

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
NINETEENTH JUDICIAL CIRCUIT

**FILED**  
MAR 26 2014  
COLE COUNTY  
CIRCUIT COURT

<b>KERRY MESSER, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14AC-CC00009</b>
	)	
<b>JEREMIAH W. NIXON, et al.</b>	)	<b>Division: I</b>
	)	
<b>Defendants.</b>	)	<b>Hon. Jon E. Beetem</b>
	)	

**PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Plaintiffs Kerry Messer, Don Hinkle, Justin Mosher, and Joseph Ortwerth ("Plaintiffs"), under Rule 92.02 of the Missouri Rules of Civil Procedure, move the Court for a temporary restraining order and, thereafter, a preliminary injunction, as follows:

1. Plaintiffs seek a temporary restraining order preventing the Defendants from accepting combined returns from any same-sex couples during the pendency of this lawsuit, including the April 15, 2014, filing deadline for the 2013 tax year.

2. In this case, Plaintiffs seek a declaration that R.S. Mo. §143.091 and R.S. Mo. §143.031.1 are unconstitutional on their face, or as applied by Executive Order 13-14, to the extent that they require the Director of Revenue: a) to accept federal definitions of "husband and wife" that are inconsistent with the Missouri Constitution; or b) to accept a Missouri combined return from same-sex couples wed in another state, thus giving official recognition to the existence or validity of same-sex marriages, in violation of the Missouri Constitution, Article 1, § 33, and R.S. Mo. §451.022.

3. Defendants admit that they have begun to spend, and intend to continue spending, taxpayer funds to implement R.S. Mo. §143.091 and R.S. Mo. §143.031.1, as

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applied by Executive Order 13-14, in a manner which requires the Director of Revenue to accept a Missouri combined return from some same-sex couples. See Defendants' Answer, ¶ 21. Furthermore, Defendants admit to spending money to plan, prepare, train, communicate, publish, mail, post and implement this policy regarding acceptance of a combined return. See Defendants' Answer, ¶ 41.

4. To protect the public fisc and uphold the rule of law, Plaintiffs respectfully submit that the Court must enjoin this illegal conduct immediately. Until such time as the Court may hold a contested hearing on the merits, Plaintiffs seek a temporary restraining order to prevent Defendants from implementing these tax statutes in this manner, and from spending taxpayer funds for the implementation of this policy. After a contested hearing, Plaintiffs seek a preliminary injunction during the pendency of this litigation

5. Plaintiffs incorporate by reference the allegations contained in the First Amended Petition as if fully set forth herein.

6. Plaintiffs also incorporate by reference, the Answer filed by Defendants in response to Plaintiffs' First Amended Petition.

7. Plaintiffs file herewith and incorporate by reference the factual statements contained in the Affidavit of Don Hinkle, attached hereto as Exhibit 1.

8. Plaintiffs, as taxpayers, have already suffered, and will continue to suffer, immediate and irreparable harm if Defendants continue to promote and implement the challenged policy. More specifically, once taxpayer funds are disbursed to administer this policy, and once combined returns have been accepted, it will be more expensive if not impossible for such expenditures to be recouped or for such actions to be undone.

9. Plaintiffs' constitutional rights are being violated by the actions of the Governor and remaining defendants to implement R.S. Mo. §§143.031.1, and 143.091 of the

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Missouri Tax Code, pursuant to Executive Order 13-14, as more fully set forth in this motion, hereinafter described sometimes as “the challenged policy.”

10. Plaintiffs have a legally protectable interest at stake in the outcome of this dispute.

11. Plaintiffs lack an adequate remedy at law to prevent the further disbursement of taxpayer funds to implement the challenged policy, which Defendants admit. See Defendant’s Answer, ¶ 50. Injunctive relief is, therefore, vital.

12. The *status quo* should be preserved while the case is pending. Only the requested injunctive relief can protect the interests of the Plaintiffs and prevent irreparable harm to the Plaintiffs during the pendency of the case.

13. Plaintiffs are entitled to a temporary restraining order and, after hearing, a preliminary injunction against Defendants because there is a strong likelihood that Plaintiffs will prevail on the merits of their claims and strong potential for immediate and irreparable damage to the Plaintiffs, if Defendants are permitted to continue to waste taxpayer funds to administer the challenged policy.

14. Plaintiffs submit that no bond is required because this matter involves an injunction to prevent the unlawful expenditures of funds, and that such funds will either remain in the treasury throughout the pendency of the litigation or be expended in accordance with the applicable, pre-existing law whereby unmarried individual taxpayers will file individual Missouri returns, should the Court grant the temporary restraining order and preliminary injunction requested in this motion.

15. Plaintiffs file herewith their Memorandum in Support, and a proposed temporary restraining order.

**WHEREFORE**, Plaintiffs respectfully request that the Court:

1. Enter a temporary restraining order preserving the *status quo* by prohibiting Defendants, and each of them, and all those in active concert or participation with them, from taking any action, including but not limited to:

- a. permitting or requiring the filing of a combined return by anyone other than married individuals as defined by Article 1, § 33, and by R.S. Mo. §451.022; or
- b. applying federal definitions of “husband and wife” as contained in IRS Revenue Ruling 2013-17 to the Missouri tax code for any purpose, contrary to Article 1, § 33, and by R.S. Mo. §451.022.
- c. the use of public funds to implement the policies prohibited above, whether based on an interpretation of R.S. Mo. §143.091 and R.S. Mo. §143.031.1, or Executive Order 13-14.

2. After hearing, enter a preliminary injunction prohibiting Defendants, and each of them, and all those in active concert or participation with them, from taking any action, including but not limited to:

- a. permitting or requiring the filing of a combined return by anyone other than married individuals as defined by Article 1, § 33, and by R.S. Mo. §451.022;  
or
- b. applying federal definitions of “husband and wife” as contained in IRS Revenue Ruling 2013-17 to the Missouri tax code for any purpose, contrary to Article 1, § 33, and by R.S. Mo. §451.022.
- c. the use of public funds to implement the policies prohibited above, whether based on an interpretation of R.S. Mo. §143.091 and R.S. Mo. §143.031.1, or Executive Order 13-14; and

3. Grant Plaintiffs such other relief as the Court deems just and proper.

Dated: March 25<sup>th</sup>, 2014

Respectfully submitted,

**WHITEHEAD LAW FIRM, L.L.C.**



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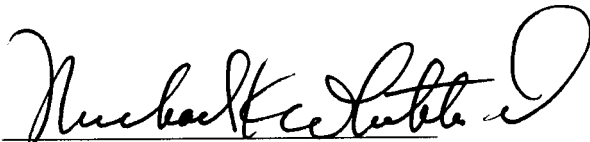
ATTORNEY FOR PLAINTIFFS

**Certificate of Service**

On this 25<sup>th</sup> day of March, 2014, a copy of the foregoing was served upon all defendants by email to their counsel below, and also upon applicant-intervenors:

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