No. 25-1634

In the United States Court of Appeals
For the Eighth Circuit

CNS INTERNATIONAL MINISTRIES, INC.,

Plaintiff-Appellant,

v.

JESSICA BAX, in her official capacity as Director of the Missouri Department of Social Services,

Defendant-Appellee.

Appeal from the U.S. District Court for the Eastern District of Missouri
Hannibal (2:21-cv-00065-HEA)

BRIEF OF APPELLEE

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

The Missouri legislature enacted the Residential Care Facility Notification Act (RCFNA), Mo. Rev. Stat. §§ 210.1250 to 210.1286. The RCFNA enables state oversight of license-exempt residential care facilities (LERCFs) to protect the health, safety, and well-being of children in those facilities. Those children are especially vulnerable because they reside in a LERCF without a parent or guardian, and depend on the LERCF and its staff for their needs including food, shelter, supervision, "and other care necessary to provide for the physical and mental health of the child." Mo. Rev. Stat. § 210.1256.3. The RCFNA requires a LERCF to submit a notification form to the State that includes contact information for the LERCF. *Id.* § 210.1262. LERCF employees must successfully complete background checks. *See id.* § 210.493. The district court rejected CNS International Ministries, Inc.'s challenges to the RCFNA and implementing regulations, granting Defendant's motion for summary judgment.

Appellee asks this Court to affirm the judgment in its favor. Appellee requests 15 minutes for oral argument.

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STATEMENT OF THE CASE

This case concerns whether Missouri's measures designed to protect children from convicted felons violate liberty interests protected by the First and Fourteenth Amendments to the U.S. Constitution. They do not—the summary-judgment record here does not demonstrate that application of the State's background-check regulations to janitorial or cafeteria staff generate core church-autonomy, expressive-association, or due-process concerns. This Court should therefore affirm.

CNS International Ministries, Inc. (CNSIMI) is a Christian not-for-profit corporation. J.App. 312, 316; R. Doc. 111 at 1, 5. CNSIMI's sprawling Heartland Campus includes land in Shelby County and Knox County, Missouri. J.App. 291; R. Doc. 109 at 6. Among other things, the campus includes the following:

- Heartland Community Church (separately incorporated from CNSIMI), J.App. 291, 313; R. Doc. 109 at 6, R. Doc. 111 at 2;
- A K–12 school called Heartland Christian Academy (HCA), J.App. 291, 313, 428; R. Doc. 109 at 6, R. Doc. 111 at 2, R. Doc. 119 at 4;
- Heartland Christian College (a separately incorporated two-year college), J.App. 291, 313; R. Doc. 109 at 6, R. Doc. 111 at 2; and

- Separate residential recovery programs for men, women, and children (boys and girls), J.App. 291, 312-14; R. Doc. 109 at 6, R. Doc. 111 at 1-3.

"[C]hildren of staff and from the community at large" attend Heartland Community Church. J.App. 313; R. Doc 111 at 2. So do the seven children (J.App. 314; R. Doc. 111 at 3) in Heartland Children and Youth Home (HYCH), *see* J.App. 428-29; R. Doc. 119 at 3-4. HYCH consists of a girls' recovery program and a boys' recovery program. J.App. 312-13; R. Doc. 111 at 1-2. The children are residents of HYCH. J.App. 407; R. Doc. 111-7 at 4. HYCH residents "are placed into two homes, divided by gender. Boys live in the Christian House and girls live in the Adams House." *Id.* Each house includes "house parents that disciple, correct, teach, and care for them." *Id.* HYCH's house parents have not violated the background check regulations. *See* J.App. 446-47; R. Doc. 133 at 9-10 (explaining that a janitor and cafeteria worker are at issue).

HCYH has a separate address from the school that CNSIMI operates and the church—it serves as a separate ministry according to the HCYH 2021 Manual of Resident Standards, *see* J.App. 257-58; R. Doc. 101-4 at 6-7; J.App. 256-59, 312-13; R. Doc. 101-4 at 5-8; R. Doc. 111 at

1, 2. The Missouri Department of Social Services (DSS) has no information indicating that the children in HYCH receive any services at the facilities for the men's or women's recovery programs. J.App. 427; R. Doc. 119 at 2. The women's recovery program residents, children's recovery program residents, and the college students live in Shelby County; the Heartland Men's Recovery Program participants reside in Knox County—on a portion of the Heartland Campus that is "separated by a lake from the remainder of the residents." J.App. 314; R. Doc. 111 at 3.

On October 12, 2021, CNSIMI attempted to file its license-exempt residential care facility (LERCF) notification for HYCH through an online portal, J.App. 199; R. Doc. 101-1 at 2. CNSIMI successfully submitted the form through the portal two days later. J.App. 286; R. Doc. 109 at 1. As part of its LERCF notification, CNSIMI submitted a table listing with "Job Title Description" those who would complete background checks. J.App. 206, 208-09, 287; R. Doc. 101-1 at 9, 11-12; R. Doc. 109 at 2. The list included not just HYCH employees, but also the HCA Head of School, teachers and substitutes, and individuals whose

jobs were HCA Kitchen or HCA maintenance staff. J.App. 208-09, 287; R. Doc. 101-1 at 11-12; R. Doc. 109 at 2.

CNSIMI's LERCF notification form did not contain all information required by governing regulations. J.App. 200, 291, 293; R. Doc. 101-1 at 3; R. Doc. 109 at 6, 8. For example, the Director of CNSIMI's LERCF did not provide the certification required by Mo. Code Regs. tit. 13, § 35-71.300(5)(D).9. *See* J.App. 200-02, 292-93; R. Doc. 101-1 at 3-5; R. Doc. 109 at 7-8. Instead, he provided a multiple paragraph "Modified Attestation." *See* J.App. 201-02, 207, 292-93; R. Doc. 101-1 at 4-5, 10; R. Doc. 109 at 7-8. The "Modified Attestation" includes the statement: "Individuals who do not have unsupervised access to children will not be asked to complete a background check." *Id.* Two individuals, employed at the school—not the children's home—had felony records. J.App. 447; R. Doc. 133 at 10; J.App. 321-23: R. Doc. 111 at 10-12; *see* App.'s Br. at 53 (emphasizing how both of these employees do not work within the children's homes, but within a separate K–12 school). Edward Sonnier, a school janitor, pleaded guilty to unlawful use of a weapon. *Id.* And Sara Morgan, a school-lunchroom supervisor, pleaded guilty to felony arson. *Id.*

CNSIMI filed this action on October 12, 2021, J.App. 1, 2, the day it attempted to file its LERCF notification, *see* J.App. 199; R. Doc. 101-1 at 2. The original complaint consisted of six counts, and sought declaratory and injunctive relief. *See* Ct. Doc. 1. After an initial round of summary-judgment briefing, *see* J.App. 7-10, the district court observed that an amended version of a statute at issue, Mo. Rev. Stat. § 210.493, had become effective and denied all pending motions as moot. Ct. Doc. 88 at 4; *see* J.App. 11. The court later ordered CNSIMI to file a Second Amended Complaint because the First Amended Complaint "relie[d] heavily upon a now defunct version of . . . § 210.493." Ct. Doc. 90 at 1; *see* J.App. 11. CNSIMI filed its Second Amended Complaint on January 5, 2024. *See* J.App. 11, 17-55; R. Doc. 91 at 1-39. The following March, the parties filed cross-motions for summary judgment on all counts of the Second Amended Complaint. *See* J.App. 12, 109-17, 188-90; R. Doc. 95; R. Doc. 100.[1]

[1] The parties' 2024 summary judgment filings can be found at J.App. 109-437; R. Docs 95, 97, 97-1 through 97-4, 100, 101, 101-1 through 101-4, 108, 108-1, 108-2, 109, 109-1, 111, 111-1 through 111-8, 116, and 119, and Ct. Docs 103, 104, 110, 115, 117, and 118.

The district court denied CNSIMI's motion for summary judgment and largely granted DSS's motion on the merits—concluding that most of CNSIMI's constitutional claims failed. *See* J.App. 438, 458, 472, 489, 491-92; R. Doc. 133 at 1, 21, 35, 52; R. Doc. 134; J.App. 485-86, 488-91; R. Doc. 133 at 48-49, 51-53; R. Doc. 134 at 1. It carefully examined the statutory definition of a LERCF and concluded that the State's regulations applied only to the children's homes—not to CNSIMI's campus *in toto*, including the school where Sonnier and Morgan worked. J.App. 454-55; R. Doc. 17-18. The court likewise emphasized how DSS had "never advocated that an individual's non-compliance with [the] background check requirements would result in his or her exclusion from CNSIMI's ministries and/or the Heartland Campus." J.App. 462; R. Doc. 133 at 25.

The district court also dismissed some of CNSIMI's procedural-due-process claims for lack of standing—finding that CNSIMI had not developed a record showing a threat from the provisions delineating potential processes for enjoining operation of a LERCF and removing children for their protection (Sections 210.1271.1 and 210.143). J.App. 482-83, 485-86; R. Doc. 133 at 45-46, 48-49. And the court independently

concluded that CNSIMI lacked standing to bring procedural-due-process challenges to the process for administrative review and appeal of the background-check determinations for failure to articulate an imminent threat. *See* J.App. 487-88; R. Doc. 133 at 50-51.

SUMMARY OF THE ARGUMENT

The facts of this case and the narrow construction of Missouri's statutes neither demonstrate a burden on core First Amendment or parental rights nor bespeak violations of procedural due process. To begin with, the district court correctly read the plain language of the Residential Care Facility Notification Act's (RCFNA) definition of "residential care facility," Mo. Rev. Stat. § 210.1253(6), and determined that CNSIMI's LERCF does not include all operations or ministries on Heartland's Campus. That dispenses with the mine run of potential First Amendment burdens and shows that CNSIMI can maintain neither facial nor as-applied challenges here.

The facts of this case do not support a ministerial-exception claim. The First Amendment broadly protects the right of religious organizations to choose their leadership and those responsible for imparting the faith without interference from the government. *See Our*

Lady of Guadalupe Sch. v. Morrissey-Berru, 591 U.S. 732, 737 (2020). But no court has suggested that the ministerial exception extends to *every* employee of a religious entity. The facts ultimately doom the ministerial-exception claim here.

For similar reasons, CNSIMI's parental-rights claims meet the same fate. While parents unquestionably have the right to see their children educated according to a specific religious tradition, parents have no license to leave their children in the care of adults that the State has deemed dangerous. The fact that the individuals here play no apparent educational or faith-imparting role makes affirmance of summary judgment on the parental-rights claim an easy call.

So too does the free-association claim fail. Importantly, the State is *not* prohibiting anyone from remaining members of CNSIMI's broader religious mission and community. CNSIMI can welcome even those unable to work in the LERCF as part its faith-based community and employ them in other roles. Hence, there is no significant burden on expressive association.

CNSIMI also failed to establish standing to bring procedural-due-process challenges to the statute's enforcement provisions. The district

court correctly concluded that CNSIMI had not articulated an imminent enforcement threat. Even if this Court concludes that CNSIMI has standing to bring those challenges, it should affirm on the merits because the statute plainly provides notice and meaningful opportunities to be heard.

This Court should also reject CNSIMI's procedural-due-process challenges to the process for administrative review and appeal, with subsequent *de novo* judicial review, of background-check ineligibility findings. That process, set forth in Mo. Code Regs. tit. 13, § 35-71.015(12); *see also* Mo. Rev. Stat. § 210.493.13, .15, provides opportunity for review and thus satisfies the requirements of procedural due process.

STANDARD OF REVIEW

This Court reviews the grant of summary judgment *de novo*, "viewing the evidence in the light most favorable to the non-moving party." *Viewpoint Neutrality Now! v. Bd. of Regents of Univ. of Minn.*, 109 F.4th 1033, 1038 (8th Cir. 2024) (citation omitted). "Summary judgment is appropriate unless the nonmoving party comes forward with specific facts showing that there is a genuine issue for trial." *Id.* (cleaned

up). "The existence of standing is a legal issue that" this Court reviews "*de novo*." *Arc of Iowa v. Reynolds*, 94 F.4th 707, 710 (8th Cir. 2024).

ARGUMENT

The construction and application of Mo. Rev. Stat. § 210.1253(6), which defines "residential care facility" for the purposes of the RCFNA, eviscerates CNSIMI's First Amendment and parental-rights claims. The statute's reporting requirements apply to the children's residences, not CNSIMI as a whole. Hence, the State is not forcing CNSIMI to exclude anyone from its faith community. Nor has CNSIMI developed a record demonstrating that the law threatens anyone playing any faith-imparting or teaching role—foreclosing CNSIMI's remaining substantive claims. And because the RCFNA provides notice and opportunity to be heard, the procedural-due-process claims fail.

I. The plain language of the RCFNA's definition of "residential care facility," Mo. Rev. Stat. § 210.1253(6), is constitutionally valid and does not encompass CNSIMI ministries such as its adult-recovery programs.

The district court correctly understood the definition of LERCF, *see* Mo. Rev. Stat. § 210.1253(6), based on the plain language of the statute. It concluded that the LERCF included only the children's homes. J.App. 455; R. Doc. 133 at 18. This Court applies Missouri's rules of statutory construction. *Behlmann v. Century Sur. Co.*, 794 F.3d 960, 963 (8th Cir.

2015). "Any time a court is called upon to apply a statute, the primary obligation is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning." *State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 604-05 (Mo. 2019) (citation omitted). The statutory definition of a word "must be employed in determining the statute's meaning." *Lisle v. Meyer Elec. Co., Inc.*, 667 S.W.3d 100, 104 (Mo. 2023). Other words in a statute "are given their plain and ordinary meaning with help, as needed, from the dictionary." *Balloons over the Rainbow v. Dir. of Revenue*, 427 S.W.3d 815, 825 (Mo. 2014) (citation omitted).

"If the language of a statute is plain and unambiguous, this Court is bound to apply that language as written and may not resort to canons of construction to arrive at a different result." *Hillman*, 566 S.W.3d at 605. "A statute is unambiguous if its plain language answers the current dispute as to its meaning." *State ex rel. Bailey v. Fulton*, 659 S.W.3d 909, 913 (Mo. 2023) (citation omitted). The dispute at the core of CNSIMI's argument is:

1. Whether a LERCF as defined in Section 210.1253(6) means the operator of the "place, facility, or home," and therefore encompasses all CNSIMI ministries and operations—as CNSIMI asserts, or

2. Whether a LERCF is a "place, facility or home" where "children who are not related to the operator and whose parent or guardian is not a resident of the same facility" are provided "with supervision, care, lodging, and maintenance for twenty-four hours a day," Mo. Rev. Stat. § 210.1253(6), so that HYCH is a LERCF—but ministries or operations of CNSIMI such as the men's and women's recovery programs are not.

The RCFNA defines "residential care facility" to mean:

> **any place, facility, or home** operated by any person who receives children who are not related to the operator and whose parent or guardian is not a resident of the same facility and **that provides such children with** supervision, care, lodging, and maintenance for twenty-four hours a day, with or without transfer of custody.

Mo. Rev. Stat. § 210.1253(6) (emphasis added). "The context in which a word is used determines which of the word's ordinary meanings the legislature intended." *Gross v. Parson*, 624 S.W.3d 877, 885 (Mo. 2021). "Maintenance" means "the provisions, supplies, or funds needed to live

on: means of sustenance." *Maintenance*, Webster's Third New Int'l Dictionary 1362 (1993).

The RCFNA distinguishes the operator of a facility from the LERCF itself. *See* Mo. Rev. Stat. § 210.1262, .1262(1)-(3) (LERCF notification requirements); *id.* § 210.1253(6); *see also id.* § 210.1253(5). For purposes of the RCFNA, Section 210.1253(6) defines residential facility. It focuses on the "place, facility, or home . . . that provides" to children not living with their parents' "supervision, care, lodging, and maintenance for twenty-four hours a day." *See id.* § 210.1253(6).

Section 210.1253 also defines "person" as "an individual, partnership, organization, association, or corporation." *Id.* § 210.1253(5). It in turn says that the facility is "operated by any person who receives children who are not related to the operator." *Id.* § 210.1253(6). All told, what "place, facility, or home," constitutes a LERCF—including CNSIMI's LERCF—is determined by whether the facility "provides" "children who are not related to the operator and whose parent or guardian is not a resident of the same facility" "with supervision, care, lodging, and maintenance for twenty-four hours a day." *Id.* There is no evidence that a natural or legal parent, or legal guardian, of any child

residing at HYCH resides or resided at HYCH with his or her child. And nothing suggests that children "lodge" at the school.

The narrow construction of a LERCF being the children's homes comports with ordinary meaning. A "place" is "a building or locality used for a special purpose < ~ of amusement> < ~ of worship>." *Place*, Webster's Third New Int'l Dictionary 1727 (1993); *see, e.g.*, *Moon Shadow, Inc. v. Dir. of Revenue*, 945 S.W.2d 436, 437 (Mo. 1997) (holding that a building was not a place of amusement because the activities at issue did not occur there). The evidence in the record showed that the entire Heartland Campus was not used for the special purpose of operating HYCH or operating a boarding school.

The campus serves varying functions for different groups of people. In addition to HYCH, there is the K–12 school, the separate men's and women's recovery programs, and the two-year college. The record even shows that these ministries have separate addresses and facilities, with some being distinct legal entities (e.g., the college and the church). *See* J.App. 256-59; R. Doc. 101-4 at 5-8; J.App. 312-13; R. Doc. 111 at 1, 2.

Indeed, the Men's Recovery Program is housed in a different county than HYCH, and is "separated by a lake from the remainder of the

residents" of the sprawling Heartland Campus. J.App. 314; R. Doc. 111 at 3. The Women's Home that houses the Women's Recovery Program is on a different street from HYCH. *See* J.App. 205, 427-28; R. Doc. 101-1 at 8; R. Doc. 119 at 2-3.

The children in the boys' recovery program and the girls' recovery program are residents of HYCH. J.App. 407; R. Doc. 111-7 at 4. "Residents" of HYCH "are placed into two homes, divided by gender. Boys live in the Christian House and girls live in the Adams House." *Id.* The HYCH residents "are placed with house parents that disciple, correct, teach, and care for them." J.App. 407; R. Doc. 111-7 at 4. In other words, house parents provide supervision and care to the children who reside at HYCH and are lodged there. A LERCF "shall provide for adequate food, clothing, shelter, medical, and other care necessary to provide for the physical and mental health of the child." Mo. Rev. Stat. § 210.1256.3.

In short, many textual limitations in Mo. Rev. Stat. § 210.1253(6) qualify what "place, home, or facility" will constitute a LERCF. A LERCF "provides such children"—"children who are not related to the operator and whose parent or guardian is not a resident of the same facility"—

"with supervision, care, lodging, and maintenance." Mo. Rev. Stat. § 210.1253(6). The only CNSIMI facility meeting this definition on this record is HYCH.

This Court should not consider CNSIMI's vagueness arguments, raised for the first time on appeal. CNSIMI—which filed its Second Amended Complaint more than two years after instituting this litigation (*see* J.App. 1-2, 11, 17-55; R. Doc. 91 at 1-39)—waived any vagueness claim by failing to plead it in the district court. *See De Rossitte v. Correct Care Sols., LLC*, 22 F.4th 796, 802 (8th Cir. 2022) (discussing waiver generally); *Mitchell v. Dakota Cnty. Soc. Servs.*, 959 F.3d 887, 900 (8th Cir. 2020) (finding a failure to plead). In addition to failing to plead vagueness, CNSIMI made no vagueness argument in its summary-judgment briefing filed in the spring of 2024 or in the last quarter of 2022.

Even now, CNSIMI has not pointed to any specific words or phrasing of the statutory definition of LERCF that CNSIMI views as vague or unclear. The district court's rejection of CNSIMI's overbroad misreading of Section 210.1253(6) does not create a vagueness issue. Whatever hypothetical situation might be imagined that could present a vagueness question, "because we are condemned to the use of words, we

can never expect mathematical certainty from our language." *Hill v. Colorado*, 530 U.S. 703, 733 (2000) (citation omitted). A void for vagueness challenge will not succeed solely based on ambiguous language in a statute, or where a statute is "open to two constructions." *Mumad v. Garland*, 11 F.4th 834, 838 (8th Cir. 2021). The language of Mo. Rev. Stat. § 210.1253(6) is not ambiguous, nor is it amenable to CNSIMI's construction.

Section 210.1253(6) provides guidance, through explicit standards, to those who apply and potentially enforce the RCFNA, "avoiding possible arbitrary and discriminatory application." *See State v. Young*, 695 S.W.2d 882, 884 (Mo. 1985). The express criteria in the statutory definition of LERCF are sufficient to provide a person with ordinary intelligence seeking to operate a residential care facility for children without a license notice of what the law requires. Hence, Section 210.1253(6) does not authorize or encourage arbitrary or discriminatory enforcement. *See Grayned v. City of Rockford*, 408 U.S. 104, 113 (1972). Enforcing a statutory scheme such as the RCFNA requires the exercise of some degree of judgment, but that degree of judgment is permissible in the statutory context. *See id.* at 114.

The only criminal penalty in the RCFNA is found in Mo. Rev. Stat. § 210.1283. It criminalizes the knowing failure to complete a background check, "as described under sections 210.493 and 210.1263." *Id.* The inclusion of the specific mens rea element—knowing—as well as the cross-reference to Sections 210.493 and 210.1263 provide fair notice of what conduct is prohibited. *See United States v. Tebeau*, 713 F.3d 955, 961 (8th Cir. 2013).

The conclusion that the LERCF includes only the children's homes disposes of the factual predicates for this case. CNSIMI now emphasizes how Sonnier and Morgan are not employed in the children's homes, "but instead work in CNSIMI's K–12 school." App.'s Br. 53. Affirming the district court's construction of what qualifies as a LERCF would mean that the RCFNA's reporting requirements do not even cover Sonnier and Morgan—dispensing with any plausible enforcement harm feared by CNSIMI. Hence, this disposes any as-applied challenges articulated by CNSIMI.

And to the extent CNSIMI maintains facial challenges, it has failed to meet the demanding standard for the reasons explained in the following sections. The fact that the RCFNA can apply here without any

constitutional concern ultimately warrants affirmance. *See United States v. Stephens*, 594 F.3d 1033, 1037 (8th Cir. 2010) ("Facial challenges 'are best when infrequent' and 'are especially to be discouraged' when application of the challenged statute to the case at hand would be constitutional when the facts are eventually developed.").

II. Requiring employees of CNSIMI's LERCF to complete background checks does not violate the principle of church autonomy.

The Constitution boldly instantiates "that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The Religion Clauses of the First Amendment ensure that religious organizations shall have "an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church of N. Am.*, 344 U.S. 94, 116 (1952). The "ministerial exception" proceeds from this recognition, broadly protecting a religious community's ability to select its own faith leadership. *Hosanna-Tabor Evangelical Lutheran*

Church & Sch. v. EEOC, 565 U.S. 171, 188-89 (2012). Importantly, teachers imparting faith to children qualify for the protection. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020).

While the ministerial is indeed capacious, it is not limitless. The exception "does not mean that religious institutions enjoy a general immunity from secular laws." *Id.* at 746. Nor does it grant every employee of a religious entity the status of a protected "minister." Indeed, whether the ministerial exception applies depends on the facts and circumstances of the case. *See id.* at 751 ("In determining whether a particular position falls within the *Hosanna-Tabor* exception, a variety of factors may be important."). And the ministerial exception does not prevent the operation of criminal law. *See Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 982 (7th Cir. 2021) ("[N]o court has held that the ministerial exception protects against criminal or personal tort liability."); *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) (explaining that religious organizations are not "above the law" and that laws not implicating "the church's spiritual functions" apply to them).

Key to the inquiry "is what an employee does." *Our Lady of Guadalupe*, 591 U.S. at 753. The protection includes "a recognition that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." *Id.* at 753-54. Hence, the touchstone for whether an employee qualifies for the ministerial exception's protections will turn on evidence showing the performance of "vital religious duties," such as teaching religion, leading prayer, or counseling students. *Id.* at 756-57.

Despite the fact-specific inquiry central to ministerial-exception claims, CNSIMI appears intent on litigating a facial challenge under the exception. In its operative complaint, CNSIMI charges infirmity with the RCFNA because the statute contains no carveout for ministers and teachers. J.App. 45; R. Doc. 91 at 29. But the RCFNA does not need one. The ministerial exception acts as a constitutional defense against the application of an otherwise valid statute. When the exception applies, the court finds the employee exempt from the statute—it does not strike down the entire statute. *See, e.g.*, *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 942 (7th Cir. 2022).

This is not to suggest that some possible law might impose such a burden on a religious organization's autonomy as to be facially unconstitutional. The Religion Clauses were, in part, meant to protect against the kind of British or colonial laws that sought to regulate disfavored religious groups. *See Our Lady of Guadalupe*, 591 U.S. at 748-49 (discussing this history). CNSIMI (at 49) now tries to latch onto this concern—saying that the RCFNA invades its "sphere of autonomy." But the RCFNA has no such aim or sweep. Criminal-history reporting requirements for employees of a LERCF do not (at least facially) threaten CNSIMI's "independence in matters of faith and doctrine and in closely linked matters of internal government." *Id.* at 747.

Whether and how the ministerial exception or church-autonomy doctrine limit application of the RCFNA must await case-by-case determination. For now, as the actual record of this case plainly demonstrates, it suffices to conclude that at least some of its applications to employees of religious organizations are constitutional. *See Stephens*, 594 F.3d at 1037 ("[A] party mounting a facial challenge 'must establish that no set of circumstances exists under which the Act would be valid.'"). The Court should therefore reject CNSIMI's effort to insulate every

employee of a religious institution from basic public-safety regulations. *See McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 348 (5th Cir. 2020) (explaining that the "First Amendment does not categorically insulate religious relationships from judicial scrutiny, for to do so would necessarily extend constitutional protection to the secular components of these relationships, which would impermissibly place a religious leader in a preferred position in our society" (citation omitted)).

Notably, CNSIMI has previously run into no difficulties with the RCFNA implicating the ministerial exception. It listed all HCA teachers on its October 2021 LERCF notification form and attested that they would complete the background checks required by the RCFNA. J.App. 206-09, 287; R. Doc. 101-1 at 9-12; R. Doc. 109 at 2. None of CNSIMI's teachers failed a RCFNA-required background check.

The LERCF background check requirements also do not affect Heartland Community Church or Heartland's "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe*, 591 U.S. at 747. The State's concerns about the safety and protection of children residing at

LERCFs—who are particularly vulnerable because they do not live with either parent, *see* Mo. Code Regs., tit. 13, §35-71.015(1)(E)—do not involve matters of faith and doctrine. As the Seventh Circuit has explained, "the ministerial exception is not applicable when a claim does not implicate an ecclesiastical matter." *Starkey*, 41 F.4th at 944. Section 210.493's criteria for employment eligibility or presence at a LERCF (not being a sex offender subject to registration requirements, and not having been found guilty of, or pled guilty to, certain crimes, *see* Mo. Rev. Stat. § 210.493.12(3), (5)) do not interfere with Heartland or Heartland Community Church's religious doctrine or leadership.

Ultimately, the only issue CNSIMI has encountered is with janitorial and cafeteria staff. CNSIMI, quite understandably, makes no effort to argue that Sonnier and Morgan held faith-formation roles and that their inability to satisfy a background check to work in a LERCF implicated those roles. With no record demonstrating interference with CNSIMI's religious leadership or mission, the district court's dismissal of this claim must be affirmed.

III. The RCFNA does not prevent any parent from sending a child to HCA or a school run by CNSIMI.

CNSIMI claims that the RCFNA's background-check requirements violate parents' rights to send their children to a private, religious school and direct their children's education. Core to parental rights is "the liberty of parents and guardians to direct the upbringing and education of children." *Pierce v. Soc'y of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534 (1925). But "[t]he 'rights of parenthood' are not 'beyond limitation.'" *Brandt ex rel. Brandt v. Griffin*, 147 F.4th 867, 885 (8th Cir. 2025) (en banc) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)). Axiomatically, parental rights are at their nadir when the child's physical wellbeing is at stake. *See, e.g.*, *Ginsberg v. New York*, 390 U.S. 629, 639-40 (1968) (recognizing states' interest in protecting the general well-being of minors); *Prince*, 321 U.S. at 167 (holding that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare").

For example, a state is not forced to sit idly by and allow parents to forego medically necessary treatments for children. *See Brandt*, 147 F.4th at 886; *see, e.g.*, *Novak v. Cobb Cnty.-Kennestone Hosp. Auth.*, 849 F. Supp. 1559, 1566-67 (N.D. Ga. 1994) (finding no violation for state

intervention over a Jehovah's Witness parent who would not permit a blood transfusion for child). Even with education, while parents have an unquestionable right to send their children to private schools reflecting the parents' values, parents "have no constitutional right to provide their children with private school education unfettered by reasonable government regulation." *Runyon v. McCrary*, 427 U.S. 160, 178 (1976). "Indeed, the Court in *Pierce* expressly acknowledged 'the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils . . . .'" *Id.* at 178-79 (quoting *Pierce*, 268 U.S. at 534).

The RCFNA follows from the State's broader *parens patriae* authority to protect children from actions it deems harmful. *See Schall v. Martin*, 467 U.S. 253, 265 (1984); *Brandt*, 147 F.4th at 885. Holding that parental rights overcomes the bedrock state authority to establish procedures ensuring that children are not subjected to abuse or neglect would necessarily undermine the State's ability to protect children from other potential harms. Namely, if the State cannot implement basic reporting requirements for LERCF employees and maintain procedures for removing children if the State finds cause to believe children face a

real risk of harm, then the State's authority to proscribe children's engaging in parentally approved sexual activity, use of controlled substances, or foregoing necessary medical intervention becomes open to question. *See Ginsberg*, 390 U.S. at 640-41 (recognizing the interest of the state in the safeguarding of children from abuse and from negative influences).

Ultimately, the facts here show how this case does not implicate core parental rights—demonstrating how any challenge, facial or as-applied necessarily fails. *See United States v. Salerno*, 481 U.S. 739, 745 (1987) (requiring a plaintiff bringing a facial challenge to show that every application of the law is unconstitutional). Notwithstanding the fact that Sonnier and Morgan did not work in the LERCF, CNSIMI's fears of adverse action by DSS stem from its failure to abide by its obligations to report whether convicted felons have access through employment to children in the LERCF. And Sonnier and Morgan are not even teachers or house parents—they are janitorial and cafeteria staff. Their employment does not affect the upbringing or installation of values in children. Moreover, CNSIMI submitted a LERCF notification attesting that all teachers at CNSIMI's school would undergo the background

checks required by Mo. Rev. Stat. § 210.493. *See* J.App. 207-09; R. Doc. 101-1 at 10-12. No teacher or house parent has been found ineligible for employment or presence at the LERCF following a background check.

As noted, the children's homes are separate from HCA, the private K–12 school that CNSIMI operates. *See* J.App. 256-59, R. Doc. 101-4 at 5-8; J.App. 312-313; R. Doc. 111 at 1, 2. "[C]hildren of staff and from the community at large" attend the school, not just the seven children residing in the LERCF. J.App. 313-14; R. Doc. 111 at 2, 3.

Even if a court were to order CNSIMI's LERCF to cease operations, CNSIMI could continue to operate a K–12 school and admit any pupil it chose—including any or all children that might hypothetically be removed from CNSIMI's LERCF.

For all these reasons, the RCFNA and its implementing regulations do not violate parents' rights to direct their children's education or send them to a private, religious school. By implementing basic reporting requirements and provisions for removing children from dangerous situations, Missouri has not substantially burdened the rights of parents in the upbringing of their children. CNSIMI's efforts to trivialize and recast the right must therefore fail.

IV. The RCFNA does not violate expressive association.

Because the RCFNA imposes, at most, a minimal burden on CNSIMI's free-association rights, the district court properly granted summary judgment to DSS. To prosecute a free-association claim, a plaintiff must first show that "the burden on [the free-association] right is 'significant.'" *Royer ex rel. Estate of Royer v. City of Oak Grove*, 374 F.3d 685, 687 (8th Cir. 2004) (quoting *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 656 (2000)). "If the burden is found to be a significant burden on associational rights, the court must then consider whether a compelling state interest justifies the governmental practice." *Id.* The State easily meets these requirements.

To begin with, CNSIMI "chose to litigate [this] case[ ] as [a] facial challenge[ ], and that decision comes at a cost." *Moody v. NetChoice*, 603 U.S. 707, 723 (2024). Even in First-Amendment claims, "courts 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 *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)). Facial challenges also "'threaten to short circuit the democratic process' by preventing duly

enacted laws from being implemented in constitutional ways." *Id.* (quoting *Wash. State Grange*, 552 U.S. at 451). Hence, in every case involving a facial challenge, a court must explore the "full range" of a law's "applications." *Id.* at 726. The standard for First Amendment cases 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 *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021)).

"The first step in the proper facial analysis is to assess the state laws' scope. What activities, by what actors, do the laws prohibit or otherwise regulate?" *Id.* at 724. Then, the court must "decide which of the laws' applications violate the First Amendment, and to measure them against the rest." *Id.* at 725. 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.

CNSIMI makes no effort to meet this standard. Rather than engaging with the statute's actual sweep and impact, it instead spends its free-association argument speculating about overly broad applications of the RCFNA. *See* App.'s Br. at 20-21 (theorizing applications and

burdens based on an overbroad reading of the RCFNA); *id.* at 34 (saying that that the RCFNA's background-check requirements ban "individuals from inclusion in CNSIMI"). But as the district court explained, the law's application to the children's homes significantly narrows its impact and, hence, does not prevent CNSIMI from welcoming individuals with felony records into its broader faith community or hiring them to positions outside of LERCFs. *See* J.App. 459-60; R. Doc. 133 at 22-23. This reading leaves CNSIMI only with imagined fears about the law's chilling participation within the community. However, "speculat[ion] about 'hypothetical' or 'imaginary' cases" cannot satisfy the demanding facial standard. *Wash. State Grange*, 552 U.S. at 449-50. The district court therefore properly rejected the free-association claim.

Even if the law applied more broadly, CNSIMI's claim would meet with failure. First, CNSIMI has not shown a "significant" burden on an association right—application of the RCFNA is not preventing CNSIMI from associating with convicted felons. *Royer*, 374 F.3d at 687 (citation omitted). Claims that an employer–employee relationship gives rise to a protected associational relationship are inherently weak. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 620 (1984) ("[T]he Constitution undoubtedly

imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees.").

Moreover, an individual who has been found ineligible for employment or presence at a LERCF under Section 210.493.12 may remain a member of CNSIMI, still reside on the Heartland Campus, and work or volunteer for a ministry or operation of CNSIMI that is not a LERCF. Thus, even broader enforcement of Section 210.493 "would not materially interfere with the ideas that" CNSIMI seeks to express. *Dale*, 530 U.S. at 657.

Second, of course, preventing convicted felons from having access to children's residential facilities falls within a "plainly legitimate sweep." *NetChoice*, 603 U.S. at 723 (citation omitted); *see Royer*, 374 F.3d at 687 (recognizing that even a "significant" burden can still give way to a compelling interest). "[F]ew governmental interests are more compelling than protecting minor children from abuse or deadly harm." *Webb ex rel. K.S. v. Smith*, 936 F.3d 808, 811 (8th Cir. 2019). As the record here demonstrates, the children in CNSIMI's homes come from troubled backgrounds—giving the State good reason for wanting to keep convicted

felons from potentially influencing or endangering these children in spaces where they are most vulnerable. *See, e.g.*, J.App. 312-13; R. Doc. 111 at 1-2; J.App. 438; R. Doc. 133 at 1.

States are free to advance compelling interests "unrelated to the suppression of ideas." *Roberts*, 468 U.S. at 623; *see Royer*, 374 F.3d at 687. And the RCFNA's application is narrowly tailored because it focuses on the employer–employee relationship within the LERCF setting. The State does not otherwise prohibit faith groups from ministering to convicted felons or even keep them from being employed in non-LERCF contexts. As the actual facts (as opposed to CNSIMI's speculation) demonstrate, CNSIMI is free to employ Sonnier and Morgan anywhere else within the community aside from the children's homes. Thus, even granting the assumption that lack of employment in a LERCF qualifies as a significant burden on free-association rights, the State has shown a compelling and tailored interest.

As if conceding the inherent weaknesses of its free-association argument, CNSIMI spends much of its analysis making miscellaneous statutory arguments. These fail to carry the day—and end up exemplifying the Act's limited sweep.

Contrary to CNSIMI's assertion (at 21-23), the amendment to Mo. Rev. Stat. § 210.493 narrowed the categories of persons required to undergo background checks under the RCFNA. In interpreting Missouri statutes, federal courts apply Missouri's rules of statutory construction. *Behlmann*, 794 F.3d at 963. "When two statutes—each plain and unambiguous on their own—conflict with each other, resort to certain canons of construction remains appropriate." *Hillman*, 566 S.W.3d at 605.

In 2023, the Missouri legislature amended Section 210.493 to remove the original language that had required officers, managers, and other support staff of LERCFs to undergo background checks. *Cf.* Mo. Rev. Stat. § 210.493.2 (2022); *id.* § 210.493.3. Section 210.493.2 sets background-check requirements for licensed residential care facilities, which are covered under Mo. Rev. Stat. §§ 210.481 to 210.536 rather than the RCFNA. *See* Mo. Rev. Stat. § 210.493.2.

The bill that amended Section 210.493 did not codify Section 210.1263. *See* Mo. Legis. Serv. S.B. 40, West's No. 22 (2023). "There is an inherent conflict between the two statutes." *see St. Charles County v. Dir. of Revenue*, 961 S.W.2d 44, 47 (Mo. 1998); *see* Mo. Rev.

Stat. §§ 210.493 and 210.1263. If two statutes "are repugnant in any of their provisions, the later act, even without a specific repealing clause, operates to the extent of the repugnancy to repeal the first." *County of Jefferson v. Quiktrip Corp.*, 912 S.W.2d 487, 490 (Mo. 1995). "[T]his is true though the law does not favor repeal by implication." *Colabianchi v. Colabianchi*, 646 S.W.2d 61, 63 (Mo. 1983).

Section 210.1263 ends with the qualification that the categories of persons listed in that statute "shall undergo background checks under section 210.493." Mo. Rev. Stat. § 210.1263. Section 210.493 as amended is chronologically later than Section 210.1263, and qualifies that section so that officers, managers, and "other support staff" of LERCFs are no longer required by the RCFNA to undergo background checks. *See County of Jefferson*, 912 S.W.2d at 490. Not only is this a sensible understanding of the statutory scheme; it also "avoids interpreting a statute in a way 'that would call into question its constitutional validity.'" *State ex rel. Parson v. Walker*, 690 S.W.3d 477, 485 (Mo. 2024).

As for CNSIMI's argument (at 24-25) that the district court incorrectly determined that only LERCF contractors with access to children, rather than all LERCF contractors, need undergo background

checks, neither reading of Section 210.493 results in a violation of CNSIMI's right to expressive association. Contractors or not, nothing prevents the CNSIMI from welcoming the individuals into its broader religious community.

That said, the district court's conclusion that Section 210.493 requires only contractors with access to children, rather than contractors generally, to undergo background checks, *see* J.App. 467; R. Doc. 133 at 30, is the best reading in the context of the statute and the purposes of the RCFNA. CNSIMI focuses on the district court's use of the "series qualifier canon" to say that the district court wrongly interpreted the statute to apply only to contractors with access to children. App.'s Br. at 25. Regardless of how the statute might operate in other contexts, on this record, the only contractors that the statute applies to are contractors at the LERCFs—the children's homes.

Specifically, a background-check applicant is either "eligible or ineligible for employment or presence at the" LERCF. Mo. Rev. Stat. § 210.493.12. Thus, only a contractor who will be present inside the LERCF or on the LERCFs premises will need to undergo a background check. *See* Mo. Rev. Stat. § 210.493.1(3) (defining a contractor as "a

person who contracts to do work for or supply goods to a licensed residential care facility"). As explained, only the children's homes, not the campus generally, are the LERCFs. CNSIMI's fixation on whether the statute captures contractors without access to children is inapposite.

CNSIMI presented no evidence that any employee of its LERCF sought their positions of employment with the LERCF for the purpose of expressing a First Amendment right such as the free exercise of religion or free speech. And employment relationships are remote from the concerns underlying expressive association. *See Roberts*, 468 U.S. at 620. Ultimately, any burden on expressive association from being unable to employ a janitor and a cafeteria worker in a particular place is minimal considering that CNSIMI may still include them within its faith community. This minor burden is outweighed by the State's compelling *parens patriae* interest in protecting children. Holding otherwise would threaten the State's ability to enforce regulations proscribing contact via employment between children and individuals that the State deems dangerous—including sex offenders. For these reasons, this Court should affirm the district court.

V. The administrative review and appeal processes comport with the Due Process Clause.

CNSIMI's procedural-due-process contentions necessarily fail. It is axiomatic that the Fourteenth Amendment's Due Process Clause provides only the basic guarantee of "adequate notice and opportunity to be heard." *In re Veg Liquidation, Inc.*, 931 F.3d 730, 740 (8th Cir. 2019). Here, the State provides ample opportunity for individuals like Sonnier and Morgan to challenge adverse administrative determinations via judicial review.

This Court can affirm this claim on standing grounds. CNSIMI does not have standing to challenge a statutory provision that has not been applied to it in an unconstitutional manner. *See Young Am.'s Found. v. Kahler*, 14 F.4th 879, 888 (8th Cir. 2021); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (explaining how a plaintiff must show a "real or immediate threat" of enforcement). Any concern that a hypothetical background-check applicant might have been placed on the child-abuse and neglect registries (including those of a different state) is speculative and does not present a justiciable controversy here. Such an applicant's remedy would be via an appeal or other proceedings in the other state that failed to provide due process.

Moreover, CNSIMI has not articulated an alleged injury *to itself* from putative reputational injuries from Sonnier and Morgan. CNSIMI has not pleaded associational standing to bring claims on behalf of Sonnier and Morgan and it cannot start now. *See Iowa League of Cities v. EPA*, 711 F.3d 844, 869 (8th Cir. 2013) (explaining how an association "must prove associational standing"). And, to the extent that CNSIMI is trying to articulate a facial due-process challenge, it has not attempted to meet the demanding burden of showing that the review procedures here will *always* provide insufficient notice and opportunity to be heard. *See Salerno*, 481 U.S. at 751 (explaining how a facial procedural-due-process challenge fails if the procedures are adequate for at least some individuals).

In a transparent effort to manufacture standing, CNSIMI complains that a LERCF cannot meaningfully seek review of an ineligibility finding without knowing the reasons behind it.[2] But CNSIMI has not articulated an injury fairly traceable to the State. CNSIMI knows about the felony convictions that render Sonnier and

[2] Mo. Rev. Stat. § 210.493.11 provides in part "[t]he department shall not reveal to the residential care facility any disqualifying offense or other related information regarding the applicant." *Id.*

Morgan ineligible to work at its LERCF. Any LERCF can require its employees and background-check applicants to disclose to the LERCF any basis for ineligibility under Mo. Rev. Stat. § 210.493.12.

As noted by the district court, *see* J.App. 480-81, R. Doc. 133 at 43-44, DSS has not argued that CNSIMI lacked standing to challenge the process for administrative review and appeal, with subsequent *de novo* judicial review, of background check ineligibility findings. DSS and CNSIMI briefed the merits of these procedural-due-process challenges in their cross-motions for summary judgment. If this Court finds that CNSIMI has standing, it is proper for this Court to decide those issues on the merits. *See Disability Support All. v. Heartwood Enter., LLC*, 885 F.3d 543, 547 (8th Cir. 2018).

CNSIMI's Second Amended Complaint (J.App. 17-55; R. Doc. 91) does not mention Sonnier or Morgan, or their (still) pending actions for Section 536.150 review of their background check ineligibility findings, filed in September 2022 (see App.'s Br. at 28, n.9).[3] Both sides were

[3] The docket entries for Cole County Circuit Court cases 22AC-CC05604 and 22AC-CC05831, and various filings, are publically accessible via Case.net. This Court takes judicial notice of such court records. *Levy v. Ohl*, 477 F.3d 988, 991 (8th Cir. 2007).

aware of those pending cases, but did not mention in their summary-judgment filings that Sonnier and Morgan had completed the administrative appeal process or had pending Section 536.150 actions.

A pre-deprivation hearing serves as "an initial check against mistaken decisions[,]" *see Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545 (1985), and need not definitively resolve eligibility or ineligibility for employment to satisfy due process. *See id.* It is undisputed that Sonnier and Morgan were found ineligible solely due to criminal convictions. Procedural due process does not require Missouri to entertain collateral attacks on criminal convictions or guilty pleas. *See Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987).

Nor does due process require DSS to entertain collateral attacks on civil judgments or administrative findings such as child-abuse and neglect review-board determinations as part of any administrative review or appeal of a background-check ineligibility finding. *See Univ. of Tenn. v. Elliott*, 478 U.S. 788, 798-99 (1986); *Deretich v. Off. of Admin. Hearings, State of Minn.*, 798 F.2d 1147, 1153 (8th Cir. 1986). A separate de novo review process is available for anyone found to be a perpetrator of child abuse and neglect under Mo. Rev. Stat. §§ 210.109 to 210.183.

See Mo. Rev. Stat. § 210.152.4, .6; *C.S. v. Mo. Dept. of Soc. Servs*, 491 S.W.3d 636, 647 (Mo. Ct. App. 2016). DSS uses Central Registry findings in accordance with the due process requirements. *See Jamison v. Dep't of Soc. Servs.*, 218 S.W.3d 399 (Mo. 2007); *see also* Mo. Code Regs. tit. 13, § 35-31.100.

CNSIMI's reliance (at 37) upon 28 C.F.R. § 50.12 is misplaced. DSS is not the employer or potential employer of those applying for background checks[4] as required by the RCFNA.

Finally, CNSIMI's complaints about meaningless judicial review are unfounded. An action for judicial review under Mo. Rev. Stat. § 536.150 is an original action in which the plaintiff "tries his or her case to the court." *City of Valley Park v. Armstrong*, 273 S.W.3d 504, 506-07 (Mo. 2009). The court "conducts a *de novo* review in which it hears evidence on the merits" and makes the record. *Id.* at 508. Specifically,

[4] The scope of 34 U.S.C. § 40102 is broader than CNSIMI implies (*see* App.'s Br. at 35). A "covered individual" includes a person who "seeks to have, or may have access to children" (34 U.S.C. § 40104(9)(A)) "who—(i) is employed by, volunteers with, or seeks to be employed by, or volunteer with, a qualified entity[,]" § 40104(9)(B)(i). 34 U.S.C. § 40102(a) enables a state to establish procedures for "qualified entities designated by the state" to obtain national criminal history background checks on covered individuals.

the court "hears evidence, determines facts, and adjudges the validity of the agency decision." *Id.* at 506. Section 536.150 provides several forms of relief, including injunctive relief. *See* Mo. Rev. Stat. § 536.150.1.

Specifically, "Section 536.150 authorizes a *de novo* post-deprivation evidentiary hearing before a Missouri circuit court, which determines the evidence and 'on the facts as found adjudges the validity of the agency decision.'" *Birkenholz v. Sluyter*, 857 F.2d 1214, 1218 (8th Cir. 1988) (*quoting Phipps v. Sch. Dist. of Kansas City*, 645 S.W.2d 91, 95 (Mo. Ct. App. 1982)). Indeed, with respect to questions of law, the statute makes clear that the court will exercise its own independent judgment in deciding whether the agency has issued an "unconstitutional" or "unlawful" decision. Mo. Rev. Stat. § 536.150. CNSIMI points to no authority suggesting that undue deference attaches to any questions of law adjudicated by the relevant agency. *See* App.'s Br. at 41. Section 536.150 review therefore provides a sufficient remedy that comports with basic procedural due process. *See Birkenholz*, 857 F.2d at 1218.

VI. CNSIMI's procedural-due-process challenges to the RCFNA fail.

A. The district court properly found that CNSIMI lacked standing.

Finally, CNSIMI contends that the statutory-notification requirements violate procedural due process. CNSIMI takes particular issue with the DSS's ability to obtain injunctive relief against a LERCF. App.'s Br. at 42. The statutes provide for, *inter alia*, "attempted notice" and potential for "an *ex parte* showing . . . that notice is ill advised." *Id.* As support for its fear of unconstitutional application, CNSIMI points to the removal of 115 students from its facilities nearly two decades ago (but DSS did not have the students removed), a statement from DSS that CNSIMI is in violation of LERCF notification obligations, and CNSIMI's non-inclusion on DSS's "compliance listing." *Id.* at 43-46.

Before reaching the merits of CNSIMI's procedural-due-process challenges, this Court must determine whether CNSIMI had standing to bring them. *See Pratt v. Helms*, 73 F.4th 592, 594 (8th Cir. 2023). "The existence of standing is a legal issue that" this Court reviews "*de novo*." *Arc of Iowa v. Reynolds*, 94 F.4th 707, 710-11 (8th Cir. 2024). "Standing is assessed at the time the action commences." *L.H. v. Indep. Sch. Dist.*,

111 F.4th 886, 892 (8th Cir. 2024). And speculative fears of future enforcement—even when rooted in prior actions—do not generate a justiciable controversy warranting an injunction. *See Lyons*, 461 U.S. at 111 (explaining that a claim remains speculative "where there is no showing of any real or immediate threat that the plaintiff will be wronged again"). Likewise, "[f]or a declaratory judgment to issue, there must be a dispute which calls, not for an advisory opinion on a hypothetical basis, but for an adjudication of present right upon established facts." *Ashcroft v. Mattis*, 431 U.S. 171, 172 (1977) (citation omitted).

CNSIMI did not and cannot meet its burden to establish standing. *See Arc of Iowa*, 94 F.4th at 710. CNSIMI does not and did not face an actual or imminent threat that DSS or anyone else authorized to seek a court order under Sections 210.143 or 210.1271 would do so—let alone on an ex parte basis. *See id.*

True, CNSIMI's LERCF notification was not 100% compliant with every detail of the RCFNA's requirements. But it remains speculative that, more than three years after CNSIMI submitted its LERCF notification, someone with statutory authority would seek an injunction for the LERCF to cease operations due to less-than-total compliance with

the notification requirements. And there is no basis for having a firm belief that a Missouri judge would grant such an injunction under Section 210.1271—let alone on an ex parte basis.

When a risk of injury "is too speculative, Article III standing is lacking." *Arc of Iowa*, 94 F.4th at 711. Fears rooted in past experience do not create "a sufficient likelihood that [the plaintiff] would again be wronged in a similar way." *Lyons*, 461 U.S. at 111. As this Court has held, previous enforcement against a plaintiff cannot solely form the basis for substantial fear of prosecution when the governing law has changed. *See Christian Action League of Minn. v. Freeman*, 31 F.4th 1068, 1074 (8th Cir. 2022).

CNSIMI's own referenced cases demonstrate why it lacks a more-than-speculative fear of harm here. In *Susan B. Anthony List v. Driehaus*, the plaintiff organization did not merely claim that it violated the statute and feared enforcement. 573 U.S. 149, 163 (2014). Rather, the Court emphasized how the organization faced a substantial threat of enforcement because the regulatory body had found probable cause that the organization violated the law. *Id.* at 164-66. CNSIMI's fear that it has not been included on a "compliance listing" comes nowhere close to a

regulatory body laying the groundwork for an enforcement action. App.'s Br. at 45. The Court also detailed how enforcements were "not a rare occurrence." *Susan B. Anthony List*, 573 U.S. at 164. Here, CNSIMI points only to a removal instigated by a juvenile officer more than twenty years ago, when CNSIMI's children's homes were completely exempt from state regulation. App.'s Br. at 44. That mass removal provides nothing more than a speculative basis for fearing how DSS would *currently* react to potential violations.

Recognizing this weakness, CNSIMI turns to cases from other Circuits for the proposition that showing a credible threat is more forgiving for recently enacted statutes. But changes to statutory regimes do not come with get-out-of-standing-free cards. Even granting CNSIMI grounds to be concerned about some enforcement for not completing its reporting obligations, it has not articulated a particular basis for fearing that enforcement will take the form of seeking an injunction against its LERCF with only attempted notice or on an ex parte basis. Hence, the risk that it will be subjected to the particular processes under Sections 210.143 or 210.1271 remain too speculative. *See, e.g.*, *Zanders v. Swanson*, 573 F.3d 591, 593-94 (8th Cir. 2009) (holding that the mere

existence of a law that could be enforced against a plaintiff does not, by itself, grant standing). Because CNSIMI never articulated how it faced an imminent threat from these processes, the district court correctly found that it lacked standing.

B. CNSIMI's claims would fail on the merits.

Even if CNSIMI made a sufficient showing to establish standing, its claim fails on the merits.[5] The Children's Division of DSS is required to "promote the safety of children" statewide, Mo. Rev. Stat. § 210.109.1, "by conducting investigations or family assessments and providing services in response to reports of child abuse and neglect." Mo. Rev. Stat. § 210.109.2. To execute that charge, the Missouri legislature has empowered the Children's Division, as well as "law enforcement" and prosecuting attorneys, to

> … petition the circuit court for an order directing an exempt-from-licensure residential care facility [LERCF], as those terms are defined under section 210.1253, that is the subject of an investigation of child abuse or neglect to present the child at a time and place designated by the court to a children's division worker for an assessment of the child's health, safety, and well-being.

[5] Given that the matter was fully briefed and DSS's entitlement to judgment as a matter of law is clear, this Court should decide the merits of the parties' cross-motions for summary judgment on those claims rather than remand. *Cf. Disability Support Alliance*, 885 F.3d at 547.

Mo. Rev. Stat. § 210.143.1. The court must issue an order under § 210.143 when it "determines that there is reasonable cause to believe that the child has been abused or neglected and the residential care facility does not voluntarily provide access to the child[,]" the order "is in the best interest of the child[,]" and "[t]he assessment is reasonably necessary" to complete the investigation of child abuse or neglect or collect evidence. Mo. Rev. Stat. § 210.143.2.

The pertinent statutory definition of "investigation" means "the collection of physical and verbal evidence to determine if a child has been abused or neglected." Mo. Rev. Stat. § 210.110.

> The investigation shall include but not be limited to the nature, extent, and cause of the abuse or neglect; the identity and age of the person responsible for the abuse or neglect; the names and conditions of other children in the home, if any; the home environment and the relationship of the subject child to the parents or other persons responsible for the child's care; any indication of incidents of physical violence against any other household or family member; and other pertinent data.

Id. § 210.145.10. An investigation of child abuse under chapter 210 of Missouri's statutes "would reasonably include an interview of the child" that is "the subject" of the suspected abuse or neglect, *see Hawley v. Nelson*, 968 F. Supp. 1372, 1386 (E.D. Mo. 1997), as well as an

assessment of the child's health, safety, and well-being, *see* Mo. Rev. Stat. § 210.143.1.

In addition to the procedural due process available to a LERCF and other parties under Missouri law after a Section 210.143 petition is filed, the next question is whether and to what extent CNSIMI has a liberty or property interest in the continuous presence of a child residing at its LERCF. But CNSIMI does not have a constitutionally protected property interest in operating a LERCF on its Heartland Campus. Because CNSIMI has not filed a notification containing all information required by Mo. Rev. Stat. § 210.1262 and Mo. Code Regs tit. 13, §35-71.300(5), *see* J.App. 200, 291-93; R. Doc. 101-1 at 3; R. Doc. 109 at 6, 8, CNSIMI has no "legitimate claim of entitlement to" continuing to operate its LERCF. *See Austell v. Sprenger*, 690 F.3d 929, 935 (8th Cir. 2012) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

Even if CNSIMI had a cognizable interest, due process would not mandate actual notice. *See Jones v. Flowers*, 547 U.S. 220, 226 (2006) ("Due process does not require that a property owner receive actual notice before the government may take his property."); *Crum v. Vincent*, 493 F.3d 988, 993 (8th Cir. 2007) (explaining that the State is not required to

show "that an interested party received actual notice"). Due process "requires notice that is 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Crum*, 493 F.3d at 993 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). Notice by mail, *see Crum*, 493 F.3d at 993, or even e-mail, *see Missouri ex rel. Schmitt v. China*, 2021 WL 1889857, at *2 (E.D. Mo. May 11, 2021) (citing *Mullane*, 339 U.S. at 314), would satisfy due process.

Contrary to CNSIMI's suggestion (at 42), Section 210.143 does not contemplate that an assessment or interview of "the child" who may be a victim of abuse or neglect will last seventy-two hours. Rather,

> [t]he assessment shall be completed and the child shall be returned to the residential care facility or to the child's parents or guardian within seventy-two hours, unless the court, after a hearing with attempted notice to the facility and to the parents or guardian and with due process for all parties, enters further orders to the contrary.

Mo. Rev. Stat. § 210.143.3. Indeed, the process under Section 210.143.3 reflects Missouri's statutes and rules applicable to protective custody proceedings in juvenile court for children who are neglected or lack proper care, custody, or support. *See* Mo. Rev. Stat. §§ 211.031.1,

211.032; Mo. S. Ct. Rules 110.01, 110.04(a)(20) (defining "party" to include the child subject of the proceeding, and the juvenile's parents, guardian, and custodian); Mo. S. Ct. Rule 114.01 (requiring personal service, unless it cannot be effected, in which case, service "may be made by registered or certified mail to the party's last known address"). All of this comports with the rule that "[a] party 'need not receive actual notice, but only notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.'" *Slaven v. Engstrom*, 710 F.3d 772, 779 (8th Cir. 2013) (citation omitted).

Regarding any liberty interest, "the right to family integrity does not include a constitutional right to be free from child abuse investigations." *Mitchell*, 959 F.3d at 897. "The government has a compelling interest in protecting minor children, especially when it is necessary to protect them from their parents." *Id.* The government also has a compelling interest in protecting children residing at a LERCF. Any liberty interest of a child residing at CNSIMI's LERCF (that would hypothetically be the subject of an investigation of child abuse or neglect at some future time) would be "limited by the compelling government

interest in protection of minor children." *Stanley v. Hutchinson*, 12 F.4th 834, 841 (8th Cir. 2021).

The ex parte provision of the statute reflects this interest:

> The petition and order may be made on an ex parte basis if it is reasonable to believe that providing notice may place the child at risk for further abuse or neglect, if it is reasonable to believe that providing notice may cause the child to be removed from the state of Missouri or the jurisdiction of the court, or if it is reasonable to believe that evidence relevant to the investigation will be unavailable if the ex parte order is not entered.

Mo. Rev. Stat. § 210.143.5. In those circumstances, an ex parte petition and order protect "the state's very strong interests in protecting the child and learning in timely fashion what the child had to relate about the matter, without being possibly limited by the presence of" LERCF staff or officers, who may be perpetrators. *See Hawley*, 968 F. Supp. at 1386, *aff'd*, 141 F.3d 1168 (8th Cir. 1998).

CNSIMI contends that its LERCF, or another LERCF, would not clearly be served with a Section 210.143 order or subpoena. App.'s Br. at 43. That ignores the plain language of Section 210.143, specifying that the order will direct the LERCF "to present the child at a time and place designated by the court to a children's division worker for an

assessment." Mo. Rev. Stat. § 210.143.1; *see id.* § 210.143.4 ("If the court enters an order to produce the child under this section . . . .").

A hypothetical future ex parte court order under Section 210.143 could allow CNSIMI's LERCF sufficient time to seek a protective order, stay, or temporary restraining order, and obtain an expedited hearing before the LERCF would be required to produce the child, or before the court-ordered assessment would occur. A court may stay implementation of its order to produce a child for up to three days. Mo. Rev. Stat. § 210.143.6. "Any person served with a subpoena, petition, or order under this section . . . may file a motion for protective order or other appropriate relief . . . at or before the time for production" of the child in the court's order. *Id.* "The court shall expedite a hearing on the motion and shall issue its decision no later than one business day after the date the motion is filed." Mo. Rev. Stat. § 210.143.6.

A Section 210.143 order is not an infringement upon a liberty interest similar to the outright removal of a child from its parents' custody. Even if this Court views Section 210.143 through the lens of child removal, notice is not constitutionally required prior to a temporary (up to seventy-two hours) removal of a child for an assessment of the

child's health, safety, and well-being. *See Mitchell*, 959 F.3d at 897 (explaining the due-process flexibility states have in investigating child abuse). Such removals occur after a court has found: reasonable cause of abuse or neglect (Mo. Rev. Stat. § 210.143.2(1)); the assessment is reasonably necessary as part of a child abuse investigation (§ 210.143.2(2)); and the order is in the child's best interests (§ 210.143.2(3)). A "reasonable suspicion" of child abuse is sufficient to remove a child in the context of a child abuse investigation. *Stanley v. Finnegan*, 899 F.3d 623, 627 (8th Cir. 2018).

Alternatively, a hearing after the child was transported and assessed would satisfy due process. *See Mitchell*, 959 F.3d at 897. CNSIMI—like a parent—is "not entitled to participate in child abuse investigations with the authorities." *See Hawley*, 968 F. Supp. at 1386 (citing *Manzano v. S. Dak. Dep't of Soc. Serv.*, 60 F.3d 505, 510 (8th Cir. 1998)). "Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect" may seek administrative review with subsequent de novo judicial review. Mo. Rev. Stat. § 210.152.4, .6. A post-child-assessment judicial proceeding and

remedy under Mo. Rev. Stat § 210.152 provides meaningful notice and opportunity to be heard. *See Mitchell*, 959 F.3d at 897.

CNSIMI contends (at 43) that a permanent injunction entered against one juvenile officer (and his successors) more than twenty years ago establishes the standard for due process surrounding any removal of a child from anywhere on its Heartland Campus. *See Heartland Academy Community Church v. Waddle*, 317 F. Supp. 2d 984, 1110 (E.D. Mo. 2004), *aff'd*, 427 F.3d 525 (8th Cir. 2005) ("*Heartland II*"). That litigation did not involve a challenge to the constitutionality of any Missouri statute or court rule. Rather, the district court in *Heartland II* concluded that juvenile officer "Waddle did not have a reasonable belief that the children at Heartland were in imminent danger of abuse" on the date of the mass removal. *Id.* A post-removal hearing had been scheduled, but Waddle deprived the plaintiffs of procedural due process by dismissing his removal petitions, *see id.* at 1092, thereby eliminating plaintiffs' post-removal right to be heard. *Id.* at 1101.

A court order, a reasonable suspicion of child abuse, and probable cause or exigent circumstances all permit the removal of a child from the custody of a parent or from a facility without offending due process. *See*

Stanley, 12 F.4th at 840-41. Section 210.143, Missouri's court rules and juvenile code, and other Missouri laws, afford LERCFs notice and meaningful opportunities to be heard before and after any court order to present a child that is the subject of a child abuse or neglect investigation for assessment. Hence, CNSIMI's frontal attack on Section 210.143 fails. It has failed to articulate how the procedures would always yield insufficient process. *See Salerno*, 481 U.S. at 751. Nor has it proven that Section 210.143 will lead to a constitutional violation if applied to CNSIMI.

The same goes for the challenge to Section 210.1271. That provision authorizes bringing an action for

> injunctive relief to cease the operation of a residential care facility and provide for the appropriate removal of the children from the residential care facility and placement in the custody of the parent or legal guardian or any other appropriate individual or entity in the discretion of the court,

for a limited set of violations. Mo. Rev. Stat. § 210.1271. It provides that "a hearing shall be held within three business days" "[i]n cases of an order granted ex parte under [Section 210.1271.1] to determine whether the order shall remain in effect." *Id.* § 210.1271.2. The language of the provision indicates that the Missouri legislature considered Missouri

Supreme Court Rule 92.02—which provides that a temporary restraining order may be ex parte, and that an ex parte TRO may remain in effect for ten days. Mo. S. Ct. Rule 92.02(a)(2), (b).

Section 210.1271 does not require any ex parte proceeding or order. But it does mandate a quicker opportunity for the LERCF (as well as parents and guardians) to be heard than might occur if a court simply applied Rule 92.02[6] to a proceeding for injunctive relief to cease a LERCF's operation and provide for "the appropriate removal of the children." Mo. Rev. Stat. § 210.1271.1, .2. Where the State "must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause." *Gilbert v. Homar*, 520 U.S. 924, 930 (1997).

If a Section 210.1271 proceeding was brought at some future time to cease the operation of CNSIMI's LERCF, and that action implicated a liberty interest of CNSIMI, Section 210.1271 would not violate

[6] Rule 92.02 prohibits the issuance of a preliminary injunction absent "prior notice and an opportunity to be heard" (Mo. S. Ct. Rule 92.02(c)(1)) and imposes strict limits upon ex parte temporary restraining orders (*see* Mo. S. Ct. Rule 92.02(b)(1)). Mo. Rev. Stat. § 210.1271 did not amend Mo. S. Ct. Rule 92.02. *See* Mo. Const. art. V, § 5.

procedural due process. It provides at least the due process required to the extent that CNSIMI may claim a liberty interest in the continued presence of a child at its LERCF.

For one thing, CNSIMI does not have a liberty interest in keeping children in its LERCF. Any parent or guardian with legal custody of a child at may choose to remove that child from CNSIMI's homes at any time. *See* Mo. Rev. Stat. § 475.025. Notably, the statute contemplates that children will be placed in the physical custody of their parents or legal guardians where possible. Mo. Rev. Stat. § 210.1271.1, .4.

Moreover, Section 210.1271 more than satisfies "the meaningful time and manner requirement" for due process "[i]n child removal cases." *Mitchell*, 959 F.3d at 897. It requires a hearing to be held before an order for a LERCF to cease operations or for removal of the children to issue, *see* Mo. Rev. Stat. § 210.1271.1, or, in the event of an ex parte order, within three business days, *id.* § 210.1271.2. If the circuit court made "a referral to a juvenile officer for removal of a child," *see id.* § 210.1271.3, .4, the child's parents, guardians, "and custodian" (the LERCF), and any other party to the juvenile proceeding, *see* Mo. S. Ct. Rule 110.04(a)(20), would receive notice consistent with the requirements of procedural due

process. *See* Mo. Rev. Stat. § 211.032.1; Mo. S. Ct. R. 114.01(a), (d), (f); *see also Slaven*, 710 F.3d at 779 (explaining that a party need not receive actual notice, but rather notice "reasonably calculated under all the circumstances"). CNSIMI once again fails to show entitlement to either facial or as-applied relief.

CONCLUSION

In light of the foregoing, Appellee requests that this Court affirm the judgment in its favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that on the 2 day of October, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Upon acceptance of this brief, the original plus 10 copies of this brief will be mailed, postage prepaid, to the Clerk of the Court.

I certify that this brief has been scanned for viruses and is virus-free. I certify that this brief was prepared using Microsoft Word 2010, in 14-point, proportionally spaced typeface. I further certify that the brief contains 12,083 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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