

1 **IN THE ADMINISTRATIVE HEARING COMMISSION**

2 RON CALZONE,)
3 Petitioner,)
4 vs.)
5 MISSOURI ETHICS COMMISSION,) Case No. _____
6 Respondent.)
7)

8 **PETITION FOR REVIEW**

9 COMES NOW Petitioner, Ron Calzone, and for his Petition for Review of
10 an Order of the Missouri Ethics Commission states the following:

11 **Parties to the Proceeding**

- 12 1. Petitioner Ron Calzone is a natural person residing at 33867 Highway E,
13 Dixon, Missouri 65459.
14 2. Respondent Missouri Ethics Commission (“Commission”), is a state agency
15 whose enabling statute was codified at RSMo § 105.955.

16 **Jurisdiction and Venue**

- 17 3. This Commission has jurisdiction and venue over appeals of findings of
18 probable cause by the Missouri Ethics Commission. RSMo § 105.961;
19 *Impey v. Missouri Ethics Comm’n*, 442 S.W.3d 42 (Mo. 2014) (*en banc*).
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21 **Statement of Facts**

22 **Missouri’s Lobbyist Registration Statute**

- 23 4. The State of Missouri regulates the act of lobbying members of the General
24 Assembly.
25 5. Missouri defines a “legislative lobbyist” as “any natural person who acts for
26 the purpose of attempting to influence the taking, passage, amendment,
27 delay or defeat of any official action on any bill, resolution, amendment,
28 nomination, appointment, report or any other action or any other matter

1 pending or proposed in a legislative committee in either house of the general
2 assembly, or in any matter which may be the subject of action by the general
3 assembly and in connection with such activity” who also:

4 “(a) Is acting in the ordinary course of employment, which primary
5 purpose is to influence legislation on a regular basis, on behalf of or for the
6 benefit of such person's employer, except that this shall not apply to any
7 person who engages in lobbying on an occasional basis only and not as a
8 regular pattern of conduct; or

9 (b) Is engaged for pay or for any valuable consideration for the
10 purpose of performing such activity; or

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

14 (d) Makes total expenditures of fifty dollars or more during the twelve-
15 month period beginning January first and ending December thirty-first for
16 the benefit of one or more public officials or one or more employees of the
17 legislative branch of state government in connection with such activity.”
18 RSMo § 105.470(5).

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20 6. Missouri has also codified a number of “exceptions” to the definition of
21 legislative lobbyist. RSMo § 105.470(5)(d).

22 7. Specifically, a legislative lobbyist “shall not include any...person solely due
23 to such person’s participation in any of the following activities...

24 a. Responding to any request for information made by any public
25 official or employee of the legislative branch of government...

26 b. Preparing or publication of an editorial, a newsletter, newspaper,
27 magazine, radio or television broadcast, or similar news medium,
28 whether print or electronic...

1 d. Testifying as a witness before the general assembly or any
2 committee thereof.”

- 3 8. Under Missouri’s legislative lobbyist statute, lobbyists must “not later than
4 January fifth of each year or five days after beginning any activities as a
5 lobbyist, file standardized registration forms, verified by a written
6 declaration that it is made under the penalties of perjury, along with a filing
7 fee of ten dollars, with the commission.” RSMo § 105.473.1.
- 8 9. Such forms “shall include the lobbyist’s name and business address, the
9 name and address of all persons such lobbyist employs for lobbying
10 purposes, the name and address of each lobbyist principal by whom such
11 lobbyist is employed or in whose interest such lobbyist appears or works.”
12 *Id.*
- 13 10. Missouri defines a “lobbyist principal” as “any person, business entity,
14 governmental entity, religious organization, nonprofit corporation or
15 association who employs, contracts for pay or otherwise compensates a
16 lobbyist.” RSMo § 105.470(7).
- 17 11. Following registration, legislative lobbyists must file with the Commission
18 “monthly reports which shall be due at the close of business on the tenth day
19 of the following month.” RSMo § 105.473.3(1).
- 20 12. These reports, which must be “verified by a written declaration that it is
21 made under the penalties of perjury” must, *inter alia*, itemize expenditures
22 made on behalf of public officials and their families and staffs, and “any
23 direct business relationship or association or partnership the lobbyist has
24 with any public official...” RSMo § 105.472.3(2).
- 25 13. Additionally, under the law, the Commission’s executive director must, “at
26 all times,” keep these reports “open to the public for inspection and copying
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1 for a reasonable fee for a period of five years from the date when such
2 information was filed.” RSMo § 105.473(6).

3 14. The Commission was responsible for overseeing this lobbyist registration
4 and reporting regime. RSMo § 105.955.

5 15. The Commission was also empowered to enforce the lobbyist law, and to
6 investigate complaints brought against persons accused of unauthorized
7 lobbying, ordering registration and civil penalties when probable cause as to
8 a violation was found. RSMo § 105.957.

9 **Complaint Brought Against Mr. Calzone By The Missouri Society of**
10 **Governmental Consultants**

11 16. Only natural persons are empowered under Missouri law to file complaints
12 with the Commission. RSMo § 105.957.2.

13 17. At some point prior to November 4, 2014, a number of legislators
14 approached the Missouri Society of Governmental Consultants and “asked if
15 [the Society] was interested in compliance with the law” as it applied to
16 “Mr. Calzone’s status or nonstatus as a lobbyist with anyone.” Hearing Tr. at
17 64, l 9-18.

18 18. These legislators were not members of the Missouri Society of
19 Governmental Consultants (“Society”). Hearing Tr. at 65, l 3-4.

20 19. Specifically, at least Representative Kevin Engler and Senator Ron Richard
21 “raised the question” with the Society “of bringing a complaint before th[e
22 Missouri Ethics] Commission on the subject of Mr. Calzone’s status or
23 nonstatus...[a]s a lobbyist.” *Id.* at 66, l 4-25.

24 20. The Society’s board unanimously, without abstention, voted to authorize the
25 bringing of a complaint against Mr. Calzone. Hearing Tr. at 75, l 5-13.

26 21. The Society’s officers and board explicitly chose to file its Complaint after
27 the close of the 2014 election season because “Mr. Calzone had been
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1 involved in some local activities in an election campaign in St. Louis
2 regarding... Representative John Diehl, and [] there was some concern that
3 if it was filed prior to the election, that it would somehow impact
4 Diehl's...reelection." Hearing Tr. at 71, l 5-24.

5 22. Although the Society "motivated the Complaint" against Mr. Calzone, it
6 could not file it by itself, as the Society is a non-natural person. Hearing Tr.
7 at 63, l 15-16.

8 23. However, none of the Society's officers brought a complaint against Mr.
9 Calzone.

10 24. Neither Mr. Engler nor Mr. Richard brought a complaint against Mr.
11 Calzone.

12 25. Instead, on November 4, 2014, Mr. Michael Dallmeyer filed such a
13 complaint with Respondent, accusing Petitioner of being a legislative
14 lobbyist within the meaning of Missouri law, yet having failed to comply
15 with relevant reporting and registration requirements.

16 26. Mr. Dallmeyer is a Missouri attorney, and Society Secretary Randy Scherr
17 has testified that Mr. Dallmeyer "represented" the Society itself—not any
18 officer of the Society—"pro bono" for the purpose of filing a complaint
19 against Mr. Calzone. Hearing Tr. at 74, l 23-24.

20 27. Mr. Dallmeyer filed a Complaint on November 4, 2014 using the Official
21 Complaint Form provided by the Commission to the general public. Hearing
22 Ex. 6.

23 28. The instructions on that form state that "[t]his complaint shall contain all
24 facts known to the person bringing the complaint that give rise to the
25 complaint." Hearing Ex. 6.

26 29. Mr. Dallmeyer signed the complaint under penalty of perjury. *Id.*
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1 30. Mr. Dallmeyer appended one page, which he characterized as a “statement
2 of facts” laying out the charges which Mr. Dallmeyer swore were “all facts
3 known to” him. *Id.*

4 31. Mr. Dallmeyer claimed that Mr. Calzone “meets the definition of ‘legislative
5 Lobbyist’” under Missouri law. *Id.*

6 32. Mr. Dallmeyer claimed that Mr. Calzone’s “[f]ailure” to comply with
7 Missouri lobbying law “subjects [Mr. Calzone]...to a ten dollar a day late
8 fee. Mr. Calzone has failed to file a monthly lobbyist report for over fourteen
9 years.” *Id.*

10 33. Mr. Dallmeyer’s complaint included a cover sheet that specifically stated
11 that he was filing on behalf of the Society, and not in a personal capacity.
12 Hearing Ex. 9.

13 **The Ethics Commission’s Investigation Into The Society’s Complaint**

14 34. Mr. Dallmeyer’s complaint on behalf of a non-natural person triggered an
15 investigation by the Commission.

16 35. Della Luaders was tasked with investigating Mr. Dallmeyer’s complaint.

17 36. Ms. Luaders took notes throughout her investigation, but destroyed them
18 after concluding her investigation and writing a report. Hearing Tr. at 110 *l*
19 6-15.

20 37. That investigative report, which was introduced as Exhibit 1 at the hearing,
21 was delivered to Mr. Calzone on June 18, 2015.

22 38. Ms. Luaders spoke to Mr. Dallmeyer in the course of her investigation.

23 39. On January 8th, 2015, in the course of speaking with Mr. Dallmeyer,
24 reference was made to a cover letter which Mr. Dallmeyer claimed had been
25 attached to his initial complaint, but which had not been given to Ms.
26 Luaders. Hearing Tr. at 121, *l* 10-21.
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- 1 40. This cover letter stated that Mr. Dallmeyer was filing his complaint, the
2 factual accuracy of which he attested to under oath based upon personal
3 knowledge, “on behalf of our client, Missouri Society of Governmental
4 Consultants.” Hearing Ex. 9.
- 5 41. The cover letter also identified the Society’s president, Mr. Sam Licklider,
6 and secretary, Mr. Randy Scherr. *Id.*
- 7 42. The letter noted that “public or media communications should be directed”
8 to the Society, but “any communications or questions from” the Commission
9 “should be directed” to Mr. Dallmeyer.
- 10 43. Ms. Luaders, however, testified that Mr. Dallmeyer asked that she speak to
11 Mr. Licklider and Mr. Scherr. Hearing Tr. at 121, l 22-25, 122 l 1-3.
- 12 44. During the course of her investigation, Ms. Luaders spoke with Mr. Calzone,
13 Mr. Dallmeyer, Mr. Licklider, Mr. Scherr, and a number of members of the
14 Missouri legislature. Hearing Tr. at 86, l 4-10. Those members included
15 “Senator [*sic*] Engler, Senator Nieves, Representative Barnes,
16 Representative [*sic*] Schaefer, [and] Representative Funderburk.” Hearing
17 Tr. at 118, l 2-13.
- 18 45. This list of persons that Ms. Luaders spoke with during her investigation is
19 non-exhaustive. At the hearing, Ms. Luaders admitted that she could not
20 “remember the rest of the individuals’ names” that she “spoke with as part of
21 [her] investigation.” *Id.*
- 22 46. Mr. Calzone did not provide Ms. Luaders with any specific information
23 about when he met with legislators, and Ms. Luaders did not testify to any
24 specific interaction Mr. Calzone had with any legislator.
- 25 47. Mr. Calzone told Ms. Luaders that he did not believe he met the “definition
26 of a legislative lobbyist” under Missouri law. Hearing Tr. at 89, l 1-5.
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- 1 48. During her investigation, Ms. Luaders viewed Missouri First's website at
2 <http://www.mofirst.org>.
- 3 49. During her investigation, Ms. Luaders also requested and obtained
4 documents from Missouri governmental bodies. Hearing Ex. 1, 2, 3, 4.
- 5 50. Hearing Exhibit 1, admitted at the hearing over Petitioner's objections,
6 consists of Ms. Luaders' final investigation report, Missouri business
7 documents, and a number of photocopies printed off the Internet purporting
8 to be the nonprofit corporation Missouri First's website. It also included
9 various printouts of information related to bills before the Missouri House
10 and Senate, including House and Senate committee minutes.
- 11 51. Hearing Exhibit 2, as admitted at the hearing over Petitioner's objections,
12 consists of minute book entries authored by the Missouri House of
13 Representatives listing individuals testifying before committee hearings, a
14 number of witness appearance forms for those hearings, exhibits created by
15 Mr. Calzone for the purpose of testifying before committees of the House,
16 and exhibits brought by other witnesses to aid their testimony before
17 committees of the House.
- 18 52. Hearing Exhibit 3, as admitted at the hearing over Petitioner's objections,
19 appears to consist of excerpts of minutes kept by the Missouri Senate for
20 hearings, at some which Mr. Calzone provided testimony. Unlike Exhibit 2,
21 other documents—whether authored by Mr. Calzone or any other person—
22 are not included.
- 23 53. Hearing Exhibit 4 consists of records provided by the Missouri Secretary of
24 State. Specifically, they consist of Missouri First's articles of incorporation,
25 certificate of incorporation, and its Biennial Registration Reports for 2010-
26 2011, 2012-2013, and 2014-2015.
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- 1 54. In requesting documents from the Missouri General Assembly, Ms. Luaders
2 requested “[d]ocumentations of the minutes which would show the
3 committee meeting and any of the supporting documents for or against,
4 specifically if it related to Mr. Calzone”, Hearing Tr. at 112, / 2-10, as well
5 as “all records referring to legislation sponsored by the individuals who were
6 referred to” in the Society’s complaint. Hearing Tr. at 113, / 23-25-114, / 1-
7 5.
- 8 55. Ms. Luaders completed her report in January 2015.
- 9 56. The Luaders Report contained no specific information regarding any
10 relevant action taken by Mr. Calzone.
- 11 57. The Luaders Report did reference Mr. Calzone’s testimony before
12 committees of the Missouri General Assembly.
- 13 58. The Luaders Report incorrectly and repeatedly referred to the website for
14 Missouri First as “Calzone’s website.”
- 15 59. The Luaders Report, without explanation, justification, or additional
16 evidence, contained a number of bald assertions that “[o]n or about August
17 2000, with the formation of Missouri First, Inc. through present Calzone”
18 had spoken to legislators about legislation. The Report failed to specify any
19 dates, specific legislators, or other identifying information about these
20 alleged activities. Hearing Ex. 1 at 5.
- 21 60. The Luaders Report also noted that Missouri First’s Charter indicated that
22 “Missouri First will give priority to educating and mobilizing the public to
23 meet our objectives. Media Advertising, public oratory, informational
24 seminars, legislative lobbying, and citizen involvement *may* be used to teach
25 or to influence public policy.” Hearing Ex. 1 at 5 (emphasis supplied).
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1 61. The Luaders Report concluded by recommending that “[t]he Commission
2 find[] reasonable grounds to support a violation of chapter 105, RSMo, and
3 refer the report to commission counsel.” *Id.* at 8.

4 **The Commission’s Complaint Against Mr. Calzone**

5 62. The Commission accepted the recommendation of the Luaders Report.
6 Hearing Ex. 5 at 1, ¶ 6 (“Based on the report of the Commission’s staff, the
7 Commission determined that there were reasonable grounds to believe that
8 violations of law occurred...”)

9 63. Having reviewed the findings of the Luaders Report, which concluded the
10 investigation into the Society’s initial complaint, the Commission filed an
11 official Complaint against Mr. Calzone on April 21, 2015. Hearing Ex. 5 at
12 1.

13 64. The Commission’s Complaint defined a legislative lobbyist pursuant to
14 RSMo § 150.470(5)(c). Specifically, the Complaint defined a lobbyist as one
15 who “[i]s designated to act as a lobbyist by any person, business entity,
16 governmental entity, religious organization, nonprofit corporation,
17 association or other entity.” *Id.* at 3, ¶ 13.

18 65. The Commission’s Complaint also listed the statutory exceptions to the
19 requirement of lobbyist registration and reporting, including the exception
20 for testimony before legislative committees. *Id.* at 3, ¶ 14.

21 66. The Complaint nevertheless relied upon specific examples of Mr. Calzone’s
22 testimony as evidence he was likely in violation of the lobbyist registration
23 and reporting statute. *Id.* at 5, ¶¶ 18, 19, 20.

24 67. The Commission’s Complaint did not provide any other specific charge or
25 any other specific evidence that Mr. Calzone engaged in lobbying, as
26 defined by RSMo § 105.470.
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1 68. The Commission’s Complaint did not provide any allegation, evidence, or
2 charge as to the mechanism by which Mr. Calzone was “designated” as a
3 legislative lobbyist by Missouri First, a nonprofit corporation with its own
4 by-laws and board of directors.

5 69. Despite quoting from the Missouri First Charter, the Commission’s
6 Complaint did not mention that this same page, later included as Appendix 1
7 of the Commission’s Findings of Fact and Conclusions of Law, states the
8 following:

9 (a) “Missouri First will be governed by the Board of Directors within the
10 constraints of this charter.”

11 (b) “Normal operational decisions will be decided upon by a simple majority
12 vote, but a conviction objection by one or more board members will nullify
13 the decision.”

14 70. The Commission’s Complaint contained no evidence of a decision by
15 Missouri First, through its Board of Directors or otherwise, designating any
16 person as a legislative lobbyist.

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18 **Mr. Calzone’s Motion to Dismiss**

19 71. On August 31, 2015, after acquiring legal counsel, Mr. Calzone, through
20 said counsel, filed a Motion to Dismiss, raising statutory and constitutional
21 objections to the Commission’s Complaint.

22 72. Mr. Calzone’s Motion to Dismiss is attached as Exhibit A.

23 **Hearing Before The Missouri Ethics Commission**

24 73. Upon information and belief, on July 13, 2015, Governor Jay Nixon signed
25 into law Senate Bill 58. That law repealed, without replacing, RSMo §
26 105.955, the enabling statute for the Missouri Ethics Commission.

27 74. A closed hearing was held at the Commission’s office on September 3,
28 2015.

- 1 75. Mr. Calzone was represented by counsel: Allen Dickerson of the Center for
2 Competitive Politics, appearing *pro hac vice*, and David Roland of the
3 Freedom Center of Missouri.
- 4 76. Per an agreement between the Parties' counsel, Zac Morgan of the Center
5 for Competitive Politics was permitted to observe the proceedings.
- 6 77. At the outset of the hearing, Commission Chairman Charles Weedman noted
7 that the Commission had granted Mr. Dickerson's motion to appear *pro hac*
8 *vice*. Hearing Tr. at 6, l 2-3.
- 9 78. In describing Commission procedure, Chairman Weedman noted that
10 "[o]bjections should be made as you would under any other court case. We
11 will attempt to follow rules of evidence and rules of civil procedure."
12 Hearing Tr. at 6, l 9-11.
- 13 79. The Commission's response to Mr. Calzone's Motion to Dismiss was
14 presented to Mr. Calzone's counsel at the hearing. Hearing Tr. at 9, l 2-3.
- 15 80. The Commission "overruled" Mr. Calzone's Motion to Dismiss. Hearing Tr.
16 at 10, l 2-5.
- 17 81. The Commission's counsel, in his opening statement, made clear that its
18 theory of the case relied entirely upon the designation provision of Missouri
19 law. Hearing Tr. at 11, l 23-25, 12, l 1-5.
- 20 82. The Commission's counsel argued that "[t]he purpose of designate in the
21 statute...is authorize, that Missouri First authorizes Mr. Calzone to act."
22 Hearing Tr. at 17, l 18-20.
- 23 83. For support for this proposition, the Commission's counsel looked to the
24 1986 Merriam Webster's Third New International Dictionary. Hearing Tr.
25 at 17, l 11-15.
- 26 84. The Commission's counsel argued that Mr. Calzone designated himself as a
27 legislative lobbyist simply by appearing "as president and secretary [of
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1 Missouri First],” and noting affiliation with Missouri First, when testifying
2 before committees of the legislature. The Commission’s counsel stated that
3 this “act alone shows designation” by Mr. Calzone as a lobbyist for the
4 organization. Hearing Tr. at 18, / 12-21. However, in addition to the legal
5 flaws in this assertion, the Commission also failed to present any evidence
6 that Mr. Calzone had referred to himself as “president and secretary of
7 Missouri First” when testifying before committees of the legislature.

8 85. The Commission’s counsel also suggested that Mr. Calzone was the sole
9 officer of Missouri First during the two-year period before the Society’s
10 complaint was filed. Hearing Tr. at 18, / 8-11 (“When he signed that and
11 said I’m appearing on behalf of Missouri First, Inc., he was the only officer
12 for Missouri First, Inc.”).

13 86. However, in 2013, Mrs. Anne Calzone served as treasurer of Missouri First,
14 Inc., an officer position. Hearing Tr. at 111, / 1-2.

15 87. The Commission’s counsel argued that, despite the exception to lobbyist
16 registration due solely to offering testimony before the legislature, that
17 activity remains “relevant to whether or not you are a lobbyist. It’s just that
18 we have to prove one of those things, plus something else.” Hearing Tr. at
19 25, / 21-23.

20 88. To prove its case, the Commission called four witnesses: Mr. Randy Scherr,
21 Secretary of the Missouri Society of Governmental Consultants; Ms. Della
22 Luaders, a Senior Field Investigator for the Commission; Mr. Ron Calzone;
23 and Ms. Betsy Byers, the Director of Business Services for the Commission.

24 89. Notice of these witnesses was not provided to Mr. Calzone or to Mr.
25 Calzone’s counsel.

26 90. The Commission did not call Mr. Michael Dallmeyer, who swore under oath
27 that he had actual knowledge of the allegations against Mr. Calzone.
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1 91. The Commission did not call any other member of the Society, except for
2 Mr. Scherr.

3 92. Mr. Calzone's counsel objected to the inclusion of Mr. Scherr, the first
4 witness called by the Commission, on grounds that no notice was provided.
5 Hearing Tr. at 30, l 13-15.

6 93. The Commission's counsel responded by "not[ing] that no request for
7 witnesses w[as] ever made" by Mr. Calzone or his counsel. Hearing Tr. at
8 30, l 16-18.

9 94. The Commission noted that Mr. Calzone's "objection is for the record", but
10 never ruled upon it. Hearing Tr. at 31, l 1-2.

11 95. Mr. Scherr was permitted to testify.

12 *Testimony of Randy Scherr, Secretary of the Missouri Society of Governmental*
13 *Consultants*

14 96. Mr. Scherr's testimony, in relevant part, asserted that he had seen Mr.
15 Calzone at the Capitol, "talking to legislators." Hearing Tr. at 42, l 6.

16 97. Mr. Scherr was unable to testify as to the content of those communications.
17 Hearing Tr. at 54, l 11-21.

18 98. On the topic of "designation" as a lobbyist, Mr. Scherr, on cross-
19 examination, admitted that when he represents a client there is often an
20 engagement letter that serves to designate Mr. Scherr or his company as a
21 lobbyist. Hearing Tr. at 53, l 7-25.

22 99. Mr. Scherr testified that, even with *pro bono* clients, "the control group or
23 the board or someone at [the client]" would formally designate a lobbyist
24 "[t]o speak on their behalf." Hearing Tr. at 54, l 1-9.

25 100. Mr. Scherr also provided testimony, discussed *supra*, that Missouri
26 legislators engineered the Society's complaint.
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1 101. Mr. Scherr also testified, as provided *supra*, that the timing of the Society’s
2 complaint was determined on the basis of political considerations.

3 102. Mr. Scherr also testified that he was in the Capitol “[e]very day” and he did
4 not believe that “at [any] point during any of those daily visits did [he] see
5 Mr. [Michael] Dallmeyer for the last two years.” Hearing Tr. at 67, l 21-25.

6 103. Mr. Scherr provided no evidence as to the mechanism by which Missouri
7 First, Inc. designated Mr. Calzone as a legislative lobbyist.

8 104. Mr. Scherr provided no evidence that Missouri First compensated Mr.
9 Calzone for any of his activities.

10 105. Mr. Scherr provided no evidence of any specific meeting between Mr.
11 Calzone and any legislator which was for the purpose of lobbying under
12 Missouri law.

13 *Testimony of Della Luaders, Senior Field Investigator for the Missouri Ethics*
14 *Commission*

15 106. Ms. Luaders’s testimony largely concerned the conduct of her investigation,
16 as discussed *supra*.

17 107. Ms. Luaders testified, over an objection by Petitioner, as to the content of
18 conversations with Mr. Calzone. Hearing Tr. at 95, l 21-24 (Petitioner “felt
19 his hat was to represent the faceless mask of citizens who did not have a
20 lobbyist”).

21 108. Ms. Luaders testified that she did not record conversations during her
22 investigation. Hearing Tr. at 108, l 21-24.

23 109. Ms. Luaders testified that she did not keep “any record contemporaneous to
24 those conversations.” Hearing Tr. at 108, l 25, 109, 1-2.

25 110. Ms. Luaders testified that she did not “keep any notes.” Hearing Tr. at 109, l
26 3-4.
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- 1 111. Ms. Luaders then testified that her testimony “directly quoting from Mr.
2 Calzone” was not “entirely from her memory.” Hearing Tr. at 109, l 5-8.
- 3 112. Counsel for Mr. Calzone then asked if Ms. Luaders had “ke[pt] any
4 contemporaneous record of the conversations” that occurred during the
5 course of her investigation. Hearing Tr. at 109, l 11-12.
- 6 113. At this point, Ms. Luaders testified that she “took notes during the
7 conversation.” Hearing Tr. at 109, l 13.
- 8 114. Ms. Luaders then testified that after her investigative “report is written and
9 reviews are written, it is my standard practice to let those stand on their own
10 and anything handwritten is discarded.” Hearing Tr. at 110, l 9-12.
- 11 115. Petitioner was never provided with the “reviews” Ms. Luaders claimed to
12 have produced, nor were they introduced into evidence by the Commission’s
13 counsel.
- 14 116. It is unclear what, if anything, Ms. Luaders relied upon in order to testify as
15 to the activities of Mr. Calzone, aside from the content of her Report.
- 16 117. The Luaders Report, as provided to Petitioner and introduced by
17 Commission counsel at the hearing, does not contain any information as to
18 the content of conversations with Mr. Calzone or anyone else.
- 19 118. Ms. Luaders provided no evidence that Missouri First compensated Mr.
20 Calzone for any of his activities.
- 21 119. Ms. Luaders provided no evidence of any specific meeting between Mr.
22 Calzone and any legislator which was for the purpose of lobbying under
23 Missouri law.
- 24 120. Ms. Luaders provided no evidence as to the mechanism by which Missouri
25 First designated Mr. Calzone as a legislative lobbyist.
- 26

27 *Objections To The Commission’s Counsel’s Evidence*

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1 121. Following Ms. Luaders’s testimony, the Commission’s counsel sought to
2 introduce a number of its exhibits. Counsel for Mr. Calzone objected on
3 grounds of relevance and hearsay, as well as authenticity, to much of the
4 Commission’s evidence.

5 122. Particularly, the Commission provided exhibits which were
6 “documents...obtained off the [I]nternet,” specifically printouts allegedly of
7 the Missouri First website attached in Exhibit 1. Hearing Tr. at 130, l 3-5.
8 No testimony had been offered as to those pages.

9 123. These documents constituted inadmissible hearsay.

10 124. The Commission called Mr. Calzone to “testify very briefly to the
11 authenticity of the website.” Hearing Tr. at 132, l 21-22, 133, l 24.

12 125. Under Missouri administrative law, a respondent “may be called and
13 examined as if under cross-examination.” RSMo § 536.070(3).

14 126. The scope of cross-examination in Missouri is the entire case. RSMo §
15 491.070.

16 127. Accordingly, although ostensibly calling Mr. Calzone to cure hearsay and
17 foundation infirmities with its own evidence, the Commission could ask Mr.
18 Calzone any question regarding the charges against him, as indeed the
19 Commission’s counsel proceeded to do.
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21 128. Failure to register and report as a lobbyist during 2013 and 2014 is “a class
22 B misdemeanor” for “the first offense.” RSMo § 105.478(1).

23 129. “For the second and subsequent offenses, such person is guilty of a class D
24 felony.” RSMo § 105.478(2).

25 *Testimony of Ron Calzone*

26 130. Counsel for Mr. Calzone responded by noting that while “it is apparent from
27 the face of the complaint that there is not probable cause to proceed with this
28 matter...the Commission is now in the process of attempting to backfill that

1 evidentiary hurdle. And to the extent it attempts to do so with Mr. Calzone's
2 own testimony [that] is a fairly substantial constitutional violation." Hearing
3 Tr. at 134, l 2-9.

4 131. Accordingly, counsel for Mr. Calzone advised that Petitioner invoke his
5 Fifth Amendment right not to be a witness against himself. Hearing tr. at
6 134, l 14-15.

7 132. Mr. Calzone elected to do so. Hearing Tr. at 137, l 18-19.

8 133. Mr. Calzone was asked a number of questions by the Commission's counsel
9 and consistently invoked his Fifth Amendment right.

10 134. Commission counsel asked questions to cure the Commission's foundation
11 and hearsay infirmities. *E.g.* Hearing Tr. at 140, l 19-20 ("The next question,
12 page 46 of Exhibit 2 was authored and filled out by Mr. Calzone"); Hearing
13 Tr. at 141, l 3-4 ("The next question, Exhibit 6 is a true and accurate
14 copy...")

15 135. The Commission's counsel asked Mr. Calzone about behavior outside of the
16 facts of the Complaint. Hearing Tr. at 139, l 25, 140 l 1-2 ("The next
17 question, that Mr. Calzone in 2015 met with legislators in their offices about
18 legislation pending before the Missouri Legislature in 2015").

19 136. The Commission's counsel asked the same question as in ¶ 135 regarding
20 activity in 2013 and 2014. Hearing Tr. at 140, l 3-8.

21 137. The Commission's counsel also asked "that Mr. Calzone went to the side
22 gallery of the Missouri Senate and requested the doorman for the Missouri
23 Senate to contact senators to come and speak with him outside of the Senate
24 about legislation in 2013, that he did the same thing in 2014, that he did the
25 same thing in 2015." Hearing Tr. at 140, l 9-14.

26 138. The Commission's counsel's question regarding activity in 2015 was outside
27 the scope of the Complaint.
28

1 139. The Commission's questions relating to activity in 2015, if answered in the
2 affirmative, could potentially serve as a predicate for future complaints
3 against Mr. Calzone.

4 140. Following Mr. Calzone's testimony, and despite his consistent invocation of
5 his Fifth Amendment rights, the Commission's exhibits were entered into
6 evidence over renewed objection. Hearing Tr. at 143, l 5-8.

7 *Testimony of Betsy Byers, Director of Business Services for the Missouri Ethics*
8 *Commission*

9 141. The Commission's counsel then called Betsy Byers, Director of Business
10 Services for the Missouri Ethics Commission.

11 142. Director Byers demonstrated how to find lobbyist registration reports on the
12 Commission's website.

13 143. Director Byers provided no evidence that Missouri First compensated Mr.
14 Calzone for any of his activities.

15 144. Director Byers provided no evidence concerning any specific meeting
16 between Mr. Calzone and any legislator for the purpose of lobbying under
17 Missouri law.

18 145. Director Byers provided no evidence as to the mechanism by which
19 Missouri First designated Mr. Calzone as a legislative lobbyist.

20 *Closing Arguments*

21 146. Mr. Calzone rested on the Commission's record.

22 147. Both the Commission's counsel and Mr. Calzone's counsel were granted
23 time for closing remarks.

24 148. Counsel for Mr. Calzone requested and received the Commission's
25 permission to include the Motion to Dismiss discussed *supra* as a
26 component of his closing argument. Hearing Tr. at 159, l 25, 160, l 1-3.
27
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- 1 149. Both the Commission’s counsel and Mr. Calzone’s counsel offered
2 competing interpretations of the Missouri lobbyist statute.
- 3 150. Mr. Calzone’s counsel argued that under RSMo § 105.470(7), the
4 requirement that a lobbyist principal “employs, contracts for pay, or
5 otherwise compensates” demonstrated that the legislative lobbyist statute
6 could not reach uncompensated persons such as Mr. Calzone
- 7 151. Mr. Calzone’s counsel further noted that “being a lobbyist without a lobbyist
8 principal is an absurdity.” Hearing Tr. at 168, *l* 22-24.
- 9 152. Indeed, Missouri law requires that lobbyists report their lobbyist principal
10 upon registration. RSMo § 105.473(1).
- 11 153. The Commission’s counsel suggested that “it is a possibility to have a
12 lobbyist without a lobbyist principal, because you’re just not reporting on
13 behalf of the principals.” Hearing Tr. at 171, *l* 2-7.
- 14 154. As support for this reading, the Commission’s counsel cited no authority,
15 but stated that “we currently have on appeal a lobbyist who terminated all of
16 his lobbyist principals but maintained his lobbyist registration.” Hearing Tr.
17 at 170, *l* 17-20.
- 18 155. Additionally, the Commission’s counsel admitted that there was no Missouri
19 legal guidance on the meaning of the word “designate”, but provided a
20 lengthy list of definitions from the Merriam-Webster Third International
21 Dictionary to the Commission.

22
23 **The Commission’s Findings of Facts, Conclusions of Law, and Order**

- 24 156. On September 11, 2015, Mr. Calzone’s counsel was provided with the
25 Commission’s Findings of Fact, Conclusions of Law, and Order
26 (“Findings”).
27
28

- 1 157. Commission regulations require that “[c]opies of orders shall be served by
2 regular first class mail or by personal service on all parties, accompanied by
3 a notice of the statutory right to judicial review.” 1 C.S.R. 50-2.140.
- 4 158. The Commission’s provided copy of the order was not “accompanied by a
5 notice of the statutory right to judicial review.” *Id.*
- 6 159. The Commission’s Findings were approved by a 6-0 vote. Findings at 2.
- 7 160. The Commission found that it “heard testimony that Respondent Calzone
8 has been seen in the Missouri House and Missouri Senate, particularly on the
9 third and fourth floors of the Missouri Capitol, where most legislators’
10 offices are located, and has been seen meeting with legislators individually
11 in their offices.” Findings at 4, ¶ 11.
- 12 161. The Commission also relied on the testimony of Ms. Luaders for the
13 proposition that Mr. Calzone “met with legislators individually, outside of
14 committee hearings, to discuss legislation and policy.” Findings at 4, ¶ 12.
- 15 162. The Commission made no finding as to whether Mr. Calzone spoke to those
16 legislators at their invitation, an exception to lobbying under Missouri law.
17 RSMo § 150.470(d)d(2).
- 18 163. The Commission also found that Mr. Calzone testified before four different
19 committees of the Missouri General Assembly in 2013 and 2014. Findings at
20 5, ¶ 17-20.
- 21 164. The Commission made a conclusion of law as to the statutory definition of
22 “designate.”
- 23 165. The Commission adopted several definitions of the word “designate”,
24 concluding that, under the Missouri lobbyist statute, the word means “to
25 make known directly as if by sign; to distinguish as to class; Specify,
26 stipulate; to declare to be; to name esp. to a post or function...Designate
27
28

1 may apply to choosing or detailing a person or group for a certain post by a
2 person or group having power or right to choose.” Findings at 7, ¶ 30.

3 166. The Commission did not provide any determination, finding, or conclusion
4 as to the mechanism by which Mr. Calzone was designated by Missouri
5 First, Inc. as a lobbyist.

6 167. The Commission also concluded that the statute reached uncompensated
7 lobbyists. Findings at 8, ¶ 32.

8 168. The Commission concluded that “[t]here is probable cause to believe that
9 Respondent Calzone violated” the lobbyist statute when he did not register
10 as a legislative lobbyist in 2013 and 2014. Findings at 9, ¶ 33.

11 169. Accordingly, the Commission ordered Mr. Calzone to “cease and desist
12 from acting to attempt to influence any pending or potential legislation on
13 behalf of Missouri First, Inc., or any other person, until filing an annual
14 lobbyist registration report and filing all necessary lobbyist expenditure
15 disclosure reports pursuant” to state law.

16 170. Respondent “further order[d] a fee be imposed against Respondent Calzone
17 in the amount of \$1,000 pursuant to Section 105.961.4(6), RSMo.”
18

19
20 **WHEREFORE** the Petitioner asks this Court to enter judgment in his favor on the
21 following grounds.

22 **COUNT I: Complaint Brought By Non-Natural Person**

23 171. Petitioner realleges and incorporates by reference the allegations in
24 paragraphs 1 through 170.

25 172. The Commission has jurisdiction only over complaints filed by natural
26 persons. RSMo § 105.957(2).
27
28

- 1 173. Hearing Exhibit 9, as well as the testimony of Mr. Randy Scherr,
2 demonstrates that a non-natural person, the Missouri Society of
3 Governmental Consultants, truly brought the complaint against Mr. Calzone.
4 Wherefore, Petitioner prays that the Administrative Hearing Commission:
5 A. Declare that the Commission had no jurisdiction over the Society's
6 complaint;
7 B. Reverse and vacate the Commission's finding of probable cause with
8 instructions for the Commission to enter dismissal of all charges against
9 Petitioner;
10 C. Award Petitioner reasonable attorneys' fees and costs in this matter;
11 D. Award such further relief that the Commission deems just and appropriate.
12

13 **COUNT II: Complaint Insufficiently Provided Notice To Mr. Calzone To Prepare**
14

15 An Adequate Defense

- 16 174. Petitioner realleges and incorporates by reference the allegations in
17 paragraphs 1 through 173.
18 175. "The axiomatic requirement of due process...carries the practical
19 consequence that a defendant charged under a valid statute will be in a
20 position to understand with some specificity the legal basis of the charge
21 against him." *Schad v. Arizona*, 501 U.S. 624, 632 (1991).
22 176. "The purpose of the complaint is to inform the [respondent] of the
23 allegations with which he is charged and to provide sufficient notice to
24 enable him to prepare an adequate defense." *Moheet v. State Bd. of*
25 *Registration for the Healing Arts*, 154 S.W.3d 393, 398 (Mo. App. 2004).
26 177. The four corners of the Commission's Complaint failed to provide the
27 State's theory under which Mr. Calzone was designated a lobbyist by
28 Missouri First, Inc.

1 Wherefore, Petitioner prays that the Administrative Hearing Commission:

- 2 A. Declare that the Missouri Ethics Commission’s Complaint provided
3 insufficient notice as to permit Petitioner Calzone to prepare an adequate
4 defense;
- 5 B. Reverse and vacate the Commission’s finding of probable cause with
6 instructions for the Commission to enter dismissal of all charges against
7 Petitioner;
- 8 C. Award Petitioner reasonable attorneys’ fees and costs in this matter; and
9 D. Award such further relief that this Commission deems just and appropriate.
10

11 **COUNT III: Unconstitutional Use Of Adverse Inference For Finding Of Probable**

12 Cause

- 13 178. Petitioner realleges and incorporates by reference the allegations in
14 paragraphs 1 through 177.
- 15 179. Missouri law prohibits compelling a person to register and report as a
16 legislative lobbyist for the act of testifying before the General Assembly.
17 RSMo § 105.470(5)(d)d.
- 18 180. The Commission introduced no specific evidence, other than Mr. Calzone’s
19 testimony before legislative committees, to support its determination that
20 Petitioner lobbied members of the legislature.
- 21 181. However, the Commission’s counsel asked Mr. Calzone if he spoke to
22 members of the legislature about legislation during the years 2013 and 2014.
23 *Supra* ¶¶ 135-138.
- 24 182. Further, the Commission entered evidence against Mr. Calzone into the
25 record based upon an adverse inference.
- 26 183. Upon this record, the Commission’s conclusion that Mr. Calzone “attempted
27 to influence official action on matters pending before the Missouri
28

1 Legislature in 2013 and 2014” could only have resulted from an adverse
2 inference against Petitioner’s invocation of his Fifth Amendment rights.

3 184. “[T]here are limits on the extent to which such a negative inference may be
4 indulged by a civil fact finder.” *Johnson v. Missouri Bd. of Nursing Adm’rs*,
5 130 S.W.3d 619, 631 (Mo. Ct. App. 2004).

6 185. Moreover, “a civil defendant’s privileged refusal to respond to a particular
7 discovery request cannot, without more, be considered a *conclusive* judicial
8 admission of the truth of the matters asserted therein.” *Johnson*, 130 S.W.3d
9 at 631.

10 186. While “inferences based on the assertion of the privilege are permissible, the
11 entry of judgment based only on the invocation of the privilege and without
12 regard to the other evidence exceeds constitutional bounds.” *Id.* (quotation
13 marks and citation omitted).

14 Wherefore, Petitioner prays that the Administrative Hearing Commission:

- 15 A. Declare that the Commission’s finding of probable cause was predicated on
16 an unconstitutional reliance upon an adverse inference;
17
18 B. Reverse and vacate the Commission’s finding of probable cause with
19 instructions for the Commission to enter dismissal of all charges against
20 Petitioner;
21
22 C. Award Petitioner reasonable attorneys’ fees and costs in this matter; and
23
24 D. Award such further relief that this Commission deems just and appropriate.

24 **COUNT IV: Mr. Calzone’s Activity Does Not Implicate The Legislative Lobbyist**

25 Statute

26 187. Petitioner realleges and incorporates by reference the allegations in
27 paragraphs 1 through 186.
28

1 188. The Commission introduced no evidence of any specific activity of Mr.
2 Calzone's that constitutes legislative lobbying.

3 Wherefore, Petitioner prays that the Administrative Hearing Commission:

4 A. Declare that the Commission's finding of probable cause was in error.

5 B. Reverse and vacate the Commission's finding of probable cause with
6 instructions for the Commission to enter dismissal of all charges against
7 Petitioner;

8 C. Award Petitioner reasonable attorneys' fees and costs in this matter; and

9 D. Award such further relief that this Commission deems just and appropriate.
10

11 **COUNT V: The Legislative Lobbyist Statute Does Not Reach Uncompensated**
12 **Persons**

13 189. Petitioner realleges and incorporates by reference the allegations in
14 paragraphs 1 through 188.

15 190. Legislative lobbyists, upon registration, "shall include...the name and
16 address of each lobbyist principal by whom such lobbyist is employed or in
17 whose interest such lobbyist appears or works." RSMo § 105.473(1).
18

19 191. Monthly lobbyist reports also must report expenditures made by a lobbyist's
20 lobbyist principal.

21 192. A "lobbyist principal" is defined as "any person, business entity, religious
22 organization, nonprofit corporation or association who *employs, contracts*
23 *for pay or otherwise compensates a lobbyist.*" RSMo § 105.470(7)
24 (emphasis supplied).

25 193. This language can only be read to reach compensated individuals. Mr.
26 Calzone is not compensated in any way by Missouri First, and the
27 Commission introduced no evidence suggesting the contrary.

28 Wherefore, Petitioner prays that the Administrative Hearing Commission:

- 1 A. Declare that the Commission’s finding of probable cause was in error.
2 B. Reverse and vacate the Commission’s finding of probable cause with
3 instructions for the Commission to enter dismissal of all charges against
4 Petitioner;
5 C. Award Petitioner reasonable attorneys’ fees and costs in this matter; and
6 D. Award such further relief that this Commission deems just and appropriate.
7

8 **COUNT VI: Mr. Calzone Was Not “Designated” As Missouri First’s Lobbyist.**

- 9 194. Petitioner realleges and incorporates by reference the allegations in
10 paragraphs 1 through 193.
11 195. The Commission has failed to point to any action or mechanism by which
12 Missouri First, a nonprofit corporation, designated Mr. Calzone as a
13 legislative lobbyist.
14

15 Wherefore, Petitioner prays that the Administrative Hearing Commission:

- 16 A. Declare that the Commission’s finding of probable cause was in error.
17 B. Reverse and vacate the Commission’s finding of probable cause with
18 instructions for the Commission to enter dismissal of all charges against
19 Petitioner;
20 C. Award Petitioner reasonable attorneys’ fees and costs in this matter; and
21 D. Award such further relief that this Commission deems just and appropriate.
22

23 **COUNT VII: The Commission’s Order Was *Ultra Vires***

- 24 196. Petitioner realleges and incorporates by reference the allegations in
25 paragraphs 1 through 195.
26 197. The Missouri Ethics Commission was a creature of statute.
27 198. The Missouri Ethics Commission’s enabling statute was lawfully repealed
28 by the General Assembly, effective August 28, 2015.

1 Wherefore, Petitioner prays that the Administrative Hearing Commission:

2 A. Declare that the Missouri Ethics Commission's hearing held on
3 September 3, 2015 was *ultra vires*.

4 B. Declare that the Missouri Ethics Commission's Findings of Fact,
5 Conclusions of Law, and Order of September 11, 2013 was *ultra vires*
6 and is of no effect.

7 C. Award Petitioner reasonable attorneys' fees and costs in this matter; and

8 D. Award further relief that this Commission deems just and appropriate.
9

10 **COUNT VIII: The Legislative Lobbyist Statute Is Unconstitutionally Vague**

11 199. Petitioner realleges and incorporates by reference the allegations in
12 paragraphs 1 through 198.

13 200. The First Amendment robustly protects the right to "petition the
14 Government for a redress of grievances." U.S. Const. amend. I.; *Nat'l Ass'n*
15 *of Mfrs. v. Taylor*, 582 F.3d 1, 9 (D.C. Cir. 2010) (noting that Petition
16 Clause activities represent a "substantial First Amendment interest[]" which
17 is implicated by lobbyist registration and reporting statutes).

18 201. "Precision of regulation must be the touchstone in an area so closely
19 touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438
20 (1963).

21 202. Yet, Missouri's legislative lobbyist statute fails to provide any guidance as
22 to the meaning of the word "designate."

23 203. Missouri First is a corporation which requires a majority of its board of
24 directors to conduct official action.

25 204. Yet, the Commission found probable cause that Mr. Calzone was designated
26 by Missouri First, in the absence of any official action from Missouri First's
27
28

1 Board of Directors, nor did it provide any other specific mechanism by
2 which Mr. Calzone was “designated” as Missouri First’s lobbyist.

3 205. No reasonable person could predict this string of events. The statute’s lack
4 of specificity consequently poses a trap for the unwary, and is therefore
5 unconstitutional. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)
6 (“Vague laws may trap the innocent by not providing fair warning”).

7 Wherefore, Petitioner prays that the Administrative Hearing Commission:

8 A. Declare that RSMo § 105.470(5)(c) is unconstitutionally vague, both facially
9 and as-applied to Petitioner.

10 B. Reverse and vacate the Commission’s finding of probable cause with
11 instructions for the Commission to enter dismissal of all charges against
12 Petitioner;

13 C. Award Petitioner reasonable attorneys’ fees and costs in this matter; and

14 D. Award such further relief that this Commission deems just and appropriate.
15

16 **COUNT IX: The Legislative Lobbyist Statute Is Not Constitutionally Tailored To**

17 **A Proper Governmental Interest**

18
19 206. Petitioner realleges and incorporates by reference the allegations in
20 paragraphs 1 through 205.

21 207. To the extent that the Missouri legislative lobbyist statute reaches
22 uncompensated persons, the law is not properly tailored to an important
23 governmental interest.

24 208. Requiring registration and reporting of an uncompensated person as a
25 legislative lobbyist does not further any cognizable interest in the integrity of
26 the governmental decisionmaking process.

27 209. Indeed, to the extent the law could be read to regulate uncompensated
28 persons as lobbyists, it would render Missouri’s law fatally underinclusive.

Counsel for Petitioner

*admission *pro hac vice* pending

Dated: September 25, 2015

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