July 27, 2014

To: **Members of the 83rd Texas Legislature**

From: Steve Bresnen

Subj: **UPDATE: Let’s Stay Honest**

Forgive me for being a naive traditionalist, but as corny as it may seem to some “activists,” I continue to believe that credibility is fundamental to all we do. My greatest fear—as a citizen and professional advocate—is that lying threatens to replace honesty as the currency of public discourse. That’s why it’s been a good week for Texas.

**The Texas Ethics Commission did its job**: By now you’re aware that on July 21st, the TEC found Mike Sullivan guilty of violating the Lobby Registration Act by failing to register as required by law in 2010 and 2011. Some observations:

1. No one doubts Mike gets paid to directly communicate with legislators and it’s not to play fantasy football. It’s to influence your vote. Like it or not, that’s when the law requires registration, which provides disclosure but, more importantly, is designed to prevent and punish corruption. And, there’s no more conservative principle than the Rule of Law.
2. The Commission’s order does a great service by using plain language to call a spade a spade and enumerate what does and does not constitute lobbying. Mike’s incessant demagoguery on this issue has been, surprise, incessant and demagogic. On the other hand, his lawyers know better. Any credibility Mike or his lawyers may have once had is shot to hell.
3. The Commission did *not* do what I thought it should, which was to go to District Court to enforce its subpoenas and force Mike to testify under threat of jailing him if he did not. Once again, his lawyers destroyed their own credibility by trumping up bogus privileges against testifying in a contorted effort to avoid Mike having to say: “I take the 5th.” On the other hand, the Commission clearly had a mound of evidence on which to find Mike guilty and there will be other opportunities—soon, I hope—to demonstrate that Commission subpoenas have teeth. I look forward to that day. The Commission sought to avoid further delay (and probably to conserve the agency’s limited resources); I can’t fault them for making that responsible decision.
4. The Commission’s staff lawyers did yeoman’s work. Normal humans should not be expected to deal with the kind of stuff Mike and his lead counsel, Joe Nixon, excreted. But, they did. “Good job” to these honest, straightforward public servants.

“WHAT ABOUT 2013?” Several folks have asked why Mike has not been charged with the same kinds of lobby law violations for his activities in 2013. THE ANSWER: Beats me. If there is ample evidence re: the 2013 sessions, like the evidence that led to the Commission’s decision, it would appear another complaint would meet the same result.

***I commend the Commission order to your reading. Here’s a link to it:*** <http://bit.ly/1Amyvmu>

**Televised distortions**: Congenitally unable to resist the temptation to lie to thousands of people all at once, Mike gave an interview to the July 20th Dallas NBC affiliate’s program *Lone Star Politics* in which he repeatedly (and demonstrably) lied to the interviewers, to wit:

Asked whether he destroyed email evidence, Mike denied it and said: “They never actually asked us about emails…never asked us about policies, if they had they would have found that we, like most businesses have an email retention policy, they never asked us about that…”

Say what?

**First**, it’s dumb to start by explaining why he wouldn’t testify at all and then answer any question with “they never asked me?” (Understand: I gave the Commission evidence of hundreds of emails Mike sent to legislators in 2010 and 2011. The Commission specifically cited examples of them to find him guilty.)

**Second**, the transcript of the Commission’s formal hearing, in which Mike took the stand but refused to testify, shows Mike was asked about emails sent to legislators, starting on Page 231 when Nixon asserted that Mike would not be answering questions. Mike was again asked about emails on Pages 246 through 250 and again on Pages 269 through 273. So, *he* *was* *asked about the emails*. He simply lied to the reporters, smiling all the while.

But, **third**, there’s more. Mike gave testimony under oath in federal court (before the Commission hearing) when he sued the Commission to void its subpoenas demanding the emails. The transcript shows Nixon asking Mike about the e-mails. The word “e-mail” appears on 11 pages of that transcript, often repeatedly. Mike answers specific questions regarding emails to legislators (Pages 15 and 16) and, when asked by Nixon, “Do you have any such documents?” Mike answers: “Yes sir, I believe those do exist.” Then, why would the Commission need to ask Mike about his retention policy? The Commission had this transcript. Mike acknowledged that the e-mails were covered by the subpoenas; the e-mails clearly remained under subpoena at the Commission hearing; and, Mike told a federal judge, under oath, that he had retained copies of them. Bizarre, simply bizarre.

Why lie when the public record so easily and demonstrably proves the truth? Your guess is as good as mine, but I used the word “congenitally” advisedly, not to be snarky.

Now, I know this may be tedious to you and it sure is to me. MY POINT IS: Mike’s credibility is in tatters. So much so that nothing he says is worthy of belief. If he truly believes that kind of lying will fly in State District Court (“I’ll be more than happy to testify in front of a real judge.”), his lawyers should brace him for a rude awakening. (If that’s to be, I guess I’ll see Mike down town at 11th and Guadalupe.)

***Here’s a link to the program (@ the 7:11 mark):*** <http://bit.ly/1rqHRaL>

**Salem’s decision**: You may recall that Salem Abraham, a Panhandle businessman, filed a libel suit against AgendaWise, another credibility-bereft plaything controlled by Mike and Tim Dunn. A District Court in Canadian ruled that AgendaWise’s blog post about Mr. Abraham was indeed false and damaging, but dismissed the case under Chapter 27 of the Civil Practice and Remedies Code (the so-called anti-SLAPP statute). I won’t go into the legal details here, but if that court was right, anyone could say anything about YOU and you’d have no recourse, zero, nada.

Joe Nixon represented the defendants in that case, too, and could be virtually heard yodeling “cocka-doodle-doo” all the way down here in Austin. That rooster crowed too early; it turned out the sky was falling on AgendaWise because Salem Abraham did not take it sitting down.

On July 25th, the 7th Court of Appeals (Amarillo) reversed the trial court and reinstated Mr. Abraham’s suit. Looks like the chickens are about to come home to roost. Credibility is about as foreign to AgendaWise as feathers are to a javelina. The case goes back to the trial court, which has already found the statements by AgendaWise to be a lie. That should make the remaining proceedings rather more, uh, efficient. It may also make Mike subject to subpoenaed testimony in that litigation.

BUT REMEMBER: I warned you two years ago about the interaction of the anti-SLAPP law and the Reporter Shield statute and the threat it poses to YOUR reputation. It’s easily fixable but so far no one has stepped forward to do so.

***Here is a link to the Amarillo Court’s opinion***: <http://bit.ly/1k2m2PE>

**Summary (sorta):**  Mike and his lawyers had an awful week. July 20th he lied on a big stage like no one was watching—but some who knew the truth were; July 21st he was found guilty, fined $10,000 (the max) and publicly questioned about destroying evidence; and, on July 25th, his spawn got tagged for lying by the Amarillo Court of Appeals.

Mike’s credibility quotient dropped below measurement and Tim Dunn’s legal bills have gone the other way (up, vertically, that is) proportionately. Not that Tim seems to care about either credibility or enormous, readily avoidable and entirely wasted legal fees.

**But, there’s more**: Presumably, the Commission will pursue the Election Code violations alleged against Empower Texans back in May of 2012 and, later, the two Election Code violations I complained of earlier this year. Those complaints will likely also call on the Commission to enforce its subpoenas, since Mike and Joe have shown no likelihood of complying with them, either. I hope the Commission goes down to State District Court right away and makes a simple request: Compliance or contempt.

One way or the other, sooner or later, Mike and Tim are going to have to tell the truth.