

**IN THE CIRCUIT COURT OF COLE COUNTY
NINETEENTH JUDICIAL CIRCUIT**

ROB SCHAAF, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 15AC-CC00239
)	Hon. Jon E. Beetem
JEREMIAH W. NIXON, et al,)	
)	
Defendants.)	

**GOVERNOR NIXON’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

Defendant Jeremiah W. Nixon (“Governor”) respectfully moves this Court to dismiss him from this law suit because Plaintiffs’ First Amended Petition for Declaratory and Injunctive Relief fails to state a claim against the Governor upon which relief can be granted. In support of his motion, the Governor submits the attached Suggestions in Support.

Dated this 23rd of June 2015

Respectfully Submitted,

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**SUGGESTIONS IN SUPPORT OF DEFENDANT NIXON’S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Plaintiffs—one state senator and five state representatives—have a political dispute with defendant Jeremiah W. Nixon (“Governor”). Simply put, the Governor is a vocal advocate for the Regional Convention and Sports Complex Authority’s (“RCSCA”) plan to construct a new stadium in St. Louis, a plan which these six legislators oppose. In an effort to prevent the stadium project from moving forward, Plaintiffs ask this Court to declare that RCSCA’s plan violates Missouri law and enjoin its implementation.

As both RCSCA and the stadium project are located in St. Louis, that court is the proper venue for Plaintiffs’ legal challenge. In fact, litigation regarding RCSCA’s plans for the new stadium—including some of the legal issues Plaintiffs raise here—is already pending in the Circuit Court for the City of St. Louis. But rather than intervening in that case or filing their own

suit against RCSCA in that forum, Plaintiffs filed their claims against RCSCA in this Court, joining the Governor in a pretensive effort to establish venue in Cole County.

Plaintiffs' First Amended Petition should be dismissed for failure to state a claim because Plaintiffs do not allege a single fact about the Governor's advocacy for the new stadium project that supports any legally cognizable cause of action against him. Nor do they identify any unlawful conduct by the Governor for this Court to enjoin. Plaintiffs' only factual allegations of unlawful conduct are directed at RCSCA. To the extent Plaintiffs allege any facts about the Governor himself, they fail to state a claim upon which relief can be granted.

Relevant Background

Plaintiffs allege the following facts in their First Amended Petition:

The General Assembly enacted and amended legislation in 1988 and 1989 establishing the Regional Convention and Sports Complex Authority ("RCSCA"). Pet. ¶¶8-19. Pursuant to its statutory authority, RCSCA entered into a contract with St. Louis City, St. Louis County, and the State of Missouri in 1991 to construct and operate the Edward Jones Dome ("Dome"). *Id.* ¶20. To finance construction of the Dome, RSA issued a series of three bonds (sponsored by the City, County, and State), the debt service for which would be paid out of the lease payments RSA would receive from the City,

County, and State for use of the Dome. *Id.* ¶22. The Dome is now the home field for the St. Louis Rams. *Id.* ¶25.

In 2014, Rams owner Stan Kroenke announced his intention to relocate the team to another state. *Id.* ¶26. The Governor subsequently “appointed a two-person task force to develop a financing plan” and “set forth specific criteria for the task force to propose a new stadium.” *Id.* ¶27. “On January 29, 2015, Defendant RCSCA approved agreements with contractors for work planning for a new stadium.” *Id.* ¶30. Two weeks later, the Governor “announc[ed] a number of concrete steps that – when the final financing plan comes together – will position this area for redevelopment, and bring new excitement, energy, and activity to the St. Louis Riverfront, and the entire state.” *Id.* ¶31. He claimed, “we’re making solid progress.” *Id.* ¶32.

In late February, the Governor “announced an agreement with St. Louis-area building trades representatives to commit to a 24-hour construction schedule.”¹ *Id.* ¶33. In March, the Department of Economic

¹ Paragraphs 33 and 34 of the First Amended Petition contain a potentially misleading ambiguity. In paragraph 33, Plaintiffs allege that the Governor recently “announced an agreement with St. Louis-area building trades representatives,” Pet. ¶33, implying that the trade representatives entered into an agreement *with the Governor* or an executive agency under his control, when in fact the agreement Plaintiffs refer to in this paragraph was *between the trade representatives themselves*. Paragraph 34 exacerbates this ambiguity by alleging in the very next sentence, “Under the existing agreement, the state Office of Administration is obligated to request \$12 million annually in the appropriations process for purposes of paying debt service and maintenance on the Edward Jones Dome.” Pet. ¶34. These consecutive paragraphs refer to entirely different agreements, but Plaintiffs’

Development (“DED”) “outlined the state of Missouri’s portion of the stadium financing plan before a committee of the Missouri House.” *Id.* ¶35. Plaintiffs allege that “DED and the Office of Administration plan to extend bond payments of \$12 million per year from state taxpayers until the year 2048.” *Id.* ¶37.

In April, RSCSA filed a lawsuit in the City of St. Louis alleging that it—RCSCA—was “developing a financing plan involving the State and the City relative to the cost of development of the New Stadium.” *Id.* ¶38. RCSCA has “declared” that its financing plan, when finalized, would include “[t]he execution by Defendant RCSCA, the State, and the City of a new Projecting, Construction, and Operation Agreement relative to the New Stadium.” *Id.* ¶39. The Governor has “pledged state taxpayer funding for the New Stadium consistent with the facts presented” in RCSCA’s lawsuit in the City of St. Louis.

“Defendant RCSCA has signed contracts with architects, engineers, surveyors, planners, contract attorneys, tax attorneys, and bond attorneys which total more than \$40 million.” *Id.* ¶43. “As of June 5, 2015, Defendant RSCSA has been billed nearly \$3 million relating to the new stadium proposal.” *Id.* ¶41. RCSCA’s chairman has stated, “At some point, we’re

phrasing suggests that the Office of Administration was the other party to the agreement with the trade representatives.

going to have to get some of this money back from the state.” *Id.* ¶42.

Plaintiffs allege that RCSCA and the Governor “have made direct expenditures of funds generated through taxation” in planning for “potential new construction.” *Id.* ¶44. Since this suit was filed, the Governor “re-iterated he was in charge of the project” to a sports radio reporter. *Id.* ¶48.

The Governor has “actively engaged in direct negotiations with the NFL and used taxpayer moneys and resources to do so”; “initiated communications with NFL Commissioner Roger Goodell”; traveled to New York for a comprehensive face-to-face meeting with NFL officials regarding the stadium plans”; “explained and reviewed the funding mechanism for the planned stadium with NFL officials”; “received guidance from NFL officials on how to proceed”; and “asked NFL officials to be informed of any problems.” *Id.* ¶¶49-50. His “statements, events, and other actions relating to the stadium plan involved the expenditure of taxpayer funds.” *Id.* ¶53.

Motion to Dismiss Standard

“To withstand a motion to dismiss for failure to state a claim, a petition must contain allegations of the ultimate facts necessary for recovery or allegations from which such ultimate facts can be inferred.” *Thomas v. Denney*, 453 S.W.3d 325, 332 (Mo.W.D. 2014). “The petition must state allegations of fact in support of each essential element of the cause pled.” *Id.* “If a petition consists only of conclusions and does not contain ultimate facts

or any allegations from which to infer those facts, a motion to dismiss is properly granted.” *Id.*

Argument

Counts I through IV of Plaintiffs’ five-count First Amended Petition purport to seek relief against both RCSCA and the Governor on the grounds that “Defendants’ Actions in Spending Money for Purposes of the Planned New Stadium” violate one or more statutes governing RCSCA’s authority to issue bonds for stadium construction.² Count I alleges that RCSCA plans to refinance RCSCA’s bond debt in ways that exceed RCSCA’s statutory authority. Count II alleges that RCSCA plans to extend the duration of RCSCA’s bond debt in ways that exceed RCSCA’s statutory authority. Count III alleges that RCSCA plans to build a new stadium at a location RCSCA’s authorizing statutes do not permit. Finally, Count IV alleges that RCSCA plans to spend RCSCA’s state appropriations in ways that exceed RCSCA’s statutory authority. None of these counts states a claim upon which relief can be granted against the Governor.

While Plaintiffs identify a number of ways in which RCSCA has allegedly exceeded its statutory authority in planning for the construction of a new stadium in St. Louis, they fail to identify even one way in which the Governor has allegedly exceeded his own authority in supporting RCSCA’s

² RCSCA is the only defendant named in Count V.

plans. Every allegation of fact they plead as to the Governor’s involvement with the new stadium proposal alleges nothing more than his use of the bully pulpit to present and advocate for the proposal to drum up public support. For example, Plaintiffs allege that the Governor “appointed a two-person task force,” Pet. ¶27; “set forth specific criteria,” *id.* ¶28; “announced concrete steps,” *id.* ¶31; “pledged state taxpayer funding,” *id.* ¶40; “developed and announced plans,” *id.* ¶45; “re-iterated he was in charge of the project,” *id.* ¶48; “engaged in direct negotiations,” *id.* ¶49; “initiated communications with NFL Commissioner Roger Goodell,” *id.* ¶50; “traveled to New York for a comprehensive face-to-face meeting,” *id.*; “explained and reviewed the funding mechanism,” *id.*; “received guidance from NFL officials,” *id.*; “actively [led] the process of planning the new stadium,” *id.* ¶51; and “set a deadline of August for finalizing a financing plan,” *id.* ¶52. None of these allegations comes close to stating a cause of action against the Governor.

Other than a handful of vague references to the Governor’s constitutional duty to “take care that the laws are . . . faithfully executed,” Plaintiffs do not identify any ministerial or nondiscretionary duty the Governor has allegedly neglected to perform, nor any constitutional or statutory limit on his own authority that the Governor has allegedly exceeded, nor any state or federal law the Governor has broken. Indeed, the only statutory provisions Plaintiffs cite in their petition concern the bonding

authority of *RCSCA*. Count I alleges that the new stadium proposal violates §67.653.1(10)(g) RSMo, which Plaintiffs describe as “limit[ing] *the authority of Defendant RCSCA* to extend bond payments.” Pet. ¶60 (emphasis added). Count II alleges violations of §67.653.1(10)(b) RSMo, which Plaintiffs also describe as “limit[ing] *the authority of Defendant RCSCA* to extend bond payments.” Pet. ¶70 (emphasis added). Count III alleges violations of §67.653.1(1), which Plaintiffs describe as “limit[ing] *the authority of Defendant RCSCA* to finance stadiums.” Pet. ¶60 (emphasis added).

Count IV alleges that *RCSCA*—not the Governor or his Office—received \$12 million in state appropriations from General Revenue “[f]or debt service and maintenance on the Edward Jones Dome project in St. Louis.” Pet. ¶99. Without pleading any facts alleging the Governor’s direct involvement in expenditures of state money, Plaintiffs claim that “Defendant *RCSCA* and Defendant Governor Jay Nixon’s actions in using funds to pay for planning construction of a new stadium are in excess of the lawful purpose of the appropriations in House Bill 2005 because they are not for ‘debt service and maintenance on *the Edward Jones Dome project* in St. Louis.” Pet. ¶100 (emphasis in original). The only *facts* they allege about expenditures for a new stadium relate exclusively to the conduct of *RCSCA*:

- “On January 29, 2015, *Defendant RCSCA* approved agreements with contractors for work planning for a new stadium.” Pet. ¶30 (emphasis added).

- “As of June 5, 2015, *Defendant RCSCA has been billed* nearly \$3 million relating to the proposal.” *Id.* ¶41 (emphasis added).
- “*Defendant RCSCA has signed contracts* with architects, engineers, surveyors, planners, contract attorneys, tax attorneys, and bond attorneys which total more than \$40 million.” *Id.* ¶43 (emphasis added).

Even under the most favorable interpretation of their Petition, Plaintiffs allege nothing more than the Governor’s use of the bully pulpit to advocate for the construction of a new stadium in St. Louis. Plaintiffs offer no legal basis for this Court to enjoin him from continuing to do so.

WHEREFORE the Governor respectfully requests that this Court dismiss him as a Defendant in this case because Plaintiffs have failed to plead facts stating any claim against the Governor upon which relief can be granted.

Dated this 23rd of June 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2015, Defendant Nixon's **MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**, and **SUGGESTIONS IN SUPPORT** were electronically filed with the Clerk of the Court using the Missouri Courts Electronic Filing System, which sent notification to the following:

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