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**IN THE  
MISSOURI SUPREME COURT**

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**F. R.,**

**Appellant,**

**v.**

**ST. CHARLES COUNTY  
SHERIFF'S DEPARTMENT**

**Respondent.**

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**Case No. SC89834**

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**Appeal from the Circuit Court of St. Charles County, Missouri  
The Honorable Ted House, Circuit Judge**

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**BRIEF OF AMICUS MISSOURI ATTORNEY GENERAL**

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## **INTEREST OF AMICUS**

F.R. filed suit in the Circuit Court of St. Charles County, raising constitutional challenges to §566.147, RSMo 2007 (the “School Residency Law”). Because F.R. raised challenges to the constitutionality of a statute, the Missouri Attorney General’s Office participated in the circuit court as amicus, pursuant to Mo.R.Civ.P. 87.04 and §527.110, RSMo. L.F. at 26. Pursuant to these provisions, the Attorney General again appears as amicus in this Court.

## ARGUMENT

**I. The School Residency Law is not an invalid retrospective law as applied to F.R. because it does not create a new obligation, impose a new duty, or attach a new disability with respect to transactions or considerations already past; it only restricts a certain area in which F.R. can live.**

F.R. brings constitutional challenges to the School Residency Law. Construction of a statute is a question of law that this Court reviews de novo. *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006). A “statute is presumed to be valid and will not be declared unconstitutional unless it clearly contravenes some constitutional provision.” *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 340 (Mo. banc 1993).

F.R.’s first constitutional challenge to the School Residency Law is that the law violates Article I, Section 13 of Missouri’s Constitution which provides “that no law . . . retrospective in its operation . . . can be enacted.” In *Jerry-Russell Bliss v. Hazardous Waste*, 702 S.W.2d 77 (Mo. banc 1985), this Court set out types of situations in which a law will be found to be retrospective in operation: New laws may not “impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions . . . already past.” *Id.* at 81. But “[a] statute is not retrospective or retroactive . . . because it relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage, or because it fixes the status of an entity for the purpose of its operation.” *Id.* A ‘vested right’ has been defined as “a title, legal or equitable, to the present or future enjoyment of property or to the present or to the present or future enjoyment of property or

to the present or future enjoyment of the demand, or a legal exemption from a demand made by another. *La-Z-Boy Chair Co. v. Director of Economic Development*, 983 S.W.2d 523, 525 (Mo. banc 1999). This Court has held that a vested right “must be something more than a mere expectation based on an anticipated continuance of the existing law,” because no one has a vested right that the law will remain unchanged. *Id.*

As a preliminary matter, this instant case is distinguishable from this Court’s holding in *R.L. v. State of Missouri Department of Corrections*, 245 S.W.3d 236 (Mo. banc 2008). In *R.L.*, the registered sex offender pled guilty to a crime requiring him to register as a sex offender in 2005, prior to the enactment of the 2006 version of the School Residency Law. *Id.* at 236 – 37. R.L. had resided in his home since 1997; a home which had a grade school within 1,000 feet. *Id.* This Court held that the School Residency Law imposed a new obligation on R.L. and those similarly situated by requiring them to change their places of residence based solely on offenses committed prior to the enactment of the School Residency Law, thus violating the bar on retrospective laws. *Id.* at 237 – 38. The Court likened R.L.’s situation to that of sex offenders in *Doe v. Phillips*, 194 S.W.3d 833, 850 (Mo. banc 2006). In *Doe v. Phillips*, the Court held that requiring individuals to register as sex offenders based on crimes committed prior to the effective date of the sex offender registration law imposed an obligation and duty to register based solely on offenses committed prior to the enactment of the law; and thereby violated Missouri’s ban on retrospective laws. *Id.* at 850 – 852.

Unlike in *R.L.*, there is no new obligation or duty imposed on F.R. by the School Residency Law. He is not being forced to abandon his home like R.L. was. Nor is he being required to register as a sex offender as a result of crimes committed prior to the enactment

of the statute like in *Doe v. Phillips*. He is merely restricted from moving his residence to areas that are in close proximity to a school or child-care facility. Unlike R.L., F.R. does not currently reside in such an area, nor does he claim to own property in them.

While seemingly conceding that a new duty had not been imposed on him by the School Residency Law, F.R. argues that a new obligation has been imposed by forcing him to identify schools or child-care facilities near any home he would like to occupy in order to ascertain the distance. This argument ignores the requirements F.R. is already required to take as a convicted sex offender. Pursuant to §589.414.1, RSMo 1998 (the statute in effect at the time F.R. pled guilty to his crime), F.R. is required to notify the chief law enforcement official within ten business days<sup>1</sup> of his move to a new residence. After this required notification to law enforcement, F.R. would then be notified by law enforcement if he was in violation of the School Residency Law – just as he was in this case after informing the St. Charles County Sheriff’s Department of his intent to move. Statement of Facts at p.6-7. F.R. did not impose any new obligation in checking to make sure his proposed residence was not within 1,000 feet of a school or child-care facility; St. Charles Sheriff’s Department did it for him. There is no “new” obligation imposed on F.R., since he is already required to contact law enforcement every time he moves pursuant to §589.414. Therefore, there is no “new obligation” being imposed on F.R.

F.R. then argues that a new disability has been attached by the School Residency Law, a disability to live near a school or near a child-care facility. Brief of Appellant at p.16-17.

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<sup>1</sup> This statute has since been amended to require this notification within three business days.

While F.R.'s Brief lists the number of schools and child care facilities in his area as evidence of a new disability, at best this is a speculative argument based on evidence not contained in the record that is not ripe for adjudication. There is no evidence in the record that F.R. himself has been unable to find a place to live due to the School Residency Law. Nor is there any evidence in the record that F.R. was in any danger of violating the School Residency Law at his old residence. The only evidence in the record before this Court is that F.R. cannot reside at one specific location.

What F.R. argues is a new disability in not being able to reside at this one specific location is in actuality akin to a zoning ordinance, since it effectively restricts F.R.'s use of property within 1,000 feet of a school or child-care facility. The Missouri Court of Appeals, Western District, analyzed a situation in which an individual brought a retrospective law challenge to a zoning ordinance that was being applied retroactively to him in *City of Blue Springs v. Gregory*, 764 S.W.2d 101 (Mo.App.W.D. 1989). There, Gregory was issued a citation for a violation of a city ordinance prohibiting the parking of a commercial truck weighing over six tons in a residential area. *Id.* at 102. Gregory did not dispute that he violated the ordinance. But he argued that having parked in the area for the fourteen years prior to the enactment of the ordinance gave him a constitutionally protected, vested right to continue parking there. *Id.* The court disagreed, holding that the ordinance related to the health, safety, peace, comfort, and general welfare of the residents and was, therefore, fairly referable to the exercise of the city's police powers. *Id.* at 103. Thus, the ordinance did not violate a vested right by means of a retrospective law. *Id.*

Likewise, the School Residency Law is reasonably necessary for promotion of public

health, safety, morals, or welfare of the residents of the State of Missouri. This Court has stated that the “obvious legislative intent for enacting [the Missouri Sex Offender Registration Act] was to protect children from violence at the hands of sex offenders.” *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. banc 2000). The School Residency Law at issue in this case also advances the legitimate, non punitive purpose of public safety and protecting children from sex offenders by preventing sex offenders from living within close proximity to schools and day cares. The restriction that F.R. cannot reside within 1,000 feet there is reasonably necessary to advance this same purpose.

Like the plaintiff in *Gregory*, F.R. is not being deprived of a vested right by the School Residency Law. The Law only prohibits him from residing within one thousand feet of a school or child-care facility. It does not prohibit him from owning, renting, or leasing property within one thousand feet of such a facility. F.R. does not allege that he has been denied any income or employment as a result of the School Residency Law. He is not prevented from moving about, from changing his domicile, or from associating and living with whomever he chooses – so long as he is not within 1,000 feet of a school or childcare facility.

F.R. cites no cases in support of the proposition that the School Residency Law impacts any of his fundamental rights. This is because, as the Court of Appeals for the Eight Circuit has stated, “we cannot agree that the right to choose one’s place of residence is necessarily a fundamental right.” *Doe v. Miller*, 405 F.3d 700, 714 (8<sup>th</sup> Cir. 2005) (quoting *Prostrollo v. Univ. of S.D.*, 507 F.2d 775, 781 (8<sup>th</sup> Cir. 1974)). While the School Residency Law unquestionably restricts use of certain property for F.R., this restriction is a valid use of

the State's police powers, and is reasonably necessary for promotion of public health, safety, morals or welfare.

In Point I of his Brief, F.R essentially argues that he has a vested right to the law remaining the same and being able to live where he wants without respect to his status as a convicted sex offender. This Court recently rejected a similar argument made in a challenge to a statute that limited the visitation and custody rights of a parent. In *Canon v. Canon*, 280 S.W.2d 79 (Mo. banc 2009), this Court looked at §452.375, RSMo 2006, which expressly prohibits a court from awarding unsupervised visitation or custody to a parent convicted of crimes such as statutory rape and statutory sodomy. The father in *Canon* was convicted of these two crimes. *Id.* at 81. At the time the marriage of the father and mother was dissolved, §452.375, RSMo 2006, was not in effect. *Id.* at 85. However, the amended law was in effect at the time the father sought to modify the custody arrangement, and the law prohibited him from obtaining unsupervised custody or visitation of his children. *Id.* The father challenged the law as applied to him as being unconstitutionally retrospective since it was not in effect at the time his marriage was dissolved, and it served to take away his fundamental right to associate with his own children. *Id.* at 83. This Court rejected his argument, finding that the fact he had not anticipated the law would be enacted to preclude him from seeking a change in the nature of his visitation did not make the amended law unconstitutionally retrospective in operation, for “a mere expectation based upon anticipated continuance of the existing law does not constitute a vested right.” *Id.* at 85.

In summary, the School Residency Law as applied to F.R. does not create a new obligation, impose a new duty, or attach a new disability with respect to transactions or

considerations already past. It only prohibits, prospectively, a certain area in which he can live. The School Residency statute was in effect at the time F.R. attempted to move within 1,000 feet of a school. While the prohibition on him living within 1,000 feet of a school did not exist at the time F.R. pled guilty to the crime requiring him to register as a sex offender, just as in *Canon*, this alone does not make the School Residency Law unconstitutionally retrospective. While it may be an inconvenience for F.R. to not be able to move to the exact location he desires – he has no fundamental right to live where he wants under the law, and any potential inconvenience does not rise to the level of a new duty, a new obligation, or new disability. Any inconvenience that may exist to F.R. is outweighed by the State’s legitimate interest in protecting children from violence at the hands of sex offenders. F.R. is not inconvenienced as much as the father in *Canon* who was not able to obtaining unsupervised custody or visitation of his children. This Court should therefore affirm that the School Residency Law does not violate Missouri’s ban on retrospective laws.

**II. The School Residency Law is not unconstitutionally vague or unambiguous, as people of reasonable intelligence would know that the 1,000 foot requirement should be measured property line to property line (Response to Appellant’s Points II and III).**

In Point II of his Brief, F.R. argues that the School Residency Law is unconstitutionally vague. In Point III, he argues that is ambiguous. Both Points center around the same argument – namely, that the phrase in the School Residency Law “shall not reside within one thousand feet of any public school . . . private school . . . or child-care facility” is vague and ambiguous as to how the 1,000 feet should be measured. Both arguments are without merit.

Courts presume a statute to be constitutional, holding otherwise only if the statute plainly contravenes some constitutional provision. *Prokopf v. Whaley*, 592 S.W.2d 819, 824 (Mo. banc. 1980). A court must be reluctant to declare statutes unconstitutional and must resolve all doubts in favor of validity of a legislative act. *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 8 (Mo. banc. 1975). But a statute that fails to clearly define proscribed conduct does violate the Due Process Clause and is void for vagueness. *State v. Allen*, 905 S.W.2d 874, 876 (Mo. banc 1995) .

Vagueness challenges take two forms. *State v. Young*, 695 S.W.2d 882, 884 (Mo. banc 1985). A statute is unconstitutionally vague if it fails to give “a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.” *Allen*, 905 S.W.2d at 877. A statute is also vague if its standards lack sufficient specificity to prevent arbitrary and discriminatory enforcement. *Allen*, 905 S.W.2d at 877.

In determining whether terms are impermissibly vague, “neither absolute certainty nor

impossible standards of specificity are required.” *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991). Rather, the test is “whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices *Id.* Where the words used are of common usage and understandable to persons of ordinary intelligence, they satisfy the constitutional requirement of definiteness and certainty. *Whaley*, 592 S.W.2d at 824. If the statute “is susceptible of any reasonable and practical construction which will support it, it will be held valid, and the courts, must endeavor, by every rule of construction, to give it effect.” *Duggar*, 806 S.W.2d at 408.

F.R. argues that the 1,000 feet distance in the School Residency Law should be measured from building to building, while the St. Charles County Sheriff’s Department measured it from property line to property line. F.R. argues that people of reasonable intelligence would not know how “shall not reside within one thousand feet of any public school . . . private school . . . or child-care facility” would be measured. However, a reasonable and practical construction of the School Residency Law indicates that the 1,000 feet is to be measured from property line to property line. Both a registered sex offender and children at the school or child-care facility would be at other places on the property other than just the structural building that F.R. argues should be used for the measurement. Schools and child-care facilities would have playgrounds and other recreational areas on their property for the children to play in. The registered sex offender, meanwhile, could easily be wherever he wanted to be on his property, inside or outside. Given the fact that there are uses for the properties in question other than just being a foundation for the structural buildings on the property, the only practical application of the School Residency

Law is to measure the 1,000 from property line to property line.

Construing the statute as F.R. suggests simply diminishes the protection for children that the legislature obviously intended to provide by means of the School Residency Law. Construing the statute as F.R. suggests also raises more questions, such as, because many schools have multiple buildings and structures on their property, which building should be considered for the measurement? Under F.R.'s argument, having multiple buildings on the school grounds would pose logistical nightmares for local law enforcement officers to know from which building to measure to ensure a registered sex offender's compliance with the School Residency Law. Measuring property line to property line leaves no doubt about how that measurement should be made – both for the registered sex offenders and for law enforcement.

That the 1,000 feet requirement should be measured property line to property line is illustrated by the criminal case of *State v. Gonzales*, 253 S.W.3d 86 (Mo.App.E.D. 2008). In that case, Gonzales appealed a jury verdict finding him guilty of violating the School Residency Law. *Id.* at 87. He argued there was insufficient evidence to prove beyond a reasonable doubt that he knew his residence was within 1,000 feet of a school. *Id.* at 89. The Missouri Court of Appeals, Eastern District, rejected this argument, first noting that there were three playground areas adjacent to various sides of the school building – some of which were clearly visible from the windows of Gonzales' home. *Id.* at 90. The court held that the fact that the school building and playground equipment were visible from Gonzales' home permitted an inference that he had knowledge of the location of the school when he established his residence. *Id.* at 91. As this opinion indicates, the court has already

ascertained the language of §566.147 to mean not just the physical buildings, but the entire property – in this case the playground area adjacent to the school building. The statute is therefore not vague, nor is ambiguous, as people of reasonable intelligence would know that the 1,000 feet requirement means property line to property line.

### **III. F.R.'s ex post facto and equal protection challenges to the School Residency Law that were raised in the circuit court also fail.**

In his Petition in the circuit court, F.R. also alleged: (1) that the School Residency Law was an invalid ex post facto law in violation Article I, Section 13 of the Missouri Constitution and Article I, Section 10 of the United States Constitution, and (2) that the Law violated the equal protection clause contained in Article I, Section 2 of the Missouri Constitution and the Fourteenth Amendment to the United States Constitution. L.F. at p.7. While F.R. included these two issues in his Notice of Appeal, he has not raised them in his Opening Brief, and has thus abandoned them for purposes of appeal. But, both of these challenges lack merit anyway.

a. The School Residency Law is not an ex post facto law because it is civil and regulatory in nature, not criminal.

F.R. alleges that the School Residency Law constitutes an invalid ex post facto law in violation of Article I, Section 13 of the Missouri Constitution and Article I, Section 10 of the United States Constitution. This Court has held that the federal and state due process clauses are to be interpreted the same. *See Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006).

In *Doe*, this Court denied an ex post facto challenge to the Missouri Sex Offender Registration Act (“SORA”) because the ex post facto clause applies only to criminal laws and “the thrust of the registration and notification requirements are civil and regulatory in nature.” *Id.* at 842. Just like the requirements of SORA, the School Residency Law requirement is civil and regulatory in nature. This Court previously stated that the “obvious legislative intent for enacting SORA was to protect children from violence at the hands of

sex offenders.” *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. banc 2000). When a statute is “an incident of the State's power to protect the health and safety of its citizens,” it will be considered “as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment.” *Smith v. Doe*, 538 U.S. 84, 93-94 (2003). That the School Residency Law also advances the legitimate, non-punitive purpose of public safety and protecting children from sex offenders is confirmed by decisions upholding similar statutes in other states.

In rejecting an ex post facto challenge to a similar law in Iowa, the Eighth Circuit held that like the restrictions in Iowa’s version of SORA, were intended to protect the health and safety of Iowa citizens *Doe v. Miller*, 405 F.3d 700, 718-19 (8<sup>th</sup> Cir. 2005). The Eighth Circuit therefore found the purpose of the Iowa legislature in passing its version of a school residency law to be regulatory and non punitive. *Id.* at 719. The Eighth Circuit went on to find that given the high risk of recidivism posed by sex offenders, the legislature reasonably could conclude that the law would protect society by minimizing the risk of repeated offenses against minors *Id.* at 721. The Eighth Circuit reiterated this conclusion in upholding a similar residency law in Arkansas from an ex post facto challenge because the Arkansas legislature intended to create a civil, non-punitive regulatory scheme. *Weems v. Little Rock Police Department*, 453 F.3d 1010, 1017 (8<sup>th</sup> Cir. 2006).

Similarly, a district court in Georgia rejected an ex post facto challenge to that state’s version of the School Residency Law, finding that the law was enacted with a clear regulatory intent. *Doe v. Baker*, 2006 WL 905368 at \*5-6 (N.D.Ga. 2006). The law prohibited registered sex offenders from residing within one thousand feet of any child care

facility, school, or area where minors congregate. *Id.* at \*1. In analyzing the ex post facto claim, the district court took note of the fact that the U.S. Supreme Court had held that the involuntary commitment of a mentally ill sex offender was non-punitive in nature. *Id.* at \*4 (citing *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997)). It then stated that “[e]ven though the Plaintiff is being forced to move from his home, this disability is nowhere near as significant as the involuntary commitment approved in *Hendricks*.” 2006 WL 905368 at \*4. Thus, the fact that a plaintiff had been forced to move from his home by Georgia’s school residency law did not overcome the important state interests that inspired the legislation. *Id.* at \*6.

The analysis of the Eighth Circuit and Georgia district court leads to the same conclusion in this case: Missouri’s School Residency Law does not constitute an invalid ex post facto law because the obvious legislative intent for enacting the law was to protect children from violence at the hands of sex offenders. The Missouri Legislature reasonably could conclude that the law would protect society by minimizing the risk of repeated sexual offenses against minors. The law is not punitive in purpose and effect because any additional punishment under the law such as the revocation of probation or the new charge of a Class D felony can only be imposed if the sex offender prospectively chooses to violate the law by moving within 1,000 feet of a school. Any ex post facto challenge therefore fails.

b. There is no equal protection violation because the School Residency Law is rationally related to the State’s legitimate interest in protecting the safety of children.

F.R.’s Petition also claimed the School Residency Law violates his right to equal protection by treating similarly situated persons differently by distinguishing between

persons who establish residence within 1,000 feet of an existing school, and persons who have a school built within 1,000 feet of their home. This Court has held that the federal and state equal protection clauses are to be interpreted the same. *See Doe v. Phillips*, 194 S.W.3d at 841.

“[T]he equal protection clause does not deny the state the power to make classifications, as long as its classifications do not establish invidious discrimination or attack a fundamental interest.” *Elliott v. Carnahan*, 916 S.W.2d 239, 242 (Mo.App. W.D.1995). There is a presumption that the legislature acted within its constitutional power in spite of the fact that its laws may result in some inequality. *State ex rel. May Dep’t Stores Co. v. Koupal*, 835 S.W.2d 318, 322 (Mo. banc 1992). Where the classification in such a law is challenged, if any state of facts, reasonably conceived, can sustain the law, the existence of that state of facts at the time the law was enacted must be assumed. *State v. Mitchell*, 563 S.W.2d 18, 23 (Mo. banc 1978). “A statutory classification does not offend the Fourteenth Amendment unless it rests on grounds ‘wholly irrelevant’ to the achievement of the state's objective.” *Spudich v. Smarr*, 931 F.2d 1278, 1281 (8th Cir. 1991).

In this case, F.R. has never alleged that he is a member of suspect class or that a fundamental right is affected, so rational basis review applies. *See Doe v. Phillips*, 194 S.W.3d at 845. Missouri has chosen to prohibit individuals who have committed various sexual offenses from living within one thousand feet of a school or day care that is in existence at the time. It does so in an effort to “protect children from violence at the hands of sex offenders.” *Beaird*, 28 S.W.3d at 876. This interest is rationally related to the State’s legitimate interest in protecting the safety of children, and therefore does not violate equal

protection under the law.

It is true the School Residency Law makes a distinction between persons who want to reside within one thousand feet of an existing school or child-care facility, and persons who have a school or child-care facility built within one thousand feet of their homes. This distinction is a rational one, however. When a new school or child-care facility is being planned, the sex offender registry can be checked by officials of the school or child-care facility to see if any sex offenders live in the area of the proposed school. Those officials can then make an informed determination whether to erect the school in an area of close proximity to a sex offender. That choice is not an option for schools or child-care facilities that are already in existence when a sex offender moves to a location within one thousand feet of an existing school or child-care facility. The distinction made in the School Residency Law does not “rest on grounds ‘wholly irrelevant’ to the achievement of the state's objective” as is required in order to offend the Fourteenth Amendment. The distinctions made between sex offenders by the School Residency Law is therefore rationally related to the State’s legitimate interest in protecting the safety of children and does not violate equal protection.

Below, F.R. did not argue his equal protection claim should be analyzed under strict scrutiny analysis. Such arguments have been rejected on more than one occasion by the Eighth Circuit. In *Doe v. Miller*, 405 F.3d at 709-710, the Eighth Circuit concluded that Iowa’s school residency restriction did not implicate any fundamental rights of the sex offenders that would require strict scrutiny. *Id.* Because the Iowa statute did not “operate directly on the family relationship,” *id.* at 710, the residency restriction did “not infringe

upon a constitutional liberty interest relating to matters of marriage and family in a fashion that requires heightened scrutiny.” *Id.* at 711.

The Eighth Circuit also upheld an equal protection challenge to a school residency law in Arkansas because the distinctions made in the law among groups of sex offenders were rationally related to a legitimate state interest of protecting the safety of children. *Weems*, 453 F.3d at 1015-16 (8<sup>th</sup> Cir. 2006). The Eighth Circuit found that a rational basis standard of review applied to this claim because the distinctions drawn by the Arkansas statute were not based on a suspect classification such as race or religion, and did not implicate a fundamental right. *Id.* at 1016. The same analysis applies to this case, and F.R.’s equal protection challenge fails under rational basis review.

## CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Circuit Court of St. Charles County declaring the School Residency Law §566.147, RSMo 2007, to be constitutional.

Respectfully Submitted,

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ATTORNEYS FOR AMICUS

**CERTIFICATE OF SERVICE  
AND OF COMPLIANCE WITH RULE 84.06(b) AND (c)**

I hereby certify that one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, this 30<sup>th</sup> day of June, 2009, to:

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I also certify that the foregoing brief complies with the limitations contained in Rule 84.06(b), and that the brief contains 5,365 words, excluding the Table of Contents and Table of Authorities.

I further certify that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses, and is virus-free.

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