In the
Supreme Court of Ohio

IN RE: D.S.,	:	Case No. 2014-0607
	:	
a minor child.	:	On Appeal from the
	:	Licking County
	:	Court of Appeals,
	:	Fifth Appellate District
	:	
	:	Court of Appeals Case
	:	No. 13CA58
	:	

MERIT BRIEF OF APPELLEE STATE OF OHIO

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INTRODUCTION

The procedure for classifying juveniles subject to sex-offender registration permits the courts that handle these cases to make that decision either before or after a juvenile has served time with the Department of Youth Services ("DYS"). The statute authorizing this procedure "speaks for itself" in "'clear and unambiguous'" language to expand "a [juvenile] court's options under certain conditions rather than restricting a court to a certain pathway." *In re I.A.*, 140 Ohio St. 3d 203, 2014-Ohio-3155 ¶¶ 12, 14 (citation omitted). This flexibility in the statute "providing a judge with more options for dealing with a delinquent juvenile" in the specific sex-offender-registration context is consistent with the "goals of the juvenile justice system" more generally. *Id.* ¶ 16.

D.S. sees in this flexibility a vice, not a virtue. He sees a problem with the juvenile court's action in accepting his admission of two counts of gross sexual imposition, adjudicating him delinquent, sending him to DYS, and then, after release, determining that he was eligible for and should be classified as a sex offender. Precisely as R.C. 2152.83 allows, the juvenile court declined to classify D.S. as a sex offender when it found him delinquent, and instead told D.S. that it would defer considering his sex-offender classification until after a period in state custody, allowing D.S. to later argue that he had been rehabilitated and that he should not be classified as a sex offender. That hearing was only the first of several that D.S. has had (and will have) to determine if sex-offender classification remains appropriate for him. Those multiple hearings are the height of due process.

The relevant statutes speak with clarity to this process and afford D.S. extensive review of his sex-offender classification. Still, D.S. and his *amici* detect a statutory or constitutional problem with his sex-offender classification. The procedure used here is more protective of juveniles than adults; the procedure here affords juveniles multiple chances to either avoid

registration or have it cancelled; the procedure here satisfies all constitutional challenges that D.S. and his *amici* allege.

At bottom, D.S. and his *amici* disagree with the General Assembly's choices about establishing and structuring a juvenile sex-offender registration system. To that end, they load their briefs with policy analysis. Those are arguments for State Street, not Front Street. As a matter of judicial decisonmaking, the statutory and constitutional questions in this case are easy—the Fifth District should be affirmed.

STATEMENT OF THE CASE AND FACTS

A. D.S. admitted to two counts of gross sexual imposition and was adjudicated delinquent by the Licking County Juvenile Court.

D.S. admitted to the Licking County Juvenile Court that he committed two counts of gross sexual imposition. *In re D.S.*, 2014-Ohio-867 ¶ 3 (5th Dist.) (hereafter "App. Op."). The complaint alleged that he had committed these two counts and one count of public indecency between August 1, 2009 and June 4, 2010. *Id.* ¶ 2. During this time, D.S. turned 14. *Id.* The State dropped the public-indecency count, and the juvenile court adjudicated D.S. delinquent and committed him to the Department of Youth Services for two consecutive terms of at least six months. *Id.* ¶ 3. At the disposition, the court told D.S. that his "'classification as a juvenile sex offender registrant is deferred or delayed pending efforts at rehabilitation while committed to ODYS.'" *Id.* (quoting juvenile court). At the time of the delinquency adjudication, the juvenile court made no finding regarding whether D.S. was 13 or 14 at the time of the incidents, nor was a determination of D.S.'s precise age necessary to that adjudication.

B. When D.S. was released from custody, the juvenile court determined that D.S. was subject to discretionary classification as a sex offender, and classified him as a Tier II sex offender.

When D.S. was released from custody, the juvenile court held a juvenile sex-offender registration hearing. *Id.* ¶ 4. Under R.C. 2152.83, the juvenile court must subject certain offenders to sex-offender registration if they were 16 or older at the time of the incident. For those who were 14 or 15, classification is discretionary. Offenders who were 13 or younger at the time of the offense are not subject to sex-offender classification. In the classification hearing, the juvenile court determined that D.S. was 14 at the time he committed at least one of the counts of gross sexual imposition and was therefore subject to discretionary classification as a juvenile sex offender. App. Op. ¶ 4; *see* R.C. 2152.83(B). Having established that D.S. was subject to discretionary classification, the juvenile court considered the factors in R.C. 2152.83(D) and classified D.S. as a Tier II registrant. App. Op. ¶ 4; App't Supp. at A-50—A-52. The court reached that conclusion principally because D.S. had not yet "successfully completed . . . treatment." *Id.* at. A-51. The court was explicit that, once D.S. completed treatment, classification "would not be indicated." *Id*. The court emphasized that point directly to D.S., telling him in open court that it "could terminate" registration. *Id*. at A-60. In D.S.'s own words, he understood that the court was telling him to "do good so [he could] get off the register list." *Id*.

C. D.S. appealed to the Fifth District, which affirmed his classification as a juvenile sex offender after finding no double-jeopardy or due-process violation.

D.S. appealed to the Fifth District Court of Appeals on four grounds: (1) that the juvenile court lacked statutory authority to determine his age at the time of the offenses during the classification hearing; (2) that classifying him as a juvenile sex offender after the delinquency disposition violated the Double Jeopardy Clauses of the United States and Ohio Constitutions;

(3) that imposing registration requirements beyond the age of twenty-one violated due process, and (4) that D.S. was denied the effective assistance of counsel for failing to assert these challenges when the juvenile court adjudicated him delinquent.

The Fifth District disagreed. It held that the juvenile court had the authority to determine his age at the time of the offense after D.S.'s confinement because the juvenile sex-offender registration statute, R.C. 2152.83, specifically allowed the court to conduct a classification hearing after D.S.'s confinement. App. Op. ¶¶ 47-50. The appeals court rejected his double jeopardy argument because R.C. 2152.83 allows the juvenile proceeding to continue, and the registration hearing to occur, *after* confinement—thus an offender has no expectation that his adjudication is complete until after any period of confinement. App. Op. ¶¶ 72-76. The court also rejected his due-process argument because it rested on a faulty premise—that the juvenile court's jurisdiction ends when D.S. turns twenty-one. *Id.* ¶¶ 55-58, 76. The panel pointed to R.C. 2152.83(E), which specifically grants the juvenile court jurisdiction to impose registration requirements that extend beyond the offender's twenty-first birthday. *Id.* ¶¶ 55-56. Finally, the Fifth District rejected D.S.'s ineffective-assistance claim because his other arguments were meritless and D.S. suffered no prejudice by his counsel's failure to raise those arguments before the juvenile court. *Id*. at ¶¶ 77-81.

D.S. appealed to this Court, asserting propositions of law similar to his statutory, double-jeopardy, and due-process assignments of error below. D.S. does not raise an ineffective-assistance-of-counsel claim.

ARGUMENT

Appellee State of Ohio's Proposition of Law 1:

> *R.C. 2152.83 allows a juvenile court to conduct a juvenile sex-offender classification hearing after any period of confinement. A court conducting such a hearing may find facts necessary to the registration hearing.*

The law allows a juvenile court to conduct a sex-offender classification hearing either before or after any period of confinement. Before conducting that hearing, the juvenile court must establish that conditions precedent to that hearing are met, and must find facts to do so. These facts are irrelevant to the underlying delinquency determination. Revised Code 2152.191 gives the juvenile court the authority to make preliminary factual determinations necessary to the sex-offender classification hearing and nothing in that statute or in R.C. 2152.83 requires the court to make those factual determinations at the time of the delinquency adjudication.

A. The statute specifically allows a juvenile court to make a registration determination after confinement.

The plain text of the relevant statute authorized the procedure the juvenile court used here. When a statute speaks in unambiguous terms, courts have a "duty" to "apply the statute rather than interpret it." *Panther II Transp., Inc. v. Seville Bd. of Income Tax Rev.*, 138 Ohio St. 3d 495, 2014-Ohio-1011 ¶ 16 (rejecting party's suggestion to interpret the statute); *see In re J.V.*, 134 Ohio St. 3d 1, 2012-Ohio-4961 ¶ 23 ("There is no need to interpret the statute; we need only apply the facts of this case to the law."). The statute here needs no interpretation: it plainly contemplates and authorizes the juvenile court's decision to hold a classification hearing after D.S. was released from DYS.

The General Assembly has unambiguously granted juvenile courts the authority to hold a sex-offender classification hearing either before or after any period of confinement. The plain text authorizes the exact procedure used here. A court that "adjudicates a child a delinquent"

may issue an order that "classifies the child a juvenile offender" either "at the time of the disposition" or "at the time of the child's release" from DYS. R.C. 2152.83(B)(1). Very recently, this Court reviewed the statute and held that it speaks in "'clear and unambiguous'" terms to expand "a [juvenile] court's options." *In re I.A.*, 140 Ohio St. 3d 203, 2014-Ohio-3155 ¶¶ 12, 14 (citation omitted). One option the statute gives juvenile courts is to "conduct a hearing at the time of the child's release from the secured facility." *Id.* ¶ 14.

Other portions of the statute reinforce that conclusion by highlighting the reasons that the General Assembly gave that option to juvenile courts. *See* R.C. 1.49(A) (legislative "object" bears on statutory meaning); *UBS Fin. Servs., Inc. v. Levin*, 119 Ohio St. 3d 286, 2008-Ohio-3821 ¶ 35 (reading statute in light of legislative "'object sought to be obtained'" (citation omitted)). Letting juvenile courts conduct classification hearings after DYS confinement lets them account for more variables when deciding whether to classify a juvenile. After DYS confinement, for example, the court may better consider, among other factors, "the effectiveness of the disposition made of the child." R.C. 2152.83(B)(2); *see also* R.C. 2152.83(D) (requiring the court to also consider "whether the child has shown any genuine remorse or compunction," "the public interest or safety," and other factors). The statute's flexibility serves the goals of juvenile justice by maximizing both individualized consideration and opportunities to avoid further consequences.

In this case, the juvenile court used this flexibility to D.S.'s benefit. It declined to hold a classification hearing at the time of D.S.'s disposition. But in that disposition, the court indicated that it would do so upon his release from custody: "'classification as a juvenile sex offender registrant is deferred or delayed pending efforts at rehabilitation while committed to ODYS.'" App. Op. ¶ 3 (quoting juvenile court). Upon D.S.'s release from custody, the juvenile

court held the hearing and classified D.S. as a Tier II sex offender. *Id.* ¶ 4. The juvenile court followed the statute, and, in doing so, gave D.S. the best possible chance to avoid classification.

B. Determinations necessary to the juvenile sex-offender registration hearing but not relevant to the finding of delinquency need not be made at the time of the delinquency hearing.

The juvenile court has the authority to engage in some factfinding before conducting a juvenile sex-offender classification hearing. This factfinding is actually *necessary* to determine whether the court has the discretion to classify the juvenile as a sex offender. These same facts are not relevant to the disposition of the underlying delinquency claim.

In most cases, when a juvenile court adjudicates a child delinquent, it has no discretion to classify the child as a sex offender—either it must do so or it may not. Revised Code 2152.83(B), however, gives the juvenile court discretion to conduct a sex-offender classification hearing in specific circumstances. "The court . . . may conduct at the time of the child's release from the secure facility a hearing . . . if all of the following apply . . . . [t]he child was fourteen or fifteen" at the time of the offense. R.C. 2152.83(B)(1), (B)(1)(b). The court must find facts to decide if these circumstances exist. These facts are irrelevant to the underlying disposition and are necessary *only* to determine if the court has discretion to hold a sex-offender classification hearing under R.C. 2152.83(B). The juvenile court may only hold a hearing to determine whether to classify a child as a sex offender if the child was 14 or 15 at the time of the sexually oriented offense. R.C. 2152.83(B)(1)(b). It may not classify children under 14 as sex offenders, and it must classify children older than 15 as sex offenders if they committed sexually oriented offenses. R.C. 2152.83(B)(1)(b), (A)(1)(b). That determination is entirely irrelevant to the delinquency disposition.

For a juvenile court to hold a classification hearing under R.C. 2152.83, it must find facts to establish that the conditions precedent to the hearing are met. This factfinding about the offender's age does not upset the prior adjudication of facts necessary to the finding of delinquency because age is irrelevant to the finding of delinquency. *See, e.g.*, *In re C.T.*, 2010-Ohio-5887 ¶ 19 (2d Dist.) (reversing juvenile court). The General Assembly confirmed this view when it granted that authority to juvenile courts. Revised Code 2152.191(B) gives juvenile courts the authority to "make any *determination*, adjudication, or order authorized under" R.C. 2152.83. That is exactly what the juvenile court did here. Recognizing that it could only hold the sex-offender classification hearing if D.S. was 14 or 15 at the time of at least one of the offenses, it made the determination that he was 14, as required under R.C. 2152.83(B). Nothing in either R.C. 2152.83 or 2152.191 suggests that such a determination must be made at the time of the delinquency determination, rather than after a period of custody.

This pattern—one hearing for the original sentence and a later hearing for other consequences—finds analogues in other statutes. For example, the serious-youthful-offender statute requires "juvenile courts to make factual determinations before invoking the stayed adult portion of a blended sentence." *In re J.V.*, 2012-Ohio-4961 ¶ 13; *see also In re Cross*, 96 Ohio St. 3d 328, 2002-Ohio-4183 ¶ 28 (authority over juvenile lasts as long as sentence, including probation) (plurality opinion). Those factual determinations are not made at the time the juvenile court first imposes a blended serious-youthful-offender sentence. Similarly, an adult who violates community-control conditions undergoes a second sentencing hearing to impose punishment for violating those conditions. *See, e.g.*, *State v. Fraley*, 105 Ohio St. 3d 13, 2004-Ohio-7110 ¶ 17. That second hearing may consider "the seriousness of the [new] violation and the underlying offense," *State v. John*, 2013-Ohio-871 ¶ 28 (11th Dist.), even though the

seriousness of the underlying offense played a role in the initial decision to impose community control, not a prison term. *See* R.C. 2929.11(B) (sentence should be "commensurate" with "seriousness of offender's conduct"); R.C. 2929.12 (guides for evaluating, among other things, seriousness of offense). There is nothing remarkable about the statute here that separates the sentencing decision and produces two different hearings.

The General Assembly's choice to permit the hearings at different times makes sense, as requiring a decision about classification at the time of delinquency would harm juveniles. It would require the court to front-load a discretionary choice that factors in "remorse" and the "results of any treatment" the juvenile receives. R.C. 2152.83(D)(2), (6). The statute's flexibility "provid[es] a judge with more options for dealing with a delinquent juvenile" and is therefore consistent with the "goals of the juvenile justice system." *In re I.A.*, 2014-Ohio-3155 ¶ 16. The harm to juveniles of a contrary approach is especially pronounced if juvenile courts can hold only a single classification hearing. *See id.* ¶ 19 (statute permits only one hearing) (French, J., concurring).

C. D.S.'s statutory arguments to the contrary do not withstand scrutiny.

Despite the plain text of R.C. 2152.83 and this Court's recent decision in *I.A.* confirming the State's reading of that plain text, D.S. contends that the statute *bars* a juvenile court from finding an offender's age at a hearing held after DYS confinement. He makes three arguments—that *State v. Raber* compels reversal, that his pre-DYS disposition was a final order that could not be reopened, and that a juvenile's age may not be determined at a classification hearing. Each breaks down on a closer look.

1. Pointing to the adult case of *Raber* (at 4-7), D.S. contends that his original adjudication was a final order that the juvenile court could not "reopen" to determine that he was

14 at the time of at least one of the offenses. There, this Court held that a common pleas court could not reopen a criminal judgment after it had "implicitly" entered a judgment that the defendant had "no duty to register" as a sex offender. *State v. Raber*, 134 Ohio St. 3d 350, 2012-Ohio-5636 ¶ 3 (we discuss the constitutional aspects of *Raber* below). *Raber* is no guide to resolving this case for two distinct reasons.

First, the relevant statutes are different. Revised Code 2152.83 explicitly *allows* the juvenile court to conduct the sex-offender classification hearing *after* the juvenile is released from custody. No similar statute permits the prosecutorial do-over condemned in *Raber*. Thus, when the common pleas court "entered a judgment of conviction without finding Raber to be a sex offender," it concluded the proceedings by deciding not to classify him. 2012-Ohio-5636 ¶ 18. No statute permitted a second hearing on a matter already determined. Indeed, the non-constitutional holding in *Raber* is no more than a recognition that no statute or rule of procedure authorizes a common pleas court to reopen a final order. *See* 2012-Ohio-5636 ¶ 20 (citing *State, ex rel. Hansen, v. Reed*, 63 Ohio St. 3d 597 (1992), which cites *Brook Park v. Necak*, 30 Ohio App. 3d 118, 120 (8th Dist. 1986), which held that a court lacked "procedural authority" to reconsider a "legally proper sentence" where no statute or inherent power authorized the reconsideration). In contrast, the juvenile court here deferred a proceeding about D.S.'s classification, and told him it would do so. App. Op. ¶ 3; *see also In re M.R.*, 2014-Ohio-2623 ¶ 22 (7th Dist.) (*Raber* "not a case on point" for juvenile registration). Unlike in *Raber*, a statute specifically permitted that procedure here. *See* R.C. 2152.83.

Second, the procedure in the cases differs drastically. When classifying the adult defendant in *Raber*, the common pleas court "entered a judgment of conviction without finding Raber to be a sex offender subject to Tier I registration and without notifying him of a duty to

register, presumably on its *determination* that no duty existed based on the sexual activity's being consensual." 2012-Ohio-5636 ¶ 18 (emphasis added). That is, the common pleas court determined at the first hearing that Raber could not be classified as an offender. Here, the juvenile court *deferred*, rather than *determined*, a decision about D.S.'s offender status. The evil in *Raber* was giving the prosecution a second chance to prove a fact it affirmatively *lost* at a prior hearing. *Raber* condemned the reopening of a final judgment. Nothing of the sort took place in this case.

2. D.S. next attempts (at 7-8) an analogy to final appealable orders to support his argument that the juvenile court could not determine his age at the time it decided whether to classify him. D.S. claims that, because the order committing him to DYS was appealable, that order could not be "reopened" at the time of his classification hearing. D.S. confuses the appealability of an order with the reopening of that order. Where there are two orders, and each is appealable, litigation about the second order does not "reopen" the first. As we have shown, the classification hearing did not "reopen" the disposition hearing. Instead, and as directed by statute, the disposition hearing and the classification hearing are two distinct proceedings. They may occur together, or separately, as the juvenile court elects. *See* R.C. 2152.82(B). It is simply wrong to suggest that the appealability of one order in a case automatically means that litigating or appealing a second order equals "reopening" the first. *See, e.g.*, *Frisch's Rests., Inc. v. Ryan*, 121 Ohio St. 3d 18, 2009-Ohio-2 ¶¶ 2-3 (describing earlier appeal of class-action certification denial and subsequent appeal on merits issue).

Nor does D.S. gain any traction by pointing to Juvenile Rule 35, which governs probation revocation. The Rule is not on point. Again, what the court did here was conduct a classification hearing; it did not reopen anything. That is what the statute directs, and what the

juvenile court did. At bottom, D.S. argues that the General Assembly may not authorize the juvenile court to conduct a classification hearing that considers the juvenile's age separately from a disposition hearing. Nothing D.S. cites—and nothing of which the State is aware—supports that argument.

3. Finally, D.S. claims (at 10) that a juvenile's age may not be decided at the classification hearing because the only factfinding permitted then involves those facts that inform the juvenile court's discretion in deciding whether to classify a juvenile. D.S. has it exactly backward. There is no reason to *exclude* the age prerequisite from the list of things the court might determine at a classification hearing. The factors in subsection (D) guiding classification, no less than the prerequisites in subsection (B) setting requirements, are all checkpoints a juvenile court must pass before it classifies a 14 or 15 year old a sexual offender. Like many other statutes, R.C. 2152.83 includes prerequisites and guideposts for the court's discretion. In the same way, R.C. 2929.14(C)(4) channels decisions about consecutive sentencing with both prerequisites (e.g., committing an offense while under post-release control) and guideposts (e.g., the sentence will protect the public); *see also, e.g.*, *Renfrow v. Norfolk S. Ry. Co.*, ___ Ohio St. 3d ___, 2014-Ohio-3666 ¶¶ 16-17 (describing statutory prerequisites and findings necessary to pursue asbestos claim). Further undercutting D.S.'s argument, the statute specifically *includes* age as a factor that the juvenile court can use when deciding whether to classify a juvenile. *See* R.C. 2152.83(D)(4) (citing R.C. 2950.11(K), which includes "the offender's age"). The General Assembly certainly did not think that an offender's age must be proven at the time of disposition.

Because age is not relevant to a finding of delinquency, it would be odd for a juvenile court to make a specific finding about age at a disposition hearing. So long as the juvenile is not over 18, his age is of no real consequence when the court makes a finding about delinquency. At

best, age might bear on the jurisdiction of the court, but it is generally waivable. *See, e.g., In re Anthony D.G.*, 2008-Ohio-598 ¶ 16 (6th Dist.). Indeed, when "none of the elements of the charges . . . require proof of age" it is reversible error to dismiss delinquency charges for failing to show the age of the juvenile. *E.g., In re C.T.*, 2010-Ohio-5887 ¶ 19. The claim that a precise age *must* be determined at the time of disposition defies logic, not just the statute.

Appellee State of Ohio's Proposition of Law 2:

R.C. 2152.83 comports with the double-jeopardy and due-process gurantees of the state and federal constitutions.

The classification of D.S. accorded with the General Assembly's plan for juvenile offenders. It also comports with both the double-jeopardy guarantees and the due-process guarantees in the federal and state constitutions**.** Neither D.S. nor his *amici* offer a reason to doubt the classification's constitutionality.

A. The classification raised no Double Jeopardy Clause problem because D.S. had no reasonable expectation of finality in his disposition at the time he was adjudicated delinquent and put into State custody.

The Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution provides three distinct protections to criminal defendants. It protects against "a second prosecution for the same offense after acquittal," "a second prosecution for the same offense after conviction," and "'multiple punishments for the same offense.'" *Jones v. Thomas*, 491 U.S. 376, 381 (1989) (citation omitted). The Double Jeopardy Clause of the Ohio Constitution "provides the same protection." *State v. Miranda*, 138 Ohio St. 3d 184, 2014-Ohio-451 ¶ 6. This case fits into the category of the multiple-punishments protection. This protection applies in two situations: when a sentence is increased after "'a defendant has a legitimate expectation of finality,'" *Raber*, 2012-Ohio-5636 ¶ 24 (citation omitted), and when a court imposes multiple punishments that exceed the total punishment intended by the legislature, *Jones*, 491 U.S. at 381 (noting that this

protection is "'limited to ensuring that the total punishment did not exceed that authorized by the legislature'" (citation omitted)), *see also State v. Washington*, 137 Ohio St. 3d 427, 2013-Ohio-4982 ¶ 10 ("Whether multiple punishments imposed in the same proceeding are permissible is a question of legislative intent."). Together, these protections still leave a sentencing court the option of increasing a sentence without offending the Double Jeopardy Clause when the punishment is part of the legislative plan and where "there can be no expectation of finality in the original sentence." *United States v. DiFrancesco*, 449 U.S. 117, 139 (1980). These rules have not been violated here.

As an initial matter, there are reasons to doubt that D.S.'s classification is punitive, and thus that it implicates the Double Jeopardy Clause at all. The U.S. Supreme Court has "long recognized that the Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that could, in common parlance, be described as punishment." *Hudson v. United States*, 522 U.S. 93, 98-99 (1997) (internal quotation marks omitted). To be sure, this Court has held that certain classification requirements are punitive, but the requirements applicable to D.S. are distinguishable. Both *In re C.P.* and *State v. Williams* involved *automatic* classification requirements with no room for judicial discretion. *In re C.P.*, 131 Ohio St. 3d 513, 2012-Ohio-1446 ¶ 12; *State v. Williams*, 129 Ohio St. 3d 344, 2011-Ohio-3374 ¶ 17. In both *C.P.* and *Williams* this Court emphasized the *mandatory* nature of the classification in establishing that it was a punishment: "Williams is classified as a Tier II sex offender based solely on the offense he committed without regard to the circumstances of the crime or his likelihood to reoffend. Under [a previous, non-punitive classification statute], Williams might not have been subject to registration requirements." *Williams*, 2011-Ohio-3374 ¶¶ 17-18; *C.P.*, 2012-Ohio-1446 ¶ 12. Here, by contrast, D.S.'s classification was not mandatory. It is therefore not punishment in the

sense protected by the Double Jeopardy Clause. *See, e.g.*, *United States v. Young*, 585 F.3d 199, 204–05 & n.26 (5th Cir. 2009) (holding that a registration requirements was not punitive) (collecting cases); *see Smith v. Doe*, 538 U.S. 84, 97 (2003) (factors for evaluating whether statute is punitive used both in double jeopardy and ex-post-facto contexts).

But even accepting the characterization of D.S.'s registration as punishment, the juvenile court did not violate either of the "multiple punishments" protections of the Double Jeopardy Clause. Because R.C. 2152.83 specifically allows for a classification hearing after confinement, D.S. could not have had any reasonable expectation of finality until after his confinement and the required classification hearing, nor can he argue that the General Assembly did not intend him to be eligible for *both* confinement and sex offender classification.

Expectation of Finality. Sentences carry less of an expectation of finality than acquittals or convictions. "The Double Jeopardy Clause 'does not provide the defendant with the right to know at any specific moment in time what the exact limit of his punishment will turn out to be.'" *Monge v. California*, 524 U.S. 721, 730 (1998) (citation omitted). The Double Jeopardy Clause permits courts to increase punishments if the legislature provides a mechanism for their increase. "[T]he Double Jeopardy Clause does not require that a sentence be given a degree of finality that prevents its later increase." *DiFrancesco*, 449 U.S. at 137.

Two analogies illustrate that defendants have a low expectation of finality in the exact contours of their punishment. A defendant has no expectation of finality where a statute allows a subsequent imposition of additional punishment. For example, in *State v. McMullen*, this Court held that a criminal defendant could have no expectation of finality in his sentence where a statute allowed imposition of a longer sentence after probation revocation. 6 Ohio St. 3d 244, 245 (1983). In that case, the defendant pleaded guilty to grand theft and was sentenced to six

months to five years in prison. *Id.* at 244. His imprisonment was suspended "upon the condition he successfully undergo drug rehabilitation, . . . [and he] was placed on probation for a period of three years." *Id.* When the defendant violated his probation, his probation was revoked and he was sentenced to eighteen months to five years of imprisonment. *Id.* This Court held that the subsequent increase in punishment did not violate the Constitution because a "defendant has no expectation of finality in the original sentence when it is subject to his compliance with the terms of his probation." *Id.* at 246. The statute permitting resentencing defeated any expectation of finality. Here, R.C. 2152.83 specifically allows a juvenile court to conduct a juvenile sex-offender classification hearing after a period of State custody. Thus, D.S. could have no expectation of finality at the time of the delinquency adjudication.

Another illustration is the possibility of further judicial review, which also defeats an expectation of finality. In *State v. Roberts*, this Court held that a criminal defendant can have no expectation of finality in a sentence that could be increased on review. 119 Ohio St. 3d 294, 2008-Ohio-3835 ¶ 29. In *Roberts*, the defendant was sentenced to eight years' imprisonment, but the court of appeals held that the trial court's sentencing method was unconstitutional and reduced his total sentence to two years. *Id.* ¶ 3. While the case was pending in this Court, the defendant was released from prison. *Id.* ¶ 6. This Court subsequently remanded the case to the trial court for resentencing, which again sentenced the defendant to eight years. *Id.* ¶ 7. This Court held that the defendant had no expectation of finality in his sentence based on either the court-of-appeals decision or completion of the new, two-year sentence and release from prison. *Id.* ¶ 29. Contrast the position of D.S. He seeks finality in his sentence *before* custody; *Roberts* rejected finality even after *completing* custody.

D.S. could not have had any reasonable expectation that the period of confinement ordered by the juvenile court was final both because a statute explicitly allows classification after confinement and the juvenile court's order explicitly "deferred" classification while D.S. was "'committed to ODYS.'" App. Op. ¶ 3 (quoting juvenile court).

Legislative Intent. Where an offender has no expectation that their punishment is final, the Double Jeopardy Clause prohibits multiple punishments only "to ensure that sentencing courts do not exceed, by the device of multiple punishments, the limits prescribed by the legislative branch of government, in which lies the substantive power to define crimes and prescribe punishments." *Jones*, 491 U.S. at 381. "'Where consecutive sentences are imposed at a single criminal trial, the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.'" *Albernaz v. United States*, 450 U.S. 333, 344 (1981) (citation and alteration omitted). Here, no such double-jeopardy interest is implicated. Accepting D.S.'s argument that the juvenile court imposed multiple punishments, those punishments do not exceed the General Assembly's authorization. To the contrary, the legislature plainly intended that a juvenile sex offender could be subject both to confinement and to registration. *See* R.C. 2152.83. The Double Jeopardy Clause demands no more.

B. D.S.'s classification accords with due process.

Juvenile courts have the flexibility to follow procedures that are different from those in adult criminal trials, but juvenile procedures must "comport with the 'fundamental fairness' demanded by the Due Process Clause." *State v. D.H.*, 120 Ohio St. 3d 540, 2009-Ohio-9 ¶ 50 (citation omitted). As this Court recognizes, "[w]e need not transform juvenile proceedings into full-blown adult trials and dispositions to preserve a juvenile's due process rights." *Id*. ¶ 60. In

other words, juvenile-delinquency adjudications and dispositions may offer different due-process protections than criminal trials. Due process applies in each context, but it need not always be satisfied using the same tools. Indeed, "a balanced approach is necessary to preserve the special nature of the juvenile process while protecting procedural fairness." *Id.* ¶ 49; *see also In re Agler*, 19 Ohio St. 2d 70, 77-78 (1969) (due process does not require juvenile adjudications to include trial by jury). Especially in juvenile courts, the procedures that satisfy due process are flexible. *See D.H.*, 2009-Ohio-9 ¶ 52.

Procedures in adult and juvenile sex-offender classifications differ, but the differences largely redound to the *benefit* of juveniles, not their *detriment*. For example, adults convicted of a crime and subject to a sex-offender classification cannot argue, as juveniles may, that they should avoid classification because their disposition and time in custody were effective at rehabilitating them. *See* R.C. 2152.83(B)(2); 2152.84(A)(1). Juveniles subject to discretionary classification have the opportunity to argue that the nature of their offenses, their showing of remorse, or the public interest suggest that they should not be classified as sex offenders. R.C. 2152.83(D). The juvenile court is required to revisit the decision to classify an offender at the end of his disposition. R.C. 2152.84(A)(1); *In re C.P.*, 2012-Ohio-1446 ¶ 23. That hearing presents another opportunity for juveniles to argue that a disposition and any treatment was effective, and that a sex-offender classification should be terminated. Adults do not have that opportunity. Juveniles subject to discretionary classification also are entitled to petition for reclassification as a lower-tier sex offender, or declassified altogether. R.C. 2152.85(A)(2). They may file such a petition three years after their classification, and then periodically thereafter. R.C. 2152.85(B). Adults do not have this same opportunity. *See* R.C. 2950.04; R.C. 2950.15.

These procedures give juveniles subject to discretionary classification repeated opportunities meaningfully to challenge classifications, to have those classifications re-evaluated, and even to have them removed altogether. By statute, a juvenile classified as a Tier II offender like D.S. will get a hearing "upon completion of . . . disposition" to determine whether the classification "should be continued or terminated." R.C. 2152.84(A)(1), (2)(b). Three years after this "mandatory hearing," R.C. 2152.85(B)(1), a juvenile may petition for reclassification or termination of classification. *Id.*; *see* R.C. 2152.85(A)(2). Three years after that, the juvenile may again petition for the same relief. R.C. 2152.85(B)(2). Five years later, the juvenile may again petition for the same relief. R.C. 2152.85(B)(3). At each of these hearings, the juvenile judge considers factors such as the "nature" of the offense, the juvenile's "remorse," any mitigating conduct, the "results of any treatment," and any "professional assessment" of the juvenile. R.C. 2152.83(D)(1), (2), (6); *see* R.C. 2152.84(A)(2); 2152.85(C). Individualized process abounds for juveniles like D.S.

These procedures ensure fundamental fairness. At every step the kind of classification at issue here affords discretion to the juvenile court. And discretion is the exact ingredient that this Court identified as the touchstone of fundamental fairness when criticizing its absence from other parts of the juvenile sex-offender statutes. Those statutes flunked due process, the Court held, because they "eliminate[d] the discretion of the juvenile judge," which the Court explained, is the "essential element of the juvenile process." *In re C.P.*, 2012-Ohio-1446 ¶ 77. Unlike the statutes condemned in *C.P.*, the statutes used here allow the judge to "consider individual factors about [the juvenile] or his background . . . ." *Id.* ¶ 78. This case is a far cry from *C.P.*

C. Neither D.S. nor his *amici* show that the classification here is unconstitutional.

D.S. and his *amici* invoke three kinds of constitutional protections: (1) the Double Jeopardy Clause, (2) substantive due process, and (3) procedural due process (including its protection of the right to reputation). The classification here infringes none of these protections.

1. The classification invaded no expectation of finality protected by the Double Jeopardy Clause.

D.S. again offers up (at 11-16) *State v. Raber* to claim that the juvenile court may not hold a sex-offender classification hearing after confinement. *Raber* is no more helpful here than it was to the statutory argument. This case is distinguishable from *Raber* in two key ways.

First, in *Raber*, the prosecution had *two* opportunities to prove a fact necessary to sex-offender registration—that the offense for which the defendant pleaded guilty was non-consensual. At the sentencing hearing the state failed to prove that fact. *Id.* ¶ 3. Then, after the court issued its sentence, it reopened the case and gave the prosecution a second chance to prove the very same fact. *Id.* ¶ 9. This second time, the prosecution successfully convinced a different judge that the conduct was nonconsensual, and that the defendant therefore should be classified as a sex offender. *Id.* D.S.'s classification is quite different. The State sought only once to demonstrate D.S.'s precise age at the time of the incidents. It did so at the time of the classification hearing. By contrast, at the delinquency determination, it was irrelevant whether D.S. was 13 or 14 at the time of the incident. He could be adjudicated delinquent for an incident at either age. The State made no attempt to prove his precise age, and the juvenile court made no finding on that issue. That fact was only relevant to the sex-offender classification hearing, and it was at that hearing that the State proved beyond a reasonable doubt that D.S. was 14 at the time of at least one of the incidents. The State only had a single opportunity to prove that D.S. was 14 at the time of the offense.

Second, the *Raber* defendant had a strong expectation of finality; D.S. did not. The trial court in *Raber* issued a judgment and sentence, and decided not to classify the defendant. The defendant reasonably expected that the decision not to subject him to sex-offender classification was final. Here, however, at the delinquency disposition, the juvenile court did not decide against classifying D.S. as a sex offender. Just the opposite. It explicitly reserved that decision, and informed D.S. that it would hold a hearing on the matter after his release from custody. D.S. and the defendant in *Raber* are polar opposites regarding their expectation of registration. Nothing suggested that the defendant in *Raber* would have his case reopened for classification. D.S., on the other hand, received an adjudication of delinquency that told him he would face a juvenile sex-offender registration hearing after his confinement. He could have no expectation of finality prior to that classification hearing.

2. A substantive-due-process inquiry asks the wrong question, but the statute easily passes the test under that provision.

Much of D.S.'s brief (at 16-27) attacks his classification on due-process grounds. This attack sounds mostly in substantive due process (we address the procedural-due-process argument in Part C.3 below). *See e.g.*, Br. at 19 (statute violates due process by "grant[ing] juvenile courts jurisdiction" past age twenty-one), 20 ("punishments must cease" at age twenty-one), 22 (punishing a child "into adulthood is not justified"), 22-23 ("no justification" for classification to "carry into adulthood"). These arguments that D.S.'s classification has effects that go beyond other juvenile punishments are in fact claims that juvenile classification is a cruel and unusual punishment. The Eighth Amendment is the right rubric here, but even under that test, the statute is constitutional as applied to D.S.

Two principles of constitutional adjudication show that D.S.'s claim challenging his classification as substantively unreasonable fails at the outset under the Substantive Due Process Clause and instead should be analyzed solely under the Eighth Amendment.

One, substantive due process is inapplicable when another part of the Constitution contains explicit text relevant to the question. Here, D.S. challenges his punishment. The Eighth Amendment governs whether a punishment is unconstitutional. *Ewing v. California*, 538 U.S. 11, 20 (2003) ("The Eighth Amendment, which forbids cruel and unusual punishments, contains a 'narrow proportionality principle' that 'applies to noncapital sentences.'") (O'Connor, J., op.). In these circumstances, the Supreme Court has repeatedly held that courts should look to the textually relevant clause, not vague conceptions of substantive due process. "We have held that where another provision of the Constitution 'provides an explicit textual source of constitutional protection,' a court must assess a plaintiff's claims under that explicit provision and 'not the more generalized notion of substantive due process.'" *Conn v. Gabbert*, 526 U.S. 286, 293 (1999) (citation and some internal quotation marks omitted); *Graham v. Connor*, 490 U.S. 386, 395 (1989) ("Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims."). Because the text of the U.S. and Ohio Constitutions directly addresses punishment, the Eighth Amendment is the right yardstick here.

Two, the textually unbounded character of substantive-due-process analysis makes it ill-suited for novel claims. Therefore, "[a]s a general matter, the Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended. The doctrine of judicial self-

restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125 (1992) (citation omitted); *cf. State ex rel. King v. Sherman*, 104 Ohio St. 317, 322-23 (1922) ("It has been repeatedly declared that before a statute can be declared to be unconstitutional it must be violative of some specific provision of the written Constitution, and that it is not sufficient that it shall be contrary to natural justice or public policy or other latent spirit pervading or underlying the Constitution without either expressly or impliedly violating its terms."). When D.S. says (at 22) that his classification "is not justified," he makes a novel claim about punishment. That is a task for the Eighth Amendment, not substantive due process.

In contrast to the vague substantive-due-process standards, this Court has established a concrete standard to analyze an Eighth Amendment claim. This standard demonstrates that D.S.'s sex-offender classification is constitutional. D.S. has, of course, waived any Eighth Amendment claim, but it fails nonetheless.

As with double jeopardy, there are reasons to doubt that D.S.'s classification is a punitive consequence subject to scrutiny under the Eighth Amendment at all. The holdings of *In re C.P.* and *State v. Williams* involved the distinct question of whether *automatic* classifications were punitive. 2012-Ohio-1446 ¶ 12; 2011-Ohio-3374 ¶ 17. In both *Williams* and *C.P.* this Court emphasized the *mandatory* nature of the classification in establishing that it was a punishment. That ingredient is lacking here.

Even if D.S.'s classification is punitive, there are further reasons to doubt that it is unconstitutional. For one thing, there is no indication of a national consensus against discretionary juvenile sex-offender classification. Many States allow it. *See, e.g., N.L. v. Indiana*, 989 N.E.2d 773, 776 (Ind. 2013) ("[T]rial courts may place a child on the sex offender

registry only if they first find by clear and convincing evidence that the child is likely to repeat a sex offense."). For another, this Court's precedents give no hint that a discretionary classification scheme with many opportunities for the juvenile court to revisit a juvenile's classification status is "so greatly disproportionate to the offense as to shock the sense of justice of the community." *State v. Hairston*, 118 Ohio St. 3d 289, 2008-Ohio-2338 ¶ 13 (internal quotation marks omitted). Indeed, as the Ninth Circuit has explained, registration is not disproportionate because it does not expose juvenile sex offenders to "any risk of incarceration or threat of physical harm." *United States v. Juvenile Male*, 670 F.3d 999, 1010 (9th Cir. 2012).

D.S.'s argument about substantive due process only makes sense as an Eighth Amendment challenge. As an Eighth Amendment challenge, it plainly fails. Even so, as a substantive-due-process challenge, it plainly fails as well. D.S. points to no case holding that the kind of discretionary sex-offender registration statute like the one applied to him violates substantive due process. Indeed, the authority is stacked against that position. The Ninth Circuit recently collected cases addressing substantive-due-process challenges to sex-offender registration statutes and joined several other circuits in rejecting the challenges. The court's logic is equally applicable here. "Given the limited range of rights that have been recognized as 'fundamental' for the purposes of substantive due process analysis, defendants have failed to establish a substantive due process violation." *Juvenile Male*, 670 F.3d 999, 1013.

Notwithstanding these authorities, D.S.'s key argument (at 20) about substantive due process seems to be that registration is punishment and that "all dispositions and punishments [of a juvenile] must cease" at age twenty-one. That claim suffers three main problems.

First, D.S.'s theory cannot explain the holding of *In re C.P.* There, the Court held that lifelong, automatic offender registration for juvenile offenders violates the Eighth Amendment

(and Ohio's analogue) and the Procedural Due Process Clause. 2012-Ohio-1446 ¶¶ 58, 69, 85. If D.S. is right that the statutory limits of juvenile-court jurisdiction prohibit *any* consequences that extend beyond age twenty-one, then *C.P.* should have been decided on statutory, not constitutional grounds. *See Mahoning Educ. Ass'n of Dev. Disabilities v. State Employee Relations Bd.*, 137 Ohio St. 3d 257, 2013-Ohio-4654 ¶ 19 (enforcing Court's "duty to apply the plain language of the statute as written and to construe statutes so as to avoid finding incompatibility with a constitutional provision"). This Court does not make constitutional law unless it is "absolutely necessary." *Smith v. Landfair*, 135 Ohio St. 3d 89 2012-Ohio-5692 ¶ 13 (collecting cases). If D.S. were right, the lengthy constitutional discussions in *C.P.* were unnecessary and trespassed the restraint reaffirmed in *Smith*.

Second, if D.S. were right that any consequences of a juvenile disposition that extend beyond age twenty-one are unconstitutional, the entire Serious Youthful Offender law is unconstitutional. That makes the decision in *J.V.* an odd exercise. There, the Court scrutinized the exact dates of the relevant juvenile-court orders because a court *does* lose jurisdiction to *impose* a new disposition after age twenty-one. *See* 2012-Ohio-4961 at ¶ 24, *id.* at ¶ 30 (McGee Brown, J., concurring), *id.* at ¶ 42 (O'Donnell, J., dissenting). But if the entire *sentence* was unconstitutional because it extended beyond age twenty-one, the Court could have resolved the case without scrutinizing the dates of the various dispositions.

Third, the notion that the continuing consequences of a juvenile disposition equate with continuing juvenile-court jurisdiction also fails when considering analogous precedent from adult courts. This Court has repeatedly denied relief to adult defendants challenging the details of their punishment because it is the executive branch, not the courts, that handles the details of sentences. For example, the duty to grant pretrial-confinement time credit "rests with the Adult

Parole Authority" not the court. *State ex rel. Jones v. O'Connor*, 84 Ohio St. 3d 426, 427 (1999); *State ex rel. Harrell v. Court of Common Pleas, Hamilton Cnty*, 58 Ohio St. 2d 193, 193 (1979). Similarly, it is the executive (the sheriff) that handles sex-offender reporting, not the judiciary. *See, e.g.*, R.C. 2950.04(A)(1)(b); *see also* R.C. 2950.03(B)(2)(c)(ii) (violation of juvenile's registration obligation after age 18 is a crime prosecuted in common pleas court). The juvenile court simply has no jurisdiction over the registration obligations. Finally, it is doubtful that D.S. means to challenge the procedures that permit a juvenile court to declassify him as a sex offender even after he turns twenty-one because those procedures *benefit* juvenile registrants like him. *See* R.C. 2152.85.

3. The statute afforded D.S. significant procedural due process.

The bulk of the due-process argument in D.S.'s brief reads like a substantive-due-process claim. But at times, D.S. couches the claim in terms of procedural due process. He says, for example (at 26), that registration duties like his are imposed without adequate "protections" like those accorded offenders classified as serious youthful offenders or transferred to adult court. But that argument overlooks the procedures that afford D.S. *more* protection than his comparators in serious-youthful-offender or bind-over proceedings. As we explained above, D.S. has been and will be afforded numerous hearings to first set, and then possibly undo, his registration classification. He has already had a hearing that took account of whether his time in custody was effective at rehabilitating him. *See* R.C. 2152.83(B)(2). And D.S. will have future hearings to revisit his classification. *See* R.C. 2152.84; 2152.85; 2152.83(D). Collectively, these hearings give juveniles like D.S. multiple chances to avoid or undo classification before registration continues "into adulthood." (Br. at 26). These protections are more expansive than those afforded adults, and are more extensive than the comparators D.S. offers. And these

protections are the kinds of mechanisms recommended by those who *agree* with D.S. that mandatory, lifetime registration for juveniles is unconstitutional. *See, e.g.*, Shannon C. Parker, *Branded for Life: The Unconstitutionality of Mandatory and Lifetime Juvenile Sex Offender Registration and Notification*, 21 Va. J. Soc. Pol'y & L. 167, 204 (2014) (noting that "states should incorporate frequent reevaluation of the juveniles to determine if registration remains appropriate"). Under no recognized formulation of due process has D.S. been denied that right.

D.S. responds (at 26) to this panoply of protections by noting that declassification is "not guaranteed" and that "mandatory registrants" cannot benefit from the declassification hearings. These points easily fall away. Due process cares about procedure, not result. *See, e.g.*, *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 321 (1985) ("the fundamental fairness of a particular procedure does not turn on the result obtained in any individual case"). It is no argument to say that the vast protections afforded D.S. do not "guarantee" reclassification. As for the point that certain juveniles cannot benefit from these procedures, D.S. has no standing to assert arguments others might make because he *can* benefit from all of these reclassification hearings. *See, e.g.*, *Clifton v. Blanchester*, 131 Ohio St. 3d 287, 2012-Ohio-780 ¶¶ 17, 30 (litigant had no standing to challenge regulation "not directed at [his] property"); *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) (articulating the "'general prohibition on a litigant's raising another person's legal rights'") (citation omitted). There is no constitutional shortcoming in the process *afforded to D.S.*

D.S. has received, and will receive, more process than adults subject to sex-offender registration and more process than juveniles subject to serious-youthful-offender sentences or juveniles tried in adult court. At bottom, D.S.'s "procedural due process argument strikes us as a

last ditch effort to undo the adequate process because it did not produce the anticipated result." *Bettendorf v. St. Croix Cnty*, 631 F.3d 421, 427 (7th Cir. 2011).

4. The statute does not trespass any Article I, Section 16 reputational interests.

D.S. has not advanced a right-to-reputation argument; it is therefore waived in this Court. *See, e.g.*, *E. Liverpool v. Columbiana Cnty. Budget Comm'n*, 116 Ohio St. 3d 1201, 2007-Ohio-5505 ¶ 3 (arguments "abandoned" in Supreme Court where litigant "never pressed [them] . . . in its briefs to the Court); *State ex rel. Kolcinko v. Ohio Police & Fire Pension Fund*, 131 Ohio St. 3d 111, 2012-Ohio-46 ¶ 10 (argument presented only in reply in lower court not considered by this Court); *State v. Childs*, 14 Ohio St. 2d 56, paragraph three of the syllabus (1968). D.S.'s *amicus* does raise this claim, but it fares no better than D.S.'s arguments.

This Court has explained that there is no freestanding right to reputation. In considering the right to reputation for adult sex-offender registrants, the Court observed that registration "does not impair the right to a favorable reputation" because a favorable reputation "is not a protected liberty interest." *State v. Williams*, 88 Ohio St. 3d 513, 527 (2000). "'Further, the harsh consequences of classification and community notification come not as a direct result of the sexual offender law, but instead as a direct societal consequence of the offender's past actions.'" *State v. Cook*, 83 Ohio St. 3d 404, 413 (1998) (citation and alterations omitted).

Amici seek to distinguish these cases by invoking Article I, Section 16, which provides that "an injury done [to] . . . reputation, shall have remedy by due course of law . . . ." Ohio Const. art. I, § 16. But this provision is about process, not substance. "A plain reading of Article I, Section 16 reveals that it does not provide for remedies without limitation . . . . Rather, the right-to-remedy clause provides that the court shall be open for those to seek remedy by '*due course of law*.'" *Ruther v. Kaiser*, 134 Ohio St. 3d 408, 2012-Ohio-5686 ¶ 12 (citation omitted).

Thus, Article I, Section 16 "does not prevent the General Assembly from defining a cause of action" or defining the reach of substantive rights. *Id*. Here, the General Assembly has defined the reach of the right to reputation by declaring that it does not shield juvenile sex-offender registrants from all possible reputational consequences of their actions. That accords with the General Assembly's prerogative to determine "what injuries are recognized and what remedies are available." *Id*. ¶ 13. D.S. suffered no constitutional deprivation here.

* * * *

At the end of the day, D.S. and his *amici* dislike the General Assembly's decision to create a juvenile-offender registration system in Ohio. The breadth of their social-science and public-policy citations shows that their concern is better directed at the statehouse than the courthouse. Even accepting "for the sake of argument" that a different juvenile sex-offender policy is warranted, "it is the legislature's role, not" the courts', to make that change. *See Anderson v. Barclay's Capital Real Estate, Inc*., 136 Ohio St. 3d 31, 2013-Ohio-1933 ¶ 25 n.1.

CONCLUSION

For these reasons, the Court should affirm the decision of the Fifth District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Appellee State of Ohio was served by regular U.S. mail this 4th day of November, 2014 upon the following:

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