

IN THE SUPREME COURT OF MISSOURI

KELLY D. GLOSSIP,)	
)	
Appellant,)	
)	
v.)	
)	No. SC92583
MISSOURI DEPARTMENT OF)	
TRANSPORTATION AND HIGHWAY)	
PATROL EMPLOYEES')	
RETIREMENT SYSTEM,)	
)	
Respondent.)	

BRIEF OF MAYOR FRANCIS SLAY, CONGRESSMAN LACY CLAY,
AND CERTAIN CURRENT AND FORMER MEMBERS
OF THE MISSOURI GENERAL ASSEMBLY*
AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT KELLY D. GLOSSIP

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STATEMENT OF INTEREST

Amici are current and former elected officials from both political parties who wish to share their perspective on why the statutes at issue in this case violate the Missouri Constitution. *Amici* also wish to make clear that the majorities of the Missouri General Assembly who adopted those statutes do not speak for all elected officials. The fact that legislative majorities have passed laws specifically to deny equal protection to gay men and lesbians underscores the reasons why this Court should apply heightened scrutiny to such laws and why this Court should reverse the trial court's validation of statutes that deny Mr. Glossip equal protection of the laws.

In particular, *amici* have served the people of Missouri in the following ways:

Joan Bray served in the Missouri House of Representatives from 1993 to 2003, and in the Missouri State Senate from 2003 to 2011.

John Burnett served in the Missouri House of Representatives between 2003 and 2011.

Susan Carlson has served in the Missouri House of Representatives since 2011.

Maria Chappelle-Nadal served in the Missouri House of Representatives between 2005 and 2011. She has served in the Missouri State Senate since 2011.

Mike Colona has served in the Missouri House of Representatives since in 2009.

Lacy Clay served in the Missouri House of Representatives from his election in 1983 through 1991, in the Missouri Senate from 1991 through 2001, and in the United States House of Representatives since 2001. He currently represents Missouri's First Congressional District in Congress.

Tishaura Jones has served in the Missouri House of Representatives since 2009.

Jolie Justus has served in the Missouri State Senate since 2007.

Jeanne Kirkton has served in the Missouri House of Representatives since 2009.

Tom McDonald has served in the Missouri House of Representatives since 2009.

Genise Montecillo has served in the Missouri House of Representatives since 2011.

Jeanette Mott Oxford has served in the Missouri House of Representatives since 2005.

Jill Schupp has served in the Missouri House of Representatives since 2009.

Francis Slay has served as the Mayor of the City of St. Louis since 2001.

Zachary Wyatt has served in the Missouri House of Representatives since 2011.

CONSENT OF PARTIES

Appellant Kelly Glossip and Respondent Missouri Department of Transportation and Highway Patrol Employees' Retirement System have consented to *amici* filing this brief.

JURISDICTIONAL STATEMENT

Amici hereby adopt and incorporate by reference the Jurisdictional Statement in Appellant Kelly Glossip's brief.

STATEMENT OF FACTS

Amici hereby adopt and incorporate by reference the Statement of Facts in Appellant Kelly Glossip's brief.

POINTS RELIED ON

Amici hereby adopt and incorporate by reference the Points Relied On in Appellant Kelly Glossip's brief.

ARGUMENT

This case provides the Court an opportunity to honor a fallen hero and to ensure that, in the future, surviving partners of our bravest citizens are entitled to equal protection of the laws. Our Constitution imposes on this Court the solemn duty to protect the rights of those who are most vulnerable to the passing whims of democratic majorities. Making equality meaningful is “the principal office of government” and, when government does not ensure equality of its citizens, “it fails in its chief design.” Mo. Const. art. I, § 2. Our government will fail in its chief design if this Court does not acknowledge Kelly Glossip’s right to survivor benefits as the long-term committed life partner of Missouri State Trooper Dennis Engelhard.

I. THE STATUS AND HISTORY OF LESBIANS AND GAY MEN IN THE STATE OF MISSOURI CONFIRMS THAT LAWS THAT HAVE THE EFFECT OF CLASSIFYING PEOPLE BASED ON SEXUAL ORIENTATION WARRANT HEIGHTENED JUDICIAL SCRUTINY.

Amici agree with plaintiff that laws that treat lesbian and gay Missourians differently from the rest of the state—like the statutes at issue here—should be reviewed with heightened scrutiny. Although neither this Court nor the United States Supreme Court has ruled on the appropriate level of scrutiny for sexual orientation discrimination, criteria that inform this judgment include whether the group is a minority or is politically powerless and whether the group in question has suffered a history of discrimination. *See Bowen v. Gilliard*, 483 U.S. 587, 602 (1987); *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441-42 (1985).

These factors counsel in favor of heightened scrutiny of laws that discriminate based on sexual orientation. As an oppressed minority that has suffered a long history of discrimination, lesbians and gay men have been unable to obtain basic protections routinely afforded other minority groups, to prevent demeaning laws governing their most intimate acts, or to obtain justice when they are harassed simply for being who they are.

Everyone is entitled to equal protection of the law. Heightened scrutiny is warranted where—as here—an identifiable minority has received unfavorable treatment in the political process and has been targeted repeatedly for harm. Thus, although plaintiff amply demonstrates why heightened scrutiny is necessary (and why the statutes at issue could not survive even rational basis review), *amici* elaborate upon the lack of political power of this identifiable minority group in Missouri and the history of discrimination they have experienced in our state.

A. Lesbians and gay men are a small minority of the Missouri population.

Lesbians and gay men constitute a small minority of the Missouri population. A recent study found that only 1.7% of the U.S. population identifies as gay or lesbian. Gary J. Gates, *How Many People are Lesbian, Gay, Bisexual and Transgender?*, THE WILLIAMS INSTITUTE (Apr. 2011), *available at* <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/how-many-people-are-lesbian-gay-bisexual-and-transgender/>. The most recent demographic study of Missouri demonstrates that the gay and lesbian community in Missouri is an even smaller minority: only 0.75% of Missourians identify as gay or lesbian. Gary J. Gates, *Gay and Lesbian Families in the United States*, THE

WILLIAMS INSTITUTE (Aug. 22, 2001), *available at* http://www.urban.org/UploadedPDF/1000491_gl_partner_households.pdf.

B. Due to their status as a small minority, lesbians and gay men have been unable to obtain basic protections through the political process.

Given the small percentage of Missourians who are gay or lesbian, it is not surprising that they have little political power. As a result, gay men and lesbians have not been able to obtain basic legal protections despite frequently finding themselves the target of negativity and contempt.

Legislative efforts to obtain basic protection from discrimination have failed. Since 2001, members of the General Assembly have introduced legislation to add sexual orientation to Missouri's nondiscrimination act. If passed, the legislation would prohibit discrimination on the basis of sexual orientation in employment, housing, and public accommodations. Yet gay men and lesbians have so little political influence that the General Assembly did not even allow a committee hearing on the proposed legislation until nine years after it was first introduced. Tony Messenger, *Gay Discrimination Measure Advances in Mo. House*, ST. LOUIS POST-DISPATCH, Mar. 23, 2010, *available at* http://www.stltoday.com/news/local/metro/article_e90befb8-1668-5322-a02a-e2d75da7e0d4.html (hereinafter "Messenger, *Gay Discrimination Measure Advances*"). Although 89% of Americans believe that such protections should exist, the proposed legislation has yet to pass. *See* Gay and Lesbian Rights, GALLUP (2008), <http://tinyurl.com/278saqd>.

Because the gay and lesbian community is unable to obtain these basic protections, a gay or lesbian Missourian can be denied service at a lunch counter, evicted from an apartment, or fired from a job for no reason other than sexual orientation, left without recourse under state law. According to an attorney in the Attorney General's Civil Rights Division, complaints about discrimination based on sexual orientation are "basically ignored." Messenger, *Gay Discrimination Advances*.

While complaints about overt discrimination are ignored, in the last legislative session Missouri legislators proposed a statute called the "Don't Say Gay" Bill which would prohibit any mention of sexual orientation in public school instruction, material, or extracurricular activities. See H.R.2051, 96th Gen. Assembly (Mo. 2012), available at <http://www.house.mo.gov/billtracking/bills121/biltxt/intro/HB2051I.htm>. The bill's sponsor believed outlawing the word "gay" in public schools was necessary to "protect the moral values that are most important to Missouri families." See Holly Brantley, *Don't Say Gay Bill a Hot Issue in Mo.*, KSLA NEWS, available at <http://www.ksla.com/story/17701166/don't-say-gay-bill-a-hot-issue-in-mo>. Even though the bill did not pass, the fact that it garnered significant support is evidence of the prevailing attitudes that exist among many politicians and their constituents. It also exemplifies that the level of discrimination in Missouri is such that "victories" for gays and lesbians often take the form of defeating attempts to further marginalize gays and lesbians rather than enshrining true equality into our law.

As with the "Don't Say Gay" Bill, any small victories gays and lesbians have secured were modest and clouded by anti-gay animus of the most vitriolic variety. For example,

Missouri State University's addition of sexual orientation to the list of protected classes in its anti-discrimination policy was bookended by bias-laced rhetoric. In a letter to alumni before the change, the university's president wrote that homosexuality was a "biological perversion" and "intrinsically disordered." Steve Koehler, *Sides Prepare Passionate Debate over Missouri State Policy*, NEWS-LEADER (Mar. 17, 2004), available at http://www.academic08.net/StopDiscrimination/keiser_letter_1995_media.htm. After the university finally added sexual orientation to its policy, Governor Matt Blunt issued a statement saying the change was "unnecessary and bad." Scott Jaschik, *Long-Fought Win for Gay Rights*, INSIDE HIGHER ED, Sept. 18, 2006, <http://www.insidehighered.com/node/11878/atom.xml> (last visited Oct. 26, 2012). Such an environment is indicative of how little political power the small gay and lesbian minority in Missouri possesses. See *Windsor v. United States*, No. 12-2335, 2012 WL 4937310, at *9 (2d Cir. Oct. 18, 2012) ("[H]omosexuals are not in a position to adequately protect themselves from the discriminatory wishes of the majoritarian public.").

Moreover, the history of discrimination against gays and lesbians has exacerbated their political powerlessness. "Because of the immediate and severe opprobrium often manifested against homosexuals once so identified publicly, members of this group are particularly powerless to pursue their rights openly in the political arena." *Rowland v. Mad River Local School Dist.*, 470 U.S. 1009, 1014 (1985) (Justices Brennan and Marshall, dissenting from denial of certiorari).

Although gay and lesbian Missourians are a small and relatively powerless minority, their rights are no less worthy of respect than those of the majorities who elected us *amici* to our respective offices.

C. Lesbians and gay men have suffered a history of discrimination.

Discrimination against gays and lesbians in Missouri is real. It is felt by children at school, by adults at work, and by parents struggling to provide a safe home for their families. It is a shameful legacy that must be acknowledged and addressed in every branch of our government.

The prevailing attitude toward gays and lesbians has long been “one of strong disapproval, frequent ostracism, social and legal discrimination, and at times ferocious punishment.” Richard Posner, *Sex and Reason* (Harvard University Press 1992) c. 11, p. 291; *see also* Note, *The Constitutional Status of Sexual Orientation: Homosexuality as a Suspect Classification*, 98 HARV. L. REV. 1285, 1302 (1985) (“It is . . . uncontroversial that gays as a group suffer from stigmatization in all spheres of life.”). “[W]hen compared to other social groups, homosexuals are still among the most stigmatized groups in the nation. Hate crimes are prevalent. . . . Child custody decisions still frequently view gay and lesbian people as unfit parents. Gay and lesbian adolescents are often taunted and humiliated in their school settings. Many professional persons and employees in all occupations are still fearful of identifying as gay or lesbians in their work settings. . . . In fact, gays and lesbians share a history of persecution comparable to that of blacks and women.” *Snetsinger v. Montana Univ. Sys.*, 104 P.3d 445, 456 (Mont. 2004) (Nelson, J., concurring) (quoting in part from the American Psychiatric Association, *Fact Sheet: Gay, Lesbian and Bisexual*

Issues (Feb. 2000)). Over time, gays and lesbians have been branded Communists, subjected to Congressional investigations, prohibited from holding government jobs by Executive Order, and deported by the INS as sexual deviants. *See Boutilier v. INS*, 387 U.S. 118, 124 (1967); Patricia A. Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551, 1565-66 (1993). “There is no question, therefore, that gay persons historically have been, and continue to be, the target of purposeful and pernicious discrimination due solely to their sexual orientation.” *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 434 (Conn. 2008).

It is one thing to acknowledge discrimination in the abstract; it is wholly another to be confronted with examples from our own State’s history. The history of discrimination against gays and lesbians in Missouri is no less a stain on our culture than racism or sexism. Documented examples of apparent discrimination and bias-motivated behavior, some regrettably aided by our courts, include the following:

- In the mid-1970s, the University of Missouri refused to recognize a student group called Gay Lib on the basis that formal recognition of the group would “perpetuate and expand an abnormal way of life,” would “cause latent or potential homosexuals who become members to become overt homosexuals,” would allow “the sick and abnormal [to] counsel[] others who are similarly ill and abnormal,” and would “constitute an implied approval by the University of the abnormal homosexual life-style as a normal way of life.” *Gay Lib v. Univ. of Missouri*, 416 F. Supp. 1350, 1358 (W.D. Mo. 1976); *Gay Lib v. Univ. of Missouri*, 558 F.2d 848, 854 (8th Cir. 1977).

- In 1977, a court entered a decree conditioning custodial rights of Kathy, the child's mother, on Kathy "immediately discontinuing any relationship" with Betty, that she "not be in Betty's presence or company at any time for any reason," and that she not have "any other female living within the same family residence or group . . . except a relative or upon order of Court." The decree further provided that if Kathy had been caught in the "presence or company" of her girlfriend, custody would be changed to the father. *N.K.M. v. L.E.M.*, 606 S.W.2d 179, 183 (Mo. App. 1980).
- In 1977, the General Assembly enacted § 566.090, RSMo., which deemed "sexual intercourse with another person of the same sex" to be Class A misdemeanor. "The Committee Comment to § 566.090 indicates that it was intended to criminalize [such] sexual intercourse 'between consenting adults in private.'" *State v. Walsh*, 713 S.W.2d 508, 509 (Mo. banc 1986). "Essentially, Missouri's sexual-misconduct law labels all gays as criminals [and] restricts the ability of gay men and lesbians to form meaningful and lasting relationships and proscribes all activities by which they may sexually express their love for one another." Otis Cowan, *A Plebiscite for Prejudice: An Analysis of Equal Rights for Gay and Lesbian Missourians*, 62 UMKC L. Rev. 347, 353 (1993). Relying on *Bowers v. Hardwick*, 478 U.S. 186 (1986), this Court suggested that statutory classifications that discriminate against gay men and lesbians are "legitimate" because gay men and lesbians constitute a "class[] whose members have violated society's legal and moral codes of conduct." *Walsh*, 713 S.W.2d at 511-12.

- In 1982, a court restricted a gay father's visitation rights by allowing only scheduled visitation with the father, disallowing overnight visitation, and prohibiting the father from taking his child "to a church at which a large proportion of the congregation are homosexuals" whose pastor described it as "a Christian church with a primary outreach for historical needs [of] the gay community." The court limited his visitation despite the testimony of two psychologist experts that the child would not suffer any damage by spending time with his father. Although the expert witnesses testified that "most child molestation occurs between adult heterosexual males and female children," the appellate court dismissed this expert testimony as obviously incorrect because "[e]very trial judge, or for that matter, every appellate judge, knows that the molestation of minor boys by adult males is not as uncommon as the psychological experts' testimony indicated." *J.L.P.(H.) v. D.J.P.*, 643 S.W.2d 865, 866-69 (Mo. App. 1982).
- In 1985, Darrell Williamson was fired from a job when he discussed his homosexuality at work. Williamson's discrimination claim failed, however, because he had only established that he was discriminated against because of his sexual orientation, not because of his race. *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1989).
- In 1985, Stanley Lingar received a death sentence for murder in St. Francois County, Missouri. According to public reports, in the sentencing phase of his trial, the prosecutor presented Lingar's homosexuality as a reason to give him the

death penalty, arguing to the judge “that Lingar’s sexuality spoke to his character,” and was indicative of a “depraved mind” as an aggravating factor.

Richard Goldstein, *Queer on Death Row*, VILLAGE VOICE, Mar. 13, 2001, available at <http://www.villagevoice.com/2001-03-13/news/queer-on-death-row/>.

- In a 1987 divorce proceeding, Gene was awarded custody of the couple’s child rather than his lesbian wife Dena, despite the fact “[t]he court found the parents’ suitability for custody to be fairly equal,” and “the mother’s physical living arrangement [was] superior. The presumed impact on the child of the mother’s homosexuality, for which no evidence was presented, turned out to be the deciding factor.” *G.A. v. D.A.*, 745 S.W.2d 726, 728-29 (Mo. App. 1987) (Lowenstein, J., dissenting).
- In 1989, a gay father was prohibited from introducing his partner to his children for fear that such exposure to homosexuality could “endanger the child’s mental health and emotional development.” *J.P. v. P.W.*, 772 S.W.2d 786, 794 (Mo. App. 1989).
- In 1995, Rodney Wilson told his Mehlville High School history class that he was gay while they were discussing the treatment of groups like gays and lesbians during the Holocaust. The school administration cited him for “inappropriate conduct” in his personnel file for mentioning his sexual orientation in class. Connie Farrow, *More Gay Teachers Are Coming Out of the Closet*, L.A. TIMES, Jan. 29, 1995, available at http://articles.latimes.com/1995-01-29/news/mn-25614_1_sexual-orientation.

- In 2003, the Department of Social Services (“DSS”) denied Lisa Johnston’s application for a foster care license, concluding that she “was not a person of reputable character” due to her sexual orientation, despite conceding that Johnston and her partner “have exceptional qualifications to be foster parents.” *Johnston v. Missouri Dep’t of Soc. Services*, No. 0516-CV09517, 2006 WL 6903173 (Mo. Cir. Feb. 17, 2006).
- In 2004 and 2006, the Kansas City Health Department found that 14.1% of gay and lesbian residents experienced discrimination in the workplace and that 13.1% reported being physically assaulted, having property damaged, or being verbally harassed because they were or were perceived to be gay or lesbian. *The Pulse 2006: A Community Health Assessment of the Lesbian, Gay, Bisexual, and Transgendered Community in the Kansas City, Missouri, Metropolitan Area*, HEALTH DEP’T AND THE LESBIAN AND GAY COMMUNITY CENTER OF GREATER KANSAS CITY (Nov. 2006), <http://www.kcmo.org/idc/groups/health/documents/health/007923.pdf>; *The Pulse: A Community Health Assessment of the Lesbian, Gay, Bisexual, and Transgendered Community in the Kansas City, Missouri, Metropolitan Area*, HEALTH DEP’T AND THE LESBIAN AND GAY COMMUNITY CENTER OF GREATER KANSAS CITY (Apr. 2004), <http://www.kcmo.org/idc/groups/health/documents/health/007243.pdf>.
- In 2006, a study found that 61% of students in Missouri schools reported that other students were bullied and harassed at school because of sexual orientation. Among the less-than-half who felt comfortable reporting the harassment to school

- authorities, in only 37% of reported cases did school authorities take some immediate action to address the harassment. The study also found that 76% of Missouri students reported hearing homophobic terms like “faggot” and “dyke” at school and that, when homophobic remarks were made in the presence of teachers or school staff, teachers and staff intervened only 40% of the time. Kosciw et al., *From Teasing to Torment: A Report on School Climate in Missouri*, GAY, LESBIAN AND STRAIGHT EDUCATION NETWORK (2006), http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/000/750-1.pdf.
- In 2008, “an applicant for a prosecutor position reported that he had his job offer revoked because he was gay.” *Missouri—Sexual Orientation and Gender Identity Law and Documentation of Discrimination*, WILLIAMS INSTITUTE (Sept. 2009), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Missouri.pdf>.
 - A 2009 study found that 99% of lesbian and gay students in Missouri schools had heard the word “gay” used in a negative way at school, while 93% had heard homophobic terms like “fag” and “dyke” at school. One-third of gay or lesbian students in Missouri schools regularly heard school staff make negative remarks about a student’s gender expression, while one-quarter regularly heard school staff make homophobic remarks. *Research Brief: School Climate in Missouri*, http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1839-3.pdf.
 - In 2011 and 2012, a Missouri school district had to be ordered by a federal judge to stop using discriminatory filtering software that allowed students to view anti-

- gay websites, but not to view websites for organizations like Parents, Family and Friends of Lesbians and Gays, the Matthew Shepard Foundation, or a Catholic organization called DignityUSA. According to the New York Times, the filter allowed students to read *Bowers v. Hardwick* (validating state anti-“sodomy” laws), but not *Lawrence v. Texas* (invalidating state anti-“sodomy” laws).
- Michael Winerip, *School District Told to Replace Web Filter Blocking Pro-Gay Sites*, N.Y. TIMES, March 26, 2012, available at <http://www.nytimes.com/2012/03/26/education/missouri-school-district-questioned-over-anti-gay-web-filter.html?pagewanted=all>. According to one of the school board members, the software was motivated out of a “concern with students accessing websites saying it’s okay to be gay.” *Parents, Families, & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 894 (W.D. Mo. 2012).
- In August 2012, a lesbian living in Cape Girardeau was attacked by three siblings, ages 11, 13, and 16, who started by “shouting slurs at the woman, as had happened on several other occasions,” but ended with, as one neighbor described it, the siblings “kicking, stomping, and beating the hell out of her.” The victim, who was left with a concussion, bruises, and in need of eye surgery, connected the attack to what she described as a long-running streak of anti-gay harassment by her neighbors. Erin Ragan, *Disputes Led Up to Alleged Assault in Cape Neighborhood*, SOUTHEAST MISSOURIAN, August 1, 2012, available at <http://www.semissourian.com/story/1876855.html>; Holly Brantley, *Woman Says She Was Beat Up Because of Her Sexual Orientation*, WMCTV, available at

<http://www.wmctv.com/story/19125544/woman-says-she-was-beat-up-because-of-sexual-orientation>.

This history of discrimination against this small, powerless minority compels this Court to approach any classification on the basis of sexual orientation with heightened scrutiny. *Amici* agree with plaintiff that the statutes at issue here fail under even rational basis review. As plaintiff correctly explains in his brief, the statutes that deny Mr. Glossip the equal protection of the laws should be declared unconstitutional.

CONCLUSION

When the statutes at issue here were enacted in 2001, gay and lesbian couples could not marry anywhere in the United States. *Bowers v. Hardwick*, 478 U.S. 186 (1986)—where the Supreme Court validated anti-“sodomy” statutes—was still good law, inviting discrimination as a means of expressing moral disapproval of lesbians and gay men. Missouri law was articulated in this Court’s opinion in *State v. Walsh*, 713 S.W.2d 508 (Mo. banc 1986), which held that criminally “punishing homosexual acts” was justified by the desire to “promot[e] the public morality.” *Id.* at 512.

These antiquated and false notions of what is acceptable in a free country—and what is right—have been largely abandoned. The legacy of *Bowers* was forcefully repudiated in *Lawrence v. Texas*, 539 U.S. 558 (2003). Today, the *Walsh* opinion is just as valid as the opinion in *Scott v. Emerson*, 15 Mo. 576 (1852), where the Court denied Dred Scott his status as a free man. Now, as this case presents the Court with an overdue next step toward abandoning these old prejudices, it is appropriate to remember that “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in

fact serve only to oppress.” *Lawrence*, 539 U.S. at 579. It is this Court’s role to empower “persons in every generation [to invoke constitutional] principles in their own search for greater freedom.” *Id.* As future generations reflect on this Court, hopefully its legacy will be one of equality.

Allowing these survivor benefits here will not erode good values of Missourians. State employees leaving an earned employment benefit to their survivors is something that inures to the benefit of the common weal. Allowing one decent person to leave something of value to their surviving partner promotes human values that hopefully all Missourians share. Erasing these statutes from our law will not aggrandize a minority community, but instead will foster a proper measure of compassion for those who are left behind after death.

The experience of Missourians like Trooper Engelhard and Kelly Glossip compels this Court to apply heightened scrutiny in assessing the constitutionality of statutes that have the effect of classifying our citizens based on sexual orientation. The effect of the statutes at issue here is to deny Trooper Engelhard’s spouse equal protection by denying him the survivor benefits to which he would be entitled if only he were heterosexual. This statutory refusal to allow gay men to stand on equal footing with all other citizens serves no legitimate interest. Such statutes should not be left to shame and demean the families of future fallen heroes like the family of Trooper Engelhard. This Court can fulfill its duty under our Constitution only by declaring the statutes unconstitutional. It should do so now.

Dated: November 5, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 5, 2012, a true and correct copy of the foregoing document was served upon the Clerk of the Court and upon the following counsel via the Missouri e-filing system:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of Microsoft Word, the undersigned certifies that this brief contains a total of 4,186 words, excluding the cover, table of contents, table of authorities, certificate of service, certificate of compliance, and signature block.

The undersigned further certifies that an electronic copy of this brief was also filed via electronic mail to the clerk in an email that was scanned for viruses and was found virus-free through the Symantec anti-virus program.

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