

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

RONALD CALZONE,)	
)	
Petitioner,)	
)	
v.)	Case No. 15AC-CC00247
)	
STATE OF MISSOURI et. al.,)	
)	
Respondents.)	

MOTION TO DISMISS FOR LACK OF STANDING

Respondents, Chris Koster, Missouri Attorney General, Richard Fordyce, Director of Department of Agriculture, Kevin Keith, Director of Department of Transportation, Nia Ray, Director of Department of Revenue, Margie Vandeven, Commissioner of Department of Elementary and Secondary Education, and Gail Vasterling, Director of the Department of Health and Senior Services, (“Respondents”), by and through undersigned counsel, move for dismissal of Petitioner’s entire petition because Petitioner lacks standing. In support of their motion, Respondents state as follows:

LEGAL STANDARD

“[P]arties seeking relief bear the burden of establishing that they have standing.” *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. 2013). “[S]tanding cannot be waived.” *CACH, LLC v. Askew*, 358 S.W.3d 58, 61 (Mo. 2002). Courts “determine standing as a matter of law on the basis of the petition

and the undisputed facts.” *White v. White*, 293 S.W.3d 1, 8 (Mo. App. W.D. 2009). See also *Borges v. Missouri Public Entity Risk Management Fund*, 358 S.W.3d 177, 180 (Mo. App. W.D. 2012) (“We consider the petition along with any other non-contested facts to determine whether the petition should be dismissed due to Petitioner’s lack of standing.”).

“Standing is a necessary component of a justiciable case that must be shown to be present prior to adjudication on the merits.” *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. 2013). “A justiciable controversy exists where [1] the plaintiff has a legally protectable interest at stake, [2] a substantial controversy exists between parties with genuinely adverse interests, and [3] that controversy is ripe for judicial determination.” *Id.* at 773. “The first two elements of justiciability are encompassed jointly by the concept of ‘standing.’” *Id.* at 774. The standing doctrine serves “the purpose of preventing parties from creating controversies in matters in which they are not involved and which do not directly affect them.” *Id.* (quoting *CACH, LLC v. Askew*, 358 S.W.3d 58, 61 (Mo. 2002)).

“The issue is whether plaintiff has a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.” *Schweich*, 408 S.W.3d 769, 775. “A party establishes standing, therefore, by showing that it has some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome.” *Id.*

CITIZEN STANDING

Petitioner asserts two types of standing, the first essentially being citizen standing. Petitioner asserts standing on the basis of “his status as a citizen and his status as a legislative watchdog.” Pet. 3, ¶ 7. His first authority is *Ryder v. County of St. Charles*, 552 S.W.2d 705 (Mo. banc 1977). The portion of *Ryder* which Petitioner relies upon merely lists the “primary objective” of standing. *Id.* at 707. However, in *Ryder*, the Petitioner was St. Charles County, not a citizen. *Id.* at 706. *Ryder* does not lend guidance as to the question of whether citizen standing exists in Missouri. Petitioner next asserts that *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994) demonstrates citizen standing in Missouri. Petitioner’s focus is a description of one out of five purposes of the single subject provision of the Missouri Constitution. *Id.* at 101. That portion of the opinion did not address standing. In *Hammerschmidt*, the Petitioner was given standing based upon taxpayer status, which was not addressed on appeal. *Id.* at 100.

Missouri case law demonstrates the opposite of what Petitioner asserts with regard to citizen standing. “Generally, an individual does not have standing to seek redress of a public wrong, or of a breach of public duty, if such individual’s interest does not differ from that of the public generally, even though the complainant’s loss is greater in degree than that of other members of the public.” *Hinton v. City of St. Joseph*, 889 S.W.2d 854, 859

(Mo. App. 1994). To assert standing, Petitioner is to show a “special injury,” that are “different than the injuries which would be suffered by the public as a whole.” *Ours v. City of Rolla*, 965 S.W.2d 343, 345 (Mo. App. S.D. 1998). Petitioner has alleged nothing to indicate that any injury to him as a result of S.B. 672 is any different than the average citizen.

TAXPAYER STANDING

Petitioner also asserts that he has taxpayer standing. Pet. 3, ¶ 8. To establish taxpayer standing, “a taxpayer must establish that one of three conditions exists: (1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality.” *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. 2011). “[A] direct expenditure of public funds generated through taxation is a sum paid out, without any intervening agency or step, of money or other liquid assets that come into existence through the means by which the state obtains revenue required for its activities.” *Manzara*, 343 S.W.3d at 660.

Petitioner has insufficiently plead the facts necessary to establish taxpayer standing. “Allegations and proof of the illegal expenditure of public funds or the prospect of such illegal expenditures is an essential element to grant taxpayer standing.” *Ours*, 965 S.W.2d citing *Worlledge v. City of greenwood*, 627 S.W.2d 328, 331 (Mo. App. W.D. 1982). “Mere filing of a

lawsuit does not confer taxpayer standing.” *Manzara*, 343 S.W.3d at 659. Petitioner only alleges that HB 672 results in the “expenditure of state funds in numerous ways by various state agencies” and does not allege an increased levy in taxes or a pecuniary loss. Pet. 2, ¶¶6, 8. This allegation is itself merely a legal conclusion and is unsupported by alleged facts. Petitioner offers the Fiscal Note that accompanied HB 672. Pet. Ex. L, ¶ 8. Specifically, Petitioner references a chart that indicates that the “*estimated* net effect on *other state funds*.” Pet. Ex. L, ¶ 8. (Emphasis added). However, Petitioner does not identify anything within Exhibit L that would establish an expenditure of state funds. He merely establishes an estimated net effect.

Two cases are illustrative on why the allegation of “net effect” is insufficient. First, in *Tichenor v. Missouri State Lottery Com’n*, 742 S.W.2d 170, 172 (1988), the Missouri Lottery Commission attempted to include Missouri in a multi-state lottery. The expectation was that this program would result in a “net gain.” *Id.* The Lottery Commission was authorized by the new law to spend 10% of its proceeds for “expenses.” *Id.* Despite the fact that Missouri’s revenue would result in a net gain and “no money will be taken from the state treasury,” the Court found that the 10% allocated to expenses constituted “state funds” and, therefore, found taxpayer standing for the Petitioner. *Id.*

The analysis in *Manzara* was essentially the opposite. There, the Court stated that tax credits and expenditures “might be compared in that their end result is ‘less’ money in the state treasury.” *Manzara*, 343 S.W.3d at 660. However, the tax credits in *Manzara* were determined not to confer taxpayer standing because “taxpayer standing is to give taxpayers a way to conform government spending to the law [and] that purpose is not served if the State is *spending nothing*.” *Id.* (emphasis added).

Both cases stand for the proposition that the net effect of the law has no bearing on taxpayer standing. What is important for taxpayer standing is whether the state spends money. Here, Petitioner has merely alleged an estimated net loss, but does not identify any part of HB 672 which authorizes state funds to be allocated to the programs referenced in HB 672. By alleging an estimated negative net effect to state agencies, and nothing more, Petitioner has not plead facts necessary to establish that HB 672 will result in a “sum paid out.” *Manzara*, 343 S.W.3d at 660. Because Petitioner has failed to identify such an allocation of state funds created by HB 672, Petitioner has insufficiently plead the facts necessary to establish taxpayer standing and his Petition must be dismissed.

CONCLUSION

Because Missouri does not recognize citizen standing, and because Petitioner has insufficiently plead the facts necessary to establish taxpayer standing, Petitioner's petition should be dismissed.

WHEREFORE, Respondents respectfully request that the Court dismiss the entire petition in this case, and for such other and further relief as is just and proper.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Curtis Schube
Curtis Schube
Assistant Attorney General
Missouri Bar No. 63227

Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-7728
Facsimile: 573-751-5660
Curtis.Schube@ago.mo.gov

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via first class mail, on this 29th day of June, on the following:

Ronald J. Calzone, *pro se*
33867 Highway E
Dixon, MO 65459

/s/ Curtis Schube
Assistant Attorney General