IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JOHN KUEHN,	)	**Case No. CI 24-4307**
	)	
Plaintiff,	)	
v.	)	
	)	
JAMES D. PILLEN, in his official capacity as the Governor of Nebraska; ROBERT B. EVNEN, in his official capacity as the Secretary of State of Nebraska; STEVEN L. CORSI in his official capacity as the Chief Executive Officer of the Department of Health and Human Services of Nebraska; THOMAS D. BRIESE in his official capacity as the State Treasurer of Nebraska; JAMES R. KAMM in his official capacity as the Tax Commissioner of Nebraska; BRUCE D. BAILEY in his official capacity as a member of the Nebraska Medical Cannabis Commission; MONICA OLDENBURG in her official capacity as a member of the Nebraska Medical Cannabis Commission; LORELLE MUETING in her official capacity as a member of the Nebraska Medical Cannabis Commission; KIM M. LOWE in her official capacity as a member of the Nebraska Medical Cannabis Commission; and ANNA WISHART, CRISTA EGGERS, and ADAM MORFELD,	)	**ORDER ON MOTIONS TO DISMISS**
	)	
Defendants.	)	

This matter came on for hearing before the Court on May 20 and June 16, 2025. On May 20, the Court heard argument on Defendants' Motions to Dismiss the Verified 1st Amended Complaint. On June 16, the Court granted Plaintiff leave to file the 2nd Amended Complaint and took Defendants' renewed Motions to Dismiss under

advisement. Plaintiff John Kuehn was represented by his attorneys Edward Greim, Andrew LaGrone, and Anne Mackin. Defendants James Pillen, Robert Evnen, Steven Corsi, Thomas Briese, and James Kamm were represented by Assistant Attorneys General Jennifer Huxoll and Zachary Pohlman. Defendants Crista Eggers, Anna Wishart, and Adam Morfeld were represented by attorney Daniel Gutman and Sydney Hayes. And attorney Jason Grams represented Defendants Bruce Bailey, Monica Oldenburg, Lorelle Mueting, and Kim Lowe.[1]

The Court, having reviewed briefing and heard argument from Plaintiff and Defendants' counsel on behalf of their respective clients, determines that Plaintiff does not have standing. The Court therefore dismisses the 2nd Amended Complaint without prejudice.

Background

Plaintiff challenged the legal sufficiency of two initiatives to decriminalize and regulate medical cannabis on the November 2024 general election ballot. In a September 2024 lawsuit, he raised pre-election issues, including a single-subject challenge and challenges to the validity of the petition signatures necessary to place the two measures on the ballot. The Court found that the measures did not violate the single-subject rule and, after a four-day expedited trial, found that the petitions contained a legally sufficient number of valid signatures to be placed on the ballot. That matter is now on appeal at *Kuehn v. Evnen*, S-24-901.

The election ensued and the two initiatives passed with about 70% of the vote. On December 10, 2024, Plaintiff sued Governor James Pillen, Secretary of State Robert Evnen, and the ballot sponsors. Plaintiff moved for a temporary injunction and temporary restraining order to stop the Governor from certifying the two initiatives into law. The Court denied the motions. On December 12, 2024, Governor Jim Pillen signed proclamations certifying the enactment of the two initiatives into law. The

[1] Plaintiff's 2nd Amended Complaint substitutes (as defendants) new members of the NMCC, Monica Oldenburg and Lorelle Mueting, for former member Harry Hoch Jr.

Nebraska Medical Cannabis Patient Protection Act (Patient Protection Act) removes penalties for possession and use of medical cannabis. Neb. Rev. Stat. §§ 71-24,103 to 71-24,105. The Nebraska Medical Cannabis Regulation Act (Regulation Act) removes penalties for the manufacture and distribution of medical cannabis and creates a commission to regulate cannabis establishments. Neb. Rev. Stat. §§ 71-24,106 to 71-24,111.

On June 16, 2025, Kuehn filed a 2nd Amended Complaint for Declaratory and Injunctive Relief ("2nd Amended Complaint"). The defendants can be categorized into three groups. Defendants James Pillen, Governor; Robert Evnen, Secretary of State; Steven Corsi, Chief Executive Officer of the Department of Health and Human Services; Thomas Briese, State Treasurer; and James Kamm, Tax Commissioner, are all sued in their capacities as state officials and will be referred to as the "State Defendants." Defendants Bruce Bailey, Monica Oldenburg, Lorelle Mueting, and Kim Lowe are sued in their official capacities as members of the Nebraska Medical Cannabis Commission and will be referred to as the "NMCC Defendants." Defendants Anna Wishart, Crista Eggers, and Adam Morfeld are sued as the sponsors of the ballot initiatives and will be referred to as the "Ballot Sponsor Defendants." All three groups are separately represented, and all three groups have separately moved to dismiss Plaintiff's 2nd Amended Complaint.

In this lawsuit, Plaintiff alleges that the measures are unconstitutional under both state and federal law. He alleges theories of relief under eight counts: To declare that the Governor's proclamation is preempted by federal law and in violation of Nebraska's separation-of-powers clause (Counts I & II); to declare that the measures are legally insufficient under Nebraska's election laws (Count III); to enjoin the illegal expenditure of taxpayer money by the Department of Health and Human Services (DHHS) (Counts IV & V); to enjoin the illegal expenditure of taxpayer money by the NMCC Defendants (Counts VI & VII); and to enjoin the collection and maintenance of sales tax from medical cannabis sales by the Treasurer and the Department of Revenue (Count VIII). In his prayer for relief, Plaintiff seeks a declaratory judgment

that the commitment of employee time and the expenditure of tax monies to carry out the measures is unlawful and that the measures are legally insufficient and invalid. Plaintiff asks for an award of attorney fees and costs and for such other relief as is just and equitable.

Evidentiary Rulings

At the hearing on May 20, 2025, the NMCC Defendants offered Exhibits 1 to 4 in support of their motion to dismiss under Rule 6-1112(b)(1). Their intent was to make a factual challenge to Plaintiff's standing, in addition to a facial challenge. See *Washington v. Conley*, 273 Neb. 908, 734 N.W.2d 306 (2007) (distinguishing facial and factual challenges to standing). Plaintiff objected that it was unfair to challenge his standing as a factual matter before he could engage in discovery.[2] He noted that the Court had stayed discovery until the motions to dismiss were resolved. Alternatively, if the Court received the NMCC Defendants' evidence, then Plaintiff offered Exhibit 5, which he argued creates a factual dispute regarding standing.

Having considered the parties' arguments, the Court sustains Plaintiff's objections. Exhibits 1 to 5 are not received. The Court will only consider the NMCC Defendants' facial challenge to Plaintiff's standing. But the Court notes that Plaintiff attached many of the documents in Exhibit 5 to his 2nd Amended Complaint. These documents are now part of Plaintiff's operative pleading and the Court will consider them in ruling on the Motions to Dismiss. See *Kellogg v. Neb. Dep't of Corr. Servs.*, 269 Neb. 40, 690 N.W.2d 574 (2005) ("attachments to the complaint become a part of the complaint, and the court may consider those documents in ruling on a motion to dismiss").

Standard of Review

Defendants move to dismiss the 2nd Amended Complaint under Rule 6-1112(b)(1) for lack of standing and Rule 6-1112(b)(6) for failure to state a claim.

[2] Plaintiff made this objection in a filing titled "Plaintiff's Motion to Strike." This filing was functionally a written objection to the NMCC Defendants' anticipated offer of evidence.

Standing is jurisdictional and is therefore properly raised under Rule 6-1112(b)(1). *See Jacobs Engr. Group v. ConAgra Foods*, 301 Neb. 38, 54–55, 917 N.W.2d 435 (2018). When a motion to dismiss is brought under both Rules 6-1112(b)(1) and (6), "the court should consider the rule 12(b)(1) challenge first. If the court determines that it lacks subject-matter jurisdiction, the court should dismiss on that basis and should not consider the rule 12(b)(6) grounds." *Anderson v. Wells Fargo Fin. Acceptance Pa., Inc*., 269 Neb. 595, 601, 694 N.W.2d 625, 630 (2005).

On a facial challenge to standing under Rule 6-1112(b)(1), the court must accept the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor. *Washington v. Conley*, 273 Neb. 908, 734 N.W.2d 306 (2007). Similarly, on a motion to dismiss for failure to state a claim under Rule 6-1112(b)(6), the court "accepts as true all the facts which are well pled and the proper and reasonable inferences of law and fact which may be drawn therefrom, but not the pleader's conclusions." *Cent. Neb. Pub. Power & Irrigation Dist. v. Jeffrey Lake Dev., Inc.*, 282 Neb. 762, 764, 810 N.W.2d 144, 147 (2011). A court will sustain a motion to dismiss under Rule 6-1112(b)(6) if the plaintiff has failed to allege sufficient facts that, accepted as true, state a claim to relief that is plausible on its face. *Rodriguez v. Cath. Health Initiatives*, 297 Neb. 1, 899 N.W.2d 227 (2017).

Analysis

Generally, to have standing, a plaintiff must suffer an "injury in fact." *Hauxwell v. Middle Republican Nat. Res. Dist.*, 319 Neb. 1, __ N.W.3d __ (2025). This injury must be "concrete in both a qualitative and a temporal sense," "distinct and palpable," and "actual or imminent." *Id.* at 17–18. Plaintiff concedes that he does not have an injury in fact.

Instead, Plaintiff argues that he has standing under several exceptions to the injury-in-fact requirement. First, he argues that the Legislature allows "any resident" to challenge the legal sufficiency of an initiative petition, even after the election is over. Second, he argues that he has standing as a taxpayer to enjoin the illegal

expenditure of public funds. Third, he argues that he has standing because the constitutionality of the Patient Protection and Regulation Acts is a matter of great public concern. For the following reasons, the Court disagrees with Plaintiff on all three points.

A. Plaintiff does not have standing under Neb. Rev. Stat. § 32-1412.

Unlike the U.S. Constitution, the Nebraska Constitution does not limit the courts' jurisdiction to "cases" and "controversies." Thus, the Nebraska Legislature may, so long as it acts within the bounds of other constitutional provisions, confer standing that is broader or more restrictive than the common-law baseline. *Griffith v. Neb. Dep't of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019).

The Election Act is a prime example of the Legislature conferring standing that is broader than the common law. Plaintiff's previous lawsuit relied on Neb. Rev. Stat. § 32-1412(2), which grants "any resident" the right to enjoin the Secretary of State from "certifying or printing on the official ballot" any initiative petition that is "not legally sufficient." A ballot measure is not legally sufficient if it "violates a constitutional or statutory rule that governs the form of the measure or the procedural requirements for its placement on the ballot." *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 984–85, 853 N.W.2d 494 (2014); see also *Stewart v. Advanced Gaming Techs., Inc.*, 272 Neb. 471, 723 N.W.2d 65 (2006) (stating that § 32-1412 authorizes "[p]rocedural challenges").

In this lawsuit, Plaintiff does not have standing under § 32-1412 for two reasons: First, he is not challenging the legal sufficiency of the ballot measures. His claims do not involve the "form of the measure or the procedural requirements for its placement on the ballot." Second, Plaintiff filed this lawsuit more than a month after the election. The relief provided by § 32-1412(2) is an injunction preventing the Secretary of State from certifying or printing the petition on the official ballot. It is much too late to stop the Secretary of State from putting the medical-cannabis initiatives on the ballot.

If a resident files a timely pre-election challenge under § 32-1412(2) and loses before the district court, then an appellate court might have the power to constructively remove the initiative from the ballot after the election. See *Chaney v. Evnen*, 307 Neb. 512, 949 N.W.2d 761 (2020) (stating that the Supreme Court had the power to "direct the legal removal of the petition from the ballot even if we could not direct its physical removal"). Such power might be necessary to ensure that the remedy in § 32-1412(2) is effective. But § 32-1412(2) does not allow a resident to challenge the legal sufficiency of an initiative petition for the first time after an election. Allowing such post-election challenges would ignore the plain language of the statute, which, again, allows residents to enjoin the Secretary of State from "certifying or printing [legally insufficient petitions] on the official ballot."

Plaintiff cites *Duggan v. Beermann*, 249 Neb. 411, 544 N.W.2d 68 (1996) (*Duggan II*) for the proposition that he can file a post-election challenge under § 32-1412 to the constitutionality of the Patient Protection and Regulation Acts. In *Duggan II*, the plaintiffs sued the Secretary of State before the election. They sought to enjoin him from certifying an initiative measure that would have added term limits in the Nebraska Constitution for state legislators and city councilmembers, among other officers. The plaintiffs also prayed for a declaration that the proposed amendment was unconstitutional. Before the election, the district court generally found in favor of the Secretary of State. The district court held that deciding the measure's constitutionality before the election would be an advisory opinion. The measure was submitted to the voters and passed. The plaintiffs then moved for a new trial on whether the amendment was constitutional. The district court overruled the motion, reasoning that its jurisdiction under the predecessor to § 32-1412 was limited to deciding whether the petition was "legally sufficient."

On appeal in *Duggan II*, the Supreme Court held that the district court had jurisdiction to decide whether the amendment was constitutional because the plaintiffs had prayed for a declaratory judgment in addition to an injunction under the election statute. The Supreme Court held that the declaratory judgment claim was properly

joined with the injunction claim. The Supreme Court also held that that, while the district court properly declined to decide the measure's constitutionality before the election, it should have done so after the election when the plaintiffs moved for a new trial.

Duggan II does not help Plaintiff in this case. It does not stand for the rule that any resident has standing under § 32-1412 to challenge the constitutionality of a voter-initiated statute after the election. The Supreme Court instead held that the plaintiffs in *Duggan II* could challenge the term-limit measure's constitutionality in a claim for declaratory judgment (which was properly joined with their injunction claim under the predecessor to § 32-1412). The Supreme Court did not discuss the plaintiffs' standing to seek declaratory relief. That is not surprising, because two of the plaintiffs in *Duggan II* (Ernie Chambers and Ken Haar) were elected officials who would have been term limited by the amendment. They obviously had standing to challenge the amendment's constitutionality. It was therefore unnecessary for the Supreme Court to consider whether the other plaintiffs (who were Nebraska residents and voters) also had standing under the declaratory judgment statutes. See *Planned Parenthood of the Heartland, Inc. v. Hilgers*, 317 Neb. 217, 9 N.W.3d 604 (2024) (if one plaintiff has standing, then a court does not have to decide if another plaintiff has standing).

In sum, Plaintiff does not have standing under § 32-1412 to sue for a declaration that the Patient Protection and Regulations Acts are unconstitutional. Section 32-1412 is limited to enjoining the Secretary of State from certifying or printing a legally insufficient measure on the ballot. The Court will now consider whether Plaintiff has standing to seek a declaratory judgment under two exceptions to the injury-in-fact requirement.

B. Plaintiff does not have taxpayer standing.

Plaintiff argues that he has standing under the taxpayer exception to the common-law requirement of injury in fact. A resident taxpayer, with no injury in fact, "may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes." *Myers v. Neb. Inv. Council*, 272 Neb. 669, 681, 724 N.W.2d

776 (2006). Defendants argue that most taxpayer-standing cases involve a direct expenditure of public funds, like a contract between the government and a third party. See, e.g., *id.* Defendants assert that expanding the definition of "expenditure of public funds" to include the incidental burdens of implementing a law, like employee time and printing costs, would effectively swallow the injury-in-fact rule.

Plaintiff's allegations of taxpayer standing in this case are remarkably broad. He alleges that DHHS employees will expend public funds by issuing guidance and investigating complaints against doctors who recommend medical cannabis. 2d Am. Compl. ¶¶ 126–49. According to Plaintiff, a DHHS employee expends public funds when they "review" a complaint. *Id.*, ¶ 145. Likewise, Plaintiff alleges that the Treasurer and Tax Commissioner will expend public funds by collecting sales tax on sales of medical cannabis.[3] *Id.*, ¶¶ 107–25, 215–22. He also alleges that the Governor expended public funds when he signed a proclamation, made appointments, and directed two other agencies to provide administrative support to the NMCC Defendants. *Id.*, ¶¶ 150–59 & Ex. Q. Plaintiff's theory seems to be that any government action, any use of government resources like computers, and any employee time (including reviewing something) is an expenditure of public funds.

Plaintiff's strongest case for taxpayer standing is his claim against the NMCC Defendants to declare that the Regulation Act is unconstitutional. The Regulation Act creates a new commission to regulate the medical-cannabis industry, i.e., the Nebraska Medical Cannabis Commission (NMCC). But its three mandatory members already belong to the pre-existing Nebraska Liquor Control Commission. See Neb. Rev. Stat. § 71-24,109(3). The Regulation Act does not pay these *ex officio* members of the NMCC any more for their new duties. The Regulation Act allows the Governor to appoint two more members to the NMCC (if confirmed by the Legislature). § 71-24,109(4). But, again, it does not provide for their compensation. The Regulation Act

[3] The fact that Plaintiff wants to enjoin state officers from collecting sales taxes (that the Plaintiff himself will not pay) suggests that this lawsuit is not motivated by a concern for the public fisc.

authorizes the NMCC to acquire office space and staff. § 71-24,111(11). But it provides no financial means to do so. The Regulation Act provides no funding at all.[4]

In the 2nd Amended Complaint, Plaintiff alleges that "LB 261 provided funding of $30,000 for the NMCC." 2d Am. Compl., ¶ 77, citing 2025 Neb. Laws, L.B. 261. Whether L.B. 261 appropriated money to the NMCC is a question of law. See, e.g., *Mosher v. Whole Foods Mkt., Inc.*, 317 Neb. 26, 8 N.W.3d 733 (2024) ("The meaning of a statute is a question of law . . . ."). As a matter of law, L.B. 261 did not. The NMCC is not mentioned anywhere in L.B. 261. Plaintiff suggests that L.B. 261 appropriated $30,000 to the Liquor Control Commission to help implement the Patient Protection and Regulation Acts. But the Liquor Control Commission's appropriation does not say that. See 2025 Neb. Laws, L.B. 261, § 164. For other agencies, the Legislature stated that part of their appropriation was for a specific purpose. For example, the section appropriating money to the Supreme Court provides: "There is included in the appropriation to this program $30,000 from the General Fund for FY2025-26 for the purpose of contracting for services with an organization with the primary goal of ensuring sustainability in juvenile justice reform." *Id.* at § 29. The Legislature did not provide any similar direction in the Liquor Control Commission's appropriation.

The Regulation Act does require the NMCC Defendants to perform some acts. In particular, they must promulgate regulations and, later, register cannabis establishments that qualify under those regulations. § 71-24,111(1), (2). Although the NMCC has no staff, Plaintiff alleges that other state agencies will provide administrative assistance to the NMCC Defendants. 2d Am. Compl., ¶ 76 & Ex. Q. Plaintiff's theory seems to be that making rules and granting applications will necessarily require employee time. Someone will probably use the State's computers

[4] The NMCC might fund itself through licensing fees. But Plaintiff will not pay those fees. He therefore would not have standing to challenge how they are spent.

and printers, maybe even postage. Plaintiff argues that these incidental burdens of implementing a law are the expenditure of public funds.

To support this expansive version of the taxpayer-standing doctrine, Plaintiff relies on *Chambers v. Lautenbaugh*, 263 Neb. 920, 644 N.W.2d 540 (2002). There, the plaintiff, a resident taxpayer, sued a county election commissioner to declare that the redrawn district lines for city council elections were unlawful. The plaintiff alleged in his petition: "Employees in the office of the Douglas County Election Commissioner have spent and will spend in the future public time and money to implement the new district boundary lines . . . ." *Id.* at 928. The Supreme Court held that the petition "clearly" alleged an expenditure of public funds. *Id.* The Supreme Court did not explain its reasoning on this point.

Chambers does look very good for Plaintiff, but it was limited by *Project Extra Mile v. Nebraska Liquor Control Commission*, 283 Neb. 379, 810 N.W.2d 149 (2012), overruled on other grounds, *Griffith v. Neb. Dep't of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019). In *Project Extra Mile*, the Supreme Court described a "tension between *Chambers* and our cases holding that an allegation of unlawful government action is insufficient to show an illegal expenditure of public funds." *Id.* at 390. Specifically, "government officials must perform their duties without fear of being sued whenever a taxpayer disagrees with their exercise of authority." *Id.* at 389. The Supreme Court suggested that "*Chambers* would have been more correctly presented as raising a matter of great public concern: If true, the county election commissioner's alleged statutory violation would have unlawfully altered the way that the city's residents elected their city council representatives." *Id.* at 390.

Plaintiff emphasizes that the Supreme Court later overruled *Project Extra Mile* on other grounds. See *Griffith*, *supra*. But this Court believes that the Supreme Court was wise to suggest that *Chambers* should be understood as something other than a taxpayer-standing case. If alleging "employee time" is enough to claim taxpayer standing, then taxpayer standing would no longer be an "exception." It would be the rule anytime a statute requires a government employee to do anything. That

result would be inconsistent with the principle that "[e]xceptions to the rule of standing must be carefully applied in order to prevent the exceptions from swallowing the rule." *Egan v. County of Lancaster*, 308 Neb. 48, 56, 952 N.W.2d 664 (2020), quoting *State ex rel. Reed v. State*, 278 Neb. 564, 773 N.W.2d 349 (2009) (alteration in original).[5]

Because courts created taxpayer standing for reasons of public policy, they can also limit taxpayer standing for reasons of public policy. For example, in *Jacob v. State*, 12 Neb. App. 696, 685 N.W.2d 88 (2004), the Court of Appeals held that inmates who pay only "limited" sales tax cannot claim taxpayer standing. *Id.* at 705–706. The reason was that "incarcerated individuals should not be 'litigating engines' in the taxpayer standing arena." *Id.* at 703 (citation omitted). The Court believes that this case raises similar concerns. Nebraska, like other states, has no shortage of citizen-taxpayers with strong political opinions. That is not necessarily a bad thing. But it would be bad if all those citizens could sue whenever a law requires a government employee to do something.

In sum, Plaintiff does not have taxpayer standing. The Court does not believe that the incidental burdens of implementing a law, like employee time and printing costs, is an "expenditure of public funds" sufficient to confer taxpayer standing under Nebraska law. The Court therefore turns to Plaintiff's alternative exception to the injury-in-fact requirement: standing for matters of great public concern.

[5] Courts in other jurisdictions have reached different conclusions on this issue, depending on how broadly or narrowly they construe their taxpayer-standing doctrine. Compare *Citizens for Uniform Laws v. County of Contra Costa*, 285 Cal. Rptr. 456 (Cal. App. 1991) (holding that under California's taxpayer-standing doctrine, which is liberally construed, taxpayers have standing when "paid employees of a preexisting public entity have expended their time in performing acts prescribed by the challenged law"), with *Gaddy v. Ga. Dep't of Revenue*, 802 S.E.2d 225 (Ga. 2017) ("we reject plaintiffs' argument that they have standing because public funds are illegally expended to administer the Program in that state employee time is used to process the filings for tax credits").

C. Plaintiff does not have matter-of-great-public-concern standing.

The Nebraska Supreme Court recognized the matter-of-great-public-concern doctrine in *Cunningham v. Exon*, 202 Neb. 563, 276 N.W.2d 213 (1979). There, a citizen-taxpayer alleged that language preventing the state from using public funds for sectarian purposes, but allowing the state to distribute federal grants, had been omitted from a constitutional amendment. The Supreme Court observed that other jurisdictions had recognized an exception to the injury-in-fact requirement "where matters of great public concern are involved and a legislative enactment may go unchallenged unless plaintiff has the right to bring the action." *Id.* at 700–701. The Supreme Court applied this exception in *Cunningham* because "changes [to] the provisions of a state constitution as to the use of public funds for sectarian and educational purposes" was a matter of great public concern. *Id.*

It is not clear whether the Supreme Court has applied the matter-of-great-public-concern exception after *Cunningham*. In *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015), four justices said that the exception applied to a constitutional challenge to a statute that allowed major oil pipeline carriers to obtain the Governor's approval instead of the Public Service Commission's approval. But this opinion was one justice short of the five-justice supermajority required to hold a statute unconstitutional. See Neb. Const. art. V, § 2. A few years later, the Supreme Court expressly declined to say whether the standing analysis in the four-justice opinion in *Thompson* was controlling precedent. See *Egan v. County of Lancaster*, 308 Neb. 48, 952 N.W.2d 664 (2020). Also, as discussed above, the Supreme Court has suggested that *Chambers v. Lautenbaugh* is better understood as a matter-of-great-public-concern case. See *Project Extra Mile*, *supra*. But the Supreme Court has not yet expressly said so.

On the other hand, the Supreme Court has rejected the matter-of-great-public-concern exception on several occasions. For example, it held that the "proliferation of gambling" was not a matter of great public concern. *Nebraskans Against Expanded Gambling, Inc. v. Neb. Horsemen's Benevolent & Protective Ass'n*, 258 Neb. 690, 694,

605 N.W.2d 803 (2000). It also held that "harm to the natural resources and aesthetic beauty of the state" was not a matter of great public concern. *State ex rel. Reed v. State Game & Parks Comm'n*, 278 Neb. 564, 571, 773 N.W.2d 349 (2009).

If the proliferation of gambling and harm to the state's natural resources are not matters of great public concern, then the Court is hard-pressed to say that the legalization and regulation of medical cannabis is. Although Plaintiff's nondelegation claim involves the separation of powers under the Nebraska Constitution, that constitutional issue is much more mundane than the constitutional issue in *Cunningham*. The Court is simply asked to decide whether the people were specific enough about what kind of rules an agency can promulgate for medical cannabis, which is just one of thousands of substances that may now be used for medical treatment under Nebraska law. The Court does not believe that every claim alleging a violation of the separation of powers is automatically a matter of great public concern. For these reasons, the Court concludes that Plaintiff does not have matter-of-great-public-concern standing.

D. Other parties have standing.

Defendants also argue that the taxpayer and matter-of-great-public-concern exceptions do not apply because there are other people who could sue. While the Court's conclusions above do not depend on the existence of other parties with standing, the Court agrees that this factor is relevant. Generally, "[t]he threshold question . . . when a party attempts to base standing on an injury common to the general public, has been whether or not there exists another party whose interests are more at issue in the action, and who is thus more appropriately entitled to present the claim." *Ritchart v. Daub*, 256 Neb. 801, 808, 594 N.W.2d 288 (1999). As articulated in *Cunningham*, the matter-of-great-public-concern exception applies only if the "legislative enactment may go unchallenged unless plaintiff has the right to bring the action." Likewise, part of the reason why taxpayers have standing is that there might be no one else who could challenge the government action. See *Woodruff v. Welton*, 70 Neb. 665, 97 N.W. 1037 (1904) ("if, in such cases as the present, a taxpayer can

not intervene, no one else can except one who is a participant in the illegal proceedings . . . .").

Here, there is obviously another party with standing to argue that Nebraska's medical-cannabis laws are preempted by federal law: The federal government. At any time, the federal government can enforce the Controlled Substances Act. Indeed, it is questionable whether a private individual like the Plaintiff has any right to do so. See, e.g., *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865 (10th Cir. 2017) (holding that private individuals did not have the right to assert that Colorado's marijuana laws were preempted by the Controlled Substances Act).

There are also other parties who could litigate whether the Regulation Act violates the separation of powers under the Nebraska Constitution. For example, a landowner near a registered cannabis establishment would have standing if the value, use, or enjoyment of their property is impaired. See, e.g., *Safe Streets Alliance*, *supra* (holding that landowners next to a "marijuana grow" operation had standing). Likewise, any person fined by the NMCC would have standing to challenge the law's constitutionality. See § 71-24,111(8), (9) (stating that the NMCC has the power to impose fines, which are remitted to the State Treasurer for the support of the common schools).[6]

The State Defendants also argue that the Attorney General has standing to sue state officers who are implementing a law that the Attorney General believes is unconstitutional. See *State ex rel. Meyer v. Peters*, 188 Neb. 817, 199 N.W.2d 738 (1972). In *Peters*, the Attorney General sued the Tax Commissioner for a declaration of a law's constitutionality under the Uniform Declaratory Judgments Act (UDJA). Emphasizing that the UDJA is liberally construed, see Neb. Rev. Stat. § 25-25-21,160,

[6] The NMCC Defendants also argue that anyone to whom they deny a license to manufacture or dispense cannabis would have standing to challenge the law's constitutionality. But that is unlikely. See *N'Da v. Golden*, 318 Neb. 680, 18 N.W.3d 570 (2025) ("it is inconsistent for one to seek to gain the benefit of a statute and at the same time seek to have the statute declared unconstitutional").

the Supreme Court held that the Attorney General had standing because he took an oath to uphold the Nebraska Constitution.

This Court does not decide in the present lawsuit whether the Attorney General would have standing to challenge Nebraska's medical-cannabis laws. The State Defendants' reliance on *Peters* (which liberally construed the UDJA and did not require an injury in fact) is hard to square with their argument elsewhere that the UDJA should be strictly construed to require an injury in fact under *Griffith v. Nebraska Department of Correctional Services*, 304 Neb. 287, 934 N.W.2d 169 (2019). This Court rejected that argument in *Community Care Health Plan of Nebraska v. Jackson*. See Transcript, S-23-681, at pp. 736–38.[7] The Court rejects that argument again for the same reasons. Namely, the UDJA is not a waiver of sovereign immunity and is therefore not strictly construed.

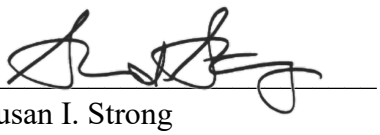
Conclusion

Plaintiff admits that he has not suffered an injury-in-fact resulting from Defendants' actions and the Court finds that he lacks standing under any of the exceptions to the rule requiring an injury-in-fact. Accordingly, Plaintiff lacks standing to sue.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the 2nd Amended Complaint for Declaratory and Injunctive Relief is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 26th day of June 2025.

BY THE COURT:



Susan I. Strong
District Court Judge

[7] The Supreme Court's opinion can be found at 317 Neb. 14, 9 N.W.3d 404 (2024).