

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

RONALD JOHN CALZONE)	
)	
Plaintiff,)	
)	
v.)	Civil Action. No. _____
)	
NANCY HAGAN, et. al)	
Commissioners and officers of the Missouri)	
Ethics Commission in their official capacities)	
thereof,)	
)	
Defendants.)	
_____)	

Verified Complaint

INTRODUCTION

1. Ronald John Calzone (“Mr. Calzone”) is a citizen activist who is passionate about the principles of individual liberty and constitutionally limited government, and he frequently travels to the Missouri State Capitol to share his political views with those who serve in the General Assembly, the governmental entity vested with the power to make laws for the state.
2. No entity has designated Mr. Calzone to serve as its lobbyist, no one pays him to share with the state’s legislators his thoughts about the best approach to public policy, and he does not give legislators any gifts.
3. Accordingly, Mr. Calzone has not registered as a lobbyist and does not submit to the government any reports regarding his conversations with legislators.
4. Some people resent Mr. Calzone’s efforts to persuade legislators to share his political perspectives, and at least twice he has been the subject of complaints filed with the

Missouri Ethics Commission asserting that he is a lobbyist within the meaning of § 105.470(5)(c), RSMo., and that he must register with the state, pay a fee, and make regular reports to the government concerning his conversations with legislators, in which case he would be subject to the regulatory scheme that applies to professional lobbyists, including civil and criminal penalties for failing to timely file reports, and also accept the stigma that accompanies the label “lobbyist” – a pejorative in the eyes of many.

5. In this case, Mr. Calzone asserts that § 105.470(5)(c), RSMo., violates the First Amendment freedom of speech and the freedom to assemble and to petition the government for a redress of grievances, both facially and as-applied to him. U.S. Const. amend I.
6. Plaintiff charges that § 105.470(5)(c), RSMo is unconstitutional because:
 - a. As-applied, § 105.470(5)(c) advances no state interest sufficient to override Plaintiff’s right to influence legislation as an engaged citizen. *United States v. Harriss*, 347 U.S. 612, 625 (1954) (government interest advanced by lobbyist registration and reporting is to expose “who is being hired, who is putting up the money, and how much”); *Minn. State Ethical Practices Bd. v. Nat’l Rifle Ass’n*, 761 F.2d 509, 510 (8th Cir. 1985) (upholding lobbyist registration statute that regulated compensated lobbying).
 - b. Facially, the law’s definition of “designate” is unconstitutionally vague, as evidenced by Defendants’ efforts to define that term—through the enforcement process against, *inter alia*, Mr. Calzone—as mandating the registration of persons who, without any authority to do so, “self-designate” as a legislative lobbyist for a third party.

7. Missouri’s legislative lobbyist statute chills citizen engagement with the legislative process by forcing putative grassroots activists, including Mr. Calzone, to comply with unconstitutional regulatory burdens when they merely seek to influence legislation in their private, uncompensated, capacities as active citizens.

JURISDICTION AND VENUE

8. This Court has jurisdiction because this action arises under the First and Fourteenth Amendments to the United States Constitution. 28 U.S.C. § 1331 (federal question).

9. This Court also has jurisdiction pursuant to Section 1 of the federal Civil Rights Act of 1871. *See* 42 U.S.C. §§ 1983, 1988; 28 U.S.C. § 1343(a).

10. This Court has jurisdiction to grant the relief Mr. Calzone requests pursuant to the federal Declaratory Judgment Act. *See* 28 U.S.C. §§ 2201 and 2202.

11. This Court is the proper venue for this case pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) (“a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located...judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”). The Ethics Commission is based in—and its actions giving rise to the claim in this suit occur in—Cole County, Missouri.

12. Accordingly, the Central Division of this Court is the proper venue for this case pursuant to Local Rule 3.1(a)(2).

PARTIES

13. Plaintiff, Ronald John Calzone, is a citizen of the United States and a citizen of the State of Missouri, where he resides in Maries County.

14. Defendants, the Commissioners of the Missouri Ethics Commission (“MEC” or “Ethics Commission”)—Nancy Hagan, Bill Deeken, Eric L. Dirks, Don Summers, Kim

Benjamin, and George Ratermann, and the Executive Director of the Ethics Commission, James Khlar, are sued solely in their official capacities.

15. The Ethics Commission, through its commissioners, is responsible for the enforcement of Missouri's statutes regarding legislative lobbyists.
16. The executive director "shall be responsible for the administrative operations of the [C]ommission and perform such other duties as may be delegated or assigned to the director by law or by rule of the [C]ommission." § 105.955(11), RSMo. Upon information and belief, those duties include, but are not limited to, making an initial determination as to whether complaints filed with the Ethics Commission provide jurisdiction for investigation, supervising the work of the Ethics Commission's investigators, and making public legislative lobbyist reports. §§ 105.955(11), (13), 105.473(6) RSMo.
17. As relevant to this Verified Complaint, Defendants act under color of state law.

FACTS

Mr. Calzone's Citizen Activism Is Threatened By State Law.

18. Mr. Calzone regularly speaks with members of the General Assembly in an effort to persuade them to share his views in regard to proposed legislation. He does so, *inter alia*, via testimony before committees of the General Assembly.
19. No one pays Mr. Calzone or gives him any other valuable consideration in exchange for sharing his views on policy with members of the General Assembly.
20. No third party entity has "designated" Mr. Calzone to serve as its lobbyist or otherwise to represent its views to members of the General Assembly.

21. Missouri defines a “legislative lobbyist” as “any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity” who also:

...

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity.”

22. In response to a complaint that the Missouri Society of Governmental Consultants filed against Mr. Calzone, the MEC determined that he was a “legislative lobbyist” subject to the registration and reporting requirements imposed by § 105.473, RSMo.; the MEC’s attempt to penalize Mr. Calzone for his activism was halted by Cole County Circuit Judge Jon Beetem for the sole reason that Missouri law does not allow corporations to file complaints with the MEC. § 105.957(2), RSMo (“Complaints shall be in writing, and filed only by a natural person...”).

23. Circuit court judgments in Missouri take 30 days to become final. Mo. R. Civ. P. 75.01.

24. On October 15, 2016, less than 30 days after the circuit court’s order, Mr. Calzone was notified that the MEC had received another complaint, this time ostensibly filed by Mr. Michael C. Reid (attached as Exhibit A); in virtually all respects Reid’s complaint is a copy-and-paste of the dismissed 2014 complaint filed by the Missouri Society of Governmental Consultants (attached as Exhibit B).

25. Mr. Calzone credibly fears that he will be subjected to another probable cause finding, pursuant to the process and statutory understanding discussed *infra* at ¶¶ 31-47, including an order forbidding him to engage in citizen activism and requiring him to pay a financial penalty. § 105.961(4), RSMo.
26. If the MEC does call for another probable cause hearing, Mr. Calzone will be severely delayed in asserting his First Amendment rights as a defense to the MEC's action because that forum is devoid of power to rule on the constitutionality of a statute.
27. Accordingly, absent injunctive relief, Mr. Calzone fears that he will face severe penalties and possible criminal prosecution if he continues to share his political ideas with legislators without first submitting to the registration and reporting requirements for legislative lobbyists. § 105.473, RSMo.
28. Such reports must be “verified by a written declaration that it is made under the penalties of perjury” and also must, by work of the Ethics Commission's executive director be kept “open to the public for inspection and copying for a reasonable fee for a period of five years from the date when such information was filed.” §§ 105.473(1), (3)2, (6), RSMo. The Commission's executive director has provided that these reports be made available for free, online, where they are essentially immortal.
29. Mr. Calzone plans to engage in efforts to, without pay and without any organization having designated him as a lobbyist, persuade legislators to share his perspectives on proposed legislation in future legislative sessions—but only if he can do so without having to comply with the burdens of registration, reporting, and concomitant public disclosure, necessitated for legislative lobbyists.

Mr. Calzone's Prior Experience With Defendants

30. The Missouri Ethics Commission is prohibited by operation of state law from conducting rulemakings or issuing regulations to limit the present scope of the legislative lobbyist statute. § 105.955(14)8, RSMo.
31. Plaintiff is intimately familiar with the Ethics Commission's interpretation of § 105.470(5)(c), RSMo via enforcement, as the target of a complaint, investigation, and probable cause determination by Defendants that ended on September 23, 2016, when the Missouri Circuit Court of Cole County made permanent a writ of prohibition, rendering all actions against Mr. Calzone void. That judgment is due to become final on October 23, 2016. Mo. R. Civ. P. 75.01.
32. Accordingly, the legal theory under which Mr. Calzone was found to have violated the statute, that an uncompensated person may "self-designate" himself as a lobbyist for a third party, remains Defendants' understanding of state law.

The Ethics Commission's Investigation of an Illegally Filed Complaint.

33. Plaintiff's prior experience with Defendants began sometime before November 4, 2014, when the Missouri Society of Governmental Consultants ("Society"), a professional organization for state lobbyists, was approached by a number of legislators. These officeholders requested that the Society file a complaint against Mr. Calzone, accusing him of being an unauthorized legislative lobbyist.
34. The Society—after a holding a board vote to approve the complaint, and securing *pro bono* legal counsel—did just that. § 105.957(2), RSMo ("Complaints filed with the [C]ommission shall be...filed only by a natural person").

35. The Society's complaint (Ex. B) was filed against Mr. Calzone on November 4, 2014. The complaint was caused to be hand-filed by Mr. Michael A. Dallmeyer, the Society's *pro bono* legal counsel in the matter.
36. Although Missouri law requires that "a complaint clearly lacking any basis in...law...shall [be] dismiss[ed]," Defendants did not do so.
37. On April 21, 2015, the MEC accepted Ms. Luaders' findings and formally accused Mr. Calzone of being an unauthorized lobbyist.
38. After Mr. Calzone requested a continuance of his scheduled hearing date, he acquired *pro bono* counsel in August of 2015.

The Ethics Commission's Hearing

39. On August 31, 2015, Mr. Calzone's counsel filed a motion to dismiss, arguing, *inter alia*, that the Ethics Commission's complaint failed to state a claim that Mr. Calzone lobbied within the meaning of § 105.470(5)(c). Mr. Calzone's motion argued that Missouri law could not reach persons that were uncompensated or undesignated by a third party.
40. On September 3, 2015, the Ethics Commission held a hearing in Mr. Calzone's case.
41. At that hearing, the Ethics Commission's counsel argued that the MEC has no power to grant a motion to dismiss once a complaint has been filed. Accordingly, Mr. Calzone's motion was "overruled."
42. The Ethics Commission called four witnesses, none of whom had been previously identified to Plaintiff, and witnesses were allowed to testify over objection by Mr. Calzone's counsel. One of this witnesses was the secretary of the Missouri Society of Governmental Consultants, Mr. Randy Scherr, who testified that the complaint had been

brought by the corporation. Ex. C (Excerpt of Testimony of Mr. Randy Scherr) (“The Complaint was filed...by the association”).

43. None of the Ethics Commission’s witnesses testified that Mr. Calzone received compensation for his citizen activism, or that had been designated as a lobbyist by a third party.

44. Rather, the MEC argued that the statute reached uncompensated persons and that Mr. Calzone “self-designated” as a legislative lobbyist for a third party, Missouri First, Inc., when he referenced his affiliation with that organization when testifying before committees of the Missouri General Assembly.

45. Mr. Calzone’s counsel consistently argued that probable cause ought not be found, because:

- a. the best reading of the Missouri legislative lobbyist statute did not reach uncompensated lobbyists,
- b. that the theory a person could “self-designate” as a legislative lobbyist for a third party was not cognizable under the statute,
- c. that the complaint was illegally filed by a corporation

46. After the hearing, on September 11, 2015, the Ethics Commission unanimously found probable cause, fined Mr. Calzone \$1,000, and issued an order that would have prohibited Mr. Calzone from “acting to attempt to influence any pending or potential legislation on behalf of Missouri First, Inc., or any other person, until filing an annual lobbyist registration report and filing all necessary lobbyist expenditure disclosure reports pursuant” to state law. Ex. D (MEC Findings of Fact, Conclusions of Law, and Order) at 10.

Plaintiff's Appeal of Defendant's Probable Cause Finding

47. The Administrative Hearing Commission (“AHC” or “Hearing Commission”) has exclusive jurisdiction over appeals of probable cause findings by Defendants. § 105.961(3), RSMo §; *Impey v. Missouri Ethics Comm’n*, 442 S.W.3d 42 (Mo. 2014) (*en banc*).
48. Before the Hearing Commission, Plaintiff timely filed a motion for judgment on pleadings. The AHC, however, has no jurisdiction to reach constitutional questions, and Mr. Calzone was limited entirely to relief as to his jurisdictional and statutory arguments.
49. The AHC’s review is also *de novo*, and it is not bound by the probable cause record or the facts developed before the Ethics Commission.
50. Although the AHC indicated that it believed that it was devoid of jurisdiction, it nevertheless ordered additional discovery sought by the Ethics Commission against Mr. Calzone, and denied Mr. Calzone’s motion for a protective order that discovery not be had until the agency had satisfied itself as to jurisdiction. Ex. E (Excerpt of AHC Hearing Tr.) (“unless you have actual case law to state...that a corporation can be the same as a natural person...I’m going to side with [Mr. Calzone] in this case”).

Defendants' Case Against Mr. Calzone Is Rendered Void

51. In Cole County Circuit Court, Mr. Calzone moved for a writ in prohibition to end these inherently flawed proceedings, which was preliminarily granted on April 19, 2016, and made permanent on September 23, 2016. Ex. F (Judgment, *Calzone v. Admin. Hearing Comm’n*, Case No. 16AC-CC00155 (Mo. 19th Cir. Sept. 23, 2016)).
52. Unfortunately, while the permanent writ of prohibition acknowledged the jurisdictional defects with the Society’s complaint, it did not—and could not have—struck the Ethics

Commission's belief that the legislative lobbyist statute reaches uncompensated persons and those who "self-designate" on behalf of a third party.

Second Complaint Filed Against Mr. Calzone

53. On September 30, 2016, before the judgment in the underlying case was made final by operation of Missouri Rule 75.01, a new complaint was filed against Mr. Calzone.
54. The new complaint is almost entirely a copy-and-paste of the same complaint filed by the Society in November of 2014. *Compare* Ex. A *with* Ex. B.
55. Accordingly, Plaintiff could be subjected to further appearance before Defendants who have shown little compunction about (1) prosecuting citizens on the basis of plainly unlawful complaints, (2) in a tribunal that has neither the power to grant motions to dismiss nor hear constitutional claims, (3) with an appeal solely to a body that can order new discovery, hold a second hearing, and is also disempowered to hear constitutional questions.

Cause of Action

56. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
57. The Defendants' actions, taken under color of law, have interfered with Mr. Calzone's exercise of freedoms protected by the Speech and Petition Clauses of the First Amendment, as incorporated by the Due Process Clause of the Fourteenth Amendment.
58. Specifically, the MEC's efforts to apply § 105.470(5)(c) and § 105.961(4), RSMo. to Mr. Calzone's uncompensated policy conversations with those vested with the state's legislative authority have severely chilled and threatened to completely cut off Calzone's exercise of his First Amendment freedoms within the Missouri State Capitol.

59. There is no legitimate state interest that would allow the MEC's enforcement of § 105.470(5)(c) to override Plaintiff's right to influence legislation as an engaged citizen. *Harriss*, 347 U.S. at 615 (government interest advanced by lobbyist registration and reporting is to expose "who is being hired, who is putting up the money, and how much").
60. Moreover, even assuming *arguendo* that Missouri law is properly tailored to a sufficiently important state interest, the meaning of the word "designate" is unconstitutionally vague, facially and as-applied, inasmuch as it has been applied by the Ethics Commission against Mr. Calzone under a theory that Mr. Calzone could "self-designate" as a lobbyist for a third party corporation.

Wherefore, Plaintiff prays that this Court:

- A. Enter judgment, including declaratory judgment pursuant to 42 U.S.C. § 1983, in favor of Plaintiff and against Defendants.
- B. Upon proper motion, issue temporary restraining orders, preliminary and permanent injunctions enjoining Defendants from enforcing, or threatening to enforce, RSMo § 105.470(5)(c) and attendant obligations thereto against Plaintiff.
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

Respectfully submitted,



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