

2025 SENATE JUDICIARY

SB 2052

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2052
1/8/2025

Restrictions on public officials and lobbyists
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10:30 a.m. Chair Larson opened the meeting

Members present:

Chair Larson, Senators: Paulson, Castaneda, Cory, Luick, Myrdal, Braunberger

Discussion Topics:

- Caption change
- Elected public officials
- Freedom of speech lobbying ban

10:30 a.m. Rebecca Binstock, Executive Director of ND Ethics Commission, testified in favor and submitted testimony #28158.

10:37 a.m. Geoff Simon, Lobbyist #144 for Western Dakota Energy Association testified in opposition and submitted testimony #28095 and # 28096

10:41 a.m. Chair Larson closed the hearing.

10:41 a.m. Senator Myrdal moved a do pass

10:41 a.m. Senator Braunberger seconded the motion

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Carried 7-0-0

10:42 a.m. Senator Braunberger carried the bill

10:43 a.m. Chair Larson Closed the hearing

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2052 ([25.8024.01000](#))

Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING), and be placed on the Eleventh order on the calendar. This bill does not affect workforce development.

United States Court of Appeals
For the Eighth Circuit

No. 23-1902

Rockne Miller, also known as Rocky; John LaVanchy; Presidio Environmental,
LLC

Plaintiffs - Appellants

v.

Elizabeth L. Ziegler, in her official capacity as Executive Director of the Missouri
Ethics Commission; Helene J. Frischer, in her official capacity as Executive
Director of the Missouri Ethics Commission; Robert Cook, in his official capacity
as Executive Director of the Missouri Ethics Commission

Defendants - Appellees

Appeal from United States District Court
for the Western District of Missouri - Jefferson City

Submitted: January 9, 2024
Filed: July 29, 2024

Before LOKEN, ARNOLD, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

Under a recent amendment to the Missouri Constitution, former legislators and staff face a two-year ban on lobbying. As applied to three plaintiffs, the restriction violates the First Amendment.

I.

The first two are Rockne Miller, a former Missouri legislator, and Presidio Environmental, LLC, the company that tried to hire him as a lobbyist. The other one is John LaVanchy, a committee-records specialist. Although he currently works for the General Assembly, he wants to become a lobbyist to “earn better income.” He recently applied for outside positions “that may require him to register as a lobbyist,” but he “has not been hired” yet.

Standing in their way was Article III, Section 2(a) of the Missouri Constitution, which says that

no person serving as a member of or employed by the general assembly shall act or serve as a paid lobbyist, register as a paid lobbyist, or solicit prospective employers or clients to represent as a paid lobbyist during the time of such service until the expiration of two calendar years after the conclusion of the session of the general assembly in which the member or employee last served

Missouri voters enacted it in 2018 through a ballot initiative. *See* Mo. Const. art. III, §§ 49–50 (allowing voters to directly amend the Missouri Constitution).

Not long after, the law went from the voters’ hands to the courtroom. Miller, LaVanchy, and Presidio sued individual members of the Missouri Ethics Commission, the agency responsible for enforcing the ban. *See* 42 U.S.C. § 1983; *see also* Mo. Rev. Stat. § 105.955; *Calzone v. Summers*, 942 F.3d 415, 419 (8th Cir. 2019) (en banc). They seek a declaratory judgment that the law unconstitutionally limits their speech, compensatory and nominal damages, and a permanent injunction preventing enforcement “against them or any other similarly situated persons or entities.”

Once discovery was complete, the parties filed cross-motions for summary judgment. The district court granted Missouri’s motion, which had the effect of upholding the lobbying ban, and denied partial summary judgment the other way. The ban was consistent with the First Amendment, according to the court, because it was “narrowly tailored to further [a] compelling state interest[.]”

II.

In as-applied challenges, “the particular facts” matter. *Calzone*, 942 F.3d at 420 (citation omitted); see *United States v. Salerno*, 481 U.S. 739, 745 n.3 (1987). Two of the plaintiffs, one a former legislator and the other a current staffer, would have become lobbyists had the ban not been in place. The third would have hired one of them. Applying de novo review, we must determine whether, as applied to their individual circumstances, the ban violates the First Amendment. See *Calzone*, 942 F.3d at 419.

A.

Our first task is to figure out which First Amendment test applies. See *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 874–75 (8th Cir. 2012) (en banc). Most employ some form of means-end scrutiny, which focuses on the sufficiency of the government interest and how close the law gets to satisfying it. See *id.* There are two possibilities here.

The less restrictive one is “exacting scrutiny, which requires a substantial relation between the [law] and a sufficiently important governmental interest.” *Citizens United v. FEC*, 558 U.S. 310, 366–67 (2010) (citation omitted). This form of means-end scrutiny applies to “disclaimer and disclosure requirements,” which burden speech but do not “prevent” or place a “ceiling” on it. *Id.* (citation omitted); see, e.g., *Calzone*, 942 F.3d at 423 (applying exacting scrutiny to a law that required an unpaid lobbyist “to reveal his identity and divulge his activities”). It is a tough standard to meet.

Even tougher is “strict scrutiny,” which requires “a compelling interest and . . . narrow[] tailor[ing] to achieve that interest.” *Citizens United*, 558 U.S. at 340 (citation omitted). “Laws that burden political speech are subject to strict scrutiny” *Id.* (citation omitted). The dividing line between the two standards is not always clear, *see Minn. Citizens Concerned for Life*, 692 F.3d at 874–75, but it generally depends on the extent of the burden. The more “onerous” it is, the stricter the scrutiny. *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734–35 (2011).

Missouri’s lobbying ban burdens political speech in two ways. First, it cuts off the speech of would-be lobbyists like Miller and LaVanchy for two years. The role of a lobbyist is “to influence” government policy through information and persuasion, *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995), which qualifies as “core political speech,” *Calzone*, 942 F.3d at 425 (quoting *McIntyre*, 514 U.S. at 347). And so does “petition[ing] the Government for a redress of grievances,” even on behalf of others. U.S. Const. amend. I; *see Calzone*, 942 F.3d at 427 (Grasz, J., concurring) (recognizing it “is unquestionably core political speech”). As applied to them, it “prevent[ed]” speech. *Citizens United*, 558 U.S. at 366 (emphasis added) (citation omitted).

Second, the lobbying ban burdened Presidio, which wanted to hire Miller to advocate for a “minor change” in a state permitting law. It believed that an “experienced environmental engineer” and former legislator like him had the best chance to persuade lawmakers. The lobbying ban, however, limited the company’s options and kept it from “advocat[ing] [its] cause” in the way “[it] believe[d] to be the *most* effective.” *Meyer v. Grant*, 486 U.S. 414, 424 (1988) (emphasis added); *Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 784 (1978) (explaining that corporate political speech is just as protected under the First Amendment as individual speech).

It was also more onerous than a mere “disclaimer [or] disclosure requirement[.]” *Missourians for Fiscal Accountability v. Klahr*, 892 F.3d 944, 949 (8th Cir. 2018) (explaining that “the effect of the provision” is what determines

whether we treat it as “a disclosure requirement, or something more” (quoting *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 426 (5th Cir. 2014))). Regardless of how many regulatory hoops LaVanchy and Miller were willing to jump through, they both had to remain on the sidelines for two years. Bans like this one are subject to strict scrutiny.¹

B.

The next step is to apply strict scrutiny to what the lobbying ban prevented these plaintiffs from doing. See *Phelps-Roper v. Ricketts*, 867 F.3d 883, 896 (8th Cir. 2017) (“The caveat that First Amendment issues require a case-by-case analysis of the fact[s] is especially true with regard to as-applied challenges.” (alteration in original) (citation omitted)). We must determine whether, given their “individual circumstances,” *United States v. Veasley*, 98 F.4th 906, 909 (8th Cir. 2024), the ban “furthers a compelling interest and is narrowly tailored to achieve that interest.” *Citizens United*, 558 U.S. at 340 (citation omitted).

1.

Missouri advances a familiar interest: “regulating . . . *quid pro quo* corruption [or] the appearance thereof.” This Latin phrase refers to a specific type of corruption, the exchange of “dollars for political favors.” *FEC v. Nat’l Conservative Pol. Action Comm.*, 470 U.S. 480, 497 (1985) (calling it the “hallmark of corruption”). In the abstract, combatting it is a “permissible objective.” *McCutcheon v. FEC*, 572 U.S. 185, 192–93 (2014) (plurality opinion); see *Calzone*, 942 F.3d at 424 (collecting cases in which the Supreme Court “credited anti-corruption rationales . . . despite the limitations . . . place[d] on speech”).

¹Missouri insists exacting scrutiny applies because its lobbying ban is “content neutral.” Neutral or not, “[l]aws that burden political speech are subject to strict scrutiny.” *Citizens United*, 558 U.S. at 340 (citation omitted).

Limiting “access and influence,” on the other hand, is not. Just because former legislators and legislative employees have better “relationships [with] and access [to]” current legislators and legislative employees than others does not mean corruption is taking place. *See Citizens United*, 558 U.S. at 360; *see McCutcheon*, 572 U.S. at 191, 208 (“Congress may not . . . restrict the political participation of some in order to enhance the relative influence of others.”).

Missouri’s position is that, even if it is not out in the open, corruption must be present behind the scenes. But as it candidly admitted during discovery, it “does not possess any evidence (testimonial or documentary) of [its] compelling/substantial interest.” *See FEC v. Cruz*, 596 U.S. 289, 307 (2022) (explaining that a government asserting an anti-corruption interest “must do more than simply posit the existence of the disease sought to be cured” (citation omitted)); *McCutcheon*, 572 U.S. at 210 (“[W]e have never accepted mere conjecture as adequate to carry a First Amendment burden.” (citation omitted)). “[R]ecord evidence [and] legislative findings,” in other words, are in short supply. *Cruz*, 596 U.S. at 307 (citation omitted).

There are no findings because the lobbying ban became law through a voter-sponsored ballot initiative. In their place, Missouri relies on an expert report. But instead of pointing out real-world examples of corruption involving recently departed legislators or legislative employees, the expert “hypothesize[s]” that relationships between former colleagues *will* lead to corruption. *Cruz*, 596 U.S. at 307. She openly admits, however, that she views corruption differently than “[t]he Supreme Court led by Chief Justice John Roberts,” which she believes has made “the problems of *quid pro quo* corruption and its appearance . . . bigger than ever.”

Look no further than the off-base examples she uses. One involves former U.S. Representative Billy Tauzin, who (according to Missouri) “suddenly resigned from [Congress] to work for [a] trade association for drug manufacturers” after leading “the re-write of a new law on drug pricing.” Turns out, however, that he simply left Congress at the end of his term. *See William M. Welch, Tauzin Switches Sides from Drug Industry Overseer to Lobbyist*, USA Today (Dec. 16, 2004). And

although Senator Trent Lott resigned early to become a lobbyist, neither Missouri nor its expert claim he was involved in the exchange of “dollars for political favors.” *Nat’l Conservative Pol. Action Comm.*, 470 U.S. at 497. Nor is there evidence that anyone thought so.

Most of the state-level examples also just reflect “access and influence,” not corruption. The first focuses on a former state representative and lieutenant governor from Michigan who became a lobbyist *eight* years after he left the legislature. The other discusses two former New Mexico drug-enforcement officials who joined a pro-marijuana advocacy group. In neither case is there an allegation that anyone exchanged money for favors.

Missouri looks closer to home for its final example, which at least involves the type of corruption it can regulate. Thirty years ago, Bob Griffin, the Speaker of the Missouri House of Representatives, pleaded guilty to accepting bribes from a lobbyist in exchange for a positive recommendation to “members of the construction industry.” *United States v. Griffin*, 154 F.3d 762, 763 (8th Cir. 1998). The problem with this example is that, even though it involves quid pro quo corruption, the lobbying ban would have done nothing to prevent it. After all, Griffin was a sitting legislator who had no interest in becoming a lobbyist. And the lobbyist who gave him the bribe had never worked in the General Assembly herself.

In short, Missouri “is unable to identify a single case of *quid pro quo* corruption *in this context*.” *Cruz*, 596 U.S. at 307 (emphasis added). Its “cited sources do not provide any real-world examples” of former legislators or legislative staff whose transition to lobbying led to corruption. *McCutcheon*, 572 U.S. at 217. Even if it has shown that lobbying is a common career choice for former government officials, more is required. *See Russell v. Burris*, 146 F.3d 563, 569–70 (8th Cir. 1998) (explaining that we must determine whether “there could be a reasonable

perception of corruption”). Missouri, after all, cannot have a compelling interest in solving a problem that it cannot prove exists.²

2.

Even if Missouri had a compelling anti-corruption interest, its chosen means, a two-year lobbying ban, would still have to be “narrowly tailored to achieve that interest.” *Citizens United*, 558 U.S. at 340 (citation omitted). A narrowly tailored regulation must be the least-restrictive alternative, not too under- or over-inclusive. *See Republican Party of Minn. v. White*, 416 F.3d 738, 751 (8th Cir. 2005) (en banc). Missouri’s ban regulates both too little and too much.

First, it does too little by prohibiting full-time lobbying for two years “but leav[ing] unfettered other modes of expression that implicate the same interest.” *Johnson v. Minneapolis Park & Recreation Bd.*, 729 F.3d 1094, 1100 (8th Cir. 2013). Under Missouri’s definition of “legislative lobbyist,” for example, there is no restriction on “occasional” lobbying, even though it presumably poses a similar corruption risk. Mo. Rev. Stat. § 105.470(5)(a). Nor does Missouri explain why it leaves former executive-branch employees like New Mexico’s drug-enforcement officials free to lobby whomever they want. *See Parada v. Anoka County*, 54 F.4th 1016, 1021 (8th Cir. 2022) (holding that a local government’s policy was “not ‘specifically and narrowly framed to accomplish’ its interest” because it “miss[ed]” prominent instances of the same problem (quoting *Shaw v. Hunt*, 517 U.S. 899, 908 (1996))). If there is something special about the risk posed by former legislators and legislative-branch employees who go into full-time lobbying, Missouri has not

²Nor does our en banc decision in *Calzone v. Summers* save the lobbying ban. To be sure, we recognized there that states may have a “transparency interest” in knowing “who is putting up the money” for lobbyists. 942 F.3d at 425 (quoting *United States v. Harriss*, 347 U.S. 612, 625 (1954)); see *McIntyre*, 514 U.S. at 354–55. But transparency is about *disclosure*, as *Calzone* itself recognizes. 942 F.3d at 424–25. It does not allow a state to *ban* all former legislators and staff from engaging in political speech. Lobbying, after all, does not become corrupt just because someone else is paying for it.

identified it. *See McCullen v. Coakley*, 573 U.S. 464, 495 (2014) (placing the burden on the government).

Second, it “sweep[s] too broadly.” *Republican Party of Minn.*, 416 F.3d at 751. Similar laws enacted in other states suggest that Missouri might have been able to get by with a shorter period. Its own expert highlighted some of the possibilities, from six months (like North Carolina) to one year (like New Mexico), even though both states have two-year election cycles like Missouri. *See* Mo. Const. art. III, § 11 (requiring the election of state senators every four years and representatives every two years); *see also* N.M. Const. art. 4, § 4; N.M. Stat. Ann. § 10-16-8(D); N.C. Gen. Stat. §§ 120C-304(a)–(c), 163-1. Nor is it clear why it lumps legislators and staffers together, when their level of access and influence might be different. *See Nat’l Conservative Pol. Act. Comm.*, 470 U.S. at 500–01 (explaining that the government could not assume that “small” political-action committees posed a similar risk of corruption as “large-scale” ones).

The lobbying ban is also overly restrictive in one other way. If “access and influence” lead to corruption, as Missouri claims, then it is a mystery why legislators and their staff must steer clear of lobbying executive-branch and local-government officials. *See* Mo. Const. art. III, § 2(a); Mo. Rev. Stat. § 105.470(1)–(2), (6). Nothing in the record suggests that a committee-records specialist like LaVanchy would have any special access or influence beyond the General Assembly itself. *See Ashcroft v. ACLU*, 542 U.S. 656, 669 (2004) (“The [g]overnment’s burden . . . is to show that [a less-restrictive alternative would be] less effective.”); *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (explaining that a narrowly tailored statute “targets and eliminates no more than the *exact* source of the ‘evil’ it seeks to remedy” (emphasis added)). The point is that, even if Missouri’s theory of corruption were correct,³ a

³To the extent Missouri is concerned about legislative employees performing official acts in exchange for employment after they leave, several laws already prohibit it. *See* Mo. Rev. Stat. § 576.010 (criminalizing the bribery of government employees); *id.* § 576.020 (forbidding them from accepting benefits in exchange for official acts). Missouri makes no attempt to explain why these “less restrictive

ban limited to legislative lobbying would have been a less-restrictive alternative to the broad measure it enacted.

* * *

Missouri’s two-year lobbying ban is unconstitutional as applied to these three plaintiffs. Missouri had to show that it has a compelling anti-corruption interest, *see McCutcheon*, 572 U.S. at 208–09, and that its lobbying ban is “narrowly tailored to achieve that interest.” *Citizens United*, 558 U.S. at 340 (citation omitted). It did neither. All it offered was an expert report⁴ with “pretty meager” support on both points. *Cruz*, 596 U.S. at 310. Strict scrutiny requires more.

III.

One loose end remains. The plaintiffs purportedly raise facial and overbreadth challenges, but they do not suggest that most or all applications of Missouri’s lobbying ban violate the First Amendment. *See Veasley*, 98 F.4th at 909 (explaining that a plaintiff must show that there is “no set of circumstances . . . under which [the challenged law] would be valid” (quoting *Salerno*, 481 U.S. at 745)); *Missourians for Fiscal Accountability*, 892 F.3d at 948 (articulating the test for an overbreadth challenge). Indeed, plaintiffs’ counsel conceded at oral argument that they *only* “challenge . . . the post-employment component” of it, which leaves its application to current “member[s] . . . or employe[es] [of] the general assembly” unaffected. Mo. Const. art. III, § 2(a). Besides, there is no reason to address their broader challenges after they have already prevailed on their narrower ones. *See Bd. of Trs.*

alternative[s]” are insufficient on their own to rein in potential corruption. *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 816 (2000).

⁴The plaintiffs argue that Missouri’s expert report was inadmissible. *See* Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591–93 (1993). Even if it was—a question we need not decide—it makes no difference to the outcome.

of the State Univ. of N.Y. v. Fox, 492 U.S. 469, 484–85 (1989) (“It is not the usual judicial practice . . . to proceed to an overbreadth issue unnecessarily . . .”).

IV.

We accordingly reverse the judgment of the district court and remand for further proceedings.



WESTERN DAKOTA ENERGY ASSOCIATION

January 6, 2025

EXECUTIVE COMMITTEE

Supt. Leslie Bieber
President
Alexander PSD

Lyn James
Vice President
City of Bowman

Vawnita Best
City of Watford City

Steve Holen
McKenzie Co. PSD

Supt. Tim Holte
Stanley PSD

Shannon Holter
Burke County

Nick Klemisch
Garrison PSD
Coal Conversion
Counties

Howard Klug
City of Williston

Craig Pelton
Dunn County

John Phillips
Coal Conversion
Counties

Trudy Ruland
Mountrail County

Testimony of:

Geoff Simon, Lobbyist #144

in opposition to SB 2052 – Restrictions on public officials and lobbyists
Senate Judiciary Committee

Chair Larson and Committee members:

I am executive director and a registered lobbyist for the Western Dakota Energy Association, but submit testimony regarding this legislation as the chairman of North Dakotans for Good Government, a group that was formed in 2018 in opposition to passage of Measure 1, the ballot measure which established the Ethics Commission.

We cautioned during the campaign that the measure was poorly written, and fraught with provisions that were subject to constitutional challenge. Our words proved to be prophetic with the section of the ethics measure which banned public officials from employment as a lobbyist for two years after leaving office or their position in state government. The 8th Circuit Court of Appeals, in a ruling issued in a Missouri case in July 2024, determined that the state's lobbying ban, virtually identical to that found in North Dakota's ethics measure, is an unconstitutional restriction of Freedom of Speech, improperly limiting the employment opportunities of former legislators.

The Missouri case involved a former legislator, Rockne Miller, who received an offer of employment from Presidio Environment, to lobby for the company's interests, but had to wait for the two-year prohibition to expire before registering as a lobbyist. Miller and Presidio sought to overturn the ban in Missouri's state constitution in a lawsuit filed against the Missouri Ethics Commission. A judge initially upheld the lobbying ban as a means of inhibiting "corruption," but the federal appeals court overturned the lower court ruling. Excerpts of the court's decision are paraphrased in the following:

Missouri's lobbying ban burdens political speech in two ways. First, it cuts off the speech of would-be lobbyists like Miller for two years. The role of a lobbyist is "to influence" government policy through information and persuasion, which qualifies as "core political speech." Second, the lobbying ban burdened Presidio, which wanted to hire Miller to advocate for a minor change in a state permitting law. It believed that an "experienced environmental engineer" and former legislator like him had the best chance to persuade lawmakers. The lobbying ban, however, limited the company's options and kept it from "advocating its cause" in the way it believed to be the most effective. Corporate political speech is just as protected under the First Amendment as individual speech.

With due respect, the statute should not be amended as contemplated in SB 2052. It should be repealed, and the provision in the state constitution should not be enforced.

I appreciate the opportunity to offer testimony. Thank you for your consideration.

Western Dakota Energy Association
1661 Capitol Way, Bismarck ND 58501
www.ndenergy.org • 701-527-1832



North Dakota Ethics Commission
Senate Bill 2052
Testimony presented by
Rebecca Binstock, Executive Director
Before the Senate Judiciary Committee
January 8, 2025

Good morning, Madam Chair and Committee members, my name is Rebecca Binstock. I serve as the Executive Director of the North Dakota Ethics Commission.

North Dakota citizens created the Ethics Commission in 2018 by passing an initiated measure which created Article XIV of the North Dakota Constitution. The Ethics Commission, an independent constitutional entity, consists of five commissioners:

- Chair Dave Anderson (Bismarck)
- Vice-Chair Ward Koeser (Williston)
- Dr. Cynthia Lindquist (Grand Forks)
- Ron Goodman (Oakes)
- Murray Sagsveen (Bismarck)

SB 2052

Senate Bill 2052 consists of the Ethics Commission's proposed amendment to change the caption of Section 54-66-13 of the North Dakota Century Code. It is a simple one-word addition of the word "elected." This amendment clarifies only elected public officials—and not appointed public officials—are subject to the prohibition on lobbying in the North Dakota Constitution, found in subsection 2 of section 2 of article XIV. This constitutional lobbying prohibition states, "An **elected** public official may not be a lobbyist while holding office or for two years after holding office." Section 54-66-13 makes a knowing violation of this constitutional provision a class A misdemeanor and directs the Ethics Commission to assess a civil penalty up to \$1000.



The Ethics Commission often receives questions on whether the constitutional prohibition applies to appointed public officials. It does not. However, without the word "elected" in the caption of the statute, it has led to some confusion.

Because a caption is not part of the law under N.D.C.C. § 1-02-12, Ethics Commission staff worked with Legislative Council to determine whether a bill is necessary to add "elected" to the caption. Legislative Council recommended the Ethics Commission bring a bill so there is a record of the change. The Ethics Commission is confident this change will minimize confusion in the future.

Madam Chair, that concludes my testimony, and I will gladly stand for any questions you may have.

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2052

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2052
3/6/2025

Relating to restrictions on public officials and lobbyists.

10:41 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Definitions of public officials
- Constitutional concerns

10:43 a.m. Logan Carpenter, General Counsel of the Ethics Commission, testified in favor and submitted testimony, #39026.

10:56 a.m. Geoff Simon, Executive Director of Dakota Western Energy, testified in opposition.

11:00 a.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk



North Dakota Ethics Commission
Senate Bill 2052
Testimony presented by
Logan Carpenter, General Counsel
Before the House Government and Veterans Affairs Committee
March 6, 2025

Good morning, Mr. Chair and Committee members, my name is Logan Carpenter. I serve as General Counsel for the North Dakota Ethics Commission.

North Dakota citizens created the Ethics Commission in 2018 by passing an initiated measure which created Article XIV of the North Dakota Constitution. The Ethics Commission, an independent constitutional entity, consists of five commissioners:

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- Vice-Chair Ward Koeser (Williston)
- Dr. Cynthia Lindquist (Grand Forks)
- Ron Goodman (Oakes)
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The Ethics Commission often receives questions on whether the constitutional prohibition applies to appointed public officials. It does not. However, without the word "elected" in the caption of the statute, it has led to some confusion.

Because a caption is not part of the law under N.D.C.C. § 1-02-12, Ethics Commission staff worked with Legislative Council to determine whether a bill is necessary to add "elected" to the caption. Legislative Council recommended the Ethics Commission bring a bill so there is a record of the change. The Ethics Commission is confident this change will minimize confusion in the future.

Mr. Chair, that concludes my testimony, and I will gladly stand for any questions you may have.

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2052
3/13/2025

Relating to restrictions on public officials and lobbyists.

11:24 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, C. Brown, T. Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Committee action

11:24 a.m. Representative Vetter proposed amendments changing line 6 to include being a lobbyist.

11:28 a.m. Representative Vetter moved to adopt the amendments.

11:28 a.m. Representative Wolff seconded the motion.

11:28 a.m. Voice vote passed.

11:29 a.m. Representative Vetter moved a Do Pass as amended.

11:29 a.m. Representative T. Brown seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	N
Representative Landon Bahl	N
Representative Collette Brown	N
Representative Timothy Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	N
Representative Carrie McLeod	N
Representative Karen M. Rohr	N
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

11:33 a.m. Motion passed 8-6-0.

House Government and Veterans Affairs Committee
SB 2052
3/13/2025
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Representative Vetter will carry the bill.

11:34 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2052

Introduced by

Judiciary Committee

(At the request of the Ethics Commission)

- 1 A BILL for an Act to amend and reenact section 54-66-13 of the North Dakota Century Code,
2 relating to restrictions on public officials and lobbyists.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

- 4 **SECTION 1. AMENDMENT.** Section 54-66-13 of the North Dakota Century Code is
5 amended and reenacted as follows:

- 6 **54-66-13. Restriction on ~~lobbying by~~ being a lobbyist as an elected public**
7 **~~officials~~ official - Penalty.**

- 8 A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North
9 Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to
10 one thousand dollars on any individual who knowingly violates the subsection.

**REPORT OF STANDING COMMITTEE
SB 2052**

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS** ([25.8024.01002](#)) and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2052 was placed on the Sixth order on the calendar.

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2052
3/20/2025

Relating to restrictions on public officials and lobbyists.

11:02 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, C. Brown, T. Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Public official definition

11:03 a.m. Representative Vetter provided information on the bill.

11:08 a.m. Logan Carpenter, General Counsel for the North Dakota Ethics Commission, testified and submitted written testimony #45240.

11:16 a.m. Emily Thompson, Legal Division Director of Legislative Council, testified and answered questions.

11:22 a.m. Rebecca Binstock, Executive Director of the North Dakota Ethics Commission, testified and answered questions.

11:24 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk



Breakdown of SB 2052

- Article XIV, § 4(2) of the North Dakota Constitution defines "public officials."

Section 4.

1. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article. This article shall take effect sixty days after approval.
2. For the purposes of this article, "public office" or "public official" means any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency.

- Article XIV, § 2(2) of the North Dakota Constitution limits lobbying by **elected** public officials.

Section 2.

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. "Gift," as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, "gift" does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
2. An elected public official may not be a lobbyist while holding office or for two years after holding office. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.

- 2019 Legislative Assembly sets a penalty for violations, as required by Article XIV, § 2(2).

54-66-13. Restriction on lobbying by public officials - Penalty.

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

- Caption is notably missing the word "elected."
 - Other public officials call the Ethics Commission because they are confused.
 - "Did the Legislative Assembly expand the lobbying prohibition in the constitution to all public officials?"
 - No, but the missing word in the caption creates this confusion.
- Captions ≠ Law

1-02-12. Caption, cross-reference note, and source note.

No caption, source note, or cross-reference note, whether designating an entire title, chapter, section, subsection, or subdivision, constitutes any part of a statute. A caption may not be used to determine legislative intent or the legislative history for any statute. An effective date or expiration date note immediately following a caption is not a part of the caption and is a part of the statute.

- The Ethics Commission asked Legislative Council if "elected" could be added to the caption of section 54-66-13 without bringing a bill
- Legislative Council recommended the Commission bring a bill to create a record of the change.
- SB 2052 does **NOT** change the law. Only the caption.
- As introduced

54-66-13. Restriction on lobbying by elected public officials - Penalty.

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

- And even with the House amendment

54-66-13. Restriction on ~~lobbying by~~ being a lobbyist as an elected public official - Penalty.

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2052
3/20/2025

Relating to restrictions on public officials and lobbyists.

2:47 p.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, C. Brown, T. Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Committee discussion

2:47 p.m. Representative Steiner verbally proposed amendments relating to fines.

2:58 p.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2052
3/27/2025

Relating to restrictions on public officials and lobbyists.

3:03 p.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, T. Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff
Members absent: Representative C. Brown

Discussion Topics:

- Committee action

3:03 p.m. Representative Steiner provided information to the committee.

3:05 p.m. Representative Schneider provided information to the committee.

3:07 p.m. Vice Chairman Satrom moved a Do Not Pass as previously amended.

3:07 p.m. Representative Bahl seconded the motion.

3:08 p.m. Vice Chairman Satrom rescinded the motion.

3:08 p.m. Vice Chairman Satrom moved to reconsider the bill.

3:09 p.m. Representative VanWinkle seconded the motion.

3:09 p.m. Voice vote passed.

3:09 p.m. Vice Chairman Satrom moved a Do Not Pass as amended.

3:09 p.m. Representative Bahl seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Collette Brown	AB
Representative Timothy Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y

Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	N

3:10 p.m. Motion passed 12-1-1.

Representative Schneider will carry the bill.

3:12 p.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

**REPORT OF STANDING COMMITTEE
AMENDED SB 2052 ([25.8024.02000](#))**

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAY, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2052, as amended, was placed on the Fourteenth order on the calendar.