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ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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OPINION LETTER NO. 36

Mr. Edwin Pruitt, Jr., Chairman
Commission on Human Rights
314 East High Street
Jefferson City, Missouri 65101

Dear Mr. Pruitt:

This letter is in response to your request for an opinion on the constitutionality of Section 288.040(6), RSMo Supp. 1973.

We cite to you the recent United States Supreme Court decision in Geduldig v. Aiello, 414 U.S. 897, 94 S.Ct. 2485, 41 L.Ed. 2d 256 (1974). The court reversed a district court decision and upheld the constitutionality of a section of the California Disability Insurance System which parallels Section 288.040(6), RSMo Supp. 1973. That section reads:

> "'"Disability" or "disabled" includes both mental or physical illness and mental or physical injury. An individual shall be deemed disabled in any day in which, because of mental or physical condition, he is unable to perform his regular or customary work. In no case shall the term "disability" or "disabled" include any injury or illness caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter' (Emphasis added.)" West's Ann.Cal.Un.Ins. Code, §2626.

The court concluded that the exclusion of pregnancy disability from coverage does not amount to invidious discrimination under the Equal Protection Clause. The court remarked that the classification challenged relates to the asserted under-inclusiveness of the set of risks that the state has selected to insure. Although Missouri, like California, has created a program to insure most risks of employment disability, it has not chosen to insure all such risks.

The United States Supreme Court has held that, consistent with the Equal Protection Clause, a state:

> ". . . may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . ." Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, at 489, 75 S.Ct. 461, 99 L.Ed. 563 (1955).

In Geduldig, supra, at 94 S.Ct. 2491, the court remarked:

> ". . . Particularly with respect to social welfare programs, so long as the line drawn by the State is rationally supportable, the courts will not interpose their judgment as to the appropriate stopping point. '[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all.' Dandridge v. Williams, 397 U.S. 471, 486-487 (1970).
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> "It is evident that a totally comprehensive program would be substantially more costly than the present program and would inevitably require state subsidy, a higher rate of employee contribution, a lower scale of benefits for those suffering insured disabilities, or some combination of these measures. There is nothing in the Constitution, however, that requires the State to subordinate or compromise its legitimate interests solely to create a more comprehensive social insurance program than it already has."

We concur with the opinion of the court.

Therefore, applying the reasoning of Geduldig v. Aiello, supra, to the statute in point, it is our view that there is no constitutional infirmity in Section 288.040(6), RSMo Supp. 1973.

Yours very truly,

JOHN C. DANFORTH
Attorney General