No. _____

In the Supreme Court of the United States

CATHERINE L. HANAWAY, IN HER 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,
Petitioners,

v.

THOMAS L. SANDERSON,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under Missouri law, convicted sex offenders cannot participate in Halloween: They must avoid all Halloween-related contact with children, remain at their residence with all outside lighting off during the evening hours, and post a notice stating "No candy or treats at this residence." Thomas Sanderson, a convicted sex offender, challenged the sign-posting requirement as unconstitutional compelled speech. The Eighth Circuit agreed and struck down Missouri's law—contending that "the sign mandate compels speech" and fails strict scrutiny.

The question presented is:

Does Missouri's Halloween sign-posting requirement, which requires factually accurate disclosures, unconstitutionally compel the speech of convicted sex offenders?

PARTIES TO THE PROCEEDING

Petitioners Missouri Attorney General Catherine L. Hanaway and City of Hazelwood Police Chief James Hudanick were defendants in the U.S. District Court for the Eastern District of Missouri and appellants in the U.S. Court of Appeals for the Eighth Circuit.

Respondent Thomas L. Sanderson was the plaintiff in the U.S. District Court for the Eastern District of Missouri and appellee in the U.S. Court of Appeals for the Eighth Circuit.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Hanaway v. Sanderson*, No. 25A1191 (application to extend time to file a petition for writ of certiorari) (granted Apr. 29, 2026);
- *Sanderson v. Hanaway*, Nos. 24-3120, 24-3204 (8th Cir. Feb. 6, 2026) (denial of petition for rehearing);
- *Sanderson v. Hanaway*, Nos. 24-3120, 24-3204 (8th Cir. Jan. 2, 2026) (appellate court decision);
- *Sanderson v. Bailey*, No. 4:23-cv-01242-JAR (E.D. Mo. Oct. 2, 2024) (district court judgment);
- *Sanderson v. Bailey*, No. 4:23-cv-01242-JAR (E.D. Mo. June 14, 2024) (district court judgment);
- *Sanderson v. Bailey*, No. 23-3394 (8th Cir. Dec. 11, 2023) (order dismissing appeal of TRO); and
- *Sanderson v. Bailey*, No. 4:23-cv-01242-JAR (E.D. Mo. Oct. 27, 2023) (order granting TRO).

There are no other proceedings directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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"Sex offenders are a serious threat in this Nation." *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003) (citation omitted). This threat is especially serious every year on Halloween, when countless children approach the doors of strangers' homes. Missouri, understandably, wants to ensure that sex offenders do not answer the door.

To counteract this obvious risk, Missouri enacted a statute prohibiting sex offenders' participation in Halloween. Offenders must remain home, have their exterior lights off, not interact with children, and display a notice that there is "No candy or treats at this residence." Mo. Rev. Stat. § 589.426.1.

Respondent Sanderson is a convicted sex offender who forcibly sodomized a sixteen-year-old girl. App. 17a, 19a; *see also* C.A. J.App. 1170–72. He wants to participate in Halloween and has flagrantly violated Missouri's law for over a decade. After getting caught, he brought a First Amendment challenge to Missouri's no-candy notice requirement as unconstitutional compelled speech. Remarkably, the Eighth Circuit agreed—holding that strict scrutiny applies and that the First Amendment prohibits Missouri from requiring sex offenders to make the factually correct disclosure that candy is not available at their homes on Halloween night. *See* App. 8a–11a.

That dangerous holding deepens a circuit split and warrants this Court's attention. Like the Eighth Circuit, the Eleventh Circuit recently held that a requirement for sex-offenders to post no-candy signs on Halloween night unconstitutionally compelled speech. *See McClendon v. Long*, 22 F.4th 1330, 1337

(11th Cir. 2022). These decisions, however, conflict with the Fifth Circuit's holding that the more onerous disclosure requirements codified in the Sex Offender Registration and Notification Act (SORNA) are not unconstitutional compelled speech. *See United States v. Arnold*, 740 F.3d 1032, 1034–35 (5th Cir. 2014). The Fifth Circuit is not alone. *See, e.g.*, *Crist v. Florida*, 419 So. 3d 183, 197–98 (Fla. Dist. Ct. App. 2025) (en banc) (rejecting a challenge to sex-offender status being printed on government identification because it was not "a form of expressive conduct").

The Eighth Circuit's decision is wrong—and it disregarded two lines of this Court's precedents in subjecting the Halloween-notice rule to strict scrutiny. *First*, the Eighth Circuit failed to follow this Court's instruction that strict scrutiny does not apply to speech rules that are "plainly incidental" to the regulation of conduct and thus not compelled speech. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 62 (2006).

Second, the Eighth Circuit based its opinion on the assumption that a factually accurate notice is an expressive message protected by the First Amendment and applied strict scrutiny. But the notice is not an expressive or ideological message that the First Amendment forbids. Missouri's required message is not "ideological." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). Nor is it a prescription of orthodoxy "in politics, nationalism, religion, or other matters of opinion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The Eighth Circuit therefore erred in treating the notice requirement like edicts for individuals to parrot the government's ideological message.

Under any form of scrutiny more relaxed than strict scrutiny, the Halloween-notice rule passes First Amendment muster. *Cf. Smith v. Doe*, 538 U.S. 84, 103–04 (2003) (holding that the state is not precluded "from making reasonable categorical judgments that conviction of [sex-offender] crimes should entail particular regulatory consequences"). Requiring sex offenders to post signs saying that candy is not available on Halloween night makes it less likely that children will approach sex offenders' doors. It also helps the police catch sex offenders (like Respondent) who are unlawfully participating in Halloween. Missouri should not—like the Eighth Circuit held—be required to simply trust that sex offenders will not answer the door, or that parents will do advance research on sex-offender databases. *See* App. 10a.

This case is vitally important to protecting children from sex offenders. In line with the Fifth Circuit's decision, Missouri and other States should be allowed to enact common-sense disclosure requirements (like SONRA) to protect vulnerable children. "[E]vident beyond the need for elaboration," that kind of protection constitutes a governmental objective of "surpassing importance." *New York v. Ferber*, 458 U.S. 747, 756–57 (1982). Under the logic of the Eighth and Eleventh Circuits, any sex-offender disclosure—including SORNA—would qualify as compelled speech subject to strict scrutiny. That cannot be correct.

Moreover, this case presents a clean vehicle to address what qualifies as a permissible government-mandated notice requirement versus unconstitutional compelled speech. Although this Court has provided markers, *see, e.g.*, *Nat'l Inst. of*

Fam. & Life Advocs. v. Becerra, 585 U.S. 755, 766 (2018), exactly what counts as compelled expressive speech "can sometimes raise difficult questions," *303 Creative LLC v. Elenis*, 600 U.S. 570, 599 (2023). The decision below, which over-read this Court's compelled-speech cases, exemplifies the confusion in the lower courts. *See* App. 6a–8a. Because this case involves a governmental requirement to post a message in connection with conduct (interacting with children) and incontrovertible facts (sex-offender status), it offers this Court a valuable opportunity to clarify this murky area of First Amendment law.

The Court should therefore grant certiorari and confirm that sex-offender-status disclosures are not unconstitutional compelled speech.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is available at 163 F.4th 1101 (8th Cir. 2026). App. 1a–13a. The district court's findings of fact, conclusions of law, and order is available at 753 F. Supp. 3d 773 (E.D. Mo. 2024). App. 14a–40a. The order of the court of appeals denying Petitioners' petition for rehearing is unpublished but available at 2026 WL 328373 (8th Cir. Feb. 6, 2026). App. 45a–46a.

JURISDICTION

The court of appeals denied rehearing on February 6, 2026. App. 50a. This Court granted an extension to and including July 6, 2026 to file a petition for a writ of certiorari. App. 43a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

U.S. Constitution Amendment I provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Missouri Revised Statute § 589.426 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.

STATEMENT OF THE CASE

I. Missouri prohibits sex offenders from participating in Halloween.

Missouri has good reason for limiting sex-offender interactions with children: "Sex offenders are a serious threat in this Nation." *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 32 (2002) (plurality opinion)). "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault." *McKune*, 536 U.S. at 33 (plurality opinion). Worse, "the victims of sexual assault are most often juveniles." *Id.* at 32.

To counter this risk, the federal and state governments have enacted substantial restrictions on sex offenders—including sex-offender-registration statutes. After completing his prison sentence, a sex offender must register under SORNA. *See* 34 U.S.C. § 20913. Recognizing that "consequences flow" from being a convicted sex offender, this Court has repeatedly upheld the sex-offender-registration statutes. *Smith v. Doe*, 538 U.S. 84, 101 (2003).

Missouri, like many other jurisdictions, places several restrictions on sex offenders. They may not live within 1,000 feet of schools and other childcare facilities. Mo. Rev. Stat. § 566.147.1. They cannot be present or loiter within 500 feet of schools, parks, and childcare facilities. *Id.* §§ 566.148–.150. They may not coach children's sports and may not supervise or employ children. *Id.* § 566.155. Nor can they participate in Halloween. *See id.* § 589.426.

Specifically, sex offenders must "[a]void all Halloween-related contact with children" and, except for employment or medical emergencies, "remain inside [their] residence[s]" during trick-or-treating hours with their outside lights off. *Id.* § 589.426.1(1)–(2), (4). They must also post a "No candy or treats at this residence" notice at their homes. *Id.* § 589.426.1(3). Failure to comply with these rules is a misdemeanor. *Id.* § 589.426.2.

II. Respondent challenged the notice mandate as compelled speech.

Thomas Sanderson is a Tier II sex offender. App. 17a, 19a; *see also* C.A. J.App. 1346; Mo. Rev. Stat § 589.414.6(1)(a). In 2001, when he was about thirty-five years old, Sanderson sodomized a sixteen-year-old girl while drinking. App. 17a, 19a; *see also* C.A. J.App. 1164. Sanderson sat on top of the girl and refused her pleas to stop. C.A. J.App. 1170–71. Instead, Sanderson moved her underwear, "smiled" at her, and inserted his fingers into her vagina. C.A. J.App. 1171–72. Only when the victim shouted "really loud" did he stop. C.A. J.App. 1172.

Sanderson was convicted in 2006 and released from prison in 2008. App. 16a; *see also* App. 2a–3a. Despite this conviction, Sanderson refuses to admit his guilt and ridicules the State's sex-offender-rehabilitation programming. App. 82a, 98a.

While Sanderson was in prison, the Missouri General Assembly moved to protect children from sex offenders on Halloween. *See* App. 16a–17a. During the evening hours on Halloween, sex offenders cannot interact with children. Mo. Rev. Stat. § 589.426.1(1). They must remain inside their residences with their

outside lights off and post a sign stating, "No candy or treats at this residence." *Id.* § 589.426.1(2)–(4).

Sanderson ignored this statute for several years and handed out candy to children. App. 17a; *see also* App. 66a. In 2022, a resident alerted the local police department that Sanderson was participating in Halloween. App. 19a. Police witnessed Sanderson outside his home with his lights and Halloween display on, while he distributed candy to children. *Id.*

When police went to Sanderson's home to force compliance with the Halloween statute, Sanderson hid inside. C.A. J.App. 109. Police directed Sanderson to shut down his Halloween festivities and to turn off his outside lights. App. 18a. Police also observed that his home lacked the required "No candy or treats at this residence" notice. *Id.* Several days later, Sanderson was arrested for violating the Halloween statute (not just the notice requirement). *Id.* He pleaded guilty and received one-year probation. *Id.*

III. The District Court and the Eighth Circuit held for Sanderson.

In 2023, Sanderson brought this suit challenging only the notice requirement as unconstitutionally compelled speech. App. 14a–15a. The District Court entered judgment for Sanderson. App. 41a–42a. It found the no-candy notice to be compelled speech "like the State motto on the New Hampshire license plate in *Wooley*." App. 31a. The District Court's compelled-speech analysis began and ended with *Wooley*. *See* App. 31a–32a. It assumed—without analysis—that the factually accurate notice is expressive conduct warranting First Amendment protection.

Although the District Court found that the State had a compelling interest in the posting requirement, it held that the notice failed the least-restrictive-means analysis because the notice "contains no warning that there is a convicted sex offender . . . at that residence" and the other Halloween-related restrictions "adequately address all of [the State's] interests." App. 34a–35a. On this basis, the District Court enjoined enforcement of the notice provision statewide. App. 39a–40a.

On appeal, the Eighth Circuit agreed that the notice provision is unconstitutional compelled speech. App. 7a–8a. Despite the notice requirement furthering the statute's focus on conduct (keeping sex offenders from participating in Halloween), *see* Mo. Rev. Stat. § 589.426.1, the court rejected the argument that notice was speech incident to conduct, App. 7a–8a. Instead, the Eighth Circuit considered the notice to "require[]" speech, "not merely [being] incidental to conduct." App. 7a.

Specifically, the Eighth Circuit assumed that because the statute requires sex offenders to "bear[] a specific message," it had to compel speech. App. 7a–8a. The court did not account for how the notice requirement furthers the statute's other provisions by unambiguously disclosing that a household is not participating in Halloween. *See id.* The court also presumed that an uncontroversial, factual disclosure qualified as compelled speech. *See id.*

Moreover, the Eighth Circuit never grappled with the Fifth Circuit's decision upholding SORNA's disclosure requirement against a compelled-speech claim in *United States v. Arnold*, 740 F.3d 1032, 1034–35 (5th Cir. 2014)—despite that case's centrality in

the State's argument. *See generally* App. 2a–13a. Following the court's decision, the State petitioned for rehearing, which the Eighth Circuit denied without opinion. App. 46a.

REASONS FOR GRANTING THE WRIT

I. Courts are split over whether sex-offender notifications unconstitutionally compel speech under the First Amendment.

The Eighth Circuit sharpened a split among the circuits over whether sex-offender disclosures qualify as compelled speech triggering strict scrutiny. The government, of course, may not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Nor may the government force an individual to serve "as a 'mobile billboard' for the State's ideological message or suffer a penalty." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). Sex-offender notices cross no such lines.

As the Fifth Circuit correctly recognized with SORNA disclosures, sex-offender-status notices do not implicate First Amendment protections. *Arnold*, 740 F.3d at 1034–35. In that court's words: "When the government, to protect the public, requires sex offenders to register their residence, it conducts an 'essential operation[] of [the] government'" and does not compel speech. *Id.* at 1035 (alterations in original). Rather, the disclosure is purely factual: SORNA does not require an offender "(a) to affirm a religious, political, or ideological belief he disagrees with or (b) to be a moving billboard for a governmental ideological message." *Id.* In other words, "*Barnette*

and [*Wooley*] do not . . . require [courts] to conclude that the government has unlawfully compelled [an offender's] speech" via a SORNA disclosure. *Id.*

The Fifth Circuit's upholding SORNA's requirements is particularly telling given the comparative invasiveness of SORNA's disclosures. SORNA requires sex offenders to detail what they look like, where they live, where they work, and the nature of their sex offense. *See* 34 U.S.C. §§ 20913–20914. By contrast, Missouri's notice requirement does not even require offenders to disclose that they are offenders—they merely have to say that there is "[n]o candy or treats at this residence." Mo. Rev. Stat. § 589.426.1(3). That is a factually correct message because, under state law, sex offenders cannot participate in Halloween. *Id.* § 589.426.1. But unlike SORNA, Missouri's law does not necessarily expose regulated individuals as sex offenders, because even law-abiding citizens not wishing to participate in Halloween could post that sign on their doors.

The Fifth Circuit is not alone. Other courts have upheld sex-offender disclosures against constitutional attack. *See, e.g.*, *Cutshall v. Sundquist*, 193 F.3d 466, 481 (6th Cir. 1999) (upholding disclosure against a right to privacy challenge); *Crist v. State*, 419 So. 3d 183, 197–98 (Fla. Dist. Ct. App. 2025) (en banc) (rejecting a challenge to a person's status as a sex offender being printed on government identification because it was not "a form of expressive conduct" (citation omitted)).

The Eighth Circuit too is not on its own—the Eleventh Circuit has also held unconstitutional a sex-offender Halloween disclosure. In that case, the

Eleventh Circuit concluded that a local sheriff placing "NO TRICK-OR-TREAT AT THIS ADDRESS" in sex offenders' yards on Halloween unconstitutionally compelled speech. *McClendon v. Long*, 22 F.4th 1330, 1337 (11th Cir. 2022).

This Court should grant review and resolve this split.

II. The Eighth Circuit wrongly viewed the Halloween-notice rule as compelled speech subject to strict scrutiny.

In subjecting the Halloween-notice rule to strict scrutiny, the Eighth Circuit disregarded two lines of this Court's precedent. First, the Eighth Circuit narrowly focused on the Halloween-notice rule in isolation—without considering its incidental role in enforcing *conduct* prohibitions on sex-offender participation in Halloween. Second, the Eighth Circuit incorrectly analyzed the sign as expressive messaging rather than a purely factual disclosure.

If this Court grants review and clarifies that strict scrutiny does not apply to sex-offender disclosure requirements, it can easily uphold the Halloween-notice rule. The rule is crucial to enforcing Missouri's prohibition on sex-offender participation in Halloween because it helps prevent children from approaching sex offenders' doors and assists police in detecting sex offenders who (like Respondent) unlawfully participate in Halloween.

1. The Eighth Circuit's error began with divorcing the no-candy notice rule from the restrictions on sex offenders' conduct on Halloween. App. 7a–8a (proceeding from premise that the Halloween-notice

rule requires "only speech" and "not any other related conduct"). But Missouri's statute is designed to prevent sex offenders from *participating* in Halloween. *See* Mo. Rev. Stat. § 589.426.1. The notice requirement is essential to that goal because it ensures that children do not approach the doors of sex offenders (and that police can more easily enforce the no-participation rule). Together, the notice and conduct restrictions "constitute[] a single and integrated course of conduct." *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949); *see United States v. O'Brien*, 391 U.S. 367, 376 (1968) ("This Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.").

Even Respondent seems to understand this point. Indeed, Sanderson testified below that his opposition to the notice comes not from an ideological objection, but because he "want[s] to hand out candy." App. 78a. The Halloween-notice rule—consistent with Missouri's compelling interest in protecting children from sex offenders—bars precisely that *conduct*.

Therefore, the Halloween-notice rule is not a pure speech requirement—like the Eighth Circuit held. App. 7a–8a. It is merely a "plainly incidental" regulation designed to enforce regulations of *conduct*. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.* (*FAIR*), 547 U.S. 47, 62 (2006).

This Court addressed and upheld a similar regulation in *FAIR*. There, the Court examined a rule

that required law schools to facilitate military recruiters' efforts on campuses. *Id.* at 54. The Court acknowledged that the rule imposed certain speech obligations on the schools; for example, the schools needed to advertise the recruiters' presence. *Id.* at 61. But instead of analyzing those speech requirements in isolation—like the Eighth Circuit did—the Court examined them *in relation* to the conduct regulations at the heart of the case. *See id.* at 61–62. Because the "elements of speech" necessary to assist the military recruiters were merely ancillary to conduct regulations, the Court did not apply strict scrutiny. *See id.*; *see also Nat'l Inst. of Fam. & Life Advocates v. Becerra* (*NIFLA*), 585 U.S. 755, 770 (2018) (emphasizing how a problematic notice requirement included no conduct regulation). Instead, the Court applied intermediate scrutiny. *See FAIR*, 547 U.S. at 67–68; *see also Riley v. Nat'l Fed'n of Blind of N.C., Inc.*, 487 U.S. 781, 797–98 (1988).

FAIR thus forecloses the Eighth Circuit's application of strict scrutiny. *See* 547 U.S. at 67–68. The Court should grant review and hold that the Halloween-notice requirement is not subject to strict scrutiny.

2. The Eighth Circuit also erred in applying compelled-speech precedents to Missouri's law, which merely requires a *factual* disclosure.

Just as "[o]ur system does not treat dissemination of truthful information [about sex offender status] in furtherance of a legitimate governmental objective as punishment," *Smith*, 538 U.S. at 98, it should not treat this same factual dissemination as compelled speech. "The right to speak and the right to refrain

from speaking are complementary components" of the First Amendment. *Wooley*, 430 U.S. at 714. This Court has thus not hesitated to strike down laws "compelling individuals to speak a particular message." *NIFLA*, 585 U.S. at 766. This Court's compelled-speech cases have concerned "involuntary affirmation" of objected-to beliefs, *Barnette*, 319 U.S. at 633; *accord NIFLA*, 585 U.S. at 778, or propagating "the State's ideological message," *Wooley*, 430 U.S. at 715.

Displaying a no-candy notice—when the sex offender is prohibited from distributing candy—does not require the speaker "(a) to affirm a religious, political, or ideological belief he disagrees with or (b) to be a moving billboard for a governmental ideological message." *Arnold*, 740 F.3d at 1035. Nor does the notice requirement threaten to "drown[] out" any desired message. *NIFLA*, 585 U.S. at 778; *see, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023) (recognizing that the touchstone of compelled speech is whether the government wishes to "coopt an individual's voice for its own purposes"). Rather, the Halloween-notice rule merely requires a *factually accurate* disclosure designed to prevent children from approaching sex-offenders' doors. *See* Mo. Rev. Sat. § 589.426.1. This is no different than laws compelling warnings of a dangerous condition, *e.g.*, 19 C.S.R. 20-3.050(3)(F)2.G ("No lifeguard on duty"), or statutes mandating "Exit" signs above doorways, *e.g.*, Mo. Rev. Stat. § 316.060.3. Requiring such notices is "simply not the same" as commanding individuals to propagate an ideological message. *FAIR*, 547 U.S. at 62. Suggesting otherwise "trivializes the freedom protected in *Barnette* and *Wooley*." *Id.*; *accord NIFLA*,

585 U.S. at 779 (Kennedy, J., concurring) (explaining that an abortion-related disclosure requirement was problematic because it "compel[led] individuals to contradict their most deeply held beliefs, beliefs grounded in basic philosophical, ethical, or religious precepts").

In response to all this, the Eighth Circuit put weight on the fact that Missouri "requires *verbatim* speech" in its notice requirement. App. 7a. But this fact cannot—at least not alone—trigger strict scrutiny. This Court has held that the government can require factual disclosures to use particular language. *See Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 251 (2010). Rightly so; if litigants could receive strict scrutiny by simply quibbling over the phrasing required for a disclosure, it would be practically impossible to enforce even basic labeling regulations. *Cf., e.g.*, *Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 22–23 (D.C. Cir. 2014) (en banc) (confronting a challenge to country-of-origin labels). Now, within the Eighth Circuit—and in contrast to other jurisdictions—such regulations are vulnerable. The Court should not permit such needless confusion.

The Court should grant review and hold that the Halloween-notice rule's disclosure requirements do not trigger strict scrutiny.

3. If the Court holds that the Halloween-notice rule is not subject to strict scrutiny, it can either remand for the Eighth Circuit to apply the appropriate standard or simply uphold the rule itself.

Whether the Court assesses the Halloween-notice rule as an incidental-speech regulation of conduct or

as a factual-disclosure rule, intermediate scrutiny is the appropriate standard of review. *See O'Brien*, 391 U.S. at 377; *Riley*, 487 U.S. at 797–98. But even if this Court applies heightened scrutiny, *see, e.g.*, *Wooley*, 430 U.S. at 716, the Halloween-notice rule clearly passes First Amendment muster.

States have a compelling interest in protecting children from sex offenders. *See New York v. Ferber*, 458 U.S. 747, 758 (1982); *see also Packingham v. North Carolina*, 582 U.S. 98, 106 (2017) ("[I]t is clear that a legislature 'may pass valid laws to protect children' and other victims of sexual assault 'from abuse.'" (quoting *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245 (2002)). Surely, that interest should extend to Halloween night, when tens of millions of children nationwide approach strangers' front doors.[1]

Moreover, the Halloween-notice rule is important to protecting children from sex offenders on Halloween. Without the notice requirement, there is an acute risk that children will approach and knock on the doors of sex offenders. And below, police officers testified that the law is important for helping police detect sex-offenders (like Sanderson) who are ignoring the law and participating in Halloween. App. 19a; *see also* App. 149a, 173a, 175a–76a.

In response to these points, the Eighth Circuit rejected the notice requirement primarily because it believed that alternative regulations sufficiently protected Missouri's interest. *See* App. 10a. Most

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[1] *See Halloween: October 31, 2025*, U.S. Census Bureau (Sept. 30, 2025), https://www.census.gov/newsroom/facts-for-features/2025/halloween.html.

bizarrely, the Eighth Circuit suggested that the State can simply trust sex offenders to abide by the law's other restrictions and not answer the door when children knock, App. 10a, even though Sanderson has blatantly violated the restrictions for years, App. 4a, 17a. And this Court has recognized that sex-offenders are uniquely likely to reoffend. *See United States v. Kebodeaux*, 570 U.S. 387, 395–96 (2013); *McKune*, 536 U.S. at 33 (plurality opinion). The Eighth Circuit also suggested parents could simply do advance research using the sex-offender database, App. 10a—a patently unrealistic expectation.

Additionally, the Eighth Circuit rejected the Halloween-notice rule under strict scrutiny because it thought sex-offenders could render the requirement useless by posting tiny signs. App. 9a. This speculation contradicts the testimony of the police-officer witnesses who testified that the notice requirement is important and helpful in detecting sex offenders participating in Halloween. App. 19a; *see also* App. 149a, 173a, 175a–76a. And there is zero evidence in the record suggesting that *any* sex offender has tried to post a tiny and unreadable sign. Given that this case features only a *facial* challenge, it is obviously impermissible for a court to invalidate a duly enacted statute based on speculative hypotheticals. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 723–24 (2024).

* * *

The First Amendment should not be interpreted to prevent Missouri from protecting children from sex offenders on Halloween night. The Court should grant review and reverse.

III. Whether sex-offender disclosures are constitutional is an issue of national importance.

This case has major implications for sex-offender registries and disclosure requirements. The Court should not permit confusion over compelled-speech jurisprudence to neuter their operation. The Eighth and Eleventh Circuits' decisions elevate a sex offender's perceived speech over the ability of a government to protect its citizenry, especially children. The decisions allow a challenger to dismantle systematically otherwise lawful restrictions that have disclosure as one part of a comprehensive scheme. If left in place, these decisions jeopardize the constitutionality of other sex-offender disclosure laws—like SORNA.

1. This case warrants certiorari because the Eighth Circuit's decision threatens sex-offender registries. Indeed, following the Eighth and Eleventh Circuits' approach would allow challengers to invalidate nearly any law requiring a person to fill out a form or to provide a notification—including sex-offender registration requirements.

After release from prison, sex offenders must register in the jurisdiction where the offender resides. *See* 34 U.S.C. § 20913. A sex offender "shall provide" his "name," "Social Security number," "address," employer or learning institution, "license plate number" and vehicle description, information relating to foreign travel, and "[a]ny other information required by the Attorney General." 34 U.S.C. § 20914. This statute governs only the information required for registration—not additional conduct. *See id.* And like

the Halloween-notice rule at issue here, all information provided is factual. *See id.* Yet under the Eighth and Eleventh Circuits' logic, the sex offender filling out the form would be "only speech . . . , not any other related conduct," and fall into the compelled-speech analysis. App. 7a; *accord McClendon*, 22 F.4th at 1336–37 (viewing sign disclosures as compelled speech).

For the reasons already discussed, that cannot be right. As the Fifth Circuit correctly explained on its side of the split, requiring sex offenders to disclose serves "to protect the public" and is an "'essential operation[] of [the] government'" such that there is no right to refrain from speaking. *Arnold*, 740 F.3d at 1035 (alterations in original) (quoting *Barnette*, 319 U.S. at 645 (Murphy, J., concurring)).

2. The Eighth and Eleventh Circuits' holdings are emblematic of the confusion in federal and state courts about how sex-offender disclosure requirements should be analyzed under the First Amendment. As other constitutional challenges to sex offender registries have failed, *see, e.g.*, *Smith*, 538 U.S. at 105–06; *Cutshall*, 193 F.3d at 481, sex offenders have increasingly brought compelled-speech challenges to sex-offender registries and disclosure requirements. Although, unlike the present case, most sex-offender disclosure requirements have been upheld, the reasoning of the cases has wildly varied.

Specifically, some courts have rejected the challenge as being "essential" to government operations. *E.g.*, *Arnold*, 740 F.3d at 1035. Others have relied on a distinction that the sex offender is not disseminating a message, but rather disclosing

information to the State, which the State is then disseminating. *E.g.*, *McGuire v. Marshall*, 741 F. Supp. 3d 1112, 1201 (M.D. Ala. 2024); *Does v. Whitmer*, 751 F. Supp. 3d 761, 824 (E.D. Mich. 2024). Still others have held that sex-offender registration is compelled speech but that it withstands least-restrictive-means analysis. *E.g.*, *United States v. Fox*, 286 F. Supp. 3d 1219, 1222–24 (D. Kan. 2018).

Similar disputes have arisen in other contexts—such as requirements that one's status as a sex offender be printed in government identification. Facing compelled-speech challenges, courts have split every which way. One court rejected the challenge, as the label is not "a form of expressive conduct." *Crist*, 419 So. 3d at 197–98. Another upheld a passport label as government speech. *See Doe v. Kerry*, No. 16-cv-0654-PJH, 2016 WL 5339804, at *18 (N.D. Cal. Sept. 23, 2016).

Unfortunately, other challenges have succeeded. *See Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1324–27 (M.D. Ala. 2019) (holding that Alabama's marked-identification requirement of "CRIMINAL SEX OFFENDER" for sex offenders is government speech but nonetheless unconstitutionally compels private speech); *Louisiana v. Hill*, 341 So. 3d 539, 552–53 (La. 2020) ("sex offender" printed on driver license). Any guidance from this Court in this case will undoubtedly aid in resolving such related disputes—which are likely to keep coming. Indeed, holding that mandated disclosures about undebatable facts (status as a sex offender) are *not* unconstitutional compelled speech would resolve these challenges. *See 303 Creative*, 600 U.S. at 596 (recognizing "that the government may sometimes

'requir[e] the dissemination of purely factual and uncontroversial information'" (alteration in original)).

All told, the decision below and its split with the Fifth Circuit starkly illustrates how courts have struggled conceptually to place sex-offender disclosure requirements within the First Amendment framework. This Court should take the opportunity to clarify the extent to which the government may lawfully require sex offenders to disclose factually accurate information to the public.

* * *

Sex-offender regulations are essential to a safe and orderly society. *Cf. Smith*, 538 U.S. at 98–99. Yet sex offenders are constantly challenging these rules. Although these efforts usually fail, *e.g.*, *id.* at 105–06; *Nichols v. United States*, 578 U.S. 104, 112 (2016), the decision below represents a threat to a range of sex-offender disclosure rules—including SORNA. If sex-offender disclosure requirements are subject to strict scrutiny as compelled speech, then they will likely be struck down. *See Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025) (explaining this Court has "only once" held that a law satisfied strict scrutiny in the First Amendment context). This Court should grant review and prevent the federal courts from embarking upon that dangerous journey.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 6, 2026

APPENDIX

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Appendix A

United States Court of Appeals
For the Eighth Circuit

———

No. 24-3120

———

Thomas L. Sanderson, an individual

Plaintiff – Appellee

v.

Catherine L. Hanaway, in her official capacity as Attorney General of the State of Missouri

Defendant – Appellant

James Hudanick, in his official capacity as Chief of Police of the City of Hazelwood, Missouri

Defendant

———

No. 24-3204

———

Thomas L. Sanderson, an individual

Plaintiff – Appellee

v.

Catherine L. Hanaway, in her official capacity as Attorney General of the State of Missouri

Defendant

James Hudanick, in his official capacity as Chief of Police of the City of Hazelwood, Missouri

Defendant – Appellant

Appeals from United States District Court for the Eastern District of Missouri - St. Louis

---

Submitted: September 16, 2025
Filed: January 2, 2026

Before LOKEN, KELLY, and ERICKSON, Circuit Judges.

KELLY, Circuit Judge.

Thomas Sanderson challenged a Missouri statutory provision that required all registered sex offenders, such as himself, to post a sign at their residence on Halloween stating, "No candy or treats at this residence." Concluding that this mandate violated the First Amendment, the district court permanently enjoined its enforcement statewide. Defendants appeal.

I.

Since 2000, Thomas Sanderson and his family have consistently set up large, elaborate Halloween displays involving decorations, sound effects, and fog machines. But when Sanderson was convicted of a sex offense in 2006 and ordered to serve a term of imprisonment, those displays ceased. While he was incarcerated, Missouri passed a law restricting registered sex offenders from participating in Halloween:

> 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";
>
> (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.

Mo. Rev. Stat. § 589.426 (2008) (Halloween statute). Upon his release from custody, Sanderson asked the St. Louis County Police Department and, later, the Hazelwood Police Department if he was required to abide by the Halloween statute, given it was enacted after the date of his conviction. Both assured him that he had been "grandfathered in" and thus could continue participating in Halloween festivities.

For the next fourteen years, Sanderson's Halloween displays continued, and they grew more extravagant with each year. But in 2022, Hazelwood police received a call that a sex offender was participating in Halloween, and Sanderson was consequently arrested, charged, and convicted for violating the Halloween statute.

The validity of that conviction is not before us. Instead, Sanderson brought a facial challenge to the Halloween statute under the First Amendment, specifically arguing that subsection 1(3)—the sign mandate—unconstitutionally compelled the speech of all individuals required to register as sex offenders in the state. Just before Halloween 2024, the district court found Sanderson was likely to succeed on the merits and entered a preliminary injunction. Then, after a bench trial, the district court found the sign mandate unconstitutional and entered a permanent injunction preventing Defendants (the State) from enforcing it anywhere in Missouri.

The State appeals. Only subsection 1(3) of the Halloween statute is at issue in this appeal.

II.

A.

"After a bench trial, this court reviews legal conclusions de novo and factual findings for clear error." Howard v. United States, 964 F.3d 712, 716 (8th Cir. 2020) (quoting Kaplan v. Mayo Clinic, 847 F.3d 988, 991 (8th Cir. 2017)). "Under the clearly erroneous standard, we will overturn a factual finding only if it is not supported by substantial evidence in the record, if it is based on an erroneous view of the law, or if we are left with the definite and firm conviction that an error was made." Id. (quoting Roemmich v. Eagle Eye

Dev., LLC, 526 F.3d 343, 353 (8th Cir. 2008)). "There is a strong presumption that the factual findings are correct." Id. (quoting Urb. Hotel Dev. Co. v. President Dev. Grp., L.C., 535 F.3d 874, 879 (8th Cir. 2008)).

That said, "[a]n appellate court's review . . . is unique in the context of a First Amendment claim." Doe v. Pulaski Cnty. Special Sch. Dist., 306 F.3d 616, 621 (8th Cir. 2002) (en banc) (citing New York Times Co. v. Sullivan, 376 U.S. 254, 284–85 (1964)). In First Amendment cases, the court must "make an independent examination of the whole record," which is "not necessarily a de novo review of all the facts relevant to the ultimate judgment entered." Id. (first quoting Sullivan, 376 U.S. at 285; and then citing Fams. Achieving Indep. and Respect v. Neb. Dep't of Soc. Servs., 111 F.3d 1408, 1411 (8th Cir. 1997)). Accordingly, facts irrelevant to the free speech issue are reviewed for clear error, whereas the facts "crucial to the First Amendment inquiry" receive a "fresh examination." Id. (quoting Fams. Achieving Indep. and Respect, 111 F.3d at 1411). The court is not bound by the district court's determinations of the credibility of witnesses, but "we remain cognizant that the district court is in the best seat to observe the demeanor of the witnesses." Id.

A facial challenge is successful only if "a law's unconstitutional applications are substantial compared to its constitutional ones." GLBT Youth in Iowa Schs. Task Force v. Reynolds, 114 F.4th 660, 669 (8th Cir. 2024) (quoting Moody v. NetChoice, LLC, 603 U.S. 707, 718 (2024)). That analysis proceeds in three steps. First, we "assess the [law's] scope, which includes consideration of what activities by what actors [does] the law[] prohibit or regulate." Id. (citing Moody, 603 U.S. at 724). Second, we "determine which

of the [law's] applications violate the First Amendment." Id. at 669–70. Third, we "must measure the unconstitutional applications against the remaining provisions." Id. at 670.

B.

The sign mandate has, in effect, one application: those required to register as sex offenders, regardless of their underlying offense, must post a sign bearing the phrase "no candy or treats at this residence." Mo. Rev. Stat. § 589.426.1(3). Because the statute does not apply differently to anyone within the category of those required to register, we need only consider whether that sole application violates the First Amendment. See NetChoice, LLC v. Bonta, 113 F.4th 1101, 1116 (9th Cir. 2024).

C.

The First Amendment's protection "includes both the right to speak freely and the right to refrain from speaking at all." Wooley v. Maynard, 430 U.S. 705, 714 (1977) (citations omitted). In other words, compelling an individual to "personally speak the government's message" or "host or accommodate another speaker's message" contravenes the First Amendment. Rumsfeld v. F. for Acad. & Institutional Rts., Inc. (FAIR), 547 U.S. 47, 63 (2006); see also Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 790–91 (1988) ("The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it."). And "[c]ompelled statements of fact . . . like compelled statements of opinion, are subject to First Amendment scrutiny." Ark. Times LP v. Waldrip as Tr. of Univ. of Ark. Bd. of Trs., 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc) (quoting FAIR, 547 U.S. at 62)); Riley, 487

U.S. at 797–98 ("These cases 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.").

However, the First Amendment is not implicated when the speech "is plainly incidental to the [law's] regulation of conduct, and 'it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." FAIR, 547 U.S. at 62 (quoting Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949)). For example, laws banning the *conduct* of discrimination in the workplace would incidentally prevent the *speech* of posting a sign that says, "Whites Only." See id. (citing R.A.V. v. St. Paul, 505 U.S. 377, 389 (1992)). Likewise, the Solomon Amendment, which explicitly required law schools to allow the military to recruit on its campus, only incidentally required the school to circulate messages about the presence of recruiters on campus. Id. at 61–62 ("[R]ecruiting assistance provided by the schools often includes elements of speech.")

The sign mandate—the sole provision challenged here—is not merely incidental to conduct: it explicitly requires registrants to post a sign bearing a specific message. Mo. Rev. Stat. § 589.426.1(3). True, the other three provisions of the Halloween statute regulate a registrant's conduct. See Mo. Rev. Stat. § 589.426.1. But the sign mandate requires only speech (the posting of a sign with the government's message), not any other related conduct. Id. § 589.426.1(3). In fact, it requires *verbatim* speech. See FAIR, 547 U.S at 62

(noting that unlike the laws at issue in compelled speech cases, the Solomon Amendment "does not dictate the content of the speech at all"). Because the sign mandate (1) explicitly requires registrants to speak the government's message in the form of a sign at their residence, and (2) dictates specifically what that sign must say, it compels speech.

In short, we agree with the district court that the sign mandate compels speech and, thus, is unconstitutional unless it can survive strict scrutiny.

D.

The sign mandate will survive strict scrutiny only if it "furthers a compelling interest and is narrowly tailored to achieve that interest." Miller v. Ziegler, 109 F.4th 1045, 1050 (8th Cir. 2024) (quoting Citizens United v. FEC, 558 U.S. 310, 340 (2010)). The district court found that "Defendants have established a compelling interest in restricting *certain* conduct of sexual offenders on Halloween that satisfies the strict scrutiny standard." Neither party challenges that determination on appeal, and understandably so. We therefore move directly to the question of whether the statutory provision is narrowly tailored. In other words, is the sign mandate the least restrictive means of achieving the government's compelling interest? See United States v. Playboy Ent. Grp., Inc., 529 U.S. 803, 813 (2000).

At trial, the State's witnesses offered several justifications for the sign mandate. Law enforcement officers testified that the signs were beneficial for enforcement purposes because the signs (1) allow them to "be able to ensure that there is compliancy," (2) make enforcement of the Halloween statute more

efficient, and (3) provide an extra layer of protection for children.

The evidence presented, however, failed to show how the sign mandate achieved these goals. The statute does not set any requirements for the size or the location of the mandated signs. According to one law enforcement officer, a registrant could put "a little itty-bitty [] Post-it [note]" on the door and still be in compliance, so long as the note had "the correct verbiage." Another law enforcement witness confirmed that a compliant sign "could be as small as a postage stamp." Both officers further testified that, under the statute, a registrant would still be in compliance even if the sign was on the back door or inside the house. Even if a sign could result in greater efficiency for law enforcement and heightened protection for children, a sign that is not visible to law enforcement or trick-or-treating children fails to serve either purpose.

The efficiency rationale was also premised on the idea that, with the signs, officers do not have to exit their vehicles to ensure compliance with the Halloween statute. But one officer testified that even if he does not see a sign from the driveway, "that doesn't necessarily mean they are in violation of [the sign mandate]." And another agreed that officers "can drive by and see if the lights are on the house without getting out of the car. . . . [T]he fact that a sign isn't posted isn't going to make it more necessary for an officer to get out of their car[.]" Rather, "[t]he sign simply allows [officers] to have that extra provision that [they] are checking the right home." Indeed, the Chief of Police testified that his officers still enforced the remaining provisions of the Halloween statute when the preliminary injunction was in place, and

there was no evidence that the statute was more difficult to enforce without the signs than with them.

Even when the signs are visible and legible from the driveway or the porch, there was no convincing evidence presented that they add anything to advance the goal of protecting children. One officer, based on her personal, rather than professional, experience trick-or-treating, said that having the exterior lights off on Halloween "means absolutely nothing" and that children will still approach the house. A second officer testified that the sign mandate was necessary because, unlike leaving lights off, the sign was "not ambiguous." Yet this officer did not demonstrate how any such ambiguity would put children at risk. Rather, she wanted parents "to have a clear understanding that there is a potential danger at that location." Given the publicly accessible sex offender database, coupled with the remaining provisions of the Halloween statute, this testimony likewise does not establish a specific need for the sign mandate. In any event, the State's sole expert, who testified to the compelling interest by demonstrating that Halloween presented unique risks for grooming that could lead to future abuse, could not provide any evidence for the claim that *signs* provide any additional protection beyond the other restrictions imposed on registrants in the Halloween statute. There was no evidence to support the idea that children would be at risk if there was no sign, so long as the registrant complied with the remaining provisions of the statute (*i.e.*, remaining inside the residence, not giving candy to or otherwise engaging with children, and leaving lights off). In other words, nothing in the record indicates that a child knocking on a door that no one opens presents a risk to that child.

We agree with the State that narrow tailoring does not require "perfect" tailoring. Here, however, there is insufficient evidence to support the State's assertion that the sign mandate is the least restrictive means of achieving its goals. The record does not support the claim that, despite the remaining provisions of the Halloween statute, the sign mandate is necessary to further the government's compelling interest in protecting children on Halloween. Accordingly, the sign mandate burdens more speech than necessary and fails strict scrutiny.[1] See McClendon v. Long, 22 F.4th 1330 (11th Cir. 2022) (concluding that when a local Sheriff's office made signs carrying the message "NO TRICK-OR-TREAT AT THIS ADDRESS" and placed them in registrants' yards, the signs were compelled speech and they were not narrowly tailored to the compelling interest of protecting children from sexual abuse).

E.

In the alternative, the State argues that a new trial is warranted because it was improperly prevented from introducing evidence about Sanderson. We review a district court's evidentiary rulings for abuse of discretion. United States v. Spotted Horse, 914 F.3d

[1] The State argues on appeal that the sign mandate was at least properly applied to sexually violent predators. But the only evidence presented on the subcategory of sexually violent predators was that, after release from civil commitment, they would be required to abide by the sign mandate. No evidence was presented at trial that sexually violent predators, once released, pose a different level of risk than any other person required to register, despite the district court allowing the State to elicit such testimony. Without any evidence in the record to suggest the sign mandate is narrowly tailored to this subcategory, there is no basis upon which to conclude that any "other application" of the law, presuming it existed, would be constitutional.

596, 600 (8th Cir. 2019) (citing Chism v. CNH Am. LLC, 638 F.3d 637, 640 (8th Cir. 2011)). Even then, we will reverse only "when an improper evidentiary ruling affected the defendant's substantial rights or had more than a slight influence on the verdict." Id.

The State sought to introduce evidence of Sanderson's "dangerousness and sex-offense history," but the district court excluded it on relevancy grounds. We discern no abuse of discretion in that decision. Regardless, this evidentiary ruling neither affected the State's substantial rights nor had any influence on the verdict.

As an initial matter, Sanderson stipulated to the fact of his criminal history and the admission of exhibits about his underlying conduct. Although the State also wanted to introduce testimony from B.C., the victim in Sanderson's underlying sex conviction, her testimony would have been cumulative. As the district court explained:

> The Court: The actual facts are not at issue in this case. He was convicted of the offense. That's a part of the record. Move on to another question.
>
> [State's counsel]: Yes, your Honor.
>
> [State's counsel to B.C.:] Understanding the Judge knows – or will know, based on the evidence that's been provided and agreed upon in the record regarding the case that you testified in, I want to zoom out a little bit now[.]

The district court had at its disposal Sanderson's entire criminal record, including police reports and other records related to his case involving B.C. This

evidence was sufficient to support the State's theory of Sanderson's "dangerousness," even without B.C.'s testimony.

More importantly, even if the evidence had been admitted, it would not have affected the verdict. That is because any evidence of Sanderson's dangerousness—either from B.C. or from the State's expert, who never met or conducted an evaluation of Sanderson—would have supported only the compelling interest prong of the legal analysis. But, as discussed, the sign mandate failed strict scrutiny on the second prong: whether it was narrowly tailored. Nothing about the unique risks posed by Sanderson—or any other registrant for that matter—would have overcome the sign mandate's tailoring deficiency.[2]

F.

The permanent injunction in this case was entered prior to the Supreme Court's opinion in Trump v. CASA, 606 U.S 831 (2025). As a result, we vacate the injunction and remand for the district court to consider the appropriate scope of injunctive relief in accordance with that opinion.

III.

The district court's ruling that the sign mandate in Missouri's Halloween statute facially violates the First Amendment is affirmed. We vacate the injunction, however, and remand for further proceedings on the scope of relief.

---

[2] The State also argues that it was entitled to introduce this evidence to rebut Sanderson's testimony. But Sanderson testified about how the law applied to him only for the limited purpose of establishing standing, which the State contested.

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THOMAS L. SANDERSON,	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:23CV1242 JAR
	)	
ANDREW BAILEY, *in his official capacity as Attorney General of the State of Missouri, et al.*,	)	
	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On October 3, 2023, Plaintiff Thomas L. Sanderson brought this action for declaratory and permanent injunctive relief against Defendants Andrew Bailey, Attorney General of the State of Missouri, and James Hudanick, Chief of Police of the City of Hazelwood, Missouri.[1] Plaintiff alleges that Missouri Revised Statute Section 589.426.1(3), which mandates that any person required to register as a sexual offender under Sections 589.400 to 589.425 must post a sign at his or her residence on October thirty-first of each year

[1] The allegations against the individual defendants are brought in their respective official capacity

stating, "No candy or treats at this residence,"[2] constitutes compelled speech in violation of the First Amendment to the United States Constitution. Plaintiff requests a declaratory judgment that the sign posting requirement is unconstitutional. Plaintiff further requests that Defendants be permanently enjoined from enforcing the sign posting requirement against him and all other individuals covered by the statute.

On October 11, 2023, Plaintiff moved for a Temporary Restraining Order ("TRO"), pursuant to Federal Rule of Civil Procedure 65, to prevent Defendants from enforcing Section 589.426.1(3) of the statute. The Court granted Plaintiff's Motion for TRO and combined the preliminary injunction hearing with the trial on the merits. ECF Nos. 23 and 35.

On June 20, 2024, the case proceeded as a bench trial before this Court. Plaintiff appeared in person and by counsel. Defendant Bailey appeared by counsel. Defendant Hudanick appeared in person and by counsel. After trial, the parties requested, and the Court agreed to give thirty days to file post-trial briefs, which were timely filed by all sides. ECF Nos. 61, 64, 67. The only issue before the Court is whether the sign posting requirement constitutes compelled speech in violation of the First Amendment.[3] Having considered the arguments and evidence presented at trial, the Court finds that the sign posting requirement is unconstitutional and therefore unenforceable.

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[2] The Court will refer to this as the "sign posting requirement."

[3] The Court notes that the majority of the testimony and evidence presented by the parties at trial were irrelevant to determining this issue.

FINDINGS OF FACT

The Parties

Plaintiff Thomas L. Sanderson is a resident of the City of Hazelwood in St. Louis County, Missouri. In 2006, Plaintiff was convicted of an offense requiring his registration as a sex offender with the chief law enforcement official in his county of residence under Missouri law and is subject to the sign posting requirement. *See* Mo. Rev. Stat. § 589.400.2.

Defendant Andrew Bailey, Attorney General of the State of Missouri, in his official capacity, is responsible for the investigation, enforcement, and prosecution of violations of laws in the State of Missouri.

Defendant James Hudanick, Chief of Police of the City of Hazelwood, in his official capacity, is responsible for the investigation and enforcement of violations of laws in the City of Hazelwood, including the sign posting requirement.

The Statute

Effective August 28, 2008, the State of Missouri enacted Missouri Revised Statute Section 589.426 (the "Halloween Statute"), which imposes the following restrictions on conduct for any person required to register as a sexual offender under sections 589.400 to 589.425 on October thirty-first of each year (Halloween):

> (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.

Mo. Rev. Stat. § 589.426.1.

The criminal penalty imposed for a violation of any of the Halloween Statute's provisions is a class A misdemeanor. *Id.* § 589.426.2.

Plaintiff's Evidence

Plaintiff and his family moved to Hazelwood in 2000. Shortly thereafter, law enforcement officers interviewed Plaintiff regarding allegations of inappropriate sexual touching made by a friend of the family, who was sixteen years old at the time. Plaintiff was subsequently charged with a sex offense, and in 2006, Plaintiff was convicted of that offense, which required his registration as a sex offender with the chief law enforcement official in his county of residence under Missouri law. *See* Mo. Rev. Stat. § 589.400.2. Plaintiff testified he has been convicted of several other offenses, none of which involved child sexual abuse, including but not limited to domestic assault, assault, driving while intoxicated, and indecent exposure.

Every year since living in Hazelwood, Plaintiff has participated in Halloween traditions on October thirty-first, such as throwing large parties, hosting a bonfire, handing out candy to children outside, decorating his residence, and keeping his lights on. Plaintiff testified that he did not believe at that time the Halloween Statute applied to him since he was convicted prior to its enactment.

Plaintiff's Arrest for Halloween Statute Violations

On October 31, 2022, Hazelwood Police Officers testified that they received complaints, including an anonymous tip, about Halloween activity at Plaintiff's residence. Officers testified they were dispatched to Plaintiff's residence and observed that it appeared he was hosting a Halloween party. Officers observed Plaintiff dressed up in a costume and handing out candy to children, and his residence was decorated with Halloween decorations and lights. Officers also observed that he did not have a sign posted at his residence that stated, "No candy or treats at this residence." Officers spoke with Plaintiff's girlfriend and instructed Plaintiff to cease Halloween activity as he was in violation of the Halloween Statute. After receiving further complaints about Plaintiff's residence, Officers testified that they were again dispatched to Plaintiff's residence and observed that he was continuing to participate in Halloween activity. Officers then informed Plaintiff that he was in violation of all restrictions in the Halloween Statute. On November 3, 2022, Plaintiff was arrested for these violations. Plaintiff was subsequently charged and pleaded guilty to violating the Halloween Statute, including the sign posting requirement. Plaintiff received a suspended imposition of sentence with twelve months unsupervised probation.[4]

Defendant Hudanick's Testimony

Defendant Hudanick testified that he is the Chief of Police for the City of Hazelwood and has held that

[4] The Court assumes the Halloween Statute applies retroactively to Plaintiff since the parties have not raised that issue. Further, it is important to note that Plaintiff cannot collaterally attack his state sentence for violating the Halloween Statute in this Court.

position since December 2021. Defendant Hudanick testified that his predecessor did not strongly enforce the Halloween Statute. However, Defendant Hudanick directed his officers to enforce the Statute, mainly focusing on any interaction with children, such as handing out candy. Defendant Hudanick testified that he gave no specific instruction regarding enforcement of the sign posting requirement at that time, but after the prosecution of Plaintiff in 2023, Defendant Hudanick directed his officers to enforce all sections of the Halloween Statute. He also testified that he sent a letter in October 2023 to all registered sex offenders in his jurisdiction that he intended to enforce all aspects of the Halloween Statute.

Brittany Cale's Testimony

The defense called witness Brittany Cale, who was the victim of Plaintiff's 2006 sodomy conviction requiring his registration as a sex offender. The Court limited Cale's testimony to establish the significant impact and trauma child sexual abuse has on a victim.

Defense Expert Witness

The defense called expert witness Paul Simpson, Ed.D., who agreed that the sign posting requirement could help prevent sex offenders from having any type of contact with children on Halloween. On cross examination, Dr. Simpson agreed that even without the sign posting requirement, a sex offender's compliance with the other restrictions of the Halloween statute would prevent the offender from having contact with children at their residence on Halloween.

Dr. Simpson also testified that, based on his research, sex offenders re-offend at a rate of approximately one-third.

Other Relevant Defense Evidence

Defendants called Sergeant Jason Heffernan and Captain Danielle Heil who testified that the sign posting requirement is helpful to law enforcement to easily identify houses where registered sex offenders reside to ensure compliance with the Halloween Statute restrictions. These witnesses testified that they also have access to where registered sex offenders reside on the sex-offender registry. The sex-offender registry contains each registrant's name, address, photograph, and convicted offense information, and is available on the Missouri State Highway Patrol's website that law enforcement and the public have access to. These witnesses confirmed that the sign posting requirement does not define the size of the sign or the size of the font for the phrase, "No candy or treats at this residence." These witnesses also confirmed that registered sex offenders could display the sign at the back of the residence, or even inside the residence, and still be in compliance with the sign posting requirement.

The defense also submitted testimony and evidence to establish recidivism rates of sex offenders and the risks and dangers these offenders pose to society.

CONCLUSIONS OF LAW

Standing

Article III

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const., Art. III, § 2. "One element of the case-or-controversy requirement" is that Plaintiff "must establish that [he has] standing to sue." *Raines v. Byrd*, 521 U.S. 811, 818 (1997). Article III standing is

a threshold inquiry in every federal case that determines whether the Court has the power to decide the case. *See, e.g., United States v. One Lincoln Navigator 1998*, 328 F.3d 1011, 1013 (8th Cir. 2003); *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

To establish that he has standing to bring this lawsuit, Plaintiff must show that he suffered an "injury in fact." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2144 (1992). "Injury-in-fact means an actual or imminent invasion of a concrete and particularized legally protected interest." *Kinder v. Geithner*, 695 F.3d 772, 776 (8th Cir. 2012). When a state or local law imposes compliance burdens on those it regulates or controls, and "compliance is coerced by the threat of enforcement . . . the controversy is both immediate and real." *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 508 (1972). Section 1983 provides a remedy against any person who, under color of state law, deprives another of rights protected by the Constitution and laws of the United States. *Dossett v. First State Bank*, 399 F.3d 940, 947 (8th Cir. 2005) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 931 (1982)); *see also, Yassin v. Weyker*, 39 F.4th 1086, 1089 (8th Cir. 2022).

There are two common ways of demonstrating an injury in fact in First Amendment cases. *See Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794 (8th Cir. 2016). First, a plaintiff may allege "an intention to engage in a course of conduct . . . proscribed by a statute" such that the plaintiff risks prosecution or some other penalty. *Id.* (internal quotation marks omitted) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). Second, a plaintiff may allege self-censorship. *Id.* Importantly, these methods are used in cases in which plaintiffs are

challenging the constitutionality of a law before facing prosecution or otherwise suffering from the adverse consequences of noncompliance. *See, e.g., 281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011); *Zanders v. Swanson*, 573 F.3d 591, 593–94 (8th Cir. 2009).

Persons who violate the Halloween Statute can be prosecuted for committing a class A misdemeanor. *See* Mo. Rev. Stat. § 589.426.2. Defendant Bailey, the Attorney General of the State of Missouri, has statutory authority in his official capacity to represent the state in both criminal and civil cases. *See* Mo. Rev. Stat. § 56.060.1; § 27.030; § 27.060. At trial, Plaintiff testified he was prosecuted for violating the Halloween Statute, including the sign posting requirement, and was placed on probation for the offense. Defendant Hudanick confirmed that Plaintiff was arrested by Hazelwood Police Officers for violating the Halloween Statute. Defendant Hudanick also testified that, absent a Court Order, he would continue to instruct his officers to enforce the sign posting requirement.

Plaintiff, a convicted sex offender, has proven that he already sustained an injury because he was arrested and prosecuted for violating the Halloween Statute. Thus, Plaintiff has properly alleged an injury in fact and a threat of future prosecution. The prosecution could be initiated by Defendant Hudanick, or by Defendant Bailey, who have the authority to order an investigation or prosecution. A plaintiff who alleges a threat of prosecution that "is not imaginary or wholly speculative" has standing to challenge the statute. *281 Care Comm.*, 638 F.3d at 630 (quoting *Babbitt*, 442 U.S. at 302). Plaintiff clearly satisfies the requirement that the sign posting portion of the Halloween Statute will be enforced against him again,

absent declaratory and injunctive relief, since there is a history of past enforcement. *See United Food & Commercial Workers Int'l Union v. IBP, Inc*., 857 F.2d 422, 427 (8th Cir. 1988) (noting that past experience with a statute is relevant to standing determination). The Court thus finds that Plaintiff has standing to bring his claim against Defendants under Article III of the Constitution.[5]

Eleventh Amendment Immunity

In general, "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Simply put, lawsuits against state officials are treated as lawsuits against the State itself. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985). Many suits against a State are barred by the State's Eleventh Amendment sovereign immunity. *See Will*, 491 U.S. at 67. However, an exception to Eleventh Amendment sovereign immunity exists pursuant to the *Ex parte Young* doctrine. 209 U.S. 123 (1909). Under *Ex parte Young*, individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action. *Id.* at 155–56.

According to the Eighth Circuit, "[t]he *Ex parte*

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[5] The Court assumes the Halloween Statute applies retroactively to Plaintiff since the parties have not raised that issue. Further, it is important to note that Plaintiff cannot collaterally attack his state sentence for violating the Halloween Statute in this Court.

Young doctrine does not apply when the defendant official has neither enforced nor threatened to enforce the statute challenged as unconstitutional." *281 Care Comm.*, 766 F.3d at 797 (quotation omitted). "[A]ny probe into the existence of a *Young* exception should gauge (1) the ability of the official to enforce the statute at issue under his statutory or constitutional powers, and (2) the demonstrated willingness of the official to enforce the statute." *Id.* (quoting *Okpalobi v. Foster*, 244 F.3d 405, 417 (5th Cir. 2001)). "Absent a real likelihood that the state official will employ his supervisory powers against plaintiffs' interests, the Eleventh Amendment bars federal court jurisdiction." *Id*. (quotation omitted).

In *Missouri Protection and Advocacy Servs., Inc., v. Carnahan*, 499 F.3d 803 (8th Cir. 2007), the Eighth Circuit held that the Missouri Secretary of State and Attorney General were the proper defendants in a voting rights case even though local election authorities were primarily responsible for carrying out the alleged unconstitutional activity. In that case, the plaintiffs challenged Missouri's constitutional provision and implementing statute that denied the right to vote to Missouri residents under a court-ordered guardianship due to mental incapacity. *See id.* at 807. Missouri law gave local county clerks and other authorities the broad power to register voters and administer elections. However, under Missouri law, a person can be prosecuted for knowingly attempting to vote when they are ineligible. *See id*. at 807. The Eighth Circuit held that because the Attorney General could prosecute a person under guardianship if they knowingly attempted to vote, he was a proper defendant in that case. *Id*.

The Court finds that Defendant Bailey, in his official capacity as the Attorney General for the State of Missouri, is a proper defendant here since he has enforcement authority to investigate or prosecute violations of the Halloween Statute's sign posting requirement. *See* Mo. Rev. Stat. §§ 56.060.1; 27.030; 27.060; *see also, Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 864 (8th Cir. 2006), *abrogated on other grounds* by *Obergefell v. Hodges*, 576 U.S. 644, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015) ("[W]e agree with the concession implicit in the State's decision not to press this issue—the Governor and the Attorney General have some connection with the enforcement of [the state constitutional amendment] and therefore this suit for equitable relief falls within the exception to the State's Eleventh Amendment immunity established in *Ex parte Young*." (internal quotation omitted)).

The Court also finds that Defendant Hudanick, sued in his official capacity, is a proper defendant because he would enforce, and did enforce, the sign posting requirement of the Halloween Statute in the City of Hazelwood. The evidence at trial established that Defendant Hudanick is the Chief of Police of the City of Hazelwood, and he wrote a letter to all sex offender registrants in his jurisdiction, where Plaintiff resides, of his intent to enforce *all* sections of the Halloween Statute prior to Halloween in 2023. The evidence at trial also established that on October 31, 2022, City of Hazelwood Police Officers informed Plaintiff that he was in violation of the Halloween Statute, including the sign posting requirement, which he was later prosecuted for and pleaded guilty to violating. To be a proper defendant in a suit challenging a particular statute, the state officer must have "some connection with the enforcement of the act." *Reprod. Health Servs.*

v. Nixon, 428 F.3d 1139, 1145–46 (8th Cir. 2005). Here, the Court finds that the evidence has demonstrated a sufficient connection between Defendant Hudanick and his enforcement of the Halloween Statute's sign posting requirement.[6]

Facial Challenge

Plaintiff brings a facial challenge to the constitutionality of the Halloween Statute's sign-posting requirement.[7] The Supreme Court recently reiterated how courts are to address facial challenges. *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024) (Because "facial challenges threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways," courts ought to "handle constitutional claims case by case, not en masse." (cleaned up)).

The Eighth Circuit also recently addressed facial challenges, citing *NetChoice*, explaining that:

> The first step in a proper facial analysis is to assess the laws' scope, which includes consideration of what activities by what actors do the laws prohibit or regulate. . . . After that assessment is completed, the next step in the process is to determine which of the laws' applications violate the First Amendment. Once the court has made that determination, it then must measure the unconstitutional applications against the remaining provisions.

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[6] The Court reiterates this connection only applies to the sign posting requirement section of the Halloween Statute.

[7] Plaintiff does not raise an as-applied challenge nor does he challenge the other sections of the Halloween Statute.

GLBT Youth in Iowa Sch. Task Force v. Reynolds, 114 F.4th 660, 669-70, (8th Cir. 2024) (citing *NetChoice*, 144 S. Ct. at 2398) (holding that the district court did not perform the necessary inquiry set forth in *NetChoice*).

The Eighth Circuit emphasized that, for facial challenges, "the question . . . is whether a law's unconstitutional applications are substantial compared to its constitutional ones." *Id*. (citing *NetChoice,* 144 S. Ct. at 2394).

Step One

The Court's first step in its facial analysis is to assess the state laws' scope. In other words, "[w]hat activities, by what actors, do the laws prohibit or otherwise regulate?" *NetChoice,* 144 S. Ct. at 2398. The Halloween Statute imposes the following restrictions on conduct for any person required to register as a sexual offender under sections 589.400 to 589.425 ("registered offenders") on October thirty-first of each year:

(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.

Mo. Rev. Stat. § 589.426.1.

The criminal penalty imposed for a violation of any of the Statute's provisions is a class A misdemeanor. *Id.* § 589.426.2.

The facial challenge here is only to the sign posting requirement of the Halloween Statute in Section 589.426.1(3).[8] Thus, the Court dejtermines that the sign posting requirement applies to registered sex offenders in the State of Missouri and regulates that on a specific date of each year, October thirty-first, sex offenders must post a sign at their residence with specific language stating, "No candy or treats at this residence."

Step Two

"The next order of business is to decide which of the laws' applications violate the First Amendment, and to measure them against the rest." *NetChoice,* 144 S. Ct. at 2388.

The Supremacy Clause of the United States Constitution provides that federal law is "the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2. "The First Amendment declares in part that 'Congress shall make no law . . . abridging the freedom of speech.'" *1-800-411-Pain Referral Serv., LLC v. Otto*, 744 F.3d 1045, 1054 (8th Cir. 2014) (quoting U.S. Const. amend. I). The First Amendment applies to state and local governments by virtue of the Fourteenth Amendment. *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 750 (8th Cir. 2019).

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[8] The Court finds that the Halloween Statute comprises multiple, alternative versions of the crime, and is therefore "divisible." *Descamps v. United States,* 570 U.S. 254, 262 (2013). The consideration of Section 589.426.1(3) does not affect the validity of other sections of the statute.

This First Amendment protection "includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705 (1977). State actors may not compel a person to utter a message with which the person does not agree. *Johanns v. Livestock Mktg. Ass'n,* 544 U.S. 550, 557 (2005). This protection is implicated when a person "must personally speak the government's message," as well as when a person is "forced to accommodate" a message that interferes with the ability of the speaker to communicate the speaker's own message. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (F.A.I.R.),* 547 U.S. 47, 63 (2006). When a state actor compels speech, that action is subject to strict scrutiny judicial review, which requires the state actor to prove that the action is "narrowly tailored" to serve a "compelling state interest." *Telescope Media*, 936 F.3d at 754 (quoting *Reed v. Town of Gilbert,* 576 U.S. 155 (2015)).

To decide the facial challenge here, the Court "must explore the laws' full range of applications—the constitutionally impermissible and permissible both—and compare the two sets." *NetChoice,* 144 S. Ct. at 2388. Two courts in other circuits have addressed similar Halloween sign posting issues for sex offenders, and both have ruled that the signs unconstitutionally compel speech in violation of the First Amendment. A district court in California issued a temporary restraining order enjoining an ordinance that, like the sign posting requirement here, required sex offenders to post a sign on their front doors declaring "No candy or treats at this residence." *Doe v. City of Simi Valley*, 2012 WL 12507598, at *1 (C.D. Cal. Oct. 29, 2012). The District Court in *Doe* found Plaintiffs clearly showed that they were likely to succeed on the merits of their claim that "the sign

requirement—a form of compelled speech—runs afoul of the free speech guarantee of the First Amendment." *Id.* at *8.

The Eleventh Circuit held in *McClendon v. Long*, that a local sheriff's department signs that law enforcement placed in the front of registered sex offenders' homes that said "Stop – Warning! NO TRICK-OR-TREAT AT THIS ADDRESS! A COMMUNITY SAFETY MESSAGE FROM BUTTS COUNTY SHERIFF GARY LONG" were a "classic example of compelled speech." 22 F.4th 1330, 1337 (11th Cir. 2022). The *McClendon* Court relied on the Supreme Court's holding in *Wooley*, where the Court invalidated the conviction of a New Hampshire couple who covered the state motto "Live Free or Die" on their license plate, concluding that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." 430 U.S. at 714. "Since *Wooley,* the Supreme Court has reaffirmed the prohibition on compelled speech and refined it to apply to cases in which the government orders certain types of speech or speech about certain topics." *Gralike v. Cook*, 191 F.3d 911, 917 (8th Cir. 1999), *aff'd*, 531 U.S. 510 (2001). *See, e.g., Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 797–98 (1988) (invalidating a requirement that professional fundraisers disclose to potential donors the percentage of charitable contributions collected during the previous twelve months that were actually turned over to the charity); *Hurley v. Irish–American Gay, Lesbian, & Bisexual Grp.,* 515 U.S. 557, 573 (1995) (the "general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact"); *Pacific Gas & Elec. Co. v. Public Utils. Comm'n,* 475

U.S. 1, 14–16 (1986) ("[T]he State is not free either to restrict appellant's speech to certain topics or views or to force appellant to respond to views that others may hold [T]he choice to speak includes within it the choice of what not to say.").

The Court finds that Halloween Statute's sign posting requirement, like the State motto on the New Hampshire license plate in *Wooley*, is compelled speech. Plaintiff has proven that the sign posting requirement compels him to speak a viewpoint in written words, directed to the public, that he does not adhere to, in violation of the First Amendment. Applying "the laws' full range of applications," the Court further finds that the sign posting requirement compels the speech of *any* registered offender in Missouri, not just Plaintiff. *See NetChoice,* 144 S. Ct. at 2388. Defendants require the use of private property to reflect their own message "for the express purpose that it be observed and read by the public," thereby depriving registered offenders of their freedom to speak in their own words or to not speak at all. *Wooley*, 430 U.S. at 713; *see also, Hurley,* 515 U.S. at 573 ("[O]ne important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say") (internal quotation marks omitted). This covers all applicable actors under the sign posting requirement's scope. Thus, the Court finds that the sign posting requirement of the Halloween Statute mandating that registered offenders post a sign that says "No candy or treats at this residence" on Halloween is compelled speech and is unconstitutional as applied to all sex offenders in Missouri. *See Wooley*, 430 U.S. at 717 (When "the State's interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot

outweigh an individual's First Amendment right to avoid becoming the courier for such message.").

Application of Strict Scrutiny

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed,* 576 U.S. at 163. As a content-based restriction, the Halloween Statute's sign posting requirement must satisfy strict scrutiny. *See id*. "Content-based [speech] regulations are presumptively invalid." *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382 (1992). Defendants thus bear the burden of rebutting the presumption of invalidity. *United States v. Playboy Ent. Grp*., *Inc.,* 529 U.S. 803, 817, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000). Indeed, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible." *Id.* at 818. Defendants can, nonetheless, rebut the presumption if it is able to show that the ordinance is "narrowly tailored to promote a compelling Government interest," such that the ordinance is the "least restrictive alternative" to serve the government's purpose. *Id.* at 813; *see also, Ashcroft v. ACLU,* 542 U.S. 656, 666 (2004). If restrictions are not narrowly tailored to achieve a compelling interest, they are "unconstitutional restraints on free speech." *See Whitton v. City of Gladstone*, 54 F.3d 1400, 1409 (8th Cir. 1995).

Compelling State Interest

It has been recognized that "[s]ex offenders are a serious threat in this Nation." *McKune v. Lile,* 536 U.S. 24, 32 (2002). Statistics show that, when "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." *Id.* at 32–33.

"[E]very . . . State, has responded to these facts by enacting a statute designed to protect its communities from sex offenders and to help apprehend repeat sex offenders." *Connecticut Dept. of Public Safety v. Doe,* 538 U.S. 1, 4 (2003).

There is no doubt that protecting children is a compelling government interest, as further supported by the evidence adduced at trial. Here, the focus is protecting children on Halloween. "It is common sense … that young 'trick-or-treaters' are indeed vulnerable to child predators on Halloween." *Doe*, 2012 WL 12507598, at *8. The Court accepts that Defendants have established a compelling interest in restricting *certain* conduct of sexual offenders on Halloween that satisfies the strict scrutiny standard.

Narrowly Tailored

The First Amendment requires that content-based speech laws "be narrowly tailored, not that [they] be 'perfectly tailored.'" *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 454 (2015) (quoting *Burson v. Freeman*, 504 U.S. 191, 209 (1992)). But when a less restrictive or less burdensome means is available for the government to achieve its goal, "the Government must use it." *Playboy Ent.*, 529 U.S. at 815. Content-based speech laws must be "narrowly drawn" to address the government's compelling interest, and the curtailment of free speech must be "actually necessary to the solution." *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 799, 131 S.Ct. 2729, 180 L.Ed.2d 708 (2011). "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching on our most precious freedoms." *Riley*, 487 U.S. at 801 (internal quotation marks omitted).

Because the sign posting requirement is a presumptively unconstitutional content-based speech regulation, it is Defendants' burden to prove that the law is narrowly tailored to serve Defendants' compelling governmental interest. *See Reed*, 576 U.S. at 173. Defendants adduced testimony at trial to show that laws restricting conduct for registered sex offenders*, in general*, are part of Missouri's broader statutory scheme to protect children and other vulnerable victims from the acts of sexual offenders. However, Defendants proffered interests as it relates solely to the Halloween Statute's sign posting requirement cannot withstand strict scrutiny because it is not narrowly drawn to accomplish those ends nor is it the least restrictive manner to meet that end. Defendants did not provide any evidence at trial that sexual offenders are more likely to re-offend on Halloween as compared to any other day of the year nor do they show it is the least restrictive alternative to serve its interest in protecting children on Halloween. *See Whitton*, 54 F.3d at 1408 (restriction not narrowly tailored because government "has not presented sufficient evidence" that the Ordinance is the least restrictive means to further stated interests and "no evidence that enforcement of these existing provisions is insufficient").

First, a sign stating "No candy or treats at this residence" does not clarify the danger that the statute serves to mitigate. The sign contains no warning that there is a convicted sex offender or other dangerous person at that residence. The sign posting requirement does not even dictate the font size or location of the sign to ensure visibility to children or others. The Halloween Statute requires only that the registered offender must "[p]ost a sign at his or her residence stating, 'No candy or treats at this

residence.'" Mo. Rev. Stat. § 589.426.1(3). Defense witnesses conceded that the phrase could be written in the smallest possible font, and a sign placed at the back door, or even inside the residence, would still be compliant with the Statute.

More significantly, the other restrictions mandated in the Halloween Statute adequately address all of Defendants' interests. To wit, sex offenders must "[a]void all Halloween-related contact with children." *See* Mo. Rev. Stat. § 589.426.1(1). Sex offenders must "[r]emain 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." *Id.* § 589.426.1(2). Sex offenders must also "[l]eave all outside residential lighting off during the evening hours after 5 p.m." *Id.* § 589.426.1(4). These provisions prevent sex offenders from being in contact with children outside trick-or-treating and also deter children from venturing onto the properties of sex offenders.

Additionally, law enforcement witnesses testified that the sex-offender registry, which contains each registrant's name, address, photograph, and convicted offense information, is available on the Missouri State Highway Patrol's website. This further diminishes the need to require registered sex offenders to disseminate the same information on signs on their private property. The evidence presented has not shown that the sign posting requirement adds any value to protect children from Plaintiff, or other registered sex offenders, on Halloween. Even without the sign posting requirement, Defendants are free to enforce the other sections of the Halloween Statute. Plaintiff can still be charged and prosecuted for keeping his

residence's lights on, participating in Halloween activities that involve contact with children such as handing out candy to trick-or-treaters, or leaving his house absent just cause on Halloween. The Court does not discount the importance of the government's interest in protecting children from sex offenders on Halloween, but the evidence fails to show that the sign posting requirement is narrowly tailored to achieve that interest *in the least restrictive manner*. "To this end, the government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listener." *Riley,* 487 U.S. at 2675.

Because the sign posting requirement of the Halloween Statute is not narrowly tailored to achieve Defendants' interest in protecting children from sex offenders on Halloween, and there are other effective alternatives to achieve that interest, the Court finds that the sign posting requirement fails strict scrutiny. *See Reed*, 576 U.S. at 173 (invalidating law because Government "has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest").[9] For all of these reasons, Plaintiff is entitled to a declaratory judgment that Missouri Revised Statute Section 589.426.1(3) is

[9] Even assuming that the less stringent form of First Amendment review applies, the Halloween Statute's sign posting requirement still does not pass. Under that standard, a law must further a "substantial governmental interest" that is "unrelated to the suppression of free expression." *NetChoice*, 144 S. Ct. at 2388 (quoting *United States v. O'Brien*, 391 U.S. 367, 377, 88 S.Ct. 1673, 20 L.Ed.2d 672). As the Court explained in detail, many possible interests relating to protecting children from sex offenders can meet that test. But the asserted interest here relates to the suppression of free expression, and it is not valid, let alone substantial. *NetChoice,* 144 S. Ct. at 2388.

unconstitutional under the First and Fourteenth Amendments of the United States Constitution. 28 U.S.C. § 2201 (Declaratory Judgment Act).

Permanent Injunctive Relief

"The standard for issuing a preliminary or permanent injunction is essentially the same, except one key difference." *Oglala Sioux Tribe v. C & W Enters., Inc.,* 542 F.3d 224, 229 (8th Cir. 2008). To obtain a permanent injunction, "the moving party [must] show actual success on the merits, rather than the fair chance of prevailing on the merits required for a standard preliminary injunction." *Id.*; *see also Randolph v. Rodgers*, 170 F.3d 850, 857 (8th Cir. 1999). "If a court finds actual success on the merits, it then considers the following factors in deciding whether to grant a permanent injunction: (1) the threat of irreparable harm to the moving party; (2) the balance of harms with any injury an injunction might inflict on other parties; and (3) the public interest." *Oglala Sioux Tribe,* 542 F.3d at 229 (citations omitted). Each factor is addressed below.

Irreparable Harm

In cases implicating the First Amendment, courts normally assume irreparable injury because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713, 91 (1971)); *see also, Crow v. Watson Chapel Sch. Dist*., 540 F.3d 752, 762 (8th Cir. 2008). Here, Plaintiff has succeeded on the merits of his claim that the sign posting requirement, a form of compelled speech, runs afoul of the free speech guarantee of the First Amendment. Therefore, the Court finds Plaintiff will

suffer irreparable harm this year, and every year thereafter, on Halloween absent a permanent injunction.

Balance of Harms

The interests of the State in protecting children from sex offenders on Halloween is accomplished by the other sections of the Halloween Statute. Because the Court has determined that the sign posting requirement violates Plaintiff's constitutional rights, this significant harm outweighs any interest Defendants may have in the sign posting requirement and enforcing it.

The balance of harms factor weighs in favor of a permanent injunction.

Public Interest

The public has a compelling interest in protecting First Amendment rights. *Crow*, 540 F.3d at 762. Defendants have not shown that the Halloween Statute's sign posting requirement has or will increase public safety. The public interest in ensuring safety for children and protecting them from contact with registered sex offenders on Halloween is satisfied by the remaining restrictions in the Halloween Statute. Thus, the Court finds that the public interest factor also weighs in favor of permanent injunctive relief. *See Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (finding that "it is always in the public interest to protect constitutional rights" and "[t]he balance of equities . . . generally favors the constitutionally-protected freedom of expression").

Statewide Injunctive Relief

Lastly, Plaintiff requests the injunction be issued statewide, permanently enjoining the enforcement of

the sign posting requirement.[10] Because the constitutional violations in this case are not based on unique facts or circumstances to Plaintiff but rather affect all registered offenders under sections 589.400 to 589.425 in the State of Missouri, a statewide permanent injunction is warranted. *Rodgers v. Bryant,* 942 F.3d 451, 458 (8th Cir. 2019) (holding that "injunctive relief should extend statewide because the violation established—the plain unconstitutionality of Arkansas's . . . law—impacts the entire state of Arkansas").

CONCLUSION

For these reasons, the Court concludes that Plaintiff has met his burden of establishing that declaratory and permanent statewide injunctive relief is warranted. Further, because the Court has found that Missouri Revised Statute Section 589.426.1(3) is unconstitutional, it is therefore unenforceable against not only Plaintiff, but all others subject to this section of the Halloween statute. *See id.*

Accordingly,

IT IS HEREBY ORDERED that Plaintiff Thomas L. Sanderson's Request for Declaratory and Permanent Injunctive Relief [ECF No. 1] is **GRANTED.** Missouri Revised Statute Section 589.426.1(3) is hereby declared **UNCONSTITUTIONAL** under the First and Fourteenth Amendments of the United States Constitution.

IT IS FURTHER ORDERED that The State of Missouri, by and through Defendant Andrew Bailey,

---

[10] In post-trial briefing, Plaintiff and Defendant Hudanick both address the issue of Hudanick's liability under 42 U.S.C. § 1983. However, Plaintiff's Complaint does not request monetary damages. *See* ECF No. 1 at p. 15. As such, the Court need not address those arguments.

in his official capacity as the Attorney General, and James Hudanick, in his official capacity of Chief of Police of the City of Hazelwood, Missouri, as well as their officers, agents, employees, and attorneys, are **PERMANENTLY ENJOINED STATEWIDE** from implementing, applying, or taking any action whatsoever to enforce Missouri Revised Statute Section 589.426.1(3), requiring any person required to register as a sexual offender under sections 589.400 to 589.425 to post a sign at his or her residence stating, "No candy or treats at this residence" on October thirty-first. This Order only relates to the enforcement of Section 589.426.1(3) of the Halloween Statute and does not affect the validity of its other sections.

IT IS FURTHER ORDERED that that any motion for costs and fees shall be filed within fourteen (14) days of the date of this Order.

IT IS FURTHER ORDERED that Plaintiff's Motion to Clarify the Court's Extension of Temporary Restraining Order Through October 31, 2024 [ECF No. 69] is **DENIED AS MOOT.** A separate judgment in accordance with this Findings of Fact, Conclusions of Law, and Order is entered this same date.

Dated this 2nd day of October, 2024.

John A. Ross
United States District Judge

Appendix C

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

THOMAS L. SANDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:23CV1242
	)	
ANDREW BAILEY,	)	
in his official capacity as	)	
Attorney General of the State	)	
of Missouri, et al.,	)	
	)	
Defendants.	)	

JUDGMENT

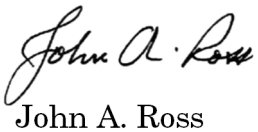
In accordance with the Memorandum and Order entered this same date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Thomas L. Sanderson's Request for Declaratory and Permanent Injunctive Relief is **GRANTED**. Missouri Revised Statute Section 589.426.1(3) is hereby declared **UNCONSTITUTIONAL** under the First and Fourteenth Amendments of the United States Constitution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that The State of Missouri, by and through, Defendant Andrew Bailey, in his official capacity as the Attorney General, and James Hudanick, in his official capacity of Chief of Police of the City of Hazelwood, Missouri, as well as their officers, agents, employees, and attorneys, are

PERMANENTLY ENJOINED STATEWIDE from implementing, applying, or taking any action whatsoever to enforce Missouri Revised Statute Section 589.426.1(3), requiring any person required to register as a sexual offender under sections 589.400 to 589.425 to post a sign at his or her residence stating, "No candy or treats at this residence" on October thirty-first. This order only relates to the enforcement of Section 589.426.1(3) of the Halloween Statute and does not affect the validity of its other sections.

Dated this 2nd day of October, 2024.



John A. Ross
United States District Judge

Appendix D

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 29, 2026

Clerk
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 S. 10th Street, Room 24.329
St. Louis, MO 63102-1125

Re: Catherine L. Hanaway, Attorney General of Missouri, et al. v. Thomas L. Sanderson
Application
No. 25A1191 (Your No. 24-3120, 24-3204)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kavanaugh, who on April 29, 2026, extended the time to and including July 6, 2026.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Angela Jimenez
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Louis Joseph Capozzi, III
Missouri Attorney General
815 Olive Street Suite 200
St Louis, MO 63101

Clerk
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 S. 10th Street, Room 24.329
St. Louis, MO 63102-1125

Appendix E

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

———

No. 24-3120

———

Thomas L. Sanderson, an individual

Appellee

v.

Catherine L. Hanaway, in her official capacity as Attorney General of the State of Missouri

Appellant

———

James Hudanick, in his official capacity as Chief of Police of the City of Hazelwood, Missouri

———

No. 24-3204

———

Thomas L. Sanderson, an individual

Appellee

v.

Catherine L. Hanaway, in her official capacity as Attorney General of the State of Missouri
James Hudanick, in his official capacity as Chief of Police of the City of Hazelwood, Missouri

Appellant

———

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis (4:23-cv-01242-JAR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Gruender did not participate in the consideration or decision of this matter.

February 06, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Appendix F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Cause No. 4:23cv-1242JAR

THOMAS L. SANDERSON,

Plaintiff,

vs.

ANDREW BAILEY, *et al.*,

Defendant.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

June 20, 2024

APPEARANCES

For Plaintiff:

Ms. Janice Bellucci
LAW OFFICES OF JANICE BELLUCCI
2110 K. Street
Sacramento, CA 95816

For Defendant-Attorney General:

Mr. Andrew Clarke
Mr. Peter Donohue, Sr.
Mr. Gregory Goodwin
OFFICE of the ATTORNEY GENERAL
207 W. High Street, P.O. Box 65102
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For Defendant-Hazelwood Police

Mr. Timothy Reichardt
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Stenographically Reported and Produced by:
Lisa M. Paczkowski, CCR, CSR, RPR
Official Court Reporter
United States District Court
111 South 10th Street, St. Louis, MO 63102

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[1] JUNE 20, 2024

(The proceedings commenced at 9:02 a.m.)

THE COURT: We are here and on the record in the case of Thomas Sanderson versus Andrew Bailey in his official capacity as the Attorney General of the State of Missouri, and James Hudanick, in his official capacity as Chief of Police of the City of Hazelwood.

The record should reflect that Mr. Sanderson appears by counsel, and it is Ms. Janis Bellucci, is that how you pronounce it?

MS. BELLUCCI: Yes, your Honor.

THE COURT: And is Mr. Sanderson here today?

MS. BELLUCCI: Yes, your Honor. Mr. Sanderson is here today.

THE COURT: Okay. And I see him raising his hand back there in the gallery; is that correct?

MS. BELLUCCI: Yes, your Honor.

THE COURT: Okay. And on behalf of the Attorney General, we have counsel Greg Goodwin, Andrew Clarke.

MR. CLARKE: Good morning, your Honor.

THE COURT: Mr. Clarke, and Peter Donohue.

MR. DONOHUE: Good morning, your Honor.

THE COURT: And Ms. Emma Moore.

MS. MOORE: Good morning, your Honor.

THE COURT: And then on behalf of the Chief of [2] Police of the City of Hazelwood, it is Tim Reichardt, and the Chief appears in person as well.

We are here today as a result of a complaint that was filed on October 3rd of last year 2023. It alleged a two count complaint. Count 1 alleges a 1983 violation. Count 2 requests a declaratory judgment as it relates to a section of a Missouri Statute; thereafter, there was a motion for a temporary restraining order. The Court had a hearing on the matter. The Court granted the temporary restraining order.

On October 27th of 2023, thereafter, the Court had conferences with counsel. There was a discovery schedule established. We are here today for a hearing on the merits. Ms. Bellucci, you are ready to proceed; is that correct?

MS. BELLUCCI: Yes, your Honor. As a preliminary matter though, I would ask that my legal assistant join me here at the table.

THE COURT: And that is Carlton Morse; is that correct?

MS. BELLUCCI: Yes, your Honor.

THE COURT: Mr. Morse can join you there at the counsel table.

MS. BELLUCCI: Thank you.

THE COURT: I understood that you had a couple of other issues that you wanted to take up with the Court.

MS. BELLUCCI: Yes, your Honor, at least one, and [3] that is, your Honor, I just wanted to note for the record that the Attorney General's Office appears to – may or may not have met the letter of the law with

regard to Rule 26, but certainly has not met with the spirit of the requirement of Rule 26.

Specifically, in their fourth amended pretrial disclosures here, they continue the same – down the same path as we have complained about in the past, and that is when it lists, for example, who they may call, they are very vague, the descriptions such as all witnesses Plaintiff may call, any expert witness identified by the Defendants.

THE COURT: Tell me, what is your specific objection. What is your specific issue?

MS. BELLUCCI: Well, the specific issue is, your Honor, is that we want to put on the record that we have an objection to the fourth amended pretrial disclosures, and there is not a specific remedy for your Honor this morning.

THE COURT: Okay.

MS. BELLUCCI: The thing that can, for your attention, is we do object to one of the witnesses. That witness is the alleged victim of this offense. Her name is Brittany Cale. She is present in the courtroom I believe at this moment, and we also don't believe that she should be called at all, but certainly, if she is, she should not be present in the courtroom this morning until she was, in fact, [4] called as a witness.

Your Honor, the basis for this objection is we have already stipulated to the documents regarding this conviction, including whatever the witness might have to say today or tomorrow.

THE COURT: Mr. Goodwin, honestly, with all due respect to the witness, I'm not sure I understand how it would be relevant on any of the issues.

MR. GOODWIN: Sure, your Honor. Let me address first the suggestion that she is here in the courtroom right this second. She is not, because we understood that there might be an objection. She is actually out in a waiting room. Her mother is here, but the witness is not here.

The witness is relevant to the issues for a couple of reasons, your Honor. First, as opposing counsel just noted, they refer to her as an alleged victim. In the complaint, in two different places on page nine, paragraphs 22 and 23, Mr. Sanderson alleges that he continued to deny the allegations.

Now, I understand that there has been a stipulation to some of the documents from the original criminal court trial, but relevant to the State's case, your Honor, or to the Defendant's case, I apologize, is issues about the behavior that Mr. Sanderson engaged in, which we will refer to as grooming behavior. Not all of that is going to be [5] captured in a State Court criminal trial, because the issues in a State Court criminal trial are more narrow than the issues.

So she is relevant for that reason in addition to the allegations that – or the suggestion that the Plaintiff is denying the allegations that she made, and that he was, in fact, convicted of. Additionally, the impact on the victim for what happened to her is relevant to the State's – compelling State interest in passing and enforcing this law.

In other words, the injury or the effect of being a victim of sexual assault has on somebody. That's very relevant to our case.

THE COURT: It is without doubt that Mr. Sanderson pled guilty to this offense; is that correct?

MR. GOODWIN: No, your Honor. He pled guilty to the Halloween offense.

THE COURT: He was convicted of the underlying offense, the sex offense for which he was required to register and be a sex offender, correct?

MR. GOODWIN: That's correct, yes.

THE COURT: Okay. But in any event, he was convicted of that offense. The details of it, the circumstances of it, I have no doubt about the impact on the victim, but I don't understand how it is relevant to the issues before the Court in this case. It is certainly [6] correct that the Government has to – the State has to prove a compelling State interest. But in terms of the specific impact on an individual, it is – it doesn't seem relevant to the Court at all.

If you want to make an offer of proof at some point, you can do that. But again, I don't think there is any doubt that it would have had a dramatic impact on the victim. It just isn't an issue in this case. So it would be the Court's intent to sustain the objection to the witness's testimony, because I don't believe it in any way is relevant on the issues in this case.

Again, if you want to make an offer of proof at some point, you can do that. Anything else we need to take up?

MS. BELLUCCI: No, your Honor.

MR. GOODWIN: Your Honor, I apologize. I understand the Court's ruling. I just want to make sure that I'm clear about the rule on witnesses. I think that we will probably intend to make an offer of proof at some point. May the witness come in during the trial, or would the Court prefer that she wait to come

into the courtroom until after we make the offer of proof.

THE COURT: If she wants to come into the courtroom, that's fine with me.

MR. GOODWIN: Very good. Thank you.

[7] THE COURT: Are you ready to proceed; is that correct, Ms. Bellucci?

MS. BELLUCCI: Yes, your Honor.

THE COURT: Then you may proceed. Call your first witness.

MS. BELLUCCI: Thank you, your Honor. My first witness is Mr. Sanderson, the Plaintiff in case.

MR. DONOHUE: If I may –

THE COURT: You have to identify who you are, so the court reporter knows who is speaking. Mr. Donohue, is that –

MR. DONOHUE: Yes, your Honor.

THE COURT: And generally, I'm going to have you come here to the podium. Thank you.

MR. DONOHUE: Yes, your Honor. And if I may, we have an opening prepared that we would love to be able to present to the Court at the outset of the case. Would your Honor entertain that?

THE COURT: Do you have an opening statement you want to make, Ms. Bellucci?

MS. BELLUCCI: No, your Honor, I do not.

THE COURT: So you are prepared to waive an opening statement; is that correct?

MS. BELLUCCI: That's correct.

THE COURT: If you want to make an opening [8] statement, five minutes.

MR. DONOHUE: Thank you, your Honor.

THE COURT: You may proceed.

DEFENDANT'S OPENING STATEMENT

MR. DONOHUE: Thank you. Halloween is the one night a year when parents across the State of Missouri encourage children to let down their guards and accept candy or treats from strangers.

Those who have sexually molested children have proven they are unable to follow the law, committed some of the worst offenses there are against children: Rape, sexual assault, sodomy, and other heinous sexual crimes against those most vulnerable in society.

Missouri's challenged Halloween Sign Posting requirement is a prophylactic measure which protects those most vulnerable, our children, from the risk of being targeted or groomed for future victimization by offenders who have shown at least once that they don't care about society's rules or laws.

The Halloween law does so by requiring certain minimal contact, posting of a sign "No candy or treats at this residence." That's all.

This requirement, like so many other statutory sex offender requirements that are the result of the collateral consequences of these convictions, is like very many others [9] that have been upheld by the Supreme Court and by Courts throughout this Circuit and State.

Missouri's Legislature was well within its rights to enact a Statute to place appropriate guidelines on conduct of such offenders in the society they have so

horribly betrayed. The sign's requirement provides a proverbial picket fence to keep a conveyer belt of children off the doorsteps of offenders on Halloween night.

And, your Honor, we are not just talking about what might happen on Halloween night. We are also talking about the grooming behaviors that can begin or continue on Halloween night when such offenders have regular contact with kids who have let their guards down.

And you will hear testimony throughout the next two days on the efficacy of Missouri's Halloween Sign Posting mandate.

You will hear from law enforcement, from mental health professionals, and you will hear about how the law prevents sexual offenders from using Halloween as a springboard for grooming behaviors. You will also hear how law enforcement driving by at any point in the evening on Halloween night can use the sign as an easy way to determine that the offender knows the requirement and is in compliance. It can actually be beneficial to the offender, because they don't have to have further contact with police knocking on [10] their door making sure that they are following the Halloween requirements that night.

On the other hand, you will hear testimony about and will receive evidence on the Plaintiff's own conduct. You will learn that for essentially his entire life Thomas Sanderson has shown that he is either unwilling or unable to conform his conduct to societies' laws. Evidence regarding his extensive criminal record has already been stipulated as admissible. Five DUI's, multiple assaults and batteries against everyone from former wife, to former girlfriends, and even complete

strangers, multiple alcohol and drug-related offenses, and most importantly, the assault against Brittany Cale, a 15, 16 year old girl, who grew to trust Thomas Sanderson, was at his house every day for over a year before the offense occurred, and those grooming behaviors that she is prepared to testify to your Honor about, are very very concerning when we look at not just this offender, but offenders statewide who would have access to kids on Halloween night, but for the Sign Posting and other Halloween requirements.

You will hear testimony from Dr. Paul Simpson, a forensic psychologist, who has testified in many cases before, and has provided a report to your Honor regarding what these grooming behaviors mean, and regarding what the literature says about what is concerning, and the benefits [11] that the Sign Posting mandate has in relation to those grooming behaviors.

You will from hear from two Sheriff's Department officials, Sergeant Cole and Corporal Heffernan, who will testify about the mechanisms of Sex Offender Registration in their counties, and how the counties are related to the State in terms of the relationship between the State Highway Patrol, and the different counties, and the independence of all of the different law enforcement agencies that work together across the State to keep kids safe.

And you will hear testimony from a variety of law enforcement witnesses with extensive background in investigating criminal misconduct against children, and their experiences as it relates to grooming behaviors in the State of Missouri.

One thing the Court will not hear any evidence about is that Defendant Bailey has anything to do with enforcing the law or any evidence establishing that

Thomas Sanderson has met his burden of establishing that he has standing to sue for the statewide injunctive relief he has requested. Moreover, as you will hear more in closing, the recent Supreme Court case of *Poe v. Labrador* circumscribes this Court's authority to grant such statewide relief injunctions absent an express grant of statutory authority such as the Administrative Procedure Act.

[12] Thomas Sanderson cannot meet the extraordinarily high burden he must meet for a statutory challenge. That there is no set of circumstances under which this law is valid. The Court should apply intermediate scrutiny as this essential law furthers an important Government interest by means that substantially related to that interest.

But the evidence in this case will show that the law survives any level of scrutiny, because it serves a compelling State interest, several, in fact, and is narrowly-tailored to accomplish those interests. Specifically, protecting children from sex offenders, keeping that virtual conveyer belt of kids off the doorsteps of sex offenders on Halloween night, enabling enforcement of Sex Offender Registration requirements, and appropriate interactions with law enforcement. And finally, the State has a right to enact criminal laws, which this is, as it has a criminal component if compliance is not met, and to enforce laws requiring collateral consequences of sexual criminal convictions.

In conclusion, the Court should deny Plaintiff's petition in whole as he has failed to meet his burden in showing the Statute is unconstitutional as applied to the entire State of Missouri. However, even if your Honor does anything short of that full denial of the requested relief, *Labrador* makes it clear that the

Court must limit any relief [13] to the Plaintiff himself, not every offender in the State.

Thank you, your Honor.

THE COURT: Mr. Reichardt, I didn't mean to skip over you. Do you want to make an opening statement?

MR. REICHARDT: No need to, Judge. Thank you.

THE COURT: Okay. Ms. Bellucci, call your first witness. I understand it is Mr. Sanderson; is that correct?

MS. BELLUCCI: Yes, your Honor.

THE COURT: Mr. Sanderson, step up here, the Clerk will administer the oath.

Counsel, I think you know, my law clerk, Sara Koppenaal, is over here in the jury box. Just so that you know who is in the courtroom.

You may proceed with questions of the witness. Mr. Sanderson, speak into that microphone, it will help amplify your voice.

THE WITNESS: All right, perfect.

THOMAS SANDERSON,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BELLUCCI:

Q. Good morning, Mr. Sanderson. Would you please state your full legal name for the record?

A. Thomas Lee Sanderson.

Q. Are you the Plaintiff in this lawsuit?

[14] A. Yes, ma'am.

Q. What is the street address, including city, where you currently reside?

A. 1573 Ville Maura Lane, Hazelwood, Missouri 63042.

Q. And in what county is that home located?

A. North County, St. Louis County.

Q. How long have you lived in the State of Missouri?

A. All of my life.

Q. Do you live with anyone else at your residence?

A. Yes.

Q. And that person's name is?

A. Ronda Phelps, my fiance.

Q. Does anyone else regularly reside at that location?

A. I'm sorry?

Q. Does anyone else regularly reside at that location?

A. The grand kids come over every other weekend, or every weekend, hopefully, the more we can get them, but every other weekend for sure.

Q. What is your current age?

A. 59.

Q. And you previously mentioned that you live with a person named Ronda Phelps, how long have you lived with her?

A. 24 years.

Q. And are you and Ronda currently married?

A. No, ma'am.

[15] Q. Where is Ms. Phelps employed?

THE COURT: Counsel, I don't see any relevance to this, so –

MS. BELLUCCI: That's fine.

THE COURT: – move on.

MS. BELLUCCI: Very good.

Q. (By Ms. Bellucci) Have you ever been convicted of an offense requiring Sex Offender Registration?

A. I'm sorry?

MS. BELLUCCI: And maybe I can state for your Honor, Mr. Sanderson is experiencing a problem with his ears. I believe he has a perforated ear drum, and he is having some trouble with hearing.

THE COURT: It will help if you keep your voice up.

MS. BELLUCCI: And I will be happy to do that.

THE WITNESS: Everything is kind of like really muffled right now.

THE COURT: Okay. If you don't understand, just ask that it be repeated.

THE WITNESS: Perfect, thank you.

Q. (By Ms. Bellucci) Have you ever been convicted of a sex offense that requires you to register?

A. Yes.

Q. If so, when were you convicted?

A. It would have been in 2006, I believe.

[16] Q. Is that the only condition that requires you to register?

A. Yes, ma'am.

Q. When was the conduct in that case alleged to have taken place?

A. It was alleged in 2001, I believe.

Q. So you were not convicted until five plus years after the alleged –

THE COURT: Counsel, I don't see any relevance to this, move on.

MS. BELLUCCI: Okay.

Q. (By Ms. Bellucci) Were you incarcerated for that offense?

A. Yes, ma'am.

Q. How long were you incarcerated?

A. I was sentenced to 18 months by a jury of my peers, and then they – the judge said two years – or on years intervals – so it turned into from 18 months to a two year sentence.

Q. In what year were you released from custody?

A. 2008.

Q. And after you were released, were you required to register as a sex offender?

A. Yes.

Q. Are you still required to register as a sex offender?

[17] A. Yes.

Q. In what county do you register as a sex offender?

A. St. Louis County.

Q. When did you move to Hazelwood, what year?

A. Oh, boy, that would have been in 2002, I believe – 2001, two-ish.

Q. Have you ever had a Halloween display in front of your home in Hazelwood?

A. Yes.

Q. If so, what was the first year of that display?

A. 2001, two-ish, whenever we moved in.

Q. And did you have a display at your home every year after moving to Hazelwood?

A. Absolutely. I'm sorry, other than the two years that I was incarcerated.

Q. So please describe briefly the Halloween displays that you set up in front of your home?

A. Initially, little stuff – I mean, it goes back years, and I have always decorated them, and our family has always decorated, but it just started off in little spooky zombies, and lights, and tombstones and stuff, and gradually bigger and bigger into animated zombies, and I build my own ghouls and zombies, and just bigger and bigger.

It is a big show for families, you know, passing through, and then cars going by. They enjoy it. So we enjoy [18] it, grand kids love it, and nieces and nephews.

THE COURT: Pose another question of the witness.

MS. BELLUCCI: Yes, your Honor.

Q. (By Ms. Bellucci) Has anyone ever helped you put up your Halloween display?

A. I don't like – Rhonda tries to help, but I mean, I change it every year. So I like to do it myself, because I do different things.

Q. After your conviction, release from custody in 2008, were you worried about whether you would be allowed to continue your Halloween displays in Hazelwood?

A. Yeah, I was.

Q. And why were you worried about that?

A. Because I enjoyed doing it.

THE COURT: Pose another question of the witness. It is simply not relevant.

Q. (By Ms. Bellucci) Did you understand that Missouri law would have required you to post a sign at your residence in 2008 stating "No candy or treats at this residence"?

A. No.

Q. Did you ask anyone in law enforcement about whether or not you had to comply with that Missouri Halloween law?

A. I did.

Q. And could you please provide the Court with some details?

[19] A. And I was grandfathered in, and I didn't have – I was grandfathered in, and I didn't have to comply with the no Halloween decorations.

Q. Do you recall – not necessarily mentioning the name – but the title of the person who told you this?

A. They told me at the Sex Offender Registry at St. Louis County, and then again at around 2014 maybe,

the officers came to my house, at that point, to shutdown our Halloween decorations, and I explained to them I was grandfathered in, and it was another altercation, like this past one, not as elaborate as this last one was, but – and so we shut it down, and then I got ahold of St. Louis County. And they said "Oh, no, you are absolutely grandfathered in." And then I got ahold of St. Louis – then I got ahold of Hazelwood, and they mentioned oh, we apologize, and that they would put it on file that I was grandfathered in, and that I could continue to decorate, and so I did after that as well until just this past situation.

Q. All right. And so after Hazelwood Police Department told you – a registration officer at the Police Department told you that you were grandfathered in, you continued your Halloween displays?

A. Now, the Hazelwood Police Department didn't tell me I was grandfathered in, St. Louis County did. I contacted Hazelwood and let them know that that's what St. Louis County [20] had told me. Then evidently, maybe they had contacted St. Louis County, and said that they will put in my file that I'm getting grandfathered in.

Q. Prior to the year 2022, did you ever observe Hazelwood police officers near your Halloween displays?

A. Yeah. They would pass through. The fire department would always park on the corner and hand out candy as well. It is kind of a big neighborhood thing, hundreds of kids, and you know, families passing through. So, but yeah, officers would pass through. I got pulled over by a Hazelwood officer on Dunn Road and Villa Maria, and he said –

THE COURT: Pose another question of the witness.

MS. BELLUCCI: All right, thank you, your Honor.

Q. (By Ms. Bellucci) In the years prior to 2022, about how long would it take you to set up your Halloween displays?

THE COURT: Counsel, it is not relevant. Pose another question of the witness.

Q. (By Ms. Bellucci) All right. Mr. Sanderson, what did you personally do on Halloween after the displays were up?

A. I'm sorry, one more time.

Q. Yes. After your Halloween displays were set up, what did you do on Halloween?

A. We had a bonfire, and the wife and friends of hers, and the daughter, who would hand out candy, and then me and my grandsons, or whoever, would scare – we would dress up and [21] kind of move around the yard. They would be looking around and watching, you know, just little scares and boos and stuff.

Q. When you had your Halloween display in the front yard, were there any other adults present on a regular basis?

A. During the display on Halloween night?

Q. Yes?

A. Yes, several, we had neighbors over, and then families would take pictures of us, you know, of us the ones that dressed up and –

THE COURT: Counsel, pose another question of the witness.

Q. (By Ms. Bellucci) Did you ever hand out candy to children on Halloween?

A. On a couple of occasions, yes.

Q. Would other people at your home hand out candy to children on Halloween?

A. I'm sorry?

Q. Did on Halloween, did anyone else, any other adults, hand out candy to children?

A. Oh, absolutely, mostly around Debbie and some of her friends, our daughter, even the kid, Mckinsey, across the street, she is like 14, 15, and she came over and handed out candy as well, her mom, whoever present handed out candy.

Q. All right. After the Hazelwood Police Department said [22] you could continue decorating your home in the year 2012, or 2014, did anyone ever let you know that you couldn't decorate for Halloween?

A. No.

Q. After the Hazelwood Police Department said in 2012, you to continue decorating for Halloween, did anyone ever let you know that the Halloween Statute required you to post a sign at your residence stating "No candy or treats at this residence"?

A. I had no clue, no.

Q. Did you encounter law enforcement at your home on Halloween of the year 2022?

A. Yes.

Q. Could you –

A. Lots of them.

Q. Approximately how many?

A. You said how many?

Q. Yes, sir?

A. Oh, probably five cars.

Q. And did each car include just one officer, or were there more?

A. More, several.

Q. Several, so the total number of police officers?

THE COURT: Counsel, it is not relevant. Pose another question of the witness.

[23] Q. (By Ms. Bellucci) All right. Did any of the Hazelwood police officers mention on Halloween 2022, that you had not put a sign on your home as required by the Statute?

A. Yes, it was important, and the decorations were – I think they were more – the sign was brought up several times, but the decorations was really flamboyant, and way violating the Statute, and things of that sort. That's what the situation – that's what they were mentioning.

MS. BELLUCCI: Your Honor, I now would like to admit Exhibit 1. It is the Hazelwood Police report.

MR. GOODWIN: We stipulated to all of the evidence, your Honor, to all of the exhibits, and so we have no objection.

THE COURT: I'm not quite sure how is it relevant.

MS. BELLUCCI: Your Honor, it is relevant because it specifically states in here that, in fact, the sign requirement was one of the reasons for this charge in this report, and the reason that Mr. Sanderson was, in fact, arrested that day.

And, your Honor, it is going to become relevant because they have objected in the past, or they have

asserted in the past that the Police Department did not say anything about the Halloween sign that night.

THE COURT: Okay. So again, Mr. Goodwin, there is no objection to the exhibit?

[24] MR. GOODWIN: That's correct.

THE COURT: Mr. Reichardt, any objection?

MR. REICHARDT: No objection.

THE COURT: The exhibit will be admitted in evidence.

MS. BELLUCCI: Your Honor, I do have, and I'm sorry I didn't give it to you before, I have a binder here with all of our exhibits.

THE COURT: That's fine.

MS. BELLUCCI: Your Honor, if I might provide a copy of the report to the witness, and call his attention to page 12 of that report.

THE COURT: You are going to ask this witness to read a police report?

MS. BELLUCCI: Just one small excerpt, your Honor.

THE COURT: Okay. All right, you can present it to the witness.

Q. (By Ms. Bellucci) Mr. Sanderson, if you go to page 12, please?

A. I can't see shit. My glasses are –

THE COURT: Counsel, as opposed to having him read it, if you want to read it. There has not been any objection to the exhibit.

MS. BELLUCCI: Okay. Thank you, your Honor, I'll do that.

[25] Q. (By Ms. Bellucci) On the last sentence that actually spills over into page 13, starts out "I would like to add that I" –

THE COURT: If you can read slow so that the court reporter can get it down.

MS. BELLUCCI: Of course, your Honor.

"I would like to add that I observed no sign posted in Sanderson's yard informing trick or treaters that there is no candy or treats at this residence, per Missouri State Statute 589.426, Halloween restrictions on conduct, registered sex offenders are required to have a sign posted in their front yard alerting individuals to the statement of: No candy or treats at this residence."

THE WITNESS: Your Honor, can I get my glasses? Can you get them, thank you.

THE COURT: So is there a question about this? You are just reading this into evidence.

MS. BELLUCCI: And calling the Court's attention to the statement in the document, your Honor.

THE COURT: Okay. All right, pose another question to the witness.

MS. BELLUCCI: Yes, your Honor. At this point in time, I would like to bring the Court's attention, Mr. Sanderson's attention, to Plaintiff's Exhibit 2. This is the Hazelwood police report filed April 13, 2023. I'm sorry – [26] this is his guilty plea. Not the police report. Again, Plaintiff's Exhibit 2.

THE COURT: Any objection to this, Mr. Goodwin?

MR. GOODWIN: No, your Honor.

MR. REICHARDT: No objection, Judge.

THE COURT: Okay. Exhibit 2 will be admitted in evidence.

MS. BELLUCCI: Thank you, your Honor. If we can approach the witness with Exhibit 2.

THE COURT: I'm sorry?

MS. BELLUCCI: He already has a copy. I was just checking.

Q. (By Ms. Bellucci) Okay. Mr. Sanderson, do you recognize this document?

A. Yeah.

Q. And can you describe briefly what it is?

A. I'm sorry?

Q. Can you describe briefly what this document is, do you remember it?

A. It looks like the plea of guilty for decorating for Halloween.

Q. And on the third page of this document, which has a Bates number of 175 on the bottom right-hand column, is that your signature at the bottom of the page under defendant?

A. Let me see – yeah, I'm sure it is. It is, yes.

[27] MS. BELLUCCI: Thank you. Your Honor, we request that this be admitted.

THE COURT: It is admitted in evidence. There have been no objections to it.

MS. BELLUCCI: Thank you.

Q. (By Ms. Bellucci) Mr. Sanderson, were you indeed convicted of this offense?

A. The Halloween offense?

Q. Yes?

A. Yes.

Q. And what was your sentence for this conviction?

A. One year, a suspended sentence, be a good boy for a year, and poof, it goes away.

Q. Did you – were you – did you lose your job after this event, after this conviction, rather?

THE COURT: Counsel, it is not relevant. Pose another question of the witness.

Q. (By Ms. Bellucci) Okay. Going back to your conviction that required you to register. You were convicted in the year 2006; is that correct?

A. Yes, ma'am.

Q. And the alleged event – the alleged conduct occurred in the year 2000?

A. I'm sorry?

Q. And the alleged action – sorry, took place in the year [28] 2000?

A. Yes.

Q. All right. So you were not charged until six years after that?

A. Yes.

Q. Did you plead guilty to that offense?

A. No.

Q. Were you convicted of that offense?

A. Yes.

Q. Did you go to a jury trial?

A. Yes.

Q. How many victims were in the case?

A. Excuse me?

THE COURT: Counsel, it is not relevant.

MS. BELLUCCI: Okay.

Q. (By Ms. Bellucci) Was the allegation in this conviction related to Halloween or to one of your Halloween displays?

A. No, ma'am.

Q. Did you meet the victim on or around Halloween of any year?

THE COURT: Counsel, it is not relevant.

Q. (By Ms. Bellucci) Do you believe that when you – do you believe today that you are guilty of that offense?

THE COURT: Counsel, it is not relevant.

Q. (By Ms. Bellucci) Other than your 2006 conviction, have [29] you ever been charged with another sex offender that requires you to register?

A. No.

Q. To your knowledge, have you ever been accused of any impropriety relating to your Halloween displays in any year?

A. No.

Q. Mr. Sanderson, do you drink alcohol?

A. Yes.

Q. When did you first start drinking?

THE COURT: Counsel, it is not relevant.

Q. (By Ms. Bellucci) How many DWI's, Mr. Sanderson, have you been convicted of?

A. Five.

Q. And when was the most recent DWI?

A. Oh, boy, 2015, I believe.

Q. Other than the conviction requiring your Sex Offender Registration and the DWI's, have you been convicted or investigated for other criminal offenses?

A. Yes.

Q. Have you ever been arrested for an incident regarding domestic disturbance against your spouse or girlfriend?

A. Yes.

Q. About how many times?

A. Four maybe.

Q. In February of 1986, 38 years ago, were you arrested for [30] urinating near the riverfront in St. Louis?

A. Urinating on the riverfront?

Q. Yes, sir.

A. Yes, ma'am.

Q. In January 2002, were you arrested for boating while intoxicated and battery against another person while in Bay County, Florida?

A. Yes.

Q. In February of 2002, did you brandish a toy plastic gun in view of another motorist?

A. Yes.

Q. Did that lead to a conviction?

A. I forget what that led to. I don't think it did.

Q. In August 2002, did you expose your uncovered buttocks to a group of young people sitting in a Taco Bell restaurant?

A. Yes.

Q. Also in 2002, did you injure your neighbor with a butter knife?

A. Yes.

Q. In 2011, in Ferguson, were you arrested on a possession of marijuana charge?

A. Yes.

Q. Were you convicted of that offense?

A. No.

Q. In 2021, did you get in a fight in the parking lot at [31] Home Depot regarding a joke that you told another patron or customer?

A. Yes.

Q. Were you convicted in that offense?

A. No.

Q. In November 2023, after the start of this case, were you questioned by a police officer after urinating in public?

A. Mardi Gras, are you talking about the past one?

Q. November 2023?

A. November 2023, what was the question again?

Q. Do you recall being questioned by a police officer for urinating in public?

A. In November?

Q. Yes, sir?

A. I don't recall that, no.

Q. In February 2024, earlier this year, did you, in fact, urinate in public during a Mardi Gras celebration?

A. That one I recall, yes.

Q. And were you convicted of that offense?

A. That's still ongoing.

Q. All right, I'd like to call to the Plaintiff's attention Plaintiff's Exhibit 11.

THE COURT: Any objection, Mr. Goodwin, to Exhibit 11?

MR. GOODWIN: No, your Honor.

[32] THE COURT: Any objection, Mr. Reichardt?

MR. REICHARDT: No objection, Judge.

THE COURT: Exhibit 11 will be admitted in evidence.

Q. (By Ms. Bellucci) Mr. Sanderson, did you receive a copy of a letter like this from the Hazelwood Police Department?

A. Yes.

Q. Do you understand that the Halloween Statute require you and others required to register to post a sign at your residence stating "No candy or treats at this residence"?

A. Yes.

Q. Do you understand that the Halloween Statute requires you to create a sign yourself?

A. Yes.

Q. Do you want to post a sign that says "No candy or treats at this residence"?

A. No.

Q. Why not?

A. Because I don't want to write a note. I want to hand out candy. I don't want to be forced to write something that I don't want to do. It is like scratching a nail down a chalkboard for me to take a pen and write down "No candy at this residence" when I have been doing it so long. I don't want to be – I just don't want write a note like that. I have to have my light out. I have to be inside my house. [33] Light out means no candy at this residence. I have always known that as a kid, and it should be clear to any children or any family walking by, there is no candy here, my light is out, and I'm inside. So be it.

Q. Mr. Sanderson, do you believe that you currently pose a danger to children?

A. Man, oh man, I'm sorry, can you ask one more time?

Q. Mr. Sanderson, do you believe that you currently pose a risk to children?

A. No.

Q. Despite your convictions, Mr. Sanderson, for five DWI's and other offenses, do you believe that you are protected by the U.S. Constitution?

A. Yes.

Q. Specifically, do you believe that you are protected by the First Amendment of the U.S. Constitution?

A. Absolutely.

Q. Do you believe that the First Amendment protects you from other in compelled speech, including the requirement to post a sign on the front door of your home on Halloween?

A. Yes, I believe that.

Q. Finally, do you believe that the Halloween Sign Requirement and the Missouri Statute violates your First Amendment rights?

A. Yes, it does.

[34] MS. BELLUCCI: No further questions at this time.

THE COURT: Mr. Goodwin, and let me just say whoever is going to take a witness, they will be responsible for that witness, questions, objections.

MR. GOODWIN: One attorney, one witness.

THE COURT: One attorney, one witness.

MR. GOODWIN: Very good, thank you.

CROSS-EXAMINATION

BY MR. GOODWIN:

Q. Good morning, sir?

A. Good morning.

Q. You were shown a letter, and you indicated that you received a copy of that letter, I believe it is Plaintiff's Exhibit 11; is that right?

A. Yeah.

Q. And so you didn't call the phone number at the bottom of the letter, did you?

A. No.

Q. Okay. So you got the letter. You just assumed this doesn't apply to me and went on about your business?

A. I received a letter just – I have never received this letter in the whole 20 something years that I have lived there, so this letter was – it was just – it just came about all of a sudden since – I guess since this big ordeal, all of a sudden I get a letter in the mail, but I have never [35] received this letter in my life.

THE COURT: Pose another question of the witness.

THE WITNESS: I have never seen this letter.

MR. GOODWIN: Thank you. Thank you, your Honor.

Q. (By Mr. Goodwin) Sir, I think you just testified that you want to hand out candy to children on direct; is that right?

A. Yeah, I have handed out candy to children, because I could.

Q. You want to do that though, correct?

A. Do what?

Q. So my question is on direct you just testified that you want to be able to hand out candy to children?

A. I didn't say I want to be able to myself, have I, yes. Do I mind, no. Is there a reason why I do it, no. It is a Halloween thing. It is a candy thing. It is a Christmas present, give you a Christmas present.

THE COURT: Mr. Sanderson, just listen carefully to the question. Just answer the question, all right. Pose another question of the witness.

MR. GOODWIN: Thank you, your Honor.

Q. (By Mr. Goodwin) In your deposition, Mr. Sanderson, you refer to that as treating the children, when they get candy, you call it treating the children?

A. Trick or treat.

[36] Q. Right, treating. And in your Halloween displays, children come up to your yard; is that right?

A. Come up to who?

Q. Into your yard?

A. No, on the street. We have the popup tent is set up right at the edge of the driveway, and they come up to the street. They don't come up in the yard.

Q. And you hide in the display and jump out to scare the children?

A. I hide and give them boos and scares, yeah.

Q. You might have 200 or 300 kids come up to your house on Halloween?

A. Yeah, with families, you know, families and kids.

Q. But 200 or 300 kids come over to your house?

A. Around about.

Q. Okay. The complaint in this case is verified; is that right?

A. It is what, excuse me?

Q. Verified, you signed to everything in the complaint is true, didn't you?

THE COURT: Counsel, I will stipulate that the complaint is verified and signed by Mr. Sanderson.

MR. GOODWIN: Okay, very good.

Q. (By Mr. Goodwin) And after you filed your lawsuit, sir, there was news coverage about the lawsuit; is that correct?

[37] A. I'm sorry?

Q. There was news coverage about your lawsuit?

A. Yeah, there was some newspaper stuff and Riverfront Times.

Q. And nobody came by your house and harassed you, after the newspaper?

A. No.

Q. And it is your opinion it is okay for sex offenders to be around children?

A. I said depending on the situation.

Q. And in fact, in some cases, you believe it is okay for someone who preys on children to be around children?

MS. BELLUCCI: Objection.

THE WITNESS: I never said that.

THE COURT: The objection is sustained. Pose another question of the witness.

Q. (By Mr. Goodwin) When you were in prison, sir, you didn't complete the Missouri Sex Offender Treatment Program, did you?

A. Not a chance.

Q. Regarding the sign, sir, you would agree that somebody if the sign only says "No candy or treats at this residence" that sign does not say this person is a sex offender; is that correct?

A. It sets a persona that that's the reason why it is [38] there. I think a lot of people are aware that if there

is a sign on Halloween on somebody's door that that's what it pertains to.

Q. But the sign does not say they are a sex offender; is that right?

A. It doesn't say that, no.

Q. All right. And you would agree –

A. It insinuates.

Q. – in fact, you testified previously it is a possibility if the lights are off and kids want candy, they may still come up to door, right?

A. I don't know, maybe. I don't recall.

Q. Depo, page 103?

THE COURT: Counsel, even if he said that before, it is speculation. You are asking him to speculate whether or not kids would still come to the front. It is objectionable. It is not relevant. The Court will sustain – the Court is going to rule it is not relevant.

MR. GOODWIN: I understand. I would just say, your Honor, and I respect the Court's ruling, if I can just make a record about why I think that question is relevant, and the reason is, your Honor, it goes to Mr. Sanderson's argument that the light being off by itself means that there is no – which is a statutory requirement – means that the sign does nothing else, and I think Mr. Sanderson, that's my reason [39] why.

THE COURT: Again, you are asking him to speculate whether or not children will still come to the front door. It is just speculation on his part. And actually, his opinion isn't relevant on the issues. So the Court will sustain it and will find that it is objectionable.

MR. GOODWIN: I understand. Thank you, your Honor.

Q. (By Mr. Goodwin) Mr. Sanderson, you are not aware of any facts that support your belief that there should be a statewide injunction; is that correct?

MS. BELLUCCI: Objection, calls for a legal conclusion.

THE COURT: The objection is sustained.

MR. GOODWIN: My question just is does he have any facts.

MS. BELLUCCI: Same objection.

THE COURT: The objection is sustained.

Q. (By Mr. Goodwin) Okay. Mr. Sanderson, you don't know who Andrew Bailey is, do you?

MS. BELLUCCI: Objection, relevance.

THE COURT: Well, he brought a case against Andrew Bailey in his official capacity. So the objection will be overruled.

THE WITNESS: Yes.

THE COURT: You can answer.

[40] THE WITNESS: Yes.

Q. (By Mr. Goodwin) You do know who Andrew Bailey is?

A. I know back then, I had a brain fart, and I said no, but anyway, yeah.

Q. Well, at the deposition, you were asked the question "Do you know who Andrew Bailey is." And your answer was "I don't know any Andrews"; is that correct?

A. That was during the deposition.

Q. Right. And in fact, you don't have any idea what Andrew Bailey does to enforce this Statute, do you?

MS. BELLUCCI: Objection, calls for a legal conclusion, and it is argumentative.

THE COURT: You can answer, sir. The objection will be overruled.

THE WITNESS: I'm not Mr. Politics man, so I don't know what he does.

THE COURT: Pose another question of the witness.

MR. GOODWIN: Thank you, your Honor.

Q. (By Mr. Goodwin) Mr. Sanderson, you are – the complaint says your property is large, but in fact, your property is small; is that right?

MS. BELLUCCI: Objection, relevance.

THE COURT: The objection is sustained.

MR. GOODWIN: Well, your Honor.

THE COURT: I understand. It is – he has it in [41] the complaint, you want to impeach his credibility; is that correct?

MR. GOODWIN: Yes, exactly, your Honor.

THE COURT: Again, it is a collateral issue that doesn't go to his credibility. The objection is sustained.

MR. GOODWIN: Thank you, your Honor.

Q. (By Mr. Goodwin) Mr. Sanderson, you just testified on direct that police officers came to your house that night; is that right?

A. Yes.

Q. They didn't come to you through your backyard though, did they?

A. Yes.

Q. Yes, they did come into your backyard?

A. They were in the neighbor's backyard at my fence line.

Q. My question was not about your neighbor's backyard, it was about your backyard. They did not enter through your backyard; is that correct?

A. They did not, no.

Q. Mr. Sanderson, you testified on direct that you were in prison. You were released in 2008; is that right?

A. Yes.

Q. In fact, you were released approximately June 29, 2008; is that right?

A. I don't recall, but sounds good.

[42] Q. You also testified before that you heard about the Sign Posting requirement while you were in prison, correct?

MS. BELLUCCI: Objection, that testimony is not in evidence.

THE COURT: The objection will be overruled. You can answer.

THE DEFENDANT: I don't know.

Q. (By Mr. Goodwin) You don't remember what you testified to, sir?

A. I don't know if I heard that. I mean, I heard a lot of things in prison. So I don't know.

Q. Okay.

A. I do want to add –

THE COURT: Mr. Sanderson, just listen to the question, answer the question.

THE WITNESS: My apologies, your Honor.

Q. (By Mr. Goodwin) Mr. Sanderson, you would agree with me that the Statute took effect – I'm sorry – August 28, 2008, after you were released from prison; is that correct?

A. Is that the no-decorating Statute?

Q. That's correct?

A. It took effect afterwards, yes.

Q. Okay.

A. But I wasn't aware until 2023 that it had changed.

Q. Mr. Sanderson, while you were on probation for the [43] violation of the Halloween offense, you – I think your counsel asked you about this – in March of 2024, while this case was ongoing, were peeing in public at the Soulard Purina Pet Parade; is that correct?

THE COURT: Counsel, how is this relevant?

MR. GOODWIN: I think it is relevant, because I think it goes to his risk. Mr. Sanderson has alleged in his complaint that he is not the type of person that this Statute should be enforced against, and I think our expert witness is going to testify that someone's criminality goes to their risk.

Additionally, this is perhaps the time when he is going to be under the most scrutiny while he is on probation in State Court. He has filed this lawsuit

about this very similar activity that he engaged in in urinating in public. That's why it is relevant.

THE COURT: Okay. You can answer.

THE WITNESS: I was at our car in a parking lot. It wasn't like I was running around in front of a big crowd of people. But yes, I urinated at our vehicle with the door, yeah, but the officer seen me, and came over and took a picture of my ID, and then it was maybe a month later I got –

THE COURT: Pose another question of the witness.

MR. GOODWIN: Thank you, your Honor.

[44] Q. (By Mr. Goodwin) Going back to your house on Halloween night, nobody has ever committed any vandalism against your house; is that right?

A. No, but lots of threats, and I had a pistol, and chased a neighbor with a pistol, and things like that.

Q. Not related to Halloween?

A. Related to my sex offender charges.

Q. And that's stuff that you say happened years ago, not related to Halloween, right?

A. Halloween is related to my sex offender charges as well. So it is kind of all included.

Q. How is Halloween related to your sex offender charges?

A. You asked about any violence or anything. So I had – I have had violence, and things post to my house, and around my neighborhood with a pistol, I have chased around my neighborhood with a pistol, and things like that, because of my sex offender charge.

Q. And that stuff that has happened years ago; is that correct, and it did not happen around Halloween?

A. I don't know when it happened, but it happened, but Halloween is a really risky night for it to happen. So I keep my eyes and ears open.

Q. Nothing has ever happened to you or your family on Halloween, has it?

A. Not as of yet, no.

[45] Q. And everything that you have ever talked about, threats that you say that you have encountered or dealt with, that's related to being on the Sex Offender Registry, right?

A. Yes, and so is Halloween decorating.

Q. Okay, sir, but if none of that stuff happened around Halloween, how would they know that it is in connection with Halloween?

A. How would they know?

Q. Correct?

A. I don't know how they would know. I said that – I don't know how they would know, but Halloween is a terrible night, so.

THE COURT: Pose another question of the witness.

THE WITNESS: Thank you.

Q. (By Mr. Goodwin) On Halloween of 2022, you violated every provision of the Missouri Statute, didn't you?

MS. BELLUCCI: Objection, calls for a legal conclusion.

THE COURT: The objection will be overruled. You can answer, if you know.

THE WITNESS: I don't know what they want.

THE COURT: Okay. Pose another question.

THE WITNESS: I wasn't violating nothing.

THE COURT: Mr. Sanderson, just listen to the question and answer the question.

[46] Q. (By Mr. Goodwin) You had your exterior lights on after 5 p.m., didn't you?

A. Exterior lights?

Q. Yes, sir.

A. Yeah.

Q. Okay. You had decorations out, right?

A. Lots of them.

Q. Lots of them. So you were engaged in Halloween-related activities?

A. Absolutely.

Q. You were outside of your house?

A. Absolutely.

Q. And you didn't have a sign posted?

A. Absolutely.

Q. Okay. And when the police came to your house, you ran downstairs and hid in the basement?

A. That didn't happen, no. The first time they came, I ran to go get fog juice for our fog machine, and on the way back, I got a text sayings "Officers are all over here. Wait a little bit before you came back." So I waited a little bit and came back, and they were gone. Now, maybe the second incident –

THE COURT: Mr. Sanderson, just listen to the question. Pose another question of the witness.

MR. GOODWIN: Thank you, your Honor.

[47] Q. (By Mr. Goodwin) The second time the police came, you went down to the basement?

A. I don't know that I went to the basement, no, but I was inside the house.

Q. Well, you didn't come out to talk to the officers right away, did you?

A. No.

Q. Okay. You were trying to avoid them?

A. Yes.

THE COURT: Mr. Goodwin, I don't know how it is relevant.

MR. GOODWIN: Your Honor, it goes to his state of mind. He has alleged that he knew that he didn't have to do any of these things, but when the officers come to his house for the second time, he is trying to avoid the officers.

THE COURT: You can answer the question.

THE DEFENDANT: It is obvious what they were there for. So and I had already been through this one time prior, and I didn't want to go through it again, because it is humiliating. It is embarrassing for everybody that's out there, families and kids that are out there, and to have a bunch of police cars in front of your house. So I didn't want to be involved in it again, because actually, I thought that they missed the mark again.

THE COURT: Pose another question of the witness.

[48] MR. GOODWIN: Thank you, your Honor.

Q. (By Mr. Goodwin) Sir, you eventually did come out and talk to the police; is that right?

A. Yeah.

Q. And you were – had some coarse language for them?

A. I wasn't a happy camper, right.

Q. Right. And that's all recorded on the body cam video that you've seen?

A. It is, yes.

Q. Correct. And that will be part of the record for the Court so?

A. Perfect.

Q. Everything that you said that's on the body cam, that's all accurate and correct? A. Absolutely.

Q. It is your intention to challenge the other provisions of the Halloween Statute at a future date, isn't it?

MS. BELLUCCI: Objection.

THE COURT: How is that relevant, counsel?

MR. GOODWIN: Well, your Honor, his argument is is that he is going to comply with every other provision of the law, and he has indicated to us that –

THE COURT: The only issue before the Court is the Sign Posting requirement. What his intent is isn't relevant. The objection is sustained.

[49] MR. GOODWIN: Thank you, your Honor.

Q. (By Mr. Goodwin) Sir, you have admitted that the guilty plea document that your attorney showed

you earlier doesn't say anything about the Sign Posting requirement?

MS. BELLUCCI: Objection, that misstates the evidence.

THE COURT: The objection will be overruled. You can answer, if you know, sir.

THE WITNESS: The question again, I'm sorry?

Q. (By Mr. Goodwin) Sure. The guilty plea document that your attorney showed you a few minutes ago, I think you probably have a copy of it up there.

A. For decorating for Halloween?

Q. Yeah. It is for decorating for Halloween, isn't it?

A. Yes.

Q. It is not for the Sign Posting requirement?

A. That's all in the same thing.

Q. Okay. But it doesn't say anything about the Sign Posting requirement?

A. It is all included. It is included in the Statute so.

Q. Sir, sir –

THE COURT: Mr. Goodwin, pose another question of the witness.

Q. (By Mr. Goodwin) When you pled guilty, you were in court, right?

[50] A. Yeah – no.

Q. Okay. You had your attorney handle that for you?

A. Yes.

Q. So as far as you know, you have never seen anything in writing, other than the police report, as it pertains to your guilty plea that says anything about the Sign Posting requirement?

A. Oh, boy, one more time. I'm sorry.

Q. Sure. Other than that police report, which is page 13.

It is in a supplement, right, you have never seen anything in writing that says that your Halloween conviction is related to the Sign Posting requirement?

A. It is just related to the Statute.

Q. Okay.

A. The Statute includes the Sign Posting.

Q. Now, Mr. Sanderson, you testified on direct examination that the Statute requires you to make a sign, but isn't it true that you could – somebody could give you a sign, and you could post that?

A. I don't want a sign. I don't want somebody to make me one, or I don't want to write one. I don't want a sign.

Q. I understand that. You are not required to physically write the sign, are you?

MS. BELLUCCI: Objection, relevance.

MR. GOODWIN: Well, your Honor, she asked –

[51] THE COURT: The Statute speaks for itself. It doesn't require him to write the sign. We can all agree that the language in the Statute does not require that. Pose another question of the witness.

MR. GOODWIN: Thank you, your Honor.

Q. (By Mr. Goodwin) Finally, sir, when you go and register as a sex offender, you have to fill out paperwork; is that right – you have to sign some papers?

A. I signed some stuff, yeah.

Q. And you read that paperwork, don't you?

A. Yeah.

Q. Okay. And so if the paperwork on the back said that you are subject – that sex offenders are subject to the Halloween restrictions, that's something you would have read before you signed the registration form?

A. The paperwork is generic. So it is the same every time. I used to go four times a year. Now I go twice a year. They cut it down to twice a year. So when I go, it is generic. They say basically "Is everything the same." I say "Everything is the same." Sign this, and off I go. I'm in there three to five minutes.

Q. Do you read the paperwork before you sign it or not?

A. It is the same paperwork every time.

Q. Do you read the paperwork before you sign it?

A. I read it several times.

[52] MS. BELLUCCI: Objection, let him answer.

THE COURT: The objection is overruled. He hasn't answered the question. Just listen to the question, Mr. Sanderson, and just answer the question. Rephrase the question.

MR. GOODWIN: Thank you.

Q. (By Mr. Goodwin) Before you signed the paperwork to register as a sex offender, do you read it?

A. I do read it, yes.

Q. Do you read the whole thing?

A. Not every single time, though.

Q. Okay. So you just don't read it?

A. Because it says the same thing every time.

MR. GOODWIN: Okay. No further questions.

THE COURT: Mr. Reichardt?

MR. REICHARDT: Briefly, Judge.

CROSS-EXAMINATION

BY MR. REICHARDT:

Q. Good morning, sir?

A. Good morning.

Q. You just testified that Halloween is a risky night?

A. I'm sorry?

Q. You just testified -

A. I'm sorry?

THE COURT: Just listen to the question.

[53] Q. (Mr. Reichardt) You just testified not too long ago that Halloween is a risky night?

A. Yes.

Q. Risky for you is what you were talking about?

A. It is risky for a lot of people that have problems with people or whatever, yeah, stuff that goes on.

Q. For children too possibly?

A. I'm sorry?

Q. For children as well?

MS. BELLUCCI: Objection, relevance, argumentative.

THE COURT: The objection is overruled. THE WITNESS:

For children, it is risky?

Q. (By Mr. Reichardt) Yeah.

A. I guess if they fall down and skin their knee while they are trick or –

Q. You have grandchildren, don't you?

A. Well, yeah, several.

Q. How many?

MS. BELLUCCI: Objection, relevance.

Q. (By Mr. Reichardt) How old are they?

THE COURT: The objection is sustained. The objection is sustained to their ages as well.

MR. REICHARDT: Thanks, Judge.

Q. (By Mr. Reichardt) You would want to keep them safe at all costs, wouldn't you?

[54] A. Well, absolutely, yeah.

Q. We have just gone through all of your criminal violations and your criminal record over the years; is that right?

A. Yeah.

Q. For someone with a criminal record that you have on paper, would you want a person – a hypothetical person like that to be around your grand kids?

MS. BELLUCCI: Objection, relevance and argumentative.

THE COURT: The objection is sustained.

MR. REICHARDT: No further questions, Judge.

THE COURT: Ms. Bellucci? MS. BELLUCCI: Thank you.

REDIRECT EXAMINATION

BY MS. BELLUCCI:

Q. Mr. Sanderson, do you still have before you Exhibit 11. There is a letter from law enforcement regarding Halloween?

A. Oh, yeah.

Q. Do you recall in what year you received that letter?

A. Just this past year.

Q. This past year being 2022 or 2023, if you recall?

A. It was last year, so '23.

Q. Mr. Sanderson, why did you not complete sex offender treatment while you were in prison?

[55] A. I didn't complete it, because I didn't – I wasn't guilty for the charge. So, when you are – the first thing you do is they set you in a classroom.

THE COURT: Mr. Sanderson, hold on, pose another question of the witness. This really is not relevant.

MS. BELLUCCI: All right, your Honor.

Q. (By Ms. Bellucci) Mr. Sanderson, with the sign that said "No candy or treats", did that sign – was there any media attention that you were aware of with

regard to those signs. Was it in the newspaper, or did you see it on television?

A. That what – I'm sorry.

Q. The sign requirement of the Statute, did it receive any media attention?

A. The sign in the Statute, yes.

Q. Yes. And in that attention, did it ever say only people required to register as a sex offender would be required to put that sign on their door?

A. Yes.

Q. Mr. Sanderson, I believe that you said that there were risks to children on Halloween; is that correct?

A. Uh-huh.

Q. One of those risks is that they might fall down and skin their knees?

A. Yes.

[56] Q. Is another risk that they might get hit by a car?

A. Absolutely.

MS. BELLUCCI: No further questions, your Honor.

THE COURT: Mr. Goodwin?

MR. GOODWIN: No questions, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No questions, Judge.

THE COURT: You can step down, sir.

THE WITNESS: Yeah.

THE COURT: Ms. Bellucci, call your next witness.

MS. BELLUCCI: Your Honor, could I request a five minute break so I can speak to my client?

THE COURT: We are going to go forward. Call your next witness.

MS. BELLUCCI: All right, very good. My next witness is, in fact, I want to call police officer, Police Chief Hudanick.

THE COURT: Chief, if you will step up here, sir, the Clerk will administer the oath.

While the Chief is going up there, if you want to take a minute and talk to your client, go ahead. Counsel, you may proceed with questions of the witness.

MS. BELLUCCI: Thank you, your Honor.

CHIEF JAMES HUDANICK,

[57] being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BELLUCCI:

Q. I'm hesitating, because I don't want to mispronounce your name, I'm sorry. Sir, could you please pronounce your name for the record?

A. It is James F. Hudanick.

Q. Hudanick, thank you so much, Chief. Are you currently the Chief of Police of the Hazelwood, Missouri, Police Department?

A. Yes, ma'am.

Q. And how long have you served in that capacity?

A. Including acting, two years.

Q. About how many, do you know rather, how many registered sex offenders reside in the City of Hazelwood?

A. Somewhere – I think our registry list there is close to a hundred. I think the number we are going with is 62, 63.

Q. Are you familiar with the Statute that's at issue in case. It is Missouri Section 589.426, and the title is "Halloween-Restrictions on Conduct"?

A. Yes.

Q. I'd like to bring Exhibit 12 to everyone's attention.

THE COURT: I don't have an Exhibit 12 in my binder. What is Exhibit 12? It is not on your exhibit list. What is Exhibit 12?

[58] MS. BELLUCCI: Exhibit 12, your Honor, is in fact the Missouri Statute, a copy of that.

THE COURT: Any objection, Mr. Goodwin?

MR. CLARKE: Andrew Clarke, it is the printout. Let me see. I'm sorry, no objection for Defendant Bailey.

MR. REICHARDT: No objection, Judge.

THE COURT: Exhibit 12 will be admitted in evidence.

Q. (By Ms. Bellucci) So, Chief Hudanick, you now have a copy of the Statute in front of you?

A. Yes, ma'am.

Q. Are you familiar with that Statute?

A. Yes, ma'am.

Q. And is the Hazelwood Police Department an agency that's responsible for enforcing the Statute?

A. Yes, ma'am, St. Louis County as well.

Q. So from both the City of Hazelwood and St. Louis County?

A. All municipalities in St. Louis County are responsible for enforcing it.

Q. Okay. All right, so we also have another exhibit for your attention. It is Plaintiff's Exhibit 10. If you would please take a look at that exhibit. The title of it is: Defendant, James Hudanick's responses and objections to Plaintiff's interrogatories. Have you seen this document before?

[59] A. Yes, ma'am.

THE COURT: Any objection to Exhibit 10?

MR. CLARKE: Your Honor, I don't know if the entirety of the document is relevant. No objection.

MR. REICHARDT: No objection, your Honor.

THE COURT: Okay. Exhibit 10 will be admitted in evidence.

MS. BELLUCCI: Thank you, your Honor.

Q. (By Ms. Bellucci) Chief Hudanick, if you will turn to page six of that document?

A. Yes, ma'am.

Q. Is your signature on that document and on that page?

A. Yes, ma'am.

Q. And is it signed under penalty of perjury?

A. Yes, ma'am.

Q. Are the answers to these interrogatories your own?

A. Yes, ma'am.

Q. So let's quickly confirm your answer to these interrogatories for the record, specifically interrogatory number one?

THE COURT: Counsel, if there is a particular question that you want to inquire about, that's fine, but I'm not going to have the witness read the document. The document speaks for itself.

MS. BELLUCCI: Yes, your Honor. I would like to [60] paraphrase from that interrogatory answer, and then ask him if that's correct. Would that be acceptable?

THE COURT: Pose a question.

MS. BELLUCCI: Yes, your Honor.

Q. (By Ms. Bellucci) All right. So interrogatory number one asked you to identify all occasions on which the Missouri Halloween Statute was enforced, and you answered once, and that was against Plaintiff Thomas Sanderson in the year 2022; is that correct?

A. Yes, ma'am.

Q. So the Hazelwood Police Department has not enforced that Statute against any other person in the years; is that also correct?

A. I can't – to my knowledge.

Q. Interrogatory number two asked you to identify all occasions on which the Sign Posting Mandate of the Statute was enforced, and you replied none; is that correct?

A. Yes.

Q. Now, I'd like to turn your attention to Plaintiff's Exhibit 1.

THE COURT: Counsel, this is the police report; is that right?

MS. BELLUCCI: Yes, your Honor.

THE COURT: It has been previously admitted in evidence.

[61] Q. (By Ms. Bellucci) Chief, if you'd take a moment to look at them to acquaint yourself with the document, please.

A. No, I'm familiar with it.

Q. All right. So are these, in fact, police reports from your Department regarding the enforcement of the Missouri Halloween Statute against the Plaintiff?

A. Yes, ma'am.

Q. If you would, on page 004-005?

A. Yes, ma'am.

Q. It reads "Phelps was showed the following Statute as well in reference to the restriction Sanderson is required to abide by"; is that correct?

A. Yes, ma'am. The officer placed the Statute in the report. It is very thorough.

Q. And the police report also lists – refers to a person named Ronda Phelps – or to Phelps, rather. Is that Ronda Phelps?

A. Yes – yes, ma'am.

Q. And there is a statement there on page 004. "Phelps was showed the following Statute as well in reference to the restriction that Sanderson is required to abide by"; is that also correct?

A. According to the report, yes.

Q. On the following page, Chief Hudanick, on the top of the page, there is a statement "Post a sign at his or her [62] residence stating: No candy or treats at this residence"; is that correct?

A. Yes, ma'am.

Q. So also on that page, there is a statement "Phelps was advised she needed the above-noted signage on the residence"; is that correct?

A. Yes, ma'am.

Q. And further, it should be noted on the same page, it should be noted that no sign as required above was posted or visible at the Sanderson residence; is that correct?

A. Yes, ma'am.

Q. Now turning your attention to pages 13 and 14. That would be 013 and 014?

A. Yes, ma'am.

Q. At the very bottom of the page, there is a statement.

"I would like to add that I observed no sign posted in Sanderson's yard informing trick or treaters that there is no candy or treats at this residence per Missouri State Statute 589.426 Halloween restrictions on conduct. Registered sex offenders are required to have a sign posted in their front yard alerting individuals to the statement of No candy or treats at this residence"; is that also correct?

A. Yes, ma'am.

Q. Turning your attention back to Exhibit 10, interrogatories number five and six, asked you to identify [63] any citations issued for violations of any

aspect of the Statute in any year, and you answered none; is that correct?

A. Yeah, I don't have any records of that.

Q. Do you have the document in front of you?

A. Yes, ma'am, I have it, and you asked me the question about citations and that, don't have any records.

Q. So you are, in fact, affirming the answer to your interrogatory; is that correct?

A. Yes.

Q. Thank you. Interrogatories number nine and ten ask you to identified all occasions on which warnings were issued for violations of any aspect of the Statute, and you answered none; is that also correct?

A. Yes.

Q. Interrogatory number 11 asked you to identify all written policies and other documents concerning enforcement of the Statute. Your response was "The City of Hazelwood Police Department sent letters in 2023, one week to 10 days before Halloween, to addresses on the National Sex Offender Registry list addressed to current residents"; is that correct?

A. Yes, ma'am.

Q. Turning your attention to Plaintiff's Exhibit 11. You may not have it. Is this the content of the letter that your Department sent to all registered sex offenders who resided [64] in Hazelwood?

A. Yes, ma'am. I put that together.

Q. You did, okay, and you signed the letter; is that correct?

A. I'm sorry, what?

Q. Did you sign the letter?

A. Yes, I did.

MS. BELLUCCI: Okay. Please, your Honor, I would like the witness to read the letter aloud, but.

THE COURT: Counsel, the letter has been admitted in evidence. It speaks for itself. Pose another question of the witness.

MS. BELLUCCI: Very good. All right, thank you.

Q. (By Ms. Bellucci) Turning your attention back to Exhibit 10, and looking at interrogatories number 13 and 14, that asks you to identify all facts and documents supporting your contention that the Statute increases public safety. I'll give you a moment to get to 13 and 14. Your answer is there too.

A. Yeah.

Q. Okay. Your answer is "Defendant Hudanick objects to this interrogatory as seeking irrelevant and immaterial opinion and or subjective belief"; is that correct?

A. Yes, ma'am.

[65] Q. Is this still your response to the question of whether you have facts or documents supporting the contention that the restrictions of the Statute increase public safety?

A. Ma'am, I enforce the Statute.

MR. REICHARDT: I object. This is a valid objection to an interrogatory.

THE COURT: It is a legal objection posed to an interrogatory. You never took that up with the Court. The objection is sustained.

MS. BELLUCCI: Thank you, your Honor. No further questions at this moment.

THE COURT: Okay. Counsel, any questions of the witness?

MR. CLARKE: Yes, your Honor.

CROSS-EXAMINATION

BY MR. CLARKE:

Q. Good morning, Chief?

A. Good morning.

Q. So Attorney General Bailey for the State of Missouri is also a named Defendant in this case; is that correct?

A. Yes, sir.

Q. Is General Bailey your boss?

A. I guess not at the local level, but I guess at the State level, of course, overarching.

Q. So let's talk about that. When you are policing [66] Hazelwood, does Attorney General Bailey supervise the day-to-day operations in the Police Department?

A. No, sir.

Q. Okay. That would be you who supervises the police?

A. Yes, sir.

Q. Okay. So on the day-to-day choices about what police are going to do in Hazelwood, you are the supervisor?

A. Yes.

Q. Okay. And General Bailey doesn't have a role in that day-to-day operation?

A. Exactly.

Q. Okay. And he doesn't supervise you long-term about what sort of goals are for the office?

A. No, he does not.

Q. Okay. So now, you are the Police Chief for Hazelwood; is that correct?

A. Yes, sir.

Q. All right, now, do you enforce the law in let's say Cass County, Missouri?

A. No.

Q. Or Cole County, Missouri?

A. Just in Hazelwood.

Q. Okay. So do you know there are 114 counties in the State of Missouri?

MS. BELLUCCI: Objection, relevance.

[67] THE COURT: The objection is overruled. You can answer.

THE WITNESS: No. There is a lot.

Q. (By Mr. Clarke) Okay. And would it be fair to say that outside of Hazelwood, you don't enforce the law in any of those counties?

A. Correct.

Q. Now, that letter that you sent, you have the letter in front of you?

A. Yes, sir.

Q. You sent that to individuals in Hazelwood, Missouri; is that correct?

A. Yes, sir.

Q. As of my last question, you didn't send the letter to Cole County, Missouri, Registrants?

A. No, just through the registered sex offenders in the city limits of Hazelwood.

Q. Okay. So no other county in the State of Missouri?

A. Correct.

Q. Okay. Or the City of St. Louis?

A. Correct.

Q. Okay. Now, you were asked a lot of questions about your interrogatories here. I want to ask you about a citation being issued to Mr. Sanderson. You read the police report. Is it true that you did not issue a citation to Mr. [68] Sanderson?

A. Correct.

Q. Okay. And you don't know if any citation has ever been issued to anyone about the Statute?

A. Correct.

Q. Okay. So the Halloween Statute we have been speaking about, do you understand it has four parts; is that correct?

A. Yes, sir.

Q. Okay. And the four parts outline different criminal offenses?

A. Yes, sir.

Q. Now, when we are talking about JIFT 589426 sub 3, which says "Post a sign at his or her residence stating: No candy or treats at this residence." To your knowledge, has anyone been arrested for that Sign Posting mandate?

A. Just that Sign Positing mandate?

Q. Correct.

A. No.

MR. CLARKE: One moment, your Honor. Nothing further, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No questions.

THE COURT: Ms. Bellucci, any other questions of the Chief?

MS. BELLUCCI: No, your Honor.

[69] THE COURT: Chief, let me just ask you, with regard to the entire Halloween Statute that we are calling the Halloween Statute.

THE WITNESS: Yes, sir.

THE COURT: Mr. Sanderson is the only one that you know of who has been prosecuted under that; is that correct?

THE WITNESS: In Hazelwood?

THE COURT: In Hazelwood.

THE WITNESS: Yes, do you mind if I expand on this?

THE COURT: Go ahead.

THE WITNESS: For the longest time in St. Louis County they had a unit that actually handled the Halloween activities, right. They would go out, right. At a certain point in time in history, what I'm told is their unit has been – not de-staffed, but they have less people in it to do it, right. There is a lot of things that would happened 14, 15, 16, there is a lot of things that have occurred, so staffing has been a problem, right.

The previous Chief, before I took over, wasn't so keen on doing this, right. So there was a huge lap from St. Louis County going out, and I think it was alluded to to go visit on Halloween, right.

When I took over, my initiative was to follow the statutes, and you know, as completely and as thoroughly as possible, you know, and to enforce the laws, because in the [70] community of Hazelwood, that's the expectation of law enforcement to enforce statutes on the book, and that was my mission going forth. So when you asked the question about any previous stuff – no.

THE COURT: Okay. But you don't know whether or not St. Louis County then previously enforced that Statute?

THE WITNESS: No. I have no idea if maybe they issued a citation or arrested anybody. No, I do not.

THE COURT: And you indicated that in your capacity as the Chief, it is your responsibility to enforce the laws of the State of Missouri, the laws of Hazelwood; is that correct?

THE WITNESS: Yes, sir.

THE COURT: And you would intend to do that going forward; is that correct?

THE WITNESS: Correct, sir.

THE COURT: So, if this Statute, the Sign Posting requirement stays in effect, it would be your intent to continue to enforce it; is that correct?

THE WITNESS: Yes, sir.

THE COURT: Okay. All right, Ms. Bellucci, any other questions of the witness?

MS. BELLUCCI: No, your Honor.

THE COURT: Any other questions of the witness?

MR. CLARKE: Just one, your Honor.

[71] RECROSS-EXAMINATION

BY MR. CLARKE:

Q. Chief, when you went to Mr. Sanderson's house, or your police officers went to Mr. Sanderson's house, that was the result of an anonymous tip; is that correct?

A. Yes, sir.

MR. CLARKE: Thank you.

THE COURT: Mr. Reichardt, any questions?

CROSS-EXAMINATION

BY MR. REICHARDT:

Q. Chief, just to clarify the record here, what was your directive to – as the Chief and as the supervisor, what is your directive to your police officers as of Halloween 2022, as to how the Police Department and the law enforcement resources were going to be used to monitor activity that would fall under the Statute?

A. I'm sorry, if I can get some clarification, so setting aside '22, you are talking about going forward?

Q. I'm talking about just so Mr. Sanderson was arrested in 2022; is that right?

A. Yes, sir.

Q. Okay. So before Halloween night happens, you have discussions with your people and the Police Department as to how you are going to enforce the Statute, right?

A. Exactly.

[72] Q. Okay. So can you explain to Judge Ross here how exactly what you told your people on what to do?

A. Okay. So we put together some teams. There are 62 people that we were going to go check on in '23 that night. So we sent out the letters as a reminder to people here are the provisions of the Statute that you have to be compliant with, right. Hazelwood, like everybody else, is limited in the amount of resources that we have.

My concern was for them. The safety of the children. So my overarching intent was I didn't want to see anybody that was doing hand-to-hand transactions, handing candy out, sex offenders handing candy out was my number one objective for that evening. So we can move quickly through the process.

Q. Okay. So that was the directive, watch for hand-to-hand contact, and then deal with it if you start seeing that?

A. It is about the kids to make sure that the offender isn't grabbing at the kids, for lack of a better – I think that's my words, I didn't want any kids grabbed.

Q. Okay. So there wasn't any specific directive to go looking around and hunting for signs not being up?

A. No. It is about the children.

Q. And about seeing interaction with children?

A. Exactly.

Q. Okay. That's the best of your recollection of that [73] directive that you had; is that correct?

A. Yes.

Q. Okay. And so as it exists now, there is a TRO in place, and you are aware of that?

A. Yes, I am.

Q. As of now, we are going to following the Court's order, we couldn't –

A. We will.

Q. Well, let me finish, Chief.

A. Yes, sir.

Q. We couldn't enforce the Sign Posting requirement, and we couldn't, as of Halloween 2023; is that right?

A. You know, I forget, yes, because of the TRO came out, and that was a part of the Statute that was unenforceable.

Q. So if Judge Ross ultimately declares this law unconstitutional, obviously, we will never enforce that provision, correct. We follow the Court's order, right?

MS. BELLUCCI: Objection, calls for a legal conclusion.

MR. REICHARDT: I'm just moving this along.

THE COURT: The objection is overruled. You can answer.

THE WITNESS: Yes.

Q. (By Mr. Reichardt) If he doesn't find it unconstitutional, will your directives be the same as they [74] were previously, go look out for, you know, making sure people aren't interacting with children?

A. Right. That's the number one goal.

Q. Exactly the type of stuff Mr. Sanderson was doing, right?

A. Yes.

MR. REICHARDT: Okay. No further questions.

Thanks, Judge.

THE COURT: Chief, just so that I'm clear.

THE WITNESS: Okay.

THE COURT: Again, at one point, you said you thought there was a hundred sex offenders in Hazelwood, but you said 62 or 63.

THE WITNESS: Okay, so –

THE COURT: It is fine, but with regard to the 62 that are on the Sex Offender Registry, first of all, the Sex Offender Registry is a public –

THE WITNESS: Yes, sir.

THE COURT: – site, so any citizen in the City of Hazelwood can find out where sex offenders live.

THE WITNESS: Certainly, yes.

THE COURT: So if I live on a street, and I want to know whether or not there are sex offenders on my street, I can go to that public record and find out.

THE WITNESS: Yes.

[75] THE COURT: And the Police Department has access to those records?

THE WITNESS: Yes, sir.

THE COURT: And did you indicate that you had teams that would go to those 62 residences –

THE WITNESS: Yes, sir.

THE COURT: – and check to see if they are in compliance with again what we are calling the Halloween Statute; is that correct?

THE WITNESS: Correct.

THE COURT: It seemed to me that you were suggesting that because of the TRO, you didn't send those teams out.

THE WITNESS: Oh, no, no, no, the teams still went out.

THE COURT: The teams still went out –

THE WITNESS: Right.

THE COURT: – because there are still other important portions of the Statute.

THE WITNESS: Of the Statute, exactly.

THE COURT: So you still check to make sure that sex offenders were avoiding all Halloween-related contact with children; is that correct?

THE WITNESS: Yes.

THE COURT: You still checked to make sure that sex [76] offenders remained inside his or her residence –

THE WITNESS: That's all part of the Statute.

THE COURT: – between the hours of 5 p.m. and 10:30 p.m., unless required to be elsewhere for just cause, and it talks about it.

THE WITNESS: Yes, sir.

THE COURT: And then the other one is that they leave all outside residential lighting off during the evening hours after 5 p.m. So those provisions were all still enforced on Halloween of 2023?

THE WITNESS: Yes, sir.

THE COURT: And do you agree keeping the residential lighting off – I mean, we have talked about, I guess, what people generally do on Halloween, and certainly years ago, there were lots and lots of kids going to residences. Now it has changed, wouldn't you say; is that correct? It is a lot more going to malls, or going to trunk or treat events, or going to public events, as opposed to going to houses, for a variety of reasons; isn't that correct, Chief?

THE WITNESS: Your Honor, I think it is twofold, I guess. It depends on what area of the two county that you are living in. One area is more prone to school events, parking lots and everything. Hazelwood has a lot of trick or treaters.

[77] So I see what you are saying, but yes, it has changed since I was a kid.

THE COURT: Okay. And those things continue to change; is that correct?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: Can I clarify the 162?

THE COURT: Sure, go ahead.

THE WITNESS: We have almost a dozen hotels, and their last known registry was at the hotel, and that's a time-consuming task to go track down all of those. So

we went to the ones that we could confirm were still in town at least residentially-wise.

THE COURT: Okay. All right, any other questions of the witness, Ms. Bellucci?

MS. BELLUCCI: No, your Honor.

THE COURT: Any other questions of the witness,

Mr. Clarke?

MR. CLARKE: No, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No, your Honor.

THE COURT: You can step down, Chief. Thanks for being here.

THE WITNESS: Thank you.

THE COURT: We are going to go ahead and take a [78] five minute recess. We will be in temporary recess for five minutes.

(At 10:29 a.m., the proceedings stood in temporary recess. At 10:46 a.m., the proceedings resumed.)

THE COURT: Ms. Bellucci, any other witnesses on behalf of Mr. Sanderson?

MS. BELLUCCI: No, your Honor.

THE COURT: Anything else before you rest your case?

MS. BELLUCCI: No, your Honor.

THE COURT: Okay. So the Plaintiff rests at this time?

MS. BELLUCCI: Yes, your Honor.

PLAINTIFF RESTS

THE COURT: Okay. I don't know if you want to make any argument at the close of Plaintiff's case. If you do, Mr. Goodwin, go ahead.

MR. GOODWIN: Mr. Clarke would like to make an argument, your Honor.

THE COURT: Mr. Clarke, if you will approach the podium.

MR. CLARKE: Thank you, your Honor.

Your Honor, Defendant Bailey would move for a judgment under rule – Federal Rule of Civil Procedure 52C.

Mr. Sanderson requests statewide injunctive relief enjoining [79] Attorney General Andrew Bailey, and Police Chief James Hudanick, from enforcing the Sign Posting requirements of 589.426.

Mr. Sanderson has failed to present any evidence from which this Court could find that the Attorney General Bailey has any role in enforcing that the Sign Posting requirement of 589.426, and this Court has not heard any evidence that General Bailey supervised any law enforcement officers, any Highway Patrol member, any County Sheriff's Office officer, or any member of a local police force.

Similarly, Mr. Sanderson has failed to present any evidence that would allow this Court to find that Chief Hudanick has any role in enforcing 589.426 in any jurisdiction other than Hazelwood, Missouri. And that's because this evidence does not exist.

Throughout pretrial proceedings, and during the TRO litigation in this matter, Attorney General Bailey has repeatedly asserted that this court was without jurisdiction or legal authority to issue a statewide relief for every sex offender in the State of Missouri.

This is at least in part because Mr. Sanderson's challenge is a facial challenge to a State criminal Statute. As the Supreme Court stated in *United States vs. Salerno* 481 U.S. 739, 745, it's 1987, a facial challenge to a Legislative Act is, of course, the most difficult challenge to mount [80] successfully, since the challenger must establish that no set of circumstances exist under which the act would be valid.

Here, Mr. Sanderson has not even attempted to engage with this burden, and has not recognized the existence of any set of circumstances other than his own.

And as the Eighth Circuit has recognized, facial challenges are disfavored. And that's because they often rest on speculation and raise the risk of premature interpretation of statutes on the basis of factually bare bones records.

Here, Mr. Sanderson's challenge is worse. He has an opportunity to create a record, and he failed on all fronts. He has not carried the heavy burden for a statewide injunction. And further, during the pendency of this action, the Supreme Court decided *Labrador vs. Poe*. That's 144 Supreme Court 921. And in *Labrador*, the Supreme Court granted a statewide – I'm sorry – granted a stay of a statewide injunctive relief, except as to the Plaintiffs who had brought the challenge to State law.

And Justice Gorsuch, in concurrence, explained this Court has long held that a Federal Court's authority to fashion equitable relief is ordinarily constrained by the rules of equity known at the time of the separation of this Country from Great Britain. Under those rules, this Court has said a Federal Court may not issue an equitable remedy [81] more burdensome to the

Defendant than necessary to address the Plaintiff's injuries. And at least one Eighth Circuit Judge has expressed similar concerns in *Rodgers vs. Bryant* 942 F3d 451, and that's Judge Stras.

Here, Sanderson asks this Court for a drastic equitable relief, a statewide injunction, enjoining the enforcement of 589.426, the Sign Posting requirement of that Statute, against any individual in every circumstance. That equitable remedy is far more burdensome to the State of Missouri than necessary to redress any of Mr. Sanderson's injuries, and the evidence here does not show that Mr. Sanderson was injured. That he has been injured at any time, or that he continues to experience injury.

And as not to be misunderstood, Judge, the State of Missouri's position is not that universal injunctions are always incorrect or always inappropriate. Congress may give this Court jurisdiction and authority to grant universal injunctions, and it has, in other contexts, like the Administrative Procedure Act. All the *Labrador* case makes clear is that Federal Courts lack inherent equitable authority to abide a relief beyond the parties.

When Congress gives this Court the authority in the APA, it can. Without it, *Labrador* says this Court cannot fashion a statewide injunction.

At bottom, Mr. Sanderson has not shown an [82] entitlement to any relieve, let alone the drastic equitable relief afforded by a statewide injunction.

THE COURT: Okay. Thank you.

MR. CLARKE: Thank you, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: Very briefly, Judge.

Judge, as you pointed out, this is just a facial challenge to this one specific subsection of the Statute. It is not an as-applied challenge. It is the fight is not with Chief Hudanick. It is between the State and the Plaintiff as to that specific provision.

We are following the law of the Court, regardless. We did not, in our position, I don't think there has been any evidence that the Sign Posting provision has ever been widely enforced or even specifically enforced in this case. I think that there was a response. The evidence has been there was a response to Mr. Sanderson's house for different reasons, because there were complaints, and because he was making that hand-to-hand contact.

Ultimately, we will follow the order of the Court. If it finds the law unconstitutional, we can't enforce it. There is a TRO in place. We can't enforce it. But as for now, the fight as to the challenge at issue here is not with us. So we think the claim against Chief Hudanick is superfluous, and moot, and should be dismissed.

[83] THE COURT: Okay.

MR. REICHARDT: Thank you, Judge.

THE COURT: All right. Anything you want to tell me, Ms. Bellucci? And I really don't want to get into a drawn-out argument about the merits, or the merits of the case, but go ahead.

MS. BELLUCCI: I'm not. Your Honor, the Defendants in this case continue to sing the same song. And they are singing the song, because they cannot meet the requirements of strict scrutiny under the First Amendment.

The challenge here is a facial challenge. There is a Constitutional Right that Mr. Sanderson and every

person in the State of Missouri, who is required to register, are protected by the First Amendment. They cannot meet that requirement of strict scrutiny; and instead, they try to divert the Court's attention to other matters which, in fact, are not relevant.

We believe, your Honor, that we addressed this issue in our response to their motion to dismiss, which in fact this Court denied last week. Thank you, your Honor.

THE COURT: Okay. Mr. Clarke, let me just ask you one thing, assume for argument sake that the Court were to find that the sign requirement was unconstitutional, what would be the remedy?

MR. CLARKE: Well, Mr. Sanderson could have brought [84] an as-applied challenge, and perhaps if the Court believes that it was unconstitutional at that point, he could have enjoined enforcement as to Mr. Sanderson; however, because Mr. Sanderson has forgone that request as-applied challenge, and instead has asked for a statewide injunction, he then has the burden after this Court were to find – this hypothetical – the Statute unconstitutional, Mr. Sanderson has to show then that there is no set of circumstances in which it could be constitutional.

This Court hasn't heard that evidence from Mr. Sanderson, and Mr. Sanderson tries to push that onto the Attorney General, that burden. It is his burden. Under *Salerno*, he has the burden – Mr. Sanderson has the burden to show that there is no set of circumstances, none, that it could not be enforced against any person in the State of Missouri constitutionally, and he has failed in every front.

THE COURT: Okay. All right, the scope of the injunction is certainly an issue that the Court is going

to have to consider, among other things, there are a number of issues. But at this point, I'm going to take the arguments with the case. We are going to proceed.

The Plaintiff has rested. You can proceed with evidence on behalf of the Attorney General.

MR. GOODWIN: Thank you, your Honor. Pursuant to an agreement with opposing counsel, your Honor, we would [85] offer Defendant's Exhibits A through ZZZ.

THE COURT: Any objection, Mr. Reichardt?

MR. REICHARDT: No, your Honor.

THE COURT: Any objection, Ms. Bellucci?

MS. BELLUCCI: No, your Honor.

THE COURT: So again, you are offering Exhibits A through triple Z. Those exhibits will be admitted in evidence.

MR. GOODWIN: Thank you, your Honor. I believe my co-counsel is prepared to call the next witness.

MR. DONOHUE: And your Honor, if I may, before proceeding, I have courtesy copies of the exhibits.

THE COURT: That's great.

MR. DONOHUE: May I proceed?

THE COURT: If you want to bring them over here, that would be great.

MR. DONOHUE: Hard copies. There is a full electronic –

THE COURT: Okay, thank you. Mr. Donohue, you may proceed.

MR. DONOHUE: Thank you, your Honor. At this time, Defense would like to call Ms. Brittany Cale for a proffer pursuant to our conversation earlier.

THE COURT: Okay.

MR. DONOHUE: Thank you, your Honor.

[86] THE COURT: Again, this is an offer of proof that we are taking with the case.

MR. DONOHUE: Thank you, your Honor.

THE COURT: If you will step up here, please. Ms. Cale, there is a bottle of water there next to you, if you want to get a drink. You need to speak into the microphone. I have to hear you. The court reporter has to take down what you say.

Counsel, again, this is a limited purpose of an offer of proof of what you believe the relevant testimony would be. You may proceed.

MR. DONOHUE: Yes, your Honor.

THE COURT: You may proceed.

MR. DONOHUE: Thank you.

OFFER OF PROOF:

BRITTANY CALE,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

MR. DONOHUE:

Q. Ms. Cale, do you know Thomas Sanderson?

A. Yes.

Q. How?

A. He was the boyfriend of my friend's mother.

Q. And at what age – how old were you when you knew him?

A. Between 15 and 16.

[87] Q. And how old are you now?

A. 39.

Q. Is the person you knew then the same Thomas Sanderson who is in the courtroom here as Plaintiff today?

A. Yes.

Q. And do you see him?

A. No, not now.

Q. Did you see him here earlier?

A. Yes.

Q. Is this the same Mr. Sanderson who committed secondary felony statutory sodomy against you when you were a 16 year old?

A. Yes.

Q. He was an adult at the time, right?

A. Correct.

Q. About how much older was he than you, if you know?

A. About 20 years, I think.

Q. About how old were you when you first met the Plaintiff?

A. 15.

Q. Where did you both live at the time?

A. Rolla, Missouri.

Q. How did you come in contact with him?

A. I went over to my friend's house. He was her mom's boyfriend.

Q. What was your friend's name?

[88] A. Amy.

Q. So over at Amy's house, how often did you go over to Amy's house when you were say 15 or 16?

A. Several times a week.

Q. Was the Plaintiff there most of the time?

A. Most of the time, yeah.

Q. What was the environment like at that house on a general weekday?

A. We would just hang out mostly. But I mean, we hung out with Amy's mom and Tommy, and I mean, it depended whether there was school time or not. But it was pretty relaxed, do what you want kind of environment.

Q. You say Tommy, is that the Plaintiff you are referring to?

A. Right.

Q. Were there other teenage girls that would come over and hang out with you and Amy?

A. Yes.

Q. And would Tommy interact with them too?

A. Yes.

Q. What kind of things would the Plaintiff allow you to do at his house?

A. Well, we always had like get-togethers, sleep overs, parties. We would smoke, drink. There was – I

mean, pretty much anything we wanted to do, weed, it was pretty readily [89] available to us.

Q. When you say weed, are you referring to marijuana?

A. Yeah.

Q. That wasn't legal at the time, right?

A. No.

Q. The Plaintiff knew about that, right?

A. Right.

Q. And he made it available to you?

A. Right.

Q. Was it basically a sort of a perpetual party for teenagers at his house?

A. Yeah.

Q. And was that sort of more the case on the weekends than during the week?

A. Absolutely.

Q. Did he take you to a bar with him?

A. Yeah.

Q. Did he let you drink before you went to the bar?

A. Yeah.

Q. Did he provide the alcohol?

A. Yeah.

Q. You weren't old enough to buy cigarettes, right?

A. No.

Q. But he let you have cigarettes at his house?

A. Right.

[90] Q. Approximately how long was it from the time you first started regularly going over to the Plaintiff's house until he sodomized you?

A. I think it was probably about a year.

Q. During that time, did this party environment and atmosphere persist, especially on the weekends?

A. Yeah.

Q. As a 15 or 16 year girl, did you know what sexual grooming was?

A. At that age, no, I didn't.

Q. Do you know now?

A. Yes.

Q. And just so we are on the same page, when I say "grooming", are you referring to the process by which an offender manipulates a potential victim to situations in which sexual abuse can be more readily committed while simultaneously preventing disclosure?

A. Yes.

Q. I want to ask you about some specific behaviors he committed before the sodomy. Did he do things to gain your trust?

A. Yeah. I think as a whole, letting us party, and do what we want was part of that.

Q. Did he do things to fit in with you and your teenage friends?

91] A. Again, being just letting us party there, and hanging out with us, and being goofy, and not being like the typical parents type, yeah.

Q. You said not being the typical parent type, so would you say he kind of –

THE COURT: Counsel, pose another question.

MR. DONOHUE: Yes, sir.

Q. (By Mr. Donohue) Did he befriend or manipulate you?

A. Yeah, I mean, he was friends with all of us really.

Q. Did he do things to get closer to you and your friends?

A. I mean, he would have, you know, parties, bond fires. He would sing to us. He would talk to us about our problems. Let us talk to him about, you know, whatever we wanted to talk to him about.

Q. Did those things build your trust in him?

A. Yeah.

Q. Did those – did his behavior also build your family's trust in him, so that you could stay over at his house regularly?

A. I think so, yes.

Q. Did he do things to seem likeable and charming?

A. Yes.

Q. You mentioned singing to you. Can you describe that?

THE COURT: Counsel, I want to give you leeway to make the offer of proof. This is beyond the scope of the [92] offer of proof. Pose another question.

MR. DONOHUE: Thank you, your Honor.

Q. (By Mr. Donohue) Did those behaviors cause you to trust being around him in a way you would not have with other older men?

A. Yes.

Q. Did he test any boundaries with you?

A. Yes.

Q. Can you give us an example?

A. He would often make like comments about your outfit making your boobs, or you butt look nice, or just off-the-wall type comments in passing.

Q. Did he ever try to kiss you?

A. The night of, yes.

Q. I want to talk briefly about the night of. You said it was about an hour after you started – or sorry, a year after you started going over to his house?

A. After he was there, yes.

Q. And although this happened – how long ago did this happen?

A. In 2001.

Q. Do you still remember what happened?

A. Like it was yesterday.

Q. The day he sodomized you, were you over at his house again?

[93] A. Yeah.

Q. Was anyone else there?

A. Yes.

Q. Who else?

A. Amy, and then a couple of other people, and the mom.

Q. And was it a typical party environment night?

A. No. That was more like a sleep over night. I mean, they had been drinking, but it was more of just kind of a hangout night. It wasn't really a planned thing.

Q. So people were hanging out. What were the people doing?

A. We were watching a movie.

THE COURT: Counsel, pose another question of the witness.

Q. (By Mr. Donohue) At some point, did you try to go lay down?

A. Yes.

Q. What happened?

THE COURT: The actual facts are not at issue in this case. He was convicted of the offense. That's a part of the record. Move on to another question.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) Understanding the Judge knows – or will know, based on the evidence that's been provided and agreed upon in the record regarding the case that you testified in, I want to zoom out a little bit now and ask you [94] about has this impacted you?

A. Yeah, every day, I mean really.

THE COURT: Pose another question, counsel.

Q. (By Mr. Donohue) Do you know why we are here, or do you know that we are here because the Plaintiff has challenged the requirement that he post a sign on Halloween night saying "No candy or treats at this residence"?

A. Yeah.

Q. How does it make you feel that he challenged the law based on the conviction that –

THE COURT: Counsel, it is not relevant.

Q. (By Mr. Donohue) Do you have children?

A. I do.

Q. Have you taken them trick or treating?

A. I have previously, yeah.

Q. How old are they now?

A. 15 and 16.

Q. The same age as you were?

A. Yes.

Q. If you were to go to Thomas Sanderson's house, would you want a sign on the door saying "No candy or treats at this residence"?

A. Absolutely.

THE COURT: Counsel, it is not relevant.

MR. DONOHUE: Your Honor, may I speak to the [95] relevance of this question?

THE COURT: Go ahead.

MR. DONOHUE: Your Honor –

THE COURT: You are asking if she would want a sign at his residence. That is not relevant on any issue before the Court. I'm sorry, but that's a fact.

MR. DONOHUE: If I may, sir. It speaks to Ms. Cale is a resident of Missouri. She is a person who has been impacted by a sexual offense. I'm trying to ask a question that elicits her perception of the sexual offense that occurred to her as it relates to the challenge here at issue.

THE COURT: I understand this was very traumatic for her. I take judicial notice of that. Any person who has been a victim of a sexual assault is significantly traumatized by that. That is beyond doubt. It is not an issue as far as the Court is concerned that an individual who was a victim is incredibly traumatized. That's not an issue.

So her opinion about a sign is just not relevant. I'm sorry. Pose another question.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) Would you want to prevent what happened to you from happening to anyone else?

A. Yes.

Q. Is there anything else you would like to tell the Court?

A. I personally just feel like the signage to me it is a [96] label, a warning label, just like you put on medication that can hurt you, or you know, any other thing that can hurt you, there is a warning label.

I feel like this is that type of warning label for a person that is capable of that kind of thing.

THE COURT: Okay.

MR. DONOHUE: Your Honor, may I have a moment?

THE COURT: Yes.

MR. DONOHUE: Thank you, your Honor. I have no further questions. Thank you.

THE COURT: Okay. Ms. Cale, thank you for being here. I understand that it is very traumatic for you to have to talk about it. I'm sorry you went through all of that.

THE WITNESS: Thank you.

THE COURT: You can step down.

THE WITNESS: Thanks.

THE COURT: I'll take the offer of prof with the case. Call your next witness.

MR. GOODWIN: Thank you, your Honor. Defendant would call Penny Cole. Can we approach the sidebar for a moment?

THE COURT: Okay. Counsel, if you will approach the sidebar.

(An off-the-record discussion took place at the sidebar.)

[97] MR. GOODWIN: Your Honor, based on our scheduling matter we discussed off the record, the State will call Jason Heffernan to the stand.

THE COURT: Counsel, you may proceed.

MR. CLARKE: Thank you, your Honor.

SERGEANT JASON HEFFERNAN,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Could you state your name for the record, please?

A. It is Jason Heffernan.

Q. I think I called you – I may have called you Corporal Heffernan at some point previously. Have you been promoted recently?

A. Yes.

Q. What is your title now?

A. I'm now the Sergeant.

Q. Okay. Previously, you were Corporal Heffernan?

A. Yes, sir.

Q. Okay. And is that promotion recent?

A. Yes, sir.

Q. Okay, thank you. Now, Sergeant Heffernan, where are you currently employed?

A. I'm currently employed with the Cass County Sheriff's
Office.

[98] Q. Okay. And generally, where is Cass County located in the State of Missouri?

A. So we are the Southern Metro County of the Kansas City Metropolitan area. So we are right below Kansas City, Jackson County.

Q. And what are kind of the generally the bounds or confines of Cass County. What's the furthest North city, what's the furthest South city?

A. Okay. So the furthest North city would be the big city that people would probably recognize would be Belton. And then just South of that, our last city would be Archie, and then we go all the way over to the Kansas state line to basically Creighton, Missouri, Pleasant Hill area.

Q. So would it be fair to refer to the Cass County as kind of the southernmost suburb of Kansas City?

A. Yes, sir.

Q. Okay. Now, you said you are employed with the Sheriff's Office there?

A. Yes.

Q. Okay. What's your position?

A. I am currently assigned to our Sex Offender Apprehension and Registration Unit.

Q. Okay. And what is that unit?

A. Basically, that unit is the unit that registers all offenders who either reside or work in Cass County, and then [99] we also are tasked with doing compliance operations.

Q. Okay. So walk me through kind of the general process an offender undertakes when registering with your office?

A. Okay. So the offender comes into our Sheriffs Office. They will meet with our clerks behind the glass. They will tell them they are here for a Sex Offender Registration. They will get one of us. We bring them into a side room. We introduce ourselves.

If they are a new offender, we start that process of getting all of their basic information, name, date of birth, social. We look up like what they were convicted of, so we can fill out all of that stuff. They will also provide us with any social media sites, IP sites, if they volunteer, they work, vehicles they have, that's about it.

Q. That's when a new offender comes in?

A. Yes.

Q. All right. Now, can you explain to me again generally the tiering process in Missouri?

A. So Missouri is a Three Tier state. So Tier III is the highest. Tier II is in the middle, and Tier I is the

lowest. A Tier I is a 10 to 15 year registration. Tier II is 25. Tier III is lifetime.

Q. Okay. And that tiering system is set forth in Missouri
Statute; is that correct?

A. Yes.

[100] Q. All right. So in your role as now Sergeant with the Sheriff's Office, is your role to essentially run that registration process for the County?

A. Yes, sir.

Q. For the County Sheriff's Office?

A. Yes.

Q. Okay. Now, you talk about new offenders coming in. Is there a difference between what registration requirements are for each tier of offender?

A. Yes. So a Tier III is every 90 days. A Tier II is essentially their birth month and six months after. So about 180 days, and then a Tier I is just in the month of their birth.

Q. And now tiers are set by what the offense is; is that correct, is that your understanding?

A. Yes.

Q. And the offense is what the offender committed?

A. Yes.

Q. Okay. Now, when the offender comes in – the Registrant comes in and starts that process, what sort of information, physical characteristics are you taking down?

A. So –

MS. BELLUCCI: Objection, relevance.

THE COURT: How is it relevant?

MR. CLARKE: Your Honor, the challenge has been to [101] the facial validity of the Halloween Statute. It is the State's position that it is part of a broader registration Statute. That Missouri has a broader registration kind of framework, and the Halloween Statute fits in as a piece of that. So I am explaining the general framework in moving forward.

THE COURT: You need to move this process along. The specific question I think is not relevant.

MR. CLARKE: Okay. Thank you, your Honor.

Q. (By Mr. Clarke) Now, you said new offenders, there is continued registration requirements for Registrants; is that correct?

A. Can you rephrase?

Q. I'm sorry. When you said that you registered new offenders, and then you explained there was like a scheduling about when they had to register again. So there is a continuing registration obligation; is that correct?

A. Yes.

Q. Okay. Now, I want to talk to you about the Halloween Statute. When I refer to the Halloween Statute, do you understand what I'm speaking about?

A. The Halloween sign, the lights off, being at the residence.

Q. Okay. So are you responsible for enforcing – or in taking compliance enforcement of that Statute?

[102] A. Yes.

Q. Okay. Can you explain to me the process that you use in ensuring compliance with that Statute?

A. So, we also have the municipalities that help out with that. Those kind of vary based on the municipalities, how they do them from our office. But initially, we will either provide them a sign, if they ask for one, or they make their own. And with that, the Statute kind of has failed us, because it doesn't define what size a sign is.

So, in our County, we have ran into issues where we will have people who use a standardized piece of paper. They will write the "No candy or treats at this residence" all the way to just a little itty-bitty like Post-it that you put a little note on to attach to your computer. As long as it has the correct verbiage, and it is on their house and everything else is done, we move along per our prosecutor.

Q. Okay. So as long as the statutory language appears somewhere, they are in compliance?

A. Yes.

Q. And you provide signs you said?

A. We do, if the offender asks for one, but they are not required to take one from us.

Q. Okay. Now, when you are doing the Halloween compliance enforcement –

A. Uh-huh.

[103] Q. – when does that occur. When do those sorts of enforcement actions occur?

A. On Halloween night.

Q. Okay. Now, are you aware that – of the Halloween traditions of St. Louis City?

A. I am not.

Q. Are you aware of the Halloween traditions of the county that you operate in?

A. Yeah.

Q. Okay. So do you know that in City of St. Louis it is traditional for kids to arrive at the door and tell a joke?

MS. BELLUCCI: Objection, speculation.

THE COURT: The objection is sustained.

Q. (By Mr. Clarke) Okay. Are you aware of any tradition that children engage in in Hazelwood, Missouri?

A. I am not.

Q. Are you aware of any Halloween tradition that adults engage in in Hazelwood, Missouri?

A. I am not.

Q. How about Adair County?

A. I am not.

Q. How about Cole County, Missouri?

A. I'm not.

Q. How about Oregon County, Missouri?

A. I am not.

[104] Q. Okay. So when you are aware of what's happening on Halloween, that's in Cass County; is that correct?

A. That's correct.

Q. Okay. So when you are enforcing the Halloween compliance, is the Attorney General your boss?

A. No, sir.

Q. The Attorney General of Missouri doesn't supervise what you do; is that correct?

A. I guess I don't understand.

Q. Well, you work for the Sheriff of Cass County; is that correct?

A. That's correct.

Q. And that's not Attorney General Andrew Bailey; is that correct?

A. Correct.

Q. And you answer to the Sheriff of Cass County?

A. Yes.

Q. Okay. Have you ever met Attorney General Andrew Bailey?

A. Not that I recall, no.

Q. Has he ever specifically given you an order to enforce the Halloween Statute?

A. No.

Q. Okay. How about Chief Hudanick from Hazelwood, have you ever spoken to that individual?

A. I believe I said good morning to him in the hallway. [105] That's the first time I have ever met him.

Q. That's the first time. So you don't work for Chief Hudanick in Hazelwood, Missouri?

A. No.

Q. If the Chief tells you to jump, you don't ask how high?

A. No.

Q. The same goes for Attorney General Bailey?

A. Correct.

Q. So, I want to talk to you about Cass County, and what it looks like kind of geographically in my neighborhood. You said it is a suburb of Kansas City; is that correct?

A. Correct.

Q. Is it urban, is it rural, what is it?

A. It is a 50-50, to be honest with you right now.

Q. And what do you mean by that?

A. So the Northern part of the County is more suburb, where basically Harrisonville, which is our county seat South, to where you have me list the furthest city like Archie, it is more rural. It is more farm, agricultural-based, where up North, it is all more urban.

Q. And that would be like Belton, Missouri?

A. Yes.

Q. Okay. Now, are the Halloween compliance issues the same in the rural neighborhoods as the more urban neighborhoods?

MS. BELLUCCI: Objection, relevance.

[106] THE COURT: The objection is overruled. You can answer.

THE WITNESS: It has its own challenges, but yes.

Q. (By Mr. Clarke) Okay. So, when you are enforcing in let's say Archie, Missouri, is that city more rural?

A. It is more rural where like some of those people will have a mile-long driveway, but by State Statute,

they are required still to hang a sign, even though they won't get anybody to come down their driveway, per se, to knock on the door for candy.

Q. Okay. So that would exist in say Archie, Missouri. Now, in Belton, Missouri, are the houses more concentrated?

A. Yeah. It is a suburb setting, and basically you can reach out and touch your neighbor.

Q. Okay. Now, signs have to be posted in those cities as well?

A. Correct.

Q. And you check all of those rural and urban cities when you are enforcing the Halloween Statute; is that correct?

A. Either we do or the city has people that does, yes.

Q. Now, you have spoken about the Halloween enforcement generally. Is Cass County sending out Sheriff's Deputies as teams, how does that work on the actual night of Halloween?

A. So, we have done it in a couple of different ways. We have done the team-wise, where there is like two of us, and [107] we will get in a car, we will drive around, and we'll look for signage.

In our city areas, they will sometimes use their auxiliary members who don't want to pass out candy. They will get a list of people. They will drive through the neighborhoods. They will look and see if the person has a sign on their door, or if they are handing out candy. If they see that, they contact the City PD, and they will send an officer over to address that issue.

If it is in the county side of things, and we see it, or if it's one of the cities we patrol, if we don't see a sign, we just go up, knock on the door, hey, don't forget you are supposed to put a sign. We will do a report. We will send it over to the Prosecutors Office for a referral, if they want to file it or not.

Q. So let's break that down a little bit here. You said that you refer it to some police agencies, is that what you said?

A. Yeah. So some of the cities, they help us out, because Cass County is so big, and the guys on patrol will handle some, will bring in some people sometimes for teams, and will handle some. Or the cities themselves will also team up with us, and have their auxiliary people drive around and check.

Q. Okay. So, for example, Harrisonville has its own Police Department; is that correct?

[108] A. Correct.

Q. And does the Sheriff, does he supervise that Police Department?

A. No. The Chief of Police does that.

Q. They are separate entities?

A. Yes, they are.

Q. So when you are working together, does the Sheriff supervise that Police Department officer?

A. If it is an operation, the Sheriff becomes the Chief of that operation. If it is the city just asking us, hey, can you provide us a list of everyone in our city who is a sex offender who is supposed to have a sign, we just provide them that. They do their operation. They send me an e-mail usually of, hey, Joe Smith

wasn't home when we checked, but he did have a sign up.

Q. So, it is an operation, compliance checks essentially is what those are, is that what you are saying?

A. That's what we call them, yes.

Q. So there may be times where the Sheriff is the lead on that compliance check or operation; is that correct?

A. Correct.

Q. And there may be times where the Sheriff has no role in what the police are doing; is that correct?

A. Correct.

Q. Okay. Now, when you go to a Registrant's house, and you [109] are doing a compliance – a compliance check, when you see a sign, what do you do?

A. So there is different levels of the compliance check that we can do. So one level is if we are just checking to see if they have a sign, we just drive around. If we see a sign, we mark it off the list. We move on to the next one. That's one version.

Another version is it could be we are going to hit everything in that Statute. So we may go door-to-door just to make sure that they are home. Some of the guys, at least in Cass County, we have a lot of like distribution centers and factories. A lot of those guys work those evening shifts. So most of them we already know hey what their schedule is. And they tell us, hey, just so know, I'm not going to be home. I'm going to be working at the factory or the distribution center. We make note of that.

There is different levels that we can do. But typically, it is just checking to see if they have a sign, and most of the time, we move on, unless we get a report that they are passing out candy or something like that.

Q. So would it be fair to say that if a Registrant is in compliance, or has an excuse, like a work excuse, no harm no foul?

A. Yeah.

Q. Just moving on.

[110] A. Yeah.

Q. Okay. Now if a Registrant is not in compliance, go to the house, you don't see a sign, what happens then?

A. We will make contact at the door, or we will at least knock on the door to attempt to make contact. If no contact is made, no one comes to the door or anything like that, we will take a picture of the front of the residence door. We will take one from about the street to get the whole front of the house.

We will do a quick little report on this date at this time, we did a Halloween compliance check. There was no sign listed at 123 First Street in a city, see attached photos for verification of no sign.

Q. Do you attempt to get the Registrant in compliance with the Statute if the Registrant is home?

A. If they are home, yes. And sometimes, they will have everything else correct, except they will forget to hang the sign, and they will usually have it right there, and they will hang it, or they will make one before we leave.

Q. And that Registrant, that could be a Tier I offender, right?

A. It depends on what they are charged with, yes.

Q. Okay. But the Statute applies to Tier I offenders?

A. Yes.

Q. And Tier II offenders?

[111] A. Yes.

Q. And Tier III offenders?

A. Yes.

MR. CLARKE: One moment, your Honor.

THE COURT: Any other questions?

MR. CLARKE: Yes, your Honor.

Q. (By Mr. Clarke) Sergeant, when you see a sign, would it be fair to say that that's helpful to law enforcement?

A. Yes.

Q. The Halloween sign, why?

A. Well, when we see the sign, we know they are abiding by the Statute, but I have got neighbors who also just have a sign that says the same thing usually, because they don't want to hand out candy, so.

Q. And are those neighbors sex offenders?

A. No.

Q. Okay. They are not Registrants?

A. No.

Q. Okay. Now, you have been in your current role as a Corporal before, now a Sergeant, since when?

A. So, pretty much since I got hired, I have always kind of done sex offenders, because that's how the Sheriff's Office had it set up. In 2018, the Sheriff decided to separate it from how it was going, and now it is its own individual unit. So I would say since 2018, we have been our own substantial [112] unit.

Q. Okay. And when you say it, the unit, what's that unit called again?

A. The SORE Unit.

Q. Okay. And that's what we talked about being in charge of Registrants and compliance?

A. Yes.

Q. Okay. Now, were you in your position in 2022 of October?

A. Yes.

Q. Okay. And did you receive notice of a temporary restraining order enjoining the enforcement of the Sign Posting requirement?

A. I heard about it. I didn't actually receive anything.

Q. Okay. And when you heard about it, what did you do?

A. We notified the cities who were going to do something, and they simply told them, hey, there is this order, so it would behoove of you to probably just document, and not arrest, or make contact with anybody. And I believe one city still went through with their deal, and drove around and checked, but they did not make any contact or anything with people.

Q. So would it be fair to say there was some confusion about what officers could do?

A. Yes.

[113] Q. Okay. Now, I want to talk to you kind of about the registration requirements and the compliance aspect of the Sex Offender Registry, okay. You do compliance checks outside of Halloween; is that correct?

A. Yes.

Q. And Registrants are required to undertake quite a few different obligations; is that correct?

A. Yes.

Q. Okay. I want to ask you about a specific registration incident. Was there a time when you went to enforce a compliance check, or an officer who you supervised went to enforce a compliance check, and the individual was thankful for it?

MS. BELLUCCI: Objection, relevance.

THE COURT: The objection is sustained.

Q. (By Mr. Clarke) Okay. Sergeant Heffernan, have you ever been told by a Registrant that they were spiraling out of control?

THE COURT: Counsel, it is not relevant.

Q. (By Mr. Clarke) So, Sergeant Heffernan, as you sit here today, you are responsible for enforcing the Statute's registration requirements in Cass County, Missouri; is that correct?

A. Correct.

Q. Okay. And not Hazelwood, Missouri?

[114] A. Correct.

Q. Okay. Not anywhere else in the State of Missouri?

A. Correct.

THE COURT: Counsel, we have established that.

MR. CLARKE: No further questions, your Honor.

THE COURT: Okay. Mr. Reichardt, any questions?

MR. REICHARDT: No questions.

THE COURT: Ms. Bellucci, any questions?

MS. BELLUCCI: Yes, your Honor.

CROSS-EXAMINATION

BY MS. BELLUCCI:

Q. Sergeant Heffernan, I believe that the prior attorney misstated the fact that in fact a temporary restraining order was issued in 2023 and not 2022.

A. Okay.

Q. But regardless of what year that it was issued, I believe you said –

THE COURT: Counsel, just pose a question.

MS. BELLUCCI: Yes, your Honor. Thank you.

Q. (By Ms. Bellucci) All right. So it is relevant to my question. So in the year 2023, after the TRO was issued, did in fact your Police Department, Sheriff's Office.

A. Sheriff's Office.

Q. Did they, in fact, enforce the remaining three components of the Missouri Statute?

[115] A. Actually, to be honest with you, we just went and drove around, and most of the people didn't do anything. They took note, and that was it. We never – I never got the order on our side. So where I'm at, we just only heard about it. So like maybe the Sheriff got it, and passed it down, my bosses trickled it down to

me. So, we didn't enforce any aspect of that on that year.

Q. And the year after this temporary restraining order issue was issued; is that correct?

A. 2022, 2023, yeah.

Q. And so in that year, were in fact there any reports of children who were sexually abused on Halloween?

A. I do not know.

Q. In Cass County only I'm asking?

A. I do not know. I only do the registration side. I don't do the general investigation side.

MS. BELLUCCI: Thank you. No further questions, your Honor.

THE COURT: Okay. Any other questions, Mr. Clarke?

MR. CLARKE: No, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No, Judge.

THE COURT: Sergeant, can I ask you – first of all, you have a tough job. It sounds like you do a great job with what you are required to do.

[116] I wanted to ask you, again just with regard to the temporary restraining order, and the issues before this Court. It is limited just to that Sign Posting requirement. Do you understand that the other aspects of the Statute are still fully in force and effect, and you know that; is that correct?

THE WITNESS: Well, at the time I didn't.

THE COURT: Okay. So there was some confusion.

THE WITNESS: Yes, sir.

THE COURT: Okay. But, in fact, I will tell you that there has never been anything about the order that this Court issued that relate to the other aspects of that Statute, and that it could be fully-enforced, and so I'll tell you that.

With regard to the specifics of the issue before this Court about posting a sign, you pointed out some issues with that. One is that there is no size requirement. So it could be six feet by six feet, or could be six inches by six inches, correct?

THE WITNESS: Correct.

THE COURT: So when you go around, if somebody – if you don't see it from the driveway, that doesn't necessarily mean they are in violation of that Sign Posting requirement, correct?

THE WITNESS: Correct.

[117] THE COURT: Because again, the sign could be the size of a postage stamp.

THE WITNESS: And we actually have had that issue, your Honor, where we went to a house, and he had a little Post-it stamp, and he had it in the upper left-hand corner of his door.

THE COURT: And that's the other aspect of it, the Statute doesn't say anything about where it is posted.

THE WITNESS: Correct.

THE COURT: And so it could be at the front door, it could be at the back door, and still be in compliance, correct?

THE WITNESS: I have always kind of been taught it has been on the front door. So that's kind of what I have gone with.

THE COURT: The Statute reads "Post a sign at his or her residence stating: No candy or treats at this residence." So it doesn't specify where it is posted. So it doesn't have to be at the front door. It could be at the back door, correct?

THE WITNESS: Yeah, it just says residence.

THE COURT: It could actually be inside the residence. It doesn't actually say outside the residence, does it?

THE WITNESS: No, it doesn't. It just says posted [118] on the residence.

THE COURT: So someone could have a Post-it piece of paper inside their residence in a back bedroom and be in compliance with this Statute?

THE WITNESS: The way you are putting it, yes.

THE COURT: Okay. One other thing that you mentioned was that you have seen people, you kind of reference neighbors, who put up a sign saying "No candy or treats at this residence" simply because they don't want to hand out candy; is that correct?

THE WITNESS: Correct.

THE COURT: And they were not sex offenders.

THE WITNESS: Correct.

THE COURT: And again, with the Sex Offender Registration, that's a public record, anybody could access that, find out if there is a sex offender living down the street?

THE WITNESS: Correct.

THE COURT: All right. Any other questions of the witness, Mr. Clarke?

MR. CLARKE: A few on top of that, your Honor.

REDIRECT EXAMINATION

BY MR. CLARKE:

Q. Sergeant Heffernan, when you were speaking about the postage stamp on the door, the smaller one, when you got to [119] the door, you saw the postage stamp; is that correct?

A. Actually, the offender pointed it out to us.

Q. Okay. You could see it at that point?

A. Yes.

Q. You could read it?

A. Yes.

Q. Okay. Now, you were asked questions about where the sign may be posted, and when you are doing compliance checks, have you ever seen a sign posted in someone's bedroom?

A. I have not.

Q. Have you ever seen them post it in their bathroom?

A. No, I have not.

Q. You usually see it on the front door?

A. Typically on the front of the residence is where we typically see it.

Q. The front door or maybe a yard?

A. Yes.

MR. CLARKE: Okay. Thank you.

THE COURT: Any questions, Mr. Reichardt?

MR. REICHARDT: No, your Honor.

THE COURT: Any questions, Ms. Bellucci?

MS. BELLUCCI: No, your Honor.

THE COURT: You can step down. Thanks for being here, sir.

THE WITNESS: Thank you, sir.

[120] THE COURT: Call your next witness.

MR. DONOHUE: Your Honor, the Defendant calls Scott Schlueter.

MR. CLARKE: For the record, can Sergeant Heffernan be released?

THE COURT: Yes, he is released. Step up here, if you would, sir. The Clerk will administer the oath.

SCOTT SCHLUETER,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DONOHUE:

Q. Good morning, sir. Where do you work?

A. I work at the Missouri State Highway Patrol.

Q. And what is your role at the Missouri State Highway Patrol?

A. I'm a CJIS program manager, and I oversee the criminal history system, and I used to oversee the Sex Offender Registry System.

Q. Let's talk about that. How long did you oversee the Sex Offender Registry System for the Highway Patrol?

A. For approximately about a six year period.

Q. And was that the registry program for the entire State?

A. Yes.

Q. And you said it was for about six years?

A. Yes, approximately, yes.

[121] Q. Before that, how long were you employed by the Highway Patrol?

A. Approximately nine years total. So probably I think approximately two years prior to that six year oversight.

Q. The Highway Patrol is a different entity from the Attorney General's Office; is that right?

A. Correct.

Q. And it is also a different entity from the local Sheriff's Offices, right?

A. Correct.

Q. There are about 114 counties in the State of Missouri, right?

A. Yes.

Q. Do all of those counties provide information to your office on Sex Offender Registration?

A. Yes.

Q. And is that often done – what are the law enforcement entities in those counties that typically do that?

A. Most typically, it would be the Sheriff's Office of each county.

Q. What is the Missouri Department of Corrections?

A. It is an institution or an entity made up of several adult institutions for incarceration and other rehabilitative matters.

Q. Is that the Missouri Prison System, in other words?

[122] A. Yes.

Q. And is that part of the Highway Patrol?

A. No, different entity.

Q. So despite being a different entity from all of those different entities we just talked about, does the Highway Patrol work with local law enforcement and with the Department of Corrections on the registration of sex offenders?

A. Yes.

Q. How does that process work?

THE COURT: Counsel, I just don't see how it is relevant. How is this relevant on the issue before the Court?

MR. DONOHUE: Your Honor, it is relevant in that the – I can speed this up a little bit, your Honor, but there is the notification portion of the registration component includes notification of the Halloween offender registration requirements.

THE COURT: Okay. If you will move along with the questions, please.

MR. DONOHUE: Yes, sir.

Q. (By Mr. Donohue) Is there a universal form that's used across the State of Missouri for Sex Offender Registration?

A. Yes.

Q. Does your office generate that form?

[123] A. Yes.

Q. If the law changes, does the Highway Patrol update the form for everyone across the State?

A. We would as needed per law, yes.

Q. And did that ever happen when you were in charge of the Sex Offender Registration Unit?

A. I believe that probably occurred I think at least once.

Q. And does registration involve Tiers of offenders that the three Tiers that Missouri has?

MS. BELLUCCI: Objection, relevance.

THE COURT: The objection is overruled. You can answer.

THE WITNESS: Can you repeat that question, please.

Q. (By Mr. Donohue) Absolutely. Does the registration process involve the Missouri Three Tier System?

A. Yes, it does.

Q. How so?

THE COURT: Again, we have kind of covered the Three Tier System. So, if we can move along. It is repetitive.

MR. DONOHUE: Yes, your Honor. I don't want to – and to be clear, my question, your Honor, and to the

witness is is simply how does that tie into the registration process. Not – I don't need a thorough expose' as to what the system is, simply how it is documented on the forms.

[124] THE COURT: Okay. Go ahead.

THE WITNESS: Sure. The Tier System really will help determine the registration interval that the offender is required to come back in for registrations.

Q. (By Mr. Donohue) And when a person comes back in for registration, are they using that same form?

A. Yes.

Q. I have one question that hasn't been asked about the Tier System. Tier I is the least, lowest tier, and Tier III is the highest, right?

A. Yes.

Q. What are some examples of Tier III offenses?

MS. BELLUCCI: Objection, not relevant.

THE COURT: The objection is sustained.

Q. (By Mr. Donohue) Approximately how many Tier III offenders are there in the State of Missouri?

MS. BELLUCCI: Objection, not relevant.

THE COURT: The objection is sustained.

MR. DONOHUE: Your Honor, may I make a proffer on why it is relevant.

THE COURT: Go ahead.

MR. DONOHUE: The Statute applies to all offenders across the street, your Honor. And as it is a facial challenge of the Statute, the scope of the application of the Statute to all offenders across the

State is relevant for the [125] Court to be aware of how many offenders are in the State of Missouri to whom the Statute applies.

THE COURT: First of all, you asked about Tier III offenders, which I don't believe that there is any relevance to the distinction. Ask him how many total sex offenders there are in the State of Missouri who have to register.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) Sir, do you know how many total offenders there are in the State of Missouri that have to register?

A. I believe it is approximately around 18,300.

Q. I would like to show you, sir, what has been previously admitted as Exhibit CCC. It will appear on the screen for you. Is this that Sex Offender Registration form that we are talking about?

A. Yes.

Q. If we can scroll down slowly through page one, pause there. Are there a variety of statements that this form requires an offender to make?

MS. BELLUCCI: Objection, relevance.

THE COURT: Get to the issue.

MR. DONOHUE: Yes, your Honor.

THE COURT: Thank you.

Q. (By Mr. Donohue) Across this form, are there a variety of statements that are required of offenders to make during [126] the registration process?

MS. BELLUCCI: Objection, relevance, your Honor.

THE COURT: The objection is overruled. Let me see where you are headed with this.

THE WITNESS: Ultimately, yes. The last page of the form has those statements.

Q. (By Mr. Donohue) And in the earlier pages, those are some background information, things about a persons – where they work, what they have done, things like that, right?

A. That would be correct.

Q. And it includes things about social media?

A. Yes.

Q. A lot of information about your personal life that you are required to put down on this form based on your conviction, right?

A. Correct, per State Statute.

Q. Please turn to the last page of Exhibit CCC. These are the statements you mentioned that an offender has to certify to; is that correct?

A. Yes.

Q. And if you can scroll down, on this page, it indicates the Halloween requirements that all sex offenders are notified about, right?

A. Yes.

Q. And it also includes all of the other statutes that [127] apply to sex offenders; is that correct?

A. That's correct.

Q. And all of the different collateral consequences in terms of their restrictions, right?

A. Yes.

Q. Please scroll to the end of the page. And at the bottom, the offender is certifying that they are – all of these statements are true and accurate, and that they are aware of what these requirements mean; is that correct?

A. Yes.

THE COURT: Can you go back and show me where it references the Halloween Statute.

MR. DONOHUE: Yes, your Honor. If you can pause in the middle of the page. I'm circling the reference of the Halloween Statute (indicating).

THE COURT: Okay, thank you.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) I think that's all for Exhibit CCC. When an offender fills out one of these forms with the local law enforcement entity, is that information all fed back into a certain system?

A. Yes.

Q. And is that system then used to update the statewide registry?

A. The system would be the statewide registry system, but [128] that information would be inputted into it.

Q. And is any portion of that made public?

A. Portions are per State Statute, yes.

Q. And does the Highway Patrol post on its website a registry listing of offenders that have provided information on this form?

A. Yes.

Q. I'd ask that you bring up Exhibit XXX – or sorry, XX.

This is Exhibit XX, sir. This has a date at the top of 3-5-2024, and so that's obviously a few months ago. Is this an example of what would be posted on the Highway Patrol's website regarding all offenders in the State?

A. Yes. This is a downloadable Excel file that's available.

Q. And please explain to the Court the data that's included, just in a summary manner, that's on this form?

A. Sure. Essentially, the data that is collected from the local level on that form entered into the statewide system, and then the various data that is available to the public per State Statute is then in this Excel format for easy accessibility for the public.

Q. And when you say easy accessibility for the public, you don't have to submit a Sunshine request to get access to this, right?

A. No, you do not.

[129] Q. Anybody can with a basic access to Google can access it?

A. Basic access to the internet, yes.

Q. And this is not the only way that Highway Patrol does notification about where people live, where the information they are registered for, right?

A. Correct. There is the website itself. This is just a downloadable file from the website itself.

Q. And is it possible to register for alerts about sex offenders that live near you?

A. Yes.

Q. And what's the purpose of the Missouri Registration System that the Highway Patrol manages?

A. The purpose as outlined in State Statute, but for – to make information available to the public, as well as to abide

by the registration laws outlined in State Statute.

MR. DONOHUE: Your Honor, may I have a moment?

THE COURT: You may.

MR. DONOHUE: Thank you. No further questions for the witness. Thank you.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No questions.

THE COURT: Ms. Bellucci, any questions of the witness?

MS. BELLUCCI: No questions, your Honor.

THE COURT: Okay. Thank you for being here.

[130] THE WITNESS: Thank you.

THE COURT: Let's go ahead and take a lunch break. We will be in recess until 1:15, and we will proceed at that time. We will be in temporary recess. Thank you all.

(At 11:56 a.m., the proceedings stood in temporary recess. At 1:21 p.m., the proceedings resumed.)

THE COURT: Counsel, before we proceed, I did want to just say for the record essentially what we talked about here at the sidebar.

As I understand Plaintiff's complaint, and the case that we are here today on, this is a facial challenge to the constitutionality of one section of a Missouri Statute. Again, it is only the Sign Posting requirement in the Missouri Statute.

Many times with a facial challenge to a Statute, there is no evidence that is necessary, and that's part of the issue that I was trying to talk to counsel about here at the sidebar.

I want to give you an opportunity to make whatever record that you want to make. If you want to make an offer of proof as to certain testimony, you can do that. Again, I think that we talked about it at the sidebar. I just wanted to put that on the record and make sure that that was part of the record.

That being said, Mr. Goodwin, you may proceed with [131] evidence on behalf of the Attorney General.

MR. GOODWIN: Thank you, your Honor. The Attorney General calls Sergeant Penny Cole to the stand.

THE COURT: If you will step up here, the Clerk will administer the oath. Counsel, you may proceed.

MR. GOODWIN: Thank you, your Honor.

SERGEANT PENNY COLE,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOODWIN:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. Could you please introduce yourself to the Court?

A. My name is Penny Cole.

Q. Ma'am, where do you work?

A. I work with the Jackson County Sheriff's Office in Missouri.

Q. Do you hold a rank?

A. I do. I am a Sergeant.

Q. How long have you worked for the Jackson County Sheriff's Department?

A. I have been with Jackson County for 20 years.

Q. Where do you currently live – I'm sorry, let me rephrase that question. I don't need your exact street address, but can you describe for me the municipality or [132] unincorporated part of the county that you live in?

A. I actually live outside of Jackson County right on the county line of Lafayette.

Q. And with the Jackson County Sheriff's Department, what is your job responsibility?

A. I am the Sergeant over the Sex Offender Registration Unit.

Q. Can you just very briefly describe for the Court what your job responsibilities are?

A. So what our office does is those people, we refer to them as our clients, that are required to come in and provide their information to the Sex Offender Registration Unit. My Unit collects that information, and we verified the accuracy of that information.

Q. And do you call those folks clients?

A. We do.

Q. And why do you do that?

A. I don't refer to someone who has been convicted of a burglary as a burglary. I don't refer to someone that has had a speeding ticket as Mr. Speeding ticket. They are clients, and they are treated as clients.

Q. Has there been a change in the philosophy of your Unit over the years?

A. There has been. I took over the Unit 12 months ago. I want my Unit to be friendly. We are polite. We understand [133] that there are requirements, that people have to come and see us, and that should not be a horrible or a terrible experience. So we have had a change of attitude in our office in the last 12 months.

Q. And how has that change of attitude, how has that changed the actions – I'll call them enforcement actions that you folks take, or if it hasn't, explain that as well?

A. So part of what we do is we have been reaching out to those clients that are considered noncompliant. Those are people that haven't been in to see us as required. We actually call them by phone. We go out and contact them in person, and we say we need you to come in and get registered with us.

Since we have done that, our number of non-compliancy has dropped considerably. We have also found numerous clients that were assigned by Highway Patrol to Jackson County that were actually registered in other counties, had moved to other states, and we were able to remove them from the responsibility of Jackson County to have them come and see us.

Q. I want to talk about that just for a moment. So you said that there were sex offenders or clients that were assigned to Jackson County by the Highway Patrol?

A. Correct.

Q. Can you explain to the Court what that means?

[134] THE COURT: Counsel, it is not relevant. Pose another question of the witness.

MR. GOODWIN: Maybe I'll ask it in a more direct fashion, your Honor. I think that there is some relevance here.

Q. (By Mr. Goodwin) Everybody on the Highway Patrol list that says – the Highway Patrol list that's available to the public, if they say that a person lives in Jackson County, is that necessarily true?

A. No, that's not always true.

Q. Go ahead?

THE COURT: Go ahead.

Q. (By Mr. Goodwin) And so, is part of your enforcement action determining who lives and who doesn't live in Jackson County?

A. Yes, that's correct.

Q. So if a person looks up a list of all of the sex offenders on their street from the Highway Patrol, that list might not be accurate?

A. That's correct.

Q. How many folks are in your Unit?

A. I have four civilians, four detectives, and myself.

Q. And Jackson County, just very briefly, what kind of county – describe, is it all urban, is it partially urban?

A. So we have cities within Jackson County, and then we [135] have an unincorporated area. So we have several smaller municipalities within the county,

and then we have larger cities such as Kansas City, Independence, and Blue Springs.

Q. Is the Sheriff's Department responsible for enforcing all the Sex Offender Registration requirements in the urban, and the rural, and the suburban portions?

A. Yes, we are.

Q. Is your unit responsible for enforcing the Halloween restrictions?

A. Yes, we are.

Q. As part of the Halloween restrictions in the past, have you all produced a sign for distribution to your clients?

A. We actually started that in 2023, which was last year.

Q. Could you pull up LL. Your Honor, displaying on the Court's audio-visual system Defendant's Exhibit LL, which has been previously marked and admitted into evidence.

While – ma'am, displayed on the screen is Exhibit LL. Is that the sign that you all created for distribution?

A. Yes.

Q. Were the clients required to post this particular sign?

A. No, they were not.

Q. What kind of conversation did you have with the clients about the Sign Posting requirement?

A. Part of my goal with Jackson County is to make the registration process as easy as possible. I want my people [136] to be in compliance.

So we created the sign as a courtesy. When they would come in, we would say this is the Halloween Statute. There is a sign that is required. We are going to give it to you. If you want to put the sign up, you are welcome to. If you want to use your own sign, that's fine. But we wanted to make it easier so that they would have something to post.

Q. You can take that down. And explain for the Court how the enforcement on – do you do enforcement on Halloween night?

A. We do. We did it a little bit differently in 2023 than we have in the past.

Q. Explain for the Court how you did it in the – well, strike that. Did you do the enforcement differently in 2023 because of the Court's temporary restraining order?

A. Yes, we did.

Q. So let's talk about how you did the enforcement before the Court's temporary restraining order. Can you explain how that process works for the Court?

A. So prior to 2023, there would be a random list compiled of clients in our area, members of our agency as well as the municipalities that could assist us. We would go out and actually check for the sign, and to ensure that the lights were off, according to our SMO.

Q. And physically go –

[137] A. Physically get out of the car and go out.

Q. And as a result of the TRO, what did the enforcement process look like last year?

A. Last year we did it a little bit differently. Last year because of the situation with the sign, we had the smaller cities that participated, as well as our officers, and we literally just drove past the homes to ensure that the lights were off on the outside of the residence.

Q. In your experience of enforcing the Halloween Statute, does the sign make it easier or harder – the Sign Posting requirement – make it easier or harder for you to enforce the other provisions?

A. Actually, the sign makes it easy for us, plus it gives our clients a bit of privacy, from our point of view.

Q. I want to break that apart. How does it make it easier for you?

A. We are able to drive by, not get out of our vehicles, see that the light is off, there is a sign on the door, and we carry on.

Q. As opposed to having in-person contact?

A. Correct.

Q. And you said that you think that it gives your clients additional privacy?

A. Yes.

Q. Can you explain that for the Court?

[138] A. When a patrol car pulls up in front of someone's home, and two officers exit, and walk up to the door, everyone that's standing around on Halloween, there are people, they want to know why we are there.

When we just drive by and look for a sign and the light off, we don't have to get out of our cars. So it gives them a little more privacy.

Q. And when say everyone around wants to know why you are there, are you referring to people doing trick or treating activities?

A. Absolutely.

Q. Are you familiar with trick or treating in the Jackson County area?

A. I am.

Q. Is that through your enforcement experience and your personal experience?

A. My personal experience actually. I had three young children that are now grown.

Q. Did you take the kids trick or treating?

A. I did.

Q. Is that a situation where you took them to a public event, or a private event, or –

MS. BELLUCCI: Objection, relevance.

THE COURT: The objection is sustained.

MR. GOODWIN: Your Honor, I thought that that issue [139] was relevant based on a question the Court asked of previous witnesses.

THE COURT: The objection is sustained.

MR. GOODWIN: Okay.

Q. (By Mr. Goodwin) Ma'am, are you familiar with situations where, in your experience, someone's light has been out during trick or treating?

A. Yes.

Q. Did children approach the door in that situation?

A. Yes.

MS. BELLUCCI: Objection, relevance.

THE COURT: You can answer.

THE WITNESS: Yes, they have.

Q. (By Mr. Goodwin) And is that a personal experience or?

A. That would actually be my own children.

Q. Meaning what?

A. Walking up to a home where there was no light on and knocking on the door.

Q. Ma'am, in your experience of enforcing the Halloween – all four of the components of the Halloween Statute – does the presence of the Sign Posting mandate, is that useful to law enforcement?

A. It absolutely is.

Q. And just if it is not something we have already talked about, could you explain why to the Court – unless if it is [140] something other than what we have already covered, could you explain why to the Court?

MS. BELLUCCI: Objection, asked and answered.

THE COURT: The objection will be overruled.

THE WITNESS: The sign has been beneficial to law enforcement. It allows us to be able to ensure that there is compliancy. That the light is off, and that they are not having trick or treaters actively at their doors. It means that I don't have to get out of my car and call attention to the home.

Furthermore, children walk up with the lights off, and that sign is just a little bit of enforcement not to knock on that door, because a child will knock on the

door. The light off means absolutely nothing. So that helps prevent them from that consistent knocking.

Q. (By Mr. Goodwin) And finally, ma'am, when we are talking about you not having to get out of your car, are you dealing with dozens, hundreds of sex offenders in Jackson County that you have to travel to on that one night?

A. I have over 3,000 clients in Jackson County that have come and reported that we are aware of.

Q. And so the piece about not having to get out of your car is not because Sergeant Cole is lazy, is it a time efficiency thing?

A. It is much more efficient just to be able to drive by, [141] and look for those two components, and carry on.

Q. To enable you and your team to be able to visit all of the houses?

A. Absolutely.

MR. GOODWIN: I don't have any additional questions for this witness.

THE COURT: Mr. Reichardt, any questions of the witness?

MR. REICHARDT: No questions.

THE COURT: Ms. Bellucci, any questions?

MS. BELLUCCI: I do have a few.

CROSS-EXAMINATION

BY MS. BELLUCCI:

Q. Ms. Cole, I wanted to clarify your testimony, part of it anyway. I believe that you said that your office produced signs in the year 2023; is that correct?

A. Yes.

Q. Halloween signs, and were any of those signs distributed?

A. Yes, they were.

Q. To whom?

A. To our clients that came in between September until we had notification that the sign had been set aside for 2023.

Q. And to the best of your knowledge, were any of those signs displayed on the home of somebody who required to [142] register?

A. Actually, they were.

Q. Did your office make any effort to notify your clients that they were – that sign was not required to be on their home?

A. We did not find out about that until October 31st, when Probation and Parole sent an e-mail notification.

Q. Was anybody in Jackson County found – well, charged with violating the Halloween Statute, because they did not put a sign on the front door?

A. No.

Q. To the best of your knowledge, was any child sexually abused – any reports that your office might have received about children being sexually abused on Halloween?

A. My office would not have handled those reports. That would be a different division.

Q. Do you have any personal knowledge of that?

A. No. That would not be my division.

MS. BELLUCCI: No further questions, your Honor.

THE COURT: Anything further, Mr. Goodwin?

MR. GOODWIN: Very briefly, your Honor.

REDIRECT EXAMINATION

BY MR. GOODWIN:

Q. Ma'am, you were just asked some questions about the Sign Posting mandate of the TRO. Did your office or you hand out [143] those signs after you got notification of the TRO?

A. No, we did not.

Q. Did your office follow the Court's order?

A. Yes, we did.

MR. GOODWIN: Thank you. Nothing further.

THE COURT: Mr. Reichardt, any questions?

MR. REICHARDT: No, Judge.

THE COURT: Can you just clarify for me, I'm at a little bit of a loss why, whether the Sign Posting is required or isn't required, necessitates you getting out of your car, the officers going by. I mean, you can drive by and see if the lights are on the house without getting out of the car. The Sign Posting would just be one additional thing, but it doesn't – the fact that a sign isn't posted isn't going to make it more necessary for an officer to get out of their car; is that right?

THE WITNESS: That's correct, your Honor. The sign simply allows us to have that extra provision that we are checking the correct home.

THE COURT: Okay. And I do understand that, but again, they can drive by, and see if the lights are on and not get out of the car. Would they ordinarily go up

to the house, and have personal contact with anyone, if there was no apparent violation?

THE WITNESS: I can only speak as to 2023. I do [144] know that prior to that, our office did go up and actually contact. But in 2023, under my supervision, we did not.

THE COURT: Okay. But that was a supervision strategy that you adopted to not go up and contact them; is that correct?

THE WITNESS: That's correct.

THE COURT: It wasn't because of any danger or issue other than that?

THE WITNESS: No, your Honor.

THE COURT: Let me ask you about the Sign Posting requirement. You have read the Statute, and you know what it says; is that correct?

THE WITNESS: Yes, your Honor.

THE COURT: The Statute says "Post a sign at his or her residence stating: No candy or treats at this residence." It doesn't say a size of the sign. So it could be as small as a postage stamp, or it could be as big as the one you produce; is that correct?

THE WITNESS: That's correct.

THE COURT: It doesn't say where it is posted. It could be at the back door, and it would be in compliance with the Statute; isn't that correct?

THE WITNESS: That's correct.

THE COURT: Could be inside the house and theoretically be in compliance with the Statute.

[145] THE WITNESS: That's correct.

THE COURT: Okay. Any other questions of the witness?

MR. GOODWIN: No, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No, Judge.

MS. BELLUCCI: No, your Honor.

THE COURT: Thank you for being here. You have a tough job.

THE WITNESS: Thank you.

THE COURT: You do a great job. Call your next witness.

MR. DONOHUE: Defense calls Dr. Paul Simpson.

THE COURT: Dr. Paul Simpson, if you will step up here, the Clerk will administer the oath. If you will step over here.

Dr. Simpson, there is a bottle of water there on the counter, if you want some water. Make yourself comfortable, and speak into the microphone.

THE WITNESS: Excellent. Thank you, your Honor.

THE COURT: Counsel, you may proceed.

MR. DONOHUE: Thank you, your Honor.

DR. PAUL SIMPSON,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

[146] BY MR. DONOHUE:

Q. Doctor, are you the same Dr. Paul Simpson who provided an expert report in this case?

A. I am.

Q. Can you please tell the Court about your background?

A. So, your Honor, I have been licensed as a psychologist in the State of Arizona since 1991. In 2000, I switched from a clinical practice to forensic psychology, the post-doctoral training that I did.

So the past 24 years that has been the focus for State, Federal, Military Courts, and it has been a lot of cases, certainly north of a thousand, so.

Q. And do you have any specialized licenses or certifications?

A. A license with the State for psychology. I'm also licensed with something it is technical. It is called the Association of State and Provincial Psychology Boards. It is a mouthful. What it means is that all 50 states, all Providences in Canada, some Virgin Island and things, they all have recognized that I have trained and qualified at or above their own state or provincial license requirements.

Q. Doctor, what is it that you currently do?

A. So as I mentioned, your Honor. I practice forensic psychology, State, Federal, Military, I tend to wear three hats. Just quickly, we do the biggest portion is evaluations [147] for the court, *mens rea*, current competency, future risk. Second would be testimony, which is today, and then consultation with defense or prosecution teams.

Q. Do you have a background with any clinical practice in your experience as well?

A. Sure, yes.

Q. And can you speak high-level to what that is?

A. Oh, my. So in 1984, I started doing psycho-sexual evaluations of juvenile sex offenders, which kind of set me as a young psychologist on a particular path. But beyond that, I have done a lot as it relates to sex offender treatment, assessment, also specialize in issues of memory, child sexual abuse, some things along those lines as well.

Q. What is forensic psychology?

A. Great question. So it is from the Latin term forensis. It just means of the court, two-3,000 years ago, they would hold court in an open courtyard. So forensis, and then psychology is simply the scientific study of human thought and behavior. So it is the interchange of those two of bringing the science of psychology into the legal arena to help the trier of fact with questions that are before the court.

Q. And you provided a CV to counsel. I'm going to ask that what has been previously admitted as Exhibit BB – as in bravo, bravo – be brought up and shown on the screen. This [148] is the curriculum vitae of Dr. Paul Simpson.

If you can, please scroll to the end. Does this curriculum vitae accurately depict – ending with Bates number 0867 – accurately depict all of your qualifications and experience as relevant to your testimony today?

A. It does, your Honor.

Q. You mentioned you have testified in court.

Approximately how many times have you testified?

A. I kind of lose count over the years, your Honor. At least I'd say 300 plus times in State, Federal, now over a 100 times in Military Court.

Q. And in those hundreds of testimonies, have you ever been denied recognition to testify as an expert?

A. No, your Honor.

Q. Have you provided trainings on sex offender assessment and treatment?

A. Oh my, yes.

Q. Could you please give us a high-level summary to the Court of what those trainings have involved?

MS. BELLUCCI: Objection, relevance. Your Honor, we do not dispute that Dr. Simpson is an expert.

THE COURT: I mean, it is relevant, but there is no dispute that Dr. Simpson is immanently qualified. I think that's what counsel is indicating. I certainly recognize that. So why don't you go ahead and pose another question.

[149] MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) With that, your Honor, I'm going to cut a few questions. Doctor, are you a member of any professional organizations that specialize in sex offender research, assessment, and treatment?

A. Yes, sir.

Q. Could you indicate which organizations?

A. So we formerly were called ATSA, so Association for Treatment of Sexual Abusers, and you have seen a couple of the policy statements from our organization.

About two years ago, we switched, and now it is all complicated. We just call it AT-PSA. It is the Association for Treatment and Prevention of Sexual Abuse is our new title, and we are all trying to get used to saying. I have been in the past – I am a member of

the Arizona chapter, the national chapter, and I've been an officer of our state chapter in the past.

MR. DONOHUE: Doctor – at this time, your Honor, at this time, I'd move to have Dr. Simpson admitted as a forensic expert on sex offender dynamics and psychosexual risk assessments.

THE COURT: Any objection, counsel?

MS. BELLUCCI: No, your Honor.

THE COURT: You may proceed.

MR. DONOHUE: Thank you, your Honor.

[150] Q. (By Mr. Donohue) In preparation for your testimony today, did you review exhibits associated with this case?

A. Yes.

Q. You mentioned ATSA or AT-PSA, and that you are a member of that organization. Did you review anything associated with this case from that organization?

A. Yes, your Honor, I did.

Q. And what in particular?

A. As I listed in my affidavit to the Court, the 2019, is that right – yes, 2019 statement from ATSA at the time on Halloween notification laws. I may have the year wrong. And then the next year, they published a lengthier 33 page position statement just on notification laws in general. So it was a broader position paper.

Q. And I'll put that on the screen in front of you in a minute, Doctor, but before we get there, I'll ask a broader general question, what does the research tell us about Sign Posting mandates, and whether they serve the public interest?

A. Well, and again, I have made citation to that, Gains in 20 – I want to say 2006 – specifically describes that the – that it proves to be a safety factor for the community.

More recently, we had a study which showed that almost half of Probation and Parole officers specifically identify Halloween notification as a protective factor in their experience.

[151] Q. And Doctor, what does that mean, what is a protective factor?

A. That it would one in a tool box of different tools to try to prevent or mitigate harm to the community from a known sex offender population.

Q. And the Court has these both, your Honor, it is Gaines 2006 is Exhibit 000, previously admitted, and the other study Kaylor 2022 is Exhibit PPP. There are two actually by Kaylor PPP and QQQ both referenced.

So let's turn now – we'll go back to the ATSA or AT-PSA 2019 policy paper you mentioned, and if I can have – first, Exhibit DD, as in delta-delta. If we can scroll down, please. This is a 33 page document. Doctor, is this the one you were referring to a minute ago?

A. That would have been the 2020.

Q. Okay. And is this – is there any portion of this that you would want to direct the Court's attention to specifically right now or refresh on it?

A. And this kind of relates back to the earlier study as well. In this particular one, AT-PSA is saying, researchers 83 percent of victims of child sexual abuse know their perpetrator. So there is some degree of relationship that they have.

In the year prior 2019, they say the knowing their perpetrator rate is 73 percent of child victims who know who [152] the person who assaulted them. They had a relationship.

Q. And then – ask for Exhibit FF, as in foxtrot-foxtrot. Is this the 2019 statement you were referring to, Doctor?

A. Yes, sir.

Q. And in this one page statement. ATSA or now AT-PSA describes the Halloween effect is a myth. Could you please tell us what the Halloween effect is?

A. So it is kind of a general public-held belief that kids are getting molested and hurt on Halloween night by folks out in the community, including convicted sex offenders that are on release into the community.

Q. And what are some concerns you have about AT-PSA's policy statement?

A. Well, for one, it is not a very good scientific document. It is one page. They literally don't cite a single study. So you won't find a single study that's referenced to support their position. That's problematic. From a scientific standpoint, show your case, you know, here is the studies, etc. So they don't it. It is simply a position statement without any kind of justification.

Interestingly, and I'll follow your guidance, your Honor, but the Plaintiff's cites I think a 2006 study by Chaffin that showed there is not an increase of child molestation on Halloween Eve. It is not happening. But in that very study, the authors say what we don't know is how [153] many cases of child molest were initiated through the contact on Halloween Eve, and

then cultivated a grooming relationship where kids were acted on subsequent down the road.

So the authors in that study say what is the problem. It is not the myth about Halloween assault happening that night. It is the deeper question. The bigger question is does – and I'm over-answering, so does Halloween contact provide an opportunity to create a grooming relationship between a sex offender first time or repeat and into the future that can be acted on. And that's the deeper question.

And we know from MO's research, certainly from my experience, sex offenders are looking for grooming opportunities that establish a legitimate point of contact where that relationship can be cultivated, trust can be established. And secondary to that, that caregivers can be put at ease about this person's presence in their child's life.

THE COURT: Let me ask you this, is there any study that says that Halloween is a grooming opportunity. That it is shown that it is a grooming opportunity. I understand what you are saying is that the reverse isn't true. That they can't say that it isn't, but is there any study that says that it is a grooming opportunity.

THE WITNESS: Not to that effect, no, your Honor, [154] great question.

THE COURT: Okay. Pose another question of the witness.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) Dr. Simpson, you mentioned an article by Chaffin, if I can have EE just to clarify which article we are talking about. Is this the article you mentioned?

A. Yes.

Q. Anything further to add about that article?

A. No.

Q. Doctor, you mentioned grooming behavior. Let's get into a little bit of your definition of that. What is that?

A. So grooming behavior has been a down-thought, and the research is a very common kind of first stage of initiating a sexual assault against a child. So it can happen under a number of different auspices whether it is volunteering with a community organization, Boy Scouts, church participation, youth group leader, any of a number of kind of roles that someone can play that again help to establish and develop a relationship with a child. Secondary to that is to try to provide putting the caregivers at ease, because grooming involves not only developing a relationship, but also trying to minimize detection.

Q. And do you address this further in your report?

A. Yes, sir.

[155] Q. Did you – were you here earlier today during the proffered testimony of Brittany Cale?

A. Yes, sir.

Q. Were there any behaviors that she described that comport with the grooming behavior that you are defining and discussing now?

A. Yes, your Honor.

Q. And can you speak to which ones of those give concerns as grooming?

MS. BELLUCCI: Objection, relevance.

THE COURT: She actually testified about the different behaviors. So I don't think it is really necessary. It is repetitive. Pose another question.

MR. DONOHUE: Yes, your Honor. May I ask a summary question on that topic?

THE COURT: You may.

Q. (By Mr. Donohue) Were those behaviors that Brittany described making her – giving her marijuana and cigarettes, playing guitar to her, singing to her, getting her family to be okay with her being at his house, becoming a fixture in her life. Did those comport with what you are describing as grooming?

MS. BELLUCCI: Objection, relevance.

THE COURT: The objection is overruled. You can answer.

[156] THE WITNESS: All right, yes, your Honor, that would be consistent.

THE COURT: Let me ask this, aren't those also behaviors that could be completely innocent behaviors as well?

THE WITNESS: That's correct, your Honor.

THE COURT: Okay.

Q. (By Mr. Donohue) Thank you. Your Honor raises a good point. What's the difference between those behaviors in a grooming context and those behaviors in a non-grooming context?

A. Outcome.

THE COURT: It is 20/20 hindsight. We know from looking back, that it may have been a grooming behavior with this victim, but you don't know that until down the road; is that correct?

THE WITNESS: That's correct. I can expand on that, but generally, it is an error of reasoning. A, can lead to B to C, but C doesn't necessarily lead you back to A.

THE COURT: Okay.

Q. (By Mr. Donohue) Have any of ATSA's policy decisions been criticized by any entity?

A. Yes.

MS. BELLUCCI: Objection, relevance.

THE COURT: Honestly, I don't see the relevance, [157] whether or not other policies have been criticized. I'm not quite sure you are trying to disprove the position of this organization.

MR. DONOHUE: Your Honor, this is a – and I can articulate the question better – this is a specific ATSA. Have any of ATSA's policy papers related to Sex Offender Registration, or any of their other statements. This is very focused on registration. This is just not about the organization globally. This is about Sex Offender Registration.

THE COURT: Go ahead, you can answer.

THE WITNESS: Thank you, your Honor. So in 2022, the Federal Research Division published an 88 page very in depth examination of 28 of the most-commonly cited studies and papers as it relates to notification laws. So, they really went study-by-study. They applied something called the Maryland Scientific Method Scale.

THE COURT: Can you just tell me what they concluded?

THE WITNESS: That all of the identified studies suffered very serious scientific methodology problems, very significant.

THE COURT: Okay.

Q. (By Mr. Donohue) And do you reference that conclusion somewhat in your report as well, sir?

[158] A. Yes, sir.

Q. Doctor, I want to next ask you about some terminology.

Could you define the term "recidivism" as it is commonly used in your field?

A. Sure. So recidivism, in this context, is for sexual re-offense. So what are the identified instances of recidivating into a sexual offense.

Q. Can you describe whether or not that recidivism rate typically includes rates of re-offense. Is there a distinction between those two things?

A. There is, your Honor, 2015 report by about the U.S. Department of Justice identified that what we know in a lot of the other literature the identified offense rate versus the actual rates there is a great disparity. That the actual rates tend to be higher than the ones that we have actually discovered. There is reasons for that, but that's kind of the short of it.

Q. And if we can have Exhibit KK, please. Doctor, is this that report you just referenced?

A. Yes, your Honor, from 2019, I apologize.

Q. Any particular portion of that report that you would like to call the Court's attention to?

A. Not in particular, your Honor. If you look at the summary section, it is saying what I have just described, which is there is a great disparity between the reported and [159] identified events of recidivism versus the actual rate.

Q. And could you touch on a few reasons why there is a delta between those two things. Why are there not all actions that have been – all re-offenses, why are not all re-offenses captured in recidivism statistics?

A. Oh my, there is a number of reasons, your Honor. One is on re-offense, folks become more sophisticated in perhaps what they did wrong, you know, the first time around. So they have a learning curve that they improve. A lot of cases are adjudicated in the Court System as not being sex offense, but adjudicated down to some other kind of plea that's agreed to. So it doesn't get registered for the number crunching to reflect an actual sexual re-offense.

Q. And when you say they get better at doing what they are doing, are you saying better at not getting caught?

A. That's correct, yes.

Q. Doctor, what does the research tell us about danger to someone placed on the Sex Offender Registry?

A. We have some specific studies that have been published that show there is not an increased risk of physical danger to folks who are placed on the registry. It tends to be more of a psychological burden that folks on the registry experience, but there is not an increase in any kind of retribution or physical violence. That study that I referenced from 2022, with the Federal Research Division, [160] specifically looks at I believe it is eight different studies that talk about harm that's purported to happen to folks who are on the Sex Offender Registry. And again, the conclusion for those researchers is that is not a – that is not a statement that can be borne out from the research.

MS. BELLUCCI: Your Honor, I object to that answer and ask that it be stricken. That was a nonresponsive answer, and quite frankly, it is beyond the scope of the declaration.

THE COURT: The objection will be overruled. I'll take it for what it is worth. This is a bench trial in the case. I'll overrule the objection. Pose another question of the witness.

MR. DONOHUE: Thank you, your Honor.

Q. (By Mr. Donohue) Doctor, in addition to the study you mentioned you have cited in your report, did you mention a study by Lasher in 2012 on this as well?

A. I did, but I can't reference it just from the names. I'm sorry.

Q. Okay. If we can have Exhibit RRR, please. Does this article speak to that same concept, sir?

A. Yes.

Q. Let me shift gears to talk about psycho-sexual risk assessment tools. You mentioned earlier in your background, in talking about your background, that you have done over a [161] thousand psycho-sexual risk assessments in the course of your career; did I get that right?

A. Yes, sir.

Q. And you have taught psycho-sexual risk assessments to thousands of your peers in hundreds of trainings across the state?

A. That's correct.

Q. And the country too, right?

A. That's correct.

Q. So what is a psycho-sexual risk evaluation?

THE COURT: Counsel, can you tell me how this is relevant?

MR. DONOHUE: Yes, your Honor. Psycho-sexual risk evaluations of which Dr. Simpson has conducted, over a thousand, are a metric of indication of risk to society, right, and when we are looking at the risk of individuals to society, when we are speaking about what the Sign Posting mandate does, in terms of putting a barrier between those individuals, and the risk they pose to the individuals, there are – I have a couple of questions that will get to the risks that these individuals pose to society.

THE COURT: Then get to the questions about risk associated with the Sign Posting requirement.

MR. DONOHUE: Understood, sir.

Q. (By Mr. Donohue) Can risk assessment tools, like the [162] ones you have used many times and trained on, can they be used to assess the risk of an offender like Mr. Sanderson?

MS. BELLUCCI: Objection, your Honor, this is beyond the scope of the declaration, and Mr. Simpson – Dr. Simpson rather, he has not evaluated Mr. Sanderson. He has never met him. He has not done an assessment.

THE COURT: Do you have some conclusion as it relates to psycho sexual risk assessment as it relates to the Sign Posting requirement. When you do these, you can't tell whether or not one I guess preventative measure would change the risk assessment, can you?

THE WITNESS: Actually, you can, but I take your Honor's point.

THE COURT: Well, okay, can you tell me is there a change in the risk assessment when somebody posts a sign at their front door that says "No candy or treats" on Halloween.

THE WITNESS: Only in a very general sense, your Honor.

THE COURT: Okay. I'm willing to listen.

MR. DONOHUE: And your Honor, if I may before.

THE COURT: Okay.

MR. DONOHUE: This line of questioning goes towards the State's interest, your Honor. And so while there is obviously going to be relevant testimony in the middle on where these two things overlap, we are also looking – we are [163] trying to provide the Court information on the risk of offenders generally to society. And as your Honor has correctly pointed out, this is a facial challenge. And so we are not looking at the risk of Thomas Sanderson, but also similarity, as your Honor points out, we are not able to predict which of these –

THE COURT: Ask him questions about his conclusions, but you are asking him about how he goes through risk assessments for a thousand offenders. That's not relevant.

MR. DONOHUE: Understood, your Honor.

Q. (By Mr. Donohue) So Doctor, let me ask you this then, globally-speaking, not on the individual basis, but can a forensic psychologist provide information to a court on the risk that a particular offender poses to society?

A. Yes, your Honor. We can point towards research-backed factors that increase risk and factors that decrease risk as well.

Q. And then zooming out, if we were to look at all of those in the aggregate, let's ask – can you give the Court any distinctions, or any helpful information on how to analyze this risk play out across an entire state?

A. Yes.

Q. Can you speak to that?

A. I need to get into the weeds just a little bit, your [164] Honor, I apologize.

MS. BELLUCCI: Your Honor, I am going to object right here, because this is just not relevant to Halloween signs.

THE COURT: Go ahead.

THE WITNESS: So, we call it – it is a problem of probability statistics. So if I can give a quick example, if I have a hundred marbles in a bag.

THE COURT: We are getting too far-field. You have to tell me.

THE WITNESS: So, I can do prediction models with low error rates for a thousand offenders and be reasonably good. Our statistics, we don't have a method yet that allows us to take those predictors, and slim them down to specifically apply to one person. Our probability estimates go all wobbly when we try to slim it down to one individual, whereas it will work with a thousand.

THE COURT: Okay.

Q. (By Mr. Donohue) And if we were going to take that, Doctor, and take it a step further, are you able to predict with any kind of certainty which offender that's been released back in society is going to recidivate?

MS. BELLUCCI: Objection, relevance. We are talking about Halloween signs, folks. This is not about re-offense.

[165] THE COURT: We are talking about a compelling State interest in regulating sex offenders on Halloween. Again, he is asking about can you identify one particular offender who is going to recidivate, and I'm assuming from your answer before that you cannot identify one. You can give statistics about what the probability is; is that correct?

THE WITNESS: That's correct, your Honor.

THE COURT: Okay. Pose another question of the witness.

MR. DONOHUE: Thank you, your Honor.

Q. (By Mr. Donohue) Are there things that can increase the risk to society of offenders after release such as substance abuse or dependancy?

A. Yes.

Q. And can things like psychopathic, deviate, and antisocial personality disorders also increase risk to society of offenders?

MS. BELLUCCI: Objection, your Honor, relevance.

THE COURT: The objection is sustained.

Q. (By Mr. Donohue) As with the previous questions, is there any way to extrapolate from a societal prospective and say that this particular subset

of offenders will be more impacted or not by particular aggravating factors?

A. Yes.

Q. And can you explain why?

[166] A. So again, in the aggregate, the larger picture, we have tools that have been developed to identify what our risk factors that can be identified that increase risk. Specifically, I don't know how far you want me to go, but the SVR20, Sexual Violence Recidivism 20-item, is driven from research legislature, and it helps us to identify what are 20 of the most risk – identified risk factors that increase the potential for offense into the future for any individual.

THE COURT: Pose another question, counsel.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) Tying that into the Halloween Statute, Doctor, is there – would there be any way, if you were advising the Legislature on drafting this Statute, for you to say, tailor this more narrowly, because I know this subset of offenders is going to offend?

MS. BELLUCCI: Objection, calls for speculation.

THE COURT: The objection to the form of the question is sustained.

MR. DONOHUE: May I re-ask in a different form, sir?

THE COURT: Go ahead.

Q. (By Mr. Donohue) Would you be able to – in thinking about the compelling State interest at play with the Missouri Halloween Statute, would you be able to give any kind of granularity to the Court on

predictions of a particular [167] offender as it relates to –

MS. BELLUCCI: Objection, calls for a legal conclusion. What is a compelling interest is a legal matter, not psychological.

THE COURT: I don't think that's really what you have asked, but you are going to have to rephrase the question anyway.

MR. DONOHUE: Yes, your Honor.

Q. (By Mr. Donohue) Can you give the Court anything to – anything concrete regarding the risk of offenders to society as it relates to who needs to put a sign on their door?

MS. BELLUCCI: I object to the question as vague. I'm not sure what you just asked.

THE COURT: The objection to the form of the question is sustained.

Q. (By Mr. Donohue) As an expert looking at risk to society, is there any way that you can indicate a particular individual will commit an offense against a child?

MS. BELLUCCI: Objection, form of the question, at this point in time, I would say it is asked and answered.

THE COURT: The objection is overruled. You can answer. I mean, again, you have already indicated that you can't predict as to a particular individual; isn't that correct, Doctor?

THE WITNESS: That would be correct, your Honor. [168] So we can – we have some very good research-driven elements, factors, that can speak to the one thousand. We don't have a statistical method that can

take it granular down to that one individual. So certainly a consult can be, for the big aggregate, you just have a much more difficult time bringing it down to an individual.

THE COURT: Okay. Any other questions, counsel?

MR. DONOHUE: If I may have a moment, your Honor.

THE COURT: You may.

MR. DONOHUE: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Mr. Reichardt, any questions for the witness?

MR. REICHARDT: No questions.

THE COURT: Ms. Bellucci?

MS. BELLUCCI: Yes, your Honor.

CROSS-EXAMINATION

BY MS. BELLUCCI:

Q. Good afternoon, Dr. Simpson.

A. Good day, Ms. Bellucci.

Q. You and I have met before, haven't we?

A. Yes, ma'am.

Q. We met when you were deposed; is that correct?

A. Yes.

Q. So I'm going to ask you some questions today that will [169] clarify your testimony today, and also perhaps what you said during the deposition.

A. Okay.

Q. Just to let you know. All right, to confirm, the scope of your opinions in this case is limited to the purpose of the Missouri Halloween Statute in general, and not to Plaintiff, or to any particular Registrant; is that correct?

A. That would be correct for the general, yes.

Q. In forming your opinion, you did not meet Mr. Sanderson; is that correct?

A. That's correct, your Honor.

Q. In forming your opinion, you did not perform a psychological assessment of Mr. Sanderson; is that correct?

A. That's correct. Although, I can expand on that if you need me to.

Q. No, thank you. In forming your opinion, you did perform an assessment on any specific person required to register; is that also correct?

A. In this case, no.

Q. Your opinion in this case is not based upon original research or studies that you performed; is that correct?

A. That would be correct.

Q. And I'm not sure – and that's why I'm asking you this question – are you or are you not a member of what used to be called the Association for the Treatment of Sexual Abuser, [170] ATSA?

A. I am, your Honor.

Q. Would you agree that ATSA's members are cognizant of the latest research in the field of sexual abuse and re-offense statistics?

A. That's really broad. I don't know that I can speak to that part.

Q. Well, you did it your deposition. So let me refresh your memory. On page 41 of your deposition, lines 14 through 18.

THE COURT: Counsel, I really don't see the relevance of this. Can you tell me how this is relevant?

MS. BELLUCCI: Yes, your Honor. Dr. Simpson has made some very broad statements today, and he has also made them in his declaration, and I wanted to call the Court's attention to some differences of opinion that he expressed during his deposition, which lends to his credibility or lack thereof.

THE COURT: Do you have a copy of the deposition to give to him, so that when you are reading from certain lines, he can follow.

MS. BELLUCCI: Yes, I do.

THE COURT: Go ahead. If your assistant has the copy, it may be easier for him to give him a copy.

Q. (By Ms. Bellucci) So, Dr. Simpson, I just made [171] reference to page 41, lines 14 through 18. And so, in that, I asked you the question "Do you consider ATSA a prestigious organization." And you answered –

THE COURT: That's actually a different question than what you asked him.

MS. BELLUCCI: Yes, your Honor.

Q. (By Ms. Bellucci) And your answer was "One of the better professional associations for those of us with this specialty to kind of come together, yes." Does that refresh your memory?

A. Yes.

Q. All right. Turning to page 42, lines 12 through 17.

THE COURT: Counsel, you are going to have to ask a question, and if he gives an answer different than the deposition, then you can refer him to the deposition. But you can't just read from the deposition and pick out lines. So it is improper form. Pose a question of the witness.

Q. (By Ms. Bellucci) Do you believe that ATSA's opinion, as expressed in its publications, are based upon a thorough understanding of the research and empirical data available in the field that studies sexual offending?

A. Can I ask where you are in the transcript?

Q. Page 42, lines 12 through 16, your answer is on line 17.

A. Yes, it can be. Not necessarily, but it can be.

Q. I do believe you testified otherwise earlier today. Is [172] it true that ATSA is familiar with the phenomenon of grooming as a risk to children; is that correct?

A. What line are you on – I'm sorry?

Q. I'm not making a specific reference to the deposition.

I'm asking you that question, and let's see if it is consistent with your deposition answer.

A. Can you ask it again?

THE COURT: Counsel, what's the point of this?

MS. BELLUCCI: Your Honor, because today Dr. Simpson has made some statements –

THE COURT: About grooming, I understand.

MS. BELLUCCI: – that are inconsistent with what he said during his deposition, and inconsistent with what he has said in his declaration. So I'm trying to figure out what the truth of the matter is here.

THE COURT: So we are talking about his opinions now and not the organization; is that right?

MS. BELLUCCI: Well, your Honor, yes. This is his opinion that ATSA is familiar with the phenomenon of grooming as a risk to children. Please answer – that's a question.

THE COURT: Are you familiar with that?

THE WITNESS: Yes, but I would have to parse it, your Honor.

THE COURT: Pose another question of the witness.

MS. BELLUCCI: I would be happy to.

[173] Q. (By Ms. Bellucci) It is true that ATSA opposes laws that require the posting of Halloween signs; is that correct?

A. That's correct.

Q. ATSA disagrees with your opinion that Halloween signs are justified by an interest in protecting the public; is that correct?

A. I don't know if they disagree with my position, but their position is it is not effective for preventing sexual assault of children on Halloween night. They are very specific to that.

Q. Thank you. We have to skip over some questions, because you did define grooming earlier. Your opinion in this matter does not consider whether the Halloween signs do, in fact, deter grooming or abuse; is that correct?

A. I apologize, your Honor, could you say it again?

Q. Absolutely. I will slow down. Your opinion in this matter does not consider whether the Halloween sign, in fact, deters grooming; is that correct?

A. It actually – your Honor, I am considering that. It is one of the main theses of the affidavit that I produced. We don't have research to the specific part of that question. How many groomed relationships are initiated at Halloween. So I don't have that part.

Q. My next question, your opinion does not encompass whether Halloween signs are more or less effective than any [174] other legal restriction that's intended to deter grooming; is that correct?

A. Your Honor, that would be correct. I'm not doing a comparison with other kinds of restrictions from sex offenders. So I'm at a loss.

Q. I'm asking – you provided the Court with an opinion in the form of your declaration. So now I'm asking, does your opinion encompass whether the Halloween signs are effective, more or less effective, than other legal restrictions intended to deter grooming. It is a "yes" or "no" question, Dr. Simpson?

MR. DONOHUE: I object as it being asked and answered.

THE COURT: The objection is overruled. You can answer, if you understand.

THE WITNESS: Your Honor, I apologize. I'm a little confused on this thing.

THE COURT: Pose another question of the witness.

Q. (By Ms. Bellucci) You were not confused in your deposition. So let's turn to page 30, please, and your answer is on line 17.

MR. DONOHUE: Objection, improper impeachment.

THE COURT: The objection will be overruled. You can answer, sir.

THE WITNESS: Ma'am, did you say 33?

[175] Q. (By Ms. Bellucci) Page 30, line 17, your answer at that point was "No, it does not." Just remind you. Okay, are you aware that the Missouri –

THE COURT: You have to let him answer the question at least.

MR. DONOHUE: Your Honor, I'm unclear of what question was asked, if we are impeaching, from the beginning.

MS. BELLUCCI: Perhaps the court reporter could read it back.

THE COURT: Just pose another question of the witness.

MS. BELLUCCI: Thank you, your Honor.

Q. (By Ms. Bellucci) Are you aware that the Missouri Statute prohibits a Registrant from participating in any Halloween activity?

A. As I sit here, yes.

Q. Are you aware that the Missouri Statute prohibits a Registrant from opening his or her door to trick or treaters on Halloween?

A. That's correct.

Q. So even if grooming is a concern on Halloween, a Registrant's compliance with the provisions of the Missouri Statute, other than the Sign Posting mandate, would prevent the Registrants from initiating grooming behavior at the residence on Halloween; is that correct?

[176] MR. DONOHUE: I object to the compound nature of the question.

THE COURT: I think the question is confusing, if you can just clarify.

MS. BELLUCCI: I would be happy to, your Honor.

Q. (By Ms. Bellucci) All right, so you have testified that you know there is a Halloween Statute, and the Halloween Statute has four requirements, and the Sign Posting requirement is only one of the four; is that correct?

A. That's correct, your Honor.

Q. Okay. So then if a Registrant were to comply with those three requirements that were not the Sign Posting requirement, wouldn't that, in fact, prevent Registrants from initiating grooming behavior on Halloween?

A. Your Honor, I have no research that references that kind of a distinction.

THE COURT: All right.

Q. (By Ms. Bellucci) Moving on. Your theory that the signs might deter grooming behavior is premised on an assumption that the Registrant would violate the rest of the Missouri Statute; is that correct?

A. As asked right now, in theory, I guess the other elements could be in place, your Honor, and just the violation of the signage.

Q. I'm not –

[177] THE COURT: I'm not sure what your answer is.

MS. BELLUCCI: "Yes" or "no".

THE WITNESS: I don't have a study that pulls these pieces apart.

Q. (By Ms. Bellucci) We are talking about your theory. We are not talking about a study. So you declared that the signs might – may deter grooming behavior, all right; and therefore, the Registrant would violate the rest of the Missouri Statute "yes" or "no"?

A. And do you have that reference?

Q. Page 65. You can testify today, what is your opinion today?

A. On what line?

Q. Your answer is on line six – maybe not. I'm sorry, your answer is on page 66, line 6. Do you see your answer there, sir.

MR. DONOHUE: I'm going to object to the form of the impeachment. There is a long series of questions, and the answer simply says yes.

THE COURT: Okay. I'm not sure that's going to be helpful to the witness.

MS. BELLUCCI: Moving on then.

Q. (By Ms. Bellucci) Even if the Halloween signs were effective to deter grooming, the risk to children from grooming that began on Halloween wouldn't

necessarily require [178] interactions after the Halloween contact; is that correct?

A. I apologize. Do you have that point of reference?

Q. I'm just asking you that question, Dr. Simpson. We don't need to refer to your transcript right now. I'm asking you that question.

A. Please restate it.

Q. Even if the signs were effective, the Halloween signs, to deter grooming, the risk to children from grooming that began on Halloween would require interaction after the Halloween contact; is that correct?

A. Well stated, thank you. Yes, your Honor, the very –

Q. That's the only answer that I need, Dr. Simpson.

A. Grooming after –

Q. Moving on. You are not personally aware of any incidents where a Registrant used contact on Halloween to commence grooming behavior that led to abuse, are you?

A. That's correct, your Honor.

Q. You did not perform any studies to confirm that there is a correlation between contact on Halloween and grooming behavior; is that correct?

A. That's correct, your Honor.

Q. You are not aware of any statistical research that establishes a correlation between contact on Halloween and grooming behavior; is that correct?

A. That would be correct, your Honor, yes.

[179] Q. All right. So let's turn to Plaintiff's Exhibit 8, which is your declaration, Dr. Simpson. My assistant is going to provide you with a copy. Dr. Simpson, turning your attention to the second page of that declaration.

A. Yes, ma'am.

Q. All right. There is a statement there that says "Adds a caution, fully 93 percent of sexual assaults on children are perpetrated by someone known to and trusted by the child and the child's family"; is that correct?

A. That's correct, your Honor.

Q. Okay. And isn't it true that ATSA has concluded that research has shown that the majority of the sexual crimes reported to law enforcement are actually committed by first time offenders and not recidivists?

A. From that study that they cited, yes, your Honor.

Q. Do you agree with ATSA that 93 percent of sexual assaults against children are perpetrated by persons already known to or trusted by the child and the child's family?

A. From the second, the 2020, they substantiated that with research, your Honor.

Q. Of the people in this cohort of 93 percent who offend against a child they already know, would you say that the majority are first-time offenders who would not be listed on a Sex Offender Registry; is that correct?

A. Your Honor, that sounds generally correct. I don't know [180] the exact part of that research study they cite.

Q. Well, first-time offenders would not be subject to the Sign Posting mandate of the Statute; is that correct, if they are not on the registry?

A. That's correct, your Honor.

Q. In the context of the Missouri Statute, the statistics mean that the majority of persons likely to offend against a child are not covered by the Statute, because they are first-time offenders; is that correct?

A. Putting it that way, yes, your Honor.

Q. Are you familiar with instruments designed to assess the risk that a person convicted of a sex offense will re-offend sexually?

A. Yes.

Q. In fact, you administer some of those instruments; is that correct?

THE COURT: Again, counsel, I actually sustained the objection as it related to those questions from Mr. Donohue.

MS. BELLUCCI: I only have a few more questions, your Honor.

Q. (By Ms. Bellucci) Do you agree that persons convicted of a sex offense do not all share the same risk of re-offense?

A. That would be correct, your Honor.

[181] Q. Do you agree that the risk of sexual re-offense declines the longer someone is in the community without re-offending?

A. At the aggregate, but not at the specific, and I have a specific –

Q. It is a "yes" or "no" question, sir.

A. – if you want me to address that, your Honor.

THE COURT: No, that's fine.

Q. (By Ms. Bellucci) Do you agree that the risk of sexual re-offense declines with age, my final question.

A. At the aggregate level, yes.

MS. BELLUCCI: Thank you. Your Honor, no further questions at this time.

MR. DONOHUE: Your Honor, may I have a moment, please.

THE COURT: You may. Mr. Reichardt, are you all set?

MR. REICHARDT: No questions.

THE COURT: Go ahead.

MR. DONOHUE: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. DONOHUE:

Q. A couple of follow-ups. Doctor, first you clarified, yes, you are a member of ATSA. Have you also been a member of ATSA, or whatever acronym they are going by now?

A. Yes, yes, sir.

[182] Q. You mentioned that in answer to a couple of questions my friend on the other side had asked you, you don't have a study about this. There were a couple of things that you said here, and then a couple of other things in your deposition where you said "No, I don't have a study about that particular thing."

As an expert in the field of forensic psychology, do you always have to base your opinion on a study?

A. Well, your Honor, it is the standard that a forensic psychologist aspires to is to give evidence-based testimony. But certainly, there are points in time where 40 years of working with sex offender populations, treatment, assessment, group, individual, inpatient-outpatient, there are definitely points in time where I go look, I have hung out with this for a long time. These are the patterns that I have seen, even if I can't put a study to that part of it.

Q. And so to summarize, do you rely upon your experience in the absence of studies?

A. Yes, your Honor.

Q. Ms. Bellucci asked you a question about grooming, and does grooming require contact, and then I think she cut you off on your answer. Could you describe that a little bit more?

A. Subsequent contact?

Q. Yes, so subsequent contact. So you have defined [183] grooming. You have defined it and described sort of high-level what it is, but what does that look like over a period of time in terms of interactions between a potential offender and a child?

A. So, your Honor, as is implied, a grooming relationship involves repeated ongoing points of contact. Those can be in person, but in an era of the internet, very often those interactions can be online as well.

Q. And she also asked you a question about the definitions in the literature on the term "strangers". Are you able to speak to –

MS. BELLUCCI: Objection, that is not what I said at all. That was not my question. I didn't ask about strangers.

THE COURT: The objection is overruled. Finish the question, and then let me see whether or not it is relevant.

MR. DONOHUE: Thank you, your Honor.

Q. (By Mr. Donohue) In the grooming context, does the literature speak to the concept of who is a stranger versus someone who is known in the context of the statistics mentioned about the likelihood, the 93 percent statistic that was mentioned?

A. Yes. So, in general, it identifies two categories, and whether it is family members or known acquaintances to that child.

[184] Q. And what is a known acquaintance?

A. That would be across the spectrum in a number of different contexts, but known to the child as compared to part of the Halloween math – it is the stranger the child has never seen to the one being molested.

Q. And can neighbors be known acquaintances?

A. Yes.

Q. And if a child goes trick or treating in their neighborhood, can they be trick or treating with known acquaintances?

A. Yes.

Q. And can a grooming relationship be continued with a known acquaintance through Halloween contact?

A. Yes.

Q. You were asked does the risk of recidivism decline the longer someone stays in the community, and then you had something to add. Can you follow-up

on what you meant, or what you were trying to add there?

A. I don't want to try your Honor's patience.

THE COURT: I don't think it is relevant.

MR. DONOHUE: Agreed, your Honor. However, I believe that as the question has been asked, I think that the clarification is necessary.

MS. BELLUCCI: I would object based on relevance as well.

[185] MR. DONOHUE: Your Honor, it is her question.

THE COURT: What do you want to say, Doctor?

THE WITNESS: A couple of months back, you had Phil Cotton in a community here in Missouri, 76 years old, I think it is. He committed sex offenses back in the late 1960's, 1970's, with no known re-offense since that time. He was a school bus driver, molested a seven year old child, and was convicted.

THE COURT: What's the point?

THE WITNESS: That if you look at the aggregate predictors by decade, his risk should have been going down because of lowered levels of testosterone in his system, with good research on that. But what we see is in individual cases that are blatant contradictions to the aggregate predictions.

THE COURT: Okay. All right, any other questions of the witness?

MR. DONOHUE: Just one final question, your Honor.

Q. (By Mr. Donohue) Is there anything else relevant to the Court that you would like to add?

A. (Laughing) I apologize, your Honor. There is a number of things I would love to speak to, but I just feel like I don't want to try the Court's patience. I have done this a long time, and there is some very – at the individual level, there are serious concerns I have on this case, and I just [186] wanted –

THE COURT: I don't know what you – are you talking about the individual level related to Mr. Sanderson?

THE WITNESS: Mr. Sanderson.

THE COURT: That, okay, I understand that. The issue here is a much broader issue, as far as I'm concerned. Let me just ask you this, what percentage of sex offenders re-offend?

THE WITNESS: For the known recidivism rates, we have anywhere from – depends on the span of years – from five percent within the first few years up to 24 to 34 percent over the span of years.

THE COURT: And those are based on reliable studies?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: In Canada, but also here in Missouri as well.

THE COURT: Okay. All right, any other questions of the witness?

MR. DONOHUE: If I may briefly formulate my thoughts, sir.

Q. (By Mr. Donohue) Just one follow-up, your Honor. Those statistics 2, 24, 34 percent recidivism rates, that you are referring to recidivism, not re-

offense, right. So those [187] statistics don't even capture the cases, for instance, that are not caught?

A. Your Honor, that would be correct. The known cases as compared to what we don't know.

MR. DONOHUE: If I can have a moment, your Honor. No further questions, thank you, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No.

THE COURT: Ms. Bellucci, any other questions of the witness.

MS. BELLUCCI: No, your Honor.

THE COURT: You can step down. If you will hand that to Ms. Bellucci on your way down.

THE WITNESS: Thank you, your Honor.

THE COURT: Thank you. Call your next witness.

MR. CLARKE: Thank you, your Honor. We would call Scott O'Kelly.

THE COURT: If you will step up here, sir, over this way, the Clerk will administer the oath.

Mr. Clarke, you may proceed with questions of the witness.

MR. CLARKE: Thank you, your Honor.

SCOTT O'KELLY,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

[188] BY MR. CLARKE:

Q. State your name for the record, please?

A. Scott O'Kelly.

Q. And how are you currently employed, Mr. O'Kelly?

A. Assistant Division Director for Behavioral Health in the Missouri Department of Corrections.

Q. And what do you do in that role?

A. So, I am a Director of all of the Behavioral Health Services, which includes mental health, substance abuse, and sex offender treatment.

Q. Okay. So let me talk to you just about the sex offender treatment as part of that. Is that referred to as MOSOP?

A. Yes.

Q. What is MOSOP?

A. Missouri Sex Offender Program, and it is a residential treatment program in the prisons.

Q. Okay. And generally, very high-level, what happens at MOSOP?

THE COURT: Counsel, MOSOP is an important program in the Missouri Department of Corrections. It is just not relevant in this case.

MR. CLARKE: Your Honor, if I can just make a showing as to why – or an argument as to why. I believe the testimony from the witness will be that that his hope is to return these individuals to the community, and that MOSOP [189] plays a role in that, and that it plays a role in the registration requirements that come afterwards.

THE COURT: Again, MOSOP plays a very very important role in the Missouri Department of Corrections. It just doesn't have anything to do with the Sign Posting requirement.

MR. CLARKE: Okay, your Honor. Thank you.

Q. (By Mr. Clarke) So, after an offender completes MOSOP, are they usually released to the community?

MS. BELLUCCI: Objection, relevance.

THE COURT: The objection will be overruled. You can answer, sir.

THE WITNESS: Yes. So they are statutorily required to complete MOSOP in order to get parole.

Q. (By Mr. Clarke) Okay. Now are there offenders after MOSOP who are identified as sexually violent predators? MS. BELLUCCI: Objection, relevance.

THE COURT: The objection is sustained.

MR. CLARKE: Your Honor, as an offer of proof, sexually violent predators are a category of Registrants who are required to register under the Statute. As Mr. Sanderson has created a facial challenge to the Statute, he has to show that it cannot be constitutionally applied to everyone, every traunch of offender, and that includes sexually violent predators.

[190] THE COURT: I disagree with your analysis there. You want to ask a question about sexually violent predators who I assume are civilly committed.

MR. CLARKE: Some are, your Honor, some are released. That's where these questions are going.

THE COURT: Again, how is that relevant?

MR. CLARKE: Because when they are released, your Honor, they are subject to the registration requirements, and those individuals pose a different risk than other offenders do, and I believe that this witness will explain that at least in general.

THE COURT: Can you just get to how they pose a different risk?

THE WITNESS: Can you repeat the question?

Q. (By Mr. Clarke) The sexually violent predators are included in the MOSOP Program; is that correct?

A. Correct.

Q. Those offenders are confined at some point, usually civilly?

A. Yes.

Q. Are some of those offenders then released?

A. From the SVP programs?

Q. Correct, yes.

A. Yes.

Q. Okay. And when they are released, are they subject to [191] registration requirements?

A. I believe so, yes.

Q. Okay. Now, do you work with sexually violent predators at all in your role?

A. No, I don't.

Q. Okay. You handle the MOSOP situation; is that correct?

A. Correct.

Q. Okay. And not every offender who is in MOSOP is a sexually violent predator; is that correct?

A. Correct.

Q. One moment, your Honor. One final question for you.

When sexually violent predators are released as Registrants, they are required to post the sign under the Sign Posting requirement; is that correct?

A. I believe so, if they are required to register.

MR. CLARKE: Thank you.

THE COURT: Any questions, Mr. Reichardt?

MR. REICHARDT: No, your Honor.

THE COURT: Ms. Bellucci?

MS. BELLUCCI: No, your Honor.

THE COURT: You can step down. Thank you very much for being here.

THE WITNESS: Okay.

THE COURT: I have a three o'clock conference call on another matter. It will only take me five minutes. So we [192] will be in recess until 10 after 3.

MR. GOODWIN: Thank you, your Honor. That will give me time to get the next attorney and the next witness.

Thank you.

THE COURT: Counsel, can I see you at the sidebar real quickly. We are in temporary recess.

(At 2:53 p.m., the proceedings stood in temporary recess. At 3:14 p.m., the proceedings continued.)

THE COURT: Counsel, call your next witness.

MR. DONOHUE: Thank you, your Honor. Defense calls Mr. David Oldfield.

THE COURT: Step up here, the Clerk will administer the oath. Counsel, you may proceed.

MR. DONOHUE: Thank you, your Honor.

DAVID OLDFIELD,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DONOHUE:

Q. Mr. Oldfield, I know that you just recently retired, but can you describe to the Court what your job was before your retirement?

A. Director of Research and Evaluation for the Department of Corrections.

THE COURT: Sir, you have to lean forward, speak into the microphone, and you have to keep your voice up.

[193] THE WITNESS: Right, can you hear me now?

Q. (By Mr. Donohue) Yes, sir. Can you please repeat your answer?

A. I was the Director of Research and Evaluation for the Department of Corrections.

Q. And for how many years did you do that?

A. For about 22 years.

Q. And was that Missouri Department of Corrections?

A. Yes.

Q. Do you have any advanced degrees?

A. I have an MBA.

Q. And in your job as working for the Department of Corrections, were you a part of calculation of statistics regarding sex offenders in the State of Missouri?

A. Yes.

Q. And did you help create – did the research you did go into any kind of report?

A. On every year the Department – the Research Department put out an annual report of statistics. It is included more than just sex offenders, but there was a section on specifically to sex offenders.

Q. And if we can have Exhibit II, please. Is this the report, sir?

A. Yes.

Q. I want to ask you what this report does not cover. So [194] this report, first of all, does cover recidivism statistics in the State of Missouri, right?

A. Yes.

Q. And included in those recidivism statistics, do those recidivism statistics include those who were not found guilty of a subsequent offense?

A. No, no, are specifically for sex offenders, it includes only those offenders who come in with a new offense, and it must be a felony offense, and it is served by the Department of Corrections.

Q. And when you say come in, are you saying come in to the Department of Corrections?

A. Convicted, are now incarcerated.

Q. Understood. So come into the Department of Corrections having been convicted and incarcerated, did I hear you correctly?

A. Yes.

Q. And so if somebody does – is convicted in Federal Court and goes to Federal Prison, would that go into these recidivism statistics?

A. No.

Q. If somebody is convicted in another state, would that go into these recidivism statistics?

A. No.

Q. If somebody is arrested, but not found guilty for [195] whatever reason, would that go into these statistics?

A. No.

Q. If somebody pleads down from a sex offense to some lesser offense, would that be included in these statistics?

A. No. The sentence we record is the sentence they are serving. So if it was a plea down, then we wouldn't know.

Q. So no?

A. No, not in the statistics itself, but the people who are supervising the offender, they may know that there was a plea deal.

Q. Sure. But it is not included in any of the data included in this report?

A. No.

MR. DONOHUE: Your Honor, before I proceed with my next question, I want to inquire on the scope of the ruling as to the previous witness, as to this witness's knowledge on the Missouri Sex Offender Program. I can proffer, your Honor, what the testimony would be first before proceeding.

THE COURT: Go ahead.

MR. DONOHUE: This witness would be able to testify to the comparative rates of recidivism as it

relates to those who have gone through the Missouri Sex Offender Program as to what it does to help reduce recidivism, and also as to whether or not the individuals in the Department of Corrections, what the rates of those who go through the [196] program are, and he would be able to say that there is, I believe, a 63 percent rate of individuals who actually go through, complete MOSOP.

THE COURT: I simply don't see the relevance as it relates to the Sign Posting requirement. I would assume that there is some benefit to people who complete the MOSOP Program, and that's what those statistics would say; is that correct?

MR. DONOHUE: That's correct, your Honor.

THE COURT: Okay. I mean, if you want to ask about just those questions, go ahead.

MR. DONOHUE: Okay. Understood, your Honor.

Q. (By Mr. Donohue) Mr. Oldfield, does your – did your previous responsibilities include calculating the efficacy, if you will, of the MOSOP Program?

A. Yes.

Q. And did the MOSOP Program reduce the rate of recidivism by any amount?

A. It depends upon which statistic you want to use, but for those who came back with a new sex offense, and that was calculated over five years. Then the result almost a three times reduction in recidivism for those who failed the program, or refused to go into the program, and those who completed the program.

Q. Understood. So completion of the program reduces the [197] risk of recidivism, did I hear that right?

A. Right. It also reduced the risk of recidivism for any new offense too. But the concern with sex offenders is that they are likely to come back with a new sex offense.

Q. Understood. And of those who are eligible to participate in MOSOP, do all participate?

A. No.

Q. What are some of the reasons why someone might not?

A. Both. They may fail the course itself, because the course it requires some participation in the program. So that could be a failure, and also some people may refuse to participate in it period.

So in the last fiscal year for which that report was produced, there was a 61 percent completion rate. So that meant 39 percent of the offenders did not complete the program.

MR. DONOHUE: Understood. Your Honor, may I have a moment?

THE COURT: You may.

MR. DONOHUE: Your Honor, maybe two or three more questions.

THE COURT: Go ahead.

Q. (By Mr. Donohue) If we can have Exhibit]], please. Although this screen does not show it, this is exhibit – as listed in the tab, this is Exhibit]] before the Court and [198] before you, Mr. Oldfield. Can you see that on the screen there?

A. Yes, I do, yeah.

Q. Is this – does this go with the report that you just discussed?

A. It would be for the same time period, yes.

Q. Understood. And does the research you did, does that feed into this as well?

A. Yes.

Q. And are all of the questions I asked you about what is not included in the other report true of this one as well?

A. Yes.

MR. DONOHUE: Thank you, sir. I have no further questions.

THE COURT: Mr. Reichardt, any questions of the witness?

MR. REICHARDT: No, your Honor.

THE COURT: Ms. Bellucci, any questions of the witness?

MS. BELLUCCI: No, your Honor.

THE COURT: So let me just ask – so what was the last year that you were involved in doing the statistics?

THE WITNESS: I retired in December of 2022.

THE COURT: So did you do the statistics for 2022 or 2021?

[199] THE WITNESS: Yes.

THE COURT: The last year that you did the statistics.

THE WITNESS: Uh-huh.

THE COURT: What are the percentages of offenders who recidivate, sex offenders, were incarcerated for sex

offense and commit a new sex offense for which they come back. What is the percentage?

THE WITNESS: For those – the average is about three and a half percent to four percent after five years. It is quite low. That's the actual sex offense itself.

THE COURT: So at least your statistics would indicate that the number of sex offenders who re-offend, return to prison for a new sex offense, that percentage is three and a half to four percent?

THE WITNESS: Yeah. We take account of those who completed MOSOP, which would be about one or two percent, one-half percent, and then we have those who failed or refused MOSOP. They are over five but.

THE COURT: The total number who re-offend, it is three and a half to four percent?

THE WITNESS: Something like that, yes.

THE COURT: Okay. All right, any other questions of the witness?

MR. DONOHUE: If I may briefly, your Honor.

[200] REDIRECT EXAMINATION

BY MS. BELLUCCI:

Q. Mr. Oldfield, I understand your full retirement was in 2022. Do you still stay involved on a part-time basis?

A. I'm working part-time.

Q. And are you aware of – and were you part of the production of those more recent reports after the date of your retirement?

A. Yes.

Q. And those statistics you just mentioned that the Judge asked you about –

A. They were compiled by me, yes. They were compiled by myself.

Q. Yes, sir. I want to ask you another question. Are all of those limitations on what is not included in those statistics that we just discussed during your testimony, that doesn't go into that three or four percent recidivism rate, right?

A. That three or four percent are those offenders who are serving a new felony sex offense.

Q. And only as a result of a Missouri conviction, right?

A. Yes.

Q. In Missouri jails?

A. After they were released from prison.

MR. DONOHUE: Understood. Thank you, sir.

[201] THE COURT: Okay. Mr. Reichardt, any questions?

MR. REICHARDT: No, your Honor.

THE COURT: Ms. Bellucci, any questions?

MS. BELLUCCI: Yes, your Honor. If we can pull up Exhibit JJ. I'm going to have to ask opposing counsel to do that. You have that, your Honor, on your screen.

THE COURT: I don't have it on the screen. This is the additional notes on sex offender recidivism.

MS. BELLUCCI: Yes, your Honor.

THE COURT: Do you remember that, Mr. Oldfield?

Okay, pose a question.

MS. BELLUCCI: Yes, your Honor.

CROSS-EXAMINATION

BY MS. BELLUCCI:

Q. Actually, it was after I believe Mr. Oldfield retired, but when I look at this report here – and I'll just ask you, Mr. Oldfield, have you ever seen a report that looks like this?

A. This one?

Q. Yes, sir?

A. I thought I did it.

Q. Okay. Well, then if you would look at the chart there, because I – perhaps to refresh your memory – here we go. There is some statistics about a small – well, as I can see in this screen, it looks at the bottom of the screen, but it [202] is probably not on the bottom of the page. But it says releases, percent incarcerated, percent with new sentence, and then it says any sex and violent. So in looking at the table, I'll call it, I just want to make sure that I'm interpreting it properly, because my interpretation of this table, and I'm going to ask you to correct me if I'm wrong, is at 1.8 percent of the Registrants went back to prison for a sex offense conviction?

A. Yes.

Q. Is that the proper interpretation of that table?

A. That's right, yes, that's fine.

MS. BELLUCCI: All right, thank you. That's all.

THE COURT: Any other questions of the witness?

MR. DONOHUE: Just one, your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. DONOHUE:

Q. Mr. Oldfield, you weren't referring to this report when you cited those numbers the Judge was asking you about from 2022, right?

A. Yes. Sorry – repeat the question.

Q. You weren't referring to this – the number from this report when you cited the other statistic, right?

A. No. I sent you some more statistics recently from that.

Q. Right.

[203] A. They are slightly different, but they are basically in the same ballpark.

Q. Okay. And that rate varies from year-to-year, right – that rate can vary from year-to-year?

A. Yes. I mean, the numbers are so small that there are random variations.

Q. Understood.

A. But it is never very high. It is never very much from those percentages.

Q. But from year-to-year, it is consistent that all of the things we discussed, Federal conviction, out of state conviction, none of those things would be captured in any of those statistics?

A. No.

Q. When you say no, you mean that they are not captured, right?

A. They are not captured, no.

MR. DONOHUE: Okay. Thank you.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No, your Honor.

THE COURT: Ms. Bellucci?

MS. BELLUCCI: No, your Honor.

THE COURT: You can step down, sir. Thank you very much.

Step up here, if you would, the Clerk will [204] administer the oath.

THE COURT: Counsel, you may proceed.

MR. GOODWIN: Thank you, your Honor.

CAPTAIN DANIELLE HEIL,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOODWIN:

Q. Good afternoon, ma'am?

A. Good afternoon.

Q. Can you please introduce yourself to the Court?

A. My name is Danielle Heil. I'm a Captain with the Missouri State Highway Patrol.

Q. And what is your current assignment?

A. I am the Director over Recruiting and Community Outreach.

Q. And did you previously have experience in the Highway Patrol with the – with DDCC?

A. Yes, 17 years just prior to this.

Q. And what is DDCC?

A. It is the Division of Drug and Crime Control. It is our Investigative Unit.

Q. Thank you, Captain. Just broadly, the Highway Patrol enforces the traffic laws on the roads in the State of Missouri?

A. That's part of what we do, yes.

[205] Q. And another smaller part is general criminal investigations of serious felonies; is that correct?

A. Yes.

Q. And is that DDCC?

A. Yes.

Q. And so they don't enforce – sorry – let me rephrase the question. The Highway Patrol is not generally enforcing all criminal laws everywhere across the State?

A. Correct.

Q. And certainly the Highway Patrol doesn't supervise local law enforcement?

A. No, we do not.

Q. As part of your experience in DDCC, did you have experience or cause to interact with sex offenders?

A. I did.

Q. And is community outreach shifting to your current responsibility – is community outreach important to crime detection and prevention?

A. Absolutely, yes.

Q. And just very briefly, can you explain that to the Court?

A. I feel that community outreach is important in assisting us with protecting citizens and investigating crimes, because it allows us to build relationships with community leaders, and community members, and hopefully foster relationships [206] where they are comfortable coming to us, and allowing us to help them make their community safer.

Q. Is there a component to community outreach where a successful community outreach increases the number of crimes that are reported to law enforcement?

A. Absolutely, yes.

Q. Does that extend to sex offenses?

A. Yes.

Q. In your experience, are sex offenses not always promptly disclosed to law enforcement?

A. In most cases they are not, yes.

Q. And as part of the community outreach, does that deal – I'm sorry – let me rephrase the question. Are press releases informing the public about law enforcement, enforcement actions, is that part of the community outreach?

A. Yes.

Q. Based on your experience, does the community have a sufficient amount of information about sex offenders?

MS. BELLUCCI: Objection, calls for speculation.

THE COURT: The objection is sustained.

Q. (By Mr. Goodwin) I'm not going to ask you for specifics, ma'am, but in your law enforcement career, have you worked on a case or cases where sex offenses

were discovered and prosecuted by law enforcement because the community notified law enforcement about the occurrence?

[207] A. Yes, I have.

Q. Is that an important way in which law enforcement learns about sex offenses?

A. Yes.

Q. Are you aware of the Halloween Statute and its requirements on sex offenders?

A. Yes, I am.

Q. In your understanding and experience, what is the purpose of those Statutes?

A. It is just another added layer of protection for what I believe is our most vulnerable citizens, our kids, who may not be aware that there is a danger there. So it is just a way for us to protect kids.

Q. And you said an added layer of protection, in your opinion, is a single layer of protection enough?

A. Absolutely not.

Q. In your experience, does the Sign Posting mandate – would the Sign Posting mandate be an independent layer of protection even in the existence of the other provisions of the Halloween Statute?

A. I think it is important in addition to the other three, yes. I think they are all important.

Q. And why, in your opinion, is the Halloween Posting mandate in the Statute, why is that important?

A. So, in my opinion, just based on my interactions and my [208] experience, it is just beneficial for

families, for parents, for them to have a clear understanding that there is a potential danger at that location.

Q. In other words, the sign is not ambiguous?

A. No, it is not.

Q. Why it is being off might be ambiguous?

A. Yes. And then not being at home might be ambiguous, yes.

Q. And I apologize, ma'am, I should have asked you, how long have you been in law enforcement?

A. 28 years.

MR. GOODWIN: Thank you. I don't have any other questions for this witness, your Honor.

THE COURT: Mr. Reichardt?

MR. REICHARDT: No questions.

THE COURT: Ms. Bellucci?

MS. BELLUCCI: No questions, your Honor.

THE COURT: Okay. Thank you very much. Thanks Captain. Call your next witness.

MR. DONOHUE: Your Honor, in the interest of efficiency of the Court's time, I would like to make a proffer as to what our next witness would state, and based on the prior rulings, the Court may not accept the testimony of the witness. I wanted to speak to it.

THE COURT: Which witness is this?

[209] MR. DONOHUE: It would be Ms. Kimberly Grebner.

THE COURT: Okay.

MR. DONOHUE: So first, Ms. Grebner's background is similarly in law enforcement. She has been in law enforcement since 1989, started with the Kansas City Police Department, worked on the – works now on the STAT Team, which is an investigative unit that looks into all types of investigations of child abuse, neglect, sexual abuse, murder, etc. They assist local law enforcement in a variety of different areas.

She has extensive experience as a child forensic interviewer and as an interviewer of offenders. She can speak to her experience as it relates to forensic interviews, as it relates to offenders – statements offenders have made, and particular examples to the Court of the registration process, the registration system, and things adjacent to and similar to the Sign Posting mandate as to the effect that they have on offenders, and the ability for the offenders not to, as bumpers basically, to keep them on the right track.

She would be able to speak to a couple of personal examples of particular grooming behaviors, due to a close family member, and a variety of other foundational items as the basis for her opinion that the Sign Posting mandate does indeed protect children based on her extensive law enforcement experience.

[210] With that, that's the proffer as to what this witness would state.

THE COURT: Tell me what you believe she would testify to as it relates to her experience, and how that is impacted by the Sign Posting requirement, specifically just that.

MR. DONOHUE: Yes, your Honor. So in addition to her extensive experience as it relates to investigations of offenders, and offender psychology, etc., she was part of – she has been part of Halloween enforcement

actions as a part of her law enforcement career, and can speak to the fact that the Sign Posting – the sign mandate, as some of the other law enforcement officers have testified, has an additional benefit to notifying law enforcement, notifying the offender, ensuring we are all on the same page.

THE COURT: Tell me how she would know that the Sign Posting requirement has an additional benefit?

MR. DONOHUE: As this witness just testified, your Honor, it is along the same lines, that it does – it provides an additional layer of protection, and that it is a clear manifestation by the offender that they know what the rules are, and that they are following the rules.

THE COURT: Okay. I have made some prior rulings in terms of those rulings, and how it would relate to this testimony, I think it is of limited relevance, and it is [211] really repetitive to what Captain Heil just testified to. Do you have any objection to the Court accepting this as an offer of proof, Ms. Bellucci?

MS. BELLUCCI: Yes, your Honor. I have several things. That it is, in fact, not relevant, and the other would that it is repetitive. As you said, Captain Heil basically said exactly the same thing.

THE COURT: Okay. But other than that, you have no objection to this as an offer of proof that the Court can consider; is that correct?

MS. BELLUCCI: No. I actually do object to it. I don't think it is appropriate. I don't think it is relevant. Perhaps if your Honor could weigh it appropriately, then we would not object.

THE COURT: When you say weigh it appropriately, what's that mean?

MS. BELLUCCI: However you interpret that, your Honor.

THE COURT: I'll take the offer of proof as what the testimony would be. Again, as I indicated, I do view it as of little relevance, and it is repetitive with what Captain Heil's testimony is. Having said that, I'll accept the offer of proof.

MR. DONOHUE: Thank you, your Honor.

THE COURT: Okay.

[212] MR. GOODWIN: Yes, your Honor. At this time, we would renew the motion that we made earlier.

THE COURT: I was just asking, the Attorney General has no other evidence to present; is that correct?

MR. GOODWIN: Yes, your Honor. I apologize. I got ahead of myself. We are resting.

DEFENSE RESTS (Attorney General)

THE COURT: So the Attorney General is resting. Mr. Reichardt, any evidence on behalf of the Chief?

MR. REICHARDT: No, your Honor.

THE COURT: So you are resting on behalf of the Chief?

MR. REICHARDT: Yes, your Honor.

DEFENSE RESTS (Chief Hudanick)

THE COURT: And Ms. Bellucci, you have no other evidence to present, no rebuttal evidence; is that correct?

MS. BELLUCCI: That's correct, your Honor.

THE COURT: Okay. I had indicated to counsel that I would give you an opportunity to submit a post-

hearing brief. I don't want that to be a brief, and a response, and a reply. I would like to give everybody an opportunity to submit a single post-hearing brief.

How many days would you like to submit that?

MS. BELLUCCI: Your Honor, we would request 60 days, because we would like to get a transcript. We want to [213] make sure we have a transcript of today's hearing.

MR. GOODWIN: Your Honor, can we, with the Court's permission, perhaps we could have a brief off-the-record conversation to inquire about some of those logistical things, and then I can come back and give the Court my view. Would that be all right?

THE COURT: Yeah. That's fine. Do you want to make a closing statement?

MR. GOODWIN: Well, your Honor.

THE COURT: Again, and we had talked off-the-record. Again, I view it as giving the parties an opportunity to make their closing argument in a closing brief or post-hearing brief.

I know that you indicated that you would be comfortable answering any questions that I may have. So we are really at that point.

MR. GOODWIN: Your Honor, I just have one thought before that, just because I think I need to do it for the record. I understand the Court took the previous motion with the case.

THE COURT: I want to take the motion for judgment at the close of all of the evidence.

MR. GOODWIN: Yes, your Honor, and I'll just stand on the argument previously made. I just want to say

that for the record. I understand the Court is taking that with the [214] case.

THE COURT: I am going to take it with the case. Again, I think you can address some of those issues in the post-hearing brief as well.

MR. GOODWIN: Yes.

THE COURT: Mr. Reichardt, on behalf of the Chief?

MR. REICHARDT: Just making that same argument, restating the argument at the close of all of the evidence, Judge. Thank you.

THE COURT: Okay. All right, Ms. Bellucci, anything you want to tell me about judgment at the close of all of the evidence?

MS. BELLUCCI: Your Honor, we would certainly agree to wait until we do our post-briefs.

THE COURT: Okay.

MR. GOODWIN: And then, your Honor, we had an off-the-record conversation that I'm happy to put on the record where we had a conversation about whether closing arguments would be helpful. My position was I just want to be helpful to the Court, and the tenure of the conversation I think ended at a place where my belief was that I could be most helpful to the Court by answering any questions the Court has.

So, for closing argument, that's what I would propose to do, and perhaps make a very brief one or two [215] minute statement in addition.

THE COURT: Let me just start with the Plaintiff. Ms. Bellucci, again, I'm going to give you – and you can come here to the podium. Did you want to talk about the timing of –

MR. GOODWIN: Of the post-hearing briefs?

THE COURT: Yes.

MR. GOODWIN: Yes, your Honor. I thought I don't know how long it will take to get a transcript. I thought the discussion was about that would be useful, but I don't want to rush the court reporter.

THE COURT: Well, counsel, let's take a short break. Just take five minutes. Let me see you here at the sidebar.

(An off-the-record conversation took place at the sidebar.)

THE COURT: So, just for the record, we have had a conversation off the record. I was explaining the Court's schedule. We start another trial on Monday. The court reporter has got transcripts. So the parties have agreed with the Court, for the Court to give each side – all three sides – 30 days to submit a post-hearing brief. They will be submitted simultaneously or at least within that 30 days. So I'll give you 30 days to submit a post-hearing brief.

Ms. Bellucci, I have a few questions for you. One [216] is, let me just ask you about the Police Chief, the Chief. The Chief is bound to enforce the laws of whatever city they represent and the laws of the State of Missouri.

So, if this is in the Statute, the Chief is bound to enforce it. How is the Chief really a proper party in this lawsuit?

MS. BELLUCCI: He was the one who arrested and charged Mr. Sanderson.

THE COURT: But again, we are talking about declaratory relief, finding the Statute to be

unconstitutional. Again, with regard to the enforcement of the Statute, even if the argument is that he – it is a 1983 violation, he had a duty and obligation to enforce the Statute, whatever it may be, and the Chief did that. So how is that –

MS. BELLUCCI: Well, your Honor, I think also it applies to the issue of standing in that Mr. Sanderson, in fact, had standing to file this lawsuit.

THE COURT: Okay. He is an aggrieved party – MS. BELLUCCI: Yes, your Honor.

THE COURT: – based on the Statute; but again, the Chief is just enforcing Missouri law, and doing the job he was sworn to do. So in what sense has he violated the rights of your client, other than by applying Missouri law. So it is the Missouri law that is the issue, is it not?

[217] MS. BELLUCCI: It is the Missouri law, your Honor, yes.

THE COURT: Okay. All right, I don't think I have any other questions for you. Mr. Reichardt, I really don't have any questions for you.

Mr. Goodwin, assuming that the Court finds that the State has a compelling State interest in protecting children from sex offenders, the question that I'm struggling with is this portion of the Statute. Again, the other portions of the Statute requiring sex offenders to avoid all Halloween-related contact with children, to remain inside, to leave all outside residential lighting off.

Those provisions, it seems to the Court, would entirely protect, to the best of anybody's ability – I mean, obviously, there are things that can happen, but to the best of anybody's ability, those three provisions

would protect children from sex offenders, and I'm at a loss to see how the Sign Posting requirement advances any Governmental interest. And particularly, when the language of the Statute, it doesn't designate a size for the sign. So it can be very very small and still be in compliance. It doesn't require a location. It could be inside the house and still be in compliance with that Statute. So I'm at a loss to see how that advances a State interest.

I also want you to comment on the issue of whether [218] or not the State agrees that it constitutes compelled speech. So if you can just address those two issues.

MR. GOODWIN: Yes, your Honor. Let me sort of work in reverse, if I may. The test for compelled speech also has exceptions. And so one of those exceptions is the *Arnold* case from the Eighth Circuit, where yes, when you fill out the registration form, you are compelled to fill out the registration form, but it is an exception to compelled speech. And in our view, this fits within that exception.

So, in our view, if the Court's question is is the State of Missouri forcing someone to make a statement, the answer to that question is, yes, by posting the sign. Is that, therefore, violative of the First Amendment, our answer is no, because it fits within those sort of exceptions, if that answers the Court's question.

THE COURT: Okay. I guess it still gets back to the nature of the compelled speech in this instance. Again, the Sign Posting requirement I'm at a loss to see how it advances the State interest.

MR. GOODWIN: And so to the other sort of three pieces of the Statute, your Honor, as we have heard from some of the testimony today, some of those are

more ambiguous. And we have presented some testimony today, your Honor, that even if a light is off, someone may approach – a child may approach the front door and knock to try get candy.

[219] And so, in the State's view, the existence of the other elements, or the other provisions, do not make this one superfluous, if that makes sense. And one of the pieces for strict scrutiny, if that's the standard the Court determines should apply, is narrow-tailoring. But narrow-tailoring doesn't have to be perfect tailoring.

So I would agree perhaps with sort of the perception or the belief that the Statute is not perfectly-tailored. I would agree it is not perfectly-tailored, but it is our position that the Statute does not have to be perfectly-tailored.

As to some of the other instances that the Court identified the size and location of the sign. In the State's view, the size of the sign is perhaps less important, because as long as it is readable – in other words, is it legible. If it is posted such that the person sees it, as they are – before they enter the residence, then it has accomplished its goal.

In other words, the sign does not have to be visible from the street if in, for example, some of the testimony the person walks up to the front door, and sees the sign that says "No candy or treats at the residence", even if it is Post-it note size, the sign has accomplished its goal.

As to the Court's other position about – or question rather, I'm sorry, about the location of the sign, I [220] don't have the statutory text in front of me, but my memory is that the Statute says post it on the residence, and our view is that on the residence, the

plain and ordinary meaning of that would be on the exterior of the residence, as opposed to the interior.

THE COURT: The language of the Statute says "Post a sign at his or her residence."

MR. GOODWIN: At his or her residence.

THE COURT: It is "at" – so it does not require to be on, and even if it said on, I'm not sure it would preclude someone from having it inside the residence.

Again, the language says "Post a sign at his or her residence." Again, to survive strict scrutiny, the language of the Statute, I believe, has to be clear. It has to advance some compelling State interest, and that's what I'm struggling with.

MR. GOODWIN: I understand. And your Honor, may I just briefly, another compelling – and we will advance this fully in the post-trial briefing, but an additional compelling State interest would be the law enforcement's identification of sex offenders. There is a recent – and like two or three weeks ago perhaps – decision from a District Court, I think in Alabama, but certainly in the 11th Circuit, I apologize. I don't have the name of the case, but that's the benefit of post-trial briefing, it relates to [221] driver's licenses. And I understand this is not going to be a perfect map on to what we are dealing with, but in that case, their State Statute requires a code of digits and numbers to be placed on a driver's license, and that was challenged as compelled speech, violative of the First Amendment.

And in that District Court opinion, the driver's license code was found to serve the compelling interest of allowing law enforcement to identify sex offenders in a way that wasn't, you know, a Scarlet Letter or a Red Beacon, because the string of letters and numbers

is, I might say facially neutral, although I don't think that's the language used in the opinion.

And, in our view, a sign that says "No candy or treats here" is the same thing. It would be a different conversation if it was a sign that said "A sex offender lives here." That would be sort of different than what I would say is facially neutral "No candy or treats at this residence." So that's an additional compelling State interest, and I understand the Court may find that the Statute is or is not narrowly-tailored to serve that interest, but I did want to flag that for the Court as well.

THE COURT: All right. I appreciate it. Again, I'm going to give –

MR. GOODWIN: I apologize, your Honor. Could I [222] just very briefly be heard on the scope of relief, if the Court decides to grant relief. Again, and we have made this point, so I don't want to belabor it, but I think a statewide injunction here is the wrong relief to grant for the reasons that we have talked about, but then also factually.

You know, we have heard and presented some testimony from witnesses that live in different parts of the State, and things are different in different parts of the State. Missouri is a big State, obviously, with lots of differences. You know, here in St. Louis, there is a particularly unique tradition of telling a joke when you knock on the door for trick or treating. It doesn't exist anywhere else.

The rural part of the State is different from the urban part of the State. Missouri has tried to pass – we have one General Assembly that can pass one set of Statutes. We have tried to narrowly-tailor it to serve the entire State, but because there might be different

circumstances than what Mr. Sanderson encountered here in Hazelwood for – in addition to all of the other reasons we have mentioned – statewide injunctive relief is not appropriate.

And finally, there is an issue of parties, who the correct parties are. As the Court knows, there is 115 counties, plus the City of St. Louis. There is an untold number of municipalities, all of which have different levels [223] of enforcement responsibility. The Attorney General, of course, has – we can't enforce the Statutes through police action, and so that's sort of an additional reason why, in our view, statewide injunctive relief is not appropriate.

THE COURT: Okay. Again, I'll give everybody 30 days to submit a post-hearing brief. I appreciate everybody's cooperation in getting the case heard and thank you for being here. We will be in recess. Thank you.

MR. GOODWIN: Your Honor, I have one -

THE COURT: Go ahead.

MR. GOODWIN: Your Honor, I have a final issue. I apologize. When the Court granted – I'm sorry – the Court denied the motion to dismiss, I believe on Friday, and so here we are having a trial today, we have not yet filed. No party has filed an answer. The rules allow for the answer to be filed within 14 days of the denial. It is our intention to file an answer on or before the 28th, which would be the 14th day. I just wanted to make sure that that's okay with everybody.

THE COURT: It is fine.

MR. GOODWIN: Okay.

THE COURT: You are correct that because there was a pending motion to dismiss, the answer hadn't been filed.

MR. GOODWIN: I just wanted to make sure the record is clean for the Court, and for the parties, and everybody. [224] So I just wanted to flag that for the Court's attention.

THE COURT: Thank you.

MR. GOODWIN: Thank you, your Honor.

THE COURT: All right, we will be in recess. Thank you all.

(The proceedings concluded at 3:59 p.m.)

[225] REPORTER'S CERTIFICATE

I, Lisa M. Paczkowski, Registered Professional Reporter, do hereby certify that I am a duly appointed Official Court Reporter for the United States District Court, Eastern District of Missouri, and that the foregoing is a true and accurate reproduction of requested proceedings had in the matter of:

Sanderson vs. Bailey, et al

In the event copies are made of the transcript herein, the court reporter takes no responsibility for missing or damaged pages.

Dated this 2nd day of December, 2024.

/s/ Lisa M. Paczkowski
Lisa M. Paczkowski
Official Court Reporter
United States District Court
Eastern District of Missouri