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# New York Court of Appeals

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## Transactive Corporation v. N.Y. State Department of Social Services, 1998 N.Y. Int. 0157 (Dec. 3, 1998).

STANDING TO SUE - GOVERNMENT CONTRACTS - DEFECTIVE BIDDING PROCESS

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### ISSUE & DISPOSITION

#### Issue

Whether petitioners, a subcontractor of a bidder and a trade association, have standing to sue to challenge State bidding process.

#### Disposition

No, petitioners lacked standing to sue on several grounds. First, no injury in fact occurred and the alleged injury did not fall within the zone of interests protected by statute. Additionally, petitioners lacked standing to sue since taxpayers do not have standing to challenge the manner in which State agencies award contracts. Finally, since petitioners were not seeking judicial review of legislative action, and since an impenetrable barrier to judicial scrutiny did not exist, petitioners lacked standing as taxpayers under the common law.

### SUMMARY

The New York State Department of Social Services (DSS) conducted a competitive bidding process to award a contract for the creation and implementation of a system to electronically distribute public assistance. The contract was awarded to Citicorp and was challenged on the basis of an alleged defective bidding process by a sub-contractor of another bidder on the project (Transactive Corp), a trade association (Check Cashers) and a New York benefits recipient and taxpayer (Rivera).

Check Cashers and Rivera brought an article 78 proceeding against DSS challenging the validity of the bidding process and the resultant contract awarded to Citicorp. Citicorp joined as a respondent. Check Cashers then commenced a declaratory judgment action against Citicorp and DSS seeking relief. Transactive also brought an article 78 proceeding against DSS, and Citicorp again joined as a respondent.

The Supreme Court converted Check Cashers' declaratory judgment into an article 78 proceeding and granted the petition; held that Transactive had standing; that DSS had violated provisions of the State Finance law; and therefore, the award to Citicorp was null and void.

The Appellate Division reversed and dismissed the petitions, and concluded that none of the petitioners, except Transactive, had standing to sue. Ruling on the merits, the Appellate Division found that DSS had not violated any State Finance laws and that there were no material defects in the bidding process.

The Court of Appeals granted leave to appeal; affirmed only the petitioners' lack of standing; and therefore declined to rule on the merits of the case. The Court of Appeals held that Check Cashers lacked standing to sue because, having no direct stake in the outcome of the bidding process, they did not suffer an injury in fact. In addition, their alleged injury did not fall within the zone of interests protected by the State Finance statute. Even though Transactive may have suffered a potential economic injury, because their alleged injury was not one within the zone of protected interests of the statute, they lacked standing to sue. Check Cashers and Rivera were also found to lack standing to sue as taxpayers, since taxpayers do not have standing to contest the manner in which State agencies award contracts. Further, they lacked common law taxpayer standing since they were not seeking judicial review of legislative action, nor did an "impenetrable barrier" to judicial scrutiny exist.

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Prepared by the [liibulletin-ny](#) Editorial Board.

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