

SECOND REGULAR SESSION

SENATE JOINT RESOLUTION NO. 38

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 8, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5853S.03I

JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article I of the Constitution of Missouri relating to parental rights.

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

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

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

**Section 36. 1. That every parent has a fundamental right to
2 exercise exclusive control over all aspects of their minor children's
3 lives without governmental interference, including, but not limited to,
4 decisions regarding their minor children's custody, upbringing,
5 education, religious instruction, discipline, physical and mental health
6 care, and place of habitation; provided, this fundamental right shall not
7 extend to any decision or action by a parent that threatens clear,
8 immediate, and substantial physical injury to their minor child, nor
9 shall it permit a parent to compel a minor child to have an abortion.**

10 **2. That every parent also has the fundamental right to require
11 government entities to obtain the parent's explicit permission before
12 soliciting from a minor child information or data about the child or the
13 child's family members or sharing such information or data solicited
14 from a minor child with anyone other than the child's parents for
15 purposes not directly related to a criminal investigation or, if enrolled
16 in a public school, the child's knowledge of academic subjects; neither**

17 the parent nor child shall in any way be punished or penalized if the
18 parent refuses such permission.

19 3. That every parent has the fundamental right to decide what
20 educational setting will best prepare their children to meet the
21 obligations of responsible adulthood, and this right includes, but is not
22 limited to, a parent's choice to have their children educated in public,
23 private, parochial, or home schools or otherwise to provide for their
24 children's education in another setting; provided, nothing in this
25 section shall require or prohibit any state or local government to fund
26 or subsidize education in a nonpublic school setting or, unless
27 otherwise required by law, require a public school to enroll or educate
28 a child who does not live in that public school's district.

29 4. That a government entity in this state shall only be justified
30 in interfering with the parental rights acknowledged in this section if:

31 (1) The interference is temporary and limited to only the degree
32 and duration necessary to protect a child from a clear, immediate, and
33 substantial threat of physical injury;

34 (2) A court of law has first found by clear and convincing
35 evidence that a parent has knowingly exposed a child to harm through
36 physical neglect, abandonment, reckless endangerment, or sexual or
37 physical abuse, as each of those terms may be defined by state statute;

38 (3) A court of law has first found by clear and convincing
39 evidence that a parent is incapacitated or mentally incompetent, as
40 those terms may be defined by state statute;

41 (4) A court of law has first ruled that minor child is emancipated
42 in accordance with state statutes;

43 (5) A court of law has assumed jurisdiction over a minor child
44 charged with violating or found beyond a reasonable doubt to have
45 violated a criminal statute; or

46 (6) A court of law has assigned parental rights to one parent or
47 someone other than a biological parent as a result of mental
48 incompetence, adoption, or marital dissolution.

49 If, after considering evidence, a judge has first determined that a
50 government entity has probable cause to believe that a parent has
51 subjected their child to criminal, sexual, or physical abuse, neglect, or
52 endangerment, it shall not be considered an interference with the
53 parental rights acknowledged in this section for the government entity

54 to question the parent or the child about the alleged crime, or for
55 police to obtain a warrant to search the parent's home for evidence of
56 the suspected crime.

57 5. That any parent whose rights under this section have been
58 adversely affected by any type of law, policy, or other act of
59 government authority shall be permitted to file a lawsuit challenging
60 the constitutionality of the law, policy, or other act of government
61 authority, and seek damages against the government entity responsible
62 for the violation of the parent's rights. In considering such a lawsuit,
63 courts may not presume the constitutionality of the law, policy, or
64 other act of government authority being challenged, may not defer to
65 claims made by a government entity that the law, policy, or other act
66 of government authority is justified unless the government entity
67 supports all such claims with competent evidence, and shall award
68 appropriate damages and reasonable attorney's fees for any
69 infringement of these constitutional rights that the government has not
70 justified in accordance with subsection 4 of this section.

71 6. For the purposes of this section, the term "parent" includes a
72 child's legal guardian and "minor child" means a child under eighteen
73 years of age.

Section B. Pursuant to chapter 116, RSMo, and other applicable
2 constitutional provisions and laws of this state allowing the general assembly to
3 adopt ballot language for the submission of a joint resolution to the voters of this
4 state, the official ballot title of the amendment proposed in section A shall be as
5 follows:

6 "Shall the Missouri Constitution be amended to guarantee parents'
7 exclusive right to control the upbringing of their children, including but not
8 limited to custody, education, religious instruction, health care, and private
9 information, with certain exceptions including those necessary to protect against
10 a clear, immediate, and substantial threat to the child?"

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