

House Resolution No. 380

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MARSHALL (Sponsor), BRATTIN, POGUE, SCHIEBER,
MOON, BERRY, BAHR AND WILSON (Co-sponsors).

5273L.011

ARTICLES OF IMPEACHMENT

2
3 **WHEREAS**, on November 14, 2013, Governor Jeremiah W. (Jay) Nixon issued
4 Executive Order 13-14 which orders the Missouri Department of Revenue to require all
5 taxpayers who file a joint federal income tax return to file a combined state income tax return,
6 including same-sex couples married in a state that authorizes such marriages who file a joint
7 federal income tax return; and

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9 **WHEREAS**, on August 3, 2004, the people of this state overwhelmingly adopted Article
10 I, Section 33 of the Missouri Constitution:

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12 "Section 33. That to be valid and recognized in this state, a marriage shall
13 exist only between a man and a woman."; and

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15 **WHEREAS**, Section 143.031, RSMo, authorizes only a "husband and wife" to file a
16 Missouri state combined income tax return:

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18 "143.031. 1. A husband and wife who file a joint federal income tax
19 return shall file a combined return. A husband and wife who do not file a joint
20 federal income tax return shall not file a combined return."; and

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22 **WHEREAS**, Section 143.091, RSMo, sets forth the requirements for the meaning of
23 terms used in Missouri's income tax statutes:

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25 "143.091. Any term used in sections 143.011 to 143.996 shall have the
26 same meaning as when used in a comparable context in the laws of the United
27 States relating to federal income taxes, unless a different meaning is clearly
28 required by the provisions of sections 143.011 to 143.996. Any reference in
29 sections 143.011 to 143.996 to the laws of the United States shall mean the
30 provisions of the Internal Revenue Code of 1986, and amendments thereto, and
31 other provisions of the laws of the United States relating to federal income taxes,
32 as the same may be or become effective, at any time or from time to time, for the
33 taxable year."; and
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35 **WHEREAS**, Governor Nixon, in citing only a portion of the language in Section
36 143.091, RSMo, in Executive Order 13-14, knowingly omitted a key phrase in that statutory
37 language conditioning the use of the federal meaning of terms on whether "a different meaning
38 is clearly required by the provisions of sections 143.011 to 143.996"; and

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40 **WHEREAS**, with a blatant and complete disregard for the will of the people of this state
41 expressed in the adoption of Article I, Section 33 of the Missouri Constitution and predicated
42 on a knowing omission of key statutory language, Governor Nixon concluded in Executive Order
43 13-14 that "the Department of Revenue, under Section 143.091, RSMo, must apply the same
44 meaning to the phrase 'husband and wife' as is applied under federal law pursuant to Revenue
45 Ruling 2013-17"; and

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47 **WHEREAS**, the statutory laws of the State of Missouri are clearly subject to the
48 provisions of the Missouri Constitution and therefore must be interpreted in a manner consistent
49 with and not in contradiction to the provisions of the Missouri Constitution; and

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51 **WHEREAS**, to the extent that a statutory provision cannot be interpreted in a manner
52 consistent with and not in contradiction to the Missouri Constitution, such statutory provision
53 is constitutional unenforceable; and

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55 **WHEREAS**, requiring the filing of a combined state income tax return by same-sex
56 couples, which results in a recognition of same-sex marriage by the State of Missouri, is not
57 consistent with and is completely contrary to Article I, Section 33 of the Missouri Constitution;
58 and

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60 **WHEREAS**, in knowingly omitting a key phrase of statutory language in Executive
61 Order 13-14 and in knowingly failing to acknowledge the will of the people as expressed in
62 Article I, Section 33, Governor Nixon misstates and misrepresents the meaning and requirements
63 under Missouri's constitutional and statutory law, and thereby misleads the citizens of this state
64 by asserting that Missouri must allow the filing of a state combined income tax return by same-
65 sex couples; and

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67 **WHEREAS**, Executive Order 13-14, which orders the Department of Revenue to require
68 same-sex couples legally married in a state that authorizes such marriages to file a combined
69 Missouri state income tax return based on only a portion of the language in Section 143.091,
70 RSMo, and which omits the language of the statute which prohibits such an order, is a direct
71 violation of Article I, Section 33 of the Missouri Constitution which prohibits the State of
72 Missouri from recognizing any marriage not between a man and a woman; and

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74 **WHEREAS**, Article IV, Section 2 of the Missouri Constitution states:

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76 "The governor shall take care that the laws are distributed and faithfully executed,
77 and shall be a conservator of the peace throughout the state."; and

78 **WHEREAS**, Governor Nixon in issuing Executive Order 13-14 breached his
79 constitutional duty under Article IV, Section 2 of the Missouri Constitution to "take care that the
80 laws are distributed and faithfully executed"; and

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82 **WHEREAS**, Article VII, Section 1 of the Missouri Constitution states:

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84 "All elective executive officials of the state, and judges of the supreme court,
85 courts of appeals and circuit courts shall be liable to impeachment for crimes,
86 misconduct, habitual drunkenness, willful neglect of duty, corruption in office,
87 incompetency, or any offense involving moral turpitude or oppression in office."; and

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90 **WHEREAS**, Governor Nixon's breach of his constitutional duties to distribute and
91 faithfully execute the laws of this state by issuing an Executive Order in direct contradiction and
92 violation of Article I, Section 33 is grounds for impeachment; and

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94 **WHEREAS**, Article VII, Section 2 of the Missouri Constitution vests the sole power of
95 impeachment in the House of Representatives:

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97 **NOW, THEREFORE, BE IT RESOLVED** that the Missouri House of Representatives,
98 Ninety-seventh General Assembly, finds, charges, and presents that Governor Jeremiah W. (Jay)
99 Nixon, while so acting as the Governor of the State of Missouri, issued Executive Order 13-14
100 in contradiction and violation of Article I, Section 33 of the Missouri Constitution, constituting
101 an act which is an impeachable act under Article VII, Section 1 of the Missouri Constitution, and
102 that by doing such aforesaid act Jeremiah W. (Jay) Nixon was and is guilty of the commission
103 of willful neglect of duty and misconduct in office; and

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105 **BE IT FURTHER RESOLVED** that the Missouri House of Representatives adopts the
106 following:

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ARTICLES OF IMPEACHMENT

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ARTICLE I

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112 That the Missouri House of Representatives under the authority of Article VII, Section
113 2 of the Missouri Constitution does find, charge, and present that Governor Jeremiah W. (Jay)
114 Nixon, while so acting as the Governor of the State of Missouri, contrary to the standards of
115 conduct prescribed for an elected executive official of the state, committed an act impeachable
116 under Article VII, Section 1 of the Missouri Constitution, in that, on November 14, 2013,
117 Governor Jeremiah W. (Jay) Nixon issued Executive Order 13-14 which requires the filing of
118 a combined state income tax return for "married individuals, including same-sex couples legally
119 married in a state that authorizes such marriages, who file a joint federal income tax return" in

120 direct contradiction and in violation of Article I, Section 33 of the Missouri Constitution which
121 prohibits the validity and recognition of a marriage not between a man and a woman.

122 That by the doing of the aforesaid act, Jeremiah W. (Jay) Nixon was and is guilty of
123 willful neglect of duty and misconduct in office, an impeachable offense under Article VII,
124 Section 1 of the Missouri Constitution, and that such act has shaken the faith and confidence of
125 the citizens of the State of Missouri in their ability to have faith in their elected public officials,
126 and has breached the public trust that the laws of this state will be faithfully executed.

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ARTICLE II

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130 That the Missouri House of Representatives under the authority of Article VII, Section
131 2 of the Missouri Constitution does find, charge, and present that Governor Jeremiah W. (Jay)
132 Nixon, while so acting as the Governor of the State of Missouri, contrary to the standards of
133 conduct prescribed for an elected executive official of the state, committed an act impeachable
134 under Article VII, Section 1 of the Missouri Constitution, in that, on November 14, 2013,
135 Governor Jeremiah (Jay) Nixon issued Executive Order 13-14 which cited language in Section
136 143.091, RSMo, but knowingly failed to cite the complete text of said section. Such knowing
137 omission of statutory language misrepresented the basis which Governor Jeremiah W. (Jay)
138 Nixon cited as necessitating the issuance of Executive Order 13-14. The omitted statutory
139 language of "unless a different meaning is clearly required..." conditioned the requirement cited
140 as the basis for Executive Order 13-14, and thereby such knowing omission failed to address the
141 constitutional impediment which arose as a result of such conditional statutory language. By
142 knowingly failing to cite the complete text of Section 143.091, RSMo, Governor Jeremiah W.
143 (Jay) Nixon did knowingly misrepresent and mislead by omission the citizens of this state
144 regarding the full meaning and requirements of the laws of this state.

145 That by the doing of the aforesaid act, Jeremiah W. (Jay) Nixon was and is guilty of
146 willful neglect of duty and misconduct in office, an impeachable offense under Article VII,
147 Section 1 of the Missouri Constitution, and that such act has shaken the faith and confidence of
148 the citizens of the State of Missouri in their ability to have faith in their elected public officials,
149 and has breached the public trust that the laws of this state will be faithfully executed."; and

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151 **BE IT FURTHER RESOLVED** that upon impeachment by the House of
152 Representatives, Governor Jeremiah W. (Jay) Nixon shall stand trial before a special commission
153 of seven eminent jurists to be elected by the Missouri Senate in accordance with Article VII,
154 Section 2 of the Missouri Constitution for willful neglect of duty and misconduct in office; and

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156 **BE IT FURTHER RESOLVED** that the Chief Clerk of the Missouri House of
157 Representatives be instructed to prepare properly inscribed copies of this resolution for Governor
158 Jeremiah W. (Jay) Nixon, the Missouri Supreme Court, and the Missouri Senate.

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