

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

WARREN EASTERLING,

Petitioner,

:

Case No. 3:13-cv-024

-vs-

District Judge Timothy S. Black  
Magistrate Judge Michael R. Merz

:

STATE OF OHIO,

Respondent.

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**ORDER STRIKING AMENDED MOTION FOR PRELIMINARY  
INJUNCTION**

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This case is before the Court on Plaintiff's Amended Motion for Preliminary Injunction (Doc. No. 24).

On April 30, 2013, Easterling filed a Motion to Amend (Doc. No. 21) which the Magistrate Judge denied without prejudice to its renewal if the renewed motion to amend was accompanied by a proposed amended complaint (Doc. No. 22). In apparent response, Easterling has filed what he styles an "Amended Motion for Preliminary Injunction." That document is STRICKEN for the following reasons:

1. The "Amended Motion" purports to substitute Attorney General Mike Dewine for the State of Ohio as "Defendant/Respondent" which cannot be done without court permission. Easterling must file a formal motion to substitute a party in order to achieve this result.
2. Instead of a plain and complete statement of Plaintiff's claims as would be required in a complaint, it very briefly makes the erroneous claim that the state of Ohio has admitted the

unconstitutionality of Ohio Revised Code § 2323.52 by failing to file an answer in Easterling's prior case, 3:12-cv-300. The State made no such admission. A party which files a motion to dismiss for lack of jurisdiction under Fed. R. Civ. P. 12(b) is under no obligation to answer a complaint unless and until the court overrules its motion to dismiss. In that case, the State had no obligation to file an answer because its motion to dismiss was granted.

In fact, Easterling has never filed a complaint (or petition in mandamus) in this case; the Court has dealt solely with Easterling's Motion for Temporary Restraining Order as his initiating document. The Court can no longer proceed in that fashion. Easterling must file a motion for leave to file an amended complaint, accompanied by a proposed amended complaint, to which the State of Ohio has an opportunity to respond.

May 6, 2013.

s/ *Michael R. Merz*  
United States Magistrate Judge