

ORIGINAL

In the
Supreme Court of Ohio

IN RE C.P.,	:	Case No. 2010-0731
	:	
Adjudicated Delinquent Child	:	
and Serious Youthful Offender	:	On Appeal from the
	:	Athens County
	:	Court of Appeals,
	:	Fourth Appellate District
	:	
	:	Court of Appeals Case
	:	No. 09CA41
	:	

MERIT BRIEF OF *AMICUS CURIAE*
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IN SUPPORT OF APPELLEE STATE OF OHIO

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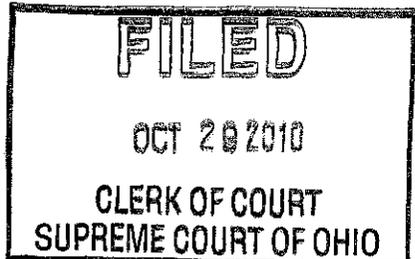


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INTRODUCTION

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, which created national standards for sex offender classification, registration, and community notification. Unlike previous sex offender laws, the AWA includes registration requirements for juveniles found delinquent of certain serious sex offenses. Juveniles, the House Judiciary Committee found, “commit a significant number of sexual abuse crimes,” and “current limitations,” such as state confidentiality policies, often “permit them to escape notification requirements.” H.R. Rep. No. 218, 109th Cong., 1st Sess. Pt. 1 at 25 (2005). In light of the troubling number of sex offenses committed by juveniles, the Committee concluded that “[w]hile . . . States typically protect the identity of a juvenile who commits criminal acts, in the case of sexual offenses, the balance needs to change; no longer should the rights of the juvenile offender outweigh the rights of the community and victims to be free from additional sexual crimes.” *Id.* Congress encouraged the states to follow its lead, and to adopt standards for juvenile sex offender registration.

Responding to that call, the Ohio General Assembly passed Senate Bill 10 to conform Ohio’s sex offender registration and notification law to the federal AWA. S.B. 10 subjects certain juveniles to registration and community notification requirements. As to most juvenile sex offenders, the decision whether to impose registration and notification requirements is in the juvenile court’s discretion. (This matter is currently under consideration in *In re Smith*, 2008-1624; see also Br. of Atty. Gen., *In re Smith*, 2008-1624 (filed Apr. 22, 2009)).

For Ohio’s most acute juvenile offenders—known as “Serious Youthful Offenders” (SYOs)—the process is different, although in many cases (as here) the juvenile court still retains considerable discretion over the ultimate outcome. SYOs are subject to both juvenile supervision and a conditional, suspended adult sentence. Sex offenders who are SYOs are

automatically designated “Public Registry-Qualified Juvenile Offender Registrants” (PRQJORS) if they (1) were fourteen years or older at the time of their delinquent acts; and (2) were found delinquent of certain sexually motivated acts. As PRQJORS, these offenders must register with the county sheriff quarterly for life. They are also subject to community notification, and their name is placed on Ohio’s electronic sex offender registry, ESORN.

In September 2009, C.P., then fifteen, admitted to two counts of rape and one count of kidnapping. The juvenile court found him delinquent and designated him an SYO, giving him a blended juvenile/adult sentence. Along with his SYO designation, the juvenile court also designated C.P. a PRQJOR, since he was fifteen when the PRQJOR-qualifying offenses were committed. C.P. objected, alleging that the PRQJOR designation violated his rights to due process and equal protection and the prohibition against cruel and unusual punishment.

C.P.’s claims lack merit. The SYO determination is the essential trigger for the PRQJOR designation, and C.P. received all the process due to him in the SYO proceeding. The SYO adjudicatory process includes robust procedural protections on par with those available in the adult criminal system, including the right to counsel, the right to a jury trial, and the right to appeal. Moreover, the decision whether to classify C.P. as an SYO in the first place involves numerous discretionary decisions. Accordingly, C.P.’s attempt to paint the statutory scheme as a mechanized process is wrong.

Nor has C.P. asserted a viable equal protection claim. The General Assembly enacted a carefully drawn statutory scheme that subjects only the most dangerous youthful offenders to registration and notification requirements. The General Assembly reasonably differentiated juveniles in C.P.’s position—Serious Youthful Offenders who are fourteen years of age and older and who committed the most serious sexual offenses—from younger juveniles or those

who committed less serious offenses, who may not be designated as SYOs. The rationale—that with age comes greater accountability and that with more serious crimes comes a greater likelihood of re-offense—is a rational basis that easily withstands C.P.’s challenge.

C.P.’s cruel and unusual punishment claim also fails. C.P. has not shown that the registration and notification requirements are punishment at all, let alone cruel and unusual.

At bottom, C.P.’s arguments amount to policy disagreements about whether—and on what terms—juveniles should be subject to sex offender registries. But he has not satisfied the heavy burden of “prov[ing] beyond a reasonable doubt that [S.B. 10] is clearly unconstitutional.” *State v. Williams*, 88 Ohio St. 3d 513, 521, 2008-Ohio-428. This Court should therefore affirm the decision of the Fourth District.

STATEMENT OF AMICUS INTEREST

The Ohio Attorney General is Ohio’s chief law officer, and therefore has a strong interest in ensuring the enforcement of Ohio’s sex offender registration and community notification laws. R.C. 109.02.

JUVENILE OFFENDER PROCEEDINGS IN OHIO

A. Juvenile Offender Dispositions

Ohio has a multi-faceted juvenile justice system capable of addressing the complex (and, at times, competing) interests at stake in juvenile adjudications. See *In re C.S.*, 115 Ohio St. 3d 267, 2007-Ohio-4919 ¶ 75. The system provides a spectrum of possible proceedings and dispositions, generally depending upon the age of the juvenile and the seriousness of the offense.

1. Traditional Juvenile Dispositions

Traditional juvenile dispositions are at one end of the spectrum and a “traditional juvenile” facing allegations of delinquency falls under the exclusive jurisdiction of the juvenile court. R.C. 2151.23(A). These proceedings are not criminal proceedings and, while bound to provide

“fundamental fairness” under the Fourteenth Amendment’s due process guarantee, *McKeiver v. Pennsylvania* (1971), 403 U.S. 528, 543, they do not require many of the constitutional safeguards—grand jury indictment, trial by jury, public trial—that accompany adult criminal prosecutions. See *In re Agler* (1969), 19 Ohio St. 2d 70, 77-78; Juv. R. 27(A)(1).

With this lesser formality comes greater flexibility. See *In re C.S.*, 2007-Ohio-4919 ¶¶ 80-81. After a juvenile court has found a child delinquent, the court (depending on the delinquent act) has a variety of dispositional options, ranging from court-imposed curfew, R.C. 2152.19(A)(4)(h), to community service, R.C. 2152.19(A)(4)(d), to house arrest, R.C. 2152.19(A)(4)(k), to commitment to the custody of the Department of Youth Services for institutionalization, R.C. 2152.16(A)(1)(b). DYS’s custody over a juvenile terminates, at latest, when the juvenile reaches age twenty-one. See R.C. 2152.16. Whatever disposition the juvenile court chooses, its abiding goal in traditional juvenile dispositions remains rehabilitating and “reintegrating juveniles back into society.” *State v. Iacona*, 93 Ohio St. 3d 83, 90, 2001-Ohio-1292.

2. Transfer to Adult Court for Criminal Prosecution

On the far other end of the spectrum, some juveniles qualify for criminal prosecution as an adult in common pleas court. A transfer may be mandatory or discretionary, depending on the individual’s age and offense. R.C. 2152.10; R.C. 2152.12. Transferring a juvenile to adult court reflects a judgment that he is not suited for the rehabilitative goals of the juvenile justice system, whether because of the severity of his crime, his delinquent past, or some other combination of factors. R.C. 2152.12.

When such a transfer (or “bindover”) occurs, the juvenile court relinquishes its jurisdiction over the juvenile. R.C. 2152.12(I). He is then tried as an adult in criminal court, where he receives the same constitutional protections afforded to adults and qualifies for adult sentences

(save for the death penalty and life without parole for nonhomicide crimes). See *Roper v. Simmons* (2005), 543 U.S. 551; *Graham v. Florida* (2010), 130 S. Ct. 2011. Once a juvenile receives an adult-court conviction, he remains forever out of the juvenile court's purview. R.C. 2152.05. Any subsequent charges brought against him must be heard in the adult courts. *Id.*

3. Serious Youthful Offender Dispositions

Serious Youthful Offender dispositions occur in the juvenile court and fall between traditional juvenile dispositions and adult-court transfers, though are usually closer to the latter. (As was the case with C.P., some SYOs actually qualify for adult-court treatment).

On the premise that some juveniles, even those whose offenses are particularly severe, might still benefit from the care of the juvenile system, an SYO disposition balances legitimate public safety concerns with the juvenile system's goal of "rehabilitat[ing] errant children and bring[ing] them back to productive citizenship." *In re Caldwell*, 76 Ohio St. 3d 156, 157, 1996-Ohio-410.

A juvenile adjudicated a Serious Youthful Offender receives a blended sentence in which the juvenile court simultaneously issues two dispositions: (1) a juvenile disposition placing the offender in the juvenile system, and (2) an adult sentence. R.C. 2152.13(D). The juvenile court then suspends the adult sentence at the outset, giving the juvenile both a carrot and a stick: If the youth successfully completes the juvenile disposition, he does not serve the adult sentence. But if he fails to comply with the terms of the juvenile disposition, the court may impose the stiffer adult penalty. R.C. 2152.14.

Probably because of their potentially severe implications, SYO adjudications offer procedural protections roughly equivalent to those in an adult criminal trial. If the State decides to seek an SYO disposition, it must inform the juvenile by indictment or by written notice.

R.C. 2152.13(A). Upon notice, the juvenile has a “right to a grand jury determination of probable cause” that he is eligible for an SYO disposition. R.C. 2152.13(C)(1). Following indictment, the youth has the right “to an open and speedy trial by jury in juvenile court” and a right “to be provided with a transcript of the proceedings.” *Id.* As the youth awaits adjudication, he has the “the same right to bail as an adult” facing similar allegations. R.C. 2152.13(C)(2). And throughout the proceedings, the youth has “the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.” *Id.*

In addition to the enhanced procedural protections, an SYO adjudication differs from a traditional juvenile adjudication in several ways. First, venue for an SYO hearing, like a criminal prosecution, lies only in the county in which the alleged act occurred. R.C. 2151.271; Katz and Gianelli, Baldwin’s Ohio Practice, Criminal Law (2d ed.), Ch 56. By contrast, traditional juvenile adjudications may take place either in the county where the offense occurred or the county where the juvenile lives. See R.C. 2151.271, Juv. R. 11. Second, SYO hearings must be open to the general public, unlike traditional juvenile hearings, in which the court “may exclude the general public.” Juv. R. 27(A). Third, a juvenile trial judge must preside over an SYO hearing, unlike traditional juvenile hearings, which may be heard by magistrates. Juv. R. 40(C)(1)(b).

In an SYO adjudication, once the jury has found the youth delinquent (or he has admitted to the charges), the juvenile court’s disposition depends on whether the statute makes the SYO dispositional sentence mandatory or discretionary. R.C. 2152.11. The age of the offender and the severity of the offense are determinative. Here, because C.P. was fifteen at the time of his offense, his SYO disposition was discretionary. R.C. 2152.11(D).

If mandatory, the trial court must impose both a juvenile disposition and an adult sentence. The adult sentence shall be the “sentence available for the violation, as if the child were an adult, under Chapter 2929 of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.” R.C. 2152.13(D)(1)(a).

If the SYO designation is discretionary, further findings are required. The juvenile court may impose a blended sentence only if it finds on the record “that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in [R.C. 2152.01] will be met.” R.C. 2152.13(D)(2)(a)(i). If the court opts not to impose an SYO designation, the juvenile receives a traditional juvenile disposition. R.C. 2152.13(D)(2)(b).

Regardless of whether an SYO designation is mandatory or discretionary, the youth has the right to appeal the blended sentence. R.C. 2152.13(D)(3).

B. The Effect of an SYO Designation on Juvenile Sex Offender Registration

1. S.B. 10

On June 30, 2007, the Ohio General Assembly passed S.B. 10 to align Ohio’s existing sex offender registration laws with the “recently enacted requirements of federal law contained in the Adam Walsh Child Protection and Safety Act.” S.B. 10, 127th Gen. Assem. (2007). S.B. 10’s classification system became effective on January 1, 2008.

S.B. 10 replaced the old classification regime with a new, three-tier system. The registration and notification obligations vary by tier. R.C. 2950.07(B). Following the federal AWA, Ohio’s S.B. 10 requires a Tier I offender to register annually for 15 years, a Tier II offender to register bi-annually for 25 years, and a Tier III offender to register quarterly for life. See 42 U.S.C. §§ 16915, 16916; R.C. 2950.06(B); R.C. 2950.07(B).

2. Tier Classification Process Varies Based on Type of Juvenile Offender

The process for assigning sex offenders to a tier under S.B. 10 varies depending on whether the offender is considered an adult, a traditional juvenile, or an SYO. For adult offenders (and juveniles transferred to adult criminal courts), the tier level is determined solely by the offense of conviction—the more serious the crime, the higher the tier. R.C. 2950.01(E)-(G).

The process is different for all other juveniles, including C.P. For juveniles adjudicated delinquent through a traditional juvenile disposition and who were age fourteen or older at the time of their act, the juvenile court determines their tier using a two-step process. (Juveniles under fourteen are not subject to registration requirements, regardless of the offense). First, the juvenile court decides, based on an array of factors, whether the delinquent child qualifies as a “juvenile offender registrant” (JOR). R.C. 2152.82. If the delinquent juvenile receives a JOR designation, the juvenile court proceeds to the next step: assigning him to a registration tier. R.C. 2152.82(B); R.C. 2152.83(A); R.C. 2152.83(C)(1); see also R.C. 2152.831(A). Which tier such an offender is placed in rests within the juvenile court’s discretion. (This traditional juvenile classification scheme is being reviewed by this Court in *In re Smith*, Case No. 2008-1624, and *In re Adrian R.*, 2009-0189).

The tier assignment process is different for certain juveniles with SYO dispositions. S.B. 10 created a new category of sex offender known as a “public registry-qualified juvenile offender registrant” (PRQJOR). The juvenile court classifies a juvenile with an SYO disposition as a PRQJOR if the youth (1) was age fourteen or older at the time of his delinquent act, and (2) committed one of the following acts: (a) aggravated murder, murder or kidnapping, all with sexual motivation; (b) rape, sexual battery, or gross sexual imposition by touching genitalia, all of a victim under the age of twelve; or (c) attempt, conspiracy, or complicity to commit any of the above-mentioned offenses. R.C. 2152.86(A)(1); R.C. 2907.02; R.C. 2907.03(B);

R.C. 2907.05; R.C. 2903.01; R.C. 3903.02; R.C. 2905.01. Once the juvenile court determines that a juvenile qualifies for PRQJOR status, “the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child.” R.C. 2152.86(B)(1). PRQJOR-designated juveniles “whose delinquent act[s] w[ere] committed” prior to January 1, 2008,—when the new tier classifications took effect—“may request as a matter of right a court hearing to contest the [PRQJOR] classification,” R.C. 2152.86(B)(1), (D)(1).

3. Obligations of Public Registry-Qualified Juvenile Offender Registrants

The obligations of PRQJORS assigned to tier III differ from those juveniles placed in tier III as a JOR. Tier III JORs are subject to community notification only if the juvenile court orders it and to victim notification only if the victim requests it. R.C. 2950.10. And the State does not disseminate the registration information of JORs on the internet. For PRQJORS, the community and victim notification requirements are automatic. R.C. 2950.10(B)(2); R.C. 2950.11(F)(1)(a). The State must, in addition, place PRQJORS on its public internet database. R.C. 2950.081(B).

How long tier III juveniles have to wait to petition for reclassification also varies depending on whether the juvenile is a PRQJOR or a JOR. For JORs, the juvenile court conducts a reclassification hearing “upon completion of the disposition of that child” from the juvenile system. R.C. 2152.84(A)(1). A JOR may file a petition for reclassification three years after the completion-of-disposition hearing, a second petition three years later, and additional reclassification petitions every five years thereafter. R.C. 2152.85(B). PRQJORS, in contrast, are placed on a reclassification track similar to that of adult tier III offenders. They are first eligible for a reclassification hearing 25 years after the end of their disposition. R.C. 2950.15(C)(2); R.C. 2152.85(G).

STATEMENT OF THE CASE AND FACTS

In June 2009, the Athens County Sheriff's Department filed a complaint accusing C.P., then fifteen, of two counts of rape and one count of kidnapping. *In re C.P.*, (4th Dist.), 2010-Ohio-1484. Because of his age and the severity of the offenses, C.P. was eligible to be prosecuted as an adult in common pleas court. R.C. 2952.10. In its discretion, the juvenile court opted not to transfer the case and to keep C.P. within the juvenile system. *In re C.P.*, 2010-Ohio-1484, ¶ 3. In September of that year, a grand jury indicted C.P. on the rape and kidnapping charges and found him eligible for classification as an SYO. *Id.* at ¶ 4.

C.P. admitted to the charges, and the court accordingly adjudicated him delinquent. *Id.* at ¶ 5. Because C.P. was fifteen at the time of his offenses, the decision whether to impose a traditional juvenile disposition or an SYO disposition was left to the juvenile court's discretion, R.C. 2152.11, even though C.P.'s offenses would have been first-degree felonies had he been bound over and tried as an adult. See R.C. 2907.02(B); R.C. 2905.01(C).

The juvenile court, in its discretion, designated C.P. an SYO. *In re C.P.*, 2010-Ohio-1484, ¶ 5. (This was also the parties' joint recommendation). *Id.* The court then imposed the following blended sentence: (1) an aggregate three-year minimum commitment to the Department of Youth Services; (2) three adult prison terms, which were suspended pending C.P.'s successful completion of his juvenile dispositions. C.P. Br. 2. Because C.P. was fifteen at the time of the acts, and because the acts were PRQJOR-qualifying offenses, the juvenile court then classified C.P. as a tier III public registry-qualified juvenile offender registrant. *In re C.P.*, 2010-Ohio-1484, ¶ 5.

C.P. appealed, arguing that his PRQJOR designation violated his due process and equal protection rights under the U.S. and Ohio Constitutions, as well as the constitutional prohibitions

against cruel and unusual punishment. The Fourth District rejected each of these constitutional challenges and affirmed the judgment of the juvenile court. *In re C.P.*, 2010-Ohio-1484.

ARGUMENT

Amicus Curiae Attorney General's Proposition of Law I:

The process for assigning Public-Registry Qualified Juvenile Offender Registrant status to a juvenile offender is consistent with the due process guarantees of the U.S. and Ohio Constitutions.

C.P. argues that classifying him as a PRQJOR offends the due process guarantees of the U.S. and Ohio Constitutions. The PRQJOR classification process, he asserts, does not offer procedural protections proportionate to the interests at stake. That claim has no merit. Because PRQJOR classification is a civil, remedial scheme, and because the SYO adjudicatory process that leads up to a PRQJOR classification includes an array of robust procedural protections, C.P. received all the process he was due.

A. Because the PRQJOR classification scheme is civil and remedial in nature, process equivalent to that available in the criminal justice system is not constitutionally required.

C.P. asserts that, because PRQJOR classification amounts to a criminal penalty, “fundamental fairness” requires that he receive due process protections greater than those currently available under S.B. 10. C.P. Br. 10-14. Both his premise and his conclusion are wrong.

The PRQJOR classification scheme, which requires certain SYOs to register as Tier III offenders, is—like the whole of S.B. 10’s classification regime—civil and remedial in nature. The seven guideposts this Court uses to determine whether an act is civil or criminal—(1) whether the act imposes an affirmative disability or restraint; (2) whether the act resembles historical punishments; (3) whether the act contains a scienter requirement; (4) whether the act promotes the traditional aims of punishment; (5) whether the act applies to behavior that is

already a crime; (6) whether the act serves a remedial purpose; and (7) whether the act is excessive in relation to its remedial purpose, see *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168-69; *State v. Cook* (1998), 83 Ohio St. 3d 404, 418, 1998-Ohio-291—confirm as much. In arguing to the contrary, C.P. relies on reasoning that both this Court and the U.S. Supreme Court have repeatedly rejected. See, e.g., *Cook*, 83 Ohio St. 3d at 419; *State v. Ferguson*, 120 Ohio St. 3d 7, 2008-Ohio-4824; *Smith v. Doe* (2003), 538 U.S. 84. “[O]nly the clearest proof” can “show that a statute has a punitive effect so as to negate a declared remedial intention,” *Cook*, 83 Ohio St. 3d at 419. C.P. has offered none here.

1. PRQJOR classification does not impose an affirmative disability or restraint.

The first *Kennedy* factor considers whether the PRQJOR classification imposes an affirmative disability or restraint. As a PRQJOR-designated juvenile, C.P. must register as a Tier III offender quarterly for life. (This requirement is identical to the registration requirements of other Tier III offenders, which include adults, juveniles prosecuted as adults, and traditional juveniles designated as JORs and placed in Tier III).

The Court has considered *identical registration requirements* before and found that they impose no affirmative disability or restraint. See *Cook*, 83 Ohio St. 3d at 418. Megan’s Law, S.B. 10’s predecessor, required offenders with a “sexual predator” classification to register quarterly with the county sheriff for life. Former R.C. 2950.06(B)(1); Former R.C. 2950.07(B)(1) (1998). That “act of registering,” this Court said, “does not restrain the offender in any way.” 83 Ohio St. 3d at 418. Rather, it “is a de minimus administrative requirement” “comparable to renewing a driver’s license.” *Id.*; accord *State v. Hayden*, 96 Ohio St. 3d 211, 2002-Ohio-4169, ¶ 14. Under *Cook*, registration requirements do not amount to an affirmative disability or restraint.

The U.S. Supreme Court sees it the same way. In *Smith v. Doe*, the Court rejected the proposition that registration requirements impose an affirmative disability or restraint, finding that registration “imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is paradigmatic affirmative disability or restraint.” *Smith*, 538 U.S. at 100. As in *Smith*, the registration requirements here do “not restrain activities” that PRQJOR-designated juveniles may pursue, “but leave[] them free” “to move where they wish and to live and work as other citizens, with no supervision.” *Id.* at 101. Quarterly registration, while perhaps an inconvenience, is not an affirmative disability or restraint.

Nor do the community notification requirements constitute an affirmative disability or restraint. The *Cook* Court already answered that question too. As with the notification provisions in Megan’s Law, the Tier III community notification provisions here place “the burden of dissemination” not “on the [offender], but rather on law enforcement.” *Cook*, 83 Ohio St. 3d at 418; accord *Cutshall v. Sundquist* (6th Cir. 1999), 193 F.3d 466, 474-75 (“The public notification provisions of Tennessee’s sex offender law “impose[] no restraint whatever upon the activities of a registrant.”).

2. PRQJOR classification does not resemble historical punishments.

As to the second *Kennedy* factor, C.P. argues that the community notification provisions, which make “where the individual lives” publicly available, “resemble colonial punishments of public shaming, humiliation and banishment.” C.P. Br. 13 (citing *Smith*, 538 U.S. at 98). Yet the U.S. Supreme Court has rejected that comparison to shaming—indeed, in the very case C.P. cites to support his argument. See *Smith*, 538 U.S. at 98. In *Smith*, the Court reviewed Alaska’s sex offender law, which—similar to the provisions here—mandated the publication of a sex offender’s name, aliases, address, photograph, physical description, license plate number, employment address, date of birth, crime of conviction, date of conviction, place of conviction

and length of sentence. “Our system,” the Court reasoned, “does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment.” *Id.* at 98. And because “[t]he purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender,” the Court found that the notification provisions were not punitive. *Id.* at 99.

This Court has likewise refused to equate community notification with punishment, finding that disseminating truthful information “has never been regarded as punishment when done in furtherance of a legitimate governmental interest.” *Cook*, 83 Ohio St. 3d at 419 (citation omitted); accord *Cutshall*, 193 F.3d at 475 (“Dissemination of information is fundamentally different from traditional forms of punishment.”). This Court repeated that conclusion in *State v. Ferguson*, noting that “the General Assembly’s purpose for requiring the dissemination of an offender’s information is the belief that education and notification will help inform the public so that it can protect itself.” 2008-Ohio-4824, at ¶ 38. Such “[w]idespread public access is necessary for the efficacy of the scheme,” and any shame “is but a collateral consequence of a valid regulation.” *Id.* (quoting *Smith*, 538 U.S. at 99).

The civil nature of community notification does not morph into a punitive measure simply because S.B. 10 extends it to PRQJOR-designated juveniles. Juvenile adjudications are often shielded from public view, but this is because of legislative policy, not constitutional command. See, e.g., *Davis v. Alaska* (1974), 415 U.S. 308, 319-20; *United States v. Eric B.* (9th Cir. 1996), 86 F.3d 869, 879 (rejecting argument that juvenile has a constitutional right to nondisclosure of his criminal records). While public dissemination of truthful material regarding PRQJOR-designated juveniles reflects a legislative policy in favor of greater disclosure to the public, that

does not mean that community notification, as applied to juveniles, resembles a historical or shaming punishment.

3. The PRQJOR classification scheme does not contain a scienter requirement.

C.P. does not address the third *Kennedy* factor, which asks whether there is a “scienter requirement indicated in [the law]” itself. *Cook*, 83 Ohio St. 3d at 419; see also *Cutshall*, 193 F.3d at 475 (scienter requirement must be found in the statute “on its face”). The language of S.B. 10, including the PRQJOR classification scheme, contains no scienter requirement.

4. The PRQJOR classification does not promote traditional aims of punishment.

As to the fourth *Kennedy* factor, C.P. claims that the PRQJOR classification scheme “furthers the traditional aims of punishment: retribution and deterrence.” C.P. Br. 13. He first argues that “automatic placement of an offender into a tier without determining whether he or she is likely to reoffend,” is “a form of retribution.” C.P. Br. 14. Problem one with this argument is that, at least in the case of discretionary SYOs like C.P., placement in a tier is not as automatic as C.P. complains, but rather occurs only after the juvenile court has deployed its discretion to designate C.P. an SYO. And even if the classification were characterized as automatic, the U.S. Supreme Court has refused to attribute a retributive purpose to automatic registration requirements. It “[is] incorrect,” the Court said, “to conclude that” measuring “the length of the reporting requirement . . . by the extent of the wrongdoing, not by the extent of the risk posed” amounts to retribution. *Smith*, 538 U.S. at 102. Rather, “[t]he State’s determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment . . .” *Id.* at 104.

C.P. next focuses on deterrence, arguing that “[b]y placing a juvenile offender into a tier that is based on the offense that he or she committed, and without determining whether the youth is likely to commit another sexual offense in the future, the General Assembly is attempting to

prospectively deter the commission of sexually oriented offenses.” C.P. Br. 14. Again, C.P. bases this argument on the incorrect assumption that his classification was automatic, and not the result of the juvenile court’s discretionary decision to give him an SYO disposition. But even if his classification were characterized as automatic, C.P.’s claim finds no foothold in either this Court’s or the U.S. Supreme Court’s jurisprudence. “Any number of governmental programs might deter crime without imposing punishment.” *Smith*, 538 U.S. at 102. And “the mere presence of a deterrent purpose” does not transform a valid regulatory scheme into a criminal punishment. *Smith*, 538 U.S. at 102 (quoting *Hudson v. United States* (1977), 522 U.S. 93, 105). As this Court has noted, any deterrent effect from sex offender registration and notification is minimal compared with the deterrent effect of traditional criminal punishments. *Cook*, 83 Ohio St. 3d at 420. In this case, for example, were C.P.’s adult sentence to be invoked, he would be subject to three adult prison terms. Whatever deterrent effect quarterly registration may have, it pales in comparison to the deterrent effect of the adult portion of his sentence.

This Court, in any event, has approved categorical classifications of sex offenders. Under Megan’s Law, any individual convicted of a “sexually oriented offense” was automatically classified as a “sexually oriented offender,” and any offender with a prior history of sexually oriented offenses was automatically classified as a “habitual sex offender.” Former R.C. 2950.01(B), (D). There were no individualized judicial determinations for these two Megan’s Law classifications; the trial court “merely engage[d] in the ministerial act of rubber-stamping the registration requirement on the offender.” *State v. Hayden*, 96 Ohio St. 3d 211, 2002-Ohio-4169, ¶ 16 (citation omitted). By these measures, offense-based classification of sex offenders is well established as an appropriate and permissible remedial tool.

5. Any punishment that occurs as a result of an offender's PRQJOR classification flows from a new violation.

C.P. does not discuss the fifth *Kennedy* factor, which asks whether the PRQJOR classification scheme applies to behavior that is already a crime. The decisions in *Smith* and *Cook* foreclose any reliance on this factor. It is true that “[t]he regulatory scheme applies only to past conduct, which was, and is, a crime.” *Smith*, 538 U.S. at 105. But classifying a juvenile as a PRQJOR does not impose new punishment on past conduct. Rather, “[t]he obligations the statute imposes are the responsibility of registration, a duty not predicated upon some present or repeated violation.” *Id.* And “any . . . punishment flows from a failure to register, a new violation of the statute, not from a past sex offense.” *Cook*, 83 Ohio St. 3d at 421; accord *Cutshall*, 193 F.3d at 476.

6. The PRQJOR classification scheme serves the remedial purpose of protecting the public.

This Court and the U.S. Supreme Court have also given guidance on the sixth *Kennedy* factor—whether S.B. 10 serves a remedial purpose. Sex offender registration laws, the U.S. Supreme Court has concluded, advance “a legitimate nonpunitive purpose of ‘public safety, which is advanced by alerting the public to the risk of sex offenders in their community.’” *Smith*, 538 U.S. at 102-03 (citation omitted); accord *Cutshall*, 193 F.3d at 476 (sex offender laws “aid law enforcement and protect the public”). This Court in *Cook* likewise recognized that sex offender registration “allows local law enforcement to collect and maintain a bank of information on offenders” and that community notification “allow[s] dissemination of relevant information to the public for its protection.” 83 Ohio St. 3d at 421. In *Ferguson*, the Court re-emphasized that sex offender registration and notification helps protect and educate the public. See 2008-Ohio-4824, ¶¶ 35-38.

7. The PRQJOR classification scheme is not excessive in relation to its remedial purpose.

The seventh *Kennedy* factor asks whether the PRQJOR classification scheme is excessive in relation to the law’s remedial purpose. This “is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy,” but “whether the regulatory means chosen are reasonable in light of the nonpunitive objective.” *Smith*, 538 U.S. at 105.

The PRQJOR designation is carefully tailored to ensure that only the most serious juvenile offenders are subject to automatic registration and community notification requirements. An SYO only becomes a PRQJOR if he is found delinquent of sexually motivated aggravated murder, murder or kidnapping, or of rape, sexual battery, or gross sexual imposition of a victim under the age of twelve. R.C. 2152.86(A)(1). These are among the most violent acts there are. It is true that the unique SYO blended sentencing scheme allows juveniles who committed one of those acts a final chance at rehabilitation within the juvenile justice system. But simply because an SYO may not have to face adult criminal consequences for his acts does not mean that it is unreasonable to require him to register so that the State can monitor his whereabouts.

This Court has already endorsed periodic registration for sex offenders, and S.B. 10—including the PRQJOR scheme—employs such a mechanism. A lifetime registration requirement is needed “to monitor the whereabouts of the most dangerous classification of sexual offender,” *Cook*, 83 Ohio St. 3d at 421, of which SYOs, given the nature of their acts, are a part.

Further, the quarterly registration requirement for PRQJORS is not excessive in relation to its purpose. As Tier III offenders, PRQJORS must comply with the same “de minimus administrative requirement” as Megan’s Law: appearing in person at the county sheriff’s office

at periodic intervals. *Cook*, 83 Ohio St. 3d at 418. And the PRQJOR requirements do not exceed the maximum ceiling—quarterly registration with the county sheriff—upheld in *Cook*.

Community notification advances a different purpose; it fosters community awareness and empowers individuals, parents, and neighborhoods to take precautions as they desire. See *Ferguson*, 2008-Ohio-4824, at ¶ 38 (“[E]ducation and notification will help inform the public so that it can protect itself”); accord R.C. 2950.02(A)(1) (“Members of the public and communities can develop constructive plans to prepare themselves and their children.”).

This Court has already held that community notification is not excessive in relation to that purpose if it is “restricted to those most likely to have contact with the offender.” *Cook*, 83 Ohio St. 3d at 422. The community notification provisions that attach to PRQJOR-designated juveniles are limited in just that way. Notification is provided to neighbors, children’s services agencies, local schools, day-care centers, local law enforcement, and area children’s volunteer organizations. R.C. 2950.11(A)(1). Furthermore, S.B.10 allows PRQJORS, like other Tier III offenders, to petition for reclassification after 25 five years. This allows offenders to come off of the lifetime registry if significant enough time has passed to ensure that re-offending is unlikely. Accordingly, the community notification provisions are properly tailored.

Finally, the General Assembly’s decision to adopt an “automatic” classification system is not excessive in light of the remedial purpose. To start, the scheme is not “automatic” in the case of discretionary SYOs: The juvenile court has discretion whether to impose an SYO disposition on juveniles like C.P., and only upon making that discretionary determination does a PRQJOR classification follow. R.C. 2152.86. Even if automatic, the U.S. Supreme Court has approved automatic classification as long as the legislative scheme employs “reasonable categorical judgments” about the “particular regulatory consequences” that ought to attach to specified sex-

based acts. *Smith*, 538 U.S. at 103. And the General Assembly’s decision to set PRQJORs apart from other juvenile offenders is indeed “reasonable.” PRQJOR status flows directly from an SYO adjudication. If a juvenile is of a certain age and committed certain serious acts, he receives a PRQJOR designation. This method of classification, which is confined to the juvenile justice system’s most serious offenders, is carefully calibrated to affect only those juvenile offenders who, in the judgment of the General Assembly, pose the greatest threat to the public.

In sum, the PRQJOR classification scheme bears none of the hallmarks this Court typically associates with punitive measures. Because C.P. has not met his burden of offering “the clearest proof” that the statute has a punitive effect, he cannot negate the General Assembly’s “declared remedial intention.” *Cook*, 83 Ohio St. 3d at 48. Accordingly, the procedural due process protections available in a criminal proceeding are not required in an SYO/PRQJOR adjudication.

B. The process afforded to juveniles designated as PRQJORs includes the most robust procedural protections the juvenile system has to offer.

Even though a PRQJOR designation is not a criminal penalty, few would debate the significant impact it may have on a juvenile offender’s life. Perhaps because of this potential impact, the process by which a juvenile receives PRQJOR status includes a number of procedural protections not typically part of a traditional juvenile proceeding. Though C.P. insists that the “classification mechanism isolates PRQJORs from both the juvenile and the adult system” and “robs the child of the due process that each system affords,” C.P. Br. 20, the reality is exactly the opposite. The SYO adjudicatory process—which is the only means by which a juvenile receives a PRQJOR designation—offers juveniles the robust protections of both worlds: It is at once replete with the formal protections attendant to adult prosecution (including grand jury indictment, public jury trial, right to counsel and right to appeal) and infused with the discretionary decision points on which the traditional juvenile system is based.

1. An SYO adjudication—the only route by which a juvenile receives a PRQJOR designation—offers an array of procedural protections on par with those available in adult courts.

While C.P. admits that he “was afforded certain due process rights related to his initial designation as an SYO,” he argues that his PRQJOR designation violated due process because the statute “required the court” to assign him to Tier III “immediately following his SYO designation.” C.P. Br. 18. But by focusing so narrowly on the automatic aspect of his PRQJOR designation, C.P. overlooks the broader picture: *Because* he received significant due process related to his SYO disposition, he required no additional process at the PRQJOR designation stage. This is because *the only path to a PRQJOR designation is through the SYO adjudicatory process*. And that multi-step process ensures that a juvenile attains SYO status (and with that, PRQJOR designation) only after receiving robust due process.

The SYO process begins when a juvenile receives written notice that the State is seeking an SYO disposition. R.C. 2152.13(A). He has a “right to a grand jury determination of probable cause.” R.C. 2152.13(C)(1). He has a right to a jury trial, which must be both “open” and “speedy.” R.C. 2152.13(C)(1). He has a “right to counsel,” which he “may not waive.” R.C. 2152.13(C)(2). He has a right to “raise the issue of competency.” R.C. 2152.13(C)(2). He has “the same right to bail as an adult” facing similar allegations. R.C. 2152.13(C)(2). He has a right to a “transcript of the proceedings.” R.C. 2152.13(C)(1). And he has the right to appeal. R.C. 2152.13(D)(3).

After that exhaustive process—tantamount to that available in a criminal proceeding—it does not offend “fundamental fairness” to attach a PRQJOR classification automatically to certain SYO dispositions. In adult criminal proceedings (including trials of juveniles transferred to adult court), sex offender classification follows automatically from the offense of conviction.

A criminal defendant receives all the process he is due during his trial, making additional process unnecessary at the classification stage.

What is more, discretionary SYO proceedings like C.P.'s not only include similar adult-level procedural protections, but they also incorporate a layer of discretion unavailable in adult courts. Here, the juvenile court had discretion whether to impose an SYO disposition in the first place, ensuring that C.P.'s SYO/PRQJOR designation came only as a result of an individualized assessment. Specifically, the juvenile court may assign the SYO designation and impose a blended sentence only after making a finding on the record that "given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in [R.C. 2152.01] will be met." R.C. 2152.13(D)(2)(a)(i). In other words, the juvenile court is already considering, through the SYO proceeding, the nature and circumstances of the violation, the history and characteristics of the juvenile, and similar factors. In short, after receiving protections even greater than those available at the adult level, assigning a PRQJOR classification requires no additional process.

The juvenile due process cases on which C.P. relies confirm as much. See C.P. Br. 10 (citing *In re Gault* (1967), 387 U.S. 1; *In re Winship* (1970), 397 U.S. 358). *Gault* and *Winship* extended to juveniles the due process rights that adults already enjoyed. They did not recognize a right, unique to juveniles, to have *more* due process than adults receive. C.P. received process beyond that available in adult court—first by being adjudicated a discretionary SYO and then by receiving his PRQJOR classification as a matter of course. The Due Process Clause does not require more.

Resisting this conclusion, C.P. argues that he had “no opportunity to be heard on the issue of [his] classification,” no “right to present evidence,” and that there was no role for his counsel to play “on the issue of classification.” C.P. Br. 19. In light of the process he received during his SYO adjudication, these purported failings add up to nothing more than a policy disagreement with the General Assembly’s design. Simply because C.P. can envision a better process does not mean that the process he received fell short of the constitutional minimum.

2. Allowing the PRQJOR classification to flow automatically from an SYO disposition does not compromise the fundamental fairness required in the juvenile system.

After arguing that the PRQJOR classification process does not offer enough adult level protections, C.P. next faults it for being *too much* like the adult system. Within the juvenile court system, C.P. says, giving juvenile court judges discretion to make individualized determinations is a prerequisite to achieving the “fundamental fairness” required by the Due Process Clause. C.P. Br. 17. But he offers no constitutional mooring for this proposition. Discretion, while often present in the juvenile system, is a matter of legislative grace, not a constitutional requirement. And in any case, the juvenile court had significant discretion here to determine whether C.P. should be classified as an SYO in the first place, which was the key trigger for the PQRJOR designation.

a. Discretion at every stage of juvenile adjudication is not a constitutional requirement.

While acknowledging that “there is no constitutional right to be treated like a juvenile,” C.P. Br. 11, C.P. asserts that due process is wanting in the SYO/PRQJOR classification scheme because the scheme “erases . . . discretion for purposes of sex offender classification,” C.P. Br. 17. Yet he offers no support for the idea that discretion is somehow a constitutional mandate. Neither this Court nor the U.S. Supreme Court has ever held that discretion at all steps in a

juvenile court proceeding is a prerequisite to due process. To be sure, the General Assembly has preferred a discretionary approach for some aspects of juvenile court proceedings. But affording discretion in some aspects of juvenile adjudication does not mean that it violates due process to limit discretion in other areas.

C.P. characterizes the automatic nature of PRQJOR classification as “a drastic departure” from “every other procedure in juvenile court.” C.P. Br. 18. Not so. There are a number of circumstances in which the General Assembly has limited the juvenile court’s discretion. For instance, juvenile courts, under certain circumstances, *must* transfer juveniles to adult courts for prosecution. R.C. 2152.12(A). And juvenile courts, under certain other circumstances, *must* give an SYO-adjudicated juvenile a blended juvenile and adult sentence. R.C. 2152.11. Nor do juvenile courts have unfettered discretion to determine the type and length of a juvenile’s disposition. When a juvenile commits a delinquent act that includes certain heightened gun or gang specifications, the General Assembly has prescribed mandatory minimum terms of commitment to the Department of Youth Services. See R.C. 2152.17. In those situations, the juvenile court may have discretion to impose a *longer* term of commitment, see, e.g., 2152.17(D), but it cannot impose a *lesser* one.

In light of the many other “automatic” procedures in the juvenile court system, the fact that a PRQJOR designation flows automatically from an SYO designation is, in context, unremarkable—and exponentially so given that the SYO designation is infused with so many discretionary decision points, as discussed above and in further detail below. In short, the General Assembly may permissibly limit discretion where it sees fit, and its choice to limit it in the context of SYO/PRQJOR classifications poses no constitutional problem.

b. The adjudication that ultimately led to C.P.'s PRQJOR designation included a number of discretion-based checkpoints.

Even if discretion were somehow a constitutional requirement (and it is not), C.P. received the benefit of the juvenile court's discretion. As discussed, the SYO designation is the trigger for the PQRJOR designation and its related registration duties and the SYO adjudication involves numerous discretionary decision points.

First, because of C.P.'s age and the seriousness of his offenses, the juvenile court could have transferred him to the adult system for prosecution. Once there, any criminal conviction on the charged offenses would have led automatically to a sex offender classification. Yet the juvenile court, in its discretion, elected to keep him within its jurisdiction, giving him the chance to avoid adult prison time.

The second discretionary checkpoint occurred when the juvenile court weighed whether even to designate C.P. an SYO and assign him a blended juvenile/adult sentence. While an SYO disposition is mandatory for certain older juveniles found delinquent of acts comparable to C.P.'s, his young age meant that the juvenile court had discretion whether to impose an SYO disposition or a traditional juvenile disposition. When deciding whether to make C.P. an SYO, the juvenile court knew (and the statute makes clear) that an SYO disposition would, given C.P.'s age and the nature of his acts, automatically result in a PRQJOR designation. C.P. received the individualized evaluation that he insists the constitution requires. Among other things, the SYO adjudication requires the judge to make an individualized evaluation of the nature and circumstances of the violation and the history and particular circumstances of the child. R.C. 2152.13(D)(2)(a)(i). That this individualized evaluation came at the dispositional stage of the SYO proceeding and not in the moments immediately preceding his PRQJOR designation is of no significance *when the former is the prerequisite and proxy for the latter*.

3. Due process does not require that an SYO/PRQJOR designated juvenile be shielded from the public eye.

In his final attempt to identify a due process violation, C.P. turns his attention to the public registry. Placing a juvenile on the public registry, he argues, “ignores the history and purpose of the juvenile justice system.” C.P. Br. 20. And by not “insulating [juveniles] from the reputation and answerability of criminals,” he concludes, it violates due process. C.P. Br. 20. This claim is meritless.

To start, “the history and purpose of the juvenile justice system,” C.P. Br. 20, has never included an unqualified right to nondisclosure of delinquent conduct. Rather, “many legitimate interests . . . favor public access to juvenile delinquency proceedings.” *State ex rel. Plain Dealer Publ’g Co. v. Floyd*, 111 Ohio St. 3d 56, 2006-Ohio-4437 ¶ 35 (citing *State ex rel. Plain Dealer Publ’g Co. v. Geauga County Court of Common Pleas*, 90 Ohio St. 3d 79, 84, 2000-Ohio-35). While juvenile court proceedings and records typically remain confidential, this policy routinely bows to competing interests. See *State v. Cox* (1975), 42 Ohio St. 2d 200; *Davis v. Alaska* (1974), 415 U.S. 308.

For example, a juvenile’s interest in “testify[ing] free from embarrassment and with his reputation unblemished” “fall[s] before the right of” a criminal defendant to impeach a witness based on his juvenile court record. *Davis* (1974), 415 U.S. 308, 319-20; see also *State v. Cox*, 42 Ohio St. 2d 200 (following the holding of *Davis*). And a state’s “interest” in “protect[ing] the anonymity of [a] juvenile offender” is not sufficiently strong to permit criminal prosecution for a newspaper’s truthful publication of lawfully obtained information about that juvenile. *Smith v. Daily Mail Publishing Co.* (1979), 443 U.S. 97, 104-106.

These examples confirm that the policy interest in juvenile confidentiality is just that: a policy interest. See *Cox*, 42 Ohio St. 2d at 204. And as with all matters of policy, the General

Assembly may modify the extent and scope of juvenile confidentiality when other competing interests demand it. This case presents what should be an easy call. The General Assembly has determined that the confidentiality often attached to juvenile dispositions must yield to the public's safety interest in knowing the whereabouts of the most serious sex offenders in their midst. That decision implicates only matters of policy, not due process.

As significantly, C.P. would not be in a position to benefit from the “insulating” effect of the juvenile system, C.P. Br. 20, *even if the PRQJOR system did not place him on the public registry*. Even before enacting S.B. 10, the General Assembly did not permit juveniles found delinquent of rape to have their records sealed. See, e.g., R.C. 2151.358(C), (D) (2004); R.C. 2907.02. Nor does it now, regardless of whether the juvenile is found delinquent as an SYO or as a traditional juvenile. R.C. 2151.356; R.C. 2907.02. Though the public registry perhaps makes information about his offenses more accessible, it does not dramatically expand the scope of accessible information beyond what is already a matter of public record. See *Smith*, 538 U.S. at 100-01. Add to that the reality that the SYO process requires the proceedings—for the juvenile's own protection—to be open to the public, and C.P.'s claim to a due process right to nondisclosure cannot withstand scrutiny.

Amicus Curiae Attorney General's Proposition of Law II:

S.B. 10's scheme for assigning the Public-Registry Qualified Juvenile Offender Registrant designation to juveniles comports with the equal protection guarantees of the U.S. and Ohio constitutions.

C.P. next argues that the PRQJOR designation violates his right to equal protection. C.P. Br. 22-30. The statutory scheme, C.P. says, draws irrational and arbitrary distinctions (1) between SYO-designated juveniles who are younger than 14 (who are not PRQJOR eligible) and SYO-designated juveniles who are 14 and older (who are); (2) between discretionary juvenile offender registrants and mandatory juvenile offender registrants, which include

PRQJORS; (3) between JORs (who receive an end-of-disposition assessment regarding their classification and PRQJORS (who do not); and (4) between JORs (who are not placed on the public registry) and PRQJORS (who are). None of these distinctions amount to an equal protection problem.

A. The age-based distinction between SYO-designated juveniles younger than fourteen and those fourteen and older is rationally related to the General Assembly’s interest in protecting the public.

C.P. first argues that S.B. 10 unlawfully discriminates on the basis of age by making certain SYOs age fourteen and older eligible for PRQJOR classification while exempting all SYOs younger than fourteen from registration requirements. C.P. Br. 25. This age-based distinction presents no constitutional concern.

To withstand an equal protection challenge, an age-based classification that does not implicate a fundamental right need only have a rational basis. *City of Cleveland v. Trzebuckowski*, 85 Ohio St. 3d 524, 531, 1999-Ohio-285. C.P. identifies no fundamental right at stake and agrees that the rational basis standard applies here. C.P. Br. 25. That standard is not an exacting one: “[I]f there exists any conceivable set of facts under which the classification rationally furthered a legitimate legislative objective,” “the statute must be upheld.” *Morris v. Savoy* (1991), 61 Ohio St. 3d 684, 689.

The PRQJOR designation scheme clears that low bar. At the core of the juvenile system is the principle that, as a juvenile matures in age, he becomes increasingly responsible for his actions—and with that, increasingly accountable for his delinquent acts. Following that principle, Ohio law draws age-based lines among juveniles all the time. It is why, for example, a ten-year-old may be eligible for an SYO designation when a nine-year-old is not, R.C. 2152.11; a ten-year-old may be placed in DYS custody when a nine-year-old cannot, R.C. 5139.05(A); a fourteen-year-old may be subject to discretionary bindover while a thirteen-year-old is not,

R.C. 2152.10; R.C. 2152.12; and a sixteen-year-old may be subject to mandatory bindover when a fifteen-year-old is not, R.C. 2152.10; R.C. 2152.12. These are age-based distinctions, to be sure, but they are based on the rational principle that accountability grows with age.

In keeping with the principle that accountability accompanies age, the PRQJOR scheme reflects a legislative judgment that, in general, older juvenile sex offenders pose a greater long-term threat to public safety than younger sex offenders. Older juveniles have a greater degree of culpability for their acts. Therefore, when they commit serious sexual offenses, it is reasonable to infer that they pose longer-term public safety risks than younger, less mature juveniles. And older juveniles will “age out” of the juvenile system sooner than their younger peers, giving them less time to reap the benefits of the juvenile system’s rehabilitative services. The age-based line dividing PRQJOR-eligible juveniles and non-registration-eligible juveniles reflects not arbitrary, age based discrimination, but reasonable reliance on the common-sense notion of graduated accountability that underlies much of the juvenile system.

C.P. elsewhere concedes that responsibility and maturity provide a sufficient rational basis for age-based lines, acknowledging that “age-based restrictions that control when a child may lawfully vote, drive, sit on a jury, marry without parental consent, and purchase tobacco and alcohol have clearly illustrated the value in lawmakers taking into consideration the mental capacity of a child to handle these responsibilities.” C.P. Br. 32. Those restrictions, like the PRQJOR designation here, are age based bright line rules that rest on legislative judgments about juvenile responsibility and accountability, and this Court has never found that any of them lack a rational basis.¹

¹ The Ohio Revised Code is filled with age based distinctions that reflect judgments about graduated juvenile maturity levels. A juvenile must be seven to contribute to a campaign, R.C. 3517.102(c); ten to be presumed a competent witness, R.C. 2317.01; ten to ride in a boat without

What is more, the *particular* line the General Assembly has drawn—age fourteen—is itself rational in light of the significance attached to age fourteen elsewhere in the juvenile system. At fourteen, a juvenile is eligible for bindover to the adult system, where a conviction would result in adult criminal penalties. If the General Assembly has made a judgment that fourteen-year-olds are capable of bearing adult criminal consequences for their acts, it follows that fourteen-year-olds are capable of bearing civil registration requirements resembling those in the adult scheme.

C.P. responds that juveniles are “categorically less culpable than the average criminal.” C.P. Br. 26. Citing *Roper v. Simmons* (2005), 543 U.S. 551, the U.S. Supreme Court’s decision barring the death penalty for juveniles under age eighteen, C.P. concludes that “all adolescents under the age of 18” have “[less] maturity, [a lesser] sense of responsibility, and [greater] susceptibility to negative influences” than adults. C.P. Br. 27. It may be true as a general matter that juveniles (those under 18) are less culpable than adults (those over 18), but that certainly does not mean that all adolescents under age 18 have the *same* level of maturity, responsibility, and susceptibility to negative influences. *Roper* itself suggests that a juvenile’s eighteenth

a lifejacket, R.C. 1547.24; ten to serve as an observer for a boat towing waterskiers, R.C. 1547.15; twelve to operate personal watercraft with parental supervision, R.C. 1547.06; twelve to give consent to adoption, R.C. 3107.06; fourteen to receive personal service, R.C. 2111.04; fourteen to select her own guardian, R.C. 2111.12; fourteen to operate an electric personal assistive mobility device, R.C. 4511.512; fourteen to operate a motorized bicycle, R.C. 4511.521(A)(1); fourteen to receive outpatient mental health services without parental consent, R.C. 5122.04(A); fifteen to enter a life insurance contract, R.C. 3911.08; fifteen years and six months to receive a learner’s permit to drive, R.C. 4507.05; fifteen years and six months to become an organ donor, R.C. 2108.04(A); sixteen to hunt without parental supervision, R.C. 1533.13; sixteen to operate an amusement ride, R.C. 1711.55(D); sixteen to purchase certain regulated poisons, R.C. 3719.32; sixteen to operate a historical boiler, R.C. 4104.35; sixteen to be employed without a work permit, R.C. 4109.02; sixteen to become an apprentice, R.C. 4139.01; sixteen to ride unrestrained in the back of a truck, R.C. 4511.51; seventeen to serve as a precinct officer during elections, R.C. 3501.22; seventeen to donate blood, R.C. 2108.31; and seventeen to attend a barber school, R.C. 4709.10.

birthday, while a reasonable event to use as a bright line, is an imperfect gauge of responsibility and accountability. *Roper*, 543 U.S. at 574. And nowhere in the course of drawing an age-based distinction of its own (between seventeen-year-olds and eighteen-year-olds) does *Roper* imply that age-based distinctions *among* groups of juveniles are constitutionally impermissible. If anything, *Roper*'s choice to draw an age based bright line suggests that the PRQJOR scheme's age-based distinction is reasonable: If categorical distinctions between seventeen-year-olds and eighteen-year-olds are permissible based on the idea that with age comes responsibility and self-awareness, so too are categorical distinctions among thirteen-year-olds and fourteen-year-olds for the purpose of sex offender classification.

B. PRQJORs are sufficiently different from other juvenile sex offenders to justify different classification and registration requirements.

C.P. next points to the differing treatment “of the varying classes of juvenile offender registrants,” arguing that “the General Assembly has failed to provide any reasons justifying” the differences. C.P. Br. 27. He principally argues that PRQJORs do not receive the same process as traditional juveniles who, if classified at all, are designated JORs and not placed on the public registry. None of the distinctions C.P. identifies poses an equal protection problem.

First, C.P.'s argument faces an obstacle: he has not shown that SYOs who receive PRQJOR designations are similarly situated to traditional juveniles. “[T]he Equal Protection Clause does not require things which are different in fact to be treated in law as though they were the same.” *Ohio Apt. Ass'n v. Levin*, 2010-Ohio-4414, ¶ 38. “[O]nly similarly situated entities” may be compared “to determine[e] whether” a statutory scheme violates equal protection. *Id.*

SYOs are not, by any measure, similarly situated to traditional juveniles. In many instances, they have committed acts more serious than those of traditional juveniles. Even if their acts are similar, they receive their SYO disposition because, in the judgment of the juvenile

court (or, if a mandatory SYO, the General Assembly), a combination of factors warrants a blended juvenile/adult sentence. Moreover, and as explained above, when the state seeks an SYO disposition, the juvenile is removed from the traditional juvenile process. The SYO process, and the blended sentences that result from it, places SYOs in a category of their own.

C.P. and his *amici* appear to question the legitimacy of finding these groups not similarly situated. The only difference between SYOs with PRQJOR designations and traditional juveniles, they reason, is “whether the prosecutor decide[d] to pursue a serious youthful offender disposition.” ACLU Br. 33, C.P. Br. 28. Neither C.P. nor his *amici* offer support, however, for the idea that the adjudications that result from charging decisions are an improper basis on which to distinguish between groups. And at least in the case of juveniles like C.P., for whom the SYO disposition is discretionary, the decision to impose an SYO disposition—the event that triggers PRQJOR classification—rests with the juvenile courts, not the prosecutor. That decision, which comes after the court considers an array of factors, ensures that individual juveniles receive an SYO/PRQJOR designation only if the circumstances warrant it. It follows that what separates SYOs from traditional juveniles is a permissible line between two dissimilar groups.

Second, even if C.P. could show that PRQJORS are similarly situated to other juveniles, he cannot show that the different process PRQJORS receive creates an equal protection problem.

C.P. points out that offender classification is mandatory for certain juveniles, including certain SYOs, and discretionary for other juveniles. Juveniles receive mandatory classification if they fall into one of two groups: (1) SYOs like C.P., who are over age thirteen and found delinquent of certain sexually oriented or child-victim oriented acts; and (2) traditional juveniles over age thirteen who are found delinquent of certain sexually oriented or child-victim oriented acts and who have a prior history of sexually motivated delinquency. R.C. 2152.82;

R.C. 2152.86. It is rational to have separate classes of mandatory and discretionary registrants. The General Assembly reasonably decided that the public ought to have access to information about mandatory registrants, who committed certain serious acts and who have certain other features—whether it be their age, their history of delinquency or some combination of factors—that suggest a likelihood of re-offense. After ensuring that the most serious juvenile offenders would be required to register, the General Assembly reasonably allowed the juvenile court, who sees and assesses each juvenile, to determine whether other juvenile offenders might also pose a significant enough public-safety threat to require registration.

C.P. also notes the two principal differences between JORs and PRQJORs and claims that those distinctions violate equal protection. First, the JORs receive an end-of-disposition hearing to determine whether offender classification is appropriate, and PRQJORs do not. R.C. 2152.83. Second, JORs are not placed on Ohio’s electronic offender database, and PRQJORs are. R.C. 2950.081(B). Both of these distinctions are supported by a rational basis. PRQJORs enjoy the benefit of significantly greater process than what is available to traditional juveniles. In light of the frontloaded procedural protections, the General Assembly reasonably decided that an end-of-disposition hearing was unnecessary for SYO/PRQJOR-designated juveniles. And the greater openness already required for SYO adjudications justifies placing SYO/PRQJOR-designated juveniles on the public registry. SYO adjudications are open to the public, and in many cases SYOs found delinquent of the type of crimes that trigger PRQJOR status have no statutory right to seek sealing of their record. R.C. 2152.356. Given this greater openness, the decision to place only certain SYOs on the public registry demonstrates respect for the confidentiality that typically attaches to traditional juvenile proceedings.

Lastly, C.P. asserts that the S.B. 10 violates equal protection because “there is no rational justification for juveniles to be automatically subject to classification as a lifetime registrant. And there is no justification for classifying a child as a public registrant.” C.P. Br. 27. C.P. may dispute the General Assembly’s decision as a matter of policy, but generalized grievances about the rationale supporting a legislative scheme do not establish an equal protection claim. C.P. must support his equal protection claim by demonstrating an improper distinction between similarly situated groups. He has not done so here.

Amicus Curiae Attorney General’s Proposition of Law III:

Making Public-Registry Qualified Juvenile Offender Registrants subject to Tier III registration requirements and community and victim notification procedures does not violate constitutional prohibitions on cruel and unusual punishment.

C.P. argues that it violates the federal and state prohibitions on cruel and unusual punishment to subject him to the Tier III registration and notification requirements. C.P. Br. 31-38. This claim is also meritless.

C.P. faces a threshold problem: Unless he can show that the registration and notification requirements amount to punishment, he cannot show that they are cruel and unusual. “[T]he original design of the Cruel and Unusual Punishments Clause was to limit *criminal* punishments.” *Ingraham v. Wright* (1977), 430 U.S. 651, 668 (emphasis added). No matter what responsibilities attach to a PRQJOR designation, as long as they are civil, not criminal, they pose no Eighth Amendment problem. As explained above, C.P. has not established that the PRQJOR designation scheme is a criminal law under the *Kennedy* factors.

C.P., moreover, has no support for his claim that it is “cruel and unusual” to apply sex offender registration and community notification requirements to juveniles. “[O]utside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare.” *Rummel v. Estelle* (1980), 445 U.S. 263, 272. Juveniles, it is true,

have special protection from the death penalty and “the second most severe penalty permitted by law”—life without parole. *Graham v. Florida* (2010), 130 S.Ct. 2011, 2027; see also *Roper*, 543 U.S. 551. But the U.S. Supreme Court has never suggested that juveniles enjoy categorical exemptions beyond those for the two most severe adult punishments.

The Court’s most recent ruling in *Graham* confirms that the Eighth Amendment protections offered to juveniles are narrow. For one thing, the Court did not place an *absolute* bar on juvenile life without parole: The Court applied its holding only to sentences for non-homicide crimes, noting that “[t]here is a line between homicide and other serious violent offenses against the individual.” *Graham*, 130 S.Ct. at 2027 (internal quotation marks omitted). Moreover, the bar on juvenile life sentences applies only to those that offer no opportunity for parole. *Id.* All other punishments, including life with the possibility of parole and lengthy term-of-years sentences, remain legitimate juvenile sentencing options.

Most importantly, critical to the Court’s decision to limit juvenile eligibility for life without parole was the sentence’s similarity to the death penalty. *Id.* at 2027. “[L]ife without parole sentences,” the Court reasoned, “share some characteristics with death sentences that are *shared by no other sentences.*” *Id.* at 2027 (emphasis added). “It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by . . . the remote possibility of” executive clemency. *Id.* at 2027. While acknowledging that life without parole creates “a different dynamic” than the death penalty, “the same concerns”—that the sentence effectively denies juveniles a “chance for fulfillment outside prison walls,” a “chance for reconciliation with society,” and “hope”—compelled the Court to limit its applicability in juvenile sentencing. *Id.* at 2032.

Nothing about the limited holding in *Graham* suggests that this Court should expand the scope of special juvenile Eighth Amendment protections to include sex offender classifications. Unlike the death penalty or life without parole, sex offender classification does not deprive the offender of “the most basic liberties.” *Id.* at 2027. Quarterly registration with the county sheriff, even for life, by no measure compares to the total deprivation of liberty associated with the two most severe sentences available in the criminal justice system. Nor, for that matter, does sex offender classification have the same inescapable permanency associated with the death penalty or life without parole. S.B. 10 gives PRQJOR-designated juveniles the opportunity to petition for reclassification after 25 years. Lengthy as that may seem to a fifteen-year-old, it does not come close to manifesting the complete deprivation of liberty that comes with execution or lifetime imprisonment.

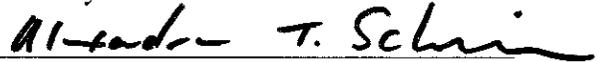
CONCLUSION

For all of the foregoing reasons, the Court should affirm the decision below.

Respectfully submitted,

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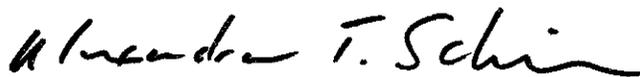
I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Richard Cordray in Support of Appellee State of Ohio was served by U.S. mail this 29th day of October, 2010, upon the following counsel:

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