No. 24-

IN THE

Supreme Court of the United States

KACI MAY AND KACI MAY AS GUARDIAN *AD LITEM* FOR A.R.M., J.H.M., J.T.M., C.B.M., J.R.M. AND J.W.M.,

Petitioners,

v.

DORCHESTER SCHOOL DISTRICT TWO, SOUTH CAROLINA, DEPARTMENT OF SOCIAL SERVICES, MICHAEL LEACH, AND JASMINE FLEMISTER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI

ANDREW T. LILLY
LILLY, PLLC
4907 Magazine Street
New Orleans, LA 70115

ROBERT J. BUTCHER
Counsel of Record
DEBORAH J. BUTCHER
THE CAMDEN LAW FIRM, PA
507 Walnut Street
Camden, SC 29020
(803) 432-7599
rbutcher@camdensc-law.com

Counsel for Petitioners Kaci May, A.R.M., J.H.M., J.T.M., C.B.M., J.R.M. and J.W.M.

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COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

Questions Presented

The Supreme Court of South Carolina left undisturbed the decision of the South Carolina Court of Appeals' decision holding S.C. Code Ann. § 63-7-920 allows the unrestricted interrogation of public school children by state child protective services (CPS) workers in blatant disregard of parents' and children's 1st, 4th, 5th, 6th, and 14th Amendment rights under the United States Constitution.

1. Did the trial court/state appellate courts err in finding that S.C. Code Ann. §63-7-920 was not limited by the Petitioners' constitutional protections under Amend. I, IV, V, VI, and XIV of the U.S. Const.

2. Did the trial court/state appellate courts err in finding the Petitioners' failed to meet the factors granting injunctive relief? *Uzuegbunam v. Preczewski*, 592 U.S. 279, 286, 209 L.Ed. 2d 94, 101, 141 S.Ct. 792 (2021).

Parties to the Proceeding

Petitioners in this Court, Plaintiffs-Appellants-Petitioners below, are Mother, Kaci May, and her children, A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., by and through Kaci May as guardian ad litem for the Children.

Respondents in this Court, Defendants-Appellees-Respondents below, are Dorchester School District Two, South Carolina Department of Social Services (SCDSS), Michael Leach, the Director of the South Carolina Department of Social Services, and Jasmine Flemister.

Respondents not in this Court but who were parties in proceedings below include Wally Baird and Joseph R. Pye, school district officials, and Susan Alford, the former director of SCDSS.

Corporate Disclosure Statement

No corporations are parties to the action in this Court and there are no parent companies or publically held companies owning any corporations' stock.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Kaci May and Kaci May, as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., ("Children") respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of South Carolina and South Carolina Court of Appeals. The state supreme court and its lower courts chose the convenient and easier route, ignoring the fundamental rights of families and children, by allowing state child protective services (CPS) workers to interrogate public school children without parental permission, exigent circumstances, probable cause, or even a suspicion of child abuse and neglect. This occurs even months after child protective services investigations are concluded.

There is a circuit split on the constitutionality of interrogations of public-school children by CPS workers who lack permission, a warrant, or exigent circumstances. The Second, Sixth, Seventh, Ninth, and Tenth Circuits, covering 25 states and 2 territories, have addressed this issue and carved out protections for public-school children interrogated at school. *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999); *Schulkers v. Kammer*, 955 F.3d 520 (6th Cir. 2020); *Barber v. Miller*, 809 F.3d 840 (6th Cir. 2015); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003); *Michael C. v. Gresbach*, 526 F.3d 1008 (7th Cir. 2008); *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999); *Mann v. County of San Diego*, 907 F.3d 1154 (9th Cir. 2018); *Dees v. County of San Diego*, 960

F.3d 1145, 1154 (9th Cir. 2020); *Scanlon v. Cnty. of Los Angeles*, 92 F.4th 781 (9th Cir. 2024); *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005).

OPINIONS BELOW

After a bench trial, the Dorchester County Court of Common Pleas issued an order denying the Petitioners' request for injunctive relief pursuant to 42 U.S.C. § 1983 and the common law on October 8, 2020. App. 19. The South Carolina Court of Appeals issued an opinion denying Petitioners' requested relief on March 3, 2024, substituted its opinion on May 29, 2024 and is reported at *May v. Dorchester School District Two*, 901 S.E.2d 36 (S.C. Ct. App. 2024). App. 3. Petitioner's petition for a writ of certiorari was denied by the Supreme Court of South Carolina on September 13, 2024. App. 1.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42, Section 1983 creates a cause of action against a state actor who violates someone's civil rights. The statute provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State. . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . "

The following factors must be considered before granting injunctive relief:

> (1) Permanent injunction is available only if there is no adequate remedy at law.
> (2) A party seeking a permanent injunction must demonstrate that it has suffered an irreparable injury.
> (3) In determining whether to grant injunctive relief, the court must balance the hardship faced by the applicant resulting from the conduct sought to be enjoined against the hardship the defendant would suffer if the relief were granted.
> (4) Court Must Consider Effect of Injunction on Public Interest

Morales v. TWA, 504 U.S. 374, 381, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–313, 102 S. Ct. 1798, 72

L. Ed. 2d 91 (1982); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987); *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 141 S. Ct. 63, 208 L. Ed. 2d 206 (2020) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)); *Honig v. Doe*, 484 U.S. 305, 328 n.10, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988); *Glossip v. Gross*, 576 U.S. 863, 135 S. Ct. 2726, 2739, 192 L. Ed. 2d 761 (2015).

The "Due Process Clause" of United States Constitution, Amendment Fourteen, Section 1 bars states from making or enforcing: "any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. In this matter, S.C. Code Ann. § 63-7-920 fails to limit interrogations of public-school children and there is no judicial oversite for these state actions. While the statute does contemplate the need and use of warrants in CPS investigations, the South Carolina courts have determined that school interrogations of children are not beholden to the warrant requirement.

The substantive component of the due process clause "bars certain government actions regardless of the fairness of the procedures used to implement them . . . [and thereby] serves to prevent governmental power from being 'used for purposes of oppression.'" *Daniels v. Williams*, 474 U.S. 327, 332,

106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). When determining whether an action violates a right protected by this element of the due process clause, the court must balance "the liberty of the individual" and "the demands of an organized society." *Youngberg v. Romeo*, 457 U.S. 307, 320, 102 S. Ct. 2452, 2460, 73 L. Ed. 2d 28 (1982). The substantive due process provides the right to familial integrity, a fundamental liberty interest protected by the Fourteenth Amendment. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *see also*, *Prince v. Massachusetts*, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944) (parents have fundamental interest in the religious upbringing of children); *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) (parents have a fundamental interest in the education of their children); *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).

The Fourth Amendment of the United States Constitution provides "[t]he right of the people to be secure in their persons, . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. S.C. Code Ann. § 63-7-920, as interpreted by the South Carolina Courts, fails to delineate any standard upon the State's searches and seizures of public-school children by state CPS workers and fails to provide due process protections and judicial oversite through the application and

approval of warrants. *See also*, *N.J. v. T.L.O.*, 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1984) (The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials.)

S.C. Code Ann. § 63-7-920 states, in part:

> (A)
>
> > (1) Within twenty-four hours of the receipt of a report of suspected child abuse or neglect, the department must begin an appropriate and thorough investigation to decide whether the report should be "indicated" or "unfounded" when the department concludes the report alleges that:
> >
> > > (a) a child is at imminent and substantial risk of physical or mental injury due to abuse, neglect, or harm;
> > >
> > > (b) the family may flee or the child may be unavailable for purposes of conducting a child protective services investigation; or
> > >
> > > (c) the department has assumed legal custody of a child pursuant to Section 63-7-660 or 63-7-670 or the department has been notified

that a child has been taken into emergency protective custody.

(2) The department must begin an appropriate and thorough investigation of all reports of suspected child abuse or neglect that do not meet criteria established in subsection (A)(1) within two business days of receiving the report to determine whether the report should be "indicated" or "unfounded".

(3) The finding must be made no later than forty-five days from the receipt of the report. A single extension of no more than fifteen days may be granted by the director of the department, or the director's designee, for good cause shown, pursuant to guidelines adopted by the department.

(4) If the investigation cannot be completed because the department is unable to locate the child or family or for other compelling reasons, the report may be classified as unfounded Category III and the investigation may be reopened at a later date if the child or family is located or the compelling reason for failure to complete the investigation is removed. The department must make a finding within

forty-five days after the investigation is reopened.

(B) The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.

(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the

> child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.
>
> . . .

STATEMENT OF THE CASE

One of the most important investigation tactics CPS workers use during a child abuse and neglect investigation is the interrogation of public-school children without consent from the parent or guardian of a child. It is effective because (1) children may feel more free to speak about abuse and neglect when their parents are not present, (2) children are taught to respond to the apparent authority of school administrators and CPS workers when they are removed from class and brought up front to the office, (3) there is less of a chance children have been coached, and (4) children may feel safer from retaliation.

On the other hand, these interrogations are not limited by the Agencies, statutes, or regulations, and there is no oversite by the courts – except when a family has the means and sophistication to seek redress months or years later. CPS workers may interrogate children because (1) there was an immediate, timely, legitimate report or concern of abuse or neglect, (2) exigent circumstances arise because of visible injuries or disclosures of ongoing and impending abuse or neglect, (3) a warrant or court order was issued, (4) a CPS worker has a grudge against the parents, (5) a CPS worker believes the child has been abused or neglected in the past, (6) the parents failed to show the CPS worker respect, or (7) the CPS worker doesn't want to go home to her spouse.

This Court and our state courts have agreed that Fourth Amendment protections are abrogated once a CPS agency receives a report of abuse and neglect. Parents and children across our nation, however, have experienced interrogations in the school settings well past the initial reports of abuse and neglect – weeks and months – after any probable cause, exigent circumstances, or other emergency would justify the abrogation of such protections.

This petition addresses the unrestricted government intrusion into the lives of South Carolina's children and families. SCDSS's policies and procedures use compulsory schooling to skirt

children's and families' constitutional protections, even after affirmative assertions of such rights.

Under the South Carolina courts' interpretation of S.C. Code Ann. § 63-7-920 and application of the Constitution, CPS workers could stand at the doors of each and every school and interrogate every single child about their private homelife with no limitations.

The South Carolina Department of Social Services (SCDSS) and our public schools allow SCDSS's caseworkers unfettered access and interrogation of the children of South Carolina. They do not require parental permission, exigent circumstances, a warrant, or a court order before interrogations are conducted. Rarely do SCDSS or the public schools inform parents of such interrogations after they occur. SCDSS and our public schools rely upon S.C. Code Ann. §63-7-920 to disregard parents' and children's 1st, 4th, 5th, 6th, and 14th Amendment rights under the United States Constitution.

After a report of abuse and neglect was made against May, SCDSS interrogated the May children at Dorchester School District Two (School District) schools without parental consent, a warrant, or a court order seven times over the course of nine months for the same allegation/intake. There were no exigent circumstances to excuse these interrogations.

Petitioner Children, who attend public schools/will attend public schools, asked the Court to protect their constitutional rights and enjoin SCDSS and School District from interrogating the May children in the future unless SCDSS has parental permission, exigent circumstances are present, or a warrant or court order is obtained. Petitioners asked the trial court to restrain SCDSS Defendants from interrogating the Children unless there is a court order or a new allegation of abuse and/or neglect and also restrain School District from facilitating interrogation of the children unless there is a court order or a new allegation of abuse and/or neglect.

RELEVANT FACTS

I. The May Family.

Warren May, father of the minor Petitioners, passed away during litigation on April 16, 2020. Kaci May (Kaci) is the biological mother of A.R.M., J.T.M., C.B.M., and J.W.M. Kaci is adoptive mother of J.H.M., J.R.M., and L.C.M. and they were adopted from SCDSS foster care on June 5, 2015.

J.H.M. and J.R.M. suffered severe sexual abuse, physical abuse, and neglect before being placed in the Mays' home. J.R.M. ". . . is diagnosed with reactive attachment disorder", his behaviors include, "[l]ying, cheating, stealing, manipulating people, killing animals" "[H]e has threatened many

people's lives repeatedly . . . " and demonstrated "significant sexual behavioral problems" while placed at a residential treatment facility. J.H.M., J.R.M., and L.C.M., have been in therapy since foster care. J.T.M., C.B.M., A.R.M., and J.W.M. engaged in therapy later.

Because J.H.M., J.R.M., and L.C.M. sexually act out, the Children's Fifth Amendment Right to remain silent need to be protected. Kaci was also concerned because SCDSS allowed the adopted children to be sexually abused in foster care.

Kaci was concerned J.H.M. would sexually act out on other children at school, on the school bus, and in the community. The School District did not take J.H.M.'s behaviors seriously.

a. Spring 2017 IEP Meeting, SCDSS intake and investigation.

An IEP meeting was held on March 27, 2017, to discuss services for J.H.M., J.R.M., and the other children. Due to the School District's history of not supervising J.H.M., the meeting was contentious. The school was endangering J.H.M. and other children by not supervising J.H.M. After several explanations, Kaci used terms like "rape" regarding J.H.M.'s behaviors to drive home the dangers of J.H.M.'s sexual conduct.

On March 28, 2017, a School District employee made the following report to SCDSS:

> It is reported that the children have been "brutally" raped by J.H.M., age 9 yrs. R[eporter]/S[tates] that J.H.M. "sucked J.T.M.'s penis" R/S the children are not safe in the home. R/S J.R.M. and J.H.M. need supervision at all times. R/S that all the children in the home were sexually abused by J.R.M. and J.H.M. and that J.H.M. could be doing this with other children. R/S concerns that parents are not supervising children properly.

The intake was accepted, and an investigation was initiated by SCDSS.

On March 29, 2017SCDSS caseworkers Melissa Geathers and Priscilla King went to the school to interrogate the Children. Only A.R.M. was at school. Geathers and King asked the 7-year-old (1) who lived in the home, (2) whether she was afraid at home, (3) whether her siblings ever feel afraid, (4) drugs/alcohol in the home and (5) whether anyone had touched her private areas.

On March 30, 2017, at 1:00 p.m. SCDSS caseworkers Kerryn Hullstrung and Vanessa Smalls went to the school to interrogate the Children.

Hullstrung and Smalls met with C.B.M. and asked about (1) medical visits, (2) who lived in home, (3) what the family does, (4) parents abuse of alcohol/drugs, (5) sexual abuse, (6) corporal

punishment, (7) hygiene, (8) domestic violence, (9) food, and (10) was he scared/worried.

Hullstrung and Smalls met with J.H.M., who asked that her mother be present at the meeting with the SCDSS caseworker.

> C[ase] M[anager] met with J.H.M. next and had a difficult time completing the interview because she was unable to remain focused and was annoyed about the case managers presence in the room. Dept. Pryor stated that J.H.M. asked for her mother to be present prior to meeting with CM.

J.H.M. was asked about (1) health, (2) safety of home, (3) medical visits, (4) who lived in home, (5) food, (6) corporal punishment, and (7) sexual abuse. J.H.M. became angry when SCDSS began asked her about sexual abuse, stating, "if you want to talk about this I need my mom here" and then refused to further speak with the case worker.

Hullstrung and Smalls met with J.R.M. and he was asked about (1) supervision, (2) medical visits, (3) who lived in home, (4) corporal punishment, (5) domestic violence, and (6) concerns in home.

On March 31, 2017, Hullstrung went to the May home. Kaci, "stated she has an attorney" and SCDSS was not allowed to interview children or

enter the home. J.H.M. hid under her bed because she was afraid SCDSS was going to remove her.

On April 24, 2017, SCDSS recorded Kaci, "has reportedly quit her job and withdrawn [sic] the children so that she is able to homeschool them.", ***which was false***. The staffing recommended:

1. CW to await meeting schedule with client and attorney
2. CW to complete Inspection Warrant

On May 1, 2017, Hullstrung emailed Kaci to schedule a home visit. Kaci wanted to schedule on a Friday, "because our children had nightmares last time you visited our home." Hullstrong cancelled the visit to the home because of the nightmares.

On May 12, 2017, Hullstrung went to the school around 9:00 a.m. to interrogate the May children, J.H.M., J.R.M., and A.R.M. A guidance counselor sat in on the interrogation. Hullstrung:

The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc.

Later that day Hullstrung and Ray conducted a decisional staffing. SCDSS recommended:

1. C[ase]W[orker] to Indicate case against mom & dad for Physical Neglect
5. CW to prepare file for transfer to Family Preservation Unit

SCDSS made a case decision indicating the Mays of physical neglect. SCDSS wrote:

> [SCDSS] responded to a report that the children have been brutally raped by J.H.M. Allegations that the children are not safe in the home. Concerns that parents are not supervising the children properly.

Although SCDSS made an administrative finding of physical neglect, there were no facts that would lead any factfinder to come to the same conclusion.

At this point, SCDSS's investigation was complete. S.C. Code Ann. §63-7-920(A)(2). Kaci testified that she instructed SCDSS to stop interrogating her children. "I told everybody who had ears to stop speaking to my children."

On May 25, 2017, Hullstrung visited the school at 10:15 and pulled J.T.M. and C.B.M. out of class to be interrogated. The information sought during the interview included family information on abuse, alcohol/drug use, discipline, family mental and physical health, family history, finances, diet, etc.

On June 1, 2017, SCDSS conducted a case staffing and transferred the case from Investigations to the Family Preservation Unit. SCDSS wrote:

> Minor children are allegedly receiving services. mother will not sign release. C[ase] M[anager] was unable to gain access to the home. CM is preparing paperwork.

Jasmine Flemister was assigned as the Family Preservation Case Manager for the May case.

On June 5, 2017, Flemister emailed Kaci and asked to speak to her and visit her home. Kaci informed Flemister the family's attorney had not received a response from SCDSS and provided her attorneys' contact information to SCDSS.

On June 7, 2017, the May's appealed SCDSS's administrative determination of physical neglect against Kaci and her husband.

On June 17, 2017, SCDSS Case Manager Flemister ran into the May Family at Fort Dorchester High School after a performance. SCDSS noted:

> CM spoke to the family and observed all the children. All the children stated they were fine. CM observed the children all dressed appropriately and free of marks and bruises. CM did not engage in full conversation due to

> the nature of the contact. CM will follow up with a home visit.

On July 5 and July 14, 2017, Flemister attempted to visit the May family at home.

From July 14, 2017 through July 26, 2017, there were several emails among Flemister, Kaci, and her attorney addressing SCDSS's desire to get into the May's home. On July 24, 2017, Flemister met with legal.

On August 2, 2017, SCDSS's attorney sent an email to Kaci's attorney providing dates to schedule a time for Flemister to meet with the children.

On August 3, 2017, the May's filled out School Sign-Out Sheets for 2017-2018. At the bottom of each sheet, Warren May listed the phone numbers for Family Attorney Deborah Butcher and wrote the following:

> Either Kaci May or Mrs. Butcher are to be contacted before anyone interviews [my child].

Principal Baird disregarded the instructions because the School District needed, "a court order signed by a judge to make this happen" and never contacted the May's or their attorney when SCDSS subsequently interrogated the children.

On August 23, 2017 Flemister contacted Gregg Middle School about J.T.M. and spoke with

the 6th grade principal. The principal had seen J.T.M. that day with his mother, the child was fine, and she had no concerns. Flemister wrote:

> On August 24, 2017 Flemister received a call from Principal Baird, ". . . that he made face to face contact with the minor children and they are well. He stated there is nothing to report."
>
> From August 25, 2017 through August 28, 2017 Flemister, Kaci, and Deborah Butcher sent emails regarding a time to meet with the children.
>
> On August 28, 2017 Flemister requested a law enforcement escort to Kaci's home to see L.C.M.
>
> On September 13 and 14, 2017 Kaci withdrew J.H.M. and J.R.M. from school and transferred them to Connections Academy because of the interrogations.
>
> On September 14, 2017 SCDSS filed a complaint in *SCDSS v. May*, 2017-DR-18-01334, in the family court alleging abuse and neglect against Kaci and Warren May and asking for custody of all seven of the May children. Flemister filed a Court Information Sheet/ Supplemental Report in support of SCDSS's Complaint. Flemister and SCDSS alleged the following:
>
> > The children have not been permitted to complete forensic interviews to determine if services are needed. The Department has been

> denied access to the children and the home where they reside. The Department was not granted access to the minor children's medical or mental health records to confirm Ms. May's reports of trauma and services for the minor children. The parents have denied the Department visitation with the minor children and prohibited contact. Ms. May has reported that her children were upset and hid when the Department's investigators came to the home because she had taught them that if they were taken to a foster home that they would be raped.
> …
> The Department has been unable to access the minor children's medical or mental health records. Mr. and Ms. May have not cooperated with requests that the minor children have forensic interviews to determine if services are needed.

SCDSS's and Flemister's representations to the family court that Kaci refused to release medical information or present the children for a forensic interview were <u>false</u>. At no time, from March 2017 through September 2017, did SCDSS or its employees request Kaci or her husband to (1) sign any medical or mental health release, (2) provide records, or (3) submit the children to forensic interviews. This perjury was confirmed by Flemister at trial.

On September 19, 2017, at 9:03 a.m. Flemister went to Sand Hill Elementary School to interrogate C.B.M., A.R.M., and J.W.M. The interrogation lasted 15-20 minutes. The information sought during the interview included questions about abuse, alcohol/drug use, discipline, mental and physical health of family, family history, finances, diet, etc.

On September 22, 2017, Flemister went to Gregg Middle School to interrogate J.T.M. with the 6th Grade Guidance Counselor. The information sought during the interview included questions about abuse, alcohol/drug use, discipline, mental and physical health of family, family history, finances, diet, etc.

On September 25, 2017, Flemister sent a deputy to check on J.R.M., J.H.M. and L.C.M.

On October 7, 2017, Flemister spoke with the court appointed Guardian *ad Litem*, Mevelyn Williams, "who stated she was granted access to her the family's home and was able to meet with the children and mother." Flemister also wrote:

> Ms. Williams stated that at the time of the visit she did not have any concerns but she has not reviewed the case file. . .

On October 12, 2017, the family court Merits Hearing was continued. SCDSS did not ask the family court for access to the children.

On October 13, 2017, J.H.M. and J.R.M. were admitted to Three Rivers Pediatric Psychiatric Residential Treatment Facility.

On October 16, 2017, Robert Butcher, attorney for Kaci May and Warren May, wrote a letter to the Principal and Superintendent demanding the School District stop allowing SCDSS to interrogate the May children at school.

On November 20, 2017, Flemister interrogated C.B.M., A.R.M., and J.W.M. at Sand Hill Elementary School. The information sought during the interview included abuse, alcohol/drug use, discipline, mental and physical health of family, family history, finances, diet, etc.

On November 20, 2017, Flemister attempted to interrogate J.T.M. at Gregg Middle School. Flemister documented the following:

> CM attempted to make contact with J.T.M. Upon arrival CM was told by the school that the parent stated they need to contact with family's attorney before the child can be seen by anyone. CM asked if they have a signed court order, they did not have an order. CM requested the guidance counselor see the child as a collateral.

On November 29, 2017, Flemister met with GAL Williams. The GAL had no concerns with the Children.

On December 7, 2017, Petitioners filed a verified complaint the School District, SCDSS, and several individual defendants. ***SCDSS stopped interrogating the children at school.***

On June 14, 2018, SCDSS, the Mays, and the GAL filed a Stipulation for Voluntary Dismissal that included, "Plaintiff SCDSS's investigation . . . is hereby overturned."

No administrative or judicial findings of abuse and/or neglect have ever been upheld or substantiated against Kaci May or Warren May. Trans.

For each and every interrogation SCDSS conducted at school:

- SCDSS and the School District failed to inform the Mays that SCDSS had interrogated the children at school.
- No warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Appellant children by SCDSS.
- SCDSS never applied for a warrant or court order to interrogate, interview, search, or strip-search the May children at school or home from March 2017 through November 2017.
- From March 2017 through November 2017, there were never any exigent circumstances or emergency circumstances

where delaying an interrogation of the May children in order to obtain a warrant or court order would have endangered the May children.

b. South Carolina Department of Social Services Policies.

Once a complaint of abuse and/or neglect is accepted through SCDSS intake, a child protective services worker has from two to twenty-four hours to make face-to-face contact with the subject children. It is SCDSS's policy, upon accepting an intake for investigation, to make face-to-face contact with all minor children within two to twenty-four hours. This contact may include interrogation, interview, searches, and strip-searches.

If a parent will not allow SCDSS to interview a child, SCDSS caseworkers are taught that they can obtain a warrant through the County DSS attorney or law enforcement. S.C. Code Ann. §63-7-920(B). If a parent will not sign releases for information, SCDSS can obtain a warrant or, once a case is filed in the Family Court, issue a subpoena.

II. Trial.

a. Testimony of A.R.M.

A.R.M. was 10 years old at tat trial and 7-8 when the interrogations occurred. A.R.M. was home

schooled later because SCDSS kept pulling her out of class. A.R.M. wants to return to public school.

When A.R.M. was pulled out of class, she was not told who she was meeting with. A.R.M. was not told she could call her mother and talk to her before being interrogated.

A.R.M. testified C.B.M. told SCDSS he did not want to speak with them, "And then we left. But they were waiting for my brother, J.W.M." A School District employee did not always sit in on the interrogations.

b. Testimony of C.B.M.

C.B.M. was 12 when he testified and in 3rd and 4th grade when the interrogations occurred. The last interrogation lasted about 20 minutes. The interrogations made him, ". . . feel that something was wrong, because they kept coming back after I said everything was fine the first time."

c. Testimony of Principal Marion Baird.

Marion Baird was responsible for enforcing the School District's policies and procedures.

Baird testified SCDSS does not need permission from the school to interrogate students. Baird clarified SCDSS is authorized to interview children at appropriate times. Baird did not know if SCDSS could come to the school and interrogate the

same child every day or interview all of the children in a class. "We have been advised to allow DSS to interview children, if they see a need."

Baird equated SCDSS interrogations of children as "a conversation, how are you doing".

d. Testimony of Kaci May.

Kaci was previously a schoolteacher at a program for pregnant teens for twelve years. She became a licensed foster parent.

Kaci testified:

> We thought that we were great parents and our children are great children. . . I have a right to protect my children. I have a right to build a safe, you know, hub for my children, to choose the people who are around my children. To protect them. And that right was taken away from me.

Kaci also testified to the following:

> I believe that the school is a place for my children to receive an education based on the standards put through the Department of Education. The school should not be a place where my children are investigated or I'm being investigated. If you don't believe that my children are in imminent danger. So anytime . . . if you think a child is going to be,

> you know, hurt by going home or something, by all means, investigate at school.
>
> But that was not the case and, therefore, my children should not be continued to be interviewed while at school. My children did not feel comfortable with that. . . They wanted to trust the people in the school building. I wanted to trust the people in the school building and there was no trust.

III. REASONS FOR GRANTING THE PETITION.

The South Carolina Court of Appeals used the following justification to diminish the harms for violation of the Children's constitutional rights: "[t]he adopted children had significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with their biological family". Such a rationale is not relevant to the legal standard or the case law. *May,* at 39. In fact, the justification that a small harm to a child abuse victim who was grievously harmed in the past would eliminate any and all recourse for a large contingent of our population who had experienced such harms in the past is perverse.

If someone was horrifically, sexually abused in the past, it does not divest them of their constitutional rights, nor does it insulate them from being harmed by violation of those constitutional

rights. The constitutional violations were ***more*** traumatizing to the children because of their history of PTSD and sexual assault. That makes the injury more irreparable, not less.

The trial court's finding that "Plaintiff[s] failed to produce any evidence supporting… irreparable harm" is without merit. First, there are the numerous completed violations of each of the Petitioners' constitutional and legal rights.[1] *See*, *Uzuegbunam v. Preczewski*, 592 U.S. 279, 285 (2021). Instead, the trial court weighed irreparable harm on a scale of hysteria:

> CBM and ARM, testified that they were not upset about the meetings or interviews with DSS. They were not crying and did not observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case.

It also appears that the nature of the seizures by SCDSS was a factor for the trial court and South Carolina Court of Appeals determination that there

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[1] March 29 (A.R.M.) and 30 (C.B.M., J.H.M., and J.R.M.), May 12 (J.H.M., J.R.M., A.R.M., and J.T.M.) and 25 (J.T.M. and C.B.M.), September 19 (A.R.M., C.B.M., and J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.).

were no Constitutional violations. This is wrong. The official need not always "display an intimidating demeanor or use coercive language" for a suspect to believe he cannot decline an officer's requests or otherwise terminate the encounter. *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004). This is particularly true where, as here, the persons being confronted are young children who are well aware of the power of the social worker to disrupt their family. Children in adoptive families and children of low-income families view both law enforcement and social services differently than the rest of society.

The record was replete with evidence of harms. Well-founded fear and anxiety proximately caused by continuous unconstitutional governmental intrusions, are irreparable harms.

A.R.M. testified that she was uncomfortable during the interrogations, she would distance herself and become angry at J.H.M. and J.R.M. because she blamed them. C.B.M. testified that the SCDSS interrogations make him feel nervous and he was afraid that his siblings would be taken. (. . . like my siblings wouldn't be on the bus when I came home."). C.B.M. did not feel like he could have gotten up and walked out of the interrogation. C.B.M. remains afraid that SCDSS will come back to the school and try to interrogate him. C.B.M. was afraid, "DSS was trying to . . . dig up dirt and try to take everybody away . . . [a]nd trying to prove that our family was bad . . . "

When SCDSS came to the house on March 31, 2017, J.H.M. was afraid SCDSS was going to remove her and hid under the bed. After J.H.M. was interrogated at school, she:

> "would stay up all night long and to into a state of mania where she would just – she would masturbate compulsively. She would harm herself masturbating. She would just pace her room all night long. She would talk to her self in the mirror. She would become extremely defiant and violent and destructive of house property. She would become very clingy on the other hand. Need extra reassurances that everything's fine. I'm still mom. I'm your parent. I'm your protector. And I've never failed you. You know, these are conversations that we would have to have over and over and over again to build this attachment, build the trust, and to remind her that she was safe in our home."

J.H.M. was distrustful of SCDSS and felt "frightened and violated" in the past by SCDSS. J.R.M. "would kill animals. And we would have dead birds in the yard. We would have birds from bird's nest in our yard. We had a lot of chickens and he would accidently break their backs." The frequency of killing animals, lying, and manipulation went up after the SCDSS interviews.

The other children became hypervigilant. C.B.M. would go into the yard and practice martial

arts, go into the woods for hours, and pace because of the stress related to SCDSS. J.T.M. is "aware of the fallout, the observations in our house, the destruction of property, the killing of our animals . . . and the cause of family tension. It causes the siblings to . . . have harsh feelings towards one another."

May took A.R.M. and J.W.M. out of school and May resigned from her employment to home school the children.

Two of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. May testified there was no indication the children's mental illnesses and behaviors would ever go away. May testified that she had witnessed J.H.M. sexually act out at school.

May's children were diagnosed with PTSD. L.C.M., age 7, has been committed to MUSC Institute of Psychiatry. There were subsequent SCDSS investigations involving J.H.M. when she was at Three Rivers PRTF and J.R.M. at Palmetto PRTF.

May would like to put her children back into school and the children would all like to attend public school. But because of SCDSS interrogations, she cannot safely allow the children to attend. All of the children are traumatized by SCDSS because they are afraid that they will be removed from home.

"[T]he denial of a constitutional right . . . constitutes irreparable harm for purposes of equitable jurisdiction." *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987) (emphasis added). Where the Court has found a likelihood of success on Plaintiffs' due process claim, the deprivation of such a constitutional right alone would constitute irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (infringement on a First Amendment right, even for "minimal periods of time, unquestionably constitutes irreparable injury").

Irreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Roman Catholic Diocese v. Cuomo,* 592 U.S. 14 (2020). While a finding of damages is not a prerequisite to the issuance of an injunction, the decision to issue injunctive relief must be based upon a balancing of the equities. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–313 (1982); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987); Assessing harm to the opposing party and weighing the public interest "merge" when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Supreme Court held, that "[t]o satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a

remedy that is likely to redress that injury. *Uzuegbunam*, at 285. "[W]e conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Uzuegbunam*, at 291.

"[A] constitutional injury—including alleged Fourth Amendment violations—may satisfy the irreparable harm component of this factor. *Williams v. Cty. of San Diego*, 2020 U.S. Dist. LEXIS 233539, 2020 WL 7318125 (S.D. Cal. December 11, 2020)

There is the highest public interest in the due observance of all the constitutional guarantees. *United States v. Raines*, 362 U.S. 17, 27 (1960). It is always in the public interest to prevent the violation of constitutional rights. *G & V Lounge v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

IV. The Court's finding there was no "likelihood of success on the merits" is erroneous.

On February 24, 2024, the Ninth Circuit relied upon *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999)[2], which is still good law:

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[2] "The Supreme Court granted certiorari and vacated Greene's Fourth Amendment holding on mootness grounds. However, it left intact the qualified immunity determination. *Camreta[v. Greene]*, 563 U.S. [692,] 698, 714 n.11 (2011) ("We leave untouched the Court of Appeals' ruling on qualified immunity

> Temporary seizures of children at school for investigatory purposes present a more nuanced instance of this problem. The school is not the home and, when the school has its own interests, the Supreme Court has sought to "strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." Here, we are not confronted with questions around seeking a balance between the interests of the child and those of her school but, rather, between the interests of the child and those of the state in securing the welfare of children at home. We have some history in this area. Although in general "[t]he Fourth Amendment protects a child's right to be free from unreasonable seizure by a social worker," the details surrounding the investigation have proven critical.

Scanlon v. Cnty. of Los Angeles, 92 F.4th 781, 806 (9th Cir. 2024) (Internal citations omitted).

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and its corresponding dismissal of S.G.'s claim because S.G. chose not to challenge that ruling."). The only surviving portion of our decision in *Greene* is that the Fourth Amendment "right of minor children to be free from unconstitutional seizures and interrogations by social workers [w]as not . . . clearly established" as of August 2015. *Capp[v. County of San Diego]*, 940 F.3d [1046,] 1059. *See*, *Greene*, 588 F.3d at 1033."

At a minimum, many circuit courts agree that removing a child from class to be questioned by a caseworker is a seizure for Fourth Amendment purposes. *Greene v. Camreta*, 588 F.3d 1011, 1022 (9th Cir. 2009); *In the Interest of Thomas B.D.*, 326 S.C. 614, 617, 486 S.E.2d 498 (S.C. Ct. App. 1997); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003) (a twenty-minute interview of eleven-year-old conducted by caseworker in the presence of a uniformed police officer violated boy's Fourth Amendment rights); *Dees v. Cty. of San Diego*, 960 F.3d 1145, 1154 (9th Cir. 2020) (Citing *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 790-91 (9th Cir. 2016) (*en banc*)); *Michael C. v. Gresbach*, 526 F.3d 1008, 1018 (7th Cir. 2008) (in light of *Heck*, a social worker who interviewed minors at a private school was not entitled to qualified immunity); *Schulkers v. Kammer*, 955 F.3d 520 (6th Cir. 2020) ("[a]t a minimum, a social worker must have reasonable suspicion of child abuse before conducting an in-school interview without a warrant or consent."); *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005). "A 'seizure' triggering the Fourth Amendment's protections occurs only when government actors have, 'by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen.'" *Camden v. Hilton*, 360 S.C. 164, 175, 600 S.E.2d 88 (Ct. App. 2004); *Dees*, 960 F.3d at 1154. Courts generally should take into account the child's age when determining if a reasonable person would have felt free to leave. *Schulkers*, at 536.

"When the actions of the [official] do not show an unambiguous intent to restrain or when an

individual's submission to a show of governmental authority takes the form of passive acquiescence…a seizure occurs if, 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *Dees*, 960 F.3d at 1154. Common sense dictates that a reasonable child would not have felt free to decline or otherwise resist going to the front office with a school official. *Williams*, at 17.[3]

It seems here, the South Carolina courts believe that traditional Fourth Amendment protections do not apply to child abuse investigations at all, as such investigations constitute administrative searches requiring neither probable cause nor a warrant. The State bolsters this assertion through reliance upon S.C. Code Ann. § 63-7-920. The statute provides no limitation upon SCDSS. There is no due process and there is no judicial oversight upon the SCDSS's executive use of this power. Under this Court's interpretation of S.C. Code Ann. § 63-7-920, knowing that SCDSS's investigation concluded for several months in this matter, SCDSS has license to interrogate every single child every single day about what goes on in their home. Or, in what occurs more commonly, SCDSS conducts school interrogations of children of

[3] A.R.M. was given no choice about the interrogation and when she was interrogated, she didn't, "like to disobey adults and. . .I'm not comfortable when I disobey adults."; C.B.M. was not given a choice and he did not feel free to leave; Baird testified children who refused to speak with SCDSS could be given a referral for disobeying a teacher.

parents it wishes to target, whether or not an investigation is in place.

A significant number of courts across the country have found school children retain a fundamental right to be free from search and seizure by social services workers. "A reasonable nine-year-old child who is called out of class by school officials for the purpose of meeting with a social worker who has already disturbed the child's family life, and who is not advised that she may refuse to speak with the social worker, will feel compelled to talk to the social worker and remain there until dismissed." *Dees v. Cty. of San Diego*, 302 F. Supp. 3d 1168, 1179 (D.S. Cal. October 10, 2017). *See also, Heck*, at 510 (20-minute interview of eleven-year-old boy was a seizure where child was escorted from class by the principal, caseworkers, and a uniformed police officer into church's empty nursery and questioned by caseworkers, with police officer present, about corporal punishment); *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, at 1226 (an "emotionally vulnerable" 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew "had the authority to determine her custodial care," confined her for an "hour or two" in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her

father); *Schulkers*, at 536 (Social worker violated Plaintiffs' Fourth Amendment rights by seizing them from their classrooms and subjecting them to interrogation without any suspicion of child abuse, and without obtaining a warrant or consent. We hold that the Fourth Amendment governs a social worker's in-school interview of a child pursuant to a child abuse investigation).

Exceptions to the probable cause requirement, include consent, exigent circumstances, and in some instances, "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *Schulkers*, at 536 (citing *Griffin v. Wisconsin*, 483 U.S. 868, 873, (1987)). None of these exceptions were present at any time during and subsequent to the SCDSS investigation of the Mays. The substantial record demonstrates that at any time, SCDSS could have sought relief with the family court had probable cause been present. In fact, the record demonstrates that SCDSS had access to, policies related to, and the ability to seek a warrant or court order--and records show SCDSS considered seeking a warrant or court order.

Because SCDSS and Flemister were limited by the Mays, they contacted collateral sources and third parties, to learn information about the Appellant children. SCDSS and Flemister also asked law enforcement to assist in entering the home. Lastly, when SCDSS filed for family court intervention three months later, it never asked for

access to the children because it never had probable cause to do so.

In *Scanlon v. Cnty. of Los Angeles*, the Ninth Circuit cited *Dees*, at 1156, in observing:

> [I]t is at least arguable whether a nine-year old girl with cognitive disabilities, called into the administrative office of her school by a woman who she knew had the authority to disrupt her family's life, would feel empowered to leave or could have consented to the discussion.

Scanlon v. Cnty. of Los Angeles, 92 F.4th 781, 807-808 (9th Cir. 2024).

a. The court's justification that SCDSS interrogations were conducted as part of the Child Protective Services investigation had an expiration date.

The South Carolina Court of Appeals' finding that "May's claim that either the School District or DSS unreasonably "seized" her children, or otherwise violated their constitutional rights by calling them from class and asking limited, basic questions for a short period of time" is wrong. *May,* at, 698.

The problem is the investigation ended on May 12, 2017. At a minimum, the interrogations of the children on September 19 (A.R.M., C.B.M., and

J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.) were unlawful seizures outside of the scope of the investigation. SCDSS's time to investigate is limited by statute in S.C. Code Ann. § 63-7-920(A)(3):

> The finding must be made ***no later than forty-five days*** from the receipt of the report. A single extension of no more than fifteen days may be granted by the director of the department, or the director's designee, for good cause shown, pursuant to guidelines adopted by the department.

The next statute adds emphasis to the notion that a CPS investigation has an expiration date by requiring that any case that has not been determined by sixty days "must be classified as unfounded." S.C Code Ann. 63-7-930(C).

The fact that SCDSS waited three months to file the child protective services action in family court demonstrates that there was little or no concern for the safety of the May children by SCDSS.

Because the Mays asserted their actual innocence in appealing the indicated case, they did not consent for them and their children to be under the jurisdiction and authority of SCDSS. The only way for the Agency to force services upon a citizen, like the Mays, is through a family court order.

Without a family court order, SCDSS does not have the unfettered right to interrogate children, enter the homes of families, require drug tests, require classes, or limit parental rights. If, and only if, a family court has determined that a child is abused and/or neglected, can the State intrude upon a family's privacy.[4] None of the facts supported EPC and no judicial determination of abuse and/or neglect took place.

b. Parents have Fourteenth Amendment interest in the "companionship, care, custody and management of their children".

Parents have a cognizable liberty interest in the "companionship, care, custody and management of [their] children." *S.C. Dep't of Soc. Servs. v. Truitt*, 361 S.C. 272, 281, 603 S.E.2d 867 (Ct. App. 2004); *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N.C.*, 452 U.S. 18, 27 (1981). *See also*, *Wallis v. Spencer*, 202 F.3d 1126, 1137 (9th Cir. 2000). District Courts considering analogous circumstances found that a state official's seizure and subsequent interview of a minor on school grounds without judicial authorization, parental consent, or exigent circumstances amounted to unconstitutional interference with the parent-child relationship. *See*, *Williams v. County of San Diego*, 2017 U.S. Dist.

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[4] S.C. Code Ann. §§ 63-7-620 (EPC); 63-7-710 (Probable cause hearing); 63-7-1640 (Family Preservation); 63-7-1650 (Services without removal); 63-7-1660 (Services with removal); and 63-7-1670 (Treatment Plan).

LEXIS 210404, 2017 WL 6541251, at *7-8 (S.D.Cal. Dec. 21, 2017); *Rabinovitz v. City of Los Angeles*, 287 F.Supp.3d 933, 951 (C.D. Cal.2018).

In this case, it is without dispute that actual deliberation of the Petitioners' due process rights was not only practical, but it was considered, disregarded, and violated over and over and over again.

Courts have made clear that neither peace officers nor social workers may dispense with constitutional constraints in their investigation of child abuse when there is no imminent threat of serious harm to the child. *Wallis*, at 1130-1131; *Rogers v. County of San Joaquin*, 487 F.3d 1288 (9th 2007); *Calabretta*, at 817; *Heck*, at 524; *Tenenbaum v. Williams*, 193 F.3d 581, 604 (2nd Cir. 1999); *Jones v. Hunt*, at 1226; *Rabinovitz*, at 951.

While the protection of children from abuse and neglect is vital, "the rights of families to be free from governmental interference and arbitrary state action are also important." *Rogers*, at 1297. It therefore follows that a balance must be struck, "on the one hand, the need to protect children from abuse and neglect and, on the other, the preservation of the essential privacy and liberty interests that families are guaranteed under both the Fourth and Fourteenth Amendments of our Constitution." *Id.*

When responding to a report of abuse and neglect, SCDSS teaches its caseworkers to go to the child's school to interrogate the child and it is SCDSS's policy to interrogate children at school when school is in session at any time. SCDSS testified that it does not need to obtain parental permission to interrogate a child to gather evidence against the parents. This information sought includes abuse, alcohol/drug use, discipline, mental and physical health of family members, family history, finances, diet, etc. After a CPS investigation has been completed, SCDSS testified that it can continue to interrogate children at school. The head of SCDSS Training was unaware of any legal authority that permitted SCDSS to interrogate children without permission of a parent after an investigation was completed.

There is no doubt SCDSS used the May children's school attendance to seize and interrogate the children against the wishes of the Mays and their children. SCDSS, the School District, and the trial court all believe that neither Kaci nor her children have constitutional protections or even a say in these settings.

V. The court's finding that there was adequate remedy at law is erroneous.

While the State court was quick to point out that Kaci May relinquished her rights to J.H.M. and J.R.M. after the 2017 investigation during another CPS action in family court, the court then found that

future contact with CPS was "speculative" as if SCDSS hadn't conducted two other investigations since 2017. *May*, at *698-699. This obviously meant that another SCDSS investigation had taken place. *See*, *SCDSS v. May*, 2021DR1800553 and *SCDSS v. May*, 2021DR1801099.

The application of constitutional protections to school interrogations by SCDSS has never been seriously addressed. A damages action for these constitutional violations would result in low damages and it is not worth an attorney's time and expense. Public interest law firms have many more serious constitutional issues to address. When the potential damage award for a multitude of violations is insufficient, lawsuits cannot be deemed adequate remedies at law. *Peabody Holding Co. v. Costain Group PLC*, 813 F. Supp. 1402, 1421 (E.D. Mo. 1993) ("Improper conduct for which monetary remedies cannot provide adequate compensation is sufficient to establish [irreparable] harm.").

The victims of most constitutional violations are almost always low-income, poorly educated families who have little sophistication to navigate a lawsuit.

SCDSS trains caseworkers to interrogate children at school. SCDSS reported 33,353 CPS investigations in 2019-2020. SCDSS CPS Referrals for Investigations for Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-

investigation-5-yr-history-2020.pdf on April 5, 2021. The number of unchecked civil rights violations is pervasive and staggering. Of those investigations, SCDSS may interrogate each child in each case on multiple occasions. Seven times in this matter. These are not isolated incidents.

Most SCDSS investigations do not end up in the family court. SCDSS CPS Referrals for Investigations for Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-investigation-5-yr-history-2020.pdf on April 5, 2020 (Founded cases for fiscal year 2019-2020 were 8,927 of the 33,353 investigations). And even fewer of the founded cases end up in family court.

Some families have no remedy except to move or remove their children from schools in order to protect their children from constitutional violations.

When multiple actions are necessary for legal remedy, injunctive relief is necessary. *Lee v. Bickell*, 292 U.S. 415, 421 (1934) (necessity for multiplicity of actions for legal remedy was sufficient to uphold injunction); *Ecolab, Inc. v. Paolo*, 753 F. Supp. 1100, 1110 (E.D.N.Y. 1991) ("If a plaintiff can receive legal relief only through a multiplicity of lawsuits, plaintiff has suffered irreparable harm sufficient to warrant a preliminary injunction.").

Repeated harmful actions require injunctive relief. *Northeast Women's Ctr., Inc. v. McMonagle*,

665 F. Supp. 1147, 1153 (E.D. Pa. 1987) ("The legal remedy is inadequate if the plaintiff's injury is a continuing one, where the last available remedy at law would relegate the plaintiff to filing a separate claim for damages each time it is injured anew.") (Citing 11 Wright & Miller, at § 2944, at 398).

The record shows that SCDSS has received two subsequent reports and not interrogated the Appellant Children at school. The "voluntary cessation" exception to mootness stems from the concept that "a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior", which, in this case, is stopping its policy of interrogating the Children in subsequent abuse and neglect cases in order to evade judicial review. *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001).

This matter imposes questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. *Curtis v. State*, 345 S.C. 557,549 S.E.2d 591 (2001).

The School District asserts SCDSS is allowed to interrogate any child at any time without reasonable suspicion or probable cause. They have operated this way since SCDSS was established. They are still doing it. They will continue to violate children's First, Fourth, Fifth, Sixth, and Fourteenth Amendment Rights until a Court stops them

VI. Conclusion and relief requested.

The unrestricted intrusion into the lives of South Carolina's children and families by SCDSS's interrogations must be limited by the Court. A bright line must be drawn to place SCDSS on notice that it must have probable cause to seize, search, and interrogate our children. The interrogations of the Petitioner Children were nothing short of state-sponsored fishing expeditions into the private affairs of the Petitioners. SCDSS had nothing. SCDSS knew it was not allowed in the May home and it was not allowed to interrogate the Petitioner children. Compulsory schooling should not be viewed as a means to skirt children's and families' constitutional protections, especially after families have affirmatively asserted their rights.

SCDSS, the School District, and the family courts already have the statutory procedures for the Defendants to follow the law. The Respondents have chosen not to follow the law, and they have told the Petitioners, the Courts, and all South Carolinians, "make us follow the law".

The Petitioners ask the Court for the following relief:

1. Reverse and remand this matter for a new trial.
2. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1983.

Respectfully submitted,

FOSTER CARE ABUSE LAW FIRM, PA

s//Robert J. Butcher
Counsel of Record

Robert J. Butcher - 74722
Deborah J. Butcher - 74029
507 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
rbutcher@camdensc-law.com

LILLY, PLLC

Andrew T. Lilly
4907 Magazine Street
New Orleans, Louisiana 70115

Counsel for Petitioners Kaci May, A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M.

Camden, South Carolina
December 12, 2024

APPENDIX

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The Supreme Court of South Carolina

Kaci May and Kaci May as guardian *ad litem* for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina, Department of Social Services, Michael Leach, and Jasmine Flemister, Respondents.

Appellate Case No. 2024-001072

ORDER

Based upon the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

By ¨Patricia A Howard
Clerk

Columbia, South Carolina
September 13, 2024

Cc:
Thomas Kennedy Barlow, Esquire
Susan Marie Fittipaldi, Esquire
Dwayne Traynor Mazyck, Esquire
William H. Davidson, II, Esquire
Kenneth P. Woodington, Esquire

Robert J. Butcher, Esquire
Deborah J Butcher, Esquire
The Honorable Jenny A. Kitchings

PUBLISHED

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Kaci May and Kaci May as guardian *ad litem* for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina, Department of Social Services, Michael Leach, and Jasmine Flemister, Respondents.

Appellate Case No. 2020-001352

Appeal From Dorchester County
Maite Murphy, Circuit Court Judge

Opinion No. 6053
Heard June 7, 2023 – Filed March 13, 2024
Withdrawn, Substituted, and Refiled May 29, 2024

AFFIRMED

Deborah J. Butcher and Robert J. Butcher, both of The Camden Law Firm, PA, of Camden, for Appellant.

Kenneth P. Woodington and William H. Davidson, II, both of Davidson, Wren & DeMasters, of Columbia, for Respondents South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister; and Thomas Kennedy Barlow, Susan Marie Fittipaldi, and Dwayne Traynor Mazyck, all of Halligan, Mahoney, & Williams, of Columbia, for Respondent Dorchester School District Two.

MCDONALD, J.: Kaci May filed this circuit court action seeking to enjoin the South Carolina Department of Social Services (DSS) from interviewing her children at school and to prevent Dorchester School District Two (School District) from facilitating such interviews without a court order, warrant, subpoena, or new allegation of abuse or neglect. May appeals the order denying injunctive relief and challenges the circuit court's finding that because Respondents acted within their express statutory authority, their efforts to interview the children did not implicate the Fourth Amendment. We affirm the well-reasoned order of the circuit court.

Facts and Procedural History

Kaci and Warren May (collectively, the Mays)[1] were the parents of seven children: four biological children (J.T.M., C.B.M., A.R.M., and J.W.M.) and an adopted sibling group (J.H.M., J.R.M., and L.C.M.).[2] One or

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[1] Warren May passed away in 2020.

[2] The Mays adopted J.H.M., J.R.M., and L.C.M. from foster care in June 2015. At the time of the circuit court's bench trial, at

more of the adopted children suffered severe sexual abuse while with their biological family.

On March 27, 2017, the Mays attended a daylong meeting with School District personnel at Sand Hill Elementary School to discuss four of the children. At this meeting, May alleged in graphic detail that one of the adopted children had brutally raped one or more children in the May home. May called this child, who was present at the meeting, a rapist and made other concerning statements.

The School District reported May's statements to DSS, which opened an investigation. As a part of the investigation, DSS conducted—or attempted to conduct—interviews with the five school-aged children at Sand Hill Elementary School on March 29 and March 30. On March 31, two DSS caseworkers went to the family home in an effort to contact May and see the children they were unable to interview at school, but May would not allow the caseworkers to enter the home and did not allow them to interview the children. DSS continued to investigate, and caseworkers conducted a combined school interview of three of the children on May 12.[3] Later that day, DSS indicated a case of physical neglect against May; the Mays subsequently filed an administrative appeal of that determination.

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least two of the adopted children had been moved from the May home to residential facilities.

[3] DSS was later able to interview two of the children on May 25. May conceded she did not object to DSS interviewing the children at school while the case was still within the investigative period.

On June 15, 2017, Dorchester County DSS Director John Dunne advised the Mays that he had conducted an interim review of the case and "concluded that the decision to indicate the case for Neglect is supported by a preponderance of the evidence." Dunne also informed the Mays that DSS would seek intervention in family court. On June 23, DSS stayed the administrative appeal pending the outcome of the family court case.

Despite the serious safety concerns she had raised, May resisted all DSS efforts to contact the children or visit their home during June, July, and August 2017. Instead, she referred the caseworkers to her attorney.[4] At the start of the new school year, May instructed the School District that no further interviews with her children were to occur without someone first contacting May or her counsel.[5] On September 13 and 14, 2017, May withdrew J.H.M. and J.R.M. (two of the adopted children) from Sand Hill Elementary and Gregg Middle School and transferred them to Connections Academy, South Carolina's virtual charter school.

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[4] DSS's concerns are reflected in the caseworker's September 22, 2017 notes: "Kaci and Warren May have not allowed the department in their home. No assessments have been made for this family. The [Mays] have not been in direct contact with the department. The family's attorney is not responding to emails to schedule visits. . . . The department is concerned about the allegations and the inability to get in the home. The department is unable to properly assess for the safety and wellbeing of the minor children."

[5] The Sand Hill Elementary principal disregarded these instructions because the School District needed "a court order signed by a judge to make this happen."

DSS filed a family court case seeking non-emergency removal of the children from the May home on September 14, 2017. May counterclaimed, seeking, among other things, an order restraining DSS caseworkers from speaking with the Mays about legal issues in the case. She also filed a motion seeking an order restraining DSS from "interrogating [her] children at school."

DSS conducted additional in-school interviews in the fall of 2017. Three of the children were interviewed on September 18, one child was interviewed on September 22, and DSS conducted a brief, combined interview with three of the children on November 20.[6]

On December 7, 2017, May, individually and as guardian ad litem for the seven children, filed this circuit court action seeking preliminary and permanent injunctive relief to prevent DSS from interviewing her children at school. She also sought to enjoin the School District from facilitating such interviews unless DSS presented a court order, warrant, subpoena, or new allegation of abuse or neglect.

On June 14, 2018, the family court action was dismissed by voluntary stipulation. DSS agreed the "investigation beginning on or about March 28, 2017[,] resulting in a finding of abuse and/or neglect on or about May 12, 2017[,] is hereby overturned." DSS closed its case on June 21.

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[6] DSS did not seek to interview the May children after November 20, 2017.

Following a hearing, the circuit court denied May's motion for a temporary restraining order, finding May failed to establish irreparable harm or the lack of an adequate remedy at law. The School District and DSS then moved to dismiss. The circuit court granted these motions in part and dismissed the individual School District defendants. The remaining governmental defendants answered May's complaint and denied she was entitled to permanent injunctive relief. At the subsequent August 2020 bench trial, the circuit court directed a verdict for the School District and DSS. May timely appealed.

Analysis

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Richland County v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (quoting *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)). "An injunction is a drastic equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party . . . . and only where no adequate remedy exists at law." *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). Although an order granting or denying a request for injunctive relief is generally reviewed for abuse of discretion, "where the decision turns on statutory interpretation . . . this presents a question of law." *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8, 760 S.E.2d 785, 788 (2014). An appellate court "reviews questions of law de novo." Id. at 7, 760 S.E.2d at 788 (quoting *Town of*

Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

I. Irreparable Harm

May argues the circuit court erred in finding she failed to demonstrate irreparable harm. We disagree.

Initially, we note it is undisputed that DSS's last interview with any of the May children occurred in November 2017, and DSS closed its family court case in June 2018. Before both the family and circuit courts, May failed to offer any evidence of threatened or pending DSS investigations or of further DSS plans to interview her children at a school. Two of the three adopted children no longer live with the biological May family.

Significantly, May has not identified any injury aside from inconvenience or mild upset at the prospect of DSS returning to interview her children. The children testified that they knew they did not have talk to DSS, and some exercised their right not to answer questions. There is no evidence in the record that any of the children's grades suffered or that any of the children were harmed, much less to an extent that might have outweighed DSS's need to interview them regarding May's own report that one or more of her children had suffered sexual abuse by another child in the May home. Although May testified the children were upset by the DSS interviews, there is simply no evidence to support a claim that any of the May children have been harmed or would suffer harm in the absence of injunctive relief.

At least two of the adopted children had significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with their biological family. These prior experiences caused stress and emotional harm far beyond any issue raised in the current matter. Thus, it is difficult to comprehend how the emotional difficulty alleged could be attributed to the DSS interviews which, as discussed below, were appropriate and authorized by statute. Notably, May failed to demonstrate that DSS returning to a school to interview her children was anything more than a hypothetical possibility insufficient to support her claim for injunctive relief.[7] Accordingly, the circuit court properly found May failed to show the required irreparable harm.

II. Likelihood of Success on the Merits

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[7] We decline to dismiss May's appeal as moot because her case presents an issue that is capable of repetition but usually becomes moot before it may be reviewed.

See Wardlaw v. S.C. Dep't of Soc. Servs., 427 S.C. 197, 204, 829 S.E.2d 718, 721 (Ct. App. 2019) (finding that an appellate court may address a matter despite mootness where it raises an issue capable of repetition that "usually becomes moot before it may be reviewed" (citing *S.C. Dep't of Mental Health v. State*, 301 S.C. 75, 76, 390 S.E.2d 185, 185 (1990)). The interviews May challenges occur early in the process of abuse and neglect investigations, and a family court's review in such cases would be complete before any related civil action could be considered. *See, e.g., Rainey v. S.C. Dep't of Soc. Servs.*, 434 S.C. 342, 351, 863 S.E.2d 470, 475 (Ct. App. 2021) (noting statutorily mandated timelines for investigation once DSS receives a report of possible abuse or neglect).

May next argues the circuit court erred in finding she failed to establish a likelihood of success on the merits and in ruling section 63-7-920 of the South Carolina Code (2010) "was not limited by her constitutional protections." But the circuit court made no such ruling. As to May's constitutional claims, the circuit court recognized the United States Supreme Court "has never held that a social worker's warrantless in-school interview of a child pursuant to a child abuse investigation violates the Fourth Amendment." *See, e.g., Camreta v. Greene*, 563 U.S. 692, 710–14 (2011) (examining in-school interviews in Fourth Amendment context but ultimately leaving the issue undecided and disposing of the case on mootness grounds). The circuit court then noted the DSS interviews here were authorized by statute and that May failed to show either DSS or the School District acted unreasonably by interviewing the children or permitting the interviews.[8] We agree with the circuit court.

Within twenty-four hours of receiving a report of suspected child abuse or neglect, DSS "must begin an appropriate and thorough investigation to decide whether the report should be 'indicated' or

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[8] The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend IV. The Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers, *Elkins v. United States*, 364 U.S. 206, 223–24 (1960), including public school officials, *New Jersey v. T.L.O.*, 469 U.S. 325, 336–37 (1985).

'unfounded.'" See S.C. Code Ann. § 63-7-920(A)(1) (2010); *see also Jensen v. S.C. Dep't of Soc. Servs.*, 297 S.C. 323, 331–32, 377 S.E.2d 102, 106–07 (Ct. App. 1988) (holding South Carolina Child Protection Act mandating "an 'appropriate and thorough' investigation," of an allegation of child abuse imposed a ministerial duty of care on county officials). Regarding investigations and case determinations, section 63-7-920(C) provides:

> The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the

> child to reduce potential emotional trauma to the child.

In our view, the language of § 63-7-920(C) establishes the circuit court correctly found May failed to demonstrate a likelihood of success on the merits. However, we must also address May's arguments that (1) the probable cause standard for warrants issued under § 63-7-920(B) applies to interviews conducted pursuant to § 63-7-920(C) and (2) the interviews here violated the Fourth Amendment.

Section 63-7-920(B) provides:

> The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.

May's assertion that the probable cause standard for warrants issued under subsection (B) applies to interviews conducted under subsection (C) is foreclosed by the plain language of subsection (C),

pursuant to which DSS conducted the in-school interviews of the May children. While subsection (B) does contain a warrant provision, its terms apply only when "the investigation cannot be completed without issuance of the warrant." § 63-7-920(B). Among other things, subsection (B) authorizes DSS to inspect the premises where an abused or neglected child may be located or may reside. Id. In other words, DSS may seek a warrant when other authorized means, such as in-school interviews, are unavailable.[9] Moreover, subsection (C) states DSS "may interview the child alleged to have been abused or neglected and any other child in the household during the investigation" and such interviews "may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents." § 63-7-920(C).

In her appellate brief, May arguably concedes subsection (B) is inapplicable to in-school interviews conducted under subsection (C) by stating "schools are often the only places SCDSS and/or law enforcement may have contact with a child without the undue influence of an abusive or neglectful caregiver." In either case, we find the plain language of subsection (C) permits DSS to interview children at school and—in the discretion of DSS or law enforcement—such interviews may be conducted

[9] In practice, and as referenced by May's counsel at trial, such warrants are referred to as "inspection warrants."

"outside the presence of the parents." § 63-7-920(C).[10]

With respect to May's Fourth Amendment argument, "[i]n determining whether a search and seizure is reasonable, we must balance the government's need to search with the invasion endured by the plaintiff." *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993); *see also, State v. Houey*, 375 S.C. 106, 111, 651 S.E.2d 314, 316–17 (2007) (finding "the State's need to search must be balanced against the invasion occasioned by the search, and the search will be reasonable if the State's interest outweighs the interest of the individual" in cases involving the "health and safety of victims."). Like the circuit court, we have found no case in which our supreme court has determined a social worker's warrantless in-school interview of a child for purposes of a statutorily mandated investigation following a report of abuse or neglect violates the Fourth Amendment or the protections of the South Carolina Constitution.

In sum, May failed to show either that DSS acted unreasonably by interviewing her children at school or that the School District unreasonably permitted the in-school interviews expressly authorized by statute.[11] Based on the largely undisputed

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[10] This might be a different case had the governmental defendants even arguably abused their statutory discretion in investigating the actions May reported at her initial meeting with the School District. There simply are no facts here to support such a claim.

[11] Although May's appellate brief cites several cases containing broad statements of general legal principles, she fails to cite any case actually finding the kind of interviews DSS conducted

testimony, we agree with the circuit court that the interviews here were reasonable in inception and scope following May's own report of sexual abuse; her subsequent refusal to allow DSS to interview the children in their home necessitated that they be interviewed at school. And, May admits legitimate circumstances may exist in some cases for DSS to interview a child at school without a court order or a warrant. Concessions aside, we find § 63-7-920(C) expressly authorizes DSS to interview children at school without a warrant when conducting an investigation mandated by § 63-7-920(A)(1). Additionally, we find meritless May's claim that the either the School District or DSS unreasonably "seized" her children, or otherwise violated their constitutional rights by calling them from class and asking limited, basic questions for a short period of time. In light of the state's significant interest in interviewing the children following May's report, the circuit court properly found the in-school interviews did not violate the family's constitutional rights. It follows that the circuit court correctly denied May's request for injunctive relief in light of her inability to show a likelihood of success on the merits.

III. Adequate Remedy at Law

May next argues the circuit court erred in finding she would have an adequate remedy at law to address any harm she or the children might suffer from future "interrogations." Again, we disagree.

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here might violate a child's (or parent's) Fourth Amendment rights.

Although May was required to offer evidence demonstrating that at some point in the future, DSS is likely to again interview her children at school in direct contravention of her wishes, she failed to do so. While it is always possible that future events could lead to another DSS investigation, it is speculative to assume such will actually take place. In the event another DSS investigation does take place, May agreed she would "not [be] opposed to DSS interviewing the children that may be subject to a report of abuse and neglect. . . ." Nor would she object to additional interviews in a case "still in the investigation period." However, May would object to interviews conducted after the conclusion of an investigation resulting in an indication.

We find May has failed to establish the lack of an adequate remedy at law to address future harm that might result from subsequent DSS interviews. May's decision to forgo a state law damages claim and pursue only injunctive relief does not render the remedy at law inadequate for a case that might merit relief. Here, the circuit court properly found May failed to show she lacked an adequate remedy at law for harm that might result from "future interrogations."

Conclusion

Certainly, there may be—and have been—situations in which state actors overreach or otherwise act in a manner requiring constitutional scrutiny. There may be—and have been—cases in which the actions of DSS caseworkers or other agents or employees rise to the level necessary for injunctive relief in the

constitutional context. This is not such a case. For these reasons, the circuit court's order denying injunctive relief is

AFFIRMED.[12]

THOMAS and HEWITT, JJ., concur.

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[12] As our findings here are dispositive, we decline to address Respondents' additional sustaining grounds. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address remaining issues when a prior issue was dispositive).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
Kaci May and Kacy May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M.,	)	C.A. No. 2017-CP-18-02001
Plaintiff,	)	**ORDER**
vs.	)	
Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister,	)	
Defendants.	)	

This matter came before the Court for a bench trial on August 11 and 12, 2020, during which Plaintiff argued generally that she was entitled to permanent injunctive relief prohibiting Defendant South Carolina Department of Social Services (DSS) from interviewing any of her children at any of Defendant Dorchester School District Two (DD2) schools without parental permission, a warrant, or a court order. At the conclusion of Plaintiff's case, Defendants moved for a directed verdict. After careful consideration of the testimony of the witnesses and arguments of all parties and fully reviewing the evidence presented, as set forth more fully below, the Court grants Defendants' motion for a directed verdict.

I. INTRODUCTION AND FINDINGS OF FACT

Plaintiff filed this action seeking both preliminary and permanent orders enjoining DSS from interviewing her children at school and enjoining DD2 from facilitating those interviews unless DSS presented a court order, warrant, subpoena, or a new allegation of abuse or neglect.

In March 2017, DSS received a report of possible child abuse and/or neglect involving the Plaintiff household.[1] The report was made after Plaintiff Kaci May disclosed in graphic detail during

[1] Plaintiff is the mother of the seven children, four of whom are biological and three adopted. Plaintiff testified that her adopted children were subjected to significant abuse and neglect prior to their adoption which has caused continued and serious negative effects on her family.

a school meeting, among other things, that one of her children had brutally raped other children in the household. As a result of that report, DSS opened an investigation into the allegations. As part of the investigation, DSS interviewed or attempted to interview the five school-aged children[2] at Sand Hill Elementary School in DD2 on two occasions in March 2017 and two occasions in May 2017. Plaintiff refused to allow DSS to interview the children in her home.

In May 2017, DSS indicated a case of physical neglect against Kaci May, a determination that she appealed. DSS later filed a Family Court action against Kaci May which was still pending in the fall of the 2017-18 school year. DSS interviewed or attempted to interview some of the children at DD2 schools on two occasions in September and once in November 2017.

DSS did not return to DD2 schools after November 20, 2107, to interview any of the children and has not interviewed or attempted to interview any of the May children at school since November 2017. Eventually, on June 14, 2018, the DSS action and Plaintiff's later filed counterclaim were both voluntarily dismissed.

In seeking an injunction, Plaintiff alleged that the District and DSS violated the federal and state constitutional rights of Plaintiff and her minor children by interviewing and permitting DSS workers to interview the minor children at District schools without a court order, subpoena or exigent

[2] J.W.M. and L.C.M. were only four years old and were not in school.

circumstances.

II. LEGAL STANDARD

When the Court considers a motion for a directed verdict, the Court must "view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and [must] deny the motion when either the evidence yields more than one inference or its inference is in doubt." *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008). The Court's task is to "resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party's favor." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).

III. LEGAL ANALYSIS

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Ray v. City of Rock Hill*, 428 S.C. 358, 368, 834 S.E.2d 464, 469 (Ct. App. 2019), *cert. granted* (May 22, 2020). The standard for granting a permanent injunction is the same as that for preliminary relief, except that the court must consider plaintiff's actual success on the merits rather than her likelihood of success. *See Amoco Production*

Co. v. Village of Gambell, 480 U.S. 531, 546 n. 12 (1987).

"Actions for injunctive relief are equitable in nature." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). An injunction is a drastic and "extraordinary equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party" when no adequate remedy exists at law. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). Due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law. *Id.*

Viewing the testimony and other evidence presented at trial and inferences reasonably drawn therefrom in the light most favorable to Plaintiff, I find that Plaintiff failed to produce evidence supporting any of the three elements required for injunctive relief.

First, Plaintiff did not show irreparable harm that would justify an injunction. Two of the children, CBM and ARM, testified that they were not upset about the meetings or interviews with DSS. They were not crying and did not observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case. Although Plaintiff Kaci May testified that the children were upset by the interviews with DSS,

there was no evidence to support that the children suffered or would suffer harm in the absence of injunctive relief. The children had significant life circumstances and psychological issues that caused stress and upset in their lives outside of the issues raised in this case such that any upset the children may have experienced could not be attributed to the DSS interviews. Further, Plaintiff made no showing that DSS returning to DD2 to interview the children was anything more than speculation or a hypothetical possibility, which is insufficient to support injunctive relief.

Second, Plaintiff did not prove that she would have no adequate remedy at law if DSS returned to DD2 to interview her children. Ms. May testified that she told the children that if DSS ever tried to talk to them, they did not have to answer any questions. The children knew that they did not have to talk with DSS and some exercised this right not to answer questions. ARM and CBM both testified that they knew they did not have to talk to DSS unless they wanted to. Moreover, there is no pending DSS case with the family. The underlying DSS case that formed the basis of this lawsuit was resolved in June 2018. DSS has not attempted to speak with any of the May children since November of 2107. If an entirely speculative future interview is conducted in a tortious or unconstitutional manner, Plaintiff will have adequate remedies at law and equity to address it.

Finally, Plaintiff did not establish a likelihood of success on the merits. S.C. Code Ann. § 63-7-920, *Investigations and case determination*, provides:

> C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

The language of the above statute is clear and unambiguous: DSS is permitted by statute to interview children at school. As a corollary, DD2 has no authority to prevent properly credentialed DSS workers or law enforcement from conducting interviews of children on school premises. Where a statute expressly enumerates the requirements on

which it is to operate, additional requirements are not to be implied. *Byrd v. Irmo High School*, 321 S.C. 426 (1996), citing, *Trayco, Inc. v. United States,* 994 F.2d 832 (Fed.Cir.1993).

With regard to the underlying constitutional issues, the Fourth Amendment protects against unreasonable searches and seizures. *United States v. Place*, 462 U.S. 696 (1983). While the Fourth Circuit has held that the Fourth Amendment applies to social workers involved in child abuse investigations, "investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context." *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir.1993). Further, the Fourth Circuit has held that the state "has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse. *Martin v. St. Mary's Dep't of Social Services*, 346 F.3d 503, 506 (4th Cir.2003).

The Supreme Court has never held that a social worker's warrantless in-school interview of a child pursuant to a child abuse investigation violates the Fourth Amendment. *See Camreta v. Greene*, 563 U.S. 692, 713–14 (2011). Thus, any suggestion that DD2 or DSS somehow "seized" or violated plaintiff's constitutional rights by summoning the children and asking limited, basic questions for a limited amount of time is unsupported by the law.

Plaintiff failed to show that DSS or DD2 acted unreasonably by interviewing or permitting interviews, respectively, at school. Based on the largely undisputed testimony, I find that the DSS

interviews were both reasonable in inception and scope based on the report to DSS and Plaintiff's refusal to allow DSS to interview the children in the home. No legal authority supports a claim on the merits against DD2 or DSS under the facts of this case.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion for a Directed Verdict is GRANTED.

IT IS SO ORDERED.

_____
The Honorable Maite Murphy

September __, 2020

Columbia, South Carolina

Dorchester Common Pleas

Case Caption: Kaci May , plaintiff, et al VS Dorchester School District Two , defendant, et al

Case Number: 2017CP1802001

Type: Order/Other

So Ordered
s/ Maite Murphy 2166

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Circuit Court Case Number 2017-CP-18-02001

Kaci May and Kaci May as guardian *ad litem* for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina, Department of Social Services, Michael Leach, and Jasmine Flemister, Respondents.

BRIEF OF APPELLANTS

Robert J. Butcher
Deborah J. Butcher
Foster Care Abuse Law Firm, PA

509 Walnut Street
Post Office Box 610

Camden, South Carolina 29021

Phone: (803) 432-7599
Cell: (803) 427-6117 (RJB)
Cell: (803) 900-0809 (DJB)
Email: rbutcher@camdensc-law.com
Email: dbutcher@camdensc-law.com
Attorneys for Appellants

Other Counsel of Record:

Attorneys for SCDSS, Michael Leach, and Jasmine Flemister,
Kenneth P. Woodington
William H. Davidson
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
Telephone: (803) 806-8222
Email: kwoodington@dml-law.com
Email: wdavidson@dml-law.com

Attorneys for Dorchester School District Two
Susan M. Fittipaldi - 14225
Thomas K .Barlow - 8995
Post Office Box 11367
Columbia, South Carolina 29211
Telephone: (803) 254-4035
Email: sfittipaldi@hmwlegal.com
Email: tbarlow@hmwlegal.com

*****Tables omitted in this Appendix*****

Statement of Issues on Appeal

I. **The trial court erred in finding the Appellants did not establish a likelihood of success on the merits.**

II. **The trial court erred in finding that S.C. Code Ann. §63-7-920 was not limited by the Plaintiffs' constitutional protections under Amend. I, IV, V, VI, and XIV of the U.S. Const. and S.C. Const. art. I, §§3 10, and 12.**

III. **The trial court erred in finding the Appellants failed to show irreparable harm.**

IV. **The trial court erred in finding the Appellants would have adequate remedy at law for harm from future interrogations.**

Statement of the Case

We address unrestricted government intrusion into the lives of South Carolina's children and families. SCDSS's policies and procedures use compulsory schooling to skirt children's and families' constitutional protections, even after affirmative assertions of such rights.

The South Carolina Department of Social Services (SCDSS) and our public schools allow SCDSS's caseworkers unfettered access and interrogation of the children of South Carolina. They

do not require parental permission, exigent circumstances, a warrant, or a court order before interrogations are conducted. Rarely do SCDSS or the public schools inform parents of such interrogations after they occur. SCDSS and our public schools rely upon S.C. Code Ann. §63-7-920 to disregard parents' and children's First, Fourth, Fifth, Sixth, and Fourteenth Amendment rights under the United States Constitution and rights under §§ 3, 10, and 12 of Article I of the South Carolina Constitution.

After a report of abuse and neglect was made against Kaci May, SCDSS interrogated the May children at Dorchester School District Two (School District) schools without parental consent, a warrant, or a court order seven times over the course of nine months. There were no exigent circumstances to justify these interrogations.

Appellants, who attend public schools/will attend public schools, asked the Court to protect their constitutional rights and enjoin SCDSS and School District from interrogating the May children in the future unless SCDSS has parental permission, exigent circumstances are present, or a warrant or court order is obtained. Appellants asked the trial court to restrain SCDSS Defendants from interrogating the children unless there is a court order or a new allegation of abuse and/or neglect and also restrain School District from facilitating interrogation of the children unless there is a court order or a new allegation of abuse and/or neglect.

Relevant Facts

I. The May Family.

Warren May, father of the minor Appellants, passed away during litigation on April 16, 2020. Kaci May (Kaci) is the biological mother of A.R.M., J.T.M., C.B.M., and J.W.M. ROA 290, 343-344. Kaci is adoptive mother of J.H.M., J.R.M., and L.C.M. and they were adopted from SCDSS foster care on June 5, 2015. ROA 290, 343-344, 367.

The following table may assist the Court in sorting out the May children:

May Children on March 26, 2017				May Children on August 22, 2017		
Initials	**Age**	**Grade**	**School**	**Age**	**Grade**	**School**
JTM¶	**11**	**5**	**SHES**	**11**	**6**	**GMS**
JHM*	**10**	**3**	**SHES**	**10**	**4**	**SHES**
CBM¶	**9**	**3**	**SHES**	**9**	**4**	**SHES**
JRM*	**7**	**1**	**SHES**	**8**	**2**	**SHES**
ARM¶	**7**	**1**	**SHES**	**7**	**2**	**SHES**
JWM¶	**4**	**-**	**-**	**5**	**K**	**SHES**
LCM*	**4**	**-**	**-**	**4**	**-**	**-**
***= Adopted and ¶ = Kaci May and Warren May are the Biological Parents SHES = Sand Hill Elementary School; GMS = Gregg Middle School**						

ROA 343-345.

a. Background.

J.H.M. and J.R.M. suffered severe sexual abuse, physical abuse, and neglect before being placed in the Mays' home. ROA 281-300.

J.H.M. received treatment through MUSC's National Crime Victim Center. ROA 291. J.R.M. "…is diagnosed with reactive attachment disorder". ROA 292. J.R.M.'s behaviors include, "[l]ying, cheating, stealing, manipulating people, killing animals." ROA 293. "[H]e has threatened many people's lives repeatedly…" and demonstrated "significant sexual behavioral problems" while placed at a residential treatment facility. ROA 293.

J.H.M., J.R.M., and L.C.M., have been in therapy since foster care. ROA 294. J.T.M., C.B.M., A.R.M., and J.W.M. engaged in therapy later. ROA 294-295.

Due to the children's prior abuse issues, the Mays learned they had to take precautions. ROA 291, 293. Kaci may testified:

> …[W]e are all hypervigilant and over the years we have learned the need for open communication constantly. Strategy called, "Name it to tame it." So we identify behaviors exactly as they are. The purpose and functions of the behaviors. Everybody in the home as to practice that.
>
> We have extensive rules about who can be where and when they can be there and what they can be doing. And they're signed by everybody in the house, posted all over the doors. We have alarms on almost every single door in our house. We have cameras inside our house, outside our house. We have motion detectors. I've slept on the floor outside of

> J.H.M.'s door many, many nights or just sat there because I couldn't sleep so I sat all night outside her door.
>
> LCM and J.W.M. are our two youngest children. And they've spent most of their lives sleeping in our bedroom for their protection.

ROA 293-294. Because J.H.M., J.R.M., and L.C.M. sexually act out, the children's Fifth Amendment Right to remain silent needs to be protected. ROA 311. Kaci is also concerned because SCDSS has caused harm by allowing the adopted children to be sexually abused while in foster care. ROA 311.

b. J.H.M.'s sexual behaviors.

Kaci was concerned J.H.M. would sexually act out on other children while at school because of J.H.M.'s a history of sexual behavior problems inside the school, on the school bus, and in the community. ROA 79, 174, 299, 308. The Mays could not get the School District to take J.H.M.'s behaviors seriously. ROA 171-174, 299, 365.

At a meeting before school opened in fall of 2016, Kaci informed Principal Wally Baird of J.H.M.'s sexual behaviors problems. ROA 205--208, 299-300. Kaci shared an email from the school bus driver regarding the sexual incident. ROA 208. The school bus driver was physically present at the new school during the meeting and Baird chose not to speak with him to confirm the information. ROA 208. Kaci expressed she was fearful of an increase of

sexual behaviors and she needed the school to be vigilant. ROA 300.

c. Fall 2016 SCDSS Intake.

J.H.M. reported to the school that her mother threw a toy and hit her. ROA 145, 298. A report was made to SCDSS.[1] ROA 298. SCDSS dispatched a child protective services contractor to "interview me and talk to me. I refused services at that point because they had nothing to offer that we didn't already have in place." ROA 142, 298. The investigation was unfounded. ROA 299.

d. Spring 2017 IEP Meeting, SCDSS intake and investigation.

Sand Hill Elementary School held a meeting with Kaci on March 27, 2017, to discuss the provision of educational services to J.H.M. and J.R.M. and the other children. ROA 184-188, 200-202. The School District had a history of ignoring Kaci's concerns. ROA 308. The meeting was contentious. Kaci was concerned the school was endangering J.H.M. and other children by not supervising J.H.M. After several explanations, Kaci used terms like "rape" regarding J.H.M.'s behaviors to drive home the dangers of the sexual conduct. ROA 204, 336, 369-371.

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[1] Although Kaci testified the school made the report, the origin of the report (1) was statutorily confidential pursuant to S.C. Code Ann. §63-7-330 and 1990; (2) was not relevant to Plaintiffs' claims and the Defendants' defenses; and (3) was not substantiated.

The next day, on March 28, 2017, a School District employee made a report to SCDSS. ROA 470. The following was reported:

> It is reported that the children have been "brutally" raped by J.H.M., age 9 yrs. R[eporter]/S[tates] that J.H.M. "sucked J.T.M.'s penis" R/S the children are not safe in the home. R/S J.R.M. and J.H.M. need supervision at all times. R/S that all the children in the home were sexually abused by J.R.M. and J.H.M. and that J.H.M. could be doing this with other children. R/S concerns that parents are not supervising children properly.

ROA 470. The intake was accepted, and an investigation was initiated by SCDSS. *Id.* Part of the justification for accepting the intake was Kaci's refusal to accept services from SCDSS in November, even though SCDSS knew services were in place. *Id.*

School Resource Officer Deputy Pryor and Detective Blanchard interviewed J.H.M. on March 28, 2017, at the school. ROA 402.

On March 29, 2017, at 1:00 p.m. SCDSS caseworkers Melissa Geathers and Priscilla King went to the school to interrogate the children. ROA 202, 404, 460. J.H.M., J.T.M. and J.R.M. were not at school and Geathers and King met with A.R.M. ROA 404. Geathers and King asked 7-year-old A.R.M. (1) who lived in the home, (2) whether she was afraid at home, (3) whether her siblings ever feel afraid, (4)

about drugs or alcohol in the home and (5) whether anyone had touched her private areas. ROA 404.

On March 30, 2017, at 1:00 p.m. SCDSS caseworkers Kerryn Hullstrung and Vanessa Smalls went to Sandhill Elementary to interrogate the children. ROA 402, 461. Deputy Pryor told SCDSS he wanted to take J.H.M. into Emergency Protective Custody but there were no grounds. ROA 402.

Hullstrung and Smalls met with C.B.M. and asked about (1) medical visits, (2) who lived in his home, (3) what he does with his family, (4) whether his parents abuse alcohol or drugs, (5) whether he was sexually abused, (6) whether he was spanked, (7) personal hygiene, (8) domestic violence in the home, (9) whether there is enough food, and (10) whether he was scared or worried about anything. ROA 401.

Hullstrung and Smalls next met with J.H.M., who asked that her mother be present at the meeting with the SCDSS caseworker. ROA 403.

> CM met with J.H.M. next and had a difficult time completing the interview because she was unable to remain focused and was annoyed about the case managers presence in the room. Dept. Pryor stated that J.H.M. asked for her mother to be present prior to meeting with CM.

ROA 403, 146. J.H.M. was asked about (1) her health, (2) the safety of the home, (3) medical visits, (4) who resided in the home, (5) whether there was

enough food in the house, (6) whether she was spanked, and (7) whether she was being sexually abused. ROA 403. J.H.M. became angry when SCDSS began asking her about sexual abuse, stated, "if you want to talk about this I need my mom here" and then refused to further speak with the case worker. ROA 403.

Hullstrung and Smalls met with J.R.M. and he was asked about (1) adult supervision, (2) medical visits, (3) who lived in the house, (4) whether he is spanked, (5) domestic violence in the home, and (6) concerns or worries in the home. ROA 403.

On March 31, 2017, Hullstrung went to the May home. ROA 406. Kaci, "stated she has an attorney, and the case manager needs to speak with her." ROA 406. Kaci did not allow SCDSS to interview the children or enter her home. ROA 365-366, 406. J.H.M. hid under her bed because she was afraid SCDSS was going to remove her. ROA 313-314.

On April 5, 2017, Hullstrung and Supervisor Elliott Ray, III, conducted a Seven Day Staffing. ROA 407, 473-474. *See also* ROA 551. SCDSS planned for its attorney to contact Kaci's attorney. ROA 407.

On April 24, 2017, Hullstrung and Ray conducted another staffing. ROA 408, 475-476. Hullstrung staffed the case with legal to meet with Kaci's attorney. ROA 408, 475-476. SCDSS recorded Kaci, "has reportedly quit her job and withdrawn [sic] the children so that she is able to homeschool

them.", which was false. ROA 408, 409, 475-476. The staffing recommended:

1. CW to await meeting schedule with client and attorney
2. CW to complete Inspection Warrant
3. CW to re-staff within 14 days

ROA 409, 476.

On May 1, 2017, Hullstrung emailed Kaci to schedule a home visit. ROA 498, 497, 321-322. Kaci wanted to schedule on a Friday, "I was trying to stick to a weekend because our children had nightmares last time you visited our home." ROA 496. Hullstrong cancelled the visit to the home because, "…it causes the children to have nightmares…" ROA 495, 321-322. On May 3, 2017, Hullstrung asked Kaci to have her attorney schedule a meeting. "I will not be coming to the home at this time due to allegations you are bringing towards me causing the children nightmares when I come to your home." ROA 494.

On May 12, 2017, Hullstrung went to the school around 9:00 a.m. to interrogate the May children, J.H.M., J.R.M., and A.R.M. ROA 412. A guidance counselor sat in on the interrogation. ROA 413. Hullstrung:

> …"observed J.H.M. to have shoes on that have holes in them. J.H.M. was also wearing a mismatched outfit. J.R.M. and A.R.M. appeared put together with no holes and clothes that fit them and appeared to be clean.

ROA 412. The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552.

Later that day Hullstrung and Ray conducted a decisional staffing. ROA 410, 477-478. SCDSS recommended:

1. CW to Indicate case against mom & dad for Physical Neglect
2. CW to send [Determination] & [Right to Appeal] within 5 business days
3. CW to complete Investigative Summary & Child Safety
4. CW to prepare [Court Information Sheet] for court intervention
5. CW to prepare file for transfer to Family Preservation Unit

ROA 411, 473, 477-478. SCDSS made a case decision indicating the Mays of physical neglect. ROA 499-502, 477-478. SCDSS wrote:

> [SCDSS] responded to a report that the children have been brutally raped by J.H.M. Allegations that the children are not safe in the home. Concerns that parents are not supervising the children properly.

ROA 499-502. SCDSS also recorded:

> Education contact was made at Sandhill Elementary. Home visit/safety inspected [sic] attempted. Law enforcement contacted.

ROA 499-502.

At this point, SCDSS's investigation was complete. S.C. Code Ann. §63-7-920(A)(2). Kaci testified that she instructed SCDSS to stop interrogating her children. ROA 320, Trans., *35 (Aug. 12, 2020) (I told everybody who had ears to stop speaking to my children.). SCDSS never sent a proposed treatment plan to Kaci. ROA 337.

On May 25, 2017, Hullstrung visited the school at 10:15 and pulled J.T.M. and C.B.M. out of class to be interrogated. ROA 463, 413. The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552.

On June 1, 2017, SCDSS conducted a case staffing and transferred the case from Investigations to the Family Preservation Unit. ROA 506, 255-256. SCDSS wrote:

> Minor children are allegedly receiving services. mother will not sign release. CM [Case Manager] was unable to gain access to the home. CM is preparing paperwork.

ROA 506. Jasmine Flemister was assigned as the Family Preservation Case Manager for the May case. ROA 479-480.

On June 5, 2017, Flemister emailed Kaci and asked to speak to her and visit her home. ROA 479-480, 243. Kaci informed Flemister the family's attorney had not received a response from SCDSS and provided her attorneys' contact information to SCDSS. ROA 479-480.

On June 7, 2017, the May's appealed SCDSS's determination of physical neglect. ROA 504-505, 325.

On June 15, 2017, Dorchester County DSS Director conducted an interim review of the case, concluded the decision was supported by the evidence", and SCDSS would seek family court intervention. ROA 503.

On June 17, 2017, SCDSS Case Manager Flemister ran into the May Family at Fort Dorchester High School after a performance. ROA 414. SCDSS noted:

> CM spoke to the family and observed all the children. All the children stated they were fine. CM observed the children all dressed appropriately and free of marks and bruises. CM did not engage in full conversation due to the nature of the contact. CM will follow up with a home visit.

ROA 414, 263.

On June 23, 2017, SCDSS's Office of Administrative Hearings issued an Order to Stay Appeal based upon SCDSS's intent to seek family court intervention. ROA 505.

On July 5, 2017, Flemister attempted to visit the May family at home. ROA 415, 243-244, 263. She wrote, "CM arrived at the address and no one answered the door. CM observed a van in the yard but no noise from the inside of the home." ROA 415.

On July 14, 2017, Flemister attempted to visit the May residence:

> Upon arrival CM observed a van in the yard. CM contacted Mrs. May's attorney's office while in the yard to obtain information for the family. The secretary at the office took my information and stated I would receive a call back. CM was able to obtain a number for Kaci May from a previous case in which she adopted children. CM made contact with Kaci May via telephone and informed her who she was and that she was at the home. Mrs. May stated that the CM was not to be at her home and that she needed to schedule any home visits with her family through her attorney CM left the May residence.
>
> CM will follow up with legal and contact her attorney for a visit.

ROA 416, 244.

On July 14, 2017, Flemister received an email from Kaci:

> Good morning Jasmine.
> It is my understanding you are at my home now. I want to make it clear again, agree speaking with you a moment ago, that any visit to our home, we want scheduled through our attorney Ms Deborah Butcher. If you are having trouble contacting her, please let me know.
> Best regards
> Kaci May

ROA 416, 244.

From July 14, 2017 through July 26, 2017, there were several emails among Flemister, Kaci, and her attorney addressing SCDSS's desire to get into the May's home. ROA 418-423, 481-485. On July 24, 2017, Flemister met with legal. ROA 419.

On July 31, 2017 Flemister contacted the sheriff's office to assist with conducting a face-to-face visit with the Mays. ROA 424, 244-245. The officer went to the home and no one was present. ROA 424.

Later that day, Flemister conducted a staffing with Juanita Bryant, a performance coach with SCDSS. ROA 425-426. Bryant documented that Flemister was only able to "meet with the children by going to their school." ROA 425. Bryant wrote, "Children were interviewed once at school and they made no disclosures of abuse." ROA 425. She listed as a Complicating Factor, "Mom is not allowing DSS

to have access to her home." ROA 425. Under "Next Steps", Bryant wrote:

> CM Needs to contact the father through the military to hear his side of what goes on in his household from his knowledge.
> -Contact law enforcement to do a wellness check again. This time to go with them to the home to be sure they have the right location.
> -Send a letter to mom and her attorney stating that we have been trying to reach her to set up a visit to see if post office will provide a forwarding address if in fact she has moved.
> -Make call to Region 3 Adoptions worker to see what background information she can tell you about the family.
> -Continue to make diligent efforts to locate the family and correspond with mom's attorney and dad.
> -Request authorization to obtain the children's therapy records and school behavior records to thoroughly assess the behavior problems parent is alleging.

ROA 426.

On August 2, 2017, SCDSS's attorney sent an email to Kaci's attorney providing dates to schedule a time for Flemister to meet with the children. ROA 427.

On August 3, 2017, the May's filled out School Sign-Out Sheets for 2017-2018. ROA 507-511. At the bottom of each sheet, Warren May listed the phone

numbers for Family Attorney Deborah Butcher and wrote the following:

> Either Kaci May or Mrs. Butcher are to be contacted before anyone interviews [my child].

ROA 507-511, 156-157. Principal Baird disregarded the instructions because the School District needed, "a court order signed by a judge to make this happen" and never contacted the May's or their attorney when SCDSS interrogated the children. ROA 157-158.

During the 2017-2018 school year, C.B.M., A.R.M., and J.W.M. were enrolled at Sand Hill Elementary School. ROA 437-438. J.T.M. attended Gregg Middle School. ROA 429, 439-440.

On August 23, 2017 Flemister contacted Gregg Middle School about J.T.M. and spoke with the 6th grade principal. The principal had seen J.T.M. that day with his mother, the child was fine, and she had no concerns. Flemister wrote:

> CM explained the current situation regarding the family and asked for her assistance if needed. She stated she would be willing to see if the child if needed and would be in contact with the CM.

ROA 429, 263-264.

On August 24, 2017 Flemister received a call from Principal Baird, "…that he made face to face

contact with the minor children and they are well. He stated there is nothing to report." ROA 430.

From August 25, 2017 through August 28, 2017 Flemister, Kaci, and Deborah Butcher sent emails regarding a time to meet with the children. ROA 432-435, 487-490, 264-266.

On August 28, 2017 Flemister requested a law enforcement escort to Kaci's home to see L.C.M. Flemister wrote:

> …was met by Ofc. P. Owens to assist with the welfare check. Ofc. Owens followed the CM to the home to conduct the welfare check. CM observed no cars in the yard at the home. Ofc. Owens knocked on the door but there was no answer and he did not observe any movement in the home.

ROA 431, 245.

On September 13 and 14, 2017 Kaci withdrew J.H.M. and J.R.M. from school and transferred them to Connections Academy because of the interrogations. ROA 512-513, 436, 332-333, 358.

On September 14, 2017 SCDSS filed a complaint in *SCDSS v. May*, 2017-DR-18-01334, in the family court alleging abuse and neglect against Kaci and Warren May and asking for custody of all seven of the May children. ROA 516-523, 295.

SCDSS asked for the following relief, in part, from the Family Court:

(A) ***Legal and physical custody of the minor children***, J.T.M., J.H.M., L.C.M., J.R.M., J.W.M, C.B.M., A.R.M., be granted to the South Carolina Department of Social Services (SCDSS);
(B) The Court ***approve the Plaintiff's Treatment/Placement Plan*** or in the alternative, the Court should authorize Plaintiff to terminate or forego reasonable efforts to preserve the family or reunite the minor children, J.T.M., J.H.M., L.C.M., J.R.M., J.W.M., C.B.M., A.R.M., with Defendants, Kaci May and Warren May, pursuant to S.C. Code Ann. §63-7-1640;
…
(E) ***Defendants cooperate with Plaintiff to make appropriate plans for the minor children and to notify Plaintiff promptly of any change of condition and/or address***;
(F) ***Plaintiff be granted full and complete access to all criminal, professional, school, medical, and other records of the minor children and of Defendants*** as may be necessary, ***including an order that Defendants execute necessary releases for such records*** when required by providers;
…
(H) The Court make a finding that the minor children are abused or neglected children as defined in §63-7-20 and the minor children cannot be protected from further harm without further services and possible removal;

ROA 522-523 (Emphasis added).

Flemister filed a Court Information Sheet/Supplemental Report in support of SCDSS's Complaint. ROA 524-528. Flemister and SCDSS alleged the following:

> The children have not been permitted to complete forensic interviews to determine if services are needed. The Department has been denied access to the children and the home where they reside. The Department was not granted access to the minor children's medical or mental health records to confirm Ms. May's reports of trauma and services for the minor children. The parents have denied the Department visitation with the minor children and prohibited contact. Ms. May has reported that her children were upset and hid when the Department's investigators came to the home because she had taught them that if they were taken to a foster home that they would be raped…

ROA 525-526. Flemister and SCDSS also alleged:

> The Department has been unable to access the minor children's medical or mental health records. Mr. and Ms. May have not cooperated with requests that the minor children have forensic interviews to determine if services are needed.

ROA 526, 267-268.

SCDSS's and Flemister's representations to the family court that Kaci refused to release medical information or present the children for a forensic interview were <u>false</u>. At no time, from March 2017 through September 2017, did SCDSS or its employees request Kaci or her husband to (1) sign any medical or mental health release, (2) provide records, or (3) submit the children to forensic interviews. *See* ROA 401-459 (showing the negative), 479-498 (showing the negative), 248-250, 267-268, 336-337.

On September 19, 2017, at 9:03 a.m. Flemister went to Sand Hill Elementary School to interrogate C.B.M., A.R.M., and J.W.M. ROA 437-438, 266-267, 271, 273. The interrogation lasted 15-20 minutes. ROA 272-273. The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552.

On September 22, 2017, Flemister went to Gregg Middle School to interrogate J.T.M. with the 6th Grade Guidance Counselor. ROA 439-440. The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552.

On September 25, 2017, Flemister sent a deputy to check on J.R.M., J.H.M. and L.C.M. ROA 441.

On October 7, 2017, Flemister spoke with the family court appointed Guardian ad Litem, Mevelyn Williams, "who stated she was granted access to her the family's home and was able to meet with the children and mother." ROA 442, 253-254. Flemister also wrote:

> Ms. Williams stated that at the time of the visit she did not have any concerns but she has not reviewed the case file. She stated that she will come to review the case. CM explained that she has not been granted access to the home.
>
> CM will follow up with legal. CM will continue to monitor the family.

ROA 442.

On October 12, 2017, the family court Merits Hearing was continued. ROA 443. SCDSS did not ask the family court for access to the children.

On October 13, 2017, J.H.M. and J.R.M. were admitted to Three Rivers Pediatric Psychiatric Residential Treatment Facility. ROA 529-530.

On October 16, 2017, Robert Butcher, attorney for Kaci May and Warren May, wrote a letter to Principal Baird and Superintendent Joseph R. Pye. ROA 531-532, 159-163. The Mays demanded the

School District stop allowing SCDSS to interrogate the May children at school and warned they would seek injunctive relief in court and seek attorneys' fees and costs. ROA 531-532.

On November 20, 2017, Flemister interrogated C.B.M., A.R.M., and J.W.M. at Sand Hill Elementary School. ROA 445, 465, 259-260, 273-274, 279-280. The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552.

On November 20, 2017, Flemister attempted to interrogate J.T.M. at Gregg Middle School. ROA 446. Flemister documented the following:

> CM attempted to make contact with J.T.M. Upon arrival CM was told by the school that the parent stated they need to contact with family's attorney before the child can be seen by anyone. CM asked if they have a signed court order, they did not have an order. CM requested the guidance counselor see the child as a collateral.
>
> CM received a call from the guidance counselor that stated the child was not present at school and the child's absences are in double digits. The guidance counselor stated she would attempt contact again on 11.21.17.

> CM will retrieve attendance records on 11.21.17.

ROA 446, 251-252. The information sought during the interview included family information on abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552.

On November 29, 2017, Flemister met with GAL Mevelyn Williams. The GAL had no concerns with the family visit and Flemister documented that she still had not been granted access to the home. ROA 447, 253-254.

On December 7, 2017, Appellants filed a verified complaint in this action and a request for a temporary restraining order against the School District, SCDSS, and several individual defendants. ROA 19-31. SCDSS stopped interrogating the children at school. ROA 254.

SCDSS initiated a second SCDSS investigation, made a finding against Kaci, never interrogated the children, and never served the finding. ROA 450-452, 454-457.

On June 14, 2018, SCDSS, the Mays, and the Guardian ad Litem filed a Stipulation for Voluntary Dismissal with the family court. ROA 533. The stipulation included, "Plaintiff SCDSS's investigation beginning on or about March 28, 2017 resulting a finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned." ROA 533.

At the time of trial, only J.T.M., C.B.M., and J.R.M. attended school in the School District. ROA 334, 362. J.H.M. was temporarily placed in an 18-month pediatric psychiatric residential treatment (PRTF) facility at Piney Ridge Treatment Center in Fayetteville, Arkansas and attended school through the program. ROA 314. J.H.M. and J.R.M. have special needs, a 504 Plan, an Individualized Education Program (IEP), and a Behavioral Intervention Plan (BIP). ROA 334. A.R.M., J.W.M., L.C.M. attend Connections Academy. ROA 334.

No administrative or judicial findings of abuse and/or neglect have ever been upheld or substantiated against Kaci May or Warren May. Trans. ROA 236.

For each and every interrogation SCDSS conducted at school:

- SCDSS and the School District failed to inform the Mays that SCDSS had interrogated the children at school. ROA 261, 320, 338-339..
- No warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Appellant children by SCDSS.
- SCDSS never applied for a warrant or court order to interrogate, interview, search, or strip-search the May children at school or home from March 2017 through November 2017. ROA 245-246.
- From March 2017 through November 2017, there were never any exigent

circumstances or emergency circumstances where delaying an interrogation, of the May children in order to obtain a warrant or court order would have endangered the May children.

e. South Carolina Department of Social Services Policies.

Once a complaint of abuse and/or neglect is accepted through SCDSS intake, a child protective services worker has from two to twenty-four hours to make face-to-face contact with the subject children. ROA 217-218. It is SCDSS's policy, upon accepting an intake for investigation, to make face-to-face contact with all minor children within two to twenty-four hours. ROA 217, 548. This contact may include interrogation, interview, searches, and strip-searches. ROA 548.

The goal of SCDSS's Child Protective Services is to ascertain all facts related to the allegations, through the interviewing process with children, parents, and other caregivers, and to ensure the safety of the child or children involved. ROA 214.

SCDSS's policy is taught in all of the training for case workers. ROA 214. SCDSS's caseworkers' training is based upon law and SCDSS policy. ROA 215. The training focuses on maltreatment, investigations, intake, family preservation intake, foster care, and adoptions. ROA 215. SCDSS caseworkers are taught interviewing skills on how to extract information from children. ROA 215-216.

If a parent will not allow SCDSS to interview a child, SCDSS caseworkers are taught that they can obtain a warrant through the County DSS attorney or law enforcement. ROA 218-220, 245-246, 569, 618; S.C. Code Ann. §63-7-920(B). If a parent will not sign releases for information, SCDSS can obtain a warrant or, once a case is filed in the Family Court, issue a subpoena. ROA 226.

When a treatment plan is court ordered, the family court's order usually provides for SCDSS to have access to children and their records. ROA 238.

II. Trial.

a. The Trial Court and parties relied upon the pretrial briefs throughout the trial.

The trial court and the parties relied upon and referred to the pretrial briefs of the parties in waiving opening argument and arguing the law. ROA 96-97, 378, 379, 383, 393-394. The pretrial briefs are located at ROA 700 for the Plaintiffs and ROA 726 for the SCDSS Defendants.

b. Testimony of A.R.M.

A.R.M. was ten years old at the time she testified. ROA 99. She was seven and eight years old and in first and second grade when the interrogations occurred. ROA 106-107, 110. A.R.M. was home schooled because SCDSS kept pulling her out of class. ROA 101. A.R.M. wants to return to public school. ROA 102, 104-105.

When A.R.M. was pulled out of class, she was not told who she was meeting with. ROA 103. A.R.M. was not told she could call her mother and talk to her before being interrogated. ROA 103.

A.R.M. testified C.B.M. told SCDSS he did not want to speak with them, "And then we left. But they were waiting for my brother, J.W.M." ROA 111. A School District employee did not always sit in on the interrogations. ROA 117.

c. Testimony of C.B.M.

C.B.M. was twelve years old when he testified. ROA 119. He was in third and fourth grade when the interrogations occurred. ROA 125, 127, 133. The last interrogation lasted about 20 minutes. ROA 127. The interrogations made him, "…feel that something was wrong, because they kept coming back after I said everything was fine the first time." ROA 134.

C.B.M. was not told that he was being interrogated by SCDSS and he was told "…someone had to talk to me". ROA 120-121.

d. Testimony of Principal Marion Baird.

Marion Baird was the principal at Sand Hill Elementary School at the time of the interrogations. ROA 136. As the principal, Baird was responsible for enforcing the School District's policies and procedures and guidance from the superintendent and the school board. ROA 137.

Baird testified SCDSS does not need permission from the school to interview students. ROA 140. Baird clarified SCDSS is authorized to interview children at appropriate times. ROA 140. Baird did not know if SCDSS could come to the school and interrogate the same child every day or interview all of the children in a class. ROA 140-141. "We have been advised to allow DSS to interview children, if they see a need." ROA 142.

Baird equated SCDSS interrogations of children as "a conversation, how are you doing". ROA 153.

When SCDSS comes to a school to interrogate a child, the School District asks the employee to present their badge and the school makes a copy of it and they write the names of the children SCDSS wants to see on the copy and the dates and time they are interrogated by SCDSS. ROA 190, 268-269, 271-272. *See also* 460-465. The copy will also have a notation of the name of any School District employees who sat in on the interview. ROA 192. A record of the SCDSS interrogations are kept in a folder by the reception desk at the school. ROA 191.

e. Testimony of Jasmine Flemister.

Jasmine Flemister was a Family Preservation Case Manager during the time of the events in this matter. ROA 232. Flemister attended SCDSS's Basic Child Welfare Services Course for six weeks. ROA 233.

Family preservation is the unit within Child Welfare Services or Child Protective Services that works with the family to maintain the family unit by providing resources and referrals to what resources for appropriate treatment. ROA 261. SCDSS works with the family to develop treatment plans and locate or investigate appropriate services for the entire family. ROA 262. Family Preservation includes making monthly contact with the involved children. ROA 262.

f. Testimony of Kaci May.

Kaci was previously employed as a schoolteacher. ROA 294. She taught at the Florence Crittenton Residential Program for Pregnant Teens in Charleston, South Carolina for twelve years. ROA 294, 345. This included attending treatment team meetings with, "therapists, doctors, to manage children with maladaptive behaviors, and then I became a foster parent and went through the training and took in any information I could." ROA 294.

> Kaci testified:
> These are my children. I – Warren and I took -- take parenting very seriously. We thought that we were great parents and our children are great children. We have a wonderful time out and about playing and managing and whatever. I have a right to protect my children. I have a right to build a safe, you know, hub for my children, to choose the people who are around my children. To protect

> them. And that right was taken away from me.

ROA 316. Kaci also testified to the following:

> I believe that the school is a place for my children to receive an education based on the standards put through the Department of Education. The school should not be a place where my children are investigated or I'm being investigated. If you don't believe that my children are in imminent danger. So anytime if a child if you think a child is going to be, you know, hurt by going home or something, by all means, investigate at school.
>
> But that was not the case and, therefore, my children should not be continued to be interviewed while at school. My children did not feel comfortable with that. They wanted to be just another child. They wanted to trust the people in the school building. I wanted to trust the people in the school building and there was no trust.

ROA 337-338.

Arguments

I. Standard of Review.

At the close of Appellants' case, the trial court granted the Defendants' Motion for Directed Verdict. The procedural vehicle the trial court should have used is Rule 41(b), SCRCP. But the standards of

review are the same for both directed verdict and involuntary nonsuit and it should not be an issue.

In deciding whether to grant or deny a motion for involuntary nonsuit, the trial court must view the evidence and all reasonable inferences in the light most favorable to the Plaintiffs. *Bullard v. Ehrhardt*, 283 S.C. 557, 324 S.E.2d 61 (1984). If there is no relevant, competent evidence reasonably tending to establish the material elements of the Appellants' case, a motion for an involuntary nonsuit must be granted. In reviewing the trial court's ruling on a motion for an involuntary nonsuit, the appellate court applies the same standard as the trial court. *Rewis v. Grand Strand Gen. Hosp.*, 290 S.C. 40, 348 S.E.2d 173 (1986).

Though there is not much case law concerning the appellate standard of review on appeal from the grant of a motion for involuntary nonsuit, it appears that the appellate court applies the same standard as does the trial court, much the same as with review of decisions on motions for a directed verdict, J.N.O.V., or summary judgment. *See Johnson v. J.P. Stevens & Co., Inc.*, 308 S.C. 116, 118, 417 S.E.2d 527 (1992) (seeming to apply this analysis, without discussion of standard); *Ex parte USAA: Smith v. Moore*, 365 S.C. 50, 614 S.E.2d 652, 653 (Ct. App. 2005) ("[b]ecause a dismissal [under Rule 41(b)] has the same effect as summary judgment, the standard for summary judgment applies"). For Rule 50, directed verdict, see *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993); *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991); *Baggerly v. CSX Trasp. Inc.*, 370 S.C. 362, 635

S.E.2d 97 (2006) ("[T]he evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party against whom the verdict was directed.").

Appellant children are minors, it is the duty of the courts to protect the interest of parties under legal disability because "[s]uch persons are wards of the court of chancery." *Caughman v. Caughman*, 247 S.C. 104, 146 S.E.2d 93 (1965). Therefore, an appellate court "will take notice of any error prejudicial to them, which is apparent on the record, even though not raised by appropriate plea or exception," because "the duty to protecting the rights of incompetents has precedence over procedural rules otherwise limiting the scope of review." *Id. See also*, *Joiner ex rel Rivas v. Rivas*, 342 S.C. 102 (1970) ([W]here the rights and best interests of a minor child are concerned, the court may appropriately raise, *ex mero motu*, issues not raised by the parties.")

II. SCDSS, public schools, and child protective services investigations.

a. SCDSS was created by the South Carolina General Assembly to investigate, identify, and remedy child abuse and neglect in our communities.

The South Carolina General Assembly has attempted to address child abuse and neglect by establishing a children's policy through the Children's Code, Title 63. S.C. Code Ann. § 63-1-

20(a). SCDSS is a statutory creature, and its organic statute is found at S.C. Code Ann. § 43-1-10. SCDSS's first substantive statute is found at S.C. Code Ann. § 43-1-80. SCDSS is charged with supervising and administering the, "public welfare activities and functions of the State…and child protective services as referred to in Title 63, Chapter 7…". *Id.*

All child welfare intervention by the State has as its primary goal the welfare and safety of the child. S.C. Code Ann. § 63-7-10(A)(5). South Carolina's Child Protection and Permanency statutes require SCDSS to "establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members." S.C. Code Ann. 63-7-10(B)(4).

SCDSS's responsibilities shall include, but are not limited to, assigning and monitoring initial child protection responsibility through periodic review of services offered throughout the State; [and] assisting in the diagnosis of child abuse and neglect. S.C. Code Ann. § 63-7-910(C)(1 – 2).

b. Schools are essential partners in the identification and investigation of child abuse and neglect.

School attendance is often the only time an abused or neglected child is seen outside of the home. Schools are often the first line of defense in the identification of child abuse and neglect in our communities. Similarly, schools are often the only

places SCDSS and/or law enforcement may have contact with a child without the undue influence of an abusive or neglectful caregiver.

The South Carolina General Assembly recognized this when it charged the State to "…encourage community involvement in the provision of children's services…" S.C. Code Ann. § 63-1-20(C). "The children's policy provided for in this chapter shall be implemented through the cooperative efforts of state, county and municipal legislative, judicial and executive branches,…" S.C. Code Ann. § 63-1-20(E). It also required SCDSS "to actively…seek the cooperation and involvement of local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves." S.C. Code Ann. § 63-7-900(C).

c. Child abuse and neglect investigations are limited by statute.

The execution of child abuse and neglect investigations are codified in S.C. Code Ann. § 63-7-920. This statute is discussed in detail below and provides timelines, procedures for obtaining a warrant to (1) interview a child, (2) inspect the condition of a child, (3) inspect a premises, and (4) to obtain medical, school, and other records. SCDSS may promulgate regulations and formulate policies and methods of administration to effectively carry out child protective services, activities, and responsibilities. S.C. Code Ann. § 63-7-910(E).

The Children's Code states that SCDSS has sixty days to conclude an investigation for child abuse and/or neglect. S.C. Code Ann. §§ 63-7-920(A)(2) and 63-7-930(A).

III. The trial court erred in failing to issue injunctive relief to Plaintiffs.

An injunction is an equitable remedy not a matter of legal right and is committed to the discretion of the court and granted when a review of all of the evidence establishes that it is necessary to prevent irreparable harm. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993), *rev'd on other grounds*, *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995); *Miller v. Borg-Warner Acceptance Corp.*, 279 S.C. 90, 302 S.E.2d 340 (1983). The injunction is a drastic remedy and should be carefully considered and granted only when legal rights are invaded or legal duties wantonly neglected. *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 62 S.E.2d 470 (1950); *LeFurgy v. Long Cove Club Owners Ass'n*, 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994).

a. The trial court erred in finding the Appellants did not establish a likelihood of success on the merits.

We do not suspend the constitution in order to protect children. Plaintiffs' claims are grounded in the Constitution. 42 U.S.C. §1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

> State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

42 U.S.C. §1983. Plaintiffs assert the Defendants violated Amend. I, IV, V, VI, and XIV of the U.S. Const.

Similarly, Article I of the South Carolina Constitution contains three relevant sections:

> **§ 3. Privileges and immunities; due process; equal protection of laws.** The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> **§ 10. Searches and seizures; invasions of privacy.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the

> place to be searched, the person or thing to be seized, and the information to be obtained.
>
> **§ 12. Double jeopardy; self-incrimination.** No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself.

S.C. Const. art. I. The Court should note that S.C. Const. art. I, §10 is much more stringent than the Fourth Amendment, as it includes and additional clause, "…unreasonable invasions of privacy shall not be violated,…"

b. School interrogations are seizures under the 4th Amendment.

The Fourth Amendment protects a child's right to be free from unreasonable seizure by a social worker. *In the Interest of Thomas B.D.*, 326 S.C. 614, 617, 486 S.E.2d 498 (Ct. App. 1997); *Dees v. Cty. of San Diego*, 960 F.3d 1145, 1154 (9th Cir. 2020) (Citing *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 790-91 (9th Cir. 2016) (*en banc*)). "A 'seizure' triggering the Fourth Amendment's protections occurs only when government actors have, 'by means of physical force or show of authority,…in some way restrained the liberty of a citizen.'" *Camden v. Hilton*, 360 S.C. 164, 175, 600 S.E.2d 88 (Ct. App. 2004); *Dees*, 960 F.3d at 1154, (Citing *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). *See Schulkers v. Kammer*, 955 F.3d 520, 536 (6th Cir. 2020) (*O'Malley*

v. City of Flint, 652 F.3d 662, 668 (6th Cir. 2011) (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Courts generally should take into account the child's age when determining if a reasonable person would have felt free to leave. *Schulkers*, at 536 (Citing *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005); *Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003)).

"When the actions of the [official] do not show an unambiguous intent to restrain or when an individual's submission to a show of governmental authority takes the form of passive acquiescence…a seizure occurs if, 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *Dees* 960 F.3d at 1154, (Citing *Brendlin v. California*, 551 U.S. 249, 255 (2007) (quoting. *Mendenhall* at 544, 554, (1980)). *See also*, *State v. Spears*, 429 S.C. 422, 434, 839 S.E.2d 450 (2020). Common sense dictates that a reasonable child would not have felt free to decline or otherwise resist going to the front office with a school official. *Williams v. Cty. of San Diego*, 2021 U.S. Dist. LEXIS 25711, *17 (S.D. Cal. February 10, 2021) (Citing *Neel v. Cty. of San Diego*, No. 18-CV-1764 W (MSB), 2019 U.S. Dist. LEXIS 70261, at *10-11 (S.D. Cal. Apr. 25, 2019)). *See also*, ROA 103-104, 108 (A.R.M. was given no choice about the interrogation and when she was interrogated, she didn't, "like to disobey adults and…I'm not comfortable when I disobey adults."); ROA 120-124 (C.B.M. was not given a choice and he did not feel free to leave); ROA 154-155 (Baird testified children who refused to speak with SCDSS could be given a referral for disobeying a teacher).

The majority of Courts across the country have found school children retain a fundamental right to be free from search and seizure by social services workers. "A reasonable nine-year-old child who is called out of class by school officials for the purpose of meeting with a social worker who has already disturbed the child's family life, and who is not advised that she may refuse to speak with the social worker, will feel compelled to talk to the social worker and remain there until dismissed." *Dees v. Cty. of San Diego*, 302 F. Supp. 3d 1168, 1179 (D.S. Cal. October 10, 2017). *See also Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003) (20-minute interview of eleven-year-old boy was a seizure where the child was escorted from class by the principal, caseworkers, and a uniformed police officer into church's empty nursery and questioned by the caseworkers, with the police officer present, about corporal punishment); *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005) (an "emotionally vulnerable" 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew "had the authority to determine her custodial care," confined her for an "hour or two" in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her father); *Schulkers v. Kammer*, 955 F.3d 520, 536 (6th Cir. 2020) (Social worker violated Plaintiffs' Fourth Amendment rights by seizing them

from their classrooms and subjecting them to interrogation without any suspicion of child abuse, and without obtaining a warrant or consent. We hold that the Fourth Amendment governs a social worker's in-school interview of a child pursuant to a child abuse investigation).

There are several exceptions to the probable cause requirement, including consent, exigent circumstances, and in some instances, "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *Schulkers*, at 536 (Citing *Griffin v. Wisconsin*, 483 U.S. 868, 873, (1987)). None of these exceptions were present at any time during and subsequent to the SCDSS investigation. ROA 245-246, 401-459 (Plt. Tr. Ex. 1, Dictation); ROA 466-472 (Plt. Tr. Ex. 3, Intake); and ROA 473-478 (Plt. Tr. Ex. 4, Guided Supervision Staffing). The substantial record demonstrates that at any time, SCDSS could have sought relief with the family court had probable cause been present. *See* ROA 407 (meet with legal), ROA 409 (complete inspection warrant), ROA 411 (prepare for court intervention), ROA 417 (contacting Kaci's attorney), ROA 417 (contact legal), ROA 418 (email to Kaci's attorney), ROA 419 (contact legal), ROA 420-423 (email re Kaci's attorney), ROA 426 (send letter to Kaci's attorney and request children's records), ROA 427 (email between SCDSS attorney and Kaci's attorney), ROA 428 (email to Kaci's attorney), ROA 432 (email to Kaci's attorney), ROA 433 (email to Kaci about contacting her attorney), ROA 434 (email from Kaci's attorney), ROA 435 (email from Kaci about contacting her attorney), ROA 443 (court

intervention), ROA 444 (follow up with legal); ROA 474 (meet with legal), 476 (complete inspection warrant), 478 (prepare for court intervention) (Plt. Tr. Ex. 4, Guided Supervision Staffing); ROA 479-498 (Plt. Tr. Ex.s 5-A & 5-B, Emails); ROA 506 (Plt. Tr. Ex. 8, SCDSS Case Transfer and/or Case Staffing ([Case Manager] was unable to gain access to the home. CM is preparing paperwork)); ROA 551, 569, 582-584, 618 (Plt. Tr. Ex. 18, SCDSS Policy). In fact, the record demonstrates that SCDSS had access to, policies related to, and the ability to seek a warrant or court order--and it considered seeking a warrant or court order.

Because SCDSS and Flemister were limited by the Mays, they contacted collateral sources and third parties, to learn information about the Appellant children. ROA 429, 430, 436, 442, 446, 447. SCDSS and Flemister also asked law enforcement to assist in entering the home. ROA 424, 426, 431, 441. Lastly, when SCDSS filed for family court intervention, it never asked for access to the children because it never had probable cause to do so. ROA 519-527 (Tr. Ex. 12, Family Court Pleadings).

c. Parents have Fourteenth Amendment interest in the "companionship, care, custody and management of their children".

Parents have a cognizable liberty interest in the "companionship, care, custody and management of [their] children." *S.C. Dep't of Soc. Servs. v. Truitt*, 361 S.C. 272, 281, 603 S.E.2d 867 (Ct. App. 2004);

Lassiter v. Dep't of Soc. Servs. of Durham Cty., N.C., 452 U.S. 18, 27 (1981); see *Wallis v. Spencer*, 202 F.3d 1126, 1137 (9th Cir. 2000). District Courts considering analogous circumstances found that a state official's seizure and subsequent interview of a minor on school grounds without judicial authorization, parental consent, or exigent circumstances amounted to unconstitutional interference with the parent-child relationship. *See*, *Williams v. County of San Diego*, 2017 U.S. Dist. LEXIS 210404, 2017 WL 6541251, at *7-8 (S.D.Cal. Dec. 21, 2017); *Rabinovitz v. City of Los Angeles*, 287 F.Supp.3d 933, 951 (C.D. Cal.2018). *See also Doe v. Heck*, 327 F.3d at 524 ("[B]ecause the defendants had no evidence giving rise to a reasonable suspicion that the plaintiff parents were abusing their children, or that they were complicit in any such abuse, the defendants violated the plaintiffs' right to familial relations by conducting a custodial interview of [the child] without notifying or obtaining the consent of his parents and by targeting the plaintiff parents as child abusers.").

Appellants assert that S.C. Const. art. I, §10 is also applicable here, as, "unreasonable invasions of privacy shall not be violated". In this case, it is without dispute that actual deliberation of the Appellants' due process rights was not only practical, but it was considered, disregarded, and violated over and over and over again.

Courts have made it clear that neither peace officers nor social workers may dispense with constitutional constraints in their investigation of child abuse allegations when there is no imminent

threat of serious harm to the child. *Wallis v. Spencer*, 202 F.3d 1126, 1130-1131 (9th Cir. 2000); *Rogers v. County of San Joaquin*, 487 F.3d 1288 (9th 2007); *Calabretta v. Floyd*, 189 F.3d 808, 817 (9th Cir. 1999); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003); *Tenenbaum v. Williams*, 193 F.3d 581, 604 (2nd Cir. 1999); *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005); *Rabinovitz v. City of Los Angeles*, 287 F.Supp.3d 933 (C.D. Cal. 2018).

While the protection of children from abuse and neglect is vital, "the rights of families to be free from governmental interference and arbitrary state action are also important." *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1297. It therefore follows that a balance must be struck, "on the one hand, the need to protect children from abuse and neglect and, on the other, the preservation of the essential privacy and liberty interests that families are guaranteed under both the Fourth and Fourteenth Amendments of our Constitution." *Id.*

> "Because the swing of every pendulum brings with it potential adverse consequences, it is important to emphasize that in the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural guarantees of the Constitution. The fact that the suspected crime may be heinous—whether it involves children or adults—does not provide cause for the state to ignore the rights of the accused or any other parties. Otherwise, serious injustices may result. In cases of alleged child abuse, governmental failure to

> abide by constitutional constraints may have deleterious long-term consequences for the child and, indeed, for the entire family. Ill-considered and improper governmental action may create significant injury where no problem of any kind previously existed."

Wallis v. Spencer, 202 F.3d at 1130-1131.

When responding to a report of abuse and neglect, SCDSS teaches its caseworkers to go to the child's school to interrogate the child and it is SCDSS's policy to interrogate children at school when school is in session at any time. ROA 220-221, 237; ROA 546-568 (Plt. Tr. Ex. 18, SCDSS Policy 719). *See also*, ROA 401-405, 412-413, 437-440, 445-446. SCDSS testified that it does not need to obtain parental permission to interrogate a child to gather evidence against the parents. ROA 224-225. This information sought includes abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. ROA 224-225, 543, 551-552 (Plt. Tr. Ex. 18, SCDSS Policy). After a Child Protective Services investigation has been completed, SCDSS testified that it can continue to interrogate children at school. ROA 229. The head of SCDSS Training was unaware of any legal authority that permitted SCDSS to interrogate children without permission of a parent after an investigation was completed. ROA 228.

There is no doubt SCDSS used the May children's school attendance to seize and interrogate the children against the wishes of the Mays and

their children. SCDSS, the School District, and the trial court all believe that neither Kaci nor her children have constitutional protections in these settings.

d. The trial court erred in finding that S.C. Code Ann. §63-7-920 was not limited by the Plaintiffs' constitutional protections under Amend. I, IV, V, VI, and XIV of the U.S. Const. and S.C. Const. art. I, §§3 10, and 12.

SCDSS acknowledged that without a Family Court order, there is no requirement for a parent to let SCDSS in the home, to return phone calls, or to let SCDSS talk to children. ROA 277. SCDSS also acknowledged that even though SCDSS policy requires a face-to-face visit and interrogation of a child, a parent does not have to let SCDSS see their child. ROA 280.

The trial court's reliance upon S.C. Code Ann. § 63-7-920(c) and assertion the statute requires schools to allow SCDSS to interrogate children wherever and whenever it wishes is misguided. No state statute can diminish Federal and State Constitutional protections in the manner the trial court set forth.[2] Blind application of S.C. Code Ann. § 63-7-920(C) fails to acknowledge due process

[2] Plaintiffs do concede exigent circumstances allow searches and seizures under the Fourth Amendment and S.C. Const. art. I, §10, but no such circumstances were ever present in this matter.

protections enumerated in paragraph (B). Paragraphs (B) and (C) of the statute state:

> (B) The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.
>
> (C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both,

> shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

S.C. Code Ann. § 63-7-920(B -C).

Paragraph (B) of S.C. Code Ann. § 63-7-920 provides tools to facilitate SCDSS in conducting its investigation, but with judicial oversite and due process protections. The requirement of an affidavit in support of a petition for a warrant is no different than the same requirements for law enforcement and other state officers. *See* S.C. Code Ann. § 17-13-140 (law enforcement; *See State v. Dill*, 423 S.C. 534, 542, 816 S.E.2d 557 (2018)); § 41-15-260 (Commission of Labor); § 44-53-1400 (Lead Poisoning Prevention and Control); § 61-6-4540 (Alcoholic Beverage Control); § 44-53-500 (DHEC Narcotic and Controlled Substances). Paragraph (C) cannot be read in isolation and absent the due process provisions found in the preceding paragraph, and the United States and South Carolina Constitutions. The trial court's application of S.C. Code Ann. § 63-7-920 completely abrogates the protections of Amends, I, IV, V, VI, and XIV of the U.S. Const. and S.C. Const. Article I, §§ 3, 10, and 12.

There is no doubt the State and our communities have a legitimate, vested interest in the protection of children from abuse and neglect. "South Carolina, as *parens patriae*, protects and safeguards the welfare of its children." *In the Interest of Stephen W.*, 409 S.C. 73, 78, 761 S.E.2 231 (2014) (*Harris v. Harris*, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992). *See also State v. Cagle*, 111 S.C. 548, 552, 96 S.E. 291, 292 (1918) ("The state is vitally interested in its youth, for in them is the hope of the future. It may therefore exercise large powers in providing for their protection and welfare."). "The State has a profound interest in the welfare of the child, particularly his or her being sheltered from abuse. The right to familial relations is not absolute." *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002); *Brokaw v. Mercer County*, 235 F.3d 1000, 1018 (2000). The liberty interest in familial privacy and integrity is limited by the compelling governmental interest in the protection of children particularly where the children need to be protected from their own parents and does not include the right to be free from child abuse investigations. *Brown v. Newberger*, 291 F.3d 89, 94 (1st Cir. 2002); *Watterson v. Page*, 987 F.2d 1, 8 (1st Cir. 1993).

The South Carolina General Assembly recognized the countervailing interests of protecting the health, welfare, and best interests of South Carolina's children against the due process and fundamental liberties of the First, Fourth, and Fourteenth Amendments of the United States Constitution when it wrote the Children's Code, requiring SCDSS to "establish fair and equitable procedures, compatible with due process of law to

intervene in family life with due regard to the safety and welfare of all family members." S.C. Code Ann. 63-7-10(B)(4).

As stated above, there are legitimate circumstances when interrogation of a child at school without a court order or a warrant would be appropriate. Such exigent circumstances would occur on a case-by-case basis and would include probable cause that suspected abuse and/or neglect that threatened the life and safety of a child was imminent and certain or that certain evidence would be destroyed or wasted. Otherwise, there is no compelling reason for SCDSS caseworkers to be exempt from the warrant requirement of the United States Constitution and Article I, § 10 of the South Carolina Constitution. *Doe v. Heck*, 327 F.3d 492, 509 (7th Cir. 2003) (Citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (the Fourth Amendment's prohibition against unreasonable searches and seizures protects against warrantless intrusions during civil as well as criminal investigations by the government. Thus, the strictures of the Fourth Amendment apply to child welfare workers, as well as all other governmental employees.)

The law thus seeks to strike a balance among the rights and interests of parents, children, and the State. *Tenenbaum v. Williams*, 193 F.3d 581, 595 (2nd Cir. 1999) (Citing *Franz v. Lytle*, 997 F.2d 784, 792-93 (10th Cir. 1993). "While the paramount importance of the child's well-being can be effectuated only by rendering State officials secure in the knowledge that they can act quickly and decisively in urgent situations and that the law will

protect them when they do, there is a critical difference between necessary latitude and infinite license." Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 Wm. & Mary L. Rev. 413, 417 (2005).

The Supreme Court has repeatedly upheld the appropriateness of federal injunctive relief to combat a "pattern" of illicit law enforcement behavior. See *Allee v. Medrano*, 416 U.S. 802, 812, (1974); *Hague v. CIO*, 307 U.S. 496 (1939); *see also INS v. Delgado*, 466 U.S. 210 n.4 (1984); *Rizzo v. Goode*, 423 U.S. 362, 375 (1976) (distinguishing *Allee* and *Hague* as involving patterns of misbehavior, not isolated incidents). While a likelihood is required, the alleged harm does not need to be occurring or be certain to occur. *Michigan v. United States Army Corps of Eng'rs*, 667 F.3d 765, 788 (7th Cir. 2011).

Appellants have shown that SCDSS has a written policy, and it trains its caseworkers to interrogate children at school without regard to children's or families' Fourth Amendment protections. ROA 214-220, 237; ROA 546-568 (Tr. Ex. 18, SCDSS Policy 719). *See also*, ROA 401-405, 412-413, 437-440, 445-446 (Plt. Tr. Ex. 1, Dictation). Where the harm alleged is directly traceable to a written policy, see *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001), there is an implicit likelihood of its repetition in the immediate future. Second, the Appellant may demonstrate that the harm is part of a "pattern of officially sanctioned…behavior, violative of the plaintiffs' [federal] rights." *LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985).

Here, the School District was not aware that S.C. Code Ann. §63-7-920 limited school interrogations to the time period when an investigation was open. ROA 143-144. The School District was aware that SCDSS interviewed the Appellant children well into November 2017. ROA 144. When asked about notifying parents of interrogations, Marion Baird testified, "…typically we do not call parents regarding DSS business." ROA 158. Again, there were no facts present to necessitate an exception to the warrant requirement, after the investigation was complete, the Defendants continued to interrogate the children, and the interrogations continued for an additional six months.

e. The trial court erred in finding the Appellants failed to show irreparable harm.

"[T]he denial of a constitutional right…constitutes irreparable harm for purposes of equitable jurisdiction." *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987). Where the Court has found a likelihood of success on Plaintiffs' due process claim, the deprivation of such a constitutional right alone would constitute irreparable harm. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (finding that infringement on a First Amendment right, even for "minimal periods of time, unquestionably constitutes irreparable injury"); *Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir. 2014) ("[T]he deprivation of constitutional rights unquestionably constitutes

irreparable injury."). See also, *Am. Coll. of Obstetricians & Gynecologists v. United States FDA*, 472 F.Supp.3d 183 (D. Md. July 13, 2020).

Irreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993), *rev'd on other grounds*, *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995); While a finding of damages is not a prerequisite to the issuance of an injunction, the decision to issue injunctive relief must be based upon a balancing of the equities. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). Assessing harm to the opposing party and weighing the public interest "merge" when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Irreparable injury does not mean that the injury is beyond the possibility of compensation in damages. *Bethel Methodist Episcopal Church v. Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947). Irreparable injury has been found in many circumstances. For example, temporary relief was granted to prevent misappropriation of property[3] or

[3] *Columbia Broadcasting Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 189 S.E.2d 305, *cert. denied*, 409 U.S. 1007 (1972).

to prevent trespass on property[4] or prevent violations of ordinances,[5] or the loss of a business.[6]

The Supreme Court gave some insight into the considerations when it stated that "where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction." *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950) (citation omitted).

Recently, the United States Supreme Court held, that "[t]o satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a remedy that is likely to redress that injury. *Uzuegbunam v. Preczewski*, 209 L.Ed. 2d 94, 101, 141 S.Ct. 792 (2021) (Citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018)). "[W]e conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Uzuegbunam v.*

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[4] *South Carolina Elec. & Gas Co. v. Hix*, 306 S.C. 173, 410 S.E.2d 582 (Ct. App. 1991).
[5] *Beaufort County v. Butler*, 316 S.C. 465, 451 S.E.2d 386 (1994).
[6] *Levine v. Spartanburg Reg. Servs. Dist.*, 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2006); *Peek v. Spartanburg Regional Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005).

Preczewski, 209 L.Ed. 2d 94, 105, 141 S.Ct. 792 (2021). In other words, the United States Supreme Court held that even if all harms other than nominal harm from a completed constitutional violation exists, then the case will not become moot for failure to satisfy the redressability prong of standing.

"[A] constitutional injury—including alleged Fourth Amendment violations—may satisfy the irreparable harm component of this factor. *Williams v. Cty. of San Diego*, 2020 U.S. Dist. LEXIS 233539, 2020 WL 7318125 (S.D. Cal. December 11, 2020) (Citing, e.g., *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996) ("Indeed, this circuit has upheld injunctions against pervasive violations of the Fourth Amendment.").

The trial court's finding that "Plaintiff[s] failed to produce any evidence supporting… irreparable harm" Order, *3-4 (September 18, 2020). First, the are the numerous completed violations of each of the Appellants' constitutional and legal rights on March 29 (A.R.M.) and 30 (C.B.M., J.H.M., and J.R.M.), May 12 (J.H.M., J.R.M., A.R.M., and J.T.M.) and 25 (J.T.M. and C.B.M.), September 19 (A.R.M., C.B.M., and J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.). *See Uzuegbunam*, at 101.

It appears the trial court weighted harm on a scale of hysteria:

> CBM and ARM, testified that they were not upset about the meetings or interviews with DSS. They were not crying and did not

> observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case.

Order, ROA 14-15 (September 18, 2020).

It also appears that the nature of the seizures by SCDSS was a factor in the trial court determining that there were no Constitutional violations. But this is wrong. The official need not always "display an intimidating demeanor or use coercive language" for a suspect to believe he cannot decline an officer's requests or otherwise terminate the encounter. *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004). This is particularly true where, as here, the persons being confronted are young children who are well aware of the power of the social worker to disrupt her family. Children in adoptive families and children of low-income families view both law enforcement and social services differently than the rest of society. This comes from personal experience, parenting, and socialization. There is no "Officer Friendly" and the nice ladies from social services strike fear in many children who have seen their peers, relatives, and siblings disappear from school. The record was replete with evidence of harms. Well-founded fear and anxiety proximately caused by continuous unconstitutional governmental intrusions, which are irreparable harms.

The evidence shows A.R.M. testified that she was uncomfortable during the interrogations. ROA 103, 108-109. A.R.M. would distance herself and become angry at J.H.M. and J.R.M. because she thought they were to blame. ROA 331-332. C.B.M. testified that the SCDSS interrogations make him feel nervous and he was afraid that his siblings would be taken. ROA 120 (…like my siblings wouldn't be on the bus when I came home."). C.B.M. did not feel like he could have gotten up and walked out of the interrogation. ROA 123-124. C.B.M. remains afraid that SCDSS will come back to the school and try to interrogate him. ROA 124. C.B.M. was afraid, "DSS was trying to…dig up dirt and try to take everybody away…[a]nd trying to prove that our family was bad…" ROA 132.

Appellants demonstrated that when SCDSS came to the house on March 31, 2017, J.H.M. hid under her bed because she was afraid SCDSS was going to remove her. ROA 313-314. After J.H.M. was interrogated at school, she:

> "would stay up all night long and to into a state of mania where she would just – she would masturbate compulsively. She would harm herself masturbating. She would just pace her room all night long. She would talk to her self in the mirror. She would become extremely defiant and violent and destructive of house property. She would become very clingy on the other hand. Need extra reassurances that everything's fine. I'm still mom. I'm your parent. I'm your protector. And I've never failed you. You know, these are

> conversations that we would have to have over and over and over again to build this attachment, build the trust, and to remind her that she was safe in our home."

ROA 327-328. J.H.M. was distrustful of SCDSS and felt "frightened and violated" in the past by SCDSS. ROA 354-355. J.R.M. "would kill animals. And we would have dead birds in the yard. We would have birds from bird's nest in our yard. We had a lot of chickens and he would accidently break their backs." ROA 328. The frequency of killing animals, lying, and manipulation went up after the SCDSS interviews. ROA 328-329.

The Appellants also showed the other children became hypervigilant. ROA 329. C.B.M. would go into the yard and practice martial arts, go into the woods for hours, and pace because of the stress related to SCDSS. ROA 331. J.T.M. is "aware of the fallout, the observations in our house, the destruction of property, the killing of our animals…, and the cause of family tension. It causes the siblings to…have harsh feelings towards one another." ROA 332.

Kaci took A.R.M. and J.W.M. out of school because it affected C.B.M. and Kaci resigned from her employment to home school the children. ROA 329.

Three of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. Kaci testified that

there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. ROA 342. Kaci testified that she had witnessed J.H.M. sexually act out at school. ROA 362-363.

Kaci May's children have been diagnosed with PTSD. ROA 312. L.C.M., age 7, has psychiatric problems and has been committed to MUSC Institute of Psychiatry for thirteen days. ROA 315-316. There were subsequent SCDSS investigations involving J.H.M. when she was at Three Rivers Residential Treatment Facility and J.R.M. when he was at Palmetto Residential Treatment Facility. ROA 360-361. J.H.M. and J.R.M. both have issues, at each end of the spectrum, where they distrust others and unconditionally trust strangers. ROA 312-313. J.H.M. seeks her mother whenever she is in trouble or stressed. ROA 313. Kaci testified there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. ROA 342. Kaci testified that she had witnessed J.H.M. sexually act out at school. ROA 362-363.

Kaci would like to put all of the children back into school. ROA 334. The children would all like to attend public school. ROA 334. But because neither SCDSS nor the School District follow the law and the Constitution regarding SCDSS interrogations, she cannot safely allow the children to attend. ROA 335-336.

All of the children are traumatized by SCDSS because they are afraid that they will be removed from their home. ROA 311-313.

There is the highest public interest in the due observance of all the constitutional guarantees. *United States v. Raines*, 362 U.S. 17, 27 (1960). It is always in the public interest to prevent the violation of constitutional rights. *G & V Lounge v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

f. The trial court erred in finding the Appellants would have adequate remedy at law for harm from future interrogations.

The trial court made the following finding:

> Plaintiff did not prove that she would have no adequate remedy at law if DSS returned to DD2 to interview her children. Ms. May testified that she told the children that if DSS ever tried to talk to them, they did not have to answer any questions. The children knew that they did not have to talk with DSS and some exercised this right not to answer questions. ARM and CBM both testified that they knew they did not have to talk to DSS unless they wanted to. Moreover, there is no pending DSS case with the family. The underlying DSS case that formed the basis of this lawsuit was resolved in June 2018. DSS has not attempted to speak with any of the May children since November of 2107. If an entirely speculative

> future interview is conducted in a tortious or unconstitutional manner, Plaintiff will have adequate remedies at law and equity to address it.

Order, ROA 15 (September 18, 2020).

The application of constitutional protections to school interrogations by SCDSS has not been seriously addressed in the two generations since the Children's Code was passed. Appellants assert that one of the main reasons is because a damages action for these constitutional violations almost always result in low damages and it would not worth an attorney's time and expense. Public interest law firms have many more serious constitutional issues to address. When the potential damage award for a multitude of violations is insufficient, lawsuits cannot be deemed adequate remedies at law. *Peabody Holding Co. v. Costain Group PLC*, 813 F. Supp. 1402, 1421 (E.D. Mo. 1993) ("Improper conduct for which monetary remedies cannot provide adequate compensation is sufficient to establish [irreparable] harm.").

The victims of these constitutional violations almost always belong to low-income, poorly educated families who have little sophistication to raise objections or little means to challenge the violations in a court of law.

Past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury. *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). SCDSS trains its caseworkers to interrogate children

at school. SCDSS reported that there were 33,353 child protective services investigations in 2019-2020. SCDSS CPS Referrals for Investigations for State Fiscal Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-investigation-5-yr-history-2020.pdf on April 5, 2021. The number of unchecked civil rights violations is pervasive and staggering. Of those investigations, SCDSS may interrogate each child in each case on multiple occasions. Seven times in this matter. These are not isolated incidents.

Most SCDSS investigations do not end up in the family court. SCDSS CPS Referrals for Investigations for State Fiscal Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-investigation-5-yr-history-2020.pdf on April 5, 2020 (Founded cases for fiscal year 2019-2020 were 8,927 of the 33,353 investigations). And even fewer of the founded cases end up in family court. But even in family court, the seizures, searches, and interrogations of children at school has been institutionalized and our family courts either ignore the violations, *de minimis non curat lex*, or else endorse such unconstitutional acts. There are no judicial or administrative remedies.

There is no doubt that some of the Appellants have severe mental health and behavioral challenges that dramatically increases the likelihood of additional reports of child abuse and neglect to SCDSS. The trial court acknowledged:

> Certainly, you have children that have been sexually abused and, obviously, they'll have to deal with that issue for their entire life. And if something happens in the future, certainly, I'm sure DSS will be involved. So I think the parties will probably even stipulate to that fact. And I think that if an allegation of abuse comes up in the future, I pretty much guarantee you they're not going to say that they're not going to investigate.

ROA 304.

In February 2019 J.H.M. sexually acted out at school by climbing the divider in a bathroom to try to see another student's private parts. ROA 301, 306-308, 362-363. Three of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. Kaci testified that there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. ROA 342. SCDSS even ran a secret investigation on the Mays beginning in December 2017. ROA 451-452, 454-457, 254.

When multiple actions are necessary for legal remedy, injunctive relief is necessary. *Lee v. Bickell*, 292 U.S. 415, 421 (1934) (necessity for multiplicity of actions for legal remedy was sufficient to uphold injunction); *Ecolab, Inc. v. Paolo*, 753 F. Supp. 1100, 1110 (E.D.N.Y. 1991) ("If a plaintiff can receive legal relief only through a multiplicity of lawsuits, plaintiff has suffered irreparable harm sufficient to

warrant a preliminary injunction."); *Hill v. Wallace*, 259 U.S. 44, 62 (1922).

Repeated harmful actions require injunctive relief. *Northeast Women's Ctr., Inc. v. McMonagle*, 665 F. Supp. 1147, 1153 (E.D. Pa. 1987) ("The legal remedy is inadequate if the plaintiff's injury is a continuing one, where the last available remedy at law would relegate the plaintiff to filing a separate claim for damages each time it is injured anew.") (Citing 11 Wright & Miller, at § 2944, at 398). The unchecked unconstitutional polices of SCDSS and the School District mean the Appellant children will have their constitutional rights violated as a matter of course when the next SCDSS intake occurs, until each child ages out, with L.C.M. turning eighteen in 2031.

The issues raised are capable of repetition but evading review. *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001). In *Byrd v. Irmo High School*, the Supreme Court observed that its prior decisions had taken a more restrictive approach when applying this exception, holding that the reviewing court could take jurisdiction under the exception only when the duration of the challenged action was too short to be fully litigated prior to its termination and when it was reasonable to expect that the same complaining party would be subjected to the action again. *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). The *Byrd* court adopted a less restrictive approach, however, which permitted the exception's operation when the issue raised was "capable of repetition but evading review, thereby no longer requiring courts to make a finding concerning

the reasonable expectation that the same complaining party would be subjected to the action again. *Id.*; *see State v. Passmore*, 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005); *Sloan v. Greenville Cnty.*, 356 S.C. 525, 531, 590 S.E.2d 36, 38 (Ct. App. 2003) ("The party bringing the action need only show the issue raised is capable of repetition and is not required to prove there is a 'reasonable expectation the issue will arise again.'"). The action must be one which will truly evade review. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). *See also Seabrook v. City of Folly Beach*, 337 S.C. 304, 523 S.E.2d 462 (1999) (just because an action is capable of repetition does not automatically imply it will evade review); *City of Charleston v. Masi*, 362 S.C. 505, 609 S.E.2d 301 (2005) (finding the exception inapplicable where the issues raised in the appeal could arise again but would not usually become moot before the court had the opportunity to review them).

If a CPS investigation of an innocent family lasts forty-five days, but a common pleas case challenging the constitutional violation takes one year to get try, these unconstitutional interrogations will never be addressed without applying the mootness exception of, "capable of repetition but evading review". The record shows that SCDSS has received two subsequent reports and not interrogated the Appellant Children at school. The "voluntary cessation" exception to mootness stems from the concept that "a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior", which, in this case, is stopping its policy of interrogating the

Appellant children in subsequent abuse and neglect cases in order to evade judicial review. *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001). *See* ROA 450-452, 454-457.

This matter imposes questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. *Curtis v. State*, 345 S.C. 557,549 S.E.2d 591 (2001); *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (2002). In *Ashmore v. Greater Greenville Sewer District*, the Supreme Court explained the rationale behind the exception, opining:

> If this were an ordinary case, our opinion might well stop here…But the case is not an ordinary one: it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments: and raised on the record are earnestly argued public questions of importance. The last stated factor brings into play the principle, now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance. however abstract or moot they may have become in the immediate contest.

Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947); see also *Sloan v. Greenville Cnty.*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (stating in regard to a matter concerning the stewardship of public funds, "[o]ur inability to

provide any effective relief in this case should not be a barrier to the courts consideration of this question of exceptional public interest").

In this matter, both SCDSS and the School District Defendants assert that SCDSS is allowed to interrogate any child at any time without reasonable suspicion or probable cause. They have operated this way since SCDSS was established. They are still doing it. They will continue to violate children's First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. They will continue to violate the privacy rights of the families of South Carolina. They will continue to violate rights of children under the South Carolina Constitution delineated in Article I, §§ 3, 10, and 12.

In *Mann v. Cty. of San Diego*, the United States District Court found, "Because the Mann children are still minors living in San Diego County, they remain subject to the possible jurisdiction of the County's child welfare system, and therefore it is not "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Mann v. Cty. of San Diego*, 907 F.3d 1154, 1164 n. 12 (9th Cir. 2018) (Citing *United States v. Concentrated Phosphate Export Ass'n, Inc.*, 393 U.S. 199, 203 (1968).).

The May children that were chronically abused before coming into SCDSS custody and while in SCDSS custody continue to have mental health and behavioral issues. These issues will ebb and flow as the children mature, physically, psychologically, and sexually. Whether SCDSS investigations will

happen again has been answered – two subsequent investigations are mentioned in the record. There are more. That the Mays will be involved again with SCDSS, despite doing nothing wrong, has been proven. This is part and parcel with the adoption of children with special needs and prior abuse issues. It would be more shocking if there were no reports in the future.

Conclusion and Relief Requested

The Appellants ask the Court to address a difficult issue. As South Carolinians, we are all charged with eliminating child abuse in our communities. But these concerns should never override children's and families' constitutional protections.

The unrestricted intrusion into the lives of South Carolina's children and families by SCDSS's interrogations must be limited by the Court. A bright line must be drawn to place SCDSS on notice that it must have probable cause to seize, search, and interrogate our children. The interrogations of the Appellant children were nothing short of state-sponsored fishing expeditions into the private affairs of the Appellants. SCDSS had nothing. SCDSS knew it was not allowed in the May home and it was not allowed to interrogate the Appellant children. Compulsory schooling should not be viewed as a means to skirt children's and families' constitutional protections, especially after families have affirmatively asserted their rights.

SCDSS, the School District, and the family courts already have the statutory procedures for the Defendants to follow the law. The Defendants have chosen not to follow the law and they have told the Appellants, the Courts, and all South Carolinians, "make us follow the law".

The Appellants ask the Court for the following relief:

1. Reverse and remand this matter for a new trial.
2. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1983.

Respectfully submitted,
FOSTER CARE ABUSE LAW FIRM, PA

s//Robert J. Butcher
Robert J. Butcher - 74722
Deborah J. Butcher - 74029
507 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
rbutcher@camdensc-law.com
dbutcher@camdensc-law.com

Camden, South Carolina
August 18, 2021

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Circuit Case Number 2017-CP-18-02001
Appellate Case Number 2020-001352
Opinion No. 6053 (Withdrawn, Substituted, and Refiled May 29, 2024)

Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister, Respondents

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

Counsel for Appellants:

Robert J. Butcher
Deborah J. Butcher
Foster Care Abuse Law Firm, PA

507 Walnut Street
Post Office Box 610
Camden, South Carolina 29021
Phone: (803) 432-7599
Cell: (803) 427-6117 (RJB)
Cell: (803) 900-0809 (DJB)
Email: rbutcher@camdensc-law.com
Email: dbutcher@camdensc-law.com
Attorneys for Appellants

Other Counsel of Record:

Attorneys for SCDSS, Michael Leach, and Jasmine Flemister
Kenneth P. Woodington
William H. Davidson
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
Telephone: (803) 806-8222
Email: kwoodington@dml-law.com
Email: wdavidson@dml-law.com

Attorneys for Dorchester School District Two
Susan M. Fittipaldi - 14225
Thomas K .Barlow - 8995

Post Office Box 11367
Columbia, South Carolina 29211
Telephone: (803) 254-4035
Email: sfittipaldi@hmwlegal.com
Email: tbarlow@hmwlegal.com

*****Tables omitted in this Appendix*****

I. Certification of Counsel.

Counsel for Petitioners Kaci May (May) and A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., (The Children), certify that the Petition for Rehearing (Appx. 982) was made and finally ruled on by the Court of Appeals on May 29, 2024, when the South Carolina Court of Appeals withdrew, substituted and filed its opinion (Appx. 1032) after considering the Children's Petition for Rehearing (March 13, 2024).

II. Questions Presented.

1. Did the trial court/court of appeals err in finding the Appellants did not establish a likelihood of success on the merits?

2. Did the trial court/court of appeals err in finding that S.C. Code Ann. §63-7-920 was not limited by the Plaintiffs' constitutional protections under Amend. I, IV, V, VI, and XIV of the U.S. Const. and S.C. Const. art. I, §§ 3, 10, and 12?

3. Did the trial court/court of appeals err in finding the Appellants failed to show irreparable harm?

4. Did the trial court/court of appeals err in finding the Appellants would have adequate remedy at law for harm from future interrogations?

III. Statement of the Case.

We address unrestricted government intrusion into the lives of South Carolina's children and families. SCDSS's policies and procedures use compulsory schooling to skirt children's and families' constitutional protections, even after affirmative assertions of such rights.

The South Carolina Department of Social Services (SCDSS) and our public schools allow SCDSS's caseworkers unfettered access and interrogation of the children of South Carolina. They do not require parental permission, exigent circumstances, a warrant, or a court order before interrogations are conducted. Rarely do SCDSS or the public schools inform parents of such interrogations after they occur. SCDSS and our public schools rely upon S.C. Code Ann. §63-7-920 to disregard parents' and children's 1st, 4th, 5th, 6th, and 14th Amendment rights under the United States Constitution and rights under §§ 3, 10, and 12 of Article I of the South Carolina Constitution.

After a report of abuse and neglect was made against May, SCDSS interrogated the May children at Dorchester School District Two (School District) schools without parental consent, a warrant, or a court order seven times over the course of nine months for the same allegation/intake. There were

no exigent circumstances to justify these interrogations.

Appellants, who attend public schools/will attend public schools, asked the court to protect their constitutional rights and enjoin SCDSS and School District from interrogating the May children in the future unless SCDSS has parental permission, exigent circumstances are present, or a warrant or court order is obtained. Appellants asked the trial court to restrain SCDSS Defendants from interrogating the children unless there is a court order or a new allegation of abuse and/or neglect and also restrain School District from facilitating interrogation of the children unless there is a court order or a new allegation of abuse and/or neglect.

IV. Relevant Facts.

The relevant facts are sufficiently described in Appellants' Brief at pp. 2-20. Appx. 852-871.

V. The Court's finding Appellants failed to show irreparable harm is erroneous.

In its opinion, the Court of Appeals wrote:

> Before both the family and circuit courts, May failed to offer any evidence of threatened or pending DSS investigations or of further DSS plans to interview her children at a school. The three adopted children no longer live with the biological May family.[1]

[1] L.C.M. still lives with the May family.

Significantly, May has not identified any injury aside from inconvenience or mild upset at the prospect of DSS returning to interview her children. The children testified that they knew they did not have talk to DSS, and some exercised their right not to answer questions. There is no evidence in the record that any of the children's grades suffered or that any of the children were harmed, much less to an extent that might have outweighed DSS's need to interview them regarding May's own report that one or more of her children had suffered sexual abuse by another child in the May home. Although May testified the children were upset by the DSS interviews, there is simply no evidence to support a claim that any of the May children have been harmed or would suffer harm in the absence of injunctive relief.

The adopted children had significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with their biological family. These prior experiences caused stress and emotional harm far beyond any issue raised in the current matter. Thus, it is difficult to comprehend how the emotional difficulty alleged could be attributed to the DSS interviews which, as discussed below, were appropriate and authorized by statute. Notably, May failed to demonstrate that DSS returning to a school to interview her children was anything more than a hypothetical

> possibility insufficient to support her claim for injunctive relief. Accordingly, the circuit court properly found May failed to show the required irreparable harm.

May, et al., v. Dorchester School District Two, *et al.*, 2024 S.C. App. LEXIS 22, *5, 2024 WL 1081569 (Ct. App. March 13, 2024).

The Court of Appeals' justification that at least two of the three adopted children had "significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with their biological family" in diminishing any harm for the violation of the Appellants' constitutional rights is, respectfully, not relevant to the legal standard or the case law. *May,* at 5. The justification of a small harm to someone who has been grievously harmed in the past would eliminate any and all recourse for a large contingent of our population who had experienced such harms in the past. Similarly, just because a driver hits a pedestrian, it does not mean that the next car can drive over the pedestrian as well, without consequence.

Merely because someone was horrifically, sexually abused in the past, it does not divest them of their constitutional rights, nor does it insulate them from being harmed by violation of those constitutional rights. Because of the children's PTSD and J.H.M.'s and J.R.M.'s sexual abuse history, the constitutional violations were ***more*** traumatizing to the children because of their history of PTSD and

sexual assault. That makes the injury more irreparable, not less.

a. Irreparable harm presented to the trial court.

The trial court's finding that "Plaintiff[s] failed to produce any evidence supporting… irreparable harm" is without merit. Appx. 20-21. First, there are the numerous completed violations of each of the Appellants' constitutional and legal rights.[2] *See*, *Uzuegbunam v. Preczewski*, 209 L.Ed. 2d 94, 101, 141 S.Ct. 792 (2021). The trial court weighed harm on a scale of hysteria:

> CBM and ARM, testified that they were not upset about the meetings or interviews with DSS. They were not crying and did not observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case.

Appx. 20-21.

It also appears that the nature of the seizures by SCDSS was a factor in the trial court and Court

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[2] March 29 (A.R.M.) and 30 (C.B.M., J.H.M., and J.R.M.), May 12 (J.H.M., J.R.M., A.R.M., and J.T.M.) and 25 (J.T.M. and C.B.M.), September 19 (A.R.M., C.B.M., and J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.).

of Appeals determining that there were no Constitutional violations. But this is wrong. The official need not always "display an intimidating demeanor or use coercive language" for a suspect to believe he cannot decline an officer's requests or otherwise terminate the encounter. *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004). This is particularly true where, as here, the persons being confronted are young children who are well aware of the power of the social worker to disrupt their family. Children in adoptive families and children of low-income families view both law enforcement and social services differently than the rest of society. This comes from personal experience, parenting, and socialization. There is no "Officer Friendly" and the nice ladies from social services strike fear in many children who have seen their peers, relatives, and siblings disappear from school or home forever. The record was replete with evidence of harms. Well-founded fear and anxiety proximately caused by continuous unconstitutional governmental intrusions, are irreparable harms.

A.R.M. testified that she was uncomfortable during the interrogations. Appx. 109, 114-115. A.R.M. would distance herself and become angry at J.H.M. and J.R.M. because she thought they were to blame. Appx. 343-344. C.B.M. testified that the SCDSS interrogations make him feel nervous and he was afraid that his siblings would be taken. Appx. 126 (…like my siblings wouldn't be on the bus when I came home."). C.B.M. did not feel like he could have gotten up and walked out of the interrogation. Appx. 129-130. C.B.M. remains afraid that SCDSS will come back to the school and try to interrogate

him. Appx. 130. C.B.M. was afraid, "DSS was trying to…dig up dirt and try to take everybody away…[a]nd trying to prove that our family was bad…" Appx. 138.

When SCDSS came to the house on March 31, 2017, J.H.M. was afraid SCDSS was going to remove her and hid under the bed. Appx. 325-326. After J.H.M. was interrogated at school, she:

> "would stay up all night long and to into a state of mania where she would just – she would masturbate compulsively. She would harm herself masturbating. She would just pace her room all night long. She would talk to her self in the mirror. She would become extremely defiant and violent and destructive of house property. She would become very clingy on the other hand. Need extra reassurances that everything's fine. I'm still mom. I'm your parent. I'm your protector. And I've never failed you. You know, these are conversations that we would have to have over and over and over again to build this attachment, build the trust, and to remind her that she was safe in our home."

Appx. 339-340. J.H.M. was distrustful of SCDSS and felt "frightened and violated" in the past by SCDSS. Appx. 366-367. J.R.M. "would kill animals. And we would have dead birds in the yard. We would have birds from bird's nest in our yard. We had a lot of chickens and he would accidently break their backs." Appx. 340. The frequency of killing animals, lying,

and manipulation went up after the SCDSS interviews. Appx. 340-341.

The other children became hypervigilant. Appx. 341. C.B.M. would go into the yard and practice martial arts, go into the woods for hours, and pace because of the stress related to SCDSS. Appx. 343. J.T.M. is "aware of the fallout, the observations in our house, the destruction of property, the killing of our animals…, and the cause of family tension. It causes the siblings to…have harsh feelings towards one another." Appx. 344.

May took A.R.M. and J.W.M. out of school and May resigned from her employment to home school the children. Appx. 341.

Two of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. May testified there was no indication the children's mental illnesses and behaviors would ever go away. Appx. 354. May testified that she had witnessed J.H.M. sexually act out at school. Appx. 374-375.

May's children were diagnosed with PTSD. Appx. 327. L.C.M., age 7, has been committed to MUSC Institute of Psychiatry. Appx. 327-328. There were subsequent SCDSS investigations involving J.H.M. when she was at Three Rivers Residential Treatment Facility and J.R.M. at Palmetto Residential Treatment Facility. Appx. 372-373. J.H.M. and J.R.M. both have issues, at each end of the spectrum, where they distrust others and

unconditionally trust strangers. Appx. 324-325. J.H.M. seeks her mother whenever she is in trouble or stressed. Appx. 325. May testified that she had witnessed J.H.M. sexually act out at school. Appx. 374-375.

May would like to put her children back into school and the children would all like to attend public school. Appx. 346. But because of SCDSS interrogations, she cannot safely allow the children to attend. Appx. 347-348. All of the children are traumatized by SCDSS because they are afraid that they will be removed from their home. Appx. 323-325.

b. Irreparable harm includes *de minimus* injuries in Constitutional claims.

As stated in the Appellants' brief[3], ***"[T]he denial of a constitutional right…constitutes irreparable harm for purposes of equitable jurisdiction."*** *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987) (emphasis added). Where the Court has found a likelihood of success on Plaintiffs' due process claim, the deprivation of such a constitutional right alone would constitute irreparable harm. *See*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (finding that infringement on a First Amendment right, even for "minimal periods of time, unquestionably constitutes irreparable injury"); *Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir. 2014) ("[T]he deprivation of constitutional rights unquestionably

[3] Brief of Appellants, *35-41 (August 18, 2021).

constitutes irreparable injury."). *See also*, *Am. Coll. of Obstetricians & Gynecologists v. United States FDA*, 472 F.Supp.3d 183 (D. Md. July 13, 2020).

Irreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993), *rev'd on other grounds*, *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). While a finding of damages is not a prerequisite to the issuance of an injunction, the decision to issue injunctive relief must be based upon a balancing of the equities. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). Assessing harm to the opposing party and weighing the public interest "merge" when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Irreparable injury does not mean that the injury is beyond the possibility of compensation in damages. *Bethel Methodist Episcopal Church v. Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947). Irreparable injury has been found in many circumstances. For example, temporary relief was granted to prevent misappropriation of property[4] or to prevent trespass on property[5] or prevent

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[4] *Columbia Broadcasting Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 189 S.E.2d 305, *cert. denied*, 409 U.S. 1007 (1972).

[5] *South Carolina Elec. & Gas Co. v. Hix*, 306 S.C. 173, 410 S.E.2d 582 (Ct. App. 1991).

violations of ordinances,[6] or the loss of a business.[7] The Supreme Court gave some insight into the considerations when it stated that "where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction." *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950) (citation omitted).

Recently, the United States Supreme Court held, that "[t]o satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a remedy that is likely to redress that injury. *Uzuegbunam*, at 101 (Citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). *See also*, *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018)). "[W]e conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Uzuegbunam*, at 105. In other words, the United States Supreme Court held that even if all harms other than nominal harm from a completed constitutional violation exists, then the

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[6] *Beaufort County v. Butler*, 316 S.C. 465, 451 S.E.2d 386 (1994).

[7] *Levine v. Spartanburg Reg. Servs. Dist.*, 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2006); *Peek v. Spartanburg Regional Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005).

case will not become moot for failure to satisfy the redressability prong of standing.

"[A] constitutional injury—including alleged Fourth Amendment violations—may satisfy the irreparable harm component of this factor. *Williams v. Cty. of San Diego*, 2020 U.S. Dist. LEXIS 233539, 2020 WL 7318125 (S.D. Cal. December 11, 2020) (Citing, *e.g.*, *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996) ("Indeed, this circuit has upheld injunctions against pervasive violations of the Fourth Amendment.").

There is the highest public interest in the due observance of all the constitutional guarantees. *United States v. Raines*, 362 U.S. 17, 27 (1960). It is always in the public interest to prevent the violation of constitutional rights. *G & V Lounge v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

VI. The Court's finding there was no "likelihood of success on the merits" is erroneous.

On February 24, 2024, the Ninth Circuit relied upon *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999)[8], which is still good law:

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[8] "The Supreme Court granted certiorari and vacated Greene's Fourth Amendment holding on mootness grounds. However, it left intact the qualified immunity determination. *Camreta[v. Greene]*, 563 U.S. [692,] 698, 714 n.11 (2011) ("We leave untouched the Court of Appeals' ruling on qualified immunity and its corresponding dismissal of S.G.'s claim because S.G. chose not to challenge that ruling."). The only surviving portion of our decision in *Greene* is that the Fourth Amendment "right

> Temporary seizures of children at school for investigatory purposes present a more nuanced instance of this problem. The school is not the home and, when the school has its own interests, the Supreme Court has sought to "strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." Here, we are not confronted with questions around seeking a balance between the interests of the child and those of her school but, rather, between the interests of the child and those of the state in securing the welfare of children at home. We have some history in this area. Although in general "[t]he Fourth Amendment protects a child's right to be free from unreasonable seizure by a social worker," the details surrounding the investigation have proven critical.

Scanlon v. Cnty. of Los Angeles, 92 F.4th 781, 806 (9th Cir. 2024) (Internal citations omitted).

At a minimum, the courts agree that removing a child from class to be questioned by a caseworker is a seizure for Fourth Amendment purposes. *Greene v. Camreta*, 588 F.3d 1011, 1022 (9th Cir. 2009); *In the Interest of Thomas B.D.*, 326 S.C. 614, 617, 486 S.E.2d 498 (Ct. App. 1997); *Doe v. Heck*, 327 F.3d

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of minor children to be free from unconstitutional seizures and interrogations by social workers [w]as not . . . clearly established" as of August 2015. *Capp[v. County of San Diego]*, 940 F.3d [1046,] 1059. *See*, *Greene*, 588 F.3d at 1033."

492 (7th Cir. 2003) (a twenty-minute interview of eleven-year-old conducted by caseworker in the presence of a uniformed police officer violated boy's Fourth Amendment rights); *Dees v. Cty. of San Diego*, 960 F.3d 1145, 1154 (9th Cir. 2020) (Citing *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 790-91 (9th Cir. 2016) (*en banc*)); *Michael C. v. Gresbach*, 526 F.3d 1008, 1018 (7th Cir. 2008) (in light of *Heck*, a social worker who interviewed minors at a private school was not entitled to qualified immunity); *Schulkers v. Kammer*, 955 F.3d 520 (6th Cir. 2020) ("[a]t a minimum, a social worker must have reasonable suspicion of child abuse before conducting an in-school interview without a warrant or consent."); *Barber v. Miller*, 809 F.3d 840, 845 (6th Cir. 2015); *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005) ("A social worker who lacks any legitimate justification for seizing a child, but nonetheless seizes the child and demands, in direct contravention of a court order, that she enter the custody of her abusive father, would clearly know that his conduct is unconstitutional."). "A 'seizure' triggering the Fourth Amendment's protections occurs only when government actors have, 'by means of physical force or show of authority,…in some way restrained the liberty of a citizen.'" *Camden v. Hilton*, 360 S.C. 164, 175, 600 S.E.2d 88 (Ct. App. 2004); *Dees*, 960 F.3d at 1154, (Citing *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). *See*, *Schulkers*, at 536 (Citing *O'Malley v. City of Flint*, 652 F.3d 662, 668 (6th Cir. 2011)). Courts generally should take into account the child's age when determining if a reasonable person would have felt free to leave.

Schulkers, at 536 (Citing *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005); *Heck*, at 510.

"When the actions of the [official] do not show an unambiguous intent to restrain or when an individual's submission to a show of governmental authority takes the form of passive acquiescence…a seizure occurs if, 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *Dees*, 960 F.3d at 1154, (Citing *Brendlin v. California*, 551 U.S. 249, 255 (2007)). *See also*, *State v. Spears*, 429 S.C. 422, 434, 839 S.E.2d 450 (2020). Common sense dictates that a reasonable child would not have felt free to decline or otherwise resist going to the front office with a school official. *Williams*, at 17 (Citing *Neel v. Cty. of San Diego*, 2019 U.S. Dist. LEXIS 70261, at *10-11 (S.D. Cal. Apr. 25, 2019)).[9]

It seems here, the appellate court believes that traditional Fourth Amendment protections do not apply to child abuse investigations at all, as such investigations constitute administrative searches requiring neither probable cause nor a warrant, bolstering this assertion through reliance upon S.C. Code Ann. § 63-7-920. Appx. 1036. The statute provides no limitation upon SCDSS. There is no due process and there is no judicial oversight upon the SCDSS's executive use of this power. Under this

[9] *See also*, Appx. 109-110, 114 (A.R.M. was given no choice about the interrogation and when she was interrogated, she didn't, "like to disobey adults and…I'm not comfortable when I disobey adults."); Appx. 126-130 (C.B.M. was not given a choice and he did not feel free to leave); Appx. 160-161 (Baird testified children who refused to speak with SCDSS could be given a referral for disobeying a teacher).

Court's interpretation of S.C. Code Ann. § 63-7-920, knowing that SCDSS's investigation concluded for several months in this matter, SCDSS has license to interrogate every single child every single day about what goes on in their home. Or, in what occurs more commonly, SCDSS conducts school interrogations of children of parents it wishes to target, whether or not an investigation is in place.

But the majority of courts across the country have found school children retain a fundamental right to be free from search and seizure by social services workers. "A reasonable nine-year-old child who is called out of class by school officials for the purpose of meeting with a social worker who has already disturbed the child's family life, and who is not advised that she may refuse to speak with the social worker, will feel compelled to talk to the social worker and remain there until dismissed." *Dees v. Cty. of San Diego*, 302 F. Supp. 3d 1168, 1179 (D.S. Cal. October 10, 2017). *See also, Heck*, at 510 (20-minute interview of eleven-year-old boy was a seizure where child was escorted from class by the principal, caseworkers, and a uniformed police officer into church's empty nursery and questioned by caseworkers, with police officer present, about corporal punishment); *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, at 1226 (an "emotionally vulnerable" 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew "had the

authority to determine her custodial care," confined her for an "hour or two" in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her father); *Schulkers*, at 536 (Social worker violated Plaintiffs' Fourth Amendment rights by seizing them from their classrooms and subjecting them to interrogation without any suspicion of child abuse, and without obtaining a warrant or consent. We hold that the Fourth Amendment governs a social worker's in-school interview of a child pursuant to a child abuse investigation).

There are several exceptions to the probable cause requirement, including consent, exigent circumstances, and in some instances, "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *Schulkers*, at 536 (Citing *Griffin v. Wisconsin*, 483 U.S. 868, 873, (1987)). None of these exceptions were present at any time during and subsequent to the SCDSS investigation.[10] The substantial record demonstrates that at any time, SCDSS could have sought relief with the family court had probable cause been present.[11] In fact, the

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[10] Appx. 251-252, 413-471 (Plt. Tr. Ex. 1, Dictation); Appx. 478-484 (Plt. Tr. Ex. 3, Intake); and Appx. 485-490 (Plt. Tr. Ex. 4, Guided Supervision Staffing).

[11] Appx. 419 (meet with legal), Appx. 421 (complete inspection warrant), Appx. 423 (prepare for court intervention), Appx. 429 (contacting Kaci's attorney), Appx. 429 (contact legal), Appx. 430 (email to Kaci's attorney), Appx. 431 (contact legal), Appx. 432-435 (email re Kaci's attorney), Appx. 438 (send letter to Kaci's attorney and request children's records), Appx. 439 (email between SCDSS attorney and Kaci's attorney), Appx. 440 (email to Kaci's attorney), Appx. 444 (email to Kaci's attorney), Appx. 445 (email to Kaci about contacting her

record demonstrates that SCDSS had access to, policies related to, and the ability to seek a warrant or court order--and it considered seeking a warrant or court order.

Because SCDSS and Flemister were limited by the Mays, they contacted collateral sources and third parties, to learn information about the Appellant children. Appx. 441, 442, 448, 454, 458, 459. SCDSS and Flemister also asked law enforcement to assist in entering the home. Appx. 436, 438, 443, 453. Lastly, when SCDSS filed for family court intervention three months later, it never asked for access to the children because it never had probable cause to do so. Appx. 537-545 (Tr. Ex. 12, Family Court Pleadings).

In *Scanlon v. Cnty. of Los Angeles*, the Ninth Circuit cited *Dees*, at 1156, in observing:

> [I]t is at least arguable whether a nine-year old girl with cognitive disabilities, called into the administrative office of her school by a woman who she knew had the authority to disrupt her family's life, would feel

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attorney), Appx. 446 (email from Kaci's attorney), Appx. 447 (email from Kaci about contacting her attorney), Appx. 455 (court intervention), Appx. 456 (follow up with legal); Appx. 486 (meet with legal), 488 (complete inspection warrant), 490 (prepare for court intervention) (Plt. Tr. Ex. 4, Guided Supervision Staffing); Appx. 491-492 (Plt. Tr. Ex.s 5-A & 5-B, Emails); Appx. 524 (Plt. Tr. Ex. 8, SCDSS Case Transfer and/or Case Staffing ([Case Manager] was unable to gain access to the home. CM is preparing paperwork)); Appx. 569, 587, 600-602, 636 (Plt. Tr. Ex. 18, SCDSS Policy).

> empowered to leave or could have consented to the discussion.

Scanlon v. Cnty. of Los Angeles, 92 F.4th 781, 807-808 (9th Cir. 2024).

a. The Court's justification that SCDSS interrogations were conducted as part of the Child Protective Services investigation had an expiration date.

The Court's finding that "May's claim that either the School District or DSS unreasonably "seized" her children, or otherwise violated their constitutional rights by calling them from class and asking limited, basic questions for a short period of time" is wrong. *May,* at, *9. In its opinion, the Court agreed with the trial court that:

> Based on the largely undisputed testimony, we agree with the circuit court that the interviews here were reasonable in inception and scope following May's own report of sexual abuse; her subsequent refusal to allow DSS to interview the children in their home necessitated that they be interviewed at school.

Id. The problem with this logic is the investigation ended on May 12, 2017. Brief of Appellants, *8 (August 18, 2021). At a minimum, the interrogations of the children on September 19 (A.R.M., C.B.M., and J.W.M.) and 22 (J.T.M.) and November 20, 2017 (A.R.M., C.B.M., and J.W.M.) were unlawful seizures

outside of the scope of the investigation. SCDSS's time to investigate is limited by statute in S.C. Code Ann. § 63-7-920(A)(3):

> The finding must be made ***no later than forty-five days*** from the receipt of the report. A single extension of no more than fifteen days may be granted by the director of the department, or the director's designee, for good cause shown, pursuant to guidelines adopted by the department.

S.C. Code Ann. § 63-7-920(A)(3) (emphasis added). The next statute adds emphasis to the notion that a CPS investigation has an expiration date by requiring that any case that has not been determined by sixty days "All reports that are not indicated at the conclusion of the investigation and all records of information for which an investigation was not conducted pursuant to Section 63-7-350 must be classified as unfounded." S.C Code Ann. 63-7-930(C).

The following is a timeline of SCDSS's investigation, the Mays' appeal, and the filing of SCDSS's CPS action in family court:

March 28, 2017	SCDSS accepted the intake of the report against Kaci May.[12]

[12] Brief of Appellants, *4 (August 18, 2021).

May 12, 2017	SCDSS indicated the investigation against the Mays.[13]
June 7, 2017	The Mays appealed the administrative decision.[14]
September 14, 2017	SCDSS filed *SCDSS v. May*, 2017-DR-18-01334.[15]
September 19, 2017	SCDSS Interrogation of A.R.M., C.B.M., and J.W.M.
September 22, 2017	SCDSS Interrogation of J.T.M.
November 20, 2017	SCDSS Interrogation of A.R.M., C.B.M., and J.W.M.

The fact that SCDSS waited three months to file the child protective services action in family court demonstrates that there was little or no concern for the safety of the May children by SCDSS. SCDSS's own policy states that:

> In cases where treatment services are to be provided or are reasonably expected to be provided and the individual or family disagrees with the indicated decision and/or the decision to deliver services, those cases

[13] Brief of Appellants, *7-8 (August 18, 2021).
[14] Brief of Appellants, *9 (August 18, 2021).
[15] Brief of Appellants, *12 (August 18, 2021).

> MUST be taken to Family Court. There can be little effective treatment and the safety of the child is in question when there is no acknowledgement of the abuse or neglect. The Administrative Appeals process cannot coerce treatment nor address child safety.

Appx. 562, SCDSS Human Services Policy and Procedure Manual, Chapter 7, Child Protective and Preventative Services, Policy No. 701 (January 7, 2015).

Because the Mays asserted their actual innocence in appealing the indicated case, they did not consent for them and their children to be under the jurisdiction and authority of SCDSS. The only way for the agency to force services upon a South Carolina citizen, and in particular, the Mays, is through a family court order. The process has its own due process protections, found in Title 63, Chapter 7 of the South Carolina Children's Code.

Without a family court order, SCDSS does not have the unfettered right to interrogate children, enter the homes of families, require drug tests, require classes, or limit parental rights. If, and only if, a family court has determined that a child is abused and/or neglected, or there is probable cause for emergency protective custody, can the State intrude upon a family's privacy.[16] None of the facts supported EPC and no judicial determination of

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[16] S.C. Code Ann. §§ 63-7-620 (EPC); 63-7-710 (Probable cause hearing); 63-7-1640 (Family Preservation); 63-7-1650 (Services without removal); 63-7-1660 (Services with removal); and 63-7-1670 (Treatment Plan).

abuse and/or neglect took place. The statues listed above are all due process protections where SCDSS must make a showing of abuse and/or neglect before the family court. Under the Court's ruling here, there are no protections or remedies for children and family until SCDSS files an action in family court.

This Court's application of S.C. Code Ann. § 63-7-920 to the latter interrogations that took place from September 14 through November 20, 2017, is misplaced, as time had expired. In addition, the Court's reliance upon *State v. Houey*, 375 S.C. 106, 651 S.E.2d 314 (2007) is misplaced. In *Houey*, the State, at a minimum, had probable cause to seek HIV and STD testing of the defendant due to his arrest and indictment and with the State's stipulation that it would not use the test results in trial. Similarly distinguishable, in *Wildauer v. Frederick County*, 993 F.2d 369, 370-372 (4th Cir. 1993), Ann Wildauer ran a care home for "fifteen children, most of whom were disabled", and refused to return four of the children to two sets of parents. This caused a county social worker and two deputies to go to Wildauer's home and demand release of the children to the legal custody of their parents. *Wildauer v. Frederick County*While there, the county social worker and two deputies observed "that Wildauer's home was unhygienic and potentially unsuitable for disabled and sick children" and opened an investigation. *Id.*

b. The Court failed to consider the Appellants' claims under 42 U.S.C. §1983 or the South Carolina Constitution.

Plaintiffs' claims are grounded in the Constitution. 42 U.S.C. §1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

42 U.S.C. §1983. Plaintiffs assert the Defendants violated Amend. I, IV, V, VI, and XIV of the U.S. Const.

Similarly, Article I of the South Carolina Constitution contains three relevant sections:

> **§ 3. Privileges and immunities; due process; equal protection of laws.** The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> **§ 10. Searches and seizures; invasions of privacy.** The right of the people to be secure

> in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.
>
> **§ 12. Double jeopardy; self-incrimination.** No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself.

S.C. Const. art. I. The Court should note that S.C. Const. art. I, §10 is much more stringent than the Fourth Amendment, as it includes and additional clause, "…unreasonable invasions of privacy shall not be violated,…" These constitutional protections guarantee citizens' rights and privacy, whether they are guilty, or in the case of the Mays, innocent.

c. Parents have Fourteenth Amendment interest in the "companionship, care, custody and management of their children".

Parents have a cognizable liberty interest in the "companionship, care, custody and management of [their] children." *S.C. Dep't of Soc. Servs. v. Truitt*, 361 S.C. 272, 281, 603 S.E.2d 867 (Ct. App. 2004); *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N.C.*, 452 U.S. 18, 27 (1981). *See also*, *Wallis v. Spencer*,

202 F.3d 1126, 1137 (9th Cir. 2000). District Courts considering analogous circumstances found that a state official's seizure and subsequent interview of a minor on school grounds without judicial authorization, parental consent, or exigent circumstances amounted to unconstitutional interference with the parent-child relationship. *See*, *Williams v. County of San Diego*, 2017 U.S. Dist. LEXIS 210404, 2017 WL 6541251, at *7-8 (S.D.Cal. Dec. 21, 2017); *Rabinovitz v. City of Los Angeles*, 287 F.Supp.3d 933, 951 (C.D. Cal.2018). *See also*, *Heck*, at 524 ("[B]ecause the defendants had no evidence giving rise to a reasonable suspicion that the plaintiff parents were abusing their children, or that they were complicit in any such abuse, the defendants violated the plaintiffs' right to familial relations by conducting a custodial interview of [the child] without notifying or obtaining the consent of his parents and by targeting the plaintiff parents as child abusers.").

Appellants assert that S.C. Const. art. I, §10 is also applicable here, as, "unreasonable invasions of privacy shall not be violated". In this case, it is without dispute that actual deliberation of the Appellants' due process rights was not only practical, but it was considered, disregarded, and violated over and over and over again.

Courts have made it clear that neither peace officers nor social workers may dispense with constitutional constraints in their investigation of child abuse allegations when there is no imminent threat of serious harm to the child. *Wallis*, at 1130-1131; *Rogers v. County of San Joaquin*, 487 F.3d

1288 (9th 2007); *Calabretta*, at 817; *Heck*, at 524; *Tenenbaum v. Williams*, 193 F.3d 581, 604 (2nd Cir. 1999); *Jones v. Hunt*, at 1226; *Rabinovitz*, at 951.

While the protection of children from abuse and neglect is vital, "the rights of families to be free from governmental interference and arbitrary state action are also important." *Rogers*, at 1297. It therefore follows that a balance must be struck, "on the one hand, the need to protect children from abuse and neglect and, on the other, the preservation of the essential privacy and liberty interests that families are guaranteed under both the Fourth and Fourteenth Amendments of our Constitution." *Id.*

> "Because the swing of every pendulum brings with it potential adverse consequences, it is important to emphasize that in the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural guarantees of the Constitution. The fact that the suspected crime may be heinous—whether it involves children or adults—does not provide cause for the state to ignore the rights of the accused or any other parties. Otherwise, serious injustices may result. In cases of alleged child abuse, governmental failure to abide by constitutional constraints may have deleterious long-term consequences for the child and, indeed, for the entire family. Ill-considered and improper governmental action may create significant injury where no problem of any kind previously existed."

Wallis, at 1130-1131.

When responding to a report of abuse and neglect, SCDSS teaches its caseworkers to go to the child's school to interrogate the child and it is SCDSS's policy to interrogate children at school when school is in session at any time. Appx. 228-229, 243; Appx. 564-586 (Plt. Tr. Ex. 18, SCDSS Policy 719). *See also*, Appx. 413-417, 424-425, 449-452, 457-458. SCDSS testified that it does not need to obtain parental permission to interrogate a child to gather evidence against the parents. Appx. 230-231. This information sought includes abuse, alcohol and drug use, discipline and disciplinary methods, mental health of family members, family history, finances, diet, physical health of family members, etc. Appx. 230-231, 561, 569-570 (Plt. Tr. Ex. 18, SCDSS Policy). After a Child Protective Services investigation has been completed, SCDSS testified that it can continue to interrogate children at school. Appx. 235. The head of SCDSS Training was unaware of any legal authority that permitted SCDSS to interrogate children without permission of a parent after an investigation was completed. Appx. 234.

There is no doubt SCDSS used the May children's school attendance to seize and interrogate the children against the wishes of the Mays and their children. SCDSS, the School District, and the trial court all believe that neither Kaci nor her children have constitutional protections in these settings.

VII. The Court's finding that there was adequate remedy at law is erroneous.

While the Court was quick to point out that Kaci May relinquished her rights to J.H.M. and J.R.M., which, obviously took place in a CPS action in the family court, the Court then found that future contact with CPS was "speculative". *May*, at *10. This obviously meant that another SCDSS investigation had taken place. *See*, *SCDSS v. May*, 2021-DR-18-00553 and *SCDSS v. May*, 2021-DR-18-01099. Appx. 825-838.

Counsel for Appellants is quite confident in stating that families of children with special needs and/or mental health issues are more susceptible to unnecessary CPS investigations due to increased chances of bumps, bruises, and physical injuries, misinterpreted statements by children, strange behaviors by these children, increased frequency of contact with well-meaning service providers who are mandatory reporters, and sadly, false reports by school special needs employees who are frustrated by parents' advocacy for their children.

The application of constitutional protections to school interrogations by SCDSS has not been seriously addressed in the two generations since the Children's Code was passed. Appellants assert that one of the main reasons is because a damages action for these constitutional violations almost always result in low damages and it would not worth an attorney's time and expense. Public interest law firms have many more serious constitutional issues to address. When the potential damage award for a

multitude of violations is insufficient, lawsuits cannot be deemed adequate remedies at law. *Peabody Holding Co. v. Costain Group PLC*, 813 F. Supp. 1402, 1421 (E.D. Mo. 1993) ("Improper conduct for which monetary remedies cannot provide adequate compensation is sufficient to establish [irreparable] harm.").

The victims of these constitutional violations almost always belong to low-income, poorly educated families who have little sophistication to raise objections or little means to challenge the violations in a court of law.

Past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury. *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). SCDSS trains its caseworkers to interrogate children at school. SCDSS reported that there were 33,353 child protective services investigations in 2019-2020. SCDSS CPS Referrals for Investigations for State Fiscal Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-investigation-5-yr-history-2020.pdf on April 5, 2021. The number of unchecked civil rights violations is pervasive and staggering. Of those investigations, SCDSS may interrogate each child in each case on multiple occasions. Seven times in this matter. These are not isolated incidents.

Most SCDSS investigations do not end up in the family court. SCDSS CPS Referrals for Investigations for State Fiscal Years 2015-2016 through 2019-2020, last accessed at https://dss.sc.gov/media/2665/6-cps-referrals-for-

investigation-5-yr-history-2020.pdf on April 5, 2020 (Founded cases for fiscal year 2019-2020 were 8,927 of the 33,353 investigations). And even fewer of the founded cases end up in family court. But even in family court, the seizures, searches, and interrogations of children at school has been institutionalized and our family courts either ignore the violations, *de minimis non curat lex*, or else endorse such unconstitutional acts. There are no judicial or administrative remedies.

Some families have no remedy except to remove their children from schools in order to protect their children and family from these constitutional violations.

There is no doubt that some of the Appellants have severe mental health and behavioral challenges that dramatically increases the likelihood of additional reports of child abuse and neglect to SCDSS. The trial court acknowledged:

> Certainly, you have children that have been sexually abused and, obviously, they'll have to deal with that issue for their entire life. And if something happens in the future, certainly, I'm sure DSS will be involved. So I think the parties will probably even stipulate to that fact. And I think that if an allegation of abuse comes up in the future, I pretty much guarantee you they're not going to say that they're not going to investigate.

Appx. 316.

In February 2019 J.H.M. sexually acted out at school by climbing the divider in a bathroom to try to see another student's private parts. Appx. 313, 318-320, 374-375. Three of the children have severe psychiatric issues and behavioral issues related to their prior abuse and since 2017, there have been two additional SCDSS investigations. Kaci testified that there was no indication that her adopted children's mental illnesses and subsequent behaviors would ever go away. Appx. 354. SCDSS even ran a secret investigation on the Mays beginning in December 2017. Appx. 463-464, 466-469, 266.

When multiple actions are necessary for legal remedy, injunctive relief is necessary. *Lee v. Bickell*, 292 U.S. 415, 421 (1934) (necessity for multiplicity of actions for legal remedy was sufficient to uphold injunction); *Ecolab, Inc. v. Paolo*, 753 F. Supp. 1100, 1110 (E.D.N.Y. 1991) ("If a plaintiff can receive legal relief only through a multiplicity of lawsuits, plaintiff has suffered irreparable harm sufficient to warrant a preliminary injunction.").

Repeated harmful actions require injunctive relief. *Northeast Women's Ctr., Inc. v. McMonagle*, 665 F. Supp. 1147, 1153 (E.D. Pa. 1987) ("The legal remedy is inadequate if the plaintiff's injury is a continuing one, where the last available remedy at law would relegate the plaintiff to filing a separate claim for damages each time it is injured anew.") (Citing 11 Wright & Miller, at § 2944, at 398). The unchecked unconstitutional polices of SCDSS and the School District mean the Appellant children will have their constitutional rights violated as a matter of course when the next SCDSS intake occurs, until

each child ages out, with L.C.M. turning eighteen in 2031.

The issues raised are capable of repetition but evading review. *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001). In *Byrd v. Irmo High School*, , 321 S.C. 426, 468 S.E.2d 861 (1996), the Supreme Court observed that its prior decisions had taken a more restrictive approach when applying this exception, holding that the reviewing court could take jurisdiction under the exception only when the duration of the challenged action was too short to be fully litigated prior to its termination and when it was reasonable to expect that the same complaining party would be subjected to the action again. The *Byrd* court adopted a less restrictive approach, however, which permitted the exception's operation when the issue raised was "capable of repetition but evading review, thereby no longer requiring courts to make a finding concerning the reasonable expectation that the same complaining party would be subjected to the action again. *Id*. *See also*, *Sloan v. Greenville Cnty.*, 356 S.C. 525, 531, 590 S.E.2d 36, 38 (Ct. App. 2003) ("The party bringing the action need only show the issue raised is capable of repetition and is not required to prove there is a 'reasonable expectation the issue will arise again.'"). The action must be one which will truly evade review. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006).

If a CPS investigation of an innocent family lasts forty-five days, but a common pleas case challenging the constitutional violation takes more than one year to set trial, these unconstitutional

interrogations will never be addressed without applying the mootness exception of, "capable of repetition but evading review". The record shows that SCDSS has received two subsequent reports and not interrogated the Appellant Children at school. The "voluntary cessation" exception to mootness stems from the concept that "a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior", which, in this case, is stopping its policy of interrogating the Appellant children in subsequent abuse and neglect cases in order to evade judicial review. *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001). *See*, Appx. 462-464, 466-469.

This matter imposes questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. *Curtis v. State*, 345 S.C. 557,549 S.E.2d 591 (2001).

In this matter, both SCDSS and the School District Defendants assert that SCDSS is allowed to interrogate any child at any time without reasonable suspicion or probable cause. They have operated this way since SCDSS was established. They are still doing it. They will continue to violate children's First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. They will continue to violate the privacy rights of the families of South Carolina. They will continue to violate rights of children under the South Carolina Constitution delineated in Article I, §§ 3, 10, and 12.

In *Mann v. Cty. of San Diego*, the United States District Court found, "Because the Mann children are still minors living in San Diego County, they remain subject to the possible jurisdiction of the County's child welfare system, and therefore it is not "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Mann v. Cty. of San Diego*, 907 F.3d 1154, 1164 n. 12 (9th Cir. 2018) (Citing *United States v. Concentrated Phosphate Export Ass'n, Inc.*, 393 U.S. 199, 203 (1968).).

The May children that were chronically abused before coming into SCDSS custody and while in SCDSS custody continue to have mental health and behavioral issues. These issues will ebb and flow as the children mature, physically, psychologically, and sexually. Whether SCDSS investigations will happen again has been answered – two subsequent investigations are mentioned in the record. There are more. That the Mays will be involved again with SCDSS, despite doing nothing wrong, has been proven. This is part and parcel with the adoption of children with special needs and prior abuse issues. It would be more shocking if there were no reports in the future.

VIII. Conclusion and relief requested.

The unrestricted intrusion into the lives of South Carolina's children and families by SCDSS's interrogations must be limited by the Court. A bright line must be drawn to place SCDSS on notice that it must have probable cause to seize, search, and interrogate our children. The interrogations of

the Appellant children were nothing short of state-sponsored fishing expeditions into the private affairs of the Appellants. SCDSS had nothing. SCDSS knew it was not allowed in the May home and it was not allowed to interrogate the Appellant children. Compulsory schooling should not be viewed as a means to skirt children's and families' constitutional protections, especially after families have affirmatively asserted their rights.

SCDSS, the School District, and the family courts already have the statutory procedures for the Defendants to follow the law. The Defendants have chosen not to follow the law and they have told the Appellants, the Courts, and all South Carolinians, "make us follow the law".

The Appellants ask the Court for the following relief:

1. Order a rehearing.
2. Reverse and remand this matter for a new trial.
3. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1983.

Respectfully submitted,
FOSTER CARE ABUSE LAW FIRM, PA

s//Robert J. Butcher
Robert J. Butcher - 74722
Deborah J. Butcher - 74029
507 Walnut Street
Camden, South Carolina 29020
Post Office Box 610

Camden, South Carolina 29021
Telephone: 803.432.7599
rbutcher@camdensc-law.com
dbutcher@camdensc-law.com

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