

Summary of SC91025, *Barbara Manzara and Keith Marquard v. State of Missouri, et al.*
Proceedings originating in the Cole County circuit court, Judge Patricia S. Joyce
Argued and submitted March 23, 2011; opinion issued Aug. 2, 2011

Attorneys: Manzara and Marquard were represented by Irene J. Smith, a solo practitioner in St. Louis, (314) 381-2430; the state was represented by Solicitor General James R. Layton and Maureen Beekley of the attorney general's office in Jefferson City, (573) 751-3321; and Northside Regeneration was represented by Paul J. Puricelli and Robb E. Hellwig of Stone, Leyton & Gershmans in St. Louis, (314) 721-7011.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Taxpayers appeal the trial court's finding that they lacked standing to challenge the constitutional validity of the distressed areas land assemblage tax credit act. In a decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court's judgment. Six judges concur in the result of the decision, three of whom concur in its rationale. Because the tax credits provided by the act merely excuse the tax liability of redevelopers or those to whom the credits are assigned or sold, the government collects no money to deposit into the state treasury, and money not collected cannot be expended. Because the tax credits do not result in the direct expenditure of public funds, they do not have a sufficient effect on the taxpayers as to confer standing. This Court will not abandon more than a century of precedent to merge the requirements for taxpayer standing with the constitutional question of whether a tax credit grants public money to a private party. Further, this Court agrees with *Arizona Christian School Tuition Organization v. Winn*, 131 S.Ct. 1436, 1440 (2011), which analyzes taxpayer standing in a case involving tax credits and concludes that tax credits are not government expenditures.

Although Judge Michael A. Wolff disagrees with the principal opinion's holding that the taxpayers lack standing to sue, he concurs in result because he agrees that, under this Court's precedents, they failed to show that the redevelopment project was not for a public purpose. He would find that the transferable tax credits here are a cash alternative and assets of the state and that, under this Court's precedent, providing a transferable tax credit is the expenditure of public funds, conferring standing to sue. Further, article X, section 17(1) of the state constitution defines "total state revenue" as including the amount of any credits not related to actual tax liabilities. He would find that the standing analysis of *Arizona Christian School Tuition Organization v. Winn*, 131 S.Ct. 1436 (2011), does not apply here because the standards for standing are different in federal court than they are in state court. Missouri courts recognize a taxpayer's standing even though his injury may be no different from that of other taxpayers, while the federal courts do not. He would reach the merits of the taxpayers' claims here and, in so doing, would hold that they fail because the tax credits here are a grant of public money for a public purpose – the redevelopment of economically disadvantaged areas.

Judge Laura Denvir Stith concurs in the principal opinion's analysis that the plaintiffs do not have taxpayer standing under current Missouri law and that this is not the case in which to consider whether the test for taxpayer standing should be reconsidered in the context of tax

credits. She also concurs in Judge Wolff's separate opinion to the extent it would hold that the tax credits here constitute an expenditure of public funds for a public purpose and, therefore, are valid.

Facts: Taxpayers Barbara Manzara and Keith Marquard live within a distressed community as defined by section 135.530, RSMo Supp. 2010. They filed a petition for declaratory judgment challenging the constitutional validity of section 99.1205, RSMo Supp. 2010, the distressed areas land assemblage tax credit act. Under the act, qualified redevelopers may apply for a tax credit to offset the acquisition and interest costs incurred by the redeveloper in obtaining the land. Once an applicant acquires an eligible parcel of land, the act allows a tax credit to issue. An applicant is entitled to a tax credit for 50 percent of the acquisition costs and 100 percent of the interest incurred five years after acquisition. The tax credit may be applied to certain state taxes on income, corporate franchises and financial institutions and may be transferred, sold or assigned. In their suit, the taxpayers claimed the tax credits provided by the act constituted a grant or lending of public money to private persons, associations or corporations in violation of article III, section 38(a) or article III, section 39(1)-(2) of the Missouri Constitution. The trial court rejected their suit, finding that they lacked standing to bring their claims and that, even if they did have standing, section 99.1205 is constitutional because it serves a public purpose. They appeal.

AFFIRMED.

Court en banc holds: (1) The trial court did not err in finding there was no taxpayer standing (a legally cognizable interest and a threatened or real injury). Because the tax credits result in no deposits into the state treasury, they generate no public funds that can be expended. As such, they do not have a sufficient effect on the taxpayers as to confer standing.

(a) The mere filing of a lawsuit does not confer taxpayer standing on a plaintiff. Instead, a taxpayer must establish that one of three conditions exists. Here, the taxpayers argue that tax credits under the act are a direct expenditure of funds generated through taxation. This Court never has interpreted what "a direct expenditure of funds generated through taxation" constitutes. Based on dictionary definitions of the words in the phrase, "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.

(b) The tax credits created by the act do not meet this definition because they are not expenditures. In state government, expenditures typically occur when the state treasurer writes checks based on appropriations or warrants. No such withdrawal of public funds or such "expenditure" occurs when a tax credit is granted. Although the end result might be "less" money in the state treasury, a tax credit is money that the state could have taxed but has chosen not to collect and, therefore, that cannot be expended or loaned. The act's passage acknowledges that the state never would have the tax revenue to spend because it was waived by tax credits. Lowering tax liability by such means does not move money out of the public treasury; it leaves it in private hands.

(c) Although no reported Missouri case has considered whether a tax credit is a direct expenditure of funds generated through taxation for the purpose of taxpayer standing, this Court has concluded that a taxpayer had not been affected adversely by statutes granting exemptions for certain types of tangible personal property when those statutes merely excused the tax obligations of others. *W.R. Grace & Co. v. Hughlett*, 729 S.W.2d 203, 206-7 (Mo. banc 1987). Similarly, this Court noted that taxpayers lack standing to challenge the property tax assessments of other taxpayers, as they are not injured personally by others' assessment calculations. *State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525, 529 (Mo. banc 2010). There is no "public interest" when one taxpayer challenges statutory exemptions given to other taxpayers. *W.R. Grace*, 729 S.W.2d at 207. The tax exemptions in *W.R. Grace* and the tax credits here are similar in that they both result in a reduction of tax liability. The tax credits here merely excuse the tax liability of redevelopers or those to whom the credits are assigned or sold. The government collects no money when the taxpayer has a reduced tax liability, and money not collected cannot be expended.

(d) This case is distinguishable from *Ste. Genevieve School District R-II v. Board of Alderman of the City of Ste. Genevieve*, 66 S.W.3d 6 (Mo. banc 2002), which involved a challenge to the proposed expenditure of funds generated through taxation under an amended redevelopment plan in the unique context of tax increment financing statutes. Reliance on *Curchin v. Missouri Industrial Development Board*, 722 S.W.2d 930 (Mo. banc 1987), also is misplaced, as standing was not an issue in that case. Although it determined that allowance of the tax credit at issue there constituted a grant of public money or property in violation of article III, section 38(a), there is a dispositive distinction between the test for standing – whether there is a direct expenditure of funds generated through taxation – as opposed to the constitutional question – whether a tax credit is a grant of public money or property to a private person, association or corporation. Merging the two requirements into one would require this Court to abandon more than a century of precedent, which it declines to do.

(2) While this case was under submission, the United States Supreme Court determined, in its analysis of taxpayer standing, that a tax credit is not a direct expenditure of funds generated through taxation. *Arizona Christian School Tuition Organization v. Winn*, 131 S.Ct. 1436, 1440 (2011). Although this decision arises in a different context, it is instructive because taxpayer standing in both federal and Missouri courts is similar: both require an expenditure. Because the money at issue here never is deposited into the state's coffers, any effect on the taxpayers is merely speculative and, therefore, not sufficient to confer standing. This Court agrees with the Supreme Court's decision that tax credits are not government expenditures.

(3) Without standing, the taxpayers cannot challenge the constitutional validity of the tax credits provided by the act. This opinion does nothing, however, to constrain the taxpayers' right to use the courts to challenge the expenditure of public money if it is being spent on matters that the constitution forbids or on projects that have no public purpose.

Concurring opinion by Judge Wolff: Although the author disagrees with the principal opinion's holding that the taxpayers lack standing to sue, he concurs in result because he agrees

that, under this Court's precedents, they failed to show that the redevelopment project was not for a public purpose.

(1) The author would find that the transferable tax credits at issue here are public funds and that the taxpayers have standing to challenge their expenditures. Transferable tax credits are a cash alternative that can be used to pay taxes owed to the state; they are assets of the state on which the state hopes for an investment return. *Curchin v. Missouri Industrial Development Board*, 722 S.W.2d 930 (Mo. banc 1987), holding that providing a transferable tax credit is the expenditure of public funds, recognizes standing to sue. To find the taxpayers here do not have standing, the principal opinion distorts *Curchin*, which held that a tax credit is as much a grant of public money or property and is as much a drain on the state's coffers as would be an outright payment by the state to the bondholder upon default. *Id.* at 933. Here, the \$28 million in tax credits authorized to the redevelopment organization under section 99.1205, RSMo Supp. 2010, affect the taxpayers in the same way that a legislative decision to provide \$28 million straight out of the state's coffers would affect them. There is no difference between the state forgoing the collection of tax by granting a tax credit and the state making an outright payment. *Id.* Similarly, in *Ste. Genevieve School District R-II v. Board of Aldermen of the City of Ste. Genevieve*, 66 S.W.3d 6, 11 (Mo. banc 2002), this Court held that the taxpayer had standing because the tax abatement provided for a redevelopment project would cost the school district and the city future tax revenue, resulting in a pecuniary loss. He would find that the analysis of *W.R. Grace & Co. v. Hughlett*, 729 S.W.2d 203 (Mo. banc 1987), is irrelevant here because that case involved not a challenge to the expenditure of public money but rather the government's failure to collect taxes from other entities. The principal opinion's conclusion that the transferable tax credits here are not payments directly from the treasury is undercut by the Hancock Amendment's definition of "total state revenue" as including the amount of any credits not related to actual tax liabilities. Mo. Const. article X, section 17(1). If the Hancock Amendment counts these kinds of tax credits as state revenue, it makes no sense to say that they are not public funds.

(2) The author also would find that the standing analysis of *Arizona Christian School Tuition Organization v. Winn*, 131 S.Ct. 1436 (2011), does not apply here because the standards for standing are different in federal court than they are in state court. He notes, in fact, that the plaintiffs in this case had standing in state court, where they lost on the merits of their claim, but were found not to have standing in federal court. Unlike federal courts, Missouri courts have given standing to taxpayers to challenge expenditures they claim are unlawful or unconstitutional. He is concerned that by indicating that taxpayers may not have standing to present a constitutional challenge to the spending of state resources through tax credits – regardless of whether the credit is transferable – the principal opinion provides a roadmap for the legislature ensuring that courts will not be able to review whether a grant of public money as a tax credit violates the state constitution. *Arizona Christian School* should not be injected into Missouri's standing analysis. It is guided by federal court standing principles that are quite different from those under which Missouri courts recognize taxpayer standing, reflecting the vastly different roles of state and federal courts. By adhering to its standing requirements under Article III of the federal constitution, the federal courts stay out of controversies that state courts have a duty to adjudicate under their state constitutions. Missouri's cases recognize taxpayer standing without requiring the taxpayers to show the kind of particularized "injury in fact" that the United States Supreme Court requires under Article III. As such, Missouri recognizes a

taxpayer's standing even though his injury may be no different from that of other taxpayers, while the federal courts do not. When the United States Supreme Court denies standing in a controversy involving the spending of state money, it can be seen as a prudent respect for state prerogatives. But when state courts deny standing and refuse to reach the merits of a constitutional challenge to state spending, the constitutional controversy remains unresolved.

(3) The author would reach the merits of the taxpayers' claims here and, in so doing, would hold that they fail because the tax credits here are a grant of public money for a public purpose – the redevelopment of economically disadvantaged areas. That a private entity benefits from the statute does not negate its public purpose, and any benefit to the redeveloper is considered incidental unless the taxpayer shows otherwise. Here, the taxpayers have not negated that the primary purpose of the statute is to promote redevelopment of distressed communities. As such, there is no violation of article III, section 38(a) of the state constitution. There is, however, a strong case to be made that, one day, the Court should revisit the question of what is a “public purpose,” as the current standard is so lax that almost any expenditure would be considered for a “public purpose” if the government says it is.

Concurring opinion by Judge Stith: The author concurs in the principal opinion's analysis that the plaintiffs do not have taxpayer standing under current Missouri law because there is no expenditure of public funds here. She also concurs that the test for taxpayer standing should not be reconsidered in this case. Neither party briefed the issue, and this Court should not address it. If this issue were necessary to decide this case, she would ask the parties to submit supplemental briefing about whether a different test should be applied in the context of tax credits. That issue need not be reached, for the reasons stated in Judge Wolff's separate opinion, with which the author concurs to the extent it would hold that the tax credits at issue here constitute an expenditure of public funds for a public purpose and, therefore, are valid.