

# *In re C.P.*: The Ohio Supreme Court's Expansion of *Roper v. Simmons* and *Graham* *v. Florida* to the Realm of Juvenile Sex Offender Registration

by BEN BLUMENTHAL\*

## Introduction

In 2005, prosecutors charged C.P., an eleven-year-old boy in Utah, with sodomy and aggravated sexual abuse of a child.<sup>1</sup> Both charges stemmed from allegations that C.P. had performed illicit sexual acts on his half-sister—three years his minor—over the course of several years.<sup>2</sup> C.P. admitted these charges.<sup>3</sup> In light of his admissions, a Utah juvenile court placed C.P. in temporary foster care and sentenced him to serve thirty days with the Department of Juvenile Justice Services.<sup>4</sup>

The following year, in 2006, a classmate alleged C.P. inappropriately touched her at school.<sup>5</sup> Given his history, the Utah court placed C.P. in a residential treatment program for juvenile sexual offenders.<sup>6</sup> There, he received inpatient care until November 2008 when he returned home to his mother.<sup>7</sup> That living arrangement proved unworkable, however, and in June 2009, C.P. moved to Ohio

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\* J.D. Candidate 2014, University of California, Hastings College of the Law; B.A. 2006, University of California, Santa Cruz, Legal Studies. The author would like to thank Professor David Faigman for his guidance throughout the writing process. The author would also like to thank his family and friends for their love and support.

1. *In re C.P.*, 967 N.E.2d 729, 751 (Ohio 2012) (O'Donnell, J., dissenting).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*

to live with his father.<sup>8</sup> After living in Ohio for nine days, C.P., then fifteen years old, raped his six-year-old nephew.<sup>9</sup>

Ohio prosecutors immediately filed “two counts of child rape and one count of kidnapping with sexual motivation” against C.P., and moved to transfer jurisdiction to try him as an adult.<sup>10</sup> However, the juvenile court judge denied the state’s motion, finding that options within the juvenile justice system had not been “exhaustively tried.”<sup>11</sup> In juvenile court, C.P. admitted each charge in the indictment.<sup>12</sup> Pursuant to his admissions, the court sentenced C.P. to serve time with the Ohio Department of Youth Services and—consistent with Ohio’s version of the Adam Walsh Child Protection Act— notified C.P. of his automatic responsibility to register as a Tier III sex offender for life.<sup>13</sup>

This series of events—conspicuously omitted from the majority opinion—formed the factual basis of a landmark 2012 Ohio Supreme Court Case, *In re C.P.*<sup>14</sup> In that case, the court held the statute mandating C.P.’s automatic lifetime registration as a sex offender<sup>15</sup> constituted cruel and unusual punishment in violation of the Eighth Amendment and Ohio’s own constitutional prohibition against cruel and unusual punishment.<sup>16</sup> Additionally, the court found automatic registration ran afoul of the Fourteenth Amendment’s Due Process Clause.<sup>17</sup>

*In re C.P.* is anomalous for two primary reasons. First, although registration schemes are almost exclusively considered civil rather than punitive in nature, the Ohio Supreme Court applied its recent holding in *State v. Williams*<sup>18</sup> to find Ohio’s juvenile registration

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8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 733.

12. *Id.* at 751 (O’Donnell, J., dissenting).

13. *Id.* at 749, 751–52.

14. *Id.* at 729.

15. OHIO REV. CODE ANN. § 2152.86 (2013).

16. *In re C.P.*, 796 N.E.2d at 732. See U.S. CONST. amend. VIII; OHIO CONST. art. I § 9. As this Note is primarily concerned with *In re C.P.*’s application of federal constitutional law, I will only briefly discuss the Ohio Supreme Court’s analysis under this state constitutional provision.

17. *In re C.P.*, 976 N.E.2d at 732.

18. *State v. Williams*, 952 N.E.2d 1108, 1111 (Ohio 2011) (declaring Ohio’s current registration scheme punitive in nature).

statute constituted cruel and unusual *punishment*.<sup>19</sup> Second, the court interpreted two recent U.S. Supreme Court opinions, *Roper v. Simmons*<sup>20</sup> and *Graham v. Florida*,<sup>21</sup> to compel its result under circumstances far different than either of those cases presented. In so doing, the court grouped Ohio's *automatic* registration requirement, when applied to juveniles, in the same class of cruel and unusual punishment as the death penalty, and life in prison without the possibility of parole for nonhomicide offenses, when similarly imposed upon minors. However, because of its sweeping reasoning regarding registration itself, the opinion also strongly implied the very nature of lifetime reporting requirements—with or without the discretion of juvenile judges—was categorically unconstitutional.<sup>22</sup>

*In re C.P.* thus raises several critical questions. Chief amongst them is whether categorical principles enunciated in *Roper* and *Graham* should even apply to juvenile sex-offender registration schemes. This question is highly relevant because an affirmative answer thereto—as represented by *In re C.P.*—could foreshadow a dramatic shift away from current majoritarian thought on registration schemes generally, and in the juvenile context specifically. This Note, however, attempts to answer this question in the negative, arguing that *In re C.P.*'s implicit categorical ban on lifetime registration for juveniles is unsustainable under Eighth Amendment jurisprudence.

Yet, this Note further contends that the United States Supreme Court's subsequent ruling in *Miller v. Alabama*<sup>23</sup> provides the Ohio Supreme Court a solid framework within which to set a far more supportable precedent. In short, *Miller* held juveniles may not *automatically* be sentenced to life without the possibility of parole

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19. *Williams* was in direct conflict with the Ohio Supreme Court's own prior rulings on the nature of sex-offender registration, all federal circuit courts that have considered the issue, and the United States Supreme Court. See *In re C.P.*, 976 N.E.2d at 752 (O'Donnell, J., dissenting).

20. *Roper v. Simmons*, 543 U.S. 551 (2005) (holding the death penalty is cruel and unusual punishment for any offense committed as a juvenile).

21. *Graham v. Florida*, 130 S. Ct. 2011 (2010) (holding life without the possibility of parole is cruel and unusual punishment for a juvenile convicted of a crime other than murder).

22. *In re C.P.*, 967 N.E.2d at 744 (“In sum, the limited culpability of juvenile nonhomicide offenders who remain within the jurisdiction of the juvenile court, the severity of lifetime registration and notification requirements of PRQJOR status, and the inadequacy of penological theory to justify the punishment all lead to the conclusion that the lifetime registration and notification requirements in R.C. 2152.86 are cruel and unusual.”).

23. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

under the Eighth Amendment, but may still face such stringent punishment after individualized consideration.<sup>24</sup> Based on this new precedent, the Ohio Supreme Court should revisit *In re C.P.* In so doing, the court should unambiguously allow for lifetime juvenile sex offender registration and should only invalidate the *automatic* imposition thereof under the Eighth Amendment. If registration were to be considered punishment at all, such a clarification would cure the infirmity of *In re C.P.*'s strained applications of *Roper* and *Graham* and give lower courts definitive guidance on the boundaries of their discretion.

In order to reach these conclusions, Part I of this Note briefly explores the history of Ohio's registration scheme as it progressed in reaction to national trends and federal legislation. Part II discusses the Ohio Supreme Court's rulings regarding registration leading up to and including *Williams*, and contrasts that opinion with the U.S. Supreme Court's most recent holding regarding sex offender registration statutes. Next, Part III examines *In re C.P.*'s holdings in depth, highlighting the court's application of *Roper* and *Graham* in its Eighth Amendment analysis. Then, Part IV argues that *In re C.P.* relied far too heavily on *Roper* and *Graham* outside of their original contexts. Finally, Part V argues that the Ohio Supreme Court should revisit *In re C.P.* in light of *Miller* and explicitly allow juvenile judges the discretionary authority to impose lifetime registration requirements.

### I. Ohio's Sex Offender Registration Scheme

Ohio first implemented a simplistic sex offender registration scheme in 1963, though it was rarely applied.<sup>25</sup> Those statutes, contained in Chapter 2950 of Ohio's Revised Code ("Chapter 2950"), remained unaltered until the mid-1990s.<sup>26</sup> Since then, Chapter 2950 has been strengthened and amended pursuant to new legislative findings in order to comply with revised federal legislation.<sup>27</sup>

The first major revision to Chapter 2950 came in 1996, when the Ohio General Assembly enacted its version of Megan's Law.<sup>28</sup> Initially, New Jersey created Megan's Law in 1995 after a convicted

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24. *Id.* at 2469.

25. 130 Ohio Laws 669–72; *State v. Bodyke*, 933 N.E.2d 753, 756–57 (Ohio 2010).

26. *Id.* at 757.

27. *Id.*

28. *Id.* (citing Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, 2601).

sex offender raped and murdered his neighbor's young child.<sup>29</sup> In response to this gruesome crime, New Jersey imposed new requirements on convicted sex offenders, including registration and public notification.<sup>30</sup> Congress soon followed suit and enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("Jacob's Act").<sup>31</sup> Jacob's Act required state governments to enact new registration and notification standards or forgo certain federal funding.<sup>32</sup> Accordingly, Ohio incorporated these requirements into its revised registration scheme.<sup>33</sup>

The Ohio General Assembly again modified its sex offender registration requirements in 2003.<sup>34</sup> Those new revisions were based on the General Assembly's "finding that all sex offenders pose a risk of engaging in further sexually abusive behavior after being released from prison and that the protection of the public from those offenders is a paramount governmental interest."<sup>35</sup> Accordingly, "registration requirements were made more demanding, the community-notification and residency-restriction provisions were made more extensive, and sheriffs' authority was expanded to include the power to obtain landlord verification that the offender lived at a registered address."<sup>36</sup>

Then, in 2006, Congress passed the Adam Walsh Child Protection and Safety Act ("AWA").<sup>37</sup> Title I of the AWA, the Sex Offender Registration and Notification Act ("SORNA"), updated guidelines for sex offender notification and registration, and sought to create a nationalized standard of classification and reporting.<sup>38</sup> To that end, Congress created a three-tiered classification system based solely on the offense, with Tier III encompassing the most serious

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29. *Id.*

30. *Id.*

31. 42 U.S.C. § 14071 (1994) (repealed 2006).

32. *Id.*

33. *Bodyke*, 933 N.E.2d at 757 (citing Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, 2601).

34. *Id.* at 758 (citing Am.Sub.S.B.No. 5, 150 Ohio Laws, Part IV, 6558, 6687–702).

35. *State v. Ferguson*, 896 N.E.2d 110, 113 (Ohio 2008) (citing Legis. Serv. Comm'n, B. Analysis, Am.Sub.S.B. No. 5 (2003)).

36. *Bodyke*, 933 N.E.2d at 759 (citing *Ferguson*, 896 N.E.2d at 121–22 (Lanzinger, J., dissenting)).

37. 42 U.S.C. §§ 16901–16902 (2006).

38. *Bodyke*, 933 N.E.2d at 759.

crimes.<sup>39</sup> In order to ensure compliance, Congress tied ten percent of states' federal crime control funds to conformity with the AWA.<sup>40</sup>

Ohio passed its own version of the AWA in 2007, which introduced heightened regulations for sex offenders.<sup>41</sup> In particular, under the new legislation, an offender was required to:

[R]egister with the sheriff in the county in which he lives, the county in which he attends school, the county in which he is employed, any county in which he is domiciled temporarily for more than three days, and even a county in another state if he works or attends school there. When he registers, he must provide his full name and any aliases as well as his date of birth, social security number, address, the name and address of his employer and school, the license plate of any motor vehicle he owns or operates as part of his employment, his driver's license number, any professional or occupational registration or license, any e-mail address, and all Internet identifiers or telephone numbers registered to him.<sup>42</sup>

The regulations imposed new notification requirements as well.<sup>43</sup> In particular, "any statements, information, photographs, or fingerprints that an offender is required to provide [were] public record and much of that material [was] now included in the sex-offender database maintained on the Internet by the attorney general."<sup>44</sup>

Furthermore, when Congress passed the AWA in 2006, it mandated that registration and notification requirements apply to juveniles adjudged delinquent of a limited number of serious offenses.<sup>45</sup> Ohio's registration scheme complied with that requirement, creating a new subset of juvenile sexual offenders for

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39. 42 U.S.C. § 16911 (2006).

40. 42 U.S.C. § 16925(a) (2006).

41. OHIO REV. CODE ANN. §§ 2950.01–2950.99 (2013).

42. *Bodyke*, 933 N.E.2d at 761 (citing OHIO REV. CODE ANN. § 2950.04(A)(2)(a)–(e) (2008)).

43. OHIO REV. CODE ANN. § 2950.081 (2008).

44. *State v. Williams*, 952 N.E.2d 1108, 1112 (Ohio 2011).

45. 42 U.S.C. § 16911(8) (2006). In 2011, however, the Attorney General promulgated new rules designating these requirements discretionary rather than mandatory. Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630, 1632 (Jan. 11, 2011).

purposes of registration: Public Registry Qualified Juvenile Offender Registrants (“PRQJORS”).<sup>46</sup> PRQJORS were a narrowly defined portion of juvenile sexual offenders aged fourteen to seventeen who committed offenses such as rape, sexual battery, and aggravated murder when sexual gratification was motivation.<sup>47</sup> Under the newly enacted legislation, PRQJORS were automatically subject—without judicial discretion—to lifelong registration and community notification, reviewable only after twenty-five years.<sup>48</sup>

## II. Ohio’s Judicial Stance Towards Registration Turns Against National Tides

The Ohio Supreme Court has considered *ex post facto* challenges to each amended variation of the state’s registration schemes since Megan’s Law.<sup>49</sup> *Ex post facto* prohibitions are in both the United States and Ohio State Constitutions. They forbid “any statute which punishes as a crime an act previously committed, which was innocent when done, which makes more burdensome the punishment for a crime, after its commission.”<sup>50</sup> Thus, if the court found Ohio’s registration scheme punitive, it could not be applied to those convicted of sex offenses prior to the new scheme’s enactment.

In 1998, the Ohio Supreme Court determined the then-existing version of Chapter 2950 was not punitive in nature, but rather a civil remedy directly aimed at the General Assembly’s stated purpose of public safety.<sup>51</sup> Reiterating the legislature’s “irresistible conclusion,” the court noted “there was no justification for . . . not applying [the statute] to previously-convicted offenders . . . [because] the notification provision of the law would have provided absolutely no protection whatsoever on the day it became law, for it would have applied to no one.”<sup>52</sup> Accordingly, the court found Chapter 2950 violated neither federal nor state constitutional prohibitions against

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46. OHIO REV. CODE ANN. § 2152.86(A)(1) (2013).

47. *In re C.P.*, 976 N.E.2d 729, 735 (Ohio 2012) (citing OHIO REV. CODE ANN. § 2152.86 (2013)).

48. OHIO REV. CODE ANN. § 2152.86(B)(1) (2013); OHIO REV. CODE ANN. § 2950.15(C)(2) (2008).

49. *See State v. Cook*, 700 N.E.2d 570 (Ohio 1998); *State v. Ferguson*, 896 N.E.2d 110 (Ohio 2008); *Williams*, 952 N.E.2d at 1112.

50. *Beazell v. Ohio*, 269 U.S. 167, 169–70 (1925).

51. *Cook*, 700 N.E.2d at 585.

52. *Id.* at 578.

ex post facto laws when applied against offenders whose convictions predated the new regulatory scheme.<sup>53</sup>

The court reached an identical conclusion when it considered an ex post facto challenge to Chapter 2950 as amended in 2003.<sup>54</sup> The court acknowledged the increased burdens registrants would face under the new legislation, but rejected an argument that Chapter 2950 had “transmogrified the remedial statute into a punitive one.”<sup>55</sup> Instead, noting the General Assembly’s “clear reaffirmation of an intent to protect the public from sex offenders,” the court found the new regulations merely represented an “effort to better protect the public from the risk of recidivist offenders by maintaining the predator classification so that the public had notice of the offender’s past conduct—conduct that arguably is indicative of future risk.”<sup>56</sup>

In 2010, however, the Ohio Supreme Court reversed course<sup>57</sup> and became only the third state supreme court to deem a registration scheme punitive.<sup>58</sup> In *Williams*, the court found that revisions made in 2008 to Chapter 2950 had traversed the boundary of punishment, thus violating the state’s prohibition against ex post facto laws.<sup>59</sup> The court cited the lack of judicial discretion in the new sentencing scheme, as well as increased reporting and notification requirements in general, as forming the basis for its new stance on Chapter 2950.<sup>60</sup> In that regard, the court emphasized, “no one change compell[ed] our conclusion that [the new regulations are] punitive.”<sup>61</sup> Rather, it was “a matter of degree whether a statute is so punitive that its retroactive application is unconstitutional.”<sup>62</sup>

*Williams* was not simply a departure from the Ohio Supreme Court’s own precedent, but it also stands in direct opposition to the

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53. *Id.* at 588.

54. *See Ferguson*, 896 N.E.2d at 110.

55. *Id.* at 117.

56. *Id.* at 118.

57. *State v. Williams*, 952 N.E.2d 1108, 1112 (Ohio 2011).

58. *See Wallace v. State*, 905 N.E.2d 371, 384 (Ind. 2009) (“[T]he non-punitive purpose of the Act, although of unquestioned importance, does not serve to render as non-punitive a statute that is so broad and sweeping.”); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009) (“[W]e hold that the retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 . . . is punitive.”).

59. *Williams*, 952 N.E.2d at 1113. The court found it unnecessary to address the Federal Constitution’s ex post facto clause. *Id.* at 1110.

60. *Id.* at 1113.

61. *Id.*

62. *Id.*

United States Supreme Court's ruling in *Smith v. Doe*.<sup>63</sup> In *Smith*, the Court rejected an ex post facto challenge to Alaska's sex offender registration laws.<sup>64</sup> Under that statutory scheme, offenders convicted of aggravated sexual crimes were forced to register quarterly for life and notify police of their intention to change residences.<sup>65</sup> Furthermore, an offender's "name, aliases, address, photograph, physical description, description, license [and] identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence" were publicly available on a state website.<sup>66</sup> Finding Alaska's scheme remedial rather than punitive, the Court emphasized "[t]he Ex Post Facto Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences."<sup>67</sup>

In light of *Smith*, Judge O'Donnell of the Ohio Supreme Court noted in his lengthy dissent in *Williams* that "whether a comprehensive registration regime targeting only sex offenders is penal is not an open question."<sup>68</sup> Because Judge O'Donnell found no significant differences between the Alaska statute at issue in *Smith*, the previous versions of Chapter 2950 deemed civil by the court, and its current incarnation, he argued that Ohio's registration scheme remained remedial in nature.<sup>69</sup> Ultimately, however, that argument failed. Through its holding in *Williams*, the Ohio Supreme Court laid the necessary foundation for its ruling in *In re C.P.*

### **III. *In re C.P.* Takes *Williams* to the Next Level on the Heels of *Roper* and *Graham***

Quoting *Williams*, *In re C.P.* began its analysis by reiterating that "all doubt is removed: R.C. Chapter 2950 is punitive."<sup>70</sup> Accepting that determination, the court moved on to note, "in recent years, the [United States Supreme Court] has established categorical rules

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63. *Smith v. Doe*, 538 U.S. 84 (2003).

64. *See id.*

65. *Id.* at 90–91.

66. *Id.* at 84.

67. *Id.* at 103–04.

68. *State v. Williams*, 952 N.E.2d 1108, 1121 (Ohio 2011) (O'Donnell, J., dissenting) (quoting *United States v. Leach*, 639 F.3d 769, 773 (7th Cir. 2011)).

69. *Id.*

70. *In re C.P.*, 967 N.E.2d 729, 734 (Ohio 2012).

prohibiting certain punishment for juveniles.”<sup>71</sup> That precedent, embodied in *Roper* and *Graham*, requires us to briefly consider each of those cases before analyzing the Ohio Supreme Court’s application of their underlying principles in *In re C.P.*

#### A. *Roper* Alters Eighth Amendment Jurisprudence

In *Roper*, the appellee, Christopher Simmons, was seventeen years old when he committed murder.<sup>72</sup> Mr. Simmons was arrested shortly thereafter and confessed to the crime.<sup>73</sup> Consequently, a Missouri court tried Mr. Simmons as an adult and a jury convicted him of murder.<sup>74</sup> Mr. Simmons was later sentenced to death,<sup>75</sup> but appealed his sentence on Eighth Amendment grounds, arguing that imposition of the death penalty for a crime committed as a juvenile was categorically cruel and unusual.<sup>76</sup> The United States Supreme Court eventually ruled in Mr. Simmons’s favor, overturning its prior ruling that had allowed sentencing to death a juvenile over the age of fifteen.<sup>77</sup>

As the Court explained in *Roper*, the Eighth Amendment’s guarantee against cruel and unusual punishment is based on the “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.”<sup>78</sup> In beginning its analysis, the Court in *Roper* noted that this prohibition, “like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design.”<sup>79</sup> To that end, the Court applied a two-part inquiry to determine the constitutionality of the juvenile death penalty.<sup>80</sup> The first half of the Court’s test focused on “objective indicia of consensus, as expressed

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71. *Id.* at 737.

72. *Roper v. Simmons*, 543 U.S. 551, 566–67 (2005). The Court detailed Mr. Simmons’ crime, which involved a nighttime home invasion in which he and another juvenile bound their victim, drove her to a bridge spanning the Meramac River in Missouri, and threw her into the water below to drown. *Id.*

73. *Id.* at 557.

74. *Id.*

75. *Id.* at 558.

76. *Id.* at 559.

77. See *Stanford v. Kentucky*, 492 U.S. 361 (1989).

78. *Roper*, 543 U.S. at 560 (alteration in original) (quoting *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)).

79. *Id.*

80. *Id.* at 564.

in particular by the enactments of [state] legislatures that have addressed the question.”<sup>81</sup> The second part of the Court’s test consisted of its own review of whether execution was a per se “disproportionate punishment for juveniles.”<sup>82</sup>

In the first part of its analysis, the Court found that a majority of states either outlaw the death penalty entirely, or explicitly exempt juveniles from capital punishment.<sup>83</sup> The Court concluded that there was a national consensus against executing juveniles.<sup>84</sup> The second half of the Court’s test focused primarily on clear sociological distinctions between juveniles and adults. Specifically, the Court emphasized three primary distinguishing factors: (1) “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young”<sup>85</sup>; (2) that “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”<sup>86</sup>; and (3) “that the character of a juvenile is not as well formed as that of an adult.”<sup>87</sup> Given these distinctions, the Court concluded the “diminished culpability of juveniles” as compared to adults necessarily undermined the dual purposes of the death penalty: punishment and deterrence.<sup>88</sup> Accordingly, the Court held the death penalty could not be imposed on those who committed their crimes before they turned eighteen.<sup>89</sup>

#### **B. *Graham* Follows Suit**

In *Graham*, the Court built upon *Roper* and found the principles underlying that opinion similarly forbade life sentences without the possibility of parole for juvenile nonhomicide offenders.<sup>90</sup> In that case, the defendant, Terrance Graham, pleaded guilty as an adult to armed burglary with assault or battery and attempted armed robbery for crimes committed when he was sixteen years old.<sup>91</sup> The former

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81. *Id.*

82. *Id.*

83. *Id.* at 565–67.

84. *Id.* at 567.

85. *Id.* at 569 (alteration in original) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

86. *Id.* (citing *Eddings v. Oklahoma*, 455 U.S. 104, 105 (1982)).

87. *Id.* at 570.

88. *Id.* at 571.

89. *Id.* at 574.

90. See *Graham v. Florida*, 130 S. Ct. 2011 (2010).

91. *Id.* at 2018.

offense carried a maximum penalty of life in jail, while the latter carried a maximum penalty of fifteen years imprisonment.<sup>92</sup> Yet, the sentencing judge withheld adjudication and instead imposed concurrent three-year probation terms.<sup>93</sup> Six months later, however, Mr. Graham was again arrested for armed burglary and evading police.<sup>94</sup> A different state judge found Mr. Graham had violated his probation and shown a pattern of increasing violence.<sup>95</sup> Based on those findings, the court sentenced Mr. Graham, now nineteen years old, to spend the rest of his life in prison without the possibility of parole for his previous armed burglary conviction.<sup>96</sup>

In determining whether Mr. Graham's sentence constituted cruel and unusual punishment, the Court applied the same two-part inquiry from *Roper*, looking first to find a national consensus before applying its own independent review of this type of punishment.<sup>97</sup> Applying the first half of its test, in contrast to *Roper*, the Court found the majority of states *allow* juveniles to receive life sentences for nonhomicide crimes.<sup>98</sup> However, the Court noted legislation was not necessarily the touchstone of its analysis.<sup>99</sup> Instead, noting such sentences were exceedingly rare, the Court found "an examination of actual sentencing practices in those jurisdictions" that permit "life without parole for juvenile non-homicide offenders" discloses a consensus against the sentence.<sup>100</sup>

Transitioning to the second half of its inquiry, the Court explained, "[t]he judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question."<sup>101</sup> Given these parameters, the Court reiterated its finding from *Roper* that a juvenile's moral culpability is distinctly different from that of an adult.<sup>102</sup> Accordingly, the Court

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92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 2019–20.

96. *Id.* at 2020.

97. *Id.* at 2021.

98. *Id.* at 2023.

99. *Id.*

100. *Id.*

101. *Id.* at 2026.

102. *Id.* at 2028–29.

reaffirmed *Roper*'s central tenet that juveniles as a whole are "less deserving of the most severe punishments."<sup>103</sup>

With that underlying principle intact, the Court moved on to distinguish nonhomicide offenses from murder. Specifically, the Court emphasized that "[a]lthough an offense like robbery or rape is 'a serious crime deserving serious punishment,' those crimes differ from homicide crimes in a moral sense."<sup>104</sup> Thus, when compared to "an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability."<sup>105</sup> The Court then turned to Mr. Graham's sentence.

Analyzing the sentence of life without the possibility of parole, the Court began by noting such a sentence is the "second most severe penalty permitted by law."<sup>106</sup> The Court further explained that while a death sentence (the most severe) is unique in its irrevocability, "life without parole sentences share some characteristics with death sentences that are shared by no other sentences."<sup>107</sup> Given the gravity of this type of punishment and the Court's finding of a lack of penological justification as applied to juveniles, the Court concluded that life without the possibility of parole is a categorically cruel and unusual punishment for non-homicide crimes committed as a juvenile.<sup>108</sup>

### C. *In re C.P. Applies Roper and Graham to an Entirely Different Category of "Punishment"*

Finally, we turn to the Ohio Supreme Court's application of *Roper* and *Graham* in the context of Ohio's juvenile registration scheme. In deconstructing *In re C.P.*, it is important to note that the court invalidated automatic lifetime registration on three distinct grounds: the Eighth Amendment's bar against cruel and unusual punishment, Ohio's own constitutional prohibition against cruel and unusual punishment, and the Fourteenth Amendment's Due Process Clause. The court's three separate analyses will be considered in turn. However, because this Note focuses on the court's application of Eighth Amendment jurisprudence—which comprised the vast

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103. *Id.* at 2026.

104. *Id.* at 2027 (quoting *Enmund v. Florida*, 458 U.S. 782, 797 (1987)).

105. *Id.*

106. *Id.* (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991)).

107. *Id.*

108. *Id.* at 2030.

majority of the court's analysis—the following discussion will emphasize this particular inquiry.

1. *Eighth Amendment Analysis*

Having accepted the premise that Chapter 2950 imposes “punishment” at the outset of its opinion, the Ohio Supreme Court applied the same two-part test from *Roper* and *Graham* to determine whether automatic lifetime registration constituted *cruel and unusual* punishment under the Eighth Amendment.<sup>109</sup> In looking first to find a national consensus on the issue, the court presented evidence showing many states were in fact opposed to juvenile registration.<sup>110</sup>

The court began its analysis by examining the Sex Offender Registration and Notification Act's (“SORNA”) slow path towards acceptance since its inception in 2006.<sup>111</sup> Specifically, the court noted that in spite of Congress's threat of reduced crime control funding for states that did not adopt SORNA, only three states had substantially complied with SORNA as of 2011.<sup>112</sup> The court then presented evidence showing the primary barrier to states' implementation of SORNA was its juvenile registration requirement.<sup>113</sup> In particular, the court quoted a 2009 study from the National Consortium for Justice Information and Statistics, which found that “[t]he most commonly cited barrier to SORNA compliance was the act's juvenile registration and reporting requirements, cited by 23 states.”<sup>114</sup>

Additionally, the court emphasized that in reaction to these concerns—and states' noncompliance—the U.S. Attorney General promulgated new regulations in 2011 making certain disclosures of juvenile registrants' information discretionary rather than mandatory.<sup>115</sup> The court thus concluded that states' resistance to SORNA, and the Attorney General's attempts to lessen juvenile registration requirements in response thereto, was “reflective of a national consensus against the very policy that Ohio imposed as part

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109. *In re C.P.*, 967 N.E.2d 729, 738 (Ohio 2012).

110. *Id.* at 738–39.

111. *Id.* at 738.

112. *Id.* Ohio was the first state to comply. *Id.*

113. *Id.*

114. *Id.* (quoting National Consortium for Justice Information and Statistics, Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA) (2009), <http://www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf> (last visited Nov. 6, 2013)).

115. *Id.* at 739.

of its attempt to comply with SORNA.”<sup>116</sup> Having fulfilled its goal of finding a national consensus on juvenile registration, the court moved to the second half of its inquiry under *Roper* and *Graham*’s cruel and unusual punishment analysis.

The court began by emphasizing the importance of its duty to independently review Chapter 2950 in determining its constitutionality under the Eighth Amendment.<sup>117</sup> In order to conduct that review, the Ohio Supreme Court undertook a careful study of the state’s juvenile registration scheme, examining several factors the United States Supreme Court enunciated in *Graham*.<sup>118</sup> Those factors were: (1) the culpability of the offenders; (2) the nature of the offenses; (3) the severity of the punishment; and (4) penological justifications.<sup>119</sup> Each factor will be addressed in turn.

In considering the culpability of the offenders, the court stressed the same clear differences between juveniles and adults that formed the basis for the Supreme Court’s rulings in *Roper* and *Graham*.<sup>120</sup> Those key differences included juveniles’ categorically reduced degree of moral culpability, and their greater chances to conform to societal norms.<sup>121</sup> Furthermore, the court found it noteworthy that C.P. himself, and those who would similarly fall under the PRQJOR framework, would, “[b]ased on the review of a juvenile judge . . . have been determined to be amenable to the rehabilitative aims of the juvenile system.”<sup>122</sup> Accordingly, the court found such juveniles “are in a category of offenders that does not include the worst of those who commit crimes as juveniles.”<sup>123</sup>

Moving on to consider the nature of the offense at issue, the court relied heavily on *Graham* to establish the truism that sexual offenses that qualify juveniles for PRQJOR status are less serious

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116. *Id.*

117. *Id.* at 740.

118. *Id.* at 740–44.

119. *Id.* at 742–43.

120. *Id.* at 740–41.

121. *Id.*

122. *Id.* at 741.

123. *Id.* The court emphasized the relevance of this judicial determination at the pretrial stage, implying as a matter of fact that juveniles who remain within the juvenile justice system are not amongst the “worst” offenders. *Id.* However, as the Supreme Court has since noted, when a juvenile judge makes the determination to keep an offender within the juvenile justice system, she “does not know then what she will learn, about the offender or the offense, over the course of the proceedings,” and thus such a determination will necessarily be imperfect. *Miller v. Alabama*, 132 S. Ct. 2455, 2474 (2012).

than murder.<sup>124</sup> Based on that premise, the court found, as in *Graham*, “a juvenile who did not kill or intend to kill has ‘twice diminished moral culpability’ on account of his age and the nature of his crime.”<sup>125</sup> Thus, the court used the nature of the offense at issue—forcible rape—to conclude that juveniles guilty of such crimes are less morally culpable than adults who commit murder and are thus less deserving of the most serious punishments.<sup>126</sup>

The court began the next portion of its analysis—its consideration of the severity of the punishment at stake—by noting the obvious difference between a registration requirement and “the harshest and next-harshest possible sentences, death and life without possibility of parole.”<sup>127</sup> Yet, the court found such a dramatic difference was not an obstacle to its analysis, by virtue of the underlying fact that—as in *Graham*—Chapter 2950 imposed a *lifetime* of punishment.<sup>128</sup> Thus, citing *Graham* for the proposition that a lifetime prison sentence “is different from such a sentence for an adult [because] the juvenile will spend a greater percentage of his life in jail than the adult,”<sup>129</sup> the court emphasized a juvenile subject to lifetime registration would serve a similarly lengthy sentence.<sup>130</sup> Based upon that commonality, the court stressed that “[w]hile not a harsh penalty to a career criminal used to serving time in a penitentiary, a lifetime or even twenty-five year requirement of community notification means everything to a juvenile.”<sup>131</sup>

Finally, the court looked towards penological justifications—namely society’s interests in “retribution, deterrence, incapacitation and rehabilitation”<sup>132</sup>—to determine whether the “punishment” Chapter 2950 imposed was legitimate.<sup>133</sup> The court structured its analysis around the goals of the juvenile justice system in Ohio, which was created in order to “provide for the care, protection, and mental and physical development of children . . . protect the public interest and safety, hold the offender accountable for the offender’s actions,

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124. *In re C.P.*, 967 N.E.2d at 741.

125. *Id.* (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2027 (2010)).

126. *Id.*

127. *Id.*

128. *Id.* at 741–42.

129. *Id.* at 741 (citing *Graham*, 130 S. Ct. at 2028).

130. *Id.*

131. *Id.* at 742.

132. *Id.* (citing *Graham*, 130 S. Ct. at 2028).

133. *Id.* at 742–44.

restore the victim, and rehabilitate the offender.”<sup>134</sup> The court conceded that “[a]s for protecting the public interest and safety, some might argue that the registration and notification requirements further those aims.”<sup>135</sup> Yet, the court dismissed every other penological justification as poorly served by lifetime registration—and any registration at all in the juvenile context—by deriding the “effect of forcing a juvenile to wear a statutorily imposed scarlet letter as he embarks on his adult life.”<sup>136</sup>

In summary, the court reiterated its strong reliance on the *Graham* framework, concluding:

[T]he limited culpability of juvenile nonhomicide offenders who remain within the jurisdiction of the juvenile court, the severity of lifetime registration and notification requirements of PRQJOR status, and the inadequacy of penological theory to justify the punishment all lead to the conclusion that the lifetime registration and notification requirements in R.C. 2152.86 are cruel and unusual. We thus hold that for a juvenile offender who remains under the jurisdiction of the juvenile court, the Eighth Amendment forbids the automatic imposition of lifetime sex-offender registration and notification requirements.<sup>137</sup>

Having thus established the unconstitutionality of Ohio’s juvenile registration scheme under the Eighth Amendment, the court moved on to consider Ohio’s own prohibition against cruel and unusual punishment in its constitution.

## 2. *Ohio’s Own Prohibition Against Cruel and Unusual Punishment*

The Ohio Constitution contains its own bill of rights, including a prohibition against cruel and unusual punishment identical to that

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134. OHIO REV. CODE ANN. § 2152.01 (2002).

135. *In re C.P.*, 976 N.E.2d at 742. This group would seemingly include the Ohio General Assembly, who enacted Chapter 2950 based upon findings that given “adequate notice and information about offenders and delinquent children who commit sexually oriented offenses[.] . . . members of the public and communities can develop constructive plans to prepare themselves and their children for the offender’s or delinquent child’s release from imprisonment, a prison term, or other confinement or detention.” OHIO REV. CODE ANN. § 2950.02(A)(1) (2008).

136. *In re C.P.*, 976 N.E.2d at 743.

137. *Id.* at 744.

found in the Eighth Amendment.<sup>138</sup> As previously interpreted by the Ohio Supreme Court: “[a]s long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.”<sup>139</sup> That greater protection manifests itself as shielding punishment that would be “shocking to any reasonable person.”<sup>140</sup> In this portion of its opinion, the court concluded that—in light of the unique aims of the juvenile justice system, its traditional secrecy, and the stigmatizing effects of registration—Chapter 2950 “shock[ed] the sense of justice of the community.”<sup>141</sup>

### 3. *The Court’s Fourteenth Amendment Inquiry*

At last, the court looked to due process under the Fourteenth Amendment to further buttress its holding.<sup>142</sup> The court enunciated that based on United States Supreme Court precedent, the due process standard for the juvenile justice system is “fundamental fairness.”<sup>143</sup> With this standard as the guidepost, the court focused on the lack of individuality in sentences imposed under Chapter 2950.<sup>144</sup> Crucial to this inquiry was the lack of judicial discretion in imposing what the court had already deemed a lifelong punishment.<sup>145</sup> To that end, the court emphasized that “[t]he disposition of a child is so different from the sentencing of an adult that fundamental fairness to the child demands the unique expertise of a juvenile judge.”<sup>146</sup> Based on that premise, the court concluded that when lifetime registration is at stake, “fundamental fairness requires that the judge determine the appropriateness of any such penalty.”<sup>147</sup>

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138. OHIO CONST. art. I § 9.

139. *Arnold v. Cleveland*, 616 N.E.2d 163, 169 (Ohio 1993).

140. *In re C.P.*, 967 N.E.2d at 745 (quoting *McDougle v. Maxwell*, 203 N.E.2d 334, 336 (Ohio 1964)).

141. *Id.* at 746. However, if “shocking the community” is the standard, it seems odd to give no deference to the legislative body comprised of the community’s elected representatives.

142. *Id.*

143. *Id.* at 747 (citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 590 (1971) (plurality opinion)).

144. *Id.* at 747–50.

145. *Id.* at 748.

146. *Id.*

147. *Id.* at 749.

#### IV. *In re C.P.*'s Strained Analyses

Before deconstructing *In re C.P.*'s analyses piecemeal, it is necessary to delineate what its holding actually means. That is, while the court's holding seems narrowly applicable to the automatic imposition of lifetime registration on juveniles adjudicated within the juvenile justice system, the letter and spirit of the opinion as a whole suggests a far broader application.

For example, had the Ohio Supreme Court wished to simply find the *automatic* imposition of lifetime registration unconstitutional, it could have restricted itself to a due process analysis to strike down mandatory sentencing in the juvenile context. Instead, the court analyzed juvenile registration in light of the *Graham* factors and decided those factors "all lead to the conclusion that the lifetime registration and notification requirements . . . are cruel and unusual."<sup>148</sup> This inconsistency led Judge Cupp, dissenting in *In re C.P.*, to point out that on remand, "the trial court will be forced to guess what is actually required . . . ."<sup>149</sup> Given the court's broad and sweeping analysis, however, this Note proceeds on the assumption that, as a practical matter, *In re C.P.* stands as an implicit categorical ban on lifetime registration for juveniles adjudicated within the juvenile justice system.

##### A. Eighth Amendment

Moving on to the reasoning behind the court's holding, *In re C.P.*'s Eighth Amendment analysis is fundamentally flawed on two levels. First, as previously discussed, *Williams*' basic premise that Ohio's registration scheme is punitive represents a dramatic departure from Ohio's own precedent and runs contrary to the great weight of authority on point.<sup>150</sup> Second, even if we accept the premise that Ohio's registration scheme is punitive, the court's designation of that punishment as cruel and unusual as applied to juveniles is an almost incomprehensible result.

Indeed, as Judge Cupp argued in his dissent, lost in the majority's strong rhetoric is the reality that registration schemes are simply too far removed from both the death penalty and life in prison without the possibility of parole to justify the court's strong reliance on *Roper*

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148. *Id.* at 744.

149. *Id.* at 759 (Cupp, J., dissenting).

150. *See supra* Part II.

and *Graham*.<sup>151</sup> To be clear, Judge Cupp's dissent paid due deference to the premises underlying *Roper* and *Graham*—that juveniles are simply different than adults.<sup>152</sup> However, Judge Cupp argued that “the general standards of gross disproportionality and substantial deference to the legislative judgment expressed within the relevant statute are not to be abandoned merely because the offender is a juvenile.”<sup>153</sup> Accordingly, Judge Cupp emphasized, with near disbelief, the incredible juxtaposition the court all but glossed over: the difference between registration and the death penalty or life without the possibility of parole.<sup>154</sup> He noted “the sex-offender registration and notification provisions at issue in this case are so significantly different from the punishment at issue in *Graham* . . . that I am left wondering how the two can possibly be considered comparable for constitutional purposes.”<sup>155</sup>

A closer look into the court's analysis reveals how the majority minimized the relevance of that difference. For example, *In re C.P.*'s argument directly echoes *Graham*; however, the resulting stance that juvenile offenders who commit rape have “twice diminished moral culpability” (and thus are not deserving of the most serious punishments) is a surprising statement to make. Distinct from *In re C.P.*, the United States Supreme Court in *Graham* used the premise of “twice diminished moral culpability” to hold that juveniles who do not commit murder cannot be subject to the two most serious punishments our society allows. Had C.P. been sentenced to life imprisonment, the court would have been correct to invoke this reasoning; however, in the matter before it, the Ohio Supreme Court's use of *Graham*'s rhetoric to establish that C.P. is undeserving of sex offender registration seems disingenuous at best. Additionally, the court's argument, also taken from *Graham*, that lifelong punishment will typically last longer for a juvenile than an adult is true; yet, applying that argument in the context of registration ignores the fact that *Graham*'s analysis revolved around a form of punishment unique in its deprivation of liberty, and substantively incomparable to lifetime registration.

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151. *In re C.P.*, 967 N.E.2d at 758 (Cupp, J., dissenting).

152. *Id.* at 757.

153. *Id.*

154. *Id.* at 757–58.

155. *Id.*

Further proving the novelty of *In re C.P.*'s analysis is *United States v. Juvenile Male*,<sup>156</sup> an opinion from the Ninth Circuit Court of Appeals released only two months prior to *In re C.P.* There, the Ninth Circuit similarly addressed an Eighth Amendment challenge to juvenile registration and reporting under SORNA.<sup>157</sup> However, the court not only doubted registration could be considered punishment, but candidly noted that while "SORNA may have the effect of exposing juvenile defendants and their families to potential shame and humiliation for acts committed while still an adolescent, the statute does not meet the high standard of cruel and unusual punishment."<sup>158</sup> Elaborating further, the court reasoned "the requirement that juveniles register in a sex offender database for at least twenty-five years because they committed the equivalent of aggravated sexual abuse is not a disproportionate punishment."<sup>159</sup> The Ninth Circuit's reasoning and final ruling stands as a stark reminder of just how far the Ohio Supreme Court departed from mainstream Eighth Amendment opinion to reach its holding in *In re C.P.*

#### **B. Fourteenth Amendment**

*In re C.P.*'s due process analysis, in which the court concluded the automatic imposition of lifetime registration for juveniles contravened the Fourteenth Amendment, is similarly troublesome. For example, in *Connecticut Department of Public Safety v. Doe*,<sup>160</sup> the United States Supreme Court upheld a Connecticut statute that required convicted sex offenders to register with the state without an individualized hearing to determine their current dangerousness.<sup>161</sup> There, the Court dismissed a due process challenge to the law, finding "even assuming, arguendo, that [an offender] has been deprived of a liberty interest, due process does not entitle him to a hearing to establish a fact that is not material under the Connecticut statute."<sup>162</sup>

Similarly, in *United States v. Juvenile Male*, the court reached an identical holding in the juvenile context, finding where a "law's requirements turn on an offender's conviction alone—a fact that a

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156. *United States v. Juvenile Male*, 670 F.3d 999 (9th Cir. 2012).

157. *See id.*

158. *Id.* at 1010.

159. *Id.*

160. *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003).

161. *See id.*

162. *Id.* at 7.

convicted offender has already had a procedurally safeguarded opportunity to contest’—no additional process is required for due process.”<sup>163</sup> Given this precedent, Judge O’Donnell, dissenting in *In re C.P.*, concluded “[d]iscretion is a matter of grace and not of right. Thus, the General Assembly was within its authority to impose automatic registration on juvenile sex offenders . . . .”<sup>164</sup>

## V. *Miller v. Alabama*: Judicial Discretion as an Eighth Amendment Requirement

Though likely correct in a strict due process analysis, Judge O’Donnell’s conclusion that the General Assembly has complete authority to impose automatic registration for juveniles may nevertheless have been too broad. In fact, less than three months after the Ohio Supreme Court decided *In re C.P.*, the United States Supreme Court’s ruling in *Miller v. Alabama*<sup>165</sup> tangentially bolstered the majority’s argument for individualized juvenile sentencing.

### A. The *Miller* Holding

*Miller* is the United States Supreme Court’s most recent examination of juveniles, criminal justice, and the Eighth Amendment.<sup>166</sup> Not surprisingly, in *Miller*, the Court reaffirmed the principles underlying all of its recent opinions regarding juveniles within the criminal justice system.<sup>167</sup> Yet, in so doing, the Court built upon its holding in *Graham* to find that, while juveniles may be sentenced to life in prison without parole for homicide offenses, such sentences may not be automatically imposed.<sup>168</sup>

*Miller* was a consolidation of two separate cases. In each case, a jury convicted a fourteen-year-old juvenile of murder.<sup>169</sup> Each

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163. *United States v. Juvenile Male*, 670 F.3d 999, 1014 (9th Cir. 2012) (quoting *Doe v. Tandeske*, 361 F.3d 594, 596 (9th Cir. 2004)).

164. *In re C.P.*, 967 N.E.2d 729, 756 (Ohio 2012) (O’Donnell, J., dissenting).

165. *See Miller v. Alabama*, 132 S. Ct. 2455 (2012).

166. *See id.*

167. *See id.* This included not only *Roper* and *Graham*, but also *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2009), in which the Court held the age of a juvenile—when known to an interrogating officer—must be considered a factor in the officer’s *Miranda* custody determination.

168. *Miller*, 132 S. Ct. at 2469. Specifically, the Court concluded, “[a]lthough we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*

169. *Id.* at 2461–62.

juvenile was then automatically sentenced to life without the possibility of parole under mandatory state sentencing statutes.<sup>170</sup> However, the Court noted that in both cases there were numerous mitigating factors in addition to the offenders' youth that would have allowed a judge *with* discretion to impose lighter sentences.<sup>171</sup> One appellant, for example, had participated in a robbery that culminated in murder, but had not actually killed the victim.<sup>172</sup> The second appellant did in fact kill his victim, but had endured a horrific upbringing and had, by the age of fourteen, already attempted to commit suicide four times.<sup>173</sup>

In addressing these sentences, the Court did not conduct its analysis through the lens of due process, but rather through the Eighth Amendment as applied primarily in *Roper* and *Graham*.<sup>174</sup> Thus, the Court began its discussion as it had in each of those cases—by reiterating that “children are constitutionally different than adults for sentencing purposes.”<sup>175</sup> Justice Elena Kagan, writing for the majority, went on to acknowledge that *Graham*'s prohibition on life without the possibility of parole for juveniles specifically exempted homicide offenses, but noted that “nothing that *Graham* said about children is crime-specific.”<sup>176</sup> The Court went on to discuss the shortcomings of mandatory sentences as applied to juveniles.<sup>177</sup>

Continuing to craft her analysis based on *Graham*, Justice Kagan began her consideration of mandatory sentences for juveniles by reiterating that “[a]n offender's age, we made clear in *Graham*, is relevant to the Eighth Amendment, and so criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed.”<sup>178</sup> Speaking to the mandatory sentencing statutes, the Court announced:

By removing youth from the balance . . . these laws prohibit a sentencing authority from assessing whether

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170. *Id.*

171. *Id.*

172. *Id.* at 2461.

173. *Id.* at 2462.

174. *See id.* at 2469.

175. *Id.* at 2458.

176. *Id.*

177. *Id.* at 2467–69.

178. *Id.* at 2466 (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2031 (2010)) (internal quotations omitted).

the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham's* (and also *Roper's*) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.<sup>179</sup>

The Court, therefore, did not alter *Graham* by holding juveniles may not be sentenced to life without the possibility of parole. Rather, the Court removed the decision to impose such sentences on a mandatory basis away from state legislators and into the hands of judges. This outcome clearly reverberates in the context of mandatory juvenile sex offender registration.

### **B. A Logical Middle Ground Emerges**

*Miller*, like *Roper* and *Graham*, speaks to a category of sentences far more serious than sex-offender registration. In fact, as this Note points out, registration is generally not considered punitive at all. Yet, even accepting the premise of punitiveness—as we must under current Ohio precedent—registration is simply too far removed from the factual bases of *Roper* and *Graham* to justify *In re C.P.*'s reliance thereon. However, while the death penalty and life without parole cannot, and should not, be compared to registration schemes in a substantive analysis under the Eighth Amendment, *Miller's* procedural analysis under the same constitutional provision seems wholly applicable. That is, the United States Supreme Court's willingness to dictate an Eighth Amendment requirement for individuality in juvenile sentencing, like *Graham's* analysis of children in general, cannot be "crime-specific."<sup>180</sup>

Given this new precedent, the Ohio Supreme Court should revisit and clarify *In re C.P.* Specifically, the court should allow juvenile court judges to impose lifetime registration requirements if, and when, a juvenile's actions are so heinous as to justify such stringent obligations. In so doing, the court would distance itself from its sweeping, categorical analysis that placed juvenile registration on an equal footing with the death penalty and life imprisonment without the possibility of parole. Additionally, this result would still reflect the principle that juveniles must be treated differently than

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179. *Id.*

180. *Id.* at 2458.

adults, by allowing judges to tailor registration requirements to a particular child based on factors other than conviction or adjudication alone.

### Conclusion

*In re C.P.*'s holding seems specific enough: "[F]or a juvenile offender who remains under the jurisdiction of the juvenile court, the Eighth Amendment forbids the automatic imposition of lifetime sex-offender registration and notification requirements."<sup>181</sup> However, as a practical matter, in view of the court's sweeping analysis, it seems *In re C.P.* stands as a categorical ban on lifetime registration for juvenile sexual offenders.<sup>182</sup>

Such a categorical ban, however, cannot be supported by the Eighth Amendment precedent *In re C.P.* so heavily relied upon; nor can *In re C.P.*'s due process analysis support the weight of its holding. Clearly, this leaves *In re C.P.* in a precarious situation. As trial courts in Ohio will now undoubtedly struggle to determine the bounds of their discretion in imposing registration requirements on juvenile offenders, the most effective method to alleviate this confusion is perhaps the most obvious: revisit *In re C.P.* using *Miller* as a blueprint. Quite simply, *Miller* held juveniles may be severely punished for committing severe crimes, but judges must have individual discretion to do so. If registration is to be treated as punishment at all, there is no reason to treat juvenile sex offender registration any differently in Ohio or anywhere else.

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181. *In re C.P.*, 967 N.E.2d 729, 744 (Ohio 2012).

182. *See supra* Part IV.

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