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Citizen Activist or Professional Lobbyist? Eighth Circuit Decides That Political Activity is "Lobbying" Only When Money is Involved

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NOTE

Citizen Activist or Professional Lobbyist? Eighth Circuit Decides That Political Activity is "Lobbying" Only When Money is Involved

Calzone v. Summers, 942 F.3d 415 (8th Cir. 2019).

Maddie McMillian Green[*]

I. INTRODUCTION

In determining the constitutionality of lobbyist registration laws, where do courts draw the line between lobbyists and politically active citizens?[1] What is the difference between a citizen simply sharing their ideas with their elected officials and influencing them? In 2019, the United States Court of Appeals for the Eighth Circuit attempted to draw the line in *Calzone v. Summers* by holding that Missouri lobbyist registration laws violated the First Amendment as applied to an *uncompensated* lobbyist who incurred *no expenditures* relating to his lobbying efforts.[2] This decision protects individuals who neither spend nor receive any money in connection with their political activities from the requirement that they register as lobbyists in the State of Missouri. After hearing the decision of the Eighth Circuit, the plaintiff, Ronald Calzone, stated in an interview:

> It has been a long time coming, but I'm pleased that the Court of Appeals got this right. Unpaid citizen activists like myself keep our elected officials informed and accountable by sharing our views about public policy. A government cannot force unpaid activists to jump

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1. HARVARD LAW REVIEW, Case Comment, *Recent Case: Calzone v. Summers,* HARV. L. REV. BLOG (Dec. 5, 2019), https://blog.harvardlawreview.org/recent-case-_calzone-v-summers_/ [https://perma.cc/2BSB-4BFT].

2. *Id.*

> through regulatory hoops in order to exercise their First Amendment rights.[3]

His lawyer affirmed, "Our system of government depends on people like [Calzone] actively sharing their policy ideas with those in power, but for years powerful legislators have been trying to silence him."[4] However, while they may not receive monetary compensation for their efforts, "unpaid lobbyists could still offer things of value to legislators."[5] Some argue that the decision gives lobbyists permission to "influence lawmakers in secret so long as they don't spend or receive any money in the process."[6]

Part II of this Note outlines the facts and holding of *Calzone v. Summers*. Part III explains Missouri's lobbyist requirements and how the First Amendment comes into play in this case. Part IV examines the reasoning the Eighth Circuit used in reaching is decision in *Calzone v. Summers*. Finally, Part V argues that the dissenting opinion more accurately portrays the state of lobbying and lawmaking in Missouri.

II. FACTS AND HOLDING

Ronald Calzone lives in central Missouri, where he raises cattle and horses and owns a small manufacturing business.[7] He is also an "active figure" in Missouri politics.[8] He speaks to members of the Missouri General Assembly "regularly" both in private, one-on-one meetings with them and when testifying before them in public committee hearings.[9] While he speaks to legislators only when pressing his own views with them, Calzone often acts through a nonprofit organization called Missouri First, Inc. ("Missouri First").[10] Calzone is the "incorporator, sole officer, president, director, and registered agent" of Missouri First, which both parties agree is his "alter

3. INSTITUTE FOR FREE SPEECH, *Volunteers Are Not Lobbyists, Rules Eighth Circuit: Ron Calzone, Institute for Free Speech, Freedom Center of Missouri, Notch Big Win in Missouri* (Nov. 1, 2019), https://www.ifs.org/news/volunteers-are-not-lobbyists-rules-eighth-circuit/ [https://perma.cc/5PD8-2C5C].

4. *Id.*

5. Calzone v. Summers, 909 F.3d 940, 948 (8th Cir. 2018), *vacated en banc*, 942 F.3d 415 (8th Cir. 2019).

6. Mark Joseph Stern, *The Trump Bench: David Stras*, SLATE, (Nov. 5, 2019), https://slate.com/news-and-politics/2019/11/trump-bench-david-stras-8th-circuit.html [https://perma.cc/2X58-R9TT].

7. Ron Calzone, *Lobbyists, legislators aim to quash political activist's free speech*, ST. LOUIS POST-DISPATCH, (Sept. 30, 2015), https://www.stltoday.com/opinion/columnists/lobbyists-legislators-aim-to-quash-political-activist-s-free-speech/article_5053629c-ec48-57c8-b5e8-e5e3b39a4bba.html [https://perma.cc/BUK2-JMYR].

8. Calzone v. Summers, 942 F.3d 415, 418 (8th Cir. 2019).

9. *Id.*

10. *Id.*

ego."[11] According to its charter, Missouri First seeks to "evaluat[e] and produc[e] public policy ideas with an emphasis on individual liberty, free market capitalism, constitutionally limited government, and other principles that are consistent with the concept of an American constitutional republic."[12] The organization supports specific legislative and ballot initiatives as well as specific candidates who promote its objectives, but it will not campaign for a particular political party.[13] It recruits like-minded citizens to help advance its legislative agenda by either joining the organization,[14] volunteering, or providing financial support.[15] However, neither Calzone nor Missouri First spends or receives any money in pursuit of that mission.[16]

Merriam-Webster defines a "lobbyist" as "one who conducts activities aimed at influencing or swaying public officials and especially members of a legislative body on legislation."[17] Missouri law defines "lobbyist" as any natural person defined either as an executive lobbyist, judicial lobbyist, elected government official lobbyist, or a legislative lobbyist.[18] According to the State of Missouri, because of his connection to Missouri First, Calzone is a "legislative lobbyist."[19] As relevant here, a legislative lobbyist is any person who attempts to influence state legislative actions and has been "*designated* to act as a lobbyist by any […] nonprofit corporation, association[,] or other entity."[20] Calzone admits that he lobbies the Missouri General Assembly so

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11. *Id.*

12. MO. FIRST CHARTER, http://www.mofirst.org/docs/charter.htm [https://perma.cc/CZ3V-4Y2B] (last visited December 11, 2020).

13. *Id.*

14. To join Missouri First, an individual must simply agree with the principles outlined in the organization's charter and then complete a form on the Missouri First website with the individual's name, address, and email address. JOIN MO. FIRST, http://www.mofirst.org/join.php [https://perma.cc/3GV6-3UZ2] (last visited December 11, 2020). The website reads: "Why join? By joining Missouri First, you place your name and influence on the right side of issues affecting Missourians. The old saying, 'there is strength in numbers' holds true, especially when individual citizens are active in lobbying Missouri House and Senate members, but with a consistent message. You may be certain that Missouri First is working hard to represent your values in the issues that touch your life as, together, we equip The People to instruct their elected officials." *Id.*

15. ABOUT MO. FIRST, http://www.mofirst.org/about.htm [https://perma.cc/HKS7-5N4R] (last visited December 11, 2020).

16. Calzone v. Summers, 942 F.3d 415, 418 (8th Cir. 2019).

17. *Lobbyist*, WEBSTER'S DICTIONARY, https://www.merriam-webster.com/dictionary/lobbyist [https://perma.cc/23W9-T7TZ] (last visited December 11, 2020). The etymology of "lobbying" supposedly traces back to the hallways – or lobbies - of the Parliament of the United Kingdom where members of Parliament and their peers would meet with their constituents before and after debates. *See* http://news.bbc.co.uk/2/hi/uk_news/politics/82529.stm [https://perma.cc/T4BE-B55P].

18. MO. REV. STAT. § 105.470 (2020).

19. *Summers*, 942 F.3d at 419.

20. § 105.470 (emphasis added).

he is a lobbyist in the most general sense of the word – meaning he seeks to influence public officials – but he contends he is not a "legislative lobbyist" as defined by Missouri statute.[21]

In accordance with state law, all lobbyists – executive lobbyists, judicial lobbyists, elected government official lobbyists, and, most notably, legislative lobbyists – must complete a list of legal requirements. All lobbyists must file a registration form with the Missouri Ethics Commission ("MEC") within five days of beginning lobbying activities.[22] The form costs ten dollars to file and must include the lobbyist's name and business address, the name and address of anyone employed by the lobbyist for lobbying purposes, and the name and address of each principal by whom the lobbyist is employed or in whose interest the lobbyist appears or works.[23] Once filed, the information becomes a matter of public record.[24] Lobbyists must update the MEC within one week of a change in their employment or representation.[25] They are required to file monthly expenditure reports, including any money spent on behalf of "public officials, their staffs and employees, and their spouses and dependent children."[26] They must also file a monthly statement detailing "any direct business relationship or association or partnership" they have with any public official.[27] Twice a year, each lobbyist must provide a description of any piece

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> [A] 'legislative lobbyist' is any person who attempts to influence state legislative actions and 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.

Id. (emphasis added); *see also Lobbying*, MO. ETHICS COMM'N, https://mec.mo.gov/MEC/Lobbying/Home.aspx [https://perma.cc/96U8-XLXJ] (last visited Dec. 16, 2020).

21. Calzone v. Hagan, No. 2:16-CV-04278-NKL, 2017 WL 2772129, at *3 (W.D. Mo. June 26, 2017), *vacated and remanded sub nom*. Calzone v. Summers, 942 F.3d 415 (8th Cir. 2019).

22. *Summers*, 942 F.3d at 419; § 105.473. The online form can be found here: https://mec.mo.gov/LFS/Registration [https://perma.cc/7CQJ-96EC].

23. *Summers*, 942 F.3d at 419; § 105.473.

24. *Summers*, 942 F.3d at 419.

25. *Id.*; § 105.473.

26. *Summers*, 942 F.3d at 419; § 105.473.

27. *Summers*, 942 F.3d at 419; § 105.473 (For example, if a lobbyist's financial advisor is an elected official, or if a lobbyist shares a business partnership with an

of legislation they or their principal supported or opposed.[28] All of these reports become public record too.[29] Anyone who does not comply with the requirements could face fines or prison time.[30]

Anyone can initiate an investigation by filing a complaint with the MEC alleging a violation of lobbyist requirements.[31] In 2014 and 2016, two official complaints were filed with the MEC against Calzone,[32] asserting that he violated Section 105.473 of the Missouri Revised Statutes because he was designated as a lobbyist for Missouri First but failed to register as a lobbyist, pay a lobbying fee, or make regular reports to the state as required by the statute.[33] In 2016, the MEC ordered Ronald Calzone to pay a one thousand dollar fine and prohibited him from talking policy with state officials until he registered as a "legislative lobbyist."[34]

Calzone was convinced the lobbyist requirements violated his First Amendment rights to free speech and to petition the government.[35] With assistance from the Institute for Free Speech and the Freedom Center of Missouri,[36] he filed suit in federal court.[37] Calzone first sought a temporary restraining order to prevent members of the MEC from enforcing the law against him.[38] However, the district court denied Calzone's request, finding that he was not likely to succeed on the merits.[39] Next, Calzone moved for a permanent injunction, challenging the constitutionality of the Missouri statutes both facially and as applied to him.[40] Ultimately, the district court denied a permanent injunction and entered final judgment against Calzone.[41]

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elected official, or if a lobbyist has a roommate who is an elected official, etc., the lobbyist must disclose that information in his monthly statement to the MEC.).

28. *Summers*, 942 F.3d at 419; § 105.473.

29. *Summers*, 942 F.3d at 419.

30. *Id.*; MO. REV. STAT. §§ 105.473, 105.478, 558.002.1, 558.011.1(5), (7).

31. *Summers*, 942 F.3d at 419; MO. REV. STAT. §§ 105.473, 106.966.

32. The Missouri Society of Governmental Consultants filed the first complaint; Michael Reid, a lobbyist for the Missouri Society of Governmental Consultants, filed the second complaint. Calzone v. Summers, 909 F.3d 940, 944 (8th Cir. 2018), *vacated en banc*, 942 F.3d 415 (8th Cir. 2019).

33. Calzone v. Hagan, No. 2:16-CV-04278-NKL, 2017 WL 2772129, at *1 (W.D. Mo. June 26, 2017), *vacated and remanded sub nom.* Calzone v. Summers, 942 F.3d 415 (8th Cir. 2019).

34. INSTITUTE FOR FREE SPEECH, *supra* note 3.

35. *Summers*, 942 F.3d at 419.

36. INSTITUTE FOR FREE SPEECH, https://www.ifs.org [https://perma.cc/H69A-4C47] (last visited Dec. 16, 2020); FREEDOM CTR. OF MO., http://www.mofreedom.org [https://perma.cc/9XUR-L4V8] (last visited Dec. 16, 2020).

37. Calzone v. Summers, 909 F.3d 940, 944 (8th Cir. 2018), *vacated en banc*, 942 F.3d 415 (8th Cir. 2019).

38. *Summers*, 942 F.3d at 419.

39. *Summers*, 909 F.3d at 945.

40. *Id.*

41. *Summers*, 942 F.3d at 419.

The court found that Calzone's facial challenge failed because an ordinary person could reasonably understand what the statute required, so it was not unconstitutionally vague.[42] Since Calzone had the authority to act on behalf of Missouri First as its agent, he had the authority to appoint himself as a lobbyist for Missouri First, meaning he was "designated to act as a lobbyist."[43] The court, using exacting scrutiny,[44] found that Calzone's as-applied challenge failed because Missouri had a *sufficiently important* interest in governmental transparency and requiring unpaid lobbyists to register with the government and file lobbying reports was *substantially related* to furthering that interest.[45]

The Eighth Circuit panel affirmed two-to-one.[46] On appeal, Calzone made three separate claims: (1) the district court applied the wrong level of scrutiny to his constitutional claims; (2) Section 105.473 of the Missouri Revised Statutes – the statute that describes lobbyist duties – is unconstitutional as applied to him; and (3) Section 105.470 of the Missouri Revised Statutes – the statute that defines a "legislative lobbyist" – is facially unconstitutional for vagueness.[47]

First, Calzone argued that the district court erred in applying exacting scrutiny to his constitutional claims instead of strict scrutiny.[48] Like the district court, the Eighth Circuit panel relied on *Citizens United v. FEC* in rejecting this claim.[49] In *Citizens United v. FEC*, the United States Supreme Court held that "The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether."[50] Citing *Citizens United*, the Eighth Circuit held in *Minnesota Citizens Concerned for Life, Inc. v. Swanson* that laws that burden political speech are subject to strict scrutiny, unless the law is a disclosure law, in which case it is subject to exacting scrutiny.[51] Based on that precedent and the fact that the statute at issue here is a disclosure law,[52] the court found that exacting scrutiny is the correct standard of review for Calzone's First

42. *Summers*, 909 F.3d at 945.

43. *Id.*

44. "Exacting scrutiny" – sometimes referred to as "intermediate scrutiny" – requires that a disclosure requirement is *substantially related* to a "*sufficiently important* governmental interest." *Id.* at 945–46 (emphasis added).

45. *Id.* at 948-49.

46. *Id.* at 951.

47. *Id.* at 945.

48. *Id.* "Strict scrutiny" – a higher standard of review – requires that a disclosure requirement is *necessary* to achieve a *compelling* government interest and is also *narrowly tailored* to achieve that interest. *See* Calzone v. Summers, 942 F.3d 415, 423 n.6 (8th Cir. 2019).

49. *Summers*, 909 F.3d at 945.

50. Citizens United v. FEC, 558 U.S. 310, 319 (2010).

51. Minn. Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864, 874–75 (8th Cir. 2012) (quoting Citizens United v. FEC, 558 U.S. 310, 366 (2010)).

52. Since Missouri's lobbying law requires Calzone to reveal his identity and his activities, it is a "disclosure law." *Summers*, 942 F.3d at 423.

Amendment claim.[53] Second, Calzone claimed that Section 105.473 of the Missouri Revised Statutes is unconstitutional as applied to him – an uncompensated lobbyist – considering he "does not accept money for his activism, nor does he spend money on legislators or legislative staff when he communicates with them about his public policy beliefs."[54] He argued that Missouri only had a sufficient interest in having *paid* lobbyists register so, as applied to him, the statute is unconstitutional because he is *unpaid*.[55] But the Missouri statute does not differentiate between paid and unpaid lobbyists, so the government's interests are "not limited solely to paid lobbyists"[56] The court wrote:

> We agree that transparency is a sufficiently important governmental interest to satisfy exacting scrutiny. Though the lobbyists may not be receiving money, unpaid lobbyists could still offer things of value to legislators, creating a sufficiently important governmental interest in avoiding the fact or appearance of public corruption. Furthermore, the government and the public have a sufficiently important interest in knowing who is pressuring and attempting to influence legislators, and the ability to pressure and influence legislators is not limited solely to paid lobbyists.[57]

Therefore, Missouri has a sufficiently important government interest in having *unpaid* lobbyists register too.[58]

Calzone argued that it was burdensome to register as a lobbyist and file fourteen reports with the state each year, twelve of which must be filed under penalty of perjury, simply to share his ideas on public policy with members of the legislature.[59] However, the court countered that the registration requirements are so minimal that they impose only a "very slight burden" on individuals who are required to register and report, so "the burden of these requirements does not outweigh Missouri's interest in transparency."[60] In fact, the court stated, "Calzone would have an even easier time producing the lobbying reports than most because the reports simply require Calzone to make statements regarding expenditures related to his lobbying activities, which he claims he does not engage in."[61]

Further, the panel rejected Calzone's as-applied challenge on procedural grounds. The court concluded that since Calzone did not raise the issue of

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53. *Summers*, 909 at 945–46 (quoting *Citizens United*, 558 U.S. at 318; *Swanson*, 692 F.3d at 874–75).

54. *Summers*, 942 F.3d at 419; *Summers*, 909 at 946-48.

55. *Summers*, 909 at 948.

56. HARVARD LAW REVIEW, *supra* note 1.

57. *Summers*, 909 F.3d at 948.

58. *Id.*

59. *Id.* at 947, 955.

60. *Id.* at 949.

61. *Id.*

"unpaid lobbyists *who make no expenditures* related to lobbying efforts" until oral argument, he forfeited the claim in district court and waived the argument on appeal.[62]

Third, Calzone argued that Section 105.470 of the Missouri Revised Statutes is facially unconstitutional because the word "designated" in the definition of "legislative lobbyist" is vague.[63] Like the district court, the Eighth Circuit found that "designated" is clearly defined and the statute uses the word within its plain meaning, so "'people of ordinary intelligence' would have a 'reasonable opportunity to understand' what 'designated' means in the context of the statute."[64]

Judge Stras, the lone dissenter, argued that "Missouri's lobbying-disclosure law crosses the constitutional line by burdening Calzone's core First Amendment activities without either adequate justification or narrow enough tailoring."[65] Then, in a rare move, the Eighth Circuit reheard the case *en banc* and vacated and remanded.[66] Judge Stras, then writing for the six-to-five majority and echoing his earlier dissent, held that Missouri cannot require an individual to register as a "legislative lobbyist" if they do not spend or receive money while lobbying.[67]

III. LEGAL BACKGROUND

This Part begins by outlining the history of lobbyist requirements in the United States and then moves to a discussion of the First Amendment.

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62. *Id.* (emphasis added). Forfeiture is the loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty. *Forfeiture*, BLACK'S LAW DICTIONARY (10th ed. 2014).

63. *Summers*, 909 F.3d at 949.

64. *Id.* at 950.

65. *Id.* at 951 (Stras, J., dissenting).

66. *See* Calzone v. Summers, 942 F.3d 415 (8th Cir. 2019). An "en banc" or "in banc" proceeding in a United States Court of Appeals is one in which all judges "in regular active service" participate, as opposed to a typical three-judge panel. 37 A.L.R. FED. 274 (1978). For a case to be heard or reheard en banc, a majority of the judges must order it. FED. R. APP. P. 35(a). The Supreme Court noted in *United States v. American-Foreign Steamship Corp.* that en banc courts "are convened only when extraordinary circumstances exist." 363 U.S. 685 (1960). Rule 35(a) of the Federal Rules of Appellate Procedure echoes that sentiment in stating that en banc hearings are "not favored and ordinarily will not be ordered" except when "consideration by the full court is necessary to secure or maintain uniformity of its decisions" or the case "involves a question of exceptional importance." FED. R. APP. P. 35(a); *see also* James J. Wheaton, *Playing with Numbers: Determining the Majority of Judges Required to Grant En Banc Sittings in the United States Courts of Appeals*, 70 VA. L. REV. 1505, 1509 (1984).

67. *Summers*, 942 F.3d at 418; *Summers*, 909 F.3d at 951 (Stras, J., dissenting); *see also* HARVARD LAW REVIEW, *supra* note 1.

A. Lobbyist Requirements

The role of lobbyists is controversial in American politics. Lobbyists are hired and paid by businesses, nonprofits, and special-interest groups to create policy and influence elected officials at all levels of government.[68] Former President John F. Kennedy once described lobbyists as "expert technicians capable of examining complex and difficult subjects in clear, understandable fashion."[69] But not everyone describes lobbyists so thoughtfully. In fact, lobbyists have long been painted in a negative light because of their seeming influence over policymakers.[70] Term limits especially tend to shift power and influence from elected officials to unelected, professional lobbyists.[71] In most cases, lobbyists were there before the elected officials took office, and they will be there when the elected officials leave. Legislators do not always have time to become subject-matter experts and by the time they are fully acquainted with an issue, their term expires and the process starts all over again.[72] Consequently, lobbyists and legislative staff sometimes become "the repository for institutional knowledge" so legislators depend on them and their advice when making policy decisions.[73] Lobbyists also have a unique perspective into the

68. Tom Murse, *What Does a Lobbyist Do?* THOUGHTCO. (Jan. 15, 2020), https://www.thoughtco.com/what-does-a-lobbyist-do-3367609 [https://perma.cc/94FY-ZTXZ].

69. *Id.* Daniel T. Ostas, *The Law and Ethics of K Street: Lobbying, the First Amendment, and the Duty to Create Just Laws*, 73 BUS. ETHICS Q. 31, 34 (2007).

70. *See* Maggie Blackhawk, *Lobbying and the Petition Clause*, 68 STAN. L. REV. 1131, 1157 n. 178 (2016); Zac Morgan, *Court Rebuffs Attempt To Make Politically Engaged Missourian Register As A Lobbyist*, THE FEDERALIST (Jan. 28, 2020), https://thefederalist.com/2020/01/28/court-rebuffs-attempt-to-make-politically-engaged-missourian-register-as-a-lobbyist/ [https://perma.cc/8CNL-ZBS4]. In the first year that Gallup included lobbyists on its "honesty and ethics list," lobbyists debuted at the very bottom, immediately below automobile salesmen. Jeffrey M. Jones, *Lobbyists Debut at Bottom of Honesty and Ethics* List, GALLUP (Dec. 10, 2007), http://www.gallup.com/poll/103123/lobbyists-debut-bottom-honesty-ethics-list.aspx [https://perma.cc/VR5D-5B7V]. In a different poll, 71% of respondents claimed that lobbyists held too much power. Lydia Saad, *Americans Decry Power of Lobbyists, Corporations, Banks, Feds*, GALLUP (Apr. 11, 2011), http://www.gallup.com/poll/147026/americans-decry-power-lobbyists-corporations-banks-feds.aspx [https://perma.cc/RCH2-32Y8]. A 2006 poll, around the time of the Abramoff scandal, had 77% of respondents agreeing that lobbyists bribing members of Congress is just "[t]he way things work in Congress." CBS NEWS & N.Y. TIMES, *Congress, the Abramoff Scandals, and the Alito Nomination* (2006), http://www.cbsnews.com/htdocs/CBSNews_polls/JANB-CON.PDF [https://perma.cc/M2DC-H7P7].

71. Jason Hancock*, In Their Own Words: Missouri Leaders on the Good and Bad of Term Limits*, KANSAS CITY STAR (Sept. 24, 2018), https://www.kansascity.com/news/politics-government/article218682135.html.

72. *Id.*

73. *Id.*

community and can alert legislators to issues that are important to their constituents. However, some believe that lobbyists can use their position to their advantage.

Much of the controversy about lobbyists centers around their ability to use money, like a campaign donation, a gift, or simply a free lunch, to influence policymakers. To combat such issues, virtually every state requires lobbyists and entities that hire lobbyists to submit periodic disclosure reports.[74] Generally, the reports require lobbyists to disclose how much money they spent on lobbying, what legislative issues they supported, and which legislators they lobbied.[75] The government can force lobbyists to disclose their names and activities.[76] And states can disclose the names of individuals who help shape the law – even when no money changes hands – in order to promote government transparency and accountability.[77]

The last time the Supreme Court of the United States reviewed a lobbyist registration case was in 1954. In *United States v. Harriss*, the lobbyist-defendants were indicted for seeking to influence Congress without registering with Congress and filing the necessary expenditure reports, as required by the Federal Regulation of Lobbying Act of 1946.[78] The lobbyists challenged the Act for being unconstitutionally vague.[79] The Federal Regulation of Lobbying Act of 1946 was the United States' first comprehensive federal lobbying law.[80] The purpose of the Act was to provide information to members of Congress about those who lobby them.[81] It required any person who spent or received money for the "principal purpose" of influencing legislation to register with the Clerk of the House and the Secretary of the Senate and file quarterly financial reports.[82] However, the Act was poorly drafted and narrowly interpreted.[83] The Act was further weakened by *Harriss*, when the Supreme Court upheld the Act's

74. NAT'L CONF. OF ST. LEGISLATURES, *50 State Chart: Lobbyist Activity Report Requirements* (May 15, 2018), https://www.ncsl.org/research/ethics/50-state-chart-lobbyist-report-requirements.aspx [https://perma.cc/3XZP-4QD4].

75. *Id.*

76. United States v. Harriss, 347 U.S. 612, 625–26 (1954).

77. *See* Doe v. Reed, 586 F.3d 671 (2010) (holding that states can allow referendum petition signatures to be publicly disclosed).

78. *Harriss*, 347 U.S. at 615–17.

79. *Id.* at 617.

80. Note, *The Federal Lobbying Act of 1946*, 47 COLUM. L. REV. 98, 103 (1947).

81. THOMAS M. SUSMAN, POLITICAL ACTIVITY, LOBBYING LAWS & GIFT RULES GUIDE § 4:4 (3d ed. 2020). In an article on transparency, Justice Brandeis stated "[s]unlight is said to be the best of disinfectants …." *Id.* (quoting Louis D. Brandeis, *Other People's Money and How the Bankers Use It* (1914), http://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v [https://perma.cc/3CZA-DHAG].

82. *The Federal Lobbying Act of 1946*, *supra* note 80; Susman, *supra* note 81 at § 4:4.

83. Ostas, *super* note 69, at 36.

constitutionality, but narrowed its scope and application.[84] The Court held in *Harriss* that the Act only applied to *paid* lobbyists who "direct[ly] communicat[e] with members of Congress on pending or proposed federal legislation."[85] Further, the Court determined that the Act covered efforts to influence the passage or defeat of *specific legislation*, but not other Congressional activities such as communications with staff, and time spent by lobbyists in researching, drafting, coordinating, and preparing for direct communications.[86] The Act was later repealed and replaced by the Lobbying Disclosure Act of 1995, which also requires lobbyists who are compensated for their efforts to register with the Clerk of the House and the Secretary of the Senate.[87] Since *Harriss*, no federal lobbying law has gone as far as the Missouri law deemed unconstitutional by the Eighth Circuit.[88]

B. The First Amendment

While lobbying is subject to extensive and complicated rules and requirements, courts have held that the activity of lobbying is constitutionally protected as either a right to free speech, a right to petition the government for the redress of grievances, or a blend of the two.[89] The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging *the freedom of speech*, or of

84. *Harriss*, 347 U.S. at 623–26.

85. *Id.* at 623.

86. Susman, *supra* note 81, at § 4:6.

87. *See* 2 U.S.C. § 1601; 2 U.S.C. §§ 261–270.

88. LAKEEXPO, *Federal Appeals Court Decides Against Mid-Missouri Man, Ruling Unpaid Activists are Lobbyists* (Nov. 28, 2018), https://www.lakeexpo.com/news/politics/federal-appeals-court-decides-against-mid-missouri-man-ruling-unpaid/article_1e5753f8-f351-11e8-acda-2b62698aa738.html [https://perma.cc/6L2F-SKP2].

89. *See* Regan v. Taxation with Representation of Washington, 461 U.S. 540, 552 (1983) (Blackman, J., concurring) ("[L]obbying is protected by the First Amendment."); Ostas, *supra* note 69, at 37 ("In sum, the case law illustrates that lobbying is indeed protected under the First Amendment.") ("Whether one characterizes the right to lobby as a free speech right, a right to petition the government, or as an amalgam of the two, it is clear that lobbying and lobbyists enjoy First Amendment protections."); United States v. Fin. Comm. to Re-Elect the President, 507 F.2d 1194, 1201 (D.C. Cir. 1974) ("Lobbying is of course a pejorative term, but another name for it is petitioning for the redress of grievances. It is under the express protection of the First Amendment."); Andrew P. Thomas, *Easing the Pressure on Pressure Groups: Toward a Constitutional Right to Lobby*, 16 HARV. J.L. & PUB. POL'Y 149 (1993) (arguing that there is, or at least that there should be, a right to lobby under the First Amendment); *cf. also*, United Mine Workers of America, District 12 v. Illinois State Bar Association et al., 389 U.S. 217, 222 (1969) ("[The] rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press.").

the press; or the right of the people peaceably to assemble, and *to petition the Government for a redress of grievances*."[90] As relevant here, the First Amendment guarantees individuals the freedom to share their policy ideas with elected officials without punishment or reprisal.[91] The government may not suppress an individual's right to political speech, but it can regulate it through disclaimer and disclosure requirements.[92] Typically, laws that regulate political speech are subject to the highest level of scrutiny – strict scrutiny.[93] However, if the law is a disclosure law – as in this case – it is subject to exacting scrutiny.[94]

In *McIntyre v. Ohio Elections Commission*, the Supreme Court found that the First Amendment protects an individual's right to remain anonymous.[95] Margaret McIntyre distributed pamphlets to people attending a public meeting where the school superintendent planned to discuss an upcoming referendum on a proposed school tax levy.[96] She also placed some of the pamphlets on car windshields in the school parking lot.[97] The pamphlets included McIntyre's opinion on and opposition to the new tax; some pamphlets included her name but others did not.[98] The Ohio Elections Commission fined McIntyre for violating an Ohio statute, which prohibited the distribution of campaign literature that does not include the name and address of the person or campaign official distributing the literature.[99] However, the Supreme Court deemed the statute unconstitutional as it violated McIntyre's First Amendment right to remain anonymous.

While the right to remain nameless is "an aspect of the freedom of speech protected by the First Amendment," the Supreme Court of the United States found that a Washington law allowing the public disclosure of referendum petition signatures did not violate the First Amendment.[100] In *Doe No. 1 v. Reed*, the plaintiffs sought a preliminary injunction to prevent the State of Washington from making referendum petitions available under the state's Public Records Act.[101] Plaintiffs did not want the names and contact information of individuals who signed the petitions released publicly.[102] They argued that the Act violated the First Amendment.[103] The Supreme Court

90. U.S. CONST. amend. I (emphasis added).
91. *Id.*
92. Citizens United v. FEC, 558 U.S. 310, 319 (2010).
93. Minn. Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864, 874–75 (8th Cir. 2012).
94. *Id.*
95. McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 342 (1995).
96. *Id.* at 337.
97. *Id.*
98. *Id.*
99. *Id.* at 338.
100. *Summers*, 942 F.3d at 425.
101. Doe No. 1 v. Reed, 561 U.S. 186, 193 (2010).
102. *Id.*
103. *Id.* at 194.

found that the law was "subject to review under the First Amendment" but that it was subject to review using exacting scrutiny rather than strict scrutiny.[104] The Court concluded that the state can impose disclosure requirements in an electoral context if the requirements are *substantially related* to an *important* government interest.[105]

IV. INSTANT DECISION

Judge Stras wrote the majority opinion, joined by Chief Judge Smith and Judges Gruender, Erickson, Grasz, and Kobes.[106] The court held: (1) Missouri's lobbying restrictions could be upheld from First Amendment challenge so long as they survived "exacting scrutiny"; (2) Missouri's lobbying restrictions violated the First Amendment right of an unpaid lobbyist, who neither spent nor received any money in connection with his advocacy; but (3) Missouri's lobbying law that applied to anyone "designated to act as a lobbyist by any […] nonprofit corporation, association[,] or other entity" was not unconstitutionally vague and invalid on its face.[107] Judge Grasz wrote a concurring opinion, arguing only that the majority used the wrong level of scrutiny.[108] Judge Colloton wrote a dissenting opinion, joined by Judges Loken and Benton, arguing that the court should not have reheard the case en banc because of its procedural irregularities.[109] Judge Shepherd also wrote a dissenting opinion, joined by Judges Colloton and Kelly, arguing that the State of Missouri and its citizens deserve to know who is attempting to influence their elected officials and how, regardless of whether money changes hands.[110]

A. The Majority Opinion

Regarding Calzone's as-applied challenge, the Eighth Circuit concluded that the application of the law to Calzone did violate the First Amendment.[111] Judge Stras dismissed the procedural issues that Judge Shepherd outlined in the earlier opinion and concluded that Calzone had not forfeited his claims just because he did not *emphasize* his no-expenditure issue earlier in the case.[112] Rather, Judge Stras noted that Calzone "consistently *emphasized*" and raised the issue "at numerous steps in the litigation."[113] Further, Judge Stras noted that since the State did not raise forfeiture when it realized there

104. Doe No. 1 v. Reed, 561 U.S. 186, 194-196 (2010).
105. *Id.* at 199.
106. Calzone v. Summers, 942 F.3d 415, 418 (8th Cir. 2019).
107. *Id.* at 423–26.
108. *Id.* at 426.
109. *Id.* at 428 (Colloton, J., dissenting).
110. *Id.* at 439 (Shepherd, J., dissenting).
111. *Id.* at 425 (majority opinion).
112. HARVARD LAW REVIEW, *supra* note 1.
113. *Summers*, 942 F.3d at 420.

was a threshold disagreement between members of the Eighth Circuit panel, it actually forfeited its forfeiture argument.[114] Judge Stras concluded that the undisputed fact that "Calzone spends no money nor gives anything of value to anyone when pursuing his advocacy activities" was a detail that the court had to consider when evaluating his First Amendment challenge.[115] Therefore, the question before them was "[C]an Missouri require Calzone to pay a fee and publicly disclose his political activities, even though he neither spends nor receives any money in connection with his advocacy?"[116] The Eighth Circuit concluded the answer was no.[117]

Both sides agreed that Calzone engages in First Amendment activity.[118] Citing the Supreme Court, the majority contended that "interactive communication concerning political change" cuts at the heart of the First Amendment and the right to "petition for a redress of grievances [is] among the most precious of […] liberties."[119] Further, the majority argued that Calzone does not lose his First Amendment rights simply because "he speaks through an organization that shares his perspective" because both Calzone and the organization have the right to "make their views known."[120] Even so, the state has some power to regulate speech, and the nature of the regulation determines how closely the court can scrutinize it.[121] As mentioned above, since Missouri's lobbying law is a "disclosure law," the court reviewed it using "exacting scrutiny," so the State had the burden to show that the law is substantially related to a sufficiently important government interest.[122]

The State's asserted governmental interest was "transparency."[123] Transparency, according to the Eighth Circuit, encompassed two ideas: (1) a narrower interest in sharing information about advocacy activities in order to prevent actual or apparent public corruption; and (2) a general interest in having the world know who is trying to influence the General Assembly.[124] The majority found that neither justification survived "exacting scrutiny."[125] First, Judge Stras rejected the State's claim about its interest in preventing corruption.[126] While he agreed that the interest of transparency is "important," he found that applying the law to Calzone was not substantially related to that

114. *Id.* at 421.
115. *Id.* at 422.
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.* (citing Meyer v. Grant, 486 U.S. 414, 422 (1988); United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n, 389 U.S. 217, 222 (1967)).
120. *Id.* at 423.
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.* at 424.

interest.[127] Citing *McCutcheon v. FEC*, Judge Stas concluded that the government can only target '*quid pro quo*' corruption and since there is no "quid" because Calzone does not spend or receive any money nor offer anything of value to legislators, whatever "quo" he receives must be attributed to his speech alone, not corruption.[128] Further, while "casting a wide net might make it easier for Missouri to catch legislative lobbyists involved in actual corruption[,]" there are other existing provisions that would serve the same purpose.[129] Second, Judge Stras concluded that the State's broader transparency interest of having the world know who is trying to influence the General Assembly – "legislators needing to know who is speaking to determine how much weight to give the speech" and the public needing "to know who is speaking so it can hold legislators accountable for their votes" – was not sufficiently important to justify limiting Calzone's speech.[130] Judge Stras emphasized the idea that when money does not change hands, there is a "respected tradition of anonymity in the advocacy of political causes."[131] So, in this case, Calzone has a right to remain nameless to the state.[132]

The majority found that since Calzone does not spend or receive any money in connection with his activities, the burden of the lobbyist requirements on his First Amendment rights outweighed Missouri's interest in transparency.[133] Therefore, the application of the law to Calzone violated his First Amendment rights.[134] However, regarding Calzone's facial challenge, like the courts before it, the full Eighth Circuit found that "designated" was clearly defined and the statute was clear enough that "a person of ordinary intelligence" could reasonably understand it.[135] Accordingly, the court vacated the judgement against Calzone and remanded for further consideration of Calzone's request for permanent injunction.[136]

B. The Concurring Opinion

Judge Grasz otherwise agreed with the majority except for the standard of scrutiny used.[137] He argued that "[l]aws that burden political speech are subject to strict scrutiny" and since petitioning one's government is political speech, lobbyist requirements should actually be subject to the higher

127. *Id.*

128. *Id.* (citing McCutcheon v. FEC, 572 U.S. 185, 206–07 (2014)).

129. *Id.*

130. *Id.* at 424–25.

131. *Id.* at 425.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 426.

136. *Id.* On remand, the lower court denied Calzone's request for permanent injunction concluding that the request was moot. Calzone v. Summers, No. 2:16-CV-04278-NKL, 2020 WL 1170225, at *1 (W.D. Mo. Mar. 11, 2020).

137. *Summers*, 942 F.3d at 426 (Grasz, J., concurring).

standard.[138] He contended that the majority disregarded circuit precedent and read *Citizens United* too broadly when it applied exacting scrutiny.[139]

C. The Dissenting Opinions

In his dissent, Judge Colloton argued that the court should not have reheard the case en banc because of the procedural irregularities that prevented the development of the constitutional question in the district court.[140] He noted that an en banc rehearing in a court of appeals should be reserved only for "questions of exceptional importance" first considered by a district court and then a three-judge panel.[141] In this case, however, the en banc majority functioned as a court of first review and reversed a judgement on an issue that was never actually addressed at earlier stages of the litigation.[142]

Likewise, in his dissent, Judge Shepherd outlined all the instances, before the district court and the Eighth Circuit panel, where Calzone raised the issue of whether the law could constitutionally apply to him as an *uncompensated individual*.[143] But he emphasized that Calzone never included his lack of expenditures as part of that claim.[144] Just as he did in his Eighth Circuit panel majority opinion, Judge Shepherd argued that since Calzone did not raise the issue of unpaid lobbyists "who make no expenditures" until oral arguments, he forfeited the claim and waived the argument.[145]

V. COMMENT

The court's holding is troubling for a number of reasons: it misrepresents Calzone as a grassroots activist and ignores his extensive lobbying efforts; it suggests that Missourians have no interest in knowing who is influencing their government, regardless of whether they receive compensation; it ignores the reality of targeted pressure campaigns; and it largely misrepresents Calzone's intentions of bringing this lawsuit. This Part outlines each of these concerns in turn.

First, the majority largely misrepresents Calzone as "a modern-day folk hero who wants nothing more than to be free to petition his government."[146] In reality, Calzone is exactly the type of individual that the law considers a

138. *Id.* at 426–27 (citing Citizens United v. FEC, 558 U.S. 310 (2010)).

139. *Id.* at 426–27.

140. *Id.* at 428 (Colloton, J., dissenting).

141. *Id.*

142. *Id.* The majority never addressed the allegation that it was improper for the court to rehear the case en banc. *Id.* at 418–26 (majority opinion).

143. *Id.* at 432–34 (Shepherd, J., dissenting).

144. *Id.*

145. *Id.* at 430.

146. *Id.*

lobbyist.[147] The majority even acknowledges that Calzone is not the average citizen, noting that he is "an active figure in Missouri politics."[148] However, in its opinion, the majority ignores Calzone's "extensive lobbying efforts."[149] Calzone is the "incorporator, sole officer, president, director, and registered agent"[150] of Missouri First whose charter states: "[…] *legislative lobbying* […] may be used to teach and *to influence public policy* […] Missouri First *will campaign for legislative and ballot initiatives*, but will not lobby or campaign for a particular political party."[151] The Missouri First website recruits new members by emphasizing that "'there is strength in numbers' […] especially when *lobbying* Missouri House and Senate members."[152] Calzone typically meets with legislators, legislative staff, and legislative groups to advocate for the passage or blocking of legislation.[153] He identifies himself not just as Ronald Calzone, but "Ronald Calzone, Director of Missouri First" and testifies that he is appearing or speaking "on behalf of Missouri First."[154] Calzone even admits himself that he lobbies.[155] In a tweet following the decision, a Missouri political reporter noted, "Love him or hate him, he's a *fixture* in the Missouri Capitol […]" implying not only that Calzone is well-known by his peers in Jefferson City, but also that he has been long established in the capitol building.[156] Further, Calzone frequently brings these sorts of lawsuits against the state, something an average citizen would not have the time nor the resources to do.[157] Calzone is not merely an individual citizen

147. *Id.* at 431.

148. *Id.* at 418, 431.

149. *Id.* at 430.

150. *Id.* at 418.

151. *Id.* at 431 (emphasis added). Missouri First's charter was later amended to read, "Missouri First will *address* legislative and ballot issues, as well as specific candidates who further our stated objectives, but will not campaign for a particular political party" (emphasis added). *See* MO. FIRST CHARTER, http://www.mofirst.org/docs/charter.htm [https://perma.cc/CZ3V-4Y2B] (last visited December 11, 2020).

152. *Id.* at 431 (emphasis added).

153. *Id.*

154. *Id.*

155. Calzone v. Hagan, No. 2:16-CV-04278-NKL, 2017 WL 2772129, at *3 (W.D. Mo. June 26, 2017), *vacated and remanded sub nom.* Calzone v. Summers, 942 F.3d 415 (8th Cir. 2019).

156. Tony Messenger (@tonymess), TWITTER (Nov. 1, 2019, 4:41 PM), https://twitter.com/tonymess/status/1190383494482055175 (emphasis added).

157. *See* Jason Taylor, *Lawsuit against Missouri legislature's Convention of States resolution tossed*, MISSOURINET (June 29, 2018), https://www.missourinet.com/2018/06/29/lawsuit-against-missouri-legislatures-convention-of-states-resolution-tossed/ [https://perma.cc/ZQ7E-F3JA]; NEWS TRIBUNE, *Missouri Supreme Court rules on legislative powers case* (Oct. 2, 2019), https://www.newstribune.com/news/local/story/2019/oct/02/missouri-supreme-court-rules-on-legislative-powers-case/797854/ [https://perma.cc/5SQS-2734]; FREEDOM CTR. OF MO., *Missouri Rancher Files Lawsuit to Put the Brakes on*

who wants only to express his personal views.[158] He is a "legislative lobbyist" in every sense of the term.

Second, the holding wrongly suggests that Missouri does not have a sufficiently important governmental interest in having unpaid lobbyists register. The dissent argues, "[T]he distinction between paid and unpaid lobbyists does not alter the equation so significantly."[159] The Supreme Court in *Harriss* described the interest in having lobbyists register this way:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise[,] the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.[160]

While the statute at issue in *Harriss* applied only to paid lobbyists, the interest described here applies to unpaid lobbyists just the same.[161]

Further, the dissent argues that the majority's holding suggests there is little difference between a concerned citizen who writes a letter to their legislator, a "self-described lobbyist like Calzone who seeks to exploit 'strength in numbers' to influence lobbyists," and a "volunteer" lobbyist affiliated with an organization like the Sierra Club or the National Rifle Association.[162] Therefore, the holding could mean that "volunteer" lobbyists affiliated with organizations would not have to disclose their lobbying activities.[163] It gives lobbyists permission to influence legislators in secret as long as they neither spend nor receive money in the process.[164] The reality is that lobbyists can still influence the political process without opening their wallet, and lobbyists will use this decision to create loopholes in the process.[165] For example, an individual might recruit a candidate to run for office, volunteer for a candidate's campaign, organize fundraisers for the candidate, and introduce the candidate to campaign donors and other political

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Suspiciousless Vehicle Stops (June 4, 2015), http://www.mofreedom.org/2015/06/calzone-v-koster/ [https://perma.cc/DF6W-CTVW].

158. *Summers*, 942 F.3d at 431 (Shepherd, J., dissenting).

159. *Id.* at 437.

160. *Id.* at 437–38 (quoting United States v. Harriss, 347 U.S. 612, 625 (1954)).

161. *Id.* at 438.

162. *Id.* at 430.

163. *Id.* For example, if an individual is employed by the organization to fulfill a certain job function, and they actually do fulfill it at some level, but they also "volunteer" to lobby in their spare time, they might not be required to register as a lobbyist in the State of Missouri. *Id.*

164. Stern, *supra* note 6.

165. *Id.*

players. Once the candidate is elected, the individual already has the newly elected official's ear, and it is not a far reach to assume the official will want to compensate that individual for their efforts.

On the flip side, if the State would have won, it would have "treated every civically-engaged Boy Scout troop and Audubon Society chapter like a group of paid lobbyists, merely for speaking with their elected representatives."[166] In his dissent in the Eighth Circuit panel decision, Judge Stras wrote:

> By sweeping so widely, Missouri law endangers the free exchange of ideas. Indeed, a political adversary, an unscrupulous government official, or even a legislator tired of being held accountable could simply submit a complaint to the Commission accusing a politically active citizen of lobbying – that is, speaking out – without first registering as a lobbyist.[167]

In fact, Calzone believes that is exactly what happened in this case.[168] Stras argued that an opposite ruling would have "endangered the free exchange of ideas."[169] He feared that, in the alternative, every activist that joined a "lobby day" – a day set aside where advocacy groups encourage active citizens to meet with their representatives in the Capitol – would need to register as a lobbyist.[170] However, those activists do not walk the halls of the Missouri State Capitol every day, they are not well-known among their colleagues in Jefferson City, and they are not introducing themselves as the director of a nonprofit organization whose charter explicitly states that it lobbies the Missouri General Assembly. The majority failed to strike a balance between these two extremes.

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166. INSTITUTE FOR FREE SPEECH, *supra* note 3.

167. Calzone v. Summers, 909 F.3d 940, 955–56 (8th Cir. 2018) (Stras, J., dissenting), *vacated en banc*, 942 F.3d 415 (8th Cir. 2019).

168. Ron Calzone, *Lobbyists, legislators aim to quash political activist's free speech*, ST. LOUIS POST-DISPATCH, (Sept. 30, 2015), https://www.stltoday.com/opinion/columnists/lobbyists-legislators-aim-to-quash-political-activist-s-free-speech/article_5053629c-ec48-57c8-b5e8-e5e3b39a4bba.html [https://perma.cc/8SGV-TX9X] ("My activism has made some powerful enemies […] One Election Day last November, the professional lobbyists' guild, with the blessing of (and possibly at the prompting of) at least two influential legislators, decided to try to punish me and scare away other activists for exercising our constitutional freedoms."); Morgan, *supra* note 70 ("[Calzone's] behavior upset some folks. Specifically, some powerful legislators who didn't care for Ron. To punish him for speaking his mind, they engineered an ethics complaint that accused Ron of flouting lobbyist registration and reporting laws.").

169. *Summers*, 909 F.3d at 955.

170. Morgan, *supra* note 70; Philip Wegmann, *Missouri Lobbyists don't want citizens talking to legislators, US Court of Appeals agrees*, WASHINGTON EXAMINER (Nov. 29, 2018), https://www.washingtonexaminer.com/opinion/missouri-lobbyists-dont-want-citizens-talking-to-legislators-us-court-of-appeals-agrees [https://perma.cc/G84F-CYPB].

Third, the holding ignores the reality of "coordinated pressure campaigns."[171] The majority argued that an individual who advocates for his views does not lose his First Amendment right to do so simply because he speaks through a non-profit organization that shares his perspective.[172] Both the individual and the non-profit organization have the right to make their views known.[173] But the dissent suggested that denying application of the statute to unpaid lobbyists like Calzone does not consider the importance of "strength in numbers" and "coordinated pressure campaigns."[174] This concern is related to Missouri's broader transparency interest in helping the world know who is trying to influence legislators, thereby enhancing legislative accountability.[175] Using his association with Missouri First, Calzone gives legislators the impression that he speaks on behalf of a group, not just himself.[176] It does not matter if Calzone "actually speaks on behalf of others," it only matters if "legislators *think* he is speaking on behalf of others."[177] This, according to Judge Shepherd, directly relates to the government's interest in promoting transparency in the face of "coordinated pressure campaigns."[178]

Some have suggested that if Calzone were not the "alter ego" of Missouri First, then the government's transparency issues would have been strong enough to justify the application of the disclosure law to his activity.[179] The only thing that seems to save Calzone in this case is that he and his nonprofit organization are one. Does that mean that the court's criterion of not getting paid is too blunt to catch individuals like Calzone if they are unpaid but *not* alter egos of their organizations?[180] If this question were to come up again, the court could narrow their holding to lobbyists who are uncompensated, incur no expenditures, and do not *in reality* speak on behalf of others.[181] Such a narrowed holding would not address Judge Colloton's concerns about

171. HARVARD LAW REVIEW, *supra* note 1.

172. Calzone v. Summers, 942 F.3d 415, 423 (8th Cir. 2019).

173. *Id.*

174. *Id.* at 438 (citing Fla. Ass'n of Prof'l Lobbyists, Inc. v. Div. of Legislative Info. Servs., 525 F.3d 1073, 1080 (11th Cir. 2008) (holding that "the state has a compelling interest in self-protection in the face of coordinated pressure campaigns directed by lobbyists . . . [and] allow[ing] voters to appraise the integrity and performance of officeholders and candidates, in view of the pressures they face")); *see also* McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346–47 (1995) ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation."); HARVARD LAW REVIEW, *supra* note 1.

175. *Summers*, 942 F.3d at 438

176. *Id.* at 431.

177. HARVARD LAW REVIEW, *supra* note 1.

178. *Summers*, 942 F.3d at 438.

179. HARVARD LAW REVIEW, *supra* note 1.

180. HARVARD LAW REVIEW, *supra* note 1.

181. HARVARD LAW REVIEW, *supra* note 1.

perceived strength in numbers, but it would take into account a lobbyist's *actual* strength in numbers – and Calzone's arguments would likely not pass muster under that holding.[182]

Finally, the holding suggests that Calzone sought to remain anonymous in his political activity, which he did not. The majority compares Calzone to the plaintiff in *McIntyre v. Ohio Elections Commission*, who "sought to place handbills on car windshields in a school parking lot without identifying herself as the author of the literature."[183] However, nowhere in his appellate brief does Calzone mention an interest in anonymity.[184] In fact, he appears openly before legislators and their staff in an effort to influence their votes, and his name is written all over Missouri First's website, which is accessible by the public at large.[185] The majority is confusing anonymity with a lack of compensation, and that error will drastically impact the future of Missouri lobbying efforts.

VI. CONCLUSION

The State of Missouri and its citizens deserve to know exactly who is attempting to influence its laws and how.[186] Missouri's lobbying requirements ensure transparency and imposes only a minimal burden on lobbyists, even when they are unpaid.[187] However, according to this case, "there has to be nexus of money involved before the government gets to regulate political activity, at least in the sense of lobbying."[188] While the state opted not to appeal this case to the United States Supreme Court, given the political climate of Jefferson City, *Calzone v. Summers* is sure not to be the last discussion regarding lobbying requirements in Missouri.

182. HARVARD LAW REVIEW, *supra* note 1.

183. *Summers*, 942 F.3d at 424–25, 439 (citing McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995)).

184. *Id.* at 439.

185. *Id.*

186. *Id.*

187. *Id.*

188. Zac Morgan & Caleb O. Brown, *Citizen Activism vs. Missouri Regulators*, CATO INSTITUTE (Nov. 8, 2019), https://www.cato.org/multimedia/cato-daily-podcast/citizen-activism-vs-missouri-regulators [https://perma.cc/H9FS-72GS].