IN THE SUPREME COURT OF MISSOURI

No. SC99714

GARY NELSON FORD,
PLAINTIFF-APPELLANT

vs.

COL. JON BELMAR, CHIEF OF POLICE, AS CHIEF LAW ENFORCEMENT OFFICER OF ST. LOUIS COUNTY, PURUSANT TO COUNTY CHARTER, and MISSOURI STATE HIGHWAY PATROL, and JIM BUCKLES, SHERIFF OF ST. LOUIS COUNTY, AS "CHIEF LAW ENFORCEMENT OFFICIAL" AS DEFINED BY RSMO 589.404(3),
RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT OF SAINT LOUIS COUNTY
THE TWENTY-FIRST JUDICIAL CIRCUIT
DIVISION 41
THE HONORABLE VIRGINIA LAY
CAUSE NO. 18SL-CC04833

SUBSTITUTE BRIEF OF RESPONDENTS COL. JON BELMAR and SHERIFF JIM BUCKLES

Respectfully Submitted,

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I. The Trial Court Did Not Err in Denying Plaintiff's Petition for Removal from the Missouri Sex Offender Registry Because Appellant's Registration Requirements Under the Federal Sex Offender Registration and Notification Act Impose a Lifetime Registration Requirement Under Missouri's Sex Offender Registration Act.

Selig v. Russell, 604 S.W.3d 817 (Mo. App. 2020)

Wilkerson v. State, 533 S.W.3d 755 (Mo. App. 2017)

Sec. 589.400 RSMo

Sec. 589.401 RSMo

SUPPLEMENTAL STATEMENT OF FACTS

On December 17, 2003, Appellant Gary Nelson Ford pleaded guilty to three separate counts of Child Molestation in the Second Degree, a class A misdemeanor. (LF Doc. 9, p. 1) (Tr. p. 12). Specifically, Appellant "subjected XXXX who was less than seventeen years old to sexual contact [by rubbing] XXXX's vagina over her underwear and touched her breasts." (LF Doc. 9, p. 1). At the time of Appellant's plea, the maximum punishment for a Class A misdemeanor, was up to one year in jail. MO. REV. STAT. § 558.011 (2003). Appellant appeared for sentencing on these offenses on January 30, 2004 and was sentenced to one year in jail with a suspended execution of sentence and placed on probation for a term of two years. (Tr. pp. 4, 6). As a result of Appellants own actions, and subsequent pleading of guilty to this offense, The Missouri Sex Offender Registry Act ("MO-SORA") required Appellant to register with the Missouri Sex Offender Registry ("Registry"). (LF Doc. 2, p. 1; LF Doc. 11, p. 1) (Tr. p. 4). Appellant remained on the Registry at the time he filed his petition. (Tr. p. 8). During the hearing on his petition for removal, Appellant conceded that he is a Tier I sex offender under both Missouri and federal law. (LF Doc. 11, pp. 1-2) (Tr. pp. 11, 12). On May 20, 2021, the trial court in St. Louis County, Missouri, denied Appellant's petition, finding that Appellant's qualification as a sex offender under the Federal Sex Offender Registration and Notification Act ("SORNA"), imposed the independent requirement of lifetime registration under § 589.400.1(7), RSMo. (LF Doc. 5, pp. 1-2). Appellant appealed the trial court's decision to the Missouri Court of Appeals for the Eastern District. (LF Doc. 22). On June 7, 2022, the Eastern District reversed and remanded the

trial Court's ruling, holding that "the trial court erroneously declared and applied the law by concluding that, irrespective of his status as tier I offender, Petitioner was not eligible for removal from the registry…" (App. Court Opinion p. 7). This appeal of the Appellate Court's Opinion follows.

ARGUMENT

I. The Trial Court Did Not Err in Denying Plaintiff's Petition for Removal from the Missouri Sex Offender Registry Because Appellant's Registration Requirements Under the Federal Sex Offender Registration and Notification Act Impose a Lifetime Registration Requirement Under Missouri's Sex Offender Registration Act.

A. Standard of Review

Appellate Courts review questions of statutory interpretation de novo. *Holtcamp v. State*, 259 S.W.3d 537, 539 (Mo. 2008); *Dixon v. Mo. State Highway Patrol*, 583 S.W.3d 521, 523 (Mo. Ct. App. 2019). "An appellate court will reverse a judgment of a trial court when it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law." *Dixon*, 583 S.W.3d at 523 (citing *Petrovick v. State*, 537 S.W.3d 388, 390 (Mo. App. W.D. 2018)). The Court's "primary obligation is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning." *Bacon v. Mo. State Highway Patrol*, 602 S.W.3d 245, 248 (Mo. App. E.D. 2020) (citations omitted); accord *Holtcamp*, 259 at 539–40. If a statute is plain, then the Court must effectuate the General Assembly's intent. *Karney v. Dep't of Lab. & Indus. Rels.*, 599 S.W.3d 157, 162 (Mo. 2020). "When the words are clear, there is nothing to construe

beyond applying the plain meaning of the law." *Moore v. Bi-State Dev. Agency*, 609 S.W.3d 693, 696 (Mo. 2020).

B. Discussion

i. Federal Sex Offender Registration and Notification Act

The Federal Sex Offender Registration and Notification Act ("SORNA") constitutes Title I of the Adam Walsh Child Protection and Safety Act of 2006. *Carr v. United States*, 560 U.S. 438, 441, 130 S. Ct. 2229, 2232, 176 L. Ed. 2d 1152 (2010). "SORNA provides, inter alia, that '[a] sex offender shall register ... in each jurisdiction where the offender resides.'" *Doe v. Keathley*, 290 S.W.3d 719, 720 (Mo. 2009) (citing 42 U.S.C. § 16913)[1]. "A 'sex offender' is 'an individual who was convicted of a sex offense.'" *Id*. (citing 42 U.S.C. § 16911(1))[2]. A 'sex offense' includes a 'criminal offense that has an element involving a sexual act or sexual contact with another.'" *Id*. (citing 42 U.S.C. § 16911(6)).[3] "The definition of 'sex offense' includes 'a criminal offense that is a specified offense against a minor.'" *Doe v. Neer*, 409 S.W.3d 451, 455 (Mo. Ct. App. 2013) (citing 42 U.S.C. section 16911(1) and (5)(A)(ii))[4]. "In 2008, SORNA was applied to all sex offenders, even those who were convicted before 2006, by means of interim and final U.S. Department of Justice rules." *MacColl v. Missouri State Highway Patrol*, No. WD 84739, 2022 WL 1309988, at *3 (Mo. Ct. App. May 3, 2022), transferred to Mo.S.Ct. (Aug. 30, 2022) (citing *Peters v. Jackson Cnty. Sheriff*, 543 S.W.3d 85, 88 (Mo.

[1] Transferred to 34 U.S.C.A. § 20913.
[2] Transferred to 34 U.S.C.A. § 20911(1).
[3] Transferred to 34 U.S.C.A. § 20911(5)(A)(i).
[4] Transferred to 34 U.S.C.A. §§ 20911(1) and 20911(5)(A)(i), respectively.

App. W.D. 2018) (citing 72 Fed. Reg. 8894-01 (Feb. 28, 2007) and 73 Fed. Reg. 38,030-01 (July 2, 2008)); *see also Horton v. State*, 462 S.W.3d 770, 773 (Mo. App. S.D. 2015) ("SORNA has applied to persons who pled guilty before its enactment since at least August 1, 2008, following the United States Attorney General's issuance of final guidelines."). Courts have continued to uphold that "SORNA applies to individuals who committed a sex offense prior to July 20, 2006." *Keathley*, 290 S.W.3d at 720 (citing 42 U.S.C. § 16913(d)[5]; 28 C.F.R. § 72.3).

Appellant is a sex offender under SORNA because he pleaded guilty to three counts of Child Molestation in the Second Degree, a sex offense proscribed in section 566, RSMo. (LF Doc. 9, p. 1) (Tr. p. 12). SORNA divides sexual offenders into three tiered categories: Tier I, Tier II, and Tier III. 42 U.S.C. §§ 16911(2)-(4)[6]. Tier I consists of the least severe sex crimes and includes all sex offenders that are not Tier II or Tier III. 42 U.S.C. § 16911(2)[7]. Because Appellant's confessed crime does not fall within the definition of a Tier II or Tier III offender as described in 42 U.S.C. §§ 16911(3)-(4), Appellant is a Tier I offender. 42 U.S.C. § 16911(2) (LF Doc. 5, p. 1; TR p. 6, 10). Tier I requires offenders to maintain current registration on the National Sex Offender Registry for a period of fifteen years, 34 U.S.C.A. § 16915(a)(1) and 28 C.F.R. § 72.5(a)(1), unless the offender can demonstrate he has met the criteria for the "clean record reduction," in which case the registration requirement can be reduced to 10 years. 34

[5] Transferred to 34 U.S.C.A. § 20913(d).
[6] Transferred to 34 U.S.C.A. § 20911(2)-(4).
[7] Transferred to 34 U.S.C.A. § 20911(2).

U.S.C. § 20915(b)(2)(A). Offenders qualify for the clean record reduction if they have not been convicted of an offense "for which imprisonment for more than 1 year may be imposed," who have not subsequently been "convicted of any sex offense," and have completed any applicable release, probation, or parole periods and "an appropriate sex offender treatment program." 34 U.S.C.A. § 20915(b)(1). In this case, Appellant did not file his petition pursuant to the clean record exception, which would have required an additional analysis by the trial court, and therefore is subject to the fifteen year minimum requirement imposed by SORNA. 34 U.S.C.A. § 16915(a)(1) and 28 C.F.R. § 72.5(a)(1).

ii. Missouri's Sex Offender Registration Act

Missouri's Sex Offender Registration Act ("MO-SORA", also known as "Missouri Megan's Law") first went into effect on January 1, 1995. *Doe v. Phillips*, 194 S.W.3d 833, 839 (Mo. 2006). "Megan's Law imposes registration and notification requirements on persons committing crimes listed in chapter 566, certain other sexual crimes, and certain crimes that are not inherently sexual in nature but the legislature believes to be associated with a risk of sexual offenses against minors, such as child kidnapping." *Id.*; MO. REV. STAT. § 589.400, *et seq.*

At the time of Appellant's plea, Child Molestation in the Second Degree was codified in § 566.068 RSMo (2000), which provided:

1. A person commits the crime of child molestation in the second degree if he or she subjects another person who is less than seventeen years of age to sexual contact.

2. Child molestation in the second degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury on any

> person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

MO. REV. STAT. § 566.068 (2000). At the time of Appellants plea, the maximum punishment for a Class A misdemeanor was a term not to exceed one year in jail. MO. REV. STAT. § 558.011 (2003).

In 2017, the Missouri legislature amended the sex crime statutes, including § 566.068, RSMo, which now reads:

> 1. A person commits the offense of child molestation in the second degree if he or she:
>
> 1) Subjects a child who is less than twelve years of age to sexual contact; or
>
> 2) Being more than four years older than a child who is less than seventeen years of age, subjects the child to sexual contact and the offense is an aggravated sexual offense.
>
> 2. The offense of child molestation in the second degree is a class B felony.

MO. REV. STAT. § 566.068. The notable differences include changes to the age requirement of the victim, and an increase in the severity of the offense. *Id*. There have been no further amendments to this Section since 2013. Despite the changes to the statute, Appellant would still be considered a Tier I offender pursuant to § 589.414, RSMo. MO. REV. STAT. § 589.414.5(1)(n).

Following amendments to the MO-SORA statutes by the Missouri State Legislature in 2018, sexual offenders were divided into three tiered categories to mimic SORNA classifications, with Tier I offenders falling into the least severe category, and Tier III offenders being the most severe offenders. *Dixon*, 583 S.W.3d at 525; MO. REV.

STAT. § 589.400, *et seq*. (2018). There is no dispute that pursuant to § 589.414, RSMo, Appellant is a Tier I sex offender. MO. REV. STAT. § 589.414.5(c) (2018). "Those 'adjudicated' for a tier I offense are required to register for fifteen years and they must report to law enforcement annually." *Bacon v. Mo. State Highway Patrol*, 602 S.W.3d 245, 247 (Mo. Ct. App. 2020). The registration period can be reduced to ten years if the offender maintains a clean record. *Id*.; *See also* MO. REV. STAT. § 589.400.5 (2018). Per statute, a court shall not grant a petitioner's request for removal unless the petitioner has met certain criteria:

1. Has not been adjudicated or does not have charges pending for any additional nonsexual offense for which imprisonment for more than one year may be imposed since the date the offender was required to register for his or her current tier level;

2. Has not been adjudicated or does not have charges pending for any additional sex offense that would require registration under sections 589.400 to 589.425 since the date the offender was required to register for his or her current tier level, even if the offense was punishable by less than one year imprisonment;

3. Has successfully completed any required periods of supervised release, probation, or parole without revocation since the date the offender was required to register for his or her current tier level;

4. Has successfully completed an appropriate sex offender treatment program as approved by a court of competent jurisdiction or the Missouri department of corrections; and

5. Is not a current or potential threat to public safety.

MO. REV. STAT. §§ 589.401.11(1)-(5). Respondents acknowledge that Appellant has successfully fulfilled the requirements laid out in §§ 589.401.11(1)-(5), RSMo. (LF Doc. 2, pp. 3-4) (Tr. pp. 9-11).

iii. Interplay Between SORNA and MO-SORA

Pursuant to SORNA, Appellant is a sex offender and was subject to registration until at least 2020, absent evidence to support the clean record reduction. 34 U.S.C.A. § 20915(a)(1) and 28 C.F.R. § 72.5(a)(1); 34 U.S.C. § 20915(b)(2)(A). The implementation of SORNA provided a standardized national system, however, "federal sex-offender registration laws have from their inception, expressly relied on state-level enforcement." *Carr*, 560 U.S. at 452. SORNA also imposes an obligation to the states to "maintain a jurisdiction-wide sex offender registry." *Doe v. Isom*, 429 S.W.3d 436, 438 (Mo. Ct. App. 2014). States each maintain their own systems and are permitted to supplement SORNA's requirements with their own specific registration requirements. *See* Office of Att'y Gen.; The Nat'l Guidelines for Sex Offender Reg. & Notification, 73 FR 38030, 38034 (July 2, 2008). "There is no basis for taking [SORNA]'s requirement that sex offenders register for the periods specified in [34 U.S.C. § 20915(a)] as implying that jurisdictions cannot prescribe longer or additional registration requirements for sex offenders." *Id*. at 38035. Rather, § 20915(a)'s "durational requirements for registration define the minimum, and not the maximum, requirements for the jurisdictions' registration programs." *Id*.

Appellants requirement to register under SORNA creates a separate, independent requirement for offenders to register as sex offenders under MO-SORA. *Keathley*, 290 S.W.3d at 720; *Grieshaber v. Fitch*, 409 S.W.3d 435, 443 (Mo. Ct. App. 2013); 34 U.S.C.A. § 20913(a). When the state registration requirement is based on an independent federal registration requirement, the state registration requirement does not arise from the enactment of a state law and is not based solely on the fact of a past conviction. *Khatri v.*

Trotter, 554 S.W.3d 482, 484 (Mo. Ct. App. 2018) (citing *Doe v. Toelke*, 389 S.W.3d 165, 167 (Mo. 2012)).

Appellants' status as a SORNA sex offender triggers the lifetime registration requirement found in § 589.400.1(7), RSMo. Section 589.400.1(7), RSMo, dictates the MO-SORA lifetime registration requirements apply to any offender who "has been or is required to register" under federal law. Consequently, Appellant is required to register as a sex offender in Missouri for life even though his federal registration requirement expired. In 2006, SORA included a provision that required sex offenders to register under SORA if the offender "has been or is required to register in another state or under federal or military law." § 589.400.1(5). In 2009, this Court held for the first time that this language imposed an independent registration obligation on sex offenders. *Keathley*, 290 S.W.3d at 720. Eventually, that language was moved to § 589.400.1(7), RSMo, and in 2012, this Court held that section imposed an independent, lifetime registration requirement. In *Doe v. Toelke*, the Missouri Supreme Court established that "[s]ection 589.400.1 provides that the lifetime registration requirements of '[s]ections 589.400 to 589.425 shall apply to' any person who meets certain conditions." *Toelke*, 389 S.W.3d at 167 (citing MO. REV. STAT. § 589.400 *et seq.*). "The mandatory registration requirement of SORA applies to '[a]ny person who ... has been or is required to register in another state or has been or is required to register under tribal, federal, or military law....'" *Id.* (citing MO. REV. STAT. § 589.400.1(7)).[8]

[8] Respondents are aware that the rulings of the Missouri Court of Appeals Eastern District in *Ford v. Belmar*, No. ED 109958, 2022 WL 2028209 (Mo. Ct. App. June 7,

iv. Interpretation of § 589.400.1(7)

The issue before the court is whether § 589.400.1(7) imposes a lifetime registration requirement. Section 589.400.1(7) states that §§ 589.400 to 589.425 apply to:

> Any person who is a resident of this state who has, since July 1, 1979, or is hereafter convicted of, been found guilty of, or pled guilty to or nolo contendere in any other state, or foreign country, or under federal, tribal, or military jurisdiction to committing, attempting to commit, or conspiring to commit an offense which, if committed in this state, would be a violation of chapter 566, or a felony violation of any offense listed in subdivision (2) of this subsection or *has been or is required to register* in another state or has been or is required to register under tribal, *federal*, or military law;

MO. REV. STAT. § 589.400.1(7) (emphasis added).

Prior to the 2018 amendments there was no question that MO-SORA imposed a lifetime registration requirement, absent very narrow exceptions. MO. REV. STAT. § 589.400.3 (2005-2017). However, the 2018 implementation of the tiered system in § 589.401, RSMo, has called into question the Legislature's intent in § 589.400.1(7), RSMo, even though the language of this section remained unchanged following the 2018 amendments. (Appellate Court Opinion p. 7). Fortunately, previous appellate decisions have laid the foundation to resolve this issue.

In October 2017, the Missouri Court of Appeals for the Western District heard the case of *Wilkerson v. State*, 533 S.W.3d 755 (Mo. App. W.D. 2017). In that case, the State appealed the trial court's decision to grant Wilkerson's petition for removal from the

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2022), and *Smith v. St. Louis Cnty. Police*, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), is the current superseding authority. However, Respondents assert that the Court's ruling in *Toelke* was the correct interpretation of MO. REV. STAT. § 589.400.1(7).

Registry. *Wilkerson*, 533 S.W.3d at 756. In 2010, Wilkerson pleaded guilty to Sexual Misconduct Involving a Child, a Class D felony, in violation of § 566.083 (2008).[9] *Id*. Wilkerson was sentenced to a term of imprisonment of three years, and timely registered as a sex offender on the Registry upon release.[10] *Id*. In 2015, Wilkerson filed her petition for relief arguing that pursuant to §§ 589.400.8 and .9, RSMo, she was entitled to relief from the MO-SORA registration requirements because Wilkerson was nineteen or younger at the time of offense, the victim of the offense was thirteen or older, and Plaintiff was not a current or potential threat to public safety. *Wilkerson*, 533 S.W.3d at 758; *see also* MO. REV. STAT. §§ 589.400.8 and .9. Following an analysis of Plaintiff's claims, the Western District reversed the lower court's decision stating that, "an offender is subject to a *lifetime registration obligation* under [§ 589.400.1(7)], if he or she was ever required to register under federal law." *Wilkerson*, 533 S.W.3d at 761 (emphasis added) (referencing *Toelke*, 389 S.W.3d at 167). The Court went on to state that, "[i]n light of *Toelke* and *Keathley*, [Plaintiff] is required to register under state law because of her present status as someone who is or has been subject to a federal registration requirement." *Wilkerson*, 533 S.W.3d at 760. With this decision, the appellate courts created the precedent that § 589.400.1(7) independently imposes a lifetime registration

[9] Following a 2017 amendment, this offense is classified as a Class E felony for first time offenders, subject to a term of punishment up to four years in prison, pursuant to MO. REV. STAT. § 557.021.3(e).

[10] Although the tier system was not in place at the time of Wilkerson's plea, Wilkerson would currently be classified as a Tier II offender under MO. REV. STAT. § 589.414.6(l).

requirement for any offender who "has been" required to register as a sex offender under federal law.

Courts have long maintained that when the legislature acts, it operates with "full awareness and complete knowledge of the present state of the law including judicial and legislative precedent." *Selig v. Russell*, 604 S.W.3d 817, 824 (Mo. Ct. App. 2020); *Wilson v. Progressive Waste Sols. of Mo, Inc.*, 515 S.W.3d 804, 810 (Mo. Ct. App. 2017); *Hogan v. Bd. of Police Comm'rs of Kansas City*, 337 S.W.3d 124, 130 (Mo. Ct. App. 2011). When the legislature reenacts a previously interpreted provision, this Court will presume that the General Assembly was aware of judicial interpretations of the statute and that the General Assembly chose to endorse those decisions. *Citizens Bank & Tr. Co. v. Dir. of Revenue*, 639 S.W.2d 833, 835 (Mo. 1982) (citing *State ex rel. Dean v. Daues*, 14 S.W.2d 990, 1002 (Mo. Div. 1 1929)). This presumption is strengthened by the General Assembly's long-standing endorsement of that position. MO. REV. STAT. § 1.120 ("The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment."). The General Assembly is presumed to have known of the courts' interpretation of § 589.400.1(7) RSMo—that it was an independent lifetime registration obligation—yet chose to keep the provision without any changes. The General Assembly's intent was not to remove this independent lifetime obligation, otherwise they would have removed § 589.400.1(7) RSMo—or at a minimum modified it—alongside the 2018 amendments. Instead, the General Assembly's intent was to mirror the SORNA three-tier system for those offenders that have no obligation to

register under SORNA, but who are still required to register under MO-SORA, thus bringing about a change in the statute for that class of offender. This is congruent with the original intent of MO-SORA to protect the public from sex offenders, and with the intent to closely mirror SORNA to maintain compliance to receive federal funding. Thus, the independent lifetime registration requirement remains in MO-SORA for those that have ever had an obligation to register under SORNA, and it applies to Appellant in the present case.

In *Selig v. Russell*, Plaintiff petitioned for exemption from MO-SORA registration requirements pursuant to § 589.400.9(2)(c). *Selig*, 604 S.W.3d 819. "Selig entered a plea of guilty to the offense of furnishing or attempting to furnish pornographic material to a minor in violation of section 573.040 on February 27, 2019." *Id*. "Following his conviction, on March 1, 2019, Selig filed a Petition for Exemption from Sex Offender Registry ("Petition") seeking a declaratory judgment that he was exempt from registration as a sex offender under both the state and federal sex offender registries." *Id.* In response to Selig's petition, the State argued that Selig must first register on the Registry before being eligible for exemption, and that even if Selig was entitled to exemption under § 589.400.9(2)(c), he would still be required to register under § 589.400.1(7). *Id.* At the hearing on his petition, Selig asked the Court to determine "(1) that Selig's conviction did not fall within the federal Sex Offender Registration and Notification Act ("SORNA") and (2) that Selig was exempt under Missouri's Sex Offender Registration Act ("MO-SORA")." *Id*. at 820. During the hearing, Selig withdrew his request for findings regarding his obligation to register under SORNA. *Id.*

The trial court entered judgment in favor of Selig stating, "The State's Motion to Dismiss is denied. Pursuant to § 589.400.9(2)(c) RSMo., petitioner is exempt from the sex offender registration requirements generally set forth in § 589.400 RSMo." *Id*. at 820. The State appealed the trial court's decision. *Id*.

The Court of Appeals specifically examined Selig's argument considering the 2018 amendments to the sex offender statutes. The Court stated, "because section 589.400.1(7) requires registration for any offender who 'has been or is required to register under tribal, federal, or military law,' Missouri has in effect created a lifetime registration requirement for anyone who has ever been required to register under SORNA." *Id*. at 823 (citing *Wilkerson*, 533 S.W.3d at 761; *James v. Mo. State Highway Patrol*, 505 S.W.3d 378 (Mo. App. E.D. 2016)[11] ("Petitioner's status as a SORNA sex offender triggers [MO-SORA]'s lifetime registration requirement.")). The Court of Appeals further stated, "it is important to note that while making a number of large substantive changes to the statute, the legislature made no changes to the language of section 589.400.1(7) which has been fully discussed in prior case law as creating a lifetime registration requirement if a person has ever met the registration requirements of SORNA." *Id*. at 824. Based on these findings, the Court of Appeals remanded the case

[11] Listed as superseded by statute per the Missouri Court of Appeals for the Eastern District's holding in *Smith v. St. Louis Cnty. Police*, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), transferred to Mo.S.Ct. (Aug. 30, 2022).

back to the trial court for a determination on Selig's registration requirements under SORNA. *Id*. at 825.[12]

In Appellant's brief, Appellant notably only gives a passing mention to another case before this Court, *MacColl v. Missouri State Highway Patrol*, in which the Missouri Court of Appeals, Western District, follows the precedent set in *Selig* and offers directly contrary legal authority on the issues presented here. *MacColl*, No. WD 84739, 2022 WL 1309988, at *1. The *MacColl* case came before the Court on MacColl's appeal of the trial court's decision to grant summary judgment in favor of the State on MacColl's petition for declaratory judgment that she was not required to register as a sex offender in Missouri. *Id*. On appeal MacColl asserted she was not required to register under:

> (1) the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 140711 (Point I); (2) the Missouri Sex Offender Registration Act, § 589.400 et seq. RSMo (MO-SORA), beginning with the 2000 amendments to MO-SORA (Point II); and (3) MO-SORA's catch-all provision for individuals required to register under federal law because MacColl was subject to the federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901 2 et seq. (SORNA) (Point III). In her final point, MacColl claims the motion court erroneously concluded that she cannot apply for a retroactive reduction in the applicable registration period under SORNA.

[12] It should be noted that, Selig applied for transfer to the Supreme Court following the Court of Appeals' decision, and this Court denied transfer, thereby acknowledging the Western District's interpretation of MO. REV. STAT. § 589.400.1(7) as correct, until the time that the Eastern District issued a contrary opinion in *Smith v. St. Louis Cnty. Police*, *supra* n. 10, and *Ford v. Belmar*, No. ED 109958, 2022 WL 2028209 (Mo. Ct. App. June 7, 2022), transferred to Mo.S.Ct. (Aug. 30, 2022).

Id. In 1995, MacColl pleaded guilty to sexual misconduct in the first degree, a Class A misdemeanor, pursuant to § 566.090, RSMo (1994).[13] *Id*. "MacColl was sentenced to one year in the Boone County Jail with execution of sentence suspended, and she was placed on two years' supervised probation."[14] *Id*. MacColl was added to the Registry in August 2000 and remained current on her registration until she filed her petition for declaratory judgment in October 2020. *Id*. The trial court determined that MacColl was required to register under the Jacob Wetterling Act at the time of her plea, MacColl was required to register under MO-SORA following the 2000 MO-SORA amendments, MacColl was required to register under SORNA for fifteen years, and MacColl was not entitled to a retroactive reduction in her registration period. *Id*. at 2. The trial court further stated MacColl was not entitled to removal from the Registry due to her obligation to register under MO-SORA based on her federal registration requirements. *Id*. MacColl appealed. *Id*.

As it did in *Wilkerson*, the Court of Appeals, Western District, again determined that, "Missouri 'integrate[d] the registration requirements of SORNA into MO-SORA through section 589.400.1(7).'" *Id*. at 4 (citing *Selig*, 604 S.W.3d at 822). The Court again reiterated that § 589.400.1(7), RSMo, imposes a lifetime registration requirement. *Id*. Despite the obvious parallels to his own case, Appellant offers no argument as to why

[13] Following a 2013 amendment, this offense was transferred to MO. REV. STAT. § 566.101.

[14] Although the tier system was not in place at the time of MacColl's plea, MacColl would currently be classified as a Tier I offender under MO. REV. STAT. § 589.414.5(c); see also *MacColl*, No. WD 84739, 2022 WL 1309988, at *4.

the legal precedent followed in the Western District should not be followed here. It is clear the precedent followed in the Western District – supported by the Missouri Supreme Court's decision in *Toelke* and acknowledged by this Missouri Supreme Court's denial of transfer in *Selig* – accurately interprets the relevant legal authority and legislative intent.

The Missouri Supreme Court first interpreted § 589.400.1(7), RSMo, to impose an independent, lifetime registration requirement in *Toelke*, prior to the 2018 amendments. *Toelke*, 389 S.W.3d at 167; *Wilkerson*, 533 S.W.3d at 760 (citing *Toelke*). As has been mentioned, the Legislature is presumed to have known of the Court's decisions in *Toelke* and *Wilkerson*, while crafting the 2018 amendments, and yet they chose not to make any changes to § 589.400.1(7). The 2018 changes to MO-SORA simply address a different class of offenders than the class to which Appellant belongs. As the *Selig* court notes, there are "persons exempt pursuant to section 589.400.9, who do not otherwise have SORNA registration requirements, and are thus exempt from all registration under MO-SORA." *Selig*, 604 S.W.3d at 824. Likewise, there are those that do not have a lifetime registration requirement under § 589.400.1(7), RSMo, because SORNA never imposed a registration obligation while MO-SORA did impose such an obligation. Following the 2018 amendments, the Courts rightfully maintained their *Wilkerson* interpretation in *Selig*, a decision which remained good law for more than two years.

One final factor justifies declining to re-interpret § 589.400.1(7), RSMo,: *stare decisis*. Several members of this Court have expressed that *stare decisis* counsels strongly against altering the statutory interpretation of a provision that has not been altered itself. *See, e.g., D.E.G. v. Juvenile Officer of Jackson County*, 601 S.W.3d 212, 221–222 (Mo.

2020) (Powell, J., dissenting); *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 387–388 (Mo. 2014) ("Adherence to precedent is especially vital in my view with respect to prior cases interpreting statutes.") (Fisher, J., dissenting). Statutory interpretation sits at the intersection of the judicial and legislative branches, and respect between the branches is fostered when this Court follows the presumption that the General Assembly knows this Court's decisions and ratifies them when reenacting without altering language previously interpreted by this Court.

For the reasons stated herein, Appellant has failed to put forth sufficient reasons for why the Court's interpretation of § 589.400.1(7), RSMo, in *Toelke*, *Wilkerson*, and *Selig* should be overturned absent further action by the Legislature.

v. Purpose of MO-SORA

The *Selig* court further addressed concerns regarding the general "catch-all" provision of § 589.400.1(7):

> Where federal funding is tied to substantial compliance with SORNA registration requirements, it is not unreasonable that Missouri would adopt a "catch-all" provision allowing Missouri to fully comply with the registration requirements of SORNA without having to amend MO-SORA every time the federal government chose to amend SORNA. As fully discussed below, interpreting Missouri's specific exemptions to take precedence over SORNA general requirements is contrary to previous Missouri court's interpretation of section 589.400.1(7) and risks Missouri's federal funding.

Selig, 604 S.W.3d at 822.

The Missouri Supreme Court has held the General Assembly enacted MO-SORA to "protect children from violence at the hand of sex offenders and to respond to the known danger of recidivism among sex offenders." *Phillips*, 194 S.W.3d at 839. The

General Assembly modified MO-SORA in 2018 to mirror the federal statutory scheme. *Hixson v. Missouri State Highway Patrol*, 611 S.W.3d 923, 925 (Mo. Ct. App. 2020). "Since 1994, federal law has required States, as a condition for the receipt of certain law enforcement funds, to maintain federally compliant systems for sex-offender registration and community notification." *Carr*, 560 U.S. at 441. "The federal government does not maintain its own registry, separate from those registries maintained by states. SORNA establishes requirements for the registration of sex offenders that each state must comply with in order to receive certain federal funds." *Selig*, 604 S.W.3d at 821. "[SORNA] provides for the withholding of certain federal funding to any State "that fails, as determined by the Attorney General, to substantially implement this subchapter." *Wilkerson*, 533 S.W.3d at 761 (citing 34 U.S.C. § 20927(a)).

The 2018 amendments to MO-SORA created a three-tier system. *Hixson*, 611 S.W.3d at 925. Again, § 589.400.1(7) RSMo, remained unchanged and undisturbed after the 2018 amendments. *Selig*, 604 S.W.3d at 824. Instead, the General Assembly chose to "integrate the registration requirements of SORNA into MO-SORA through section 589.400.1(7). The failure to do so would risk Missouri's receipt of certain federal funding and the Missouri Legislature enacted provisions protecting that revenue source." *Selig*, 604 S.W.3d at 821-22. By leaving this provision undisturbed, the General Assembly preserved the receipt of funding from the federal government that is contingent upon Missouri maintaining compliance with federal statutory requirements. *Id*. at 821; *See also* 34 U.S.C. § 20927(a).

Rather than create an alternative means of removal from the registry, the addition of the three-tier system through the 2018 amendments simply brought MO-SORA more closely in line with the federal statute to maintain compliance. *Hixson*, 611 S.W.3d at 925; *Selig*, 604 S.W.3d at 824. This compliance is necessary for Missouri to secure funding that in turn helps maintain the sex offender registry that aids in public safety, which is the original intent of MO-SORA. *See Phillips*, 194 S.W.3d at 839. The 2018 amendments were not intended to modify § 589.400.1(7), RSMo, but to further minimize any risk of loss of funding due to non-compliance with federal statutory requirements.

SORA has never been a redemptive statute, and the 2018 amendments did not transform its purpose from protecting Missourians into helping sex offenders. *See J.B. v. Vescovo,* 632 S.W.3d 861, 866 (Mo. App. W.D. 2021) (rejecting an argument that SORA is a redemptive statute and remedial).

As a result of SORA's purpose and plain text, § 589.400.1(7), RSMo, "has been or is required to register . . . under tribal, federal, or military law . . ." imposes a continuous requirement to register even after the expiration of the current registration term.

CONCLUSION

The plain text of § 589.400.1(7), RSMo, is unambiguous and creates an independent lifetime registration requirement for Appellant, which is not an absurd or illogical result.

WHEREFORE Respondents St. Louis County Police Department and the St. Louis County Sheriff's Office respectfully request the Court affirm the judgment of the trial court and reverse the opinion of the Court of Appeals.

Respectfully Submitted,

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AFFIDAVIT OF SERVICE CERTIFICATION PURSUANT TO RULE 84.06

I, Portia Britt, hereby certify that I am the attorney of record for Respondents, St. Louis County Police Department and St. Louis County Sheriff's Office, and that the foregoing Brief of Respondents:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations in Missouri Supreme Court Rule 84.06;

3. Complies with the limitations in the Missouri Court of Appeals, Eastern District Special Rule 360; and

4. Contains 5,697 words and 476 lines.

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to Missouri Supreme Court Rule 103.08 this document has been filed for submission using the Court's electronic filing system on November 9, 2022, on all parties and counsel of record.

/s/ *Portia J. Britt*
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