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COALITION ASSOCIATION  
*Keeping Texas Families Free™*



EMPOWERTEXANS



TXPC  
TEXAS PASTOR COUNCIL

August 30, 2016

The Honorable Greg Abbott  
Governor, State of Texas  
P.O. Box 12428  
Austin, Texas 78711

The Honorable Dan Patrick  
Lieutenant Governor, State of Texas  
P.O. Box 12068  
Austin, Texas 78711

The Honorable Joe Straus  
Speaker, Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768

**Re: Texas Ethics Commission Repeated Lies in State and Federal Court / History of Abuse**

Dear Governor Abbott, Lieutenant Governor Patrick, and Speaker Straus:

We write to bring the outrageous conduct of the commissioners and staff of the Texas Ethics Commission to your attention and to call for the agency to be brought under the investigation and oversight of the Texas House of Representatives and the Texas Senate.

The agency is pursuing rules and interpreting state statutes in ways that threaten the free speech rights not only of civic groups, but also of churches and individuals.

In defense of their unconstitutional actions, the TEC and the individual commissioners and staff have now been caught in blatant lies in federal and state court. The lies serve to prolong a vendetta against the state's leading conservative organizations.

## **Brief History of the Texas Ethics Commission**

The current constitutional crisis at the TEC has been two and a half decades in the making.

The TEC was initially created at the behest of Democratic Governor Ann Richards. Presented to the voters via constitutional amendment, the TEC was billed as an agency that would take over from the legislature the job of recommending legislator salaries and setting the legislative per diem.

Also in the authorizing legislation was a grant of power allowing the legislature to confer additional duties to the TEC by statute.

The legislature granted to the TEC the power to investigate and prosecute Texans for violations of the state's lobby registration and election laws. Those statutes required the commission to adopt rules governing its proceedings in so-called "sworn complaint" proceedings. For more than 25 years, the commission has refused to adopt the rules mandated by statute.

Confidentiality provisions built into the statutes have been warped against the accused and manipulated by the TEC to shield the agency from scrutiny. Rather than protecting the accused from public allegations that they are "under investigation" for "ethics violations," the confidentiality rules instead empower the TEC commissioners to meet in secret where they harass and cajole their targets, typically for minor paperwork violations.

The statutes fail to impose any effective "speedy trial" or statute of limitations protections, and consequently, TEC investigations and prosecutions drag on for years, subjecting the TEC's targets to burdensome legal expenses. Such protracted beadledom has led to a backlog of hundreds of cases at the TEC where it takes nearly two years for a complaint to get a hearing.

At the TEC, the process is the punishment.

## **Cooperation with Far-Left State Ethics Agencies**

Last year, the TEC was exposed in the national press for participating in a politically biased email group. The group was hosted by the state of Vermont and was used by left wing state ethics regulators to share strategies on how to defend aggressive anti-speech regulations.

In the exposé, national columnists J. Christian Adams and Hans Von Spakovsky released records showing that the staff attorneys for the TEC sought advice for their cases against conservative Texas groups. Participation included government employees in New York City and the following states: California, Colorado, Hawaii, Illinois, Nevada, New York, Texas, Vermont, Washington, and Wisconsin. Texas was the only conservative "red" state participating in the email group.

In the electronic discussion, TEC staff praised articles from the left wing Brennan Center of New York City. The Brennan Center has been one of the chief voices in favor of undermining the *Citizens United* decision, recently praising the speech-chilling effects achieved by the “tough disclosure requirements and active enforcement culture” in California.

Similarly, attorneys on the Vermont email list who sought advice were referred to the Campaign Legal Center for assistance in tough cases. The Campaign Legal Center is a far-left organization funded by George Soros that champions burdensome anti-speech regulations.

Additionally, the commissioners and staff of the TEC attend and participate in the annual Council on Government Ethics Laws national conference. COGEL is a national umbrella organization of state ethics agencies committed to imposing greater speech regulations on Americans. In fact, long-time TEC commissioner Tom Harrison previously served as the Secretary-Treasurer of COGEL. The most recent COGEL conference featured Norm Eisen. A former Harvard classmate of Obama and one of his major bundlers, Eisen was appointed as the President’s “Ethics Czar.” During the question and answer period, Eisen defended Hillary Clinton as “an ethical person” and advocated for more aggressive regulation of speech.

The conference also featured the far-left chairman of the Federal Elections Commission, Ann Ravel, who drew national criticism after moving to regulate social media activity under campaign finance laws. Likewise featured was Kevin Kennedy, the disgraced former executive director of the Wisconsin Governmental Accountability Board. The GAB was abolished and Kennedy was fired by the Wisconsin legislature after the agency coordinated pre-dawn raids on the homes of conservative activists. The raids were in response to allegations that the activists coordinated their speech with the reelection campaign of Governor Scott Walker. Kennedy and the GAB were condemned by the Wisconsin Supreme Court for pursuing cases that had no basis in law or fact.

TEC Executive Director Natalia Ashley was named to COGEL’s 2016 steering committee, signaling that the TEC’s role in the organization is growing.

### **Lies in Federal and State Court**

Desperate to advance the far-left anti-speech agenda of COGEL in Texas, the TEC commissioners have resorted to telling outright lies in state and federal courts.

Last year, in procuring a dismissal of a suit brought against them by the Lake Travis Citizens’ Council, the TEC commissioners assured the Federal District Court for the Western District of Texas that the Citizens’ Council, a nonprofit corporation, could not be prosecuted for failing to register as a political committee because the Council, as a person and not a “group of persons,” could never meet the definition of a political committee under Texas law. Concluding that corporations, like the Lake Travis Citizens Council, were not at risk of being prosecuted for

failing to register as a political committee, District Judge Lee Yeakel dismissed the *Lake Travis* case on December 14, 2015.

That concession should have protected churches and other non-profit civic organizations from allegations that they failed to register as political committees.

However, the TEC commissioners have refused to end legal cases against comparable non-profit organizations, including Empower Texans and the Texas Home School Coalition.

On June 30, 2016, in their brief to the Austin Court of Appeals in *Empower Texans, Inc., et. al. v. State of Texas Ethics Commission, et. al.*, the TEC commissioners defended their right to continue investigating Empower Texans under a theory that Empower Texans failed to register with the commission as a political committee. The brief, in its entirety, serves as a repudiation of the promises made by the commissioners in 2015 in Federal District Court and a rejection of *Citizens United* and other decisions protective of the First Amendment.

Moreover, the commissioners lied to the Austin Court of Appeals.

At the center of the arguments by the TEC commissioners are five emails from Empower Texans from 2011. The emails included an online donation button and a plea that readers “consider making a monthly or one time contribution of \$5, \$10, or \$25 to fund independent expenditure activities that promote conservative leadership in the Lone Star State.” In their pleadings, the commissioners argue that the appearance of that language and the donate button in five emails caused Empower Texans and its donors to somehow morph into a political committee. The commissioners claim the power to regulate, prosecute, and punish Empower Texans for failing to register as a political committee and are attempting to force the organization to disclose the privacy of its donors.

The TEC commissioners’ arguments directly contradicts the promises they made in federal court last year.

In their brief, the commissioners conceded:

*“This case would be resolved if Empower Texans ... confirmed that \$375 was the total number of donations from the ads. A number lower than \$500 would not even trigger an inquiry into the motivations of the participants, and whether they were shared.”*

**Attached to the commissioners’ very own brief was a spreadsheet along with several emails confirming that Empower Texans received less than \$500 from the five emails.** The TEC has known for 28 months that the facts do not support their investigation, even under their disputed theory.

After the commissioners were made aware that their statement was false, they again refused to dismiss their investigation into Empower Texans. Instead, TEC Chairman Chase Untermeyer took to the pages of the *Houston Chronicle*, promising to continue the agency's crusade against the agency's conservative opponents and pejoratively referring to the donors to such organizations as "bashful billionaires" while arguing a right to force their disclosure.

## **War on Churches**

While the TEC's collaboration with liberal states has garnered a national spotlight, its war on churches and religious figures has received insufficient attention.

When the City of Houston and Mayor Annise Parker attempted to subpoena the records of churches opposed to the Houston transgender bathroom ordinance, Republican officeholders rallied in unison to condemn the attacks and defend the churches.

Yet the TEC has engaged in worse behavior with little attention from the elected leaders who have the ability to curtail their abuses.

The TEC commissioners have advanced rules that would heavily regulate churches that engage in advocacy regarding ballot initiatives, bond elections, constitutional amendment elections, local option liquor elections, and recall efforts.

In El Paso, the TEC's rules were used against Bishop Tom Brown. Over the past five years, Brown has been subjected to litigation under the allegation that his church violated election laws because he and his congregation circulated a petition to recall former El Paso Mayor John Cook. The recall effort came after Cook issued city health insurance benefits to homosexual and unmarried partners of city employees. Brown was forced to finally settle the case for nearly \$500,000 in order to save his church from bankruptcy.

The TEC commissioners themselves have litigated against churches as well. In *Joint Heirs Fellowship Church, et. al. v. Natalia Ashley, et. al.*, the TEC opposed two Houston churches and a San Antonio church over their right to engage in a potential San Antonio recall election. The TEC refused to concede that the churches would not be required to register as political committees if they and their members participated in gathering signatures for recall election petitions.

The gravity of the TEC's position cannot be understated.

If a church is determined by the TEC commissioners to be a political committee, then it would be compelled to disclose in elaborate reports the identities of those members who choose to tithe and the amounts the members give. In fact, regulated churches would effectively be barred from passing a collection plate because anonymous contributions would render the church unable to

comply with burdensome campaign finance disclosure requirements. And if a church refused to comply, or made a mistake on their paperwork, the pastor and other church members could be subject to criminal penalties.

### **Investigation and Oversight Needed**

How far can these commissioners go in trampling the constitutional rights of Texans before drawing scrutiny? How many times must the commissioners be caught lying to the courts before they are held accountable?

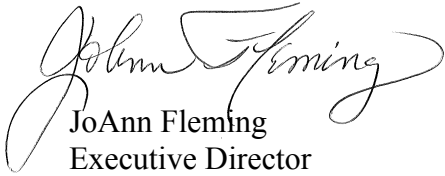
The Senate Committee on State Affairs will be holding a hearing on an interim charge regarding ethics legislation on October 5, 2016. The hearing presents an ideal opportunity for senators to demand answers from the TEC commissioners on the following and other issues:

- How do the TEC commissioners justify telling one federal court that the TEC would not prosecute non-profit groups for failing to register as political committees, while simultaneously pursuing claims against other non-profit groups in state court?
- Do the TEC commissioners respect the US Supreme Court's decisions in *Citizens United* and *United States v. McIntyre* that secured the right of organizations to speak on the most salient issues of the day, and to speak anonymously when they so choose?
- Do the TEC commissioners continue to collaborate with liberal states and far-left officials and activists to develop strategies to attack and silence conservative groups in Texas?
- Will the TEC commissioners continue to prosecute complaints against Texas churches under state election laws?

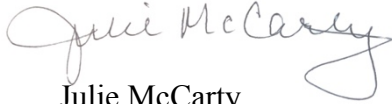
The Texas House of Representatives should follow suit and investigate the commissioners and staff at the TEC for their inexcusable and inexplicable actions. They must be held accountable.

The Texas Ethics Commission presents a great threat to the constitutionally protected liberties of 27 million Texans. All of the commissioners need to be replaced, and the agency needs to be fundamentally reformed or abolished.

Sincerely,

A cursive signature in black ink that reads "JoAnn Fleming".

JoAnn Fleming  
Executive Director  
Grassroots America – We The People

A cursive signature in black ink that reads "Julie McCarty".

Julie McCarty  
President  
NE Tarrant Tea Party

A cursive signature in black ink that reads "Tim Lambert".

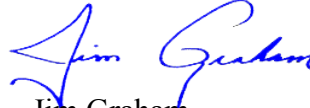
Tim Lambert  
President  
Texas Home School Coalition

A cursive signature in black ink that reads "Rev. Dave Welch".

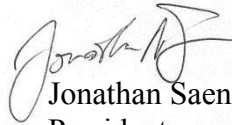
Rev. Dave Welch  
President  
Texas Pastor Council

A cursive signature in blue ink that reads "Michael Quinn Sullivan".

Michael Quinn Sullivan  
President  
Empower Texans

A cursive signature in blue ink that reads "Jim Graham".

Jim Graham  
President  
Texas Right to Life

A cursive signature in black ink that reads "Jonathan Saenz".

Jonathan Saenz  
President  
Texas Values

CC: All Republican Legislators