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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Sharon Hodges; and Frank Hodges,  
Plaintiffs,  
vs.  
Barak Obama, President of the United States; and John Boehner, Speaker of the House, United States Congress,  
Defendants.

No. CV-11-693-PHX-JAT  
**ORDER**

Plaintiffs have filed a pro se complaint against President Barack Obama and Speaker of the House John Boehner. The complaint purports to assert a negligence claim and a violation of executive privilege, and seeks an emergency restraining order prohibiting a shutdown of the federal government. Doc. 1. The case has been assigned to Judge James Teilborg, but he is not available to hear the request for emergency relief. The undersigned Judge has been randomly selected to consider Plaintiffs' request. For reasons stated below, the Court will deny Plaintiffs' request for an emergency restraining order.

To obtain an emergency restraining order, a plaintiff must show that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365,

1 374 (2008). The test includes a sliding scale. If the plaintiff shows that the balance of  
2 hardships will tip sharply in his favor, he need not make as strong a showing of the  
3 likelihood of success on the merits – the existence of serious questions will suffice.  
4 *Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049-53 (9th Cir. 2010). Plaintiffs  
5 have not shown they are likely to succeed on the merits or that they have raised serious  
6 questions.

7 Federal courts are courts of limited jurisdiction. “They possess only that power  
8 authorized by Constitution and statute,” *Kokkonen v. Guardian Life Insurance Co. of*  
9 *America*, 511 U.S. 375, 377 (1994), and “the presumption is that [they are] without  
10 jurisdiction unless the contrary affirmatively appears[.]” *Fifty Associates. v. Prudential*  
11 *Insurance Co. of America*, 446 F.2d 1187, 1190 (9th Cir. 1970). The complaint asserts  
12 only that that “[j]urisdiction for matters involving questions of Executive Privilege lay  
13 with Federal Courts” (Doc. 1 at 1), but cites no supporting legal authority other than  
14 Article III of the United States Constitution.

15 To sue in federal court, a plaintiff must have standing under Article III, that is, the  
16 plaintiff “must have suffered, or be threatened with, an actual injury traceable to the  
17 defendant and likely to be redressed by a favorable judicial decision.” *Lewis v. Cont’l*  
18 *Bank Corp.*, 494 U.S. 472, 477 (1990). The complaint, even when construed liberally in  
19 Plaintiffs’ favor, alleges no facts showing that Plaintiffs will suffer an actual, concrete  
20 injury as a result of a government shutdown. Plaintiffs’ claims implicate only a  
21 “generalized interest of all citizens” in efficient and effective governance. *Schlesinger v.*  
22 *Reservists Comm. to Stop the War*, 418 U.S. 208, 218 (1974). Plaintiffs, therefore, have  
23 failed to establish constitutional standing. *See Lujan v. Defenders of Wildlife*, 504 U.S.  
24 555, 560-61 (1992) (the party invoking federal jurisdiction bears the burden of  
25 establishing the three elements of constitutional standing).

26 Nor may the Court exercise jurisdiction over this suit given the principle of  
27 separation of powers and the political question doctrine. “Plaintiffs’ action cannot  
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1 proceed because its resolution would require the federal judiciary to ask and answer  
2 questions that are committed by the Constitution to the political branches of our  
3 government.” *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 977 (9th Cir. 2007); *see*  
4 *Schlesinger*, 418 U.S. at 215 (presence of a political question, like absence of standing,  
5 deprives court of jurisdiction).

6 Plaintiffs note, correctly, that not even the President of the United States is above  
7 the law, *see United States v. Nixon*, 418 U.S. 683 (1974), and that it is the province and  
8 duty of the judicial branch to decide what the law is, *Marbury v. Madison*, 1 Cranch 137,  
9 2 L. Ed. 60 (1803). But the general failure of the President and Congress to agree upon a  
10 federal budget does not constitute a legal question subject to judicial review.

11 **IT IS ORDERED** that Plaintiffs’ Petition for Emergency Restraining Order  
12 (Doc. 1) is **denied**.

13 Dated this 8th day of April, 2011.

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David G. Campbell  
United States District Judge