

SECOND REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 108

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

6865H.011

D. ADAM CRUMBLISS, Chief Clerk

JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article V of the Constitution of Missouri relating to judicial procedure.

Be it resolved by the House of Representatives, the Senate concurring therein:

That at the next general election to be held in the state of Missouri, on Tuesday next
2 following the first Monday in November, 2016, or at a special election to be called by the
3 governor for that purpose, there is hereby submitted to the qualified voters of this state, for
4 adoption or rejection, the following amendment to article V of the Constitution of the state of
5 Missouri:

Section A. Article V, Constitution of Missouri, is amended by adding thereto four new
2 sections, to be known as sections 1(a), 1(b), 1(c), and 1(d), to read as follows:

**Section 1(a). The paramount responsibility of Missouri courts is to ensure that
2 individuals in this state may exercise the rights and freedoms the people have enumerated
3 in this Constitution.**

**Section 1(b). When in a lawsuit properly before one of this state's courts one party
2 timely asserts that a government entity that is also an opposing party has enforced or has
3 threatened potential enforcement against the asserting party a law, regulation, or policy
4 that might limit the asserting party's exercise of a specified right or freedom enumerated
5 in this Constitution or might otherwise penalize the asserting party for exercising such a
6 right or freedom, the court shall assess the asserting party's claim in the following manner:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7 **1. The court shall determine whether the challenged law, regulation, or policy limits**
8 **or penalizes the party's exercise of the right or freedom the asserting party has specified,**
9 **giving the right or freedom the broadest scope that is consistent with the plain meaning of**
10 **each word and phrase in the relevant constitutional provision; the court shall not infer or**
11 **permit any exceptions to or limitations upon an enumerated right or freedom unless the**
12 **exception or limitation is expressly authorized by this Constitution, and any ambiguity in**
13 **the Constitution's language shall be resolved by determining how each word or phrase in**
14 **the relevant provision most likely would have been understood by the voters at the time**
15 **they ratified that provision.**

16 **2. If the facts of the case show that the challenged law, regulation, or policy does**
17 **limit or penalize a party's exercise of a right or freedom enumerated in this Constitution,**
18 **the court shall presume that the challenged law, regulation, or policy is unconstitutional**
19 **and shall adopt a perspective of active and critical analysis that gives no deference to**
20 **government assertions about the meaning, purpose, or importance of the challenged law,**
21 **regulation, or policy.**

22 **3. The presumption of unconstitutionality may only be overcome if the government**
23 **entity responsible for enforcing the challenged law, regulation, or policy presents to the**
24 **court competent evidence sufficient to prove beyond a reasonable doubt that the challenged**
25 **law, regulation, or policy is not only necessary for the prevention of a specific,**
26 **nonspeculative threat to the public health and safety, but also that the law, regulation, or**
27 **policy represents the least restrictive means of preserving the public health and safety**
28 **against the threat the government has specified.**

Section 1(c). Any judgment, order, or opinion in which a court of this state upholds
2 **the constitutionality of a law, regulation, or policy that restricts or penalizes a right or**
3 **freedom enumerated in this Constitution shall identify any specific government interest**
4 **served by the restriction or penalty as well as the evidence the court relied upon to**
5 **determine that the law, regulation, or policy represents the least restrictive means of**
6 **servicing the specified government interest.**

Section 1(d). Any other provision of this Constitution notwithstanding, a judge's
2 **failure to comply with the terms of this section shall be grounds for impeachment of that**
3 **judge.**

 Section B. Pursuant to chapter 116, and other applicable constitutional provisions and
2 laws of this state allowing the general assembly to adopt ballot language for the submission of
3 this joint resolution to the voters of this state, the official summary statement of this resolution
4 shall be as follows:

5 "Shall the Missouri Constitution be amended to make ensuring individuals' exercise of
6 rights enumerated in the Missouri Constitution the courts' paramount responsibility and specify
7 the process through which courts must assess legal challenges to the validity of laws, regulations,
8 or policies that limit rights or freedoms enumerated in the Missouri Constitution?"

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