SC95049

IN THE SUPREME COURT OF MISSOURI

IN THE INTEREST OF S.C., a minor,
Appellant,

vs.

JUVENILE OFFICER,
Respondent,

and

MISSOURI ATTORNEY GENERAL,
Intervenor.

Appeal from the Circuit Court of St. Louis City, Missouri
The Honorable David C. Mason, Circuit Judge

BRIEF OF INTERVENOR MISSOURI ATTORNEY GENERAL

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STATEMENT OF FACTS

The Missouri Attorney General, pursuant to Supreme Court Rule 84.04(f), provides the following statement of relevant facts. On appeal from the juvenile court, as in other appeals, courts "view the evidence and reasonable inferences therefrom in the light most favorable to the judgment." *In re M.N.J.*, 291 S.W.3d 306, 311 (Mo. App. W.D. 2009) citing *In the Interest of M.R.F.*, 907 S.W.2d 787, 789 (Mo. App. S.D. 1995).

A. The Sexual Assault.

The juvenile in this case, S.C., was a teenager in March of 2014 when he sexually assaulted S.E.C., his 41-year old victim. (Tr. 36). He was "several inches taller" and "substantial[ly]" "heavier and bigger" than the victim when he assaulted her. (Tr. 39). And he was also the adopted brother of the victim. (Tr. 37).

In the evening of March 11, 2014, S.C. was dropped off at the victim's home. (Tr. 40). After going to the bathroom, S.C. approached the victim while she sat on an ottoman. (Tr. 42). He put both hands around her throat and "started choking [her]." (Tr. 42). Struggling to breath she was able to utter: "what are you doing? I'm your sister. What are you doing? You're killing me." (Tr. 43). In response, S.C. said "get up bitch." (Tr. 43).

S.C. attempted to pull the victim to her feet, but she "ended up on [her] knees on the floor." (Tr. 44). From there, she "made it to the couch," at which

time S.C. "sat on [her] back," making it so she "couldn't breathe again." (Tr. 44). All this time S.C. "kept saying get up bitch." (Tr. 44). The victim was eventually able to escape S.C.'s hold and get to the door, but "when [she] tried to get out he threw all his weight up against [her] and crushed [her] up against the door." (Tr. 44). All she could think of then was "am I hemorrhaging." (Tr. 44).

As S.C. tried to lock the front door, the victim ran to the back of the house. (Tr. 44-45). He caught her in the dining room, "picked [her] up and slammed [her] into the table and the wall." (Tr. 45). She grabbed a wrench, but then thought she did not have the strength to repel S.C. with it and that he would "beat [her] to death with it." (Tr. 45). So she decided to try to make it to her bedroom where she had a gun. (Tr. 45). S.C. caught her in the hallway and "crushed" her against the bedroom door. (Tr. 45). S.C. then said to her "get on the bed bitch." (Tr. 45). But she determined "I ain't getting on that bed. (Witness crying)." (Tr. 45).

Unable to make it to her gun, the victim attempted to get back to the kitchen to go out the back door. (Tr. 46). She made it to the kitchen, but S.C. "cornered" her there. She then testified as follows:

> I couldn't fight no more. (Witness crying). He told me to pull down my pants. I said no you don't want to do

> this. Please don't do this to me. Whatever you want I'll give it to you. Don't do this to me.

(Tr. 46). Asked what happened next, the witness testified:

> [He] [b]ent me over the chair, pulled my pants down. And I thought about my window being open in the living room and I told him, I said no, not here. Because I thought if I could get in my living room maybe somebody would see him and help me. (Witness crying). He agreed to let me walk to my living room and told me to bend over the dining room chair.

(Tr. 46).

S.C. then pulled down the victim's pants and underwear and bent her over the dining room chair. (Tr. 46). "He took down his pants and [she] could feel his penis on the top of [her] bottom. And I just prayed." (Tr. 46). He then "[humped it. Hump humped me." (Tr. 46). After a period of time the victim asked "are you finished? He said no. He kept humping me." (Tr. 47). Asked at trial what she thought S.C. was trying to do, the victim responded "[r]ape me." (Tr. 47).

When S.C. was finally done with the sexual assault, the victim was able to escape, shoeless and in her pajamas, to a neighbor's home, where the police

were called. (Tr. 48-50). The victim had scratches and bruising on her chest, thighs, arms, and neck. (Tr. 55-56). She was taken to the hospital to undergo tests and exams, including a sexual assault examination. (Tr. 54-55, 82). The results of the examination and testing showed seminal fluid from swabs of the victim's lower back-buttocks, underwear, and vaginal area. (Tr. 106). DNA testing was completed and found to be consistent with S.C.'s DNA. (Tr. 117).

In her impact statement, the victim testified that "[s]ince all of this happened I'm not the same person. It's affected every aspect of my life. I'm struggling to cope mentally." (Tr. 129).

B. Juvenile Court Proceedings.

Within days of the sexual assault the juvenile officer for the Twenty-Second Judicial Circuit filed a petition with the juvenile court under § 211.031.1(3), followed by an amended petition. (LF 40-41, 42-43). The juvenile officer alleged that S.C., "in violation of Sections 564.011 and 566.030, committed the felony offense of ATTEMPT [sic] RAPE IN THE FIRST DEGREE" by "attempt[ing] to have sexual intercourse with S.[E.]C. by the use of forcible compulsion." (LF 42-43). The juvenile officer further alleged that S.C. "assaulted S.[E.]C. and attempted to insert his penis in her vagina," and that "such conduct was a substantial step toward the

commission of the offense of RAPE FIRST DEGREE, and was done for the purpose of committing such offense." (LF 43).

For relief, the juvenile officer sought "such orders, judgments and decrees as may be determined necessary to the best interest of the Juvenile, including orders addressing restitution, reparation or community service where appropriate." (LF 43). There was no request for a determination as to whether S.C. was subject to sex offender registration or any request for a determination under § 211.425 – requiring that certain juveniles register under the adult registry. (LF 40-43).

The juvenile court held a hearing to determine whether to certify S.C. to the criminal court under § 211.071, but determined not to certify. (Tr. 8–23; LF 47-50). S.C. filed a motion with the juvenile court requesting a psychiatric evaluation in order to determine his competency to stand trial. (LF 51-52). The juvenile court found S.C. competent to proceed, concluding that S.C. "possesses the capacity to understand the delinquency proceedings or to assist in his own defense . . . [and] that the juvenile possesses a rational as well as factual understanding of the proceedings against the juvenile." (LF 58). The juvenile court further found that S.C. is "capable of understanding the potential results of the charges." (Tr. 27).

Several months after the petition was filed, S.C. filed a motion asking that the juvenile court declare unconstitutional Missouri's Sex Offender

Registration Act (SORA) as well as the federal Sex Offender Registration and Notification Act (SORNA). (LF 59-62). Specifically, S.C asked the juvenile court to "find that the registration requirements for juveniles and adults pursuant to Sections 211.425 and 580.400 [sic] through 425 RSMo and SORNA are unconstitutional as applied to juveniles in general and the juvenile [S.C.] himself in particular." (LF 61).

At the outset of the adjudication hearing, S.C. "advised the [c]ourt of his motion to declare the Sex Offender Registry unconstitutional." (Tr. 33). The court took the matter under advisement, stating that "[i]t wouldn't necessarily apply if indeed the defense motion would be granted. It just has to do with the subsequent ramification." (Tr. 34). Without ruling on the motion, the juvenile court adjudicated S.C. a delinquent for attempted rape in the first degree. (LF 63-66).

In the course of the adjudication hearing, the juvenile officer produced several witnesses and exhibits, including the victim and pictures of the victim (Tr. 36-75, Exs. 1-9), the police detective who investigated the case (Tr. 75-85), the neighbors who took the victim into their home after S.C. attacked her (Tr. 86-101), and two employees of the St. Louis Police Department's crime laboratory (Tr. 101-20), along with additional records and tests (Ex. 10-12). S.C. called no witnesses and provided no exhibits. (Tr. 121).

The juvenile court then held a dispositional hearing. (Tr. 131-82). During that hearing, S.C. asked whether the court had ruled on his motion regarding the constitutionality of the juvenile and adult sex offender registries. (Tr. 144). The juvenile court indicated that the matter was under consideration. (Tr. 145). The juvenile court proceeded to take evidence regarding the care and treatment of S.C. The testimony included evidence regarding different types of facilities or treatment that would be appropriate. (Tr. 155-62). An option was suggested that S.C. be housed with other young people for treatment, and the testimony was that the possibility of S.C. "victimizing young other people would be great." (Tr. 162).

Following the disposition hearing, the juvenile court entered a form Order and Judgment of Disposition. (LF 67-72). The juvenile court checked the box for commitment of S.C. to the "care, custody and control" of the Division of Youth Services. (LF 68). The Order and Judgment went on to provide additional boxes under the heading "Further Orders." (LF 71). The juvenile court checked the following boxes:

> [X] The Juvenile shall comply with all requirements of sex offender registration pursuant to Section 211.425 RSMo., including:
>
> [X] registering on the juvenile sex offender registry or
>
> [ ] registering on the adult sex offender registry.

(LF 71). S.C. has never registered on the adult sex offender registry.

In his notice of appeal, S.C. does not challenge his competency determination; he does not challenge his adjudication of delinquency for committing the offense of attempted rape in the first degree; and he does not challenge the dispositional ruling committing him to the care, custody, and control of the Division of Youth Services. Instead, S.C. alleges "that the Court denied the juvenile's motion to declare the sex offender registration requirement to be unconstitutional as applied to juveniles in general and as to this juvenile in particular." (LF 78).

On appeal, S.C. argues only that requiring certain juveniles to register under the adult registry, pursuant to § 211.425 and § 589.400.1(6),[1/] is unconstitutional.

[1/] All statutory references are to the 2013 Cumulative Supplement of the Revised Statutes of Missouri, unless otherwise noted.

SUMMARY OF ARGUMENT

The sex offender in this case, S.C., seeks to challenge a decision that the juvenile court did not make; indeed, could not make. And even if he could challenge the supposed decision of the juvenile court and Missouri law requiring certain juvenile sex offenders to register on the adult registry, his constitutional claims fail.

Before considering the merits of the constitutional claims in this case, basic issues of justiciability must be reviewed, including standing and ripeness. After all, a party must be aggrieved by a decision in order to appeal, *see Campbell v. Dir. of Revenue*, 297 S.W.3d 656, 658 (Mo. App. W.D. 2009), and the dispute must be developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict, and to grant specific relief. *Missouri Alliance for Retired Americans v. Dep't of Labor & Indus. Relations*, 277 S.W.3d 670, 677 (Mo. 2009). Here, there is neither standing to appeal nor is the matter ripe.

The juvenile court did not order S.C. to register as a sex offender on Missouri's adult registry. In fact, the juvenile court did exactly the opposite. Given the choice on a form order to require either registration on the juvenile registry or registration on the adult registry, the juvenile court only marked the box for the juvenile registry. The juvenile court also never indicated orally or in writing that S.C. was required to register on the adult registry.

As such, how can S.C. challenge a decision that the juvenile court never made? He cannot.

Moreover, a decision requiring S.C. to register on the adult registry is a decision or disposition that the juvenile court is not authorized to make. By statute, a juvenile court is authorized to make a disposition regarding the care and treatment of juveniles found to be delinquent. There is no provision, however, allowing the juvenile court to determine whether a juvenile is required to register on the adult registry; and, of course, the juvenile court did not do so in this case. S.C. has also not registered on the adult registry, and has not been told to do so by any official.

Ultimately, S.C. may be required to register on the adult registry because he committed a serious sexual offense, but that is not a decision for the juvenile court to make. It is a collateral consequence of the disposition or judgment, *see State ex rel. Kauble v. Hartenbach*, 216 S.W.3d 158, 161 (Mo. 2007), not a part of the disposition or judgment.

Finally, S.C.'s constitutional claims fail on the merits. Courts have repeatedly rejected Due Process and cruel and unusual punishment challenges to sex offender registration requirements. *See, e.g., Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003); *Doe v. Phillips*, 194 S.W.3d 833 (Mo. 2006). Indeed, courts have addressed these issues with respect to juvenile registration requirements and have rejected the claims.

Federal law not only requires juveniles to register, but requires states to do so in order to be in substantial compliance with federal law. Considering a virtually identical provision, the U.S. Court of Appeals for the Ninth Circuit held that the provision does not violate the Due Process Clause, but instead serves a legitimate nonpunitive purpose. *United States v. Juvenile Male*, 670 F.3d 999 (9th Cir. 2012); *see also State v. Eighth Judicial Dist. Court & Logan D.*, 306 P.3d 369 (Nev. 2013).

The U.S. Court of Appeals for the Fourth Circuit, in turn, upheld the federal law requiring juvenile registration against a challenge that the law constituted cruel and unusual punishment. *United States v. Under Seal*, 709 F.3d 257 (4th Cir. 2013). Again, the federal law was determined to be "a non-punitive, civil regulatory scheme, both in purpose and effect." *Id.* at 263. So it is in Missouri. Therefore, the constitutional claims fail in this case.

ARGUMENT

Standard of Review

"An appellate court reviews juvenile proceedings 'like any other court-tried case, *i.e.*, the judgment will not be disturbed unless it is against the weight of the evidence or it erroneously declares or erroneously applies the law.' " *N.R.C. v. Juvenile Officer*, 276 S.W.3d 883, 886 (Mo. App. W.D. 2009) (quoting *N.J.K. v. Juvenile Officer*, 139 S.W.3d 250, 259 (Mo. App. W.D. 2004)); *see also Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976). A juvenile court's interpretation of statutes is subject to *de novo* review. *K.H. v. State*, 403 S.W.3d 720, 722 (Mo. App. W.D. 2013).

Here, there is no argument that the juvenile court's decision was against the weight of the evidence. Instead, S.C. argues that the requirements in § 211.425 and § 589.400.1(6) – that certain juveniles register under the adult registry – are unconstitutional. But the juvenile court did not decide whether the requirements were constitutional. Nor did the juvenile court require S.C. to register on the adult registry. And even if the juvenile court had required S.C. to register on the adult registry (which it is not authorized to do), such a requirement is constitutional.

I. Either There is No Standing to Appeal the Points Raised in This Appeal, or S.C.'s Claims are Not Ripe, Because the Juvenile Court Did Not Decide or Require S.C. to Register on the Adult Sex Offender Registry, Nor is S.C. Actually Registering on the Adult Registry – Responding to Appellant's Points I and II.

This appeal presents unique threshold issues. For example, S.C. purports to challenge a decision that the juvenile court did not make – regarding the constitutionality of a requirement under § 211.425 and § 589.400.1(6) that certain juvenile offenders register on the adult sex offender registry. Indeed, it appears that the juvenile court decided – in favor of S.C. – that S.C. was only required to register on the juvenile registry (a decision that was not appealed).

One of the potential collateral consequences of the juvenile court's adjudication of S.C. as a delinquent for committing a serious sex offense is that he must register on the adult registry. *See Ramsey v. State*, 182 S.W.3d 655, 661 (Mo. App. E.D. 2005) (holding that sex offender registration requirements are collateral consequence and not direct consequences); *see also State ex rel. Kauble*, 216 S.W.3d at 161 (noting that registration on the sex offender registry is a collateral consequence). But is the appeal of a

decision finding a juvenile delinquent the appropriate time and vehicle to challenge the potential collateral consequences of that decision? No.

A. There is No Standing to Appeal Because S.C. is Not Aggrieved by the Judgment.

"The question of whether a party has standing is a threshold issue that this Court reviews *de novo." State ex rel. Kansas City Power & Light Co. v. McBeth,* 322 S.W.3d 525, 529 (Mo. 2010). It cannot be waived, *CACH, LLC v. Askew*, 358 S.W.3d 58, 61 (Mo. 2012), and "parties seeking relief 'bear the burden of establishing that they have standing,'" *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. 2013).

"A party who has not been aggrieved by a judgment has no right or standing to appeal." *Campbell*, 297 S.W.3d at 658. "Parties may be aggrieved as to some issues but not to others." *Harrell v. Missouri Dep't of Corr.*, 207 S.W.3d 690, 692 (Mo. App. W.D. 2006). In order to appeal a particular issue, however, a party must be aggrieved by the court's decision on that issue. *Id.* at 692–93. *See also Campbell*, 297 S.W.3d at 659 ("Only prejudicial error is reversible error.").

In this appeal, S.C. has failed to establish that the juvenile court made a decision that was adverse to him. The supposed decision purporting to require S.C. to register as an adult sex offender is not supported by the record. On the contrary, the only possible decision on the matter shown by

the record indicates that the juvenile court required S.C. to register as a *juvenile* sex offender. (LF 71). And S.C. is not currently registering on the adult registry. Because S.C. has not established that the juvenile court has attempted to require him to register as an adult sex offender (even if it could), and because he is not currently registered as an adult sex offender, he lacks standing to challenge the constitutionality of such a requirement.

In his opening brief, S.C. states that "[a] motion to declare the sexual offender registry unconstitutional as applied to juveniles was filed by defense counsel on August 21, 2014." Appellant's Brief, p. 15. That is true. Furthermore, S.C. requested a ruling on his motion at the outset of the adjudication hearing, to which the juvenile court responded by stating that it would take the matter under advisement. (Tr. 33). S.C. again requested a ruling on his motion at the dispositional hearing, and the court again deferred. (Tr. 144-45).

S.C. now states in his opening brief that, "[a]t the conclusion of the hearing, the judge . . . ordered him to register as a sexual offender pursuant to Section 211.425, effectively denying the motion filed by defense counsel to declare the registry unconstitutional." Appellant's Brief, pp. 20–21. That is not accurate. S.C. cites page 181 of the transcript as support for this statement, but nowhere on that page or in the remainder of the judge's closing remarks does the court purport to require S.C. to register as a sex

offender. (Tr. 179–82). S.C. also cites the dispositional ruling as support for this claim. Appellant's Brief, pp. 20–21.

The dispositional order and judgment does purport to require S.C. to register on the *juvenile* registry, but not on the *adult* registry. (LF 71). In fact, the ruling specifically omits inclusion of that latter requirement by leaving the box on the form corresponding to that requirement blank. (LF 71). Also, the form separates the boxes with the word "or," indicating that the juvenile court will choose either but not both. (LF 71). S.C.'s points on appeal challenge the constitutionality of the requirement, found at § 211.425.1 and § 589.400.1(6), that certain juveniles register on the adult registry. Appellant's Brief, pp. 24, 40. But S.C. has failed to establish that the juvenile court (or anyone else) required him to register on the adult registry.

As to the points raised in S.C.'s opening brief, he is not aggrieved by the juvenile court's judgment. Therefore, S.C. lacks standing to appeal the points.

B. A Challenge to a Collateral Consequence is Not Ripe on Direct Appeal.

Even if there were standing to appeal the decision in this case, S.C.'s claims are not ripe. The requirements of justiciability include a "controversy . . . ripe for judicial determination." *See Schweich*, 408 S.W.3d at 773. "A ripe controversy exists if the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a

conflict that is presently existing, and to grant specific relief of a conclusive character." *See Missouri Alliance for Retired Americans*, 277 S.W.3d at 677. "In the context of a constitutional challenge to a statute, a ripe controversy generally exists when the state attempts to enforce the statute." *Id.*

Here, the juvenile court lacks statutory authority to determine whether S.C. must register on the adult registry. Also, S.C. is not currently registered on the adult registry. And no law enforcement official or court with statutory authority has attempted to require such registration. For these reasons, S.C.'s constitutional challenges are not ripe.

1. The juvenile court lacks statutory authority to determine whether S.C. must register on the adult sex offender registry.

As recently stated by the Court of Appeals in *K.S.W. v. C.P.S.*, 454 S.W.3d 422, 426 (Mo. App. W.D. 2015), "[s]ections 211.171 and 211.181, generally, and Rules 124.06 and 124.07, more particularly, provide for bifurcated hearings to dispose of any petition alleging that a minor is in need of care and treatment by the court. These hearings are identified as an adjudication hearing and a dispositional hearing." *K.S.W.* further states that "[t]he purpose of the adjudication hearing is for the juvenile court to determine whether there exists sufficient evidence that the court should assume jurisdiction over the child," and that, if the court assumes

jurisdiction, "the court then moves to the dispositional phase." *Id.* "In that second hearing, the juvenile court must conduct a separate hearing to determine what disposition, if any, (*i.e.*, placement, treatment, and care) the court should order as being in the best interest of the child." *Id.*

After making a finding of delinquency, a juvenile court is statutorily empowered to make a dispositional decision. § 211.181.3. That decision, however, does not include whether to require a juvenile sex offender to register on the adult registry.[2/] *Id.* In a juvenile case, "[o]nce the trial court issues a judgment *that includes the disposition or treatment of the juvenile*, all the issues before the . . . court have been disposed[,] nothing has been left for future determination, and the judgment is final . . . ." *K.S.W.*, 454 S.W.3d at

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[2/] It is unclear why the juvenile court's *form* order and judgment of disposition includes a box for identifying those required to register on the adult registry, or the juvenile registry for that matter. A person is required to register based on their adjudication or conviction and not as part of the disposition or sentencing in the case. Even S.C. concedes that "[i]t is the juvenile adjudication that triggers the requirement." Appellant's Opposition to Motion to Dismiss Appeal, p. 4; *see id.* ("[H]e is automatically required by 211.425 and 589.400.1(6), R.S.Mo to register as an adult sex offender."); *id.* ("It was the conviction that required the registration.").

427 (emphasis in original). "[A]lthough a court may be a court of general jurisdiction, when it engages in the exercise of a special statutory power, the court is confined strictly to the authority given by the statute." *Missouri Soybean Ass'n. v. Missouri Clean Water Comm'n*, 102 S.W.3d 10, 22 (Mo. 2003).[3/]

Sensibly, the statutes contemplate a role for a juvenile court "having jurisdiction over a juvenile required to register as a *juvenile* sex offender." § 211.425.2 (emphasis added). Once adjudicated a delinquent for a qualifying sex offense, the juvenile office administers juvenile sex offender registration. *Id.* at .2-.5. And a juvenile required to register as a juvenile sex offender "is subject to disposition pursuant to this chapter [211]" for failure to do so. *Id.* at .4. The juvenile court, however, lacks statutory authority to hear and decide controversies concerning adult sex offender registration.

When a juvenile (who is fourteen or older) commits a very serious sex offense, § 211.425.1 and § 589.400.1(6) require that the juvenile register on

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[3/] *Missouri Soybean* characterized this limitation as one of "subject-matter jurisdiction." *Id.* This Court later overruled such characterizations in *J.C.W. ex rel. Webb v. Wyciskalla,* 275 S.W.3d 249 (Mo. 2009), *see In re Adoption of C.M.B.R.,* 332 S.W.3d 793, 811 (Mo. 2011), but the former case is cited here as speaking to statutory limitations.

the adult registry pursuant to §§ 589.400 *et seq*. Unlike Missouri's registration system for juvenile sex offenders, §§ 589.400-.425 do not provide a role for the juvenile court. Instead, these provisions give authority over the adult registry to the civil division of the circuit court. *See* § 589.400.7 ("Any person currently on the . . . registry for [certain listed criminal offenses] may file a petition in the civil division of the circuit court . . . for the removal of his or her name from the . . . registry . . . ."); § 589.400.8 (similarly permitting petitions to be filed "in the civil division of the circuit court" for removal of one's name from the adult registry in certain cases).

The adult registry is administered by the "chief law enforcement official" of the pertinent county or city, *see* § 589.400.2, § 589.402, and § 589.417.2, as well as by the Missouri State Highway Patrol, *see* § 43.650. This structure contrasts with the juvenile office's administration of the juvenile registry, per § 211.425. The placement of the laws themselves reiterates this division of labor. The legislature placed the juvenile registration statutes in chapter 211, which governs the juvenile courts. *See, e.g.,* H.B. 348 (1999) and S.B. 714, 758, 899, and 933 (2008). The adult registration statutes, however, were placed in chapter 589. *See, e.g.,* H.B. 883 (1997) and H.B. 62 (2009).

2. S.C. is not actually registering, nor has any official attempted to require registration.

As stated above, S.C. is not currently registered on the adult registry. The record does not show that any court has ordered S.C. to register on the adult registry. Nor does the record show that any law enforcement official has, pursuant to § 211.425 or §§ 589.400 *et seq*., attempted to require S.C. to register. The juvenile court in this case did not make such an order. And the juvenile court lacks statutory authority, in any event, to require S.C.'s registration on the adult registry. Accordingly, S.C.'s constitutional claims are not ripe.

If S.C.'s constitutional claims were ripe, the consequences could be significant. Juvenile and criminal matters involving sex offenses would likely result in additional litigation in those very matters as to the collateral consequences of any disposition. That should not be the case, and the question of registration should be resolved in a separate civil action, if necessary.

II. Missouri Law Requiring That Certain Juvenile Sex Offenders Register on the Adult Registry Does Not Violate Due Process or the Prohibition on Cruel and Unusual Punishment – Responding to Appellant's Points I and II.

Despite having never been required to register as a sex offender on Missouri's adult registry, and having never actually registered on the adult registry, S.C. argues that his potential requirement to do so is unconstitutional. He argues that Missouri's laws in § 211.425 and § 589.400.1(6) – which require certain juveniles who have committed serious sex offenses to register on the adult registry – violate the Due Process Clauses and the prohibitions on cruel and unusual punishment in the U.S. and Missouri constitutions.

Review of the constitutional validity of a statute is *de novo*. *Roe v. Replogle*, 408 S.W.3d 759, 763 (Mo. 2013). "A statute is presumed valid and will not be held unconstitutional unless it clearly contravenes a constitutional provision, and this Court resolves all doubt in favor of the statute's validity." *Id*. The party challenging the validity of a statute also "bears the burden of proving the statute[] clearly and undoubtedly violate[s] the constitution." *St. Louis Cnty. v. River Bend Estates Homeowners' Ass'n*, 408 S.W.3d 116, 135 (Mo. 2013). The constitutional claims in this case fail.

A. The Purposes of the Sex Offender Registry.

As this Court found in *Phillips*, 194 S.W.3d at 839-40, the "purpose of Missouri's Megan's Law, and of similar acts in other states, is to 'protect children from violence at the hands of sex offenders,' *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. 2000), and to respond to the known danger of recidivism among sex offenders." *Phillips*, 194 S.W.3d at 839-40 (citing *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003); *Smith v. Doe*, 538 U.S. 84, 103, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003)). It is not to punish, nor is registration part of sentencing.

Congress enacted the federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. §§ 16901–16962 (2006), instructing states to pass legislation setting up a sex offender registration system and requiring sex offenders to register. 42 U.S.C. §§ 16912–16913; 42 U.S.C. § 16901 (establishing a comprehensive national system for registration to "protect the public from sex offenders"). This includes registration of juvenile sex offenders. *See* 42 U.S.C. § 16911(8).

Missouri has established a sex offender registration system in compliance with federal law. As a consequence, sex offenders have an obligation to register in Missouri. Consistent with federal law, Missouri's registration system includes juvenile sex offenders. Most juvenile offenders, of course, register only with the juvenile office. *See* § 211.425. But there are

some juvenile offenders – the most serious – that are required to register on the adult registry. A juvenile is required to register on Missouri's adult registry if the juvenile:

- "is fourteen years of age or older at the time of the offense";
- "the offense adjudicated would be considered a felony under chapter 566 if committed by an adult"; and
- the offense "is equal to or more severe than aggravated sexual abuse under 18 U.S.C. Section 2241, including any attempt or conspiracy to commit such offense".

§ 211.425.1; *see also* § 589.400.1(6).

In addition to registration under Missouri law, sex offenders have an "independent, federally mandated registration" requirement in Missouri. *Doe v. Keathley*, 290 S.W.3d 719, 720 (Mo. 2009). This includes juvenile sex offenders. *See* 42 U.S.C. § 16911(8). Indeed, Missouri's juvenile sex offender registration criteria are virtually identical to federal law. A juvenile sex offender is required to register under federal law if the juvenile:

- "is 14 years of age or older at the time of the offense"; and

- "the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code [18 U.S.C. § 2241])".

42 U.S.C. § 16911(8). In accordance with nearly identical requirements, juveniles who have committed serious sex offenses are required to register under Missouri law and federal law. Receipt of federal funding is even contingent on Missouri's substantial compliance with this provision. *See* http://ojp.gov/smart/pdfs/factsheet_sorna_juvenile.pdf (U.S. Department of Justice Fact Sheet for juvenile sex offender registration).

B. The Requirement That Certain Juveniles Register on the Adult Registry Does Not Violate the Due Process Clauses of the U.S. or Missouri Constitutions.

"This Court has previously stated that Missouri's Due Process Clause 'parallels its federal counterpart, and in the past this Court has treated the state and federal Due Process Clauses as equivalent.'" *State ex rel. Houska v. Dickhaner*, 323 S.W.3d 29, 33, n.4 (Mo. 2010) (quoting *Jamison v. State, Dep't of Soc. Serv., Div. of Family Serv.*, 218 S.W.3d 399, 405 (Mo. 2007)). In the context of challenges to Missouri's sex offender registration laws, this Court has also interpreted Missouri's Due Process Clause "consistently with [its] interpretation under federal law." *Phillips*, 194 S.W.3d at 841; *see R.W. v.*

Sanders, 168 S.W.3d 65, 71 (Mo. 2005).

In his brief, S.C. "ha[s] identified no reason grounded either in the language of Missouri's 1945 Constitution or the history of its enactment to believe that its framers intended th[i]s[] clause[] to be interpreted more broadly than the nearly identical provision[] in the United States Constitution." *See Phillips*, 194 S.W.3d at 841. S.C. also "do[es] not separately analyze the Missouri due process clause." *See Jamison*, 218 S.W.3d at 405, n.7. Therefore, this Court should treat the Missouri Due Process Clause as equivalent to the U.S. Due Process Clause in this case.

1. There is no procedural due process claim.

This Court has held that the rights afforded criminal defendants who are subject to prosecution and conviction meet the procedural due process requirements for placement of adults on the registry. *R.W.*, 168 S.W.3d at 71–72 (citing *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003)) and *Phillips*, 194 S.W.3d at 842). In the context of delinquency, juveniles are constitutionally entitled to many of these same procedural rights. *See Application of Gault*, 387 U.S. 1 (1967). S.C. argues that the Due Process Clause entitles him to an "individualized assessment or review" regarding his "risk of recidivism" prior to being required to register on the adult registry. Appellant's Brief, p. 33. This argument, however, was made and rejected in *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003).

The individual challenging the state registration laws in *Connecticut Dep't of Pub. Safety* argued for a right to a hearing on the issue of whether he and others similarly situated were "likely to be currently dangerous." *Id.* at 6. In rejecting this approach, the U.S. Supreme Court observed that "the fact that respondent seeks to prove—that he is not currently dangerous—is of no consequence under Connecticut's Megan's Law. . . . [T]he law's requirements turn on an offender's conviction alone—a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest." *Id.* at 7. This Court has adhered to the U.S. Supreme Court's reasoning in evaluating this argument made against Missouri's Megan's Law. *Phillips*, 194 S.W.3d at 842. "[S]ince future dangerousness is irrelevant under Megan's Law, *procedural* due process principles do not require a hearing to determine whether a particular offender is likely to be dangerous." *Id.*

These holdings are fatal to a procedural due process challenge made against Missouri's Megan's Law. The law's application to certain juveniles has no impact on the correctness of these holdings. Whether the challenge to the law's validity under procedural due process principles is made by an adult or a juvenile, the point remains that placement on the registry turns on conviction or adjudication of delinquency for certain felony sex offenses. "Unless respondent can show that that substantive rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current

dangerousness is a bootless exercise." *Connecticut Dep't of Pub. Safety*, 538 U.S. at 7–8. S.C.'s procedural due process claim is, likewise, a bootless exercise in this case. *See also United States v. Juvenile Male*, 670 F.3d 999, 1013-14 (9th Cir. 2012) (similarly rejecting a procedural due process claim).

2. There is no substantive due process claim.

"Substantive due process principles require invalidation of a substantive rule of law if it impinges on liberty interests that 'are so fundamental that a State may not interfere with them, even with adequate procedural due process, unless the infringement is narrowly tailored to serve a compelling state interest.'" *Phillips*, 194 S.W.3d at 842 (quoting *Doe v. Miller*, 405 F.3d 700, 709 (8th Cir. 2005) (internal quotation marks omitted). "To be considered a 'fundamental' right protected by substantive due process, a right or liberty must be one that is 'objectively, deeply-rooted in the nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.'" *Phillips*, 194 S.W.3d at 842 (quoting *State ex rel. Nixon v. Powell*, 167 S.W.3d 702, 705 (Mo. 2005)).

If a law does not impinge on a "fundamental liberty right, it will withstand substantive due process scrutiny if 'rationally related to a legitimate state interest.'" *Phillips*, 194 S.W.3d at 844–45 (quoting *In re Marriage of Woodson*, 92 S.W.3d 780, 784 (Mo. 2003)). "Under that test, it

will be upheld 'if any state of facts reasonably may be conceived to justify it.'" *Phillips*, 194 S.W.3d at 845 (quoting *Mahoney v. Doerhoff Surgical Servs., Inc.*, 807 S.W.2d 503, 512 (Mo. 1991)).

S.C. argues that Missouri law mandating the registration of certain juveniles on the adult registry "imposes an adult penalty for a juvenile adjudication, conflicts with the purpose of the juvenile code, and removes the discretion of the juvenile judge during disposition." Appellant's Brief, p. 24. All of these claims fail.

The juvenile court held a hearing per § 211.071 to determine whether to certify S.C. to the criminal court (*i.e.* adults) in light of the charges brought by the juvenile officer. (LF 47–50). The juvenile court ultimately determined not to certify S.C., *id.*, but that decision was at the court's discretion and not a matter of constitutional obligation. § 211.071.1 (stating that, in certain instances such as S.C.'s case, "the court may . . . order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law").

Indeed, "[t]he creation of juvenile codes . . . is a relatively modern legislative development. The juvenile justice system that exists today certainly was not known when the Bill of Rights was adopted. At that time in our history, juvenile offenders were treated no differently from adult offenders . . . ." *See State v. Andrews*, 329 S.W.3d 369, 374 (Mo. 2010)

(internal citation omitted). The juvenile delinquency system results from a policy determination made by the legislature, not a constitutional mandate. The legislature retains the power to limit the applicability of that process (or aspects of it) when it sees fit. Certification is the most prominent example of this type of limit, but others certainly exist. *See, e.g.*, § 211.321.1 (removing confidentiality of juvenile court records in certain cases). The requirements of § 211.425.1 and § 589.400.1(6) represent simply another example of this type of limitation.

Because S.C. has failed to identify a fundamental right or interest impinged by the requirement that certain juveniles who commit serious sex offenses register on the adult registry, the law should be upheld so long as it is rationally related to a legitimate governmental interest. *Phillips*, 194 S.W.3d at 844–45. In *Phillips*, this Court found that the registry—as applied to individuals with qualifying criminal convictions or guilty pleas—met this standard. *Id*. at 845.

> Missouri has a legitimate interest in disseminating public information in the interest of safety and law enforcement efforts. *Smith* [*v. Doe*], 538 U.S. [84,] . . . 99, 101 [(2003)] . . . ("purpose and the principal effect of notification are to inform the public for its own safety"; "the State makes the facts underlying the

> offenses and the resulting convictions accessible so members of the public can take the precautions they deem necessary before dealing with the registrant").

Id. This Court also noted in *Phillips* that "[t]he safety of children is a legitimate state interest," and that "the purpose of Megan's Law is to 'protect children from violence at the hands of sex offenders.'" *Id*. (quoting *J.S. v. Beaird*, 28 S.W.3d at 876).

The interests articulated by this Court in *Phillips* remain valid when examined as justification for the requirements of § 211.425.1 and § 589.400.1(6). There is a rational basis for the legislature's determination that a juvenile who is fourteen or older, and who commits or attempts an act equivalent to a felony sex offense as or more severe than aggravated sexual abuse under federal law, poses a risk to public safety in general and children in particular which justifies registration on the adult registry. The risk posed by someone who, like S.C., has attempted to forcibly rape another, creates a sufficient basis, regardless of the victim's particular characteristics or the offender's circumstances, to mandate actions that will protect the public against the likelihood of similar future offenses.

In *United States v. Juvenile Male*, 670 F.3d 999 (9th Cir. 2012), the U.S. Court of Appeals for the Ninth Circuit upheld a virtually identical federal registration law over a substantive due process challenge brought by

juveniles found to be delinquent under federal law because of sex offenses. The court confronted application of SORNA to three juveniles who were fourteen or older at the time of their offenses and who each committed either an act "comparable to or more severe than aggravated sexual abuse (as described in [18 U.S.C. § 2241]), or . . . an attempt or conspiracy to commit such an offense." *Juvenile Male*, 670 F.3d at 1005. The federal law requires lifetime registration, "with the possibility of a reduced period of 25 years if the offender maintains a clean record." *Id.*

The court in *Juvenile Male* concluded that the challengers had failed to identify a fundamental right protected by substantive due process principles, and had "instead focus[ed] on whether the statute is penal in nature." *Id.* at 1012. The court then noted the very limited set of rights protected by substantive due process, and that "[n]one of these rights are, or could be, asserted by defendants in this case," *id.* Turning to the issue of rational basis, the court invoked its holding from *Doe v. Tandeske*, 361 F.3d 594 (9th Cir. 2004), where it determined that sex offender registration requirements imposed by Alaska and challenged by individuals convicted of qualifying offenses "serve 'a legitimate nonpunitive purpose of public safety, which is advanced by alerting the public to the risk of sex offenders in their community.'" *Juvenile Male*, 670 F.3d at 1012 (quoting *Tandeske*, 361 F.3d at 597). In light of the challengers' inability to invoke a fundamental right, the

court found these justifications for the law to be determinative of the substantive due process argument. *Juvenile Male*, 670 F.3d at 1013. The law was upheld. *Id*. at 1015.[4/]

In *State v. Eighth Judicial Dist. Court & Logan D.*, 306 P.3d 369 (Nev. 2013), the Supreme Court of Nevada upheld a state law requiring juveniles to register as sex offenders if they were found delinquent for having committed certain serious sexual offenses. The Nevada law classified "[j]uveniles adjudicated for sexual assault, battery with the intent to commit sexual assault, or an attempt or conspiracy to commit these offenses . . . as Tier III offenders." *Logan D.*, 306 P.3d at 374. Tier III offenders have registration requirements much like juveniles who must register on the adult registry in Missouri. *See id*. at 374–75.

The juvenile in *Logan D.* raised a substantive due process argument against the registration requirement. *Id*. at 377. The court rejected the argument. *Id*. In doing so, the court determined that the challenger had

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[4/] *See also Doe v. Michigan Dep't of State Police*, 490 F.3d 491 (6th Cir. 2007) (upholding Michigan's sex offender registration requirements against a substantive due process challenge brought by individuals seventeen and older at the time of their acts who were assigned "youthful trainee" status after pleading guilty to qualifying crimes).

"fail[ed] to demonstrate that [the statutory registration requirement] implicates a fundamental right." *Id.* at 378. The court also held that the law "easily passes rational basis review," *id.* at 375, citing such justifications as protection of the public ("unquestionably a legitimate government interest"), *id.* at 376, and the conclusion that "once a child reaches the age of 14, he or she commits a sex offense with knowledge that it is wrong and therefore poses a greater risk to the public than a younger child"), *id.*; *see also Helman v. State*, 784 A.2d 1058 (Del. 2001) (upholding the constitutionality of a similar law requiring tiered registration of juvenile delinquents).

S.C. cites *In re J.B.*, 107 A.3d 1 (Pa. 2014), and *In re C.P.*, 967 N.E.2d 729 (Ohio 2012), in support of his argument. Neither case provides support. In *J.B.*, the Supreme Court of Pennsylvania held that the state's sex offender registration and notification act as applied to juvenile delinquents violated those juveniles' "due process rights through the use of an irrebuttable presumption." *Id.* at 2. S.C. did not include this "irrebuttable presumption" challenge in his point on appeal, Appellant's Brief, p. 24, and has therefore failed to preserve this argument. *See* Rule 84.04(d). Even if he had preserved it, the argument holds little force. The decision in *J.B.* is rooted in a Pennsylvania constitutional right. *J.B.*, 107 A.3d at 16–17. "This Court has recognized that the right to reputation, although absent from the federal constitution, is a fundamental right under the Pennsylvania

Constitution." *Id.* at 16. "Thus, [the state law in question]'s registration requirements . . . impinge upon juvenile offenders' fundamental right to reputation as protected under the Pennsylvania Constitution." *Id.* at 16–17.

C.P. is also distinguishable from this case. In *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011), the Supreme Court of Ohio held that the state's adult sex offender registration requirements, as amended in 2007 and retroactively applied to adults, were punitive and in violation of the Ohio Constitution's prohibition on retroactive laws. *Id.* at 1113; *see also C.P.*, 967 N.E.2d at 734. Those same registration requirements, as applied prospectively to certain juvenile delinquents over fourteen, were also found by the court—in line with *Williams*—to be punitive. *Id.* at 744, 746. This finding led the court in *C.P.* to hold those registration requirements violative of the U.S. and Ohio prohibitions on cruel and unusual punishment. *Id.* at 744, 746. In light of that holding, and in light of the characterization of these measures as "the . . . imposition of a lifetime punishment," *id.* at 748, the court's opinion that these measures violate the Ohio and U.S. due process clauses comes as no surprise. This point is reinforced by reference to the two dissents in *C.P.*, written by the two justices who dissented in *Williams*.

C. The Requirement That Certain Juveniles Register on the Adult Registry Does Not Violate the Prohibition on Cruel and Unusual Punishment.

As stated by this Court in *Phillips*, "[w]hile provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions, [citation omitted], analysis of a section of the federal constitution is strongly persuasive in construing the like section of our state constitution." 194 S.W.3d at 841. S.C.'s second point asserts that the statutory registration requirements found at § 211.425.1 and § 589.400.1(6) violate the U.S. and Missouri constitutions' prohibition on cruel and unusual punishment.

As with S.C.'s due process argument, this argument "ha[s] identified no reason grounded either in the language of Missouri's 1945 Constitution or the history of its enactment to believe that the framers intended th[i]s[] clause[] to be interpreted more broadly than the nearly identical provision[] in the United States Constitution." *See Phillips*, 194 S.W.3d at 841. And as with S.C.'s due process argument, S.C. does not separately analyze the Missouri constitutional clause. Appellant's Brief, pp. 40–56. Therefore, this Court should treat the Missouri cruel and unusual punishment prohibition as equivalent to the U.S. cruel and unusual punishment prohibition.

In *R.W.*, this Court determined that the registration requirements for adult sex offenders created by Missouri's Megan's Law did not violate the U.S. or Missouri constitutional prohibition on *ex post facto* laws. 168 S.W.3d at 70. The Court noted that "[t]he registration statutes operate retrospectively in this case. . . . Accordingly, the issue is whether the registration requirements constitute a punishment." *Id.* at 68. Turning to the analysis found in *Smith*, this Court first examined whether the requirements in question "were intended to establish a punishment." *R.W.*, 168 S.W.3d at 68. The Court found that "[t]he Missouri registration statutes do not clearly express the General Assembly's intent to make the registration statutes civil or criminal." *Id.* at 69. "Given the lack of clear legislative intent, the registration statutes must be analyzed to determine if they are sufficiently punitive in effect to constitute a retrospective punishment." *Id.*

R.W. then turned to five factors used by the U.S. Supreme Court in *Smith*. *Id.* These factors apply to defeat S.C.'s cruel and unusual punishment argument. After all, the registration provisions cannot violate these constitutional provisions if they do not constitute a punishment. And "[b]y definition, in order to constitute . . . cruel and unusual punishment, an action or restriction must first constitute punishment." *See State v. J.L.S.*, 259 S.W.3d 39, 43, n.2 (Mo. App. W.D. 2008). *R.W.* held that these same laws, in

relation to an adult convicted of a sex crime, did not constitute punishment. The analysis in this case does not create a different result.

In *Under Seal*, the U.S. Court of Appeals for the Fourth Circuit upheld the federal law against a challenge that the law constituted cruel and unusual punishment. The *Under Seal* court used the U.S. Supreme Court's analysis in *Smith*, and determined that the juvenile registration and notification laws in the federal statute create "a non-punitive, civil regulatory scheme, both in purpose and effect." *Under Seal*, 709 F.3d at 263. Of particular note, in evaluating the "excessiveness" factor," the court wrote that "Congress, in enacting SORNA, intentionally carved out a specific and limited class of juvenile offenders." *Id.* at 266. That is exactly what the Missouri General Assembly did, and it is likewise constitutional.

CONCLUSION

For the foregoing reasons, S.C.'s appeal should be dismissed. Alternatively, the statutory requirement challenged by S.C. should be upheld and the juvenile court's judgment affirmed.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b), and that the brief contains 9,290 words.

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