

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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

No. 4:08-cv-1518

**COMPLAINT FOR
DECLARATORY AND
INJUNCTORY RELIEF**

CARL A. KINNISON, in his official)
 capacity as Chief of Police for the)
 Cape Girardeau, Missouri, Police)
 Department, and)
)
 HARRY MORLEY SWINGLE, in his)
 official capacity as Prosecuting)
 Attorney for Cape Girardeau County.)

INTRODUCTION

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

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

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

JURISDICTION AND VENUE

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

PARTIES

8. Plaintiffs are convicted sex offenders, convicted in the State of Missouri prior to June 30, 2008, who reside in the State of Missouri.

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

¹ Plaintiffs are filing a motion to proceed with use of pseudonyms contemporaneously with their complaint.

occurred on or about February 5, 1995. He has sole custody of two children from a previous marriage, a step-child, and another child, all of whom he resides and all of whom are minors.

13. Defendant Jeremiah W. Nixon is the Attorney General of the State of Missouri and is sued solely in his official capacity. Nixon is the State's chief law enforcement officer and is charged with instituting any proceedings necessary to enforce state statutes. R.S.Mo. § 27.060. The Attorney General is also authorized to aid prosecutors when so directed by the Governor and to sign indictments when directed by the court. R.S.Mo. § 27.030. His primary office is located in Cole County, Missouri.
14. Defendant Matt Blunt is the current Governor of the State of Missouri. The supreme executive power lies with the governor. Mo. Const. art. 4, § 1. He has the duty to "take care that laws are distributed and faithfully executed." Mo. Const. art. 4, § 2. His primary office is located in Cole County, Missouri.
15. Defendant Thomas O'Connor is the Chief of Police for the Maryland Heights Police Department in Maryland Heights, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for Maryland Heights and will be responsible for enforcing R.S.Mo. § 589.426 within Maryland Heights, where Jane Doe I resides. Maryland Heights is located in St. Louis County, Missouri.
16. Defendant Steven Schicker is the Chief of Police for the Ballwin Police Department in Ballwin, Missouri. He is sued solely in his official

capacity. He is the chief law enforcement officer for Ballwin and will be responsible for enforcing R.S.Mo. § 589.426 within Ballwin, where John Doe I resides. Ballwin is located in St. Louis County, Missouri.

17. Defendant Carl A. Kinnison is the Chief of Police for the Cape Girardeau Police Department in Cape Girardeau, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for the City of Cape Girardeau and will be responsible for enforcing R.S.Mo. § 589.426 within the City of Cape Girardeau, where Jane Doe II resides. Cape Girardeau is located in Cape Girardeau County, Missouri.
18. Defendant Steven Cruise is the Chief of Police for the Bowling Green Police Department in Bowling Green, Missouri. He is sued solely in his official capacity. He is the chief law enforcement officer for Bowling Green and will be responsible for enforcing R.S.Mo. § 589.426 within Bowling Green, where John Doe II resides. Bowling Green is located in Pike County, Missouri.
19. Defendant Mark Fisher is the Prosecuting Attorney for Pike County. Fisher is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within Pike County. His primary office is located in Pike County, Missouri. He is sued solely in his official capacity.
20. Defendant Robert P. McCulloch is the Prosecuting Attorney for St. Louis County. McCulloch is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within St.

Louis County. His primary office is located in St. Louis County, Missouri. He is sued solely in his official capacity.

21. Defendant Harry Morley Swingle is the Prosecuting Attorney for Cape Girardeau County. Swingle is responsible for commencing and prosecuting all criminal actions, including violations of R.S.Mo. § 589.426, within Cape Girardeau County. His primary office is located in Cape Girardeau, Missouri. He is sued solely in his official capacity.
22. Defendants are named only for actions taken under color of state law.

STATUTE AT ISSUE

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

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

COUNT I

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

Jane Doe I v. Nixon, Blunt, O'Connor, McCulloch

24. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
25. Plaintiffs and other persons of reasonable intelligence do not have an understanding of several terms in the statutes, including what constitutes “avoid,” “Halloween-related contact” or “just cause,” within the context of the challenged statute.
26. R.S.Mo. § 589.426 is so vague as to fail to provide fair notice or warning of what would constitute a violation.
27. In addition or in the alternative, R.S.Mo. § 589.426 fails to define the criminal offense it creates with sufficient definiteness that ordinary people can understand what conduct is prohibited.
28. In addition or in the alternative, R.S.Mo. § 589.426 fails to establish minimal guidelines to govern law enforcement so as to prevent arbitrary and discriminatory enforcement.

COUNT II

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

Jane Doe II v. Nixon, Blunt, Kinnison, Swingle

29. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
30. Plaintiffs and other persons of reasonable intelligence do not have an understanding of several terms in the statutes, including what constitutes “avoid,” “Halloween-related contact” or “just cause,” within the context of the challenged statute.
31. R.S.Mo. § 589.426 is so vague as to fail to provide fair notice or warning of what would constitute a violation.
32. In addition or in the alternative, R.S.Mo. § 589.426 fails to define the criminal offense it creates with sufficient definiteness that ordinary people can understand what conduct is prohibited.
33. In addition or in the alternative, R.S.Mo. § 589.426 fails to establish minimal guidelines to govern law enforcement so as to prevent arbitrary and discriminatory enforcement.

COUNT III

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

John Doe I v. Nixon, Blunt, Schicker, McCulloch

34. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

35. Plaintiffs and other persons of reasonable intelligence do not have an understanding of several terms in the statutes, including what constitutes “avoid,” “Halloween-related contact” or “just cause,” within the context of the challenged statute.
36. R.S.Mo. § 589.426 is so vague as to fail to provide fair notice or warning of what would constitute a violation.
37. In addition or in the alternative, R.S.Mo. § 589.426 fails to define the criminal offense it creates with sufficient definiteness that ordinary people can understand what conduct is prohibited.
38. In addition or in the alternative, R.S.Mo. § 589.426 fails to establish minimal guidelines to govern law enforcement so as to prevent arbitrary and discriminatory enforcement.

COUNT IV

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

John Doe II v. Nixon, Blunt, Cruise, Fisher

39. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
40. Plaintiffs and other persons of reasonable intelligence do not have an understanding of several terms in the statutes, including what constitutes “avoid,” “Halloween-related contact” or “just cause,” within the context of the challenged statute.
41. R.S.Mo. § 589.426 is so vague as to fail to provide fair notice or warning of what would constitute a violation.

42. In addition or in the alternative, R.S.Mo. § 589.426 fails to define the criminal offense it creates with sufficient definiteness that ordinary people can understand what conduct is prohibited.

43. In addition or in the alternative, R.S.Mo. § 589.426 fails to establish minimal guidelines to govern law enforcement so as to prevent arbitrary and discriminatory enforcement.

COUNT V

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

Jane Doe I v. Nixon, Blunt, O'Connor, McCulloch

44. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

45. R.S.Mo. § 589.426 imposes a punishment upon Plaintiff Jane Doe I for a crime that she committed before R.S.Mo. § 589.426's enactment.

COUNT VI

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

Jane Doe II v. Nixon, Blunt, Kinnison, Swingle

46. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

47. R.S.Mo. § 589.426 imposes a punishment upon Plaintiff Jane Doe II for a crime that she committed before R.S.Mo. § 589.426's enactment.

COUNT VII

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

John Doe I v. Nixon, Blunt, Schicker, McCulloch

48. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

49. R.S.Mo. § 589.426 imposes a punishment upon Plaintiff John Doe I for a crime that he committed before R.S.Mo. § 589.426's enactment.

COUNT VIII

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

John Doe II v. Nixon, Blunt, Cruise, Fisher

50. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

51. R.S.Mo. § 589.426 imposes a punishment upon Plaintiff John Doe II for a crime that he committed before R.S.Mo. § 589.426's enactment.

COUNT IX

Violation of Due Process Clause of Fourteenth Amendment – Interference with Family

Jane Doe II v. Nixon, Blunt, Kinnison, Swingle

52. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

53. R.S.Mo. § 589.426 unreasonable interferes with Jane Doe II's right to be involved with and direct the upbringing of her biological daughter.

COUNT X

Violation of Due Process Clause of Fourteenth Amendment – Interference with Family

John Doe II v. Nixon, Blunt, Cruise, Fisher

54. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.

55. R.S.Mo. § 589.426 unreasonable interferes with John Doe II’s right to be involved with and direct the upbringing of his biological children.

COUNT XI

Violation of Missouri Constitution, Art. I, § 13

Jane Doe I v. Nixon, Blunt, O’Connor, McCulloch

56. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
57. Missouri’s Constitution provides, “that no ... law ... retrospective in its operation ... can be enacted.” Mo. Const. art I, § 13.
58. R.S.Mo. § 589.426 imposes an affirmative obligations on Plaintiffs to each October 31 do the following (1) Avoid all Halloween-related contact with children; (2) Remain inside her residence between the hours of 5 p.m. and 10:30 p.m. unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies; (3) Post a sign at her residence stating, “No candy or treats at this residence”; and (4) Leave all outside residential lighting off during the evening hours after 5 p.m.
59. The obligations created by R.S.Mo. § 589.426 are new duties imposed as a result of Plaintiff Jane Doe I’s criminal conviction.
60. R.S.Mo. § 589.426 was enacted after Plaintiff Jane Doe I’s conviction.

COUNT XII

Violation of Missouri Constitution, Art. I, § 13

Jane Doe II v. Nixon, Blunt, Kinnison, Swingle

61. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
62. Missouri’s Constitution provides, “that no ... law ... retrospective in its operation ... can be enacted.” Mo. Const. art I, § 13.
63. R.S.Mo. § 589.426 imposes an affirmative obligations on Plaintiffs to each October 31 do the following (1) Avoid all Halloween-related contact with children; (2) Remain inside her residence between the hours of 5 p.m. and 10:30 p.m. unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies; (3) Post a sign at her residence stating, “No candy or treats at this residence”; and (4) Leave all outside residential lighting off during the evening hours after 5 p.m.
64. The obligations created by R.S.Mo. § 589.426 are new duties imposed as a result of Plaintiff Jane Doe II’s criminal conviction.
65. R.S.Mo. § 589.426 was enacted after Plaintiff Jane Doe II’s conviction.

COUNT XIII

Violation of Missouri Constitution, Art. 1, § 13

Jane Doe II v. Nixon, Blunt, Kinnison, Swingle

66. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
67. Missouri’s Constitution provides, “that no ... law ... retrospective in its operation ... can be enacted.” Mo. Const. art I, § 13.

68. R.S.Mo. § 589.426 imposes an affirmative obligations on Plaintiffs to each October 31 do the following (1) Avoid all Halloween-related contact with children; (2) Remain inside his 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 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.
69. The obligations created by R.S.Mo. § 589.426 are new duties imposed as a result of Plaintiff John Doe I’s criminal conviction.
70. R.S.Mo. § 589.426 was enacted after Plaintiff John Doe I’s conviction.

COUNT XIII

Violation of Missouri Constitution, Art. 1, § 13

Jane Doe II v. Nixon, Blunt, Kinnison, Swingle

71. Plaintiffs incorporate each of the allegations contained in paragraphs 1-23 as if each were set forth here verbatim.
72. Missouri’s Constitution provides, “that no ... law ... retrospective in its operation ... can be enacted.” Mo. Const. art I, § 13.
73. R.S.Mo. § 589.426 imposes an affirmative obligations on Plaintiffs to each October 31 do the following (1) Avoid all Halloween-related contact with children; (2) Remain inside his 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

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.

74. The obligations created by R.S.Mo. § 589.426 are new duties imposed as a result of Plaintiff John Doe II’s criminal conviction.
75. R.S.Mo. § 589.426 was enacted after Plaintiff John Doe II’s conviction.

WHEREFORE, the Plaintiffs pray this Court:

- A. Enter declaratory judgment that R.S.Mo. § 589.426 violates the Constitution of the United States, on its face, and the Missouri Constitution, as applied to Plaintiffs;
- B. Issue preliminary and permanent injunctions enjoining enforcement R.S.Mo. § 589.426 against Plaintiffs;
- C. Award Plaintiffs costs, including reasonable attorneys fees, pursuant to 42 U.S.C. §1988; and
- D. Allow such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF EASTERN MISSOURI

/s/ Anthony E. Rothert
ANTHONY E. ROTHERT, # 518779
American Civil Liberties Union of Eastern
Missouri
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114
FAX: (314) 652-3112

COUNSEL FOR PLAINTIFFS