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.	)	
_____	)	

SUGGESTIONS IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF

David E. Roland, Bar #60548MO
FREEDOM CENTER OF MISSOURI
P.O. Box 693
Mexico, MO 65265
Phone: (573) 567-0307
Fax: (573) 562-6122
Email: dave@mofreedom.org

Counsel for Plaintiff

Date: October 21, 2016

Table of Contents

Table of Authorities

Cases

Statutes and Regulations

INTRODUCTION

This case presents a simple question: Does the First Amendment allow the state of Missouri to punish a citizen simply for sharing political ideas with members of the state legislature, even though no one is paying him to do so? As interpreted by the Missouri Ethics Commission, Missouri law allows members of the public (including the Plaintiff, Ronald John Calzone) to be treated as professional legislative lobbyists and forced to submit to the registration and reporting requirements for such lobbyists—and also the penalties for non-compliance—regardless of whether any entity has paid or otherwise designated that person to represent them. Because the expression of political ideas, and the communication of those ideas to those serving in government, are at the very heart of the freedoms protected by the First Amendment, Missouri may not constitutionally make citizens' freedom to speak to legislators about matters of public policy dependent on the citizens' willingness to register as lobbyists and submit to regular reporting of their interactions with legislators.

STATEMENT OF FACTS

A. Ron Calzone's citizen activism.

Plaintiff is an engaged citizen. He often travels to Jefferson City when the Missouri General Assembly is in session in order persuade members of that body to share his views concerning proposed legislation and policy. He does so by, *inter alia,* testifying before legislative committees.

Mr. Calzone is not paid or reimbursed for these activities, and he receives no valuable consideration of any kind for his efforts to encourage what he considers to be, fundamentally, "good government." He does not provide gifts, meals, or anything of value to legislators or legislative staff in connection with his activism. And no other person or entity has hired or designated Mr. Calzone to lobby for them.

Nevertheless, Mr. Calzone's conduct places him within the ambit of Missouri's law regulating professional lobbying, as implemented and enforced by Defendants, executive director and commissioners of the Missouri Ethics Commission ("Ethics Commission" or "MEC").

B. Missouri's legislative lobbyist statute and reporting requirements

Missouri, like its sister states, regulates the act of lobbying members of its government, and does so in slightly different ways depending upon the organ of government an individual is hired to influence. *See, e.g.*, § 105.470(4), RSMo. (defining "judicial lobbyist"). Plaintiff specifically contends that § 105.470(5), RSMo., Missouri's statute governing "legislative lobbyists," violates the First Amendment both facially and as-applied to his circumstances.

Pursuant to § 105.470(5), RSMo., a legislative lobbyist is:

> 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, meets the requirements of any one or more of the following:
>
> **(a)** Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or
>
> **(b)** Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or
>
> **(c)** Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or
>
> **(d)** Makes total expenditures of fifty dollars or more during the twelve month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the legislative branch of state government in connection with such activity.

An individual classified as a "lobbyist" under this statute must register as such with the State, and begin to abide by a regular reporting schedule. Lobbyist registration requires a written declaration under penalty of perjury, the payment of a $10 fee, and publication of "the lobbyist's name and business address, the name and address of all persons such lobbyist employs for lobbying purposes, the name and address of each lobbyist principal by whom such lobbyist is employed or in whose interest such lobbyist appears or works." § 105.473(1), RSMo. These files "shall be open to the public." *Id*.

Lobbyist reports are monthly filings, also made under penalty of perjury. § 105.473(3)1-2, RSMo. These reports must, *inter alia*, itemize expenditures made on behalf of public officials and their families and staffs, and "any direct business relationship or association or partnership the lobbyist has with any public official or elected local governmental official." § 105.473(3)2, RSMo. The information in these reports must "be kept available by the executive director of the [Ethics C]ommission at all times open to the public . . . for a period of five years from the date when such information was filed." § 105.473(6), RSMo.

Lobbyists must also inform the MEC of their "lobbyist principals," defined as "any person, business entity, governmental entity, religious organization, nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist." § 105.470(7), RSMo. Missouri law also requires the biannual reporting of "a general description of the proposed legislation or action which the lobbyist or lobbyist principal supported or opposed." § 105.473(12), RSMo.

C. Defendants enforce this law against uncompensated active citizens, deeming them "legislative lobbyists."

Although the MEC is not authorized to promulgate rules clarifying the scope of the lobbying laws, § 105.955(14)8, RSMo., the Ethics Commission has made its interpretation of the

law plain via enforcement actions, including an action filed against Mr. Calzone. That action was filed by the Missouri Society of Governmental Consultants, a corporation, in violation of Missouri law requiring that complaints filed with the MEC may be "filed only by a natural person." § 105.957(2), RSMo.

As recounted in Plaintiff's Verified Complaint at ¶¶ 31-47, after conducting a hearing, the Ethics Commission found probable cause that Mr. Calzone was a legislative lobbyist within the meaning of § 105.470(5)(c) ("designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity"). Despite a number of procedural problems with that hearing—including the fact that it was held pursuant to an unlawfully filed complaint—after the conclusion of the hearing, the Ethics Commission unanimously voted, without abstention, to find probable cause that Mr. Calzone violated the law when he failed to register and report as a legislative lobbyist. Ex. D (Findings of Fact, Conclusions of Law, and Order ("MEC Conclusions of Law") at 9, ¶ 33. Accordingly, Mr. Calzone was fined $1,000 and ordered to cease his citizen activism until he complied with the statute. *Id*. at 10.

The MEC did this despite acknowledging that the record was devoid of evidence that anyone had paid Mr. Calzone for his activism, *id*. at 8, ¶ 32, or that any third party had designated him to act as its lobbyist. *Id*. at 7, ¶ 30. Rather, the MEC relied on the fact that when he testified before committees of the General Assembly, Mr. Calzone noted his affiliation with Missouri First, Inc., a small nonprofit organization that does not pay Mr. Calzone for his service as a member of the board of directors. While the MEC's Conclusions of Law *did* acknowledge that testifying before the legislature is not considered legislative lobbying under the statute, *id*. at 8, ¶ 31, it nevertheless inferred that—despite a lack of any board action to designate him as a lobbyist, and

the lack of any exchange of money between Missouri First and Mr. Calzone—Mr. Calzone's statements before legislative committees demonstrated that he had somehow designated *himself* as the legislative lobbyist for Missouri First.

D. Unpaid citizen activists have no ability to raise constitutional objections to the statute once they are formally charged by the Ethics Commission.

Once the MEC decides to subject a citizen activist such as Mr. Calzone to a probable cause hearing, the citizen must be very careful to avoid engaging in any speech that might be construed as being illegal, and he or she must wait months or years before a court of law determines whether the First Amendment protects that speech. The MEC has no authority to declare statutes unconstitutional, so the MEC draws its conclusions and assigns penalties without regard for the constitutionality of the statutes it is applying. Moreover, the appellate body that reviews MEC probable cause findings, the Administrative Hearing Commission ("AHC"), is similarly devoid of authority on constitutional questions. *Impey v. Mo. Ethics Comm'n*, 442 S.W.3d 42, 48 (Mo. banc 2014) ("applying for review by the AHC [of a MEC probable cause finding] is an administrative remedy *that must be exhausted* before seeking judicial review" in the state courts (emphasis supplied)). Appeal to the AHC is not voluntary; if the subject of a probable cause finding "does not apply for review with the AHC, he forfeits the right to challenge the agency's initial decision *in any manner*, including through judicial review." *Id.* (emphasis supplied).

Ultimately, Mr. Calzone's constitutional objections were never reached. On appeal, the AHC improperly ordered discovery without first determining whether it had jurisdiction over the case. *See Mo. Comm'n on Human Rights v. Cooper*, 639 S.W.2d 902 (Mo. App. W.D. 1982) (noting that an agency cannot take action "until after a valid…complaint is filed"). Accordingly, Mr. Calzone sought a writ of prohibition from state circuit court, which was provisionally granted by Judge Jon Beetem on April 19, 2016, and, after a hearing, was made permanent on September

23, 2016. This action ended all proceedings against Mr. Calzone and took the case entirely from the hands of either MEC or the AHC. Ex. F, (*Calzone v. Admin. Hearing Comm'n*, Case No. 16AC-CC00155 (Mo. 19th Cir. Sept. 23, 2016)) ("Because the complaint . . . was not filed by a natural person . . . all actions taken on the complaint are and were void"). Before that judgment became final, a new complaint was filed, ostensibly by Mr. Michael C. Reid of Jefferson City, against Mr. Calzone. The new complaint, as demonstrated by a comparison of Exhibits A and B, is a virtual copy-and-paste of the dismissed 2014 complaint. It does not allege that Mr. Calzone has been paid for any of his citizen activism. Ex. A ("When testifying [Mr. Calzone] . . . declares that he is not a registered lobbyist, and doesn't need to be because he does not get paid") (emphasis in original).

No new enforcement proceeding has begun against Mr. Calzone. Accordingly, this court also ought to issue a temporary restraining order preventing the Ethics Commission from taking action on any complaint, including the complaint attributed to Mr. Reid, in which the alleged violation of Missouri's legislative lobbyist statute is as an uncompensated citizen speaking to legislators or legislative staff.

STANDARD OF REVIEW

For the purposes of granting temporary or preliminary relief, this court must consider "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). While the movant bears the burden of demonstrating the existence of these factors, "[n]o single factor in itself is dispositive," *Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994) (internal quotation marks omitted), and Plaintiff does not even need to show a "fifty percent chance of" success on the merits, *PCTV Gold, Inc. v.*

SpeedNet, LLC, 508 F.3d 1137, 1143 (8th Cir. 2007) (internal quotation marks omitted). Once a movant demonstrates this likelihood of success on the merits, this court may presume that he has been irreparably harmed. *Calvin Klein Cosmetics Corp. v. Lenox Labs., Inc.*, 815 F.2d 500, 505 (8th Cir. 1987).

ARGUMENT

I. There Is No Basis For Abstention In This Case.

A court's first responsibility is to discern whether it has jurisdiction over the case and controversy before it. Although a new complaint regarding Mr. Calzone has been filed with the MEC, the Ethics Commission has not initiated a probable cause hearing and, thus, there is no "ongoing state judicial proceeding" that would place this case within the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* abstention would not be triggered unless and until the MEC formally initiated an enforcement action against an individual such as Mr. Calzone. *See Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) ("*Middlesex*") (questioning whether there was "an ongoing state judicial proceeding"); *Geier v. Mo. Ethics Comm'n*, 715 F.3d 674, 676, 678, 680 (8th Cir. 2013) (applying *Younger* once an "enforcement action" had been brought by MEC).

A statement by the MEC that it will begin an *investigation* "in the near future" does not indicate the existence of a state *judicial* proceeding. Ex. A, Cover Letter; *Banks v. Slay*, 789 F.3d 919, 923 (8th Cir. 2015) ("Federal court abstention is warranted when one of a few 'exceptional' types of parallel pending state court proceedings exist: state criminal proceedings, civil enforcement proceedings, and civil proceedings involving certain orders that are uniquely in furtherance of the state court's ability to perform their judicial function") (internal quotation marks omitted); *Planned Parenthood of Greater Iowa, Inc. v. Atchison*, 126 F.3d 1042, 1047 (8th Cir.

1997) (finding no ongoing administrative proceeding where a state agency asked for and received information from a facility as part of an application process that could ultimately result in a public hearing); *Gillette v. N.D. Disciplinary Bd. Counsel*, 610 F.3d 1045, 1047 (8th Cir. 2010) ("*Younger* abstention is only proper if state disciplinary hearings 'constitute an ongoing state judicial proceeding'") (quoting *Middlesex*, 457 U.S. at 432).

Furthermore, abstention ought not be had if the state judicial proceeding does not "provide[] an adequate opportunity to raise constitutional challenges." *Aaron v. Target Corp.*, 357 F.3d 768, 774 (8th Cir. 2004). Mr. Calzone disputes that he was given adequate opportunity to raise a constitutional claim given that he is prohibited from doing so in *two* mandatory forums, each of which has authority to conduct a full hearing with discovery, testimony, and briefing, before landing in state court on appeal from a MEC probable cause determination. It is inapposite to raise this language from *Geier*, issued before *Impey* made AHC review mandatory, in which the court found abstention appropriate: Plaintiff here has demonstrated "why the Missouri administrative system would not allow it to adequately raise constitutional claims." 715 F.3d at 678-79.

Otherwise, an individual could preempt the proper consideration by a federal court of the constitutionality of a statute under the Civil Rights Act of 1871, 42 U.S.C. § 1983, merely by arranging for the filing a new complaint—perhaps a copy-paste of an old one—during the period of time in which *Younger* would have prevented a plaintiff such as Mr. Calzone from filing a federal complaint.[1] *Gillette*, 610 F.3d at 1047 ("'bad faith, harassment, or other extraordinary circumstance . . . constitute an exception to *Younger* abstention'" (quoting *Middlesex*, 457 U.S. at

[1] Mr. Michael C. Reid previously worked as a lobbyist for the 2014 complainant, the Missouri Society of Governmental Consultants, and the Missouri Ethics Commission.

429)); *Lewellen v. Raff*, 843 F.2d 1103, 1109 (8th Cir. 1988) ("Bad faith and harassing prosecutions also encompass those prosecutions that are initiated to retaliate for or discourage the exercise of constitutional rights."). Allowing such a permanent Mobius strip of state proceedings as a means of avoiding constitutional review would do grave damage to the protections afforded by the federal charter of liberties and the Fourteenth Amendment.

II. The Missouri Legislative Lobbyist Statute Violates The First Amendment As-Applied To Uncompensated Individuals, And It Is Facially Void For Vagueness.

A. By regulating uncompensated citizen activists as legislative lobbyists, and demanding that those individuals register and report to Defendants, the Missouri legislative lobbyist statute is unconstitutional as-applied to Plaintiff and those similarly situated.

The First Amendment robustly protects the right to "petition the Government for a redress of grievances." U.S. Const., amend. I; *Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1, 9 (D.C. Cir. 2009) (noting that Petition Clause activities represent a "substantial First Amendment interest[]" which is implicated by lobbyist registration and reporting statutes). An untold number of Americans exercise this right every day, whether by writing letters to members of the state and federal legislature, calling or emailing a representative, appearing in-person or in a group in a legislative office, testifying before legislative committees, or even asking a question at a town hall meeting to persuade elected officials concerning public policy and provide them with information.

Nevertheless, by applying the law against persons that merely talk to members of the General Assembly, without receiving any compensation and without expending any money on members or their staff, Defendants have threatened the First Amendment rights of anyone who approaches a Missouri legislator or staffer to discuss policy and does so without pay. In doing so, the Ethics Commission has run afoul of the First Amendment.

As he must, Plaintiff concedes that the protections of the Petition Clause are not absolute. "For example, in *United States v. Harriss,* [347 U.S. 612 (1954)] . . . the Court upheld lobbying

disclosure requirements . . . on the ground that the statute served a vital national interest in a manner restricted to its appropriate end." *Taylor*, 582 F.3d at 9 (internal quotation marks omitted) (brackets supplied). But, by the same token, when a lobbyist registration and reporting statute is not properly tailored to a necessary and vital national interest, it is unconstitutional.[2]

And the Supreme Court, in precedent that has gone unaltered for over six decades, has limited the vital interest at issue in regulating lobbying to compelling the disclosure of those who are paid to influence legislators and legislative staff, as a means of determining "who is being hired, who is putting up the money, and how much." *Harriss*, 347 U.S. at 625; *see also 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).

The lobbying statute upheld in *Harriss* was "limited to those persons . . . who solicit, collect, or receive contributions of money or other thing of value" to be used for lobbying purposes—and it required registration only "if the principal purpose of either the persons or the contributions is to aid" in lobbying activities. 347 U.S. at 619 (internal quotation marks omitted). The Supreme Court explicitly rejected "a much broader construction" of the law, one urged upon it by the federal government, which would have required non-compensated lobbyists to register,

---

[2] *United States v. Harriss* was decided in 1954, before the U.S. Supreme Court fully articulated the familiar tiers of scrutiny that now apply to a substantial amount of First Amendment political rights jurisprudence. Plaintiff contends that the proper test for review of a lobbying statute is, given the bald language of *Harriss*, strict scrutiny. Nonetheless, he acknowledges that there is some confusion on this point in the Circuit Courts of Appeal. *See Taylor*, 582 F.3d at 10 (noting some controversy as to whether "strict" or "exacting" scrutiny applies).

Either way, Plaintiff contends the legislative lobbyist statute cannot constitutionally be applied to uncompensated persons. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366-367 (2010) (requiring, under exacting scrutiny, that a law with First Amendment implications bear a "substantial relationship" to a "sufficiently important governmental interest" (internal quotation marks omitted)); *Minn. Citizens Concerned For Life, Inc. v. Swanson*, 692 F.3d 864, 876 (8th Cir. 2012) (*en banc*) (same).

finding that such a reading could not be anticipated by the text of the statute. *Id*. at 619-620. Instead, the Court merely "provided for a modicum of information from those who *for hire* attempt to influence legislation or who collect or spend funds for that purpose." *Id*. at 625 (emphasis supplied).

Mr. Calzone does not accept money for his activism, nor does he spend money on legislators and legislative staff when he communicates with them about his public policy beliefs. The requirement that Mr. Calzone register and report with the government about his activities does not further the government's interest in knowing who is "putting up the money, and how much" behind efforts to enact legislation in Jefferson City. *Id*. at 625; *cf. SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*) ("something . . . outweighs nothing every time"). Therefore, requiring Mr. Calzone to pay a registration fee, place his name on a public record of lobbyists, and file repeated reports about his activities, including providing a biannual description of all of his activities under penalty of perjury, colossally fails the tailoring analysis required by *Harriss*.

B. To the extent that Defendants rely upon the phrase "designate" to permit the regulation of any person who openly affiliates with an organization and yet is uncompensated for his or her citizen activism, the legislative lobbyist statute is facially unconstitutional.

Forcing Mr. Calzone to register as a legislative lobbyist would also strike against the government's interest in disclosure, by erroneously attributing his citizen activism to a third party. § 105.473(4), RSMo. ("No expenditure reported . . . shall include any amount expended by a lobbyist . . . on himself or herself"). Mr. Calzone does not act on behalf of a third party and has certainly not been paid to do so, but would still be asked under § 105.473(1), RSMo to report a "lobbyist principal," imputing his activities to another party—presumably, given Defendants' findings on the 2014 complaint, Missouri First, Inc. But Mr. Calzone's activities in Jefferson City

are not done pursuant to a "designation" by that entity as its lobbyist. *See* § 105.470(5)(c) (defining legislative lobbyist as one "designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity").

In prior proceedings, the Ethics Commission has contended that it may regulate Mr. Calzone's uncompensated activism because he was "designated" by Missouri First, Inc. as a legislative lobbyist. It did so not on the basis that Missouri First, Inc. in any way hired Mr. Calzone. Rather, the Ethics Commission argued that by associating himself with Missouri First, Inc. when he testified before the legislature—which cannot, itself, be lobbying—Mr. Calzone self-designated as that group's legislative lobbyist. Ex. D at 4-5, ¶¶ 15-22.[3]

[3] Plaintiff acknowledges that this is not the reading of Missouri law that he would have chosen. Under § 105.470(5) RSMo., which defines "legislative lobbyist," there are three of the four "classes" by which an individual may become a legislative lobbyist, all which involve an individual receiving or expending money to lobby. Subpart (a) is for those ("acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer." § 105.470(5)(a) RSMo. Subpart (b) are for contracted lobbyists: those who are "engaged for pay or for any valuable consideration." § 105.470(5)(b) RSMo. Subpart (d) kicks in when a person "[m]akes total expenditures of fifty dollars or more" in connection with lobbying. § 105.470(5)(d) RSMo.

This leaves subpart (c), which states that a lobbyist "[i]s designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity"—a definition that happens to be identical to that of a "lobbyist principal," which is "any person, business entity, governmental entity, religious organization, nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist." §§ 105.470(5)(c); § 105.470(7), RSMo. *See Crum v. Vincent*, 493 F.3d 988, 996 (8th Cir. 2007) ("Missouri law requires courts to read statutes *in pari materia*, harmonizing sections covering the same subject matter if possible").

Thus, (a) covers organizations with a full-time, in-house lobbyist, (b) covers hiring a lobbyist on a contractual basis, (c) covers compensated persons whose primary purpose is not to lobby, but do so regularly (e.g., a corporate vice president spending 10 percent of her working hours lobbying), and (d) covers gifts that may improperly influence a legislature. Unfortunately, as Defendants have already shown, this construction is not the law in Missouri.

This conception of the phrase "designated," particularly as a backdoor to the regulation of uncompensated persons, is unconstitutionally vague. The Supreme Court has clearly stated that statutes are "void for vagueness" when a provision's "prohibitions are not clearly defined," because "[v]ague laws may trap the innocent by not providing fair warning." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). And when "First Amendment rights are involved, an 'even greater degree of specificity' is required." *Buckley v. Valeo*, 424 U.S. 1, 77 (1976) (quoting *Smith v. Goguen*, 415 U.S. 566, 573 (1974)).

This conception of self-designation takes the phrase "designate" away from a principal proclaiming to the public that someone has authority to represent it. As a result, this removes any need, or right, for principals to designate their lobbyists, and it will create a risk that an individual's errant words—even if she is conducting exempted activity like legislative testimony, distributing a newsletter, or responding to a request from a legislator for information—might unwittingly turn her into another's lobbyist. *See* § 105.470(5)(d), RSMo. (listing exceptions to legislative lobbying activity); Ex. D at 4, ¶ 15 ("Calzone appeared before legislative committees of the Missouri House and the Missouri Senate, identifying himself as appearing on behalf of Missouri First, Inc.").

No reasonable person could predict which string of events might become fodder for a complaint with the Ethics Commission—which has the ability to levy non-trivial fines and restrain individuals from conducting protected First Amendment activities—if merely noting an affiliation with an organization converts an individual into a legislative lobbyist.

"'No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. . . . Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be

said. It compels the speaker to hedge and trim.'" *Buckley*, 424 U.S. at 42 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)).

III. The Infringement Of Mr. Calzone's First Amendment Liberties "Unquestionably" Constitutes Irreparable Harm.

The application of Missouri's legislative lobbyist statute against those who speak for public policy results without compensation or designation by a third party, is a "harm anticipated to occur" that is "not capable of redress by equitable or legal relief, [and] thereby warrant[s] preliminary relief to maintain the status quo." *Johnson v. Bd. of Police Comm'rs*, 351 F. Supp. 2d 929, 945 (E.D. Mo. 2004).

Injunctive relief is all the more necessary here, given that laws that restrict an individual's right to speak on public issues and petition the government for a redress of grievances sound within fundamental First Amendment liberty. *E. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961) ("The right to petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to [the legislature] an intent to invade these freedoms"). The serious threat of a loss of First Amendment freedoms, or its loss "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1964); *see id*. ("It is clear, therefore, that First Amendment interests were either threatened or in fact being impaired at the time relief was sought.").

And without the imposition of a temporary restraining order against further action by the Ethics Commission premised upon its unconstitutional application of the law, this current harm may be compounded by Defendants' efforts to investigate and bring actions against Plaintiff and, possibly, others—all of whom would be unable to bring constitutional claims before either the state courts in Missouri or the federal judiciary.

IV. The Public Interest And The Balance Of Hardships Favor Plaintiff

Since no party has an interest in the enforcement of an unconstitutional law, the public interest is best protected by issuance of the relief requested by Mr. Calzone. *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("the court acknowledged the obvious: enforcement of an unconstitutional law is always contrary to the public interest") (collecting cases). Likewise, the hardship of being subject to an unconstitutional law, in the First Amendment context, outweighs any hardship imposed upon Defendants in not being permitted to unconstitutionally enforce the law. *Minn. Citizens Concerned for Life*, 692 F.3d at 870 ("'When a plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining [relief] are generally deemed to have been satisfied.'") (quoting *Phelps-Roper v. Troutman*, 662 F.3d 485, 488 (8th Cir. 2011) (*per curiam*)).

CONCLUSION

For the foregoing reasons, a temporary restraining order ought to be entered, and preliminary relief against enforcement of Missouri's legislative lobbyist registration and reporting requirements against uncompensated and undesignated persons should issue. Plaintiff further requests that, if this Court deems it necessary, that oral argument be had.

Respectfully submitted,

David E. Roland Mo. Bar #60548
FREEDOM CENTER OF MISSOURI
P.O. Box 693
Mexico, MO 65265
Phone: (573) 567-0307
Fax: (573) 562-6122
Email: dave@mofreedom.org

Date: October 21, 2016