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Dear Chairman Hobby:

Texas faces an Ethics emergency and the Commission must act now. Governor Abbott submitted to the Legislature a specific emergency issue to increase disclosure of campaign finance information. However, the recent decision by Judge David Cleveland, sitting by assignment in the 158<sup>th</sup> Judicial District Court in Denton County, Texas, has enormous and far-reaching effects. While I believe the Commission will prevail in its appeal to the Fort Worth Court of Appeals, until the appellate court issues its decision, I ask the Commission to immediately cease issuing enforcement orders for all campaign finance and lobbying cases.

At our public meetings, the lawyers for Michael Quinn Sullivan and Empower Texans argued that the entire system of campaign finance and lobbying disclosure in Texas is an unconstitutional abridgement of the First Amendment. Now, on appeal of the lobby case, Mr. Sullivan has sought and received an order of dismissal that the Commission's attempt to enforce its order is a violation of the Texas anti-SLAPP statute.

In 2011, Texas passed its anti-SLAPP statute to protect First Amendment Rights. SLAPP stands for Strategic Lawsuits Against Public Participation. This tort reform measure is designed to quickly dismiss lawsuits brought to discourage the exercise of free speech and the right to petition the government. Plaintiffs who file SLAPP suits most commonly sue for defamation. Sometimes, they also sue for trademark infringement, intentional infliction of emotional distress or tortious interference with contract.

The statute broadly protects First Amendment activity. Exercise of the right of free speech is defined in the statute to mean "a communication made in connection with a matter of public concern." TEX. CIV. PRAC. & REM. CODE 27.001(3). "Matter of public concern" includes "the government" and "a public official." TEX. CIV. PRAC. & REM. CODE 27.001(7). Arguably, every matter we regulate is a public concern. However, the statute exempts "an enforcement action that is brought in the name of the state." TEX. CIV. PRAC. & REM. CODE 27.010(a). This statute was not passed to end campaign finance regulation in Texas but that is how it was applied.

The latest crisis highlights the fundamental problem with the Texas Ethics Commission. An enforcement agency cannot do its job if compliance is wholly voluntary. Despite a lengthy administrative process at the Commission, on appeal, no evidence and no decisions from that process may be used in the appeal in district court. This is not an appeal of a decision. This is an entirely new case. This is why the Sunset Commission recommended that final orders from the Ethics Commission have substantial evidence as their standard of review.

The Ethics Commission should have the same standard of review as 23 other state agencies with enforcement authority. From the Animal Health Commission all the way to the Workforce

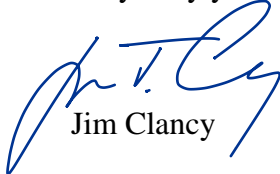
Commission, the decisions of these enforcement agencies have legal meaning. The final decisions of the agency that regulates the political class have none. Those with means can start all over again in court after years of fighting the Commission. This need has fallen on deaf ears in the legislature. The 2013 sunset bill, including this provision, was amended to remove it. The interim committee report doesn't even mention the issue. Now, not one bill filed in 2015 contains this critical reform.

Nor can an enforcement agency enforce without resources. The cuts in the proposed Commission budget by the Senate Finance Committee are significant. If funding is not provided for staff salary supplementation, the Commission cannot take steps necessary to stop the 60% turnover in its attorney ranks because of low compensation. If funding is not provided for the investigator and the auditor position, the Commission is prevented from effectively reviewing filings or performing comprehensive investigations.

In many ways, as it is currently structured, the Texas Ethics Commission is like a traffic cop standing in the middle of an intersection with a whistle. He has no gun, he has no patrol car, all he can do is stand there and blow the whistle until help arrives. I am blowing the whistle. We need substantial evidence review. We need an auditor. We need an investigator. We need to be able to pay to keep our experienced attorneys.

Until there is a decision by the court of appeals, we must stop issuing orders we cannot enforce in the courts. Ultimately, we cannot require compliance from tens of thousands of Texans when those with extraordinary resources can spend hundreds of thousands of dollars to challenge a \$10,000 fine. I respectfully ask the Chairman to notify the regulated community that we have halted all enforcement actions until the full Commission can meet as soon as possible.

Very truly yours,



Jim Clancy

cc: Commissioners, Texas Ethics Commission