

**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.

ORDER TO PETITIONER

In this mandamus action seeking invalidation of the Ohio vexatious litigator statute, Petitioner filed a Motion for Temporary Restraining Order without notice to the Respondent (Doc. No. 4). The Magistrate Judge filed a Report and Recommendations (Doc. No. 5) noting no process had been issued and concluding it was inappropriate to proceed without notice to the State. Petitioner has filed Objections (Doc. No. 6), claiming the Court should not require notice because of

- (1) further actions taken by Montgomery County court personnel to enforce the vexatious litigator judgment against Petitioner, and
- (2) the State “admitted to all the allegations and claims in the complaint” in Petitioner’s prior case, *Easterling v. Ohio*, 3:12-cv-300. *Id.*

Apparently believing that his case for injunctive relief without notice is so persuasive that he need not pursue any other avenue, Petitioner has still failed to cause the issuance of process in this case. But even if Petitioner were entitled to an emergency TRO, the State would still be

entitled to know that it had been sued and that the constitutionality of one of its statutes was being challenged. Fed. R. Civ. P. 5.1.

It is accordingly ORDERED that Petitioner cause process to issue in this case and be served upon the State of Ohio forthwith. If Petitioner has failed to cause the issuance of process by February 22, 2013, the Magistrate Judge will recommend dismissal of this action for want of prosecution. Petitioner is also cautioned that further failure to proceed properly may result in denial of *in forma pauperis* status.

February 12, 2013.

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