IN THE SUPREME COURT OF MISSOURI

Case No. SC 85170

MISSOURI BANKERS ASSOCIATION, et al.

Appellants,

v.

DIRECTOR OF THE MISSOURI DIVISION OF CREDIT UNIONS, et al.,

Respondents.

Appeal from the Circuit Court of Cole Court
Honorable Byron L. Kinder

SUBSTITUTE BRIEF OF RESPONDENTS DIRECTOR OF THE MISSOURI DIVISION OF CREDIT UNIONS AND CREDIT UNION COMMISSION OF THE STATE OF MISSOURI

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STATEMENT OF FACTS

The facts required to decide this appeal are much simpler than suggested by the appellants, the Missouri Bankers Association and Century Bank of the Ozarks ("the Bankers").

The Springfield Telephone Employees Credit Union (STECU) wanted to expand its field of membership to include those who work or reside in the 417 telephone area code. *See* Appellant's Appendix (App.) at A20. STECU applied for approval from the Director of the Missouri Division of Credit Unions (Director). App. A21.

The Director determined that the proposed change required an exemption from the limitations in § 370.081.2, RSMo. 2000. App. A21. He referred the matter to the Credit Union Commission, which granted the exemption and returned the matter to the Director. App. A22. The Director approved the proposed change. *Id*.

The Bankers claimed to be adversely affected by the Director's decision because STECU, with an expanded membership, might pose a greater competitive threat to area banks. The Bankers appealed that decision to the Commission. App. A24.

On March 29, 2001, the Commission held a hearing on the STECU application. *See* App. A26. The Bankers added "significant

evidence regarding the perceived competitive and economic problems to banks in the 417 area code" to the evidence that had been before the Director when he ruled. App. A26. The Commission affirmed the Director's decision. App. A30.

The Bankers then sought review in the Circuit Court for Cole County. App. A1. On September 29, 2002, that court held that the Bankers lacked standing, and dismissed the petition. App. A47. On January 14, 2003, the Missouri Court of Appeals, Western District, affirmed the circuit court's holding that the Bankers lacked standing. This court then granted the Bankers' motion and transferred the appeal.

STANDARD OF REVIEW

The appellant Bankers bury their "concise statement of the applicable standard of review for each claim of error" (Rule 84.04(e)) on page 32 of their brief. Stating the standard for this appeal could be more complex than the Bankers suggest. The Bankers argue in the alternative that this is a contested case, a noncontested case, or a declaratory judgment action regarding an administrative rule – a choice that normally affects the standard of review. *See Cade v. State*, 990 S.W.2d 32, 37 (Mo. Ct. App. W.D.1999). In fact, the choice affects what decision is actually before the court: if this is a contested case, the court reviews the agency decision; if it is a noncontested case, the court reviews the circuit court's decision. *See City of Cabool v. Missouri State Bd. of Mediation*, 689 S.W. 2d 51, 53 (Mo. banc 1985).

But as the Bankers implicitly suggest, under each standard of review, questions of law are addressed *de novo*. *See, e.g., Ford Motor Co. v. Director of Revenue*, 97 S.W. 3d 458, 460 (Mo. banc 2003); *State ex rel. Atmos Energy Co. v. Public Service Commission*, 103 S.W. 3d 753, 759 (Mo. banc 2003). In *Atmos*, this court reiterated its language from *Love 1979 Partners v. Public Service Commission*, 715 S.W. 2d 482, 486 (Mo. banc 1986): "[W]e decide legal points anew." The points raised by the

Bankers on appeal are entirely legal ones; they are subject to review "anew."

ARGUMENT

I. The Commission is not an appropriate party to this case.

Standing was the jurisdictional question addressed by the circuit court and it is the question briefed by the Bankers here. But their petition raised a preliminary issue – one that the circuit court declined to decide: the proper identity of the defendant in a case challenging an agency decision that has been subject to agency adjudication. Bankers sued both the Director and the Credit Union Commission. A person with standing – which, as discussed below, the Bankers did not have – can sue the Director of the Division of Credit Unions over a decision by the Director that was sustained by the Commission. But the Commission is not a proper party defendant in such a suit.

Under Chapter 370, the Commission acts as an adjunct executive agency that exercises independent and impartial decision-making authority in disputes between the Director and those who disagree with the Director's decisions. Thus the Commission decides appeals from decisions by the Director pertaining to the chartering, relocation, branching, or membership of credit unions. §§ 370.062(2), 370.063, 370.081, RSMo 2000. The role of the Commission corresponds to that of the Administrative Hearing Commission ("AHC"), the Personnel Appeals Board, and other,

similar adjudicatory bodies.

Decisions regarding the role of agencies in judicial review go back many years. In *State v. Donnelly,* 285 S.W.2d 669, 677 (Mo. banc 1956), this court held that an "administrative agency is not a party to litigation . . . and should not be considered so unless the legislature has so provided." Consistent with that declaration, the court of appeals has held that the AHC is not a proper party to an appeal of one of its own decisions, because it merely acts as an adjunct executive agency exercising independent and impartial decision-making authority in disputes between agencies and persons affected by their decisions. *Geriatric Nursing Facility, Inc., v. Department of Social Services,* 693 S.W.2d 206 (Mo. App. W.D. 1985). In *Geriatric*, the party seeking judicial review of an AHC decision named the AHC as a defendant, just as the Bankers named the Commission as a defendant here. The court analogized the relationship between the department of social services and the AHC, with that between an agency official and the agency's governing board:

> In some schemes of administrative action, an official makes a decision, which, upon request, is heard by the agency's governing board as a contested case . . . [T]he final action in a contested case is the administrative agency's action and it is

required to be subject to judicial review by Mo. Const. Art. V, § 18.

693 S.W.2d. at 209.

Similarly, the court of appeals held that the Board of Mediation was not a proper party to an appeal of one of its own decisions because the legislature did not include such a requirement in the board's governing chapters. *Baer v. Civilian Personnel Division,* 714 S.W.2d 536, 538 (Mo. App. W.D. 1986) (illustrating how § 288.210 expressly required the Division of Employment Security to be a necessary party to an appeal of one of its decisions). There the court reiterated that absent a statutory requirement imposed by the legislature, an administrative agency is not a proper party to an appeal of one of its decisions, citing *State v. Donnelly* and *Kansas City v. Reed,* 546 S.W.2d 727, 731 (Mo. App. 1977). The court held that in "the case of the Board of Mediation, none of the applicable statutes indicate that the Board is to be a litigant on judicial review of a bargaining unit decision." 714 S.W. 2d at 538.

Chapter 370 is analogous to the chapter governing the Board of Mediation. It does not contain any suggestion that the Commission is to be a litigant when someone challenges the decision that it, in essence, puts in the Director's hands. Chapter 370 leaves the Commission in the role played by the AHC. Both entities act as

adjunct executive agencies, exercising independent and impartial decision-making authority in disputes between the official and parties affected by his decision.

Under Chapter 370, the Director reviews all applications by credit unions for expansion of their geographic areas of operation, and based on his findings, approves or denies the application. § 370.081.4, RSMo 2000. Then, any party claiming to be adversely affected by the Director's decision may appeal to the Commission, which in turn may either affirm or overturn the Director's decision and enter its own decision and findings. § 370.081.5, RSMo 2000. The Director is then bound by the Commission's decision – just as an agency is bound by an AHC decision.

Again, the role played by the Commission under Chapter 370 is essentially the same as the role played by the AHC under Chapter 208. The decision of the Commission becomes the decision of the Director. And it is the Director, not the Commission, who becomes the party to any review of that decision. Thus the circuit court should have dismissed the Commission as a party.

II. The Bankers lack standing to challenge the Commission's decision.

A. A commercial interest in preventing competition does not render a person "aggrieved" so as to acquire standing to seek judicial review of that decision. (Responds in part to appellants' Point I.)

Judicial action in Missouri can usually be demanded only by an "aggrieved party." *See, e.g.*, § 288.210; § 512.202. Missouri courts have refused to adopt a broad reading of "aggrieved." Instead, they have consistently held that a person or party can only attain the status of "aggrieved" if an administrative decision operates prejudicially and directly against that person's personal or property rights or interests. *Hertz Corp. v. State Tax Commission*, 528 S.W.2d 952, 954 (Mo. banc 1975). Thus this court found in *Hertz* that the City of St. Louis lacked standing, despite its pecuniary interest, where that interest was affected hypothetically and indirectly: the tax at issue would increase the cost of doing business of airport tenants, thus reducing the rent paid to the city. That impact was simply not direct.

The holding in *Hertz* might also be explained because the right or interest affected even indirectly was not one that the law protects. *See Wrinkle v. International Union of Operating Engineers*, 867 S.W.2d 633, 638 (Mo. Ct. App. S.D. 1993), citing *St. Joseph's Hill Infirmary v. Mandl*, 682 S.W.2d 821, 824 (Mo. Ct. App. E.D. 1984), and *State ex rel. Schneider v. Stewart*, 575 S.W.2d 904, 910 (Mo. Ct. App. 1978).

The law does not usually protect competition. Thus, absent some special statutory provision, it has never been enough that a petitioner have some "general competitive interest." *See, e.g., City of Eureka v. Litz*, 658 S.W.2d 519, 523 (Mo. Ct. App. E.D. 1983), citing *Westborough Mall, Inc. v. City of Cape Girardeau*, 693 F.2d 733, 747 (8th Cir. 1982)(under Missouri law), and *Schmitt v. City of Hazelwood*, 487 S.W.2d 882, 888 (Mo. Ct. App. 1972). "Generally speaking, the 'right' to be free from legitimate competition is not a right at all and is certainly not one protected by law." *St. Joseph's Hill Infirmary*, 682 S.W. 2d at 824, citing *State v. Donnelly*, 285 S.W. 2d at 677.

The private right that the Bankers claim is a right to be free of "illegitimate competition," which the Bankers define as competition from a credit union that is given an unduly broad charter. Appellants Brief, p. 30-39. But no Missouri law – not the Missouri Constitution, the statutes, nor case law – recognizes such a right. *See Legal Communications v. St. Louis County Printing & Publishing Co., Inc.*, 24 S.W.3d 744, 748 (Mo. Ct. App. E.D. 2000). *See also Community Care Centers v. Missouri Health Facilities Review Committee*, 735 S.W.2d 13, 16 (Mo. Ct. App. W.D. 1987). Thus the court of appeals confirmed in *West County Care Center, Inc. v. Missouri Health Facilities Review Committee* that "[t]here is . . . no general principle of common law, nor of constitution, nor of statute that protects the interest of a competitor to be free of competition or invests

standing for that purpose." 773 S.W.2d 474, 478 (Mo. Ct. App. W.D. 1989), citing *St. Joseph's Hill Infirmary, Inc.*, 682 S.W.2d at 824; *Community Care Centers, Inc.*, 735 S.W.2d at 15; and *Schmitt v. City of Hazelwood*, 487 S.W.2d at 888.

The court of appeals has consistently held to that rule in cases involving the standing of a competitor to appeal an administrative decision. *E.g.*, *Querry v. State Highway Transportation Commission*, 60 S.W.3d 630, 636-637 (Mo. Ct. App. W.D. 2001); *State ex rel. Integrated Health Services v. Missouri Health Facilities Review Committee*, 814 S.W.2d 677, 679 (Mo. Ct. App. W.D. 1991); *Health Service Management v. Health Facilities Review Committee,* 791 S.W.2d 732, 735 (Mo. Ct. App. W.D. 1990); *Missouri Health Care Association v. Missouri Health Facilities Review Committee*, 777 S.W.2d 241, 244 (Mo. Ct. App. W.D. 1989); *PIA Psychiatric Hospitals, Inc. v. Missouri Health Facilities Review Committee*, 724 S.W.2d 524, 525-526 (Mo. Ct. App. W.D. 1986).

Gold Cross Ambulance, Inc. v. Missouri Department of Health, 866 S.W.2d 473, 474-475 (Mo. Ct. App. W.D. 1993), is representative. Gold Cross claimed that the circuit court erred in denying it standing to appeal an AHC decision to uphold the grant by the Missouri Department of Health of a license to a competitor of Gold Cross. Section 190.171, RSMo 1986, which governed, granted the right to seek administrative review of a Department of Health decision that affected the status of a party's ambulance license to "any person

aggrieved." Gold Cross claimed that the use of the words "any person aggrieved" gave it standing before the AHC and the courts as a potential economic competitor. 866 S.W.2d at 474-475. The court held that "[i]f the legislature had intended to grant economic competitors standing to appeal in ambulance licensing cases, the language granting such standing would have been more explicit and plain than the language in section 190.171." 866 S.W.2d at 475. Finding that the appellant was not directly and prejudicially injured by the Department of Health's grant of an ambulance license to a competitor, the court of appeals held that Gold Cross was "not an aggrieved party under the statute and lacked standing." *Id.* at 475.

The court of appeals contrasted the case before it with those involving the law regulating banks. In the banking law, the legislature had specifically permitted administrative appeals not just by "any person claiming to be adversely affected," but also by "any bank, trust company or national banking association located in the city or town and county in which the proposed bank or trust company is to be located."

§ 261.095(3), RSMo. 1986. Assuming that such language were sufficient to draw competitor banks into the scope of those "aggrieved" by new bank charters, it did not exist in the ambulance statute. Nor does it exist here.

The court of appeals' holding that competitive interest was not enough is consistent with this court's statement of the general standing rule in *Hertz Corp.,* cited by the Bankers, App. Brief at 26. As noted above, in *Hertz Corp*. the court insisted that to be "aggrieved," a person had to be subject to a judgment that "operates prejudicially and directly upon his personal or property rights or interests and that such must be immediate and not merely a possible remote consequence." *Id*. at 954. Competitive interests are not property rights. Nor, absent some statutory reference, are they legally cognizable personal interests. And they are seldom either direct or immediate. They are nothing more than "a possible remote consequence."

We create officers and agencies, ranging from the Department of Health, in regulating ambulance services, to professional licensing boards, to protect the public from such "possible remote consequences." They, not the courts, determine whether a particular person or institution is capable of providing service as provided by statute, whether that service be medical or financial. Our check on those officers and agencies is largely political, not judicial. Though we create mechanisms for judicial review, those mechanisms are intended to protect the private interests of those who must obtain permission to proceed. And though nothing bars

the legislature from opening the door to judicial review on behalf of competitors seeking to second-guess those agencies' determinations to protect the competitors' own private profits, the legislature has seldom taken that step. The door to competitor challenges in court has largely remained closed.

To open it would dramatically change the number, complexity, and nature of proceedings before courts hearing appeals from bodies as diverse as the Jefferson City Planning Commission, the Labor and Industrial Relations Commission, and the Board of Cosmetology. It would clog those courts with suits brought by those who want to use public interest statutes to serve purely private purposes. Suddenly every real or potential competitor of a person obtaining a license or other permission could use the courts to delay, if not to defeat, the issuance of the license. The principal consideration for a competitor will become an economic one: will the cost of hiring attorneys to delay or defeat the application offset the additional profits the competitor will derive during the delay – regardless of the cost to the public, the executive, or the courts?

The disadvantages of such a change are so significant that Bankers do not articulate a desire to change the general rule. Instead, they seek to avoid it by asserting that in the particular

statute involved here, the legislature itself created an exception. But it did not.

B. Section 370.081 does not give the Bankers the right to judicial review of the decisions by the Director. (Responds in part to appellant's Points I and II.)

Though judicial review of many administrative agency decisions is regulated under Chapter 536, this is one of many instances in which there is a more specific statutory scheme. Thus the Bankers must – and do – rely on § 370.081, which specifically addresses judicial review of the Commission's decisions.

That provision applies when a credit union wishes to "add to its membership additional groups or geographic areas." § 370.081.4. Such a "credit union may apply and receive approval from the director of the division of credit unions to include the proposed new groups or geographic areas in the credit union's membership." *Id*. When the Director receives "an application from a credit union to include a new group or new geographic area in its membership," the Director publishes a notice in the Missouri Register. *Id*. That notice starts a "ten-business-day comment period during which any person or entity desiring to do so may comment on such proposal in writing." After receiving comments, the Director "issue[s] a decision either granting or rejecting the credit union's application and stat[es]

the reasons therefor." *Id*.

Section 370.081.5 specifies the next two steps. The first involves the respondent Commission. "Within fifteen days after the [Director's] decision is published in the Missouri Register, any person or entity claiming to be adversely affected shall have the right to contest the decision by appealing the decision to the credit union commission utilizing the procedure as set out in section 370.063." *Id*. The Commission is then assigned to determine whether "the decision or the findings of the director of the division of credit unions was arbitrary and capricious or not based on evidence in the director's possession." *Id*. If the Commission finds such an error, it "shall set aside the findings and decision of the director of the division of credit unions and enter its own findings and decision." *Id*.

The Bankers highlight – though they misuse – key words of this review provision. The door to Commission review is open to "any person or entity claiming to be adversely affected." *Id*. Respondents agree that language extends to persons who would not be among the "aggrieved persons" covered by most review statutes. But the question here is not who can insist on review by the Commission. It is who can then proceed to circuit court. And that question is not answered by the words, "any person or entity

claiming to be adversely affected."

It is answered, instead, by the last sentence of § 370.081.5, where the legislature chooses different – more limited and traditional – language: "Any party who is aggrieved by a final decision of the commission entered pursuant to this subsection and who has exhausted all administrative remedies provided by law may appeal the decision to the circuit court of Cole County." That the legislature would open the door wide to administrative review, then close it part way for judicial review, is hardly novel. In fact, this court used the language of the venerable CORPUS JURIS SECUNDUM when it endorsed that proposition in *State v. Donnelly*: "Not every person who files a protest and is given an opportunity to be heard by the administrative agency has a right to appeal from an order of the agency . . . ." 73 C.J.S., Public Administrative Bodies and Procedure, § 176, p. 517, quoted in *State v. Donnelly*, 285 S.W.2d at 677.

Again, the sole question as to *judicial* review under § 370.081.5 is whether the Bankers were "aggrieved." And as discussed in point II.A. above, though we may not know the full extent of who is "aggrieved," we know that mere competitors are not.

C. The Bankers cannot obtain review under Chapter 536. (Responds in part to appellant's Points I and II and to appellant's Point III.)

The Bankers refer throughout their brief to review various parts of Chapter 536. But even if this appeal could be brought under that chapter, their attempt would fail.

"Contested case." Section 536.010(6) defines a "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." The proceeding before the Commission involving STECU was, indeed, a contested case." The Commission is an "agency." *See* § 536.010(5). Section 370.081.5 requires that the Commission act according to the procedure set out in § 370.063. That section, particularly when read with § 370.062, requires that the Commission determine STECU's rights "after hearing."

But judicial review of a contested case is available only under § 536.100 – which provides for appeals only by those "aggrieved." And again, "aggrieved" has been consistently interpreted to exclude those whose only interest is competitive advantage. Thus the Bankers' Count II fails.

"Noncontested case." The "noncontested case" review provision, § 536.150, does not apply here for at least two reasons. That provision is not available when the decision at issue is "subject to judicial review," and the decision here is subject to such review. And even if Chapter 370 did not provide for review, this would be a "contested case," thus subject to review under § 536.100 and excluded from review under § 536.150.

But § 536.150 would not help the Bankers in any event. That statute does not purport to create any special standing rules. Thus it is subject to the traditional rules. And again, as discussed in II.A. above, those traditional rules bar standing for those who only seek competitive advantage. The Banker's Count III fails.

Rulemaking. Section 536.050 permits declaratory judgment challenges to agency rules. In Count IV of their petition, the Bankers – without mentioning § 536.050 or any other statutory authority – challenge the validity of 4 CSR 105-3.010(1). But nothing in § 536.050 purports to modify the general rules of standing, nor to apply some special rule of standing to declaratory judgments sought as to administrative rules.

For a plaintiff to have standing in a declaratory judgment action, he "must have a legally protectable interest at stake." *Blue Cross and Blue Shield of Missouri v. Nixon*, 81 S.W. 3d 546 (Mo. Ct. App. W.D. 2002),

citing *General Motors Acceptance Corp. v. Windsor Group, Inc.*, 2 S.W.3d 836, 839 (Mo. Ct. App. E.D. 1999). "A legally protectable interest means 'a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief, either immediate or prospective." *Id.*, quoting *American Econ. Ins. Co. v. Ledbetter*, 903 S.W.2d 272, 274 (Mo. Ct. App. S.D. 1995). Again, the Bankers have no interest "directly in issue or jeopardy" in the decisions concerning the rules for credit unions. Their interest is remote and hypothetical.

The Bankers point to § 536.053, suggesting that it imposes some new, lesser standing requirement for challenges to administrative rules. But the language of the statute is not that broad. In fact, it reiterates that the person must be "aggrieved," thus incorporating into the administrative rule challenge the standing requirement applied to civil cases generally. To the extent § 536.053 refers additionally to someone who "may be aggrieved," it is merely consistent and complimentary with § 536.050. Section 536.050 speaks of the twin concepts of challenges to "the validity of rules, or of threatened application thereof." Section 536.053 merely parallels that formulation, granting standing to one who is merely threatened with application of the disputed rule.

The rules about which the Bankers complain can never be applied to them. They can only be applied to credit unions. The

Bankers' effort in Count IV to challenge regulations that can only be applied to someone else must fail.

D. No "policy of competitive regulation of the financial industry" gives the Bankers the right to limit com-petition. (Responds in part to appellant's point I.)

The Bankers speak of a policy of "competitive regulation." App. Br. At 34. But nothing that the Bankers point to suggests that such a policy – if it exists – ensures them relief. The Bankers' argument is largely based on the general regulatory structure, under which the State imposes certain requirements on those who wish to enter the financial services industry, then creates an authorization process by which regulators can check for compliance before institutions can take certain steps that might threaten their continued viability. App. Br. at 33-36. But the Bankers misconceive the purpose of that structure.

The structure protects depositors and borrowers, not institutions nor their shareholders. It contains not just the preliminary steps that the Bankers identify, but also examination and other post-establishment (or, here, post-enlargement) regulations. *E.g.*, § 370.100. Though the structure permits competition, that is not its primary focus.

The Bankers' reference to another case involving financial

institutions, *Bank of Belton v. State Banking Board*, 554 S.W.2d 451, 453 (Mo. Ct. App. W.D. 1977), does not help them on this point. There, a bank sought judicial review of an administrative decision by the Director of Finance. The Director of Finance's decision granted a competitor bank the right to operate a banking facility within the same trade area. The court of appeals held that the Bank of Belton was "aggrieved under
§ 536.100 and if otherwise authorized by the banking laws – is entitled to judicial review of the grant of the facility to competitor UMB." 554 S.W.2d at 455.

The court did not promote some generalized policy of "competitive regulation." Rather, it relied on "the legislative policy discerned from the *banking* statutes." *City of Eureka v. Litz*, 658 S.W.2d at 523 (emphasis added). Because § 362.107(3) required the Director of Finance to consider the effect granting a license to *a bank* would have on the other banks in the same trade area, the court concluded that the legislature intended for competitor banks to have standing "to contest the grant of new competition." *Bank of Belton*, 554 S.W.2d at 457.

Were there a similar provision in the scheme for supervising credit unions, ours might be a more complex case – one that would require the court to overrule *Bank of Belton*, which, by suggesting that

competitor banks are "aggrieved," is an aberration in the law. But when the legislature created the credit union scheme, it chose not to follow the bank model – just as when choosing the judicial review provision of § 370.081.5, it chose not to follow the immediately preceding administrative review model. That choice permits this court to merely distinguish *Bank of Belton*, and avoid opening the floodgates of competitor challenges to agency decisions and rules.

E. That the Bankers cannot obtain judicial review does not make the decision unreviewable. (Responds in part to appellant's Point I.)

The Bankers suggest that the respondents' view leaves the Commission's decision "essentially unreviewable." App. Br. at 30. But obviously the decision is reviewable – by the applicant, the only person whose legal right is decided by the Commission.

What the Bankers really mean is that a decision by the Commission to permit a new competitor into the financial services market will not be reviewed, because the only person with standing to seek judicial review has no incentive to do so. It is hardly unusual for a decision to be unreviewable. Indeed, the same can be said of criminal cases: a verdict that a defendant is not guilty is unreviewable, though victims and potential victims with indirect interests may object strongly to that verdict. We promise those whose interests are directly affected access to the courts; we do not

extend that promise to everyone else.

Moreover, the Bankers ignore the possibility that someone other than the applicant might seek and obtain a writ to protect the public's interest. The standing requirement for a writ of mandamus has "an exceedingly low threshold." *State ex rel. Mo. Growth Ass'n v. State Tax Comm'n*, 998 S.W. 2d 786, 790 (Mo. banc 1999) (Holstein, J. concurring). *But see West County Care Center, Inc. v. Missouri Health Facilities Review Committee,* 773 S.W.2d at 477. If the Director were really as far off base as the Bankers suggest – and not merely exercising his professional judgment regarding the viability of STECU after its proposed expansion – then the Bankers would have a remedy in writ practice.

III. The Bankers Association lacks associational standing. (Responds to appellant's point IV.)

Missouri recognizes the right of not-for-profit associations to intervene in legal proceedings for the purpose of protecting the rights of its members under certain circumstances. *See Missouri Outdoor Advertising Association, Inc. v. Missouri State Highways and Transportation Commission*, 826 S.W.2d 342 (Mo. banc 1992). To have association standing, the Bankers' Association must have what it lacks here: members who themselves have an interest. *See Id.* The interests of the individual

bank members are merely competitive. Those interests are insufficient for the reasons explained in point II above.

CONCLUSION

For the reasons stated above, the Commission should be dismissed as a party, and the decision of the Commission should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 5,687 words, excluding the cover, and this certification, as determined by WordPerfect 9.1 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of the brief, were mailed by United States First Class mail, postage prepaid, this 2nd day of July, 2003, to:

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