No. WD77744

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

GERALD GEIER, STOP NOW!,

Appellants,

v.

MISSOURI ETHICS COMMISSION, ET AL.,

Respondents.

Appeal from the Circuit Court of Jackson County at Kansas City
16th Circuit, Division 9
Circuit Judge The Honorable Joel P. Fahnestock

BRIEF OF RESPONDENT

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Nicholas Beydler
Nicholas Beydler #65784
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
Phone (573)751-9167
Fax No. (573)751-9456
nick.beydler@ago.mo.gov

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JURISDICTIONAL STATEMENT

Jurisdiction over this appeal lies in the Missouri Supreme Court because this case involves a challenge to the validity of a state statute.

The Missouri Constitution grants the Supreme Court exclusive appellate jurisdiction over all cases involving the validity of a state statute. MO. CONST. art. V, § 3; *Bone v. Dir. of Revenue*, 404 S.W.3d 883, 886 (Mo. banc 2013). If any point on appeal raises such a question, the entire case must be transferred. *Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 350-51 (Mo. banc 2001); *Estate of Wright*, 950 S.W.2d 530, 534 (Mo. App. 1997). Jurisdiction over cases challenging the validity of a state statute does not lie in the Court of Appeals as long as the challenge is "real and substantial," not merely "colorable," and is preserved for appellate review. *Sharp v. Curators of Univ. of Missouri*, 138 S.W.3d 735, 738 (Mo. App. 2003). A constitutional question is "real and substantial" if it "involv[es] some fair doubt and reasonable room for controversy." *Estate of Potashnick*, 841 S.W.2d 714, 718 (Mo. App. 1992). A constitutional issue is preserved for appellate review if it is raised at the earliest opportunity, preserved at each step of the judicial process, and presented to and ruled on by the trial court. *Sharp*, 138 S.W.3d at 738.

The Missouri Supreme Court has exclusive appellate jurisdiction over this case because it involves the validity of several state statutes. Appellants'

first Point Relied On challenges the constitutional validity of Sections 130.046.1, 130.021.4(1), Section 130.021.7, and Section 130.021.8, both facially and as-applied. App. Br. at 11-14; L.F. 664-69. And Appellants' second Point Relied On seeks a declaration that Section 105.961.3 is unconstitutional on its face. App. Br. at 25; L.F. 669-71. Appellants' claims are "real and substantial" in that none of them have been decided by a Missouri court. *See Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 52 (Mo. banc 1999) ("One clear indication that a constitutional challenge is real and substantial and made in good faith is that the challenge is one of first impression with this Court."). Appellants raised their constitutional challenges in their petition at the circuit court, and the court ruled on them. L.F. 549-59, 655-74, 700-716.[1]

Accordingly, because this appeal involves the validity of a state statute, this Court must transfer this case to the Missouri Supreme Court. MO. CONST. art. V, § 11.

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[1] This case originated in the Administrative Hearing Commission ("AHC"). L.F. 3-18, 549-59. The AHC does not have authority to declare a statute unconstitutional. *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 75 (Mo. banc 1982). Nevertheless, Appellants raised their constitutional challenges at the AHC, and AHC considered them. L.F. 10-15, 553-56, 558.

STATEMENT OF FACTS

From 1991 to 2012, Appellant Gerald Geier was the treasurer of Appellant Stop Now!, a political action committee ("PAC") (collectively, "Appellants"). L.F. 586, 625, 688, 692-93. Respondent Missouri Ethics Commission ("MEC") is an agency of the State of Missouri responsible for administering the state's campaign finance disclosure law. Section 105.955.14, RSMo 2000.

Geier formed "Stop Now!" in December 1991. L.F. 585, 625, 688. To register the PAC, Geier completed a single-page "Statement of Committee Organization." L.F. 112, 688. Stop Now!'s Statement of Committee Organization named Geier as the PAC's treasurer. L.F. 112, 689. It also required Geier to identify the PAC's "official fund depository" and "official depository account." L.F. 112. Stop Now!'s Statement of Committee Organization was later amended in 2009, when Geier updated the form to reflect a change in the PAC's address. L.F. 113, 689.

During the 1990s, Stop Now! accepted contributions and made expenditures in support of its political activities, which included opposing ballot initiatives that would raise taxes. L.F. 586, 593. Stop Now!'s political activities slowed in the early 2000s, and the committee was inactive after 2003. L.F. 47, 689. Stop Now! remained a registered PAC, however, and it continued to file the quarterly disclosure reports required by Missouri law.

L.F. 689-90; *see* Sections 130.041.1, 130.046.1, RSMo 2000 & Supp. 2007. Because Stop Now! was inactive, it was able to meet its quarterly reporting obligations by filing a "Committee Statement of Limited Activity," which certified that the PAC's receipts and expenditures did not exceed $500 for the reporting period. L.F. 690; *see* Section 130.046.3. From 2004 to 2010, quarterly disclosure reports were timely filed on Stop Now!'s behalf. L.F. 691.

In 2006, Stop Now!'s official depository account was closed after monthly account fees exhausted the remaining balance. L.F. 587, 625-26, 690. After 2006, Stop Now! did not have an official fund depository or official depository account. L.F. 587, 625; *see* Section 130.021.4(1), RSMo 2000 & Supp. 2009. No one notified the MEC on behalf of Stop Now! that the PAC's official depository account had been closed. L.F. 587-88, 626, 690; *see* Section 130.021.5, .8.

In 2011, Stop Now! did not timely file quarterly disclosure reports for the first three quarters of the year. L.F. 586-87, 625, 692. The MEC contacted Geier regarding Stop Now!'s overdue disclosure reports in June 2011, and in the fall of 2011 the MEC opened an investigation into Geier and Stop Now!. L.F. 692. In January 2012, Geier filed Stop Now!'s overdue quarterly disclosure reports. L.F. 117-19, 588, 626, 692-93. He also filed a

"Committee Termination Statement," which indicated that Stop Now! had been dissolved. L.F. 124, 588, 626, 692-83.

The MEC filed a formal complaint against Geier and Stop Now!, alleging that they had violated Section 130.046.1 by failing to timely file quarterly disclosure reports in 2011, as well as Sections 130.021.4(1) and 130.021.7 by failing to maintain an official fund depository and official depository account and failing to notify the MEC of changes to the depository and account. L.F. 21-24. The MEC held a hearing on the complaint. L.F. 21-24, 626. The hearing was closed pursuant to statute, although Appellants requested that it be open. L.F. 626; *see* Section 105.961.3, RSMo 2000. There is no record that any member of the public or the press was present at the closed hearing, or that any member of the public or press requested to be present for the hearing and was refused entry. App. Br. at 28.

The MEC found probable cause to believe that Appellants violated Sections 130.046.1, 130.021.4(1), and 130.021.7 by failing to timely file three quarterly disclosure reports and failing to timely file a termination statement after the PAC's official depository account was closed. L.F. 21-24. The MEC further found that the violations were not knowingly made. L.F. 21-24. The MEC ordered that "a letter be issued that no further action shall be taken." L.F. 21-24.

The MEC then issued a "Letter of No Further Action" to Geier. L.F. 19. The letter informed Geier:

> This letter is being issued to you pursuant to the authority granted to the Missouri Ethics Commission in Section 105.961.4(4).
>
> . . .
>
> The Commission has found that you violated Sections 130.046.1, 130.021.4(1), and 130.021.7, RSMo in your capacity as Treasurer of Stop Now! Continuing Committee.
>
> The Commission hereby issues this letter that no further action will be taken.

L.F. 19.

While the MEC complaint was pending, Appellants filed suit in federal court alleging that the agency's enforcement action violated the First Amendment and seeking a preliminary injunction. The district court abstained under the *Younger* doctrine. *See Younger v. Harris*, 401 U.S. 37 (1971). On appeal, the Eighth Circuit affirmed, finding Appellants would have an adequate opportunity to raise their constitutional arguments through the State's administrative process. *Geier v. Missouri Ethic's Comm'n*, 715 F.3d 674 (8th Cir. 2013).

Appellants appealed the MEC's probable cause determination to the Administrative Hearing Commission ("AHC"). L.F. 3-18, 26-27; *see* Section 105.961.3. Appellants did not challenge the MEC's determination that there was probable cause to believe that they violated Sections 130.046.1, 130.021.4(1), and 130.021.7—Appellants admitted that they "violated the literal terms" of the statutes. L.F. 145. Instead, Appellants sought a declaration that the statutes were unconstitutional as applied to them because Stop Now! had been inactive for several years before the MEC brought its enforcement action. L.F. 8-12. Appellants also challenged the constitutionality of Section 105.961.3, under which the MEC's enforcement hearing was closed. L.F. 15-17. Finally, Appellants argued that Geier was not responsible "in his personal capacity" for any of the statutory violations. L.F. 13. The MEC moved for summary decision, and the AHC granted summary decision in its favor on all counts. L.F. 549-59.

Appellants then sought judicial review in the circuit court. L.F. 655-74; Section 536.100, RSMo Supp. 2006. Appellants raised each of the claims asserted at the AHC, as well as new claims. In addition to claiming that Sections 130.046.1, 130.021.4(1), and 130.021.7 were unconstitutional as applied to them, Appellants sought declaratory and injunctive relief barring enforcement of the statutes against "similarly situated" PACs and treasurers "when the last political activity and/or fundraising or expenditures to

communicate were ten years earlier." L.F. 664-69. Appellants also supplemented their constitutional challenges with claims under 42 U.S.C. § 1983, and for attorneys' fees and costs under 42 U.S.C. § 1988. L.F. 664-73. Both parties moved for summary judgment, and the circuit court granted MEC's motion for summary judgment. L.F. 700-716. This appeal follows.

ARGUMENT

A. Standard of Review

This case comes on appeal from the circuit court's review of the AHC's decision. Ordinarily, in an appeal from an agency-tried case, this Court reviews the AHC's decision, not the circuit court's decision. Section 536.140. Here, however, the circuit court decided Appellants' Section 1983 and Section 1988 claims, which were not presented to the AHC, as well as Appellants' administrative claims.

Whether this Court reviews the circuit court or the AHC, the standard of review is the same. Summary judgment was entered in favor of Respondents at the AHC and at the circuit court. Because the propriety of summary judgment is an issue of law, this Court's review is de novo. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Likewise, "[w]hether a statute is constitutional is reviewed de novo." *State v. Vaughn*, 366 S.W.3d 513, 517 (Mo. banc 2012). And the AHC's interpretation of a statute is subject to de novo review. *Morton v. Brenner*, 842 S.W.2d 538, 540 (Mo. banc 1992).

B. The Reporting Statutes Do Not Violate the First Amendment

In their first Point Relied On, Appellants challenge the constitutionality of Sections 130.046.1, 130.021.4(1), 130.021.7, and 130.021.8 (collectively, the "reporting statutes").[2] Appellants mount facial and as-applied challenges against the reporting statutes. App. Br. at 12-14. They ask this Court to declare that the reporting statutes were unconstitutionally applied to them and reverse the AHC's decision. L.F. 664-68. They also seek declaratory and injunctive relief prohibiting enforcement of the reporting statutes against "similarly situated inactive PACs and treasurers." App. Br. at 11.

As a threshold matter, this Court does not have jurisdiction to decide this issue. As discussed in Respondent's Jurisdictional Statement, challenges to the validity of a state statute are within the Missouri Supreme Court's exclusive appellate jurisdiction. MO. CONST. art. V, § 3. Appellants' challenges to the reporting statutes fall squarely within the Supreme Court's

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[2] Appellants' first Point Relied On and the corresponding argument section of their brief do not address Section 130.021.8, but Appellants' Conclusion asks this Court to find this provision unconstitutional. App. Br. at 43. Without conceding that Appellants have properly presented their challenge to this statutory provision, Respondent will address it.

exclusive appellate jurisdiction. Accordingly, this Court must transfer this case. MO. CONST. art. V, §§ 3, 11.

1. Appellants' Claim for Prospective Declaratory and Injunctive Relief Is Not Ripe

Before turning to the merits of Appellants' First Amendment challenges, this Court must determine "whether these claims present a justiciable controversy." *Schweich v. Nixon*, 408 S.W.3d 769, 773 (Mo. banc 2013). Justiciability has two components: standing and ripeness. *Id.* at 774. "'Standing requires that a party have a personal stake arising from a threatened or actual injury.'" *Id.* (quoting *State ex rel Williams v. Mauer*, 722 S.W.2d 296, 298 (Mo. banc 1986)). Ripeness, on the other hand, requires that the dispute be "'developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character.'" *Schweich*, 408 S.W.3d at 774 (quoting *Missouri Health Care Ass'n*, 953 S.W.2d at 621).

Appellants' claim for prospective declaratory and injunctive relief implicates ripeness concerns because it anticipates a future dispute rather than one that is presently existing. "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Ag. Prods. Co.*, 473 U.S. 568, 581

(1985)). "[C]ourts deciding whether a dispute is ripe should consider (1) the hardship to the plaintiff caused by delayed review; (2) the extent to which judicial intervention would interfere with administrative action; and (3) whether the court would benefit from further factual development." *Nat'l Right to Life Political Action Comm. v. Connor*, 323 F.3d 684, 692-93 (8th Cir. 2003) (citing *Ohio Forestry Assoc. v. Sierra Club*, 523 U.S. 726, 733 (1998)).

Appellants' claim is not ripe because it seeks relief from a future harm that is not certain to occur. Appellants seek a declaration that the reporting statutes are unconstitutional as applied to "similarly situated" PACs and treasurers that have been inactive for six to ten years, and an injunction barring the MEC from enforcing the reporting statutes against any such inactive PACs and treasurers. App. Br. at 13, 43. But there is no evidence of any similarly-situated PACs. There is nothing in the record to suggest that there are any PACs that, despite being inactive for an extended period of time, are still registered with the MEC and subject to the reporting statutes. Any possible future dispute involving such a PAC rests entirely upon contingent events that may not occur. And in adjudicating such a dispute, a court would benefit from further factual development as to the PAC's activities and the MEC's manner of enforcement. Appellants' claim that the reporting statutes may not be enforced against "similarly situated" inactive PACs is premature and should be dismissed as unripe.

Nor is there any presently-existing conflict as to Appellants' future exercise of First Amendment protected activity. Stop Now! has been dissolved and no longer exists. L.F. 124, 588, 626, 692-93. Geier alleges that his free speech has been "chilled" by the MEC's enforcement action because he "fear[s] engaging in any future political speech potentially subject to regulation by [the MEC], because I worry that it may be too expensive and burdensome for me to bear." L.F. 160. But Appellants have not challenged ***all*** of the campaign finance regulations enforced by the MEC, only certain provisions; namely, those that require the treasurer of a PAC to file quarterly disclosure reports, maintain an official bank account, notify the MEC of changes to the PAC's official bank account, and file a termination statement when the PAC dissolves. *See* Sections 130.046.1, 130.021.4(1), and 130.021.7; *see also* Section 130.058. Geier has not alleged that he intends to become the treasurer of a PAC in the future, or that he expects his "future political speech" will make him subject to the specific regulations challenged in this case.

Furthermore, Appellants seeks seek declaratory and injunctive relief against application of the reporting statutes to a PAC that, like Stop Now!, has been inactive for many years. To fall within this class, Geier would have to form a PAC and allow it to become dormant for several years. He has not done so, or even alleged that he intends to do so. And even if Geier formed a

PAC, it would be years before he would fall under the protection of the declaratory and injunctive relief Appellants seek. Appellants' request for prospective declaratory and injunctive relief is unripe and should be dismissed.

2. Appellants' Facial Challenge Fails Because the Reporting Statutes Are Substantially Related to Sufficiently Important Interests

To prevail on a facial challenge to the reporting statutes, Appellants must establish "'that no set of circumstances exists under which [the statutes] would be valid,' or that the statute[s] lack[] any 'plainly legitimate sweep.'" *United States v. Stevens*, 559 U.S. 460, 472 (2010) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987), and *Washington v. Glucksberg*, 521 U.S. 702, 740 n. 7 (1997)). In a facial challenge, the reviewing court "must be careful not to go beyond the statute's facial requirements." *Washington*, 552 U.S. at 449-50. The challenger must demonstrate that the statute is unconstitutional based solely on its text, not its application to any discrete factual situation. *See McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196 (2003) (distinguishing facial challenge to campaign finance disclosure regulations from as-applied challenge based on alleged harm to particular donors), *overruled on other grounds by Citizens United*, 558 U.S. 310 (2010).

The analysis begins with the standard of review. The First Amendment undoubtedly protects political speech. *Mills v. Alabama*, 384 U.S. 214, 218 (1966). This protection extends to campaign finance regulations. *Citizens United*, 558 U.S. 310; *Buckley v. Valeo*, 424 U.S. 1 (1976). However, the United States Supreme Court has not subjected all campaign finance regulations to the same standard of review. The Court has distinguished laws that "restrict the amount of money a person or group can spend on political communication," *Buckley*, 424 U.S. at 19, from laws that simply require those engaging in political speech to disclose information. Campaign contribution and expenditure limits "burden political speech" and are subject to "'strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United*, 558 U.S. at 340; *see also Buckley*, 424 U.S. at 64. "Disclaimer and disclosure requirements," on the other hand, "may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking." *Citizens United*, 558 U.S. at 366 (internal quotations and citations omitted). As a result, the Court has subjected reporting requirements to "exacting scrutiny," a lesser standard, which requires a "substantial relation" between the disclosure requirement and a "sufficiently important" governmental interest. *Citizens United*, 558 U.S. at 366-67.

As Appellants recognize, their challenge to the reporting statutes is governed by "exacting scrutiny." App. Br. at 14-15. Disclosure and reporting requirements like the ones challenged by Appellants have been repeatedly and consistently upheld under exacting scrutiny. *See Citizens United*, 558 U.S. at 368-71; *Buckley*, 424 U.S. at 64-84.[3] The United States Supreme Court has recognized that disclosure and reporting requirements serve "important state interests" by "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *McConnell*, 540 U.S. at 196.

Appellants contend that "the State's singular interest under exacting scrutiny [is] the prevention of quid pro quo corruption or the appearance of quid pro quo corruption." App. Br. at 16. They rely on *McCutcheon v. Federal*

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[3] *See also Nat'l Org for Marriage v. McKee*, 649 F.3d 34 (1st Cir. 2011) (upholding Maine's PAC laws); *Combat Veterans for Congress Political Action Comm. v. Fed. Election Comm'n*, 983 F. Supp.2d 1 (D.D.C. 2013) (upholding federal PAC laws); *Nat'l Ass'n for Gun Rights v. Murry*, 969 F. Supp. 2d 1262 (D. Mont. 2013) (upholding Montana PAC laws); *Nat'l Org. for Marriage, Inc. v. Roberts*, 753 F.Supp.2d 1217 (N.D. Fla. 2010) (upholding Flordia PAC laws).

Election Commission, 134 S. Ct. 1434 (2014). *McCutcheon*, however, dealt with campaign contribution limits, not disclosure and reporting requirements. *See id.* at 1141. These are different types of regulations, supported by different interests. In *McCutcheon*, the Court "identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption." *Id.* at 1450. It went on to hold that only the government's interest in targeting "a specific type of corruption—quid pro quo corruption," rose to the level of a "sufficiently important" interest. *Id.*

On the other hand, the Supreme Court has identified at least three "sufficiently important" interests served by disclosure and reporting requirements. First, such regulations can be justified "based on a governmental interest in 'provid[ing] the electorate with information' about the sources of election-related spending." *Citizens United*, 558 U.S. at 367 (quoting *Buckley*, 424 U.S. at 66). Second, disclosure and reporting requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Buckley*, 424 U.S. at 67. And third, "recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations" of other campaign finance laws. *Id.* at 67-68.

The Court has also found disclosure and reporting requirements to be substantially related to these important interests. "[D]isclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption . . . ." *Id.* at 68. Timely disclosure of financial information "enables the electorate to make informed decisions and give proper weight to different speakers and messages" as well as "hold corporations and elected officials accountable for their positions and supporters." *Citizens United*, 558 U.S. at 370-71. The exposure provided by disclosure and reporting requirements also "may discourage those who would use money for improper purposes either before or after the election." *Buckley*, 424 U.S. at 67. "[I]nformed public opinion is the most potent of all restraints upon misgovernment." *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936). And, as the Court has recognized, some reporting requirements are necessary precisely because they allow regulators to "gather[] the data necessary to detect violations" of other campaign finance laws. *Buckley*, 424 U.S. at 78-68.

Turning to the reporting statutes, Appellants first challenge Section 130.046.1, which requires PACs to file quarterly reports disclosing, among other things, their contributions and expenditures. This claim is foreclosed by settled law. The United States Supreme Court has upheld the facial validity of quarterly disclosure and reporting requirements for PACs.

Buckley, 424 U.S. at 63-68. *See also Citizens United*, 558 U.S. at 366-71 (upholding disclosure and reporting requirements for corporations); *McConnell*, 540 U.S. at 194-201 (same); *Buckley*, 424 U.S. at 75-82 (upholding disclosure and reporting requirements for individuals and organizations that are not PACs).

Next, Appellants challenge Sections 130.021.4 and 130.021.7, which require PACs to maintain an official bank account in Missouri and register that account with the MEC. Section 130.021.4(1) requires PACs to maintain an "official depository account." This account must be at an "official fund depository" (i.e., bank, savings and loan association, or credit union) within the State of Missouri. *Id.* PACs must accept all contributions and make all expenditures through this account. Section 130.021.4(1). Section 130.021.5 requires PACs to identify their "official fund depository" and "official depository account" in their Statement of Organization, and Section 130.021.7 requires PACs to promptly notify the MEC of any changes to their depository or account.

These provisions are closely related to the MEC's ability to enforce Missouri's campaign finance disclosure laws. Under Missouri law, PACs must periodically disclose the amount of their contributions and expenditures, as well as certain information about their donors and recipients. Sections 130.041.1, 130.046.1. The MEC is responsible for

reviewing these disclosure reports, and if necessary, conducting an audit or investigation. Section 105.959.1. The MEC also receives complaints and investigates alleged violations of the campaign finance disclosure laws by PACs. Section 105.957.1(3), 105.959.3. The MEC has the power to issue subpoenas and to pursue actions in Missouri circuit courts. Sections 105.955.15(1), (4), 105.961.4, .5, .8(4). However, tracking funds distributed among multiple accounts and financial institutions would be time-consuming and costly, and investigating assets and transaction in out-of-state banks would present special challenges. Requiring each PAC to maintain a single bank account in Missouri and notify the MEC of any changes to that account forestalls these problems, allowing the MEC to more efficiently investigate alleged violations of the campaign finance disclosure laws.

For similar reasons, Section 130.021.10, which requires an out-of-state PAC to appoint a Missouri resident as treasurer, has been held to pass constitutional muster. *Nat'l Right to Life Political Action Comm. v. Connor*, 323 F.3d 684, 695 (8th Cir. 2003), *aff'g Nat'l Right to Life Political Action Comm. v. Lamb*, 202 F. Supp. 2d 995 (W.D. Mo. 2002). In *Lamb*, the court explained:

> Missouri law requires that each [PAC] must have a treasurer who is responsible for the various record keeping and filing requirements established by law. Thus, the treasurer is the

> critical official that the Commission must reach to investigate and address violations of the campaign finance laws. . . . The MEC possesses subpoena authority and the ability to pursue actions in Missouri circuit courts. But the practical and legal burdens of having to pursue out-of-state treasurers—such as travel time and expense for staff and the time, expense, and uncertainty associated with extraterritorial enforcement of investigative subpoenas and service of process—would limit the MEC's ability to enforce Missouri's law. . . . Accordingly, the Missouri resident treasurer requirement is a valid limitation on [a PAC's] associational rights because it is narrowly tailored to serve the MEC's compelling interest in using its subpoena power to enforce the disclosure law, thereby serving its related informational and anti-corruption interests.

Lamb, 202 F. Supp. at 1020.

The same is true of Sections 130.021.4 and 130.021.7. These statutes are closely tied to the MEC's interest in investigating possible violations of Missouri's campaign finance disclosure laws, which are in turn "substantially related" to the State's "sufficiently important" interests in preserving the integrity of the election process, informing the public about the sources of

election-related spending, and deterring political corruption. Appellants' facial challenge to Sections 130.021.4 and 130.021.7 fails.

Finally, Appellants challenge Section 130.021.8, which requires a PAC to file a "termination statement" within 10 days of days of its dissolution. Under the statute, the termination statement must describe the distribution of any remaining funds and the disposition of any debts, and it must identify the name, address, and telephone number of the person responsible for preserving the PAC's records and accounts. *Id.*; *see also* Section 130.036 (requring PACs to retain records for three years).

Like Sections 130.021.4 and 130.021.7, Section 130.021.8 is justified by the State's interest in enforcing its campaign finance disclosure laws. The termination statement is an administrative necessity. PACs must register with the MEC, Section 130.021.5, and file periodic reports disclosing their receipts and expenditures. Section 130.041.1. The MEC has the obligation to review these reports and perform an audit if necessary. Section 105.959.1. The termination statement formally notifies the MEC that the PAC no longer exists. It also gives the MEC the information necessary to perform a final audit of the PAC's finances, and the contact information for the person responsible for the PAC if follow-up is necessary. Accordingly, the termination statement requirement is substantially related to the MEC's

interest in enforcing the state's campaign finance disclosure laws, which in turn serve sufficiently important interests.

Each of the reporting statutes is substantially related to "sufficiently important" informational, accountability, anti-corruption, and enforcement interests. None is without any "plainly legitimate sweep." Accordingly, Appellants' facial challenge to the reporting statutes fails.

3. Appellants' As-Applied Challenge Fails Because the Reporting Requirements They Violated Are Substantially Related to Sufficiently Important Interests

Appellants concede that they "violated the literal terms of the campaign finance reporting statute." L.F. 145. Nevertheless, they contend that the reporting statutes are unconstitutional as applied to them because Stop Now! had been inactive for nearly a decade before Appellants failed to timely file quarterly disclosure reports, and for several years before Stop Now!'s bank account closed. App. Br. at 19-21.

Appellants allege two defects in the reporting statutes. First, they complain that the statutes impose "overly burdensome reporting requirements." App. Br. at 17. The alleged burdens come from two sources: "the threshold and daunting burden of deciphering what is required under the statutes," and making the required reports. App. Br. at 17. Appellants

also criticize the fit between the statutory requirements and the State's interests. App. Br. at 18.

Both allegations are without a basis in law or fact. First, the record does not support Appellants' claim that they were subject to "overly burdensome reporting requirements." There is no evidence in the record that Appellants did not understand the requirements imposed by Missouri's campaign finance disclosure laws, or that they had difficulty understanding them. The record demonstrates that Appellants knew what the law required and how to meet those requirements. Appellants complied with the quarterly reporting requirement for nearly two decades. L.F. 689-91. When they stopped, it was not because Appellants had difficulty making the required reports. Instead, in Appellants' words, "There is no reason the reports stopped other than the fact that life goes on, people have things to do, and no activity occurred." L.F. 608, 692. The record also demonstrates that Geier knew how to comply with the bank account reporting requirements. Section 130.021.7 required Appellants to notify the MEC of changes to its official depository account by amending its statement of organization. In 2009, three years after Stop Now!'s bank account closed, Geier amended the PAC's statement of organization to reflect a change of address. L.F. 689.

Instead, the record demonstrates that Appellants did not face burdensome disclosure and reporting requirements. The MEC allows PACs

that have less than $500 in receipts and expenditures to discharge their quarterly reporting requirements by filing a "Committee Statement of Limited Activity." Section 130.046.3; L.F. 117-19, 690-91. The "Committee Statement of Limited Activity" is a one-page form. L.F. 690. It requires limited information: the name, address, and telephone number of the PAC and its treasurer; the reporting period covered by the statement; and a certification from the treasurer that the PAC's receipts and expenses for the period were less than $500. L.F. 117-119. In 2011, when Appellants failed to timely file quarterly disclosure reports, the Statement of Limited Activity form was completed and filed electronically. L.F. 51-56, 61-62, 690. Completing and filing a single-page electronic form with limited information is hardly burdensome.

Likewise, Appellants did not face burdensome reporting requirements to bring their bank account into compliance with the campaign finance disclosure laws. PACs must identify an official depository account on their statement of organization. Section 130.021.4(1), .5. Afterward, if the PAC's official depository account changes, the PAC must amend its statement of organization. Section 130.021.7. The statement of organization is a single-page document. L.F. 689. And here, Geier completed Stop Now!'s initial statement of organization and an amended statement of organization. L.F. 112-13, 688-89. These forms were not overly burdensome.

Nor was the last document filed by Appellants, the termination statement. Although the termination statement is longer than the other two forms, it did not impose a burden on Appellants. L.F. 120-33. PACs must disclose their finances and comply with certain recordkeeping and reporting requirements. Sections 130.036, 130.041, 130.046. When a PAC dissolves, it must give a final accounting of its finances and the contact information for the person responsible for its records. Section 130.021.8. The termination statement merely required Appellants to provide information they were required by law to keep. Section 130.036; L.F. 120-33. And completing this form relieved Appellants of future reporting obligations. Appellants were not burdened by the requirement to file a termination statement.[4]

Appellants also fail to establish that the statutory requirements that they violated are not substantially related to sufficiently important interests. Appellants' thesis is that "there needs to be a significant nexus between speech and financial activity (money in or out) for a reporting requirement to pass muster." App. Br. at 20. According to Appellants, if a PAC does not

[4] Appellants have acknowledged that their failure to dissolve Stop Now! when the PAC became inactive in the early 2000s, as well as their failure to maintain a bank account after 2006, increased the time and expense required to file the paperwork necessary to dissolve the PAC. L.F. 161 at ¶ 4.

"speak" (i.e., accept contributions and make expenditures), the statutory reporting requirements are not substantially related to the interests justifying the statute. In Appellants' view, a PAC cannot be required to file a report if it has not accepted contributions or made expenditures.

Appellants' argument ignores that "recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary" to enforce other campaign finance laws. *Buckley*, 424 U.S. at 67-68. The "Committee Statement of Limited Activity" is narrowly-tailored to this interest, providing a simple and efficient way for PACs to notify the MEC that they were inactive during a reporting period. L.F. 117-19, 690-91. The MEC's efforts to police violations of the campaign finance disclosure laws would be frustrated if PACs could file ***nothing*** with respect to their activities for a reporting period. Without the "Committee Statement of Limited Activity," the MEC would be forced to weed through all of the PACs that did not file disclosure reports for a reporting period to determine which ones shirked their statutory disclosure obligations and which ones were merely inactive. The "Committee Statement of Limited Activity" is closely-tied to the MEC's interest in enforcing the campaign finance laws, which is in turn substantially related to the State's informational, accountability, and anti-corruption interests.

The same is true of the bank account reporting requirements. As already discussed, requiring PACs to maintain a single bank account in Missouri and notify the MEC of changes to that account supports the MEC's investigative powers. *See supra* Part B.2. An inactive PAC must eventually file a termination statement providing a final accounting of its assets. Section 130.021.8. Requiring the PAC to maintain a single in-state bank account ensures that an investigation into the PAC's finances will be spared the time and expense associated with an inter-state investigation.

Requiring inactive PACs to file a termination statement is also closely-tied to the MEC's interest in enforcing the campaign finance laws. A termination statement notifies the MEC that a PAC no longer exists, and the MEC should not expect to receive disclosure reports from it. A termination statement also provides the MEC with the information it needs to perform a final review of the PAC's finances and reports. The termination statement is narrowly-tailored to this interest, requiring the PAC to provide only the information necessary for the MEC to "close" its file on the PAC or conduct a follow-up investigation, if necessary.

Appellants counter that this substantial relationship does not exist when a PAC has had no activity for many years. Appellants apparently want the MEC to assume that a PAC is dissolved after a lengthy period of inactivity (of undefined duration). But Stop Now! was still a registered PAC.

It had never filed a termination statement and, as far as the MEC was concerned, could resume soliciting contributions and making expenditures at any point.

Appellants' argument loses the forest for the trees, focusing on individual provisions instead of the whole statutory scheme. Missouri law does not require PACs to file disclosure reports *ad infinitum*, even if they have ceased to exist. The law provides a mechanism for an inactive PAC to relieve itself of future reporting obligations—by filing a termination statement—that is narrowly drawn and substantially related to enforcement of the campaign finance disclosure laws and the important interests they serve. Appellants' failure to avail themselves of this remedy in a timely manner does not render the statute unconstitutional.

Appellants also argue that the State cannot subject PACs to different disclosure and reporting requirements than other speakers. App. Br. at 19-20. But PACs ***are*** different. Missouri has a compelling interest in preserving the integrity of its electoral process. *Weinschenk v. State*, 203 S.W.3d 201, 217 (Mo. banc 2006). PACs are organizations formed for the purpose of influencing the electoral process. *See* Section 130.011(7). The State may constitutionally require PACs to register and disclose certain information about their activities. *Buckley*, 424 U.S. at 63-68. The First Amendment

may impose outer limits on state regulation of PACs. See *Buckley*, at 68-82.[5] But even in *Citizens United*, where the Court described PACs as "burdensome . . . expensive to administer and subject to extensive regulations," the Court never suggested that PACs could not be regulated more extensively than individuals or organizations. *Citizens United*, 558 U.S. at 337.

Consequently, Appellants' reliance on *Minnesota Citizens for Life v. Swanson*, 692 F.3d 864 (8th Cir. 2012), is unavailing. In *Minnesota Citizens*, several Minnesota business entities sought a preliminary injunction against Minnesota's independent expenditure and reporting requirements for "associations." *Id.* at 867-68. Minnesota law broadly defined "association" as

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[5] Appellants cite *Galassini v. Town of Fountain Hills*, No. CV-11-02097-PHX-JAT, 2014 WL 6883063 (D. Ariz. Dec. 5, 2014), and *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26 (1st Cir. 1993), as two examples of constitutional limitations on PAC regulations. Neither has any bearing on this case. *Galassini* held that Arizona's definition of a PAC was too broad. There is no question here, though, that Stop Now! was a PAC. *DiStefano* held that Rhode Island's requirement that PACs disclose all contributions over $100 was not substantially related to the state's interest. Here, on the other hand, Appellants question the validity of the reporting requirement itself, not the information that must be included in a report.

a "group of two or more persons, who are not members of the same family, acting in concert." *Id.* at 868. The law required all "associations" to make indirect expenditures through a PAC or through an "independent expenditure political fund," which was subject to many of the same regulations as PACs. 692 F.2d at 875. Once formed, an "independent expenditure political fund" was subject to ongoing reporting requirements. *Id.* at 869. If the fund was inactive during a reporting period, it was required to file a statement of inactivity. *Id.*

The Eighth Circuit held that Minnesota's independent expenditure and reporting requirements were likely unconstitutional. Under *Citizens United*, states cannot force a corporation to "speak" through a PAC. 558 U.S. at 337-38, and the Eighth Circuit noted that "Minnesota's law imposes virtually identical regulatory burdens on political funds as it does on [PACs]." *Minnesota Citizens*, 692 F.3d at 872. The Court particularly took issue with the law's ongoing reporting requirement, under which the Court believed any association, no matter how large or how small, was "compelled to decide whether exercising its constitutional right is worth the time and expense of entering a long-term morass of regulatory red tape." *Id.* at 873. The Court held that the ongoing reporting requirement likely violated the First Amendment because Minnesota could accomplish its disclosure-related

interests through less burdensome measures, such as requiring associations to report only when money is spent. *Id.* at 876-77.

Significantly, *Minnesota Citizens* carefully excluded PACs from its holding: "We reverse the district court's denial of the appellants' motion for a preliminary injunction to the extent it requires ongoing reporting requirements from associations ***not otherwise qualifying as PACs under Minnesota law***." *Id.* at 877. Elsewhere, the Court made its point doubly clear. PACs, or "[a]ssociations 'whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question' would still comply with the same essential requirements because they are political committees. ***Our holding does not affect Minnesota's regulation of political committees***." *Id.* at 877 n.11 (quoting Minn. Stat. § 10A.01, subdiv. 27) (internal citations omitted).[6]

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[6] The Eighth Circuit reiterated this understanding of *Minnesota Citizens* in Stop Now!'s federal case:

> *Minnesota Citizens* addressed Minnesota subjecting political funds to the same regulatory burdens as PACs. Stop Now!, however, is a PAC and not the same type of small association or partnership the court considered in *Minnesota Citizens*. Therefore, this court's holding in *Minnesota Citizens*, concerning

Minnesota Citizens does not suggest that PACs may not constitutionally be required to report their inactivity. Instead, like the United States Supreme Court's decision in *Citizens United*, *Minnesota Citizens* underscores that PACs are different, and may be regulated differently, than individuals and other organizations. *Minnesota Citizens* criticized Minnesota law for "imposing virtually identical regulatory burdens upon political funds as it does for [PACs]." But it found those burdens unconstitutional only as to the corporate political funds. *Cf. Citizens United*, 558 U.S. at 337 (finding PAC regulations overly burdensome for corporations, but not questioning their application to PACs).

PACs, even inactive ones, are different from other organizations and individuals. The minimal reporting obligations that Appellants failed to meet were substantially related to sufficiently important interests. Therefore, Appellants' as-applied challenge fails.

> specific provisions of Minnesota's campaign finance statutes, does not make Missouri's separate statutory scheme flagrantly and patently violative of express constitutional provisions in every clause, sentence and paragraph.

Geier v. Missouri Ethics Comm'n, 715 F.3d 674, 679 (8th Cir. 2013) (internal quotations omitted).

4. Appellants Claim for Declaratory and Injunctive Relief on Behalf of Other Similarly Situated PACs Fails Because Enforcement of the Reporting Statutes Against Inactive PACs Is Substantially Related to Sufficiently Important Interests

Appellants also seek declaratory and injunctive relief barring enforcement of the reporting statutes against "similarly situated inactive PACs and treasurers." App. Br. at 11. Because enforcement of the reporting statutes against inactive PACs is substantially related to sufficiently important interests, *see supra* Part B.3, Appellants claim fails.

C. The MEC's Closed Hearing Did Not Violate the Sixth Amendment or the First Amendment

In their second Point Relied On, Appellants contend that the MEC's closed hearing on its complaint against Appellants violated their constitutional rights. Appellants ground their argument in two different constitutional provisions: the Sixth Amendment and the First Amendment.[7]

Like Appellants' first Point Relied On, this issue does not lie within this Court's jurisdiction because it falls within the Missouri Supreme Court's

[7] Appellants have not challenged the closed hearing under the "open courts" provision of the Missouri Constitution, Article I, § 14.

exclusive appellate jurisdiction. MO. CONST. art. V, § 3. This case must be transferred. MO. CONST. art. V, § 11.

Appellants first argue that the closed hearing violated their Sixth Amendment right to a public trial. Appellants' argument fails because the Sixth Amendment right to a "public trial" is limited to "criminal prosecutions." "In conspicuous contrast with some of the early state constitutions that provided for a public right to open civil and criminal trials, the Sixth Amendment confers the right to a public trial only upon a defendant in a criminal case." *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 386-87 (1979).

By its own terms, the Sixth Amendment does not apply to the hearing held on December 4, 2012, because it was not a criminal prosecution. The purpose of the hearing was merely to determine whether there was probable cause to believe that Appellants violated the reporting statutes. L.F. 19, 21-24. Appellants contend that the Sixth Amendment public trial right should attach because the hearing was "quasi-criminal." Appellants misrepresent what happened at the closed hearing in this case, and what may happen at a closed hearing under the statute. The closed hearing did not expose Appellants to criminal liability, and it did not adjudicate their rights.

Section 105.961 sets out the procedure for the MEC to enforce the campaign finance disclosure laws. If the MEC determines that there are

reasonable grounds to believe that a violation of the campaign finance laws has occurred, then the agency may take one of two courses of action. If the MEC believes that there are reasonable grounds to believe a violation of criminal law has occurred and that criminal prosecution is appropriate, the MEC may refer the case to an outside prosecutor. Section 105.961.2, RSMo 2000; *see also* Section 130.081, RSMo 2000 (setting out criminal penalties). If, on the other hand, the MEC believes that there are reasonable grounds to believe that a non-criminal violation of the campaign finance laws has occurred, or that criminal prosecution is not appropriate, the MEC will conduct a closed hearing to determine whether there is probable cause to believe that a violation has occurred. Section 105.961.3.[8] After the hearing, if the MEC believes there is probable cause that a violation occurred, the agency may refer the subject of the investigation to an "appropriate disciplinary authority," which applies primarily to individuals who hold elective or appointive office. Section 105.961.3, .7; *see Impey v. Missouri Ethics Comm'n*, 442 S.W.3d 42, 44 & n.4 (Mo. banc 2014). Otherwise, the MEC will take one or more statutorily-enumerated actions, including

[8] The statute's "probable cause" standard is a higher burden of proof than its "reasonable grounds" standard. *See Jenkins & Kling, P.C. v. Missouri Ethics Comm'n*, 945 S.W.2d 56, 57 (Mo. App. 1997)

"issu[ing] a letter that no further action shall be taken." Section 105.961.4(5). The enumerated actions do not include criminal penalties. Section 105.961.4.

In this case, the MEC held a closed hearing under Section 105.961.3. L.F. 22. By the terms of the statute, the hearing did not expose Appellants to criminal liability. The closed hearing reflected the MEC's determination that there were ***not*** reasonable grounds to believe that a criminal violation had occurred, or that criminal prosecution was ***not*** appropriate. The hearing's purpose was limited to determining whether there was probable cause to believe that a ***non-criminal*** violation had occurred. Nor was the hearing a precursor to criminal prosecution. Under Section 105.961, the closed hearing could not lead to the imposition of criminal sanctions. And in this case, the MEC ultimately determined that "no further action will be taken" with respect to Appellants' statutory violations. L.F. 19, 21-24.

Furthermore, the closed hearing did not adjudicate Appellants' rights. The MEC may only determine whether there is probable cause to believe that a statutory violation occurred. Section 105.961.3. The subject of the investigation may then appeal the MEC's probable cause determination to the AHC. *Id.* Appeal to the AHC automatically stays any action by the MEC. Section 105.961.5. "[T]he language of § 105.961 indicates that the legislature intended for the MEC's decision to be a tentative, contingent decision subject to further agency review." *Impey*, 442 S.W.3d at 46. "[T]he provision in

§ 105.961 for appeal of the probable cause determination to the AHC indicates that the legislature intended for the AHC to render the agency's decision in the event that the subject of a complaint disagreed with the MEC's probable cause determination. . . . [T]he legislature intended for the AHC's decision to be the final decision of the agency in a disputed § 105.961 proceeding." *Id.* at 46-47.

That is what happened in this case. The MEC determined that there was probable cause to believe that Geier and Stop Now! violated the law. L.F. 21-24. It did not determine that they actually violated the law. *See Impey*, 442 S.W.3d at 48 ("[I]t is important to note what exactly the MEC determined. Following a hearing, the MEC determined that there was probable cause to believe that Impey violated one of the campaign finance disclosure laws. The MEC did not determine, however, that Impey actually violated the law."). The AHC made the final determination that Geier and Stop Now! violated the law. L.F. 549-59, 564. Appellants' Sixth Amendment challenge to the closed hearing fails because the hearing was not a "criminal prosecution," a "quasi-criminal" proceeding, or even a final adjudication of their rights.

Next, Appellants contend that the closed hearing violated the First Amendment. The First Amendment protects the right of the public and the press to access information about matters of public concern. *Branzburg v.*

Hayes, 408 U.S. 665 (1972). This right to access includes a qualified right for the public and the press to attend criminal trials and related proceedings. *Press–Enterprise Co. v. Superior Court of Cal., Riverside Cty.*, 464 U.S. 501 (1984); *Richmond Newspaper, Inc. v. Virginia*, 448 U.S. 555 (1980).

There was no First Amendment right to access the closed hearing. The First Amendment provides a qualified right for the public and the press to attend ***criminal*** proceedings. *Press-Enterprise Co.*, 464 U.S. 501. Some courts have extended the qualified right of access to civil trialsl. *See In re Continental Ill. Secs. Litig.*, 732 F.2d 1302, 1308 (7th Cir.1984); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir.1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179 (6th Cir.1983); *see also In re Iowa Freedom of Info. Council*, 724 F.2d 658, 661 (8th Cir.1983) (extending qualified right of access to contempt proceedings, "which are partly civil, partly criminal in nature"). There is even limited authority that the First Amendment provides a qualified right for the public and press to attend adjudicatory administrative proceedings. *See New York Civil Liberties Union v. New York City Transit Auth.*, 684 F.3d 286, 294-96 (2d Cir. 2011).

The MEC's closed hearing was none of these things. The closed hearing was not a criminal proceeding. Nor was it a civil trial, or even an adjudicatory administrative proceeding, because the MEC did not render a final decision. The purpose of the closed hearing was ***investigative***—to

determine whether there was probable cause that a violation had occurred—rather than adjudicative. *See Impey*, 442 S.W.3d at 45 ("[P]ursuant to § 105.961, the MEC serves to determine whether a particular complaint is worth pursuing."); *Artman v. State Bd. of Registration for Healing Arts*, 918 S.W.2d 247, 251 (Mo. banc 1996) ("Because the Board did not adjudicate or make binding determinations about Artman at the probable cause hearing, the hearing was investigative in nature."). Appellants offer no authority for the proposition that the First Amendment guarantees the public and press access to investigative proceedings. *Cf. Press-Enterprise Co. v. Superior Court of Cal., Riverside Cnty.*, 478 U.S. 1, 10 (1986) (contrasting criminal trials, which traditionally been open to the public, from grand jury proceedings, which have traditionally been closed to the public and the accused").

Neither the First Amendment nor the Sixth Amendment mandates that the MEC conduct open hearings to determine whether there is probable cause to believe a non-criminal violation of the campaign finance disclosure laws has occurred. Appellants second Point Relied On fails.

D. Appellants' Section 1983 and Section 1988 Claims Fail to State a Claim

Appellants' third Point Relied On merely contends that Appellants properly brought Section 1983 and Section 1988 claims raising the constitutional claims addressed under Point One and Point Two. Respondent does not dispute that Appellants' Section 1983 and Section 1988 claims are before this Court. *See Blackwell v. City of St. Louis*, 778 S.W.2d 711, 714 (Mo. App. 1989) (suggesting that administrative and section 1983 remedies may be pursued simultaneously).

For the reasons discussed *supra* Parts B and C, however, Appellants have not established a violation of their constitutional rights. Accordingly, Appellants' section 1983 claim for declaratory and injunctive relief fails to state a claim, as does their section 1988 claim for attorneys' fees and costs.

E. The MEC Had Express Statutory Authority to Find Probable Cause to Believe that Geier Violated the Reporting Statutes

In their fourth Point Relied On, Appellants argue that the AHC erred in finding that Geier violated the reporting statutes.[9] Geier argues that

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[9] While Appellants' fourth Point Relied On asks this Court to review the circuit court's decision, this Court should review the AHC's construction of the statute. *See Morton v. Brenner*, 842 S.W.2d 538, 540 (Mo. banc 1992).

section 105.963 only permits fines to be assessed against a PAC, not its treasurer. *See* Section 105.963.1.

Geier's argument is misplaced. It is undisputed that the MEC did not fine Geier or Stop Now!. The MEC ordered that "a letter be issued that no further action shall be taken." L.F. 24. Geier's contention that Section 105.963 only allows fines to be assessed against PACs, even if true, has no bearing in this case.[10]

Instead, the MEC found probable cause to believe that Appellants committed statutory violations, and it issued a letter stating that no further

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[10] For this same reason, Geier does not have standing to challenge section 105.963. "Standing requires that a party have 'some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome.'" *Glossip v. Missouri Dep't of Transp. & Highway Patrol Employees' Ret. Sys.*, 411 S.W.3d 796, 803 (Mo. banc 2013) (quoting *Schweich v. Nixon*, 408 S.W.3d 769, 775 (Mo. banc 2013)). A party does not have standing to challenge a statute if he is not a member of the class of persons allegedly disadvantaged by it. *Id.* at 803-04. Here, because the MEC never assessed fines for Stop Now!'s violation of the reporting statutes, Geier was not disadvantaged by the alleged ambiguity in the statute, and so lacks standing to challenge it.

action shall be taken. L.F. 21-24. The MEC had express statutory authority for this action. *See generally Impey*, 442 S.W.3d at 44-48. The MEC has the authority to "review reports and statements filed with the commission . . . pursuant to . . . chapter 130 for completeness, accuracy and timeliness of filing," and, if there are reasonable grounds to believe a violation has occurred, to conduct an audit or investigation. Section 105.959.1, RSMo Supp. 2007. It also has the authority to determine whether there is probable cause to believe that a non-criminal violation of the campaign finance disclosure laws has occurred, and to take certain statutory actions on account of the violation. Section 105.961.3-.4.

More specifically, the MEC has the authority to investigate individual persons, not just PACs. The legislature clearly contemplated that the MEC would investigate individual persons for failing to file complete, accurate, and timely reports, as demonstrated by the requirement that the MEC "notify . . . the ***person*** under investigation . . . within five days of the decision to conduct such investigation." Section 105.959.1. Likewise, after determining that there is probable cause to believe a violation has occurred, the MEC is directed to refer "the ***person*** who is the subject of the report" to a disciplinary authority, Section 105.961.3, or to take one of the statutorily-enumerated actions, which include "notify[ing] the ***person*** to cease and desist violation of any provision of law," "notify[ing] the ***person*** of the requirement to file,

amend or correct any report," and "[i]ssue[ing] a letter of concern or a letter of reprimand to the ***person***." Section 105.961.4(1)-(2), (4).

The MEC had statutory authority for each action taken affecting Geier. It is undisputed that Stop Now! violated the law by failing to timely file quarterly disclosure reports in 2011, failing to maintain an official depository account after 2006, and failing to notify the MEC of changes to its depository account. L.F. 586-87, 625-26. It follows that the MEC had the authority investigate Stop Now! for these violations.

As the PAC's treasurer, Geier was responsible for each of these failures. Under Missouri's campaign finance laws, "the committee treasurer is ultimately responsible for all reporting requirements pursuant to this chapter." Section 130.058. Each of the statutes violated by Stop Now! also required Geier to make a report that failed to make. *See* Section 130.021.5, .7, .9 (requiring PACs to file an amended statement of organization "attested by the treasurer" within 20 days after a change to the PAC's official depositor account); Section 130.021.8, .9 (requiring PACs to file a termination statement "attested by the treasurer" within 10 days of dissolution); Section 130.041.1 (requiring the "treasurer . . . of every committee . . . [to] file a legibly printed or typed disclosure report of receipts and expenses"). Geier was the treasurer of Stop Now! in 2011, when quarterly disclosure reports were not timely filed. L.F. 586, 625. He was also the treasurer of Stop Now

from 2006 to 2011, when the PAC failed to maintain an official depository account and failed to notify the MEC of changes to the account. L.F. 586, 625. Geier was ultimately responsible for filing (or failing to file) each of the reports required by the reporting statutes. Thus, the MEC had the authority to investigate Geier for these failures and to find that there was probable cause to believe that his omissions violated the reporting statutes.

Appellants also contend that, even if Geier may be held responsible for failing to file reports, he may only be held responsible in his capacity as Stop Now!'s treasurer, not in his "personal" capacity. Geier offers no support for the proposition that there is any legal difference between an individual's actions as an officer of a PAC and his "personal" actions. Even if there was, Appellants do not show why the difference would matter in this case, as Geier was not fined or ordered to pay a monetary judgment. *See Hill v. City of St. Louis*, 371 S.W.3d 66, 71 n.4 (Mo. App. 2012) (noting that a judgment against an official in his individual or personal capacity may be executed only against the official's personal assets, while a judgment against an official in his official capacity may be executed only against the entity on behalf of which the official acted).

Moreover, the only action taken by the MEC conforms with the relief Appellants seek. The MEC ordered that a letter be issued that no further action shall be taken. L.F. 24. The letter states that Geier violated

provisions of the campaign finance laws "***in [his] capacity as Treasurer of Stop Now! Continuing Committee***." Because the MEC has already declared that these violations were committed by Geier in his capacity as treasurer of Stop Now!, Appellants would not receive any further relief from a court order that these violations were committed in his capacity as the PAC's treasurer.

Missouri law authorizes the MEC to hold the treasurer of a PAC responsible for complying with the reporting requirements of the campaign finance disclosure laws. Accordingly, this Court should deny Geier's fourth Point Relied On and affirm the decision of the AHC.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court and the decision of the AHC should be affirmed.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Nicholas Beydler
Nicholas Beydler #65784
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
Phone (573)751-9167
Fax No. (573)751-9456
nick.beydler@ago.mo.gov
ATTORNEYS FOR
RESPONDENTS DAWDY,
LEONATTI, MUNICH, ROSE,
STOLTZ, WEEDMAN AND MO.
ETHICS COMMISSION

CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that I filed electronically and served via Missouri CaseNet the Brief of Respondent this 2nd day of April, 2015, upon

W. Bevis Schock
Hugh A. Eastwood
Schock Law
7777 Bonhomme Ave.
Suite 1300
St. Louis, MO 63105

I further certify that this brief contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 10,580 words exclusive of cover, signature block, and certificates.

/s/ Nick Beydler
Assistant Attorney General