

HJR 108 -- JUDICIAL PROCEDURE

SPONSOR: McGaugh

Upon voter approval, this constitutional amendment delineates procedures a court must follow when assessing a claim against a government entity, that such entity has enforced a law or policy that might limit a person's exercise of a right or freedom enumerated by the Missouri Constitution or penalize a person for exercising such right or freedom.

If the facts of the case show that the challenged law or policy limits or penalizes a person's exercise of a right or freedom, then there is a presumption that the law or policy is unconstitutional and the court must give no deference to government assertions about the meaning, purpose, or importance of the law or policy. Such presumption can only be overcome if the government entity proves beyond a reasonable doubt that the law or policy is necessary for the prevention of a threat to public health and safety and is the least restrictive means of preserving the public health and safety against such threat.

When the court upholds the challenged law or policy the court must identify in the holding any government interest served by the restriction or penalty and the evidence the court relied upon in its determination.

Failure to uphold this resolution by any judge will be grounds for impeachment.

This bill is the same as SJR 42 (2016).