

University of California, “Smarter Balanced will continue to be a state-led organization”), at <http://www.smarterbalanced.org/resources-events/faqs/>. The charge of \$1,053,430 in “Invoice #1” submitted to the Court by the State on October 2, 2014, is unquestionably a demand for payment of fees for membership in this interstate compact. *See* Invoice #1 (charging the State for “Smarter Balanced **Membership** Complete Package”) (emphasis added).

For the reasons stated in the Plaintiffs’ Memorandum in Support of their Motion for Preliminary Injunction, Plaintiffs have made a preliminary showing of likelihood of success on the merits on their claim that the Consortium is an unconstitutional interstate compact to which Congress has never consented, in violation of the Compact Clause of the U.S. Constitution. If Plaintiffs prevail on this claim, Missouri’s membership in the Consortium is unconstitutional.

The State concedes that it may procure access to the Consortium’s assessments, as authorized by RSMo. § 161.855.4, without being a member of the interstate compact or making any payments in the form of membership fees. Further, the State may do so without incurring any additional costs above those it would incur as a member of the compact. Accordingly, the State has failed to show irreparable harm from the issuance of a temporary restraining order.

By contrast, the payment of membership fees to an unconstitutional entity would impose irreparable harm on the Plaintiff taxpayers, who have an interest in ensuring that all payments from the Missouri Treasury are made in accordance with the law. *See, e.g., Lebeau v. Comm’rs of Franklin County*, 422 S.W.3d 284, 288 (Mo. banc 2014) (“It is the public interests which are involved in preventing the unlawful expenditure of money raised by taxation that give rise to taxpayer standing. The taxpayer’s interest in the litigation ultimately derives from the need to ensure that government officials conform to the law.”); *Ste. Genevieve Sch. Dist. R-II v. Bd. of Aldermen of Ste. Genevieve*, 66 S.W.3d 6, 11 (Mo. banc 2002) (“Missouri Courts allow taxpayer

standing so that ordinary citizens have the ability to make their government officials conform to the dictates of the law when spending public money.”). Plaintiffs, therefore, have made a showing of irreparable harm.

Accordingly, the Court ORDERS that until further order, decree, or judgment of the Court, Defendants, and each of them, and all those in active concert or participation with them, are enjoined and restrained from making any payments in the form of membership fees to the Smarter Balanced Assessment Consortium, the University of California, or the National Center for Research on Evaluation, Standards and Student Testing, whether directly or indirectly, including but not limited to disbursements pursuant to “Invoice #1” issued to the State by “Smarter Balanced at UCLA” and dated September 29, 2014. Unless otherwise provided by this Court, this temporary restraining order will expire fifteen days from the date on which it is entered.

Plaintiff’s to post Bond in the amount of \$100.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'D. Green', written in a cursive style.

Judge Daniel R. Green, Circuit Court of Cole County, Missouri

Date: 11/25/2014

Hour of Signing: 8:58 AM