

SUPREME COURT OF NORTH CAROLINA

MICHAEL MUNGER, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 STATE OF NORTH CAROLINA, et al.)
)
 Defendants.)

From Wake County
07 CVS 011756
COA09-375

 AMICUS BRIEF OF THE NORTH CAROLINA ECONOMIC DEVELOPERS ASSOCIATION
 & NC CHAMBER

Pursuant to this Court's order, The North Carolina Economic Developers Association ("NCEDA") and the N.C. Chamber ("Chamber") respectfully submit this brief as amici curiae. As outlined in detail in their motion for leave to file this brief, amici represent the interests of North Carolina business owners and those seeking to promote additional business investment in North Carolina. As such, they are interested in maintaining stability and settled expectations in the taxation of businesses, including new businesses attracted to the State through the use of economic incentives.

This case involves an attempt to expand the doctrine of standing to allow any individual taxpayer to challenge any tax exemption, and, by extension, any tax credit or reimbursement, granted to businesses based solely on the status of that individual as a person who pays income and sales taxes. Amici believe that the current state of the law of standing, which requires a plaintiff challenging legislation to demonstrate a direct and substantial injury from the legislation, promotes the appropriate constitutionally-mandated separation of powers between the legislative

branch and judicial branch by vesting the primary responsibility for tax policy with the General Assembly rather than with individuals unaffected by the legislation seeking redress through the courts.

Amici believe this Court will benefit from a discussion of the bases of the doctrine of standing.

ARGUMENT

STANDING SHOULD NOT BE EXTENDED TO INDIVIDUAL TAXPAYERS WITH NO PARTICULARIZED INJURIES SEEKING TO CHALLENGE TAX EXEMPTIONS GRANTED BY THE GENERAL ASSEMBLY

As this Court recently reaffirmed, “the North Carolina Constitution confers standing on those who suffer harm.” *Mangum v. Raleigh Board of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). Only a litigant “personally injured by a statute, can be trusted to battle an issue.” *Id.* at 282, 669 S.E.2d at 642.

As the U.S. Supreme Court has held – in a case recently cited with approval in our appellate courts, *see Smith v. Beck*, 2009 WL 677918 at *4 (N.C.App. Mar. 17, 2009) – the doctrine of standing is “a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches.” *Lewis v. Casey*, 518 U.S. 343, 349 (1996). Thus, “[i]t is the role of the courts to provide relief to [persons] who have suffered, or will imminently suffer, actual harm,” but it is not the role of the courts “to shape the institutions of government in such fashion as to comply with the laws and the Constitution.” *Id.*

This Court, too, has long taken a dim view of intermeddlers – persons with “no status in court” and to whom “no wrong has been done” – and who, “with no justiciable grievance to be righted,” attempt to seek redress in our courts. *Shaver v. Shaver*, 248 N.C. 113, 119, 102 S.E.2d

Extending standing to these Plaintiffs is particularly repugnant in light of the fact that it would inevitably lead toward a breach of one of the most fundamental principles of the North Carolina Constitution: Separation of Powers as found in Art. I, § 6. The Constitution vests the legislative power with the General Assembly, N.C. Const. Art. II, § 1, and the judicial power with the General Court of Justice. *Id.*, Art. IV, § 1. Fundamental to that separation of powers is the inherent concept that the power of the courts is limited to its jurisdiction *id.*, particularly its subject matter jurisdiction as limited by the doctrine of standing. It would undermine the role of the General Assembly as “the lawmaking agent of the people,” *State ex rel. Martin v. Preston*, 325 N.C. 438, 448, 385 S.E.2d 473, 478 (1989), if the courts were permitted to strike down duly enacted legislation at the behest of individuals with, at best, attenuated interests and lacking fundamental standing. For that reason, the U.S. Supreme Court has recognized that the “idea of separation of powers . . . underlies standing doctrine.” *Allen v. Wright*, 468 U.S. 737, 759 (1984). Allowing these Plaintiffs to seek to substitute their public policy judgments for those of the General Assembly by creating an active superintending role for the courts is inimical to the basic structure of the Constitution.

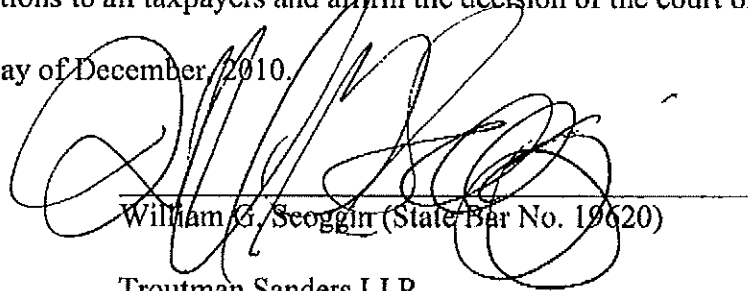
An equally fundamental problem with Plaintiffs’ efforts to extend standing to themselves to challenge the so-called “Google Legislation,” is that they can articulate no limiting principle concerning where such standing would lead. Just because Plaintiffs mischaracterize their challenge here as against “special tax breaks crafted for select corporate giants” (Petitioners’ New Brief at p. 2), the standing principle they seek to establish could just as easily be directed at any one of the dozens of tax exemptions found in the various sub-sections of N.C.G.S. § 105-164.13, including all sorts of small businesses with settled expectations about the status of taxation of their industries under North Carolina law. Indeed, there is no reason in principle why

– to business. In fact, the judicial branch has, through its decisions, ruled consistently with those efforts. *See Maready v. City of Winston-Salem*, 342 N.C. 708, 467 S.E.2d 615 (1996); *Blinson v. State*, 186 N.C.App. 328, 651 S.E.2d 268 (2007), *appeal dismissed and rev. denied*, 362 N.C. 355, 661 S.E.2d 240 (2008); *Peacock v. Shinn*, 139 N.C.App. 487, 533, S.E.2d 842, *appeal dismissed and rev. denied*, 353 N.C. 267, 546 S.E.2d 110 (2000). This Court should continue that line of authority.

CONCLUSION

For the reasons stated above, this Court should reject the invitation to extend standing to challenge tax exemptions to all taxpayers and affirm the decision of the court of appeals.

This the 6th day of December, 2010.



William G. Seoggin (State Bar No. 19620)

Troutman Sanders LLP
Two Hannover Square 434 Fayetteville Street Suite 1900
Raleigh, North Carolina 27601
(919) 835-4100

*Counsel for Amici North Carolina Economic Developers
Association and the N.C. Chamber*