IN THE SUPREME COURT OF MISSOURI

Supreme Court No. 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 COUNTY
HONORABLE BYRON L. KINDER

BRIEF OF APPELLANTS

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JURISDICTIONAL STATEMENT

This is an appeal from an Order and Judgment of the Circuit Court of Cole County rendered on January 29, 2002 granting Respondents' motions to dismiss this case in which Appellants sought judicial review, under Chapters 370 and 536, RSMo and Article V, Section 18 of the Missouri Constitution, of certain administrative decisions and of an administrative rule, for lack of standing. This case does not involve any issue that is subject to the exclusive jurisdiction of the Supreme Court of Missouri under Article V, Section 3, of the Missouri Constitution. Therefore, the initial appeal, the notice for which was filed on March 6, 2002, was within the general appellate jurisdiction of the Missouri Court of Appeals. Because the case was brought in Cole County, venue was in the Western District under § 477.070, RSMo. The case was transferred to the Missouri Supreme Court following the issuance of the opinion of the Western District pursuant to Article V, Section 10 of the Missouri Constitution and Supreme Court Rule 83.04.

STATEMENT OF FACTS

Respondent Springfield Telephone Employees Credit Union ("STECU") filed an application on July 18, 2000 with Respondent Director of the Missouri Division of Credit Unions ("Director") for approval of its proposal to expand its field of membership to include all those who reside or work in the entire 417 telephone area code and in a part of the 573 telephone area code. (L.F. 8, L.F. 27) The Director approved the portion of the application seeking to add the 417 telephone area code to STECU's field of membership. (L.F. 10; L.F. 28-29)

Appellant Missouri Bankers Association ("MBA") and Appellant Century Bank of the Ozarks ("Century Bank") filed an appeal of the Director's approval of the STECU application before Respondent Credit Union Commission of the State of Missouri ("CUCOM"). (L.F. 12; L.F. 30) Both Appellants claimed to be adversely affected by the Director's decision. (L.F. 12; L.F. 30; L.F. 159, lines 3-25 of Tr. 53; lines 1-20 of Tr. 54; L.F. 167, lines 3-9 and 24-25 of Tr. 87; lines 1-25 of Tr. 88)

The MBA is a not-for-profit organization established to represent the interests of its members, which are approximately 385 commercial banks and savings banks located throughout the State of Missouri. (L.F. 26; L.F. 166, lines 15-22 of Tr. 82) Century Bank is a commercial bank conducting the business of banking in part of the geographic area covered by the 417 telephone area code. (L.F. 7; L.F. 26-27; L.F. 158, lines 2-12 of Tr. 52) Respondent Missouri Credit Union System, Inc. (the "League") is a not-for-profit corporation established to represent the interests of its members, which are state chartered

credit unions located throughout the State of Missouri. (L.F. 27) The League was allowed to intervene in the appeal to CUCOM to represent the interests of its members. (L.F. 27)

As part of the review process, the Director determined that the group sought to be added consisted of more than 3,000 people, and consequently he forwarded the application to CUCOM in accordance with § 370.081.2, RSMo. (L.F. 8; L.F. 27-28) Approximately eight hundred thousand people reside within the 417 telephone area code. (L.F. 175, lines 3-7 of Tr. 117) On August 3, 2000, CUCOM approved a resolution "to grant an exemption" relating to the STECU application. (L.F. 10; L.F. 28; L.F. 39-40)

On March 29, 2001, a hearing on the appeal of the Director's decision was held by CUCOM. (L.F. 12; L.F. 26, L.F. 145-180) At the hearing the parties submitted a joint exhibit including the STECU application, other related records, and the deposition of the Director. (L.F. 156, lines 19-25 of Tr. 43; lines 1-25 of Tr. 44; L.F. 157, lines 1-25 of Tr. 45; lines 1-13 of Tr. 46) Three witnesses testified at the hearing. (L.F. 158-178) The Appellants also submitted a number of exhibits which primarily contained demographic information (L.F. 157, lines 24-25 of Tr. 46; lines 1-10 of Tr. 47; lines 19-21 of Tr. 48), but which also included the portion of the National Credit Union Administration rule dealing with community charter requirements for federal credit unions. (L.F. 110-120; L.F. 157, lines 22-25 of Tr. 48; L.F. 158, lines 1-3 of Tr. 50)

Testimonial evidence from Appellants' witnesses at the hearing indicated that Appellant Century Bank and some member banks of Appellant MBA would be confronted with additional competition from STECU for deposits and loans if the Director's decision

were affirmed, and that they would be economically harmed to some extent thereby. (L.F. 32; L.F. 159, lines 3-25 of Tr. 53; lines 1-20 of Tr. 54; L.F. 160, lines 23-25 of Tr. 60; L.F. 161, lines 1-25 of Tr. 61; lines 1-16 of Tr. 62; L.F. 162, lines 10-18 of Tr. 65; lines 19-25 of Tr. 68; L.F. 163, lines 1-3 of Tr. 69; L.F. 167, lines 9-25 of Tr. 85, lines 1-25 of Tr. 86; lines 1-9 and 24-25 of Tr. 87; lines 1-25 of Tr. 88; and L.F. 169, lines 5-11 of Tr. 94; lines 3-16 of Tr. 95) Director Smith agreed that credit unions and banks are in competition with each other. (L.F. 123, lines 14-16 of Dep. Tr. 115; L.F. 174, lines 9-11 of Tr. 115)

The Respondents challenged the right of the Appellants to maintain the administrative action before CUCOM on grounds of lack of standing. CUCOM, as part of its final decision, found that both Appellants had standing under the language of § 370.081.5, RSMo 2000. (L.F. 30-31)

Max Cook, the President and CEO of Appellant MBA, testified that the decision to appeal the Director's decision in this case was made by his association's board of directors and that the appeal furthered the MBA purpose of protecting member banks from unfair competitive forces. (L.F. 167, lines 7-21 of Tr. 87; L.F. 169, lines 12-20 of Tr. 93)

CUCOM, in its decision dated August 15, 2001, affirmed the Director's decision on the STECU application. (L.F. 12; L.F. 26-37)

In CUCOM's rule 4 CSR 105-3.010(1), the statutory words describing places to which a geographic credit union have to be limited – to "a well-defined local neighborhood, community or rural district" – were defined to include, among others, a telephone area code. (L.F. 43)

On September 14, 2001, Appellants filed a multi-count petition in the Circuit Court of Cole County, seeking (i) contested case judicial review of the administrative decisions approving the STECU expansion application, (ii) noncontested case judicial review under § 536.150, RSMo of the CUCOM decision of August 3, 2000 granting STECU an "exemption" from regulations no less strict than these imposed on federal credit unions by federal laws and rules, and (iii) a declaratory judgment under § 536.050, RSMo invalidating 4 CSR 105-3.010(1). (L.F. 1; L.F. 7-43) On January 29, 2002, that Court entered its order and judgment granting Respondents' motions to dismiss for lack of standing. (L.F. 128-137) On March 6, 2002, Appellants filed their notice of appeal to the Western District of the Missouri Court of Appeals. That Court affirmed the Circuit Court's decision with an opinion issued on January 14, 2003. This Court granted Appellants' application for transfer on April 22, 2003.

POINTS RELIED ON

I.

THE CIRCUIT COURT ERRED IN GRANTING THE MOTIONS TO DISMISS THE APPELLANTS' CONTESTED CASE CLAIMS BECAUSE THEY HAVE STANDING TO MAINTAIN THEIR ACTION FOR JUDICIAL REVIEW OF THE DECISION OF THE CREDIT UNION COMMISSION UPHOLDING THE APPROVAL BY THE DIRECTOR OF THE CREDIT UNION DIVISION OF THE EXPANSION APPLICATION OF SPRINGFIELD TELEPHONE EMPLOYEES CREDIT UNION, IN THAT:

A. SECTION 370.081.5, RSMO CONTAINS UNIQUE WORDING WHICH GRANTS THE RIGHT TO ADMINISTRATIVE REVIEW OF THE DIRECTOR'S DECISIONS ON EXPANSION APPLICATIONS TO ANY PERSON OR ENTITY *CLAIMING* TO BE ADVERSELY AFFECTED, AND THAT LANGUAGE DEMONSTRATES A LEGISLATIVE INTENTION TO ALLOW FULL AND EFFECTIVE COMPETITOR INTERVENTION AND REVIEW IN THESE CASES.

Farmer's Bank of Antonia v. Kostman, 577 S.W.2d 915 (Mo.App. W.D. 1979)

Lenette Realty v. City of Chesterfield, 35 S.W.3d 399 (Mo.App. E.D. 2000)

State ex rel. Consumers Public Service Co. v. Public Service Comm'n, 180 S.W.2d 40 (Mo. banc 1944)

Section 370.081.5, RSMo

B. THE STATE'S POLICY OF COMPETITIVE REGULATION OF THE FINANCIAL INDUSTRY GIVES APPELLANTS THE LEGAL RIGHT TO BE FREE FROM COMPETITION WHICH IS ILLEGITIMATE DUE TO THE FACT THAT THE APPLICATION SEEKS EXPANSION INTO AN ENTIRE TELEPHONE AREA CODE, AND A TELEPHONE AREA CODE IS NOT A "WELL-DEFINED LOCAL NEIGHBORHOOD, COMMUNITY OR RURAL DISTRICT" TO WHICH THE FIELDS OF MEMBERSHIP OF GEOGRAPHIC CREDIT UNIONS MUST BE RESTRICTED UNDER § 370.080.2(2), RSMO.

Legal Communications Corp. v. St. Louis County Printing & Publishing Co., Inc., 24 S.W.3d 744 (Mo.App. E.D. 2000)

Farmer's Bank of Antonia v. Kostman, 577 S.W.2d 915 (Mo.App. W.D. 1979)

Warnecke v. State Tax Comm'n, 340 S.W.2d 615 (Mo. 1960)

Section 370.080.2(2), RSMo

Title XXIV of the Missouri Statutes

C. APPELLANTS ARE AMONG THE INTENDED BENEFICIARIES OF THE MISSOURI STATUTE LIMITING THE FIELDS OF MEMBERSHIP OF CREDIT UNIONS, AND THE INTERESTS OF APPELLANTS ARE WITHIN THE ZONE OF INTERESTS PROTECTED BY § 370.080.2(2), RSMO.

Mo. Nat. Educ. Ass'n v. Mo. State Bd. of Educ., 34 S.W.3d 266 (Mo.App. W.D. 2000)

National Credit Union Administration v. First Nat'l Bank & Trust Co., 522 U.S. 479 (1998)

Bank of Belton v. State Banking Bd., 554 S.W.2d 451 (Mo.App. W.D. 1997)

Association of Data Processing Service Org. v. Camp, 397 U.S. 150 (1970)

Section 370.080.2(2), RSMo

II.

THE CIRCUIT COURT ERRED IN GRANTING THE MOTIONS TO DISMISS COUNTS II AND III OF THE PETITION FOR LACK OF STANDING TO MAINTAIN THE ACTION FOR NONCONTESTED CASE JUDICIAL REVIEW OF THE CREDIT UNION COMMISSION'S DECISION GRANTING THE APPLICATION AN "EXEMPTION" FROM REQUIREMENTS AS STRICT AS CERTAIN FEDERAL LAWS AND REGULATIONS THAT ARE INCORPORATED INTO THESE MISSOURI STATUTES, BECAUSE:

(A) APPELLANTS HAVE A LEGAL RIGHT TO BE FREE FROM ILLEGITIMATE COMPETITION WITHIN THE STATE'S COMPETITIVELY REGULATED FINANCIAL INDUSTRY, WHICH RIGHT WAS BREACHED BY THE COMMISSION'S "EXEMPTION" ACTION, IN THAT ILLEGITIMATE COMPETITION WOULD RESULT FROM THE ADDITION OF A NEW FIELD OF MEMBERSHIP GROUP CONTAINING MORE THAN 3,000 MEMBERS WHEN THE APPLICABLE STANDARDS ESTABLISHED BY THE INCORPORATED

FEDERAL REGULATIONS WOULD NOT HAVE ALLOWED SPRINGFIELD TELEPHONE EMPLOYEES CREDIT UNION TO EXPAND INTO AN ENTIRE TELEPHONE AREA CODE; AND (B) APPELLANTS ARE AMONG THE INTENDED BENEFICIARIES OF THE MISSOURI STATUTES LIMITING THE FIELDS OF MEMBERSHIP OF CREDIT UNIONS, AND THE INTERESTS OF APPELLANTS ARE WITHIN THE ZONE OF INTERESTS PROTECTED BY § 370.081.2, RSMO.

Kish v. Chilhowee R-IV School Dist., 814 S.W.2d 649 (Mo.App. W.D. 1991)

Legal Communications Corp. v. St. Louis County Printing & Publishing Co., Inc., 24 S.W.3d 744 (Mo.App. E.D. 2000)

Mo. Nat. Educ. Ass'n v. Mo. State Bd. of Educ., 34 S.W.3d 266 (Mo.App. W.D. 2000)

Section 536.150, RSMo

Section 370.081.2, RSMo

III.

THE CIRCUIT COURT ERRED IN GRANTING THE MOTIONS TO DISMISS COUNT IV OF THE PETITION SEEKING A DECLARATORY JUDGMENT UNDER § 536.050, RSMO ON THE VALIDITY OF 4 CSR 105-3.010(1), BECAUSE THE APPELLANTS HAVE STANDING FOR THIS PORTION OF THEIR ACTION UNDER § 536.053, RSMO, GIVEN THE FACT THAT THEY ARE OR MAY BE AGGRIEVED BY THE APPLICATION OF THE ADMINISTRATIVE RULE WHICH WOULD ALLOW EXPANSIONS OF CREDIT UNIONS INTO AREAS WHICH ARE

NOT AUTHORIZED FOR THAT PURPOSE BY THE APPLICABLE STATUTE, IN THAT: (A) THE WORDING CONTAINED IN § 536.053, RSMO EVIDENCES A LEGISLATIVE INTENTION TO EXPAND THE POOL OF PERSONS WHO MAY CHALLENGE THE VALIDITY OF AN ADMINISTRATIVE RULE; (B) SUCH APPLICATIONS OF THE RULE WOULD NEGATIVELY AFFECT APPELLANTS' LEGAL RIGHT TO BE FREE FROM COMPETITION WHICH IS ILLEGITIMATE DUE TO THE FACT THAT NEITHER A TELEPHONE AREA CODE NOR SOME OF THE OTHER AREAS INCLUDED IN THAT RULE ARE A "WELL-DEFINED LOCAL NEIGHBORHOOD, COMMUNITY OR RURAL DISTRICT" TO WHICH THE FIELD OF MEMBERSHIP OF A GEOGRAPHIC CREDIT UNION MUST BE RESTRICTED UNDER § 370.080.2(2), RSMO; AND (C) APPELLANTS ARE AMONG THE INTENDED BENEFICIARIES OF THE MISSOURI STATUTE LIMITING THE FIELDS OF MEMBERSHIP OF CREDIT UNIONS, AND THE INTERESTS OF APPELLANTS ARE WITHIN THE ZONE OF INTERESTS PROTECTED BY THAT STATUTE.

Section 536.053, RSMo

Section 536.050, RSMo

State Dept. of Labor and Indus. Relations, Div. of Labor Standards v. Board of Public Utilities, 910 S.W.2d 737 (Mo.App. S.D. 1995)

Legal Communications Corp. v. St. Louis County Printing & Publishing Co., Inc., 24 S.W.3d 744 (Mo. App. E.D. 2000)

IV.

THE CIRCUIT COURT ERRED IN HOLDING THAT THE MISSOURI BANKERS ASSOCIATION (THE "MBA") LACKS ASSOCIATIONAL STANDING BECAUSE THE MBA MEETS ALL THREE OF THE ESTABLISHED TESTS FOR SUCH STANDING, IN THAT: (A) ITS MEMBERS WOULD OTHERWISE HAVE STANDING TO BRING SUIT IN THEIR OWN RIGHT (AS SHOWN IN THE PRIOR POINTS); (B) THE INTEREST THE MBA SEEKS TO PROTECT OF DEFENDING ITS MEMBERS FROM ILLEGITIMATE COMPETITION IS GERMANE TO ITS PURPOSE; AND (C) PARTICIPATION OF INDIVIDUAL MEMBERS IS NOT NECESSARY FOR THE REQUESTED RELIEF OF THE REVERSAL OF THE ADMINISTRATIVE DECISIONS AND THE INVALIDATION OF THE RULE CHALLENGED IN THIS ACTION.

Missouri Outdoor Advertising Ass'n v. Missouri State Highways and Transportation Comm'n, 826 S.W.2d 342 (Mo. banc 1992)

Home Builders Ass'n of Greater St. Louis, Inc. v. City of Wildwood, 32 S.W.3d 612 (Mo.App. E.D. 2000)

Mo. Nat. Educ. Ass'n v. Mo. State Bd. Of Educ., 34 S.W.3d 266 (Mo.App. W.D. 2000)

Missouri Hosp. Ass'n v. Air Conservation Comm'n, 874 S.W. 2d 380 (Mo.App. W.D. 1994)

ARGUMENT

I.

THE CIRCUIT COURT ERRED IN GRANTING THE MOTIONS TO DISMISS THE APPELLANTS' CONTESTED CASE CLAIMS BECAUSE THEY HAVE STANDING TO MAINTAIN THEIR ACTION FOR JUDICIAL REVIEW OF THE DECISION OF THE CREDIT UNION COMMISSION UPHOLDING THE APPROVAL BY THE DIRECTOR OF THE CREDIT UNION DIVISION OF THE EXPANSION APPLICATION OF SPRINGFIELD TELEPHONE EMPLOYEES CREDIT UNION, IN THAT:

A. SECTION 370.081.5, RSMO CONTAINS UNIQUE WORDING WHICH GRANTS THE RIGHT TO ADMINISTRATIVE REVIEW OF THE DIRECTOR'S DECISIONS ON EXPANSION APPLICATIONS TO ANY PERSON OR ENTITY *CLAIMING* TO BE ADVERSELY AFFECTED, AND THAT LANGUAGE DEMONSTRATES A LEGISLATIVE INTENTION TO ALLOW FULL AND EFFECTIVE COMPETITOR INTERVENTION AND REVIEW IN THESE CASES.

In a contested case, a statute will always exist that identifies the parties to whom the General Assembly wants to provide judicial review of those administrative decisions; because if no special statute applies, then § 536.100, RSMo will do so. The initial step in determining whether a party has standing to maintain such an action is thus usually taken by applying the language contained in the appropriate statute.

For appeals of credit union expansion decisions made after Credit Union Commission ("CUCOM") hearings, the General Assembly included its provision on judicial review in § 370.081.5, RSMo. The portion of subsection 5 of § 370.081, RSMo directly dealing with judicial review reads as follows: "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."

It is the Appellants' position that on this first claim,[1] for contested case review, the context of the language regarding court standing in this statute should lead to a construction of that phrase that allows them to proceed with judicial review on the basis of the statutory language alone. In ***State v. Haskins,*** 950 S.W.2d 613, 615 (Mo.App. S.D. 1997), the Court wrote:

> [I]t is fundamental that a section of a statute should not be read in isolation from the context of the whole act.
>
> *Richards v. United States*, 369 U.S. 1, 11, 82 S.Ct. 585, 592,

[1] The Appellants' claims for judicial review of a noncontested case decision by CUCOM and of the validity of an administrative rule will be addressed in Points II and III below.

7 L.Ed.2d 492 (1962). In interpreting legislation, "'we must not be guided by a single sentence . . . , but [should] look to the provisions of the whole law, and its object and policy.'" *Id.*

In the first part of subsection 5 of § 370.081, RSMo, the Missouri General Assembly used unique wording in creating the right to administrative review of decisions of Respondent Director of the Division of Credit Unions ("Director") on applications by state credit unions to expand their fields of membership. Unlike wording used in other grants of administrative review in Missouri statutes, the right to appeal decisions by the Director on credit union expansion applications to Respondent CUCOM is expressly given to "any person or entity claiming to be adversely affected" by any such decision made by the Director.

In this case, both of the Appellants – the Missouri Bankers Association ("MBA"), as an association on behalf of its members, and Century Bank of the Ozarks ("Century Bank") – *claimed* to be adversely affected by the decision of the Director approving an application for expansion submitted by Respondent Springfield Telephone Employees Credit Union ("STECU"). (L.F. 12; L.F. 30; L.F. 159, lines 3-25 of Tr. 53; lines 1-20 of Tr. 54; L.F. 167, lines 3-9 and 24-25 of Tr. 87; lines 1-25 of Tr. 88) Therefore, CUCOM, in its decision, found both Appellants had standing for purposes of that administrative review. (L.F. 30-31)

The decision rendered by CUCOM in this case affirmed the Director's decision approving a portion of the application for expansion submitted by STECU and denied the

relief requested by the Appellants. (L.F. 12; L.F. 26-37) Because of the uniquely broad wording of the statutory grant of the right to administrative review in the first instance – to all those "claiming to be adversely affected" -- the parties who may be "aggrieved" by an adverse CUCOM decision should include those to whom the legislature expressly gave the right to administrative review.

While the Western District in its Opinion referred to this as a "bootstrap" argument, that is not the case if the grant of administrative review – to which the Western District clearly agreed the Appellants were entitled – in effect altered the rights which were involved and the protections which subsequently existed for the parties. This Court has previously held, for example, in ***State ex rel. Consumers Public Service Co. v. Public Service Comm'n***, 180 S.W.2d 40, 45-46 (Mo. banc 1944), that once a person is allowed in as a party in an administrative hearing, if that party loses, it should be entitled to judicial review. In addition, in ***Joseph's Hill Infirmary, Inc. v. Mandl***, 682 S.W.2d 821, 825 (Mo.App. E.D. 1984), the Court said that the legislature may allow those interested in an administrative decision to participate as parties or allow them appeal privileges; and if it does so, "such persons may become 'aggrieved' for purposes of that administrative procedure or tribunal."

In considering these standing questions, courts look to, among other things, "the terms of the statute which creates the right or the method of review." (See, e.g., ***Farmers Bank of Antonia v. Kostman,*** 577 S.W.2d 915, 920 (Mo.App. W.D. 1979)) The wording in subsection 5 of § 370.081, RSMo distinguishes the right of appeal granted to parties for

reviews of agency decisions in credit union field of membership expansion cases from all prior cases on standing for purposes of administrative and judicial review. The right to an administrative hearing was not given only, for example, to "any affected person" (as stated in the health facilities review law, in § 197.330.1(3), RSMo); it was not merely given to an "aggrieved party"; and it was not merely given to those who are actually "adversely affected." Rather, administrative review in these cases was granted to "any person or entity claiming to be adversely affected."

In the same subsection granting parties who claim to be adversely affected the right to administrative review, the legislature also gave the right to judicial appeal to any party who is aggrieved by a final decision of CUCOM. The word "aggrieved" is not defined either in this section or anywhere else within Chapter 370 (which governs credit unions), nor has it been statutorily defined elsewhere. While the word has been judicially construed in a number of other contexts, if normal rules of statutory construction were applied here, then the words in a statute which are not expressly defined within it would be given their plain and ordinary meanings, wherever possible. (See, for example, ***Murray v. Missouri Highway and Transportation Comm'n***, 37 S.W.3d 228, 233 (Mo. banc 2001).) According to **Webster's Third New International Dictionary** (1961), p. 41, "aggrieved" means "troubled or distressed in spirit," "showing grief, injury, or offense," or "having a grievance." The definition of "grievance" in the same dictionary (at p. 999) includes "suffering, grief, distress," and "a cause of uneasiness or distress felt to afford rightful reason for reproach, complaint or resistance." When the plain and ordinary meanings of

the word are applied, the Appellants clearly were "aggrieved" by CUCOM's decision in this case because they suffered the injury of its loss and feel they have been afforded a rightful reason for complaint.

Even when the general definition given to "aggrieved" in the context in other statutes is used, the Appellants should be deemed to be aggrieved for purposes of their contested case review here. For example, in ***The Hertz Corp. v. State Tax Comm'n***, 528 S.W.2d 952, 954 (Mo. banc 1975), this Court held as follows:

> The general rule is that a party is aggrieved when the judgment 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.

The evidence in this case shows that the property rights and interests of the Appellants are prejudicially and directly affected by the CUCOM affirmation of the Director's approval of the STECU expansion application. (L.F. 32; L.F. 159, lines 3-25 of Tr. 53; lines 1-20 of Tr. 54; L.F. 160, lines 23-25 of Tr. 60; L.F. 161, lines 1-25 of Tr. 61; lines 1-16 of Tr. 62; L.F. 162, lines 10-18 of Tr. 65; lines 19-25 of Tr. 68; L.F. 163, lines 1-3 of Tr. 69; L.F. 167, lines 7-25 of Tr. 85, lines 1-25 of Tr. 86; lines 1-9 and 24-25 of Tr. 87; lines 1-25 of Tr. 88; and L.F. 169, lines 5-11 of Tr. 94; lines 3-16 of Tr. 95) As stated in ***Bank of Belton v. State Banking Bd.***, 554 S.W.2d 451, 453 (Mo.App. W.D. 1977), when the Banking Board granted one bank the right to establish a facility near that of the other, "There can be little question that a bank is aggrieved by a decision to allow a competitor facility to operate

within the same trade area." Therefore, under both the plain meaning rule and under the general judicial definition of "aggrieved," Appellants should be found to have standing for judicial review of the contested case decisions under the statutory language in § 370.081.5, RSMo.

The reason the lower courts have declined to follow those constructions, however, is because of a perception that certain kinds of property rights or interests are not to be included in a judicial determination of aggrievement. Specifically, they have relied on language in a series of cases which have held that economic competitors should not be allowed to proceed with such judicial reviews. Those cases emanated primarily from decisions involving health facility review committee decisions, such as ***St. Joseph's Hill Infirmary, Inc.***, *supra*. It is Appellants' position that those cases should not be considered to be governing in this one, but rather should be treated as *sui generis*, particularly given the differences in the two statutes governing appeal being compared here. In the case of ***Community Care Centers, Inc. v. Missouri Health Facilities Review Committee***, 735 S.W. 2d 13 (Mo.App. W.D. 1987), which was relied upon by the Circuit Court, the issue decided was whether a competitor had a right to judicial review of a MHFRC decision given the provisions of § 197.335, RSMo, which expressly state that *only* "the applicant" may file an appeal of the Committee's decision to the Circuit Court of Cole County. The Court in that case noted how § 197.335 even excluded consideration of whether any other party is "aggrieved" by a MHFRC administrative decision for purposes of judicial review. (***Community Care Centers,*** 735 S.W.2d at 14) Consequently, CON cases are totally

inapplicable to the issue of judicial review for an "aggrieved" party here, because only the "applicant" was given the statutory right to judicial review of MHFRC administrative decisions. Therefore, ***Community Cares Centers*** and related CON cases simply should not control the construction of "aggrieved" for the purpose of judicial reviews of CUCOM decisions.

It is true that in some non-CON cases, courts have occasionally indicated that "mere" economic competitors are not entitled to seek judicial review of an administrative decision, absent the presence of one or more other factors. (See, e.g., ***City of Eureka v. Litz,*** 658 S.W.2d 519, 523 (Mo.App. E.D. 1983).) However, in some other cases they have provided such review despite competitor status, such as in ***Lenette Realty v. City of Chesterfield***, 35 S.W.3d 399, 405 (Mo.App. E.D. 2000), which involved the opposing economic interests of certain retailers and developers. In that case, it was held that persons who are "aggrieved by any decision of the board of adjustment" included real estate developers whose only interests in that decision were economic ones which were adverse to the economic interests of some of their opponents, who had prevailed before the board. It would be inconsistent to hold that the competitive economic interests of real property developers are sufficient for standing but that the competitive economic interests of other types of business owners are insufficient for the same purpose. As Alfred S. Neeley wrote in 20A **Missouri Practice, Administrative Practice and Procedure**, Third Edition (2001), § 13.03, pp. 173-174:

> It is not clear whether status as a competitor entitles one to "aggrieved person" status. Some cases have suggested that general competitive interest is not enough. Others have concluded the contrary . . . .
>
> Consequently, at least for agencies subject to review under the MAPA, the trend seemed to favor competitor standing to challenge administrative action which affects the competitor's economic future. Yet this is at best an intimation of inclination. Uncertainty continues.

It should also be noted that the construction of subsection 5 of Section 370.081, RSMo adopted by the trial court would in essence eliminate the right to judicial review for every party in these cases other than a denied applicant. Consequently, there would *never* be any judicial review of any *approvals* of these expansion applications. That would not be sound statutory construction under guidelines such as those established by cases like ***State ex rel. Rowland Group, Inc. v. Koehr,*** 831 S.W.2d 930, 931 (Mo. banc 1992), in which this Court held that statutes should be given reasonable interpretations in light of their legislative objectives, and ***Gott v. Director of Revenue,*** 5 S.W.3d 155, 159 (Mo. banc 1999), in which this Court stated that it "must consider the object the legislature seeks to accomplish with an eye towards finding resolution to the problems addressed therein." Respondents want no one, other than a rejected applicant (who, by the way, would *only* be affected *economically* by such a decision) to be able to obtain a judicial review of expansion decisions made by the Director and CUCOM. Had the legislature intended that only rejected applicants would be able to bring an appeal, it could have easily used the

words "the applicant" in Section 370.081.5, RSMo (as it did when it allowed only applicants to have judicial review in CON cases). It did not do that here, however. Consequently, the only other possible beneficiaries of the statutorily-created access to the courts must be those, like the Appellants, who claim to be adversely affected and who seek a mechanism for enforcing the law as it has been written. What Respondents want is a determination that the Director's actions and the Commission's actions are essentially unreviewable. If the Respondents have their way, then the legality of the Commission's construction of the law and of the Director's decisions on expansion applications could and would never be tested. Given the distinctively broad language on administrative appeals in Section 370.081.5, RSMo, such a holding would be inappropriate.

Furthermore, economic harm or injury *must* be grounds for judicial review where the only type of benefit or injury from the agency decision in question is intrinsically and necessarily economic. Competitive economic activities are what banks and credit unions do. This review should not be blocked by arguments attempting to preclude judicial review on the grounds that economic injury is somehow a "second-class" harm not worthy of the courts' attention. Statutes should be construed to give them a reasonable interpretation in light of the legislative objective and consistent with their purpose. (See, e.g., ***BCI Corp. v. Charlebois Construction Co.,*** 673 S.W.2d 774, 780 (Mo. banc 1984).) Statutes should not be construed so as to accomplish nothing or to be a useless act. The total disregard of a statute (which is essentially what the trial court's construction would accomplish in this context) should only occur if *no* other conclusion is possible. (See, e.g., ***Kilbane v.***

Director of Department of Revenue, 544 S.W.2d 9, 11 (Mo. banc 1976).) Every sentence and word in a statute is presumed to have effect. (See, e.g., ***Hyde Park Housing Partnership v. Director of Revenue,*** 850 S.W.2d 82, 84 (Mo. banc 1993).) "Aggrieved" should not be construed to render the legislative grant of judicial review in Section 370.081.5, RSMo completely meaningless, which is what the trial court's decision would do.

Because the General Assembly gave the Appellants the right to administrative review in this specific type of case if they "claimed to be adversely affected," and because they made that claim, and because they were injured by CUCOM's decision in this case (which they lost), Appellants should be deemed to have been "aggrieved" for purposes of the judicial review that was also authorized by that same statutory subsection. Subsection 5 of Section 370.081, RSMo, is a special provision for the judicial review of administrative decisions on credit union expansion applications. Whenever the legislature adopts a special statute governing judicial review of administrative decisions, the provisions of the special statute are to apply, and not those of a general statute (under, e.g., ***Hundley v. Wenzel***, 59 S.W.3d 1, 4-5 (Mo.App. W.D. 2001)). Because the language used by the legislature is this subsection let Appellants have an administrative review in the first instance, the legislature should be deemed also to have intended for them to be able to obtain judicial review of the CUCOM decision if they lost the case at that level. Therefore, the right to judicial review of these decisions should be deemed to have been given statutorily to those who lose them at the administrative level.

With regard to the appropriate standard of review for all of the matters involved in this case, according to ***ITT Commercial Financial Corp. v. Mid-America Marine Supply Corp.***, 854 S.W.2d 371, 376 (Mo. banc 1993), when the trial court's judgment is based on the law and the record submitted, the appellate court does not need to defer to the trial court's order, and the review is essentially *de novo.* In ***Switzer v. Mercantile Bank***, 932 S.W.2d 893, 896 (Mo.App. E.D. 1996), the Eastern District held in a case in which the trial court determined that the plaintiff lacked standing that its review "is essentially *de novo.*" In ***Home Builders Ass'n of Greater St. Louis, Inc. v. City of Wildwood***, 32 S.W.3d 612, 614 (Mo.App. E.D. 2000), the Court held as follows: "Our review of whether a litigant has standing to pursue claims is de novo and we do not defer to the trial court's order." Therefore, all matters involved in this case should be reviewed *de novo.*

No prior decision has construed the statutory language on judicial review of credit union expansion decisions under § 370.081.5, RSMo. This case is one of first impression; and within the context of this specific statute, standing for the Appellants should be found, and the trial court's dismissal of Count I should be reversed.

B. THE STATE'S POLICY OF COMPETITIVE REGULATION OF THE FINANCIAL INDUSTRY GIVES APPELLANTS THE LEGAL RIGHT TO BE FREE FROM COMPETITION WHICH IS ILLEGITIMATE DUE TO THE FACT THAT THE APPLICATION SEEKS EXPANSION INTO AN ENTIRE TELEPHONE AREA CODE, AND A TELEPHONE AREA CODE IS NOT A "WELL-DEFINED LOCAL

NEIGHBORHOOD, COMMUNITY OR RURAL DISTRICT" TO WHICH THE FIELDS OF MEMBERSHIP OF GEOGRAPHIC CREDIT UNIONS MUST BE RESTRICTED UNDER § 370.080.2(2), RSMO.

The *right* to judicial review is constitutional and not statutory. (See, e.g., ***Warnecke v. State Tax Comm'n,*** 340 S.W.2d 615, 618 (Mo. 1960); and ***Lederer v. Dept. of Social Services,*** 825 S.W.2d 858, 861 (Mo.App. W.D. 1992).) The statutes provide the procedure to be followed; but if the statutory procedure is followed, then, if the statute itself does not clearly authorize the appeal, whether an appellant has a right to judicial review should also be considered from the constitutional perspective. (See, e.g. ***Farmer's Bank of Antonia,*** 577 S.W.2d at 921; and ***St. Joseph's Hill Infirmary,*** 682 S.W.2d at 825.)

Under Article V, § 18 of the Missouri Constitution, all administrative decisions which "affect private rights, shall be subject to direct review by the courts as provided by law. . . ." If for any reason the right of these Appellants to judicial review of the contested case decision of CUCOM under § 370.081.5 is unclear or unestablished, then the issue should be further analyzed to determine whether Article V, § 18 nevertheless requires the review to proceed.

Appellants believe that the private rights which they have that have been affected by CUCOM's affirmance of the Director's approval of the STECU expansion application are the same as those that were expressly recognized for legal publishers in the decision in ***Legal Communications Corp. v. St. Louis County Printing & Publishing Co., Inc.,*** 24

S.W.3d 774, 778 (Mo.App. E.D. 2000). In that decision, the Court held that when the status of a competitor is combined with certain policy considerations, standing exists to challenge administrative decisions. The Court held that the "competitive regulation" established through the underlying statutes that govern the publication of legal notices provided a policy basis for standing where one would not have existed based upon competitor status alone.

The exact same policy basis exists here: the statutes of Missouri (including Chapter 370, RSMo on credit unions and Chapters 361 and 362, RSMo on banks) provide "competitive regulation" of the state's financial institutions. The degree of competitive regulation of state-licensed financial institutions is extensive. Many types of financial institutions are governed by Title XXIV of the Missouri Statutes, from its first ten chapters establishing the regulatory framework for banks and trust companies, loan and investment companies, savings and loan associations, and credit unions (among others), to the last eleven chapters of that title on insurance companies. Therefore, just as a publisher had standing to challenge an administrative decision regarding approval of a competing publisher as a legal newspaper in ***Legal Communications Corp.***, so the Appellants in this case should have standing to challenge the decisions of the Director and CUCOM on the STECU expansion application.

The trial court in this case stated that no one has the "right" to be free from "legitimate competition," and that no one is protected by law from "legitimate competition," citing, among others, ***St. Joseph's Hill Infirmary Inc.***, 684 S.W.2d at 824.

Appellants do not seek to be free from "legitimate" competition, however; what they seek to be free from is the *illegitimate* competition that would be created if and when the Missouri statute limiting geographic area credit unions to a "well-defined local neighborhood, community or rural district" is ignored and abrogated by incorrect regulatory agency actions. It is one thing to petition to be free from legitimate competition, but it is quite another to ask to be free from illegitimate competition. The trial court's decision fails to distinguish between the two.

In ***Legal Communications Corp.,*** 24 S.W.3d at 748, the Court not only recognized the difference between legitimate and illegitimate competition, but it also found that standing existed because the plaintiff's ability to compete would be impeded if it were "forced to face illegitimate competition." Another perspective of the interest the plaintiff sought to protect was "its right to compete only with lawful competition." The same right and interest exists for the Appellants in this case. The administrative approval of the second publisher to compete for business as a legal newspaper was inappropriate and unauthorized because it did not meet the express statutory criteria established for legal publications. The administrative approval of the expansion of STECU in this case was inappropriate and unauthorized because the area sought to be added does not meet the express statutory restrictions for geographic membership credit unions (which, under § 370.080.2(2), RSMo, must be limited to "a well-defined local neighborhood, community or rural district").

Because of the distinction between legitimate and illegitimate competition, and because of the established legal right to be free from illegitimate competition, Count I of the Petition is not barred by the reasoning used in the Circuit Court's decision. The decisions of the Director and of CUCOM in approving the STECU application operate prejudicially and directly upon the property interests of Century Bank and of the other banks which are represented by the MBA which are in competition with this credit union. The rights or interests in this case, as in ***Legal Communications Corp***., are the right to be free from illegitimate competition and the right to compete only with lawful competition.

The underlying purpose of judicial restrictions imposed on the right to court review of administrative decisions is to limit such actions to those who have sufficient interests in the subject matter to warrant the consideration of their claims if they have been adversely affected by the agency action. (***Metro Auto Auction v. Director of Revenue,*** 707 S.W.2d 397, 400 (Mo. banc 1986)) The Director's decision on the STECU expansion application would operate prejudicially on the interests of Century Bank and on member banks of the MBA which are located in the 417 telephone area code area. (L.F. 159, lines 3-25 of Tr. 53; lines 1-20 of Tr. 54; L.F. 167, lines 3-9, 24-25 of Tr. 87; lines 1-25 of Tr. 88) These banks have a right "to compete only with lawful competition." Furthermore, if parties like Appellants do not have the right to obtain judicial review of agency "interpretations" of the statutes that contravene statutory restrictions, then there is no manner in which such illegitimate competition could be controlled. Therefore, they should be deemed to have

sufficient rights and interests to warrant the affirmance of their standing to appeal the contested case decisions made by the Director and CUCOM in this case.

In ***State ex rel. Mo. Power & Light Co. v. Riley***, 546 S.W.2d 792, 797-798 (Mo.App. W.D. 1977), the Court wrote:

> [Article V, Section 22] has been held to guarantee the right of judicial review as a *constitutional guarantee* as opposed to a statutory right subject only to the conditions precedent that the party is properly before the administrative body and complies with the statutory methods to secure judicial review. (Citations omitted)
>
> Such party seeking review need not have a direct pecuniary or property right involved but only such interest as would require that he heard before the administrative body (here the Commission). (Citations omitted)

In this case, given the statutory grant of a broad right of appeal to anyone claiming to be adversely affected, the Appellants clearly had a sufficient interest to be heard before CUCOM on the ultimate decision on the STECU expansion application. Therefore, under Article V, §18 of the Missouri Constitution and under the holdings in the ***Legal Communications Corp.*** and ***Mo. Power & Light*** cases, these Appellants should have standing for the purpose of judicial review of the decision made by CUCOM on the

Director's approval of the STECU application. The trial court's decision dismissing Count I for lack of standing should be reversed because it is contrary to the law.

C. APPELLANTS ARE AMONG THE INTENDED BENEFICIARIES OF THE MISSOURI STATUTE LIMITING THE FIELDS OF MEMBERSHIP OF CREDIT UNIONS, AND THE INTERESTS OF APPELLANTS ARE WITHIN THE ZONE OF INTERESTS PROTECTED BY § 370.080.2(2), RSMO.

The inquiry into standing in administrative decision cases has sometimes involved a "zone of interests" analysis, which has been derived primarily from the United States Supreme Court decision in ***Association of Data Processing Service Org. v. Camp***, 397 U.S. 150, 153 (1970). In that case the Court held that if, in addition to injury, the "interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question," the complainant would have standing to challenge an administrative decision.

In ***Mo. Nat. Educ. Ass'n v. Mo. State Bd. Of Educ.,*** 34 S.W.3d 266 (Mo.App. W.D. 2000), the Court held that status as "intended beneficiaries" of a statute was a sufficient basis for standing for judicial review of agency decisions. The Court wrote that MNEA members were entitled to a review of administrative decisions made by the Board of Education on school district applications submitted regarding the statutory requirement for them to expend a certain percentage of current operating costs for compensation of staff,

because those MNEA members were "intended beneficiaries" of the statute imposing that expenditure requirement on school districts. The Court concluded that the agency's decisions under that statute adversely affected legally protectable interests of MNEA members, and therefore that they could have judicial review of those decisions. (***Mo. Nat. Educ. Ass'n,*** 34 S.W.3d at 276)

The Appellants are among the intended beneficiaries for whose benefit the restrictions on credit union fields of membership were originally created and have subsequently been maintained by the General Assembly. In part because of certain major economic advantages that have been given by federal and state statutes to credit unions -- especially the freedom from income taxation that applies at an institutional level to other types of financial institutions (like banks), as explained during the testimony of Max Cook, the President and CEO of the MBA (L.F. 167, lines 7-25 of Tr. 85; lines 1-25 of Tr. 86; lines 1-2 of Tr. 87) and as expressly found by Congress in § 2, P.L. 105-219, 112 Stat. 913[2] -- legislatures have for many years imposed significant limitations on the growth and

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[2] "The Congress finds the following:

* * * * *

(3) To promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well-understood sense of cohesion or identity is

expansion of credit unions. On both the state and federal levels, these limitations are mainly contained in statutory field of membership restrictions. The Missouri field of membership restrictions, in which the critical words for geographic area credit unions are exactly the same as those used in the federal statute,[3] are contained in Section 370.080.2, RSMo, which reads as follows:

> 2. A credit union shall be composed of one or more groups of persons. The members of each such individual group must share:
>
> (1) A common occupation, association, employer or;
>
> (2) A credit union may include those persons who reside or work in a well-defined local neighborhood,

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> essential to the fulfillment of the public mission of credit unions.
>
> (4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means."

[3] 12 USC § 1759(b)(3).

community or rural district as such terms are defined by the commission.

In 1998 the United States Supreme Court recognized standing for challengers to a federal rule in a case that in many ways parallels this action now before this Court. In ***National Credit Union Administration v. First National Bank & Trust Co.,*** 522 U.S. 479 (1998), the American Bankers Association and First National Bank & Trust Co. were allowed to challenge the National Credit Union Administration's rule dealing with the expansion of federal credit unions, leading to the invalidation of that rule by the Court. In its holding, the Court found the appellants (a bank and a banking association) to have arguably been within the "zone of interests" that were being protected or regulated by the credit union statute and rules in question, and it held that competitors of financial institutions have standing to challenge agency action that relaxes statutory restrictions on the activities of those institutions. (522 U.S. at 488) That is exactly what is happening in this case: the Appellants are challenging agency actions that relax statutory restrictions on the activities of credit unions (because a telephone area code area is *not* a "well-defined local neighborhood, community or rural district" to which geographical group credit unions are expressly limited by Section 370.080.2(2), RSMo). Therefore, the Appellants are within the zone of interests protected or regulated by that Missouri credit union statute.

Under the U.S. Supreme Court's ***First National Bank & Trust*** ruling, if a party's interests are arguably within the "zone of interests" to be protected by a statute, there does not have to be an "indication of congressional purpose to benefit the would-be plaintiff."

(522 U.S. at 491) Rather, the only test for standing then is whether the plaintiff is within the zone of interests sought to be protected by the statute in question. The Court continued (522 U.S. at 492-494):

> Section 109 provides that "[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." 12 U.S.C. § 1759. By its express terms, § 109 limits membership in every federal credit union to members of definable "groups." Because federal credit unions may, as a general matter, offer banking services only to members, see, e.g., 12 U.S.C. §§ 1757(5)-(6), § 109 also restricts the markets that every federal credit union can serve. Although these markets need not be small, they unquestionably are limited. The link between § 109's regulation of federal credit union membership and its limitation on the markets that federal credit unions can serve is unmistakable. Thus, even if it cannot be said that Congress had the specific purpose of benefitting commercial banks, one of the interests "arguably . . . to be protected" by § 109 is an interest in limiting the markets that federal credit unions can serve. This interest is

> precisely the interest of respondents affected by the NCUA's interpretation of § 109. As competitors of federal credit unions, respondents certainly have an interest in limiting the markets that federal credit unions can serve, and the NCUA's interpretation has affected that interest by allowing federal credit unions to increase their customer base.

The exact same statutory language exists in Missouri, and the exact same reasoning should authorize the Circuit Court to review the administrative decision in this case on its merits. Appellants do not need to show that § 370.080.2 was written solely to benefit the banking industry. Rather, they would merely need to be *one* of the beneficiaries to be included in the zone of interests protected by the statute. It is not necessary for the legislature to have expressly and unambiguously stated that, in order to be within the zone of interests protected by a statute, such third parties have a right to appeal the administrative decision. That was clearly not the case in, among others, the ***Mo. Nat. Educ. Ass'n*** decision. One of the interests arguably to be protected by § 370.080.2(2) limits on geographic expansion of credit unions is the banks' interest in limiting the markets that state credit unions can serve. That is an interest of these Appellants that is affected by the Director's and CUCOM's determinations and decisions that are challenged in this case. Therefore, these Appellants are suitable challengers to the contested case actions of CUCOM and the Director on the STECU application.

Arguably being within the zone of interests that are protected by a statute has been recognized in Missouri for many years as an important factor in determining standing in some of these cases. In the contested case of ***Bank of Belton***, 554 S.W.2d at 453, the Court held as follows:

> The economic interest Belton Bank seeks to protect against the administrative order which allows UMB a facility in competition falls within the zone of interests protected by Article 5, § 22 of the Missouri Constitution as defined in § 536.100. ***Association of Data Processing Service Org., Inc. v. Camp***, 397 U.S. 150, 153, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970).

The Eastern District also cited ***Association of Data Processing Service Org.*** as support for its recent ***Legal Communications Corp***. decision (24 S.W.3d at 748), thereby again acknowledging and accepting in a State court's analysis the reasoning of the federal courts in allowing competitors within the zone of interests protected by a statute to obtain judicial reviews of agency decisions. Similar references to and utilizations of the ***Association of Data Processing Service*** case were made in, among others, ***Farmers Bank of Antonia***, 577 S.W.2d at 920; ***West County Care Center v. Missouri Health Facilities Review Committee***, 773 S.W.2d 474, 477 (Mo.App. W.D. 1989); ***State ex rel. City of St. Louis v.***

Litz, 653 S.W.2d 703, 706 (Mo.App. E.D. 1983); and ***Metropolitan Express Services, Inc. v. City of Kansas City***, 23 F.3d 1367, 1371 (8th Cir. 1994).

In ***Association of Data Processing Service Org.***, the Court held that an organization representing data processing service companies was an "aggrieved" party that could challenge a ruling by the Comptroller of Currency permitting national banks to make their data processing services available to bank customers. The unanimous Court wrote that:

> There is no presumption against judicial review and in favor of administrative absolutism . . ., unless that purpose is fairly discernible in the statutory scheme. (Id.)

The data processing association was therefore able to challenge a bank regulatory decision arguably expanding the business of banks beyond their statutory limits under 12 U.S.C. § 1864, which said that no bank service corporation could engage in any activity "other than the performance of bank services for banks."

While Article V, § 18 of the Missouri Constitution grants a constitutional right to judicial review of administrative agency decisions, as authorized by statute, the legislature extended the right of judicial review of decisions on expansion applications to any party aggrieved by the decision after a CUCOM appeal that could be brought by anyone "claiming to be adversely affected." This statute should not be construed in a manner which would in essence nullify the Constitutional intention to allow our courts to review and modify administrative agency decisions in appropriate cases. The construction of this statute should be drawn more in line with the federal Administrative Procedures Act and the

numerous cases which have long held that competitors of regulated entities have standing to sue the regulator (see, e.g., ***First National Bank & Trust,*** *supra*, and ***Panhandle Producers and Royalty Owners Ass'n v. Economic Regulatory Admin.,*** 822 F.2d 1105, 1109 (D.C. Cir. 1987)), and with the rulings in comparable cases in a number of other states (see, e.g., ***Utah Bankers Ass'n v. America First Credit Union,*** 912 P.2d 988, 991 (Utah 1996), ***Everett Town Taxi, Inc. v. Board of Aldermen,*** 320 N.E.2d 896, 899-900 (Mass. 1974), and ***Dairylea Cooperative, Inc. v. Walkley,*** 377 N.Y.S.2d 451, 456 (N.Y.App. 1975).[4] Under the federal analysis, if the plaintiff is either among the "beneficiaries" of the provision of law at issue, or if it is an "otherwise suitable challenger" to the agency's actions, it will have standing. In Missouri, under ***Mo. Nat. Educ. Ass'n*** and related cases, if the plaintiffs are "intended beneficiaries" of a statute, they should have standing. In the ***First National Bank & Trust*** case challenging the federal credit union regulatory agency's interpretation and application of field of membership restrictions for federal credit unions, banks were found to be appropriate parties for those purposes. The Missouri provisions limiting the ability of credit unions to expand also clearly benefits banks, which are among a credit union's competitors. Because the General Assembly has

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[4] Other states have found standing to exist in similar cases based upon the injury alone, declining to adopt the federal zone of interests criterion. (See, e.g., ***Iowa Bankers Ass'n v. Iowa Credit Union Dept.,*** 335 N.W.2d 439, 444 (Iowa 1983), and ***New Hampshire Bankers Ass'n v. Nelson,*** 302 A.2d 810, 811 (N.H. 1973).)

limited what credit unions may do, banks as beneficiaries of that statutory regulation should be deemed to be adversely affected and aggrieved by regulatory determinations that allow an expansion of the markets that a state credit union may serve beyond the limits that have been statutorily established.

The Circuit Court's dismissal of Count I for lack of standing should be reversed and the contested case claims should be remanded for the trial court's consideration of them on the merits.

II.

THE CIRCUIT COURT ERRED IN GRANTING THE MOTIONS TO DISMISS COUNTS II AND III OF THE PETITION FOR LACK OF STANDING TO MAINTAIN THE ACTION FOR NONCONTESTED CASE JUDICIAL REVIEW OF THE CREDIT UNION COMMISSION'S DECISION GRANTING THE APPLICATION AN "EXEMPTION" FROM REQUIREMENTS AS STRICT AS CERTAIN FEDERAL LAWS AND REGULATIONS THAT ARE INCORPORATED INTO THESE MISSOURI STATUTES, BECAUSE:

(A) APPELLANTS HAVE A LEGAL RIGHT TO BE FREE FROM ILLEGITIMATE COMPETITION WITHIN THE STATE'S COMPETITIVELY REGULATED FINANCIAL INDUSTRY, WHICH RIGHT WAS BREACHED BY THE COMMISSION'S "EXEMPTION" ACTION, IN THAT ILLEGITIMATE COMPETITION WOULD RESULT FROM THE ADDITION OF A NEW FIELD OF

MEMBERSHIP GROUP CONTAINING MORE THAN 3,000 MEMBERS WHEN THE APPLICABLE STANDARDS ESTABLISHED BY THE INCORPORATED FEDERAL REGULATIONS WOULD NOT HAVE ALLOWED SPRINGFIELD TELEPHONE EMPLOYEES CREDIT UNION TO EXPAND INTO AN ENTIRE TELEPHONE AREA CODE; AND (B) APPELLANTS ARE AMONG THE INTENDED BENEFICIARIES OF THE MISSOURI STATUES LIMITING THE FIELDS OF MEMBERSHIP OF CREDIT UNIONS, AND THE INTERESTS OF APPELLANTS ARE WITHIN THE ZONE OF INTERESTS PROTECTED BY § 370.081.2, RSMO.

In Counts II and III of their Petition, Appellants seek judicial review of the noncontested case decision of CUCOM through which it granted STECU an "exemption" from restrictions on geographic area expansions at least as stringent as those applied by federal law to federal credit unions (L.F. 39-40, Appendix A33-A34), because of the express language incorporating federal laws and regulations that the Missouri General Assembly inserted into Section 370.081.2, RSMo. (Appendix, page A49) Under those federal regulations (63 FR 71998), a federal credit union would not be allowed to expand into an area consisting of an entire telephone area code. (L.F. 110-120)

Nothing in Chapter 370 provides for the judicial review of CUCOM decisions on these Section 370.081.2 matters. If the group sought to be added by a credit union's expansion application has in excess of 3,000 members, CUCOM in some instances has

some authority to make certain determinations that would or would not allow the Director to proceed with his review and make his decision on the application. No administrative hearing on that type of CUCOM decision is required by statute, however. Consequently, such decisions are reviewable by a court, if reviewable at all, as noncontested cases under § 536.150.1, RSMo.

Section 536.150.1 provides the right to judicial review whenever there was an agency decision "determining the legal rights, duties or privileges of any person" and judicial review of that decision is not otherwise available, in which event the courts are to hear and decide "whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege." Because the word "aggrieved" does not appear in that section, and because the words, "legal rights, duties or privileges" are used, the analysis of the statutory basis for standing in noncontested cases is somewhat different than that employed in contested cases.

This analysis begins with a search for a "legal duty," "right" or "privilege" which would make a § 536.150 judicial review appropriate. Appellants believe that they do have a "right" in this case that was determined by the CUCOM decision, because they have, at the very least, the legal right to be free from illegitimate competition under the ***Legal Communications*** decision. Given the wording in § 370.081.2, an "exemption" was not available for STECU in this case because contrary federal rules relating to the size of membership groups *do* exist. Consequently, the expansion by STECU into an entire telephone area code in a manner not authorized by Section 370.081.2, RSMo would not

only be illegitimate; it would also be illegal. It is the right to be free from illegitimate competition that the Appellants should be allowed to protect through judicial review of this noncontested case decision by CUCOM.

There was nothing "unusual" about the scenario of the judicial review of the administrative decision made in ***Legal Communications*** that distinguishes it from the noncontested case claim made this case. As was and is true in every noncontested case, "no specific procedure was set up by the legislature" for that review -- which is why it became a § 536.150 case. The same is true for Counts II and III of Appellants' Petition raising their noncontested case claims, because no specific procedure was set up by the legislature for review of CUCOM decisions on exemptions.

The Circuit Court's analysis of the Section 536.150 challenges fails to comprehend the agency action for which this review is being sought. This confusion led the court to erroneously conclude that this review is precluded by the simultaneous contested case review of CUCOM's decision affirming the Director's approval of the STECU application. But the Plaintiff's Section 536.150 challenges in Count II and Count III clearly request the review not of the last CUCOM decision in this matter (the affirmance of the Director's approval), but rather of the earlier CUCOM decision: its August 3, 2000 resolution "exempting" the STECU application from the restrictions imposed by federal law which are incorporated expressly into Missouri law by Section 370.081.2, RSMo, when the application of those restrictions would and should have prevented the subsequent approval of the STECU application. The fact that later decisions by the Director and CUCOM were

contested case matters should not preclude the separate, independent review of the earlier, noncontested case CUCOM decision.

That is also why the trial court's decision was in error in saying that these Counts are barred by the "other provisions for judicial inquiry" provision in Section 536.150. While there is another provision for inquiry into the second CUCOM decision (the one affirming the Director's approval of the STECU application), there is no other provision for direct inquiry into the first CUCOM decision (the one granting an "exemption" from requirements at least as strict as those contained in federal law).

In ***Legal Communications***, the Eastern District, in considering standing, clearly looked at the purpose of the statute that arguably made the administrative decision illegitimate. The Western District tried to characterize this as an inappropriate review of the "substance" of the Appellants' claims; but that is the only way in which a standing claim can be addressed and resolved in a noncontested case. Consideration of the "substance" of standing claims must also have occurred in other noncontested cases in which standing was found to exist, such as ***Mo. Nat. Educ. Ass'n*** and ***State ex rel. Crouse v. City of Savannah,*** 696 S.W.2d 346 (Mo.App. W.D. 1985).

In ***Kish v. Chilhowee R-IV School Dist.***, 814 S.W.2d 649, 653 (Mo.App. W.D. 1991), the Court wrote:

> In an uncontested case, a party whose rights are affected by the agency decision is entitled to judicial review of that decision pursuant to § 536.150, RSMo 1986.

In the present case, Appellants have been and are parties whose legal rights are affected by the first decision of CUCOM, because their property interests are or would be negatively impacted by the illegitimate competition the expansion of STECU would create, contrary to the field of membership limitations imposed by the operation of § 370.081.2, RSMo. Therefore, under ***Kish***, and under the noncontested cases of ***Legal Communications Corp.*** and ***Mo. Nat. Educ. Ass'n***, Appellants should also be deemed to have standing for Counts II and III of their Petition under § 536.150, RSMo.

While under § 536.150, a party should obtain judicial review if the agency decision determines a legal right of that person, Missouri courts have sometimes also utilized the intended beneficiary and zone of interests tests in these analyses. Such an analysis was clear, direct and determinative in the ***Mo. Nat. Educ. Ass'n*** decision, which held that the plaintiffs did have standing because the certified staff of a public school district "is the intended beneficiary of section 165.016." (***Mo. Nat. Educ. Ass'n,*** 34 S.W.3d at 276) Under existing law governing standing in noncontested cases, if a plaintiff has a legally protectable interest and is an intended beneficiary within the zone of interests of the statute in question, that plaintiff should also have a constitutional right to judicial review under Article V, § 18 of the Missouri Constitution. These Appellants meet both of those criteria for purposes of Counts II and III of their petition, utilizing the same reasoning set forth in Point I.C. above, for purposes of the review they seek of the CUCOM decision to "exempt" the STECU application from the reach of the incorporated federal regulations which would prohibit this expansion under § 370.081.2, RSMo. The only difference is that in this

noncontested case analysis, the statute of which Appellants are intended beneficiaries, and the statute which creates the zone of interests within which they fall, is § 370.081.2, RSMo, which provides effective field of membership limitations on groups having in excess of 3,000 members through federal regulatory limitations on federal credit unions; while in the contested case analysis, the Appellants were among the intended beneficiaries of and within the zone of interests created by § 370.080.2(2), RSMo.

The Western District clearly understood that the noncontested case review dealt with a CUCOM decision made prior to the Director's approval of the STECU expansion application. One thing the Western District did not recognize, however, was the potential ramification of this challenge: for if the CUCOM exemption decision is set aside, so must be the Director's decision also, for the failure of a necessary condition precedent. Because the trial court erroneously applied the law in dismissing Counts II and III for lack of standing, its decision should be reversed, and these claims should also be remanded to the trial court for consideration on the merits.

III.

THE CIRCUIT COURT ERRED IN GRANTING THE MOTIONS TO DISMISS COUNT IV OF THE PETITION SEEKING A DECLARATORY JUDGMENT UNDER § 536.050, RSMO ON THE VALIDITY OF 4 CSR 105-3.010(1), BECAUSE THE APPELLANTS HAVE STANDING FOR THIS PORTION OF THEIR ACTION UNDER § 536.053, RSMO, GIVEN THE FACT THAT THEY ARE OR MAY BE

AGGRIEVED BY THE APPLICATION OF THE ADMINISTRATIVE RULE WHICH WOULD ALLOW EXPANSIONS OF CREDIT UNIONS INTO AREAS WHICH ARE NOT AUTHORIZED FOR THAT PURPOSE BY THE APPLICABLE STATUTE, IN THAT: (A) THE WORDING CONTAINED IN § 536.053, RSMO EVIDENCES A LEGISLATIVE INTENTION TO EXPAND THE POOL OF PERSONS WHO MAY CHALLENGE THE VALIDITY OF AN ADMINISTRATIVE RULE; (B) SUCH APPLICATIONS OF THE RULE WOULD NEGATIVELY AFFECT APPELLANTS' LEGAL RIGHT TO BE FREE FROM COMPETITION WHICH IS ILLEGITIMATE DUE TO THE FACT THAT NEITHER A TELEPHONE AREA CODE NOR SOME OF THE OTHER AREAS INCLUDED IN THAT RULE ARE A "WELL-DEFINED LOCAL NEIGHBORHOOD, COMMUNITY OR RURAL DISTRICT" TO WHICH THE FIELD OF MEMBERSHIP OF A GEOGRAPHIC CREDIT UNION MUST BE RESTRICTED UNDER § 370.080.2(2), RSMO; AND (C) APPELLANTS ARE AMONG THE INTENDED BENEFICIARIES OF THE MISSOURI STATUTE LIMITING THE FIELDS OF MEMBERSHIP OF CREDIT UNIONS, AND THE INTERESTS OF APPELLANTS ARE WITHIN THE ZONE OF INTERESTS PROTECTED BY THAT STATUTE.

Rules which conflict with statutes are without legal effect. (See, e.g., ***State Dept. of Labor and Indus. Relations, Div. of Labor Standards v. Board of Public Utilities,*** 910 S.W.2d 737, 741 (Mo.App. S.D. 1995).) Count IV of the Appellants' Petition seeks to

have the rule in question (4 CSR 105-3.010(1), Appendix page A37) invalidated because it conflicts with Section 370.080.2(2), RSMo, which limits geographic credit unions to a "well-defined local neighborhood, community or rural district," for under none of those terms can a telephone area code, a zip code or a county fit.

The Circuit Court's decision does not directly address either the Appellants' statutory basis for seeking judicial review of a CUCOM rule or the statutory basis for their standing to do so. On page 7 of its judgment (Appendix page A44), that Court discussed the declaratory judgment relief sought primarily in the context of Section 536.150. However, as the Petition and the Appellants' brief clearly set out with regard to Count IV, the declaratory judgment sought through that count was not a part of the Count II and Count III review of a noncontested case decision by CUCOM, but rather was a direct request for judicial review of 4 CSR 105-3.010(1) under the statutory rights established for that purpose by Section 536.050, RSMo. Similarly, both the Petition and the brief raised and discussed the different standing requirements for those reviews that are contained in Section 536.053, RSMo. Without reference to either of those statutes or to any other authority governing standing in a direct challenge to a rule (as opposed to a challenge to other types of administrative agency decisions), the Court simply said that the standing requirements in such cases are no different from Section 536.150 requirements.

The legislature has for many years authorized persons to bring judicial challenges to the validity of administrative rules under the provisions of Section 536.050, RSMo. In 1999, however, the General Assembly added Section 536.053, RSMo, which established

new standing standards for purposes of such declaratory judgment actions. Section 536.053 has not yet been construed in a reported case.

It is significant that the General Assembly did not limit standing in these cases to persons who "are aggrieved" by an agency rule. Rather, the General Assembly chose expressly to include in the field of persons who can bring rule challenges any person who "may be aggrieved" by a rule promulgated by a state agency. In addition to their actual aggrievement (as set out above), these Appellants believe that they also may be aggrieved because of the Commission's rule interpreting "well-defined local neighborhood, community or rural district" to include an entire telephone code area, counties and zip codes.

Respondents will contend that the "or may be" wording does not expand the pool of potential rule-challengers but merely reflects the fact that "threatened" harm can be sufficient for standing. Appellants believe the expanded language has a broader impact, however. For one thing, the words "threatened applications" of the rules were included in § 536.050.1 long before § 536.053 was passed. Because the "threatened application" of a rule was already the basis for rule challenges, there would have been no need to include the "or may be" language in § 536.053 if that were the only legislative intention. The "or may be" wording can be construed not only as threatened aggrievements under a narrow construction of "aggrievement," but also as an expansion of the matters which may be considered to be potential aggrievements – that is, not only sure aggrievements, but also things which may or may not be aggrievements. It is the Appellants' position that the

legislature added the "or may be aggrieved" language in order to expand the pool of potential rule-challengers, so that for purposes of determining standing, a party does not have to show actual aggrievement, but only that it could be harmed in some way by the rule in question.

The Appellants have made an evidentiary showing of the adverse economic effects of the application of the rule in the STECU case. John Harlin, the President of Century Bank, testified at the hearing that the Director's decision on the STECU application would have an adverse effect on his bank, particularly in the area of loan demand and in his bank's ability to acquire deposits. (L.F. 159, lines 3-25 of Tr. 53; lines 1-20 of Tr. 54) He also testified about specific losses of accounts from his bank to another credit union. (L.F. 160, lines 23-25 of Tr. 60; L.F. 161, lines 1-25 of Tr. 61; lines 1-16 of Tr. 62) Max Cook, testifying on behalf of Appellant Missouri Bankers Association, stated that the effect of the decision would be adverse to member banks in that area through increased competition for and a migration of loans and deposits, and increased marketing expenses. (L.F. 167, lines 9-25 of Tr. 86; lines 1-2 and 24-25 of Tr. 87; lines 1-25 of Tr. 88) Even the Director of the Division of Credit Unions, John Smith, conceded the existence of economic competition between credit unions and banks. (L.F. 123, lines 14-16 of Dep. Tr. 115; L.F. 174, lines 9-11 of Tr. 115) Consequently, the Appellants have adequately supported their claim of the adverse effect of this rule and its application.

The fact that the Appellants are economic competitors of the regulated industry that benefits from this challenged rule should not be disqualifying for purposes of maintaining

an action under § 536.050, RSMo. These Appellants certainly have rights and interests that are impacted by the rule, and they meet the normal requirements for standing (an actual personal interest at stake, and a direct and substantial impact from the rule in question). The reasoning behind the "mere economic competitor" disqualification in some contested case decisions is much more attenuated in a direct challenge to the validity of a rule, particularly one that involves a heavily regulated industry, as here. When the claim is that a regulation has been promulgated that is contrary to law, that claim should not be discarded simply because the nature of the harm to the claimant is economic – particularly when the field of activity of the contending parties is purely an economic one. These Appellants should therefore be deemed to be "aggrieved" under § 536.053, RSMo under the same analysis of aggrievement that was set out relative to § 370.081.5, RSMo in pages 25-31 of this Brief. If that analysis is correct, then Appellants have statutory standing for this rule challenge because they "are aggrieved" or because they "may be aggrieved" by its application, even under a narrow construction of aggrievement.

While no authority currently exists to support the proposition that § 536.053 expands the pool of persons who may contest the validity of administrative rules, that is true not because courts have ruled in any other way, but rather because no final court opinion has addressed this issue at all (which only means, stated another way, that this is a case of first impression). Applying the plain meaning of the words used by the General Assembly, however, and the case law and its analysis as set out in the first portion of this

Brief, the Appellants should be deemed to have standing under § 536.053 to seek judicial review of 4 CSR 105-3.010(1).

If for any reason Appellants are not found to have statutory standing under § 536.053, then they should still be allowed to proceed with this rule challenge because they have a constitutional right to maintain it under Article V, § 18. The promulgation of a rule by an agency is an "administrative decision," and rules as well as other types of decisions may affect the "private rights" of parties. In this case, as set out above, 4 CSR 105-3.010(1) affects the private economic rights of the Appellants. Given the Appellants' legally protectable interest to be free from illegitimate competition, as explained in Point I. B. above (at pages 33-37), and particularly under the ***Legal Communications Corp.*** case, and given the Appellants' status as intended beneficiaries who are within the zone of interests protected by Section 370.080.2, RSMo, as explained in Point I. C. above (at pages 38-47), and under ***Mo. Nat. Educ. Ass'n, First National Bank & Trust***, and the other cited cases, Appellants should be deemed to be proper parties to bring this direct rule challenge under Article V, § 18 of the Missouri Constitution, as well as under Section 536.053, RSMo.

The trial court's decision dismissing Count IV for lack of standing was contrary to law and should be reversed, under the law and the standard of review set out above.

IV.

THE CIRCUIT COURT ERRED IN HOLDING THAT THE MISSOURI BANKERS ASSOCIATION (THE "MBA") LACKS ASSOCIATIONAL STANDING BECAUSE THE MBA MEETS ALL THREE OF THE ESTABLISHED TESTS FOR SUCH STANDING, IN THAT: (A) ITS MEMBERS WOULD OTHERWISE HAVE STANDING TO BRING SUIT IN THEIR OWN RIGHT (AS SHOWN IN THE PRIOR POINTS); (B) THE INTEREST THE MBA SEEKS TO PROTECT OF DEFENDING ITS MEMBERS FROM ILLEGITIMATE COMPETITION IS GERMANE TO ITS PURPOSE; AND

(C) PARTICIPATION OF INDIVIDUAL MEMBERS IS NOT NECESSARY FOR THE REQUESTED RELIEF OF THE REVERSAL OF THE ADMINISTRATIVE DECISIONS AND THE INVALIDATION OF THE RULE CHALLENGED IN THIS ACTION.

There are three elements in the judicial test for associational standing under ***Missouri Outdoor Advertising Ass'n v. Missouri State Highways and Transportation Comm'n,*** 826 S.W.2d 342, 344 (Mo. banc 1992).

The first element is whether an association's members would have standing on their own if they wanted to bring suit directly. The trial court held that the MBA has no standing as the statewide association of banks because no bank has standing for this administrative appeal. If any of the MBA's member banks *does*, however, have standing to bring this

appeal (or, stated another way, if the trial court's dismissal of any of the four counts is reversed in this case), then the MBA would meet the first test for associational standing.

The second element is whether the interests that the MBA seeks to protect are germane to its purpose. Direct evidence on this issue was provided by the President and CEO of the MBA, Max Cook, who testified that his association's purposes include representing the interests of the banking industry and protecting it from unfair competitive forces, which purposes the challenges to the actions of the Director and of CUCOM on the STECU application were deemed to advance by its Board of Directors. (L.F. 167, lines 7-21 of Tr. 87; L.F. 169, lines 12-20 of Tr. 93) (See also L.F. 7) There was no evidence to the contrary presented with regard to this issue.

The third element of associational standing is whether the participation of individual members is required for purposes of the claim asserted or the relief requested. In most cases on associational standing, this comes down to whether money damages have been requested or some other relief that is specific to an individual member is sought. As stated in ***Home Builders Ass'n,*** 32 S.W.3d at 615:

> A request for prospective relief usually does not require the participation of an organization's members in the lawsuit, although a request for monetary relief usually does require membership participation.

In the ***Home Builders'*** case, the association was held to have standing to challenge an ordinance enacted by the City of Wildwood which allegedly injured its members.

Similarly, the MNEA was found to have associational standing in the suit on behalf of its members challenging the State Board of Education's decisions granting school boards exemptions regarding some of their budgetary decisions. (***Mo. Nat. Educ. Ass'n***, 34 S.W.2d at 276) There is no requirement or need for MBA's members to participate personally or individually in this appeal. The relief requested is not specific to any individual MBA member.

A number of other associational challenges to administrative rules have been heard and determined. (See, e.g., ***Associated Gen. Contractors v. Dept. of Labor and Industrial Relations,*** 898 S.W.2d 587 (Mo.App. W.D. 1995); and ***Missouri Hosp. Ass'n v. Air Conservation Comm'n,*** 874 S.W.2d 380 (Mo.App. W.D. 1994).) The whole point of associational standing is that the association may (if it meets the three criteria) proceed as a party on behalf of its injured members.

Because the MBA meets the three tests for associational representation, the portion of the trial court's decision dealing with this issue should be reversed, as well. The Missouri Bankers Association should be allowed to participate in these proceedings, just as the Credit Union Commission allowed the Missouri Credit Union System to intervene and participate in the case below on behalf of its members.

CONCLUSION

The Credit Union Commission has seven members, and a majority of those individuals must be strongly aligned with the credit union industry.[5] To be both fair and effective, a review of the validity of CUCOM's construction and application of the statutory field of membership limitations cannot end with CUCOM itself. In a similar case in Nebraska, its Supreme Court held that there was "little question" of standing, because if standing was not found, "such an order would almost never be subject to challenge, nor could anyone raise the issue of whether statues were being compiled with or not." (***First Federal Savings & Loan Ass'n of Lincoln v. Dept. of Banking,*** 192 N.W.2d 736, 740 (Nebr. 1971))

Because it is a matter of importance in Missouri "whether statutes are being complied with or not," the order and judgment of the Circuit Court dismissing this action should be reversed, and the case should be remanded to the Circuit Court of Cole County for determinations on the merits, and for such other and additional proceedings as may be deemed appropriate by this Court.

Respectfully submitted,

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By:_____

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[5] § 370.061.2, RSMo

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CERTIFICATE OF SERVICE

I certify that on the 12th day of May, 2003, two copies of the foregoing Brief of the Appellants and one computer diskette of the foregoing Brief were hand-delivered to Mr. James B. Deutsch, 308 East High Street, Suite 201, Jefferson City, MO 65101, attorneys for Respondents Springfield Telephone Employees Credit Union and Missouri Credit Union System, Inc., to Mr. Todd Stanton Jones, Assistant Attorney General, 221 West High Street, 8th Floor, Jefferson City, MO 65102, attorneys for Respondent Director of the Missouri Division of Credit Unions, and to Ms. Christie Kincannon, Assistant Attorney General, 221 West High Street, 8th Floor, Jefferson City, MO 65101, attorneys for Respondent The Credit Union Commission of the State of Missouri, and were mailed, postage prepaid, to Mr. Michael J. Wamboldt, Assistant Attorney General, 3100 Broadway, Suite 609, Kansas City, MO 64111, attorneys for Respondent The Credit Union Commission of the State of Missouri, to Mr. Alex Bartlett, Husch & Eppenberger, LLC, 235 East High Street, P.O. Box 1251, Jefferson City, MO 65102, attorneys for Amicus Curiae American Bankers Association, and to Mr. Eric L. Richard, General Counsel, Credit Union National Association, 601 Pennsylvania Avenue, N.W., South Building, Suite 600, Washington, D.C. 20004, attorney for Amicus Curiae Credit Union National Association.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) and that it contains 14,107 words. I also certify that the diskettes provided to this Court and counsel have been scanned for viruses and are virus-free.

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John S. Pletz