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May 27 2021

S.C. SUPREME COURT

2020-001486

The Supreme Court of South Carolina

ANDREW YOUNG,

Petitioner,

v.

MARK KEEL,

Respondent.

From the Laurens County Court of Common Pleas

Appellate Case No. 2018-000082

Published Op. No. 5759

BRIEF OF *AMICI CURIAE*

SOUTH CAROLINA JUSTICE PROJECT AND ROOT & REBOUND

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INTRODUCTION

Publishing an individual on an online sex offender registry based on an expunged criminal record violates the plain text of the expungement statute and violently undercuts its spirit and intent.

By holding SORA's registration and public notification scheme applies to expunged convictions, the appeals court erroneously renders superfluous an entire category of intentional legislative relief. Because the ruling below violates the canons of statutory construction and disregards clear legislative intent, this Court should grant Petitioner's writ and reverse.

INTEREST OF *AMICI CURIAE*

Amici curiae South Carolina Justice Project and Root & Rebound are not-for-profit organizations that advocate for criminal justice reform in South Carolina. They share a common interest in reducing collateral consequences for criminal offenders and, in that capacity, engage in substantial work related to the sex offender registry and the expungement

of criminal records.

QUESTIONS PRESENTED

I. Does S.C. Code § 22-5-920 abrogate SORA for the limited class of Youthful Offenders whose underlying sexual offense has been expunged?

II. Does S.C. Code § 22-5-920, even if it does not supersede SORA's registration requirements, nonetheless abrogate SLED's public disclosure authority as applied to expunged convictions?[1]

STATEMENT OF THE CASE

In 1995, Petitioner Andrew Young entered a plea of guilty to the crime of Lewd Act on a Minor. Only eighteen years old at the time of his plea, Young's subsequent conviction and sentence were imposed under South Carolina's Youthful Offender Act ("YOA").

In 2017, Young sought and obtained an order expunging his criminal record under S.C. Code § 22-5-920. The parties agree, and the court of

[1] Although not identified as a separate issue, whether Young's expungement prohibits public notification under SORA was raised, and thus preserved, in Young's Complaint, Final Appeal, and Petition for a Writ of Certiorari.

appeals accepted below, that Young's order expunging his criminal records was lawful.

Despite expunging his underlying conviction, Respondent SLED required Young to continue registering as a sex offender under S.C. Code § 23-3-430 and continued to publish his name, photograph, address, offender type, and physical description on their publicly available online sex offender registry. When the matter could not be resolved, Young sought declaratory and injunctive relief in the Laurens Court of Common Pleas. In his Complaint, Young sought relief from the registration requirements of S.C. Code § 23-3-430, specifically from his obligations to register as a sex offender and from SLED's continued publication of his sex offender registration status.

STATUTORY SCHEMES

This case turns on whether and to what degree two separate provisions of the South Carolina Code conflict and, if they conflict, which should prevail. To answer these questions, the Court must first evaluate the plain

text and animating purposes of each statute.

S.C. Code § 23-3-400, *et seq*.

In 1994, the South Carolina Legislature enacted the South Carolina Sex Offender Registry Act (hereafter "SORA"). S.C. Code §§ 23-3-400 to -555. The avowed purpose of SORA was to promote South Carolina's "fundamental right … to provide for the public health, welfare, and safety of its citizens," by ensuring that law enforcement has access to accurate and up-to-date information about sexual offenders "who live within the law enforcement agency's jurisdiction." S.C. Code § 23-3-400. To this end, SORA created the South Carolina sex offender registry; defined who, how, and how long certain individuals must register; and delegated the operation of the Registry to SLED. S.C. Code §§ 23-3-410, -430, -490.

S.C. Code § 22-5-920

Section 22-5-920 was enacted in 2003, nine years after SORA. *See* H.B. No. 5269. In its original form, 22-5-920 authorized a defendant after fifteen years of a conviction as a youthful offender to obtain "an order expunging

the arrest and conviction of the defendant." S.C. Code § 22-5-920(B) (2003); *Gay v. Ariail*, 381 S.C. 341, 346-47, 673 S.E.2d 418, 421 (2009) ("We find the Legislature, in enacting § 22–5–920(B), reasonably concluded that persons who had been convicted of non-violent, misdemeanor offenses at a young age (between 17–25), and who had committed no subsequent offenses over the course of the next fifteen years, were entitled to be considered for an expungement.").

Legal Effect

Notably, Section 22-5-920 neither completely defines nor describes "an order expunging the arrest and conviction." But because the term "expungement" is used commonly throughout the statutory scheme, definitions offered elsewhere can be confidently imported and applied here. *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87, 55 S.Ct. 50, 79 L.Ed. 211 (1934) ("[I]dentical words used in different parts of the same act are intended to have the same meaning."); *Healthkeepers, Inc. v. Richmond Ambulance Auth.*, 642 F.3d 466, 472 (4th Cir. 2011) ("[A]pplying

different definitions to a single term of art within this one statute would be both cumbersome and illogical.").

The South Carolina Code authorizes the expungement of criminal records in at least twelve separate statutory provisions. *See* S.C. Code § 17-22-910 (creating uniform procedures for obtaining an expungement under one of twelve enumerated provisions or "any other statutory authorization."). Although the authorizations are distributed throughout the code, each provision offers the same relief: "expungement of criminal records." *Id.*

In at least five provisions, the General Assembly explains that "the effect of [an] expungement order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody." S.C. Code §§ 63-19-2050(E), 17-22-150(a), 17-22-1010(D), 44-53-450(B), 16-17-530(C). To that end, Section 22-5-920 prohibits the public release of any expunged record "except to those authorized law enforcement of court officials who need this information in order to prevent the rights afforded

by this section from being taken advantage of more than once." S.C. Code § 22-5-920(C). Under the statutory scheme, an individual who obtains an expungement is permitted to lawfully state that they have not been convicted of the expunged crime without fear of penalty or perjury. *See*, *e.g.*, S.C. Code § 17-22-150; *also see* Governor McMaster HB 3209 Veto Letter,[2] (May 19, 2018).

Purpose

South Carolina's expungement scheme does not include an explicit purpose clause. But courts have explained that "[t]he [Expungement] Act's provisions for expungement and confidentiality of the arrest reflect a legislative policy decision that, under certain circumstances, the interests of justice require that an offender be given a fresh start, free from the stigma of a criminal conviction." *State v. Joseph*, 491 S.E.2d 275, 279 (S.C. Ct. App. 1997). This core purpose has also been recognized by the South Carolina

[2] Accessed at: https://governor.sc.gov/sites/default/files/Documents/Veto-Messages/2018-05-19-H-3209-Veto-Message.pdf

Attorney General's Office, who opined in 2013 that "despite the wide variety of forms taken by various state and federal expungement statutes, 'all are directed to the basic purpose of assisting an ex-offender to overcome the stigma of a criminal record.'" S.C.A.G. Opinion, 2013 WL 6009577 (Oct. 29, 2013) (quoting *Stephens v. Van Arsdale*, 227 Kan. 676, 608 P.2d 972 (1980)).

Although he is not a lawmaker, Governor McMaster's veto letter regarding the General Assembly's 2018 expungement bill sheds further light on the legislative purpose and intended effect of expungement. According to Governor McMaster, expungement, as envisioned by the General Assembly, has the "practical effect of *erasing* large categories of criminal records," for the purpose of ensuring that those with certain prior offenses be able to "reenter our communities and apply for jobs" unencumbered by the challenges inherent to those records. McMaster, *supra*, ("I am willing to work with the General Assembly to pass laws to

improve employment opportunities [for previous offenders].").

STANDARD OF REVIEW

The issue before the Court presents a matter of statutory interpretation, which the Court reviews *de novo*.

ARGUMENT

I. A valid order of expungement necessarily grants relief from SORA.

As this Court illustrated in *Edwards v. State Law Enf't Div.*, 395 S.C. 571 (2011), the appropriate question is not whether SORA authorizes Young's removal from the registry, but whether his order of expungement prohibits registration and publication based solely upon an expunged criminal record.

In *Edwards*, the issue before the Court was whether Respondent's pardon relieved him of his duty to register under SORA. *Id.* at 574-75. Importantly, the version of SORA in place at the time of Edwards's pardon did not provide for removal on that basis. But in determining whether the pardon required removal from the Registry, the Court evaluated the text

and purpose of the *pardon* statute, not SORA. The Court identified that under the pardon statute, Section 24-21-940, a "pardon" is designed to grant an offender relief "from all the legal consequences of his crime and of his conviction." *Id.* at 575. Writing for a unanimous Court, Chief Justice Toal explained that, despite SORA making no mention of removal on the basis of a pardon, the "clear and unambiguous" effect of the pardon *necessarily* absolved Edwards of his obligations under SORA. *Id.*

> In the instant case, SCDPPPS pardoned Respondent in 2004. Thus, in light of the command of section 24–21–940 of the South Carolina Code, the circuit court correctly held that the pardon relieved Respondent from all direct and collateral consequences of his pardoned crime, which would necessarily include placement on the sex offender registry and continuous compliance with its registration requirements.

Edwards, 395 S.C. at 576.

The dispositive question here, then, is whether expungement grants relief that, like a pardon, is incompatible with the registration and publication requirements contained in SORA. A close examination of the

statutory scheme shows that it certainly does.

A. Removal is required because the text of S.C. Code § 22-5-920 prohibits SLED from engaging in conduct that is mandated by SORA.

By its express terms, Section 22-5-920 prohibits the public disclosure of any expunged record "under Section 34-11-95, the Freedom of Information Act, *or any other provision of law*, except to those authorized law enforcement or court officials who need th[e] information in order to prevent the rights afforded by this section from being taken advantage of more than once." S.C. Code § 22-5-920(C) (emphasis added). In drafting Section 22-5-920 to prohibit disclosure under FOIA *or any other provision of law*," the legislature demonstrated an unambiguous intent for expungement to supersede any other contrary disclosure requirement.

In contrast to Section 22-5-920, SORA creates an aggressive scheme of public notification about a person's status as a sexual offender. *See* S.C. Code §§ 23-3-490, -535. Because a criminal conviction for a sexual offense is both necessary and sufficient to make a South Carolina resident a "sexual

offender," publication on the registry is equivalent to a public declaration of a person's underlying criminal record.

The disclosure mandates of these two statutes are in irreconcilable conflict, and Section 22-5-920 must prevail because it was passed second in time and evidences a clear and unambiguous intent to supersede any contrary provision of law. *See* Part I(C)(ii). For these reasons, this Court should conclude that expungement extends relief from SORA.

B. Removal is required because Young's order of expungement requires that he be restored to the status he occupied *before* his arrest.

Beyond the above-mentioned proscription on public disclosure, Section 22-5-920 does not otherwise define the term "expungement." But that does not mean that confidentiality is the *only* relief conferred by the statute.

It is axiomatic that identical terms or phrases used in different parts of a statutory scheme be interpreted as having the same meaning. *In re Total Realty Mgmt., LLC*, 706 F.3d 245, 251 (4th Cir. 2013). As applied here, this canon allows the Court to import statutory declarations about the legal

effect of expungement into Section 22-5-920. *See Healthkeepers*, 642 F.3d at 472 ("[A]pplying different definitions to a single term of art within this one statute would be both cumbersome and illogical.").

In five different provisions throughout the South Carolina Code, the General Assembly has explained that the effect of expungement "is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody." S.C. Code §§ 63-19-2050, 17-22-150, 17-22-1010, 44-53-450, 16-17-530. There is no reason to infer that when the legislature authorized expungement for Youthful Offenders in 2003, they intended to offer something *less* than the full expungement relief already authorized in parallel expungement provisions. As such, the legal effect of Young's expungement must be construed as restoring him to the status he occupied before his conviction—which plainly does not include registering as a sexual offender.

As discussed above, there are judicial and executive declarations about expungement that buttress Petitioner's view. The court of appeals, for

example, has explained that the purpose of expungement is to offer a "fresh start, free from the stigma of a criminal conviction." *Joseph*, 491 S.E.2d at 279. Likewise, the Attorney General's Office has publicly maintained that South Carolina expungements serve the basic purpose of, "assisting an ex-offender to overcome the stigma of a criminal record." S.C.A.G. Opinion, 2013 WL 6009577 (Oct. 29, 2013). Finally, Governor McMaster's Veto Letter construes expungements as having the "practical effect of *erasing* large categories of criminal records." Veto Letter, *supra*.

In view of these statements, it would be absurd to conclude—as did the appeals court below—that expungement does not offer relief from SORA. Being placed on an online sex offender registry is one of the most destructive and stigmatizing weapons in the state's arsenal. *See generally* Kristine L. Gallardo, *Taming the Internet Pitchfork Mob: Online Public Shaming, the Viral Media Age, and the Communications Decency Act*, 19 Vand. J. Ent. & Tech. L. 721, 725 (2017) ("While the use of stockades in town squares to shame antisocial behavior is a relic of the past, the use of public

shaming techniques has evolved and made a fierce comeback in the digital age."). As courts throughout the nation have noted, sex offender registries are responsible for causing registrants profound ignominy and social ostracism. *See Smith v. Doe*, 538 U.S. 84, 99, 123 S.Ct. 1140, 1150, 155 L.Ed.2d 164 (2003) (upholding Alaska Act despite the "social ostracism" caused by publication); *Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016) (overturning Michigan Registry Act). Indeed, the consequences of publication are so severe that many judges and justices have favorably compared sex offender registration and notification schemes to colonial shaming and banishment. *See*, *e.g.*, *Smith*, 538 U.S. at 116 (Ginsburg, J., dissenting); *Doe v. State*, 111 A.3d 1077, 1097 (N.H. 2015); *also see* Frenzel, *et al.*, *Understanding collateral consequences of registry laws: An examination of the perceptions of sex offender registrants*, 11 Just. Pol'y J., no. 2, Fall 2014, at *11 (finding that 41.8% registrants reported being harassed due to registry, 20.7% received harassing mail/flyers/notes, 13.6% reported being physically attacked).

The purposes of SORA and Section 22-5-920 are irreconcilable. An

offender's obligations under SORA flow from his criminal conviction alone. Conversely, an expungement is designed help an individual "overcome the stigma" of his record by "erasing" it and "restoring" him to his pre-arrest legal status. There is simply no room for both to be true. Just as in *Edwards*, an order of expungement *necessarily* contains relief from registration and publication under SORA.

C. Under the traditional canons of statutory interpretation, Section 22-5-920 prevails over any contrary provisions in SORA.

In resolving the conflict between SORA and Section 22-5-920, the Fourth Circuit's opinion in *United States v. Under Seal*, 709 F.3d 257 (4th Cir. 2013) provides a useful framework. There, like here, public release of certain individuals' criminal records was mandated under one statute yet prohibited by another. Specifically, the conflict was between the registration and notification requirements of the federal Sex Offender and Notification Act ("SORNA") and the contrary the confidentiality provisions contained in the Federal Juvenile Delinquency Act ("FJDA"). *Id.*

at 259-61.

The battle of contrary provisions in *Under Seal* was strikingly similar to the conflict here. SORNA is the federal equivalent of SORA, and is animated by the same purposes and imposes many of the same obligations. Likewise, the FJDA was designed—much like Section 22-5-920—to help offenders "avoid the stigma of a prior criminal conviction." *Id.* at 261 (quoting *United States v. Robinson*, 404 F.3d 850, 858 (4th Cir. 2005)). To that end, the FJDA, like Section 22-5-920, prohibits public release of many records related to juvenile arrests and adjudications. *Id.*

In resolving the dispute, the Fourth Circuit first noted that "[b]ecause it is clear that the government's public release of juvenile records authorized by SORNA would be prohibited under the FJDA, … we agree … that the two statutes conflict." *Id.* at 262. Because the conflict could not be reconciled by reliance on the text alone, the court resorted to the canons of statutory interpretation. So too here.

1. **The legislature enacted Section 22-5-920 with knowledge that it was abrogating SORA for the small class of offenders that were eligible for expungement.**

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When the text is not clear, courts may rely on the legislative history to discover the statute's intent.

On this point, the court in *Under Seal* found it persuasive that Congress, in passing SORNA, explicitly "recognized the competing interests of juvenile confidentiality and public safety," and, in full view of that tension, affirmatively elected to apply SORNA to juvenile offenders. *Id.* at 262 ("Congress was aware that it was limiting protections under the FJDA by applying SORNA to certain juvenile delinquents, and clearly intended to do so.") (citing 42 U.S.C. § 16911(8) (defining a limited category of juvenile offenders under SORNA)).

Unlike in *Under Seal*, SORA and Section 22-5-920 do not explicitly reference each other. As to SORA, this is to be expected because when

SORA was enacted in 1994, there were no expungable sexual offenses. The text of Section 22-5-920 is slightly more helpful, though not dispositive, because while it does not explicitly reference SORA, it does express a clear intent to reign supreme over public disclosure required by "*any other* provision of law." *See* Part I(A).

But perhaps the best evidence that Section 22-5-920 intentionally abrogated SORA for this limited class of eligible offenders is that the General Assembly later withdrew that relief. As the appeals court rightly noted, the General Assembly's 2018 bill, which amended Section 22-5-920 to *exclude* convictions for "an offense for which the individual is required to register … [on] the South Carolina Sex Offender Registry," "*changed* rather than clarified" the law. *Young*, at 560 (emphasis added); 2018 Act No. 254; S.C. Code § 22-5-920(B)(2)(d) (2018). The only logical way to construe this amendment is by concluding that the prior version of the statute indeed granted relief from SORA. Otherwise, the amendment was meaningless. SORA undermines, to the greatest degree imaginable, every single benefit

offered by expungement. If expungement of a SORA-triggering offense is truly as impotent as Respondents assert, there was no reason whatsoever for the legislature to *change* Section 22-5-920 to exclude sex offenses.

2. Section 22-5-920 prevails as the more recent statute.

When the legislature passes a new statute, it is presumed to be aware of existing statutes that have overlapping or contradictory requirements. *Young*, 431 S.C. at 557-58 (citing *Harrison v. Casey*, 3 S.C.L. 390, 391 (1804)). The interpretive canon *leges posteriores priores contrarias abrogant* flows from this presumption, and holds that the more recent of two conflicting statutes must prevail. *Hale v. Gaines,* 63 U.S. 144, 148–49, 22 How. 144, 16 L.Ed. 264 (1859); *also see Watt v. Alaska*, 451 U.S. 259, 285, 101 S.Ct. 1673, 68 L.Ed.2d 80 (1981) (Stewart, J. dissenting) ("If two inconsistent acts be passed at different times, the last ... is to be obeyed; and if obedience cannot be observed without derogating from the first, it is the first which must give way.").

In *Under Seal*, the Fourth Circuit held that this canon required that

SORNA—as the later statute—be given superiority over FJDA. 709 F.3d at 262 n.2 ("We further note that there is an additional ground for deciding that SORNA is the controlling statute: *leges posteriores priores contrarias abrogant*—the rule that the more recent of two conflicting statutes shall prevail."). So too here. As discussed throughout, the General Assembly passed Section 22-5-920 nine years after the enactment of SORA. Therefore, by plain application of this canon, Section 22-5-920 must control wherever the two statutes conflict.

3. Section 22-5-920 prevails as the more specific statute.

It is a commonplace of statutory construction that the specific governs the general. *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929 (2017); *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). Under this canon, a specific statute relating to a specific subject is regarded as an exception to, and will prevail over, a general statute relating to a broad subject.

Applying this, the Fourth Circuit in *Under Seal* reasoned that SORNA

controlled as a more specific statute than FJDA because it "carves out a narrow category of juvenile delinquents who must disclose their status by registering as a sex offender," thereby disturbing the general confidentiality protections that apply to all juvenile offenders. *Id.* at 262 (citing 42 U.S.C. § 16911(8) (identifying juvenile offenders older than 14 years old as deserving of special treatment)).

Here, Section 22-5-920 is the more specific statute. Unlike its federal counterpart, SORA does not contain any specific provision directed at Youthful Offenders. Instead, as this Court has recognized, SORA applies indiscriminately to all residents, regardless of age, who have been convicted of a qualifying sex offense. *See In Interest of Justin B.*, 419 S.C. 575, 585-86, 799 S.E.2d 675, 680 (2017) (highlighting that SORA applies to "[a]ny person, regardless of age").

By comparison, Section 22-5-920 is far more specific with respect to both the type of offender and type of offense that qualifies for expungement. From the already limited category of individuals "convicted as a Youthful

Offender," Section 22-5-920 carves out an even smaller category as eligible for special legislative relief from the stigma and notoriety associated with their prior offense. To obtain an expungement under the relevant version of Section 22-5-920, a petitioning offender must show that the conviction to be expunged: (1) was imposed under the Youthful Offender Act, (2) was a first offense, (3) was not a violent crime, (4) was not an offense involving the operation of a motor vehicle, (5) was not a firearm offense as provided for in Section 16-25-30, (6) that more than five years has elapsed since the completion of his/her sentence, and (7) that he/she has not had any other conviction during that five-year period. S.C. Code § 22-5-920(B)(1)-(3) (2016).

In 1994, the General Assembly passed a law creating a registration and public notification scheme that applied to "any person, regardless of age." Nine years later, it created a pathway to restoring an individual to the legal status he occupied before a conviction for a tiny subset of individuals that may otherwise be governed by SORA. This is precisely the circumstance in

which the "ancient interpretive principle," *generalia specialibus non derogant*, applies. *Nitro-Lift Tech., LLC v. Howard*, 568 U.S. 17, 21, 133 S.Ct. 500, 504 (2012). Therefore, given the hyper-limited nature of Section 22-5-920, it must be given the nod as the more "specific" statute over the general proclamation that SORA governs all sex offenders.

4. Unlike SORA, Section 22-5-920 is a remedial statute that must be liberally construed to effectuate its purpose.

Finally, as the state Attorney General has correctly asserted, South Carolina's expungement regime is remedial in nature. S.C.A.G. Opinion, 2013 WL 6009577 (Oct. 29, 2013) ("[T]he purpose of expungement … is remedial[.]"); *also see Wiesart v. Stewart*, 665 S.E.2d 187, 188 (S.C. Ct. App. 2008) ("A statute is remedial … when it creates new remedies for existing rights or enlarges rights of persons under disability."). By contrast, SORA is not a remedial scheme. *Edwards*, 395 S.C. at 580 (holding that SORA "do[es] not create a new right, but instead impose[s] an obligation").

Because Section 22-5-920 is part of a remedial scheme, this Court must construe it liberally to ensure that it can accomplish its purpose. *South*

Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 213, 241 S.E.2d 563, 564 (1978) ("A remedial statute should be liberally construed in order to effectuate its purpose."); *Spencer v. Barnwell County Hosp*., 314 S.C. 405, 408, 444 S.E.2d 538, 540 (Ct. App. 1994) ("In considering a remedial act designed to protect a class of persons or the public at large, the courts liberally construe the act to carry out its purposes.").

As discussed above, SORA *amplifies* the social stigma and deleterious employment consequences ordinarily associated with a criminal conviction. These are precisely the consequences sought to be remedied by the legislature by creating a pathway to expungement for a limited class of citizens. To hold that, notwithstanding the purpose of expungement, that a person must register as a sex offender on the basis of an expunged conviction is contrary to the purpose of the law and would defy the liberal construction ordinarily owed to a remedial statute.

II. At a minimum, a lawful expungement under Section 22-5-920 precludes SLED from publishing Young on the public Registry.

"The goal of statutory construction is to harmonize conflicting statutes

whenever possible." *Hodges*, 341 S.C. at 91. In accordance with this principle, *amici curiae* argue that even if the Court concludes that Section 22-5-920 does not abolish Young's *registration* obligations, it must nevertheless be construed as abrogating SLED's authority to *publish* Young on the public Registry.[3] Specifically, *amici* argue that the text of Section 22-5-920—that prohibits the public disclosure of any expunged record "under … *any other provision of law*"—can be harmonized with SORA by prohibiting SLED from publicly disclosing Young's registration status.

As discussed above, the stated purpose of the Registry Act is to promote South Carolina's "fundamental right … to provide for the public health, welfare, and safety of its citizens," by ensuring that law enforcement has access to accurate and up-to-date information about sexual offenders "who live within the law enforcement agency's jurisdiction." S.C. Code § 23-3-

[3] The Court of Appeals' opinion did not contain an explicit ruling on this issue. *See Young*, 431 S.C. at 560 ("We therefore hold the expungement of Young's Lewd Act with a minor conviction does not affect his *registration* responsibilities under SORA.") (emphasis added).

400. By requiring continued registration without engaging in the additional step of public notification, SLED can largely accomplish the purpose of SORA without violating the explicit disclosure prohibition contained in Section 22-5-920(C).

In evaluating the tension between the text of Section 22-5-920 and SORA, it is SORA's public notification scheme that sits in starkest conflict with expungement. *Compare* S.C. Code § 22-5-920(C) (prohibiting public disclosure under *any* provision of law) *with* S.C. Code § 23-3-490 (making an offender's name, conviction, and other identifying information "open to public inspection, … [by] use of computerized or electronic transmission."). Moreover, it is SLED's publication of Young's status on the Registry that most severely undermines the essential promises of expungement. *See* Frenzel, *supra*, (finding that among those surveyed, 49.9% had lost employment due to the Registry). Finally, unlike its detailed registration requirements, SORA assigns SLED with the general task of developing and implementing a public notification scheme. In accordance with the canons

discussed above, this general requirement of disclosure must yield to the more narrowly-drawn prohibition on public disclosure of expunged records.

It is also persuasive that this solution finds credible support in the text of SORA. Section 23-3-490, which governs "public inspection of the offender registry," already recognizes that, in certain circumstances, the balance of interests requires registration *without* publication. *In re Ronnie A.*, 585 S.E.2d 311, 312 (S.C. 2003) (finding that SORA did not inflict "undue harm" on the juvenile's reputation because, due to his age, his information was not made public). Specifically, SORA limits public disclosure of the name and other registration information about children under the age of 12. *See* S.C. Code § 23-3-490(D)(3). In so doing, the legislature demonstrated that the alternative relief proposed by *amici* is a viable and administrable solution that balances the state's interest in tracking the whereabouts of sexual offenders whilst honoring competing interests in limiting disclosure of stigmatizing information.

CONCLUSION

WHEREFORE, on the grounds discussed above, *amici curiae* respectfully urge the Court to grant Petitioner's Writ of Certiorari and hold that Young's lawful order of expungement necessarily releases him from registration and publication under SORA.

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Respectfully submitted,

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