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REGISTERED FOR LIFE: ADDRESSING THE REMOVAL ISSUE WITHIN MISSOURI'S SEX OFFENDER REGISTRATION ACT

MICHAEL MCWATERS*

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INTRODUCTION

Based on plain text, Missouri's Sex Offender Registration Act (SORA) appears to permit sex offenders to petition for removal from the state's sex offender registry.¹ But, in practice, the statute's removal provision is useless for almost all Missouri offenders.² A 2018 amendment to Missouri's SORA

* J.D. Candidate (2023), Washington University School of Law. Thank you to the Volume 100 staff at the *Washington University Law Review* for their contributions and guidance. Special thanks to my fiancée, Danielle, for her support in law school and throughout the writing process.

1. See MO. REV. STAT. § 589.401 (Supp. 2021) (permitting removal for certain qualifying registrants). All statutory references are to MO. REV. STAT. 2021 Cumulative Supplement, unless otherwise indicated.

2. See *infra* Part II.

was intended to replace the statute's lifetime registration requirement with a system that would allow less serious offenders to obtain removal from the state's registry once they satisfied certain prerequisites.³ However, the removal statute has failed to benefit registrants because the provision only applies to one of the eight statutory registration requirements.⁴ Because of this limitation, the removal provision is ineffective for many Missouri offenders who are subject to more than one registration obligation.⁵ As a consequence, qualifying sex offenders are unable to remove their names from the registry, and the purpose of the sex offender registry—to catalogue the most dangerous offenders—is severely undermined.⁶

This Comment explains the shortcomings of Missouri's removal statute and offers a solution for how the statute could be amended to effectuate legislative intent and allow qualifying offenders to seek removal from the registry. Part I reviews the history and development of sex offender registries in the United States. Part II outlines the problem with Missouri's sex offender registry statute that causes the removal provision to be ineffective. Part III proposes a solution for how Missouri's registration statute could be revised to both give effect to the removal provision and to enhance clarity in the statutory text.

3. See S.B. 655, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018) (codified at MO. REV. STAT. §§ 589.400–425); see also Alisa Nelson, *New Law Expected to Reduce Missouri's Sex Offender Registry Count*, MISSOURINET (Aug. 20, 2018), <https://www.missourinet.com/2018/08/20/new-law-expected-to-reduce-missouris-sex-offender-registry-count/> [<https://perma.cc/A3T2-T7GY>].

4. See MO. REV. STAT. § 589.400.1(1) (referencing the removal provision at § 589.401); see also *infra* notes 112–116 and accompanying text.

5. See, e.g., *Doe v. Keathley*, 290 S.W.3d 719, 720–21 (Mo. 2009) (denying removal where offender subject to multiple registration obligations); see *infra* notes 117–124 and accompanying text.

6. See *Powell v. Keel*, 860 S.E.2d 344, 349 (S.C. 2021) (“[T]he lifetime inclusion of individuals who have a low risk of re-offending renders the registry over-inclusive and dilutes its utility by creating an ever-growing list of registrants that is less effective at protecting the public and meeting the needs of law enforcement.”); see also Elizabeth Reiner Platt, *Gangsters to Greyhounds: The Past, Present, and Future of Offender Registration*, 37 N.Y.U. REV. L. & SOC. CHANGE 727, 752 (2013) (“As registries expand, they become even less useful to both the public and law enforcement.”).

I. BACKGROUND TO STATE AND FEDERAL SEX OFFENDER REGISTRATION LAWS

State and federal sex offender registries were enacted in the mid-1990s as part of an initiative to protect communities, and especially children, from habitual and sexually violent predators.⁷ This movement spawned three important pieces of federal legislation relating to sex offender registration,⁸ as well as dozens of state registration statutes.⁹ The federal registration statutes direct states to enact registries that are at least as comprehensive as the federal program, but states retain discretion to enact programs that are more demanding than the federal scheme.¹⁰ Missouri's registration program initially exceeded the federal minimum because it provided for lifetime registration for all sex offenses,¹¹ but a 2018 amendment made Missouri's registry more similar to the federal statute.¹² Now, sex offenders in Missouri may petition for removal from the state registry once they satisfy certain statutorily defined criteria.¹³

7. See Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996), *repealed by* Sex Offender Registration and Notification Act, Pub. L. No. 109-248, § 129(a), 120 Stat. 587, 600 (2006) (identifying a legislative purpose "to protect the public from sexually violent offenders"). All subsequent references to the Sex Offender Registration and Notification Act will use the abbreviation "SORNA."

8. These statutes are (i) the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038-42 (1994), *repealed by* SORNA § 129(a), (ii) Megan's Law, and (iii) the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 34 U.S.C. §§ 20911-20932). For a discussion of each statute, see *infra* Part I.A. All subsequent references to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act will use the abbreviation "Wetterling Act," and all subsequent references to the Adam Walsh Child Protection and Safety Act of 2006 will use the abbreviation "Walsh Act."

9. By 1996, every state and the District of Columbia had created their own sex offender registry to comply with the Walsh Act and Megan's Law. For a summary of state sex offender registration statutes, see Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future*, 64 DRAKE L. REV. 741, 747 n.16 (2016).

10. See Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended, 64 Fed. Reg. 572, 575 (Jan. 5, 1999) ("Hence, the [Wetterling] Act's standards constitute a floor for state programs, not a ceiling."); see also Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, 38034 (July 2, 2008) ("SORNA does not bar jurisdictions from adopting additional regulation of sex offenders for the protection of the public, beyond the specific measures that SORNA requires.")

11. See *R.W. v. Sanders*, 168 S.W.3d 65, 67 (Mo. 2005) (en banc).

12. See *Sex Offender Registry Fact Sheet*, MO. STATE HIGHWAY PATROL, <https://www.mshp.dps.mo.gov/MSHPWeb/PatrolDivisions/CRID/SOR/factsheet.html> [<https://perma.cc/37WL-2L2H>] (last visited Nov. 21, 2022). Compare 34 U.S.C. § 20915 (imposing a sex offender registration requirement that varies in duration based on the categorization of the offender), with MO. REV. STAT. § 589.401.4 (same).

13. See MO. REV. STAT. § 589.401.

A. Federal Legislation Regulating Sex Offenders

The federal sex offender registry developed in the 1990s in response to a string of sexually violent crimes against children by habitual sex offenders.¹⁴ The primary impetus for federal action came in 1989 with the abduction and murder of Jacob Wetterling, an eleven-year-old boy from St. Joseph, Minnesota.¹⁵ Jacob's parents became advocates for child safety education after their son's disappearance,¹⁶ and their efforts prompted Congress to adopt the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act) as part of the Violent Crime Control and Law Enforcement Act of 1994.¹⁷ The Wetterling Act did not create a federal sex offender registry, but instead required each state to create their own registry of offenders convicted of sexually violent crimes.¹⁸ The Act further required that anyone convicted of either a criminal offense against a minor or a sexually violent offense must remain on the state's registry for ten years.¹⁹ States were permitted to disclose registration information to the public under the Act, but dissemination of an offender's information was not required.²⁰

The Wetterling Act represented the first step toward a national sex offender registration system, but the effectiveness of the law was limited

14. See Dep't of Just., *Legislative History of Federal Sex Offender Registration and Notification*, SMART, <https://smart.ojp.gov/sorna/current-law/legislative-history> [<https://perma.cc/ZF9K-J867>] (last visited Nov. 21, 2022).

15. See *Sources: Jacob Wetterling's Remains Have Been Found*, DAKOTA NEWS NOW (Sept. 3, 2016, 9:47 AM), <https://www.dakotane.wsnow.com/content/news/REPORTS-Wetterling-Remains-Might-Have-Been-Found-Sources-Say-392242671.html> [<https://perma.cc/W9V6-FKEB>]. Interestingly, because Jacob's killer had not been convicted of any previous sex offense, he would not have been required to register as a sex offender under the Wetterling Act.

16. As part of their mission to raise awareness about child safety, Jacob's Parents formed the Jacob Wetterling Foundation in 1990. See *JWRC History*, ZERO ABUSE PROJECT, <https://www.zeroabuseproject.org/victim-assistance/jwrc/who-we-are/history/> [<https://perma.cc/66DB-RHAA>] (last visited Nov. 21, 2022). In the years since their son's death, the Wetterlings have become vocal critics of current registry laws in the United States. They argue existing registry laws are overbroad and allow registries to become diluted by nonviolent offenders who pose a minimal risk of reoffending. See Patty Wetterling, *Patty Wetterling: The Harm in Sex-Offender Laws*, SACRAMENTO BEE (Sept. 14, 2007, 12:00 AM), <https://web.archive.org/web/20080214170401/http://www.sacbee.com/110/story/377462.html> [<https://perma.cc/L2SM-SVQS>].

17. See Wetterling Act, Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038-42 (1994), repealed by SORNA, Pub. L. No. 109-248, § 129(a), 120 Stat. 587, 600 (2006).

18. *Id.* § 170101(f)(1) ("Each State shall have not more than 3 years from the date of enactment of this Act in which to implement this section . . ."). Congress could not directly compel the states to assemble state sex offender registries, but the Wetterling Act included a reduction in federal funding for any state which failed to comply. See *id.* § 170101(f)(2)(A).

19. *Id.* § 170101(b)(6)(A). The terms "criminal offense against a victim who is a minor" and "sexually violent offense" are defined at section 170101(a)(3)(A)-(B).

20. *Id.* § 170101(d)(1) (authorizing disclosure of registration information "to law enforcement agencies for law enforcement purposes").

because there was no mandatory provision for community notification²¹ and because state compliance was limited.²² The murder of seven-year-old Megan Kanka in 1994 highlighted these shortcomings. Megan’s neighbor and eventual killer had two previous convictions for sexually assaulting young girls, but Megan’s family was unaware of his criminal history.²³ After Megan’s death, the New Jersey Legislature passed Megan’s Law, which required publication of sex offenders’ information in a public registry.²⁴ The federal government passed a similar statute, also called Megan’s law, in 1996.²⁵ The federal Megan’s Law amended the Wetterling Act and required state law enforcement to make information about registered sex offenders publicly available.²⁶

The Wetterling Act and Megan’s Law appear to provide a comprehensive federal scheme for sex offender registration and community notification, but in the early 2000s, Congress became concerned that a significant number of offenders were evading the requirements of sex offender registration laws.²⁷ Congress determined that a major contributor to this issue was that sex offenders often moved between states without updating their registration in the new state.²⁸ In response to these concerns, Congress acted to create a national sex offender registry in 2006 by enacting

21. See *id.* § 170101(d).

22. See RICHARD G. WRIGHT, SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS 50–65 (2d ed. 2015) (noting that in 1994, only five states had complied with the Wetterling Act by requiring sex offenders to register with local law enforcement).

23. See William Glaberson, *Stranger on the Block—A Special Report.; At Center of ‘Megan’s Law’ Case, a Man No One Could Reach*, N.Y. TIMES (May 28, 1996), <https://www.nytimes.com/1996/05/28/nyregion/stranger-block-special-report-center-megan-s-law-case-man-no-one-could-reach.html> [<https://perma.cc/4XSJ-GXJ2>].

24. 1994 N.J. Laws 1132–36, 1152–59; see also Kimberly J. McLarin, *Trenton Races to Pass Bills on Sex Abuse*, N.Y. TIMES (Aug. 30, 1994), <https://www.nytimes.com/1994/08/30/nyregion/trenton-races-to-pass-bills-on-sex-abuse.html> [<https://perma.cc/UCL4-APTT>]. The term Megan’s Law can refer to either the federal statute or to similar state statutes. The federal Megan’s Law only imposed a community notification requirement, whereas some state level Megan’s Laws, such as Missouri’s, imposed both a sex offender registration and a community notification requirement.

25. Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996), *repealed by* SORNA, Pub. L. No. 109-248, § 129(a), 120 Stat. 587, 600 (2006).

26. See *id.* § 2 (“The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.”).

27. A 2005 House Report estimated that 100,000 sex offenders, or one-fifth of the nation’s sex offender population, were not listed on any registry. See H.R. REP. NO. 109-218, pt. 1, at 26 (2005); see also *Reynolds v. United States*, 565 U.S. 432, 442–43 (2012) (summarizing legislative comments about gaps in state sex offender registries); Office of the Attorney General, *The National Guidelines for Sex Offender Registration and Notification*, 73 Fed. Reg. 38030, 38030–31 (July 2, 2008).

28. See 152 CONG. REC. 15333 (2006) (statement of Sen. Cantwell) (“Child sex offenders have exploited this stunning lack of uniformity, and the consequences have been tragic. Twenty percent of the Nation’s 560,000 sex offenders are ‘lost’ because State offender registry programs are not coordinated well enough.”).

the Adam Walsh Child Protection and Safety Act (Walsh Act).²⁹ The Act was named for six-year-old Adam Walsh, who was abducted from a Florida shopping mall and murdered in 1981.³⁰ Title I of the Walsh Act, entitled the Sex Offender Registration and Notification Act (SORNA), organized state and tribal sex offender registries into a single national database.³¹ The Act repealed the previous federal laws, the Wetterling Act and federal Megan's Law, and sought to create a more uniform registration system.³² As part of the Walsh Act, SORNA organizes convicted sex offenders into tiers based on the severity of their crime and imposes durational requirements based on these tiered classifications.³³ Convicted sex offenders may become exempt from SONRA's registration requirements once their term of registration expires.³⁴

To ensure the registration requirements imposed by SONRA would be immediately effective, Congress wrote the Act with the intention that it would apply to individuals who were convicted of sex offenses that predated SONRA's enactment.³⁵ The practical result of this change was that offenders who were convicted decades before the passage of SONRA would become subject to a registration requirement today, even though the

29. Walsh Act, Pub. L. No. 109-248, 120 Stat. 587 (codified at 34 U.S.C. §§ 20911–20932).

30. Yolanne Almanzar, *27 Years Later, Case Is Closed in Slaying of Abducted Child*, N.Y. TIMES (Dec. 16, 2008), <https://www.nytimes.com/2008/12/17/us/17adam.html?hp> [<https://perma.cc/D7RD-JFAD>].

31. SORNA, Pub. L. No. 109-248, §§ 101–155, 120 Stat. 587, 590–611 (2006) (codified at 34 U.S.C. §§ 20911–20932). The Walsh Act creates uniform requirements for what offender data should be publicly available, but the Act affords states some discretion in which offenders shall have their information published. Registration information for tier II and tier III offenders must be made publicly available, but states may decline to publish registration data for tier I offenders. *Id.*

32. *See Reynolds*, 565 U.S. at 440 (noting that “the Act seeks to make more uniform a patchwork of pre-existing state systems”); SORNA § 129 (repeal of earlier laws).

33. *See* 34 U.S.C. § 20911(1)–(4). SORNA imposes a minimum registration requirement of fifteen years for the least dangerous offenders, called tier I offenders. *Id.* § 20911(2). At the next-highest level, tier II offenders are subject to a twenty-five-year registration requirement. *Id.* § 20915(a). The most dangerous offenders are placed in tier III and are required to register for life. *Id.* § 20915.

34. *Id.* § 20915. This option to wait out the registration obligation is not available for tier III offenders. Registrants may also obtain a reduction in their registration period if they maintain a “clean record” for at least ten years following their conviction. *See id.* § 20915(b).

35. The statute originally applied only to individuals convicted after the statute's enactment, but SORNA empowered the Attorney General to make regulations which would allow the law to apply retroactively. *See id.* § 20913(d) (“The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction . . .”). Congress thought it imperative that SORNA apply retroactively so the law could comprehensively cover all current sex offenders once it was enacted. *See* Office of the Attorney General, *Applicability of the Sex Offender Registration and Notification Act*, 72 Fed. Reg. 8894, 8896 (Feb. 28, 2007) (“If SORNA were deemed inapplicable to sex offenders convicted prior to its enactment, then the resulting system for registration of sex offenders would be far from ‘comprehensive’ . . . because most sex offenders who are being released into the community or are now at large would be outside of its scope for years to come.”).

requirement did not exist at the time of their conviction.³⁶ The decision to make SONRA apply retroactively proved significant at the state level because even if individual states declined to impose a retroactive registration requirement as part of their state sex offender registry, offenders in those states would still be required to register in their home state due to SORNA's federal registration requirement.³⁷

While Congress drafted SORNA's requirements to apply retroactively,³⁸ many commentators worried that implementing SONRA in this way would violate the ex post facto clause of the U.S. Constitution.³⁹ Opponents of the Act maintained that imposing a new registration requirement which did not exist at the time of conviction amounted to imposing a new criminal sanction for past crimes.⁴⁰ Despite these concerns, the Attorney General relied upon the Supreme Court's holding in *Smith v. Doe*⁴¹ to conclude that retroactive application of SORNA did not violate the ex post facto clause.⁴² In *Smith*, the Court held that Alaska's state sex offender registration act did not violate the ex post facto clause because, although it was retroactive in application, it was not punitive in nature.⁴³ Federal courts have generally relied upon the logic in *Smith* to dismiss ex post facto challenges against

36. See Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act, 72 Fed. Reg. 8894, 8896 (Feb. 28, 2007) (observing that SORNA "may validly be applied (and enforced by criminal sanctions) against sex offenders whose predicate convictions occurred prior to the creation of these requirements.>").

37. See 34 U.S.C. § 20913(d). However, in states where retroactive sex offender registries have been barred by state law, some state courts have held that the retroactive piece of SORNA may not be applied to require offenders to be included on that state's registry. See Dep't of Pub. Safety and Corr. Servs. v. Doe, 94 A.3d 791, 812 (Md. 2014); Andrews v. State, 978 N.E.2d 494, 503 (Ind. Ct. App. 2012), transfer denied, 985 N.E.2d 339 (Ind. 2013). But see Doe v. Toelke, 389 S.W.3d 165, 167 (Mo. 2012) (allowing SORNA registration requirement to apply retrospectively despite constitutional prohibition on retrospective state laws). The state courts which declined to apply SORNA retroactively have relied upon 42 U.S.C. § 16925(b), which specifically contemplates situations where the state's highest court has determined that a provision of SORNA violates the state's constitution.

38. See 42 U.S.C. § 16911(1) (defining "sex offender" to "mea[n] an individual who was convicted of a sex offense") (emphasis added).

39. See Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, 38030–31 (July 2, 2008) (summarizing comments in opposition to applying SORNA retroactively). The ex post facto clause forbids imposing new or additional criminal sanctions for past conduct. See *Lynce v. Mathis*, 519 U.S. 433, 441 (1997).

40. See Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, 38030–31 (July 2, 2008).

41. 538 U.S. 84 (2003).

42. See Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, 38030 (July 2, 2008); see also Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act, 72 Fed. Reg. 8894, 8896 (Feb. 28, 2007).

43. *Smith*, 538 U.S. at 96.

both state and federal sex offender registries.⁴⁴ Although the Supreme Court has evaluated constitutional challenges to SORNA since *Smith*, the Court has declined to specifically address the question of whether SORNA violates the ex post facto clause.⁴⁵

B. Missouri's Sex Offender Registration Act

Missouri's Sex Offender Registration Act (SORA) initially imposed a lifetime registration requirement upon a narrow class of offenders,⁴⁶ but a series of amendments passed throughout the early 2000s progressively broadened the statute's application.⁴⁷ The registry originally applied retroactively, but the Missouri Supreme Court later invalidated this aspect of the registry as inconsistent with the state's constitution.⁴⁸ However, by incorporating the retroactive obligation from SORNA as a trigger for registration under Missouri's SORA, the Missouri Legislature ultimately succeeded in constructing a registration scheme which applied retroactively.⁴⁹ And although the lifetime registration obligation was never judicially invalidated, a 2018 amendment softened this requirement by creating a mechanism for certain offenders to petition for removal from the registry.⁵⁰

1. The Development of Missouri's SORA

To comply with federal requirements in Megan's Law and the Wetterling Act, Missouri adopted a statewide sex offender registration act in July of 1994.⁵¹ Like SORNA, which would be passed by the federal government eleven years later, Missouri's original registration act applied retroactively

44. See, e.g., *Shaw v. Patton*, 823 F.3d 556, 562 (10th Cir. 2016); *United States v. Parks*, 698 F.3d 1, 5 (1st Cir. 2012); *United States v. W.B.H.*, 664 F.3d 848, 853–54 (11th Cir. 2011). *But see Doe v. Snyder*, 834 F.3d 696, 705–06 (6th Cir. 2016) (finding Michigan's sex offender registry to be punitive in violation of ex post facto clause).

45. *United States v. Kebodeaux*, 570 U.S. 387, 389 (2013) (assuming without deciding that Congress did not violate the ex post facto clause in enacting SORNA's registration requirements); *United States v. Juv. Male*, 564 U.S. 932, 932–33 (2011) (declining to address whether SORNA violates ex post facto clause due to mootness); *Carr v. United States*, 560 U.S. 438, 458 (2010) (declining to address whether SORNA violates ex post facto clause).

46. See 1994 Mo. Laws 1137–39 (requiring registration for forcible rape, forcible sodomy, sexual abuse, or for sex crimes against victims under thirteen years old).

47. See *infra* notes 57–64 and accompanying text.

48. See *Doe v. Phillips*, 194 S.W.3d 833, 852 (Mo. 2006).

49. See *infra* notes 74–84 and accompanying text; see also MO. REV. STAT. § 589.400.1(7).

50. See S.B. 655, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018) (codified at MO. REV. STAT. §§ 589.400–425).

51. See MO. STATE HIGHWAY PATROL, *supra* note 12. Missouri was one of several states to adopt a sex offender registry after the murder of Megan Kanka in 1994.

to offenders whose convictions predated the statute.⁵² The original version of Missouri's SORA only required registration for a handful of offenses,⁵³ and the statute focused primarily on sex offenses committed in the state of Missouri.⁵⁴ The 1994 Act required sex offenders to register with law enforcement officials in their city or county,⁵⁵ and failure to register was made punishable as a class A misdemeanor.⁵⁶

Missouri's SORA saw a series of minor amendments over the next decade. In 1997, the General Assembly expanded the registry to include any person convicted of a felony sex offense and of certain crimes against children, such as kidnapping, promoting prostitution, and incest.⁵⁷ A 1998 amendment kept failure to register as a class A misdemeanor, but made subsequent violations punishable as a class D felony.⁵⁸ Although courts had treated Missouri's SORA as a lifetime registration requirement since its enactment, a 2000 amendment clarified that "[t]he registration requirements . . . are lifetime registration requirements unless all offenses requiring registration are reversed, vacated or set aside or unless the registrant is pardoned of the offenses requiring registration."⁵⁹ Subsequent amendments expanded the list of offenses requiring registration and further increased the penalty for failure to register.⁶⁰

Although Missouri's SORA did not include a generalized removal provision until 2018, a 2006 amendment created three narrow exceptions which, for the first time, enabled some registrants to seek removal.⁶¹ First, the amendment allowed registrants to obtain removal if their registration was based on a conviction for felonious restraint or kidnapping committed against a child where the offender was also the parent or guardian of the victim.⁶² Second, offenders could obtain removal after ten years if their registration was based on a conviction for promoting prostitution, public

52. See *Doe v. Phillips*, 194 S.W.3d 833, 837 (Mo. 2006) (noting that Missouri's SORA applies to offenders whose convictions predate the law's enactment); 1994 Mo. Laws 1137 (requiring registration for "[a]ny person who . . . has been or is hereafter convicted of [certain offenses]").

53. The law only required registration for persons convicted of forcible rape, forcible sodomy, sexual abuse, or of sex crimes against victims under thirteen years old. See 1994 Mo. Laws 1137.

54. The statute also applied to any Missouri resident who has been found guilty or pled guilty "in any other state or under federal jurisdiction" to conduct which would violate certain sex offense laws if committed in Missouri. *Id.* at 1138.

55. *Id.*

56. *Id.* at 1139. In 1994, a class A misdemeanor was punishable by up to one year imprisonment or a fine up to \$1,000. See MO. REV. STAT. §§ 558.011.1.(5), 560.016.1.(1) (1994).

57. See 1997 Mo. Laws 1324. This amendment also moved the sex offender registry to its current location at MO. REV. STAT. § 589.400.

58. See 1998 Mo. Laws 534. In 1998, a class D felony was punishable by up to five years imprisonment or a fine of up to \$5,000. See MO. REV. STAT. §§ 558.011.1.(4), 560.011.1.(1) (1998).

59. 2000 Mo. Laws 732–33.

60. See 2004 Mo. Laws 427–28.

61. See 2006 Mo. Laws 350–53.

62. *Id.* at 352.

display of explicit sexual material, or second-degree statutory rape.⁶³ Finally, offenders convicted of sex offenses committed when they were nineteen years of age or younger against someone thirteen years of age or older could also petition for removal after two years.⁶⁴

2. *Judicial Interpretation of Missouri's SORA*

In the mid-2000s, the Missouri Supreme Court resolved a series of challenges to Missouri's SORA, and, in the process, significantly modified the scope of the state's sex offender registry. Approximately seven years after the enactment of Missouri's SORA, several state registrants challenged the constitutionality of the registration scheme.⁶⁵ In the first of these cases, *R.W. v. Sanders*, the Missouri Supreme Court applied U.S. Supreme Court precedent to conclude that Missouri's sex offender registry was not an impermissible ex post facto law and did not violate the due process rights of registrants.⁶⁶ The court reasoned that no ex post facto violation existed because the requirement to register as a sex offender was not punitive, but instead was "civil and regulatory in nature."⁶⁷ With respect to the due process challenge, the court held that, because registration is always predicated on a criminal conviction, the criminal procedures leading to the conviction provide sufficient procedural protections for the registrant.⁶⁸ Although it was not directly challenged in that case, the Missouri Supreme Court also suggested the lifetime registration requirement was permissible.⁶⁹

Despite this early victory for the State, the Missouri Supreme Court subsequently curtailed the application of Missouri's Sex Offender Registration Act in *Doe v. Phillips*.⁷⁰ In that case, the court concluded the retroactive registration requirements of Missouri's Sex Offender Registration Act could not be enforced because they violated a clause in the state constitution which forbids laws that are "retrospective in [their]

63. *Id.*

64. *Id.*

65. *See R.W. v. Sanders*, 168 S.W.3d 65, 67 (Mo. 2005) (en banc).

66. *Id.* at 68–72.

67. *Id.* at 70.

68. *Id.* at 71–72. In reaching this conclusion, the Missouri Supreme Court closely followed the Supreme Court's precedent in *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003), which similarly rejected a due process challenge against a state sex offender registry.

69. *See R.W.*, 168 S.W.3d at 70. Interestingly, the court noted that a lifetime registration requirement was less likely to constitute an ex post facto violation because the registration requirement was non-retributive. The court noted that, unlike Missouri's lifetime registration period, "[a] retributive scheme would impose progressively longer registration periods based upon the severity of the underlying sex offense." *Id.*

70. *Doe v. Phillips*, 194 S.W.3d 833 (Mo. 2006).

operation.”⁷¹ The court reaffirmed the holding in *R.W.* that the Act did not violate the ex post facto clause, but the court determined a different result was appropriate with respect to the restriction on retrospective law because that clause is broader than the ex post facto clauses of the Missouri and U.S. constitutions.⁷² The registration requirements in the law, including the lifetime registration requirement, were allowed to remain in place for future offenders, but the Court held offenders could not be required to register based solely on convictions resulting from conduct that predates the enactment of the Sex Offender Registration Act.⁷³

The Missouri Supreme Court’s resolution of the ex post facto challenge in *Doe v. Phillips* represented a significant obstacle for effective enforcement of Missouri’s SORA. As a result of the decision, Missouri residents who had committed sex offenses before the enactment of Missouri’s state registry could not be compelled to register under state law unless they had committed a successive crime or they had been subsequently evaluated as a sexually violent predator.⁷⁴ However, the situation quickly changed in July of 2006 when the federal Congress passed the Walsh Act and SORNA, which included a retroactive registration requirement.⁷⁵ Once SORNA became effective, sex offenders who resided in Missouri became subject to a *federal* retroactive obligation to register, even though their own state supreme court had invalidated the retroactive registration requirement in Missouri’s SORA.⁷⁶ Significantly, the federal registration requirement also triggered a registration requirement under Missouri law, due to a clause in the Missouri statute which required registration for any person who “has been or is required to register in another state, territory, the District of Columbia, or foreign country, or has been or is required to register under tribal, federal or military law.”⁷⁷ Missouri law required offenders to register in the state if they were required to register under federal law, and the federal law applied retroactively in a way the Missouri law could not. Read together with SORNA, this clause in

71. *Id.* at 849–853 (quoting MO. CONST. art. I, § 13).

72. *Id.* at 850.

73. *Id.* at 852–853.

74. *Id.* at 838.

75. See 34 U.S.C. § 20911(1) (defining sex offender as “an individual who was convicted of a sex offense”) (emphasis added); see also Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act, 72 Fed. Reg. 8894, 8896 (Feb. 28, 2007).

76. See *Phillips*, 194 S.W.3d at 852.

77. MO. REV. STAT. § 589.400.1(7). This statutory provision was added in 2000 and predated the enactment of SORNA. See 2000 Mo. Laws 732.

Missouri's SORA imported the retroactive federal obligation into Missouri state law.⁷⁸

In 2009, the Missouri Supreme Court ratified this approach, and significantly narrowed the effect of the *Phillips* decision.⁷⁹ In *Doe v. Keathley*, the plaintiffs were all Missouri residents who had been convicted of various sex offenses before the enactment of Missouri's SORA.⁸⁰ The offenders sued the state to obtain a declaratory judgment that they were not required to register because, under *Phillips* and Missouri's retrospective law clause, they could not be compelled to register based on a sex crime that occurred before the enactment of Missouri's SORA.⁸¹ In a cursory, three-page opinion, the *Keathley* court rejected this argument and held the offenders were still required to register because they were "subject to the independent, federally mandated registration requirements under [SORNA]."⁸² Unlike in *Phillips*, the court determined Missouri's constitutional ban on retrospective laws did not bar the retroactive application of SORNA because the federal law "operates irrespective of any allegedly retrospective state law"⁸³ The Missouri Supreme Court in *Keathley* found a way to allow Missouri's SORA to apply retroactively, without violating the state's constitution, because it reasoned the retroactive character of the registry came from federal rather than state law.⁸⁴

Three years later, the Missouri Supreme Court further expanded the application of Missouri's SORA in *Doe v. Toelke*.⁸⁵ Like in *Keathley*, the

78. Although *Doe v. Phillips* held the state could not create their own retroactive registration obligation under state law, *Phillips*, 194 S.W.3d at 852, a separate question existed as to whether the Missouri Constitution prohibited application of a retrospective federal law within the state.

79. *Doe v. Keathley*, 290 S.W.3d 719 (Mo. 2009), *superseded by statute*, MO. REV. STAT. § 589.401, *as recognized in* *Smith v. St. Louis Cnty. Police*, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022).

80. *Id.* at 719–20.

81. *Id.* at 720.

82. *Id.*

83. *Id.* While the holding in *Keathley* seems inconsistent with the Missouri Supreme Court's decision in *Phillips*, the *Keathley* court did not discuss *Phillips* in the opinion.

84. The logic of the court's holding in *Keathley* is questionable. Although the Court emphasized that the retroactive registration requirement comes from federal law, the offenders in *Keathley* were only required to register *because of a state law* which was triggered by a federal registration requirement. *Id.* The text of Missouri's registration statute is not itself retrospective in operation, but the effect of the state law is to incorporate the retroactive federal law. The court concluded a constitutional violation is avoided because the state law only applies to present conduct, and it merely incorporates the application of an admittedly retroactive federal law. *Id.* This legislative technique is technically consistent with the state constitution, but the rationale seems to permit Missouri legislators to avoid the ban on retrospective laws entirely. So long as there is a retroactive federal law which serves the same purpose, Missouri law can simply import the retroactive law and apply it to its own citizens. This approach appears to rob the constitutional ban on retrospective laws of much of its effectiveness.

85. 389 S.W.3d 165 (Mo. 2012) (en banc), *superseded by statute*, MO. REV. STAT. § 589.401, *as recognized in* *Smith v. St. Louis Cnty. Police*, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022).

plaintiff in *Toelke* was a Missouri resident who committed a sex offense before the enactment of Missouri's SORA.⁸⁶ But in *Toelke*, the offender's registration requirement under SORNA had expired, so he was no longer subject to any federal obligation to register.⁸⁷ In another three-page opinion, the court held that, although the federal requirement to register had expired, the offender was still obligated to register on Missouri's registry because the Missouri law applied to anyone who "has been" required to register under federal law.⁸⁸ Like in *Keathley*, the court reasoned this requirement did not violate the state constitution because "the state registration requirement is not based solely on the fact of a past conviction," but instead on "the person's present status as a sex offender who 'has been' required to register pursuant to SORNA."⁸⁹ It is unclear if the Missouri Legislature intended the state's SORA to apply even to offenders who are no longer subject to a federal registration obligation, but in the decade since *Toelke*, the General Assembly has not acted to alter the construction of the statute given by the court in *Toelke*.⁹⁰

3. *The Generalized Removal Statute*

Missouri's SORA originally imposed a lifetime registration requirement, which the Missouri Supreme Court affirmed in dicta in *R.W. v. Sanders*⁹¹ and *Doe v. Phillips*.⁹² Missouri's lifetime registration requirement persisted until 2018, when the Missouri Legislature amended the state's SORA to allow some sexual offenders to obtain removal from the registry.⁹³ The removal provision passed along with several other changes to the Sex Offender Registration Act as part of Senate Bill 655.⁹⁴ Along with creating the possibility for removal, the Legislature modified the law to create a tiered system of offenders that mirrored the federal classifications under SORNA.⁹⁵ The legislative record does not reveal any substantive discussion

86. *Id.* at 166.

87. *Id.* at 166–67.

88. *Id.* at 167; *see also* MO. REV. STAT. § 589.400.1(7).

89. *Toelke*, 389 S.W.3d at 167.

90. *See* Selig v. Russell, 604 S.W.3d 817, 824 (Mo. Ct. App. 2020) (noting that, in passing the 2018 amendment to Missouri SORA, "[t]he legislature was aware of the Court's interpretation of [the has been language] and yet chose to make no changes to this provision").

91. 168 S.W.3d 65 (Mo. 2005).

92. 194 S.W.3d 833 (Mo. 2006).

93. *See* S.B. 655, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018) (codified at MO. REV. STAT. §§ 589.400–425); *see also* MO. STATE HIGHWAY PATROL, *supra* note 12.

94. *See* S.B. 655. Senate Bill 655 also removed the statute of limitations on sex crimes against children and tightened the restrictions on child marriage. *Id.*

95. *See* MO. REV. STAT. § 589.401. Missouri's tiered sex offender system differs slightly from the federal scheme. Under SORNA, tier I offenders must register for fifteen years. *See* 34 U.S.C. §

relating to the removal provision, but the preamble of the law indicates its purpose was to protect children.⁹⁶ The legislative comments to the law further indicate the Legislature was aware of the removal provision and believed removal would be possible for both in-state and out-of-state convictions.⁹⁷

The adoption of a removal provision came at the urging of representative Kurt Bahr, who sponsored the bill in the Missouri House.⁹⁸ Bahr publicly maintained that he sought to amend the system because it would allow “non-violent offenders a chance to behave and not reoffend and have a chance to be removed from the list.”⁹⁹ Following the legislative change, Bahr described himself as “a hero to families that were adversely affected by the sex offender list.”¹⁰⁰ However, Missouri news sources have noted that Bahr’s half-brother was subject to a lifetime registration requirement resulting from a voyeurism conviction in Missouri.¹⁰¹ Based on this connection, it is likely this personal tie also motivated Bahr to seek a legislative remedy to the lifetime requirement.

The statutory removal provision appears at Mo. Ann. Stat. section 589.401 and permits any “person on the sexual offender registry” to “file a petition . . . to have his or her name removed from the sexual offender

20915(a)(1). However, under Missouri law, a tier I offender can file their petition for removal after only ten years have elapsed. *See* MO. REV. STAT. § 589.401. The state law might appear to conflict with the federal statute, but a separate federal provision equalizes the registration periods. Under 34 U.S.C. § 20915(b), an offender may obtain a reduction in their registration period for maintaining a “clean record.” For a tier I offender who maintains a clean record for ten years, their registration period is reduced by five years. *Id.* § 20915(b). And under Missouri law, an offender may only achieve removal from the state registry if they have (1) not been convicted of or charged with a felony, (2) not been convicted of or charged with a sex offense, (3) completed their probation or supervised release, (4) completed an approved sex offender treatment program, and (5) are not a threat to public safety. *See* MO. REV. STAT. § 589.401.11. The first four of these requirements mirror the criteria for good behavior under SORNA, so any tier I offender who qualifies for removal under Missouri law will also qualify for a five-year reduction under federal law. *See* 34 U.S.C. § 20915(b).

96. *See* S.B. 655 (describing the act as “relating to the protection of children”).

97. COMM. ON LEGIS. RSCH., FISCAL NOTE, L.R. No. 4429-03, at 7 (June 12, 2018).

98. *See* SB 655, MO. HOUSE OF REPRESENTATIVES, <https://www.house.mo.gov/Bill.aspx?bill=SB655&year=2018&code=R&cal=1> [<https://perma.cc/HP2P-C27R>]. Bahr initially sought to change the law with a separate bill, but his independent bills died twice on the floor. The removal changes ultimately came to pass as an amendment to Senate Bill 655.

99. *See* Nelson, *supra* note 3.

100. Dariya Tsyrenzhapova, *New Law Sets Path for Sex Offenders to Petition Off Registry*, COLUMBIA MISSOURIAN (Aug. 27, 2018), https://www.columbiamissourian.com/news/state_news/new-law-sets-path-for-sex-offenders-to-petition-off/article_8a979b4e-aa32-11e8-91d5-078d22dfd886.html [<https://perma.cc/YWR6-7G2P>].

101. Dariya Tsyrenzhapova, *For Some Sex Offenders, the New Law Ends Lifelong Registration*, COLUMBIA MISSOURIAN (Nov. 20, 2018) https://www.columbiamissourian.com/news/local/for-some-sex-offenders-the-new-law-ends-lifelong-registration/article_3f315f8e-ec25-11e8-b993-d388e6d22924.html [<https://perma.cc/6AMA-M4PD>].

registry.”¹⁰² Offenders are eligible to seek removal from the registry after a fixed period from the date of their conviction,¹⁰³ and they must not have been charged or convicted of any felony or sex offense since the date of their original conviction.¹⁰⁴ An individual who succeeds in their removal petition is exempted from the registration requirement of section 589.400.1(1), but the removal provision does not apply to any of the other seven registration requirements listed in the statute.¹⁰⁵

Section 589.400 identifies eight separate reasons for which someone is required to register,¹⁰⁶ and an offender may be subject to multiple registration obligations at once.¹⁰⁷ The Missouri SORA imposes a registration requirement upon offenders who committed certain enumerated crimes in the state of Missouri,¹⁰⁸ but also requires registration for anyone subject to an out-of-state registration requirement because of a conviction in another state, or in a military, federal, tribal, or foreign jurisdiction.¹⁰⁹ Any person subject to a registration requirement is obligated to register

102. MO. REV. STAT. § 589.401.1.

103. MO. REV. STAT. § 589.401.4. Tier I offenders are required to wait ten years from the date of their conviction, whereas tier II offenders must wait twenty-five years. Tier III offenders are not eligible for removal, unless they were adjudicated delinquent, in which case the waiting period is twenty-five years. MO. REV. STAT. § 589.401.4(1)–(3).

104. MO. REV. STAT. § 589.401.11(1)–(2).

105. The language of section 589.400.1(1) indicates that the registration requirement applies to “[a]ny person who, since July 1, 1979, has been or is hereafter adjudicated for an offense referenced in section 589.414, unless such person is exempt from registering under subsection 9 or 10 of this section or section 589.401.” The remaining registration requirements at 589.400 do not include a similar exemption based on a successful removal petition.

106. MO. REV. STAT. § 589.400.1(1)–(8). These registration requirements apply to: (1) any person adjudicated for an offense referenced in section 589.414; (2) any person adjudicated for one of twenty-two enumerated offenses; (3) any person committed as a “criminal sexual psychopath”; (4) any person found not guilty as a result of mental disease or defect of any offense referenced in section 589.414; (5) any juvenile adjudicated as an adult for an offense referenced in section 589.414; (6) any juvenile adjudicate for an offense that is equal or more severe than aggravated sexual abuse; (7) any Missouri resident adjudicated in any other jurisdiction for an offense that is comparable to the offenses listed in section 589.414; and, (8) any person who has been required to register in another jurisdiction and who works at or attends an educational institution.

107. *See, e.g., Doe v. Toelke*, 389 S.W.3d 165 (Mo. 2012) (en banc) (offender subject to multiple registration requirements at once arising from one crime).

108. MO. REV. STAT. § 589.400.1(1) (requiring registration for “[a]ny person who, since July 1, 1979, has been or is hereafter adjudicated for an offense referenced in section 589.414.”).

109. *See Toelke*, 389 S.W.3d at 167 (imposing independent registration requirement on anyone who “has been” required to register under federal law). This independent registration requirement applies to individuals who have been:

[A]djudicated in any other state, territory, the District of Columbia, or foreign country, or under federal, tribal, or military jurisdiction for an offense which, if committed in [Missouri], would constitute an offense listed under section 589.414, or has been or is required to register in another state, territory, the District of Columbia, or foreign country, or has been or is required to register under tribal, federal, or military law.

MO. REV. STAT. § 589.400.1(7).

within three business days of their adjudication or release from incarceration,¹¹⁰ and failure to register is punishable as a felony offense.¹¹¹

II. THE PROBLEM WITH MISSOURI'S SEX OFFENDER REGISTRY

Following the SORA amendment in 2018, Missouri appellate court decisions have recognized that the removal provision at section 589.401 fails to operate as the Missouri Legislature intended.¹¹² By its terms, the removal provision only applies to nullify the registration requirement under section 589.400.1(1), which pertains to an individual who “has been or is hereafter adjudicated for” one of the listed offenses under Missouri law.¹¹³ However, the Missouri SORA includes at least seven other independent registration requirements.¹¹⁴ An individual may be subject to multiple, separate registration requirements, so it is possible that a sex offender who succeeds on their removal petition and is no longer required to register under section 589.400.1(1) may still be subject to a registration requirement under a different provision of section 589.400.¹¹⁵ The remaining registration requirements still compel the offender to remain on the sex offender registry, so the removal provision may not meaningfully change the status of the offender.¹¹⁶

110. MO. REV. STAT. § 589.400.2.

111. *Id.* § 589.425.1. As a first offense, failure to register is punishable by up to four years imprisonment, or by a fine up to \$10,000. *Id.* §§ 558.011.1.(5), 558.002.1.(1).

112. *See* Selig v. Russell, 604 S.W.3d 817, 824–25 (Mo. Ct. App. 2020), *transfer denied* (May 28, 2020), *transfer denied* (Sept. 1, 2020); *but see* Smith v. St. Louis Cnty. Police, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022) (holding that the 2018 amendments do permit removal from the registry).

113. MO. REV. STAT. § 589.400.1(1). The covered offenses are identified at § 589.414.

114. *See id.* § 589.400.1(1)–(8).

115. *See* Wilkerson v. State, 533 S.W.3d 755, 761 (Mo. Ct. App. 2017), *superseded by statute*, MO. REV. STAT. § 589.401, *as recognized in* Smith v. St. Louis Cnty. Police, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022) (discussing “the synergistic interplay between federal and State law”); *see also* Doe v. Toelke, 389 S.W.3d 165, 167 (Mo. 2012) (en banc) (discussing interaction between SORNA and § 589.400.1(7)).

116. Missouri courts have frequently denied the removal petitions of qualifying offenders where the offender is subject to more than one registration requirement. *See, e.g.,* Selig v. Russell, 604 S.W.3d 817 (Mo. Ct. App. 2020), *transfer denied* (May 28, 2020), *transfer denied* (Sept. 1, 2020); Hixson v. Mo. State Highway Patrol, 611 S.W.3d 923 (Mo. Ct. App. 2020); Khatri v. Trotter, 554 S.W.3d 482 (Mo. Ct. App. 2018), *superseded by statute*, MO. REV. STAT. § 589.401, *as recognized in* Smith v. St. Louis Cnty. Police, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022); James v. Mo. State Highway Patrol, 505 S.W.3d 378 (Mo. Ct. App. 2016), *superseded by statute*, MO. REV. STAT. § 589.401, *as recognized in* Smith v. St. Louis Cnty. Police, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022); Horton v. State, 462 S.W.3d 770 (Mo. Ct. App. 2015); Roe v. Replogle, 408 S.W.3d 759 (Mo. 2013); Solomon v. St. Charles Cnty. Prosecuting Att’y’s Off., 409 S.W.3d 487 (Mo. Ct. App. 2013); Kennedy v. State, 411 S.W.3d 873 (Mo. Ct. App. 2013); Grieshaber v. Fitch, 409 S.W.3d 435 (Mo. Ct. App. 2013).

In practice, essentially all sex offenders in Missouri who are required to register under section 589.400.1(1) are subject to at least one other registration requirement under federal law.¹¹⁷ A Missouri offender is required to register in the state if they commit any of the enumerated offenses listed in section 589.414, or if they commit a crime that resembles the federal offenses.¹¹⁸ And, a person is required to register under SORNA if they commit a “sex offense,” which is defined as a criminal offense which involves a sexual act, sexual conduct, or is a specified offense against a minor.¹¹⁹ At present, every enumerated crime under section 589.400 is either a sex offense or an offense against a minor, so every crime that makes someone a sex offender under Missouri law also triggers a federal registration obligation.¹²⁰ As a result, even if a person successfully uses the removal provision under section 589.401 to avoid their registration requirement for the state offense, that person is still subject to an independent registration requirement under federal law, so the removal provision at section 589.401 has no effect.¹²¹ Mo. Ann. Stat. section 589.400.1(7) requires registration for any person who “has been or is required to register under tribal, federal, or military law,”¹²² so even obtaining removal from the federal registry would not cure this issue, because the offender will always be someone who *has been* required to register under federal law.¹²³ Despite the clear intent of both the federal Congress and Missouri Legislature to authorize removal for low-level sex offenders, Missouri offenders are “subject to a *lifetime* registration

117. Although it would be possible for Missouri to create an offense which requires registration under state, but not federal law, all existing sex offenses in Missouri also trigger a federal obligation to register.

118. See MO. REV. STAT. § 589.414.5–7. See also § 589.400.1(1) (requiring registration for any person who “has been or is hereafter adjudicated for an offense referenced in section 589.414”).

119. See 34 U.S.C. § 20911(5)(A). The terms “sexual act” and “sexual conduct” are not defined. A specified offense against a minor is defined to include:

(A) An offense (unless committed by a parent or guardian) involving kidnapping. (B) An offense (unless committed by a parent or guardian) involving false imprisonment. (C) Solicitation to engage in sexual conduct. (D) Use in a sexual performance. (E) Solicitation to practice prostitution. (F) Video voyeurism as described in section 1801 of title 18. (G) Possession, production, or distribution of child pornography. (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct. (I) Any conduct that by its nature is a sex offense against a minor.

Id. § 20911(7).

120. Compare 34 U.S.C. § 20911(5), (7) (defining “sex offense” and “specified offense against a minor”), with MO. REV. STAT. § 589.414 (listing offenses which require registration in Missouri).

121. See, e.g., *Doe v. Toelke*, 389 S.W.3d 165 (Mo. 2012) (en banc).

122. MO. REV. STAT. § 589.400.1(7).

123. See *Solomon v. St. Charles Cnty. Prosecuting Att’y’s Off.*, 409 S.W.3d 487, 490 (Mo. Ct. App. 2013) (“[I]f an individual has been required to register pursuant to SORNA, he or she is presently required to register pursuant to SORA.”) (citing *Toelke*, 389 S.W.3d at 167).

obligation under State law, if [they were] *ever* required to register under federal law.”¹²⁴

An example demonstrates the problems which result from Missouri’s registration scheme. Imagine an offender who commits the crime of sexual misconduct in the first degree,¹²⁵ within the state of Missouri, and registers pursuant to Missouri’s SORA.¹²⁶ This offender committed a tier I offense, so they will become eligible to petition for removal after ten years.¹²⁷ Although such a person appears to be eligible for removal under the plain text of the statute, the removal provision will fail to be effective because the offender is in fact subject to at least two registration requirements. Clearly, their tier I offense, committed in Missouri, requires them to register under section 589.400.1(1).¹²⁸ But, this offense also triggers a federal registration requirement,¹²⁹ and under section 589.400.1(7), anyone who has been subject to a federal registration requirement must also register under Missouri law.¹³⁰ This duplicative registration obligation would not be a problem if the removal statute could operate against both registration requirements, but the state’s removal statute only applies to the first requirement under section 589.400.1(1).¹³¹ The result is that this tier I offender, who seems to be eligible for removal from the state registry after

124. *Wilkerson v. State*, 533 S.W.3d 755, 761 (Mo. Ct. App. 2017).

125. Sexual misconduct in the first degree is defined at MO. REV. STAT. § 566.093.1. A person commits this offense if the person:

(1) Exposes his or her genitals under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm; (2) Has sexual contact in the presence of a third person or persons under circumstances in which he or she knows that such conduct is likely to cause affront or alarm; or (3) Has sexual intercourse or deviate sexual intercourse in a public place in the presence of a third person.

Id. § 566.093.1.

126. MO. REV. STAT. § 589.400.2 provides that “[a]ny person to whom sections 589.400 to 589.425 apply shall, within three business days of adjudication, release from incarceration, or placement upon probation, register with the chief law enforcement official of the county or city not within a county in which such person resides”

127. *Id.* § 589.401.4(1).

128. *Id.* Section 589.400.1(1) provides that Missouri’s SORA shall apply to “[a]ny person who, since July 1, 1979, has been or is hereafter adjudicated for an offense referenced in section 589.414, unless such person is exempt from registering under subsection 9 or 10 of this section or section 589.401.” Our hypothetical offender committed the crime of sexual misconduct in the first degree, and that offense is listed at section 589.414.5(1)(l) as one of the offenses requiring registration.

129. Our offender is subject to a federal registration requirement because their conduct, as it is defined under federal law, makes them a sex offender. 34 U.S.C. § 20911(1) defines a “sex offender” as “an individual who was convicted of a sex offense.” Section 20911(5)(A) further defines a “sex offense” as, among other things, “a criminal offense that has an element involving a sexual act or sexual contact with another.” The elements of sexual misconduct all involve a sexual act. *See* MO. REV. STAT. § 566.093.1.

130. MO. REV. STAT. § 589.400.1(7).

131. *Id.* § 589.400.1(1) provides that “[a]ny person who, since July 1, 1979, has been or is hereafter adjudicated for an offense referenced in section 589.414, unless such person is exempt from registering under subsection 9 or 10 of this section or section 589.401.”

ten years, is in fact unable to remove their name from the registry at all. If state law were the only source of a registration requirement, the offender could obtain removal after ten years.¹³² If only federal law applied, an offender with a clean record could seek removal after ten years, or the registration obligation would expire automatically after fifteen years.¹³³ The interplay between the state and federal law, however, results in a situation where an offender is subject to a much longer requirement than either law would impose on its own.¹³⁴ The consequence of this interaction between state and federal law is not just a redundant obligation—it also converts a finite registration period into a lifetime obligation for all three tiers of offenders.¹³⁵

And although there are some narrow classes of offenders that may effectively make use of the removal provision, the overwhelming majority of qualifying registrants will not benefit from this statutory mechanism plainly meant to apply to them.¹³⁶

Notably, one Missouri appellate court has come to a different conclusion with respect to the efficacy of the removal statute.¹³⁷ In *Smith v. St. Louis*

132. *Id.* § 589.401. Note that, to be eligible for removal, the offender must also satisfy the other requirements of the removal statute. The offender must show that they (1) have not been adjudicated or charged with a felony, (2) have not been adjudicated or charged with a sex offense, (3) have completed their supervised release, probation, or parole, (4) have completed their sex offender treatment program, and (5) are not a threat to public safety. *Id.* § 589.401.11.

133. By default, federal law requires tier I sex offenders to remain registered for fifteen years. *See* 34 U.S.C. § 20915(a)(1). However, the law allows tier I offenders to obtain a five-year reduction in their registration period if they maintain a clean record for ten years. *See* § 20915(b). For a discussion of how this provision interacts with Missouri's SORA, *see supra* note 95.

134. *See* *Wilkerson v. State*, 533 S.W.3d 755, 761 (Mo. Ct. App. 2017).

135. *Id.* *But see* the exceptions discussed *infra* note 136 and at section 589.400.3(1) (no registration requirement if all offenses requiring registration are reversed). Additionally, some Missouri decisions have permitted removal for offenders who have been required to register under SORNA, without considering the registration obligation at section 589.400.1(7). *See* *Bacon v. Mo. State Highway Patrol*, 602 S.W.3d 245 (Mo. Ct. App. 2020); *Dixon v. Mo. State Highway Patrol*, 583 S.W.3d 521 (Mo. Ct. App. 2019). In this author's opinion, these decisions permitting removal are inconsistent with Missouri Supreme Court precedent.

136. Despite the several shortcomings of Missouri's statutory scheme, some offenders in special circumstances have been able to obtain removal from the sex offender registry. One such case exists where the offender's registration was required based on a plea or conviction obtained under an unconstitutional law. *See State ex rel. Kauble v. Hartenbach*, 216 S.W.3d 158 (Mo. 2007); *Keeney v. Fitch*, 458 S.W.3d 838 (Mo. Ct. App. 2015). Another such case appears where the offender's conviction sufficiently predates the adoption of SORNA. This result is possible because SORNA imposes finite registration requirements on some sex offenders. If an offender were convicted of a sex offense so far in advance of SORNA that their registration period ended before the statute ever applied, that person would be someone who never "has been . . . required to register" under federal law, and thus such a person is not required to register under Missouri law. MO. REV. STAT. § 589.400.1(7). *See Carr v. Mo. Att'y Gen. Off.*, 560 S.W.3d 61 (Mo. Ct. App. 2018); *Petrovick v. State*, 537 S.W.3d 388 (Mo. Ct. App. 2018).

137. *See Smith v. St. Louis Cnty. Police*, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022). For the same reasons as those expressed in *Smith*, the Missouri Court of Appeals also granted a sex offender's removal petition in *Ford v. Belmar*, No. ED 109958, 2022 WL 2028209 (Mo. Ct. App. June 7, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022), which was decided concurrently with *Smith*.

County Police, the Missouri Court of Appeals held that an offender who is subject to multiple registration obligations can obtain removal from the sex offender registry, notwithstanding the “has been” language at section 589.400.1(7).¹³⁸ In the view of the *Smith* court, the legislature had foreseen the “interplay” between Missouri’s SORA and the federal SORNA and intended to permit removal for offenders who were subject to more than one registration obligation.¹³⁹ The decision in *Smith* appeared to resolve the issue with Missouri’s removal statute, but on August 30, 2022, the case was ordered transferred to the Missouri Supreme Court.¹⁴⁰ Of course, if the Missouri Supreme Court disagrees with the decision in *Smith* and holds that the removal petition should be denied, the issue identified in this Comment will remain unresolved.¹⁴¹ However, even if the view in *Smith* is adopted at the Missouri Supreme Court, a revision of Missouri’s SORA is still imperative to avoid further confusion caused by the statute’s overlapping registration requirements.¹⁴²

Under Missouri law as it currently stands, the ineffective removal statute yields two key consequences: first, Missouri’s removal statute is problematic because it denies offenders the right to remove their names from the sex offender registry, in spite of a clear legislative directive that this class of offenders is deserving of removal;¹⁴³ second, and more significantly, the inclusion of relatively minor, non-recidivist offenders undercuts the purpose of the registry by diluting what is meant to be a catalogue of offenders whom are most likely to reoffend.¹⁴⁴ This second

138. See *Smith*, 2022 WL 2032238, at *16. The *Smith* court concluded that the appellate decisions holding the removal statute ineffective should no longer be followed because those decisions improperly relied on precedents that predate the 2018 amendment. See *id.* at *13–14.

139. See *id.* at *9. The court specifically relied upon section 589.401.17 of the statute, which states that “[a]ny person subject to the judgment requiring his or her name to be removed from the sexual offender registry is not required to register under sections 589.400 to 589.425 unless such person is required to register for an offense that was different from that listed on the judgment of removal.” MO. REV. STAT. § 589.401.17. The *Smith* court reasoned that this provision reflected an intention to avoid an “eternal registration/removal loop for tier I and II sex offenders.” *Smith*, 2022 WL 2032238, at *15.

140. See *Smith*, 2022 WL 2032238 (noting order transferring case to Supreme Court of Missouri). Two other cases involving removal petitions under Missouri’s SORA were also transferred to the Missouri Supreme Court on August 30. See *Ford*, 2022 WL 2028209; *MacColl v. Mo. State Highway Patrol*, No. WD 84739, 2022 WL 1309988 (Mo. Ct. App. May 3, 2022), *transferred to Mo. Sup. Ct.* (August 30, 2022).

141. Indeed, a decision from the Missouri Supreme Court recognizing the failure of the removal statute is likely to increase awareness of this issue among Missouri legislators.

142. See *infra* notes 152–169 and accompanying text (discussing overlap in registration requirements at section 589.400.1).

143. Although the legislative history is sparse, the text of the statute and the accompanying legislative materials clearly indicate an intention to permit removal for qualifying registrants. See *supra* notes 93–99 and accompanying text.

144. Sex offender registries have traditionally been justified with the argument that sex offenders are most likely to reoffend, so a registry of all known sex offenders helps to inform both law enforcement

rationale presents a formidable policy argument that Missouri's failure to create an effective removal statute actively undermines the usefulness of the state's sex offender registry.¹⁴⁵ A legislative solution is necessary to transform the removal provision into a useful tool that can permit removal for deserving registrants and enhance the precision and effectiveness of the registry in the process.

III. PROPOSED SOLUTION

Missouri's SORA should be modified to give effect to the removal provision at section 589.401. There is a clear legislative intent to allow sex offenders to obtain removal from the registry, but the poor structure of the Missouri statute has frustrated this objective.¹⁴⁶ The Missouri SORA should be amended by deleting the independent registration requirements at section 589.400.1, and by keeping section 589.400.1(1) as the only registration requirement. The additional registration requirements at section 589.400.1 are not necessary because, with one exception,¹⁴⁷ the requirement at section 589.400.1(1) completely subsumes the other statutory registration requirements.¹⁴⁸ Therefore, the additional registration requirements do not broaden the application of the Missouri registry. Instead, these duplicitous provisions only serve to frustrate the effectiveness of the removal provision.¹⁴⁹ Accordingly, the additional registration requirements should be removed from section 589.400.

and the public about the most dangerous members of society. *See Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003) (asserting that sex offenders "are much more likely than any other type of offender to be rearrested for a new rape or sexual assault") (quoting *McKune v. Lile*, 536 U.S. 24, 32 (2002)). The Missouri Supreme Court has recognized this justification as part of the legislative purpose behind the state's registry. *See J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. 2000) ("The obvious legislative intent for enacting sec. 589.400 was to protect children from violence at the hands of sex offenders."). Empirical data suggests that the link between sex offenders and recidivism is exaggerated. *See U.S. DEP'T OF JUST. OFF. OF JUST. PROGRAMS, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994*, at 2 (2003).

145. *See sources cited supra* note 6. Some research suggests that even when sex offender registries are limited to the most dangerous offenders, they are nonetheless an ineffective tool for reducing recidivism. *See J.J. Prescott & Jonah E. Rockoff, Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & ECON. 161 (2011).

146. *See S.B. 655*, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018); 34 U.S.C. § 20915(a).

147. The registration requirement at MO. REV. STAT. section 589.400.1(3) is not covered by the obligation in (1), so deleting this requirement would modify the scope of Missouri's registration scheme. But the requirement in (3) could be easily incorporated into either (1) or into section 589.414, either of which would obviate the need for multiple registration obligations.

148. *See id.* § 589.400.1(1) (requiring registration for persons convicted for an offense referenced in § 589.414); *id.* § 589.414.5(2) (defining sex offenders to include persons "adjudicated in any other state, territory, the District of Columbia, or foreign country, or under federal, tribal, or military jurisdiction of an offense of a sexual nature or with a sexual element that is comparable to the . . . sexual offenses listed in this subsection").

149. *See Doe v. Toelke*, 389 S.W.3d 165 (Mo. 2012) (en banc).

An example illustrates how this modification would rectify the present issue with Missouri's SORA. Recall again our fictional offender who has been convicted of first-degree sexual misconduct. Just like in the original case, the offender is required to register as a sex offender in Missouri according to section 589.400.1(1) because they have committed an offense that is referenced in section 589.414.¹⁵⁰ After ten years have elapsed, our offender files a petition under section 589.401 to achieve removal from the registry. This time, the only registration requirement that applies is section 589.400.1(1), and this provision expressly does not require registration if the registrant "is exempt from registering under . . . section 589.401."¹⁵¹ Consistent with the legislative intent behind section 589.401, our offender can successfully be removed under this version of Missouri's SORA.

It may be argued that deleting the registration requirements at sections 589.400.1(2)–(8) would permit some offenders who were meant to be covered by the Legislature to evade their obligation to register. To the extent that deleting these sections would modify the application of the registry, the significant portions of section 589.400.1 can be incorporated into a single registration requirement. In any event, creating one registration requirement in section 589.400.1 is essential to making the removal provision effective because section 589.400.1(1) is the only registration obligation affected by a removal petition. However, a careful review of the current registration requirements at sections 589.400.1(2)–(8) shows many of these provisions have no effect at all.

For example, section 589.400.1(2) contains a list of twenty-two offenses which require registration under Missouri SORA.¹⁵² However, all twenty-

150. First-degree sexual misconduct is an offense which requires registration. *See* MO. REV. STAT. § 589.414.5(1)(1).

151. *See id.* § 589.400.1(1).

152. These offenses are:

[K]idnapping or kidnapping in the first degree when the victim was a child and the defendant was not a parent or guardian of the child; abuse of a child under section 568.060 when such abuse is sexual in nature; felonious restraint or kidnapping in the second degree when the victim was a child and the defendant is not a parent or guardian of the child; sexual contact or sexual intercourse with a resident of a nursing home or sexual conduct with a nursing facility resident or vulnerable person in the first or second degree; endangering the welfare of a child under section 568.045 when the endangerment is sexual in nature; genital mutilation of a female child, under section 568.065; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; sexual exploitation of a minor; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic material to minors; public display of explicit sexual material; coercing acceptance of obscene material; promoting obscenity in the first degree; promoting pornography for minors or obscenity in the second degree; incest; use of a child in a sexual performance; or promoting sexual performance by a child; patronizing prostitution if the individual the person patronizes is less than eighteen years of age.

Id. § 589.400.1(2).

two of these offenses are already completely covered by section 589.414,¹⁵³ and section 589.400.1(1) requires registration for any offense referenced in section 589.414.¹⁵⁴ Accordingly, section 589.400.1(2) has no effect. The requirement at section 589.400.1(4), which requires registration for someone “found not guilty as a result of mental disease or defect,” does not modify the registration scheme because that situation is already captured under the law’s definition of “adjudicated.”¹⁵⁵ The requirement at section 589.400.1(5) does not alter the Act because any juvenile who has been adjudicated for an offense under section 589.414 is already required to register under section 589.400.1(1).¹⁵⁶ Similarly, section 589.400.1(6) does not modify the Act because a juvenile who is adjudicated for “an offense which is equal to or more severe than aggravated sexual abuse” would already be required to register under sections 589.414 and 589.400.1(1).¹⁵⁷

The registration requirements at section 589.400.1(7) are also largely covered by the existing requirements in section 589.414, and thus covered under section 589.400.1(1). Section (7) contains three distinct registration requirements.¹⁵⁸ First, the section requires registration for any person who “has been or is hereafter adjudicated in any other [jurisdiction] for an offense which, if committed in [Missouri], would constitute an offense listed under section 589.414.”¹⁵⁹ Second, section (7) requires registration for anyone who “has . . . been or is required to register in another state, territory, the District of Columbia, or foreign country.”¹⁶⁰ Finally, section (7) applies to any person who “has been or is required to register under tribal, federal, or military law.”¹⁶¹ The first requirement is entirely subsumed in section 589.414, because that statute already requires registration for any person “who is or has been adjudicated in any other [jurisdiction] of an offense of a sexual nature or with a sexual element that is comparable to the . . . offenses listed in this subsection.”¹⁶² The second and third requirements in (7) are also practically captured by the existing

153. *See id.* § 589.414.5–7.

154. *See id.* § 589.400.1(1).

155. *See* MO. REV. STAT. § 589.404(1) (defining adjudicated to include “adjudication of delinquency, a finding of guilt, plea of guilt, finding of not guilty due to mental disease or defect, or plea of nolo contendere to committing, attempting to commit, or conspiring to commit”).

156. MO. REV. STAT. section 589.400.1(1) requires registration for anyone who is adjudicated of an offense referenced in section 589.414. Section 589.400.1(5) only applies to juveniles who have been “adjudicated” for such an offense, so their registration is already required under section (1).

157. MO. REV. STAT. section 589.414 references aggravated sexual abuse as a crime that requires registration, so anyone “adjudicated” of this offense is already required to register under section 589.400.1(1).

158. MO. REV. STAT. § 589.400.1(7).

159. *Id.*

160. *Id.*

161. *Id.*

162. MO. REV. STAT. § 589.414.5(2).

registration obligations at section 589.400.1(1). The requirements in section 589.414 already require registration for “[a]ny offender who is or has been adjudicated in any other state, territory, the District of Columbia, or foreign country, or under federal, tribal, or military jurisdiction of an offense of a sexual nature or with a sexual element”¹⁶³ Almost every person who has been adjudicated of a sex offense in another jurisdiction is also a person who has been required to register in another jurisdiction, so the language at section 589.414 covers both the second and third clauses in section 589.400.1(7).¹⁶⁴ To the extent that the minor discontinuity between section 589.414 and the provisions of section 589.400.1(7) is problematic, section 589.414 could be easily amended to also require registration for individuals who are currently required to register in another jurisdiction.

The requirement at section 589.400.1(8) appears to be both misfiled and redundant. The first portion of (8) explains the requirement applies to “[a]ny person who has been or is required to register in another [jurisdiction], or has been required to register under tribal, federal, or military law.”¹⁶⁵ Any person who fits this definition is already required to register under section 589.400.1(7), and (8) is doubly redundant because the requirements in (7) are themselves subsumed in (1).¹⁶⁶ Section (8) further states the registration requirement shall apply to any person “who works or attends an educational institution,” or “has a temporary residence in Missouri.”¹⁶⁷ Unlike the other provisions in section 589.400.1, section (8) seeks to define the extent to which Missouri’s SORA applies to nonresidents.¹⁶⁸ In any event, both requirements in (8) are already captured by section 589.400.11, which requires registration for any “nonresident student” and for any “registered offender from another state who has a temporary residence in [Missouri].”¹⁶⁹

163. *Id.*

164. Indeed, the requirement at section 589.414 can potentially be more inclusive than the latter two requirements at section 589.400.1(7). For example, an offender who was adjudicated of a sex offense in another jurisdiction but never required to register would be exempt from registration under (7) but required to register under section 589.414. Conversely, the only persons covered by (7) that would be exempted from section 589.414 are individuals who are required to register in another jurisdiction, but who were not convicted of a sex offense in that jurisdiction. This could only occur if a jurisdiction decided to require sex offender registration for offenses which lack a sexual element.

165. MO. REV. STAT. § 589.400.1(8).

166. The language in section 589.400.1(8) is copied directly from that in section (7). Section (7) is almost entirely covered by section (1) because the criteria defined in section (7) are captured by section 589.414. *See supra* notes 158–164 and accompanying text.

167. MO. REV. STAT. § 589.400.1(8). It is likely that the legislature meant for section 589.400.1(8) to apply to any person who works *at* or attends an educational institution. Without this addition, (8) would seem to apply to any person who has an out of state registration requirement and who “works.” The statute does not define this term.

168. *Id.*

169. MO. REV. STAT. § 589.400(11).

Unlike the provisions discussed previously, the registration requirement at section 589.400.1(3) does materially alter the scope of the registration scheme. This is because the situation defined in (3)—someone who “has been committed to the department of mental health as a criminal sexual psychopath”—is not included in (1) or in section 589.414.¹⁷⁰ However, the requirement at (3) could be easily preserved by including persons committed as “criminal sexual psychopaths” in the registration requirement at section 589.400.1(1), or in the list of covered offenses at section 589.414. Once added to one of these sections, the registration requirement at (3) would be eligible for removal under the removal scheme at section 589.401.¹⁷¹

Another approach to amending the Missouri SORA to allow removal for qualifying offenders would be to modify the language in sections 589.400.1(2)–(7) to remove the “has been” language.¹⁷² This approach could remedy the most egregious impact of the Missouri law: its tendency to transform temporary registration obligations into permanent ones.¹⁷³ Even if the removal statute still only applied to the requirement at section 589.400.1(1), the requirement at section 589.400.1(7) would not bar removal in this situation because the state registration obligation would naturally expire with the federal one.¹⁷⁴ However, it is uncertain whether omitting the “has been” language would completely resolve the lifetime registration issue with the current removal statute.¹⁷⁵ Even without the “has been” verbiage, the first requirement at (7) mandates registration for any person who “is hereafter adjudicated in any other [jurisdiction] for an offense which, if committed in this state, would constitute an offense listed under section 589.414.”¹⁷⁶ The plain text of the statute requires registration for any person who “is . . . adjudicated” for such an offense, and there is no provision for this registry requirement to expire.¹⁷⁷ Therefore, even without

170. *Id.* § 589.400.1(3).

171. MO. REV. STAT. § 589.401.

172. While most Missouri court decisions focus on the duplicitous registration obligation at section 589.400.1(7), the other six registration requirements could also prevent removal. And, because each of these requirements uses the “has been” language, these sections also each impose a lifetime registration requirement. *See* MO. REV. STAT. § 589.400.1(1)–(7).

173. *See, e.g.,* Wilkerson v. State, 533 S.W.3d 755, 761 (Mo. Ct. App. 2017).

174. Missouri offenders can petition for removal for their tier I offenses after ten years, or for tier II offenses after twenty-five years. *See* MO. REV. STAT. § 589.401.4(1)–(2). These same durational requirements apply to tier I and tier II offenders under the federal law. *See* 34 U.S.C. § 20915(a)(1)–(2). So, if a Missouri offender is eligible for removal under state law, their federal obligation must have also expired.

175. For example, even before the Missouri Legislature amended SORA in 2000 to clarify that the period of registration was for the offender’s lifetime, the Missouri Supreme Court assumed that an offender’s obligation to register did not expire. *See* J.S. v. Baird, 28 S.W.3d 875, 875–76 (Mo. 2000).

176. MO. REV. STAT. § 589.400.1(7).

177. *Id.*

the “has been” text, the other registration obligations are still susceptible to an interpretation that would block the application of the removal statute because they are phrased in the past-tense.

Finally, the statute could be amended to ensure the removal requirement applies to every registration obligation. This could be accomplished by adding to the end of each registration requirement at section 589.400.1, “unless such person is exempt from registering under section 589.401.”¹⁷⁸ This approach would make the removal statute effective because it would avoid the issue of multiple registration requirements blocking removal. But this solution is incomplete because it would leave considerable redundancy in the statutory text. As previously detailed, the registration requirement at section 589.400.1(1) already captures almost every other registration requirement created under section 589.400.1.¹⁷⁹ Although referencing the removal provision in each obligation might make removal possible, the statute still suffers from a complicated web of registration obligations that have the potential to confuse Missouri citizens and judges alike. Allowing this redundancy to remain also makes it more likely that future Missouri court decisions will reveal other, unforeseen interactions between the many registration requirements that prevent removal for deserving registrants.¹⁸⁰ A more dramatic rewriting of the Missouri SORA is necessary to both give effect to the removal provision and to enhance statutory clarity and conciseness.

CONCLUSION

Despite a clear attempt by the Missouri Legislature to allow removal from the state’s sex offender registry, Missouri courts have failed to give effect to the statutory removal provision. This result is the unfortunate consequence of both the redundant language in the registry statute and the Missouri Supreme Court’s interpretation of that language in *Doe v. Toelke*. The Missouri Legislature should act to give effect to the removal provision by removing the additional registration requirements at section 589.400 and leaving section 589.400.1(1) as the lone registration obligation. Deleting

178. This text is modeled after the language at the end of section 589.400.1(1), which reads “unless such person is exempt from registering under subsection 9 or 10 of this section or section 589.401.”

179. *Id.* The requirements imposed by section 589.400.1(3), and, to some extent, section 589.400.1(7), are not included in section 589.400.1(1).

180. See *Rasmussen v. Ill. Cas. Co.*, 628 S.W.3d 166, 175 (Mo. Ct. App. 2021) (noting the interpretative canon that “an interpretation rendering statutory language redundant or without meaning is disfavored”) (quoting *Sun Aviation, Inc. v. L-3 Commc’ns Avionics Sys., Inc.*, 533 S.W.3d 720, 726 (Mo. 2017) (en banc)); see also U.S. HOUSE OF REPRESENTATIVES, OFF. OF THE LEGIS. COUNS., HLC 104-1, HOUSE LEGISLATIVE COUNSEL’S MANUAL ON DRAFTING STYLE § 351(i)(6)(B) (1995) (noting that use of redundant language in a statute “invites misinterpretations”).

these superfluous provisions would not limit the scope of Missouri’s Sex Offender Registration Act, but it would finally give effect to the clear legislative purpose of permitting low level offenders to seek removal from the state’s registry. The Missouri Legislature has identified a legitimate goal in modernizing their sex offender registry through the addition of a removal provision, and it is now their obligation to bring that goal to fruition.

ADDENDUM

On January 31, 2023, the Supreme Court of Missouri issued its decision in *Smith v. St. Louis County Police*.¹⁸¹ The Supreme Court reversed the Court of Appeals and held that section 589.400.1(7) “mandat[es] a lifetime registration requirement in Missouri if an offender ‘has been’ subject to federal registration requirements under SORNA.”¹⁸² The court reasoned that because the 2018 amendments did not specifically modify the language in section 589.400.1(7), Missouri courts should continue to construe that provision as imposing a lifetime registration requirement on any individual who “has been” required to register under federal law.¹⁸³ This interpretation follows the construction of section 589.400.1(7) that the Missouri Supreme Court adopted in *Doe v. Toelke*.¹⁸⁴

In the wake of *Smith*, this Comment’s call for legislative intervention has become even more salient. Despite the legislature’s clear intention to permit removal for some Missouri sex offenders, Missouri courts will continue to interpret Missouri’s SORA as imposing a lifetime registration requirement on any sex offender who has ever been required to register under federal law. In order to effectively implement the removal mechanism envisioned by S.B. 655, the legislature should amend Missouri’s SORA to delete the duplicative registration requirements in section 589.400, including and especially section 589.400.1(7). Until this problematic provision is removed, Missouri sex offenders will remain trapped on the state’s sex offender registry for life.

181. *Smith v. St. Louis County Police*, 659 S.W.3d 895 (Mo. 2023) (en banc).

182. *Id.* at 903.

183. *See id.* at 901.

184. *Doe v. Toelke*, 389 S.W.3d 165, 167 (Mo. 2012) (en banc).