Nos. 24-3120, 24-3204

In the United States Court of Appeals
For the Eighth Circuit

THOMAS SANDERSON,
Plaintiff-Appellee
v.

ANDREW BAILEY, in his official capacity as Attorney General of Missouri, and JAMES HUDANICK, in his official capacity as the Police Chief of Hazelwood, Missouri,
Defendants-Appellants.

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

Appellants' Brief

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SUMMARY OF THE CASE

This appeal concerns whether the First Amendment forbids requiring sex offenders to (truthfully) notify the public that they cannot distribute candy on Halloween. Appellee Thomas Sanderson is a registered sex offender, so Missouri law prohibits him from distributing candy on Halloween and requires him to "[p]ost a sign" (such as a sticky note) on Halloween "stating, 'No candy or treats at this residence.'" Mo. Rev. Stat. § 589.426.1(3).

After police discovered Sanderson openly violating both requirements, Sanderson challenged the sign-posting requirement under the First Amendment. He did not challenge the prohibition on distributing candy, which he violated, nor did he dispute that the sign-posting requirement would make it less likely that children would ring his doorbell on Halloween.

The district court agreed with Sanderson and declared the sign-posting requirement unconstitutional. But it did not limit relief to Sanderson. It granted universal relief, prohibiting all Missouri officials from ever enforcing the law against *any* sex offender—no matter the severity of their crime. Appellants request 15 minutes for oral argument.

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JURISDICTIONAL STATEMENT

This appeal is from the final judgment of the District Court for the Eastern District of Missouri entered on October 10, 2024. App.2219, R.Doc.70. The district court had jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. On October 2, 2024, the district court declared Mo. Rev. Stat. § 589.426.1(3) unconstitutional and permanently enjoined its enforcement by Appellants statewide. App.2240, R.Doc.70 at 22. The Missouri Attorney General timely appealed on October 18, 2024. The Chief of Police for Hazelwood, who joins the Attorney General in this appeal, timely appealed on October 29, 2024. This Court has jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 1294(1).

STATEMENT OF ISSUES

I. **Whether the district court failed to analyze Sanderson's facial challenge correctly.**

- *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024)
- *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008)
- *Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071 (8th Cir. 2024)

II. **Whether the sign-posting requirement is permissible under the First Amendment because it is incidental to the regulation of conduct.**

- *Rumsfeld v. FAIR*, 547 U.S. 47 (2006)
- *Arkansas Times LP v. Waldrip as Tr. of Univ. of Arkansas Bd. of Trustees*, 37 F.4th 1386 (8th Cir. 2022) (en banc)
- *United States v. Sindel*, 53 F.3d 874 (8th Cir. 1995)
- *United States v. Arnold*, 740 F.3d 1032 (5th Cir. 2014)

III. **Alternatively, if the sign-posting requirement triggers heightened scrutiny under the First Amendment, whether the requirement satisfies heightened scrutiny.**

- *Williams-Yulee v. Fla. Bar*, 575 U.S. 433 (2015)
- *Mitchell v. Dakota Cnty. Soc. Servs.*, 959 F.3d 887 (8th Cir. 2020)
- *Turner Broad. System, Inc. v. F.C.C.*, 520 U.S. 180 (1997)

IV. Whether the district court abused its discretion by excluding evidence of Thomas Sanderson's dangerousness and sex-offense history as irrelevant.

- *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024)
- *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008)
- *United States v. Zephier*, 989 F.3d 629 (8th Cir. 2021)

V. Whether the district court erred by issuing a statewide injunction prohibiting the enforcement of Mo. Rev. Stat. § 589.426.1(3) under any circumstances.

- *Labrador v. Poe by & through Poe*, 144 S. Ct. 921 (2024)
- *Brakevill v. Jaeger*, 932 F.3d 671 (8th Cir. 2019)
- *Nebraska v. Biden*, 52 F.4th 1044 (8th Cir. 2022)

INTRODUCTION

Missouri law generally prohibits sex offenders from going near children. For example, many sex offenders must stay away from places commonly frequented by children, such as schools, daycares, and parks. Mo Rev. Stat. §§ 566.147–150, .155. Yet once a year, millions of doorsteps become places frequented by children—because Halloween creates an implied invitation for children to approach the doorsteps of strangers.

Missouri law thus prohibits sex offenders from having contact with children in that context as well. Missouri prohibits sex offenders from distributing candy on Halloween and requires sex offenders to "[p]ost a sign" on Halloween stating "No candy or treats at this residence." Mo. Rev. Stat. § 589.426.

The rationale for this common-sense rule is obvious. When a child is already on a sex offender's doorstep, it takes little effort to lure that child inside the home, or to start or further a grooming relationship with the child. To avoid contact between sex offenders and children, sex offenders are not permitted to distribute candy anyway. The no-candy posting requirement simply rescinds the implied invitation that Halloween creates; the requirement makes it less likely that children

find themselves face-to-face with a sex offender, on that offender's doorstep, in the dark.

This case shows exactly why that prophylactic is necessary. Some sex offenders like Plaintiff-Appellee Thomas Sanderson have a history of repeatedly violating the prohibition on distributing candy. Sanderson is a registered sex offender because he was convicted of raping a minor. Trial Tr. ("Tr.") at 15:21–23. Yet, for over a decade until he was caught in 2022, Sanderson unlawfully distributed candy. *Id.* at 17:2–18:1, 21:13–15; App.0094, R.Doc.18-1. After officers discovered this, Sanderson was convicted of unlawfully distributing candy and also of unlawfully refusing to display the no-candy sign. Tr. at 22:11–27:13; App.129, R.Doc.18-8 at 3. If Sanderson had posted the sign as required, then he would have been substantially less likely to have encountered children on Halloween at all. In other words, the requirement prohibits somebody like Sanderson, who has raped a minor, from literally using the cultural expectation of candy to invite children to his home.

The district court's universal injunction undermines this commonsense law and is wrong in many respects. For one thing, the no-candy sign requirement does not trigger heightened scrutiny because it

is a factual message "incidental to [a] regulation of conduct." *E.g.*, *Rumsfeld v. FAIR*, 547 U.S. 47, 62 (2006). Sanderson does not dispute that all other parts of the challenged law are constitutional—including the requirements to "[a]void all Halloween-related contact with children," "remain inside" his residence, and leave his "residential lighting off" after 5 p.m. Mo. Rev. Stat. § 589.426. Because the no-candy sign is a "factual disclosure" "aimed at verifying compliance with unexpressive conduct-based regulations," it "is not the kind of compelled speech prohibited by the First Amendment." *Arkansas Times LP v. Waldrip as Tr. of Univ. of Arkansas Bd. of Trustees*, 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc).

But even if heightened scrutiny were triggered, protecting children is no doubt a compelling interest. And the no-candy sign is appropriately tailored to that compelling interest. The statute requires nothing more than seven words on a sticky note. And the message included on that sign is the same message Sanderson would have to give if he answered the door; he has no candy that he can provide to trick-or-treaters. The district court's order also disregards uncontroverted evidence from several witnesses that the sign-posting requirement is necessary.

Finally, even if Sanderson were entitled to any relief, the district court's universal injunction sweeps far more broadly than required to provide relief to him. Sanderson failed to present any evidence about the application of the law to any offender other than himself. The universal injunction is flatly inconsistent with several cases decided by the Supreme Court in 2024 about the proper scope of federal court injunctions against state statutes.

STATEMENT OF THE CASE

I. Sanderson is convicted of raping a minor and is convicted of violating multiple provisions of the Halloween statute.

Thomas Sanderson is a Tier II sex offender because, at the age of thiry-five, he committed second-degree statutory sodomy against B.C., a sixteen year-old girl. Tr. at 15:21–16:6, 86:20–96:5; App.510, 1346, R.Doc.57 at 5. B.C. was a friend of the teenage daughter of Sanderson's fiancée. Beginning when B.C. was fifteen, Sanderson groomed her and several other teenage girls who came to his home to visit their friend. Tr. at 86:20–91:5. Sanderson encouraged drinking, smoking, and doing drugs. *Id.* at 88:21–89:25. He even provided alcohol and drugs. *Id.* During these encounters, Sanderson made sexual comments about the girls' bodies, including their buttocks and breasts. *Id.* at 92:7–14.

Sanderson was frequently intoxicated around the teens. *See id.* at 86:20–96:5; App.510, 1263, 1290–91, R.Doc.57 at 5. In fact, he has a long history of alcohol and drug abuse. At trial, Sanderson volunteered that he had five DUIs over the course of his adult life, and that he was in and out of rehab and the courts for various crimes.[1] Tr. at 29:7–31:20.

Sanderson's inappropriate behavior culminated in raping B.C. in 2001. B.C. had planned a sleepover with her friend, and when she arrived that night, she noticed that Sanderson had been drinking and arguing with her friend's mother. *Id.* at 93:7; App.510, 1164, R.Doc.57 at 5. B.C. did not want to be around Sanderson, so she went to her friend's room. App.510, 1164–65, R.Doc.57 at 5.

Later that evening, a drunken Sanderson burst into the bedroom where B.C. was changing. App.510, 1166, R.Doc.57 at 5. B.C. immediately tried to leave, App.510, 1167–68, R.Doc.57 at 5, but Sanderson stopped her and told B.C. to "lay down" on one of the twin beds in the room. App.510, 1168, R.Doc.57 at 5. B.C. refused and instead sat on the edge of one the beds. *Id.* Sanderson then sat down next to B.C.

[1] One of his crimes occurred while this case was pending, an indecent exposure in 2024. Tr. at 31:16–18.

and again instructed her to lie down. App.510, 1169, R.Doc.57 at 5. B.C. again refused. *Id.* Sanderson repeated the command to "lie down" and forced B.C. down by pushing on her shoulders. *Id.* He then crawled up next to B.C. *Id.* He said he was upset and that he needed to work out "some problems" with his fiancée. *Id.*

Sanderson then moved his leg on top of B.C. and tried to kiss her. App.510, 1170, R.Doc.57 at 5. He next sat on top of her. App.510, 1171, R.Doc.57 at 5. B.C. told Sanderson to stop, but Sanderson refused to listen. *Id.* B.C. again pleaded with Sanderson to stop and told him she would tell Sanderson's fiancée if he refused. *Id.* Sanderson tried to silence her, stating, "No, you won't." *Id.* B.C. continued to plead with Sanderson to stop, but Sanderson moved B.C.'s underwear, "smiled" at her, *id.*, and inserted his fingers into B.C.'s vagina, App.510, 1171–72, R.Doc.57 at 5. Only when B.C. told him to stop "really loud," did Sanderson finally stop. *Id.*

B.C. reported Sanderson's conduct to the police. When the police interviewed Sanderson, he "turned beet red. His lower lip started quivering. He started a gentle sob, [and] looked down . . ." App.0101, R.Doc.18-2 at 5. Sanderson wrote "a letter of apology" in which, among

other things, he "'apologized if he offended or hurt anyone in any way' and explained that his 'alcoholism turns him into a person he is not.'" *Id.* (alterations omitted). Sanderson was criminally charged and, after trial, was convicted of second-degree statutory sodomy and sentenced to two years' imprisonment. The Missouri Court of Appeals affirmed his conviction. App.0106, R.Doc.18-2 at 10.

Because of his criminal conviction, Sanderson is now a registered sex offender in Missouri. Tr. at 15:21–16:3. Under Missouri law, all sex offenders in the State must register at regular intervals.[2] Sanderson, as a second tier offender, must re-register every six months. *Id.* at 51:6–52:13, 100:7–13. When offenders re-register, they must do so on a form that requires them to confirm their residential address, any social media accounts they may have, their vehicles, places of work, and other identifying information. *Id.* at 122:22–127:10; App.510, 0980–0983, R.Doc.57 at 5. That information is made publicly available as required by federal and state law. 34 U.S.C. § 20920; Mo. Rev. Stat. § 589.402. On the back of the form, Sanderson and all offenders must review a

[2] Either quarterly, twice a year, or once a year depending on which "tier" their offense(s) fall into. Tr. at 100:7–13.

summary of the statutory limitations on their conduct. App.510, 0983, R.Doc.57 at 5. The Halloween sign-posting requirement is a clearly listed limitation on that form. *Id.*

In full, Missouri's Halloween sex offender statute 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.

Mo. Rev. Stat. § 589.426. Notwithstanding this statute's clear commands, Sanderson admitted at trial that he violated the Halloween statute for over a decade. Tr. at 17:10–18:1, 21:25–22:13.

Police first caught Sanderson violating the law on October 31, 2022. That night, police received a tip that Sanderson had decorated his home

for Halloween and was planning to distribute candy to children. Police investigated the tip and videotaped Sanderson personally distributing candy. App.94, R.Doc.18-1; App.507, 640 (Ex. V5), R.Doc.57 at 2.

Having documented Sanderson's violation of Missouri law, Hazelwood police officers approached his residence to make contact. App.510, 972 (Ex. ZZ), R.Doc.57 at 5. Sanderson's fiancée indicated that Sanderson was no longer home, and the officers informed her of § 589.426. They warned that Sanderson must comply with Missouri law and that they would return to verify that Sanderson had complied. *Id.* at 2:09–8:16. The officers covered each of the requirements of Missouri's law with Sanderson's fiancée. *Id.* One officer specifically mentioned that Sanderson must post a sign saying "No candy or treats at this residence." *Id.* The officer also advised that if Sanderson was outside when officers returned, he would be arrested. *Id.*

When officers returned, people were still serving candy, Sanderson's residence was still decorated and illuminated, and Sanderson had still failed to post the requisite sign. App.125, R.Doc.18-6; App.126, R.Doc.18-7. Officers again made contact with Sanderson's fiancée, who continued insisting that Sanderson had left to pick up

Halloween supplies. App.508, 642 (Ex. X), R.Doc.57 at 3. This was not true. Sanderson was home and intoxicated. *Id.* at 2:45–6:34.

When officers spotted Sanderson and tried to talk to him, Sanderson immediately became aggressive. *Id.* Sanderson told the officers they should go "eat a dick." *Id.* at 5:08–5:10. Sanderson also told them that he was a sex offender because of a "bitch girl, little girlfriend of my daughters, that made some allegation." *Id.* at 5:55–6:08. He told officers to "go away" and said, "bye bye, get a warrant and come back, fucker." *Id.* When officers instructed Sanderson that he needed to be inside on Halloween, Sanderson again told officers to "eat a dick," among other things. *Id.* at 6:20–6:31. As the officers collected information from other witnesses at the scene, Sanderson continued to yell at the officers to "get off his property," and "to suck this dick." *Id.* at 6:55–7:35.

Officers again told Sanderson and his fiancée to turn off their Halloween display. *Id.* at 11:30–12:00. Sanderson refused, yelling "boy, you don't make the fucking rules." *Id.* at 12:05–12:10. But Sanderson's fiancée informed police that she would shut the display off immediately. *Id.* at 11:30–11:57. The officers left once the exterior lighting was turned off. *See id.* at 13:00–24:28. Sanderson later pled guilty to violating

§ 589.426, both for distributing candy and for failing to post the no-candy sign. App.127–28, R.Doc.18-8 at 1–2.

II. Sanderson challenges the constitutionality of the no-candy sign requirement.

Because Sanderson pled guilty to violating § 589.426, he did not challenge the constitutionality of the Halloween law in his criminal proceeding. *Id.* Instead, he brought this § 1983 action, alleging that the sign-posting requirement of § 589.426.1(3) is facially unconstitutional under the First Amendment. App.27; R.Doc.1 at 15. On October 27, 2023, the district court entered a statewide temporary restraining order enjoining Appellants from enforcing § 589.426.1(3). App.148; R.Doc.23. Appellants immediately appealed, App.165; R.Doc.25, and requested an emergency stay of the order. App.225; R.Doc.36-1. This Court denied the motion for emergency stay, App.203; R.Doc.34, and on December 11, 2023, this Court granted the Attorney General's motion to voluntarily dismiss the 2023 appeal. App.293, R.Doc.41.

The district court then consolidated the preliminary-injunction proceedings with trial on the merits, App.205; R.Doc.35, and held a one-day bench trial. At the trial, the parties entered several exhibits into the record by stipulation. App.506; R.Doc.57.

A. Sanderson's Case-in-Chief

Although Sanderson advanced a facial challenge and requested a statewide injunction, he called only two witnesses at trial: himself and Defendant James Hudanick. As the Police Chief of the City of Hazelwood, Hudanick testified that his jurisdiction is limited to Hazelwood and that he could not speak to the application of § 589.426 in any other jurisdiction. Tr. at 66:15–67:21.

Sanderson called himself as his first witness. Tr. at 13:6–8. He confirmed that he is required to register as a sex offender. *Id.* at 15:21–16:3. He testified that he lived in Hazelwood, Missouri, since around 2001 and that he put up Halloween decorations every year since he arrived (except for when he was in prison). *Id.* at 17:5–18:1. Sanderson also testified that "hundreds of kids" and "families" would pass through his neighborhood and visit his home. *Id.* at 20:8–9. Sanderson said that he would dress up, hand out candy, and attempt to scare children who visited his display. *Id.* at 21:13–24, 36:8–10.

Sanderson explained that he repeatedly violated the Halloween statute, claiming that an unnamed St. Louis County official said he was not required to comply with the statute. *Id.* at 18:17–20:3. However,

Sanderson also confirmed that he encountered Hazelwood officers in 2022, and that he refused to comply with their instructions. *Id.* at 22:11–23:8, 45:15–47:24. He also agreed that, in 2022, he had "[l]ots" of decorations out around his house, that he was "absolutely" outside of his home, and that he "absolutely" did not have the required sign posted. *Id.* at 46:1–14.

Sanderson also volunteered his lengthy criminal history, including convictions or arrests for: statutory sodomy; five DUI offenses; four domestic disturbances; two incidences of public urination; a boating-while-intoxicated offense; a battery offense; an offense for brandishing a plastic gun; an offense for exposing his "buttocks" to "a group of young people" at a Taco Bell; an offense for assaulting his neighbor; and an offense for fighting in a Home Depot parking lot. *Id.* at 29:11–31:20. Sanderson also testified that when he was incarcerated, he did not complete the Missouri Sexual Offender Program ("MOSOP"). *Id.* at 37:17–20. Sanderson was asked whether he completed MOSOP, and he retorted, "Not a chance." *Id.* David Oldfield, who recently retired as the Director of Research and Evaluation for the Missouri Department of Correction, testified that offenders who fail or refuse to participate in

MOSOP are three times more likely to reoffend sexually relative to offenders who successfully complete the program. *Id.* at 196:21–24.

Next, Chief Hudanick testified that he has been Hazelwood's Police Chief for two years. *Id.* at 57:8–13. In that capacity, he supervises the day-to-day operations of the Hazelwood Police Department. *Id.* at 66:1–5. Chief Hudanick testified that he enforced the Halloween law like any other Missouri law that he has a duty to uphold. *Id.* at 69:23–70:3. Chief Hudanick also confirmed that, outside Hazelwood, he has no role in enforcing the law in any of Missouri's other jurisdictions, including its 114 other counties. *Id.* at 66:15–67:21. He further agreed that the Attorney General does not supervise either the day-to-day or the long-term operations of the Hazelwood Police Department. *Id.* at 65:22–66:3.

Sanderson then rested his case without presenting any further testimony about the application of § 589.426 to himself or others. *Id.* at 78:14. The Attorney General and Chief Hudanick then moved for judgment under Rule 52(c), noting that Sanderson failed to present any evidence supporting a facial challenge. *Id.* at 78:23–82:25. The district court reserved ruling on the motion. *Id.* at 84:20–21.

B. Defendants-Appellants' Case-in-Chief

Defendants-Appellants then called several witnesses who testified about the application of § 589.426 across Missouri. Many witnesses also testified specifically about the need for the sign-posting requirement, and Sanderson never provided evidence contradicting this testimony.

B.C.

First, the State called B.C., the victim of Sanderson's 2001 sex offense. *Id.* at 86:16. Although the Court granted Plaintiff Sanderson's motion to exclude all of B.C.'s testimony, the court said it would permit Defendants-Appellants to proffer the testimony, which would preserve the issue on appeal. *Id.* at 5:21–6:13, 85:21–23. B.C. testified that Sanderson was the boyfriend of her friend's mom. *Id.* at 87:23–24. She and other teenage girls spent significant time at Sanderson's home, where he provided them with alcohol, marijuana, and cigarettes. *Id.* at 88:23–89:25. Unfortunately, even within the proffer of her testimony, almost all of B.C.'s testimony was excluded because the district court intervened *sua sponte* seven times. *Id.* at 91:6, 91:24, 93:12, 93:18, 94:3, 94:11, 94:24. Among other things, the district court refused to let B.C.

testify about Sanderson's sex offense and the effect of that offense on B.C. *Id.*

Sergeant Heffernan

Next, the Attorney General called Sergeant Jason Heffernan of the Cass County Sheriff's Office. The population of Cass County is about five times that of the small town of Hazelwood. Sergeant Heffernan testified to his experience with Cass County's Sex Offender Apprehension and Registration Unit. *Id.* at 97:11–114:3. The Unit registers all offenders who either work or reside in Cass County and is "tasked with doing compliance operations." *Id.* at 98:21–99:1.

Sergeant Heffernan explained that new sex offender registrants are required to come to the Sheriff's Office and provide basic demographic and identifying information. *Id.* at 99:9–14. Heffernan also discussed Missouri's tier system, which creates three tiers of sex offenders depending on the severity of their crimes. *Id.* at 99:19–22. Under that system, a Tier III offender must participate in the sex-offender registry for life, a Tier II offender (like Sanderson) must register for twenty-five years, and a Tier I offender must register for ten to fifteen years. *Id.*; *see also* Mo. Rev. Stat. § 589.400. Offenders in each tier also have to re-

register at certain intervals, with higher tiers having shorter intervals. Tr. at 100:10–13.

Sergeant Heffernan described Halloween compliance operations, which include members of the Cass County Sheriff's Office and local municipalities. *Id.* at 106:21–108:15. He explained that a no-candy sign enables police officers to ensure compliance with § 589.426 by driving past an offender's residence and verifying that they have a sign. *Id.* at 109:3–7, 111:7–14. That is how officers "typically" ensure compliance, unless officers receive a report that an offender is passing out candy or interacting with children. *Id.* at 109:3–20. If a sex offender is not in compliance with § 589.426, officers usually knock on the offender's door, inform them of the statute, and simply ask them to hang the requisite sign. *Id.* at 110:2–19.

Mr. Schlueter

Next, Scott Schlueter testified. Schlueter is a Criminal Justice Information Services ("CJIS") program manager for the Missouri Highway Patrol, and he oversees the Patrol's criminal history system. *Id.* at 120:16–18. He previously supervised the Sex Offender Registry System. *Id.* Schlueter testified that about 18,300 individuals are

required to register as sex offenders within Missouri. *Id.* at 125:11. Schlueter also identified the Missouri Sexual Offender Registration form given to all registrants, which requires them to provide demographic information and provides notice of the Halloween statute. *Id.* at 122:22–127:10; App.510, 0980–0983, R.Doc.57 at 5.

Sergeant Cole

Penny Cole is a Sergeant with the Jackson County Sheriff's Office, and who leads the Sex Offender Registration Unit there. Tr. at 132:6–7. Jackson County is about 30 times the size of Hazelwood. The County's Sex Offender Registration Unit is responsible for educating offenders, ensuring their compliance with reporting requirements, and enforcing § 589.426 on Halloween. Tr. at 132:10–14, 135:8–10.

Sergeant Cole provided undisputed testimony that the sign-posting requirement is a critical component of the Halloween statute. Cole explained that over 3,000 sex offenders in Jackson County are required to comply with § 589.426. *Id.* at 140:5–21. Cole explained that the statute is necessary because it enables officers to ensure that an offender is in compliance with the entire Halloween statute. *Id.* at 137:9–19, 140:5–10. With the sign, officers can simply drive by a residence and

observe the sign on the door rather than individually questioning offenders to ensure compliance. *Id.* That is especially useful because, on Halloween, offenders should not be answering the door to avoid contact with children. Sergeant Cole also noted that when officers have no need to make in-person contact, offenders have more privacy. *Id.* at 137:9–138:7. "When a patrol car pulls up in front of someone's home, and two officers exit, . . . everyone that's standing around on Halloween . . . want[s] to know why [officers] are there. When [officers] just drive by and look for a sign . . . , [they] don't have to get out of [their] cars." *Id.* at 138:1–6.

Finally, and perhaps most importantly, Sergeant Cole explained that the sign-posting requirement is "absolutely" necessary because, in her experience as an officer and as a mother of adopted children, some children still knock on the doors of homes without lights on Halloween. *Id.* at 139:5–140:15. Cole's uncontroverted testimony at trial was that, on Halloween, the "light off means absolutely nothing" and children "will knock on the door" unless there is a sign. *Id.* at 140:11–15.

Dr. Simpson

Next, Dr. Paul Simpson testified. *Id.* at 145:23. Simpson has been licensed as a forensic psychologist since 1991 and has testified in court at least 400 times. *Id.* at 148:9–11. Sanderson did "not dispute that Dr. Simpson is an expert" and the district court agreed that he was "qualified." *Id.*

Dr. Simpson explained that Halloween creates a unique opportunity for offenders to have initial or continued contact with a conveyor belt of potential victims. *Id.* at 150:19–153:18. He also identified research showing that Halloween notification is widely believed to prevent sexual re-offending. *Id.* at 150:15–151:5.

Dr. Simpson explained that offenders use grooming behavior to establish relationships with their victims and to minimize detection by caregivers. *Id.* at 154:11–23. Grooming can "happen under a number of different auspices," *id.*, like interactions that might start or continue on Halloween. Dr. Simpson also opined that Sanderson's interactions with B.C. leading up to the rape constituted grooming. *Id.* at 155:17–156:2.

Dr. Simpson further explained that "24 to 34 percent" of sex offenders are known to recidivate, though the actual rate of re-offense is

higher because many offenses go unreported. *Id.* at 158:8–159:13, 186:5–187:4. Dr. Simpson also testified that, while psychological science can provide information about the risk across populations, it can be difficult to identify which individual will re-offend. *Id.* at 166:1–168:6. He cited a recent Missouri case involving a 76-year-old offender who worked as a school bus driver. *Id.* at 185:3–15. Tragically, the offender sexually abused an elementary schooler who grew to trust him by riding on his bus. *Id.* Dr. Simpson explained that this case illustrated that each sex offender is unique and it is extremely difficult to tell whether a sex offender will avoid recidivating after release. *Id.*

Dr. Simpson's testimony was also cut short by the district court. The district court intervened *sua sponte* several times, explaining that it did not believe that testimony about psycho-sexual risk assessments was relevant. *Id.* at 161:11–23, 180:17–19, 184:20. The court also refused to let Dr. Simpson testify about the risks that Sanderson himself poses and the need for Sanderson to abide by the sign-posting requirement. *Id.* at 185:21–186:6.

Mr. O'Kelly

Scott O'Kelly, the Assistant Division Director for Behavioral Health in the Missouri Department of Corrections ("MDOC"), directs all behavioral health services at MDOC. *Id.* at 188:8–10. One of those services is MOSOP, a residential treatment program for sex offenders in prison facilities. *Id.* at 188:11–16. O'Kelly testified that, generally, sex offenders are required to complete MOSOP to secure parole release. *Id.* at 189:13–14. Of the offenders included in MOSOP's sweep, a portion of those offenders are or become sexually violent predators. *Id.* at 190:15–191:11. Sexually violent predators are a special class of offenders subject to civil commitment, and they must comply with Missouri's sign-posting requirement upon release. *Id.* Sanderson's counsel did not cross-examine O'Kelly, *id.* at 191:20, and made no argument at trial regarding why § 589.426 is unconstitutional in circumstances involving sexually violent predators.

Mr. Oldfield

After twenty-two years of service, David Oldfield recently retired as the Director of Research and Evaluation for MDOC. *Id.* at 192:19–193:7. In that role, Oldfield produced an annual report about recidivism

statistics. *Id.* at 193:18–195:13. That report captured every sex offender who reoffended, was convicted, and returned to MDOC custody. *Id.*; App.508, 737, R.Doc.57 at 3. Based on his report, Oldfield testified that offenders who complete MOSOP are three times less likely to recidivate than offenders who fail or refuse to complete the program. Tr. at 196:21–24. When Sanderson was asked whether he completed MOSOP, he said, "Not a chance." *Id.* at 37:17–20.

Captain Heil

Captain Danielle Heil of the Missouri State Highway Patrol testified based on 28 years of law-enforcement experience that sex offenses are common and that most sex offenses are not "promptly disclosed." *Id.* at 204:11, 206:9–11, 208:11. She emphasized that the sign-posting requirement is a necessary measure to "protect kids," who are "our most vulnerable citizens" and "may not be aware" of the "danger" posed by sex offenders. *Id.* at 207:10–208:3. Heil's uncontroverted testimony was that the sign-posting mandate is an "important" protection "in addition to" the other parts of the Halloween statute. *Id.* at 207:21. Heil explained that these signs give an unambiguous message that keeps "families" away from the homes of sex offenders on Halloween.

Id. at 208:1–8. She also testified that the statute's other requirements, such as turning off lights, are "ambiguous" signals that do not sufficiently indicate whether a home is participating in Halloween. *Id.*

C. The district court enters a universal injunction against the no-candy sign requirement.

On October 2, 2024, the district court granted judgment in Sanderson's favor. App.2242, R.Doc.70. Although Sanderson failed to present any evidence at trial in support of his facial challenge, the court held that the sign-posting requirement of § 589.426.1(3) is facially unconstitutional under the First Amendment. App.2240, R.Doc.70 at 22. The court acknowledged that, for Sanderson to succeed on his facial challenge, he must prove that the Halloween statute's unconstitutional applications substantially outweighed its constitutional applications. App.2229–30, R.Doc.70 at 11–12 (citing *Moody v. NetChoice, LLC.*, 603 U.S. 707 (2024)). But lacking concrete evidence in support of a facial challenge, the court never cited any evidence about the application of § 589.426 to offenders other than Sanderson. App.2229–38, R.Doc.70 at 11–20. The court also never mentioned Appellants' evidence that police officers need the Halloween signs to ensure the compliance of Missouri's 18,000 sex offenders. *See id.* Neither did the court address why § 589.426

does not lawfully apply to sexually violent predators, who are more dangerous than Sanderson. *See id.*

The court tested the Halloween statute under strict scrutiny, reasoning that the no-candy sign is equivalent to compelling Jehovah's Witnesses to display messages that violate their religious beliefs. App.2231–34, R.Doc.70 13–16 (citing *Wooley v. Maynard*, 430 U.S. 705 (1977)). In applying strict scrutiny, the court held that there was "no doubt" that the Halloween statute targets "a compelling government interest." App.2234–35, R.Doc.70 at 16–17. But the court then held that § 589.426 failed narrow tailoring. App.2235–38, R.Doc.70 at 17–20. The court faulted the required signs for not "clarify[ing] the danger that the [Halloween] statute serves to mitigate." *Id.* at 18. The court also claimed that Appellants failed to provide evidence that sex offenders "are more likely to reoffend on Halloween as compared to any other day of the year." *Id.* Finally, without any citation to evidence supporting its conclusion, the court speculated that there is no need for a sign because trick-or-treaters can check Missouri's sex-offender registry before knocking on doors. App.2237, R.Doc.70 at 19. The court then enjoined statewide enforcement of § 589.426.1(3). App.2238–40, R.Doc.70 at 20–22.

SUMMARY OF THE ARGUMENT

The district court's judgment is erroneous for five reasons that each provide an independent basis for reversal. First, the district court held that Sanderson succeeded on his facial challenge even though Sanderson introduced no evidence at trial about the Halloween statute's application to anyone other than himself. Under *NetChoice*, Sanderson had to prove that the Halloween statute's "unconstitutional applications substantially outweigh its constitutional ones." 603 U.S. at 724. And Sanderson could not make that showing through "speculat[ion] about 'hypothetical' or 'imaginary' cases." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449–50 (2008). Yet, lacking concrete evidence supporting a facial challenge, the district court's analysis is entirely based on its own speculation. Worse, the district court overlooked the evidence that Appellants introduced at trial.

Second, the sign-posting requirement does not trigger heightened scrutiny for two reasons. For one thing, the requirement mandates a truthful, non-ideological message. *See United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995). Additionally, that message is incidental to a regulation of conduct. *See FAIR*, 547 U.S. at 62. An offender's sign must

simply say, "No candy or treats at this residence." Mo. Rev. Stat. § 589.426.1(3). And, as several police officers testified at trial, they rely on no-candy signs to verify compliance with § 589.426. Mandatory "factual disclosure[s] of this kind, aimed at verifying compliance with unexpressive conduct-based regulations, is not the kind of compelled speech prohibited by the First Amendment." *Arkansas Times*, 37 F.4th at 1394 (en banc).

Third, the sign-posting requirement would satisfy even strict scrutiny. As the district court acknowledged, there is "no doubt" that Missouri has a compelling interest in preventing sexual offenses. App.2234–35, R.Doc.70 at 16–17. As to narrow tailoring, Missouri introduced uncontroverted evidence proving why no-candy signs are a necessary component of the Halloween statute. Several police officers testified that they need the signs to ensure the compliance of Missouri's 18,000 registered sex offenders. Further, multiple witnesses testified that children *will* approach the homes of sex offenders on Halloween unless there is a sign. Unlike every other day of the year, on October 31st, Missouri children approach the homes of strangers, including sex

offenders, and ask for candy. Halloween is the only day the sign-posting requirement applies.

Fourth and in the alternative, Appellants are entitled to a new trial. During trial, the district court excluded B.C.'s testimony and excluded part of Dr. Simpson's testimony, believing that evidence specific to Sanderson was irrelevant on a facial challenge. However, in Sanderson's case-in-chief, he was allowed to introduce evidence specific to himself. Appellants were denied the opportunity to rebut that testimony by showing that the Halloween statute validly applies to Sanderson specifically.

Fifth and finally, this Court should at least vacate the district court's universal injunction. Except in the Administrative Procedure Act context, *see* 5 U.S.C. § 706, the Supreme Court disfavors universal injunctions. *See Labrador v. Poe by & through Poe*, 144 S. Ct. 921 (2024). This Court also declines to grant universal injunctions (1) when a plaintiff's facial challenge fails or (2) when a plaintiff cannot prove that a universal injunction is necessary to provide him with complete relief. *Brakevill v. Jaeger*, 932 F.3d 671, 677 (8th Cir. 2019); *Nebraska v. Biden*,

52 F.4th 1044, 1048 (8th Cir. 2022). The district court's universal injunction violated both conventions.

STANDARD OF REVIEW

Usually, "[a]fter a bench trial, this court reviews legal conclusions de novo and factual findings for clear error." *Urban Hotel Dev. Co., Inc. v. President Dev. Grp., L.C.*, 535 F.3d 874, 879 (8th Cir. 2008). In the First Amendment context, however, this Court undertakes "an independent examination of the whole record." *Doe v. Pulaski Cnty. Spec. Sch. Dist.*, 306 F.3d 616, 621 (8th Cir. 2002) (quotation omitted). Under that standard, "[f]acts irrelevant to the free speech issue remain subject to the clear error standard, but [the Court] make[s] a 'fresh examination' of those facts that are crucial to the First Amendment inquiry." *Id.* (citation omitted). In making that fresh examination, this Court is "not bound by the district court's witness-credibility determinations." *Id.*

Next, this Court reviews the district court's evidentiary rulings for an abuse of discretion, "reversing only when an improper evidentiary ruling affected the defendant's substantial rights or had more than a slight influence on the verdict." *Chism v. CNH Am. LLC*, 638 F.3d 637, 640 (8th Cir. 2011) (quotation omitted).

ARGUMENT

This Court should reverse for five reasons. *First*, Sanderson failed to prove that Missouri's sign-posting requirement is facially unconstitutional. *Second*, the sign-posting requirement does not trigger heightened scrutiny because it mandates a truthful, non-ideological message and concerns a factual disclosure incident to conduct—the likes of which this Court and the U.S. Supreme Court have repeatedly upheld. *Third*, even if heightened scrutiny applies (it does not), the sign-posting requirement would satisfy it. *Fourth*, the district court abused its discretion by excluding testimony from B.C. and Dr. Simpson. *Fifth and finally*, the district court erred by issuing a statewide injunction.

I. The sign-posting requirement, § 589.426.1(3), is facially constitutional under the First Amendment.

A. Sanderson fails to meet his burden in mounting a facial challenge to § 589.426.1(3).

Sanderson "chose to litigate [this] case[ ] as [a] facial challenge[ ], and that decision comes at a cost." *NetChoice*, 603 U.S. at 723. "[C]ourts usually handle constitutional claims case by case, not en masse," because facial resolutions "'often rest on speculation' about the law's coverage and its future enforcement." *Id.* (quoting *Washington State Grange*, 552 U.S. at 450). Facial challenges also "'threaten to short circuit the democratic

process' by preventing duly enacted laws from being implemented in constitutional ways." *Id.* (quoting *Washington State Grange*, 552 U.S. at 451). Therefore, in every case involving a facial challenge, a court must explore the "full range" of a law's "applications." *Id.* at 726. In First Amendment cases, "[t]he question is whether 'a *substantial* number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *Id.* at 723 (emphasis added) (second alteration in original) (quoting *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 615 (2021)).

This analysis proceeds in two steps. The first step is to assess the scope of the challenged law. *Id.* at 724. That requires the Court to consider, "What activities, by what actors, do[es] the law[ ] prohibit or otherwise regulate?" *Id.* Second, a court must "decide which of the laws' applications violate the First Amendment" and "measure them against the rest." *Id.* Put another way, a court must consider a law in all its applications—both "constitutionally impermissible and permissible"—and "compare the two sets." *Id.* at 726. Courts that fail to correctly apply this test are reversed. *See id.*

Notwithstanding Sanderson's burden on a facial challenge, Sanderson never presented evidence—or even discussed—the application of § 589.426.1(3) to any offender other than himself. As noted above, Sanderson's case-in-chief consisted of two witnesses: himself and Defendant Hudanick, who testified that he had no experience with the application of § 589.426 outside the small town of Hazelwood. Tr. at 67:4–7. Although *NetChoice* required the district court to consider evidence about the "full range" of the "applications" of § 589.426.1(3), *see* 603 U.S. at 726, Sanderson did not provide any evidence about the application of § 589.426 to anyone other than him.

The district court did not consider the full range of "activities" and "actors" regulated by § 589.426.1(3). *NetChoice*, 603 U.S. at 724. Indeed, the district court stated during trial that "[m]any times," "no evidence . . . is necessary" for a plaintiff to succeed on "a facial challenge to a Statute." Tr. at 130:15–16. The district court's order then relied solely on the court's own speculation to reject Appellants' uncontroverted evidence about the applications of § 589.426 across Missouri. *See* App.2229–38, R.Doc.70 at 11–20. Controlling precedent does not allow that maneuver. *See Washington State Grange*, 552 U.S. at 449–50 ("In

determining whether a law is facially invalid, we must be careful not to . . . speculate about 'hypothetical' or 'imaginary' cases."); *Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1082 (8th Cir. 2024) (refusing to speculate about other cases "[w]hatever Plaintiffs' First Amendment interests may be"). Unable to consider the full range of applications of the statute, the district court thus failed to meaningfully "weigh" the "constitutional" applications of § 589.426.1(3) relative to its "unconstitutional" ones. *NetChoice*, 603 U.S. at 726.

As to the first step of the *NetChoice* analysis, the court's bench-trial order conclusively observed that § 589.426 "applies to registered sex offenders in the State of Missouri." App.2230, R.Doc.70 at 12. But the court never engaged with Appellants' uncontested evidence, which documented that § 589.426 applies to sexually violent predators who are even more dangerous than Sanderson. Appellants also highlighted the varying needs and practices of police departments across Missouri's 115 counties. Several police officers testified that a sign is the only way to ensure compliance in jurisdictions with thousands of offenders and that children will knock on the doors of sex offenders unless there is a sign.

Tr. at 109:3–7, 111:7–14, 137:19–140:15, 207:8–208:8. Sanderson provided no evidence at trial that contradicted this testimony.

At the second step, the district court failed to analyze whether the varying dangers posed by sex offenders and the varying needs of police departments influence the constitutionality of the sign-posting requirement in different cases. Quoting *NetChoice*, the district court noted that it needed to "explore the laws' full range of applications—the constitutionally impermissible and permissible both—and compare the two sets." App.2232, R.Doc.70 at 14 (citation omitted). But then, the district court merely discussed two inapposite cases (more on those cases below), and it never analyzed the varying applications of § 589.426, which Appellants discussed at trial. App.2232–34, R.Doc.70 at 14–16 (discussing *Doe v. City of Simi Valley*, 2012 WL 12507598 (C.D. Cal. Oct. 29, 2012); *McClendon v. Long*, 22 F.4th 1330 (11th Cir. 2022)). At the end of its analysis under step two, the court held that the sign-posting requirement compels speech and thus is always unconstitutional. App.2233–34, R.Doc.70 at 15–16. But again, the court never addressed whether the signage requirement is sometimes justified due to the varying needs of different jurisdictions and the acute danger posed by

many sex offenders. App.2233–38, R.Doc.70 at 15–20. The court also ignored the uncontroverted evidence that the State presented at trial—continuing its incorrect believe that "[m]any times," "no evidence . . . is necessary" for a plaintiff to succeed on "a facial challenge to a Statute." Tr. at 130:15–16.

To summarize, this Court should reverse and vacate the district court's injunction because Sanderson failed to provide any evidence in support of his facial challenge. Even worse, the district court disregarded Appellants' evidence about the varying "activities" and "actors" regulated by § 589.426.1(3). *NetChoice*, 603 U.S. at 724. Nor did the court consider whether sign-posting requirement's "unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 724. This alone requires reversal and vacatur of the district court's injunction, just like the Supreme Court did last year in *NetChoice*. *Id.* at 726.

B. The signage requirement does not trigger heightened scrutiny because it is incidental to a regulation of conduct and merely requires a truthful, non-ideological message.

Missouri's sign-posting requirement also survives a facial challenge for two independent reasons: (1) it is incidental to the regulation of conduct, and (2) if it compels anything, it compels only a truthful, non-

ideological message. When alleged "compelled speech" is "incidental to [a law's] regulation of conduct," *FAIR*, 547 U.S. at 62, or involves truthful, non-ideological content, *Sindel*, 53 F.3d at 878, the compelled speech does not trigger heightened scrutiny. Here, Sanderson does not challenge the requirements that registered sex offenders "[a]void all Halloween-related contact with children," "[r]emain inside" their residence on Halloween, and "[l]eave all outside residential lighting off during the evening hours." Mo. Rev. Stat. § 589.426.1(1), (2), and (4). The no-candy sign requirement is simply incidental to these conduct-based regulations because it provides truthful, non-ideological information about conduct that is required.

1. Regulation of speech incidental to conduct is ubiquitous and ubiquitously permitted. Illegal drug deals often involve speech that "a government may regulate or ban entirely." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 496 (1982). Tort laws impose a duty to warn. Pharmaceutical laws require mandatory warning labels on medicine bottles. Laws mandate informed consent before medical procedures. Mandatory "Exit" signs above doorways implicate speech. Even registration as a sex offender implicates speech because an

offender must provide their name, address, and employment, among other information. *See* 34 U.S.C. § 20914.

But while all these regulations might be said to involve "speech," courts have repeatedly rejected any argument that these kinds of regulations trigger heightened scrutiny. That is because none of these regulations compel or prohibit value-laden speech; rather, they concern factual disclosures, warnings, and speech incident to conduct. Compelled factual disclosures that are incident to a regulation of conduct are permissible. Heightened scrutiny applies "only in the context of governmental compulsion to disseminate a particular political or ideological message." *Sindel*, 53 F.3d at 878. Similarly, "the First Amendment does not prevent restrictions directed at . . . conduct from imposing incidental burdens on speech." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011). "That is why a ban on race-based hiring may require employers to remove 'White Applicants Only' signs, why 'an ordinance against outdoor fires' might forbid 'burning a flag,' and why antitrust laws can prohibit 'agreements in restraint of trade.'" *Id.* (citations omitted).

The distinction between value-laden speech and speech incident to conduct has been applied in many circumstances. In *FAIR*, for example, the Supreme Court rejected a First Amendment challenge to the Solomon Amendment, which requires federally funded universities to give military recruiters access to campus equal to access provided to other recruiters. 10 U.S.C. § 983. Several law schools argued that the Solomon Amendment "forced" them "to disseminate or accommodate a military recruiter's message." 547 U.S. at 53. The Supreme Court rejected the challenge, explaining that "the Solomon Amendment regulates conduct, not speech." *Id.* at 60. The Court acknowledged that the Amendment also required some schools to "send e-mails and post notices on behalf of the military" recruiters, and it agreed that these "compelled statements" implicated the First Amendment. *Id.* at 61–62. But the Court dismissed concerns because "[t]he compelled speech to which the law schools point[ed] [wa]s plainly incidental to the Solomon Amendment's regulation of conduct." *Id.* at 62. The Court also reaffirmed decades of precedent, explaining that "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." *Id.* (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)).

Two-and-a-half years ago, this Court applied *FAIR* to affirm that the government may require speech incident to a regulation of conduct. *See Arkansas Times*, 37 F.4th at 1394 (en banc). This Court upheld an Arkansas law requiring public contracts to include a certification that the contractor would not "boycott" Israel during its contract with a public entity. *Id.* at 1390, 1394. Among other things, the plaintiff argued that Arkansas's law "unconstitutionally compel[led] speech" by requiring a written certification from public contractors. *Id.* at 1394. This Court rejected the plaintiffs' challenge 9-1. *Id.* Even the lone dissenter dissented on grounds other than the Court's conclusion about compelled speech. *Id.* at 1398 n.7 (Kelly, J., dissenting).

This Court reasoned that "[t]he 'speech' aspect [of the law]—signing the certification—is incidental to the regulation of conduct." *Id.* at 1394 (majority op.). The certification merely targeted "the noncommunicative aspect of the contractors' conduct—unexpressive commercial choices." *Id.* The Court also emphasized "[w]e are not aware of any cases where a court has held that a certification requirement concerning unprotected,

nondiscriminatory conduct is unconstitutionally compelled speech. A factual disclosure of this kind, aimed at verifying compliance with unexpressive conduct-based regulations, is not the kind of compelled speech prohibited by the First Amendment." *Id.*

Finally, in *United States v. Arnold*, 740 F.3d 1032 (5th Cir. 2014), the Fifth Circuit rejected a First Amendment challenge to the registration requirement of the Sex Offender Registration and Notification Act ("SORNA"), 34 U.S.C. § 16913. There, a sex offender argued that the registration requirement unconstitutionally compelled speech. *Arnold*, 740 F.3d at 1032–33. The court noted that the offender had "not identified any decisions striking a registration requirement as being compelled speech in violation of the First Amendment." *Id.* at 1034. Then, relying on this Court's holding in *Sindel*, the Fifth Circuit compared the registration requirement to the lawful "compelled disclosure of information on an IRS form," which was at issue in *Sindel*. *Id.* at 1034–35. The Fifth Circuit agreed with this Court that "[t]here is no right to refrain from speaking when 'essential operations of government require it for the preservation of an orderly society—as in

the case of compulsion to give evidence in court.'" *Id.* at 1035 (quoting *Sindel*, 53 F.3d at 878).

The Fifth Circuit also carefully noted that the sex offender "ha[d] not urged that SORNA either requires him (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.* Instead, "Congress enacted SORNA as a means to protect the public from sex offenders by providing a uniform mechanism to identify those convicted of certain crimes." *Id.* The Fifth Circuit concluded that "[t]he logic of *Sindel* extends to the present case: When the government, to protect the public, requires sex offenders to register their residence, it conducts an 'essential operation[ ] of [the] government,' just as it does when it requires individuals to disclose information for tax collection." *Id.* (quoting *Sindel*, 53 F.3d at 878).

FAIR, *Arkansas Times*, and *Arnold* are simply three examples in a line of many cases holding that value-laden speech is different from factual speech incidental to conduct.[3] Indeed, as then-Judge Alito wrote

[3] *See, e.g.*, *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 884 (1992) (denying a First Amendment challenge to a law requiring

for the Third Circuit, "a supervisor's statement 'sleep with me or you're fired' may be proscribed not on the ground of any expressive idea that the statement communicates, but rather because it facilitates the threat of discriminatory conduct." *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 208 (3d Cir. 2001) (Alito, J.). And "[d]espite the purely verbal quality of such a threat, it surely is no more 'speech' for First Amendment purposes than the robber's demand 'your money or your life.'" *Id.*

2. This line of cases makes clear that there is nothing constitutionally problematic about the Halloween sign requirement. That regulation is purely incidental to conduct: Missouri law prohibits sex offenders from having any "Halloween-related contact with children." § 589.426.1(1). But Halloween itself creates an implied invitation for children to ring the doorbells of strangers, and undisputed evidence at trial showed that many children ring doorbells even if the porch light is

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physicians to provide informed consent before an abortion), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 389 (1992) ("[W]ords can in some circumstances violate laws directed not against speech but against conduct (a law against treason, for example, is violated by telling the enemy the Nation's defense secrets) . . ."); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617–18 (1969) (holding that an employer's "threat of retaliation based on misrepresentation and coercion" was "without the protection of the First Amendment").

turned off. Tr. at 140:11–15, 207:8–208:8. So just as the way to comply with a law prohibiting employment discrimination is to *take down* the "White's only" sign, *Sorrell*, 564 U.S. at 567, the way to comply with a law prohibiting Halloween-related contact with children is to *put up* a "no candy" sign.

Nothing about that speech is ideological. Sanderson does not challenge the validity of the statute prohibiting him from distributing candy, so a sign stating "No candy or treats at this residence" simply displays a true statement. As the sign indicates, the owner of the residence will not be distributing candy. The no-candy sign "is simply not the same as forcing a student to pledge allegiance, or forcing a Jehovah's Witness to display the motto 'Live Free or Die,' and it trivializes the freedom protected in *Barnette* and *Wooley* to suggest that it is." *FAIR*, 547 U.S. at 62.

3. The history and tradition of the First Amendment reinforces this conclusion. Courts have long imposed affirmative duties to warn in circumstances involving potential dangers. For example, in *Fogerty v. Pratt*, 9 F. Cas. 332, 333 (D. Pa. 1809), a group of sailors negligently transferred a stone ballast from their ship to a nearby scow, pursuing the

matter so carelessly that they sank the scow. In finding the sailors liable, the court held that "[i]f the second mate or any of the crew had deemed . . . this mode of lading the ballast uncommon, or dangerous, it was their duty to have represented the matter to the mate." *Id.*

Likewise, in *Carleton v. Franconia Iron & Steel Co.*, 99 Mass. 216, 219 (1868), the Supreme Judicial Court of Massachusetts affirmed a tort award in light of a dangerous condition, explaining that it was "immaterial . . . whether the danger had been created or increased by the excavation made by the defendants, or had always existed, if they, knowing of its existence, neglected to remove it *or to warn* those transacting business with them against it." *Id.* at 219 (emphasis added).

The U.S. Supreme Court has also recognized a duty to warn in cases involving attractive nuisances. *United Zinc & Chem. Co. v. Britt*, 258 U.S. 268, 275 (1922). And Missouri courts have long followed the attractive nuisance rule. *Hull v. Gillioz*, 130 S.W.2d 623, 627 (Mo. Div. 1 1939).

This latter line of cases is especially compelling because the implicit promise of candy on Halloween is an attractive condition. Yet, as Appellants showed at trial, the homes of registered sex offenders are a

potentially dangerous location for children. Even the district court acknowledged that a compelling interest supports the sign-posting requirement. App.2235, R.Doc.70 at 17. And as the above cases make clear, there is a long history and tradition of requiring individuals to warn others of inherently dangerous conditions.

4. The district court failed to distinguish any of the above precedents. *See* App.2231–34; R.Doc.70 at 13–16. Instead, it relied primarily on two cases that are not controlling. First, it cited *Doe v. City of Simi Valley*, 2012 WL 12507598 (C.D. Cal. Oct. 29, 2012). There, a district court issued a temporary restraining order against a city ordinance requiring sex offenders to post a "No candy" sign on Halloween. *Id.* at *7–8. The court's order is irrelevant and unpersuasive, however, because the city never argued that the sign was a permissible requirement incident to a regulation of conduct. *Id.* Accordingly, that court failed to even mention any of the many cases holding that compelled factual disclosures incident to a regulation of conduct are permissible under the First Amendment. *Id.*

Second, the district court here cited *McClendon v. Long*, 22 F.4th 1330 (11th Cir. 2022), but *McClendon* is easily distinguishable. In that

case, a Georgia sheriff used Halloween as a publicity stunt. In contrast to Missouri law, sex offenders *are* allowed to participate in Halloween under Georgia law. *McClendon*, 22 F.4th at 1333–34. Yet the sheriff placed large signs in the front yards of sex offenders several days before Halloween stating otherwise. *Id.* The sign said in large letters, "STOP Warning! STOP – NO TRICK-OR-TREAT AT THIS ADDRESS!! A COMMUNITY SAFETY MESSAGE FROM BUTTS COUNTY SHERIFF GARY LONG." *Id.* at 1033. Also, after he placed the warning signs, Sheriff Long posted a message on his official Facebook page explaining that "the signs had only been placed in front of the homes of registered sex offenders." *Id.* at 1034. The Eleventh Circuit held that the signs were compelled speech, which "expressly bore the imprimatur of government, stating that they were 'a community safety message from Butts County Sheriff Gary Long.'" *Id.* at 1036. The Court also held that the sheriff's actions failed strict scrutiny under the First Amendment. *Id.* at 1337–39.

Although *McClendon* involved a Halloween sign, *McClendon* is unlike this case in several respects. Most importantly, *McClendon* did not involve a compelled factual disclosure incident to a regulation of

conduct. The Eleventh Circuit's opinion carefully noted that "Georgia law," unlike Missouri law, "does not forbid registered sex offenders from participating in Halloween." *Id.* at 1334. Thus, the compelled speech in *McClendon* is nothing like § 589.426 or the certification in *Arkansas Times*. It was not even truthful. The *McClendon* sign forced individuals to deliver a statement that expressly conveyed the government's false message. The sign forced sex offenders to communicate a false "message" that literally read, in part, "safety message from Butts County Sheriff Gary Long." *Id.* at 1036. That is nothing like a seven-word, truthful sign that verifies compliance with a regulation of conduct and simply says "No candy or treats at this residence." *See* Mo. Rev. Stat. § 589.426.1(3).

C. In the alternative, the no-candy sign mandate survives any level of scrutiny.

For the reasons stated above, the district court was wrong to apply strict scrutiny to Missouri's law. App.2234–38, R.Doc.70 at 16–20. That test required Appellants to show that § 589.426 "is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Burson v. Freeman*, 504 U.S. 191, 198 (1992) (quotation omitted). Even if this Court believes that strict scrutiny applies (it does not), it should reverse because § 589.426.1(3) satisfies strict scrutiny.

As the district court held, Missouri plainly has a compelling interest undergirding the sign-posting statute. *See* App.2234–35, R.Doc.70 at 16–17. Indeed, "[t]he government has a compelling interest in protecting minor children," *Mitchell v. Dakota Cnty. Soc. Servs.*, 959 F.3d 887, 897 (8th Cir. 2020), and Dr. Simpson testified at trial that Halloween poses a significant opportunity for sexual re-offense or grooming. Tr. at 150:19–153:18. Further, Dr. Simpson testified to the high rates of sexual re-offending, and the district court found that "sex offenders reoffend at a rate of approximately one-third." App. 2224, R.Doc.70 at 6; *see also Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003) ("[T]he victims of sex assault are most often juveniles, and [w]hen 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." (quotation omitted)). Also, as Dr. Simpson testified, there is a serious underreporting of sex crimes against children so the rate of reoffending is likely worse than we realize. Tr. at 158:8–159:13; *see also Belleau v. Wall*, 811 F.3d 929, 935 (7th Cir. 2016) ("A nationwide study based on interviews with children and their caretakers found that 70 percent of child sexual assaults reported in the interviews had not been reported to police."). Accordingly,

Missouri clearly demonstrated its compelling interest at trial, as the district court correctly ruled on this point.

But the district court erred on the narrow tailoring analysis. App. 2235–38, R.Doc.70 at 17–20. A law compelling speech is narrowly tailored when its provisions are designed to serve a compelling governmental interest without unnecessarily interfering with First Amendment freedoms. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000). Still, a court must remain mindful that a challenged law need only "be narrowly tailored, not 'perfectly tailored.'" *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 454 (2015) (quoting *Burson*, 504 U.S. at 209).

The sign-posting requirement is narrowly tailored because it applies on one day a year, applies only to those uniquely disposed to reoffend, and requires only a simple and informative sentence. *See* Mo. Rev. Stat. § 589.426.1. Indeed, the message the statute requires is substantially less informative and revealing than sex-offender registries themselves, *see* 34 U.S.C. §§ 20912, 20913, 20914, 20920, and there is no doubt those are constitutional.

Missouri also requires many sex offenders to avoid locations with children, including schools, daycares, and parks. *See, e.g.*, Mo. Rev. Stat.

§§ 566.147–150, .155. But on Halloween, laws requiring sex offenders to avoid daycares and schools are insufficient to prevent offenders from interacting with kids. That is because a sex offender's doorstep has the potential to become an area frequented by children. On Halloween, children regularly approach an offender's door without knowing of his or her status as a sex offender. To remedy this gap, Missouri law requires offenders to post a sign with a simple, informative phrase: "No candy or treats at this residence." *Id.* § 589.426.1(3). The law's function is narrowly tailored because it serves the interest of separating sex offenders from children using only seven words.

This statutory protection is particularly necessary given the inherent difficulties in identifying which sex offenders will reoffend. As a class, sex offenders reoffend at an extremely high rate: Dr. Simpson testified that "24 to 34 percent" of sex offenders are known to recidivate. Tr. at 186:5–187:4. And that is *not* counting those who reoffend and are not caught. *See id.* at 158:8–159:13. Further, some offenders—such those who abuse substances like Sanderson—pose an even greater risk to society than the average offenders. *Id.* at 165:1–19. Yet Dr. Simpson also testified that current psychological science cannot identify, with

perfect accuracy, whether a specific offender will reoffend. *Id.* at 164:11–168:6. That means that even offenders who are low risk relative to other offenders still pose a threat to children. *Id.* at 185:3–15. Dr. Simpson also testified that it is very difficult to distinguish grooming from innocent behavior. *Id.* at 156:3–19. So for any given sex offender, passing out candy on Halloween could be their means of establishing a grooming relationship. *Id.* at 150:15–56:19. Missouri's Halloween statute is therefore narrowly tailored even though it applies to all sex offenders.

The district court disregarded Appellants' evidence on narrow tailoring. *See* App.2235–38, R.Doc.70 at 18–20. The court claimed that Appellants "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." App.2235, R.Doc.70 at 18. But that statement overlooks much.

First, as noted above, Missouri keeps many sex offenders away from children through mandatory exclusion zones, *see* Mo. Rev. Stat. §§ 566.147–150, .155. And Halloween is the only day of the year when a conveyor belt of children voluntarily approach the homes of sex offenders.

Second, the district court overlooked Dr. Simpson's testimony that the sign-posting requirement is especially necessary to prevent new opportunities for grooming. *Id.* at 154. In his declaration (which was admitted as evidence), Dr. Simpson further explained that it is "likely that [a] predator would use Halloween night to begin building or to further a relationship with the child which would later lead to criminal abuse." App.508, 665 R.Doc.57 at 3. In artificially restricting the re-offense window to a single day, the district court neglected Dr. Simpson's uncontroverted testimony about the opportunities for grooming relationships to begin on Halloween. Tr. at 150:19–153:18.

Third, the district court's analysis ignores that prophylactic laws are perfectly acceptable. Dr. Simpson explained at trial why the Halloween statute prevents offenders from using Halloween to increase the pool of their potential victims. Tr. at 150:19–153:18. That is sufficient. Missouri does not need to first collect decades of statistics about rape on Halloween before it can enact a Halloween statute. There is no requirement that Missouri *wait for more children to become victims* before passing a prophylactic law. "A fundamental principle of legislation is that [a legislature] is under no obligation to wait until the entire harm

occurs but may act to prevent it." *Turner Broad. System, Inc. v. F.C.C.*, 520 U.S. 180, 212 (1997). "[G]overnment need not wait for the flood before building the levee." *Ramirez v. Collier*, 595 U.S. 411, 444 n.2 (2022) (Kavanaugh, J., concurring).

The district court also claimed that "the other restrictions mandated in the Halloween Statute adequately address all of Defendants' interests." App.2236, R.Doc.70 at 18. This claim overlooked the unrebutted testimony of Sergeant Jason Heffernan, Sergeant Penny Cole, and Captain Danielle Heil—who each substantiated the unique and necessary role fulfilled by the sign-posting requirement. Tr. at 109:3–7, 111:7–14, 137:19–140:15, 207:8–208:8.

For one thing, Heffernan and Cole testified that the sign is the only effective means of ensuring that all sex offenders comply with the Halloween statute's other requirements, particularly in jurisdictions with thousands of sex offenders. Tr. at 109:3–7, 111:7–14, 137:19–140:15. Just as the law in *Arkansas Times* was "aimed at verifying compliance with unexpressive conduct-based regulations," *Arkansas Times*, 37 F.4th at 1394, so too Missouri's law creates an easy way to ensure that offenders are in fact complying with all the other restrictions.

For another, the undisputed evidence shows that *without* the sign requirement, children will knock on the doors of sex offenders. Cole and Heil testified that children "will" continue to walk up to a sex offender's door and ring the doorbell, even if a sex offender turns off their lights. Tr. at 137:19–140:15, 207:8–208:8. Cole added that, on Halloween, a house with its "light off means absolutely nothing." *Id.* at 140:11–15. Sanderson offered no evidence contradicting this testimony at trial. Because Halloween creates an implied invitation to approach doorsteps of others, it is necessary for sex offenders to expressly rescind that otherwise-implied invitation with a sign.

The district court also cited the existence of sex offender registries as a reason why the sign-posting statute is unnecessary to protect children. App.2237, R.Doc.70 at 19. But Sanderson never presented evidence suggesting that children and families regularly check sexual offender registries while trick-or-treating. To the contrary, in fact: body camera recordings in the trial record include a father approaching officers with concern about the police presence at Sanderson's home on Halloween night in 2022. App.508, 643 (Ex. Y at 12:55–13:40), R.Doc.57 at 3. The father inquired because he had allowed his daughters to trick-

or-treat at Sanderson's home, and he was shocked to learn that Sanderson was a registered sex offender. *Id.* Routine checks of sex-offender registries may not even be the practice of extremely sophisticated individuals. *See Belleau*, 811 F.3d at 935 (noting that a member of the appellate panel checked the sex-offender registry for the first time after learning of it during proceedings in his court). And Missouri could reasonably conclude that the sign-posting requirement—which places a sign in one's direct line of sight—is the effective means of achieving its interest.

Indeed, as mentioned above, the sex offender registry requires substantially *more* speech and is substantially more intrusive than the no-candy sign requirement. *See* 34 U.S.C. § 20914. If that registry is constitutional (and it is), then so too must be the substantially less intrusive sign requirement.

Finally, the district court faulted the sign-posting requirement for not being *more* intrusive. *See* App.2236, R.Doc.70 at 18. The court reasoned that "a sign stating 'No candy or treats at this residence' does not clarify the danger that the statute serves to mitigate." *Id.* But this analysis flips narrow tailoring on its head. Narrow tailoring requires

Missouri to use the *least* restrictive means for achieving its compelling interest, *Playboy*, 529 U.S. at 813—here, keeping kids away from sex offenders on Halloween. And whether the sign clarifies the danger that the sign serves to mitigate does not change its effect. Missouri's sign-posting requirement effectively protects children from knocking on an offender's door, and it does so by compelling the least possible speech necessary. The sign informs children and their families that a home is not participating in Halloween, thereby nullifying the point of approaching the home. The district court's suggestion that the signs should have required *more* compelled speech demonstrates a fundamental misunderstanding of narrow tailoring.[4]

[4] The district court also claimed that the sign-posting requirement did not achieve the State's compelling interest. App.2236, R.Doc.70 at 18. To support this conclusion, the district court speculated that a sex offender could comply with the sign-posting requirement by placing a sign on the back door, "or even inside the residence," because § 589.426.1(3) does not say where a sign must be posted. As the Attorney General argued at trial, this reading of the statute is wrong and the district court cited no evidence that any sex offender has ever read the sign-posting requirement in this manner. *See* Tr. at 219–20; App.2236, R.Doc.70 at 18. As the Supreme Court has long held, "nothing is better settled than that statutes should be *sensibly* construed, with a view to effectuating the legislative intent." *Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549, 555 (1915) (emphasis added). The district court's unorthodox interpretation would both defeat the purpose of the statute and has, not surprisingly, never been interpreted that way.

Because § 589.426.1(3) satisfies strict scrutiny, this Court should hold that § 589.426.1(3) is constitutional and vacate the district court's statewide injunction.

II. In the alternative, Appellants are entitled to a new trial because the district court erroneously excluded evidence specific to Sanderson as irrelevant.

Even if the district court's understanding of the First Amendment is correct (it was not), this Court should reverse and remand for a new trial. Reversal and remand are necessary because the district court (1) abused its discretion by erroneously excluding significant evidence about Sanderson specifically, and (2) those exclusions prejudiced Appellants' defense at trial. *See Chism*, 638 F.3d at 640.

Abuse of discretion. "A district court abuses its discretion when it makes an error of law." *Geier v. Missouri Ethics Comm'n*, 715 F.3d 674, 678 (8th Cir. 2013). A district court also abuses its discretion when it "erroneously excludes admissible evidence" and "there is no reasonable assurance" that the factfinder "would have reached the same conclusion had the evidence been admitted." *May v. Nationstar Mortg., LLC*, 852 F.3d 806, 819 (8th Cir. 2017). The district court abused its discretion here for both of these reasons.

Throughout trial, the district court repeatedly excluded testimony specific to Sanderson on the ground that it was irrelevant. Tr. at 3:19–6:25, 91, 93–95, 185–86; *see also id.* at 165. Specifically, the district court excluded the testimony of B.C. (the victim) as irrelevant—including her description of Sanderson's grooming process, her testimony about the rape, her testimony about the rape's impact on her life, and her testimony about the need for Sanderson to post a sign and refrain from participating in Halloween. *Id.* at 3:19–6:25, 91, 93–95.

Additionally, when Dr. Simpson testified, he tried to highlight concerns about Sanderson specifically, but the district court excluded that testimony as irrelevant. The following exchange—after several *sua sponte* interventions from the district court—is particularly illuminative:

> A. [DR. SIMPSON] . . . 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 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 . . .

Id. at 185:21–186:6. Dr. Simpson also tried to testify that some offenders—such as offenders who abuse substances like Sanderson—pose a greater risk to society. *Id.* at 165:1–19. The district court also cut this testimony short when it erroneously sustained a relevance objection from Sanderson's counsel. *Id.*

Even though Sanderson advanced only a facial challenge, the district court still needed concrete evidence find in Sanderson's favor. *Washington State Grange*, 552 U.S. at 449–50 ("The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined." (quoting *United States v. Raines*, 362 U.S. 17, 22 (1960))). At trial, Sanderson only introduced evidence about his own conviction for violating the Halloween statute. Tr. at 13:22–78:14. Appellants attempted to rebut Sanderson's limited evidence by showing that the Halloween statute lawfully applies to Sanderson himself. Evidence offered in rebuttal of an opponent's case-in-chief is certainly relevant. *See United States v. Zephier*, 989 F.3d 629, 636–37 (8th Cir. 2021) (reversing and remanding for a new trial partly because the district court excluded "relevant *rebuttal* evidence"

(emphasis original)). More broadly, evidence specific to Sanderson goes to the overall issue of whether "a substantial number of [the Halloween statute's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *NetChoice*, 603 U.S. at 723 (citing *Bonta*, 594 U.S. at 615). If the only application of § 589.426 that Sanderson cited was permissible, then Sanderson also failed to make the requisite showing under *NetChoice*. The district court erred in excluding testimony specific to Sanderson.

Prejudice. The district court's exclusions created prejudice because Appellants were denied the opportunity to rebut the only affirmative evidence that Sanderson introduced. To sustain Sanderson's facial challenge, the district court needed to assess whether "a substantial number of [the Halloween statute's] applications are unconstitutional." *NetChoice*, 603 U.S. at 723. B.C.'s and Dr. Simpson's testimony about Sanderson specifically would have shown further why Appellants satisfy strict scrutiny as applied to Sanderson. If Appellants made that showing, Sanderson would have failed to provide even one concrete example of an unconstitutional application of § 589.426. That would have dismantled Sanderson's facial challenge.

III. The district court erred by issuing a statewide injunction.

The district court also erred in issuing a statewide injunction. After years of debate about the propriety of statewide injunctions, *e.g.*, *Rogers v. Bryant*, 942 F.3d 451, 460–68 (8th Cir. 2019) (Stras, J., dissenting in part), five Supreme Court Justices held last year that statewide injunctions are improper. *See Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921 (2024). In *Labrador v. Poe*, the plaintiffs successfully lodged a facial challenge on the merits, but the U.S. Supreme Court still limited the scope of the injunction to the parties in the case. *Compare Poe ex rel. Poe v. Labrador*, 709 F. Supp. 3d 1169 (D. Idaho 2023) (holding that the plaintiffs succeeded in their facial challenge), *with Poe*, 144 S. Ct. 921 (narrowing the scope of the injunction without questioning the merits of the district court's holding). Justice Gorsuch—joined by Justices Thomas and Alito—issued a concurring opinion and said that "[l]ower courts would be wise to take heed." *Poe*, 144 S. Ct. at 928 (Gorsuch, J., concurring).

As Justice Gorsuch explained, statewide injunctions are unmoored from traditional equity. The Supreme 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.'" 144 S. Ct. at 923 (Gorsuch, J., concurring) (quoting *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318 (1999)). "Under those rules, . . . a federal court may not issue an equitable remedy 'more burdensome to the defendant than necessary to [redress]' the plaintiff's injuries." *Id.* at 923 (alteration in original) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Statewide injunctions, like the one in this case, defy that traditional limitation by granting relief to non-plaintiffs who are not before the court. *Id.*[5]

The district court's ruling is also wrong under this Court's precedents for two reasons. First, like *Poe*, this Court's precedents also require an injunction to be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Nebraska*, 52 F.4th at 1048 (quoting *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994)). Here, even if the district court correctly determined that § 589.426.1(3) violated the First Amendment, an injunction specific to

[5] Of course, Congress may authorize federal jurisdiction to grant universal remedies and it has done so in other contexts, such as the Administrative Procedure Act. *See* 5 U.S.C. § 706. Yet, in this case, neither Sanderson nor the district court cited a statute authorizing a statewide injunction.

Sanderson would have remedied Sanderson's alleged injury—the requirement that *he* post a sign on Halloween.

Second, as explained at length above, Sanderson failed to present evidence at trial supporting a facial challenge. And this Court's precedents make a successful facial challenge a prerequisite to a statewide injunction. *Brakevill*, 932 F.3d at 677. Because the district court failed to conduct the requisite facial analysis under *NetChoice*, 603 U.S. at 723–26, this Court should vacate the statewide injunction.

CONCLUSION

For these reasons, this Court should reverse the district court's order and vacate its injunction. In the alternative, the Court should reverse and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limits of Fed. R. App. P. 32(a)(7)(B)(i) in that it contains 12,891 words excluding the parts exempted by Fed. R. App. P. 32(f). I further certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) in that this document has been prepared in a proportionally spaced typeface using Microsoft Word (size 14 Century Schoolbook font).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed by using the CM/ECF system. Counsel for Appellee will receive a copy of the foregoing document through the CM/ECF system on January 21, 2025.

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