SC97591

IN THE SUPREME COURT OF MISSOURI

MISSOURI COALITION FOR THE ENVIRONMENT and CAROLYN JOHNSON,

Appellants,

v.

STATE OF MISSOURI and CLEAN WATER COMMISSION OF THE STATE OF MISSOURI,

Respondents.

From the Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Circuit Judge

RESPONDENTS' BRIEF

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INTRODUCTION

Appellants lack standing. The Missouri Coalition for the Environment and Carolyn Johnson (collectively, the "Coalition") challenge legislative action even though they do not claim to have been aggrieved and admit they do not have taxpayer standing. Lacking standing, the Coalition petitions for a new rule allowing any Missouri citizen to "enforce the law." Granting the Coalition's request would eviscerate traditional standing principles.

Moreover, the Coalition's claims are not ripe because they speculate about how legislation providing flexibility for appointments to the Clean Water Commission might be implemented at some future date. But even if its worst-case scenario were realized and the Clean Water Commission contained a membership composition different from the world before H.B. 1713 (2016), the Coalition has not alleged any direct harm it or its members would suffer.

The Circuit Court dismissed the Coalition's claims because it lacked standing. In the interest of judicial economy, the Circuit Court considered – and rejected – the Coalition's constitutional challenges. These challenges fail because the Clean Water Commission's composition is not outside the bill's single subject of "water systems." Nor does this composition violate the bill's original purpose, which the Coalition also argues is "water systems." Even if the Coalition survives the grave standing and ripeness defects, its claims fail on the merits. This Court should affirm the judgment below.

STATEMENT OF FACTS

Missouri's Clean Water Commission is composed of seven members appointed by the Governor with the advice and consent of the Senate. § 644.021.1, RSMo.[1] In order to serve, all Commission members must satisfy certain qualifications:

1. All members "shall be representative of the general interest of the public and shall have an interest in and knowledge of conservation and the effects and control of water contaminants." *Id.*
2. All members "shall have demonstrated an interest and knowledge about water quality." *Id.*
3. All members "shall be qualified by interest, education, training or experience to provide, assess and evaluate scientific and technical information concerning water quality, financial requirements and the effects of the promulgation of standards, rules and regulations." *Id.*
4. No member "shall receive, or have received during the previous two years, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit pursuant to any federal water pollution control act as amended and as applicable to this state." *Id.*

[1] All statutory citations are to the Revised Statutes of Missouri unless otherwise noted.

In addition to these general requirements, Section 644.021.1 requires the Commission to include the viewpoints of three types of members: (1) members of the public; (2) members "knowledgeable concerning the needs of agriculture, industry or mining and interested in protecting these needs in a manner consistent with the purposes of sections 644.006 to 644.141," the Missouri Clean Water Law; and (3) a member "knowledgeable concerning the needs of publicly owned wastewater treatment works." *Id.*

As amended by H.B. 1713, Section 644.021.1 provides the Governor and the Senate with flexibility in these appointments: up to four Commission members may be members of the public, and at least two Commission members—and possibly, but not necessarily, more—shall be knowledgeable of agriculture, industry, or mining needs.[2] *Id.*; *see also* L.F. D17, 4-5. The only inflexible requirement is that a single Commission position must be dedicated to a member knowledgeable of publicly owned wastewater treatment works. § 644.021.1, RSMo.

Before H.B. 1713, the Governor and the Senate did not have such flexibility. In the previously effective version of Section 644.021, four Commission members must be members of the public, two Commission

[2] Similar flexibility is provided with regard to partisan affiliation: "No more than four of the members shall belong to the same political party." § 644.021.1, RSMo.

members must be knowledgeable of agriculture, industry, or mining needs, and one Commission member must be knowledgeable of publicly owned wastewater treatment works. L.F. D17, 4-5.

H.B. 1713's amendment to the Commission's composition in Section 644.021.1 occurred on the Senate floor. L.F. D15, 115-16. The Senate body adopted the amendment. *Id.* at 116. In its final form, H.B. 1713 passed the Senate with 30 "yes" votes and only two "no" votes, and passed the House with 112 "yes" votes and 37 "no" votes. L.F. D16, 5; D18, 67-68. Similar margins in the General Assembly voted to override the Governor's veto: the override passed the House with 111 "yes" votes and 46 "no" votes, and passed the Senate with 25 "yes" votes and five "no" votes. L.F. D22, 23-24; D23, 18-19.

The Coalition challenged H.B. 1713 in a petition for declaratory and injunctive relief filed February 7, 2017. L.F. D2. In its petition, the Coalition highlighted its participation in various Commission activities and membership in certain stakeholder groups and committees. *Id.* at ¶¶ 2-3.

The Coalition conducted discovery throughout the next year. L.F. D1, 7. In March 2018, the Coalition moved for summary judgment. L.F. D4. Simultaneous with filing their opposition to summary judgment, the State and the Commission moved to dismiss because the Coalition lacked standing. L.F. D26. The Coalition admitted that it did not have taxpayer standing. L.F. D27, 3-4. Instead, the Coalition argued that it had standing under Section 516.500,

RSMo. *Id.* at 5-6. Even if the Circuit Court determined that Section 516.500 required a party to be "aggrieved," the Coalition argued it was aggrieved because "HB 1713 passed through prohibited legislative procedure and is thus an immediate threat to Plaintiffs' interests in the legislature's adherence to constitutional procedure." *Id.* at 7.

The Circuit Court dismissed the Coalition's petition for lack of standing. L.F. D29. The court ruled that "Plaintiffs have not alleged any facts to show that they have suffered, or will suffer in the future, a direct adverse effect, either from the legislature's conduct in enacting HB 1713 (2016), or from the implementation of § 644.021, RSMo 2016." *Id.* at 6. Accordingly, "[t]hey have not shown that they have standing to sue based on the general standard." *Id.* The Circuit Court also considered and rejected the Coalition's claims on the merits. *Id.* at 10-16.

STANDARD OF REVIEW

Standing is a question of law that the Court reviews *de novo*. *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008). When standing is resolved on a motion to dismiss, the appellate court assumes that all of the facts alleged in the plaintiffs' petition are true. *St. Louis Cty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014).

If the Court reaches the merits of the Coalition's claims, this Court's review of the Circuit Court's dismissal of the Coalition's constitutional challenges also is *de novo*. *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012) (per curiam); *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. banc 2002) (per curiam). Constitutional claims against a bill's passage are strongly disfavored by the courts, and therefore the Court "interprets procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). Courts must presume that the legislature enacted a constitutional bill and show a great deal of deference towards the legislative process. *Id.*

ARGUMENT

I. The Coalition does not have standing because it admits it does not have taxpayer standing, it cannot establish traditional standing, it does not have standing under Section 516.500, and its claims are unripe. (Responds to the Coalition's Point I).

The Coalition's position would allow anyone to challenge any legislation, regardless of whether the plaintiff suffered any discrete injury or whether the legislation involves spending public money. This position contradicts this Court's carefully constructed taxpayer standing doctrine, disrupts traditional standing requirements, and misconstrues Section 516.500's plain language.

"Standing is an antecedent to the right to relief." *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). "When a question of standing exists, this Court has a duty to resolve that question before reaching substantive issues." *Airport Tech Partners, LLP v. State*, 462 S.W.3d 740, 744 (Mo. banc 2015). "Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action." *E. Mo. Laborers Dist. Council v. St. Louis Cty.*, 781 S.W.2d 43, 45–46 (Mo. banc 1989). "In the absence of standing, this Court cannot grant relief, nor can it give an advisory opinion." *Airport Tech Partners,* 462 S.W.3d at 748.

The Coalition admits it does not have taxpayer standing. In addition, the Coalition cannot establish a legally cognizable interest in the subject matter or a threatened or actual injury. Section 516.500 does not change these

standing principles. Finally, even if the Coalition had standing, its claims are not ripe and should not be considered at this time.

A. The Coalition admits that it does not have taxpayer standing.

The Coalition admitted to the Circuit Court that it did not have taxpayer standing. L.F. D27, 3-4. Citing this Court's decision in *Manzara*, the Coalition acknowledged, "Taxpayer standing is not available here in the strict sense defined by the Supreme Court as the direct expenditure of money or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities." *Id.* at 3. The Coalition made clear it had unsuccessfully attempted to establish taxpayer standing: "The Court may take it as an admission by Plaintiffs that they were not able, through discovery, to find any direct payment of tax revenue for the expenses of the Clean Water Commission." *Id.* at 3-4.

On appeal, the Coalition notes its admission to the Circuit Court and does not argue taxpayer standing exists.[3] *See* App. Br. 8, 12-13. The Coalition acknowledges that "not every law passed by the General Assembly results in 'a direct expenditure of funds generated through taxation,'" but still claims standing to challenge H.B. 1713 on the belief that taxpayers must be able to

[3] The Coalition does not ask this Court to revisit the requirements for taxpayer standing. "Without such briefing by the taxpayers, it would be inappropriate for this Court to analyze whether taxpayer standing should be expanded." *Manzara*, 343 S.W.3d at 659 n.8.

enforce the law. App. Br. 13. The Coalition is mistaken. *See Manzara*, 343 S.W.3d at 663 (calling it "an exaggeration" that a taxpayer has no recourse if there is no standing to challenge legislation); *see also* Thomas C. Albus, *Taxpayer Standing in Missouri*, 54 J. Mo. B. 199, 202 (1998) ("Requiring that plaintiffs be taxpayers narrows the class of people who may challenge allegedly illegal public acts, and requiring pecuniary loss of some kind limits the kind of illegal acts which may be challenged by a taxpayer lawsuit.").

B. The Coalition does not have traditional standing because it has not established a legally cognizable interest in the subject matter or a threatened or actual injury.

Standing requires that a party seeking relief have a legally cognizable interest in the subject matter and a threatened or actual injury. *E. Mo. Laborers Dist. Council*, 781 S.W.2d at 46. This Court "has consistently required that plaintiffs have some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome." *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008). "For a party to have standing to challenge the constitutionality of a statute, he must demonstrate that he is '*adversely affected by the statute in question* . . . .'" *W.R. Grace & Co. v. Hughlett*, 729 S.W.2d 203, 206 (Mo. banc 1987) (quoting *Ryder v. County of St. Charles*, 552 S.W.2d 705, 707 (Mo. banc 1977)) (emphasis original). The party seeking relief has the burden of establishing that they have standing. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). The Circuit Court

found that the Coalition and its members "have not alleged any facts to show that they have suffered, or will suffer in the future, a direct adverse effect, either from the legislature's conduct in enacting HB 1713 (2016), or from the implementation of § 644.021, RSMo 2016." L.F. D29, 6.

i. The Coalition does not have a legally cognizable interest because it has no right to a certain composition of the Commission.

The Coalition[4] has failed to establish it has a legally cognizable interest. The Coalition has cited no authority that indicates that it has a legally protectable interest to a certain composition of the Commission. *See St. Louis Cty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014) ("Plaintiffs are interested in obtaining grant money, but they have no legally protectable interest in the receipt of discretionary grant money."). The legislative and executive branches created the Commission and its composition parameters by statute in 1972, and these branches may amend the statute in the same manner. Under Section 644.021, the Governor has the legally cognizable interest of

[4] It is unnecessary to evaluate associational standing for the Coalition because neither Ms. Johnson nor any other Coalition member has standing to bring this lawsuit in his or her own right. *See Mo. Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (Mo. banc 1997) (citing *Mo. Outdoor Adver. Ass'n, Inc. v. Mo. State Highways and Transp. Comm'n*, 826 S.W.2d 342, 344 (Mo. banc 1992)).

appointment, and the Senate has the legally cognizable interest of advice and consent for appointments.

This Court has recognized the difference, for standing purposes, between an entity that appoints and an individual indirectly affected by the appointments. *See Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002). In *Ste. Genevieve*, the school district and an individual taxpayer challenged a city ordinance adopting an amended redevelopment plan that increased project costs through expanded use of tax increment financing (TIF) revenues. *Id.* at 9-10. The city had not reconvened a TIF commission, to which the school district had the authority to appoint members. *Id.* at 9. The Court found that the school district "has a legally protected interest, conferred by statute, in appointing members to the TIF commission." *Id.* at 10. The individual taxpayer also had standing, "although his right to do so is less clear than the right of the school district." *Id.* Even though the individual taxpayer had been impacted by the failure of the TIF commission to meet, and may have cared about the composition of that commission, the Court found the individual only had standing as a taxpayer because the project would cost the district and the city future tax revenue. *Id.* at 10-11.

Instead of asserting a legally protectable interest in the case, the Coalition openly argues that it need not be "aggrieved" at all to assert standing,

App. Br. 16-17, and that "[e]very Missouri citizen has an interest in a legislature that observes the state constitution." App. Br. 13. But it is black-letter law that "the generalized interest of all citizens in constitutional governance" is not an injury that confers standing. *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 217 (1974)); *see also Allen v. Wright*, 468 U.S. 737, 754 (1984) (holding that "an asserted right to have the Government act in accordance with law is not sufficient" to establish standing); *Mo. Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (Mo. banc 1997) (holding that the Missouri Coalition for the Environment "does not claim any concrete injury beyond the non-implementation of its preferred policy choices," and that "this is not sufficient to establish standing").

ii. The Coalition has not established a threatened or actual injury from the Commission's composition.

The Coalition also asserts that it brought this action "to vindicate Plaintiffs' interests in clean water and in participating in the proceedings of the Commission." App. Br. 6. Because these general interests do not establish a threatened or actual injury, neither provides standing.

The Coalition's sole support for its alleged interest in clean water was Ms. Johnson's statement that she has a "longstanding personal and professional interest in clean water as an essential of life and in the proper

issuance and enforcement of permits for the protection of water quality." L.F. D8, ¶4. The Coalition has not presented any plausible, non-speculative allegation that H.B. 1713's changes to the Commission's composition creates a threatened or actual injury to the interest in clean water, and it could not do so. Nor has the Coalition made any plausible allegation that the composition existing before H.B. 1713 better protected clean water. Moreover, Ms. Johnson's assertion of a generalized interest in "clean water" is no different than a generalized interest in ensuring that the government complies with the law, which is insufficient for the reasons stated above.

In fact, any such allegation that the potential changes to the Commission's composition will adversely impact clean water would be inherently speculative and implausible. Contrary to the Coalition's position, all Commission members "shall be representative of the general interest of the public and shall have an interest in and knowledge of conservation and the effects and control of water contaminants." § 644.021.1, RSMo. In addition, all Commission members "shall have demonstrated an interest and knowledge about water quality." *Id.* Furthermore, the provision designating Commission members with knowledge of agriculture, industry, or mining needs specifically requires these members to be "interested in protecting these needs in a manner consistent with the purposes of sections 644.006 to 644.141," the Missouri

Clean Water Law.[5] *Id.* This includes the state's policy to "protect, maintain, and improve" water quality. § 644.011, RSMo.

Commission members with knowledge of agriculture, industry, or mining needs are required by law to act consistently with the state's policy of protecting and improving water quality. Implicitly suggesting that these members do not care about clean water as much as public members is a speculative and inaccurate characterization that is unfair to Missouri farmers and businesses.[6]

The Coalition also claims an interest due to its participation in Commission proceedings, such as participation in rulemaking processes and membership in various stakeholder working groups. L.F. D27, p. 5; L.F. D7, ¶¶3, 4. But this Court already has rejected this same argument by the Coalition. *Mo. Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (Mo. banc 1997). Just as in this case, in *Missouri Coalition*, the

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[5] Members representing the public are not subject to an express requirement to act in a manner consistent with the purposes of the Missouri Clean Water Law. *See* § 644.021.1, RSMo.

[6] *See, e.g.*, Great Rivers Environmental Law Center Press Release, "Group Appeals Unconstitutional Passage of Law Giving Industry Control of Clean Water Commission," Dec. 17, 2018 (available at https://greatriverslaw.org/2018/12/17/group-appeals-unconstitutional-passage-of-law-giving-industry-control-of-clean-water-commission/) (last accessed Mar. 26, 2019) ("Missouri citizens rely on the legislature to represent all interests and not be in the pockets of narrow agricultural interests," said Carolyn Johnson. "The legislature failed to fairly represent the citizens and failed to protect natural resources when they passed [H.B. 1713].").

Coalition argued that it "actively participates in hearings before the Department of Natural Resources, that it is concerned with the effective enforcement of the [Missouri Solid Waste Management Law], and that it has 'devoted substantial efforts to lobbying for the enactment and effective enforcement of that law.'" *Id.* The Court found this was "not sufficient to establish standing" because the Coalition "does not claim any concrete injury beyond non-implementation of its preferred policy choices . . . ." *Id.*

The Coalition again has not made any plausible allegation that H.B. 1713's changes to the Commission's composition create a threatened or actual injury to the Coalition's membership or other Commission participation. Nor has the Coalition presented any allegation that the composition existing before H.B. 1713 better protected the Coalition's membership or participation. Regardless of the Commission's composition, the Coalition will continue to be able to participate fully in Commission proceedings, and H.B. 1713 imposes no restriction on that ability.

The Coalition has failed to plead or prove that it has both a legally cognizable interest in the subject matter and a threatened or actual injury. Accordingly, the Coalition has failed its burden to establish traditional standing.

C. Section 516.500 does not provide the Coalition with an independent basis for standing.

Section 516.500 provides a statute of limitations for challenging legislative actions on procedural grounds. The Coalition argues that Section 516.500 "is also a statute of standing" because "[i]t says who may file as well as when." App. Br. 17. This is simply not the case.

No part of Section 516.500 affirmatively addresses who may file challenges to legislation. The Coalition relies heavily on a textual argument based on a strained negative inference—the word "aggrieved" is not located in the first clause of Section 516.500, but it appears later in the text of the statute, so the Coalition concludes that the legislature intended that a party need not be "aggrieved" to file a lawsuit challenging legislation on procedural grounds. App. Br. 16-17. This analysis is not convincing because Section 516.500 provides limitations on when challenges may be raised, not affirmative grants of standing.[7]

Simply because "aggrieved" is not located in Section 516.500's first clause does not mean that Section 516.500 creates a litigation free-for-all. Nothing in the plain text of Section 516.500 states or implies that the statute

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[7] The Coalition also appears to suggest that an appellate statute, Section 512.020, RSMo provides "an alternative form of standing." But a statute setting forth who may appeal has no bearing on who may sue. Moreover, the mere filing of a lawsuit does not confer standing. *Airport Tech Partners, LLP v. State*, 462 S.W.3d 740, 745 (Mo. banc 2015).

purported to create a free-standing right of action for any non-aggrieved citizen to bring a procedural challenge to legislation. On the contrary, the plain text of the statute directly presupposes that someone who is not "aggrieved" *cannot* bring such a challenge at all. *See* § 516.500, RSMo. The statute provides: "No action alleging a procedural defect in the enactment of a bill into law shall be commenced, had or maintained by any party later than the adjournment of the next full regular legislative session following the effective date of the bill as law, *unless it can be shown that there was no party aggrieved who could have raised a claim within that time*." *Id.* (emphasis added). Thus, the statute makes a limited exception to the statute of limitations for procedural challenges—the exception applies in cases where no challenge could have been brought during the limitations period because there was "no party aggrieved who could have raised a claim within that time." *Id.*

In other words, the statute plainly presupposes that, if no party was "aggrieved," then no challenge could have been brought—otherwise the exception makes no sense. This is exactly what the Circuit Court determined. L.F. D29, 9-10 ("§ 516.500 clearly requires that a plaintiff be *aggrieved*. This provision does not eliminate the requirement that a plaintiff must have standing to bring the action within an appropriate time; rather, it codifies the standing requirement.") (emphasis original). By arguing that the statute

means that a non-aggrieved party may bring a challenge, the Coalition contradicts both the plain text and the underlying logic of the statute.

In addition, the clear purpose of the statute—as reflected in Judge Holstein's concurrence in *Hammerschmidt*, on which the Coalition heavily relies—was to place reasonable *restrictions* on the ability to bring procedural challenges to state statutes. By contrast, the Coalition interprets the statute in a way that would radically *expand* the ability to bring procedural challenges to state statutes. Thus, the Coalition's interpretation turns the statute on its head.

The Coalition's sole textual argument is to make an oblique negative inference from the absence of the word "aggrieved" before "any party" in the first clause of the first sentence of the statute, as compared to the inclusion of the word "aggrieved" in the second clause of the first sentence of the statute. But, as this Court has emphasized, such negative-inference arguments are to be "used with great caution," and "should be invoked only when it would be natural to assume by a strong contrast that that which is omitted must have been intended for the opposite treatment." *Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 179 S.W.3d 266, 270 (Mo. banc 2005). Here, the opposite is true—the context of the statute strongly confirms that a party *must* be "aggrieved" if they wish to bring a procedural challenge to a statute.

Further, the Coalition's textual argument would raise grave constitutional problems. Doctrines of standing are rooted in constitutional considerations, including the vesting clause of Article V, § 14(a). *Harrison v. Monroe County*, 716 S.W.2d 263, 266 (Mo. banc 1986) (per curiam). Whether the legislature could radically expand the doctrine of standing by statute—as the Coalition urges—would raise, at very least, difficult constitutional questions. This provides yet another reason to reject the Coalition's interpretation. *See Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685, 688 (Mo. banc 2006) (per curiam) ("If a statutory provision can be interpreted in two ways, one constitutional and the other not constitutional, the constitutional construction shall be adopted.").

Moreover, the Coalition's interpretation would not limit who could challenge Missouri legislation, since a resident of another state or another country could be considered "any party." Nothing in Section 516.500 or in Judge Holstein's concurrence indicates an intent to create a new, unlimited class of potential plaintiffs. *See* § 516.500, RSMo; *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 105 (Mo. banc 1994) (Holstein, J., concurring); *cf. Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes.").

The General Assembly speaks clearly when it addresses standing. *See, e.g.*, § 86.810, RSMo ("[T]he Board of trustees of any retirement system . . . or any political subdivision which funds such retirement system, shall have standing to seek a declaratory judgment . . . ."); § 136.303, RSMo ("A taxpayer shall have standing to bring a civil action . . . ."); § 188.220, RSMo ("Any taxpayer of this state or its political subdivisions shall have standing to bring suit . . . ."); § 441.710, RSMo ("Any of the following parties shall have standing to bring a civil action . . ."); § 536.053, RSMo ("Any person who is or may be aggrieved by any rule promulgated by a state agency shall have standing to challenge . . . ."); § 537.296.5, RSMo ("Concerning a private nuisance where the alleged nuisance emanates from property primarily used for crop or animal production purposes, no person shall have standing to bring an action for private nuisance unless the person has an ownership interest in the property alleged to be affected by the nuisance."). In the absence of clear language on standing, Section 516.500 is what it purports to be: a statute of limitations. Indeed, Section 516.500 is housed in Chapter 516, which is entitled "Statutes of Limitation." Section 516.500 does not purport to address standing or any other procedural or substantive issue.[8]

[8] Reading a change in standing requirements into a procedural statute like a statute of limitations could upend standing requirements for other actions. *See, e.g.*, § 536.050, RSMo (declaratory judgments brought by "any person").

Interpreting Section 516.500 as only a statute of limitations is consistent with this Court's jurisprudence. In the 25 years since Judge Holstein's concurrence and the enactment of Section 516.500, this Court has repeatedly rejected procedural challenges to legislation on grounds of standing—and all these cases would have been incorrectly decided if "any party" could bring suit. *See, e.g.*, *St. Louis Cty. v. State*, 424 S.W.3d 450, 453-54 (Mo. banc 2014) (holding government entities and officials lacked standing to challenge the constitutional validity of legislation relating to a fund for service of process fees); *Manzara v. State*, 343 S.W.3d 656, 664 (Mo. banc 2011) (holding taxpayers lacked standing to challenge the constitutional validity of legislation providing tax credits); *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 89 (Mo. banc 2008) (holding association and its members lacked standing to challenge the constitutional validity of legislation allowing midwifery). This Court should not reverse its well-settled precedent by expanding standing here. *See Manzara*, 343 S.W.3d at 662 ("Since *Newmeyer*, which was decided in 1873, taxpayer standing has required a challenge to an expenditure of public funds. This Court is mindful of stare decisis and declines to overrule *Newmeyer* and its progeny.").

D. The Coalition's claims are not ripe.

Even if the Coalition could establish standing, its claims still fail because they are not ripe. "Ripeness is determined by whether the parties' dispute is

developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character." *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013) (per curiam) (internal quotation omitted). "A court cannot render a declaratory judgment unless the petition presents a controversy ripe for judicial determination." *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 26 (Mo. banc 2003). A declaratory judgment "is not available to adjudicate hypothetical or speculative situations that may never come to pass." *Id.* at 25.

In *Missouri Soybean Association*, the Court affirmed the dismissal on ripeness grounds of a challenge to a Clean Water Commission decision to list certain waters of the State as impaired. *Id.* at 29. The Court determined the decision was not ripe because it did not require a change in the appellants' conduct by compelling or prohibiting any action, and it did not create any rights or obligations. *Id.* Different parties could be affected "in a variety of different ways – if at all." *Id.* "Review now, based on generalities and speculation, would require a crystal ball or, at least, a lively imagination," the Court reasoned. *Id.* "Review should occur only when claims of harm are 'more imminent and more certain' and the effects of the regulatory process to control water pollution are felt in a concrete way." *Id.*

Likewise, in *Schweich*, the Court dismissed as not ripe the State Auditor's claim relating to the Governor's announced budgetary withhold. *Schweich*, 408 S.W.3d at 779. Until the fiscal year ended without the State Auditor receiving the money at issue, "it could not be known whether the Governor merely was exercising his constitutional authority to control the rate of appropriation of these funds or whether they were being withheld or spent beyond their appropriation entirely." *Id.* Thus, the Court determined the State Auditor's claim was not yet ripe. *Id.*

The Coalition's claims also are not ripe because it has made no allegation that the Commission's composition has changed since H.B. 1713, and in fact it has not changed. Like the days before H.B. 1713, the Governor still could choose to appoint the exact same composition: four members representing the public, and two members with knowledge of agriculture, industry, or mining needs.[9] In fact, the current Clean Water Commission includes only two members designated for agriculture, industry, or mining positions. *See* Clean

[9] Under the flexibility provided by Section 644.021.1, RSMo, the Commission frets that the public could be excluded from representation at some point. Without speculating about the public relations issues that may cause the Governor and the Senate to avoid this outcome, the same "no more than four members" language also applies to partisan affiliation. The State is not aware of any challenges to Section 644.021.1 brought by the Democratic Party or Republican Party regarding lack of representation on the Commission, or the possibility that it may occur.

Water Commission, https://boards.mo.gov/userpages/Board.aspx?40 (accessed March 25, 2019).

The Coalition speculates that the Governor someday will appoint more than two members with knowledge of agriculture, industry, or mining needs; the Senate will confirm these appointments; and the appointees will make decisions that adversely affect the Coalition and its members. But all of these suppositions rest on speculation about contingent future events that have not yet occurred and may never occur. "A claim is not ripe for adjudication if it 'rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Geier v. Missouri Ethics Comm'n*, 474 S.W.3d 560, 569 (Mo. banc 2015) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).

Moreover, at each of these stages, the Coalition will have remedies. The Coalition can lobby the Governor to appoint or to not appoint certain individuals or types of individuals to the Commission. The Coalition can lobby the Senate to approve or to disapprove the Governor's Commission appointments. The Coalition can seek administrative or judicial relief if a future Commission renders a decision that adversely affects it.[10] The Coalition

[10] The Coalition certainly could seek relief from any substantive Commission decision that provided it with standing. MO. CONST. art. V, § 18; § 644.051.6, RSMo; § 644.071, RSMo. But even if a Governor appoints, and the Senate confirms, a composition with fewer public members or more members with

can lobby the Governor and the General Assembly to amend Section 644.021 to provide for a different Commission composition. The Coalition can support an initiative petition to make the statutory change if the Governor and General Assembly do not act. And the Coalition can seek to elect or defeat the Governor or Senators based on appointments that are made and confirmed, or statutory changes that are made or not made. *See Manzara v. State*, 343 S.W.3d 656, 663-64 (Mo. banc 2011) (citing elections and initiative petitions as appropriate recourse for taxpayers who disagree with a legislative action that does not involve a direct expenditure of state funds); *see also id.* ("Our system of government provides for checks and balances whereby taxpayers can hold public officials accountable for their acts.").

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knowledge of agriculture, industry, or mining needs than allowed before H.B. 1713, it is unlikely the Coalition or any private party could establish standing to challenge the Commission's composition created by H.B. 1713. Challenging the constitutional validity of a Commission member's service is through a *quo warranto* action, which a private party may not bring. *State ex inf. Dykhouse*, 509 S.W.3d 140, 149 (Mo. App. W.D. 2017); *Benne v. ABB Power T & D Co.*, 106 S.W.3d 595, 598 (Mo. App. W.D. 2003); *see also In re Trenton Farms RE, LLC v. Hickory Neighbors United, Inc.*, No. WD 81385, 2019 WL 73232, at *6-7 (Mo. App. W.D. Jan. 2, 2019), *reh'g and/or transfer denied* (Jan. 29, 2019), *transfer application filed with the Supreme Court of Missouri* (Feb. 12, 2019). Even if the Coalition or another private party could challenge individual Commission members' service outside of a *quo warranto* action, demonstrating that a party was "aggrieved" under Section 516.500, RSMo likely would require speculation regarding whom the Governor would have appointed to serve on a Commission with the previous composition requirements, whether those individuals would have been confirmed by the Senate, and how those individuals would have voted on the same issue. However, the Court need not resolve these issues to dismiss the Coalition's instant challenge.

The Coalition's claims are premised on speculation about contingent future events that have not occurred and may never occur. Even if the Court finds the Coalition has standing, which it does not, the Court should dismiss the Coalition's claims because they are not ripe.

II. H.B. 1713's single core subject is "the regulation of water systems," and each of its provisions fairly relate to that single subject. (Responds to the Coalition's Point II).

The Court should not reach the merits of the Coalition's claim because the Coalition lacks standing and its claims are unripe. But even if the case were justiciable, the Coalition's claims would fail on the merits because the statute does not violate the Constitution's single subject or original purpose requirements.

Article III, § 23 provides that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title[.]" The "bill as enacted is the only version relevant to the single subject requirement." *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001). Focusing on the final title of the bill, the test is whether all provisions of the bill "fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). As this Court has said for 150 years, the "'subject' within the meaning of article III, § 23, includes all matters that fall within or reasonable relate to the general core purpose of the proposed

legislation." *Id.* (citing *State v. Mathews*, 44 Mo. 523, 527 (1869)). "The subject of a bill may be 'clearly expressed by . . . stating some broad umbrella category' when a bill has 'multiple and diverse topics' within a single, overarching subject." *Am. Eagle Waste Indust. v. St. Louis Cty.*, 379 S.W.3d 813, 826 (Mo. banc 2012) (per curiam) (quoting *Jackson Cty. Sports Complex Auth. v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007)).

The Court has upheld bills with a similar scope as H.B. 1713 against single-subject attacks:

- "environmental control" included provisions relating to release of hazardous substances, USTs, and asbestos abatement projects. *Corvera Abatement Techs., Inc. v. Air Conservation Comm'n*, 973 S.W.2d 851, 862 (Mo. banc 1998).
- "environmental regulation" included provisions relating to a surface mining fee, improper waste disposal criminal penalties, and solid waste collection services for political subdivisions. *Am. Eagle Waste Indus.*, 379 S.W.3d at 826.
- "education" included provisions increasing taxes to fund education programs. *Akin v. Director of Revenue*, 934 S.W.2d 295, 301 (Mo. banc 1996).

- "transportation" included provisions relating to billboards. *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 328-29 (Mo. banc 2000).
- "health services" included provisions relating to health insurance, medical records, and standard information. *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 840-41 (Mo. banc 2001).
- "intoxicating beverages" included provisions relating to liquor control. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997).

H.B. 1713's title of "regulation of water systems" covered nine statutory provisions. The Coalition admits that eight of the nine statutory provisions "may fairly be said to relate to 'the regulation of water systems.'" L.F. D6, 5. This concession undercuts the Coalition's argument that the ninth provision, relating to the Clean Water Commission's membership composition, is unrelated to the "regulation of water systems."

This is demonstrated by a review of the other eight provisions in H.B. 1713. The Coalition admits that the design-build contract provisions in Section 67.5070 of H.B. 1713 relate to the "regulation of water systems." *Id.* Section 67.5070.4 allows for funding consideration of design-build contracts by the Water and Wastewater Loan Fund. L.F. D17, 1. The Coalition admits that

the Commission administers the Water and Wastewater Loan Fund. App. Br. 21. Thus, H.B. 1713's Section 67.5070 relates to the Commission.

The Coalition admits that the wastewater treatment system provisions in Section 644.200 of H.B. 1713 relate to the "regulation of water systems." L.F. D6, 5. The Coalition also admits that the Commission's oversight extends to "treatment facilities and sewer systems" and "wastewater treatment plants." App. Br. 21 (quoting § 644.026(15), RSMo and § 644.053.1(1), RSMo). Thus, H.B. 1713's Section 644.200 relates to the Commission.

The Coalition admits that the fluoridation of public water supplies provisions in Section 640.136 relate to the "regulation of water systems." L.F. D6, 5. The Coalition further admits that the Commission's oversight extends to "water supply for drinking water." App. Br. 21. Indeed, the Commission is charged with considering the impact its decisions may have on drinking water. § 644.143, RSMo. The Clean Water Commission also is required to implement the intended use plan developed by the Safe Drinking Water Commission. § 644.116, RSMo. Thus, H.B. 1713's Section 640.136 relates to the Commission.

Finally, the Coalition admits that the remaining five sections in Section 256 of H.B. 1713 relate to the "regulation of water systems." L.F. D6, 5. The Section 256 amendments relate to construction-related activities for public drinking water supply projects. L.F. D17, 2-4. The Coalition admits that the

Commission may authorize state assistance to local bodies "to assist them in the construction of public drinking water and water pollution control projects, . . ." App. Br. 21 (quoting § 644.101, RSMo). Though a separate funding source, H.B. 1713's Section 256 involves the same projects in which the Commission also may be involved.

In short, the Coalition admits that eight of nine sections of H.B. 1713 "may fairly be said to relate to 'the regulation of water systems.'" L.F. D6, 5. All eight sections involve or relate to the Commission and its regulatory powers. The Coalition's claim that "[n]othing in HB 1713 assigns any role to the CWC with regard to water systems" is unavailing. App. Br. 21.

H.B. 1713 is not remotely similar to the few bills cited by the Coalition that this Court has struck down for violating Article III, § 23. In these cases, the subjects of the provisions at issue – their *raison d'etre* – were unrelated to the bills' subjects. For example, explosives permits did not relate to fish protection and preservation. *State v. Hurley*, 167 S.W. 965, 966 (Mo. 1914). Similarly, exclusive Supreme Court appellate jurisdiction over circuit court review of administrative decisions did not relate to public works construction wages. *United Bhd. of Carpenters & Joiners of Am., Dist. Council, of Kansas City & Vicinity v. Indus. Comm'n*, 352 S.W.2d 633, 635 (Mo. 1962). Likewise, a new form of county governance previously unknown in Missouri did not relate to elections. *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 103 (Mo.

banc 1994). Finally, statewide office candidates did not relate to political subdivisions. *Rizzo v. State*, 189 S.W.3d 576, 579 (Mo. banc 2006) (per curiam). Because the Clean Water Commission regulates water systems and H.B. 1713 relates to the "regulation of water systems," this case does not involve unrelated subject matter. Instead, this case resembles previous bills upheld by this Court relating to "environmental control" or "environmental regulation."

The Coalition further admits that "[t]he [Commission's] jurisdiction arguably intersects with water systems at a few points." App. Br. 21 In support, the Coalition identifies the Commission's assistance for public drinking water and water pollution control construction projects, implementation of a drinking water intended use plan, and administration of the Water and Wastewater Loan Fund. *Id.* Despite these admissions, the Coalition asserts the Commission has other, broader responsibilities. App. Br. 23. Yet a plain reading of "water systems" includes wastewater systems that are directly regulated by the Clean Water Commission, public drinking water systems that benefit from the Commission's rules and regulations that protect the "waters of the state," and natural water systems around the state like rivers and streams. *See* § 644.011, RSMo. Furthermore, the Coalition's position would require the General Assembly to encompass every duty of a

body or program in a bill's title, a requirement that would be neither reasonable nor helpful.

Finally, the Coalition argues that the use of "water systems" in H.B. 1713's title related to a defined term in Chapter 640. App. Br. 20-21. However, the Coalition has presented no plausible allegation that the General Assembly intended to reference a defined term.[11] H.B. 1713 includes numerous references to different water terms, including "wastewater or water treatment project" (Section 67.5070.2), "water resource project" (Section 256.437(6)), "public water supply" (Section 256.437(6)(c)), "multipurpose water resource program" (Section 256.440), "water supply needs" (Section 256.443.2), "public water system" (Section 640.136.1), "water quality" (Section 644.021.1), and "wastewater treatment system" (Section 644.200.1). "Water systems" is an appropriate umbrella term for these various water provisions. The Court "must adopt constitutional reading of statute if alternative readings exist." *Corvera Abatement Techs., Inc. v. Air Conservation Comm'n*, 973 S.W.2d 851, 862 (Mo. banc 1998) (citing *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326

[11] The Coalition asserts that "water systems" is not a statutory term outside of Chapter 640. App. Br. 20. However, quality and quantity of "surface and ground water systems" is addressed in a mining reclamation statute. § 444.825.1(13)(a), (c), RSMo. The use of "water systems" in Section 444.825 is far different from "water systems" in Chapter 640. This provides additional support that "water systems" has a much broader definition than the Coalition claims.

(Mo. banc 1997)). H.B. 1713 did not violate the Constitution's single subject requirement.[12]

III. H.B. 1713's original purpose of regulating water systems did not change during the bill's passage through the General Assembly. (Responds to the Coalition's Point III).

Article III, § 21 provides that "no bill shall be amended in its passage . . . as to change its original purpose." The original purpose requirement "was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made." *Blue Cross Hosp. Serv., Inc. of Mo. v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984), *vacated on other grounds by Blue Cross Hosp. Serv., Inc. of Mo v. Frappier*, 472 U.S. 1014 (1985), *original judgment confirmed by Blue Cross Hosp. Serv., Inc. of Mo. v. Frappier*, 698 S.W.2d 326, 328 (Mo. banc 1985). "Alterations that bring about an extension or limitation of the scope of the bill

[12] The Coalition notes that a representative objected that H.B. 1713 "contains amendments which violate Missouri's Constitution, Article III, Section 21 and/or 23, rendering the bill, in its entirety, unconstitutional." App. Br. 8 (citing L.F. D20, pp. 2-3). However, the same representative filed an identical objection to H.B. 1717. L.F. D20, p. 2. H.B. 1717 contained virtually the same amendments as seven of H.B. 1713's nine sections (H.B. 1717 did not contain Section 256.438.4, but otherwise contained identical changes to the same seven sections as H.B. 1713). However, H.B. 1717 did not contain the Commission membership composition provision in Section 644.021 or the design-build provisions in Section 67.5070. Thus, it is unclear from the record whether the representative objected to the same provision challenged by the Coalition in this lawsuit.

are not prohibited; even new matter is not excluded if germane." *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997).

Courts determine a bill's original purpose by looking to the bill at the time of its introduction in the General Assembly. *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 839 (Mo. banc 2001). And the original purpose may be ascertained without referring to the original title itself. As this Court has held, "the Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced." *Id.* In fact, even when a bill's original title includes the specific statutes to be amended or repealed, the bill's original purpose is "not necessarily limited by specific statutes referred to in the bill's original title or text." *McEuen ex rel. McEuen v. Mo. State Bd. of Educ.*, 120 S.W.3d 207, 210 (Mo. banc 2003).

This Court has upheld bills similar to H.B. 1713 as constitutional in the face of original purpose challenges. For example, the Court upheld a bill authorizing political subdivision cooperation agreements and an exhibition center and recreational facility district because the original purpose of the legislation "was regulating taxes even though the original title stated 'relating to city sales taxes.' " *St. Louis Cty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 715 (Mo. banc 2011). Similarly, the Court upheld the adoption of federal special education services standards because the original purpose of the legislation was educational placement of special education students, even

though the original title stated "relating to resolution conferences." *McEuen*, 120 S.W.3d at 210. Finally, the Court upheld a bill containing a prohibition of certain loan arrangement fees because the original purpose of the legislation related to credit transactions, even though the original title stated "relating to interest." *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982); *see also Mo. State Med. Ass'n*, 39 S.W.3d at 840 (upholding a bill requiring information about breast implantation because the original purpose of the legislation related to mandating health services for serious illnesses, even though the original title stated "relating to insurance coverage for cancer early detection").

Consistent with the final bill's subject, the Coalition argues that H.B. 1713's original purpose was the "regulation of water systems." App. Br. 25. The Coalition assumes that every provision of the final bill – wastewater treatment systems, fluoridation of water supplies, and multipurpose resource program projects – "adhered to the original purpose" except for the Commission composition changes.[13] *Id.* at 26. As discussed above, the Commission regulates wastewater systems and water supplies that enter public drinking

[13] The Coalition implicitly admitted below that all other provisions were connected to the original purpose. The Coalition argued to the Circuit Court that only Section 644.021 and its membership composition requirements should be severed from H.B. 1713 and that "[t]he sections of HB 1713 that do have a relation to regulation of water systems are independent of § 644.021." L.F. D6, 10.

water systems. Further, the Coalition admits that the "[Clean Water Commission's] jurisdiction arguably intersects with water systems at a few points." App. Br. 21.

This is not a case where there is no logical or remote connection between H.B. 1713's original purpose and the Commission. The Coalition's cases are inapplicable to H.B. 1713 because those cases involve instances when provisions in the final bill were not remotely connected to the original subject matter in the bill. *See Legends Bank v. State*, 361 S.W.3d 383, 387 (Mo. banc 2012) (ethics and capitol key provisions "are not logically connected or germane to procurement"); *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006) (adult entertainment provisions "were not remotely within the original purpose" of alcohol-related traffic offenses); *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 8 (Mo. 1945) (taxation definitions were not related to elimination of certain taxation deductions). H.B. 1713 is much closer to the bills upheld by the Court in *Prestige Travel*, *McEuen*, and *Lincoln Credit* because there is a logical connection between the "regulation of water systems" and the Commission.

The original purpose of "regulation of water systems" was consistent with the final version of H.B. 1713. Accordingly, H.B. 1713 did not violate the Constitution's original purpose requirement.

CONCLUSION

For the foregoing reasons, the State and the Commission respectfully request that this Court affirm the judgment of the Circuit Court.

April 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that a copy of the above Respondent's Brief was served electronically by Missouri CaseNet e-filing system on April 1, 2019, to all parties of record.

I also certify that the foregoing brief complies with the limitations in Rule No. 84.06(b) and that the brief contains 9,262 words.

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