

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

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

**RESPONDENTS' RESPONSE TO
PETITIONER'S SUGGESTIONS IN OPPOSITION TO MOTION TO
DISMISS**

Respondents, by and through undersigned counsel, requests leave to file the following response to Petitioner's Suggestions in Opposition to Motion to Dismiss. In Response, Respondents state as follows:

CITIZEN STANDING

Petitioner reasserts its standing as a citizen without providing authority establishing the existence of citizen standing. Petitioner begins by citing to Section 116.190, RSMo, which grants a citizen the right to challenge the title to a ballot initiative. Petitioner is not challenging a ballot initiative. Rather, he is challenging a state law, already passed by the legislature. Section 116.190 has no bearing on Petitioner's standing.

Petitioner next asserts Article I, Section 14, and *Hammerschmidt v. Boone County*, 877 S.W. 2d 98 (1994), to stand for the proposition that

citizens have access to the court system to challenge laws. Respondent does not deny that every citizen has access to the courts or that the citizens can challenge the laws of this state. However, that does not relieve that citizen from his or her burden to establish standing. The mere existence of the constitutional provisions given to citizens to challenge a law does not in itself establish standing.

Missouri law is very clear that standing must be established before looking to the merits of a case. “Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action.” *E. Mo. Laborers Dist. Council v. St. Louis County*, 781 S.W.2d 43, 45–46 (Mo. banc 1989). “Standing is an antecedent to the right to relief.” *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. Banc 2011) *citing* *Comm. for Educ. Equal. v. State*, 878 S.W.2d 446, 450 n. 3 (Mo. banc 1994).

Missouri law is also clear that a citizen cannot be granted standing merely by virtue of being a citizen. “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 is “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).

Absent an allegation that Petitioner spends a lot of hours trying to fight bills in the legislature, on this bill and others, Petitioner has not made any allegation that distinguishes him from the general public.

TAXPAYER STANDING

Petitioner provides a citation to *Ours v. City of Rolla*, 965 S.W.2d 343, 345 (Mo. App. S.D. 1998). It states “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.” *Id.* Suggestions Pg. 6. (Emphasis in text). However, Petitioner focuses on the wrong part of the quote. The element requires allegations of an “**illegal expenditure**” or “the **prospect** of such **illegal expenditure**.” The question hinges upon whether an **expenditure** has been made **or will be made**. An expenditure has been said, by the Missouri Supreme Court, to occur when “checks are written by the state treasurer based on appropriations or warrants.” *Manzara*, 343 S.W.3d at 660. Petitioner has failed to allege that a check has been written by the treasurer or that an appropriation or warrant has authorized such a check. To the contrary, SB 672 has not appropriated any expenditure. See Petitioner’s Exhibit K. The only thing Petitioner has plead is the “Estimated Net Effect,” which Respondents’ Motion to Dismiss demonstrates is insufficient to invoke taxpayer standing.

Finally, Petitioner points to *Lebeau v. Comm'rs of Franklin Co.*, 422 S.W.3d 284, 288 (Mo. Banc 2014), to again describe that taxpayer standing gives “taxpayers a mechanism for enforcing the procedural provisions of Missouri’s constitution [sic]...” *Id.* at 289. He also cites to a quote addressing ripeness, which is not at issue here. However, when looking at *Lebeau*, the bill at issue in that case is distinctly different than SB 672, in that, the bill there “authorized tax dollars to be spent to establish a municipal court.” *Id.* at 290. Further, the local Commission had issued an order that “the County Counselor coordinate with the County Auditor to insure that appropriate budget entries and funds are established.” *Id.* Petitioner has alleged no such authorization of the expenditure of state funds. *Lebeau* only further demonstrates that Petitioner has insufficiently plead the facts necessary to invoke taxpayer standing.

WHEREFORE, Respondents respectfully renew their 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,

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via e-mail, on this 24th day of July, on the following:

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/s/ Curtis Schube
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