

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED)
PEOPLE MISSOURI STATE)
CONFERENCE)

Case No. 25AC-CC06724

Plaintiffs,

v.

Michael KEHOE, et al.,

Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' REQUEST FOR *EX PARTE*
TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE,
MOTION FOR BRIEFING ON REQUESTED TEMPORARY RESTRAINING
*ORDER***

“Article II, § 1 of the Missouri Constitution ‘provides for the separation of power into three distinct departments—legislative, executive, and judicial—and prohibits the exercise of power properly belonging to one of those departments from being exercised by another.’” *Williams v. Falkenrath*, 676 S.W.3d 452, 459 (Mo. App. W.D. 2023) (quoting *State v. Raccagno*, 530 S.W.2d 699, 703 (Mo. 1975)). Here, Plaintiffs request this Court shatter that separation, inviting this Court to thwart Missouri’s democratic process. Seeking an astonishing and unprecedented intrusion upon Missouri’s constitutional structure and the long-established prerogatives of the Governor and the General Assembly, Plaintiffs request an *ex parte* order to “prohibit[] Defendants Pro Tem and Speaker from calling the legislature into session based on the Proclamation,” Pls. Pet. at ¶ 87(A), which would “interfere impermissibly with the other[s]’ performance of [their] constitutionally assigned

power[s].” *State Auditor v. Joint Comm. on Legislative Rsch.*, 956 S.W.2d 228, 231 (Mo. banc 1997) (quoting *I.N.S. v. Chadha*, 462 U.S. 919, 963 (1983) (Powell, J., concurring)). Essentially, Plaintiffs aim to stymie the Governor and General Assembly’s core lawmaking functions through a judicial order which—as far as Defendants know—has *never* been granted in Missouri history.

Even worse, Plaintiffs assault these fundamental foundations of the Missouri Constitution through the vehicle of an *ex parte* Rule 92 temporary restraining order (“TRO”), depriving the State of its opportunity to be heard. Rule 92.02 imposes “strict limits on *ex parte* motions.” *CNS Int’l Ministries, Inc. v. Bax*, 2025 WL 671060, at *17, n.10 (E.D. Mo. Mar. 3, 2025). In particular, such orders cannot issue unless plaintiffs prove that “notice cannot be given.” Mo. R. RCP § 92.02(b)(2). And that is clearly not true here. Plaintiffs knew how to contact the State. They declined to do so, instead opting for a highly-disfavored *ex parte* TRO to short-circuit the State’s ability to respond and to defend the Missouri Constitution. Plaintiffs have *no* basis to undercut due process in this matter. *See, e.g., Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974) (noting “fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute”).

Consequently, the Court can, and should, summarily deny Plaintiffs’ motion. But at the very least, Defendants respectfully request that this Court set an appropriate briefing schedule on Plaintiffs’ request for a temporary restraining order, as well as on their requests for declaratory and injunctive relief.

Respectfully submitted,

ANDREW BAILEY

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