THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NIYA KENNY; TAUREAN NESMITH; GIRLS ROCK CHARLESTON, INC.; D.S., by and through her next of kin Juanita Ford, and S.P., by and through her next of kin Melissa Downs, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

ALAN WILSON in his official capacity as Attorney General of South Carolina; J.ALTON CANNON, JR. in his official capacity as the Sheriff of Charleston County, SC; GREGORY G. MULLEN in his official capacity as the Chief of the Police Department of the City of Charleston, SC; EDDIE DRIGGERS, JR in his official capacity as the Chief of the Police Department of the City of North Charleston, SC; CARL RITCHIE in his official capacity as the Chief of the Police Department of the City of Mt. Pleasant, SC; LEON LOTT in his official capacity as the Sheriff of Richland County, SC; W.H.HOLBROOK in his official capacity as the Chief of the Police Department of the City of Columbia, SC; STEVE LOFTIS in his official capacity as the Sheriff of Greenville County, SC; KEN MILLER in his official capacity as the Chief of the Police Department of the City of Greenville, SC; LANCE CROWE in his official capacity as the Chief of the Police Department of the City of Travelers Rest, SC; STEVE MOORE in his official capacity as Interim Chief of the Police Department of the City of Simpsonville, SC; M.BRYAN TURNER in his official capacity as the Chief of the Police Department of the City of Mauldin, SC; DAN REYNOLDS in his official capacity as the Chief of the Police Department of the City of Greer, SC; A. KEITH MORTON in his official capacity as the Chief of the Police Department of the City of Fountain Inn, SC; on behalf of themselves and others similarly situated,

Defendants.

Civil Action No.: ------

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs challenge as unconstitutional S.C. Code § 16-17-420, commonly referred to as the "Disturbing Schools" statute, which sweeps within the purview of criminal law and the court system a broad swath of adolescent behavior. The Disturbing Schools statute violates fundamental concepts of fairness and the most basic tenets of due process.

2. By broadly labeling as criminal any "interference," or "disturbance" of a school, any act of "loitering" and any "obnoxious" action, the Disturbing Schools statute creates an impossible standard for school children to follow and for police to enforce with consistency and fairness. The Disturbing Schools statute also chills the ability of students to speak out against abuses and to participate in conversations about policing of their own classrooms and campuses.

3. South Carolina Code § 16-17-420 was enacted almost 100 years ago and there is no indication that it was intended to apply, or was applied at the time, to students rightfully attending their own school. More recently, however, the law's broad terms have been invoked to draw thousands of adolescents into the juvenile and criminal justice systems. The Disturbing School charge is consistently among the leading sources of referrals to the South Carolina Department of Juvenile Justice.

4. While the Disturbing Schools statute impacts hundreds of adolescents each year, some students in South Carolina feel the burdens of the law more than others. Statewide in 2014-2015, Black students were nearly four times as likely to be referred for charges of Disturbing Schools as were their white classmates. In Charleston County, young people were more likely to be referred to the juvenile justice system

for Disturbing Schools than for any other reason and Black students were more than six times as likely as their white peers to be referred for this offense.

5. When applied to school students, the Disorderly Conduct statute, which prohibits conducting oneself "in a disorderly or boisterous manner," is similarly vague. S.C. Code §16-17-530. It fails to provide notice to students or guidance to those charged with determining which adolescent behavior falls under the terms of the law. Adolescents are also commonly referred to the Department of Juvenile Justice for Disorderly Conduct.

6. The types of incidents that lead to Disturbing Schools and Disorderly Conduct charges cannot be distinguished by any objective standard from the types of behaviors schools address regularly without resort to the criminal justice system. These include minor school infractions like cursing, refusing to follow directions, and involvement in a physical altercation that did not result in significant injuries and where the student was not the initiator. Students as young as seven have been charged with Disturbing Schools. At times, students have been arrested when they react to disruptions caused by those who are supposed to protect them.

7. School Codes of Conduct from across the state reflect the inability to distinguish criminal Disturbing Schools or Disorderly Conduct from minor school infractions. According to Codes of Conduct, students may experience consequences ranging from a verbal warning to criminal charges for the same behaviors.

8. The resort to charging students criminally occurs despite the substantial role played by school employees in shaping student behavior and the classroom environment.

Research demonstrates that teachers and schools can employ a range of effective approaches to prevent disruption, and to de-escalate disruption and conflicts when they do occur. In contrast, research also shows that educators who employ punitive approaches create negative experiences for all students and may escalate disruptions.

9. Referral to law enforcement during school greatly diminishes the likelihood that a student will graduate. Young people who are charged with crimes may feel stigma and fear, making it more difficult to engage with school. They may also face disciplinary consequences that can include years in alternative settings that fail to offer complete access to course work necessary to graduate.

10. Plaintiffs are individuals and a nonprofit organization whose members are directly impacted by and face ongoing risk of arrest or referral under S.C. Code § 16-17-420. Plaintiffs seek a declaratory judgment that S.C. Code § 16-17-420 violates their constitutional right to due process, as well as an injunction preliminarily and permanently enjoining enforcement of and reliance upon S.C. Code § 16-17-420 by Defendants.

11. Plaintiffs D.S. and S.P. are individuals who face an ongoing risk of arrest or referral under S.C. Code § 16-17-530 while attending school. Plaintiffs seek declaratory judgment that S.C. Code § 16-17-530 violates their constitutional right to due process when applied to elementary and secondary school students, as well as an injunction preliminarily and permanently enjoining enforcement of and reliance upon S.C. Code § 16-17-530 as applied to students by Defendants.

JURISDICTION AND VENUE

12. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution.

13. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).

14. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2).

15. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 f the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

PARTIES

A. Plaintiffs

16. Plaintiff Niya Kenny ("Plaintiff Kenny" or "Ms. Kenny") is a nineteen year-old African-American female who resides in Richland County, South Carolina. Ms. Kenny obtained her G.E.D. Diploma from Richland County School District Two in June, 2016.

17. Ms. Kenny was arrested and charged under S.C. Code § 16-17-420 while a student at Spring Valley High School in Richland School District Two. Ms. Kenny fears future arrest and prosecution under the Disturbing Schools statute if, while on or around the grounds of a school, her actions are interpreted to fall under any of the broad terms of the statute.

18. Plaintiff D.S. is a seventeen year-old African-American female who resides in Charleston, South Carolina. She brings this case through her grandmother and next of kin, Juanita Ford. D.S. was enrolled at Stall High School in the Charleston County School District during the 2015-2016 school year. D.S. plans to enroll at Summerville High School in Dorchester County School District Two in August 2016. D.S. experienced lead poisoning as a young child and has an Individualized Education Plan.

19. D.S. was charged under S.C. Code § 16-17-420 while attending school. D.S. fears being charged under the Disturbing Schools or Disorderly Conduct statutes in the future if, while on or around the grounds of a school, her actions are interpreted to fall under any of the broad terms of the statutes.

20. Plaintiff S.P. is a fifteen year-old Caucasian female who resides in Travelers Rest, South Carolina. She brings this case through her mother and next of kin, Melissa Downs. S.P. was enrolled at Travelers Rest High School in the Greenville County School District during the 2015-2016 school year. She plans to continue school at Travelers Rest High School in the 2016-2015 school year. S.P. has been diagnosed with mood and conduct disabilities. She has requested special education services to address her disability and has had a behavior intervention plan.

21. S.P. was referred under S.C. Code § 16-17-0530 (disorderly conduct) while attending school. S.P. fears being charged under the Disturbing Schools or Disorderly Conduct statutes in the future if, while on or around the grounds of a school, her actions are interpreted to fall under any of the broad terms of the statutes.

22. Plaintiff Girls Rock, Charleston ("Girls Rock") is a non-profit organization with its principal office in Charleston, SC. Girls Rock provides mentorship, music and arts education, and leadership development to young people in Charleston, South Carolina. Girls Rock operates an afterschool program serving at-risk youth and youth who have been involved in the justice system. Girls Rock is guided by core principles that include challenging criminalization and promoting collective accountability for behavior.

23. Girls Rock sues on behalf of its members, students who risk arrest or referral under S.C. Code § 16-17-420 or S.C. Code § 16-17-530 while attending school. Girls Rock also sues on its own behalf. Girls Rock is substantially burdened in its mission by the continued practice of charging students under S.C. Code § 16-17-420.

24. Plaintiff Taurean Nesmith ("Plaintiff Nesmith" or Mr. Nesmith") is a twenty-one year-old African American male who resides permanently in Kingstree, South Carolina. Mr. Nesmith is a student at Benedict College in Columbia, South Carolina.

25. Mr. Nesmith was arrested and charged with Disturbing Schools under S.C. Code § 16-17-420 at his college-owned apartment building. Mr. Nesmith fears future arrest and prosecution under the Disturbing Schools statute in the future if, while on or around the grounds of a school, his actions are interpreted to fall under any of the broad terms of the statute.

B. Defendants

26. Defendant Alan Wilson ("Defendant Wilson" or "Mr. Wilson") is sued in his official capacity as the Attorney General of South Carolina. Pursuant to the South Carolina

Constitution, it is Defendant Wilson's duty in his capacity as Attorney General of South Carolina to assist and represent the Governor in the faithful execution of the laws. S.C. Const. art. IV § 15. Further, pursuant to South Carolina law, "[h]e shall appear for the State in the Supreme Court and the court of appeals in the trial and argument of all causes, criminal and civil, in which the State is a party or interested, and in these causes in any other court or tribunal when required by the Governor or either branch of the General Assembly." S.C. Code § 1-7-40, and "[i]n all cases wherein the right of the State may be involved, the persons claiming under the State shall call on the Attorney General . . . to defend the right of the State." S.C. Code § 1-7-710. Mr. Wilson is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law in all circumstances relevant to this complaint.

Charleston Defendants

27. Defendant J. Alton Cannon, Jr. ("Defendant Cannon" or "Mr. Cannon") is sued in his official capacity as the Sheriff of Charleston County, S.C. The jurisdiction of the Charleston County Sheriff's Office includes schools within Charleston County.
28. Defendant Gregory G. Mullen ("Defendant Mullen" or "Mr. Mullen") is sued in his official capacity as the Chief of the City of Charleston, S.C. Police Department. The jurisdiction of the Charleston Police Department includes schools within Charleston County.
29. Defendant Eddie Driggers, Jr. ("Defendant Driggers" or "Mr. Driggers") is sued in his official capacity as Chief of the North Charleston, S.C. Police Department. The jurisdiction of the North Charleston Police Department includes schools within Charleston County.

30. Defendant Carl Ritchie ("Defendant Ritchie" or "Mr. Ritchie") is sued in his official capacity as Chief of the Mount Pleasant, S.C. Police Department. The jurisdiction of the Mount Pleasant Police Department includes schools within Charleston County.

Columbia Defendants

31. Defendant Leon Lott ("Defendant Lott" or "Mr. Lott") is sued in his official capacity as the Sheriff of Richland County, S.C. The jurisdiction of the Richland County Sheriff's Department includes schools within Richland County.
32. Defendant W.H. Holbrook ("Defendant Holbrook" or "Mr. Holbrook") is sued in his official capacity as Chief of the Columbia, S.C. Police Department. The jurisdiction of the Columbia Police Department includes schools within Richland County.

Greenville Defendants

33. Defendant Steve Loftis ("Defendant Loftis" or "Mr. Loftis") is sued in his official capacity as the Sheriff of Greenville County, S.C. The jurisdiction of the Greenville County Sheriff's Department includes schools within Greenville County.
34. Defendant Ken Miller ("Defendant Miller" or "Mr. Miller") is sued in his official capacity as Chief of the City of Greenville, S.C. Police Department. The jurisdiction of the Greenville Police Department includes schools within Greenville County.
35. Defendant Lance Crowe ("Defendant Crowe" or "Mr. Crowe") is sued in his official capacity as Chief of the Travelers Rest, S.C. Police Department. The jurisdiction of the Travelers Rest Police Department includes schools within Greenville County.
36. Defendant Steve Moore ("Defendant Moore" or "Mr. Moore") is sued in his official capacity as Interim Chief of the Simpsonville, S.C. Police Department. The

jurisdiction of the Simpsonville Police Department includes schools within Greenville County.

37. Defendant M. Bryan Turner ("Defendant Turner" or "Mr. Turner") is sued in his official capacity as Chief of the Mauldin, S.C. Police Department. The jurisdiction of the Mauldin Police Department includes schools within Greenville County.

38. Defendant Dan Reynolds ("Defendant Reynolds" or "Mr. Reynolds") is sued in his official capacity as Chief of the City of Greer, S.C. Police Department. The jurisdiction of the Greer Police Department includes schools within Greenville County.

39. Defendant A. Keith Morton ("Defendant Morton" or "Mr. Morton") is sued in his official capacity as Chief of the Fountain Inn, S.C. Police Department. The jurisdiction of the Fountain Inn Police Department includes schools within Greenville County.

40. Defendants, through their respective duties and obligations, are responsible for enforcing S.C. Code § 16-17-420 and S.C. Code § 16-17-530. Each Defendant, and those subject to their direction, supervision, and control, has or intentionally will perform, participate in, aide and/or abet in some manner the acts alleged in this complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure Plaintiffs irreparably if not enjoined. Accordingly, the relief requested herein is sought against each Defendant, as well as all persons under their supervision, direction, or control, including but not limited to their officers, employees, and agents.

STATUTORY FRAMEWORK

41. South Carolina Code § 16-17-420 provides:

> It shall be unlawful:
> (1) for any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or
> (2) for any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

S.C. Code § 16-17-420(A).

42. A violation of S.C. Code § 16-17-420 is punishable by fine of not more than $1,000 or ninety days imprisonment. S.C. Code § 16-17-420(B).

43. Section 16-17-420, now commonly referred to as the "Disturbing Schools" statute, was enacted in 1919 and as originally drafted, applied to "any school or college in the State attended by women or girls." 1919 S.C. Acts 239 (Appendix 1).

44. The Disturbing Schools statute was amended in 1968 to apply to "any school." 1968 S.C. Acts 2308 (Appendix 2). It was subsequently applied to arrest protestors on a college campus. *See Bistrick v. Univ. of S. Carolina*, 324 F. Supp. 942 (S.C. 1971); *Herman v. Univ. of S. Carolina*, 341 F. Supp. 226, 229 (D.S.C. 1971), *aff'd*, 457 F.2d 902 (4th Cir. 1972). In 1972, the statute was amended to increase the applicable penalties. 1972 S.C. Acts 1426 (Appendix 3).

45. A Westlaw search generated cases referencing juveniles charged under § 16-17-420 beginning in 1989. *See Matter of Johnny J.*, 387 S.E.2d 251, 252 (S.C. 1989)(indefinite commitment for probation violation and status offenses was

inappropriate); *In Interest of Doe*, 458 S.E.2d 556, 560 (Ct. App. 1995)(conviction for Disturbing Schools upheld; S.C. Code § 20-7-2170 precluded residential evaluation for children ten years old and younger); *In re Amir X.S.*, 639 S.E.2d 144 (S.C. 2006)(statute not overbroad or vague as applied); *In re Joelle T.*, No. 2010-UP-547, 2010 WL 10088227, at *1 (S.C. Ct. App. Dec. 16, 2010) (Appendix 4).

46. In 2010, the law was amended to remove mandatory minimum sentences and fines and to expressly vest jurisdiction in summary courts or for juveniles, in family court. 2010 South Carolina Laws Act 273 (S.B. 1154).

47. Section 16-17-420 contains no intent requirement before imposing criminal penalties.

48. The terms “interfere,” “disturb,” “loiter,” and “act in an obnoxious manner” are not further defined by the statute.

49. South Carolina Code § 16-17-530 provides:

> Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

S.C. Code § 16-17-530.

50. The terms “disorderly” and “boisterous” are not further defined by the statute.

51. A series of South Carolina Attorney General's Opinions discuss the reach of both the Disturbing Schools and Disorderly Conduct statutes to address student conduct.

52. Attorney General's Opinions conclude that the Disturbing Schools statute and the Disorderly Conduct statute may both be applied to prohibit "[u]se of foul or offensive language toward a principal, teacher, or police officer," or "[u]se of obscene or profane language near a 'schoolhouse.'" 1994 S.C. Op. Att'y Gen. 25, 1994 WL 199757 (Appendix 5).

53. The Attorney General's Office also concludes that "[f]ailure by a student . . . to leave a school campus or school bus, when requested to do so," *id.*, "fighting," *id.*, and becoming "uncooperative and disruptive," each may constitute Disturbing Schools. Letter from Robert D. Cook, S.C. Assistant Att'y Gen., to Hon. John W. Holcombe, Sheriff, Chester Co., 1999 WL 626642 (July 12, 1999) (Appendix 6).

54. Moreover, Attorney General's Opinions observe that "[n]o express limitations on the time of applicability of [§16-17-420's] prohibition are set forth," 1990 S.C. Op. Att'y Gen. 61, 1990 WL 482448 (Appendix 7), and reason that the law might "apply to any part of the campus regardless of whether students or other students [sic] or faculty were present." 1994 S.C. Op. Att'y Gen. 25.

FACTUAL ALLEGATIONS

A. The Impact of Educator Practices on Student Behavior

55. Normal adolescent development includes the development of behavioral and social skills.

56. Addressing student behavior is a regular part of school administration.

57. Research indicates that the ways in which schools and teachers approach student behavior and the school climate can shape student behavior for better or worse.

58. There are many techniques shown to reduce incidences of disruption and discipline when employed by educators. Evidence based practices exist to respond to a continuum of student needs, and effective approaches exist including for students requiring higher levels of support.

59. In contrast, schools and classrooms that are characterized by a punitive approach with high levels of discipline and fewer positive supports are experienced negatively by students and teachers.

60. Some educator practices and responses can escalate student misbehavior and conflict.

61. Black students and students with disabilities are disproportionately likely to be subjected to exclusionary discipline such as out-of-school suspension as well as referral to law enforcement and arrest at school.

62. Research does not suggest that racial disparities in discipline can be explained by differences in behavior across students of different races.

63. Disparities are most prevalent in categories of discipline that require subjective determination of whether the rule was violated, such as offenses of “disruption” or “excessive noise.”

64. Students who experience punitive discipline miss valuable educational time and may enter a cycle of negative consequences.

65. Students are frequently disciplined more harshly when their behavior is characterized as criminal, and their educational opportunities are diminished through expulsion, suspension, placement in an alternative program, or a combination of these consequences.

66. Disciplinary consequences can have lasting impact on a student’s ability to access educational opportunities. For example, students may be placed into alternative programs without significant support services, providing only computer based instruction, and with no fixed end period, from which they must instead earn their way out. These programs may not even provide the course work required to obtain a high school diploma, placing the prospect of educational reentry further and further out of reach.

67. Students may also experience stigma and increased negative feelings about school which may impact their ability to reengage with school.

68. Students who experience referral to law enforcement have significantly reduced likelihood of graduating from high school, even after a first referral.

69. Without a high school education, a young person’s future prospects are also dimmed.

B. Enforcement of S.C. Code § 16-17-420 and § 16-17-530 Across South Carolina

70. Between the 2010-2011 school year and March, 2016, over 9,500 young people in South Carolina were referred to the Department of Juvenile Justice on charges of Disturbing Schools.

71. This number provides only a partial picture of the law's impact. Students 17 and older are charged and prosecuted as adults.

72. Students as young as seven have been charged with Disturbing Schools.

73. Students have been charged with Disturbing Schools in every county in the state except for Chester County.

74. Disturbing Schools and Disorderly Conduct charges are consistently among the leading reasons that young people enter the juvenile justice system.

75. Although referrals for Disturbing Schools have decreased over time in some counties, Disturbing Schools charges have increased statewide from the 2012-2013 school year to the 2015-2016 school year.

76. Rates of racial disparity in referrals for Disturbing Schools have also increased. In the 2014-2015 school year, Black students statewide were nearly 4 times as likely as their white classmates to be charged with Disturbing Schools.

77. Substantial racial disparities in Disturbing Schools referrals exist in large and small counties and in counties that are more and less racially homogenous.

78. Across the state, there are wide discrepancies in how charges of Disturbing Schools are handled, including whether they will be dismissed, diverted, or prosecuted. In about twenty percent of cases in which DJJ recommended diversion, solicitor's offices moved forward with prosecution.

79. School Codes of Conduct from across South Carolina reflect the impossibility of attempting to distinguish criminal Disturbing Schools or Disorderly Conduct from behaviors that should be addressed through school responses, including responses as minimal as a verbal warning or a parent conference.

80. Infractions including "disruption," "behavior that significantly interrupts the learning environment," "fighting," "excessive noise," "boisterous play or pranks," and "profanity" have all been listed as behaviors that can be addressed through lesser school interventions. Yet the same behaviors may lead students to be charged with the crimes of Disturbing Schools or Disorderly Conduct.

81. The prior experiences of named Plaintiffs exemplify the arbitrary and discriminatory application of the Disturbing Schools and Disorderly Conduct statutes to charge or refer students.

82. Students have been arrested and charged with Disturbing Schools when expressing concern over police actions.

83. On October 26th, 2015, Niya Kenny was a student at Spring Valley High School when she was arrested under S.C. Code § 16-17-420. Ms. Kenny was in her math class. Students were instructed to work on their laptops on a practice math lesson. Ms.

Kenny was working on her lesson when she noticed her teacher whispering to a student a couple desks away. She thought that the teacher must have been helping the other student with her work until she saw him walk over to his desk and call for someone to escort the student from the class. Ms. Kenny wondered what the girl could have done wrong, because she had not noticed anything out of the ordinary.

84. Shortly thereafter, a School Resource Officer ("SRO"), a sworn police officer of the Richland County Sheriff's Office, known among students as "Officer Slam" entered the room. Ms. Kenny witnessed her classmate forcefully pulled from her desk by the SRO, dragged on the floor, and handcuffed. Deeply frightened by the officer's actions, Ms. Kenny attempted to document the incident and called out for someone to do something to stop the violent treatment of her classmate.

85. In response, Ms. Kenny was herself arrested. She was handcuffed in front of her classmates, berated by the police officer and the school administrator for voicing her concern and distress, held in an adult detention center for several hours, patted down, finger printed and photographed.

86. The police incident report described her offense as a crime of disorderly conduct and she was charged with Disturbing Schools.

87. Throughout her experience, Ms. Kenny was scared and humiliated. Although she would have liked to complete her senior year with friends and classmates, due to the humiliation and anxiety she experienced, Ms. Kenny did not feel that she could return to Spring Valley High School. She withdrew and entered a GED program.

88. Taurean Nesmith was arrested and charged with Disturbing Schools at his college-owned apartment building. A campus police officer who had repeatedly stopped and searched Mr. Nesmith and his friends was patrolling in the apartment complex parking lot as Mr. Nesmith and friends left the building and got into their cars. The officer approached Mr. Nesmith's friend and proceeded to ask him for his identification.

89. Mr. Nesmith complained to another friend that the officer was again stopping them because of their race. The Officer then turned his attention to Mr. Nesmith and asked for his identification. Mr. Nesmith asked why the officer needed to see his identification and continued to question the officer's actions. Other residents came out to their balconies to see what was happening.

90. Mr. Nesmith was eventually handcuffed and transported to a detention center where he remained overnight. He was charged with Disturbing Schools and Disorderly Conduct. His charges were later dropped.

91. In other instances, students have been charged with Disturbing Schools as the result of behaviors that could just as possibly have met with less severe school discipline or other interventions.

92. In Richland School District One, an eight-year-old African-American student was charged with Disturbing Schools and assault when, after being directed to leave class, the student attempted to slam the classroom door and the teacher's arm was caught.

93. In Charleston, an African American student was charged with Disturbing Schools and adjudicated delinquent after she and a group of other students were reported for taking photographs of themselves and other students in the girls' restroom. The student was referred to Girls Rock as a condition of her probation.

94. When K.B., a Latina student in Charleston, was thirteen years old, she was charged with Disturbing Schools and adjudicated delinquent after an incident that started with her late arrival to gym class. A School Resource Officer was called when K.B. began to loudly protest being made to leave the gym class and being followed to the "tardy sweep" room. The police officer physically restrained K.B., taking her to the ground and causing bruises, and placed her in handcuffs. She was searched before being released to her mother. The police incident report indicated that K.B. would be charged with Disorderly Conduct. She was subsequently charged with Disturbing Schools.

95. K.B. was sentenced to probation and referred to Girls Rock by her probation officer. K.B. took honors courses in middle school. When K.B. returned to her high school after being charged, she was placed in a program called "Twilight," through which she was provided no more than three hours of computer-based education per day, and which did not provide access to the courses necessary to obtain a high school diploma. Because K.B. was only permitted to be on campus during program hours, which were shorter than the normal school day, K.B. had to find her own transportation to school, which was a costly expense for K.B. and her mother.

96. K.B. and her mother may move to Texas soon. Although K.B. believes she will be able to return to her regular classes if she begins school in South Carolina, she believes that she will no longer be on track to graduate from high school.

97. D.D., an African American female who has struggled with homelessness, was charged with Disturbing Schools after an incident at her Charleston middle school. D.D. was sent out of class for talking. While she was seated on a bench outside of the classroom, another girl walked past her and began speaking to her. A School Resource Officer noticed her speaking to another student and she was detained, handcuffed, and charged with Disturbing Schools. She was placed on probation and became involved with Girls Rock.

98. When D.D. left the alternative middle school and started high school, she was placed in the Twilight program. Although she has remained in the Twilight program for two years, she continues to attend school and struggle to obtain an education. D.D. must find her own transportation to and from Twilight. Her family does not own a car and navigating the bus system was difficult. D.D. was detained for violating the terms of her probation after being picked up for truancy. While attending Twilight, D.D. also does not have access to the school lunch services that she would receive if attending school regularly.

99. S.P. was charged with Disorderly Conduct as a freshman in the Greenville County School District. S.P. has diagnosed disabilities that impact her mood and conduct and has seen a therapist for several years. S.P. had a Behavior Intervention Plan with her school. On the day that S.P. was charged with Disorderly Conduct, she had an

ongoing altercation with a girl who had been making fun of her throughout the morning. S.P. encountered the girl in the library and told her to stop talking about her before sitting down at a table with friends. The principal came to the library and told S.P. that she needed to leave with him. When she refused and complained that the girl who was making fun of her did not get in trouble, the principal told S.P. he was addressing her because she could be arrested for not leaving with him. An SRO came to the library and S.P. eventually agreed to leave the library with him. As she was leaving, S.P. cursed at the student who had been teasing her. Other students in the library also began to clap as S.P. was escorted out of the library, and S.P. cursed at them.

100. Several months later, S.P. was charged with Disorderly Conduct for these actions.

101. D.S., an African American student in Charleston, was charged with Disturbing Schools after becoming involved in a physical altercation which she did not initiate and in which she was the only person who sustained an injury, a lump on her head.

102. Charged as adults, D.S., her friend, and the other two students involved in the altercation plead guilty to Disturbing Schools without legal representation. D.S. received a suspended sentence of a $400 fine or 20 days imprisonment conditioned on completion of a Pretrial Intervention program (PTI). D.S. subsequently learned that participation in PTI costs $300 or more, a cost that she could not afford. D.S. was rejected from the PTI program and spent many stressful weeks fearing that she would be sent to jail before she obtained a public defender who was able to reopen her case, which was eventually dismissed.

103. Enforcement of the Disturbing Schools and Disorderly Conduct laws has also impacted Girls Rock as an organization. Recognizing that Disturbing Schools charges are a primary cause of youth involvement with the justice system, Girls Rock has taken up efforts to challenge the Disturbing Schools statute and bring awareness to the statute's negative impact on Charleston area young people. For example, Girls Rock teen leaders have engaged in an organizing apprenticeship in which they learned about school-based referrals to law enforcement and the Disturbing Schools law and spoke about these issues at public events, Girls Rock After School Program ("GRASP") participants performed a skit on the issue during the program's annual showcase, and created a short video about their advocacy.

104. Girls Rock volunteers have also expended significant time and resources to address the impacts of Disturbing Schools adjudications through mentorship and support of young people in the GRASP program. Girls Rock volunteers also attended hearings with members. They present testimony to speak on a participant's character and her progress in GRASP. Volunteers have spent hours, at times across multiple days, to attend these hearings.

105. Girls Rock is a primarily volunteer run organization with limited resources. The significant time and resources that Girls Rock staff members spend in mentoring and supporting young people who have been caught up in the justice system for charges of Disturbing Schools detracts from Girls Rock's ability to help other young people. In addition, time spent addressing ongoing court involvement and other collateral consequences of a Disturbing Schools adjudication detract from the positive mentorship activities that Girls Rock seeks to provide. Time spent at court hearings

would otherwise be spent developing programming and providing direct services to young people and attending to administrative business necessary to sustain the operations of the organization, such as writing grant proposals and conducting fundraising activities.

106. The experiences of named Plaintiffs and other students in South Carolina reflect the Disturbing Schools and Disorderly Conduct statutes' broad reach and arbitrary and discriminatory enforcement. The terms of § 16-17-420 are vague and fail to provide notice to students and others expected to comply with its terms or to provide sufficient guidance to those charged with its enforcement, permitting arbitrary and discriminatory enforcement. When applied to elementary and secondary school students, the terms of §16-17-530 are equally vague.

107. Plaintiffs have an objectively reasonable fear that they will be charged with Disturbing Schools under § 16-17-420 or Disorderly Conduct under § 16-17-530.

108. Plaintiffs have no adequate remedy at law.

CLASS ALLEGATIONS

Plaintiff Class

109. Plaintiffs D.S and S.P. bring this action on behalf of themselves and on behalf of all elementary and secondary public school students in South Carolina ("Plaintiff Class"), each of whom faces a risk of arrest or juvenile referral under the broad and overly vague terms of the challenged statutes.

110. The class is so numerous that joinder of all members is impracticable. F. R. Civ. P. 23(a)(1). Upon information and belief, there are over 750,000 elementary and secondary public school students residing South Carolina. Each of these students faces a risk of arrest or juvenile referral under the broad and overly vague terms of S.C. Code § 16-17-420 or S.C. Code § 16-17-530.

111. Plaintiffs' claims share common issues of law and fact, including but not limited to whether each of the challenged statutes is overly vague and violates the Due Process Clause of the Fourteenth Amendment. Fed. R. Civ. P. 23(a)(2).

112. The claims or defenses of the named Plaintiffs are typical of the claims of members of the Plaintiff Class. All Plaintiffs' claims arise from S.C. Code § 16-17-420 and S.C. Code § 16-17-530 and are based on the same constitutional provisions and arguments.

113. The named Plaintiffs will fairly and adequately protect the interests of the Plaintiff Class. The named Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. Named Plaintiffs and the Plaintiff Class both seek to enjoin enforcement of S.C. Code § 16-17-420 and S.C. Code § 16-17-420 and to obtain a declaration that each law violates the due process guarantees of the Fourteenth Amendment. The attorneys representing the Plaintiffs are experienced civil rights attorneys and are considered able practitioners in federal constitutional litigation.

114. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2). Class certification is also proper because S.C. Code § 16-17-420 and S.C. Code § 16-

17-530 each apply generally to the class, thereby making final injunctive and declaratory relief appropriate as to the whole.

The Defendant Class

115. Plaintiffs bring this action against named Defendants individually and, pursuant to Rules 23(a) and 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all South Carolina law enforcement agencies who may enforce S.C. Code §§ 16-17-420 and 16-17-530 against Plaintiffs. The proposed Defendant Class consists of all South Carolina law enforcement agencies with authority to enforce S.C. Code § 16-17-420 and S.C. Code § 16-17-530 against Plaintiffs.

116. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Upon information and belief, there are more than 200 state and local law enforcement agencies in South Carolina, employing over 11,000 personnel. S.C. Code § 16-17-420 has been enforced against Plaintiffs in each county in South Carolina, apart from Chester County.

117. There are questions of law and fact common to the members of the class, including but not limited to whether the challenged statutes are overly vague and violate the Due Process Clause of the Fourteenth Amendment. Fed. R. Civ. P. 23(a)(2).

118. The claims against the named Defendants are typical of the claims against the Defendant Class, particularly because this is a facial challenge to the statute. All claims arise from S.C. Code § 16-17-420 and S.C. Code § 16-17-530 and are based on the same constitutional provisions and arguments. The Defenses expected to be

asserted by the named Defendants likewise are common to the members of the Defendant Class.

119. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1). Prosecution of separate actions against individuals would create the risk of inconsistent and varying adjudications.

120. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2). Plaintiffs' claims to enjoin enforcement of S.C. Code § 16-17-420 and S.C. Code § 530 apply generally to the class, thereby making final injunctive and declaratory relief appropriate as to the whole.

CLAIMS FOR RELIEF

First Cause of Action

S.C. Code § 16-17-420 Violates Due Process Under the United States Constitution, 42 U.S.C. § 1983

121. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

122. S.C. Code § 16-17-420's vague terms violate Plaintiffs' rights to due process guaranteed by the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV, § 1.

Second Cause of Action

S.C. Code § 16-17-530 Violates Due Process Under the United States Constitution as Applied to Elementary and Secondary Students, 42 U.S.C. § 1983

123. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

124. S.C. Code § 16-17-530's vague terms as applied to elementary and secondary school students violate Plaintiffs' rights to due process guaranteed by the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV, § 1.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court:

A. Issue a declaratory judgment that S.C. Code § 16-17-420 is unconstitutional;

B. Issue a declaratory judgment that S.C. Code § 16-17-530 is unconstitutional;

C. Issue injunctive relief:

1. preliminarily and permanently enjoining enforcement by Defendants of S.C. Code § 16-17-420;

2. preliminarily and permanently enjoining enforcement by Defendants of S.C. Code § 16-17-530 against elementary and secondary school students;

3. enjoining Defendants from considering any Plaintiffs' records relating to being taken into custody, charges filed, adjudication, or disposition under S.C. Code § 16-17-420 or S.C. Code § 16-17-530, and from retaining such records except as would be permissible following expungement under S.C. Code § 17-1-40;

3. enjoining Defendants from considering any Plaintiffs' records related to arrest, booking record, associated bench warrants, mug shots, fingerprints, charges filed, proceedings, or sentencing under S.C. Code § 16-17-420 or S.C. Code § 16-17-530, and from retaining such records except as would be permissible following expungement under S.C. Code § 17-1-40;

D. Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Grant such other, further, and different relief as the Court deems just and proper.

F. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Pursuant to Local Rule 3.01(B), undersigned counsel hereby endorses and certifies that this action is properly filed in the Charleston Division.

Dated: Aug. 11, 2016

Respectfully submitted,

s/Susan K. Dunn_____

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**Pro Hac Vice Motions to be submitted*
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