

**FILED**  
FEB 20 2014  
COLE COUNTY  
CIRCUIT COURT

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

KERRY MESSER, JUSTIN MOSHER, )  
DON HINKLE and JOSEPH )  
ORTWERTH, as Individuals, )

Plaintiffs, )

v. )

Case No. 14AC-CC00009

JEREMIAH W. NIXON, in his official )  
capacity as GOVERNOR OF )  
MISSOURI, et al., )

Defendants. )

**DEFENDANTS' ANSWER TO PLAINTIFFS'  
FIRST AMENDED PETITION FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

Defendants Nixon, Mollenkamp, Department of Revenue, and State of Missouri answer the First Amended Petition as follows:

1. This paragraph consists of plaintiffs' characterization of their First Amended Petition, which does not require an answer. But if an answer is required, denied.

2. This paragraph consists of plaintiffs' characterization of their First Amended Petition, which does not require an answer. But if an answer is required, denied.

3. As to the first sentence, defendants admit that in a news conference in his office on November 14, 2013, Governor Nixon said that

same-sex couples legally married in other states could file combined Missouri income tax returns and use state tax breaks that are given to persons filing such returns; otherwise, denied. As to the second sentence of this paragraph, defendants admit that the Office of the Governor issued a press release on November 14, 2013, saying, among other things, "However, the order does not change eligibility for any state-level exemptions, deductions or credits." That press release speaks for itself. Otherwise, denied.

4. Admitted.

5. This paragraph consists of plaintiffs' characterization of their reasons for filing suit, which does not require an answer. But if an answer is required, denied.

6. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

7. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

8. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

9. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

10. Admitted.

11. Admitted.

12. As to the allegation in the first sentence, admitted. The second sentence consists of plaintiffs' characterization of "the executive order and statutes at issue," which speak for themselves.

13. Admitted.

14. This paragraph consists of a conclusion of law and plaintiffs' characterization of their First Amended Petition, which do not require an answer. But if an answer is required, denied.

15. Admitted.

16. Admitted.

17. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

18. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

19. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

20. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

21. Defendants admit that, assuming Plaintiffs and others paid income taxes to the State of Missouri, such funds go to the State Treasury as general revenue, and that part of general revenue is expended by the State of Missouri to process combined income tax returns—which will include

processing combined returns from same-sex couples married in other states. But to the extent plaintiffs are alleging that there is any different or additional cost in processing such returns, denied.

22. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

23. Denied.

24. This paragraph consists of a conclusion of law: plaintiffs' quotation from and characterization of § 451.022, RSMo, which speaks for itself and as to which no answer is required.

25. This paragraph consists of a conclusion of law: plaintiffs' quotation from and characterization of Art. I, § 33, of the Missouri Constitution, which speaks for itself and as to which no answer is required.

26. Admitted.

27. This paragraph consists of a conclusion of law: plaintiffs' characterization of Art. II, § 1, of the Missouri Constitution, which speaks for itself and as to which no answer is required.

28. This paragraph consists of a conclusion of law: plaintiffs' quotation from and characterization of Art. IV, § 2, of the Missouri Constitution, which speaks for itself and as to which no answer is required.

29. This paragraph consists of a conclusion of law: plaintiffs' quotation from and characterization of Art. IV, § 22, of the Missouri Constitution, which speaks for itself and as to which no answer is required.

30. This paragraph consists of a conclusion of law: plaintiffs' quotation from and characterization of Art. X, § 2, of the Missouri Constitution, which speaks for itself and as to which no answer is required.

31. This paragraph consists of a conclusion of law: plaintiffs' quotation from and characterization of Art. X, § 3, of the Missouri Constitution, which speaks for itself and as to which no answer is required.

32. This paragraph consists of a conclusion of law: plaintiffs' characterization of Art. X, § 4(d), of the Missouri Constitution, which speaks for itself and as to which no answer is required.

33. This paragraph consists of plaintiffs' characterization of Executive Order 13-14, which speaks for itself. Otherwise, denied.

34. This paragraph consists of plaintiffs' characterization of Executive Order 13-14, which speaks for itself. Otherwise, denied.

35. This paragraph consists of plaintiffs' characterization of Executive Order 13-14, which speaks for itself. Otherwise, denied.

36. This paragraph consists of plaintiffs' characterization of Revenue Ruling 2013-17, which speaks for itself. Otherwise, denied.

37. This paragraph consists of plaintiffs' characterization of § 143.091, RSMo, and Executive Order 13-14, which speak for themselves. Otherwise, denied.

38. This paragraph consists of plaintiffs' characterization of § 143.031, RSMo, which speaks for itself. Otherwise, denied.

39. This paragraph consists of plaintiffs' characterization of Executive Order 13-14, which speaks for itself. Otherwise, denied.

40. This paragraph consists of plaintiffs' characterization of Executive Order 13-14, which speaks for itself. Otherwise, denied.

41. Defendants admit that the Director of Revenue expends public funds to plan, prepare and train employees for, to communicate, publish, mail, and post regarding, and to implement the acceptance and processing of combined Missouri state income tax returns, including returns filed by same-sex couples married in other states. Otherwise, denied.

42. Defendants lack knowledge sufficient to admit or deny this allegation. Therefore, denied.

43. Denied.

44. This paragraph consists of plaintiffs' characterization of the instructions for form MO-1040, which speak for themselves. Otherwise, denied.

45. This paragraph consists of plaintiffs' characterization of their First Amended Petition, which does not require an answer. But if an answer is required, denied.

46. This paragraph consists of plaintiffs' characterization of their First Amended Petition, which does not require an answer. But if an answer is required, denied.

47. Denied.

48. Denied.

49. Denied.

50. Admitted.

51. This paragraph consists of plaintiffs' characterization of their First Amended Petition, which does not require an answer. But if an answer is required, denied.

52. This paragraph consists of plaintiffs' characterization of their First Amended Petition, which does not require an answer. But if an answer is required, denied.

53. Denied.

54. Admitted.

55. This paragraph consists of a conclusion of law, as to which no answer is required. Otherwise, denied.

56. This paragraph consists of a conclusion of law, as to which no answer is required. Otherwise, denied.

57. This paragraph consists of a conclusion of law, as to which no answer is required. Otherwise, denied.

58. This paragraph consists of a conclusion of law, as to which no answer is required. Otherwise, denied.

59. This paragraph consists of a conclusion of law, as to which no answer is required. Otherwise, denied.

60. This paragraph consists of a conclusion of law, as to which no answer is required. Otherwise, denied.


**DEFENDANTS FURTHER STATE**

1. Plaintiffs lack standing to bring this suit.
2. As to Plaintiffs' request for attorneys' fees and expenses, defendants have immunity.

WHEREFORE, defendants ask the Court to deny the relief sought by the plaintiffs.

Respectfully submitted,

**CHRIS KOSTER**  
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Solicitor General  
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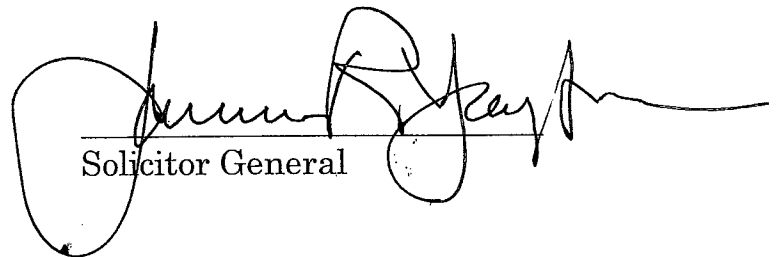
**ATTORNEYS FOR  
DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent  
via electronic mail this 20<sup>th</sup> day of February, 2014, to:

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