very particular thing that's been through a
5 constant constitutional -- and has upheld a constant
6 constitutional barrage, has been upheld as constitutional,
7 has been upheld as not punishment, has been upheld as an
8 administrative and regulatory function. And I think that
9 sets it very much apart from any other type of action that
10 may even exist, and really is what the focus -- is what
11 makes it different than the scenario you just presented.

12 THE COURT: Let's say in Washington you could get a
13 driver's license at age 14. Which is, by the way, when I
14 got my driver's license in South Carolina. But in South
15 Carolina it's 16, which is a essentially a policy position
16 of South Carolina you're not old enough to get a driver's
17 license at age -- let's make it different. Let's say in
18 Washington the drinking age is 18 -- I don't know what it
19 is. In South Carolina it's 21 -- I may have answered my
20 own question.

21 MR. WHITSETT: I think that answers the question in
22 that there are some things which, as a policy matter, the
23 South Carolina legislature has said, We are going to
24 recognize certain things. We are not going to recognize
25 other things.

1 THE COURT: Yeah.

2 MR. WHITSETT: And I think that is well within our
3 legislature's --

4 THE COURT: What about the driver's license argument?
5 Go back to the driver's license.

6 MR. WHITSETT: I believe the driver's license
7 argument would track the same. I don't think that there
8 would be --

9 THE COURT: Wouldn't they recognize a Washington
10 driver's license?

11 MR. WHITSETT: Your Honor, if they changed it to
12 14 -- I think that the Department of Motor Vehicles would
13 have to take a look at that. I'm not sure how exactly
14 that works. There may be some federal laws that apply
15 differently to driver's licenses. That's a little bit of
16 a scenario, and I'm not nearly as well-versed in that.

17 THE COURT: Okay.

18 MR. WHITSETT: Again, I think those still present
19 different legal policy scenarios than we've got with the
20 registry. My argument would be because there's no
21 argument we have proper registration, you know, when an
22 individual moves out of state, their registration
23 requirement, actively, physically showing up is relieved.
24 So Mr. Anderko does not have to physically appear --

25 THE COURT: I'm sorry. Say that again.

1 MR. WHITSETT: Okay. When an individual moves out of
2 state, an individual that's properly registered on the
3 South Carolina registry, when they moved out of state,
4 they're relieved of the requirement to physically
5 appear --

6 THE COURT: Report twice a year.

7 MR. WHITSETT: -- which is what registration actually
8 is. And see I think there's a difference in registration
9 and in appearing as the public notice on the registry.
10 And so what we've got here is a judge saying is that
11 Mr. Anderko does not have to physically appear in the
12 state of Washington, which the state of South Carolina has
13 no issue with. That's what the full faith and credit --
14 if it were an issue in this case, it would be some
15 argument that state of South Carolina was still requiring
16 the state of Washington to force him to show up, which is
17 not what we've got here.

18 So the registration requirement when an individual
19 moves is -- goes away. But that is separate than an
20 individual remaining listed out of state as what we've got
21 in the case because -- and this sort of goes to the crux
22 of it -- the public policy, the factual -- the public
23 safety issue and the public safety concern is alleviated
24 by listing this individual as out of state. So the issue
25 is that the public for -- you know, as in line with the

1 purpose of the registry is given the information that this
2 individual does not reside in this state. The individual
3 is removed. That's taken away.

4 In addition, we've got the notice issue, and that
5 goes back to my original argument. If Mr. Anderko moved
6 back today, if he made the decision to move back this
7 evening, he would be required to register, and having him
8 remain listed as out of state on the registry gives law
9 enforcement that notice. If Mr. Anderko moved back to
10 tomorrow and resided in the state for 60 days -- he says
11 that he has no intent to --

12 THE COURT: Is that the time period for that?

13 MR. WHITSETT: I mean, it's -- to be defined as the
14 resident, it's over 30 days is the definition of a
15 resident. If you get into the application of SORNA and
16 notice to the sheriff, it's actually a little shorter than
17 that. But to be defined -- just for the purpose of the
18 argument today, to be defined as a resident 23-3-430 says
19 30 days, an aggregate of 30 days in a 12-month period. So
20 if he did that, and he -- and I'm using 60 because it's
21 well beyond the 30 -- law enforcement would have no notice
22 of that. The public would have no notice of that.

23 THE COURT: So if he comes to Myrtle Beach from
24 Washington five weeks a year, he's got to tell them he's
25 here --

1 MR. WHITSETT: For that defined period of time that
2 he's here, absolutely. And that's by operation of the
3 South Carolina statute that says, Any individual who was
4 required to register in the state of conviction is
5 required to register in South Carolina for life. That's
6 sort of by operation, and that's the clear and unequivocal
7 intent of the South Carolina legislature is to have a
8 lifetime registration. And, you know, it's a recognition
9 that some states don't. And all states are certainly free
10 to have the registry as they deem.

11 THE COURT: So, in effect, the maintenance of the
12 registry of the registration is a -- is a tool by which
13 the state can keep track of him when he is in -- not just
14 Mr. Anderko, but anyone who is on the registry -- keep
15 track of him when he is in the state of South Carolina for
16 an extended period of time.

17 MR. WHITSETT: That's correct, Your Honor. It's a
18 notice function. And I think we really need to get down
19 and separate what a listing as an out-of-state offender
20 versus active, actual registration. And we've got a
21 situation -- and I was very clear about that in my answer.
22 He's not actively required to register, which would be
23 show up at the York County Sheriff's Office. He's not
24 actively required to do that as he is currently a resident
25 of another state. But if he were to return, that

1 registration requirement would be triggered.

2 THE COURT: For an accumulated period of more than 30
3 days.

4 MR. WHITSETT: That's correct, Your Honor.

5 THE COURT: So the fifth week he comes to Myrtle
6 Beach, he'd have to register -- I mean have to report.

7 MR. WHITSETT: And if he did not, then he would be in
8 violation of South Carolina law and they -- the law
9 enforcement and the public would have the notice to be
10 able to pursue that. If we simply remove him from the
11 registry in general, law enforcement and the public are
12 not going to be afforded that notice, and there's not going
13 to be notice to anyone that he's required to register by
14 operation of South Carolina law. So that's really -- when
15 you get down to the crux of it. The legislature did not
16 want a system that was based -- essentially an honor
17 system. They did not want a situation where individuals
18 would be required to sort of on their own go to law
19 enforcement and initiate the process. They wanted to put
20 in that process whereby law enforcement could have some
21 notice, whereby the public could have some notice that an
22 individual, if they do reside here, is required to
23 register here.

24 And that's the operation that we're talking about
25 today, and that's why we believe it is still proper and

1 constitutional for this individual, Mr. Anderko, to be
2 listed on the registry as an out-of-state offender. It
3 still has a public purpose for law enforcement and a
4 public purpose for the citizens of the state of South
5 Carolina. And when you couch that with his registration,
6 that listing was proper. There was no issue with the fact
7 that he was required to register and did, in fact, so
8 register. And so SLED's position would be the only way to
9 have -- to be removed from the South Carolina registry to
10 be -- have your name removed from the South Carolina
11 registry is to follow the operation of the South Carolina
12 law.

13 THE COURT: The pardon provision.

14 MR. WHITSETT: Which would be 23 E, F, and G.
15 There's actually three. If your conviction was overturned
16 or vacated, if you get a pardon based on a finding of not
17 guilty, or if you file a habeas petition and you get a new
18 trial based on that, then by operation of South Carolina
19 law, you're entitled to be removed. We've stipulated that
20 none of those apply in this case. So there is no legal
21 ability under South Carolina law to be removed from the
22 South Carolina registry, which is exactly what we've got a
23 request for here today. And so I do think that we've got,
24 you know, a situation that passes constitutional muster.
25 I think if you apply the Hendrix case, and they went

1 through the rational basis of that, and then you take from
2 Hendrix and you look at the purpose, which is the notice
3 requirement to law enforcement, which is the notice
4 requirement to the public --

5 THE COURT: We've been through that.

6 MR. WHITSETT: -- I think you've got that situation
7 where you pass constitutional muster across the board, and
8 there is not an equal protection concern, and there is not
9 a full faith and credit issue or concern because I do
10 think there's a situation -- and I think the Lisotta case
11 really illustrates. And Lisotta is the case where there
12 was not a requirement to register in the state of
13 Pennsylvania.

14 THE COURT: But there was a conviction?

15 MR. WHITSETT: It was a conviction for unlawful
16 restraint in the state of Pennsylvania. Moved down to
17 South Carolina, and South Carolina courts upheld the
18 decision that registration was required. If there were a
19 full faith and credit issue, South Carolina could not
20 register this individual. They would have to give full
21 faith and credit to the Pennsylvania law, but our Supreme
22 Court said, Absolutely not. You apply South Carolina law,
23 and applying South Carolina law, you are required to
24 register and you're required to register for life. Just
25 to touch on the factual situation of Hendrix, because I

1 think it's a little different. I think opposing counsel
2 sort of took the facts from Lisotta and said it was
3 Hendrix. Hendrix was the Colorado case where there was a
4 requirement to register in Colorado, however --

5 THE COURT: Also.

6 MR. WHITSETT: However, there was no similar type
7 offense and if the individual had committed the same act
8 in South Carolina, registration would not have been
9 required. And so the court looked at it and said, We're
10 going to say and we're going to give deference to the
11 statute with regard to registration in the state of South
12 Carolina, it is not. So the Hendrix case is really the
13 case that that said if you are required to register in
14 another state and you move to this state, you are required
15 to register, and they touched on that.

16 They actual specifically left open the very factual
17 scenario that we have today and said they weren't going to
18 address the situation where the original state removes the
19 individual. So this is truly a case of first impression
20 in that regard, because I don't believe there has been any
21 jurisprudence --

22 THE COURT: You said that Hendrix committed a crime
23 in Colorado that wasn't covered by our statute, but it
24 says -- the facts may not have -- I'm looking at the
25 facts, page 322 of the case. But he pled guilty to sexual

1 assault in the third degree. That's a -- that would be
2 covered in South Carolina. But what he did was he
3 apparently grabbed a woman in a bar without her consent,
4 grabbed the breasts and buttocks of a woman several times
5 in a bar without her consent. And you're saying that
6 wouldn't be covered?

7 MR. WHITSETT: And Your Honor, I may have even
8 misspoke on that. I think his issue with Colorado is that
9 Colorado did have a ten year and he was saying the
10 lifetime registration in South Carolina was a violation of
11 equal protection. So I may have even misspoke on that,
12 and I appreciate that --

13 THE COURT: It says in Colorado you could petition to
14 be removed five years after the date of the guilty plea.

15 MR. WHITSETT: That's correct, Your Honor. So that
16 was the argument in Hendrix is that it's an equal
17 protection and due process violation for the state of
18 South Carolina to register you for life in the face of
19 Colorado allowing you to come off after a shortened period
20 of time. So I'm sorry, I even got --

21 THE COURT: Doesn't matter.

22 MR. WHITSETT: -- confused on that issue.

23 THE COURT: I read it.

24 MR. WHITSETT: But it goes back to -- and I guess to
25 sum up, we've got a situation where registration

1 unquestionably was proper. I would assert as such that
2 removal from the South Carolina registry must be done in
3 accordance with South Carolina law, which we do not have
4 here. And when viewing this in terms of the South
5 Carolina registry statute, which is written in the past
6 tense such that any individual who was required would be
7 required, the notice function that that listing an
8 individual as an out-of-state offender provides to law
9 enforcement, provides the public, is all that is needed to
10 satisfy and to pass constitutional muster on this case.

11 And we would ask that you deny the petition -- deny
12 the relief sought by the plaintiff in this action so that
13 the public will continue with the notice that it is
14 currently given and that law enforcement is given the same
15 notice in that regard.

16 THE COURT: All right.

17 MR. WHITSETT: I think otherwise you're going have a
18 scenario --

19 THE COURT: I've heard it all. That's enough.

20 MR. WELLBORN: Your Honor, may I reply?

21 THE COURT: Yes, sir.

22 MR. WELLBORN: The first thing I'd like to do, I'd
23 like to read -- and Your Honor may have already read this
24 from Hendrix. And this is our court in Hendrix, quote, We
25 reserve --

1 THE COURT: Where are you?

2 MR. WELLBORN: I'm on the last three paragraphs up
3 before the paragraph that's entitled Due Process.

4 THE COURT: Hang on one second.

5 MR. WELLBORN: Probably is going to be your last page
6 of the opinion. I'm online, so --

7 THE COURT: Okay. What does the paragraph begin
8 with?

9 MR. WELLBORN: "We reserve for another day" --

10 THE COURT: Hold on.

11 MR. WELLBORN: And it's just below where it says
12 third-degree sexual assault. It's page 552 --

13 MR. WHITSETT: It's on page 5 on my printed version.

14 MR. WELLBORN: 552 of the actual --

15 MR. WHITSETT: Judge, I'm just --

16 THE COURT: I see it. Okay, I got it.

17 MR. WELLBORN: "So we reserve for another day the
18 question of whether the appellant's right to equal
19 protection will be offended if his petition to be removed
20 from the Colorado registry is granted." So our court was
21 interested in that argument. They've obviously reserved
22 it for another day. That was not the case in Hendrix. He
23 hadn't had his petition granted, nor, to anybody's
24 knowledge, had he even entering a petition. In our case,
25 obviously we not only have a petition that -- we have a

1 petition that was made, but a petition that was granted
2 and an ordered entered granting that petition.

3 THE COURT: Sounds like somebody on the Court was
4 interested in that, but there was a split of opinion.

5 MR. WELLBORN: Sounds like that simply wasn't the
6 case in --

7 THE COURT: I know. I know.

8 MR. WELLBORN: But also it's interesting because the
9 argument made on behalf of SLED is in Hendrix, even though
10 we -- our court said, Okay, he wouldn't be required to
11 register here for this offense if committed in South
12 Carolina, because Colorado required him to register, we're
13 going to go ahead and require him to register here.

14 THE COURT: Say that again.

15 MR. WELLBORN: Well, the argument being under
16 Colorado law, Mr. Hendrix was required to register --

17 THE COURT: Yes.

18 MR. WELLBORN: Under South Carolina, had he been
19 convicted of the same thing here, our court said he
20 wouldn't have been required to register.

21 THE COURT: Where does it say that? I don't think
22 that is correct.

23 MR. WHITSETT: I misspoke on that. I apologize.

24 MR. WELLBORN: Point being that in Hendrix, he was
25 required to register and they did apply Colorado law and

1 gave it full faith and credit.

2 Now, I'd also like to address the notice issue
3 because that's been brought up a lot. And --

4 THE COURT: Let me just ask -- let me get right to
5 what concerns me about that. Does not -- to the extent
6 that Mr. Anderko would be in the state more than 30 days,
7 five weeks at Myrtle Beach, would not the state retain
8 some interest in saying this person was registered in the
9 past as a sex offender in this state by reason of being
10 registered in state of Washington?

11 MR. WELLBORN: Yes, it would. And if I may continue
12 to sort of expand that, because I think it goes directly
13 to my point. And -- but I want to give you a direct
14 answer to your direct question.

15 THE COURT: All right.

16 MR. WELLBORN: The state of South Carolina has a
17 public safety interest in anybody from anywhere who has
18 been convicted of a sex offense that requires registry.
19 No question about that. Whether or not they've previously
20 registered in South Carolina or not, we still have a
21 public safety interest in whether these people are here
22 longer than 30 days. No question. Now, the next issue is
23 this notice requirement. We get, as a practical matter,
24 no notice of anybody who comes into our state, whether
25 they are a -- have been convicted of a sex offense that

1 requires sex offender registry or not, whether they travel
2 by plane or by boat or by car. We get absolutely no
3 notice unless the person themselves tells us that they're
4 here. It is an honor system. The law requires it, but
5 it's an honor system. The law also requires people who
6 are convicted in South Carolina --

7 THE COURT: What does a person do to get out of the
8 notice requirements when they do move? Is there -- I
9 don't remember reading that.

10 MR. WELLBORN: What do they do?

11 THE COURT: Yeah. You're on the registry, you've
12 been contacting the Sheriff's Office every six months --

13 MR. WELLBORN: Six months.

14 THE COURT: -- you say, I'm going to move to
15 Washington; I got a job out there. What do you do -- what
16 is required in terms of telling you moved?

17 MR. WELLBORN: You simply tell them where you are.
18 You provide some evidence you're there.

19 THE COURT: Okay. Is that in the statute?

20 MR. WELLBORN: I don't think it's in the statute. I
21 think it's just a -- what happens on a ground, practical
22 level.

23 THE COURT: I don't -- I don't reading that.

24 MR. WELLBORN: So what I'm getting at is this whole
25 notice thing is an honor system. There are people that

1 come to South Carolina, and some of them are prosecuted
2 that live here for a year or more and they never let
3 anybody know they've been convicted of a sex offense in
4 other state. Ultimately, they're picked up and they wind
5 up charged with failing to register. There are people who
6 live in South Carolina who are convicted in Chester
7 county, hypothetically, who move to Cherokee county and
8 never provide notice to anybody they've moved to Cherokee
9 county. They're also required on an honor system by
10 virtue of law, but it's an honor system to let the sheriff
11 of Cherokee county, twice a year, know where they are.
12 Some of them do; some of them don't. So they --

13 THE COURT: And if they don't, they get picked up,
14 they got a problem.

15 MR. WELLBORN: Correct. Correct, which would be the
16 same thing for Mr. Anderko were he to move to Myrtle Beach
17 and stay there for five weeks as we've had this
18 hypothetical. He would be like every single other person.
19 He would be like every single other person. He would be
20 no different. He would be on the honor system. The
21 citizens of South Carolina are not any safer for knowing
22 that Mr. Anderko used to live in York County and he was
23 registered here, and he now lives out of state in
24 Washington state. If Mr. Anderko suddenly appears down in
25 Beaufort for five weeks and doesn't let anybody know,

1 nobody is any safer for that. Law enforcement isn't any
2 safer.

3 THE COURT: I don't disagree with you.

4 MR. WELLBORN: So I think the notice argument is as a
5 practical matter simply falls flat. The reason -- again
6 we come back to the issue that was posited by the court in
7 Hendrix. We have this open issue of what happens when
8 somebody is alleviated, a -- successfully petition and
9 their home state and get removed from the registry, and
10 that is exactly what we have here by virtue of court
11 order.

12 THE COURT: Is that it?

13 MR. WELLBORN: Unless Your Honor has any questions.

14 THE COURT: I don't.

15 I don't think I will gain anything -- since I tried
16 to learn this before hearing this argument -- I don't
17 think there's anything to be gained by me taking this
18 under advisement, so let me just tell you what I think
19 now. I think at the end of the day, this becomes a
20 problem for the general assembly. My personal opinion is
21 that there ought to be -- it seems to me there -- for some
22 not all, sex offenses as they are characterized for the
23 purposes of registration should have some provision for
24 relief from the mark of Cain, as you called it. I think
25 that is -- it is clear that the general assembly has not

1 done that. They -- in fact, one of the cases I read -- I
2 don't remember which one it was now -- dealt with the
3 amendment to the statute that tinkered with the pardon
4 relief, saying -- it's odd to me that if you get a pardon
5 but it's not for the equivalent of a finding of not
6 guilty, you got to reregister. You're removed, but then
7 you have to reregister. That makes no sense to me, but
8 that's what they said.

9 I believe that there is a sufficient element of
10 discretion within the general assembly in connection with
11 the notification of the public, be it honor system or not,
12 to leave someone's name on the registry for the purpose of
13 monitoring them when they return to state of South
14 Carolina. I think that for me to -- you make a good
15 point, Chris, for me to decide what the Supreme Court has
16 reserved for another day would be beyond what I'm supposed
17 to do.

18 So I'm going to -- all this really is in the context
19 of the cross-motion for summary judgment really. The way
20 you presented it to me, there's no other testimony or
21 anything like that. So I find that the full faith and
22 credit is a novel argument that is one that the Supreme
23 Court has hinted that it may reconsider, and although
24 couched in the term of equal protection; that there --
25 there is a sufficient indication of a public purpose to

1 retain someone's name on the registry if and when they
2 return to South Carolina for any extended period, and that
3 it is for the general assembly to change that law. So I
4 deny the plaintiff's relief, grant the defendant's relief.

5 Mr. Whitsett, I want you to e-mail me an order in
6 Word format with those findings in it. I will -- and, of
7 course, send a copy to Mr. Wellborn. I'll undoubtedly
8 alter it some, because I always do. And when I do -- I'll
9 send each of you an e-mail copy. Any questions?

10 MR. WELLBORN: No, sir.

11 MR. WHITSETT: No, Your Honor. Thank you.

12 (Whereupon, the proceedings were concluded.)
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Mark Anderko

South Carolina Law Enforcement Division

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Adam L. Whitsett, Esquire	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

FILED - RECEIVED
 2016 JUL 28 AM 10:14
 CLERK OF COURT
 YORK COUNTY
 SOUTH CAROLINA

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

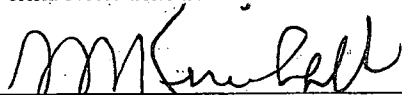
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
South Carolina Law Enforcement Division		\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Jac 

 Circuit Court Judge

3063

 Judge Code

7/14/16

 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Mark Anderko,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Law Enforcement)
 Division,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2015-CP-46-03931

ORDER

FILED - PLEASANTON
 2016 JUL 28 AM 10:14
 DAVID HARRINGTON
 CLERK OF COURT
 YORK COUNTY, SC

This matter came before me on June 21, 2016, for trial. Plaintiff was represented in this matter by Christopher A. Wellborn. Defendant was represented in this matter by Adam L. Whitsett, Defendant’s General Counsel. Prior to the hearing, the parties submitted Stipulated Facts and acknowledged that there were no material facts in dispute in this action.¹ As such, this matter proceeded only on the legal arguments of counsel. Plaintiff’s action seeks an order of the court requiring removal of Plaintiff from the South Carolina Sex Offender Registry Act (“SORA”) registry.

STIPULATED FACTS

Plaintiff, then a citizen and resident of Washington, was convicted in Kitsap County Superior Court, State of Washington, for the offense of communicating with a minor for immoral purposes (RCW.9.68A.090) on or about April 19, 2004. As a result of this conviction, Plaintiff was required under the laws of the State of Washington to register as a sex offender (RCW.4.25.550). In November, 2004, Plaintiff moved to York County, South Carolina, where he duly registered as a sex offender with the York County Sheriff’s Department, as required by S.C. Code Ann. § 23-3-430(A) (1976, as amended). Between November, 2004, and January, 2012, Plaintiff actively registered as a sex offender in York County, and was also listed on the South Carolina Sex Offender Registry.

In January, 2012, Plaintiff moved back to the State of Washington, and notified the York County Sheriff’s Department of this move. Since January, 2012, Plaintiff has continuously

¹ Although the Answer filed by Defendant raised several jurisdictional motions, Defendant waived all such motions at the hearing and elected to proceed with the hearing on the merits.

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resided in, and maintained his citizenship in, the State of Washington. Upon moving out of South Carolina, Plaintiff was relieved of any obligation to actively register with the York County Sheriff's Office, and his listing on the South Carolina Sex Offender Registry was amended to list Plaintiff as residing out of state.

On January 9, 2014, Plaintiff's Sex Offender Registry requirements in his home state of Washington were terminated by an Order of the Kitsap County Superior Court, State of Washington, pursuant to Washington Law (RCW.9A44.142). As a result, Plaintiff's name was duly removed from the Sex Offender Registry in Washington.

Plaintiff remains listed as an out of state offender on the South Carolina Sex Offender Registry. Plaintiff's April 19, 2004, conviction in Washington has not been reversed, overturned, or vacated on appeal. Plaintiff has not received a pardon based on a finding of not guilty specifically stated in the pardon for the April 19, 2004, conviction. Plaintiff has not been granted a new trial or received a verdict of acquittal for his April 19, 2004 conviction.

APPLICABLE LAW

SORA requires that any individual “. . . 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.” S.C. Code Ann. § 23-3-430(A)(emphasis added). In addition, SORA mandates lifetime registration for all sex offenders properly registered in South Carolina. *See* S.C. Code Ann. § 23-3-460 (“A person required to register pursuant to this article is required to register biannually for life”). Further, the South Carolina Supreme Court has held 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.” *Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Moreover, SORA also provides the only lawful avenues by which individuals can be removed from the registry in this state.² *See* S.C. Code Ann. § 23-3-430(E), (F), (G).

South Carolina courts have also consistently 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, supra*, 353 S.C. at 552, 579 S.E.2d at 325 (finding that “the length of time one must be listed on

² In fact, the mechanisms for both placement on and removal from the registry are provided by this same code section, S.C. Code § 23-3-430.

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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 re Justin B.*, 405 S.C. 391, 409, 747 S.E.2d 774, 783 (2013) (finding that the electronic monitoring provisions of SORA constitutes a civil non-punitive remedy.)

Rather, the South Carolina General Assembly has evidenced a clear intent that 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 *State v. Walls*, the Court stated:

[I]t 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. Hence, the language indicates the General Assembly's intention to create a non-punitive act. We find the Act is not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions. 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002).

In addition, “[w]hether an individual must be placed on the sex offender registry is a question of law.” *Lozada v. S. Carolina Law Enf’t Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing *Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App.1989)).

ANALYSIS

Plaintiff was convicted of an offense for which he was required to register in the State of Washington to wit: “communicating with a minor for immoral purposes (RCW.9.68A.090)” and Plaintiff did so register in that state. As such, Plaintiff concedes that he was properly registered as a sex offender in accordance with SORA when he moved to York County in 2004. See S.C. Code Ann. § 23-3-430(A), *supra*. In addition, a plain reading of SORA indicates that Plaintiff would in fact have to register were he to return to York County in the future. *Id.* South Carolina’s statute is written in the past tense such that any individual who has been convicted and was required to register in the state of conviction, as is the Plaintiff’s case, must register in accordance with SORA. *Id.* As such, the intent of the South Carolina legislature is clear that if an individual has ever been required to register in the state of conviction, the individual must

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register in South Carolina, which maintains such registration for life. *Id.*; see also S.C. Code Ann. § 23-3-460, *supra*.

Accordingly, the decision in this matter turns on the available avenues of removal from the South Carolina SORA registry. See S.C. Code Ann. § 23-3-430(E), (F), (G). Plaintiff concedes that he does not meet any of the enumerated statutory avenues available. The stipulated facts demonstrate, and Plaintiff concedes, that he does not meet any of the statutory criteria that would entitle statutory removal from the SORA registry under the present South Carolina statutory framework.

Notwithstanding his status for removal under current South Carolina statutes, Plaintiff asserts that South Carolina must nevertheless remove his name from the SORA registry in order to give full faith and credit to the January 9, 2014, Order of the Kitsap County Superior Court, State of Washington (“Order”) in accordance with the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution. I disagree.

By its terms, the Washington Order provides only that Plaintiff does not have to register in the State of Washington. It does not seek to require Defendant or the State of South Carolina to take any action whatsoever. Nor does it address in any way Plaintiff’s registration in South Carolina. Rather, South Carolina case law indicates that South Carolina’s registration requirement is not affected by the registry laws in any other jurisdiction. In *Lozada, supra*, the court addressed a fact situation where registration was not mandated by the State of Pennsylvania, the state of conviction for Lozada. Notwithstanding this, the South Carolina Supreme Court noted that registration was nevertheless proper in South Carolina in accordance with South Carolina law, and that the South Carolina courts were not required to give any particular deference to Pennsylvania law. *Lozada, supra*, 395 S.C. at 514-15, 719 S.E.2d at 261. In *Hendrix, supra*, an individual challenged South Carolina’s lifetime registration requirement in the face of Colorado’s law that allows a petition for removal after five years. *Hendrix, supra*, 353 S.C. at 552, 579 S.E.2d at 325. The Supreme Court stated:

Appellant’s argument fails because this Court has ruled that registering as a sex offender is a non-punitive imposition. Therefore, 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. As such, Appellant has not shown a due process violation. *Id.*, citing *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002).

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Thus, under the reasoning of current decisions in this State, the fact that Washington law allows an individual to be removed from Washington's registry has no bearing on the South Carolina's statutory requirement for lifetime registration. *See* S.C. Code Ann. § 23-3-460. Any change in that status is a matter for the legislature.

I also find and conclude that Plaintiff's continued listing on the SORA registry with an "out-of-state" designation is constitutional. The out-of-state listing "... 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." *See Hendrix, supra*, 353 S.C. at 550-51, 579 S.E.2d at 324 (2003). The requirement is consonant with the legitimate public policy of South Carolina of continuing provision of notice to South Carolina residents that an individual who would otherwise be registering is not, and should not, be residing in this State for any extended period. As such, this knowledge remains as protection for the public, and also aids law enforcement in monitoring the potential risk to communities.

Further, as determined by the legislature, maintaining a list of out-of-state registrants assists law enforcement in continuing enforcement of this State's laws should a registrant return to reside in South Carolina. In that instance, a continued listing serves as notice to both the public and to law enforcement that action may be necessary to insure compliance with SORA. Further, the continued listing of out-of-state offenders serves as notice to the public and to law enforcement should these individuals be found residing in the State of South Carolina without properly registering. Moreover, as stated by the Supreme Court, "[r]egistering persons who committed crimes in another state when they move to South Carolina is a reasonable method of achieving . . . [the goal of protecting the public and aiding law enforcement]." *Id.*

Thus, I conclude that South Carolina has a legitimate public policy interest and concern in maintaining the registration of all persons having a history of conviction of criminal sexual offenses that would require registration in this State. That interest is unaffected by the laws of other states terminating registration requirements for sex offenders. Thus, South Carolina is not required to give full faith and credit to the judicial termination of Plaintiff's sex offender registration requirement in the State of Washington.

In addition, all persons, including Plaintiff, who must register under the act are subject to uniform administrative and legal procedures. *Id.* Moreover, Plaintiff is treated the same as all

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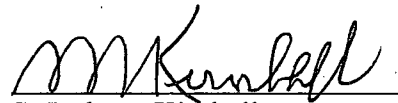
individuals who are properly registered in the State of South Carolina, and Plaintiff did not assert any disparate treatment. As such, there is no viable constitutional equal protection challenge in this matter. *See Hendrix, supra; In re Shaquille O'Neal B.*, 385 S.C. 243, 684 S.E.2d 549 (2009); and, *Lozada, supra*.

CONCLUSION

Therefore, based upon the foregoing discussion, Plaintiff's claim for relief from registration as a sex offender in South Carolina is denied, this action is dismissed with prejudice.

AND IT IS SO ORDERED.

July 12, 2016


S. Jackson Kimball
Special Circuit Court Judge
York County

#6

RECEIVED AND FILED
IN OPEN COURT

DEC 22 2014

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,

Plaintiff,

v.

MARK E. ANDERKO,

Defendant.

NO. 04-1-00348-1

ORDER TERMINATING SEX
OFFENDER REGISTRATION AND
ORDER OF DISCHARGE

****CLERK'S ACTION REQUIRED**

THIS MATTER having come on for hearing before the above-entitled court, upon the motion of the Defendant for an order TERMINATING the Defendant's obligations to register as a sex offender pursuant to RCW 9A.44.130; the Defendant being represented by JASON B. SAUNDERS of THE LAW OFFICES OF GORDON & SAUNDERS, and the plaintiff, STATE OF WASHINGTON having appeared and been heard, and the Court having considered the motion and file, now therefore

IT IS ORDERED, ADJUDGED AND DECREED that the requirement that Mark Anderko register as a sex offender is terminated. The Defendant has completed all the requirements of his sentence, and there appearing to be no legal reason why the Defendant

ORDER TERMINATING SEX
OFFENDER REGISTRATION - 1

LAW OFFICES OF GORDON & SAUNDERS, PLLC.
1111 THIRD AVENUE, SUITE 2220
SEATTLE, WASHINGTON 98101
TEL: 206-682-3053
FAX: 206-682-3746

EX PARTE

1 should not be discharged, the Court having reviewed the records and files herein, and being fully
2 advised in the premises, now, therefore, it is hereby

3 CERTIFIED that the Defendant has completed the requirements of the sentence imposed
4 and that all court-ordered monetary obligations, including any assessed interest, have been met to
5 the Court's satisfaction. It is further

6 ORDERED that this document shall be considered a satisfaction of judgment and that the
7 Defendant is hereby discharged from the confinement and supervision of the Secretary of the
8 Department of Corrections. It is further

9
10 ORDERED that the Defendant's civil rights lost by operation of law upon conviction be
11 hereby restored. This restoration of civil rights specifically may not include the right to ship,
12 transport, possess or receive firearms. Legal advice should be obtained. The restoration of civil
13 rights does include the termination of the defendant's statutory obligation to register as a sex
14 offender, pursuant to RCW 9A.44.130. This restoration of civil rights also relieves the defendant
15 of the no-contact provisions of the Judgment and Sentence.

16 Dated 12/22/14

17
18 Presented by

19 

20 Chad M. Enright, WSBA No. 34271

21 Deputy Prosecuting Attorney

22 //

23 //

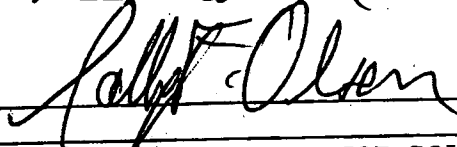
24 Judge

25
**ORDER TERMINATING SEX
OFFENDER REGISTRATION - 2**

LAW OFFICES OF GORDON & SAUNDERS, PLLC
1111 THIRD AVENUE, SUITE 2220
SEATTLE, WASHINGTON 98101
TEL: 206-682-3053
FAX: 206-682-3746

1 A certified copy of this order shall be forwarded to the Washington State Patrol and the
2 Kitsap and King County Sheriff Offices for entry into their databases.

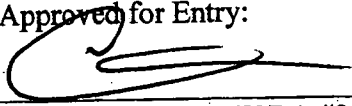
3 DONE IN OPEN COURT this 22 day of December, 2014.

4 
5 _____, JUDGE
6 KITSAP COUNTY SUPERIOR COURT

7 Presented by:

8 _____
9 JASON B. SAUNDERS, WSBA #24963
10 Attorney for Mark Anderko

11 Approved for Entry:

12 
13 _____
14 Chad M. Enright, WSBA #34271
15 Deputy Prosecuting Attorney
16
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**ORDER TERMINATING SEX
OFFENDER REGISTRATION - 3**

LAW OFFICES OF GORDON & SAUNDERS, PLLC
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SEATTLE, WASHINGTON 98101
TEL: 206-682-3053
FAX: 206-682-3746

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case N^o 2015-CP-46-03931

Mark Anderko, Appellant,

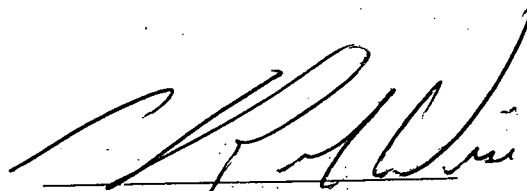
vs.

South Carolina Law Enforcement Division Respondent.

NOTICE OF INTENT TO APPEAL

Mark Anderko appeals the Order of the Honorable S. Jackson Kimball dated July 12, 2016 and filed on July 28, 2016.

August 15, 2016



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

OTHER COUNSEL OF RECORD

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Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2016-001700

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JUN 14 2017

SC Court of Appeals

Mark Anderko, Appellant,

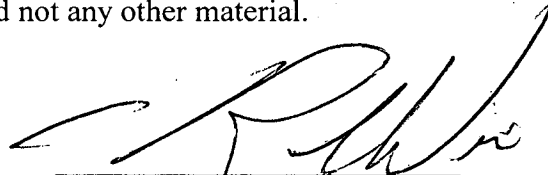
vs.

South Carolina Law Enforcement Division, Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 2nd, 2017



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 00188

Attorney for Appellant