IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

KELLY D. GLOSSIP, Plaintiff, v. MISSOURI DEPARTMENT OF TRANSPORTATION AND HIGHWAY PATROL EMPLOYEES' RETIREMENT SYSTEM, Defendant.	)	Case No. 10-CC00434

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Kelly Glossip moves for summary judgment on all counts of his First Amended Petition pursuant to Missouri Supreme Court Rule 74.04. In support of this Motion, Plaintiff states as follows:

1. Mr. Glossip states claims under the Missouri Constitution for denial of equal protection because of sexual orientation (Count I), denial of equal protection based on sex (Count II), denial of his right to due process (Count III), and denial of his right to be judged by a general, rather than a special, law (Count IV) based on Defendant's denial of survivor benefits to him because his relationship with Dennis Engelhard was a same-sex, rather than a different-sex, relationship.

2. Mr. Glossip is entitled to summary judgment on his claim for sexual orientation discrimination. Defendant offers to different-sex surviving partners the opportunity to obtain survivor benefits through the legal status of marriage, but categorically denies access to such benefits to similarly situated surviving same-sex partners of Missouri State Highway Patrol ("MSHP") employees, such as Mr. Glossip. Defendant therefore intentionally discriminates

against lesbian, gay, and bisexual individuals, including Mr. Glossip, both facially and as applied, based solely on sexual orientation. Discrimination on the basis of sexual orientation is suspect and demands heightened scrutiny under the Missouri Constitution. Defendant cannot show that its exclusion of same-sex couples is narrowly tailored to serve a compelling state interest. Nor can it show that the exclusion is substantially related to an important governmental interest. The denial of survivor benefits to same-sex couples is not even rationally related to the further of any legitimate state interests.

3. Mr. Glossip is entitled to summary judgment on his claim for sex discrimination. Defendant offers to different-sex surviving partners the opportunity to obtain survivor benefits through the legal status of marriage, but categorically denies access to such benefits to similarly situated surviving same-sex partners of Missouri State Highway Patrol ("MSHP") employees, such as Mr. Glossip. Defendant therefore intentionally discriminates against individuals, including Mr. Glossip, based solely on their sex in relation to the sex of her domestic partner. Facially and as applied, Defendant therefore discriminates based on sex. Discrimination on the basis of sex is suspect and demands heightened scrutiny under the Missouri Constitution. Defendant cannot show that the exclusion is substantially related to an important governmental interest. The denial of survivor benefits to same-sex couples is not even rationally related to the further of any legitimate state interests.

4. Mr. Glossip is entitled to summary judgment on his claim for denial of due process. Defendant offers to different-sex surviving partners the opportunity to obtain survivor benefits through the legal status of marriage, but categorically denies access to such benefits to similarly situated surviving same-sex partners of Missouri State Highway Patrol ("MSHP") employees, such as Mr. Glossip. Defendant therefore selects for disfavored treatment

individuals, including Mr. Glossip, who exercise their fundamental right to intimate association and pursuit of happiness and protected liberty interest in intimate conduct and family relationship with a committed same-sex domestic partner. Facially and as applied, Defendant therefore violates such individuals' right to due process and burdens fundamental rights and protected liberty interests. Defendant cannot show that its exclusion of same-sex couples is narrowly tailored to serve a compelling state interest. Nor can it show that the exclusion is substantially related to an important governmental interest. The denial of survivor benefits to same-sex couples is not even rationally related to the further of any legitimate state interests.

5. Mr. Glossip is entitled to summary judgment on his claim that he was denied survivor benefits pursuant to an unconstitutional special law. R.S. Mo. Sections 104.012 and 104.140.3 serve to categorically prohibit same-sex, surviving domestic partners, such as Mr. Glossip, from receipt of survivor benefits that are available to different-sex surviving spouses, R.S. Mo. Sections 104.012 and 104.140.3 are based on the immutable characteristics of sexual orientation and sex, and there is no substantial or reasonable justification for categorically excluding lesbian, gay, and bisexual individuals, including Mr. Glossip, from receiving survivor benefits provided by R.S. Mo. Section 104.140.3. Similarly, there is no substantial or reasonable justification for categorically excluding individuals, including Mr. Glossip, from receiving survivor benefits provided by R.S. Mo. Section 104.140.3 based solely on their sex in relation to the sex of her domestic partner.

6. A Statement of Uncontroverted Material Facts and attached exhibits and a Memorandum of Law in Support have been filed concurrently herewith.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order granting summary judgment in his favor on all counts of his First Amended Petition and ordering the

following relief:

(1) A declaration that Defendant's failure to provide same-sex, surviving, domestic partners of deceased gay, lesbian, and bisexual MSHP employees the opportunity to obtain survivor benefits that are available to different-sex couples through the legal status of marriage violates Mr. Glossip's right to equal protection under Article I, Section 2 of the Missouri Constitution.

(2) A declaration that the Defendant's exclusion of same-sex, surviving, domestic partners of deceased gay, lesbian, and bisexual MSHP employees from the survivor benefits that are available to different-sex couples who marry violates Mr. Glossip's right to due process under Article I, Section 10 of the Missouri Constitution.

(3) A declaration that R.S. Mo. Sections 104.012 and 104.140.3 are a special law and, therefore, violate Article III, Section 40 of the Missouri Constitution.

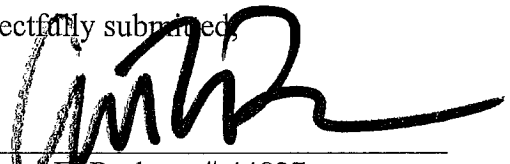
(4) An order enjoining Defendant from continuing to deny Mr. Glossip access to survivor benefits.

(5) An order requiring Defendant to offer MHSP employees and their same-sex domestic partners a regulatory structure that confers to the surviving domestic partners the survivor benefits that Defendant provides to different-sex couples who marry, but not the status or designation of marriage itself.

(6) An order awarding Mr. Glossip his costs and reasonable attorneys' fees.

(7) An order awarding such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Certificate of Service

I hereby certify that on July 15, 2011, I served the foregoing document by United States First Class mail to:

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