UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

THOMAS L. SANDERSON, an individual, **Plaintiff,** **vs.** **ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri; and JAMES HUDANICK, in his official capacity as Chief of Police of the city of Hazelwood, Missouri** **Defendants.**	**Civil Action:** **Case No. 4:23-cv-01242-JAR**

PLAINTIFF'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF

MOTION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Thomas L. Sanderson respectfully submits this Reply Memorandum in support of his Motion for Issuance of Temporary Restraining Order (TRO) (Doc. 7).

I. INTRODUCTION

Contrary to assertions made throughout the Attorney General's Opposition brief (Doc. 17, Oppo.), Plaintiff's Motion for TRO is not about whether "the First Amendment [] grant[s] sex offenders a right to give candy to children on Halloween." Oppo. at 1. Nor does Plaintiff's Motion seek to "strike down a Missouri statute designed to protect children from Halloween related contact with sex offenders." Oppo. at 2. In fact, Plaintiff's Motion is not about any of the *affirmative* Halloween-related restrictions in Missouri Rev. Stat. § 589.426 (the Statute), which would remain in place if the TRO issues.

Further, Plaintiff's Motion does not threaten either Missouri's "sovereign prerogative to assist [] law enforcement and the general public in identifying and locating sexual offenders," or the demise of "our federalist system of government." Oppo. at 16. Instead, Plaintiff's Motion presents a narrow issue: *Can the government force Registrants to post signs at their residences – a sacrosanct location long associated with expressive activity – when the signs' language is written by the government, and constitutes a pejorative "scarlet letter" that Registrants disagree with and do not wish to post for many reasons, including the risk of harm they invite?* Doe v. City of Simi Valley, 2012 WL 12507598, at *7-9 (C.D. Cal. Oct. 29, 2012) (recognizing same).

Every court to address this issue has said "no," pursuant to reasoning supported by Eighth Circuit and U.S. Supreme Court precedent. Ibid.; McClendon v. Long, 22 F.4th 1330, 1337 (11th Cir. 2022). Conspicuously, the Attorney General cites no authority in support of the state's right to compel ***any*** person to speak by posting signage at their private homes. Instead, the

Attorney General effectively concedes that the signs compel speech (see below pp. 4-7), and focuses instead on whether the sign posting mandate overcomes its "presumptive[] invalidity" through strict scrutiny. R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992).

The bottom line is that the sign posting mandate cannot satisfy strict scrutiny, because there is no evidence that mandated signs are the "least restrictive means" of protecting the public on Halloween, particularly when Missouri law *already prevents Registrants from participating in any Halloween activity*. See Oppo. at 18. This factor alone renders the Missouri sign posting mandate even more constitutionally infirm than that struck down in McClendon v. Long, where the Registrants were not prevented from participating in Halloween. See, e.g., Survivors Network of Those Abused by Priests, Inc. v. Joyce, 779 F.3d 785, 794 (8th Cir. 2015) (provision of act restricting speech for purpose of protecting houses of worship failed strict scrutiny "since a different section of the Act criminalizes obstructing the entrance to a house of worship"). Because the Missouri sign posting mandate cannot satisfy strict scrutiny, a TRO should issue.

II. AN ALLEGED DELAY IN BRINGING SUIT DOES NOT NEGATE THE IRREPARABLE INJURY FROM THE SIGN POSTING MANDATE

The Attorney General first argues that a TRO should be denied because Plaintiff unreasonably delayed in requesting a TRO. Yet, the Attorney General presents no authority for the proposition that an injunction upholding First Amendment rights can be denied because it could theoretically have been sought earlier. That is because diligence alone is not a requirement for TROs. Rather, in the case law cited by the Attorney General, the alleged delay negated the *irreparable injury* the moving party claimed to suffer, which has not occurred in this case.

In Wreal, LLC v. Amazon, Inc., 840 F.3d 1244, 1247 (11th Cir. 2016), the plaintiff did not file its trademark infringement action until three years after the defendant's allegedly

infringing behavior began, and then waited an additional five months before seeing a TRO. Similarly, in Wildhawk Investments, LLC v. Brava I.P., LLC, 27 F.4th 587, 587 (8th Cir. 2022), the plaintiff's injury from a breach of contract was undermined by "waiting more than a year to bring this lawsuit despite knowing" of the breach. Thus, Wreal and Wildhawk are distinguishable from this case because *they do not consider the infringement of First Amendment rights*, and because they involve sophisticated parties whose decision to delay seeking relief *negated the irreparable injury on which they premised the requested injunctions*.

In contrast, here, Plaintiff's irreparable injury from the sign posting mandate cannot be contested, since the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Moreover, unlike Wreal and Wildhawk, Plaintiff's irreparable injury has not yet occurred. That is, the irreparable injury resulting from the sign posting mandate will occur on and "in the weeks and months following" October 31. Doe v. City of Simi Valley, 2012 WL 12507598, at *7-9 (C.D. Cal. Oct. 29, 2012). Therefore, Plaintiff brought this Motion in time to secure relief.

The timeliness of Plaintiff's Motion is, in fact, supported by the Eighth Circuit's decision in Safety-Kleen Systems, Inc. v. Hennkens, 301 F.3d 931 (8th Cir. 2002), which states the opposite of what the Attorney General represents. Safety-Kleen held that the plaintiff "***did not unduly delay***" in taking "seven months to learn of Hennkens's competitive activity, marshal its case for a preliminary injunction, and file this action prepared for an immediate preliminary injunction hearing." Id. at 936, emphasis added.

Finally, although irrelevant for the reasons stated above, the Attorney General's allegations of an unreasonable delay in this case are conclusory as well as speculative. Plaintiff is not a sophisticated businessperson, but is instead an individual whose life has been turned

upside down by the sudden enforcement of the Halloween statute, including the subsequent loss of his employment. It took Plaintiff time to find resources and counsel willing to take this case. Under these facts, the Attorney General presents no grounds to reject Plaintiff's right to a TRO.

III. THE ATTORNEY GENERAL CONCEDES THAT THE SIGNS ARE COMPELLED SPEECH, AND FAILS TO SATISFY STRICT SCRUTINY

In opposing the TRO, the Attorney General next attempts to argue that forcing persons to post government-prescribed signs on their private residences is not speech. This cannot be a serious argument, as evidenced by the Attorney General's brief, 3-page treatment of the issue, and his much longer treatment of the strict scrutiny standard that applies to incidents of compelled speech. Yet, as discussed below, the Attorney General fails to meet his burden to establish that the sign posting mandate is one of those "rare" speech regulations that survive strict scrutiny. United States v. Playboy Entm't Group. Inc., 529 U.S. 803, 818 (2000).

A. The Compelled Speech Doctrine is Not Limited to Ideological Speech, nor is Plaintiff Seeking to Enjoin a Requirement to Report to the Government

Citing United States v. Sindel, 53 F.3d 874, 878 (8th Cir. 1995), the Attorney General argues that the compelled speech doctrine is limited to "the context of government compulsion to disseminate a particular political or ideological message." Oppo. at 12. That has never been the law. "[C]ases cannot be distinguished simply because they involved compelled statements of opinion while here we deal with compelled statements of 'fact': either form of compulsion burdens protected speech." Riley v. Nat'l Fed'n for the Blind, 487 U.S. 781, 797-98 (1988).

Regardless, Plaintiff contends that the signs embody an "ideological message" in that they reflect the State's assertion that he and all Registrants in Missouri pose a risk to children on Halloween. Plaintiff also asserts that the signs are factually false. Further, the signs infringe

Plaintiff's "right to refrain from speaking at all" which, as set forth in the Motion, is not contingent upon that speech being ideological or political. It would be a frightening precedent indeed if the government could force a person to carry its prescribed message on the grounds that ***the government*** did not consider that message to be factually false, ideological, or otherwise objectionable. Nor is such a limitation consistent with First Amendment precedent. See, e.g., Nat'l Assn. of Mfrs. v. SEC, 800 F.3d 518, 530 (D.C. Cir. 2015) (requiring manufacturers to disclose that their products include controversial "conflict minerals" was compelled speech in part because it was intended by the government to influence consumer choices); Riley, 487 U.S. at 797-98 (state could not compel charities to disclose proportion of donated funds diverted to operations in order to "dispel misperceptions" among donors about use of funds); Stuart v. Camnitz, 774 F.3d 238, 246 (4th Cir. 2014) (injunction appropriate where purpose and effect of law compelling physicians to display ultrasound images before abortions was to advance state's pro-life objectives).

Finally, citing United States v. Arnold, 740 F.3d 1032, 1035 (5th Cir. 2014), the Attorney General argues that the compelled speech doctrine does not apply to "sex offender registry requirements." Oppo. at 12. Specifically, Arnold held that a requirement to report information *to the government* as part of registration is not compelled speech because reporting supports "essential operations *of government*." Id. at 1035, quoting Sindel, 53 F.3d at 878. Yet, Arnold does not address "Sanderson's argument," as the Attorney General incorrectly contends (Oppo. at 12-13), because Arnold does not address "a sign-posting requirement" or any communication *to the public*. See ibid. That is, Plaintiff does not assert claims against a "registry requirement," or any requirement to report *to the government*. Rather, Plaintiff asserts a narrow claim against

the mandate to personally display a sign *to the public* at his residence, which is "a classic example of compelled speech." McClendon v. Long, 22 F.4th 1330, 1337 (11th Cir. 2022).

B. A Sign Posting Mandate is a "Classic" Regulations of Speech, Not Conduct

The Attorney General next argues that the sign posting mandate only "incidentally" burdens speech because the purpose of "the entire criminal statute" in which it lies is to "regulate[] only conduct," that is, prohibiting "Halloween-related contact with children." Oppo. at 14. This argument is nonsensical legerdemain that would negate the First Amendment's protection against content-based speech restrictions. A requirement to post a sign does not "incidentally" burden speech: its entire purpose and effect is to "compel[] sex offenders to speak" through that sign. Simi Valley, 2012 WL 12507598, at *7. There is no authority for the proposition that the government may compel speech by simply burying the operative mandate within a larger statutory scheme that primarily regulates conduct.

Further, the Supreme Court's dicta in Rumsfeld v. Forum for Academic and Institutional Rights, 547 U.S. 47 (2006) does not support sign posting mandates, as the Attorney General contends. Instead, that decisions supports Plaintiff by distinguishing unlawful compelled speech from the regulation of conduct that incidentally burdens speech. The Attorney General correctly notes that, in Rumsfeld, "the Court remarked that Congress can prohibit employers from discriminating on the basis of race [which is conduct], and therefore, Congress can prohibit employers from displaying a sign that reads 'White Applicants Only.'" Oppo at 13-14, citing Ibid. However, in the very next sentence, the Court clarified that the authority to ***prevent*** signage that advertises unlawful conduct "*is simply not the same* as forcing a student to pledge allegiance, or *forcing a Jehovah's Witness to display the motto 'Live Free or Die, and it trivializes the freedom protected in Barnette and Wooley to suggest that it is*." Rumsfeld, 547

U.S. at 62, emphasis added. In other words *preventing* speech that advertises unlawful conduct "is not the same" as *compelling* a private person to speak against his or her will.

Here, the State of Missouri is not *preventing* Registrants from speaking, or otherwise *preventing* speech that constitutes unlawful conduct. Instead, the State of Missouri is *forcing* Registrants to speak against their will, which is akin to "forcing a Jehovah's Witness to display the motto 'Live Free or Die,'" in violation of the First Amendment. McClendon v. Long, 22 F.4th 1330, 1333 (11th Cir. 2022), citing Wooley v. Maynard, 430 U.S. 705, 714 (1977). Thus, the statute's sign posting mandate unequivocally compels speech.

C. The Attorney General Concedes That the Sign Posting Mandate Applies to All Registrants and is Therefore Not Tailored, Much Less Narrowly Tailored

The sign posting mandate of the Statute cannot survive strict scrutiny. First, as discussed below, the Attorney General does not address the question of whether the sign posting mandate is "necessary" to protect children on Halloween, effectively conceding that it is not. See Oppo. at 15-16. Second, as in McClendon v. Long, and as the Attorney General concedes, the sign posting mandate applies to all Registrants indiscriminately, and is therefore not tailored at all, much less "narrowly tailored" or the "least restrictive means" of protecting the public.

1. *The Attorney General Presents No Evidence that the Sign Posting Mandate Serves the Interest in Protecting the Public*

As discussed in Plaintiff's TRO memo, the first issue in the narrow tailoring analysis is whether the challenged regulation of speech is "necessary" to achieve the compelling interest in protecting the public on Halloween. Survivors Network of Those Abused by Priests, Inc. v. Joyce, 779 F.3d 785, 794 (8th Cir. 2015). Here, the Attorney General fails to present evidence that requiring Registrants to post a sign at their homes serves that interest. In fact, the Attorney

General does not address this factor at all, but instead appeals to the state's "sovereign prerogative to assist state and local law enforcement and the general public in identifying and locating sexual offenders," which is not at issue because is not disputed in this case. Oppo. at 16.

2. *Missouri's Sign Posting Mandate Is Not Narrowly Tailored Because It Categorically Applies to All Registrants as in* McClendon v. Long

The Attorney General attempts to distinguish McClendon v. Long on the grounds that the signs at issue in that case were posted by a county sheriff pursuant to his ad hoc policy, whereas Missouri's signs are required by statute. This is a distinction without a difference. That is because the signs in both cases fail strict scrutiny for the same reason: the signs are categorically required of all Registrants without regard to any "evidence that the registrants [] actually pose a danger to trick-or-treating children or that these signs would serve to prevent such danger." McClendon, 22 F.4th at 1338. The Eleventh Circuit's narrow tailoring analysis is instructive:

> [T]he Sheriff's deputies placed the signs in the yards of all 57 registered sex offenders in Butts County . . . . [but] did not consider whether any of the registrants were classified by Georgia as likely to recidivate. He even admitted that, since he took office in 2013, he had never had an issue with a registrant having unauthorized contact or reoffending with a minor on Halloween or at any other time. The Sheriff has not provided any record evidence that the registrants in Butts County actually pose a danger to trick-or-treating children or that these signs would serve to prevent such danger. And the Sheriff bears the burden of proof on the issue of whether his signs are narrowly tailored.
>
> Assuming that yard signs alerting people to the residences of registered sex offenders on Halloween would prevent the sexual abuse of children (which, we repeat, is not supported by any record evidence), the signs are not tailored narrowly enough. Sheriff Long testified that the sex-offender registry, which contains each registrant's name, address, and photograph, is available on the State of Georgia's website, on the Butts County website, at Butts County administrative buildings, and at the Butts County Superior Court Clerk's Office. The Sheriff has made the sex offender registry widely available through government sources, diminishing the need to require residents to disseminate the same information in yard signs on their private property.

McClendon, 22 F.4th at 1337-38.

In this matter, the Missouri statute suffers from the same fatal overbreadth. In fact, the Attorney General concedes that Missouri "applies its Halloween provisions only to offenders subject to registration and only then for the period of time for which the offender is required to register." Oppo. at 20. In other words, Missouri's sign posting mandate categorically applies to *all Registrants* in Missouri regardless of the age of their victim, the nature of their offense, or their likelihood of recidivism, just as in Butts County, Georgia. And as in Georgia, any interested person in Missouri is free to search a Registrant's name and address on the Internet, "diminishing the need to require residents to disseminate the same information in yard signs on their private property." McClendon, 22 F.4t at 1138.

3. *Because Missouri Already Prohibits Registrants from Participating in Halloween, Missouri's Sign Posting Mandate is Even More Constitutionally Infirm that that Invalidated in* McClendon v. Long

In response to these obvious examples of the sign posting mandate's overbreadth, the Attorney General repeatedly misapplies the strict scrutiny analysis in several ways.

First, the Attorney General argues that "even if Sanderson could demonstrate that the signage required [] was not effective (a conclusion which the state does not concede), narrow[] tailoring does not require a statute to be 'perfectly tailored' in every case." Oppo. at 21. Yet, it is "the state's" burden – not Plaintiff's – "to show that this sweeping law is necessary or legitimate to serve [its] purpose," as well as the unavailability of alternative means to achieve the purpose. Packingham v. North Carolina, 582 U.S. 98, 108 (2017). The Attorney General does not meet either burden. Instead, the Attorney General attempts to distinguish aspects of the Missouri and Georgia registries that do not concern sign-posting mandates. None of these distinctions, however, is responsive to the narrow tailoring analysis, because none establishes

that the signs apply only to persons "likely to recidivate," or otherwise establishes that the signs are "necessary" or the "least restrictive means" of protecting children.

Most notably, the Attorney General argues that Georgia law did not prohibit Registrants from participating in Halloween activities, whereas Missouri law does. However, the McClendon court did not cite this factor in its narrow tailoring analysis (see 22 F.4th at 1334), and in any event the Attorney General does not explain how that factor renders its signs narrowly tailored or otherwise permissible under the First Amendment. Oppo. at 18. Nor could he: ***The fact that the Missouri Statute prohibits Registrants from participating in Halloween renders the signs even less necessary than those in McClendon, because the Statute's other provisions are, in fact, less restrictive means of achieving the same protective purpose of the sign posting mandate***. Survivors Network, 779 F.3d at 794 (8th Cir. 2015) (strict scrutiny not satisfied where other, content-neutral provisions of act advance purported purpose of speech regulation).

The Attorney General also argues that the sign posting mandate's temporal limitation "to one day of the year in which there is a holiday" is "narrow tailoring." Oppo. at 20. This factor not only fails to distinguish the Missouri statute from McClendon, which also considered a Halloween sign, but also fails to account for the fact that First Amendment freedoms apply to "even minimal periods of time." Johnson v. Minn. Park and Recreation Bd., 729 F.3d 1094, 1101-02 (8th Cir. 2013). This argument also fails to account for the reality that the signs "subject[] [Registrants] to the dangerous mischief common on Halloween night and to community harassment in the weeks and months following." Doe v. City of Simi Valley, 2012 WL 12507598, at *1 (C.D. Cal. Oct. 29, 2012).

The Attorney General next attempts to distinguish McClendon on the grounds that he has "presented evidence that Sanderson has had unauthorized contact with children." Oppo. at 19.

This argument is misdirection. The issue in McClendon was whether there was evidence that "the registrants in Butts County actually pose a danger to trick-or-treating children or that these signs would serve to prevent such danger." 44 F.4th at 1138. There is no evidence in this case that Plaintiff or any other Missouri Registrant poses a danger to children on Halloween, nor that the sign posting mandates are the least restrictive means of mitigating that danger. In fact, as detailed in the Motion, Plaintiff hosted Halloween festivities for many years with law enforcement's blessing, and without incident, further undermining the basis for the mandate.[1]

Finally, the Attorney General notes that the content of the signs in Missouri is different from those in McClendon. However, Missouri's signs are still compelled speech, which is why virtually identical mandated signs were enjoined by the District Court in Doe v. City of Simi Valley, 2012 WL 12507598, at *8 (C.D. Cal. Oct. 29, 2012). Accordingly, the Attorney General has failed to meaningfully distinguish McClendon, or to otherwise meet his burden to establish that the sign posting mandate satisfies strict scrutiny.

4. *The Attorney General's Appeal to "History and Tradition" Merely Attempts to Sidestep the Controlling First Amendment Analysis*

Strangely, the Attorney General spends six pages of his brief arguing that "our nation's history and tradition" do not prohibit sign posting mandates for Registrants on Halloween, despite acknowledging that "courts have not yet required an analysis of history and tradition in the First Amendment analysis." Oppo. at 22-27. The Attorney General's appeal to "history and tradition" are simply an attempt to sidestep the First Amendment analysis that governs

[1] Whether Plaintiff's contact with children on Halloween was "unauthorized" in the years between 2000-2021 is debatable and unresolved, given the confusion over whether and when the statute applied to his conduct. See page 14, below, and Compl. ¶¶24-25 & fn.5.

compelled speech claims, under which the Missouri sign posting mandate fails. Because the Attorney General cites to no authority permitting the government to compel speech under the First Amendment, the sign posting mandate of the Statute cannot survive strict scrutiny.[2]

IV. THE BALANCE OF THE EQUITIES FAVORS ENJOINING A FACIALLY UNCONSTITUTIONAL LAW THAT IS INCONSISTENTLY ENFORCED

In arguing that the balance of equities favors the state, the Attorney General ignores both the facts of this case as well as controlling precedent.

First, the Attorney General argues that the sign posting mandate imposes only "de minimis" harm upon Registrants because it "does not contain an ideological or political belief or creed, and must only be posted for a few hours." Oppo. at 28. Again, the Attorney General ignores Supreme Court precedent holding that the First Amendment applies "for even minimal periods of time." E.g., Elrod v. Burns, 427 U.S. 347, 373 (1976). Further, the irreparable harm

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[2] To the extent that the Court entertains this appeal to history and tradition, Plaintiff notes: Citing 200-year-old cases, the Attorney General purports to trace the origins of the "attractive nuisance" doctrine, which requires persons to warn others of "a dangerous instrumentality or condition" on their property. Then, without any citation, the Attorney General asserts that "a sex offender's Halloween display . . . is an inherently dangerous instrumentality or condition that is attractive to children." Oppo. at 25-26. This is precisely the kind of bald, nebulous assertion that cannot withstand strict scrutiny in the First Amendment context because it lacks evidence. McClendon, 22 F.4th at 1338 (assertion "that yard signs alerting people to the residences of registered sex offenders on Halloween would prevent the sexual abuse of children," even if "supported by any record evidence," "[is] not tailored narrowly enough" to satisfy strict scrutiny). In addition, the Attorney General's assertion is factually incorrect, as confirmed by leading experts such as the Association for the Treatment of Sexual Abusers (ATSA), who confirm that Halloween restrictions are grounded in "myth" and "do not make children safer." See Compl. Exh. B, ATSA, *Halloween and sexual abuse prevention: The mythical "Halloween effect"* (Oct. 4, 2019). Finally, citing a dissenting opinion in Brown v. Entertainment Merchant Association, the Attorney General claims that "there is a long history and tradition of regulating conduct speech directed at minors." Oppo. at 26. Again, this TRO is not about regulating "conduct directed at minors" or "speech directed at minors," but instead concerns the narrow issue of whether Registrants can be compelled to speak when they do not wish to.

from compelled speech exists independent of any "reputational harm" to Plaintiff which, in any event, is not the sole basis for his claim. Plaintiff's claim is also predicated upon his desire "to remain silent," as well as his fear – recognized by the District Court in Simi Valley – of vigilante violence and other "dangerous mischief" that such signs invite. 2012 WL 12507598, at *8-9. Gralike v. Cook, 191 F.3d 911, 917-18 (8th Cir. 1999). These are basic First Amendment rights.

In addition, the Attorney General cannot contend in good faith that the signs lack "ideological or political" meaning, since his entire Opposition brief as well as the Statute are predicated upon the pejorative assumption that "a sex offender's Halloween display . . . is an inherently dangerous instrumentality or condition that is attractive to children." Oppo. at 25-26. This is a debatable premise that Plaintiff Sanderson does not wish to, and need not, impliedly support, advertise, or carry by displaying a sign on his private home. Cf. Gralike, 191 F.3d at 917-18 (ballot label noting factual information that candidate did not take pledge to support term limits was compelled speech because it communicated "a negative impression" of the candidate and "impli[ed] that the candidate cannot be trusted to carry out the people's bidding, which in turn casts doubt on his or her suitability to serve in Congress.").

The Attorney General next argues that Missouri will suffer irreparable harm "if its criminal laws are subject to a statewide injunction." Oppo. at 28. This argument is as overwrought as it is incorrect. Again, Plaintiff does not seek to enjoin Missouri's "criminal law," but only a discrete sign posting mandate that other courts have found to violate the First Amendment. In addition, the Attorney General fails to present authority denying an injunction because a state is "harmed" through the enjoining of unconstitutional state action. That is of course because no state is "harmed" when the federal courts uphold constitutional rights.

Finally, the Attorney General suggests that the State of Missouri could suffer liability if Registrants are not forced to post signs warning away the public on Halloween. Oppo. at 29-30. Yet, the Attorney General does not explain how governmental immunities would not bar such claims, which are speculative in any event. Further, the Attorney General's argument is again simply conclusory in its assertion that the signs accomplish any purpose, and does not surmount the "classic" First Amendment problems they create. McClendon v. Long, 22 F.4th 1330, 1337 (11th Cir. 2022). The fanciful nature of this argument also underscores the lack of authority for opposing the TRO in this case.

V. ENFORCING THE FIRST AMENDMENT SERVES THE PUBLIC INTEREST

Finally, the Attorney General argues that an injunction is not in the public interest because, "absent state intervention, Sanderson will flout the State's sex offender law . . . and have contact with children." Oppo. at 30. This argument ignores the undisputed facts of this case as well as common sense.

First, as alleged in the Complaint, Plaintiff's prior Halloween activities occurred with the knowledge and blessing of law enforcement – including Defendant Hudanick's own Department – who informed Plaintiff that the Halloween restrictions did not apply to him. This is consistent with the confusion in Missouri law about whether the Statute applied to persons such as Plaintiff who were convicted prior to its enactment. See Compl. ¶¶24-25 & fn.5, citing F.R. v. St. Charles County Sheriff's Dept., 301 S.W.3d 56, 60 (Mo. 2010) (Section 589.426 cannot be lawfully applied to persons convicted prior to August 28, 2008 under the "retrospective application" clause of Article I, section 13 of the Missouri Constitution), called into doubt by State v. Wade, 421 S.W.3d 429, 435 (Mo. 2013). Further, even according to the Attorney General's recitation of the facts, Plaintiff never personally received notice of the Statute's application to him until the

time he was arrested. Instead, the notice provided a few hours earlier was to "Sanderson's Girlfriend" when Plaintiff was admittedly "no longer at the residence." See Oppo at 5.

Regardless, there is no evidence that Plaintiff will ignore the statutes restrictions, as the Attorney General baldly asserts. Plaintiff cannot host a display, cannot participate in trick-or-treating, and must remain indoors absent good cause. MO Rev. Stat. § 589.426. He is also subject to the myriad of other restrictions placed upon him as a Registrant. Given all that, there is no basis to assert that the public will be harmed if Plaintiff does not post a sign on his residence. "The public interest is not served – indeed, it is undermined – by enforcement of an unconstitutional law singling out a discrete, outcast group to speak in such a way that their persons, property, and loved ones may be endangered." Simi Valley, 2012 WL 12507598, at *9.

VI. CONCLUSION

For all these reasons, Plaintiff respectfully requests that the Court issue a temporary restraining order enjoining enforcement of the sign requirement of MO Rev. Stat. § 589.426(1)(3) on October 31, 2023.

Dated: October 20, 2023

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