

IN THE CIRCUIT COURT OF
COLE COUNTY, MISSOURI

JAKE MAGGARD et al.,)
Plaintiffs,)
v.) Case No. 25AC-CC09120
STATE OF MISSOURI et al.,)
Defendants.)

**PLAINTIFFS’ COMBINED SUGGESTIONS IN OPPOSITION TO
STATE DEFENDANTS’ DISCOVERY MOTIONS**

Plaintiffs submit their suggestions in opposition to Defendants’ pending discovery motions. *See* State Defs.’ Mot. to Compel Produc. from Pls. (“Lombardi Mot.”); State Defs.’ Mot. to Compel Answer to Dep. Question by Pl. Jake Maggard (“Maggard Mot.”).¹

INTRODUCTION

Defendants’ conspiracy theory has been indulged long enough.

Since the start of this litigation, Defendants have “vigorously pursued discovery to support” a fundamentally misguided and factually baseless estoppel defense fueled entirely by a desire to avoid addressing the merits. Lombardi

¹ Defendants’ notice of hearing for the latter motion was untimely and they did not meaningfully confer with Plaintiffs regarding either motion. Ultimately, any timing issue is of Defendants’ own making: Despite assuring the Court at the January 20 hearing that they would take depositions the following week (the week of January 26), Defendants delayed an additional week without explanation. To finally put an end to this unjustified distraction, Plaintiffs and third parties accommodated Defendants’ last-minute deposition requests and produced deponents on short notice.

Mot. 3. Their thinking goes like this: Plaintiffs, two Missouri voters seeking to vindicate their referendum rights, *might* be estopped from asserting their claims because their “argument in this case depends on a legal theory that People Not Politicians (‘PNP’)—the proponents of the referendum petition at issue—expressly disclaimed in federal court.” *Id.* at 2. Even though this theory has always lacked factual or legal support, Plaintiffs have gone out of their way—in discovery responses, communications with Defendants’ counsel, and representations made in open court—to clarify that this litigation is *not* being funded by, directed by, coordinated with, or even assisted by PNP or its counsel.² Third-party discovery directed at PNP and its affiliates (who likewise responded to discovery and sat for depositions on short notice) made this reality even clearer.³ These sworn assertions should have put an end to this sideshow and allowed the parties to proceed to the merits of this critically important case.

Defendants, however, have other designs. Reflecting an insatiable impulse to distract from their patently unconstitutional actions, Defendants now spin their

² See, e.g., Lombardi Mot. Ex. 1, at 7 (interrogatory response from Mr. Lombardi: “Plaintiff has not been contacted about this lawsuit by, been offered assistance regarding this lawsuit by, or discussed the filing of this lawsuit with [PNP] or any entities or individuals affiliated with [PNP] or acting on behalf of [PNP.]”); *id.* Ex. 2, at 7 (similar interrogatory response from Mr. Maggard).

³ See, e.g., State Defs.’ Mot. to Enforce Compliance with Subpoenas to People Not Politicians & Richard von Glahn Ex. 1, at 3 (subpoena response from PNP: “PNP did not recruit the plaintiffs in the *Maggard* lawsuit. PNP is not funding the *Maggard* litigation. PNP did not hire the lawyers representing the *Maggard* plaintiffs. PNP and its lawyers are not advising or directing the *Maggard* plaintiffs, or their lawyers.”); *id.* Ex. 2, at 3 (similar subpoena response from Richard von Glahn).

conspiracy theory into even wilder, more far-flung terrain. Having been told repeatedly that their original theory (that Plaintiffs are coordinating with PNP) lacks *any* factual underpinning, Defendants now speculate—again without evidence—that there *might* be common funding behind this case and PNP’s federal litigation. Plaintiffs declined on relevance and privilege grounds to provide the identity of the third-party entity paying Perkins Coie’s fees in this matter (while nevertheless emphasizing, again, that this third party is *not* PNP or a PNP affiliate). But Defendants have seized on this issue to further sidetrack the Court and delay these proceedings on the spurious ground that “showing that identical or closely related groups are funding both this case and [the federal litigation] would show a relationship suggesting that Plaintiffs’ lawsuit here should be estopped.” *Id.* at 1. “This discovery,” Defendants now assert, “goes to the heart of [their] judicial estoppel defense.” *Id.*; *see also* Maggard Mot. 1 (same). As demonstrated below, however, Defendants’ estoppel theory is a nonstarter. No preclusive concessions were ever made in the federal case and no legally relevant connection between Plaintiffs and PNP exists. Defendants cite no authority indicating that a common donor could possibly support an estoppel defense. And, in any event, the information they seek is clearly protected by the First Amendment privilege.

Simply put, the identity of the entity paying Plaintiffs’ counsel is not relevant to this litigation because it has no bearing on Defendants’ meritless estoppel theory—and is, at any rate, privileged information. Defendants’ motions should be denied, this fishing expedition should end, and discovery should be closed.

ARGUMENT

“Courts will compel discovery into funding sources only upon the presentation of ‘some objective evidence’ that the discovering party’s ‘theories of relevance are more than just theories.’” *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 306, 312 (D. Nev. 2019) (quoting *VHT, Inc. v. Zillow Grp., Inc.*, No. C15-1096JLR, 2016 WL 7077235, at *1–2 (W.D. Wash. Sept. 8, 2016)). Here, Defendants do not even have a viable *theory* of relevance, let alone anything more than “[m]ere speculation” that Plaintiffs might have arguably relevant information. *Id.*

I. Defendants’ estoppel theory is completely baseless.

PNP has nothing to do with the funding or direction of Plaintiffs’ lawsuit. But *even if it had*—even if the Court credits Defendants’ baseless suspicions—there would be no viable estoppel defense here.

A. PNP did not make the “concessions” that Defendants suggest.

Defendants’ estoppel theory is, according to Defendants, premised on “Plaintiffs being bound by PNP’s concessions in federal court” regarding the suspension of House Bill 1 (“HB1”) during the referendum process. Lombardi Mot. 7. But no such “concessions” were actually made; to the contrary, in the federal litigation, PNP and its counsel took positions *consistent* with what Plaintiffs have argued here.

The transcript of the hearing on the motion to dismiss in the federal case—the only basis Defendants have cited for their estoppel theory, *see id.* Exs. 4–5—plainly demonstrates that PNP did *not* do what Defendants claim: “t[ell] a federal

court that HB1 would not become suspended until the Secretary of State certified PNP's referendum petition or a court ordered the Secretary to certify the petition," *id.* at 2. At the hearing, PNP's counsel clearly stated that "turning in the [petition] signatures ensures that the [referred] law will not otherwise go into effect on the 90th day," *id.* Ex. 6, at 45:7–8—meaning that HB1 was suspended when the signed petitions were submitted on December 9, 2025, ahead of the legislation's December 11 effective date. PNP's counsel further explained "there [are] still processes that have to take place to ensure that ... the referendum then ends up on the ballot, which include ensuring there are enough valid signatures and that it complies with the Missouri Constitution," *id.* Ex. 6, at 45:9–12, but this later certification process does not alter the automatic suspension of referred legislation upon the submission of signed petitions. Instead, counsel said that "only upon the Secretary's decision" that a referendum petition is insufficient "surviving state court review would the map go into effect." *Id.* Ex. 6, at 45:25–46:3; *see also id.* Ex. 6, at 46:15–21 (further explaining that "it's once the voters vote that the law takes effect" and "the Secretary's decision would have to survive state court review and only then would the map go into effect").

Significantly, although the federal court pressed PNP's counsel, PNP *did not deviate* from its position that referred legislation is automatically suspended. The court asked PNP's counsel point-blank "what authority is holding the law from going into effect," to which counsel responded, "It is the submission—it is that the referendum process has been initiated." *Id.* Ex. 6, at 47:5–8. PNP's counsel also

confirmed the court's characterization of its position as follows: that "the law would go into effect" *if the Secretary of State found the petition insufficient*, at which point PNP "would seek to challenge the law based on the Secretary's actions and say what the Secretary did was impermissible and then file whatever emergency relief that you wanted to do, and that very well could preclude the map from going forward." *Id.* Ex. 6, at 48:9–23. This exchange is consistent with the federal court's eventual order, which explained that "*decertification*"—which is to say, a finding of insufficiency by the Secretary of State following statutory review of the signed petitions—would allow HB1 to take effect. *See Mo. Gen. Assembly v. Von Glahn*, No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *4 (E.D. Mo. Dec. 8, 2025) (emphasis added); *see also id.* at *4 n.4 (explaining that "the new map would go into effect barring a successful challenge to *decertification*" (emphasis added)).

The transcript is clear: PNP's counsel did not concede that HB1 would be suspended only upon certification by the Secretary of State, nor did the federal court conclude in its order that such a concession had been made. Accordingly, *even if* Plaintiffs were somehow bound by PNP's positions in the federal case—and, as explained below, they are not—that would not preclude Plaintiffs' argument here that HB1 was automatically suspended upon the submission of signed petitions on December 9.

B. Judicial estoppel does not apply to legal positions like the one at issue here.

Even if Defendants had correctly characterized the federal-court transcript, their estoppel theory would still hit an immediate dead end. Missouri courts have made clear that “[j]udicial estoppel applies to prevent inconsistent *factual* assertions.” *Stephen W. Holaday, P.C. v. Tieman, Spencer & Hicks, LLC*, 609 S.W.3d 771, 781 (Mo. App. W.D. 2020) (alteration in original) (quoting *Vacca v. Mo. Dep’t of Lab. & Indus. Relations*, 575 S.W.3d 223, 238 (Mo. banc 2019)). As the Kansas City Court of Appeals explained a half-century ago,

[u]sually the rule is applicable only to bar the assumption of inconsistent positions as to factual matters and is not to be applied where a party assumes inconsistent positions as to contentions of law as applied to a given state of facts. *Consequently, a change of position with respect to a pure matter of law ordinarily will not work an estoppel*, particularly where the earlier position has been found unsound or untenable.

Kansas City v. Martin, 391 S.W.2d 608, 616 (Mo. App. 1965) (concluding that “no estoppel operates to bar Martin from his present defense” where “it is apparent that any change of position attributable to Martin’s counsel relates only to an ultimate legal conclusion to be drawn from undisputed facts, and that no change of position has been taken with respect to the facts themselves”).

This case illustrates why this rule makes sense: Nothing PNP’s counsel might have said at the federal hearing changes, as a *legal* matter, what happens to referred legislation under the Missouri Constitution’s referendum provisions. Even if PNP’s counsel had taken a different position on this issue—and she did not—any such purported concession would be “unsound” and “untenable” for the

reasons Plaintiffs have explained in their petition and preliminary-injunction motion and will further develop in their forthcoming pretrial brief and at trial. Because the purported concessions here concern a purely legal issue, estoppel cannot apply.

C. None of Defendants’ cited authorities support an estoppel defense under the facts claimed here.

Even if PNP had made the purported concessions, and even if Missouri courts applied estoppel principles to purely legal positions, none of the cases on which Defendants rely supports application of judicial estoppel here.

“Judicial estoppel is invoked to protect the dignity of the judicial proceedings and to prevent *parties* from playing fast and loose with the judicial process by taking inconsistent positions in two different proceedings.” *Vacca*, 575 S.W.3d at 225 (emphasis added). Although courts have concluded that “it is appropriate for a court [to] consider[the] judicial estoppel effects of a non-party’s conduct” by “engag[ing] in an equitable inquiry that turns on the specific circumstances of an individual case,” *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 796 (7th Cir. 2013), Defendants have not and cannot find any authority urging application of the rule under facts analogous to those claimed here.

As discovery on Plaintiffs and third parties has conclusively closed the doors on Defendants’ original collusion theory, Defendants have now pivoted, narrowing their focus to “the [] third party funding the attorney’s fees of counsel from Perkins

Coie” and reasoning that “showing that identical or closely related groups are funding both this case and [the federal case] would show a relationship suggesting that Plaintiffs’ lawsuit here should be estopped.” Lombardi Mot. 1; *see also* Maggard Mot. 1. But the mere potential existence of a common funder is miles away from the cases Defendants have cited where estoppel was applied as an equitable matter. The Seventh Circuit’s summary of the facts in *Grochocinski*, Defendants’ primary authority, demonstrates the width of this gap:

The story of Rumpelstiltskin is about turning straw into gold. The legal malpractice case at the heart of these appeals presents a modern attempt to turn metaphorical straw into real gold. The district court rejected the effort, as do we.

This case originated in a contract dispute between CMGT, Inc. and Spehar Capital, a company CMGT hired to help it find financing. Spehar Capital sued CMGT over a dispute related to this agreement and eventually procured a \$17 million default judgment against CMGT, which had no assets to pay it. Spehar Capital devised a plan to recover on the judgment. Step one: force CMGT into bankruptcy. Step two: convince the bankruptcy trustee to bring a malpractice action against CMGT’s law firm based on the theory that but for the law firm’s negligence, Spehar Capital would never have obtained the default judgment. Step three: win the malpractice action or force a settlement for the nominal benefit of CMGT’s bankruptcy estate. Step four: since Spehar Capital’s claim on the bankruptcy estate dwarfs all others, Spehar Capital receives the lion’s share of the payment to the bankruptcy estate. Result: Spehar Capital receives payment on the default judgment by convincing another court that the default judgment should never have been entered. A meritless default judgment would be transformed into a significant payout. Straw turns into gold.

719 F.3d at 788.

As this colorful description illustrates, application of judicial estoppel to nonparty proxies is appropriate “to prevent the perversion of the judicial process”

and “protect[] the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories.” *Id.* at 795 (citation modified). Defendants’ other cited cases demonstrate this common equitable thread of deploying estoppel to prevent litigants from abusing the judicial process for (usually monetary) gain. *See Toyo Tire & Rubber Co. v. Hong Kong Tri-Ace Tire Co.*, 281 F. Supp. 3d 967, 983–84 (C.D. Cal. 2017) (applying rule where (1) “DDF represented ... that [a] Stipulation would bind its ‘affiliates,’ including QDT”; (2) “QDT acted in concert with DDF ... in spite of the Final Judgment and in spite of Toyo’s multiple attempts to enforce DDF’s agreement”; and (3) “if QDT were to prevail” in instant litigation, then “DDF [would] receive the lion’s share of the recovery”); *Deutsche Bank Nat’l Tr. Co. v. Luna*, 655 S.W.3d 820, 832 n.8 (Mo. App. W.D. 2022) (applying rule to individuals who made false representations in prior bankruptcy proceeding and abused corporate form); *St. Louis Typographical Union No. 8 v. Herald Co.*, 402 F.2d 553, 556 (8th Cir. 1968) (applying rule where “Union concededly has no beneficial interest in any recovery” and “prosecutes this action solely as the representative of the same employees who were plaintiffs in the state case”).

Here, in striking contrast, Defendants have suggested *at most* that an imaginary entity *might* have funded the defendants in one action (who, Defendants claim, took a position on a purely legal question in order to prevail on a motion to dismiss) and the plaintiffs in another (who purportedly took a contrary position to vindicate *their own constitutional rights*). No cognizable theory of estoppel would

apply to these hypothetical facts. After all, as another of Defendants' cases admonished, "courts should be cautious about finding preclusion" where "a nonparty to a prior adjudication has become a litigating agent for a party to the earlier case A mere whiff of 'tactical maneuvering' will not suffice[.]" *Taylor v. Sturgell*, 553 U.S. 880, 906 (2008). Defendants cannot claim that Mr. Lombardi or Mr. Maggard are agents of PNP or that PNP or its counsel is directing or funding this case—discovery has slammed the door on that version of their conspiracy. Their newfound suggestion that estoppel applies where a common source funds parties who otherwise have no connection to each other finds no support in the caselaw and should be rejected out of hand.

Without a viable theory of estoppel, the identity of Perkins Coie's third-party funder has no relevance to this litigation—even if Defendants were correct in their suspicions that that entity also funded PNP's litigation (which, to be clear, they are not). Defendants are not entitled to this information.

II. The information Defendants seek is privileged and protected.

That the identity of the third-party entity paying Perkins Coie's fees is not even theoretically relevant (or likely to lead to relevant information) is alone sufficient ground to deny Defendants' pending motions. But even if it were relevant, the information is privileged under the First Amendment and beyond Defendants' reach.

As the U.S. Supreme Court explained long ago, "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in

advocacy may constitute ... a restraint on freedom of association This Court has recognized the vital relationship between freedom to associate and privacy in one's associations.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) (quashing discovery order requiring disclosure of NAACP’s members).⁴ Consistent with this privilege, courts have rejected efforts to “require disclosure of the names of persons contributing to [a] lawsuit”—especially lawsuits like this one that “pertain[] to political, economic, religious or cultural matters”—because “[t]he compelled disclosure of the names of citizens exercising their right to participate in the democratic process would create a chilling effect on their rights to organize and associate,” “subject them to possible intimidation or coercion,” and “likely affect the [] ability to raise funds.” *Matthews v. City of Maitland*, 923 So. 2d 591, 592, 595 (Fla. App. 2006) (quashing discovery orders); *see also, e.g., In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 375–80, 382 (Tex. 1998) (“[T]he trial court’s orders requiring [litigant] to produce the names of its donors violates the First Amendment.”); *Est. of McPherson ex rel. Liebreich v. Church of Scientology Flag Serv. Org., Inc.*, 815 So. 2d 678, 679–80 (Fla. App. 2002)

⁴ Defendants suggest “*Patterson* is nothing like this case” because “the State is simply attempting to collect discovery to support its judicial estoppel defense” rather than “badger a private organization by demanding lists of its members and donors.” Lombardi Mot. 9; *see also* Maggard Mot. 2–3. These are distinctions without a difference: Defendants are using the judicial process to chill Plaintiffs’ and others’ associational rights, just like the State of Alabama did in *Patterson*. It doesn’t matter which side of the “*v.*” the State is on or how the posture of this case might differ in the particulars when Defendants are seeking First Amendment-protected information without any credible relevance to this litigation.

(quashing discovery order related to litigation funding where disclosure would cause irreparable harm because it would create chilling effect on future funding receipts and allow defendant to calculate how long plaintiff could last before “throw[ing] in the towel”).

There is consequently nothing “odd[]” about “invok[ing the] First Amendment privilege” here. Lombardi Mot. 8. “Disclosure of the identities of an organization’s members or contributors may have a chilling effect on the organization’s contributors as well as on the organization’s activity. For this reason, when a litigant seeks information protected by the First Amendment, the litigant must make a showing of need beyond its mere relevance.” *Evarts v. Planning Bd.*, No. 010145, 2002 WL 532682, at *1 (Mass. Super. Feb. 12, 2002) (citation omitted) (quashing subpoena). As discussed above, Defendants have not come close even to establishing the relevance of the third-party funder to this litigation—let alone the higher showing needed to burden First Amendment rights.

III. Defendants’ repeatedly mischaracterize the record and Mr. Lombardi’s deposition.

As a final matter, Plaintiffs are obliged to correct Defendants’ mischaracterizations of the record and Mr. Lombardi’s deposition.

Defendants suggest that “Lombardi stated that an anonymous third party is paying for his counsel from Perkins Coie, and that his *retainer agreement* specifies this”; that “Lombardi also stated that he did not know who was paying for his lawsuit”; and that “this contradicted Lombardi’s responses to Interrogatories 8

and 17.” Lombardi Mot. 4. Here’s what actually happened at his deposition: When asked by Defendants’ counsel “[w]ho is paying [his] attorneys’ fees,” Mr. Lombardi stated that his engagement letter with Perkins Coie explained that there is “third-party payment of [the firm’s fees]” but that he could not recall the identity of that third party. Lombardi Mot. Ex. 9, at 22:2–25:10. Mr. Lombardi *never* stated that an “anonymous” third party is paying Perkins Coie’s fees. Nor did he state that the identity of the third party was not provided by Perkins Coie—just that he could not recall it. That Mr. Lombardi could not identify the funder at the time of his deposition does not mean that information was not provided to him.⁵

More to the point, Mr. Lombardi did *not* contradict his interrogatory responses on the funding issue. His (and Mr. Maggard’s) responses made abundantly clear that “[f]unding for this lawsuit has not been provided by [PNP] or any entities or individuals affiliated with [PNP],” including PNP’s counsel. *Id.* Ex. 1, at 9; *see also id.* Ex. 1, at 16 (“Plaintiff has not received legal advice, funding, or resources (e.g., investigators, expert witnesses) relating to this lawsuit from [PNP] or any entities or individuals affiliated with [PNP.]”); *id.* Ex. 2, at 9, 16 (same assertions in Mr. Maggard’s interrogatory responses). At no point during his deposition did Mr. Lombardi suggest that these assertions were inaccurate or that

⁵ To be clear, as Plaintiffs’ counsel have repeatedly told Defendants’ counsel, the identity of the third-party funder *was* provided in Perkins Coie’s engagement letters with both Plaintiffs. Accordingly, Defendants’ suggestion that Plaintiffs’ counsel have acted in an “ethically dubious” manner, Lombardi Mot. 6 & n.4, is, to put it mildly, not well taken.

PNP provided funding for this lawsuit. Instead, he explained that these assertions were correct to the best of his knowledge “in reliance [on] the representations of [his] counsel.” *Id.* Ex. 9, at 40:1–6; *see also id.* Ex. 9, at 41:23–14 (“So as with Interrogatory No. 8, I relied on the advice of my counsel and what I was told by my counsel. And I also relied on my own experience, because I have not received any legal advice, funding or resources from any of the people listed in regard to the lawsuit.”).⁶

Plaintiffs have “fully—and truthfully—answer[ed] Interrogatories 8 and 17.” *Id.* at 5. Perkins Coie’s funding is *not* being provided by PNP, its counsel, or the other entities that Defendants have identified as potentially triggering an estoppel issue. Accordingly, the identity of Perkins Coie’s third-party funder is not relevant to this litigation because it has no bearing on Defendants’ estoppel theory—and is, at any rate, privileged information to which Defendants are not entitled.

CONCLUSION

Enough is enough. Defendants have failed to establish any need for or entitlement to the information they seek, which is privileged at any rate. Their motions should be denied, discovery should cease, and the Court should proceed to the merits.

⁶ Defendants do not cite any authority suggesting that a party’s personal knowledge cannot be informed by the representations of counsel. After all, all knowledge comes from *somewhere*; that Mr. Lombardi learned that PNP is not funding or otherwise involved with this lawsuit in part from his attorneys does not make it any less his own knowledge.

Respectfully submitted,

**AMERICAN CIVIL LIBERTIES UNION
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, a true and correct copy of the above was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

s/ Tori Schafer
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