

SECOND REGULAR SESSION

SENATE JOINT RESOLUTION NO. 42

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time March 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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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 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 V of the Constitution of the state of Missouri:

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

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

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

9 **1. The court shall determine whether the challenged law,
10 regulation, or policy limits or penalizes the party's exercise of the right
11 or freedom the asserting party has specified, giving the right or
12 freedom the broadest scope that is consistent with the plain meaning**

13 of each word and phrase in the relevant constitutional provision; the
14 court shall not infer or permit any exceptions to or limitations upon an
15 enumerated right or freedom unless the exception or limitation is
16 expressly authorized by this Constitution, and any ambiguity in the
17 Constitution's language shall be resolved by determining how each
18 word or phrase in the relevant provision most likely would have been
19 understood by the voters at the time they ratified that provision.

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

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

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

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

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

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

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