

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

MAGGIE ELLINGER-LOCKE and the MARIJUANA )  
POLICY PROJECT, )

Plaintiffs, )

v. )

Civil Action No. \_\_\_\_\_

LUTHER STRANGE, in his official capacity as )  
Attorney General of Alabama; DARYL BAILEY, )  
in his official capacity as District Attorney of )  
Montgomery County; and JERRY L. FIELDING; )  
FRANK C. ELLIS, JR.; JAMES JERRY WOOD; )  
STEWART HILL TANKERSLEY, MD; and JUDGE )  
CHARLES PRICE, in their official capacities as )  
members of the State of Alabama Ethics )  
Commission, )

Defendants. )

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This constitutional challenge seeks to vindicate the rights of Plaintiffs Maggie Ellinger-Locke and the Marijuana Policy Project (MPP) to speak and to petition the government under the First Amendment.

2. Like other states, Alabama has adopted broad laws that define many people who speak to government officials about pending or potential legislation as “lobbyists.” But unlike other states, Alabama subjects its lobbyists to a unique—and uniquely burdensome—requirement: Within 90 days of registering, every new lobbyist must appear for an in-person training session that is held on only four specific days each year, and only in Montgomery. *See* Ala. Code § 36-25-4.2(a)(3). This requirement for in-person training applies regardless of how far away from Alabama the lobbyist lives, how minimal their contacts with Alabama elected

officials are, or whether their contacts with Alabama elected officials are conducted entirely from outside of Alabama (for example, by phone or by e-mail).

3. This law violates the First Amendment. The right to petition the government by directly speaking with lawmakers is a fundamental First Amendment right. And just as Americans cannot be required to take a class before they may exercise their First Amendment right to march in a protest, or lecture from a soapbox, or write a letter to the editor, Americans cannot be required to take a class before they may speak to government officials.

4. The law is particularly burdensome when applied to national nonprofits like MPP and to speakers like Ms. Ellinger-Locke, who wishes to contact Alabama officials from MPP's headquarters in Washington, D.C. Even if the government were permitted to condition this exercise of First Amendment rights on completing some sort of training, the government cannot require that speakers like Ms. Ellinger-Locke travel hundreds of miles and spend hundreds of dollars to acquire that training before they may call or e-mail a government official.

5. Accordingly, this lawsuit seeks to declare Alabama Code § 36-25-4.2(a)(3) unconstitutional, so that Ms. Ellinger-Locke, MPP, and others like them may communicate freely with this state's lawmakers.

### **JURISDICTION AND VENUE**

6. Plaintiffs Maggie Ellinger-Locke and the Marijuana Policy Project bring this civil-rights lawsuit pursuant to the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

7. Plaintiffs seek declaratory and injunctive relief against the enforcement of Alabama Code § 36-25-4.2(a)(3).

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

10. Plaintiff Maggie Ellinger-Locke is a United States citizen, is a resident of Arlington, VA, and works as Legislative Counsel at the Marijuana Policy Project.

11. Plaintiff Marijuana Policy Project is a 501(c)(4) nonprofit corporation based in Washington, D.C. MPP lobbies at both the state and federal level on issues related to the regulation of marijuana.

12. Defendant Luther Strange is the Attorney General of the State of Alabama and is sued in his official capacity. The Attorney General is authorized under Alabama Code § 36-25-27(c) to bring enforcement actions against violators of Alabama Code §§ 36-25-1–30.

13. Defendant Daryl Bailey is the District Attorney for Montgomery County and is sued in his official capacity. The district attorney of the appropriate jurisdiction is authorized under Alabama Code § 36-25-27(c) to bring enforcement actions against violators of Alabama Code §§ 36-25-1–30.

14. Defendants Jerry L. Fielding; Frank C. Ellis, Jr.; James Jerry Wood; Stewart Hill Tankersley, MD; and Judge Charles Price are members of the State of Alabama Ethics Commission and are sued in their official capacities. Enforcement of Alabama Code §§ 36-25-1–30 is vested in the Commission.

### **FACTUAL ALLEGATIONS**

#### **Ms. Ellinger-Locke and MPP's Speech**

15. Maggie Ellinger-Locke is Legislative Counsel at MPP, a nonprofit corporation founded in 1995 that advocates for the reform of state and federal policies regarding marijuana.

16. As Legislative Counsel, Ms. Ellinger-Locke is responsible for monitoring legislative developments in eleven states and for contacting elected officials in those states to discuss proposed or potential legislation related to marijuana regulation. One of the states that Ms. Ellinger-Locke is responsible for monitoring is Alabama.

17. Most of Ms. Ellinger-Locke's work is conducted from her office in Washington, D.C. Ms. Ellinger-Locke has never physically been to Alabama as part of her employment at MPP.

18. As part of her job, Ms. Ellinger-Locke wants to communicate with Alabama lawmakers, on a sporadic basis, about legislation pending in this state or potential legislation that may be introduced.

19. Because she operates in the District of Columbia, Ms. Ellinger-Locke wishes to communicate with these lawmakers by e-mail or telephone, rather than having to undertake the time and having MPP bear the expense of her physically travelling to Alabama.

20. Given the current legislative climate in Alabama regarding marijuana policy, Ms. Ellinger-Locke estimates that all of her Alabama-related communications—including grassroots communications with Alabamans who are not government officials—would amount to around 2-15 hours per year. That amounts to about 0.1% to 0.8% of her annual work time at MPP. If, after talking with Alabama lawmakers there appear to be good opportunities for meaningful reform, Ms. Ellinger-Locke and MPP would decide how much additional time is warranted.

#### **Alabama's Training Requirement for Lobbyists**

21. Under Alabama law, anyone who qualifies as a lobbyist must travel to Montgomery within 90 days of qualifying as a lobbyist to attend a one-hour training program on Alabama lobbying law. *See* Ala. Code § 36-25-4.2(a)(3).

22. Alabama law further provides that lobbyists may be required to return to Montgomery for “additional mandatory training program[s]” whenever “any changes are made to [the lobbying law].” *Id.*

23. The State of Alabama Ethics Commission holds these mandatory training programs only on four set days each year. *Id.*

24. Three of this year’s training sessions have already passed. *See* State of Ala. Ethics Comm’n, *2016 Training for First-Time Lobbyists: Sessions 1, 2, 3*, [http://ethics.alabama.gov/docs/pdf/Lobbyist\\_Training/2016TrainingScheduleSessions1-3forNEWLobbyists.pdf](http://ethics.alabama.gov/docs/pdf/Lobbyist_Training/2016TrainingScheduleSessions1-3forNEWLobbyists.pdf). (last visited Aug. 29, 2016). The final training session of the year is currently scheduled for September 28, 2016. *See* Ala. Ethics Comm’n, *News and Updates from your Ethics Commission*, <http://ethics.alabama.gov/default2.aspx> (last visited Aug. 29, 2016).

25. Any lobbyist who “fails to attend a training program . . . shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or public employees.” Ala. Code § 36-25-4.2(a)(3).

26. The only recognized justification for not attending a mandatory training is “catastrophic illness.” *Id.* § 36-25-4.2(c).

27. Knowing, reckless, or criminally negligent violations of the training provision are punishable as a Class A misdemeanor. *Id.* § 36-25-27(a)(2). Class A misdemeanors are the most serious types of misdemeanor under Alabama law, and are punishable by imprisonment in the county jail, or a term of hard labor for the county, of up to one year. *Id.* § 13A-5-7(a)(1). Class A misdemeanors are also punishable by fines of up to \$6,000. *Id.* § 13A-5-12(a)(1).

28. Intentional violations are punishable as a Class B felony. *Id.* § 36-25-27(a)(1). Class B felonies are punishable by a minimum prison sentence of two years, up to a maximum of

20 years. *Id.* §13A-5-6(a)(2). Class B felonies are also punishable by fines of up to \$30,000. *Id.* § 13A-5-11(a)(2).

29. Other individuals who are required to take ethics training in Alabama are not required to do so in person. Although all county commissioners and all municipal mayors, council members, and commissioners are required to take ethics training, they are permitted to complete their training online. *Id.* § 36-25-4.2(a)(4).

30. Similarly, “public employees” can satisfy their training obligations through “an online educational review.” *Id.* § 36-25-4.2(e). Though even this is not strictly required. Upon request, the Ethics Commission will mail out “an Ethics Training DVD” to public officials and employees. Letter from Thomas B. Albritton to All Public Officials and Public Employees Who Are Required to File a Statement of Economic Interests Form (Jan. 1, 2016), <http://ethics.alabama.gov/docs/2015RequiredEthicsTrainingTomsSignature.pdf>.

**Ms. Ellinger-Locke and MPP’s Request for an Advisory Opinion**

31. Concerned about the effect that Alabama’s ethics-training requirement might have on her work, Ms. Ellinger-Locke requested an advisory opinion from the State of Alabama Ethics Commission concerning the training law in April 2016.

32. A true and correct (unsigned) copy of Ms. Ellinger-Locke’s request for an advisory opinion is attached as Exhibit 1.

33. In her request, Ms. Ellinger-Locke described the nature of her position at MPP and the types of communications she would like to have with Alabama elected officials. She then posed several questions about the application of Alabama’s lobbying laws to her proposed activities.

34. First, Ms. Ellinger-Locke asked “whether communications I anticipate making regarding Alabama legislative matters would require me to register as a lobbyist under your state’s law.”

35. Second, if the Commission were to determine that her proposed communications would trigger the lobbyist-registration law, Ms. Ellinger-Locke asked whether it was possible to obtain “an accommodation relating to the requirement for in-person attendance at Alabama’s lobbyist training session” that would allow her to satisfy the requirement without physically travelling to Alabama.

36. Ms. Ellinger-Locke explained that “the requirement that I attend an in-person training session in Alabama makes registration practically impossible.” That is because

[a]ttending the training session would require me to travel from Washington D.C., where my organization is headquartered, to Montgomery. The cost and time required for such a trip would likely exceed the total value of my work on Alabama matters, would take away from time for other work, and would thus be prohibitive. For these reasons, if the Commission determines that my proposed activities would qualify me as a lobbyist, I ask that the Commission accommodate me either by allowing me to satisfy the training requirement from my office in Washington D.C. or by exempting me from the training requirement entirely.

37. On May 11, Ms. Ellinger-Locke was contacted by the general counsel for the State of Alabama Ethics Commission, Mr. Hugh R. Evans, III, for additional details regarding her proposed communications with elected officials in Alabama. Specifically, Mr. Evans asked whether any phone calls or e-mails “would involve specific pieces of legislation” and, if so, asked that Ms. Ellinger-Locke provide additional details.

38. Ms. Ellinger-Locke responded to Mr. Evans’s e-mail noting that she did intend to make phone calls and send e-mails about specific pieces of legislation, and explained that those pieces of legislation would vary depending on what was introduced and what moved in the legislature.

39. As an example of the sort of legislation Ms. Ellinger-Locke would contact the legislature about, she noted the recent signing of “Leni’s Law,” which establishes an affirmative defense for patients with seizure disorders and their parents or guardians for possession of marijuana extracts with less than three percent THC. Ala. Code § 13A-12-214.3.

40. Ms. Ellinger-Locke explained that, had she been able to lobby on that bill, she would have sent an alert to MPP’s members in advance of the vote, asking them to e-mail their lawmakers and urge them to vote yes on that bill. She explained that any phone calls she might have made would have been to discuss the specifics of the bill if there was something she was unclear about, or to provide information to legislators or their staffers that might influence their vote on the legislation. Finally, she explained that if similar legislation regarding marijuana is introduced in Alabama in the future, she would like to engage in similar communications.

41. On June 1, 2016, the State of Alabama Ethics Commission unanimously approved an advisory opinion in response to Ms. Ellinger-Locke’s request.

42. A true and correct copy of this advisory opinion is attached as Exhibit 2.

43. The Commission first advised Ms. Ellinger-Locke that her proposed communications with Alabama officials would require her to register as a lobbyist. The Commission acknowledged that “Ms. Ellinger-Locke anticipates that her contact with legislators in the State of Alabama will be minimal.” But the Commission concluded that “there is no exclusion in the Ethics Law for de minimis lobbying when you are paid to do it.”

44. Having determined that Ms. Ellinger-Locke would qualify as a lobbyist, the Commission also ruled that she would have to attend the training program in person.

45. The Commission acknowledged that “this places a burden on the individual desiring to register as a lobbyist.”



46. The Commission nonetheless determined that “there are no exceptions to the mandatory training requirement.” “Every individual registered as a lobbyist in the State of Alabama is required to personally attend a training program within 90 days of registering as a lobbyist.”

### **Injury to Plaintiffs**

47. Ms. Ellinger-Locke wishes to communicate on behalf of MPP with members of Alabama’s state government.

48. For her to do so legally, however, Alabama Code § 36-25-4.2(a)(3) requires her to physically travel to Montgomery on a date-certain to attend a one-hour training program.

49. The State of Alabama Ethics Commission has acknowledged that this requirement burdens Ms. Ellinger-Locke’s ability to communicate with state lawmakers about state laws.

50. To comply with Alabama Code § 36-25-4.2(a)(3), Ms. Ellinger-Locke would have to travel from Washington, D.C., to Montgomery—a distance of nearly 800 miles. This imposes a direct and severe burden on Ms. Ellinger-Locke and on her employer, MPP, which would be obliged to incur expenses for airfare, ground transportation, lodging, incidentals, and lost employee time.

51. It makes no economic sense for MPP to pay for Ms. Ellinger-Locke to travel to and from Alabama for an hour-long training session. Ms. Ellinger-Locke estimates that all of her Alabama-related communications—including grassroots communications with Alabamans who are not government officials—could be as little as 2-15 hours per year if there appears to be no meaningful appetite for reform, which is something she won’t know until she has already been required to register as a lobbyist and been made subject to Alabama’s mandatory ethics training.

52. As long as Alabama Code § 36-25-4.2(a)(3) remains in force, therefore, Ms. Ellinger-Locke and MPP are effectively priced out of exercising their First Amendment rights in Alabama. To avoid triggering the mandatory-training law, they have refrained from engaging in any activity that might make Ms. Ellinger-Locke subject to registration as a lobbyist in Alabama.

53. The burden associated with the mandatory-training law has actually chilled Ms. Ellinger-Locke's speech to Alabama legislators on behalf of MPP. Last month—after receiving the Commission's advisory opinion—Ms. Ellinger-Locke encountered an Alabama lawmaker at a conference in Chicago. Ms. Ellinger-Locke intentionally refrained from speaking with that lawmaker about legislation or potential legislation because she did not want to trigger Alabama's mandatory-training law.

54. Ms. Ellinger-Locke and MPP are eager to start talking with Alabama elected officials as soon as possible about possible expansions to Alabama's limited medical-marijuana programs. But for the burdens on Ms. Ellinger-Locke and MPP caused by the mandatory-training law, Ms. Ellinger-Locke would immediately begin contacting lawmakers in Alabama to discuss potential changes to the state's marijuana laws.

55. Specifically, Ms. Ellinger-Locke is currently chilled from discussing changes to the recently enacted "Carly's Law," Ala. Code § 13A-12-214.2, and "Leni's Law" Ala. Code § 13A-12-214.3, both of which create a limited affirmative defense for the use of low-THC marijuana extracts for the treatment of seizure disorders. Ms. Ellinger-Locke and MPP believe that these provisions should be expanded to cover other debilitating illnesses, and they support legislative efforts that would incorporate a full medical-marijuana program for Alabama or in-state access to low-THC medical cannabis.

56. Ms. Ellinger-Locke would like to begin contacting lawmakers (including the sponsors of those bills) about these and other legislative proposals now, so that legislators can begin considering them before the start of the upcoming legislative session in February 2017. Ms. Ellinger-Locke believes it is particularly important to communicate with lawmakers before they become consumed with other matters following the start of the legislative session. As part of her communication with legislators, Ms. Ellinger-Locke would provide them with fact sheets, offer to review draft legislation, or offer to provide examples of legislative text that might be adopted in Alabama. Because of Alabama's mandatory ethics training, however, she cannot do so without committing herself (and MPP's funds) to travelling to Montgomery for the final training session of the year on September 28.

57. The burdens that Ms. Ellinger-Locke and MPP are experiencing are not unique. Around 16% of lobbyists registered in Alabama for 2016 list addresses on their registration form that are outside the state of Alabama; about half are from outside of Montgomery. *See* State of Ala. Ethics Comm'n, *2016 Registered Lobbyist List*, [https://ethics-form.alabama.gov/entity/FileUpload2015/RegisteredLobbyist/WebDataLobbyistsPDF\\_2010.aspx](https://ethics-form.alabama.gov/entity/FileUpload2015/RegisteredLobbyist/WebDataLobbyistsPDF_2010.aspx).

58. Based on the addresses provided on the 2016 lobbyist registration forms, the average distance that lobbyists both inside and outside of Alabama must travel to attend the Montgomery training is 138 miles. *See id.*

## **CONSTITUTIONAL VIOLATIONS**

### **First Claim for Relief** **(Freedom of Speech)**

59. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. Alabama Code § 36-25-4.2(a)(3) imposes a direct and substantial burden on Plaintiffs' First Amendment right to freedom of speech by requiring Ms. Ellinger-Locke to travel from Washington, D.C., to Montgomery, Alabama, as a condition to communicating with government officials or members of the public—in the form of “grassroots lobbying”—about public affairs.

61. The government has no compelling or substantial interest in requiring that private citizens be forced to undergo government-mandated training before they may speak to anyone about matters of public affairs.

62. Even if the government did have such an interest, Alabama Code § 36-25-4.2(a)(3) is not appropriately tailored to that interest. Alabama has obvious, less restrictive alternatives available to it, such as sending copies of Alabama's ethics laws to newly registered lobbyists or making training for lobbyists available online.

63. There is also no evidence, and no reason to believe, that Alabama-registered lobbyists display higher rates of compliance with ethics laws than do lobbyists registered in states other than Alabama that do not require ethics training or that do not require such training to be completed in person.

64. Alabama Code § 36-25-4.2(a)(3) thus deprives Plaintiffs and others similarly situated of their rights to free speech under the First and Fourteenth Amendments to the United States Constitution.

65. As a direct and proximate result of Alabama Code § 36-25-4.2(a)(3), Ms. Ellinger-Locke, MPP, and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from administering and

enforcing Alabama Code § 36-25-4.2(a)(3), Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

**Second Claim for Relief**  
**(Right to Petition)**

66. Alabama Code § 36-25-4.2(a)(3) imposes a direct and substantial burden on Plaintiffs' right to petition the government for a redress of grievances by requiring Ms. Ellinger-Locke to travel from Washington, D.C., to Montgomery, Alabama, as a condition to communicating with government officials about public affairs.

67. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 58 of this Complaint as if fully set forth herein.

68. The government has no compelling or substantial interest in requiring that private citizens be forced to undergo government-mandated training before they may petition members of the government regarding matters of public importance.

69. Even if the government did have such an interest, Alabama Code § 36-25-4.2(a)(3) is not appropriately tailored to that interest. Alabama has obvious, less restrictive alternatives available to it, such as sending copies of Alabama's ethics laws to newly registered lobbyists or making training for lobbyists available online.

70. There is also no evidence, and no reason to believe, that Alabama-registered lobbyists display higher rates of compliance with ethics laws than do lobbyists registered in states other than Alabama that do not require ethics training or that do not require such training to be completed in person.

71. Alabama Code § 36-25-4.2(a)(3) thus deprives Plaintiffs and others similarly situated of their rights to petition the government under the First and Fourteenth Amendments to the United States Constitution.

72. As a direct and proximate result of Alabama Code § 36-25-4.2(a)(3), Ms. Ellinger-Locke, MPP, and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from administering and enforcing Alabama Code § 36-25-4.2(a)(3), Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

### **PRAYER FOR RELIEF**

Plaintiffs respectfully request relief as follows:

- A. A declaration that Alabama Code § 36-25-4.2(a)(3) is unconstitutional on its face;
- B. A declaration that Alabama Code § 36-25-4.2(a)(3) is unconstitutional as applied to Plaintiffs;
- C. An injunction permanently enjoining Defendants from enforcing Alabama Code § 36-25-4.2(a)(3);
- D. An award of attorneys' fees, costs, and expenses in this action in accordance with 42 U.S.C. § 1988; and
- E. All further legal and equitable relief as the Court may deem just and proper.

Dated: August 30, 2016

Respectfully submitted,

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*\*Motion for admission pro hac vice filed  
concurrently*

*Attorneys for Plaintiffs*


**VERIFICATION**

I, Maggie Ellinger-Locke, declare as follows:

I have personal knowledge of the facts set forth in paragraphs 6-7, 10-11, 15-20, 31-47, 50-56, 60, and 66 of this complaint, and if called upon, I would competently testify as to them.

I verify under penalty of perjury under the laws of the United States of America that the factual statements in the above-listed paragraphs are true and correct.

Executed on: August 29, 2016

  
Maggie Ellinger-Locke

## CERTIFICATE OF SERVICE

I hereby certify that on August 30th, 2016, I served a true and correct copy of the foregoing with the Clerk of the Court via an overnight mail service, and included seven (7) true and correct copies to be served via certified mail on the following Defendants:

Luther Strange  
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James Jerry Wood  
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# Exhibit 1



Marijuana Policy Project  
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p: (202) 462-5747 • f: (202) 232-0442  
info@mpp.org • www.mpp.org

*"We change laws."*

April 29, 2016

Alabama Ethics Commission  
PO Box 4840  
Montgomery, AL 36103

Re: Request for formal Advisory Opinion

To the Alabama Ethics Commission:

My name is Maggie Ellinger-Locke and I work as a legislative analyst in the State Policies Department of the Marijuana Policy Project ("MPP"). In that capacity, I monitor legislation and support legislative reforms of marijuana laws in twelve states, including Alabama. I am requesting a formal opinion as to whether communications I anticipate making regarding Alabama legislative matters would require me to register as a lobbyist under your state's law. If the Commission determines that I would be required to register, I also ask for an accommodation relating to the requirement for in-person attendance at Alabama's lobbyist training session.

### **Background**

As part of my duties as an MPP employee, I anticipate engaging in the following communications relating to Alabama legislative matters:

- Sending e-mail alerts to MPP's Alabama subscribers, one to four times per year, which ask them to contact their state lawmakers via e-mail to express their support for (or opposition to) specific bills.
- Occasionally urging MPP's Alabama supporters to meet with their state lawmakers in person.
- Encouraging MPP's Alabama supporters to write letters to the editor about bills affecting issues MPP cares about.
- Making phone calls or sending e-mails directly to state legislators in Alabama to offer resources and suggestions regarding bills.

All my work on Alabama-related issues would be conducted entirely from my office in Washington D.C. Taken together, I estimate that my total annual time spent on these Alabama-related communications would be approximately 2-15 hours in the year. This would amount to between .1% and .8% of my annual work time at MPP.

## Questions

### **1. Do any of my anticipated communications with private citizens qualify as “lobbying” under Alabama law? If so, which?**

In Alabama, the terms “lobby” or “lobbying” includes “[t]he practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body . . . .” Alabama Stat., section 36-25-1(20). Because this definition does not have a direct-communication requirement, I am unsure whether it covers my anticipated communications with private Alabama citizens. Please advise which, if any, of the following proposed communications with private citizens would qualify as “lobbying” under Alabama law:

- Sending e-mail alerts to MPP’s Alabama subscribers, one to four times per year, which ask them to contact their state lawmakers via e-mail to express their support for (or opposition to) specific bills.
- Occasionally urging MPP’s Alabama supporters to meet with their state lawmakers in person.
- Encouraging MPP’s Alabama supporters to write letters to the editor about bills affecting issues MPP cares about.

### **2. Do my anticipated communications with legislators qualify as “lobbying” under Alabama law?**

Please also advise whether the following proposed communications with Alabama lawmakers would qualify as “lobbying” under Alabama law:

- Making phone calls or sending e-mails to state legislators in Alabama to offer resources and suggestions regarding bills.

### **3. If any of my anticipated communications qualify as a lobbying, am I required to register as a “lobbyist” under Alabama law?**

If you conclude that any of the proposed communications outlined above qualify as lobbying under Alabama law, please advise whether I am required to register as a lobbyist. Based on the information provided in this letter about my anticipated communications and the extent of those communications, would making those communications qualify me as a “lobbyist” under Alabama Code Section § 36-25-1?

## **Request for Accommodation Relating to In-Person Training Requirement**

If the Commission determines that my anticipated communications trigger Alabama’s lobbyist-registration duties, I ask for an accommodation on the state’s requirement for in-person attendance at a training session.

Alabama law requires the Commission to hold a “training program for lobbyists” four times per year and likewise requires each person who qualifies as a lobbyist to “attend a training program within 90 days of registering as a lobbyist.” Alabama Stat., section 36-25-4.2(a)(3). Unlike

training programs for some other regulated actors, the law does not seem to allow lobbyists to meet their training requirement remotely (i.e., by live streaming or DVD). The law further provides that “[a] lobbyist who fails to attend a training program shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or public employees.” Alabama Stat., section 36-25-4.

As a general matter, I do not object to registering as an Alabama lobbyist, but the requirement that I attend an in-person training session in Alabama makes registration practically impossible. Attending the training session would require me to travel from Washington D.C., where my organization is headquartered, to Montgomery. The cost and time required for such a trip would likely exceed the total value of my work on Alabama matters, would take away from time for other work, and would thus be prohibitive. For these reasons, if the Commission determines that my proposed activities would qualify me as a lobbyist, I ask that the Commission accommodate me either by allowing me to satisfy the training requirement from my office in Washington D.C. or by exempting me from the training requirement entirely.

Thank you for your consideration of this request, and please let me know if you require any further information.

Sincerely,

---

Maggie Ellinger-Locke  
Legislative Analyst  
Marijuana Policy Project

# Exhibit 2



# STATE OF ALABAMA ETHICS COMMISSION



## COMMISSIONERS

James Jerry Wood, Esq.  
Stewart Hill Tankersley, M.D.  
Frank C. "Butch" Ellis, Jr., Esq.  
Jerry L. Fielding, Ret. Sr. Circuit Judge  
Charles Price, Ret. Circuit Judge

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June 1, 2016

## ADVISORY OPINION NO. 2016-15

Ms. Maggie Ellinger-Locke  
Legislative Analyst  
State Policies Department  
Marijuana Policy Project  
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Washington, DC 20013

Lobbying Requirements/Legislative Analyst  
In The State Policies Department Of The  
Marijuana Policy Project (MPP) Registering  
As A Lobbyist

An individual whose job responsibilities include, either for compensation or as a regular and usual part of employment, the practice of promoting, opposing or in any manner influencing or attempting to influence the introduction, defeat or enactment of legislation before any legislative body is considered to be lobbying and must register within 10 (ten) days of first undertaking the lobbying activity.

Every individual registered as a lobbyist in the State of Alabama is required to personally attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to register as a lobbyist.

Dear Ms. Ellinger-Locke:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

### **QUESTIONS PRESENTED**

- 1) Is a Legislative Analyst in the State Policies Department of the Marijuana Policy Project, who will monitor legislation and communicate from time-to-time with Alabama legislators, required to register as a lobbyist?
- 2) If these activities are considered lobbying, must an individual attend a training session in person?

### **FACTS AND ANALYSIS**

The facts as have been presented to this Commission are as follows:

Maggie Ellinger-Locke is a Legislative Analyst in the State Policies Department of the Marijuana Policy Project (MPP). In that capacity, she monitors legislation and supports legislative reforms of marijuana laws in twelve states, including Alabama.

As a regular part of her duties, she anticipates engaging in the following communications relating to Alabama legislative matters:

- 1) Sending e-mail alerts to MPP's Alabama subscribers, one to four times per year, which ask them to contact their state lawmakers via e-mail to express their support for (or opposition to) specific bills.
- 2) Occasionally urging MPP's Alabama supporters to meet with the state lawmakers in person.
- 3) Encouraging MPP's Alabama supporters to write letters to the editor about bills affecting issues MPP cares about.
- 4) Making phone calls or sending e-mails directly to state legislators in Alabama during legislative sessions to offer resources and suggestions regarding bills and either urging their passage or defeat.

She further states that all her work on Alabama-related issues would be conducted entirely from her office in Washington D.C. She estimates her total time spent on Alabama-related communications would be approximately 2-15 hours per year. She is paid to do this.

The Alabama Ethics Law, Ala. Code § 36-25-1(20) defines lobbying as:

“The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.”

In addition, Ala. Code § 36-25-1(21)(a)(1) through (4) defines a lobbyist as:

“a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.”

Excluded from the definition of a lobbyist in Ala. Code § 36-25-1(21)(b)(1) – (8) are the following:

“b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person’s official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where



those professional services are not otherwise connected with legislative, executive, or regulatory action.

3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions affecting the governmental agencies which he or she represents.

Ms. Ellinger-Locke confirms that she anticipates making phone calls and sending e-mails that involve specific pieces of legislation. She states that these specific pieces of legislation will vary depending on what is introduced and what moves. She references "Leni's law" which Governor Bentley signed into law on May 4, 2016, which established an affirmative defense for patients with seizure disorders and their parents or guardians for possession of marijuana extracts with less than three percent THC. She states that had she been able to lobby she would have sent an alert to their membership in advance of the vote asking them to e-mail their lawmakers and urge them to vote yes on that bill.

She further stated that any phone calls to legislators she might have made would have been to discuss the specifics of the bill, if there was something she was unclear about, or to provide information to legislators that might influence their vote on the legislation.

While Ms. Ellinger-Locke anticipates that her contact with legislators in the State of Alabama will be minimal, she anticipates calling and e-mailing state legislators directly regarding pending legislation and advocating for its passage or defeat nonetheless. There are no exceptions to the definition of a lobbyist that would excuse Ms. Ellinger-Locke from having to register because she is compensated for her activity and it is a regular and usual part of her employment.

While much that Ms. Ellinger-Locke will do in Alabama is considered grass roots lobbying (contacting Alabama subscribers and supporters on issues rather than specific pieces of legislation, etc.), much of what she anticipates doing is not. Moreover, there is no exclusion in the Ethics Law for de minimis lobbying when you are paid to do it, and no requirement that a certain percentage of time be devoted to lobbying to trigger the registration requirement beyond “regular and usual.” Based on the nature of her activities in making phone calls and e-mails or other direct contact to state legislators, and the fact she is paid to do so and that it is a regular and usual part of her employment, she would be considered to be lobbying and would have to register as a lobbyist.

Ala. Code § 36-25-4.2(a)(3) sets out the training requirements for lobbyists. It states:

“(a) At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

**(3)** The training program for lobbyists shall be held four times annually as designated by the Executive Director of the State Ethics Commission, the first of which shall be held within the first 30 days of the year. Each lobbyist must attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or public employees. After attending one training program, a lobbyist shall not be required to attend an additional training program unless any changes are made to this chapter. Such additional mandatory training program shall be held within three months of the effective date of the changes.”

Ala. Code § 36-25-4.1(c) requires that:

“Except as provided by herein, attendance at any session of the training program shall be mandatory, except in the event the person is suffering a catastrophic illness.”

While this places a burden on the individual desiring to register as a lobbyist, there are no exceptions to the mandatory training requirement.


### **CONCLUSION**

An individual whose job responsibilities include, either for compensation or as a regular and usual part of employment, the practice of promoting, opposing or in any manner influencing or attempting to influence the introduction, defeat or enactment of legislation before any legislative body is considered to be lobbying and must register within 10 (ten) days of first undertaking the lobbying activity.

Every individual registered as a lobbyist in the State of Alabama is required to personally attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to register as a lobbyist.

### **AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on June 1, 2016.

  
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Jerry L. Fielding, Ret. Sr. Circuit Judge  
Chair  
Alabama Ethics Commission