

# Federal Appeals Court Upholds Missouri Lobbying Law Against Challenge

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A panel of the U.S. Court of Appeals for the Eighth Circuit recently upheld, by a 2-1 vote, Missouri's lobbying registration and reporting laws as applied to an unpaid volunteer lobbyist. The ruling underscores the varying thresholds and circumstances that trigger state lobbying registration and reporting requirements, and the very minimal or nonexistent thresholds in some states.

The challenge to Missouri's lobbying laws was brought by Ronald Calzone, a citizen activist who is the president of a nonprofit organization called Missouri First. Mr. Calzone often meets with Missouri state legislators and staff to urge the passage or defeat of legislation and represents himself as a director of Missouri First. Mr. Calzone is not paid for this volunteer activity, and the dissenting opinion characterized Missouri First essentially as Mr. Calzone's "alter ego."

The challenge raised the question of whether Missouri's lobbyist registration and reporting requirements are unconstitutionally broad as applied to an individual who receives no compensation and makes no expenditures when lobbying. In addition, the lawsuit alleged Missouri's requirement that anyone "designated" to lobby on another's behalf is, on its face, unconstitutionally vague. Missouri law, like a number of other states' laws, purports to require lobbyist registration and reporting even in the absence of any compensation or expenditures if an individual is "designated" to lobby.

Applying an intermediate "exacting scrutiny" standard of judicial review, the majority of the Eighth Circuit panel reasoned that requiring unpaid lobbyists to register and report furthered a "sufficiently important governmental interest in avoiding the fact or

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appearance of public corruption” because “unpaid lobbyists could still offer things of value to legislators.” This was notwithstanding the fact that, even as the majority acknowledged, in this particular as-applied challenge, both Mr. Calzone and the state stipulated that he did not make any expenditures for lobbying or for purchasing items of value for legislators. The majority also reasoned that the government and public have a “sufficiently important interest in knowing who is pressuring and attempting to influence legislators” that is not limited only to paid lobbyists.

In a strong dissenting opinion, Judge David Stras suggested that perhaps a more demanding “strict scrutiny” review standard should apply to lobbying reporting laws. Judge Stras also criticized the majority for acting as a mere “rubber stamp” for Missouri’s law under the more relaxed “exacting scrutiny” standard. Even under “exacting scrutiny,” Judge Stras concluded that Missouri had failed to identify a “substantial relation” between requiring unpaid lobbyists who make no expenditures on lobbying to register and report and preventing any “real-world examples” of corruption. Judge Stras criticized the application of the law to Mr. Calzone as “transparency for transparency’s sake.”

Illustrating what is often known as “goodwill lobbying,” Judge Stras also pointed out that Missouri law otherwise requires anyone who spends \$50 or more during a calendar year “for the benefit of one or more public officials or one or more employees of the legislative branch” in connection with lobbying to register as a lobbyist. Therefore, Judge Stras reasoned, the majority’s concern about corruption caused by unpaid lobbyists who “offer things of value to legislators” is already regulated and was not at issue in this case.

The majority also held that Missouri’s registration and reporting requirements for individuals who are “designated” to lobby on another’s behalf are not unconstitutionally vague. The majority defined “designated” to mean “anyone who has been chosen or appointed to lobby the legislature on behalf of” an organization. Of particular concern for trade associations and other membership organizations, Judge Stras warned that regulating anyone who is “designated” to lobby as a lobbyist could require unpaid participants in a “Lobby Day” to register and report. (Also called “fly-ins,” “Lobby Days” are when trade associations and membership organizations organize their members to travel from all over the state or the country to speak with legislators and staff about issues important to the group.)

Lobbying registration and reporting requirements are often burdensome and violations can carry steep penalties, even for minimal unregistered lobbying. As Judge Stras pointed out, Missouri requires up to 14 reports per year and annual registration renewals, and imposes jail time of up to four years and fines of up to \$10,000 for violations. This is not unusual; many other jurisdictions have even more draconian penalties. As *Election Law News* reported last year, the city of Chicago fined one company \$92,000 for an employee who failed to register as a city lobbyist after sending one e-mail to the mayor.

Mr. Calzone and his attorneys have asked for a rehearing of his case by the entire Eighth Circuit, which has yet to grant or deny the request as of this article’s publication date.

Wiley Rein's Election Law practice group advises clients on all federal, state, and local lobbying laws and also assists with preparing and filing reports.

*Full disclosure: Eric Wang is a pro bono Senior Fellow at the Institute for Free Speech, which represents Mr. Calzone in this litigation.*