

## SENATE SUBSTITUTE

FOR

## SENATE JOINT RESOLUTION NO. 39

## JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article I of the Constitution of Missouri, by adding thereto one new section relating to the protection of certain religious organizations and individuals from being penalized by the state because of their sincere religious beliefs or practices concerning marriage between two persons of the same sex.

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BE IT RESOLVED BY THE SENATE, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

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

7           Section A. Article I, Constitution of Missouri, is amended  
8 by adding thereto one new section, to be known as section 36, to  
9 read as follows:

10           Section 36. 1. (1) That the state shall not impose a  
11 penalty on a religious organization on the basis that the  
12 organization believes or acts in accordance with a sincerely held  
13 religious belief concerning marriage between two persons of the  
14 same sex;

15           (2) That the state shall not impose a penalty on any clergy  
16 or other religious leader on the basis that such cleric or leader

1 declines to perform, solemnize, or facilitate a marriage or  
2 ceremony because of a sincere religious belief concerning  
3 marriage between two persons of the same sex, nor shall the state  
4 refuse to authorize any clergy or religious leader to conduct  
5 marriages recognized by the state because of a sincere religious  
6 belief concerning such a marriage;

7 (3) That the state shall not impose a penalty on any  
8 church, synagogue, mosque, temple, or other house of worship,  
9 denomination, or other religious organization on the basis that  
10 such organization declines to make its buildings or other  
11 facilities and property open or available to perform, solemnize,  
12 or facilitate a marriage or ceremony because of a sincere  
13 religious belief concerning marriage between two persons of the  
14 same sex; and

15 (4) That the state shall not impose a penalty on an  
16 individual who declines either to be a participant in a marriage  
17 or wedding ceremony or to provide goods or services of  
18 expressional or artistic creation for such a marriage or ceremony  
19 or an ensuing celebration thereof, because of a sincere religious  
20 belief concerning marriage between two persons of the same sex.

21 2. As used in subsection 1 of this section, "penalty"  
22 means, but is not limited to, any adverse action taken by the  
23 state to:

24 (1) Alter the tax treatment of, or cause any tax, fine, or  
25 payment to be assessed against, to delay, revoke, or otherwise  
26 deny an exemption from taxation of, any religious organization;

27 (2) Disallow or hinder a deduction for tax purposes of any  
28 charitable contribution made to any religious organization;

1       (3) Withhold, reduce, exclude, terminate, or otherwise deny  
2 any accreditation, license, certificate, contract, grant, loan,  
3 guarantee, or insurance from or to any religious organization;

4       (4) Withhold, reduce, exclude, terminate, or otherwise deny  
5 any entitlement, social service benefit, health care benefit, or  
6 to alter or deny a custody award, foster home placement, or  
7 adoption from, to, or by any religious organization;

8       (5) Deny access to meeting space, channels of  
9 communication, or other resources at an educational institution  
10 that is otherwise available to other student organizations,  
11 participation in charitable fundraising campaigns that are  
12 otherwise available to other charitable organizations, or access  
13 to minister at correctional institutions or other public  
14 facilities and property as is otherwise available to other  
15 nongovernmental organizations, to or by any religious  
16 organization; or

17       (6) Recognize or allow an administrative charge or civil  
18 claim against a religious organization or individual.

19       3. The state shall consider accredited, licensed, or  
20 certified for purposes of state law any religious organization  
21 that would be accredited, licensed, or certified, respectively,  
22 for such purposes but for a determination that the organization  
23 believes or acts in accordance with a sincere religious belief  
24 concerning marriage between two persons of the same sex.

25       4. (1) Nothing in this section prevents the state from  
26 providing a license to marry or providing any other marital  
27 entitlement, service, or benefits authorized by state law.

28       (2) Nothing in this section permits a hospital or other

1 health care facility, or an elder care facility or hospice, to  
2 refuse to treat a marriage as valid for purposes of a spouse's  
3 right to visitation or to make surrogate health care decisions.

4 5. For purposes of this section, the following terms mean:

5 (1) "Acts", any action or failure to take action, including  
6 failure to participate in, perform, encourage, service,  
7 solemnize, or facilitate, all without regard to whether compelled  
8 by or central to a system of religious belief;

9 (2) "Individual", a natural person or a closely held  
10 commercial entity owned by a natural person or persons;

11 (3) "Religious organization", an organization that is:

12 (a) A house of worship, including but not limited to, a  
13 church, diocese, conference, convention, denomination,  
14 association, synagogue, mosque, or temple;

15 (b) A religious society, corporation, entity, partnership,  
16 order, preschool, school, institution of higher education,  
17 ministry, charity, social service provider, children's home,  
18 hospital or other health care facility, hospice, elder care  
19 facility, or crisis pregnancy center, whether or not connected to  
20 or affiliated with a church, diocese, denomination, or other  
21 organization of churches, where said organization holds itself  
22 out to the public in whole or in part as religious and its  
23 purposes and activities are in whole or in part religious; or

24 (c) Any clergy, religious leader, minister, officer,  
25 manager, employee, member, or volunteer of any entity described  
26 in paragraphs (a) or (b) of this subdivision, while acting in the  
27 scope of his or her office, employment, or duties of position;

28 (4) "State", a governmental body or person that is:

1       (a) A department, commission, board, agency, office,  
2 committee, or court of this state, and any agent of the state or  
3 an official acting under color of law of the state; or

4       (b) A municipality, county, school district, or other  
5 political subdivision in this state, and any agent of such a body  
6 or official acting under color of law of a political subdivision.

7       6. (1) A religious organization or individual may assert  
8 an actual or threatened violation of this section as a claim or  
9 defense in a judicial or administrative proceeding, or other  
10 hearing or dispute resolution process.

11       (2) A claim or defense under this section shall proceed  
12 without regard to whether the state is a named party in the  
13 judicial or administrative proceeding, or other hearing or  
14 dispute resolution process.

15       (3) A claim under this section may be commenced, and relief  
16 may be granted, in a court of competent jurisdiction without  
17 regard to whether the religious organization or individual  
18 commencing the claim has pursued or exhausted available  
19 administrative remedies.

20       (4) The court may award compensatory damages, injunctive  
21 relief, declaratory relief, or any other appropriate relief  
22 against the state, and the state waives any immunity from  
23 liability in actions brought under this section.

24       7. Nothing in this section repeals or supersedes any state  
25 law that is equally or more protective of religious beliefs or  
26 acts. Nothing in this section narrows the meaning or application  
27 of any state law protecting religious beliefs or acts.

28       8. Nothing in this section creates a cause of action

1 against a private employer by an employee for termination or  
2 other adverse action related to such employee's sincerely held  
3 religious belief concerning marriage between two persons of the  
4 same sex.

5 9. If any provision of this section or any application of  
6 such provision to any religious organization or individual is  
7 held to be contrary to the United States Constitution or  
8 otherwise in conflict with the laws of the United States, the  
9 remainder of this section and the application of the provision to  
10 any other religious organizations or individuals shall not be  
11 affected.

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

17 "Shall the Missouri Constitution be amended to provide  
18 that the state shall not penalize religious  
19 organizations and certain individuals for religious  
20 beliefs or acts concerning marriage between two persons  
21 of the same sex, but the amendment does not prevent the  
22 provision of a marriage license or other marital  
23 benefits to such persons?"