

IN THE  
SUPREME COURT  
STATE OF MISSOURI

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STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	Supreme Court Case No. SC90164
vs.	)	Circuit Court No. 08U1-CR01062
	)	
CHARLES A. RAYNOR,	)	
	)	
Respondent.	)	

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APPEAL TO THE SUPREME COURT OF MISSOURI  
FROM THE ASSOCIATE DIVISION OF THE CIRCUIT COURT OF  
AUDRAIN COUNTY, MISSOURI  
12<sup>TH</sup> JUDICIAL CIRCUIT  
THE HONORABLE LINDA R. HAMLETT, JUDGE

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APPELLANT'S STATEMENT, BRIEF AND ARGUMENT

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## **JURISDICTIONAL STATEMENT**

Respondent, Charles A. Raynor, was charged by information on November 26, 2008, with the class A misdemeanor of failure to comply with Halloween-related restrictions for sex offenders, under § 589.426 R.S.M.o. (L.F. 48). Defendant filed his Motion to Dismiss on February 11, 2009. (L.F. 3). The motion was set for hearing on March 11, 2009. *Id.* Appellant, the State of Missouri, filed its Second Amended Information on March 11, 2009, and the hearing was continued to April 21, 2009. *Id.* Defendant filed his Motion to Dismiss Second Amended Information on April 6, 2009, and called up the motion for hearing on April 21, 2009. *Id.* On April 23, 2009, the Honorable Linda R. Hamlett granted the defendant's Motion to Dismiss the Second Amended Information and filed a Decision and Judgment. (L.F. 3, 19). Appellant, the State of Missouri, appeals from the Honorable Linda R. Hamlett's grant of the Respondent's Motion to Dismiss Second Amended Information in the Court's April 23, 2009, Decision and Judgment. Jurisdiction is proper in the Supreme Court of Missouri because this case involves a provision of the Constitution and as such, jurisdiction lies with the Supreme Court under Article V, Section 3 of the Missouri Constitution. Mo. Const. Art. V. Sec. 3.

## **STATEMENT OF FACTS**

On August 28, 2008, § 589.426 RSMo went into effect to restrict the activities of registered sex offenders on Halloween night. § 589.426 R.S.Mo. (2008). These restrictions include: avoiding all Halloween-related contact with children, remain inside between the hours of 5 p.m. and 10:30 p.m. unless required to be somewhere else for just cause, turning off all outside residential lighting, posting a sign that states “No candy or treats at this residence”, and a prohibition on travel during the specified hours except for work or emergency situations. *Id.*

Charles Raynor (hereinafter “the Defendant”) is a registered sex offender in Audrain County, Missouri, pursuant to § 589.400 RSMo due to a 1988 conviction in the State of Washington for indecent liberties with a child less than fourteen years old. L.F. 43. The Defendant began registering as a sex offender with the Missouri State Highway Patrol in Audrain County, Missouri, in 2003 under Missouri’s Sex Offender Registration Act (SORA). Further, the defendant is required to register as a sex offender under federal law according to 42 U.S.C. Section 16913, and under Washington law according to WASH. REV. CODE § 9A.44.130.

On October 31, 2008, Mexico Public Safety conducted checks on registered sex offenders’ residences for compliance with § 589.426 Halloween-related restrictions. L.F. 50. At 6:30 pm, Detective Johnson of Mexico Public Safety checked the residence registered to the Defendant, 808 N. Jefferson Street, Mexico, MO 65265. *Id.* At the Defendant’s address, the officer observed a female was passing out candy to children. *Id.* After speaking with the female, Jennifer Maddox, Detective Johnson learned that

Defendant was inside the house, and Maddox believed Defendant was in compliance “with the new sex offender laws” since he was not handing out the candy. *Id.* Detective Johnson further noted a sign was not posted stating, “No candy or treats at this residence,” as required by § 589.426. *Id.*

On November 26, 2008, the Defendant was charged with the class A misdemeanor of failure to comply with Halloween-related restrictions for sex offenders under § 589.426 RSMo. L.F. 2. A subsequent First Amended Information was filed January 21, 2009, and a Second Amended Information was filed March 11, 2009. L.F. 3.

## **STANDARD OF REVIEW**

The Supreme Court reviews a trial court's grant of a motion to dismiss de novo. *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. en banc 2008). When reviewing such a grant, the Supreme Court assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. banc 2001) (quoting *Nazari v. Mo. Valley Coll.*, 860 S.W.3d 303, 306 (Mo. banc 1993)). The constitutionality of a statute is a question of law, the review of which is de novo. *Weinschenk v. State*, 203 S.W.3d 201, 210 (Mo. banc 2006). A statute's validity is presumed, and a statute will not be declared unconstitutional unless it clearly contravenes some constitutional provision. *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006).



**POINT RELIED ON**

**I.**

The trial court erred in granting respondent's motion to dismiss because § 589.426 is constitutional and properly imposes Halloween restrictions on registered sex offenders in that § 589.426 is not retrospective in operation because it is (A) a constitutional provision enacted for the purpose of protecting children, a compelling government interest, (B) does not punish behavior on Halloween nights before the statute was enacted, and (C) does not violate the constitutional bar on ex post facto laws.

## ARGUMENT

- I. The trial court erred in granting respondent's motion to dismiss because § 589.426 properly imposes Halloween restrictions on registered sex offenders in that § 589.426 is not retrospective in operation because it is
  - A. a constitutional provision enacted for the purpose of protecting children, a compelling government interest.

Section 589.426 RSMo is a properly enacted, constitutional provision that imposes Halloween-related restrictions on registered sex offenders. Statutes are presumed constitutional, and upon review, courts are bound to adopt any reasonable reading of the statute that will allow its validity, and to resolve all doubts in favor of constitutionality. *Asbury v. Lombardi*, 846 S.W.2d 196, 199 (1993). The provisions of § 589.426 went into effect on August 28, 2008. (S.B. 714, 94<sup>th</sup> Gen. Assem. (2008) (enacted)).

The purpose of Missouri's laws to protect children, such as Megan's Law (Mo. REV. STAT. §§. 589.400 to 589.426 (1996)) and other similar state statutes, is to "protect children from violence at the hands of offenders," and "to respond to the known dangers of recidivism among sex offenders." *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. banc 2000); *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003). The safety of children is a compelling state interest. *Cannon v. Cannon*, 280 S.W.3d 79, 88 (2009) (citing *Sable Comm. of California, Inc. v. F.C.C.*, 492 U.S. 115, 128 (1989)).

Section 589.426 RSMo was enacted under Missouri's Megan's Law to further its broad purpose by protecting children during Halloween-related activities from registered sex offenders. The Missouri legislature made the determination that such restrictions were necessary to further the compelling state interest reflected in Megan's Law. As such, the Halloween-related restrictions serve to compliment other previously enacted restrictions under Megan's Law similar to the provision at issue in this case, and should be found constitutional.

This Court has determined other restrictions enacted under Megan's Law to be constitutional against sex offenders. For example, the reporting requirements of § 589.414 RSMo were found constitutional in *State v. Holden*, 278 S.W.3d 674 (Mo. 2008). Similarly, residency restrictions and requirements applied to convicted sex offenders were found valid in §§ 589.149 and 589.147 in *R.L. v. Department of Corrections*, 245 S.W.3d 236 (Mo en banc 2008); *State v. Gonzales*, 253 S.W.3d 86 (Mo. 2008). Likewise, the prohibition against unsupervised visitation of minor children by convicted sex offenders of § 452.375 RSMo was found constitutional in *Cannon v. Cannon*, 253 S.W.3d 79 (Mo. 2009). These cases demonstrate this Court's willingness to uphold the consequences applied to a convicted sex offender. Such consequences are necessary and important to further Missouri's compelling state interest in protecting the safety of its children.

The Halloween-related restrictions are similar to the residency, reporting, and prohibition of unsupervised visitation restrictions, in that all deal with the protection and safety of children. In prohibiting sex offenders from living 1000 feet away from school

property, the state is protecting children from potential future crimes that may be initiated by mere proximity. A sex offender could easily see a child walking home from school or playing on a playground and entice that child away from the school surroundings and commit a crime. The legislature determined 1000 feet to be sufficient to protect children from these potential crimes. *R.L. v. Dep't of Corr.*, supra at 238.

The same reasoning should be applied to the Halloween-related restrictions. Millions of children every year participate in Halloween activities across the country. Children will be trick-or-treating around towns and communities and may be unaccompanied by an adult and unable to recognize or appreciate the dangers sex offenders pose. In order to protect children and their families from potential dangers and crime, the legislature determined that specific, particular steps such as displaying a sign, turning off residential lighting, and prohibiting travel are the best way to prevent potential crimes from occurring. Section 589.426 RSMo. Similar to the 1000 feet requirement, the Halloween-related restrictions are designed to keep children a safe proximity from a sex offender's residence. *R.L. v. Dep't of Corr.*, supra. The restrictions in § 589.426 RSMo are designed to keep children and their families away from a sex offender's residence, protecting them while they take part in Halloween activities safely.

By requiring sex offenders to report their residency, the State is protecting children and their families. The State can accurately pinpoint sex offenders in their community and require the offenders to choose housing away from children and schools. Reporting their current residence allows the State Highway Patrol to maintain a current and accurate list of offenders. The law also enables residents of a community to know

where offenders are located and choose housing away from offenders. Similarly, the Halloween restrictions allow families to locate residences that are not suitable for Halloween activities such as trick-or-treating. A sign that states “no candy or treats at this residence” communicates the necessary message to children and their families to avoid that residence. Section 589.426 RSMo.

Finally, the prohibition of unsupervised visitation by a sex offender protects children from being in a potentially violent situation. In the situation where a child has unsupervised visits with a sex offender, the child may be exposed to the potential for commission of multiple crimes or the actual crimes being committed against the child. *Cannon v. Cannon*, supra at 87-88. The legislature properly determined that convicted sex offenders should not be allowed unsupervised visitation of children in order to protect children and their safety. The Court explained in *Cannon*, limiting visitation to a supervised environment is a reasonable limitation that does not infringe on a parent’s fundamental rights. *Id.* at 88. The same is true for the Halloween restrictions; the legislature properly determined that convicted sex offenders should not be allowed to take part in Halloween activities. The restrictions of staying inside, turning off residential lighting, and displaying a sign are reasonable consequences given the compelling government interest in protecting children.

Moreover, this Court explained in *Cannon* and *Doe v. Phillips*, “the legislature did not run afoul of the bar on retrospective laws in imposing additional collateral consequences to the Does’ prior guilty pleas...” *Cannon*, supra at 84; *Doe v. Phillips*, supra at 833. The imposition of residency requirements, reporting requirements, and

prohibitions against unsupervised visitation are constitutional, collateral consequences the legislature has placed on sex offenders. The Halloween-related consequences are same. The legislature has imposed these consequences on sex offenders to further the State's compelling interest of protecting children.

The Halloween-related restrictions are a consequence the legislature has determined sex offenders must follow. Accordingly, this Court should find § 589.426 RSMo Halloween-related restrictions constitutional, since other similar consequences have been previously upheld.

- I. The trial court erred in granting respondent's motion to dismiss because § 589.426 properly imposes Halloween restrictions on registered sex offenders in that § 589.426 is not retrospective in operation because it
  - B. does not punish behavior on Halloween nights before the statute was enacted.

The trial court erroneously applied *R.L. v. Dep't of Corrections*, supra, to declare § 589.426 RSMo unconstitutional by determining the Halloween-related restrictions place a new obligation based on past actions. *R.L.* held a statute requiring sex offenders to change their place of residence based solely on offenses committed before the statute was enacted, violates the Missouri Constitutional bar on retrospective laws. *Id.* at 238. Section 589.426 RSMo does not have retrospective application in this case, therefore, the trial court erroneously found *R.L.*, supra, to be controlling.

Section 589.426 RSMo is not a retrospective law in violation of Article I, Section 13 of the Missouri Constitution. A retrospective law is one "which creates a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already past. It must give to something already done a different effect from that which it had when it transpired." *R.L.*, supra (citing, *Squaw Creek Drainage Dist. v. Turney*, 235 Mo. 80, 138 S.W. 12, 16 (1911)).

The *R.L.* Court determined "a law requiring registration as a sex offender for an offense that occurred prior to the registration law's effective date is an invalid retrospective law in violation of Article I, Section 13 of the Missouri Constitution." *R.L. v. Dep't of Corr.*, supra at 237. In 2005, R.L. plead guilty to the offense of attempted

enticement of a child in violation of § 566.151. R.L. received a three-year sentence with suspended execution of his sentence and was sentenced to five years probation and required to register as a sex offender. When R.L. plead guilty, there was no residency restriction based on his status as a sex offender. In 2006, § 566.149 made it a crime for a sex offender to reside within 1000 feet of a public school, private school, or child care facility. R.L. had resided for twelve years in a residence that fell within 1000 feet of a public school. *Id.*

The Court found that requiring R.L. to move out of the prohibited 1000 feet imposed a new obligation or duty on R.L. based on his past conduct leading to his conviction of attempted enticement of a child, which violated the retrospective bar. Because R.L. had resided at the residence for twelve years before the 1000 feet prohibition was enacted, the Court found the statute had retrospective application and declared it unconstitutional. Dispositive in this case was the fact that the statute attached new obligations to past conduct. The statute attempted to punish behavior (living within 1000 feet of school property) that occurred before the statute was enacted. Since R.L. was already residing beside the school property when the statute was enacted, requiring him to find a new residence and move was considered a new obligation. This obligation was solely based on his past actions and conviction as a sex offender and accordingly, found retrospective as applied to R.L. *Id.* at 238.

On the other hand, the case before the Court is more analogous to the case of *State v. Gonzales*, 253 S.W.3d 86 (Mo. Ct. App. 2008), than *R.L.* and should be found controlling instead. *State v. Gonzales*, *supra*, also dealt with the 1000 feet residency



prohibition. Gonzales was released from custody in 2005 after serving sentences for statutory sodomy in the second degree and sexual misconduct. When he was released, the 1000 feet prohibition in § 566.149 RSMo was effective as of August 28, 2004. The statute prohibited him from moving within 1000 feet from school property. Later in 2005, Gonzales moved within the 1000 feet of Holy Family School, a Catholic elementary school. *Id.* at 88.

Gonzales was required to register as a sex offender, as Defendant is in this case. The Court found Gonzales was not similarly situated as R.L. because the statute did not compel him to change his place of residence. *State v. Gonzales*, supra at 89. Gonzales voluntarily moved into the prohibited zone and his conviction was upheld. In this case, the Defendant knew of the new law, as Maddox stated she thought the Defendant was in compliance with “the new sex offender laws.” *Id.* Both Gonzales and Defendant knew of the prohibitions prior to their offenses. Defendant knew of the Halloween-related restrictions, yet chose not to post a sign or turn off the residential lighting in order to comply with the restrictions.

Further, the Halloween-related restrictions do not act retrospectively to punish Defendant’s behavior on Halloween nights before the statute was enacted. Instead, the statute only punishes non-compliance on Halloween nights after the statute was enacted (August 28, 2008) much like the *Gonzales* case. Section 589.147 RSMo went into effect, and Gonzales, a registered sex offender, moved into the prohibited residency zone. *State v. Gonzales*, supra at 88. Section 589.426 RSMo went into effect, and Defendant, a registered sex offender, did not comply with the Halloween-related restrictions. *R.L. v.*

*Dep't of Corr.*, supra, is not dispositive in this case since R.L. resided in the prohibited zone before the residency statute was enacted. *Id.* at 238. Defendant willingly chose not to comply with the new Halloween-related restrictions after the statute was enacted. Again, this Court explained in *Cannon* and *Doe v. Phillips*, “the legislature did not run afoul of the bar on retrospective laws in imposing additional collateral consequences to the Does’ prior guilty pleas...” *Cannon*, 280 S.W.3d at 84; *Doe v. Phillips*, 194 S.W.3d 833 (Mo. banc 2006).

Accordingly, § 589.426 does not act retrospectively to punish Defendant’s behavior on Halloween nights before the statute was enacted. The statute punishes Defendant’s non-compliance on the Halloween night after the statute was enacted. Therefore, § 589.426 does not violate the constitutional bar to retrospective laws and should be found constitutional.

- I. The trial court erred in granting respondent's motion to dismiss because § 589.426 properly imposes Halloween restrictions on registered sex offenders in that § 589.426 is not retrospective in operation because it
- C. is not an ex post facto law in violation of the Missouri Constitution.

The Halloween-related restrictions do not violate the ex post facto clause of the Missouri Constitution. Mo. Const. Art. I, Sec. 13. Ex post facto laws apply to (1) laws which make criminal an act committed before the enactment and innocent at the time when done, (2) laws changing the punishment, inflicting a greater or different punishment than was applicable when the act was committed, (3) laws aggravating a crime making it greater than when committed, and (4) laws changing the rules of evidence or procedure in such fashion as to prejudice the defendant. *Kring v. Missouri*, 107 U.S. 221 (1882); *Stogner v. California*, 539 U.S. 607 (2003). Because none of the above applies to the action at hand, the law cannot be deemed to be an ex post facto law.

The Defendant is required to register as a sex offender under several laws. Specifically, Defendant is required based upon federal law according to 42 U.S.C. Section 16913 as well as under Washington law, specifically WASH. REV. CODE § 9A.44.130. Section 589.400.1(8) RSMo requires anyone who has been required to register under the laws of another state or the federal government upon becoming a resident of Missouri. When the Defendant took residence in Missouri, the duty to register was incumbent upon him. Further, "SORNA imposes an independent obligation requiring respondents to register as sex offenders in Missouri. The independent registration

requirement under SORNA operates irrespective of any allegedly retrospective state law that has been enacted.” *Doe v. Keathley*, 2009 Mo. LEXIS 131 (2009).

The Defendant is not charged with failure to register as a sex offender in this action. At the time of the offense, Defendant was a registrant of Audrain County and was in current compliance with Missouri laws and had been registered since 2003, according to the Missouri State Highway Patrol. Defendant’s charge is based on his failure to comply with the Halloween-related restrictions and the challenge to his requirement to register is not relevant to this action.

Therefore, Defendant is required to register as a sex offender under federal provisions, Missouri statutes, as well as other state laws. The consequences of being convicted as a sex offender apply to the Defendant, as they apply to other sex offenders in the state of Missouri. This Court should find the Halloween-related restrictions to be a constitutional enactment that must be followed by all Missouri sex offenders.

Section 589.426 RSMo went into effect August 28, 2008, two months before the Halloween being charged in this situation. The statute criminalizes future behavior (after August 28, 2008) on the part of registered sex offenders such as the defendant. This case is wholly different from cases such as *Doe v. Phillips*, *supra*, which prohibited a retroactive application of sex offender registration law in violation of Missouri’s prohibition on retroactive laws. *Id.* Rather, § 589.426 RSMo creates an entirely new criminal offense for failing to meet its requirement. The statute does not criminalize past Halloween actions, and Defendant in this case is not charged for violating the statute with conduct before its enactment. Section 589.426 RSMo was effective two months prior to

the date of the offense. Defendant is included as a member of a class of persons which the legislature has determined are prohibited from doing something before a certain date, similar to a person under 21 prohibited from possessing or consuming alcoholic beverages or a felon prohibited from possessing a handgun.

Therefore, § 589.426 RSMo is not an ex post facto law because the statute only punishes actions that sex offenders do not take on Halloween and does not criminalize innocent or past conduct that occurred on Halloweens before the statute was enacted.

### **CONCLUSION**

For the reasons specified in this brief and the record as a whole, appellant submits that the Honorable Court's ruling on the motion to dismiss should be reversed, and the case should be remanded for trial.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE AND SERVICE**

I, Jacob W. Shellabarger, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b) and Rule 84.06(c). The brief was completed using Microsoft Word 2002, in Times New Roman size 13-point font. Excluding the cover page, the table of contents, table of authorities, the signature block, this certificate of compliance and service, and the appendix, the brief contains 3,934 words, which does not exceed the 31,000 words allowed for an appellant's brief.

The floppy disks filed with this brief and served on opposing counsel contain a complete copy of this brief, and have been scanned for viruses using Symantec AntiVirus Full Version 10.1.0.3194, updated September 15, 2009. According to that program, these disks are virus-free.

Two true and correct copies of the attached brief and a disk containing a copy of this brief were mailed, postage prepaid, this 16th day of September, 2009, to Ellen Flottman, Attorney for Respondent, Missouri State Public Defender System, Central Appellate Division, 1000 West Nifong, Building 7, Suite 100, Columbia, MO 65203.

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