25-1892

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

JANE DOES, 1-11, *et al.*,
Plaintiffs-Appellants,

v.

DAVID FLANNIGAN, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
Western District of Missouri,
The Honorable Beth Phillips, Chief Judge

BRIEF OF DEFENDANTS-APPELLEES

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

The Missouri General Assembly first passed Missouri's sex-offender registration act (SORA) in 1995. SORA is a civil, nonpunitive regulatory measure aimed at protecting the public and assisting law enforcement. Plaintiffs—consisting of individuals required to register as sex-offenders under SORA and their family members (collectively, the Does)—sued three members of the Missouri State Highway Patrol in their official capacity (collectively, MSHP) asserting that SORA violates various provisions of the United States Constitution.

The district court rejected all but one of the Does' thirteen constitutional challenges and either dismissed those claims or entered judgment for MSHP during various stages of litigation. Appellees asks this Court to affirm the judgment in their favor.

This case presents significant legal issues to the citizens of Missouri. For that reason, the Court should set this case for oral argument. MSHP respectfully requests 30 minutes per side.

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   Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963).

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Smith v. Boyd, 945 F.2d 1041 (8th Cir. 1991).

STATEMENT OF THE CASE

The Does' Statement of the Case violates Fed. R. App. P. 28(a)(6) because it: is overly argumentative; misrepresent several key findings from the district court below; and is not concise. *See Palmquist v. Selvik,* 111 F.3d 1332, 1337 (7th Cir. 1997) (striking a statement of the case that was argumentative and omitted important testimony). Defendants, therefore, offer the following statement of the case pursuant to Fed. R. App. P. 28(b)(1).

A. Introduction.

The Does are all individuals who are either: (a) required to register as sex-offenders under SORA (the registrant Does) or family members of the registrant Does (the family Does). In their thirteen-count Second Amended Complaint, the Does sue three members of the Missouri State Highway Patrol in their official capacity. The Does allege that SORA violates various provisions of the United States Constitution.

The Missouri General Assembly first passed SORA, also known as "Megan's Law," in 1995 in response to the sexual assault and murder of 7-year-old Megan Kanka. App. 268, R. Doc. 240 at 1 n.2. The perpetrator of this crime was Megan's neighbor who, unbeknownst to Megan's family,

had been previously convicted of sexual offenses against children. App. 268, R. Doc. 240 at 1, n.2. Within two years of Megan's death, every state adopted sex-offender registration and notification laws. App. 268, R. Doc. 240 at 1 n.2.

In Count I of the complaint, the Does allege that SORA violates the Eighth Amendment. App. 77-80, R. Doc. 48, ¶¶ 507-520. Count II alleges that SORA is a prohibited ex post facto law. App. 80-81, R. Doc. 48, ¶¶ 521-26. Count III alleges that SORA is a prohibited bill of attainder. App. 82-83, R. Doc. 48, ¶¶ 527-33. In Counts IV, V, and VI, the Does allege that SORA's tiering system violates due process and equal protection. App. 83-89, R. Doc. 48, ¶¶ 534-560. Counts VII and VIII allege that SORA violates substantive due process by impeding on their familial relationships and employment opportunities. App. 89-93, R. Doc. 48, ¶¶ 561-581. In Counts IX and X, the Does allege that aspects of SORA are void for vagueness. App. 93-97, R. Doc. 48, ¶¶ 582-599. Finally, Counts XI, XII, and XIII, maintain that aspects of SORA violate the First Amendment. App. 97-101, R. Doc. 48, ¶¶ 600-624. The district court

entered judgment for the Does on Count XIII. MSHP prevailed on the remaining 12 counts at various stages of litigation.[1]

B. Judgment on the Pleadings—Seven Counts Dismissed, Six Remain.

On October 6, 2022, MSHP moved for judgment on the pleadings. After extensive briefing by both sides, the district court found that SORA "was not intended to impose punishment." R. Doc. 83 at 2. The district court also found the Does lacked standing "to challenge the constitutionality of the exclusion zones." R. Doc. 83 at 4. The district court then requested supplemental briefing discussing whether SORA's punitive effects outweigh the legislature's nonpunitive intent. R. Doc. 83 at 5. After the parties submitted supplemental briefing, the district court

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[1] The Does appeal only Counts I, II, IV, VI, VII, VIII, X, and XI. App.'s Br. 21-22. With the exception of section IV, Appellants' brief does not clearly indicate which arguments support which counts. As such, MSHP and this Court are left in the unenviable position of sifting through the record like "hounds" and "truffle pigs" to correlate the Does' opening brief with their complaint. *See U.S. v. Guerrero*, 488 F.3d 1313, 1316 (10th Cir. 2007); *also U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). To aid this Court, MSHP believes that section II addresses Counts I and II; section III addresses counts IV, VI, VII, and VIII; section IV addresses Count XI; section V addresses Count X; and section VI generally addresses the standing of the family Does.

granted Respondents' motion for judgment on the pleading in part and dismissed Counts III, IV, V, VI, VII, VIII, and IX. App. 231, R. Doc. 86 at 22.

C. Discovery.

The case then proceeded to discovery on the remaining six counts. The parties exchanged extensive written discovery, conducted four expert depositions, and deposed each registrant Doe. The parties did not depose any family Does.

MSHP notes that the Does statement addressing discovery is incomplete and contains argument. MSHP acknowledges that it mistakenly failed to respond to the Does' Requests for Admission (RFAs) within the time allowed by the rules, and that the district court denied MSHP's motion to answer those RFAs out of time. App.'s Br. 22.

The Does statement, however, overlooks a crucial aspect of the district court's decision—"allowing Defendants to respond out of time will not promote the presentation of the merits *because the deemed-admitted RFAs do not establish any facts needed for disposition of the case*." R. Doc. 161 at 4. (emphasis added). The district court reviewed each of the Does' RFAs individually, and found that none of them had any practical value:

18 called for improper legal conclusions; 11 involved facts that were not seriously disputed; 18 involved facts that were not relevant or were too broad to be of any value; and 12 involved facts that MSHP had previously admitted in other filings. R. Doc. 161 at 4-5. The Does' contention that the unanswered RFAs "further establish the disconnect between SORA's ostensible public safety purpose and its operation" App.'s Br. 22 is improper legal argument under Fed. R. App. P. 28(a)(6) and a misinterpretation of the district court's rulings.

D. Cross-Motions for Summary Judgment—Two Counts Resolved, Four Counts Remain.

Both the Does and MSHP moved for summary judgment. The Does moved for partial summary judgment on Counts X, XI, XII, and XIII. R. Doc. 130 & 131. And MSHP sought summary judgment on all remaining counts. R. Doc. 133 & 134. The district court granted both motions in part. Specifically, it granted summary judgment to the Does on Count XIII, and granted summary judgment to MSHP on Count XII. App. 266, R. Doc. 162 at 30.

The Does' motion for summary judgment sought to expand Count XI to raise two new claims—(1) that forcing the registrant Does to report online identifiers is overly broad and chills free speech; R. Doc. 131 at 14-

17; and (2) that SORA coopts private businesses to prevent the registrant Does from accessing the internet, thereby chilling free speech R. Doc. 131 at 23-24. The district court found that the Does had not fairly presented these new claims in Count XI (or any other count in the Complaint). App. 258, R. Doc. 162 at 22. The district court further opined that it had previously described Count XI in great detail in its order on MSHP's motion for judgment on the pleadings, and that nothing in that description "alleges that SORA required registrants to report too much information or that it impairs registrants' access to the internet or related services." App. 259, R. Doc. 162 at 23.

While the district court did not fully resolve Counts I and II on summary judgment, the court noted that the Does had conceded "(1) some sex-offenders are lifelong threats to reoffend, (2) people who have committed sex offenses are more likely to commit additional sex offenses than those who have not, and (3) the risk a sex-offender will reoffend

declines over time, but more slowly than it does for those who commit other crimes." App. 251, R. Doc. 162 at 15.[2]

E. Trial – Remaining four counts decided.

Before trial, the parties entered a stipulation of facts to narrow the scope of trial. R. Doc. 192. On March 24 and 25, 2025, the district court conducted a bench trial on the remaining four counts in the Does' complaint—Count I, Count II, Count X and Count XI.

All registrant Does testified at trial. Four of the family Does also planned to testify, but the trial court excluded their testimony as irrelevant to the remaining counts. Tr.1[3] at 17. Counsel for the Does filed offers of proof via affidavit for those four family Does. Tr.2 at 16-18. Missouri State Highway Patrol employee Kerry Creech, testified on behalf of MSHP. The parties submitted all expert testimony through deposition, rather than live testimony. R. Doc. 233 & 234.

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[2] The Does argue in their Statement of the Case that the trial court improperly excluded "evidence regarding recidivism and efficacy of SORA." App.'s Br. 23. And yet, Appellants ignore the very concessions that drove that decision. App. 251, R. Doc 162 at 15; *also* R. Doc. 204 at 4.

[3] For purposes of this brief, Tr.1 refers to the transcript from the first day of trial. Tr.2 refers to the second day of trial.

On March 31, 2025, following trial and the submission of the Does' post-trial affidavits, the district court entered judgment in favor of MSHP on all remaining counts. App. 268-86, R. Doc. 240.

This appeal follows.

SUMMARY OF ARGUMENT

Neither the facts of this case nor the construction of SORA demonstrate that any of the statute's provisions violate the Constitution. First, SORA does not violate the Eight Amendment's prohibition against cruel and unusual punishment. To be cruel and unusual, a law must be punitive and either barbaric or grossly disproportionate to the offense. *Doe v. Miller*, 405 F.3d 700, 723 n.6 (8th Cir. 2005). The district court correctly determined that the Missouri legislature did not intend SORA to be punitive. Then, using the multi-factor test outlined in *Smith v. Doe*, 538 U.S. 84 (2003), the district court correctly held that SORA is not punishment within the meaning of the Eighth Amendment. Without a doubt, SORA is not like historical punishments such as public shaming or probation. It does not impose significant disabilities or restraints or promote traditional punishment goals. Nor is SORA excessive in relation to its nonpunitive purposes of informing the public and helping law enforcement. The same analysis used for the Eighth Amendment applies to the challenge the Does raise under the ex post facto clause. SORA does not violate either of those constitutional provisions.

The district court did not err in denying the Doe's due process claim in its order addressing MSHP's motion for judgment on the pleadings. The district court correctly determined that SORA does not unconstitutionally infringe on the Does' substantive due process rights. Nor did the district court err in applying the rational basis standard of review, despite the Does' contention that a "more stringent than rational basis review was warranted." App.'s Br. 39. The Missouri Supreme Court has consistently held that SORA's reporting and registration requirements are consistent with the objective of promoting public safety and that SORA is "rationally related to the legitimate state interest of protecting children." *Doe v. Olson*, 696 S.W.3d 320, 329 (Mo. banc. 2024).

The district court properly dismissed Count XI. While the Does argue that the district court erred by not recognizing the "overbreadth" claim they contend is encompassed in Count XI, the district court opined that count did not clearly state an overbreadth claim and essentially repeated what was in Counts XII and XIII. The district court has the authority to dismiss claims that are repetitive, and it found that the allegations in Count XI were the same as those in Counts XII and XIII. The Does used the same facts to support each count, and they asked for

the same outcomes. Because Count XI did not add anything new, the district court properly dismissed it as redundant.

The term "other identity information" in § 43.651.1(4) is not unconstitutionally vague because MSHP's form defines the contours of reportable information, or alternatively, the remainder of § 43.651.1(4) provides a viable limiting construction under the doctrine of *ejusdem generis*. Federal courts can impose limiting constructions on statutory language that is readily susceptible to such construction. *U.S. v. Stevens*, 599 U.S. 460, 481 (2010). The district court properly found that the term "other identity information" is not unconstitutionally vague as it is readily susceptible to limiting constructions.

Finally, the district court properly dismissed the family Does because they are not subject to SORA. While the Does contend that the district court dismissed the family Does' claims without consideration, this argument is misplaced. The district court's summary judgment order addresses the family Does' claims and explicitly holds that it would not consider evidence of SORA's impact on family members of registrants. App. 244, R. Doc. 162, at 8. The Does' contention that the issue was not briefed or discussed at trial is also refuted, as MSHP questioned the

relevance of the family Does throughout the litigation and moved to strike them from testifying at trial. R. Doc. 223. Moreover, the Does concede that the district court has the authority to dismiss claims *sua sponte*, and MSHP is unaware of any authority which holds that collateral family impact transforms a civil regulatory statute into criminal punishment. Rather, the district court properly focused its assessment on the statute's effects on the registrant personally, as family members are not required to register or take any action under SORA.

STANDARD OF REVIEW

"Traditionally, decisions on questions of law are reviewable *de novo*, decisions on questions of fact are reviewable for clear error, and decisions on matters of discretion are reviewable for abuse of discretion." *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563, 134 S. Ct. 1744, 1748, 188 L. Ed. 2d 829 (2014) (cleaned up). MSHP disputes the Does assertion in its standard of review that "the trial court's rulings were grounded in its legally erroneous analysis and several were predicated on misreading Appellant's allegations. App.'s Br. 36. Even so, MSHP agrees with the Does that this court reviews *de novo* whether the district court correctly interpreted the law. *Mann v. QuikTrip Corp.*, 148

F.4th 591, 594 (8th Cir. 2025). The same is true regarding the district court's dismissal of family Does. *Mountain Home Flight Serv., Inc. v. Baxter Cnty., Ark.*, 758 F.3d 1038, 1043 (8th Cir. 2014).

ARGUMENT

I. SORA does not violate the Eighth Amendment, First Amendment, or ex post facto clause of the Unites States Constitution as a matter of law.

The vast majority of the Does' opening brief discusses their dissatisfaction with the district court's judgment and analysis. But as mentioned above, with the exception of section IV, the Does' opening brief does not clearly indicate which arguments support which counts. Nor does the Does' opening brief clearly indicate whether their appeal concerns an as-applied challenge, facial challenge, or both. The district court stressed the uncertainty surrounding the Doe's claims in its order granting judgment:

> There has been significant discussion as to whether Plaintiffs are presenting an as-applied challenge, a facial challenge, or both. Ultimately, it does not matter: Plaintiffs have not demonstrated that SORA qualifies as punishment either (1) in its general application or (2) in light of their particular circumstances. Thus, regardless of how Plaintiffs' claim is characterized, they have not demonstrated SORA constitutes punishment.

App. 279, R. Doc. 240, p. 12, n11.

The same remains true on appeal. Whether the Does' appellate arguments present as-applied challenges, facial challenges, or both, the result does not change. None of the Does' appellate arguments have merit.

A. The district court correctly determined that SORA does not violate the Eighth Amendment or the ex post facto clause.

i. Eighth Amendment

The Eighth Amendment prohibits cruel and unusual punishment. U.S. Const. amend. VIII. To qualify as "cruel and unusual punishment," a law must: (1) impose punishment (*i.e.*, be punitive in nature); and (2) be "barbaric [] or grossly disproportionate to the offenses committed." *Doe v. Miller*, 405 F.3d 700, 723 n.6 (8th Cir. 2005). Determining whether a law imposes punishment involves a two-pronged test. First, the Court determines whether the legislature intended the statute to impose punishment. *Id.* at 718. If the legislature lacked punitive intent, the second prong requires the Court to determine whether "the law is nonetheless so punitive either in purpose or effect as to negate the state's nonpunitive intent." *Id.* (quotation omitted).

At multiple times throughout the litigation, the district court correctly concluded (*See* App. 217, R. Doc. 86, at 8) and reiterated (*See* App. 241, R. Doc. 162 at 5-6) that the Missouri legislature "did not intend SORA to be punitive in nature." App. 272, R. Doc. 240, at 5. The Does do not seem to challenge this holding on appeal. As a result, Defendants focus on the second prong: whether SORA's punitive effects outweigh the legislature's nonpunitive intent.

1. SORA is Not Unconstitutional Punishment.

To determine whether SORA's punitive effects outweigh the legislature's nonpunitive intent, the parties—and the district court—used the test outlined in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).[4] In *Smith v. Doe*, 538 U.S. 84, 97 (2003)—the seminal case involving a constitutional challenge to a state sex-offender registry—the Supreme Court acknowledged that *Mendoza-Martinez* identified a non-

[4] Besides their contentions that the district court should have considered evidence from family members when assessing whether SORA's effects are punitive and that the current technological landscape alters the analysis, the Does do not put forth any other factors beyond the *Mendoza-Martinez* factors the parties and district court relied on throughout the course of the litigation as necessary for the punishment analysis.

exhaustive list of seven non-dispositive factors to consider. *Smith*, 538 U.S. at 97. It believed the following factors were "most relevant to the analysis": "whether in its necessary operation, the regulatory scheme has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose." *Id.* To establish that SORA necessarily involves punishment, "only the clearest proof will suffice." *Id.* at 92 (citations omitted).

a. SORA is not comparable to a practice historically regarded as punishment.

Throughout this litigation, the Does have argued that SORA is comparable to shaming based on technological advances that make it easier to access or disseminate information on the registry. And the Does also contended throughout this litigation (although the extent they continue to make this argument is unclear[5]) that SORA's requirements are comparable to probation or parole. But *Smith* instructs otherwise, and the district court correctly determined that SORA is not comparable

[5] See App.'s Br. 32-35.

to any practice historically regarded as punishment. App. 243-244, R. Doc. 162 at 7-8; App. 273-74, R.Doc. 240, at 6-7.

When comparing a nonpunitive statute to historical punishments, courts examine the effects of the statute. *Smith*, 538 U.S. at 97–99. Federal courts have frequently and conclusively rejected arguments that state sex-offender schemes resemble historic punishments. *E.g.*, *Shaw v. Patton*, 823 F.3d. 556, 564 (10th Cir. 2016).

The first potential comparison is public shaming. Punishments in public shaming "consist principally in their ignominy" and "often involved standing in public with a sign describing your crime." *Doe v. Settle*, 24 F.4th 932, 949-50. As the Supreme Court has previously noted, any initial resemblance between public shaming and sex-offender registries is misleading. *Smith*, 538 U.S. at 98. Public shaming requires the state to "make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme." *Id.* at 99; *also Millard v. Camper*, 971 F.3d 1174, 1182 (10th Cir. 2020) (holding that Colorado's SORA was not comparable to public shaming because the State was not putting registrants "on display").

SORA simply disseminates criminal-record information, most of which is already publicly available. While this publicity may embarrass registrants, "[o]ur system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." *Id.*; *also Femedeer v. Huan*, 227 F.3d 1244, 1251 (10th Cir. 2000) (quoting *E.B. v. Verniero*, 119 F.3d 1077, 1099-1100 (3rd Cir. 1997) ("Public shaming, humiliation and banishment all involve more than the dissemination of information."). Indeed, as noted by the district court, "SORA's registry does not permit the public to post comments about the people listed on it." App. 244, R. Doc 162 at 8. SORA is not public shaming.

The district court correctly determined that notwithstanding the technological advances that have occurred over the last two decades, "there is no reason to believe [the *Smith* Court] would have reached a different decision upon learning that technological advances have made publicly available information even more readily available." App. 274, R. Doc. 240, at 7. While the Does note that due to technological advancements "[a] user simply seeking the address of a business via search engine will immediately be alerted if someone required to register

pursuant to SORA works there," the district court properly disposed of this fact during summary judgment. In the district court's summary judgment order,[6] it notes that "the incidence of such inadvertent discoveries is not established or discussed further[7] and therefore does not establish that SORA is similar to shaming or other practices historically regarded as punishment." App. 244, R. Doc. 162, at 8 n.5. The Does offered no evidence at trial beyond that included in the summary judgment record. The district court's analysis of this factor is sound.

To the extent the Does continue to maintain that SORA is comparable to probation and parole, that argument carries little weight and must fail. Unlike probation and parole, sex-offender registries do not include mandatory terms and conditions or provide avenues for supervising officers to revoke the probation. *See Millard*, 971 F.3d at 1182-83 (citations omitted) (holding that neither in-person reporting nor registration of online identifiers constitutes probation); *see also Settle*, 24 F.4th at 951 (quoting *Shaw*, 823 F.3d at 564 ("Historically, a probation

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[6] The district court's order notes that it adheres to the prior analysis and conclusion it reached in its summary judgment order.

[7] Referring to the Does Counterstatement of Uncontroverted Material Facts No. 44, which MSHP agreed to.

officer took a far more active role in a probationer's life than simply collecting information for a database.")).

In fact, SORA does not mandate any interaction with law-enforcement, other than the inconvenience of reporting in-person to update registry information. *Compare Settle*, 24 F.4th at 951 (holding that stricter provisions of Virginia's SORA requiring State Police to physically verify an offender's registration information twice a year still did not amount to probation or parole). To the extent the Does continue to assert this comparison, the assertion is misplaced. SORA was not comparable to a practice historically regarded as punishment when the Supreme Court decided *Smith*, and SORA still is not comparable to a practice historically regarded as punishment today.

b. SORA does not impose any affirmative disabilities or restraints on the registrant Does beyond the inconvenience of having to appear in person to update their registration information.

When examining this *Martinez-Mendoza* factor, "minor and indirect" disabilities or restraints are not enough to make a statute punitive. *Smith*, 538 U.S. at 100. While the registrant Does claim difficulty in obtaining employment or housing due to the SORA

requirements, such alleged harms are not inflicted by MSHP and do not rise to the level of affirmative disabilities or restraints. Private employers and landlords could have easily found the registrant Does convictions on a standard background check because convictions are public records. Critically, the information the registrant Does must provide under SORA is easily obtainable through other means. The Supreme Court in *Smith* found significant that the record before it "contain[ed] no evidence that [Alaska's] Act has led to substantial occupational or housing disadvantages for former sex-offenders *that would not have otherwise occurred through the use of routine background checks by employers and landlords*." *Smith*, 538 U.S. at 100 (emphasis added).

Although the registrant Does try to characterize the adverse consequences they suffer as caused by their placement on the registry and not because of their criminal offenses, the district court found that "most of this testimony constituted hearsay and all of it was speculative and unpersuasive." App. 275, R. Doc. 240 at 8. Indeed, the district court correctly noted that "many witnesses testified about information Plaintiffs conveyed to others (in answer to questions asking about prior convictions) or information obtained through background checks

conducted by another parties [*sic*.] or Google searches that revealed the registry." App. 275, R. Doc. 240 at 8. While not every registrant Does' situation is the same, some testified to owning homes or earning annual incomes in excess of $100,000.00. *e.g*, Tr. 1, pp. 117-18, 165 The record does not establish that SORA imposes affirmative disabilities or restraints on the Does.

Defendants acknowledge—just as the district court did—that Jane Doe I, received a suspended imposition of sentence for her sex offense. Even so, the evidence submitted does not support a finding that the disadvantages she complains of are the result of her status as a sex-offender registrant as opposed to her criminal offense. Assuming arguendo that the significant media coverage "is not what is returned when searching Jane Doe I's name,"[8] she still must provide "the clearest proof" that her placement on the registry, not her criminal offense, caused her alleged disabilities or restraints before this factor can weigh in her favor. Neither she, nor any of the other registrant Does, met this burden.

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[8] App.'s Br. 32.

Similarly, Missouri's in-person reporting requirement is not punitive. *See Shaw*, 823 F.3d at 568-69. In reaching its decision, the Tenth Circuit in *Shaw* was "guided by precedents addressing other harsh conditions that the Supreme Court has not regarded as punitive." *Shaw*, 823 F.3d at 569. The *Shaw* court noted that "the Supreme Court has held that a lifelong bar on work in a particular industry does not constitute an affirmative disability or restraint that is considered punitive." *Id.* The Tenth Circuit ultimately concluded that ""[a] lifelong bar on work in an industry is harsher than [the] reporting requirements." *Id.*

In addition to relying on the Tenth Circuit's decision in *Shaw*, the district court found that SORA's in-person reporting requirements were rationally related to the purposes offered by MSHP. App. 278, R. Doc. 240 at 11. Specifically, those purposes include the following: (1) ensuring the registrant is the person supplying the information; (2) providing an opportunity for the chief law enforcement officer (or his or her designee) to discuss potential errors or omissions with the registrant; and (3) ensuring all necessary information is updated and current. App. 278, R. Doc. 240 at 11. This Court should reach the same conclusion as the district court and Tenth Circuit. Even if SORA's in-person registration

requirement is inconvenient, the requirement is not a disability or restraint that warrants finding that sex-offender registration constitutes punishment.

c. SORA does not promote the traditional aims of punishment.

This *Martinez-Mendoza* factor considers whether the government action promotes the traditional goals of punishment, mainly retribution and deterrence. *Smith*, 538 U.S. at 102. To show punitive effect, "retribution and deterrence [must] be primary factors of the law. *Settle*, 24 F.4th at 952. To hold otherwise "would severely undermine the Government's ability to engage in effective regulation." *Smith*, 538 U.S. at 102. This factor requires MSHP to "identify the nonpunitive purposes intended by the Legislature so that the fourth factor—which asks whether there is a rational connection to the nonpunitive purpose—can be analyzed." App. 276, R. Doc. 240 at 9.

Throughout this litigation, MSHP asserted two non-punitive purposes for SORA: (1) to alert the public to the presence of sex-offenders in the community in order to empower "members of the public [to] make individual decisions on how to protect themselves and their children." R. Doc. 134, at 21-22; and (2) to assist law enforcement in preventing and

protecting against the commission of future offenses. R. Doc. 134, pp. 22-23. The district court correctly determined that "[t]hese are legitimate nonpunitive purposes." App. 276, R. Doc. 240 at 9. The Does did not provide "the clearest proof" that SORA is ostensibly designed to promote the traditional aims of punishment.

d. SORA is rationally connected to a nonpunitive purpose and is not excessive.

The requirement of a connection between SORA and its nonpunitive purpose is "not demanding" and the connection need not be perfect. *Miller*, 405 F.3d at 721. SORA has a rational connection to its nonpunitive purposes identified above *i.e*, to empower members of the public to make individual decisions on how to protect themselves and their children, and to assist law enforcement in preventing and protecting against future offenses. The purpose of this factor is not to second-guess the legislature's choice of solution, but simply determine whether the chosen solution is a reasonable fit. *Smith*, 538 U.S. at 105.

As noted by the district court, "SORA has a rational connection to its purpose of alerting the public to the presence of sex-offenders in the community . . . [and] it takes little analysis to demonstrate that access to the information registrants supply may be useful to law enforcement

investigating certain crimes." App. 277, R. Doc. 240, p. 10. SORA clearly satisfies the requirements of this factor. The law is rationally connected to its nonpunitive purposes.

Accepting SORA's purpose, the next step of the inquiry is to determine whether SORA is excessive with respect to its nonpunitive purpose. When analyzing whether a statute is excessive with respect to its nonpunitive purpose, courts ask whether the chosen means are "reasonable in light of the nonpunitive objective." *Smith*, 538 U.S. at 105. Although the Does raise excessiveness in other contexts in its statement of issues, they do not seem to allege error with the district court's analysis of this *Martinez-Mendoza* factor under the Eighth Amendment or ex post facto clause. Regardless, the district court rejected all of the Does' arguments that SORA is excessive. Specifically, the district court rejected two arguments raised in summary judgment. App. 277, R. Doc. 240, at 10 citing App. 251-252, R. Doc. 162, at 15-16. The district court subsequently rejected the Does' remaining argument after trial. App. 277-78, R. Doc. 240, pp. 10-11. It ultimately concluded that SORA is not excessive because the statutory scheme "is rationally related to SORA's

nonpunitive purposes, and it is therefore not excessive." App. 279, R. Doc. 240 at 12.

Just like the district court and every other court to examine the issue, this Court should hold that SORA's in person registration requirement is not excessive. In-person registration allows law enforcement to verify that the registrant is the person completing the information. It also helps ensure that the photographs of the registrant remain up-to-date and accurate, an important concern "given the general mobility of our population." *Smith*, U.S. 538 U.S. at 105. Although the registration system in *Smith* did not contain an in-person registration requirement, the Supreme Court nevertheless highlighted the mobility of our population when determining that the wide dissemination of the registration information via the internet "was not so excessive a regulatory requirement as to become punishment." *Id.* The same is true for SORA's in-person registration requirement. As mentioned above, the purpose of this inquiry is not to second-guess the legislature's choice of solution, but simply determine whether the chosen solution is a reasonable fit. *Smith*, U.S. 538 U.S. at 105. SORA's in-person requirement is not excessive.

e. The *Smith* factors, whether analyzed separately or collectively, lead to the conclusion that SORA is not punishment within the meaning of the Eighth Amendment.

Smith does not provide guidance on how courts should weigh the *Mendoza-Martinez* factors. Below, the district court analyzed each factor individually and then collectively. App. 273-79, R. Doc. 240 at 6-12. This approach aligns with weighted factor tests applicable to other constitutional challenges. *See United States v. Muhtorov*, 20 F.4th 558, 634 (10th Cir. 2021) ("No one of the factors is necessary or sufficient to conclude a violation has occurred. Instead, the factors are related and must be considered together along with other relevant circumstances.")

As discussed above, each *Mendoza-Martinez* factor analyzed by the Supreme Court in *Smith* favors MSHP. SORA does not promote the aims of punishment and instead serves the nonpunitive purposes of alerting members of the public to the presence of sex-offenders in their community and aids law enforcement in the investigation of crimes. And SORA does not impose any affirmative disabilities or restraints beyond the in-person reporting requirement, which is rationally related to SORA's nonpunitive purpose. Whether viewed individually or collectively, SORA is not punishment within the meaning of the Eighth Amendment.

The Does do not seem to take issue with most of the district court's analysis of the M*endoza-Martinez* factors for the Eighth Amendment and ex post facto claims. Rather, the Does argument on appeal for these claims primarily contends that effects on family members (which they classify as directly traceable to the operation of SORA) are "relevant for a court to consider under the prevailing constitutional test of whether SORA is punishment." App.'s Br. 10, 30-31. MSHP addresses this argument below before turning to the second prong of the punishment test.

f. The district court did not err in its analysis of the Does' Eighth Amendment and ex post facto claims because effects on the registrant Does' family members are not relevant when determining whether SORA is punishment.

The Does contend that the district court "read into *Smith* a prohibition that is contrary to its text." App.'s Br. 38. Not so. While MSHP does not dispute the Does' assertion that the M*endoza-Martinez* factors discussed in S*mith* are "non-exhaustive" MSHP disagrees with how the Does frame the district court's treatment of those factors.

The Does provide no authority to support their assertion that the district court should have expanded the scope of the punishment analysis

under *Smith* to include the incidental effect on the family unit. MSHP is not aware of any case where a court has expanded the scope of the M*endoza-Martinez* factors to include such information. Undeniably, *Smith* and its progeny do not include the "effects on family members" as a mandatory part of the punitive analysis. Instead, *Smith's* factors focus on direct effects on the registrant. While the Does contend negative consequences for spouses and children should be considered in the analysis, no authority holds that collateral family impact transforms a civil regulatory statute into criminal punishment. Rather, courts traditionally assess the "affirmative disability or restraint" on the registrant personally, not on family or associates. While the collateral effects discussed by the family Does are unfortunate, collateral effects are not determinative of punishment unless the statute targets family members directly. SORA does not.

Contrary to the Does' assertion, the district court did not decline to consider the incidental effects of SORA on family because *Smith* rejected such consideration. Instead, the district court simply did not agree with the Does' assertion that the punishment factor test should be expanded to include such information. And rightfully so. As noted by the district

court, "[f]amily members are not required to register or take any other action under SORA, and no information about them is reported." App. 270, R. Doc. 240 at 3. When assessing whether SORA imposes an affirmative disability or restraint, the Court must "inquire how the effects of [SORA] are felt by those subject to it." *Smith*, 538 U.S. at 99-100. Family Does are not subject to SORA.

Beyond the fact that family Does are not subject to SORA, the district court also observed that most of the claims they raised "related to Missouri laws creating 'exclusion zones'—locations where individuals convicted of various crimes could not live, visit, or congregate—but claims regarding exclusion zones were dismissed without prejudice." App. 270, R. Doc. 240 at 3. The district court's observation further supports its decision to not consider the alleged effects of SORA on the family Does. The Does have not asserted constitutional challenges to SORA related to Missouri's exclusions zones since the district court's dismissal of those claims, and they make no such assertion on appeal. App.'s Br. 22 n7. The district court did not err when it declined to include the effects of SORA on the family Does in its punishment analysis.

2. SORA is not barbaric or grossly disproportionate to the offenses committed.

MSHP acknowledges that the Does' complaint contains a singular use of the word barbaric. Specifically, the Does' Complaint contends that SORA is "barbaric and tortuous" because the evolution in technology and modern life has turned the Does into social lepers. App. 79, R. Doc 48, ¶ 519. The final judgment observes that "neither the First Amended Complaint nor the Second Amended Complaint allege SORA is barbaric." App. 270, R. Doc. 240 at 3.

The district court's order could be construed a couple of ways. The court may have believed the complaint's skeletal assertion that SORA is barbaric was insufficient to raise a claim. The court also may have made a misstatement. Either way, SORA is not barbaric. Nor is SORA grossly disproportionate to the offenses committed.

Punishment is barbaric when it involves "the deliberate infliction of pain for the sake of pain . . . through torture and the like." *Baze v. Rees*, 553 U.S. 35, 48 (2008); *see also Gregg v. Georgia*, 428 U.S. 153, 169-70 (1976). ("The American draftsmen, who adopted the English phrasing in drafting the Eighth Amendment, were primarily concerned, however, with proscribing tortures and other barbarous methods of punishment.").

The Does' assertion that SORA is barbaric violates common sense, Eighth Amendment jurisprudence, and the facts in the record. The Supreme Court previously rejected similar arguments against Alaska's SORA. *Smith*, 538 U.S. at 99. MSHP is unaware of any state or federal case law that supports the Does' unique approach to the Eighth Amendment.

Turning to the grossly disproportionate analysis, courts generally look to three factors when assessing whether a punishment is grossly disproportionate: "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Ewing v. California*, 538 U.S. 11, 22 (2003). Only when the threshold comparison "leads to an inference of gross disproportionality does this Court perform a comparative analysis." *United States v. Scott*, 831 F.3d 1027 (8th Cir. 2016). No such inference exists here.

The record shows that all of the Does' adjudications were serious felonies under the Revised Statutes of Missouri, and many are Class A felonies. App. 33, R. Doc. 48, ¶ 155; App., 41, R. Doc. 48, ¶ 218; App. 44, R. Doc. 48 ¶ 242; App. 49, R. Doc. 48, ¶ 285; App. 53, R. Doc. 48, ¶316;

App. 58, R. Doc. 48, ¶ 358; App. 64, R. Doc 48, ¶ 394; App. 68, R. Doc. 48, ¶ 422; App. 71, R. Doc. 48, ¶ 452. And with the exception of John Doe VIII, all of the offenses described above were committed—or attempted—against children. The gravity of these offenses and the harms caused or threatened to the victims negate an inference of disproportionality. Because SORA is not punitive in nature, and because the Does have failed to provide any cognizable evidence that SORA is barbaric or grossly disproportionate, this Court should hold that SORA does not violate the Eighth Amendment either on its face or as applied to the Does.

ii. Ex Post Facto Clause

The Constitution bans ex post facto laws. U.S. Const. art. I, § 10, cl. 1. For a legislative change to be ex post facto, it must have "the prohibited effect of altering the definition of crimes or increasing punishments." *California Dept. of Corrections v. Morales*, 514 U.S. 499, 510 n.7 (1955). As noted by the district court, the "test utilized to determine if SORA is 'punishment' within the meaning of the Eighth Amendment . . . also applies here." App. 280, R. Doc. 240 at 13 (citing *United States v. Winston*, 850 F.3d 377, 381 (8th Cir. 2017). MSHP agrees. As stated above, SORA is not punitive in nature, and the Does failed to provide any cognizable

evidence that SORA is barbaric or grossly disproportionate. This Court should hold that SORA does not violate the ex post facto clause of the Constitution.

B. SORA's requirements do not violate the Due Process Clause because the registration requirements are rationally related to a legitimate state purpose.

The district court did not err in denying the Doe's requested relief in its order addressing MSHP's motion for judgment on the pleadings because the district court correctly determined that SORA does not unconstitutionally infringe on the Does' substantive due process rights. Nor did the district court err in applying the rational basis standard of review over the Does' contention that a "more stringent than rational basis review was warranted." App. Br. 39. The registration requirements of SORA are rationally related to a legitimate state purpose. App. 224-255, R. Doc. 86 at 14-15.

The Missouri Supreme Court has consistently held that SORA's reporting and registration requirements are consistent with the objective of promoting public safety" and SORA is "rationally related to the legitimate state interest of protecting children." *Doe v. Olson*, 696 S.W.3d

320, 329 (Mo. banc. 2024); *Roe v. Replogle*, 408 S.W.3d 759, 767 (Mo. banc 2013); *Doe v. Phillips*, 194 S.W.3d 833, 845 (Mo. banc 2006).

The Supreme Court has upheld SORNA as being rationally related to a legitimate government interest in protecting the public from sex-offenders and alleviating public safety concerns. *U.S. v. Kebodeaux*, 570 U.S. 387, 395 (2013). And federal courts have upheld state sex-offender registration laws under the rational basis review. *See e.g. Doe v. Moore*, 410 F.3d 1337, 1347 (11th Cir. 2005).

i. The lifetime registration requirement for Tier III sex offenders does not implicate a fundamental right or a suspect class; thus, the district court correctly applied rational basis review.

Here, the Does' complaint failed to adequately explain how a lifetime registration requirement infringes on any fundamental rights, whereby establishing a "standard of review more stringent than rational basis review." App. Br. 38. The district court correctly determined that lifetime registration for Tier III offenders did not implicate a fundamental right or constitute a suspect class. App. 222-23, R. Doc. 86 at 13-15.

1. Tier III sex-offenders are not a suspect class for Equal Protection Purposes.

The Does contend that SORA impermissibly treats Tier III sex offenders differently from Tier I or II sex-offenders because SORA requires Tier III offenders to register for life. App.'s Br. 38-42. As a result, the Does contend that Tier III sex-offenders should be considered a suspect class requiring a heightened level of scrutiny under the Equal Protection Clause. App.'s Br. 38.

"Group classification by legislative act will be analyzed under a strict scrutiny if the classification infringes fundamental rights or concerns a suspect class." *Doe v. Moore*, 410 F.3d 1337, 1346 (11th Cir. 2005). Several suspect classifications, such as "race, alienage, national origin, gender, or illegitimacy" are subject to heightened scrutiny under the Equal Protection Clause. *Id.* But "sex offenders are not considered a suspect class in general" and the sub-classification of Tier III offenders does not implicate a suspect class. *Id.* Consequently, the district correctly determined that the sub-classification of Tier III offenders are reviewed under the rational basis test. *Moore*, 410 F.3d at 1346.

2. Familial relationships and employment are not fundamental rights requiring a heightened level of scrutiny.

The Does contend that SORA impermissibly infringes on their fundamental "rights with respect to familial relationships and employment, requiring a heightened level of scrutiny." App.'s Br. 38. Review of the Does' appellate brief, however, shows they fail to establish that familial relationships and employment are fundamental rights requiring a heightened level of scrutiny. App. Br. 38-42. In addressing the Does' familial relationships below, the district court correctly concluded that "[i]f legislation has only an incidental or unintended effect on a fundamental right, it is not subject to heightened scrutiny." App. 223, R. Doc. 86 at 14.

Applying *Miller's*, reasoning, the district correctly concluded that any impacts that SORA's registration requirements caused to the Does' employment were incidental. *Id.* The district court determined that SORA does not directly prohibit offenders from holding certain jobs, nor does it direct employers "to fire (or not hire) registrants." *Id.* Thus, the district court correctly concluded that the effects on the rights complained of by the Does did not merit heightened scrutiny. *Id.*

Where a law neither implicates a fundamental right nor involves a suspect class, the law need only be rationally related to a legitimate state

interest to survive an equal protection challenge. *Branson v. Piper*, No. 19-1956, 2022 WL 302610, at *1 (citing *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012)). Moreover, "such a law is accorded a strong presumption of validity." *Gallagher*, 699 F.3d at 1019. The law is "upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id*.

SORA does not operate directly on the family relationship or employment. *See Miller*, 405 F.3d at 710 (original citations omitted). App. 223-24, R. Doc. 86, at 14-15. Therefore, the district court correctly determined that the lifetime registration of Tier III offenders satisfies substantive due process and survives equal protection scrutiny.

ii. The Missouri General Assembly's decision to legislate with respect to convicted sex-offenders on a case-by-case basis based on the severity of the offenders' underlying sex offense, does not violate Due Process.

Here, the Does contend that SORA's "legitimate community notice purpose . . . hinges entirely on its impact on recidivism." App.'s Br. 39-41. Thus, the Does seem to contend that SORA's lifetime registration requirement is unconstitutional absent any opportunity for judicial review to assess the risk of re-offending, and the district court erred by

disposing of their Due Process claim through its order on MSHP's motion for judgment on the pleadings. App.'s Br. 40-42.

But this Court has squarely denied the notion that procedural due-process principles are offended if a sex offender is not provided a hearing to determine an individual's dangerousness. *Miller*, 405 F.3d at 709. Moreover, "[s]tates are not barred by principles of procedural due process from drawing classifications among sex offenders and other individuals." *Id.* (holding that the federal sex offender registry, SORNA, also divides offenders into tiers and that additional procedures [to assess individual recidivism risks] are unnecessary").

More fundamentally, the Does' argument ignores two provisions within SORA that demonstrate that the Missouri General Assembly *actually did* evaluate the individual risk that registrants pose. First, SORA exempts sex-offenders who were convicted of an offense involving certain sexual conduct, where no force or threat of force was directed to the victim or any other individual involved; the victim was not under the custodial care of the offender; or the victim was at least 14 years of age, and the offender was not more than four years older than the victim. § 589.400.9(1); *see also* 34 USC § 20911(5)(C). This exemption—

commonly known as the Romeo and Juliet exception—demonstrates that the General Assembly found consensual sexual conduct did not pose a threat to the public, so long as no force or threat of force was used, and the victim was 14 years of age or older *and* the offender was no more than four years older than the victim.

Second, the three-tier system within SORA demonstrates that the General Assembly carefully evaluated the individual risk that registrants pose based on the severity of their offenses. *See Hixson v. Missouri State Highway Patrol*, 611 S.W.3d 923, 925 (Mo. App. E.D. 2020); *see also* § 589.414. While the Does fixate on attempting to precisely calculate the likelihood a particular sex-offender will reoffend in the future, that is not the only metric of risk or dangerousness used by the legislature. Instead, the legislature chose to categorize registrants based on the severity of the underlying offense as a reasonable estimation of the risk a particular offender poses to the safety of children and the public.

More heinous crimes logically pose a higher future risk to public safety, and are consequently sorted into Tier II and Tier III. §§ 589.414.6 and 7; *see also* 34 USC § 20911(3) and (4). Conversely, misdemeanor

crimes and crimes punished by less than one year are sorted into Tier I. SORA's three-tier system mirrors the type of offense-categorization used in the federal context in SORNA, which has repeatedly survived constitutional scrutiny. *See Willman v. Attorney General of the United States*, 972 F.3d 819, 824–25 (6th Cir. 2020) (holding that an ex post facto challenge to SORNA, was "not facially plausible" and citing similar findings affirming the constitutionality of SORNA from the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits). The requirements of SORA apply evenly to every registrant within its purview, and the mechanism for calculating risks to children and the public based on categories of offenses—organized on a scale of increasing heinousness—are substantially similar to those imposed by SORNA.

Here, the Does rely on *Powell v. Keel*, 860 S.E.2d 344, (S.C. 2021) to support their argument that the district court's decision was "procedurally and substantively erroneous." App.'s Br. 39-41. The Does note *Powell* held that "there is no evidence in the record that current statistics indicate all sex offenders generally pose a high risk of re-offending." App.'s Br. 41. But, as discussed below, the argument that

"recent empirical studies cast significant doubt … that sex offenders' risk of recidivism is frightening and high" conflicts with the United States Supreme Court's decision in *Kebodeaux*, and the Seventh Circuit. *See id, citing Does #1-5 v. Synder,* 834 F.3d 696, 704 (6th Cir. 2016).

The Supreme Court's decision in *Kebodeaux*, found that "[t]here is evidence that recidivism rates among sex offenders are higher than the average for other types of criminals." 570 U.S. at 395-96. Similarly, the Seventh Circuit has stated that "[t]here is serious underreporting of sex crimes, especially sex crimes against children." *Belleau v. Wall*, 811 F.3d 929, 933 (7th Cir. 2016); *see Braam v. Carr*, 37 F.4th 1269, 1273-74 (7th Cir. 2022). While the Supreme Court in *Kebodeaux* ultimately noted that the evidence may conflict on this point, the weighing of conflicting evidence is ultimately a judgment call for the legislative branch to make, as that branch has the "power to weigh the evidence and to reach a rational conclusion, for example, that safety needs justify postrelease registration rules." *Kebodeaux*, 570 U.S. at 396.

C. The district court correctly dismissed Count XI as redundant to Counts XII and XIII under Fed. R. Civ. P. 12(f).

The Does contend that the district court erred in concluding that their "overbreadth" claim was not adequately pled in Count XI. App.'s Br 42. This argument ignores key factors from the proceedings below. Indeed, in the district court's decision on Respondents' Motion for Judgment on the Pleadings, the court determined that Count XI alleged that the registrant Does' "First Amendment rights are burdened, and their speech is chilled, by a combination of (1) the requirement that they report new and changed online identifiers before using them, (2) the deprivation of their ability to speak anonymously; (3) the burden involved in reporting new and changed online identifiers personally[;] and (4) fear of reprisal from the public due to uncertainty as to whether their online identifiers will be publicly available." App. 226, R. Doc. 86 at 17. Thus, the district court made clear that Count XI did not provide fair notice of an overbreadth claim. *Id*.

The Does, however, remained silent and did not seek to amend their Second Amended Complaint to clearly allege overbreadth. The district court reiterated on summary judgment that its "description [of Count XI] remains accurate, and nothing in it—or, importantly, the Second Amended Complaint—suggests Count XI alleges that SORA" raises an

overbreath claim. App. 260, R. Doc. 162 at 23. Further, the district court reaffirmed its position that Count XI "as essentially reiterating Counts XII and XIII." App. 260, R. Doc. 162 at 23.

Consequently, the district court correctly concluded that "simply alleging that speech has been chilled does not provide [a] fair notice of what claim is being presented." App. 260, R. Doc. 162 at 23. After all, "'chilling effect' is a critical concept for many different First Amendment claims." App. 260, R. Doc. 162 at 23.

i. The factual allegations and relief sought in Count XI duplicated those in Counts XII and XIII , thus the district court properly dismissed it as redundant.

Under Federal Rule of Civil Procedure 12(f), a court may strike "any redundant, immaterial, impertinent, or scandalous matter" from pleadings. In fact, dismissal of duplicative claims comports with federal courts long-standing general principle of avoid[ing] duplicative litigation." *Blakley v. Schlumberger Technology Corp.*, 648 F.3d 921, 932 (8th Cir. 2011) (holding that "the district court did not err by dismissing Blakley's duplicative claims.").

The district court enjoys 'liberal discretion" to strike duplicative claims. *Stanbury Law Firm v. I.R.S.*, 221 F.3d 1059, 1063 (8th Cir. 2000)

(original citations omitted). Courts may strike duplicative counts where a "plaintiff alleges multiple claims premised on the same factual allegations and seeking the same relief." *Compare Hand v. Beach Entertainment KC, LLC*, 456 F. Supp. 3d 1099, 1126 (WD Mo. April 27, 2020)[9] *with Sioux Biochemical, Inc. v. Cargill, Inc*, 410 F.Supp.2d 785, 804 N.D. Iowa April 11, 2005) ("that the mere duplicative remedies do not necessarily make claims redundant within the meaning of Rule 12(f), if the claims otherwise require proof of different elements; however, a claim that merely recasts the same elements under the guise of a different theory may be stricken as redundant pursuant to Rule 12(f)").

But "[d]espite this broad discretion … striking a party's pleading is an extreme measure … [and] motions to strike under Fed.R.Civ.P. 12(f)

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[9] The district court cited two additional Missouri cases in support, (1) *Schupp v. CLP Healthcare Servs., Inc.*, No. 2:12-CV-04262-NKL, 2013 WL 150291 at *1 (W.D. Mo. Jan 14, 2013) (striking a claim as duplicative where plaintiff alleged two redundant claims-one that she was wrongfully discharged under the MHRAS and one that she was discriminatorily terminated under MHRA); and (2) *Ladd v. St. Louis Bd. Of Police Comm'rs*, No 405CV916UNA RHK/AJB, 2006 WL 2862165, at *5 (E.D. Mo. Oct 4, 2006) (dismissing as redundant two claims on the same factual predicate and resulting in the same constitutional injury as a third claim).

are viewed with disfavor and infrequently granted." *Stanbury Law Firm,* 221 F.3d at 1063, c*iting Lunsford v. U.S.*, 570 F.2d 221, 229 (8th Cir. 1977). The relevant question under this doctrine is, did the Does raise the same factual allegations while seeking the same relief in Counts XI, XII, and XIII? *Hand*, 456 F.Supp. 3d at 1126. The answer to that question is yes.

By re-alleging and reincorporating all prior factual allegations into Counts XI, XII, and XIII, the Does used the same factual allegations to assert each count. App. 0097, 99, 100, R. Doc. 48, ¶¶ 600, 612, 617. The district court concluded that Count XI alleged that the Does' First Amendment rights were burdened and their speech chilled by a combination of the following allegations. App. 286, R. Doc. 240 at 18. The first allegation was the requirement to report new and changed online identifiers before use, a fact also specifically raised in Count XII. App. 0099, R. Doc. 48, ¶ 614 and Count XIII App. 0100-101, R. Doc. 48, ¶¶ 619, 620, 621, and 622. App. 286, R. Doc. 240 at 18. The second allegation contended that providing online identifiers deprived Does of the ability to speak anonymously, a fact averred again in Count XII App. 0099, R. Doc. 48, ¶¶ 614, 616. App. 286, R. Doc. 240 at 18. Third was the allegation

that reporting new and changed online identifiers personally burdened them, a fact averred again in Count XIII App. 0100-101, R. Doc. 48, ¶¶619, 620, 621, 622, 623. App. 286, R. Doc. 240 at 18. Finally the Does alleged that they feared reprisal from the public due to uncertainty as to whether their online identifiers will be publically available, a fact averred again in Count XII App. 0099-100, R. Doc. 48, ¶¶615, 616. App. 286, R. Doc. 240 at 18.

The relief sought by the Does in each Count was identical. They sought to enjoin either: (a) the enforcement of SORA App. 0099, ¶ B; or (b) the enforcement of a specific provision within SORA App. 0100, ¶B; App. 0101, ¶B. The Does additionally sought a declaration that: (a) SORA is unconstitutional App. 0099, ¶ A; or (b) a specific provision within SORA is unconstitutional App. 0100, ¶A; App. 0101, ¶A. As Count XI added nothing beyond what could be found in the two that followed, it was redundant and appropriately dismissed.

Finally, the Does maintain that the district court "dismissed Count XI after trial as a 'redundant' claim without ever addressing the

arguments made" in their complaint. App.'s Br. 42.[10] Not so. The district court's Judgment specifically addressed Count XI, finding that "Count XI is the combination of other claims asserted elsewhere" in the complaint. App. 286, R. Doc. 240 at 18. This suggests that the district court reviewed the Appellants' arguments, and ultimately found them unpersuasive. The district court correctly exercised its discretion when it dismissed Count XI, and this Court should affirm the underlying judgment.

ii. The district court correctly concluded that the complaint did not state a First Amendment overbreadth claim.

The district court correctly determined that Count XI as pleaded failed to provide fair notice the theory of recovery being claimed because "the 'chilling effect' is an element in many different First Amendment claims." App. 0259, R. Doc. 162 at 23. A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief…." Fed. R. Civ. P. (8)(a)(2). "The clear purpose of the rule is *to give notice to the other party* and not formulate issues or fully summarize the

[10] The Does also incorrectly assert that the district court refused to consider its summary judgment motion on the "ground that the [alleged] "overbreadth" claim had not been adequately pled." App.'s Br. 42.

facts involved." *Clausen & Sons, Inc. v. Theo. Hamm Brewing Co.*, 395 F.2d 388, 390 (8th Cir. 1968) (original citations omitted and emphasis added).

The Does concede that they never used the specific word "overbreadth" in Count XI. App.'s Br. 42-43. They nevertheless maintain that the allegations "set out the elements of an overbreadth claim sufficient to put the Patrol on notice of the substance of the claim." App.'s Br. 42-43. Specifically, the Does allege that Count XI suggests that "SORA requires registrants to report too much information or that it impairs registrants' access to the internet or related services." App. Br. 42-43. The Does contend that Paragraphs 604, 608, and 611 in their complaint supports their position. App.'s Br. 43. They, however, never raised this argument in an appropriate post-trial motion, and these allegations fall short of establishing a First Amendment overbreadth claim.

Nowhere in Paragraphs 604, 606, and 611 do the Does state what information required by SORA is excessive. App. 0098-99, R. Doc. 48 at 98-99. Rather, Paragraphs 604 and 606 merely assert that registering their online identifiers will chill their First Amendment rights. App.

0098-99, R. Doc. 48 at 98-99. And Paragraph 611 does not suggest that providing online identifiers "impairs registrants access to the internet or related services." A plain reading of Paragraph 611 reveals it to allege that the registration requirement generally burdened offender's online speech. App. 0098-99, R. Doc. 48 at 98-99. Nothing in these paragraphs illustrates their position that "SORA requires registrants to report too much information or that it impairs registrants' access to the internet or related services." *Id*. In short, nothing signals an overbreadth claim.

The Does next contend that the "overbreadth claim Appellants advanced on summary judgment did not rely on any facts or theories that were not articulated in the Second Amended Complaint." App.'s Br. 43. Count XI, however, alleged only that SORA's requirement for online identifiers "violates their rights to *freedom of speech* and *association* under the First and Fourteenth Amendments to the United States Constitution." App. 0097, ¶603. These allegations do not establish an "overbreadth" claim.[11] Allegations that SORA violates their freedom of

[11] The district court agreed with MSHP that the Does First Amendment overbreathed claim was not "presented by Count XI (or any other count in the Second Amended Complaint)." App. 259, R. Doc. 162 at 22.

speech by association is, in fact, inconsistent with the facts necessary to establish an overbreadth claim. *See Woody v. Sterling Aluminum Products, Inc.*, 243 F.Supp.755, 759 (E.D. Mo. July 1, 1965) (citing Fed. R. Civ. P. 8) (holding that "inconsistent claims should be separately stated, so that the other party may be enabled to 'state in short and plain terms his defenses to each claim.'").

Lastly, the Does contend that SORA's mandatory disclosure of internet identifiers was overbroad because Respondents "adduced no evidence in discovery that such information had ever been used to investigate, solve, or prevent a crime." App.'s Br 42. This argument, however, is inappropriately incorporated from the Does' suggestions in support of summary judgment rather than presented in their Brief. *See U.S. v. Beasley*, 102 F.3d 1440, 1447 (8th Cir. 1996) ("a litigant cannot make arguments on appeal by incorporating by reference into his appellate brief arguments made in written submissions to the trial court") (original citation omitted). As a result, this Court should disregard this argument. The district court correctly concluded that the Does failed to properly plead a First Amendment overbreadth claim, and it properly dismissed Count XI as redundant.

D. The term "other identity information" in § 43.651.1(4) is not unconstitutionally vague because MSHP's form defines the contours of reportable information or, in the alternative, the remainder of § 43.651.1(4) provides a viable limiting construction under the doctrine of *ejusdem generis*.

A law violates due process when it is so vague that it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Musser v. Mapes*, 718 F.3d 996, 1000 (8th Cir. 2013) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)). A law fails to provide ordinary people fair notice when liability is based on "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings," such as "whether the defendant's conduct was 'annoying' or 'indecent.'" *Williams*, 553 U.S. 285, 306 (2008).

"What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is." *Id.* at 306; *also U.S. v. Nat'l Dairy Prods. Corp.*, 372 U.S. 29, 32 (1963) (holding laws are not unconstitutionally vague "simply because difficulty is found in determining whether marginal offenses fall within their language"); *also Platt v. Bd. of Comm'rs on Grievances and*

Discipline of Ohio Sup. Ct., 894 F.3d 235, 251 (6th Cir. 2018). So long as our laws are "[c]ondemned to the use of words, we can never expect mathematical certainty." *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972).

When evaluating void-for-vagueness challenges, federal courts can impose limiting constructions to statutory language that is "readily susceptible" to such construction. *U.S. v. Stevens*, 559 U.S. 460, 481 (2010). Courts will not rewrite statutes to make them conform to constitutional requirements. *Id.* Nor will they rely on governmental assurances that the government will apply statutes in only limited circumstances. *Id.* But when statutory language is "readily susceptible" to a limiting interpretation that eliminates any ambiguity, courts "consistently favor[ ] that interpretation of legislation which supports its constitutionality." *U.S. v. Bronstein*, 849 F.3d 1101, 1106 (D.C. Cir. 2017).

Here, the term "other identify information" in § 43.651.1(4) is readily susceptible to two limiting constructions—one adopted by the district court below; and one based on the Does' own expert testimony. Each of these limiting constructions are fatal to the Does' void-for-vagueness challenge.

i. Count X challenged the validity of the catch-all phrase "other identify information," not the definition of "online identifier" as a whole.

As an initial matter, the Does' argument mischaracterizes the district court's ruling on Count X.[12] The Does urge this Court to invalidate the entirety of § 43.651.1(4) even though they did not contend below that any portion of § 43.651.1(4) beyond the phrase "other identity information" was overly broad and vague. App. 283, R. Doc. 162, n.14, at 16. The Does cannot twist the district court's ruling to paint a larger target. Nor can they isolate one portion of a statutory definition to take down an entire statutory scheme. *See Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 625 (2020) (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 508 (2010) (holding that courts analyzing the constitutionality of a statute should "limit the solution to the problem, severing any problematic portions while leaving the remainder intact"). Even if this Court were to find that the term "other identify information" is unconstitutionally vague (which it should

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[12] Although the Does never explicitly state that Section V addresses Count X, Count X is the only count in the complaint that raised a void-for-vagueness challenge. Moreover, every citation to the district court's judgment in Section V is to the pages addressing Count X.

not), the remainder of § 43.651.1(4) and the registration requirements in §§ 589.402.3(10) and 589.407.1(1) should remain intact and undisturbed.

ii. The district court properly found that the registration form created by the Patrol provided a viable limiting constitution for the term "other identify information."

In evaluating void-for-vagueness challenges, federal courts must consider "any limiting construction that a state court or enforcement agency has proffered." *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989) (cleaned up). Nevertheless, courts may impose limiting constructions only where the statute is "'readily susceptible' to such a construction." *Reno* v. American Civil Liberties Union, 521 U.S. 884 (1997).

Here, the district court properly found that MSHP's registration form provides a limiting construction proffered by an enforcement agency. *See Ward*, 491 U.S. at 796. Section 589.402.3(1) requires all SORA registrants to report their "online identifiers, as defined in section 43.651, used by the person." *See also* § 589.407.1(1). Registration of these online identifiers must occur on "an offender registration form developed by the Missouri state highway patrol." § 589.407.1. MSHP has a statutory obligation to create a registration form. And all registrants

must use MSHP's form when reporting their online identifiers. This form, in turn, means that "registrants do not have to guess what the phrase 'other identify information' means or harbor doubt about what information they must provide." App. 282, R. Doc. 162, at 15. Thus, the term "other identify information"—as used in § 43.651 and implemented through §§ 589.402.3(10) and 589.407.1—is readily susceptible to a narrowing construction proffered by an enforcement agency.

The Does raise two arguments challenging the district court's rationale: (1) that registrants have no legal recourse if MSHP changes the form; and (2) that MSHP has "unbridled discretion" to determine what information is requested on the form. App.'s Br. 45. These concerns are misplaced because Missouri law allows private parties to challenge the actions of public entities that overstep their enabling statutes.

Missouri courts have consistently held that state agencies are creatures of statute. *In the Matter of Amendment of Comm'n's Rule Regarding Application for Certificate of Needs and Necessity*, 618 S.W.3d 520, 525 (Mo. banc 2021) (quoting *State ex rel. MoGas Pipeline, LLC v. Mo. Pub. Serv. Comm'n*, 366 S.W.3d 493, 496 (Mo. banc 2012); *also State ex rel Mo. Pub. Def. Comm'n v. Waters*, 370 S.W.3d 592, 598 (Mo. banc

2012) (citing *Parmley v. Mo. Dental Bd.*, 719 S.W.2d 745, 755 (Mo. banc 1986). As a state agency, MSHP's "powers are limited to those conferred by statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted." *Id.* MSHP cannot "expand or modify" the powers conferred by its enabling statutes. *See Brown v. Melahn*, 824 S.W2d 930, 933 (Mo. banc 1992) (holding that state agencies cannot promulgate regulations that go beyond the scope of authority conferred by the state legislature).

Here, § 589.407.1 requires MSHP to develop a registration form. But that power is not unfettered. MSHP may create forms only to effectuate "registration pursuant to sections 589.400 to 589.425." § 589.407.1. In other words, MSHP cannot use the form to collect information that registrants are not required to report under SORA (*e.g.*, the name of a registrant's pet or when a registrant plans to go on vacation). Collecting such information would impermissibly "expand or modify" SORA beyond legislative dictates.

If MSHP were to amend the registration form to seek such impermissible information under the guise of an "online identifier" the Does would not be without recourse. Missouri statutes grant state courts

the power to "declare rights, status, or other legal relations whether or not further relief is or could be claimed." § 527.010. And declaratory relief is appropriate "in any instance in which it will terminate a controversy or remove an uncertainty." Mo. R. Civ. P. 87.02(d). If MSHP amended the registration form to seek information beyond their legislative directive, the Does could seek declaratory relief to curtail the offending amendments.

iii. Alternatively, applying the canon of ejusdem generis to the entirety of § 43.651.1(4) shows that the term "other identify information" refers to aliases used to communicate electronically.

The doctrine of *ejusdem generis* dictates that ""when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 223 (2008) (quoting *Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 449 U.S. 117, 119 (1991). When the preceding specific terms share a common theme, the general term "must be similarly limited." *Id.* (citing *Dolan v. Postal Serv.*, 546 U.S. 481, 486-89 (2006).

Here, the term "other identify information" in § 43.651.1(4) is a general term preceded by several specific terms. Online identifiers

include "electronic mail addresses and instant message screen name, user ID, cell phone number or wireless communication device number or identifier, chat or other internet communication name, or *other identity information*." § 43.651.1(4) (emphasis added). The use of the word "other" directs the reader to refer back to the preceding examples for important context. The specific examples provided in § 43.651.1(4) all share a common theme—they are all aliases that users create or receive to send messages, share posts, and engage in other forms of electronic communication with other users.

The Does' own experts recognized and acknowledged this common theme. App. 324-325; App. 709-713. Users choose their own email addresses and chatroom names. Similarly, users receive their own cell phone numbers. In today's digital age, where vast amounts of electronic communication occurs between total strangers using anonymous usernames, knowing whether a particular online identifier belongs to a convicted sex-offender is crucial for members of the public to protect themselves, their children, and their loved ones. Limiting § 43.651.1(4) to aliases that registrants use to directly interact with other users is a commonsense interpretation that directly furthers the primary purpose

of Missouri's SORA. Consequently, proper application of the canon of *ejusdem generis* shows that the term "other identity information" is not impermissibly vague.

Finally, the Does' assertion that MSHP is "guessing" as to the meaning of § 43.651.1(4) is misleading. App.'s Br. 48-49. MSHP has historically encouraged registrants to report IP addresses as well as any website that the offender owns, maintains, or has administrative privileges. App. 1091-1092, R. Doc. 234. These publications were designed to provide guidance for registrants in "marginal cases," given the lack of judicial insight on the exact contours of § 43.651.1(4). *See Nat'l Dairy Prods. Corp.*, 372 U.S. at 32 (holding that difficulty applying statutory language to "marginal cases" does not make a law unconstitutionally vague). And while MSHP did offer an interpretation of § 43.651.1(4) in summary judgment that excluded IP addresses, that argument was a potential interpretation based on common themes identified by the Does' expert witnesses. R. Doc. 134 at 46-47. Presenting alternative arguments based on the Does' expert testimony does not mean that MSHP is "throwing spaghetti at a wall." App.'s Br. 49.

For these reasons, this Court should affirm the trial court's judgment that MSHP's registration form ameliorates any vagueness in § 43.651.1(4) or, in the alternative, find under the doctrine of *ejusdem generis* that the specific terms in § 43.651.1(4) provide a limiting construction that saves the general term "other identify information" from any vagueness concerns.

II. The district court properly dismissed the family Does because those plaintiffs are not subject to SORA.

The Does final argument is that the district court erred when it "effectively dismissed [the family Does'] claims *sua sponte* without consideration of them." App.'s Br. 50. The Does argument is misplaced for multiple reasons, including those previously addressed in the MSHP's response to the Does contention that the district court should have expanded its *Martinez-Mendoza* analysis to include effects on family members.[13]

First, the Does contention that "[t]he first time the trial court addressed that issue was four years later, in its post-trial Order, in which it dismissed all claims by Appellants who are family members of people

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[13] See Appellee's Br. 31-33.

required to register" is refuted by the record. As the district court notes in its order granting judgment, it "effectively dismissed claims asserted by non-registrants" in its prior orders. App. R. Doc. 240, at 3 n4. For instance, the district court's summary judgment order expressly states that "the Court will not consider evidence of the impact of SORA on family members of registrants." App. 244, R. Doc. 162, at 8.

Similarly, the Does' contention that "the issue was not briefed or discussed by the parties at the trial in this matter" is refuted by the record. MSHP questioned the relevance of the family Does throughout the litigation and expressly moved to strike family Does from testifying at trial. R. Doc. 223. Although MSHP questions whether the district court's dismissal can accurately be described as *sua sponte* given the nature of the litigation below, the Doe's concede that the district court has the authority to dismiss claims *sua sponte*. App.'s Br. 50, citing *Smith v. Boyd*, 945 F.2d 1041, 1043 (8th Cir. 1991). So regardless of how the dismissal is framed, the trial court did not err. As discussed in detail above, no authority holds that collateral family impact transforms a civil regulatory statute into criminal punishment. Rather, courts traditionally assess the "affirmative disability or restraint" on the registrant

personally, not on family or associates. What is more, "[f]amily members are not required to register or take any other action under SORA, and no information about them is reported." App. 270, R. Doc. 240 at 3. Indeed, when assessing whether SORA imposes an affirmative disability or restraint, this Court must "inquire how the effects of [SORA] are felt by those subject to it." *Smith*, 538 U.S. at 99-100. Family Does are not subject to SORA. The district court properly dismissed family Does and this Court should place no weight in the Does' argument that dismissal was improper.

CONCLUSION

This Court should affirm because SORA does not violate the Eighth Amendment, First Amendment, or ex post facto clause of the United States Constitution as a matter of law, and the district court did not err in its analysis of the Doe's complaint during any stage of the litigation below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2025, an electronic copy of the foregoing brief was filed via the Court's electronic filing system and served upon all counsel of record.

/s/David L. McCain

CERTIFICATION OF COMPLIANCE

I hereby certify that the text of the foregoing document contains 12,826 words of proportionally spaced text as determined by the automated word count of the Microsoft Word 2016 word-processing system and has a 14-point, serif (Century Schoolbook) typeface.

Under Circuit Rule 28A(h)(2), I further certify that this brief has been scanned for viruses and is virus-free.

/s/ David L. McCain