

**Summary of SC92750, *Thomas A. Schweich, Missouri State Auditor v. Jeremiah W. Nixon, Governor of the State of Missouri***

Appeal from the Cole County circuit court, Judge Jon E. Beetem

Argued and submitted March 6, 2013; opinion issued October 1, 2013

**Attorneys:** The auditor was represented by Darrell L. Moore of the state auditor's office in Jefferson City, (573) 751-5032; and the governor was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321.

*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:** Two Missouri state officeholders cross-appeal a trial court judgment granting in part and denying in part their cross-motions for summary judgment in a challenge to the governor's authority to withhold and reallocate funds from the budget appropriated by the state legislature. In a 6-0 per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri dismisses the case on the grounds of standing (legal ability to sue) and ripeness (whether the case is ready to be decided). Dismissal is without prejudice, which means that the filer is not prohibited from refileing it.

**Facts:** In June 2011, the Missouri governor announced that, pursuant to his authority under article IV, section 27 of the state constitution, he would withhold \$6.9 million in appropriations from the fiscal 2012 budget, including \$300,000 from the state auditor's budget. The auditor filed a petition for declaratory judgment and injunctive relief challenging the governor's authority to withhold these funds. Specifically, the auditor alleged that the withholds were arbitrary and capricious and that the governor had no authority to announce the withholds before the fiscal year began. The auditor also challenged the constitutional validity of so-called "E," or estimated appropriations (when the exact amount needed cannot be determined and additional expenditures are approved by the "E" designation), alleging they violated separation of powers principles. The trial court held that the withholds did not exceed the governor's constitutional authority but that the governor's increased expenditures for "E" appropriations violated separation of powers. The auditor and governor cross-appeal.

**DISMISSED WITHOUT PREJUDICE.**

**Court en banc holds:** Before reaching the merits of a declaratory judgment action, a court first must determine whether a justiciable controversy (one capable of being decided) has been presented. Justiciability requires that the plaintiff has standing to bring the case, that a substantial controversy between genuinely adverse parties exists, and that the controversy is ripe for adjudication. Here, the auditor does not have standing to raise claims as to proposed withholds to offices other than his own, and the dispute was not ripe as to the proposed \$300,000 withhold from his office. As such, the Court enters the judgment the trial court should have entered and dismisses the auditor's claims without prejudice.

(1) Article IV, section 13 of the Missouri Constitution specifically limits the state auditor's authority to conducting postaudits of state agencies, to establishing appropriate accounting systems for public officials, and to certain other matters not at issue here. A postaudit is defined as one conducted after the final settlement of a financial matter. By seeking relief before the conclusion of fiscal 2012, the auditor attempted to conduct a preaudit of the governor's actions and, in so doing, exceeded his limited constitutional authority. Because the auditor's suit sought to enforce powers and duties beyond those delegated to his office by the Missouri constitution, he lacks standing to challenge the governor's withholds and handling of the "E" appropriations.

(2) The auditor has standing to challenge the governor's withholding of \$300,000 from the auditor's own office budget because the \$300,000 appropriation constitutes a legally protectable interest. This matter, however, is not ripe for adjudication. Article IV, section 27 of the Missouri Constitution grants the governor broad discretion to reduce expenditures "whenever the actual revenues are less than the revenue estimates upon which the appropriations were based." As such, the constitutional validity of the governor's \$300,000 withhold depends on factors not known either when the petition was filed or when the trial court issued its judgment. Accordingly, the auditor's suit was premature, and the trial court should have dismissed it.