

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.

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 sincere
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, synaogue, 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 personally be a participant in
17 a wedding or marriage or to provide goods or services of
18 expressional or artistic creation, such as a photographer or
19 florist, for a wedding or marriage or a closely preceding or
20 ensuing reception therefore, because of a sincere religious
21 belief concerning marriage between two persons of the same sex.

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

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

28 (2) Disallow or hinder a deduction for tax purposes of any

1 charitable contribution made to any religious organization;

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

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

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

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

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

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

1 (2) Nothing in this section permits a hospital or other
2 health care facility, or an elder care facility or hospice, to
3 refuse to treat a marriage as valid for purposes of a spouse's
4 right to visitation or to make surrogate health care decisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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