## BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

KERRY MESSER, et al,	)	
Plaintiffs,	)	
vs.	)	Case No. 14AC-CC00009
JEREMIAH W. NIXON, et ux.,	)	
Defendants.	)	

## ORDER

The Court take up for ruling Plaintiff's Motion for Temporary Restraining Order. The matter is ruled on the affidavits submitted in support and in consideration of the arguments of counsel. Being duly advised in the premises, the Court rules as follows:

The Court notes that the executive order at issue was made on November 14, 2013, the lawsuit was filed on January 8, 2014, the request for the TRO was filed on March 26, 2014 and that the deadline for filing income tax returns is April 15, 2014. While a TRO is normally directed at maintaining the *status quo*, it is difficult to say that the requested relief represents the status quo when most tax returns have been likely already filed.

Equitable relief in the form of a temporary restraining order requires this Court to consider the familiar *Dataphase* factors: 1) Likelihood of success on the merits; 2) Irreparable injury; 3) the balance of equities and 4) the public interest.

Plaintiffs admit that their personal tax obligations are not affected by the challenged executive order. It is possible that there are Missouri income tax savings available to a same sex couple who files jointly, but that, at this point in the litigation, such a savings has neither been established or quantified. Plaintiffs also assert an intangible injury to their rights as taxpayers to governmental compliance with state law and constitution.

The proposed relief does not alleviate such a harm, except with respect to an extremely

limited class of citizens who advise the Director of Revenue or his staff of their claimed marital status when filing their petition after the statutory deadline.

Finally, should the ultimate outcome of this litigation establish that such an income tax filing was improper resulting in state income taxes being illegally avoided or refunded, the State has, as it always has had, the right to challenge that filing and seek recovery.

Because the Plaintiffs have not established irreparable injury in the form of pecuniary loss and because the proposed relief fails to avoid the intangible injury claimed, the Court finds that a temporary equitable relief is not authorized. The Court makes no finding on likelihood of success on the merits or the other *Dataphase* factors.

The request for a temporary restraining order is denied.

The cause is set for status review and trial setting on May 2, 2014 at 9:00. Counsel to be prepared to discuss what sort of hearings will be required and their available dates.

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SO ORDERED this 4th day of April, 2014.