

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANE DOE I,)
)
JANE DOE II,)
)
JOHN DOE I,)
)
JOHN DOE II,)
)
JOHN DOE III, and)
)
JOHN DOE IV,)
)
Plaintiffs,)
)
v.)
)
JEREMIAH W. NIXON, in his official)
capacity as Attorney General for)
the State of Missouri,)
)
MATT BLUNT, in his official capacity as)
Governor for the State of Missouri,)
)
THOMAS O'CONNOR, in his official)
capacity as Chief of Police for the)
Maryland Heights, Missouri, Police)
Department,)
)
STEVEN SCHICKER, in his official)
capacity as Chief of Police for the)
Ballwin, Missouri, Police)
Department,)
)
ROBERT P. McCULLOCH, in his official)
capacity as Prosecuting Attorney for)
St. Louis County, Missouri,)

No. 4:08-cv-1518 CEJ

**PLAINTIFFS' SECOND
AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTORY RELIEF AND
NOMINAL DAMAGES**

STEVEN KRUSE, in his official capacity)
as Chief of Police for the Bowling)
Green, Missouri, Police Department,)
)
MARK FISHER, in his official capacity as)
Prosecuting Attorney for Pike)
County, Missouri,)
)
CARL A. KINNISON, in his official)
capacity as Chief of Police for the)
Cape Girardeau, Missouri, Police)
Department,)
)
H. MORLEY SWINGLE, in his)
official capacity as Prosecuting)
Attorney for Cape Girardeau County,))
)
DANIEL L. WHITE, in his official)
capacity as Prosecuting Attorney for)
Clay County, Missouri,)
)
PAUL C. VESCOVO, III, in his official)
capacity as Sheriff of Clay County,)
Missouri,)
)
JAMES CORWIN, in his official capacity)
as Chief of Police for the Kansas)
City, Missouri, Police Department,)
)
JOHN C. CONNELLY, in his official)
capacity as Chief of Police for the)
Manchester, Missouri Police)
Department,)
)
COLONEL JERRY LEE, in his official)
capacity as Chief of Police for the)
St. Louis County, Missouri Police)
Department,)
)
JIM WELLS, in his official capacity as)
Sheriff of Pike County, Missouri,)
)
JOHN JORDON, in his official capacity)
as Sheriff of Cape Girardeau)
County, Missouri,)

COLONEL JAMES F. KEATHLEY, in)
his official capacity Superintendent)
of the Missouri State Highway)
Patrol,)
Defendants.)

INTRODUCTION

1. Plaintiffs are Missouri parents who are required to register as sex offenders based on convictions entered prior to August 28, 2008.
2. This lawsuit challenges a new Missouri statute, which became effective August 28, 2008, and requires Plaintiffs and others who are required to register as a sex offender to take the following actions, under threat of criminal charge, on October 31, 2008, and October 31 of every year:
 - A. “Avoid all Halloween-related contact with children;”
 - B. “Remain inside his or her residence between the hours of 5 p.m. and 10:30 p.m. unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies;”
 - C. “Post a sign at his or her residence stating, ‘No candy or treats at this residence’; and”
 - D. “Leave all outside residential lighting off during the evening hours after 5 p.m.” R.S.Mo. § 589.426.
3. As a result of the lack of clarity about what activities are prohibited by the statute, Plaintiffs reasonably fear that if R.S.Mo. § 589.426 is permitted to be enforced they will be subjected to arbitrary and discriminatory

enforcement for actions or inactions that they did not reasonably know would violate the law. In particular, Plaintiffs do not understand how to conform to the statute's criminal proscription on Halloween-related contact with children with respect to their own children and grandchildren. In addition, Plaintiffs submit that the challenged statute violates the rights guaranteed to them by the United State Constitution and the Missouri Constitution.

4. This action seeks entry of a declaratory judgment finding the R.S.Mo. § 589.426 is unconstitutional under the federal Constitution and the Missouri state constitution as well as preliminary and permanent injunctions prohibiting enforcement of the statute.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1342, 1367, 2201 and 42 U.S.C. § 1983.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1).
7. Divisional venue is proper in the Eastern Division pursuant to E.D.Mo. L.R. 2.07(a)(1), (b)(2).

PARTIES

8. Plaintiffs are Missouri residents who were convicted prior to August 28, 2008, of offenses that require them to register as sexual offenders in the State of Missouri.

9. Jane Doe I¹ is a resident of the City of Maryland Heights in St. Louis County, Missouri. On or about May 16, 2003, she was convicted in St. Louis County, Missouri, of two counts of second degree statutory sodomy. The offenses of which she was convicted occurred on or about May 1, 1999. She is required to register as a sexual offender pursuant to R.S.Mo. § 589.400. She has significant contact with her grandchildren, who will be under the age of 18 on October 31, 2008, and for many years thereafter.
10. Jane Doe II is a resident of the City of Cape Girardeau in Cape Girardeau County, Missouri. On or about December 7, 2001, she was convicted in St. Charles County, Missouri, of two counts each of statutory rape and statutory sodomy. The offenses of which she was convicted occurred on or about November 1, 1995. She is required to register as a sexual offender pursuant to R.S.Mo. § 589.400. She has sole custody of her ten-year-old daughter.
11. John Doe I is a resident of the City of Ballwin in St. Louis County, Missouri. On or about January 17, 2001, he was convicted in Cole County, Missouri, of statutory rape and statutory sodomy. The offenses of which he was convicted occurred on or about July 1, 1999. He lives with his step-children, who are under the age of 18.
12. John Doe II is resident of the City of Bowling Green in Pike County, Missouri. On or about June 28, 1995, he was convicted in Marion County,

¹ Jane Doe I, Jane Doe II, John Doe I, and John Doe II have previously filed a motion for leave to proceed with the use of pseudonyms, which remains pending. (Doc. # 3). John Doe III and John Doe IV anticipate filing a identical motion in the near future.

Missouri, of statutory rape. The offense of which he was convicted occurred on or about February 5, 1995. He has sole custody of two children from a previous marriage, a step-child, and another child, all of whom he resides with and all of whom are minors.

13. John Doe III is a resident of the City of Kansas City in Clay County, Missouri. On or about November 13, 1997, he was convicted in Sedgwick County, Kansas, of indecent liberties with a minor. The offense of which he was convicted occurred on or about July 14, 1997. He lives with his daughter, who is a minor.
14. John Doe IV is a resident of the City of Manchester in St. Louis County Missouri. On or about January 27, 1999, he was convicted in the District of Columbia, of a misdemeanor charge of sexual abuse. The offense of which he is convicted occurred on or about October 1, 1998. He has one minor child, with whom he plans to have contact on October 31, 2008.
15. Defendant Jeremiah W. Nixon is the Attorney General of the State of Missouri and is sued solely in his official capacity. Nixon is the State's chief law enforcement officer and is charged with instituting any proceedings necessary to enforce state statutes. R.S.Mo. § 27.060. The Attorney General is also authorized to aid prosecutors when so directed by the Governor and to sign indictments when directed by the court. R.S.Mo. § 27.030. His primary office is located in Cole County, Missouri.
16. Defendant Matt Blunt is the current Governor of the State of Missouri. The supreme executive power lies with the governor. Mo. Const. art. 4, §

1. He has the duty to “take care that laws are distributed and faithfully executed.” Mo. Const. art. 4, § 2. His primary office is located in Cole County, Missouri.
17. Defendant Thomas O’Connor is the Chief of Police for the Maryland Heights Police Department in Maryland Heights, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for Maryland Heights and will be responsible for enforcing R.S.Mo. § 589.426 within Maryland Heights, where Jane Doe I resides. Maryland Heights is located in St. Louis County, Missouri.
18. Defendant Steven Schicker is the Chief of Police for the Ballwin Police Department in Ballwin, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for Ballwin and will be responsible for enforcing R.S.Mo. § 589.426 within Ballwin, where John Doe I resides. Ballwin is located in St. Louis County, Missouri.
19. Defendant Carl A. Kinnison is the Chief of Police for the Cape Girardeau Police Department in Cape Girardeau, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for the City of Cape Girardeau and will be responsible for enforcing R.S.Mo. § 589.426 within the City of Cape Girardeau, where Jane Doe II resides. Cape Girardeau is located in Cape Girardeau County, Missouri.
20. Defendant Steven Kruse is the Chief of Police for the Bowling Green Police Department in Bowling Green, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for Bowling

Green and will be responsible for enforcing R.S.Mo. § 589.426 within Bowling Green, where John Doe II resides. Bowling Green is located in Pike County, Missouri.

21. Defendant Mark Fisher is the Prosecuting Attorney for Pike County. Fisher is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within Pike County. His primary office is located in Pike County, Missouri. He is sued solely in his official capacity.
22. Defendant Robert P. McCulloch is the Prosecuting Attorney for St. Louis County. McCulloch is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within St. Louis County. His primary office is located in St. Louis County, Missouri. He is sued solely in his official capacity.
23. Defendant H. Morley Swingle is the Prosecuting Attorney for Cape Girardeau County. Swingle is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within Cape Girardeau County. His primary office is located in Cape Girardeau, Missouri. He is sued solely in his official capacity.
24. Defendant Daniel L. White is the Prosecuting Attorney for Clay County. White is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within Clay County. His primary office is located in Liberty, Missouri. He is sued solely in his official capacity. Defendant White sent a letter to Plaintiff John Doe III

and all other persons required to register as sexual offenders in Clay County notifying them, “Violation of [R.S.Mo. § 589.426] is a Class A misdemeanor punishable by up to a year in the county jail and/or a fine of up to \$1,000.” Defendant White’s letter further advised, “Any and all violations of this law that occur in Clay County will be prosecuted.”

25. Defendant Paul C. Vescovo, III, is the Sheriff for Clay County, Missouri. He is sued solely in his official capacity. He is responsible for enforcing Missouri criminal statutes, including R.S.Mo. § 589.426, within Clay County, where John Doe III resides. Defendant Vescovo sent a letter to John Doe III and others required to register as sexual offenders in Clay County notifying them that, “During the course of Halloween night, my deputies and I will be patrolling and will check on each and every listed offender to ensure compliance with [R.S.Mo. § 589.426]. We’ll be chaing on lighting, signage and whether the registered offender is inside his or her residence as mandated by the statute.”
26. Defendant Jim Wells is the Sheriff for Pike County, Missouri. He is sued solely in his official capacity. He is responsible for enforcing Missouri criminal statutes, including R.S.Mo. § 589.426, within Pike County, where John Doe II resides.
27. Defendant John Jordan is the Sheriff for Cape Girardeau County, Missouri. He is sued solely in his official capacity. He is responsible for enforcing Missouri criminal statutes, including R.S.Mo. § 589.426, within Cape Girardeau County, where Jane Doe II resides.

28. Defendant John C. Connolly is the Chief of Police for the Manchester Police Department in Manchester, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for Manchester and will be responsible for enforcing R.S.Mo. § 589.426 within Manchester, where John Doe IV resides. Manchester is located in St. Louis County, Missouri.
29. Defendant Colonel Jerry Lee is the Chief of the St. Louis County Police Department. He is sued solely in his official capacity. He is responsible for enforcing Missouri criminal statutes, including R.S.Mo. § 589.426, within St. Louis County, where Jane Doe I, John Doe I, and John Doe IV reside. One of Defendant Lee's detectives told the *New York Times* that—prior to entry of preliminary injunction—he had planned to knock on the doors of persons required to register as sexual offenders to ensure they were home. He further stated that after the preliminary injunction he planned to go to each house to ensure that a sign was posted and exterior lights were off. It is unknown what he decided to do after the preliminary injunction was stayed by order of the Eighth Circuit.
30. Defendant James Corwin is the Chief of Police for the Kansas City Police Department in Kansas City, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for the City of Kansas City, Missouri, and will be responsible for enforcing R.S.Mo. § 589.426 within St. Louis County, where John Doe III resides.

31. Defendant Colonel James F. Keathley is the Superintendent of the Missouri Highway Patrol. He is sued solely in his official capacity. As superintendent of a statewide law-enforcement agency, he is responsible for the enforcement of R.S.Mo. § 589.426 against persons who come into contact with the Missouri Highway Patrol. Agents of Defendant Keathley made public statements that R.S.Mo. § 589.426 cannot be applied retrospectively to persons convicted before the statute's enactment on August 28, 2008.

STATUTE AT ISSUE

32. R.S.Mo. § 589.426, entitled "Registered sexual offender, Halloween-related activities," provides:
1. Any person required to register as a sexual offender under sections 589.400 to 589.425 shall be required on October thirty-first of each year to:
 - (1) Avoid all Halloween-related contact with children;
 - (2) Remain inside his or her residence between the hours of 5 p.m. and 10:30 p.m. unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies;
 - (3) Post a sign at his or her residence stating, "No candy or treats at this residence"; and
 - (4) Leave all outside residential lighting off during the evening hours after 5 p.m.

2. Any person required to register as a sexual offender under sections 589.400 to 589.425 who violates the provisions of subsection 1 of this section shall be guilty of a class A misdemeanor.

COUNT I

Violation of Due Process Clause of the Fourteen Amendment – Inadequate Notice

33. Plaintiffs incorporate each of the allegations contained in paragraphs 1-32 as if each were set forth here verbatim.
34. Plaintiffs and other persons of reasonable intelligence do not have an understanding of several terms in the statutes, including what constitutes “avoid,” “Halloween-related contact,” or “just cause,” within the context of the challenged statute.
35. Defendants likewise have difficulty interpreting the meaning of the law. For instance Jane Doe II and other persons required to register as sexual offenders in Cape Girardeau County received a directive from the Cape Girardeau County Sheriff’s Office purporting to require them to sign a statement that they will comply with the Sheriff’s interpretation of Mo.R.S. § 589.426. Under the Cape Girardeau Sheriff Department’s interpretation of the challenged statute’s language, it means:

During the Halloween Season, I will make NO attempt to engage in any type of contact with children or go to any location, [*sic*] where children are known to frequent in order to celebrate any type of Halloween Festivities. I will remain inside my residence between 5 PM and 10:30 PM unless there is just cause to leave. I will post the sign; [*sic*] “NO CANDY OR TREATS AT THIS RESIDENCE” on

my front door and will leave all outside residential lighting off during the evening hours.

36. R.S.Mo. § 589.426 is so vague as to fail to provide fair notice or warning of what would constitute a violation.
37. In addition or in the alternative, R.S.Mo. § 589.426 fails to define the criminal offense it creates with sufficient definiteness that ordinary people can understand what conduct is prohibited.
38. In addition or in the alternative, R.S.Mo. § 589.426 fails to establish minimal guidelines to govern law enforcement so as to prevent arbitrary and discriminatory enforcement.

COUNT II

Violation of Ex Post Facto Clause, U.S. Const. Art. I, Sec. 10

39. Plaintiffs incorporate each of the allegations contained in paragraphs 1-32 as if each were set forth here verbatim.
40. R.S.Mo. § 589.426 imposes a punishment upon Plaintiffs for crimes that were committed before R.S.Mo. § 589.426's enactment.

COUNT III

Violation of First Amendment – Interference with Family Association

41. Plaintiffs incorporate each of the allegations contained in paragraphs 1-32 as if each were set forth here verbatim.
42. R.S.Mo. § 589.426 unreasonable interferes with Plaintiffs' right of family association with their children, step-children, and grandchildren.

COUNT IV

Violation of Fifth Amendment – Privilege against Self-Incrimination

43. Plaintiffs incorporate each of the allegations contained in paragraphs 1-32 as if each were set forth here verbatim.
44. R.S.Mo. § 589.426 requires Plaintiffs provide “just cause” for being absent from their homes from 5:00 p.m. to 10:30 p.m. on October 31. This shifts the burden of providing a “just cause” reason for absence to the Plaintiffs, which requires them to speak against their own penal interests in order to avoid arrest.

COUNT V

Violation of Fourteenth Amendment – Right to Travel

45. Plaintiffs incorporate each of the allegations contained in paragraph 1-32 as if each were set forth here verbatim.
46. R.S.Mo. § 589.426 requires Plaintiffs to remain in their homes from 5:00 p.m. to 10:30 p.m. on October 31, which impedes their right to travel interstate and intrastate on that day each year, and affects the right to intrastate travel on that day and surrounding days each year.

COUNT VI

Violation of Missouri Constitution, Art. 1, § 13

47. Plaintiffs incorporate each of the allegations contained in paragraphs 1-32 as if each were set forth here verbatim.
48. Missouri’s Constitution provides, “that no ... law ... retrospective in its operation ... can be enacted.” Mo. Const. art I, § 13.
49. R.S.Mo. § 589.426 imposes an affirmative obligations on Plaintiffs to each October 31 do each of the following (1) Avoid all Halloween-related

contact with children; (2) Remain inside her residence between the hours of 5 p.m. and 10:30 p.m. unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies; (3) Post a sign at her residence stating, “No candy or treats at this residence”; and (4) Leave all outside residential lighting off during the evening hours after 5 p.m.

50. The obligations created by R.S.Mo. § 589.426 are new duties imposed as a result of Plaintiffs’ criminal conviction.

51. R.S.Mo. § 589.426 was enacted after Plaintiffs’ convictions.

WHEREFORE, the Plaintiffs pray this Court:

- A. Enter declaratory judgment that R.S.Mo. § 589.426 violates the Constitution of the United States, on its face, and the Missouri Constitution, as applied to Plaintiffs and others convicted prior to August 28, 2008, of offenses that give rise to an obligation to register as a sexual offender;
- B. Upon proper motion, certify appropriate Plaintiff and Defendant classes;
- C. Issue preliminary and permanent injunctions enjoining enforcement R.S.Mo. § 589.426;
- D. Award Plaintiffs nominal damages against Defendants other than Nixon, Blunt, and Keathley for past violation of the constitutional rights;

- E. Award Plaintiffs costs, including reasonable attorneys fees, pursuant to 42 U.S.C. §1988; and
- F. Allow such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,

/s/ Anthony E. Rothert
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon each of the Defendants listed below at the address listed below by placing a copy of the foregoing in a properly addressed, postage pre-paid envelope and placing said envelope in the United States Mail on December 8, 2008, to:

Mark Fisher
Office of Prosecuting Attorney
115 West Main St.
Bowling Green, MO 63334
Pro Se and Attorney for Defendant Kruse

Jim Wells
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and was delivered by operation of this Court's ECF/CM system on December 8, 2008, to the following:

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