Supreme Court of Missouri

en banc

SC101534

State Senator Michael Moon, et al.,

Appellants,

v.

State of Missouri, et al.,

Respondents,

Cindy O'Laughlin, President Pro Tempore of the Missouri Senate, et al.,

Respondents.

Opinion issued November 10, 2026

Appeal from the Cole County Circuit Court
The Honorable Christopher K. Limbaugh, Judge

Overview

Three individuals filed a petition for equitable relief seeking a declaration that Senate Bill 3, enacted following the First Extraordinary Session of the 103rd General Assembly, was unconstitutional and to enjoin its enforcement. Each plaintiff asserted the operation of the legislation conferred taxpayer standing. Two plaintiffs, a state senator and a state representative, further alleged legislative standing. The circuit court sustained the defendants' motion to dismiss due to lack of standing, and the plaintiffs appeal. This Court affirms the circuit court's judgment.

Factual and Procedural Background

The governor called the 103rd Missouri General Assembly into a First Extraordinary Session in May 2025. One of the bills passed as a result was SB 3. As truly agreed to and finally passed, that bill "repeal[ed] sections 67.3000 and 67.3005, RSMo, and [enacted] in lieu thereof five new sections relating to taxation, with a severability clause." The bill involved tax credits for certain sporting events, legislation to support large athletic and entertainment facilities, tax credits for homestead damage, and property tax credits.

State Senator Michael Moon, State Representative Bryant Wolfin, and Ron Calzone (collectively, "the challengers") filed their petition for equitable relief against the state, the governor, and the attorney general (collectively, "the state") in July 2025. The challengers' petition alleged each challenger was a taxpayer and raised a variety of perceived constitutional infirmities in SB 3. The challengers claimed the legislation was unconstitutional because it granted public money to private persons, was a special law, contained multiple subjects, lacked a clear title, and departed from its original purpose. They requested the circuit court find SB 3 violated the Missouri Constitution on any of the grounds referenced in the petition and enjoin its enforcement.

The challengers argued they possessed taxpayer standing due to the direct expenditure of funds as evidenced by the text of the newly enacted statutes and the estimates provided in the bill's fiscal note.

First, pursuant to section 100.240.2,[1] part of the "Show-Me Sports Investment Act":

> The state of Missouri, acting through the department and the office of administration, may, upon such terms and with reasonable consideration as it may determine, subject to appropriation, expend funds for the purpose of aiding and cooperating in the planning, undertaking, financing, or carrying out of an athletic

[1] All references are to RSMo Supp. 2025 unless otherwise noted.

> and entertainment facility project for which application is made to the department and approved by the director and the commissioner.

According to the challengers, that section authorizes the direct expenditure of funds, which confers taxpayer standing.

Second, section 67.3000, which addresses tax credit eligibility for certain sporting events, contains the following two provisions. Section 67.3000.4(2) states:

> The department of revenue shall issue a refund of the refundable tax credit to the applicant within ninety days of the applicant's submission of a valid tax credit certificate issued in accordance with subdivision (1) of this subsection. *Notwithstanding any provision of law to the contrary, this may include a refund issued in advance of the close of the tax period to which the tax credit applies.*

(Emphasis added). Section 67.3000.4(3) provides, in relevant part: "Notwithstanding any provision of law to the contrary, tax credits authorized by this section may be refunded at any time following issuance, even prior to the close of the tax period for which the credits were issued." Through these two statutory subdivisions, the challengers contend the legislation authorizes a direct expenditure of funds because the state treasury is authorized to deliver funds to those turning in their tax credits. The challengers further argued any tax credits would affect taxpayers because reductions in revenue due to tax credits would cause other taxpayers "to make up the slack" or, alternatively, there would be a reduction in government services provided as a result.

Third, pointing to the fiscal note for SB 3, the challengers argue a direct expenditure of funds exists. According to the challengers, the fiscal note stated the department of revenue ("DOR") was expected to expend $10,000 to create a form, to employ additional associate customer service representatives, and to pay $175,000 for computer programming. The challengers' citation to the fiscal note, included as an exhibit to the petition, specifically concerned section 135.445, which involves the homestead disaster tax credit.

Beyond taxpayer standing, the challengers advanced a theory of legislative standing. The petition alleged Moon was a serving state senator who voted against the legislation. Similarly, the petition alleged Wolfin was a serving state representative who voted against the legislation. Each legislator had taken steps to voice concerns regarding the legislation. Moon submitted a constitutional objection letter to be included in the Senate Journal. Wolfin attempted to submit a letter stating the legislation was unconstitutional to the House Journal. According to the petition, Moon and Wolfin were interested parties in the litigation because passage of the legislation by their own respective legislative bodies violated the constitution.

Finally, the petition alleged Calzone was "a Missouri citizen, taxpayer, and resident of Maries County." Based on population data set forth in the petition, the petition alleged those in Maries County were ineligible to vote on SB 3's tax credit for property taxes. *See* section 137.1055.[2] Consequently, the petition alleged Calzone to be an interested party in the litigation "based on Maries County being ineligible for tax credits for property taxes."

The state filed a motion to dismiss. According to the state, the challengers failed to establish standing. At this point, the Missouri Senate, the Missouri House of Representatives, the president pro tempore of the Missouri Senate, and the speaker of the Missouri House of Representatives, (collectively, "the intervenors") filed a motion to intervene. Following a hearing, the circuit court sustained the motion, and the intervenors filed suggestions in support of the motion to dismiss. In September 2025, following a hearing, the circuit court took the motion to dismiss under advisement.

In January 2026, the circuit court entered a seven-page order and judgment finding the challengers lacked standing and dismissing the case. The circuit court determined the statutes the

[2] The petition referenced this section as section 137.1120, as it was labeled in SB 3.

challengers listed did not constitute a direct expenditure of funds. The circuit court also ruled there was no legislative standing in Missouri to permit Moon and Wolfin to have standing in their official capacities. A docket entry indicated the court dismissed the action *with prejudice*.

Later that month, the challengers filed a motion to reconsider relying on this Court's opinion in *Nicholson v. State*, 731 S.W.3d 871 (Mo. banc 2026), which was handed down shortly after the circuit court's dismissal. In an alternative request in the motion, the challengers asked the circuit court to amend its judgment to include certain issues, thereby preserving them for appellate review. In February 2026, the circuit court heard argument on the motion and issued an amended order and judgment, which again sustained the motion to dismiss for lack of standing. The amended order and judgment, which included additional text from section 67.3000.4, explicitly rejected challengers' contention the fiscal note showed a direct expenditure of funds. The remainder of the amended order and judgment followed what the circuit court previously entered. The challengers appeal.

Standard of Review

"Standing is a question of law, which this Court reviews de novo." *Lebeau v. Comm'rs of Franklin Cnty., Mo.*, 422 S.W.3d 284, 288 (Mo. banc 2014). "When standing is resolved on a motion to dismiss, this Court assumes all of the facts alleged in the plaintiffs' petitions are true." *Mo. Coal. for Env't v. State*, 579 S.W.3d 924, 926 (Mo. banc 2019). Those seeking relief bear the burden of demonstrating standing. *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013). Matters beyond the pleadings are not considered in this Court's review of the circuit court's dismissal of a petition. *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011).

Analysis

This Court has jurisdiction to entertain this appeal

Because this case involves the validity of a state statute, the matter falls within the exclusive appellate jurisdiction of this Court. Mo. Const. art. V, sec 3; *see also Lebeau*, 422 S.W.3d at 287-88 (retaining jurisdiction of an appeal in which the circuit court dismissed the plaintiff's petition challenging the constitutional validity of a house bill on the basis the plaintiffs lacked standing). But this Court must determine *sua sponte* whether a final judgment exists in this case to permit the Court to entertain the appeal. *Avery Contracting, LLC v. Niehaus*, 492 S.W.3d 159, 162 (Mo. banc 2016); section 512.020(5).

The amended order and judgment in this case found the challengers lacked standing and sustained the state's motion to dismiss. The amended order and judgment did not indicate whether the dismissal was with or without prejudice. Rule 67.03 specifies that "[a]ny involuntary dismissal shall be without prejudice unless the court in its order for dismissal shall otherwise specify." Additionally, when a motion to dismiss is sustained, the circuit "court shall freely grant leave to amend and shall specify the time within which the amendment shall be made or amended pleading filed." Rule 67.06. But a circuit "court is … excused from complying with the provisions of Rule 67.06 if the petitioner does not request leave to amend." *Atkins v. Jester*, 309 S.W.3d 418, 425 n.8 (Mo. App. 2010). The challengers did not request leave to amend and clearly operated under a litigation strategy not involving a desire to amend.

A dismissal without prejudice generally does not constitute a final appealable judgment, but exceptions to this general rule abound. *Naylor Senior Citizens Hous., LP v. Side Const. Co.*, 423 S.W.3d 238, 242-43 (Mo. banc 2014). As relevant here, a judgment is considered final and appellate review is permitted when the "judgment has preclusive effect in the sense that no subsequent action by the [plaintiff] can correct the defect noted in the judgment." *Id.* at 243. An

appeal from a dismissal without prejudice is permitted if "the dismissal has the practical effect of terminating the litigation in the form cast." *Chromalloy Am. Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 3 (Mo. banc 1997).

A final judgment exists in this case, and appellate review is permissible. As an initial matter, the original judgment was a dismissal with prejudice. Nothing in the record reveals a dispute to the dismissal being with prejudice. Instead, the challengers filed a motion to reconsider based on new authority or to amend the judgment to preserve certain issues for appeal. While the amended order and judgment does not specify the dismissal was with prejudice, it is doubtful the circuit court did not intend to carry over that aspect of the original judgment and its accompanying docket entry.[3]

Even if the amended order and judgment could be characterized as a dismissal without prejudice in the absence of language regarding prejudice, it would still constitute a final judgment. The circuit court effectively ended the challengers' litigation in the form cast. *See id.* The circuit court determined there was no direct expenditure of funds pleaded for taxpayer standing and further wholly foreclosed legislative standing. Because "the dismissal was such that re-filing of the petition at that time would have been a futile act, then the order of dismissal is appealable." *Masonic Temple Ass'n of St. Louis v. Soc'y for Pres. of Masonic Temple*, 70 S.W.3d 24, 26 (Mo. App. 2002). Moreover, this Court has held that, "[w]hen a party elects to stand on the original pleadings, a dismissal without prejudice is considered a final judgment for purposes

[3] As further indication the circuit court intended a dismissal with prejudice, the circuit court entered an order after its judgment to make the judgment immediately appealable pursuant to Rule 81.045. In that order, the circuit court referenced the challengers' position throughout the proceedings to have expedited treatment. To provide reasonable effect to the circuit court's amended order and judgment, the dismissal must have been with prejudice, as it was originally.

of appeal." *Goodman v. Saline Cnty. Comm'n*, 699 S.W.3d 437, 439 n.4 (Mo. banc 2024). A final judgment exists in this case, and appellate review is possible.

No direct expenditure of funds has been alleged to support taxpayer standing

"Standing is a threshold issue and a prerequisite to a court's authority to address substantive issues." *Mo. State Conf. of NAACP v. State*, 730 S.W.3d 550, 561 (Mo. banc 2026) (internal quotation omitted). "Standing requires that a party have a personal stake arising from a threatened or actual injury." *Schweich*, 408 S.W.3d at 774. It entails "a legally protectable interest at stake" on behalf of the plaintiff and the existence of "a substantial controversy … between parties with genuinely adverse interests." *Id.* at 773 (internal quotation omitted). "A party's speculation that a challenged action may adversely impact that party is insufficient to establish a threatened or actual injury." *Mo. State Conf. of NAACP*, 730 S.W.3d at 561.

This Court has long recognized taxpayer standing. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011) (noting that, since the Court first addressed taxpayer standing in 1873, "Missouri courts have held that when a public interest is involved and public monies are being expended for an illegal purpose, taxpayers have the right to enjoin the action"). "Absent fraud or other compelling circumstances, to have standing a taxpayer must be able to demonstrate a direct expenditure of funds generated through taxation, or an increased levy in taxes, or a pecuniary loss attributable to the challenged transaction of a municipality." *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 47 (Mo. banc 1989). In this case, the challengers focus solely on the first method to argue they have taxpayer standing: a direct expenditure of funds generated through taxation.

This Court has squarely addressed what constitutes a direct expenditure of funds generated through taxation. In *Manzara*, the Court established: "'a direct expenditure of funds generated through taxation' is a sum paid out, without any intervening agency or step, of money

or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities." 343 S.W.3d at 660. Since *Manzara*, this Court has faithfully followed that bright-line rule. *Nicholson*, 731 S.W.3d at 878 (finding taxpayer standing due to the presence of a direct expenditure of funds based on the taxpayer showing the attorney general had already filed an appeal pursuant to challenged legislation when no appeal was permitted previously); *Mo. Coal. for Env't*, 579 S.W.3d at 926-27 (finding no taxpayer standing due to the lack of a direct expenditure of funds raised by the plaintiffs in legislation pertaining to the composition of Missouri's Clean Water Commission); *Cope v. Parson*, 570 S.W.3d 579, 584 (Mo. banc 2019) (finding taxpayer standing due to the presence of a direct expenditure of funds based on the plaintiffs showing appointment of a person to the office of lieutenant governor would, at a minimum, require the payment of the salary for that position when it would have otherwise remained vacant); *Airport Tech Partners, LLP v. State*, 462 S.W.3d 740, 745 (Mo. banc 2015) (finding no taxpayer standing, among other reasons, due to the lack of a direct expenditure of funds raised by the plaintiffs in legislation causing a lower assessment for another's property); *Lebeau*, 422 S.W.3d at 290 (finding taxpayer standing due to the presence of a direct expenditure of funds based on the plaintiffs showing commissioners entered a county order establishing a municipal court based on new state legislation authorizing such a court to be established and because "[i]t [was] also beyond dispute that the creation and operation of a municipal court [would] require the expenditure of funds generated through taxation").

Taxpayer standing has not been demonstrated through prospective expenditures in the bill's fiscal note or expenditures already made

In their first point relied on, the challengers argue they adequately demonstrated taxpayer standing based on direct expenditures of funds identified in the fiscal note and expenditures already made by DOR and by counties conducting elections related to section 137.1120.

One paragraph in the challengers' petition provided:

> [T]he Fiscal Note to Senate Bill 3 … states that the Bill will involve direct expenditure of state funds. See Fiscal Note p. 10 stating that the Department of Revenue is expected to expend $10,000 for creation of a form, employ additional Associate Customer Service Representatives, and pay $175,000 for computer programming.

A cursory review of the fiscal note demonstrates its projections do not indicate a sum paid out.[4] The fiscal note's analysis of section 135.445, the source of the challengers' argument, notes "DOR will need to create a form for the residents to use to verify they have insurance and were in the declared disaster area. DOR assumes the creation of the form would cost $10,000." DOR explained additional disasters "could be added" for eligibility for the credit, and, if that occurred, it assumed additional employees would be needed to handle tax credit filers. "Additionally, computer programming of up to $175,000 may be needed …." The Missouri Joint Committee on Legislative Research's oversight division indicated no information contrary to DOR's assessment but further "assume[d] DOR could absorb the costs related to the change in tax credit forms. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process." The assumptions and layers of contingencies inherent in a fiscal note analysis, especially the one here, do not indicate a sum paid out. Standing alone, this fiscal note's speculative projections are insufficient to demonstrate a direct expenditure of funds.

According to the challengers, this Court's recent decision in *Nicholson* clarifies a direct expenditure of funds includes any additional work or efforts by state employees. As such, the challengers argue state employees using resources to do work required by SB 3, such as creating

[4] The challengers' petition included the fiscal note as an exhibit and referenced that exhibit. Pursuant to Rule 55.12, "An exhibit to a pleading is a part thereof for all purposes." In considering the fiscal note, this Court's review remains appropriately confined to the petition.

a form, is a direct expenditure of funds. *Nicholson*, however, did not make such a broad holding. In *Nicholson*, this Court found the plaintiff had alleged taxpayer standing because he "alleged … he [was] a taxpayer and Missouri resident with a legally protectable interest in the proper use and expenditure of tax dollars, and he further alleged … any appeal taken under [a new statute] require[d] the expenditure of tax dollars." 731 S.W.3d at 877. This Court adhered to the rule that taxpayer standing requires "the showing of an expenditure" and that "an expenditure is a sum paid out." *Id.* at 878 (internal quotation omitted). A sum was, in fact, paid out in *Nicholson*. Left undisturbed by the Court's holding was precedent explaining normal operating expenses are insufficient to confer taxpayer standing. *Id.* at 878 n.4 ("[T]his Court finds [the taxpayer] has established direct expenditure of public funds *beyond* normal operating expenses in proving the State filed a notice of appeal in a category of cases for which no right to appeal existed prior to passage of [the new legislation]." (emphasis added)). *Nicholson* followed caselaw defining a direct expenditure of funds generated through taxation; it did not expand that definition. Nothing in *Nicholson* would transform a fiscal note's assumptions about steps an agency could potentially take to support new legislation into a direct expenditure of funds. Projections are not equivalent to the requirement that a sum be paid out. The challengers' petition lacked the required factual allegations of a direct expenditure of funds.

The challengers next contend expenditures have already been made. They request this Court take judicial notice of a form DOR created for citizens to obtain tax credits for disaster relief pursuant to section 135.445. They further request judicial notice of elections held in April 2026 putting the issue in section 137.1120 before voters in the applicable counties. Taking judicial notice of these issues is inappropriate, however, when the issue before this Court is whether the circuit court erred in dismissing the challengers' petition for lack of standing. These

arguments were not before the circuit court. The facts were not in the petition. Tellingly, the challengers fail to explain how they preserved this aspect of their argument for appellate review. "An issue that was never presented to or decided by the trial court is not preserved for appellate review." *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 129 (Mo. banc 2000). The challengers' first point is denied.

A direct expenditure of funds requires no intervening steps

In their second point relied on, the challengers argue they adequately alleged taxpayer standing based on a direct expenditure of funds because SB 3 authorizes payment of refundable tax credits before the holder of a credit has filed a return. Missouri precedent forecloses the primary component of challengers' argument. "[T]he issuance of tax credits does not constitute a direct expenditure of funds generated through taxation." *Manzara*, 343 S.W.3d at 657. As the Court explained:

> [A] tax credit expresses the legislature's wish to declare a portion of the pool of taxable assets off-limits to its own power to collect taxes. Properly understood, this does not result in "less" money in the treasury because the legislature never wished it to be there in the first place. A tax credit is not a drain on the state's coffers; it closes the faucet that money flows through into the state treasury rather than opening the drain.

Id. at 660. The challengers attempt to distinguish *Manzara* and, failing that, request this Court overturn that case.

The challengers note subdivisions (2) and (3) of section 67.3000.4 permit the refund of tax credits "in advance of the close of the tax period to which the tax credit applies" and "at any time following issuance, even prior to the close of the tax period for which the credits were issued." The challengers contend permitting the refunds on this timeframe creates a direct expenditure of funds. In other words, the challengers contend a scenario may exist in which the state would be required to immediately issue the redeemer a check, which they argue would

constitute a direct expenditure of funds. They assert this is different from the tax credit scheme in *Manzara*, which served to reduce the amount of taxes due from a taxpayer.

The challengers still fail to show the refund process constitutes "a direct expenditure of funds generated through taxation," as that phrase is judicially defined. Again, *Manzara* defined that phrase to mean "a sum paid out, *without any intervening agency or step*, of money or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities." 343 S.W.3d at 660 (emphasis added). Multiple intervening steps exist before the refundable tax credit can be issued. An applicant first submits a support contract for review. Section 67.3000.2. The department of economic development determines if the support contract complies with statutory requirements. *Id.* The sporting event must then occur, and the applicant must submit appropriate documentation. Section 67.3000.3, .4(1). The department of economic development again examines the documentation and issues a certificate for a refundable tax credit based on statutory calculations and limitations. Section 67.3000.4(1), .5. That certificate of a refundable tax credit must then be presented to DOR. Section 67.3000.4(2). These intervening steps, assuming they ever come into play, cause the operation of section 67.3000 to fail the test set forth in *Manzara*.

The challengers briefly argue *Manzara* was wrongly decided and should be reversed. In support of this argument, however, the challengers merely cite arguments the Court considered in *Manzara*, a case that was closely decided.[5] Principles of *stare decisis* caution "a decision of

[5] *Manzara* focused on the existing requirements for taxpayer standing because the parties asked for no expansion of the requirements for taxpayer standing. 343 S.W.3d at 659 n.8. It was under those long-standing requirements that the definition of "a direct expenditure of funds generated through taxation" was expounded upon. *Id.* at 659-60. Notably, three judges of the Court strongly attacked the definition announced. *Id.* at 670 (Wolff, J., concurring) (arguing the definition was "cobble[d] together" and "defie[d] common sense"). Nevertheless, the Court has

this [C]ourt should not be lightly overruled" unless "it appears that [it] is clearly erroneous and manifestly wrong." *Sw. Bell Yellow Pages, Inc. v. Dir. of Revenue*, 94 S.W.3d 388, 390-91 (Mo. banc 2002) (internal quotation omitted). The challengers fail to seriously analyze reasons to overturn *Manzara*. The challengers' second point is denied.

In a similar vein, the challengers' fifth point relied on argues taxpayer standing exists because issuance and use of tax credits forces others to "take up the slack." According to the challengers, a system permitting tax credits requires other taxpayers to pay a greater share of the state's tax burden to maintain the same level of government services. This is an insufficient basis for taxpayer standing. Again, "*Manzara* rejected the argument that a tax credit should be treated like a tax expenditure because both result in a loss of monies that otherwise would be held by the state." *Airport Tech Partners, LLP*, 462 S.W.3d at 745. Arguing "[i]f someone's taxes go down, mine will go up" is insufficient to confer taxpayer standing. *Id.* at 747 (alteration in original) (internal quotation omitted). A contrary holding would permit "every property owner … to complain about every other property owner's assessment on the same basis." *Id.* Moreover, the challengers' "take up the slack" argument is based on pure conjecture. As the intervenors correctly argue, the challengers' theory is premised on compensation for the revenue reduction (should that revenue reduction happen) occurring through taxation and not other budgetary decisions to be made by the general assembly. The challengers' fifth point is denied.

In their third point relied on, the challengers posit they adequately alleged taxpayer standing based on the operation of section 100.240 and what they view as imminent expenditures for stadium subsidies. Section 100.240.2 states:

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subsequently followed the definition from *Manzara* without reservation. *See, e.g.*, *Mo. Coal. for Env't*, 579 S.W.3d at 927.

> The state of Missouri, acting through the department and the office of administration, may, upon such terms and with reasonable consideration as it may determine, subject to appropriation, expend funds for the purpose of aiding and cooperating in the planning, undertaking, financing, or carrying out of an athletic and entertainment facility project for which application is made to the department and approved by the director and the commissioner.

The challengers argue this statute, in combination with the governor's proclamation calling for the extraordinary session,[6] show the stadium subsidies resulting from this law are expenditures of enormous amounts of money.

Again, the challengers' argument is contrary to the definition of a direct expenditure of funds. An expenditure resulting from section 100.240.2 would have multiple intervening steps. First, and most importantly, any expenditure of funds is "subject to appropriation." *Id.* Even the challengers' briefing admits the general assembly may not appropriate the future funds. Second, an entity must apply to the department of economic development for facility projects. *Id.* Third, the director of the department of economic development and the commissioner of administration must then determine whether to approve the application, subject to "such terms and with reasonable consideration as" the department of economic development and the office of administration see fit. *Id.* These intervening steps cause the operation of section 100.240 to fail the test set forth in *Manzara*. The challengers' third point is denied.

Calzone's direct-standing theory was not preserved and is deficient

The challengers' fourth point relied on claims Calzone has standing because, as a resident of Maries County, he will be ineligible to vote to adopt or reject the tax credits section 137.1055 offers, thereby affecting his pecuniary interest. Section 137.1055.1 defines a "five percent county" and a "zero percent county" based on county and county seat populations. Those

[6] According to the petition, the governor's proclamation declared the importance to Missouri of professional sport teams, modern stadiums, and major sporting events.

categories of counties were required to "place on the ballot a question of whether to grant a property tax credit pursuant to this section to eligible taxpayers residing in such county in an amount equal to the taxpayer's eligible credit amount." Section 137.1055.2. Calzone argues the population of Maries County and its county seat do not meet the population criteria to require an election on the question of the property tax credit. In his view, he is personally affected because he cannot vote to lower or limit his taxes when residents of other counties can.

While the state and the intervenors attack the challengers' argument on the basis Calzone suffered no direct, personal injury, the intervenors additionally contend Calzone did not preserve his direct-standing theory for appellate review. This Court agrees the point was not preserved. The petition filed below contains a section labeled "standing." That section explicitly advances taxpayer and legislative standing. Nothing in that portion of the petition advances the direct standing theory presented in this appeal. Elsewhere in the petition, Calzone claimed to be "an interested party in the litigation based on Maries County being ineligible for tax credits for property taxes." This conclusory statement was insufficient to apprise the circuit court of Calzone's direct-standing theory. This is confirmed by the fact the parties' memoranda in the circuit court focused exclusively on taxpayer and legislative standing. The circuit court's original judgment did not address a direct-standing theory, and the challengers did not raise its failure to discuss that theory in their motion to reconsider. The amended judgment did not address standing premised on a direct injury to Calzone by way of section 137.1055. The direct-standing theory materialized for the first time on appeal.

Even assuming a theory of direct standing was potentially broached elsewhere in the petition, and the preservation issue is excused, the challengers' position still fails based on the allegations contained in the petition. To demonstrate standing, a plaintiff must "have a personal

stake arising from a threatened or actual injury." *Schweich*, 408 S.W.3d at 774 (internal quotation omitted). Calzone alleged he "is a Missouri citizen, taxpayer, and resident of Maries County" and further alleged Maries County was not required to conduct a vote to put the issue to voters. These bare allegations wholly fail to account for the operation of section 137.1055 and the ultimate impact of a vote in favor of the property tax credit. No aspect of the petition alleges Calzone is an "eligible taxpayer," as the statute defines that term, and would be capable of receiving the property tax credit. Section 137.1055.1(4) (defining "eligible taxpayer" as a Missouri resident who "[i]s an owner of record of a homestead or has a legal or equitable interest in such property as evidenced by a written instrument" and who "[i]s liable for the payment of real property taxes on such homestead" with the additional requirement the "homestead" be "real property actually occupied by an eligible taxpayer as the primary residence"). Putting aside the state's and intervenors' other arguments, without alleging such fundamental facts, the challengers failed in their burden to show direct standing on behalf of Calzone. The challengers' fourth point is denied.

Any argument supporting legislative standing has been abandoned

In the argument section of the challengers' brief, they argued the circuit court erred in dismissing the petition for lack of standing because Moon and Wolfin adequately alleged legislative standing. According to the challengers, the purported procedural infirmities of SB 3 "nullif[ied] or diminish[ed] the effectiveness of their legislative votes and conferr[ed] standing." In making this argument, the challengers cite no Missouri precedent permitting legislative standing. The state and the intervenors argue legislative standing is not recognized in Missouri. *See, e.g.*, *Kinder v. Holden*, 92 S.W.3d 793, 804 n.5 (Mo. App. 2002). The state additionally contends this argument should be dismissed due to the challengers' failure to adhere to this Court's rules.

Rule 84.04(a) provides a straightforward directive for the contents of an appellant's brief. The brief must contain, among other elements, "[t]he points relied on" and "[a]n argument, which shall substantially follow the order of the points relied on[.]" Rule 84.04(a)(4)-(5). Rule 84.04(d) provides a template for the points relied on. Rule 84.04(e) mandates that the argument follow the order of the points relied on. "The point relied on shall be *restated* at the beginning of the section of the argument discussing that point." *Id.* (emphasis added). The rules do not permit a point relied on to appear initially in the midst of the argument section of a brief.

The challengers failed to list this argument in a point relied on previously in their briefing. In their reply brief, and again in their oral argument before this Court, the challengers concede the error pertaining to this argument and waive its analysis. This Court will not review the abandoned argument.

Conclusion

For the reasons set forth above, the circuit court's judgment is affirmed.



Robin Ransom, Judge

Powell, C.J., Fischer, Broniec, and Gooch, JJ., concur; Wilson, J., dissents in separate opinion filed; Russell, J., concurs in opinion of Wilson, J.

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Dissenting Opinion

On July 31, 2025, Michael Moon, Ron Calzone, and Bryant Wolfin ("Challengers") filed a petition challenging the constitutional validity of Senate Bill 3 (2025 First Extraordinary Session). The state moved to dismiss this petition claiming Challengers lacked standing. The intervenors supported the state's motion. The circuit court sustained the state's motion and dismissed Challengers' petition.

As explained below, I believe this Court should dismiss for lack of jurisdiction. The circuit court's judgment was not a final, appealable judgment because the state chose a procedural tool not designed to result in such judgments, including on the issue of standing. *See*

Mo. State Conf. of NAACP v. State, 601 S.W.3d 241, 246 (Mo. 2020) (holding a "motion to dismiss does not permit the circuit court – or this Court on appeal – to determine the merits of a claim"). Instead, a motion to dismiss for failure to state a claim is designed to ensure the petitioner is pursuing a recognized cause of action and has pleaded sufficient ultimate (not evidentiary) facts to support that claim. *Bell v. Shelter Gen. Insur. Co.,* 701 S.W.3d 614, 619 (Mo. 2024). Under Rule 67.03, the resulting judgment is presumed to be without prejudice and, therefore, not appealable.

Even if the circuit court's judgment is appealable and this Court has jurisdiction, I believe the Court should hold Challengers' allegations regarding their standing were sufficient to survive a motion to dismiss. And, even if the circuit court was correct in dismissing Challengers' petition (without prejudice), Challengers should have been (and should be now) allowed to update and supplement their allegations regarding taxpayer standing.

I. Appellate Jurisdiction

"Prior to reaching the merits of the issues set forth in this case, this Court must determine, *sua sponte*, if there is a final judgment." *Ndegwa v. KSSO, LLC*, 371 S.W.3d 798, 801 (Mo. 2012). Rule 67.03 provides: "Any involuntary dismissal shall be without prejudice unless the [circuit] court in its order for dismissal shall otherwise specify." Here, the circuit court's judgment does not "otherwise specify"; therefore, the dismissal was without prejudice.[1]

[1] The circuit court entered an "Order and Judgment" and, later, an "Amended Order and Judgment." Neither addressed whether the dismissal was with or without prejudice. Under Rule 67.03, therefore, the presumed effect of either is a dismissal without prejudice. An unsigned, unexplained entry in the statewide case management system does not change this result. That entry was not a "docket entry" in the sense that it was entered by or at the direction of the circuit court. Instead, it was merely a label (and, here, an incorrect label) to which the original "Order and Judgment" (presumed to be without prejudice) was attached. Even if this entry mattered, the amended judgment controls, *see Southside Ventures, LLC v. La Crosse Lumber Co.*, 574 S.W.3d 771, 781 (Mo. App. 2019) (holding, "when a trial court enters an amended judgment, the original judgment is vacated in its entirety and becomes a nullity"). Like the original judgment, it is

"Generally, a dismissal without prejudice is not a final appealable judgment." *Sexton v. Jenkins & Assocs., Inc.*, 152 S.W.3d 270, 273 (Mo. 2004).

There are exceptions to this rule, but they should not apply here. *See Chromalloy Am. Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 3 (Mo. 1997) (noting an "appeal from such a dismissal can be taken where the dismissal has the practical effect of terminating the litigation ***in the form cast*** or in the plaintiff's ***chosen forum***" (emphasis added)); *Mahoney v. Doerhoff Surgical Servs., Inc.,* 807 S.W.2d 503, 506 (Mo. 1991) (noting, when "the effect of the order is to dismiss the plaintiffs' ***action and not the pleading merely***, then the judgment entered is final and appealable" (emphasis added)). As set forth below, the state's principal argument is that Challengers alleged they had taxpayer standing because a direct expenditure of tax revenues ***would*** occur, not that it ***had*** occurred. As a result, the circuit court's dismissal without prejudice did not terminate the action "in the form cast" or in Challengers' "chosen forum." Instead, the circuit court merely dismissed Challengers' pleading and ***not*** the action.

The Court has provided a means for the circuit court to make such a dismissal appealable. Rule 67.06 states:

> On sustaining a motion to dismiss a claim, … the court shall freely grant leave to amend and shall specify the time within which the amendment shall be made or amended pleading filed. If the amended pleading is not filed within the time allowed, ***final judgment of dismissal with prejudice shall be entered on motion*** except in cases of excusable neglect; in which cases amendment shall be made promptly by the party in default.

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presumed to be without prejudice under Rule 67.03, and there is no conflicting entry associated with the amended judgment.

(Emphasis added). The circuit court did not follow Rule 67.06 and, therefore, could not enter an appealable judgment, i.e., one dismissing Challengers' petition with prejudice.[2]

Because the circuit court's dismissal was without prejudice and no exception to the general rule applies, the judgment was not appealable, and this Court should dismiss the appeal for lack of appellate jurisdiction. *See Chromalloy Am. Corp.,* 955 S.W.2d at 4 ("Stated another [way], a dismissal without prejudice that a plaintiff may cure by filing another suit in the same court is not a final judgment from which an appeal may be taken.").

II. Challengers' Expenditure Allegations Were Sufficient

Even if Challengers' failure to request leave to amend is sufficient to render the circuit court's dismissal without prejudice appealable, Challengers sufficiently alleged expenditures of tax revenues to meet the standard applicable to a motion to dismiss.

> This Court has repeatedly held taxpayers have "a legally protectable interest in the proper use and expenditure of tax dollars." *Lebeau v. Comm'rs of Franklin Cnty., Mo.,* 422 S.W.3d 284, 288 (Mo. banc 2014). A taxpayer's interest does not arise from any direct, personal loss but rather the expenditure of tax dollars. *Id.* Even if the taxpayer would not have standing otherwise, the public interests in preventing the unlawful expenditure of tax revenue give rise to standing for taxpayers. *Id.* at 289. "The taxpayer's interest in the litigation ultimately derives from the need to ensure that government officials conform to the law." *Id.* at 288.
>
> But, as Nicholson concedes, simply being a taxpayer and resident of Missouri does not in itself establish taxpayer standing. Instead, the Court has held "taxpayer standing requires ***direct expenditure of funds generated through taxation, defined as a sum paid out,*** without any intervening agency or step, of

[2] True, this Court has stated: "When the party elects not to plead further and stands on the original pleadings, the dismissal without prejudice is considered a final and appealable judgment." *Dickemann v. Costco Wholesale Corp.,* 550 S.W.3d 65, 67 n.2 (Mo. 2018) (internal quotation omitted) (quoting *Mayes v. Saint Luke's Hosp. of Kan. City*, 430 S.W.3d 260, 265 (Mo. 2014). Here, however, Challengers were not offered the chance to amend under Rule 67.06 and, therefore, made no "election" not to update their/the petitioner's allegations relating to taxpayer standing. When a single change to the petition from "will involve direct expenditures of state funds" to "has involved direct expenditures of state funds" would have satisfied any concerns as to whether Challengers pleaded sufficient facts to support taxpayer standing, it makes little sense to infer Challengers made an election they plainly did not make.

> money or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities." *Mo. Coal. for Env't [v. State],* 579 S.W.3d [924,] 926-27 [(Mo. banc 2019)] (internal quotation omitted)[)].
>
> This Court has recognized taxpayer standing as a mechanism to enforce procedural requirements in the Missouri Constitution, including the original purpose provision Nicholson raises in this case. *Lebeau*, 422 S.W.3d at 289. The procedural requirements of the Missouri Constitution, including the original purpose provision, "are designed to assist the citizens of Missouri by providing legislative accountability and transparency" and "also serve to defeat surprise within the legislative process." *Id*. (internal quotation omitted). "These provisions also ensure that the public and members of the legislature are apprised of the subject matter of pending legislation." *Id*.

Nicholson v. State, 731 S.W.3d 871, 877 (Mo. 2026) (emphasis added).

Though Challengers make other claims of standing,[3] these need not be addressed because their allegations of direct expenditures of tax revenues were sufficient to survive a motion to dismiss questioning their taxpayer standing. They allege:

> [T]he Fiscal Note to Senate Bill 3, Ex 5, states that the Bill will involve direct expenditures of state funds. See Fiscal Note p. 10 stating that the Department of Revenue is ***expected to expend*** $10,000 for creation of a form, ***employ*** additional Associate Customer Service Representatives, ***and pay*** $175,000 for computer programming.

(Emphasis added).

[3] This Court has rejected claims of "legislative standing," *see, e.g., State ex rel. Mathewson v. Bd of Election Comm'rs of St. Louis Cnty*, 841 S.W.2d 633, 635 (Mo. 1992), as well as claims based on the theory that tax credits are a "direct expenditure" of tax revenues, *see, e.g., Manzara v. State*, 343 S.W.3d 656, 664 (Mo. 2011). The former plainly is correct, but the latter should be reexamined, at least when – as here – the challenged legislation authorizes ***refundable*** tax credits, i.e., credits that can be exchanged on demand for cash from the state treasury at any time – even before the tax year has ended – without regard to how much (or even whether) the credit-holder owes in taxes. In other words, a refundable tax credit operates just like a check or warrant drawn on the state treasury; no more and no less. This reexamination is not necessary here, however, because Challengers alleged sufficient direct expenditures of tax revenues to survive a motion to dismiss questioning their taxpayer standing.

First, the state challenges this allegation as insufficient because no additional appropriations for these expenses were provided and, therefore, any costs must have been absorbed in the department's normal operating budget. This Court squarely rejected this argument in *Nicholson*, however. 731 S.W.3d at 878 ("The Court rejects the State's argument no sum will be paid out because the attorney general will pursue any appeals under section 526.010 as part of its normal operating expenses.").

Second, the state argues Challengers' allegation does not say these ***expenditures had occurred,*** only that they ***would occur***. This argument ignores the fact, however, that Challengers filed this suit before Senate Bill 3 went into effect. Worse, it is the type of nitpicking, against which this Court's cases caution. "A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition." *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. 2001) (internal quotation omitted). This Court reviews the petition "in an almost academic manner." *Keveney v. Mo. Mil. Acad.,* 304 S.W.3d 98, 101 (Mo. 2010). And, in "conducting this review, this Court must accept all properly pleaded facts as true, ***giving the pleadings their broadest intendment,*** and construe all allegations favorably to the pleader." *Bell*, 701 S.W.3d at 618 (emphasis added) (internal quotation omitted).

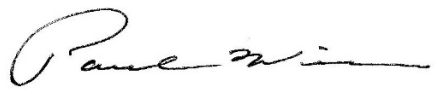
Giving Challengers' allegation the broadest intendment, the circuit court should have taken the state's ***own prediction*** of expenses as sufficient, subject, of course, to Challengers' burden of proving (at trial or in response to a motion for summary judgment) that such expenditures actually occurred. At worst, the circuit court should have responded to the state's argument by allowing Challengers to amend their allegations to reflect the passage of time from the date the petition was filed to the date the motion to dismiss was heard. Had it done so, and

had Challengers proved such expenditures when it came time to do so, this case could have been resolved on the merits.

Conclusion

For the reasons set forth above, this Court should dismiss this appeal for lack of appellate jurisdiction. Even if this Court holds it has appellate jurisdiction (whether because Challengers failed to request leave to amend or under some other exception to the general rule), it should hold Challengers alleged sufficient facts to demonstrate their taxpayer standing.

Even if this Court affirms the circuit court's dismissal without prejudice on the ground Challengers alleged only that the state itself expected Senate Bill 3 would require a direct expenditure of tax revenues, it should vacate the judgment and remand with instructions to allow Challengers to update and supplement their allegations and, if those supplemental allegations are sufficient and subsequently proved, proceed to a decision on the merits. This approach is in keeping with what the circuit court should have done, it complies with the approach to adjudicating motions to dismiss this Court has set forth in Rules 67.03 and 67.06, and it avoids the waste of resources inherent in the making Challengers refile this action[4] to supplement their taxpayer standing allegations.



Paul C. Wilson, Judge

[4] Rule 67.01 provides a "dismissal without prejudice permits the party to bring another civil action for the same cause, unless the civil action is otherwise barred." There is no question at least some of Challengers' claims fall within the one-year savings statute and can be refiled. *See* § 516.230, RSMo 2016 ("If any action shall have been commenced within the times respectively prescribed in sections 516.010 to 516.370, and the plaintiff therein suffer a nonsuit … such plaintiff may commence a new action from time to time, within one year after such nonsuit suffered[.]"); *see also Douglas v. Thompson*, 286 S.W.2d 833 835 (Mo. 1956) (holding, even if a judgment of dismissal without prejudice is appealable, this does not prevent the commencement

of a new action under section 516.230); *Ferrier-Harris, Ltd. v. Sanders,* 905 S.W.2d 123, 126 (Mo. App. 1995) (holding "a dismissal without prejudice is a non-suit under the savings statute, allowing plaintiff to commence a new action within one year of the non-suit").