

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANE DOE I, *et al.*,)
)
 Plaintiffs,)
) Case No.:4:08-cv-1518-CEJ
 v.)
)
 JEREMIAH W. NIXON, *et al.*,)
)
 Defendants.)

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

Defendant Thomas O'Connor moves to dismiss plaintiffs' First Amended Complaint and in support states:

1. Plaintiff filed this action on or about October 3, 2008, seeking declaratory and injunctive relief concerning the enforcement of Section 589.426 of the Revised Statutes of Missouri. This Court entered its preliminary injunction prohibiting enforcement of a portion of the statute on October 27, 2008, and defendants Nixon and Blunt filed an immediate notice of appeal.

2. On October 28, 2008, defendants Nixon and Blunt filed a motion with the Eight Circuit U.S. Court of Appeals to stay this court's preliminary injunction, and that motion was granted on October 30, 2008.

3. The celebration known as Halloween took place on October 31, 2008, and during that time the statute was in full force and effect due to the Eight Circuit's stay order.

4. On November 2, 2008, plaintiffs filed their first amended complaint, but plaintiffs did not allege any facts establishing that any plaintiff, or any other person, was threatened with the enforcement of Section 589.426 R.S.Mo. In addition, in that the Halloween celebration will not take

place again until October 31, 2009, plaintiffs are not at risk of any immediate enforcement of the statute.

5. Upon information and belief, plaintiffs recently filed a lawsuit in the Circuit Court of Cole County, Missouri, seeking substantially the same, if not the exact, relief sought by plaintiffs in the first amended complaint filed in this court.

6. Because of (1) the absence of any great and immediate irreparable harm, (2) the significant lapse of time before any such risk may materialize, (3) the presence of an adequate remedy at law, and (4) plaintiffs' litigation filed and pending in a Missouri state court concerning the interpretation of a Missouri statute, this court should decline to exercise its jurisdiction. Younger v. Harris, 401 U.S. 37 (1971) and Railroad Commission of Texas v. Pullman Company, 312 U.S. 496 (1941).

WHEREFORE, defendant Thomas O'Connor moves that the court abstain from exercising its jurisdiction and dismiss plaintiff's first amended complaint.

Respectfully submitted,

/s/ Howard Paperner

Howard Paperner - #49261
Attorney for Maryland Heights Police Department
9322 Manchester Road
St. Louis, MO 63119
(314) 961-0097, Ext. 13
(314) 961-0667, Fax
howardpaperner@sbcglobal.net

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed via the Court's CM/ECF electronic system on this 7th day of November, 2008 to:

Mr. Anthony E. Rothert
454 Whittier Street
St. Louis, MO 63108
tony@aclu-em.org
ATTORNEY FOR PLAINTIFFS

Mr. David C. Nelson
Nelson and Nelson
420 N. High Street
P.O. Box Y
Belleville, IL 62222
dnelson@nelsonlawpc.com
ATTORNEY FOR PLAINTIFFS

Mr. Robert E. Jones
Mr. Adam R. Lorenz
Jones & Haywood
7700 Bonhomme, Ste. 200
St. Louis, MO 63105
rejones@jhbkj.com
alorenz@jhbkj.com
ATTORNEYS FOR DEFENDANTSCHICKER

Christopher J. Quinn
Attorney General of Missouri
P.O. Box 861
St. Louis, MO 63188
Christopher.Quinn@ago.mo.gov
ATTORNEY FOR DEFENDANTS NIXON AND BLUNT

Lorena V. Merklin von Kaenel
St. Louis County Counselor's Office
41 S. Central Avenue
Clayton, MO 63105
lmerklinvonkaenel@stlouisco.com
ATTORNEY FOR DEFENDANT McCULLOCH

Harry Morley Swingle
Office of the Prosecuting Attorney
100 Court Street
Jackson, MO 63755
hmswingle@capecounty.us

ATTORNEY FOR DEFENDANT SCHICKER

The foregoing was served via U.S. postal service, postage prepaid, on this 7th day of November, 2008, to:

Carl A. Kinnison
Cape Girardeau Police Department
40 South Sprigg Street
Cape Girardeau, MO 63703

Mark Fisher
Office of the Prosecuting Attorney
115 West Main Street
Bowling Green, MO 63334

Steven Cruise
Bowling Green Police Department
15 W. Church Street
Bowling Green, MO 63334

/s/ Howard Paperner
Attorney for Maryland Heights Police Department