

AUG 15 2016

CHRISTOPHER D. RICH, Clerk
By STEPHANIE HARDY
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

EMPLOYERS RESOURCE MANAGEMENT
COMPANY, an Idaho Corporation,

Plaintiff,

vs.

MEGAN RONK, in her capacity as Director of
the Idaho Department of Commerce,

Defendant.

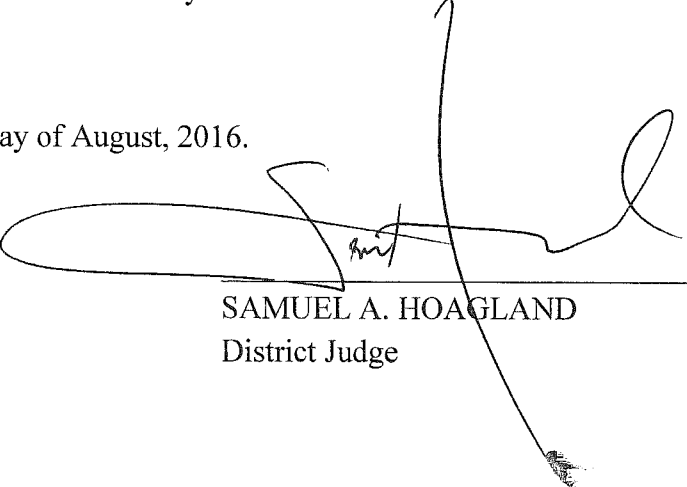
Case No. CV-OC-2016-0005467

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Amended
Complaint is hereby DISMISSED in its entirety.

IT IS SO ORDERED this 12th day of August, 2016.



SAMUEL A. HOAGLAND
District Judge

CERTIFICATE OF MAILING

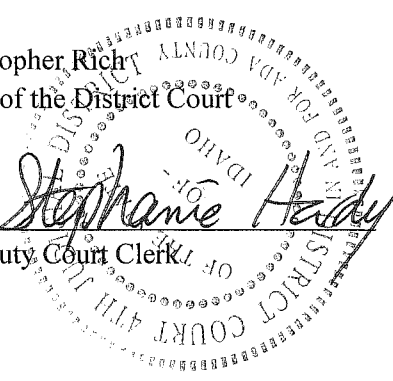
I hereby certify that on this 15th day of August, 2016, I mailed (served) a true and correct copy of the within instrument to:

Mr. Carl Withroe, *Esq.*
954 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720-0010

Mr. Christ Troupis, *Esq.*
P.O. Box 2408
Eagle, ID 83616

Christopher Rich
Clerk of the District Court

By Stephanie Hady
Deputy Court Clerk



AUG 15 2016

CHRISTOPHER D. RICH, Clerk
By STEPHANIE HARDY
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

EMPLOYERS RESOURCE MANAGEMENT
COMPANY, an Idaho Corporation,

Plaintiff,

vs.

MEGAN RONK, in her capacity as Director of
the Idaho Department of Commerce,

Defendant.

Case No. CV-OC-2016-0005467

MEMORANDUM DECISION AND ORDER
GRANTING MOTION TO DISMISS FOR
LACK OF STANDING

This case concerns the constitutionality of the Idaho Reimbursement Incentive Act, which provides for refundable tax credits to businesses that create a minimum number of new, full-time, non-seasonal jobs that pay an average wage equal to or exceeding wages in the relative county. Employers Resource Management Company (ERMC) filed this action on March 23, 2016 against Megan Ronk as Director of Idaho Department of Commerce (Ronk), seeking declaratory relief.

BACKGROUND

ERMC offers human resources solutions that include human resources management, personnel file maintenance, personnel form management, vacation tracking and reporting, sick leave tracking and reporting, new hire reporting, unemployment claim management, FLSA regulation expertise, DOL compliance expertise, regulation monitoring, employee handbooks, performance

review materials, and online training. It also provides payroll services; HR and tax compliance; workers compensation and safety programs; safety management; benefits solutions; employee savings club, such as Christmas savings club and vacation savings club; retirement plans; and JumpStart programs.

The Idaho Reimbursement Incentive Act is a statutory scheme to incentivize companies to bring employment to Idaho. The statute provides refund tax credits to both existing Idaho businesses and new Idaho businesses. A business may apply to receive a refundable tax credit for up to 15 years. Once an applicant has applied, the Commerce director does an in-depth economic analysis of the project and the application material and either submits the application and a recommended term and percentage of refund to the Economic Advisory Council or she may determine that the business has not met eligibility requirements.

The Council may approve or reject her recommendation and/or may request additional information. If the application is approved, the business and Commerce Department enter into an agreement (specifying the terms of the credit, duration of the credit, for casted amount of new tax revenue the project will generate, and percentage of tax revenues that will be reimbursed). Each year, a business will be evaluated and must demonstrate that it is in compliance with its agreement with the Commerce Department and other requirements. The Commerce Department then determines if the credit should be provided. ERMC does not allege it applied for the tax credit refund. ERMC alleges another company, Paylocity, applied and was approved for a tax credit of 28%, or possibly \$6.5 million.¹

¹ Compl. For Decl. J. ¶ 8.

Ronk filed a Motion to Dismiss on May 4, 2016, asserting ERM C lacks standing to challenge the constitutionality of this statute. ERM C filed a Response brief on May 20, 2016. ERM C filed a Motion for Leave to File Amended Complaint and Declaration of Christ Troupis on May 26, 2016. Ronk filed a Reply brief on July 15, 2016, further asserting ERM C does not have standing because it cannot show injury in fact.

A hearing was held on July 20, 2016 in which the Court granted ERM C's Motion for Leave to File Amended Complaint. On July 26, 2016, ERM C filed an Amended Complaint for Declaratory Relief. Ronk then renewed the Motion to Dismiss. The hearing was held on August 2, 2016 and the matter then taken under advisement.

LEGAL STANDARD

“A court may grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) only when it appears beyond doubt that the ERM C can prove no set of facts in support of the claim which would entitle the ERM C to relief.” *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992). In ruling on a motion to dismiss, the issue “is not whether the ERM C will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.” *Losser v. Bradstreet*, 145 Idaho 670, 673, 183 P.3d 758, 761 (2008). “A motion to dismiss must be resolved solely from the pleadings and all facts and inferences from the record are viewed in favor of the non-moving party.” *Taylor v. McNichols*, 149 Idaho 826, 832-33, 243 P.3d 642, 648-49 (2010).

To state a claim for relief and survive a Rule 12(b)(6) motion, the pleading “does not need detailed factual allegations,” however, the “[f]actual allegations must be enough to raise a right

to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545, 127 S. Ct. 1955, 1959 (2007). Mere “labels and conclusions” or a “formulaic recitation of a cause of action’s elements will not do.” *Id.* There must be “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 547, 127 S. Ct. at 1960. Stated differently, “[the] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009). “As a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which the ERMC includes allegations showing on the face of the complaint that there is some insurmountable bar to relief.” *Harper*, 122 Idaho at 536, 835 P.2d at 1347.

ANALYSIS

Fundamentally, Courts avoid wading into political issues which are better left for the other two branches of the government which are better equipped to address. Mechanisms have been established to make sure that Courts stay within their roles to decide actual live controversies between parties. Ripeness, Mootness, and Standing are three of these mechanisms.

ERMC alleges the refund credit has given Palocity an unfair economic advantage over ERMC and the “ability to lure away employee’s from ERMC.”² ERMC further alleges that “Idaho taxpayers have and will suffer harm if Idaho Department of Commerce, by and through EAC, continues to grant tax relief to some business entities and deny relief to others”³ Ultimately, ERMC contends it has “competitor standing.”

² Amended Comp. for Decl. J. ¶ 9.

³ Compl. For Decl. Relief ¶ 22.

ERMC's alleged injuries are (1) it had to buy "competitive software" to effectively compete against Paylocity;⁴ (2) it will have to increase salaries and benefits to prevent losing valuable employees to Paylocity;⁵ and (3) it will need to spend more money on advertising and marketing to retain its clients, because Paylocity will receive a tax refund and can undercut ERMC's pricing.⁶ ERMC further alleges that it and other businesses are damaged by (4) "rewarding cannibalization of existing Idaho businesses by new entrants into the Idaho business market;"⁷ (5) "distorting the Idaho labor market through subsidization of salaries paid by chosen companies to the detriment of existing Idaho businesses";⁸ (6) "incentivizing relocation of principle officers to other states that provide similar tax incentives";⁹ (7) "penalizing Idaho companies with established business in "niche" markets";¹⁰ and (8) "pitting Counties and Municipalities against each other to compete for new businesses."¹¹

Ronk asserts that ERMC (1) does not have a legally protected interest in its competitive position in the market; (2) the alleged harm is speculative and not imminent; (3) the alleged harm is self-inflicted and too attenuated and contingent to meet the standing requirement.¹² Further, Ronk asserts that ERMC alleges only a general increase in competition, but does not allege any specific or demonstrable loss of market shares, profits, any concrete financial impact, or any other identifiable loss of competitive position in the marketplace.

⁴ Amended Comp. for Decl. J. ¶ 11(a).

⁵ *Id.* at ¶ 11(b).

⁶ *Id.* at ¶ 11(c).

⁷ *Id.* at ¶ 12(a).

⁸ *Id.* at ¶ 12(b).

⁹ *Id.* at ¶ 12(c).

¹⁰ *Id.* at ¶ 12(d).

¹¹ *Id.* ¶ 12(3).

¹² Reply Mem. In Sup. Of Def.'s Mot. To Dismiss, p.2.

It is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing. *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). Standing is a preliminary question to be determined by this Court before reaching the merits of the case. *Miles v. Idaho Power Co.*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989). The doctrine of standing is a subcategory of justiciability. *Id.* at 639, 778 P.2d at 761. The doctrine is imprecise and difficult to apply. *Id.* at 641, 778 P.2d at 763. Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. *Young v. City of Ketchum*, 137 Idaho, 104, 44 P.3d 1157, 1159 (2002).

To establish standing, a litigant must allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury. *Young*, at 104-05, 44 P.3d at 1159-60. This requires a showing of a distinct palpable injury and fairly traceable causal connection between the claimed injury and the challenged conduct. *Id.* But even if a showing can be made of an injury in fact, standing may be denied when the asserted harm is a generalized grievance shared by all or a large class of citizens. *Id.*

First, in order to have standing, one must have a protectable legal interest. An injury in fact must be an injury which the plaintiff has a legally protect interest in. ERMC relies on the theory of competitor standing, but fails to address the issue that in order to demonstrate injury in fact, the injury must be to an actual legally protectable interest. ERMC's argument assumes that ERMC has a legally protectable position in the marketplace, which it does not.

Where there is a direct impediment to a company, then a company may be potentially harmed in a way that is sufficient to show a protectable legal interest. In contrast, when the conduct is directed at a third party, with no direct impact to the plaintiff that is traceable to the government conduct, then there is no protectable interest at stake. This is the situation in this case. The government conduct is directed at a third party, Palocity and other businesses who qualify for the tax credit, and not ERMC. The conduct has no direct impact on the ERMC that is traceable to the government conduct. Accordingly, EMRC has no protectable interest at stake in this matter.

Additionally, ERMC alleges that the tax refund would injure its competitive position in the market. ERMC alleged that a tax credit has incentivized a competitor to set up its business in Idaho and ERMC will have to do certain things to compete against this competitor. It must be noted that ERMC is not the object of the government action. Instead, Paylocity, a third party, is the object of the government action. This fails to satisfy the requirement that there is a “substantial likelihood that the relief requested will prevent the claimed injury.” ERMC has only alleged a mere possibility that competition will increase¹³ and that there is a possibility that the increased competition will injure ERMC. ERMC purported injuries are abstract and speculative and cannot be said to be specific or distinct and palpable.

The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has “alleged such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions.” As refined by subsequent reformation, this requirement of “personal stake” has come to be understood to require not only a “distinct palpable injury” to the

¹³ Which is the actual purpose of this legislation.

plaintiff, but also a “fairly traceable” causal connection between the claimed injury and the challenged conduct. *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757,763 (1989).

The rule which ERMC relies on to assert standing is competitor standing to establish that it has a personal stake, or distinct palpable injury. The general rule is that a competitor has standing to challenge future loss of profits. *National Tank Truck Carriers v. Lewis*, 550 F.Supp. 113, 117 (D.C. Dist. Ct. 1982). However, Idaho has not recognized competitor standing. *Martin v. Camas County*, 150 Idaho 508, 514, 248 P.3d 1243, 1249 (2011). Further, even when competitor standing has been recognized, “it is only when a successful challenge will set up an absolute bar to competition, not merely an additional hurdle, that competitor standing exists.” *Id.* A successful challenge of the Reimbursement Act will not close the market to Paylocity or other competitors within ERMC’s market; instead, it will only add an additional hurdle.

Finally, ERMC fails to establish the causal link between the government action and the harm alleged, even if it were unique and particularized. When the person is not the object of the government conduct, causation hinges on the responses of someone else and that response is not necessarily predictable or controllable, which makes any link between the harm and the government conduct extremely difficult to grasp. Governmental conduct that benefits a third party which then indirectly affects the plaintiff is distinguishable from government conduct that directly affects the plaintiff.

Ultimately, ERMC alleges the government action creates an unfair economic advantage to a competitor. While this may be true in general, it is insufficient to demonstrate that the

government conduct, and not other market factors, is the specific cause of any actual harm to any legally protected interest that ERMC may enjoy. There is no clear link between the impact of the law and any harm claimed to ERMC, the alleged damages are speculative at best, it would be impossible to demonstrate that a judgment in ERMC's favor would redress the claimed injuries.¹⁴

Lastly, at the hearing on August 2, 2016, Ronk's counsel requested the Court strike Paragraph 10 of the First Amended Complaint and the accompanying attachment. ERMC's First Amended Complaint, as filed, was different than the proposed amended complaint attached to the Declaration filed in support of the Motion for Leave to file the Amended Complaint. Paragraph 10 and the accompanying attachment were not contained in the original proposed amended complaint. Accordingly, Paragraph 10 and the attachment are deemed stricken, pursuant to Idaho Rules of Civil Procedure 12(f), and were not considered. Nevertheless and in any event, the information contained therein would not have impacted the outcome of this decision.

CONCLUSION

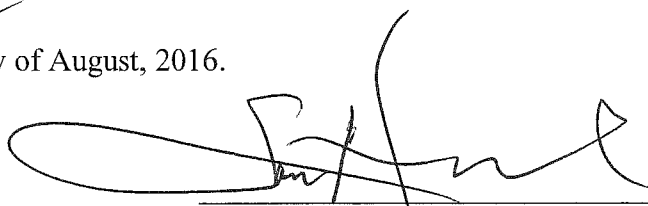
ERMC challenges the legislature's exercise of its constitutional authority. But ERMC has no standing to challenge the Reimbursement Act because the program makes tax credits available to businesses that meet certain criteria. The program does not actually do anything to ERMC, therefore, ERMC has suffered no particularized injury by which to establish standing in a challenge to the act. Instead, ERMC attempts to manufacture standing by alleging it may have to do certain things or that it expects certain things will occur as a response to another company

¹⁴ Even if ERMC did have standing, however, and contrary to ERMC's assertion, this is a politician issue that is well within the authority of the legislature.

receiving a tax credit under the program. In short, ERMC has no protectable, legal interest that has been directly damaged by the Act; the claim of injury is ill-defined, fuzzy, and speculative, essentially self-inflicted in mere anticipation and expectation of what may happen.

Based upon the above and foregoing, Ronk's Motion to Dismiss ERMC's Amended Complaint for lack of standing is GRANTED. Judgment will be entered accordingly.

IT IS SO ORDERED this 12th day of August, 2016.



SAMUEL A. HOAGLAND
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 15 day of August, 2016, I mailed (served) a true and correct copy of the within instrument to:

Mr. Carl Withroe, *Esq.*
954 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720-0010

Mr. Christ Troupis, *Esq.*
P.O. Box 2408
Eagle, ID 83616

Christopher Rich
Clerk of the District Court

By Stephanie Hardy
Deputy Court Clerk

