

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 REPLY BRIEF

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## REPLY TO RESPONDENT’S ARGUMENT

Section 589.426 is not a retrospective law because it is a public safety measure that applies, on one day each year, to persons having a then-current obligation to register as a sex offender. § 589.426.1, RSMo. The statute applies on one day a year, not to persons previously convicted, but to individuals having a then-current obligation to register as a sex offender. A similar requirement has been held constitutional under Missouri law. *State ex rel Chris Koster, Attorney General, The Missouri Department of Natural Resources and The Missouri Dam and Reservoir Safety Council v. Olive*, 282 S.W.3d 842 (Mo. 2009).

In *Olive*, this Court found that a statute requiring dam owners to obtain permits for dams constructed prior to the effective date of the statute was not a retrospective law. *Id.* at 848. After noting the State’s legitimate public safety interest in the construction, operation and management of dams, *id.* at 847-48, this Court stated:

The permitting requirements, as applied to owners of dams in existence when the act took effect, do not operate retrospectively. The past construction of the dam is not the issue. The dam’s present use and its present ability to hold back substantial amounts of water is the issue. The duty imposed to obtain a registration permit *is based on the current existence, operation and safety of the dam* and is distinguishable from the application of the registration requirements in *Phillips* to a single past criminal act.

*Id.* at 848 (emphasis supplied).

Like the statute this Court upheld in *Olive*, section 589.426 was enacted to protect the public: Missouri’s sex offender registration laws are intended to “advance[] the legitimate, non-punitive purpose of public safety and protecting children from sex offenders.” *R.W. v. Sanders*, 168 S.W.3d 65, 69-70 (Mo. banc 2005). See also *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. banc 2000) (The “obvious legislative intent” for enacting the registration requirement “was to protect children from violence at the hands of sex offenders.”). To this end, section 589.426 applies only on Halloween – the one day each year on which large numbers of young children take to the streets after dark to solicit treats from strangers at strangers’ homes.

And like the statute at issue in *Olive*, section 589.426 is not a retrospective law. A sex offender’s past conviction is not the issue. § 589.426.1, RSMo. His or her current status as a sex offender is the issue. *Id.* The statute’s requirements are based on the threat those currently required to register as sex offenders pose to trick-or-treating children. See *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 4 (2003) (“Sex offenders are a serious threat in this Nation.... [T]he victims of sex assault are most often juveniles, and [w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault.”) (brackets in original) (internal quotation marks and citation omitted).

Similarly, section 589.426 does not distinguish when an individual was convicted of a sexual offense or what type of sexual offense. The statute mandates all those required to register as sexual offenders on October 31<sup>st</sup> of each year must comply with certain Halloween-related restrictions based on their current status. If an individual is not

required to register as sexual offender on October 31<sup>st</sup>, then the Halloween-related restrictions do not apply to such person(s).

The statute's language demonstrates this point and thus, further distinguishes this case from the statute found unconstitutional in *R.L. v. Missouri Department of Corrections*, 245 S.W.3d 236 (Mo. banc 2008). Section 589.426 states, "Any person required to register as a sexual offender under sections 589.400 to section 589.425..." The statute challenged in *R.L.*, Section 566.147 (prohibiting certain offenders from residing within 1000 feet of a school or child-care facility), stated, "Any person who, since July 1, 1979, has been or hereafter has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the provisions of this chapter or the provisions of..." (the statute then listed nine offenses to be included under the statute).

Missouri's registration law for the sexual offense at issue in *R.L.* (attempted enticement of a child) was effective June of 2006. Section 566.147 R.S.M.o. The statute mandated those who were found guilty of, or pleaded guilty to such offense since July 1, 1979 could not reside within 1000 feet of a school or child-care facility. *Id.* Accordingly, the defendant in the case, who pled guilty in December of 2005, six months before the statute was effective prohibiting sexual offenders from residing within 1000 feet, had a new duty imposed on him by forcing him to move out of the 1000 feet zone.

The statute at issue here, Section 589.426, is not worded the same as the challenged statute in *R.L.* Section 589.426 mandates all individuals that have a current obligation to register as a sexual offender must comply with the Halloween-related restrictions. The statute does not distinguish between classes of sexual offenders or types

of sexual offenders. All sexual offenders required to register must follow these restrictions. If an individual is not required to register as sex offender on any particular October thirty-first, either because the registration requirement does not apply to that individual or because he has successfully petitioned for removal from the registry pursuant to § 589.400.8, RSMo, the statute does not apply to that person, regardless of whatever criminal acts he may have committed in the past.

In *Doe v. Phillips*, the law was determined retrospective because it looks “solely at [appellant’s] past conduct” and used that past conduct “not merely as a basis for future decision-making by the [S]tate,” but to require appellants to fulfill a new obligation and duty based solely on pre-act offenses. *State ex rel. Schottel v. Harman*, 208 S.W.3d 889 (Mo. 2006) (quoting *Doe v. Phillips*, 194 S.W.3d 850, 852 (Mo. banc 2006)). Section 589.426 does not look at a sexual offenders past conduct that created the requirement to register as a sexual offender. Section 589.426 solely looks at whether the sexual offender complies with restrictions on Halloween-related activities on October 31<sup>st</sup> of each year, and no other date.

“A law is not retrospective simply “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.”” *Harman*, 208 S.W.3d at 892 (quoting *Jerry-Russell Bliss, Inc. v. Hazardous Waste Mgmt. Comm’n*, 702 S.W.2d 77, 81 (Mo. banc 1985)). Although an individual’s obligation to register as a sex offender may stem from events occurring prior to the enactment of section 589.426, the statute itself imposes no new or additional

duties based on prior events. The statute was enacted and signed into law prior to October 31, 2008. That Halloween, it applied to all persons having a then-current obligation to register as sex offenders, regardless of the circumstances giving rise to that obligation.

“Statutes are presumed to be valid and will not be found unconstitutional unless they clearly contravene a constitutional provision. Because retrospective laws are barred, the Court presumes that statutes operate prospectively unless legislative intent for retrospective application is clear from the statute's language or by necessary and unavoidable implication.” *Harman*, 208 S.W.3d at 892 (citing *State Bd. of Registration for the Healing Arts v. Boston*, 72 S.W.3d 260, 263 (Mo. App. 2002)). In this case, Section 529.426 was not intended to, nor does it act retrospectively.

A sexual offender's prior conviction is not at issue under this statute. The sex offender's current obligation to register as a sex offender is the issue. The consequences of avoiding all Halloween-related contact with children, remaining inside their residence between five and ten-thirty p.m., posting a sign stating, “No candy or treats at this residence.”, and leaving the porch light off, are based on sexual offender status as of October 31<sup>st</sup> of each year. As such, the statute is not retrospective in application, and should be found constitutional.

Accordingly, Section 589.426 does not violate Article I, section 13 of the Missouri Constitution.



## **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 1,408 words, which does not exceed the 31,000 words allowed for an appellant's reply 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 20th day of November, 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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