John Kuehn, appellant, v. James D. Pillen, in his official capacity as Governor of Nebraska, et al., appellees.

___ N.W.3d ___

Filed September 11, 2026. No. S-25-503.

1. **Motions to Dismiss: Appeal and Error.** Appellate review of an order granting a motion to dismiss is de novo.
2. **Standing: Jurisdiction: Parties.** Standing is a jurisdictional component of a party's case, because only a party who has standing may invoke the jurisdiction of a court; determination of a jurisdictional issue which does not involve a factual dispute presents a question of law.
3. **Motions to Dismiss: Pleadings.** To prevail against a motion to dismiss, the pleader must allege sufficient facts, taken as true, to state a claim to relief that is plausible on its face.
4. **Standing: Jurisdiction: Pleadings: Evidence: Words and Phrases.** A court's consideration of standing will vary depending on when the issue is raised during the progression of a case. If standing is challenged at the pleadings stage, before an evidentiary hearing and before any evidence outside of the pleadings is admitted, it is deemed a facial challenge. In considering a facial challenge, a court will typically review only the pleadings to determine whether the plaintiff has alleged sufficient facts to establish standing. But when an issue of standing is presented and the court holds an evidentiary hearing and reviews evidence outside the pleadings, it is considered a factual challenge.
5. **Standing: Jurisdiction: Parties.** Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's exercise of its subject matter jurisdiction and remedial powers on that party's behalf.
6. **Standing: Parties.** To have standing, the plaintiff must have some legal or equitable right, title, or interest in the subject matter of the controversy.

7. **Standing: Proof.** To show standing, it is generally insufficient for a plaintiff to have merely a general interest common to all members of the public.
8. **Standing: Jurisdiction: Proof.** A party invoking a court's or tribunal's jurisdiction bears the burden of establishing the elements of standing.
9. **Standing.** Common-law standing generally focuses on whether the litigant has suffered or will suffer an injury in fact.
10. **Equity: Taxation: Injunction.** Because taxpayers have an equitable interest in public funds, a resident taxpayer may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes.

Appeal from the District Court for Lancaster County: Susan I. Strong, Judge. Affirmed.

Andrew LaGrone, of La Grone Law, L.L.C., and Edward D. Greim and Katherine Mitra, pro hac vice, of Graves Garrett Greim, L.L.C., for appellant.

Michael T. Hilgers, Attorney General, Zachary B. Pohlman, and Cody S. Barnett, for State appellees.

Jason W. Grams and Karson S. Kampfe, of Grams Law, L.L.C., for Nebraska Medical Cannabis Commission appellees.

Alexander S. Arkfeld and Daniel J. Gutman, of Gutman Law Group, for appellees Anna Wishart, Crista Eggers, and Adam Morfeld.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Funke, C.J.

INTRODUCTION

John Kuehn appeals the order of the district court for Lancaster County dismissing his complaint for declaratory and injunctive relief after determining that he lacked standing. Kuehn sought to challenge the constitutionality of medical cannabis laws that were enacted pursuant to initiative petitions that were approved by the voters in the November 2024 general election. The defendants moved to dismiss Kuehn's complaint on the basis that he lacked standing. Kuehn conceded that he had not suffered an injury in fact, but he asserted he had standing based on exceptions, including taxpayer standing and standing for a matter of great public concern. The district court rejected Kuehn's arguments, found that he lacked standing, and dismissed his complaint without prejudice. We affirm the district court's order.

BACKGROUND

Prior to the November 2024 general election, Kuehn filed a preelection challenge to the legal sufficiency of two initiative petitions that were aimed at decriminalizing and regulating medical cannabis. The district court rejected Kuehn's challenge in that case. We affirmed the district court's order.[1]

On December 10, 2024, Kuehn filed a complaint in the district court challenging the validity of the two initiative measures. The complaint named as defendants Governor Jim Pillen (the Governor) and Secretary of State Robert B. Evnen (the Secretary) in their official capacities. The complaint also named as defendants the three sponsors of the initiative petitions, Anna Wishart, Crista Eggers, and Adam Morfeld (collectively the Sponsors). With the complaint, Kuehn filed a motion for a temporary restraining order and temporary injunction to prevent the Governor from declaring the two initiative measures to be enacted into law. The district court denied the motion, and the Governor thereafter signed a proclamation certifying the enactment of the two initiative measures into law.

The two initiative measures were codified as the Nebraska Medical Cannabis Patient Protection Act, Neb. Rev. Stat. §§ 71-24,103 to 71-24,105 (Supp. 2025), which removes penalties for possession and use of medical cannabis, and the Nebraska Medical Cannabis Regulation Act, Neb. Rev. Stat. §§ 71-24,106 to 71-24,111 (Supp. 2025) (the Regulation Act),

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[1] *Kuehn v. Evnen, ante* p. 161, ___ N.W.3d ___ (2026).

which removes penalties for the manufacture and distribution of medical cannabis and creates a commission to regulate cannabis establishments (collectively the Acts).

Operative Complaint

Kuehn filed an amended complaint in January 2025, and he filed a second amended complaint on June 16. The second amended complaint is the operative complaint for purposes of this appeal. In his second amended complaint, Kuehn named as defendants in their official capacities the Governor, the Secretary, the chief executive officer of the Department of Health and Human Services (DHHS), the State Treasurer, and the Tax Commissioner (collectively the State Officials). Also named in their official capacities as members of the Nebraska Medical Cannabis Commission (NMCC) were Bruce D. Bailey, Monica Oldenburg, Lorelle Mueting, and Kim M. Lowe (collectively the NMCC Commissioners). Kuehn again named the Sponsors as defendants.

In the second amended complaint, Kuehn alleged that he was "an individual resident of Nebraska, a registered Nebraska voter, and property owner in Nebraska, who pays income, property, and sales taxes in the State of Nebraska." He also described himself as a "citizen opponent" of the initiative measures and the petitions that sought to place the initiatives on the ballot.

Kuehn generally alleged that the Acts were unconstitutional under both Nebraska law and federal law. He alleged that federal law prohibited the use, production, and distribution of marijuana and that state measures legalizing and regulating medical marijuana are preempted by federal law and therefore in violation of the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI. Kuehn also cited Neb. Const. art. III, § 2, which provides, in part, that "[t]he constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by initiative," and he contended that the Acts were not a proper exercise of the initiative power because they violated the Supremacy Clause. Kuehn further alleged that the Regulation Act violated Neb. Const. art. II, § 1, regarding the distribution of powers because it improperly delegated regulatory authority to the NMCC.

The operative complaint alleged that after the measures were passed by the voters, Kuehn served on the Governor a demand letter dated December 6, 2024. In that letter, Kuehn set forth reasons the measures would be unconstitutional and requested that the Governor not issue a proclamation declaring the measures to be law. Kuehn attached to his second amended complaint a copy of the demand letter in which he asked for a response from the Governor by 10 a.m. on December 10. Kuehn alleged that the Governor did not respond to his demand letter and that on December 12, the Governor issued the proclamation declaring the measures to be law.

The operative complaint further alleged that various defendants had expended or would be required to expend public moneys to comply with the Acts. Specifically, it alleged that the NMCC Commissioners and officials of the Nebraska Liquor Control Commission (NLCC), who served as staff for the NMCC Commissioners, had used significant employee time and expenditures to implement the Acts. It also alleged that the Governor had appointed members to the NMCC and pledged "administrative support and financial resources" to help the NMCC meet its deadlines and that the Nebraska Legislature had passed, and the Governor approved, "Legislative Bill 261" (L.B. 261), which provided funding of $30,000 for the NMCC. The complaint further alleged DHHS would be required to expend additional resources to comply with its credentialing duties related to health care practitioners who would be qualified to issue written recommendations for medical use of cannabis under the Acts.

Kuehn set forth theories of relief under eight counts: counts I and II—to declare the Governor's proclamation and actions to implement the Acts to be preempted by federal law and in violation of Nebraska's constitutional separation of powers; count III—to declare the initiative measures legally insufficient under Neb. Rev. Stat. § 32-1412 (Cum. Supp. 2024); counts IV and V—to enjoin or prevent DHHS from spending government employee time and public funds to comply with the Acts; counts VI and VII—to prevent the NMCC from spending public funds to carry out its duties under the Acts; and count VIII—to prevent the State Treasurer and the Department of Revenue from collecting and maintaining taxes from the sale of medical cannabis.

Kuehn alleged that he had standing to bring counts I, IV, VI, and VIII as a taxpayer challenging the illegal expenditure of public funds. In counts IV, VI, and VIII, he alleged that he made demands on DHHS, the NMCC, and the State Treasurer and the Department of Revenue, respectively, to not make illegal expenditures to comply with the Acts and that each refused to respond to his demands. Kuehn alleged that he had standing to bring counts II, V, and VII because they involved matters of great public concern. Kuehn also alleged that as a resident of Nebraska, he had standing under § 32-1412 to bring count III.

Kuehn sought relief, including a declaratory judgment that the commitment of employee time and the expenditure of tax moneys to carry out the Acts was unlawful, a declaratory judgment that the measures were legally insufficient and invalid, an award of attorney fees and costs, and such other relief as the court deemed just and equitable.

Motions to Dismiss

The three groups of defendants—the State Officials, the NMCC Commissioners, and the Sponsors—filed separate motions to dismiss Kuehn's first amended complaint. Each motion alleged, among other reasons for dismissal, that Kuehn's complaint should be dismissed pursuant to Neb. Ct. R. Pldg. § 6-1112(b)(1) for lack of subject matter jurisdiction. We have stated that because a defect in standing is a defect in subject matter jurisdiction, a challenge to standing is treated as a motion to dismiss for lack of subject matter jurisdiction brought under § 6-1112(b)(1).[2]

The district court held a hearing on the defendants' motions to dismiss on May 20, 2025, during which the arguments generally focused on the defendants' contentions that Kuehn lacked standing. After the court granted Kuehn leave to file his second amended complaint on June 16, the three groups of defendants renewed their previously filed motions to dismiss.

District Court Decision

On June 26, 2025, the district court entered an order in which it determined that Kuehn lacked standing because he had not suffered an injury in fact and that he lacked standing under any of the exceptions to the injury-in-fact rule that he asserted. The court also found that other parties would have standing to challenge the Acts.

Before addressing whether Kuehn had standing, the district court noted that at the hearing on May 20, 2025, the NMCC Commissioners had offered four exhibits in support of their motion to dismiss. It stated that the NMCC Commissioners' intent was to make a factual challenge to Kuehn's standing, as well as a facial challenge. The court cited *Washington v. Conley*,[3] in which we distinguished between facial and factual challenges to a court's subject matter jurisdiction over an action. The court further noted that Kuehn objected to the NMCC Commissioners' evidence and to any factual challenge to his standing when a stay on discovery was in effect pending disposition of the motions to dismiss. Kuehn alternatively offered his own exhibit, which he argued created a factual dispute regarding standing.

In its order ruling on the motions to dismiss, the court sustained Kuehn's objection and ruled that the exhibits offered

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[2] *Jacobs Engr. Group v. ConAgra Foods*, 301 Neb. 38, 917 N.W.2d 435 (2018).

[3] *Washington v. Conley*, 273 Neb. 908, 734 N.W.2d 306 (2007).

by the NMCC Commissioners and by Kuehn would not be received. The court indicated that it would consider only a facial challenge to Kuehn's standing. But the court also stated that because Kuehn had included many of the documents in his offered exhibit to the second amended complaint, it would consider the documents in ruling on the motions to dismiss.

Turning to the issue of standing, the district court cited precedent to the effect that common-law standing generally focuses on whether the litigant has suffered or will suffer an injury in fact; that such injury must be concrete in both a qualitative and a temporal sense; that the complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract; and that the alleged harm must be actual or imminent, not conjectural or hypothetical.[4] The court indicated that Kuehn conceded he did not have an injury in fact and that instead, he asserted he had standing under the following exceptions to the injury-in-fact requirement: (1) standing as "any resident" under § 32-1412 to challenge the legal sufficiency of an initiative petition, even after the election is over; (2) standing as a taxpayer to enjoin the illegal expenditure of public funds; and (3) standing on the basis that the constitutionality of the measures was a matter of great public concern.

Regarding standing under § 32-1412, the district court noted that the statute was an example of the Legislature's conferring standing that was broader than common-law standing for an injury in fact when it granted "any resident" the right to challenge the legal sufficiency of an initiative petition. But the court concluded for two reasons that Kuehn did not have standing under § 32-1412 to sue for a declaration that the Acts were unconstitutional. First, Kuehn did not challenge the legal sufficiency of the ballot measures, and second, Kuehn did not file this action until after the election, when it was too

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[4] See *Hauxwell v. Middle Republican NRD*, 319 Neb. 1, 21 N.W.3d 34 (2025).

late to provide the relief provided by § 32-1412, which the court described as "an injunction preventing the Secretary . . . from certifying or printing the petition on the official ballot." The district court rejected Kuehn's reliance on *Duggan v. Beermann*[5] to argue that pursuant to § 32-1412, he could file a postelection challenge to the constitutionality of the Acts. The court stated that the case "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" and that instead, the case involved the plaintiffs' separate claim for declaratory judgment, "which was properly joined with their injunction claim under the predecessor to § 32-1412."

The district court next addressed the taxpayer exception to the common-law requirement of an injury in fact. It described the exception as being that a resident taxpayer, with no injury in fact, may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes.[6] The court noted that the defendants argued that most taxpayer standing cases involve a direct expenditure of public funds, such as a contract between the government and a third party, and that expanding the definition of an expenditure of public funds to include incidental costs of implementing a law would "effectively swallow" the requirement of an injury in fact. The court stated that Kuehn's allegations of taxpayer standing in this case were "remarkably broad" and that Kuehn's "theory seems to be that any government action, any use of government resources like computers, and any employee time . . . is an expenditure of public funds."

The district court stated that Kuehn's strongest case for taxpayer standing was his claim against the NMCC Commissioners to declare the Regulation Act unconstitutional. It noted that the Regulation Act provides that the three

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[5] *Duggan v. Beermann*, 249 Neb. 411, 544 N.W.2d 68 (1996).

[6] See *Myers v. Nebraska Invest. Council*, 272 Neb 669, 724 N.W.2d 776 (2006).

members of the NLCC shall be ex officio members of the NMCC, see § 71-24,109(3), and that the Governor may appoint two additional members, if confirmed by the Legislature, see § 71-24,109(4). But it also noted that the Regulation Act did not provide for the NLCC members to be paid more for their new duties related to the NMCC and that the Act did not provide for compensation of the two additional members of the NMCC. The court concluded that although the Regulation Act authorized the NMCC to acquire office space and staff, see § 71-24,111(11), the Regulation Act provided "no financial means to do so" and "no funding at all."

Next, the district court addressed Kuehn's allegation that L.B. 261 provided funding of $30,000 to the NLCC to assist the NMCC to implement the Acts. The court determined, as a matter of law, that L.B. 261 did not provide such funding for the NMCC. It cited the section of L.B. 261 that set forth the appropriation for the NLCC and stated that although the Legislature's appropriations for other agencies stated that part of their appropriation was for a specific purpose, the Legislature did not provide any similar direction in the NLCC's appropriation and did not state that any amount was appropriated to implement the Acts.

The district court also addressed Kuehn's allegation that the Governor had pledged administrative support and financial resources to help the NMCC perform its duties under the Regulatory Act. It characterized Kuehn as arguing that performing acts required under the Regulatory Act, such as making rules and granting applications, would require use of employee time and other government assets and that "these incidental burdens of implementing a law are the expenditure of public funds."

The district court noted Kuehn's reliance on *Chambers v. Lautenbaugh*[7] to support his "expansive version of the taxpayer-standing doctrine." It described *Chambers v. Lautenbaugh* as

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[7] *Chambers v. Lautenbaugh*, 263 Neb. 920, 644 N.W.2d 540 (2002).

an action in which a resident taxpayer sued a county election commissioner to declare that redrawn district lines were unlawful, and this court determined the taxpayer had alleged an expenditure of public funds in that employees in the election commissioner's office had spent and would spend public time and money to implement the new district boundary lines. The court indicated that *Chambers v. Lautenbaugh* "look[ed] very good" for Kuehn's position but determined that *Chambers v. Lautenbaugh* had been limited by this court's decision in *Project Extra Mile v. Nebraska Liquor Control Comm.*[8] In *Project Extra Mile v. Nebraska Liquor Control Comm.*, this court described a tension between *Chambers v. Lautenbaugh* and other cases, finding similar allegations insufficient to show an illegal expenditure of public funds. We suggested in *Project Extra Mile v. Nebraska Liquor Control Comm.* that *Chambers v. Lautenbaugh* was more properly characterized as involving a matter of great public concern. The district court recognized that *Project Extra Mile v. Nebraska Liquor Control Comm.* had later been overruled on other grounds but agreed with the suggestion that *Chambers v. Lautenbaugh* "should be understood as something other than a taxpayer-standing case." The district court reasoned that "[i]f alleging 'employee time' is enough to claim taxpayer standing, then taxpayer standing would no longer be an 'exception,'" and that instead, "[i]t would be the rule anytime a statute requires a government employee to do anything." It further reasoned that such an application of taxpayer standing would be inconsistent with the principle that exceptions to a rule of standing must be carefully applied "'to prevent the exceptions from swallowing the rule.'"

The district court concluded it did not "believe that the incidental burdens of implementing a law, like employee time and printing costs, is an 'expenditure of public funds'

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[8] *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012), *overruled on other grounds, Griffith v. Nebraska Dept. of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019).

sufficient to confer taxpayer standing under Nebraska law." Based on this understanding, it determined that Kuehn did not have taxpayer standing in this case.

With respect to Kuehn's assertion that he had standing for a matter of great public concern, the district court cited *Cunningham v. Exon,*[9] wherein this court applied an exception to the requirement of an injury in fact "where matters of great public concern are involved and a legislative enactment may go unchallenged unless plaintiff has the right to bring the action." In *Cunningham v. Exon*, this court concluded that the plaintiff had standing to challenge an amendment to the Nebraska Constitution and reasoned:

> An amendment which changes the provisions of a state constitution as to the use of public funds for sectarian and educational purposes is of such great public interest and concern that a citizen taxpayer should have standing sufficient to maintain an action for a declaratory judgment as to such an amendment without the necessity of showing that he has sustained some special injury peculiar to himself and distinct from that of the public generally.[10]

The district court stated that it was not clear whether this court had applied the matter of great public concern exception after *Cunningham v. Exon*. It again noted that this court had suggested that *Chambers v. Lautenbaugh* was better understood as a case involving standing for a matter of great public concern, rather than taxpayer standing. In *Thompson v. Heineman*,[11] four justices had applied the exception for a matter of great public concern in a constitutional challenge to a statute. But the district court noted that in *Egan v. County of Lancaster*,[12] this court "expressly declined to say whether

[9] *Cunningham v. Exon*, 202 Neb. 563, 567, 276 N.W.2d 213, 215 (1979).

[10] *Id.* at 568-69, 276 N.W.2d at 216.

[11] *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

[12] *Egan v. County of Lancaster*, 308 Neb. 48, 952 N.W.2d 664 (2020).

the standing analysis in the four-justice opinion in *Thompson* [*v. Heineman*] was controlling."

The district court noted that this court had "rejected the matter-of-great-public-concern exception on several occasions," and it cited *Neb. Against Exp. Gmblg. v. Neb. Horsemen's Assn.*[13] and *State ex rel. Reed v. State*.[14] The district court reasoned that if the issues in *Neb. Against Exp. Gmblg. v. Neb. Horsemen's Assn.* ("proliferation of gambling") and *State ex rel. Reed v. State* ("harm to the state's natural resources") were not matters of great public concern, then it would be "hard-pressed to say that the legalization and regulation of medical cannabis is" a matter of great public concern. It further stated that Kuehn's constitutional separation of powers argument in this case was "much more mundane than the constitutional issue in *Cunningham* [*v. Exon*]" and that it did not "believe that every claim alleging a violation of the separation of powers is automatically a matter of great public concern." It concluded that Kuehn did not have standing for a matter of great public concern.

The defendants' argument that taxpayer standing and standing for a matter of great public concern do not apply in this case because there are others who could sue to challenge the Acts was also addressed. The court stated its conclusions that Kuehn lacked both types of standing did not depend on the existence of others who had standing but agreed that the factor was relevant. It cited *Cunningham v. Exon* as stating that the exception for a matter of great public concern applies only if the legislative enactment might otherwise go unchallenged, and it cited *Woodruff v. Welton*[15] to assert that part of the reason for taxpayer standing was that there might be no one else who could challenge the government action. The

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[13] *Neb. Against Exp. Gmblg. v. Neb. Horsemen's Assn.*, 258 Neb. 690, 605 N.W.2d 803 (2000).

[14] *State ex rel. Reed v. State*, 278 Neb. 564, 773 N.W.2d 349 (2009).

[15] *Woodruff v. Welton*, 70 Neb. 665, 97 N.W. 1037 (1904).

court stated that the federal government would have standing to challenge the Acts as being preempted by federal law and that it was “questionable” whether a private individual like Kuehn had a right to do so. The court also stated there are other parties who could challenge the Regulation Act based on constitutional separation of powers and gave as examples “a landowner near a registered cannabis establishment” and “any person fined by the NMCC” pursuant to § 71-24,111(8) or (9). The court noted the State Officials argued that the Attorney General had standing to sue state officers’ implementing a law the Attorney General believed to be unconstitutional, but the court did not decide in this case whether the Attorney General had standing to challenge the Acts.

In conclusion, the district court stated that Kuehn admitted that he had not suffered an injury in fact and found that Kuehn lacked standing under any of his asserted exceptions to the common-law requirement of an injury in fact. As such, the court dismissed Kuehn’s second amended complaint without prejudice.

Kuehn appeals the order dismissing his second amended complaint.

ASSIGNMENTS OF ERROR

Kuehn assigns several specific errors by the district court, but he argues them as three main errors. Kuehn generally assigns, combined and restated, that the district court erred in determining (1) that he did not have taxpayer standing, (2) that he did not have standing for a matter of great public concern, and (3) that he lacked both taxpayer standing and standing for a matter of great public concern because others have common-law standing to challenge the constitutionality of the Acts.

In their separate brief for appellees, the Sponsors argue that because Kuehn did not assign any error to the district court’s conclusion that he did not have standing under § 32-1412, Kuehn abandoned his sole claim against them because they were named as defendants only because they are necessary parties for a claim under § 32-1412(2). In their brief for appellees, the State Officials and the NMCC Commissioners similarly assert that the Secretary of State was named as a defendant only because of Kuehn's claim under § 32-1412. In his reply brief, Kuehn agrees with the Sponsors' contention that he has not appealed the district court's order as to his challenge under § 32-1412. We therefore do not review the portion of the district court's order determining that Kuehn did not have standing under § 32-1412.

STANDARD OF REVIEW

[1-3] Appellate review of an order granting a motion to dismiss is de novo.[16] Standing is a jurisdictional component of a party's case, because only a party who has standing may invoke the jurisdiction of a court; determination of a jurisdictional issue which does not involve a factual dispute presents a question of law.[17] To prevail against a motion to dismiss, the pleader must allege sufficient facts, taken as true, to state a claim to relief that is plausible on its face.[18]

ANALYSIS

Judicial Notice Requests

In his brief, Kuehn asked that we take judicial notice of what he described as "five matters of public record."[19] In addition, Kuehn filed two motions for judicial notice in this court. In a motion filed April 24, 2026, he requested that we take judicial notice of two legislative bills that became law when signed by the Governor on April 7. In a motion filed May 20, he requested that we take judicial notice of a recent job posting for a position as legal counsel for the NMCC.

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16 *In re Application A-19594*, 315 Neb. 311, 995 N.W.2d 655 (2023).

17 *Id.*

18 *Id.*

19 Brief for appellant at 18.

Although Neb. Rev. Stat. § 27-201(6) (Reissue 2016) authorizes courts to take judicial notice of adjudicative facts "at any stage of the proceeding," it is not clear whether a motion for judicial notice can be made in a brief on appeal. But we have declined to take judicial notice even when a motion was filed if we can resolve the appeal without taking judicial notice.[20]

[4] Based on the procedural posture of this case, not only can we resolve the appeal without taking judicial notice as requested by Kuehn, but we must. As discussed above, the district court ruled that it would not receive exhibits offered by the NMCC Commissioners and by Kuehn at the hearing on the motions to dismiss and stated that it would consider only a facial challenge and not a factual challenge to Kuehn's standing. A court's consideration of standing will vary depending on when the issue is raised during the progression of a case. If standing is challenged at the pleadings stage, before an evidentiary hearing and before any evidence outside of the pleadings is admitted, it is deemed a "facial challenge."[21] In considering a facial challenge, a court will typically review only the pleadings to determine whether the plaintiff has alleged sufficient facts to establish standing.[22] But when an issue of standing is presented and the court holds an evidentiary hearing and reviews evidence outside the pleadings, it is considered a "factual challenge."[23]

Kuehn asks that we take judicial notice of matters, including events that occurred after the district court entered its order, that were not alleged in the pleadings. The district court considered the motion to dismiss based on standing as a facial challenge, rather than a factual challenge, and it limited

[20] See *State ex rel. Douglas Cty. Sch. Dist. No. 66 v. Ewing*, 319 Neb. 663, 24 N.W.3d 861 (2025).

[21] *North Star Mut. Ins. Co. v. Stewart*, 311 Neb. 33, 41, 970 N.W.2d 461, 468 (2022) (internal quotation marks omitted).

[22] *North Star Mut. Ins. Co. v. Stewart, supra* note 21.

[23] *Id*. at 41, 970 N.W.2d at 468 (internal quotation marks omitted).

its review to the allegations in the pleadings and attachments thereto. We similarly limit our review on appeal to the pleadings and do not consider any evidence outside the pleadings. We therefore overrule Kuehn's requests that we take judicial notice of matters beyond what is alleged in the pleadings.

Standing Generally

[5-8] Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's exercise of its subject matter jurisdiction and remedial powers on that party's behalf.[24] To have standing, the plaintiff must have some legal or equitable right, title, or interest in the subject matter of the controversy.[25] To show standing, it is generally insufficient for a plaintiff to have merely a general interest common to all members of the public.[26] A party invoking a court's or tribunal's jurisdiction bears the burden of establishing the elements of standing.[27]

[9] Common-law standards are typically used to determine whether one has standing.[28] Common-law standing generally focuses on whether the litigant has suffered or will suffer an injury in fact.[29] In some cases, however, we have recognized exceptions to the usual requirement that a plaintiff demonstrate an injury in fact that is actual, imminent, concrete, and particularized.[30]

In the district court, Kuehn conceded that he did not suffer an injury in fact, and on appeal, Kuehn does not challenge

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[24] *Nebraska Firearms Owners Assn. v. City of Lincoln*, 319 Neb. 723, 24 N.W.3d 891 (2025).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *In re Application A-19594, supra* note 16.

[29] *Id.*

[30] *Johnson v. City of Omaha*, 319 Neb. 402, 23 N.W.3d 420 (2025).

that concession. As noted above, Kuehn also does not challenge the district court's determination that he did not have standing under § 32-1412. Instead, Kuehn challenges the district court's determinations that he did not have standing under exceptions to the injury in fact requirement for taxpayer standing and for matters of great public concern.

Taxpayer Standing

[10] One of the exceptions to the requirement of an injury in fact is taxpayer standing. Usually, a person seeking to restrain the act of a public board or officer must show special injury peculiar to himself or herself aside from and independent of the general injury to the public.[31] But because taxpayers have an equitable interest in public funds, a resident taxpayer may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes.[32]

We have found taxpayer standing to enjoin the illegal expenditure of public funds where a plaintiff challenged a contract awarded by a municipality based on alleged impropriety in the bid process,[33] where a plaintiff challenged an investment by the state investment officer as being prohibited by statute,[34] where a plaintiff alleged that a city's allocation of funds for the construction of a new firehouse was made necessary because of the city's illegal failure to fulfill its firefighting duty,[35] where a plaintiff challenged an airport authority's acquisition of real estate as being in violation of a statute,[36]

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[31] *Myers v. Nebraska Invest. Council, supra* note 6 (citing *Rath v. City of Sutton*, 267 Neb. 265, 673 N.W.2d 869 (2004)).

[32] *Johnson v. City of Omaha, supra* note 30.

[33] See *id.* See, also, *Rath v. City of Sutton, supra* note 31; *Martin v. City of Lincoln*, 155 Neb. 845, 53 N.W.2d 923 (1952).

[34] See *Myers v. Nebraska Invest. Council, supra* note 6.

[35] See *Professional Firefighters of Omaha v. City of Omaha*, 243 Neb. 166, 498 N.W.2d 325 (1993).

[36] See *Nebraska Sch. Dist. No. 148 v. Lincoln Airport Auth.*, 220 Neb. 504, 371 N.W.2d 258 (1985).

and where a plaintiff sought to enjoin state officials from paying out funds from a state assistance fund in violation of constitutional provisions governing appropriation of funds.[37] The common thread among these cases was that a plaintiff challenged an expenditure on the basis that the expenditure itself was illegal because it was done in violation of a law, a constitutional provision, or a duty that governed the governmental entity or officer who made the expenditure.

In the operative second amended complaint, Kuehn alleged that he had standing to bring counts I, IV, VI, and VIII as a taxpayer challenging the illegal expenditure of public funds. He alleged that the Governor, DHHS, and the NMCC had spent or would spend public funds and government employee time to implement the Acts or to fulfill duties imposed by the Acts and that the State Treasurer and the Department of Revenue would be involved in collecting tax revenues that resulted from implementation of the Acts. Kuehn alleged that these state officers and agencies were making illegal expenditures because the Acts were unconstitutional under the U.S. and Nebraska Constitutions.

The district court found Kuehn's allegations of taxpayer standing to be "remarkably broad." Based largely on concern that recognizing taxpayer standing in this matter would "'swallow[] the rule'" that standing requires an injury in fact, the district court concluded that "the incidental burdens of implementing a law" were not "sufficient to confer taxpayer standing under Nebraska law." We share the district court's concern regarding the scope of the taxpayer exception for standing, and for somewhat different reasons, we conclude that the allegations in Kuehn's operative complaint were not sufficient to show that he had taxpayer standing in this case.

While the district court focused on whether Kuehn had sufficiently alleged an "expenditure of public funds," we note

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[37] See, *Midwest Popcorn Co. v. Johnson*, 152 Neb. 867, 43 N.W.2d 174 (1950); *Rein v. Johnson*, 149 Neb. 67, 30 N.W.2d 548 (1947).

that taxpayer standing requires the allegation of an "*illegal* expenditure of public funds." Kuehn's argument for taxpayer standing in this case is to the effect that if a statute is alleged to be unconstitutional for any reason, even for reasons not directly related to the expenditure of public funds, then any public funds or government resources or employee time spent to implement or comply with the statute is an "illegal expenditure." This rationale is a step removed from our cases cited above in which the common thread was that the expenditure itself was illegal because the expenditure was made in violation of a law, a constitutional provision, or a duty that governed the entity or officer who made the expenditure.

Kuehn relies on *Chambers v. Lautenbaugh*, where this court found taxpayer standing when the plaintiff alleged that a county election commissioner redrew district boundaries without authority to do so and the plaintiff "asked the district court to declare unlawful any implementation of the new district boundaries and the consequent expenditures of employee time and public tax money."[38] This court determined that the plaintiff had standing as a resident taxpayer to bring an action to enjoin the illegal expenditure of public funds. The district court in this case noted that in *Project Extra Mile v. Nebraska Liquor Control Comm.*, we recognized a "tension between *Chambers* [*v. Lautenbaugh*] and our cases holding that an allegation of unlawful government action is insufficient to show an illegal expenditure of funds."[39] As set forth above, the common thread in our taxpayer standing cases has been that the expenditure was illegal because it was made in violation of a law, a constitutional provision, or a duty that governed the entity or officer who made the expenditure. To the extent that *Chambers v. Lautenbaugh* can be read as being inconsistent

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[38] *Chambers v. Lautenbaugh, supra* note 7, 263 Neb. at 923, 644 N.W.2d at 544.

[39] *Project Extra Mile v. Nebraska Liquor Control Comm., supra* note 8, 283 Neb. at 390, 810 N.W.2d at 160.

with our reasoning herein and the other taxpayer standing cases cited above, we disapprove it.

Kuehn's claim is not that the State Officials and the NMCC Commissioners violated laws or constitutional provisions governing expenditures. Instead, Kuehn alleged that they made expenditures of public funds to implement or comply with Acts that he alleged were unconstitutional for reasons not directly related to the expenditures. Kuehn alleged the Acts to be unconstitutional, in violation of the federal Supremacy Clause and the Nebraska Constitution's provisions regarding separation of powers. These were constitutional challenges to the substance of the Acts and not specifically to the expenditure of public funds. Recognizing taxpayer standing under this rationale is unwarranted and expands the exception beyond its proper limits. Almost any statute would require some use of employee time and expenditure of funds to implement the statute, and recognizing taxpayer standing on that basis would allow almost any taxpayer to challenge the constitutionality of almost any statute.[40]

The Minnesota Supreme Court expressed similar concerns in *Minnesota Voters Alliance v. Hunt*,[41] when it stated that taxpayer standing does not exist when a taxpayer simply seeks to generally restrain illegal actions on the part of public officials and instead "recognize[d] taxpayer standing only when the central dispute involves alleged unlawful disbursements of public funds." The Minnesota Supreme Court expressed concern that recognizing taxpayer standing when the expenditure of public funds was incidental to the statute being challenged would place no principled limitation on taxpayer standing because almost every law entails at least some public

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[40] See *Hickenlooper v. Freedom from Religion*, 338 P.3d 1002, 1008 (Colo. 2014) ("[i]f [incidental overhead] costs were sufficient to confer taxpayer standing, any and all members of the public would have standing to challenge literally any government action that required the use of a computer, basic office supplies, or state employee time").

[41] *Minnesota Voters Alliance v. Hunt*, 10 N.W.3d 163, 169 (Minn. 2024).

expenditure. It therefore held that "when standing would not otherwise exist to challenge a substantive law, a taxpayer cannot manufacture standing by pointing to expenditures that are incidental to implementing the law."[42] In a later case, the Minnesota Supreme Court determined that a plaintiff had not sufficiently alleged that an unlawful disbursement of public funds was the central dispute in the case and that instead, the plaintiff's allegations "encompass[ed] only the incidental use of public funds to implement and monitor compliance with" a provision of a collective bargaining agreement that the plaintiff alleged to be illegal.[43]

We recognize that other jurisdictions might find taxpayer standing under the circumstances now before us. The Oklahoma Supreme Court has recognized taxpayer standing "to challenge the constitutionality of non-fiscal/non-appropriation bills if there is a sufficient involvement of public funds such that implementing and enforcing the challenged act could result in the wrongful expenditure of public funds."[44] But we think that applying taxpayer standing in this manner would be inconsistent with our jurisprudence regarding exceptions to the requirement of an injury in fact for standing.

With regard to the exception to injury-in-fact standing for matters of great public concern, we have emphasized that "'[e]xceptions to the rule of standing must be carefully applied in order to prevent the exceptions from swallowing the rule.'"[45] We have also expressed concern about adopting additional exceptions "to our well-established requirements for standing" when adoption of such exceptions "would result in the judicial system's interjection into many political issues

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[42] *Id*. at 169-70.

[43] *Clapp v. Sayles-Adams*, 15 N.W.3d 648, 653 (Minn. 2025).

[44] *White v. Stitt*, 2025 OK 68, ¶ 14, 579 P.3d 636, 642 (2025) (citing *Thomas v. Henry*, 260 P.3d 1251 (Okla. 2011)).

[45] *Egan v. County of Lancaster, supra* note 12, 308 Neb. at 56, 952 N.W.2d at 670 (quoting *State ex rel. Reed v. State, supra* note 14).

confronting the community, regardless of whether or not the issues are amenable to judicial review."[46]

We share the concerns expressed by three members of this court in *Thompson v. Heineman*, who stated that "[t]his court has recognized very limited exceptions to the standing requirement that a litigant have a personal stake in the outcome of a controversy. Our approach in this regard has been careful and conservative."[47] Noting our limited recognized exceptions to traditional standing, including the exception for taxpayer standing, they further stated that "[t]here is one characteristic shared by all of the exceptions—scarcity of application. The traditional, common-law rule dominates our jurisprudence. The exceptions are few, and resort to them is rare."[48] They also stated that "we have never held that any citizen has standing to challenge the constitutionality of any statute."[49]

Based on the concerns expressed in the foregoing precedent, the exception for taxpayer standing, like the exception for matters of great public concern, must be carefully applied and should not be construed as broadly as Kuehn urges in this case. Almost any challenge to the constitutionality of a statute can be characterized as involving an expenditure of public funds, because some expenditure of public funds or use of government assets or employee time would be required to implement or comply with any statute. But the incidental expenditure of public funds or use of government assets or employee time to implement or comply with a statute should not support taxpayer standing for every challenge to a statute.

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[46] *Ritchhart v. Daub*, 256 Neb. 801, 809, 594 N.W.2d 288, 294 (1999).

[47] *Thompson v. Heineman, supra* note 11, 289 Neb. at 851, 857 N.W.2d at 768 (Heavican, C.J., and Stephan and Cassel, JJ., dissenting in part, and in part concurring in the result).

[48] *Id*. at 851, 857 N.W.2d at 769 (Heavican, C.J., and Stephan and Cassel, JJ., dissenting in part, and in part concurring in the result).

[49] *Id*. at 856, 857 N.W.2d at 771-72 (Heavican, C.J., and Stephan and Cassel, JJ., dissenting in part, and in part concurring in the result).

Instead, the central dispute must be related to the legality of the expenditure of public funds, rather than to other aspects of a statute.

In this case, the central dispute in Kuehn's challenge to the constitutionality of the Acts was not that the Acts required an illegal expenditure of public funds. Instead, the focus of Kuehn's constitutional challenge was that the Acts violated the Supremacy Clause and the separation of powers clause. The alleged expenditures of public funds to implement and comply with the Acts were incidental to that challenge. We therefore conclude that the district court did not err when it determined that Kuehn did not have taxpayer standing in this action.

GREAT PUBLIC CONCERN

Kuehn also contends that he has standing because his claim raises a matter of great public concern. In addition to taxpayer standing, we have recognized an exception to the injury-in-fact requirement for standing for matters of great public concern. However, we have rarely found standing to be proper based on great public concern, and we do not find it here.

In *Cunningham v. Exon*, this court considered "whether the plaintiff had standing to challenge the accuracy of the proclamation, publication, and incorporation of a constitutional amendment adopted by the electors of Nebraska."[50] The district court found that the plaintiff did not have standing because "the plaintiff did not allege nor sustain any injury peculiar to himself, nor did the amendment involve the expenditure of state funds."[51] This court stated that other jurisdictions had recognized an exception to the general rule of standing "where matters of great public concern are involved and a legislative enactment may go unchallenged unless plaintiff has the right

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[50] *Cunningham v. Exon, supra* note 9, 202 Neb. at 566, 276 N.W.2d at 215.

[51] *Id.*

to bring the action."[52] We stated that the reasoning to support such an exception to challenge the validity of a legislative enactment "is even more persuasive where the declaration sought involves the accuracy and validity of an amendment to a state constitution,"[53] and therefore, we held that "a citizen and taxpayer has standing to maintain an action for a declaratory judgment to challenge the accuracy and validity of the proclamation, publication, and incorporation of an amendment" to the state Constitution.[54]

In *Thompson v. Heineman*,[55] four judges of this court cited *Cunningham v. Exon* to determine that the plaintiffs who raised issues of "whether the Legislature (1) unlawfully delegated a duty constitutionally conferred on the [Public Service Commission] to the Governor and (2) unlawfully delegated to the Governor the Legislature's power to bestow the State's right of eminent domain on private organizations," had standing because the "issues necessarily involve the delegation of powers under the Nebraska Constitution, which are fundamental matters of great public concern to all resident taxpayers." Three other members of this court in *Thompson v. Heineman* determined that the plaintiffs had not shown they had standing under the great public concern exception and asserted that the four judge majority had applied a "new and expansive interpretation of the exception for matters of great public concern [that] consumes the time-honored common law rule [of traditional standing] in a single gulp."[56] The three members of the court distinguished *Cunningham v. Exon*, which "involved the structural integrity of the state Constitution itself, not

[52] *Id*. at 567, 276 N.W.2d at 215.

[53] *Id*. at 568, 276 N.W.2d at 216.

[54] *Id*. at 569, 276 N.W.2d at 216.

[55] *Thompson v. Heineman, supra* note 11, 289 Neb. at 822, 857 N.W.2d at 751.

[56] *Id*. at 859, 857 N.W.2d at 773 (Heavican, C.J., and Stephan and Cassel, JJ., dissenting in part, and in part concurring in the result).

whether one of hundreds of laws enacted by the Legislature violated a constitutional provision."[57]

We have more frequently rejected arguments for "great public concern" standing than we have found it to be the basis for standing. We have found no standing based on "great public concern" in circumstances where a plaintiff challenged government officials' issuance of a special use permit but did not challenge the officials' legal authority to make the decision,[58] where plaintiff claimed that the Nebraska Game and Parks Commission breached its duties when it failed to prohibit construction of a power transmission line across a wildlife management area,[59] where the plaintiffs challenged the Nebraska State Racing Commission's issuance of licenses as outside its authority and asserted an interest in preventing the proliferation of gambling and having public officials act within their statutory boundaries,[60] and where the plaintiffs challenged a city's award of a cable television franchise.[61] We have also rejected an assertion of standing based on an "essential services" exception to challenge actions by city officials that the plaintiff asserted violated her right to have public safety functions performed without political influence or control.[62]

Kuehn contends that he has standing for a matter of great public concern because his claims raise constitutional issues under both the Nebraska Constitution and the U.S. Constitution. He argues that his claims implicate his interest in "the form of government under which [he] is required to

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[57] *Id*. at 854, 857 N.W.2d at 771 (Heavican, C.J., and Stephan and Cassel, JJ., dissenting in part, and in part concurring in the result).

[58] See *Egan v. County of Lancaster, supra* note 12.

[59] See *State ex rel. Reed v. State, supra* note 14.

[60] See *Neb. Against Exp. Gmblg. v. Neb. Horsemen's Assn., supra* note 13.

[61] See *Green v. Cox Cable of Omaha, Inc.*, 212 Neb. 915, 327 N.W.2d 603 (1982).

[62] See *Ritchhart v. Daub, supra* note 46.

live"[63] because they involve both the separation of powers clause set forth within the Nebraska Constitution and "the carefully calibrated balance between federal and state authority in the U.S. Constitution."[64] We do not find the exception to be applicable in this case.

We agree with the district court's reasoning that not "every claim alleging a violation of the separation of powers is automatically a matter of great public concern." This is true whether the claim relates to the separation of powers within the Nebraska Constitution or to the federal Supremacy Clause and federal preemption of state laws. We have not held that any citizen may challenge the constitutionality of any statute, and to recognize an exception for any constitutional challenge involving the separation of powers or federal preemption of state laws would swallow the requirement for an injury in fact. Kuehn's interests in having statutes comply with state and federal constitutional provisions are "general interests common to all members of the public and [do] not rise to the level of great public concern required"[65] for an exception to the common-law requirements for standing.

We do not find Kuehn's claims in this case to present the rare sort of great public concern that would justify an exception to the injury-in-fact requirement for standing. We therefore conclude that the district court did not err when it determined that Kuehn did not have standing for a matter of great public concern in this action.

Whether Others Would Have Standing to Challenge Acts

Kuehn separately assigns that the district court erred in determining that he lacked both taxpayer standing and standing for a matter of great public concern because others would

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[63] Brief for appellant at 19.

[64] *Id*. at 20.

[65] *State ex rel. Reed v. State, supra* note 14, 278 Neb. at 570-71, 773 N.W.2d at 355.

have standing to challenge the Acts. Kuehn argues that to establish standing for a matter of great public concern, he was not required to show that the Acts would otherwise go unchallenged, and that to establish taxpayer standing, he was not required to rule out every other possible plaintiff. He also argues that the district court's identification of other parties who could have standing to challenge the Acts was speculative, hypothetical, and dubious.

Although the district court identified others who could challenge the Acts, it stated that its conclusions that Kuehn lacked both taxpayer standing and standing to raise a matter of great public concern did not depend on the existence of others who had standing. Our conclusions that Kuehn lacked standing under both exceptions also do not depend on the existence of others who would have standing to challenge the Acts. We therefore do not address whether identification of such other parties was necessary to establish either type of standing, nor do we address the district court's identification of others who would have standing to challenge the Acts.

Motion to Substitute Parties

Two of the NMCC Commissioners who were named as defendants in their official capacities in Kuehn's operative second amended complaint, Oldenburg and Mueting, filed a motion with this court to substitute parties. They generally sought to have other individuals who had been named as defendants in their official capacities as the NMCC Commissioners substituted with their successors in office. Mueting filed an amended motion in which she stated that Oldenburg had ceased to be a member of the NMCC and sought to have Oldenburg and other named commissioners substituted with their successors in office.

Based on our resolution of this appeal, we overrule as moot these motions to substitute parties.[66] The interests of the NMCC and the NMCC Commissioners were represented

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[66] See *State ex rel. Peterson v. Ebke*, 303 Neb. 637, 930 N.W.2d 551 (2019).

in this appeal by counsel and by Mueting. Because we affirm the district court's order dismissing Kuehn's operative complaint, we see no need to substitute parties at this time. To the extent any matters may be pending in the district court, any party who thinks substitution of parties is necessary to the resolution of such matters is free to make such motion in the district court.

CONCLUSION

We conclude that Kuehn did not have either taxpayer standing or standing for a matter of great public concern to challenge the constitutionality of the Acts. We therefore affirm the district court's order dismissing Kuehn's operative complaint without prejudice.

Affirmed.