

TEXAS ETHICS COMMISSION
IN THE MATTERS OF MICHAEL Q. SULLIVAN AND
EMPOWER TEXANS (DBA TEXANS FOR FISCAL
RESPONSIBILITY)
RESPONDENTS

SWORN COMPLAINTS SC-3120485, SC-3120486,
SC-3120487 AND SC-3120488

* * * * *
TAKEN
JUNE 25, 2014
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ABOVE-STYLED HEARING was taken in the
above-styled and numbered cause on the 25th of June,
2014, from 8:30 a.m. to 8:02 p.m., before RHONDA
HOWARD, CSR in and for the State of Texas, reported
by machine shorthand, at the offices of John H.
Reagan Building, Room 120, Austin, Texas, pursuant
to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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Hon. Paul W. Hobby
17 Hon. Tom Harrison
Hon. Tom Ramsay
18 Hon. Hugh C. Akin
Natalia Ashley
19 Hon. Bob Long
Hon. Wilhelmina Delco
20

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1 (8:56 a.m.)

2 CHAIR CLANCY: We are reconvening
3 from this morning's Executive Session. And I don't
4 believe fellow Commissioners have any motions as a
5 result of the session. Is that correct?

6 All right. Is there a motion to adjourn
7 the Executive Session?

8 COMMISSIONER LONG: So moved.

9 COMMISSIONER DELCO: So moved.

10 CHAIR CLANCY: Motion by Commissioner
11 Long; second by Commissioner Delco. All in favor,
12 say aye. All right.

13 Good morning. We're here today waiting
14 for Marcy Castellanos to get our tape recorder ready
15 to go.

16 All right. Good morning. We're here
17 today on the formal hearing in sworn complaints
18 3120487 and 3120488.

19 The Commission has reviewed the motions
20 filed by each of the parties and will take them
21 under advisement, specifically retiring those
22 motions.

23 Today we have the opportunity to conduct a
24 formal hearing, and each party has been awarded four
25 hours of time to present their case to the

1 Commission.

2 The rules for the time are as follows:
3 Specifically each side gets a total of four hours to
4 use as they'd like. That includes questioning
5 witnesses, cross-examining witnesses, presenting
6 evidence, making opening and closing statements and
7 arguing evidentiary points throughout the --
8 throughout the hearing.

9 The following does not count towards the
10 four hours: Questioning by Commissioners. And once
11 the Commissioner's question has been answered, the
12 Chair or the Commissioner can say that, "You've
13 answered our question." And then the -- the clock
14 will start again for the next party who starts
15 speaking.

16 We have a couple of timekeepers available
17 with us and -- and that is only to allow the parties
18 the information of knowing where they are in terms
19 of the -- the time that they have to present their
20 case today.

21 We'll provide time updates at my request,
22 at each break, at the request of either party, at
23 the two-hour mark, the one-hour mark. And then once
24 the side has one-hour mark remaining we will count
25 it down. Our timekeepers this morning are Christina

1 and Marta. Raise your hand, ladies. Okay. And so
2 you can -- you can check with them with regard to
3 where we stand.

4 All right. In order to get going this
5 morning we need to call the roll, so I would like to
6 ask our Executive Director to call the roll.

7 MS. ASHLEY: Chair Clancy?

8 CHAIR CLANCY: Here.

9 MS. ASHLEY: Vice Chair Hobby?

10 COMMISSIONER HOBBY: Hear.

11 MS. ASHLEY: Commissioner Akin?

12 COMMISSIONER AKIN: Present.

13 MS. ASHLEY: Commissioner Delco?

14 COMMISSIONER DELCO: Here.

15 MS. ASHLEY: Commissioner Harrison?

16 COMMISSIONER HARRISON: Here.

17 MS. ASHLEY: Commissioner Long?

18 COMMISSIONER LONG: Here.

19 MS. ASHLEY: Commissioner Ramsay?

20 COMMISSIONER RAMSAY: Here.

21 MS. ASHLEY: Commissioner Untimeyer
22 (phonetic). We have a quorum.

23 CHAIR CLANCY: All right. At the end
24 of today's hearing and the close of evidence and the
25 completion of arguments, the Commission will

1 deliberate and we'll decide then whether we'll be
2 able to make a decision today or whether we'll need
3 to continue the hearing.

4 We'll also decide whether or not
5 additional relief needs to be awarded to either
6 party, or whether the hearing needs to be continued.

7 So we are ready to proceed with the formal
8 hearing on Sworn Complaints SC-3120487 and 0488. Is
9 the Respondent present?

10 MR. NIXON: Yes, the Respondent is
11 present.

12 CHAIR CLANCY: All right.

13 MR. NIXON: Mr. Chairman, we have a
14 couple of just administrative questions.

15 CHAIR CLANCY: Please.

16 MR. NIXON: Okay. The first is with
17 regard to the documents. I mean, there are many of
18 the documents that we have stipulated to as to no
19 objection, but there are some that we do have
20 objections to. And how does the Chair wish to deal
21 with those objections?

22 CHAIR CLANCY: What I would like to
23 do is if you have a list of the documents that have
24 been preadmitted, if you could provide that to me,
25 and then we'll take up the objections as the

1 evidence, if required, is admitted -- offered.

2 MR. NIXON: We have evidence of a
3 stipulation previously. I think those -- that --
4 and so those -- that numbers [sic] are listed in the
5 stipulation.

6 CHAIR CLANCY: All right. Can I have
7 a copy of that for our reference?

8 MR. STEUSLOFF: Yes, sir.

9 MR. NIXON: For our understanding, is
10 the Chair able to identify which motions it has
11 chosen to carry forward?

12 CHAIR CLANCY: All of the pending
13 motions.

14 MR. NIXON: Does that include our
15 motion for more definitive statement?

16 CHAIR CLANCY: Yes, sir.

17 MR. NIXON: Does it include our
18 motion to exclude the testimony of Mr. Bresnen?

19 CHAIR CLANCY: Yes, sir.

20 MR. NIXON: Okay. We would invoke
21 the rule under Rule 614 of the Texas Rules of
22 Evidence.

23 CHAIR CLANCY: Okay. Counsel, you
24 intend to make an opening. Right?

25 MR. STEUSLOFF: I do, yes, sir.

1 CHAIR CLANCY: And do you, as well,
2 Mr. Nixon?

3 MR. NIXON: Yes.

4 CHAIR CLANCY: Okay. What I would
5 like to do is -- who is here to testify on today's
6 hearing?

7 (Show of hands)

8 CHAIR CLANCY: Okay. Can I have the
9 witnesses all stand and come forward so I can swear
10 you all at one time.

11 All right. And we're just going to go
12 left to right. If you would identify your full name
13 and then I'll swear you all at one time.

14 MR. SULLIVAN: Michael Quinn
15 Sullivan.

16 MR. LISHERON: Mark Lisheran.

17 MS. HAUG: Jessie Haug.

18 MR. KEFFER: Jim Keffer.

19 MS. DOUGLAS: Robbie Douglas.

20 MR. BRESNEN: Steve Bresnen.

21 MS. TRUITT: Vicki Truitt.

22 MR. GREENHAW: William Greenhaw.

23 CHAIR CLANCY: All right. Ladies and
24 gentlemen, if you'll raise your right hand.

25 (Witnesses sworn)

1 CHAIR CLANCY: All right. Thank you
2 very much. You all can be seated. At the
3 conclusion of opening, we'll ask you to leave the
4 hearing room as we begin the testimony.

5 MR. NIXON: Okay. So that we're
6 clear, Mr. Sullivan is allowed to stay?

7 CHAIR CLANCY: Of course.

8 MR. NIXON: And then our expert,
9 Mr. Lisheron, would be allowed to stay.

10 CHAIR CLANCY: The basis for him
11 being allowed to stay?

12 MR. NIXON: He is our expert and
13 needs to be able to digest and understand the other
14 testimony in order to provide this Commission his
15 expert testimony.

16 CHAIR CLANCY: Counsel, do you have a
17 position on Mr. Lisheron remaining?

18 MR. NIXON: He needs to be able to
19 assist us.

20 MR. STEUSLOFF: Well, I think at this
21 point Mr. Lisheron should be required to wait
22 outside. If he's going to be providing an expert
23 opinion in this case, then we'll need to know what
24 specific evidence he's looked at. And I would
25 assume that he has already looked at some -- some

1 documents or he's communicated with Mr. Sullivan or
2 other individuals with Empower Texans.

3 CHAIR CLANCY: Do you oppose him
4 attending?

5 MR. STEUSLOFF: I do.

6 CHAIR CLANCY: And, Mr. Nixon, do
7 you -- do you envision Mr. Lisher on offering fact
8 testimony?

9 MR. NIXON: No. He's going to be
10 offering only opinion testimony. And I need him to
11 be able to assist me in the preparation of my
12 defense.

13 CHAIR CLANCY: All right.
14 Mr. Lisher on will be able to remain during the
15 hearing.

16 MR. NIXON: And so that we're clear,
17 the Complainants, pursuant to 571.138, are not
18 parties, and the Complainant would be required to
19 wait outside, as well.

20 CHAIR CLANCY: Counsel, your position
21 on the Complainants?

22 MR. STEUSLOFF: Well, they're --
23 they're not a party to the complaints. I have no
24 objections if they're kept -- kept outside.

25 CHAIR CLANCY: Counsel, just to make

1 the -- the timing easier for when -- when we start,
2 we'd ask that you address the Commission or question
3 witnesses from the podium.

4 MR. STEUSLOFF: Certainly.

5 CHAIR CLANCY: All right. All right.
6 Very good. We're prepared to proceed. Staff, you
7 may open.

8 OPENING STATEMENT ON BEHALF OF STAFF

9 MR. STEUSLOFF: Yes, sir. Thank you.
10 Mr. Chairman and Members of the Commission, for the
11 record, my name is Ian Steusloff. I'm Assistant
12 General Counsel with the Texas Ethics Commission,
13 and I thank you for the opportunity to present this
14 case to you today.

15 I'd like to begin first just by informing
16 the Commission that we do have some visual aids.
17 They are poster boards behind that black --
18 they're -- they're currently sealed and they're a
19 restatement of the law. I would ask the Chair if I
20 would be able to open those visual aids --

21 CHAIR CLANCY: Of course.

22 MR. STEUSLOFF: -- and put an aid --

23 CHAIR CLANCY: Sure.

24 MR. STEUSLOFF: -- on display over
25 here in the corner?

1 CHAIR CLANCY: Thank you.

2 MR. STEUSLOFF: So this -- this chart
3 here is a restatement of the law. It's just a guide
4 for -- for you, Commissioners, regarding what the
5 elements are in this case. And I would like to --
6 to begin by saying that -- that this is a case about
7 disclosure. It's about transparency in government,
8 and it's about allowing the public to know who is
9 being paid to exert influence on State officials,
10 who is being paid to influence those public servants
11 who decide the policies of State government and make
12 decisions that affect all of us.

13 This isn't a -- a case about only
14 scorecards. It's not a case about whether any
15 member of the public has the right to petition their
16 government, because certainly under the State and
17 the U.S. Constitution, every -- every citizen does
18 have the right to petition their government. But
19 the issue is that in the State of Texas there are
20 laws in the Government Code that require a person to
21 register as a lobbyist with the Commission depending
22 on how much they spend or how much they are paid for
23 the purpose of influencing the State Legislature.

24 If you receive more than \$1,000 in a
25 calendar quarter to lobby, then you have to

1 register. If you lobby the Legislature as a part of
2 your regular employment and you are paid more than
3 \$1,000 in a calendar quarter by your employer, then
4 you have to register.

5 A person must also register if they're
6 buying things like gifts, awards, meals,
7 transportation, lodging, for Legislators and they're
8 spending over \$500 in a calendar quarter for those
9 things, that person must also register.

10 Now, in this case the issue is not about
11 lobby expenditures necessarily. It's about
12 compensation. It's about someone working for a
13 corporation, lobbying the Legislature and being paid
14 to do so. It's not about just a person who feels
15 one day like they want to call their Legislator or
16 send them an E-mail and say, "There's a bill coming
17 up, and I urge you to support it," or "I urge you to
18 oppose it." If they're doing that on their own,
19 that's perfectly fine. They're free to do so.

20 It's only in the case where they're
21 spending certain amounts of money or they're being
22 paid to make those communications that the State law
23 requires them to file a registration with the
24 Commission. And what we're talking about, it's --
25 it's a form that identifies who they are. It

1 identifies who their employer is, and it identifies
2 who they're being paid. It doesn't prohibit anyone
3 from lobbying the Legislature. These are disclosure
4 requirements.

5 The issue in this case is whether
6 Mr. Sullivan, the Respondent, was required to
7 register as a lobbyist based on the compensation
8 that was paid to him by Empower Texans. Now, you
9 will hear from some witnesses regarding the
10 complaints that they filed. That's the reason why
11 we are here today. And they will testify that they
12 had a valid basis for filing those complaints.

13 You will also hear from other witnesses
14 who, together, provided hundreds of pages of
15 documents to the Commission that were received from
16 the offices of State Legislators. Those documents
17 will be offered as evidence. You will be able to
18 review them. And one of those witnesses will also
19 be reading certain portions of those documents into
20 the record. It will be clear from those documents
21 that Mr. Sullivan was communicating to Legislators
22 or their staff on behalf of his employer in 2010 and
23 2011, and that the intent behind those
24 communications was clear. They were intended to
25 influence. And again, we're not -- we're not just

1 talking about scorecards. We're not just talking
2 about a statement that I'm going to grade you on
3 this bill. There are significant statements in the
4 documents that state, "We urge you to support this
5 bill. We urge you to oppose this bill. Here's a
6 list of our legislative priorities, and, by the way,
7 all of these issues, all of these bills we're going
8 to grade on your scorecard." And then the grades
9 are subsequently provided to the Legislators and
10 publicly announced. In those purposes,
11 circumstances when the scorecard is used along with
12 specific exhortations to support or oppose
13 legislation, that is when the scorecards are used to
14 influence, and the documents are going to show that.

15 There are some other documents that -- or
16 if you look at these records you will also see that
17 Mr. Sullivan's name and title and E-mail address,
18 signature and contact information and in other
19 statements they are all over these documents. So
20 it's very clear and it will be -- it will be clear
21 from those records that Mr. Sullivan was the source
22 of those documents.

23 Now, lastly, the evidence will show that
24 Empower Texans paid Mr. Sullivan well over \$1,000 in
25 each calendar quarter of 2010 and 2011 when these

1 communications were made.

2 Those communications themselves show that
3 Mr. Sullivan sent a large number of them to
4 Legislators and staff to influence them and that it
5 was done as part of his employment. Therefore, he
6 was required to register as a lobbyist.

7 The decision before you today, again, is
8 whether Mr. Sullivan was required to register in
9 2010 or 2011. In making that determination you must
10 decide whether, by a preponderance of the evidence,
11 Mr. Sullivan was required to register and failed to
12 do so. Preponderance of the evidence means more
13 likely than not or 50 percent plus one or 50 percent
14 plus 01, if you would like. Essentially that it is
15 more likely that Mr. Sullivan was required to
16 register than that he was not in 2010 and 2011.

17 So the questions that -- that you can ask
18 is, is it more likely than not that Mr. Sullivan
19 communicated directly with Legislators or staff with
20 the intent to influence legislation, including the
21 election of the Speaker at the beginning of the 2011
22 session.

23 Is it more likely than not that those
24 communications were a part of Mr. Sullivan's
25 employment with Empower Texans. And is it more

1 likely than not that Mr. Sullivan was paid more than
2 \$1,000 by Empower Texans in a calendar quarter
3 during that time period.

4 Again, the issue is -- is not whether
5 Mr. Sullivan or any other person has the right to
6 contact their Legislators. They certainly do. But
7 the Texas Legislature has set out relatively benign
8 requirements that people who spend money to lobby
9 the State or who receive payment to lobby the State
10 must publicly register to disclose what they spend
11 on Legislators, if anything, and who pays them to
12 lobby. That does not prohibit anyone from
13 petitioning their government, but only requires
14 transparency so that we all know who is being paid
15 to exert influence over the State's public servants.
16 This is an important interest, and I thank you for
17 allowing me the opportunity to address this
18 Commission.

19 CHAIR CLANCY: Mr. Nixon?

20 OPENING STATEMENT ON BEHALF OF THE RESPONDENT

21 MR. NIXON: Mr. Chairman,
22 Commissioners, Counsel, today is exoneration day.
23 Today is the day that Michael Quinn Sullivan is
24 exonerated. The facts and the law are going to set
25 him free from this complaint, either in this

1 tribunal or the next. But today is the day that we
2 are so excited to be able to be here, because we
3 publicly get to explain why Mr. Sullivan nor anyone
4 else who's similarly situated should be facing these
5 complaints.

6 First -- there are three reasons why today
7 is exoneration day. One, you're not going to have a
8 single bit of evidence to support the allegations
9 brought in the complaint. This whole fight has been
10 over signing a 7,000-signature petition asking
11 Legislators to support somebody other than the
12 current Speaker for Speaker constitutes an act of
13 lobbying. And if you recall, I asked the Commission
14 to specifically identify whether signing that
15 petition constituted an act which required
16 Mr. Sullivan and the other 7,000 signators to pay a
17 fee to the State of Texas of \$750 for the privilege
18 of signing that piece of paper. The Commission
19 refused that request.

20 I asked the Commission to identify the
21 specific act with regard to scorecarding that
22 required Mr. Sullivan to register to lobby.

23 You're going to see Mr. Sullivan's
24 scorecard and others who do not register to lobby.
25 And I want to know what facts there are that support

1 a violation of a specific statute. You're not going
2 to have any. There will be no evidence to support
3 the concept that scorecarding influences legislation
4 for a very key reason. The United States Supreme
5 Court in the case of Buckley versus Villejo
6 (phonetic) considered the term influencing to be
7 unconstitutionally vague. Influencing allows any
8 kind of regulatory body the opportunity for
9 selective prosecution. We're going to consider a
10 complaint against one but not others, because
11 influencing isn't -- it's a very vague term. Just a
12 few weeks ago the Seventh Circuit in the case of
13 Wisconsin Right to Life versus the Wisconsin
14 Election -- or Ethics Commission considered the term
15 influence in the Wisconsin statute. And you know
16 what the Wisconsin Commission did? It acquiesced.
17 It said, "You're right. We can't enforce this
18 statute, because we agree that influence language in
19 the definition raises the same vagueness in
20 over-breadth concerns that were present in federal
21 law at the time of Buckley."

22 So to begin with we have a statute that
23 has an unconstitutional term. Influence does not
24 create a bright line. And the interesting thing,
25 any statute which chills speech can and must be

1 invalidated when the facial -- when you look at the
2 law and it becomes facially invalid -- when it's --
3 the law is -- is vague and unclear. And the reason
4 is it's very -- it's very specific, because the
5 First Amendment requires a heightened degree of
6 regulatory -- regulatory clarity and a close fit
7 between governmental means and its end. And most
8 regulations just don't meet that standard.

9 So you've got a statute on its face with
10 regard to scorecarding that is unconstitutionally
11 vague.

12 And then finally, Mr. Sullivan you might
13 hear, but not from any of the witnesses that were
14 sworn in, attends a Wednesday Center Right meeting.

15 But you're not going to hear it from
16 anybody who was actually there as to what goes on.
17 And so when I ask this Commission -- because all
18 three of those things are identified in the
19 complaint -- what is it specifically that
20 Mr. Sullivan does that requires him to register,
21 this is what I was told. Those were almost my exact
22 words. What specifically did this Commission find
23 to constitute lobbying? And I was told, "Pay the
24 fine and get on down the road." That's what your
25 lawyer said in response.

1 And, Mr. Chairman, you said in response,
2 "We'll consider it."

3 That's not enough to determine that
4 someone is subject to civil and criminal penalties.
5 So you're not going to have evidence that any
6 conduct constituted any sort of speech that the
7 State of Texas or this Commission has the
8 constitutional authority to regulate.

9 Furthermore, you're going to find -- and I
10 think it's great that he put this up there, lobby
11 registration requirements, but he didn't put up the
12 exceptions. And on this board that we have here it
13 says exceptions down at the very bottom.

14 We have an exception in the Texas statute
15 that says this, the Government Code Section
16 305.004(1) says, "A person who owns, publishes or is
17 employed by a newspaper, any other published
18 periodical, a radio station, a television station, a
19 wire service or any other bona fide news medium that
20 in the ordinary course of business disseminates
21 news, letters to the editor, editorial or other
22 comment, you're exempt from registering."

23 Do you know what that means, Mr. Akin?
24 General Electric owns NBC. NBC owns a radio
25 station, a T.V. station, a newspaper. The Maytag

1 repairman that works for General Electric is exempt
2 from lobbying, because he's employed by a person.

3 And, Mr. Chairman, we know that a person
4 is who? It's a live entity and a corporate entity.

5 There is an exception - it's not your
6 fault; you didn't draft it - it was written in 1993
7 before the Internet, Mr. Ramsay. Before Al Gore
8 invented the Internet, before I had a computer at
9 home, you had a statute that gave an exemption so
10 broad you could drive a battleship through it.

11 Now, let's think about some obvious
12 choices. The Austin American Statesman, owned by
13 Hurst -- Mr. Hobby, your family used to own the
14 Houston Post. My mother used to be a columnist for
15 the Houston Post. The Post had more than just a
16 newspaper. The Austin American Statesman is owned
17 by Cox. Hurst owns the Chronological. Belo
18 Corporation owns the Dallas Morning News. And a
19 quick Internet look can tell you what all those
20 entities own, banking interests, real estate
21 interests, assets both here in America and abroad
22 that have nothing to do with media.

23 So we have a media exception that
24 Mr. Sullivan fits into, but then you're confronted
25 with the very last problem with regard to your media

1 exception. The United States Supreme Court looked
2 at this exact situation in Citizens United, which
3 was a cause of corporate entities being determined
4 as persons in Texas statute. Citizens United
5 prohibited corporations from engaging in political
6 speech so many days before an election. But there
7 was a media exception, because obviously, the media
8 has to talk about politics. The Supreme Court
9 considered that problem and held that corporations
10 that don't own media assets are no different than
11 any corporation. Corporations that own media assets
12 are on equal standing to everybody else. I want to
13 review their words for you right now so we
14 understand where we are.

15 "The media exception as was written by
16 Justice Kennedy, discloses further difficulties with
17 the law now under consideration. There is no
18 precedent supporting laws that attempt to
19 distinguish between corporations which are deemed to
20 be exempt as media corporations and those which are
21 not."

22 We have consistently rejected the
23 proposition that the institutional press has any
24 constitutional privilege beyond that of other
25 speakers.

1 So here's where they did [sic], the media
2 exception's fine. You want to draw a line in the
3 sand, say these people -- because there's no --
4 there's no -- they simply -- the federal statute
5 distinguished between people of equal dignity and
6 said, "We're just going to draw an arbitrary line."
7 And the Supreme Court said, "The drawing of the line
8 is unconstitutional. You gave an exception to the
9 media." So what happened, Mr. Hobby, made the rest
10 of the statute unconstitutional.

11 It's okay to give the media an exception;
12 it just invalidates the rest of the Constitution.
13 And why, Mr. Clancy? Because as the Supreme Court
14 said we have consistently rejected the proposition
15 that the institutional press has any constitutional
16 privilege beyond that of other speakers. We have a
17 fundamental flaw in the Government Code 305. We
18 have given an exemption to the media. And thereby,
19 failing to give the exception to everybody else,
20 we've created a constitutional dilemma, meaning that
21 the rest of the statute fails a constitutional
22 challenge.

23 To make the matter worse, Justice Kennedy
24 continued, "With the advent of the Internet and the
25 decline of print and broadcast media moreover, the

1 line between media and others who wish to comment on
2 political and social issues becomes far more
3 blurred."

4 So we've brought for you today a very well
5 qualified media expert, someone who has been in
6 journalism all of his life, who has worked for
7 newspapers for the majority of his life, who was
8 involved in a national media -- he was a deputy
9 editor, the No. 2 man at a national media, Mark
10 Lisher, award-winning writer, both a critic and
11 scholar of journalism, who is going to tell you what
12 new media looks like today and why bona fide media
13 and why Empower Texans is bona fide media.

14 So here's where we are: One, you don't
15 have any evidence to support any conduct which can
16 be regulated by the State of Texas.

17 Two, Mr. Sullivan indisputably fits into
18 the media exception. And we know that in part -- I
19 mean, this Commission asked for and tried to
20 subpoena at one point, his blog postings, his
21 editorials and news stories, thereby admitting that
22 the guy disseminates news and writes editorial
23 content.

24 And three, you have a statute which is
25 clearly unconstitutional in the exact same manner of

1 the federal statute which prohibited corporate
2 speech for the exact same reasons, dead solid on.
3 So here's where we are, it's our exoneration day and
4 we are very happy to be here, glad that this day has
5 finally has come. But at the end of today whether
6 through you or through another forum, Mr. Sullivan
7 will be exonerated.

8 CHAIR CLANCY: All right. Thank you,
9 sir.

10 MR. NIXON: We would ask that the
11 Rule be invoked.

12 CHAIR CLANCY: Yeah. At this time
13 I'd admonish the witnesses that while this hearing
14 is broadcast for the benefits of members of the
15 public, you not review any broadcast for any
16 information regarding that broadcast until after
17 you're excused from your subpoena and your testimony
18 in today's hearing.

19 So those witnesses who are going to offer
20 testimony today, I would ask that you leave the
21 hearing room at this time. And I'd ask Staff to
22 call their first witness.

23 MR. STEUSLOFF: We call State
24 Representative James Keffer.

25 THE WITNESS: Where do you want me to

1 go?

2 CHAIR CLANCY: You're going to have
3 the seat at the end of the dais or witness chair.

4 MR. STEUSLOFF: Be very careful with
5 the wheel there.

6 THE WITNESS: All right. Am I on?

7 CHAIR CLANCY: There's a little red
8 button underneath the chair -- underneath the table,
9 that will empower -- empower your microphone.

10 Under the Government Code
11 Section 571.130(C) each witness has the opportunity
12 to give a brief statement prior to the questioning
13 being made.

14 I don't -- is that microphone on for
15 Representative Keffer? All right.

16 Sir, do you wish to give a brief
17 statement?

18 THE WITNESS: No, thank you.

19 CHAIR CLANCY: All right. Counsel,
20 you may proceed.

21 MR. STEUSLOFF: Thank you,
22 Mr. Chairman.

23
24
25

1 TEXAS ETHICS COMMISSION CASE IN CHIEF

2 JIM KEFFER,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STEUSLOFF:

6 Q Representative Keffer, I'm going to --

7 MR. STEUSLOFF: Well, for the -- for
8 the record, Exhibit No. 2 has already been
9 stipulated to as -- as admissible. And Mr. --

10 Q (By Mr. Steusloff) Representative Keffer,
11 if you could please turn to -- in the large book
12 before you --

13 A Okay.

14 Q -- if you could turn to Tab No. 2, please.

15 A Yes, sir.

16 Q Are you there?

17 A Yes, sir.

18 Q Do you recognize that document? And --
19 and please feel free to take a moment to -- to
20 review that.

21 A Yes, I recognize it.

22 Q And what is -- what is that document?

23 A It is the complaint to the Ethics
24 Commission.

25 Q Okay. And -- and just so I -- I want to

1 kind of start from -- from the beginning.

2 For the record, could you please state
3 your full name?

4 A Jim -- James Lloyd Keffer.

5 Q And what is your current occupation?

6 I'm -- I -- I missed a few introductory questions.

7 A Okay.

8 Q So let me -- let me just start there,
9 please.

10 A Okay. In my -- my governmental or --

11 Q Both, personal and professional.

12 A Well, I'm State Representative for
13 District 60, and also I'm President of Ebaa Iron
14 Sales and Iron Foundry in Eastland, Texas.

15 Q Okay. And how long have you been a State
16 Representative?

17 A Since '97, 1997.

18 Q Okay. And you are a Complainant in this
19 case. Is that correct?

20 A Yes.

21 Q This document before you, is that the
22 complaint that you filed?

23 A Yes.

24 Q How did you prepare that complaint or what
25 was your involvement with --

1 A The involvement?

2 Q -- filing that complaint? Yes, sir.

3 A The involvement, this complaint was
4 brought to me, the evidence -- or the complaint was
5 brought to me. And I was asked to look at it and to
6 see if I felt that the -- what had been collected
7 over a period of time by Steve Bresnen, if that was
8 thought -- if I thought that that would be something
9 I would want to be involved in to go forward and --
10 and have a complaint -- or file this complaint, and
11 I did.

12 Q Okay. So somebody else gave you --

13 A Right.

14 Q -- the documents that were used as the
15 basis for the complaint?

16 A Right.

17 Q Okay. And was -- was that Steven Bresnen?

18 A Yes.

19 Q Okay. Did any other person assist you
20 other than Mr. Bresnen in filing that complaint?

21 A Brian Epstein.

22 Q Okay. And what was -- what was his
23 involvement?

24 A He actually worked with Steve Bresnen on
25 some of this information, and he's the one that

1 brought Steve and myself together --

2 Q Okay.

3 A -- for a meeting.

4 Q But when you filed the complaint, you --
5 you completed an affidavit that's on the very last
6 page of that complaint. Is that correct?

7 A What page?

8 Q It's at the very last -- if you turn to
9 the very last page, sir, Page 74, you'll see it at
10 the bottom.

11 A Yes. Yes, I signed it.

12 Q So the bottom half of that page, is that
13 your name?

14 A Yes.

15 Q And is that your signature beneath your
16 name?

17 A It is.

18 Q Okay. So you completed that affidavit.
19 And that -- and that's correct?

20 A That's correct.

21 Q And did you file that complaint once it
22 was completed with the Commission?

23 A Yes, I did.

24 Q Okay. Now, that affidavit, it states that
25 the -- and I'm reading from it. In the paragraph it

1 says that, "The source of my information and belief
2 is the documentation attached."

3 Is that correct?

4 A Yes.

5 Q So what was the -- the basis for the
6 allegations that you made in that complaint?

7 A Well, the basis of the allegation --
8 listening to the opening statements. But the basis
9 of the allegation in my thought was that influence
10 was being garnered or generated to elected officials
11 or staff and -- by mail, by conversation, by phone,
12 by whatever. And that there was enough information
13 that had been collected from other offices to show
14 that certainly in what I feel lobbying or trying to
15 influence outcome of policy, not election but
16 policy, and that -- and that the law, as I
17 understand it, is if you're going to do that, that
18 you sign up as a lobbyist. You -- you actually
19 follow the regular -- regulations and rules and sign
20 up as a lobbyist, which Mr. Sullivan had not done.
21 So that gave a basis to if you're going to do this,
22 that you follow the rules and regulations set out by
23 the State.

24 Q Okay. So as a State Representative, do
25 you encounter many lobbyists at the Capitol?

1 A Yes, I do.

2 Q Do some of them contact you in person?

3 A Yes, they do.

4 Q Do some of them contact you by telephone?

5 A Yes, they do.

6 Q Do some of them contact you by writing?

7 A Yes, they do, though that --

8 Q By --

9 A -- those that can write.

10 Q Does that -- does that include E-mail?

11 A Yes.

12 Q Is it -- is it at all unusual for a -- a
13 lobbyist to contact Legislators in writing rather
14 than stopping by their office or -- or calling them
15 on the phone?

16 A Is it usual?

17 Q Is it unusual?

18 A Is it unusual? No, it's not unusual.

19 Q Now, you were a representative at the 2011
20 legislative session. Correct?

21 A I was.

22 Q And at the beginning of the session,
23 what's -- what's the -- how is the Speaker of the
24 House elected?

25 A By the members of the House.

1 Q Okay. Is that -- is that done by a vote?

2 A Yes.

3 Q That's done on -- on the floor of the
4 House?

5 A The very first vote of each session is the
6 Speaker election.

7 Q So that's a decision that's ultimately up
8 to the members of the House to make?

9 A Right.

10 MR. STEUSLOFF: I pass the witness.

11 CHAIR CLANCY: Mr. Nixon? Take your
12 time.

13 CROSS-EXAMINATION

14 BY MR. NIXON:

15 Q Morning, Mr. Keffer. How are you?

16 A Good morning, Mr. Nixon. How are you?

17 Q Good to see you again.

18 A Likewise. Likewise.

19 Q All right. Let's make sure we know where
20 we are. You didn't do the research to obtain
21 documents?

22 A You're right.

23 Q That was done by --

24 A Steve Bresnen and Brian Epstein.

25 Q Who is Brian Epstein?

1 A He's a political consultant.

2 Q Your political consultant?

3 A Yes.

4 Q Now --

5 A But the majority of the work was done by
6 Steve.

7 Q Okay. My understanding is that you didn't
8 even write the complaint?

9 A That's right.

10 Q Is that true?

11 A That's right.

12 Q The handwritten portions of the complaint
13 were all filled in by who?

14 A Steve Bresnen.

15 Q And the only thing you signed was the last
16 page?

17 A That's right.

18 Q Okay. Now, did you check his work?

19 A We did.

20 Q Good.

21 Did you authorize research to begin with?

22 A No, I did not.

23 Q Do you know who did?

24 A No, sir.

25 Q They just came to you with a finished

1 complaint?

2 A Pretty much.

3 Q Okay. Now, a minute ago you said the
4 words you thought Mr. Sullivan was exercising
5 influence by generating mail, conversations and
6 phone calls. Did I hear you correctly?

7 A Yes, sir. Yes, you did.

8 Q Can you turn to your complaint, Exhibit 2.
9 Is there an allegation in your complaint that
10 Mr. Sullivan had a conversation or phone call with a
11 single member of the Texas House of Representatives?

12 A I'd have to read through it.

13 Q Take your time.

14 A Okay.

15 MR. NIXON: I'd like the clock to
16 stop, Mr. Chairman, while the witness reads his
17 complaint.

18 CHAIR CLANCY: That's going to be
19 denied.

20 A Well, on Page 5, Joe, the evidence
21 supplied below shows that Michael Sullivan sought to
22 influence the legislation on behalf of his employer,
23 Empower Texans d/b/a Texans For Fiscal
24 Responsibility, by communicating directly with
25 members and staff of the Texas Legislature during

1 the last quarter of 2010 and during the 2011
2 sessions of the Texas Legislature.

3 Q (By Mr. Nixon) Did you reference a single
4 conversation?

5 A Well, there's -- there's --

6 Q Did you reference a single conversation?

7 A No.

8 Q Did you reference a single phone call?

9 A No.

10 Q Did you engage a lawyer to review the
11 complaint to see that it was facially correct?

12 A I do have a -- yes, I do.

13 Q Who?

14 MR. STEUSLOFF: I object. I think
15 that information would be privileged.

16 MR. TRAINOR: It's the witness' --

17 Q (By Mr. Nixon) The witness --

18 CHAIR CLANCY: What's the objection?

19 MR. STEUSLOFF: With an attorney, if
20 he consulted an attorney.

21 CHAIR CLANCY: Okay. That's
22 sustained.

23 MR. NIXON: He can testify as to
24 whether he did engage a lawyer and who he was. I
25 did not ask for advice.

1 CHAIR CLANCY: Ask your question
2 again.

3 Q (By Mr. Nixon) Who was the lawyer you
4 engaged?

5 A Ross -- my mind just went blank. I'm
6 sorry, Ross.

7 Q At the time you filed the complaint?

8 A No, at a later date.

9 Q All right. Let me ask my question again.
10 At the time you filed --

11 A No, I did not. I did not.

12 Q All right. So the record is perfectly
13 clear, at the time you filed the complaint you did
14 not engage a lawyer to review the complaint to see
15 if it was legally or factually correct?

16 A You're right.

17 Q Did you consider any of the exceptions
18 that are in the election -- in the 305 of the -- of
19 the Government Code?

20 A No. At that time there was no
21 conversation about being in the -- of the press.

22 Q Okay. You didn't consider that?

23 A That's come out later.

24 Q All right. So -- and so we're all clear
25 and the public knows this, the complaint was filed

1 on information and belief?

2 A Yes.

3 Q Not on personal knowledge.

4 You didn't swear to it that this is based
5 on your personal knowledge to be true and correct
6 like you would an affidavit?

7 A Well, it is based on what I know goes on
8 in the Legislature.

9 Q Well, look at -- turn to the signature
10 page. Let's talk about that.

11 A The signature page?

12 Q Last page of your complaint. It would be
13 the last page of Exhibit 2.

14 A Okay. 74.

15 Q What's that?

16 A 74.

17 Q All right. It's signed under -- I don't
18 need to look at it, because I've read it. It's
19 signed under, "Information and Belief." Right?

20 A Yes.

21 Q You had an opportunity to sign it under
22 your own personal knowledge, but you did not?

23 A Right.

24 Q You crossed out the section that said
25 personal knowledge?

1 A Right.

2 Q And you signed it only under information
3 and belief?

4 A Okay, yes.

5 Q What is information and belief?

6 A That --

7 Q A rumor?

8 A That the information that was brought to
9 me after we looked at it and my knowledge of what
10 goes on in the Legislature I felt that it was enough
11 to go forward --

12 Q Information and belief is --

13 A Information and belief.

14 Q -- nothing more than a rumor. Right?

15 A Information and belief. I don't know.
16 You're the attorney.

17 Q It's a rumor.

18 All right. Now, let's get to the heart of
19 this. Let's look at the first exhibit to your
20 complaint.

21 A Which is?

22 Q It's a letter. Do you see it, letter
23 dated November 4th, 2010?

24 A I'm sorry. What -- what tab?

25 Q It is the first exhibit to your complaint,

1 so it should be under Exhibit 2 still.

2 CHAIR CLANCY: Counsel, for the
3 benefit of the Commission, would you give us the
4 page number from the exhibit book?

5 MR. TRAINOR: If the time will stop.

6 MR. NIXON: Be Page 14 under Tab 2.

7 CHAIR CLANCY: That's the one that
8 has the label 14 on it?

9 MR. NIXON: No. It is Bates stamped
10 00014 under Exhibit 2.

11 CHAIR CLANCY: Okay.

12 A What, November 4th, 2010?

13 Q (By Mr. Nixon) Yes. Do you see that?

14 A Yes, I do.

15 Q You attached that to your complaint.
16 Right?

17 And you wanted the Commission to utilize
18 that letter in its decision-making. Is that
19 correct?

20 A Yes.

21 Q How many signators are on that letter of
22 November 4th, 2010?

23 A There's five signatures.

24 Q And one that's electronically signed?

25 A Right.

1 Q And that letter says, "A change to a more
2 conservative Speaker is in order." Right?

3 A Right.

4 Q Do you consider that to be lobbying you?

5 A I think -- yes.

6 Q Now, we understand this letter wasn't
7 addressed to you?

8 A No, all the members.

9 Q Yes, all the members.

10 In fact, as I go through your complaint,
11 there's not a single piece of paper, E-mail, web
12 page, anything addressed to you?

13 CHAIR CLANCY: Counsel, can I
14 interrupt you for a second. We're trying to find
15 this exhibit here for the Commission. It appears
16 that it's labeled Page 88 as Exhibit 1 to --

17 MR. NIXON: Mr. Chairman, if the
18 clock can stop, I'll show it to you.

19 MS. ASHLEY: It's right here. It is
20 here. It's Tab 2.

21 CHAIR CLANCY: 14. 0014.

22 MR. NIXON: 0014. Yes.

23 CHAIR CLANCY: In Exhibit 2. Very
24 good. Thank you.

25 Q (By Mr. Nixon) Okay. Did you ensure -- do

1 anything to ensure that that was a complete letter?

2 A A complete letter?

3 Q Yes.

4 A What does that mean?

5 Q Well, let me hand you what's been
6 marked --

7 MR. NIXON: Mr. Chairman, I would
8 offer Exhibits 110, 111 and 112 pursuant to our
9 stipulation into evidence now.

10 CHAIR CLANCY: Those are preadmitted.
11 Correct?

12 MR. STEUSLOFF: Yes.

13 CHAIR CLANCY: Okay. They're
14 admitted.

15 (Exhibit Nos. 110-112 offered and
16 admitted)

17 THE WITNESS: Do you have the
18 notebook?

19 MR. STEUSLOFF: It's a smaller one.

20 MR. NIXON: It's not -- these aren't
21 the same. Do you have one for the witness, a small
22 one for the witness?

23 MR. STEUSLOFF: That includes 110
24 through 112.

25 MR. NIXON: Oh, I'm sorry. Thanks.

1 Q (By Mr. Nixon) Here you go. You're going
2 to need 111 and 110. Okay.

3 Mr. Keffer, let's look at Exhibit 110 --
4 excuse me, 111, 111. In comparing Exhibit 111 to
5 your Exhibit 1 to your complaint, is your -- the
6 exhibit attached to your complaint a true and
7 correct copy of the letter that was received by
8 members?

9 A It has these other two pages with more
10 signatures.

11 Q This has 42 more signators?

12 A Okay.

13 Q Three more pages of people who signed that
14 letter?

15 A Okay.

16 Q You would agree with me that the exhibit
17 attached to your complaint is incomplete?

18 A It is -- it does not have the other pages.

19 Q Based on information and belief, are there
20 any other exhibits attached to your complaint which
21 are incomplete?

22 A Well, I would not know.

23 Q Because you didn't ever go back and look.
24 Is that right?

25 A We have the crux of the letter here and

1 not all the signatures that we felt was in the -- in
2 the --

3 Q Mr. Keffer, are you asking the Commission
4 to assess a fine and hold someone in violation of a
5 statute of the State based upon incomplete research?

6 A I think the research is complete showing
7 what the crux of the issue is, I feel.

8 Q But we have -- do you consider a letter --

9 A And some of these actually are lobbyists.

10 Q -- do you consider a letter signed by 48
11 people to be a lobby letter?

12 A Yeah.

13 Q You do?

14 A I do.

15 Q Okay. Let's go to Exhibit 112.

16 Oh, by the way, did you file a complaint
17 against any other signators on the letter?

18 A Did not.

19 Q Okay. Let's go to Exhibit 112. I note
20 that this letter was not attached to your complaint.
21 Exhibit 112 was not attached to your complaint at
22 all.

23 Have you seen Exhibit 112?

24 A No.

25 Q 112 is a letter identical in wording to

1 the exhibit you attached, identical to the wording
2 of the complete letter signed by the 48 signators,
3 but this one's signed electronically by 7,000
4 citizens of the State of Texas.

5 Do you consider Exhibit 112 to be a lobby
6 letter?

7 A Well, I'm certain -- you know, it -- they
8 are -- these letters or any other letters like this
9 are written to influence, yes.

10 Q You note that there are -- there are
11 probably a dozen members of House District 60 -- you
12 represent House District 60. There are about a
13 dozen votes on House District 60 of 7,000 that
14 signed this letter. Did you file a complaint
15 against any voters of House District 60?

16 A I'm sure that these are not getting paid
17 to do it. It is their right to --

18 Q Have you done research? Have you done
19 research?

20 A Not on everyone, no --

21 Q Have you done --

22 A -- they were not at the point of the -- of
23 the complaint.

24 Q Did you do any research as to any other
25 signator on any of the letters that we've talked

1 about?

2 A I did not.

3 Q So let's get to the heart of this. What
4 is really Exhibit 1 attached to your complaint?

5 A What is --

6 Q Yeah.

7 A What is it? What do you mean, the letter?

8 Q It's a letter saying, "We want a new
9 Speaker." Right?

10 A Right.

11 Q Now, you're a Chairman in the House.
12 Right?

13 A Uh-huh.

14 Q Appointed by whom?

15 A The Speaker.

16 Q And your political consultant -- it wasn't
17 your idea, but your political consultant has come to
18 you and says, "Here's a complaint we want you to
19 file."

20 A We want to you look at, yeah, to file,
21 yeah.

22 Q And you signed it on a rumor. So let's
23 get right to it, Mr. Keffer.

24 You filed a complaint that you didn't
25 research either factually or legally of which you

1 have no personal knowledge based on a belief that
2 Sullivan was lobbying other people?

3 A I believe that is true.

4 Q Not you, other people?

5 A He knew not to lobby me.

6 Q Have you ever been to the Empower Texans'
7 website?

8 A Maybe once or twice.

9 MR. NIXON: Pass the witness.

10 CHAIR CLANCY: Before you continue,
11 Counselor, any questions by Commissioners for this
12 particular witness? Go ahead, Counselor.

13 REDIRECT EXAMINATION

14 BY MR. STEUSLOFF:

15 Q Representative Keffer, when you filed a
16 complaint and you only included those first couple
17 of pages from Exhibit 1 in your complaint, the --
18 what was your reason for just including those
19 particular pages?

20 A Well, because the letter was the letter,
21 and really the residents' signatures where they have
22 a right to sign. And that's fine. Like you said,
23 we're not here to shut off anybody's right to -- to
24 communicate with their elected officials. But the
25 letter was the crux of the issue. So that's why it

1 was only -- that part of it was the only -- attached
2 to the complaint.

3 Q Now, are you required to file a complaint
4 against any person if -- if you think that they may
5 be lobbying? Is there anything that requires you to
6 do that?

7 A Of course not.

8 Q Is there anything that requires you to
9 look through Chapter 305 of the Government Code and
10 Chapter 34 of the Ethics Commission's rules to
11 review every exception under the law to see if a
12 Respondent meets all of those exceptions?

13 A No.

14 Q Now, Mr. Nixon said that you filed a
15 complaint based on a rumor. But is that -- is that
16 an accurate statement that you filed a complaint
17 based on a rumor, or was it based on information and
18 belief?

19 A It's information and belief.

20 MR. STEUSLOFF: I have no further
21 questions.

22 MR. NIXON: Nothing further.

23 CHAIR CLANCY: Next witness. You may
24 step down. Is this witness released?

25 MR. STEUSLOFF: Yes, Mr. Chairman.

1 MR. NIXON: The witness is excused.

2 CHAIR CLANCY: Thank you, sir. You
3 are released from your subpoena.

4 THE WITNESS: Talk to you, Joe.

5 (Witness excused from hearing)

6 MR. STEUSLOFF: I call Ms. Vicki
7 Truitt.

8 CHAIR CLANCY: Now, would one of the
9 members of the Commission staff poke their head in
10 the hallway and let the witness know it's time.

11 Good morning, ma'am. If you would take a
12 seat at the end of the dais. That's where we're
13 having our witnesses testify from today.

14 Ma'am, the Government Code gives each
15 witness at a formal hearing before the Commission an
16 opportunity to make a statement. Would you care to
17 make a statement?

18 THE WITNESS: I did not prepare an
19 opening statement.

20 CHAIR CLANCY: All right. Counsel?

21 VICKI TRUITT,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. STEUSLOFF:

25 Q Good morning, Ms. Truitt.

1 A Good morning.

2 Q Could you state your name for the record,
3 please.

4 A Vicki Truitt.

5 Q And what is your current occupation?

6 A I'm a lobbyist.

7 Q Did you once hold a public office?

8 A I did.

9 Q And what was that office?

10 A Between the years 1999 and 2012, I was the
11 State Representative for the people of the 98th
12 Texas House District.

13 Q Okay. And you are one of the Complainants
14 in this proceeding. Is that correct?

15 A I am.

16 Q I have before you -- in your notebook,
17 there's a -- there's a large notebook behind Tab
18 No. 3.

19 MR. STEUSLOFF: And I would offer
20 that Exhibit No. 3 to be admitted into evidence as
21 per our agreement with the Respondent's attorneys.

22 MR. NIXON: No objection.

23 A Would that be 103?

24 Q (By Mr. Steusloff) No, ma'am, three in the
25 large notebook.

1 CHAIR CLANCY: Counsel, all the
2 evidence that's been preadmitted is already there.

3 MR. STEUSLOFF: Okay. I just
4 wanted -- okay. Thank you, sir.

5 Q (By Mr. Steusloff) Do you recognize this
6 document?

7 A I do.

8 Q And what is that document?

9 A It's the complaint that -- on the second
10 page, on Page 076, that's my handwriting.

11 Q So you filed this complaint?

12 A Yes.

13 Q Did you prepare that complaint?

14 A Not completely, no, sir.

15 Q So how did you compare it -- or how did
16 you prepare that complaint?

17 A I read it and signed it and have -- had it
18 prepared to admit. And some of the documents within
19 it were provided either by me personally or by my
20 legislative office.

21 Q So did -- did you personally obtain any of
22 those documents that were included in the exhibit
23 from -- from your office or did they -- were they
24 given to you by somebody else?

25 A There was an Open Records request through

1 which some of them were submitted, and at least one
2 of the documents I submitted on my own that --
3 something that was mailed out in the District.

4 Q Okay. So is there another person who
5 assisted you with filing that complaint?

6 A Yes.

7 Q And -- and who was that?

8 A Well, the -- if I could back up to the
9 genesis of the complaint --

10 Q Certainly.

11 A -- I was really shocked to learn that
12 Mr. Sullivan was not a registered lobbyist based on
13 my experience in the Texas Legislature, and was told
14 by my campaign consultant that some information was
15 being put together to prove that -- that there had
16 been lobbying and would I be interested in being a
17 party to a complaint. And I agreed that I would.
18 As I said, I was shocked to learn that he wasn't
19 registered.

20 Q If you could please turn to the very last
21 page behind Tab No. 3 that's marked at the bottom
22 with a somewhat -- somewhat fuzzy 148. Can you turn
23 to that page, please?

24 A Yes, sir.

25 Q What is at the bottom of that page?

1 A Notary and my affidavit.

2 Q So -- so you signed that affidavit?

3 A I -- that is my signature, yes.

4 Q Okay. And you stated in that affidavit
5 that the source of your information and belief was
6 the documentation attached?

7 A Yes, sir.

8 Q Okay. So I'm going to show you an Exhibit
9 No. 39. And these -- these documents are located,
10 Commissioners, in your notebook behind Tab 39. I
11 have the originals here.

12 MR. NIXON: We have -- we have
13 objected to those exhibits that we've not agreed
14 that those are to be admitted. So before we show
15 the witness or discuss them, I'd like to reurge our
16 objection based upon both relevance and hearsay.

17 CHAIR CLANCY: Counsel?

18 MR. STEUSLOFF: Well, I'd like at
19 least an opportunity to ask Ms. Truitt if she knows
20 what the documents are, if she recognizes anything.

21 CHAIR CLANCY: Let's go through the
22 prove-up.

23 Q (By Mr. Steusloff) Ms. Truitt, do you
24 recognize those documents?

25 A I do.

1 Q What are they?

2 A The top document is a letter dated
3 January 24th, 2012 from William R. Greenhaw to my
4 legislative office, an Open Records request.

5 Q Does that appear to be the letterhead from
6 your office?

7 A That is the letterhead from my legislative
8 office and that is my original signature.

9 Q Okay. Was it your office's normal
10 practice to --

11 A I'm sorry. This was not from Greenhaw.
12 It was to Greenhaw in response to his Open Records
13 request. I apologize.

14 Q Okay. It was to your office --

15 A Correct.

16 Q -- responding to a letter from
17 Mr. Greenhaw?

18 A Yes, sir.

19 Q Was it your office's normal practice to
20 produce this kind of a record when responding to an
21 Open Records request?

22 A Yes, sir.

23 Q Was it your normal practice to include all
24 of the documentation responsive to an Open Records
25 request?

1 A Yes, sir.

2 Q When they were sent back to the requester?

3 A Yes, sir.

4 Q Okay. Can you turn to the next page,
5 please, No. 733?

6 A Uh-huh.

7 Q Do you recognize that document?

8 A That is the letter from Mr. Greenhaw,
9 open -- the Open Records request from Mr. Greenhaw.

10 Q And the notation at the upper right corner
11 of that page, what does that say?

12 A That was the date it was received in my
13 legislative office. And I believe that's the
14 handwriting of my former Chief of Staff, the --
15 the --

16 Q Former Chief of Staff --

17 A -- date received, yes, sir.

18 Q -- at the time.

19 And who was your Chief of Staff at the
20 time?

21 A Tara Taylor.

22 Q Okay. So is she the person who would have
23 prepared these documents?

24 A Yes, sir.

25 Q And is she the person who would have

1 compiled them and sent them to the requester?

2 A Correct.

3 Q So the additional documents that are
4 included with this exhibit, do you recognize those?

5 MR. NIXON: Excuse me.

6 A Yes, sir.

7 MR. NIXON: Mr. Chairman, I would
8 reurge the objection. I think the witness is now
9 helpless.

10 CHAIR CLANCY: I'm sorry?

11 MR. NIXON: I think the witness has
12 now absolutely stated that her Chief of Staff is the
13 custodian of records. They were compiled and kept
14 by her. We do not have a business records
15 affidavit. These aren't government records. These
16 documents are absolutely all hearsay.

17 CHAIR CLANCY: Just so -- just so
18 everyone understands, you guys can make as many
19 objections and speaking objections as you wish, but
20 the time is going to run for the period of those
21 objections. Okay?

22 MR. STEUSLOFF: I understand.

23 CHAIR CLANCY: All right. So we're
24 going to -- we're going to admit Exhibit 39. And
25 the Commission will afford it the weight that it's

1 due.

2 (Exhibit No. 39 admitted)

3 Q (By Mr. Steusloff) So my question, again,
4 Ms. Truitt, do you recognize what these additional
5 documents are?

6 A I do. One is a letter dated to me --
7 dated June 29th, 2011 to me as a State
8 Representative, addressed to my State office here at
9 the Capitol.

10 Q Okay. Is that Page No. 734?

11 A Page No. 734.

12 Q Okay.

13 A It's signed by Michael Quinn Sullivan.
14 It's a correspondence to -- to me.

15 Q Okay. And what is that correspondence --
16 can you generally state what that correspondence is,
17 what it's stating?

18 A It advises that the organization Texans
19 For Fiscal Responsibility will be preparing a
20 scorecard -- or prepared a scorecard. And based on
21 my votes, my rating for the 2011 Fiscal
22 Responsibility Index for the 82nd Legislative
23 Session was a C.

24 Q And do you -- do you recall receiving that
25 document?

1 A I do.

2 Q Do you believe that that document was sent
3 to make any sort of impression on you?

4 A Yes, sir.

5 Q Okay. Can you please turn to Page
6 No. 737.

7 A Yes, sir.

8 Q And do you recognize that document?

9 A I do.

10 Q And what is that document?

11 A It is a -- a letter dated May 6th, 2011
12 from Michael Quinn Sullivan, as president of Texans
13 For Fiscal Responsibility, thanking me for my
14 service and to inform me of the draft of their 2011
15 Fiscal Responsibility Index that they wouldn't be
16 releasing until after the legislative session.

17 Q Okay. And can you refer to -- can you
18 turn to Page 738?

19 A Yes, sir.

20 Q And do you recognize that document?

21 A I do.

22 Q What is that document?

23 A It was the draft for my rating of the --
24 with the Fiscal Responsibility Index.

25 Q Okay. And what is -- what is -- do you

1 know what this list of -- this list of items
2 underneath the column -- the heading, "Vote"?

3 A Those are votes upon which they based
4 their scoring.

5 Q Okay. And there are two columns there to
6 the right of that. Is that right?

7 A Yes, sir.

8 Q And one column says, "Our position" --

9 A "Our position."

10 Q -- and the other says, "Your position"?

11 A -- "Your position," correct.

12 Q Can you turn to Page 739?

13 A Uh-huh.

14 Q Do you recognize that document?

15 A I do.

16 Q What is that document?

17 A That is a document that was not submitted
18 through the Open Records request. It was a document
19 that I offered up. It was a -- a letter or a
20 memo -- legislative memorandum to the taxpayers of
21 House District 98 from Michael Quinn Sullivan. The
22 letterhead says Tim Dunn and Michael Quinn Sullivan
23 telling the -- telling the taxpayers of House
24 District 98, which is the district I represented,
25 that I was not a good representative.

1 Q Okay. So you provided this document --

2 A By their standards, I'm sorry.

3 Q So you provided this document for purposes
4 of the complaint. Is that right?

5 A I did.

6 Q All right. Now, can you turn to Page 741
7 and 742?

8 A Yes, sir.

9 Q Do you recognize those documents?

10 A Yes, sir.

11 Q And what is that?

12 A It's a letter dated December, 2010 from
13 Texans For Fiscal Responsibility signed by Michael
14 Quinn Sullivan. The letterhead says Tim Dunn and
15 Michael Quinn Sullivan, thanking me for my service,
16 sharing their -- he wanted to share their
17 organization's priorities and interests and sharing
18 that they will be scoring their -- scoring me on the
19 Fiscal Responsibility Index based on how I voted
20 according to their desires.

21 Q Okay.

22 A And -- and to -- and discouraged me from
23 voting against the Speaker of the House and
24 indicated that that would be a substantial piece of
25 their scoring component.

1 Q And so at the -- the very first paragraph
2 of that -- of that letter on Page 741, can you read
3 that first full paragraph?

4 A Yes, sir.

5 The first -- beyond the, "Thank you for
6 your service"?

7 Q Yes.

8 A Okay. "As you know, Empower Texans/Texans
9 For Fiscal Responsibility is a nonprofit nonpartisan
10 organization through which tens of thousands of
11 voters from around the State work with and through
12 to advance free market solutions, transparency,
13 responsible government and low taxes for the
14 empowerment of all Texans."

15 Q This document was addressed and sent to
16 your office. Correct?

17 A To my legislative office at the Capitol.

18 Q So the very next sentence that starts with
19 the word, "With," can you read that sentence,
20 please?

21 A "With the start of the 82nd session of the
22 Texas Legislature, I wanted to share with you our
23 organization's priorities and interests."

24 Q And there's a list of bullet points there.
25 Is that correct?

1 A Yes, sir.

2 Q What's the first bullet point?

3 A "Balance the budget without increasing
4 taxes or creating new revenue sources."

5 Q And what's the second bullet point?

6 A "Oppose the creation of new taxes,
7 granting of additional taxing authority or creating
8 any new taxing entities."

9 Q And what's the third bullet point?

10 A "Strengthen the constitutional expenditure
11 limit such as by requiring that the Legislature
12 choose the lower of the change in the sum of
13 population plus inflation or the current measure."

14 Q Okay. So there's a lengthy list of
15 certain policies. Is that correct?

16 A Yes.

17 Q And that --

18 A Policies and a reference to a particular
19 bill.

20 Q Okay. And at the very last sentence that
21 says, "As we have done," can you read that?

22 A "As we have done in the past, scores on
23 the Fiscal Responsibility Index will be based on the
24 votes related to these issues. We will calculate
25 individual members' scores only on votes actually

1 taken, including any clarifying statements with the
2 journal -- in the journal sponsoring, cosponsoring.
3 Targeted legislation is likewise included in the
4 scoring."

5 Q Can you restate that, the full sentence,
6 please, sponsoring and cosponsoring?

7 A "Sponsoring and cosponsoring. Targeted
8 legislation is likewise included in the scoring."

9 Q And can you read the next paragraph,
10 please?

11 A "We will make every attempt during the
12 legislative session to notify your office of the
13 specific votes and legislation we will be scoring.
14 Those will also be noted on our website."

15 Q Okay. And the very -- the sentence in
16 bold, can you also read that?

17 A "Given the important role of the Speaker
18 of the House in determining committee assignments
19 and chairmanships and thereby affecting the flow of
20 legislation, the vote on the Speakership may be
21 included in the index."

22 Q Okay. And that page has a signature name
23 of Michael Quinn Sullivan?

24 A Correct.

25 Q So this document, it didn't just tell you

1 that they were going to issue a scorecard. Is that
2 right?

3 A Correct.

4 Q In fact, didn't it include -- doesn't it
5 include a list of what it refers to as priorities
6 and interests?

7 A Yes, sir.

8 MR. NIXON: Objection; leading. I've
9 been letting counsel lead, but we need to elicit
10 testimony from the witness and not counsel at this
11 time.

12 CHAIR CLANCY: Sustained.

13 Q (By Mr. Steusloff) So, Ms. Truitt, you
14 were in the Legislature in 2010 and 2011. Is that
15 correct?

16 A Yes, sir.

17 Q Did you ever sign up to receive any
18 correspondence from Mr. Sullivan or Empower Texans?

19 A No, sir.

20 Q So you never asked them to send anything
21 to you?

22 A No, sir.

23 Q Never asked them to send any notices of
24 this sort to you?

25 A No, sir.

1 Q Now, you're currently registered as a
2 lobbyist?

3 A I am.

4 Q When you're contacting a legislator on
5 behalf of a client, do you contact them in person?

6 A Oftentimes. Sometimes by E-mail.

7 Q Sometimes by writing --

8 A In writing, on E-mail, in person, on the
9 phone.

10 Q But it's not uncommon to -- to send out
11 multiple letters to various Legislators on behalf of
12 a client. Is that correct?

13 MR. NIXON: Leading.

14 CHAIR CLANCY: Sustained.

15 A No.

16 Q (By Mr. Steusloff) Okay. Is it -- is it
17 unusual for a lobbyist to send multiple letters or
18 multiple copies of letters to Legislators on behalf
19 of a client?

20 A No, sir.

21 MR. NIXON: Same objection.

22 CHAIR CLANCY: Sustained. Let the
23 witness testify, Counsel.

24 MR. STEUSLOFF: Okay. I have nothing
25 further. I pass the witness.

1 A I -- I -- especially --

2 MR. NIXON: There's no question
3 before the witness at this time.

4 CHAIR CLANCY: That's correct.

5 MR. NIXON: Thank you.

6 CROSS-EXAMINATION

7 BY MR. NIXON:

8 Q Ms. Truitt, have you ever been to the
9 Empower Texans' website?

10 A I have.

11 Q Did I hear you correctly in answering
12 questions today that you saw the questions that were
13 going to be asked of you ahead of your testimony
14 today?

15 A That I saw the questions -- I'm sorry.
16 Would you say it again?

17 Q Yeah. I'm not sure that I heard it
18 correct. I just wanted to make sure I did, and I
19 may not have.

20 Did you see questions that Mr. Steusloff
21 was going to ask you?

22 A No.

23 Q Okay. All right. I just wanted -- I
24 didn't think I heard that right, but I just wanted
25 to make sure.

1 Okay. So in looking at your exhibits you
2 got a letter in May saying you're going to get a
3 grade, and this is what we think your grade's going
4 to be. Right?

5 A Yes.

6 Q Did it tell you how to vote on any piece
7 of legislation?

8 A The pieces that came to our desks and via
9 E-mail to our offices did.

10 Q I didn't ask that question.

11 I asked you if the letter that is attached
12 to the exhibit that you talked with counsel about in
13 May --

14 A I believe it did.

15 Q All right. Well, let's -- let's turn to
16 it. That would be 737. Can you identify for me the
17 pending piece of legislation before the Texas House
18 that 737 suggested that you vote for or against?

19 A Well, the -- the votes were on 738.

20 Q Now, I didn't ask for votes that you
21 already cast.

22 738 contains votes you've already cast.
23 Right?

24 A Correct.

25 Q I'm talking about the current pending

1 piece of legislation --

2 A That -- that was the end of session. This
3 is after --

4 Q Oh. So when we get down to influencing
5 legislation, this was after you'd had an opportunity
6 to influence any legislation?

7 A There were contacts throughout the
8 legislative session prior to every vote being taken
9 where we would get communications directing us how
10 to vote.

11 MR. NIXON: Object to the
12 nonresponsiveness of the answer and ask that the
13 answer be struck and the witness be asked to answer
14 the question that's been asked.

15 CHAIR CLANCY: Overruled.

16 Q (By Mr. Nixon) Ms. Truitt, did you not
17 understand my question?

18 A I guess not.

19 Q Okay. I'm asking you with regard to the
20 exhibit that the Ethics Commission has wanted to put
21 in this big thick notebook, what is the pending
22 piece of legislation that the letter of May 6th,
23 2011 was designed to influence?

24 A That particular letter was regarding votes
25 that had already been taken.

1 Q Well, my point is that there's -- there's
2 no pending piece of legislation that it asked you to
3 vote for or against. Right?

4 A There were many occasions when I was
5 contacted before the vote.

6 Q This letter doesn't say, "Vote for or
7 against a pending piece of legislation," does it?

8 A It says, "While the session is not
9 complete and there will be many votes ahead, I
10 wanted you to both be aware of what we are currently
11 scoring and where that places your rating."

12 And the message to me was that okay, here
13 we are, you've got a little bit of time left, you
14 better be doing what we tell you to do.

15 Q Or what happens?

16 A Or I get worse than a C, I guess.

17 Q So what is the name of the bill that was
18 pending that they told you how to vote?

19 A It is not referenced in this
20 particular letter.

21 Q Oh, okay. It's not referenced.

22 Okay. And so let's go to 734, the first
23 letter you discussed. That's dated what?

24 A Thanked me for my service --

25 Q No, no. What's the date?

1 A June the 29th --

2 Q Was the Legislature in session at that
3 time?

4 A I don't believe so.

5 Q No. It was after session. Right?

6 So there's nothing pending before the
7 Legislature. And of course, they gave you a C.
8 Right?

9 A (Witness nods head.)

10 Q You didn't like that.

11 Now, the last thing that you dug out and
12 attached was a memo to your constituents. Right?

13 A Correct.

14 Q Okay. So is the memo to your constituents
15 communication to you to influence legislation?

16 A No.

17 Q Okay. So that's what's attached to
18 Exhibit 39.

19 I note, too - and if you go look at your
20 complaint, and I think -- I think it's
21 Exhibit 3 - there's not a single piece of paper
22 attached to your complaint addressed to you, is
23 there?

24 A I'd have to go back through and look.
25 There were -- yes, I believe there -- absolutely

1 there were some -- some things from -- from my
2 office, yes.

3 Q Okay. Well, we're going to have an
4 opportunity to go through Exhibit 3 in just a second
5 when we get to it, so we can clarify that.

6 Now, one of the things we know is that you
7 have a relationship with a Mr. Epstein, don't you?

8 A I -- no longer.

9 Q But you did?

10 A I did.

11 Q And at the time you filed the complaint
12 you did?

13 A I did.

14 Q And was Mr. Epstein -- what was that
15 relationship?

16 A He was my political consultant.

17 Q Did he advise you to file this complaint?

18 A He did not advise me.

19 Q Did he recommend it to you?

20 A He asked me if I would be interested.

21 Q Yes.

22 And what did you tell your political
23 consultant?

24 A I was -- that I was frankly shocked
25 that -- that Mr. Sullivan was not registered to

1 lobby given the extent of communication that had --
2 was taking place with members of the Legislature and
3 that -- that I would be interested in being a party
4 to that.

5 Q Okay. So we saw the extent that is
6 attached in Exhibit 39 as it relates to you. But
7 Mr. Epstein was doing something else for you at that
8 time. Right? He was advising you --

9 A He was my political consultant --

10 Q Right.

11 And you were in a race, were you not?

12 MR. STEUSLOFF: I object. Is
13 Mr. Nixon testifying or is he asking questions of
14 Ms. Truitt?

15 MR. NIXON: I get to lead.

16 CHAIR CLANCY: Your objection is
17 what?

18 MR. STEUSLOFF: I -- I retract it.

19 Q (By Mr. Nixon) You had a political race
20 going on at the time you filed the complaint, did
21 you not?

22 A I did.

23 Q Yeah.

24 And then you turned right around and made
25 public the fact that you filed a complaint?

1 A I did not.

2 Q You did not?

3 Turn to, in the smaller notebook,
4 Exhibit 110.

5 MR. NIXON: Commissioners 110 is a
6 mail piece sent out by Ms. Truitt.

7 Q (By Mr. Nixon) You see Exhibit 110?

8 A I do.

9 Q Okay. This has already been admitted into
10 evidence.

11 If you could turn to the page that looks
12 like this (indicating).

13 A Got it.

14 Q This page.

15 A So that -- that did make reference to the
16 ethics complaint --

17 Q Oh, okay.

18 A -- and it was my flier.

19 Q Will you read out -- read aloud the
20 sentence -- the first sentence under the paragraph,
21 "Pulling the curtain back on the victims -- on
22 Vicki's opponent"?

23 A "Formal ethics complaints have been filed
24 against a special interest pack, Empower Texans From
25 Midland, Texas, and their special interest lobbyist

1 for funding the false attacks against our State
2 Representative, Vicki Truitt."

3 Q Okay. The special interest lobbyist is
4 who?

5 A That would have been Mr. Sullivan.

6 Q And the ethics complaints were filed by
7 who?

8 A By myself and Representative Keffer.

9 Q Okay. So when you said you didn't turn
10 around and make them public, you did?

11 A Well, via the campaign.

12 Q Sure.

13 Okay. And here's what you said, "Formal
14 complaints have been filed against Empower Texans
15 and Michael Sullivan for funding the false attack
16 ads -- or false attacks against our State
17 Representative."

18 Are you -- but the complaint alleges that
19 Mr. Sullivan is an unregistered lobbyist. The
20 complaint doesn't allege that he's funding false
21 attack ads.

22 A Mr. Sullivan issued directives to the
23 members of the Texas Legislature received by me,
24 mostly through unsolicited E-mails and written
25 material addressed and provided to House members in

1 the chamber prior to key votes. He directly --

2 Q Ms. Truitt -- Ms. Truitt --

3 A -- contacted myself and other members of
4 the Legislature and recommended how we should vote
5 on specific legislation.

6 MR. TRAINOR: Is she reading
7 something?

8 MR. NIXON: Objection; nonresponsive.

9 CHAIR CLANCY: Overruled.

10 Q (By Mr. Nixon) Ms. Truitt --

11 A Sir.

12 Q -- did you allege in your complaint that
13 Mr. Sullivan was funding false attacks against you?

14 A I don't recall. I'd have to read the --

15 Q He didn't?

16 A -- complaint.

17 Q Your complaint doesn't allege that against
18 him, does it?

19 A What does that have to do with anything?

20 Q Well, your statement saying that, "Ethics
21 complaints were filed against Mr. Sullivan for
22 funding false attacks ads" is itself false. Right?

23 A I think that's a play on words.

24 Q They're your words.

25 Now, as a candidate you approve every mail

1 piece that goes out. Right?

2 A I looked at them.

3 Q You approved these words?

4 A I don't recall.

5 Q Are you proud of this mail piece? Are you
6 glad you sent it?

7 A I don't have a problem with it.

8 Q All right. Good. Don't have a problem
9 with it.

10 Okay. So let's take a look at --
11 Ms. Truitt, we've had an opportunity to go back and
12 look at Exhibit 3 in detail. There's not a single
13 document from your office attached to your own
14 complaint.

15 MR. NIXON: And I would ask that the
16 Ethics Commission take notice of the fact of what is
17 and is not in her complaint.

18 Q (By Mr. Nixon) Now, Ms. Truitt, I'm going
19 to hand you if you -- a resolution adopted by the
20 Texas Ethics Commission.

21 This is issued December 3rd, 2013. Would
22 you like to read it?

23 MR. STEUSLOFF: I -- I -- I object.
24 I don't see how this is relevant.

25 MR. NIXON: This is your own

1 document, and I'm laying the predicate for a
2 question.

3 CHAIR CLANCY: How is a Commission
4 action in 2013 relevant in 2011?

5 MR. NIXON: Well, if we go over the
6 resolution, it will be patently obvious. I get four
7 hours. I can use it any way I want.

8 CHAIR CLANCY: The objection is
9 sustained, but you can continue to ask your
10 questions.

11 Q (By Mr. Nixon) All right. So let's go
12 over this resolution, then. I won't have you read
13 it. It says, "Ethics Commission unanimously
14 condemns the use of misleading campaign
15 communications regarding the activities of the
16 Commission." Do you see that?

17 A I do.

18 Q Do you see where it says, "The use of
19 statements. A sworn complaint has been filed
20 against candidate" --

21 MR. STEUSLOFF: I'm sorry, I don't
22 know where this is going. Mr. Nixon is --

23 MR. NIXON: He does not know where
24 this is going, but I do.

25 MR. STEUSLOFF: -- he's just reading

1 a statement into the record and --

2 CHAIR CLANCY: Counsel, what's your
3 objection?

4 MR. STEUSLOFF: Well, the objection
5 is I don't see why he's reading this statement into
6 the record, and it's not relevant.

7 MR. NIXON: I'm asking questions that
8 are extraordinarily relevant to this --

9 CHAIR CLANCY: The relevance
10 objection is sustained. You may continue your
11 cross-examination.

12 MR. NIXON: All right.

13 Q (By Mr. Nixon) You see where the Ethics
14 Commission has condemned the use of the statements.
15 "A sworn complaint has been filed against Candidate
16 A where the Texas Ethics Commission is investigating
17 a complaint against Candidate A"?

18 A I do.

19 Q They condemned it after you sent out this
20 mail piece?

21 A Okay.

22 Q So, Ms. Truitt, as we stand here today,
23 the only person whose actions have been condemned by
24 the Ethics Commission are yours. Is that right?

25 A I don't think so.

1 Q In this room, in this room, the only
2 persons whose words have been condemned by the
3 Ethics Commission by resolution are yours?

4 MR. STEUSLOFF: I object. The
5 Commission has not specifically addressed this
6 particular flier. They haven't made a statement
7 regarding her flier.

8 CHAIR CLANCY: What -- what's the
9 objection to that question?

10 MR. STEUSLOFF: Well, the objection
11 is he's -- he's making an inference that the
12 Commission has objected to --

13 CHAIR CLANCY: He's cross examining
14 this witness. I mean, he could make all sorts of
15 false statements. We're not going to rule on the
16 truth or falsity of his cross-examination.

17 What's your objection to his question?

18 MR. STEUSLOFF: Well, that was my
19 objection, sir.

20 CHAIR CLANCY: That it was a false
21 statement?

22 MR. STEUSLOFF: Well, that he's
23 making false statements and inferring that the
24 Commission has condemned her statement.

25 CHAIR CLANCY: Overruled.

1 Q (By Mr. Nixon) Now, let's just do a last
2 few things. Like Mr. Keffer, you're -- your
3 complaint is filed under information you believe.
4 Right?

5 A Yes, sir.

6 Q Rumor?

7 A No, sir.

8 Q Okay. You -- you had the option to file
9 under personal knowledge, but you didn't?

10 A I did not, correct.

11 Q Okay. With regard to Exhibit 39, you
12 didn't attach any of those documents to your
13 complaint, did you?

14 A Exhibit 39. In the big book?

15 Q Yes, in the big book.

16 A Exhibit 39, yes, came from -- the top
17 sheet came from my office. The 732 came from my
18 office; 733 came from my office; 734 came from my
19 office; 735, 736.

20 Q I maybe didn't ask the question.

21 All of Exhibit 39 came from your office.
22 Right?

23 A Correct.

24 Q But none of Exhibit 39 is attached to your
25 complaint. Correct?

1 A I would have to go back and look.

2 Q We've looked. It isn't.

3 Why wasn't it -- the documents sent to
4 your own office attached?

5 A I don't -- I would have to talk to my
6 counselor about that. I don't -- I'm hesitant to
7 take your word for it.

8 Q Speaking of that, did you hire a lawyer to
9 review your complaint when you filed it?

10 A No.

11 Q Did you look at the lobby statute when you
12 filed it?

13 A I may have read part of it. It's been a
14 good while back.

15 Q Did you read any of the exceptions?

16 A Not that I recall.

17 Q Did you read any Supreme Court case law?

18 A No, sir.

19 Q Do you know whether the documents attached
20 to your complaint, which are identical to
21 Mr. Keffer's, are complete?

22 A I'm not certain.

23 MR. NIXON: Pass the witness.

24 CHAIR CLANCY: Counsel, we're going
25 to take a ten-minute recess for our morning break,

1 and we'll be back in ten minutes.

2 (Off the record from 10:31 to 10:46)

3 CHAIR CLANCY: All right. Good
4 morning. We're back in session on formal hearing.
5 Counsel for Respondent has completed his questioning
6 on cross. And I need to ask my fellow Commissioners
7 if they have any questions.

8 Mr. Nixon, do you have something?

9 MR. NIXON: Couple of quick
10 administrative issues real quick.

11 CHAIR CLANCY: Sure.

12 MR. NIXON: First, we're not certain
13 if the witnesses that you put under the Rule
14 understand that they're not to watch the proceedings
15 on the Internet.

16 CHAIR CLANCY: That's what I said.

17 MR. NIXON: Okay. Just wanted --
18 there was some -- some information during the break
19 that somebody might have. And I just wanted to make
20 sure that that didn't happen.

21 CHAIR CLANCY: Those were my
22 instructions.

23 MR. NIXON: Second, I need to make
24 sure that the witness had not been reading in her
25 testimony from any kind of prepared statement or any

1 kind of notes.

2 Did you have any statements or notes that
3 you were reading from?

4 CHAIR CLANCY: You can ask that on
5 recross.

6 MR. NIXON: Finally, this is -- I
7 understand how committee issues work. However,
8 this -- this hearing is very, very important to our
9 client. And I note that a couple of times that
10 Commissioners have had to leave or excuse
11 themselves. We don't mind taking a break at any
12 time, but we request, particularly during
13 cross-examination, that the Commissioners stay and
14 hear the entirety of the evidence.

15 COMMISSIONER HOBBY: I'll just note
16 that the microphones work back there, so you can't
17 get away from it. You -- you're hearing every word
18 even if you're back there for a second.

19 MR. NIXON: Well, as a lawyer, you
20 know, Mr. Hobby, that jurors need to see witnesses,
21 their expressions and take into the entirety of
22 their circumstances in their deliberation.

23 CHAIR CLANCY: Counsel, your
24 objection's noted. We'll take more frequent breaks
25 to accommodate Commissioners.

1 And, staff and counsel, I'd ask that
2 you -- to the extent that you're going to address
3 Commissioners, please refer to them as Commissioner.
4 That would be helpful and appropriate for this
5 forum.

6 MR. STEUSLOFF: Yes, sir.

7 CHAIR CLANCY: All right. I'm going
8 to ask Commissioners if they have any questions for
9 Representative Truitt. I have a couple.

10 EXAMINATION

11 BY CHAIR CLANCY:

12 Q Would you turn to Exhibit 39.

13 A Yes, sir.

14 Q Specifically, I want to turn to what's
15 been -- to Page 734, the letter dated June 29th,
16 2011.

17 A Yes, sir.

18 Q I understand that the June 29th letter is
19 a scorecard on votes that have been completed. Is
20 that correct?

21 A Yes, sir.

22 Q So every item that's listed with regard to
23 this scorecard is a matter that is no longer
24 pending. Is that right?

25 A Yes, sir. Yes, sir.

1 Q Okay. So to the extent that your
2 complaint addresses influence, it doesn't pertain to
3 a letter dated June 29th, 2011. Is that right?

4 A Correct.

5 Q All right. Now, I want to turn to the --
6 the whole issue of -- of scorecards. A scorecard is
7 a very common device for interest groups to grade
8 Legislators after a session?

9 A Absolutely nothing wrong with it.

10 Q Okay. Who are you aware of that has
11 scorecards that you've been scored on?

12 A I think -- I think maybe Texas Right to
13 Life has a scorecard.

14 CHAIR CLANCY: Turn the power on.

15 MR. STEUSLOFF: There's a --

16 THE WITNESS: Okay. Now?

17 CHAIR CLANCY: We can't hear you.

18 A In response to your question, I -- I think
19 that Texas Right to Life may have a scorecard.

20 Q (By Chair Clancy) Okay.

21 A I mean, there -- there are other
22 organizations. I -- I personally never paid much
23 attention to scorecards --

24 Q That's not my question. My question is
25 who has them?

1 A There -- there are other organizations.
2 I'm sorry. I can't list all of them. I just have
3 to go look them up.

4 Q So there's only two that you're aware of
5 today?

6 A Only two that come to mind. I'm certain
7 there are others.

8 Q All right. Now, the -- at the beginning
9 of a session are you contacted by many folks about
10 what their priorities are for the session?

11 A Yes.

12 Q Okay. What form did those communications
13 take?

14 A Personal visits, phone calls, E-mails,
15 letters.

16 Q Okay. Do you believe that an organization
17 or do you feel like an organization that has a
18 particular interest making a general statement about
19 what their priorities are for the legislation is a
20 comment on a pend -- pending matter?

21 A No. I think it would have to -- it would
22 specifically concern the bill.

23 Q Okay. So it doesn't surprise you that
24 Empower Texans is in favor of lower taxes, for
25 example?

1 A Not at all.

2 Q Okay. It doesn't surprise you that Texans
3 For Lawsuit Reform are in favor of tort reform
4 measures?

5 A No, sir.

6 Q All right. And that would not try -- be
7 an attempt to influence you on a pending matter
8 before the Legislature?

9 A The pending matter to me is the
10 specific -- a specific legislation or an action
11 of -- of the Legislature. I mean, I can't --
12 Speaker election is part of that.

13 Q All right. When does the Speaker election
14 actually begin?

15 A On the very first day of session -- oh,
16 when does the election begin?

17 Q No.

18 When does that become a pending matter
19 before the House?

20 A The -- as soon as the Legislature is
21 gaveled in, I presume.

22 Q All right. So is it your testimony that a
23 communication regarding the Speaker election before
24 the session is not a pending matter?

25 A No. That would be a pending matter.

1 Q Okay. Why is it a pending matter?

2 A Well, there's going to be a Speaker.

3 Q And so what is the -- what is the
4 mechanism for the choice of the Speaker?

5 A The Speaker is determined by a vote of the
6 150 members of the Texas House.

7 Q Okay. And how is that done in practice?

8 A One of the first orders of business when
9 the Legislature is sworn in is to deal with its
10 housekeeping rules and -- and elect a Speaker,
11 presiding officer. And the presiding officer is
12 elected from among the body of the 150.

13 Q So pledge cards have nothing to do with
14 it?

15 A I guess there's a history of pledge cards,
16 but they're nonbinding.

17 Q My -- my question is in Exhibit 39 there
18 is a -- there's a document from, what is it,
19 November? The one with the -- the -- oh, it's not
20 39. The one with the -- the -- signed by numerous
21 people and attaching a petition. Do you remember
22 that?

23 A I do remember such a document.

24 Q Okay. And it asks that a change to a more
25 conservative Speaker is in order?

1 A I remember that.

2 Q Okay. Is it your testimony that that is a
3 communication regarding a pending matter or not?

4 A It was.

5 Q Okay. How could it be a pending matter if
6 it was sent before the session opened?

7 A It was directed -- directed to members
8 elect of the next Legislature that would be taking
9 up that matter.

10 Q Okay. So it's your testimony that even
11 though the session had not opened that pending
12 before the House was the Speaker election issue?

13 A Well, you know, I don't think lobbying is
14 confined only to the period of the legislative
15 session.

16 Q Okay. One of the things that Commission
17 staff briefed us on was that the purpose of the
18 communication is to influence any matter pending in
19 either the -- the House or the Legislature. Okay?

20 Is it your testimony that the Speaker race
21 is a matter that's pending prior to the beginning of
22 the session?

23 A Yes, sir.

24 Q Now, I want to talk to -- I want to
25 address the letter in Exhibit 39 dated

1 December 20th, 2010. It's Pages 741 to 742.

2 A Yes, sir.

3 Q Okay. Are these bullet lists general
4 statements of the interests that are supported by
5 this group, or are those specific attempts to
6 influence pending activity?

7 A Those are more general bullet points.

8 Q Okay.

9 A But I'm certain that there's other -- that
10 there are other documents that were submitted
11 that -- that referenced specific legislation and
12 directed members of the Legislature how to vote.

13 Q What documents are you referring to?

14 A There was something related to House
15 Bill 20 -- I had three -- three bills during the
16 82nd Legislative Session, and there was
17 communication sent to my office and other
18 legislative offices telling members to vote against
19 those specific pieces of legislation. And I would
20 have to go back and look at the -- I would have to
21 go back and look at the bill numbers. In fact, it
22 may be on their scorecard business.

23 2592. Was it behind 37 or 39 where that
24 list -- where that list of -- on their scorecard
25 was?

1 Q Let's go to 737 in Exhibit 39 and let me
2 ask you some specific questions about it.

3 A Okay. All right.

4 Q May 6, 2011 is a letter that addresses a
5 draft rating. Do you see that?

6 A We're on 739?

7 Q Page 737.

8 A 737.

9 Q The May 6th, 2011 letter.

10 A Yes, sir.

11 Q And attached to that letter is a listing
12 of votes?

13 A Yes, sir.

14 Q But those votes have already been cast.
15 Right?

16 A Correct.

17 Q Okay. So this draft report of May 6, 2011
18 is for votes that have already been cast?

19 A Yes, sir.

20 Q Just like the June final report is for
21 votes that have already been cast?

22 A I'm sorry. Say that again, please.

23 Q Just like the first letter we looked at in
24 June, the June 29th, 2011 on seven -- Page 734 were
25 for votes that were already cast?

1 A Right.

2 But it says -- if you'll notice down
3 toward the bottom of the letter it says, "Again,
4 others will be added to these in the final weeks of
5 session."

6 Q Right.

7 But they can add anything they want to
8 their scorecard, can't they?

9 A Yes, but along with the scorecards there
10 were directives issued to the members of the
11 Legislature to vote a certain way on each of those
12 pieces of legislation.

13 Q How were those directives communicated?

14 A Via E-mail and -- and communication --
15 written communication that was sent -- delivered to
16 the desks of the members on the House floor.

17 Q Okay. So the E-mail was sent from who?

18 A From Empower Texans, Michael Quinn
19 Sullivan, to members of -- each member of the Texas
20 House.

21 Q For every bill that ever came on a
22 scorecard?

23 A I -- I don't know that it was for all of
24 them, but for certainly selected bills they -- they
25 issued written communication, yes, sir.

1 Q Okay. Now, this reply in Exhibit 39, this
2 letter to Mr. Greenhaw, asks for, "All
3 correspondence received from Michael Quinn Sullivan
4 including electronic mail."

5 Why are those electronic mails not
6 included in Exhibit 39?

7 A Likely because they had been -- well, I
8 think there is a House policy, administration policy
9 that periodically they make room for more data
10 and --

11 Q Don't tell me the Texas House is as bad as
12 the IRS. Please don't tell me that.

13 A Gosh, I hope not. I hope not. But I --
14 but I do think that periodically they -- and
15 frankly, some of those things I wadded up and threw
16 in the trashcan. So I may not have kept, you know,
17 a hard copy of it. And if that's the case, I
18 couldn't provide something that I had thrown away.

19 CHAIR CLANCY: Do you have to
20 interrupt me?

21 MR. NIXON: I just wanted to let you
22 know that one of the documents that we stipulated
23 was the House policy on elimination of E-mails after
24 30 days. That was -- the House's own document
25 retention policy is to eliminate E-mails after 30

1 days.

2 CHAIR CLANCY: Thank you.

3 Q (By Chair Clancy) So it is as bad as the
4 IRS?

5 A I didn't vote to do that.

6 Q So it's your testimony that the E-mails
7 would come to you regarding scorecard votes?

8 A Yes, sir.

9 Q In advance of those votes being made?

10 A Yes, sir.

11 Q Now, did they tell you which way to vote
12 on a scorecard?

13 A Yes, sir.

14 Q What did they say?

15 A Not on the scorecard. They tell -- they
16 told us that this was their position on that bill,
17 that we were to vote for or against it, and that it
18 would be graded on the scorecard.

19 Q Okay. What is the significance of a draft
20 score before the last three weeks of the session?

21 A I don't think -- a -- a warning.

22 Q What do you mean?

23 A You know, clean up your act or else.

24 Q Or else what?

25 A Or we'll go after you in your district.

1 Q Okay. And it's your testimony that those
2 communications came primarily by E-mail?

3 A Yes, sir. And --

4 Q Have you ever --

5 A -- and some passed out on the -- on the
6 floor of the House that -- there's a process. And
7 I -- I don't know that it is still the -- the
8 procedure currently in the House. But at the time
9 a -- a document could be submitted via the
10 Sergeant's office, approved by House administration,
11 and then distributed to members' desks on the floor.

12 Q And what would that document say?

13 A It would identify -- and -- and it -- we
14 didn't get those just from this organization.
15 But -- but I remember seeing stuff come through that
16 would be, okay, this bill is coming up, and we want
17 you to vote this way. So and so is going to be
18 offering an amendment, and you need to vote this way
19 on it, or we oppose this bill or we're in favor of
20 this bill and this is going to be on our scorecard,
21 and so you need to vote the way we want you to vote.

22 MR. NIXON: Mr. Chairman, I don't
23 want to interrupt, but I do have to assert a hearsay
24 objection to that testimony. The best evidence, of
25 course, is the E-mails themselves. And her

1 recollection of what's -- I don't have the ability
2 to cross examine her recollection because she, of
3 course, doesn't have those E-mails. So I would ask
4 that that testimony be disregarded.

5 A I believe that there is --

6 Q (By Chair Clancy) Let me ask just a
7 question. I realize you two former members would be
8 able to talk for a long time.

9 But I have a question about this thing
10 that is handed out on the House floor. Are you --
11 is it your testimony that the Sergeant at Arms hands
12 out interest group communications on the floor of
13 the House?

14 A Yes, sir, they did. I don't think they do
15 anymore.

16 Q They did in the 2011 session?

17 A Yes, sir.

18 Q Did they keep a record of those?

19 A I am not certain.

20 Q And so for matters that are pending on the
21 calendar for that day there's a list of where the
22 interested --

23 A 2000 -- they did it through 2000 -- I know
24 for certain -- yeah, they did it in 2011, too,
25 because that's when my three bills were up, and I

1 remember seeing something on the floor related to --
2 from this organization saying, "Vote against that
3 bill."

4 Q Are there from other organizations, as
5 well?

6 A Yes, sir.

7 CHAIR CLANCY: All right. Any other
8 Commissioners have questions for this witness?

9 COMMISSIONER RAMSAY: Mr. Chairman --

10 CHAIR CLANCY: Commissioner Ramsay,
11 if you would use your microphone --

12 COMMISSIONER RAMSAY: Yes.

13 CHAIR CLANCY: -- so we can have the
14 public see it -- the button's underneath the table.

15 COMMISSIONER RAMSAY: I would like to
16 ask the Chair to give me an explanation of what is
17 pending legislation and what would, in pending
18 legislation, be important to this procedure?

19 CHAIR CLANCY: Fortunately today we
20 are triers of fact. And I would hope counsel will
21 address that in their closing arguments.

22 COMMISSIONER RAMSAY: Okay. So one
23 more question. Can pending mean -- if you're in the
24 Legislature and you've been there two or three
25 sessions or even the first session, doesn't matter

1 when, but you are aware of certain items that are
2 going to happen that session in the Legislature.
3 Would -- would those be in the pending
4 classification, in your opinion, Mr. Chairman?

5 CHAIR CLANCY: I hope that counsel
6 will address that in their closing arguments.

7 COMMISSIONER RAMSAY: Thank you, sir.

8 THE WITNESS: Mr. Chairman --

9 CHAIR CLANCY: Any further questions
10 by Commissioners?

11 THE WITNESS: Mr. Chairman, may I
12 just clarify something on the papers being handed
13 out?

14 CHAIR CLANCY: Exhibit 39 or
15 something else?

16 THE WITNESS: The ones that we
17 referenced. You asked me about the material that
18 was handed out on the House floor --

19 CHAIR CLANCY: Yeah.

20 THE WITNESS: -- it did -- I believe
21 it did -- I was just thinking about it. I believe
22 it did have to -- it was done at the request of a
23 House member. So an organization would bring
24 something to a House member and ask them if they
25 could have it distributed. And then that person

1 would take it to -- would go through the approval
2 process.

3 So it came from an organization via a
4 sitting member.

5 CHAIR CLANCY: So it would be, say,
6 Representative Houston supports this bill or would
7 it --

8 THE WITNESS: No.

9 CHAIR CLANCY: -- say the interest
10 group supports this bill?

11 THE WITNESS: It would say the
12 interest group supports the bill, but there would be
13 a signature at the top saying approved for
14 distribution and a signature of a House member.

15 CHAIR CLANCY: I see. Thank you.

16 Counsel, redirect?

17 REDIRECT EXAMINATION

18 BY MR. STEUSLOFF:

19 Q Ms. Truitt, are you aware of what the
20 definition of legislation is under the Lobby Law?

21 A Anything pending.

22 Q Can you -- can you see the -- the board up
23 here --

24 A No, sir.

25 Q -- can you see the writing?

1 A I can't.

2 Q I mean, since this issue is under -- under
3 discussion --

4 MR. STEUSLOFF: Mr. Chairman, I'd
5 like to ask if you could take official notice of the
6 definition of legislation that's posted on that
7 board.

8 CHAIR CLANCY: I think you guys are
9 going to do a great job in closing of explaining how
10 the law applies to these facts. And what we're
11 trying to do is get all the facts on the table.

12 MR. STEUSLOFF: Okay.

13 CHAIR CLANCY: All right.

14 MR. STEUSLOFF: I have no further
15 questions.

16 CHAIR CLANCY: So did you ask her any
17 questions?

18 MR. STEUSLOFF: Well, I mean, I asked
19 her if she was aware of the definition of
20 legislation. That's all I just wanted to get. I
21 wanted to ask if she was aware of that.

22 CHAIR CLANCY: All right. Counsel?

23 MR. NIXON: Thank you.

24 RE CROSS EXAMINATION

25 BY MR. NIXON:

1 Q Ms. Truitt, have you ever sponsored a
2 flier being distributed on the floor of the House?

3 A Yes, sir.

4 Q And you write on it, "Okay for
5 distribution," sign your initials and the date and
6 then give it to the Sergeant at Arms. Right?

7 A Yes, sir.

8 Q That's pursuant to the House rules?

9 A It was at the time. I don't know if
10 that's still the case.

11 Q Okay. And then the Sergeant at Arms
12 distributes it?

13 A After approval from House administration,
14 I believe.

15 Q Right.

16 So House administration has to approve it?

17 A I believe so.

18 Q And -- and one of the things that is
19 routinely circulated on the floor is a flier each
20 day from the Texas Conservative Coalition. Is that
21 right?

22 A Correct.

23 Q Okay. And sometimes they compile
24 information of positions of various organizations.
25 Right?

1 A Yes, sir.

2 Q And so they say, "Here's our list for
3 today of various bills, Texas Public Policy
4 Foundation takes a position, Texas Trial Lawyers
5 take a position, the Realtors take a position" or
6 some other -- or the Austin American Statesman takes
7 a position. But the Texas Conservative Coalition
8 compiles those and submits those. Is that right?

9 A They did have a list, uh-huh.

10 Q Okay. Are you thinking that -- that your
11 bills were opposed by the compilation of a
12 distribution that was done by the Texas Conservative
13 Coalition and then sponsored by a member and not
14 specifically done by Empower Texans?

15 A I seem to remember a communication
16 specifically from Empower Texans opposing one or
17 more of those three bills.

18 Q You don't have a copy of it, though?

19 A I don't. Well, there may -- there may be
20 something in the documents.

21 Q I've been informed that Empower Texans has
22 never once in the history of its existence has asked
23 [sic] for a piece of their paper to be submitted to
24 the House floor. It's gone through -- if their
25 position -- it's been done by a different

1 organization and sponsored by a member.

2 Do you have any evidence to support
3 something opposite that position?

4 A Not in front of me at this time.

5 Q Okay. Now, let's talk about the Speaker's
6 election, and clarify. It's something I know
7 something about as well as you.

8 The first order of business in the Texas
9 House is to do what?

10 A As I recall, the Secretary of State
11 convenes the Legislature and then the Speaker --
12 then a Speaker is nominated. Nominations are open
13 for Speaker. There are nominations, seconding
14 speeches. And I -- I think the housekeeping comes
15 after that.

16 Q Doesn't the first -- everybody gets sworn
17 in?

18 A Yes, sir.

19 Q And then the next thing that happens is
20 they adopt rules?

21 A Is that -- it is the rules first? I
22 couldn't --

23 Q Can't elect a Speaker unless you have
24 rules --

25 A That's true.

1 Q -- to have a Speaker's race?

2 Okay. So the first thing you do is adopt
3 rules. And then you have a Speaker's race. You
4 don't have a race --

5 A A Speaker's race goes on a long time
6 before that.

7 Q You don't really have a race --

8 A It's usually over by then.

9 Q That's right.

10 You don't have a race until you have a
11 nomination. Right?

12 A I would disagree with that.

13 Q Well, you don't -- I mean, you and I have
14 both been in the chamber when we only had one
15 choice?

16 A So I -- I liken this to the time when my
17 previous opponents hadn't filed for election yet,
18 but I was asked to appear in a tea party meeting to
19 debate my opponent who hadn't filed for office yet.

20 It's the same -- the race --

21 Q What --

22 A -- starts way before the official --

23 Q You officially don't have an opponent
24 legally. Legally, you don't have an opponent until
25 that person files. Right?

1 A I appeared -- I appeared anyway out of
2 courtesy.

3 Q Sure. Out of courtesy.

4 But legally you didn't have an opponent,
5 did you?

6 A I did not.

7 Q Legally, there's not --

8 A Well --

9 Q -- Ms. Truitt --

10 A -- but the Speaker's -- in the Speaker's
11 case, those people file well in advance of the
12 election.

13 Q They file a notice that they may be
14 running?

15 A They -- they file with the Ethics
16 Commission, I believe --

17 Q Right.

18 A -- that they're -- that they're a nominee
19 or that they're going to run for Speaker.

20 Q But there isn't a real race until they're
21 nominated. Right?

22 A I would disagree with that.

23 Q You're -- now, there's a difference --
24 there's a difference between sharp elbows and
25 politics in the back hallways of the Legislature and

1 what happens on the House floor.

2 But on the House floor, there's not a real
3 race until there's a nominee?

4 A If someone tells me that they filed for
5 Speaker, I think they're running for Speaker.

6 Q Have -- how many -- I mean, you've been
7 around when people have said they're running for
8 Speaker who have never really filed and nobody
9 nominated them. Right?

10 A But I --

11 Q No, no. Answer my question. Right?

12 A That is correct.

13 Q Okay. That's all that we need to get to.
14 And the House rules will speak for
15 themselves.

16 Okay. Now, couple questions earlier, were
17 you looking at notes when answering my questions
18 earlier?

19 A Without direction or advise of anyone, I
20 jotted a few notes down for myself.

21 Q Can I have those?

22 A Certainly can.

23 Q Can I have them now?

24 A Well, they're on my iPad.

25 Q So you were testifying from your iPad?

1 A Yes.

2 Q Is your iPad connected to the Internet?

3 A It is.

4 Q Were you watching the proceedings out in
5 the hallway?

6 A I was not.

7 Q Did anybody help you put those notes
8 together?

9 A No, sir.

10 Q Well, your testimony was that in answering
11 my questions you were looking at prepared notes?

12 A That I myself prepared without direction
13 or advice from anyone else.

14 MR. NIXON: Mr. Chairman, I ask that
15 this witness' testimony be struck.

16 MR. STEUSLOFF: Well, and I would say
17 that I don't believe her testimony should be --
18 should be struck. We don't know what -- what
19 specifically she was referring to. But she was
20 testifying for the vast majority of these
21 proceedings without referring to any -- any notes or
22 prepared writings --

23 THE WITNESS: I'll be happy to
24 provide the notes if I need to. It's like one page.

25 CHAIR CLANCY: Ms. Truitt, did you

1 testify from notes?

2 THE WITNESS: Not -- I testified
3 maybe two sentences from notes.

4 CHAIR CLANCY: Okay. So you referred
5 to them to help provide testimony to the Commission
6 today?

7 THE WITNESS: I -- at one -- only
8 during one time.

9 CHAIR CLANCY: What time was that?

10 THE WITNESS: When Mr. Nixon was
11 first interviewing me.

12 CHAIR CLANCY: Okay. And so those
13 notes are in what type of application on your iPad?

14 THE WITNESS: It's in iAnnotate.

15 CHAIR CLANCY: And can you E-mail a
16 copy of iAnnotate to both sides?

17 THE WITNESS: Yes, sir.

18 CHAIR CLANCY: And I'd ask you to do
19 that as soon as this testimony is over, and we will
20 prevent the witness from being excused in case we
21 need to recall her to address that item.

22 MR. STEUSLOFF: Okay. Thank you.

23 CHAIR CLANCY: Is there any further
24 redirect?

25 MR. STEUSLOFF: Yes.

1 CHAIR CLANCY: Okay.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. STEUSLOFF:

4 Q Ms. Truitt, could you refer to the
5 documents behind Tab No. 75?

6 COMMISSIONER RAMSAY: Which book?

7 MR. STEUSLOFF: At this point I would
8 like to offer as an exhibit, certified copies of
9 Document 75 and 76.

10 (Exhibit Nos. 75 and 76 offered)

11 MR. STEUSLOFF: And for the record,
12 Mr. Nixon and I, we did stipulate to certain facts
13 as indicated at the front of the stipulations that
14 from May of 27, 2009 [sic] to the date of election
15 of the Texas Speaker of the House on January 11,
16 2011 that Joe Straus, III, was a candidate for the
17 Speaker of the House as well as under section --
18 Paragraph 3; that from November 12th, 2010 to the
19 date of election of the Texas Speaker of the House
20 on January 11, 2011, Warren K. Ken Paxton, Jr., was
21 a candidate for the Texas Speaker of the House.

22 CHAIR CLANCY: What about Exhibits 75
23 and 76?

24 MR. STEUSLOFF: Those are certified
25 copies of Speaker declaration forms that have been

1 filed with the Commission. I would like those on
2 the -- on the record to indicate that those
3 particular individuals were candidates for Speaker
4 during that same time period.

5 CHAIR CLANCY: Are you offering them
6 or asking the witness?

7 MR. STEUSLOFF: I would like to offer
8 them.

9 CHAIR CLANCY: Counsel?

10 MR. NIXON: Relevance.

11 CHAIR CLANCY: Okay. They're
12 admitted.

13 (Exhibit Nos. 75-76 admitted)

14 MR. NIXON: The Commission should
15 take note that Mr. Paxton was not nominated nor did
16 he run on the day that the House was sworn in.
17 There was not an actual election. He was not a
18 candidate in an election before the Texas House.

19 CHAIR CLANCY: Is that an objection,
20 Counsel?

21 MR. NIXON: No. That is a request
22 for you to take note of that.

23 CHAIR CLANCY: That is a stipulated
24 fact, Counsel?

25 MR. STEUSLOFF: That is not.

1 CHAIR CLANCY: Okay. Please continue
2 your questioning.

3 Q (By Mr. Steusloff) Ms. Truitt, during the
4 2011 Legislative Session, did members of the
5 House -- I mean, in -- in -- is it your
6 understanding as a Legislator that members of the
7 House have discussions amongst themselves about who
8 they're going to support as Speaker?

9 A Indeed, yes, sir.

10 Q And how long do those deliberations last
11 leading up to the session?

12 A Months.

13 Q Do -- in your recollection -- recollection
14 do candidates for Speaker, do they make attempts to
15 seek support from other members during that time?

16 A Absolutely, yes, sir.

17 MR. NIXON: Let's --

18 Q (By Mr. Steusloff) And is that done
19 through --

20 MR. NIXON: All soliciting hearsay.
21 They're both leading and soliciting hearsay. What
22 other people may have talked about at some point
23 where she wasn't present, it's not knowledge of
24 facts.

25 CHAIR CLANCY: Sustained. Continue.

1 A There were many occasions --

2 MR. NIXON: There's not a question
3 present.

4 CHAIR CLANCY: Ma'am, I'm sorry.
5 Please wait for the question.

6 THE WITNESS: Yes, sir.

7 CHAIR CLANCY: You can continue.

8 MR. STEUSLOFF: Sure.

9 Q (By Mr. Steusloff) In your recollection is
10 it -- I mean, how do -- how do candidates for
11 Speaker obtain support from other House members?

12 A Mostly by contacting them directly either
13 in person or on the phone and soliciting their
14 support. Prior -- and oftentimes in the past a
15 Speaker candidate would try to garner enough
16 signatures from members to show that they had enough
17 votes to win the race, then show those to other
18 members, hopefully discouraging another candidate to
19 withdraw. So there's a lot of work -- a lot of work
20 that's done ahead of time to seek the votes, seek
21 the commitment of members of the next Legislature.

22 Q Are candidates for the Speaker of the
23 House, are they free -- are members of the House,
24 are they free to decide for months or any period of
25 time leading up to the day of the election of the

1 Speaker who they're going to support?

2 A Yes, sir.

3 Q And they can freely discuss that with
4 other members?

5 A Yes, sir.

6 Q And they can be contacted by individuals
7 outside --

8 A Yes, sir.

9 Q -- of the House and ask who they support?

10 A Yes, sir.

11 MR. STEUSLOFF: I have no further
12 questions.

13 FURTHER RECROSS EXAMINATION

14 BY MR. NIXON:

15 Q Did Ken Paxton -- was he nominated?

16 A He was a candidate.

17 Q No, no.

18 A He filed papers.

19 Q Did you not understand my question?

20 Was he nominated from the floor of the
21 House?

22 A I believe he decided to withdraw on that
23 day.

24 Q So he was not nominated?

25 A He worked ahead of the legislative

1 session --

2 CHAIR CLANCY: Ma'am --

3 Q (By Mr. Nixon) I'm having a hard time
4 getting a yes or no. Was he nominated?

5 CHAIR CLANCY: Excuse me. Give
6 Mr. Nixon back two minutes. Okay? He's asked a
7 very straightforward question. Please answer his
8 question.

9 A He filed papers, he campaigned, he
10 withdrew on the day --

11 CHAIR CLANCY: Ma'am, let me ask the
12 question. Was he nominated in the Texas House for
13 Speaker in 2000 --

14 THE WITNESS: I don't believe so. I
15 don't think it got to that -- I think he withdrew
16 before the nomination.

17 CHAIR CLANCY: Thank you. Now we're
18 back.

19 Q (By Mr. Nixon) One last question.

20 MR. NIXON: Thank you, Mr. Chairman.

21 Q (By Mr. Nixon) If Michael Quinn Sullivan
22 had been registered as a lobbyist would you have any
23 objection to his letter?

24 A No, sir.

25 Q So I guess it's your testimony in front of

1 this Commission that registered lobbyists have an
2 opportunity to influence members in a Speaker's race
3 but regular people do not?

4 A Not at all.

5 Q Thank you.

6 MR. STEUSLOFF: I have no further
7 questions.

8 CHAIR CLANCY: All right. Ma'am, if
9 you would get the E-mail addresses from these two
10 lawyers, send them your iAnnotate document and then
11 if you would remain subject to recall.

12 Unfortunately, you won't be able to remain in the
13 proceedings inside the hearing room.

14 (Witness excused subject to recall)

15 THE WITNESS: Can I get their cards?

16 CHAIR CLANCY: Sure. If you would
17 just give her a slip of paper --

18 MR. TRAINOR: Mr. Chairman, we've
19 given her counsel our E-mail address.

20 CHAIR CLANCY: Okay. Very good.
21 Counsel, who is your next witness?

22 MR. STEUSLOFF: I call Steve Bresnen.

23 THE WITNESS: Where am I sitting,
24 over here?

25 MR. STEUSLOFF: On that chair, yes.

1 CHAIR CLANCY: All right.

2 Mr. Bresnen, Government Code 571.130(C) gives each
3 witness the opportunity to make a brief statement if
4 that is their preference. Do you wish to do so?

5 THE WITNESS: Can I reserve it for a
6 later time or shall I make it now?

7 CHAIR CLANCY: You have to make it
8 now or not make it.

9 MR. NIXON: Mr. Chairman, before we
10 get started --

11 CHAIR CLANCY: Yes.

12 MR. NIXON: -- I would reurge our
13 motion to exclude Mr. Bresnen's testimony. We asked
14 the Commission for his deposition, and the
15 Commission -- even though they had voted to subpoena
16 Mr. Bresnen and knew that he would testify, counsel
17 for Commission opposed our taking his deposition.
18 And the Commission voted that we could not take his
19 deposition.

20 So if the Commission's position is that
21 there was not good cause sufficient to depose a
22 witness that they knew were going to testify, there
23 is not good cause to have any testimony from that
24 witness. I would urge that -- that because of
25 our -- the Commission's decision to not allow us

1 discovery of this witness that was requested, I
2 think back on February 12th that we -- that at this
3 time the witness should not be allowed to testify.

4 CHAIR CLANCY: And we're still going
5 to carry that motion, but we'd like to hear from the
6 witness today.

7 MR. NIXON: I would ask that the
8 witness be instructed that we don't have a Truitt
9 issue with regard to any notes or any information
10 off of iPhones or iPads and that all that be turned
11 off at this time.

12 CHAIR CLANCY: That's not a problem.
13 Mr. Bresnen, the question has been that we would
14 like to hear your oral testimony today in answer to
15 the questions. And if you need to refer to
16 documents for purposes of refreshing your
17 recollection or something else, that counsel be
18 available to see them.

19 THE WITNESS: Sure. I understand.

20 CHAIR CLANCY: So do you need
21 documents to make your opening statement?

22 THE WITNESS: Just -- just very
23 briefly. What document --

24 CHAIR CLANCY: Do you need documents
25 to make your opening statement?

1 THE WITNESS: One document.

2 CHAIR CLANCY: Which document is
3 that?

4 THE WITNESS: It's from United States
5 versus Harriss, 1954 case upholding lobby statutes.

6 CHAIR CLANCY: What's the citation of
7 that case?

8 THE WITNESS: Hold on just a minute,
9 and I'll give it to you. 347 U.S. 612, 74 Supreme
10 Court 808, '98 Lawyers Edition 989 United States
11 versus Harriss, with two S's, et al. argued
12 October 19, 1953, decided June 7th of 1954.

13 CHAIR CLANCY: Mr. Nixon?

14 MR. NIXON: Mr. Chairman.

15 CHAIR CLANCY: Uh-huh.

16 MR. NIXON: If Mr. Bresnen is going
17 to provide us expert testimony, I would urge the
18 Commission to not consider it and not allow him to
19 do so. He is designated as a witness with knowledge
20 of relevant facts. We ought to hear what his facts
21 are, not what his opinion is on law or any other
22 matter, because he's not designated as an expert.

23 CHAIR CLANCY: The Rules of Evidence
24 apply to this hearing, but the Government Code also
25 gives him the opportunity to make an opening

1 statement. And so I'm going to give him that
2 opportunity. But the Rules of Evidence do apply.

3 MR. NIXON: So -- so I may make a
4 motion to disregard his opening statement if it
5 includes expert testimony?

6 CHAIR CLANCY: You may or you may
7 object to portions of it that are objectionable.

8 MR. NIXON: Would the Chair wish I
9 make my objection at the time or wait until the
10 conclusion of his statement? I do not mind waiting
11 until the conclusion.

12 CHAIR CLANCY: Okay. That would
13 probably make it go faster.

14 MR. NIXON: Thank you.

15 THE WITNESS: And I'll be brief,
16 Mr. Chairman.

17 CHAIR CLANCY: Yes, sir.

18 STATEMENT BY MR. BRESNEN

19 THE WITNESS: The rule of law is a
20 fundamental principle in western civilization, and
21 it's a conservative principle. It's the bedrock of
22 conservative principles. Here's what the Chief
23 Justice of the United States Supreme Court had to
24 say about lobby laws and an attack against those
25 lobby laws under the First Amendment. And I'll read

1 it briefly, and that will be all I'll have to say,
2 Mr. Chairman, other than my testimony, of course.

3 "To summarize, therefore, there are three
4 prerequisites to coverage under the federal law. A
5 person must have solicited, collected or received
6 contributions, which is analogous to compensation
7 under our statutes. One of the main purposes of
8 such person must have been the influence of passage
9 or defeat of legislation by Congress; three, the
10 intended method of accomplishing this purpose must
11 have been through direct communication with members
12 of Congress."

13 It goes on to discuss some of the
14 specifics of the specific federal statutes and says,
15 "Thus construed, these federal statutes do not
16 violate the freedoms guaranteed by the First
17 Amendment, freedom to speak, publish and petition
18 the government. Present day legislative
19 complexities are such that individual members of
20 Congress cannot be expected to explore the myriad
21 pressures to which they are regularly subjected.
22 Yet full realization of the American ideal of
23 government by elected representatives depends to no
24 small extent on their ability to properly evaluate
25 such pressures. Otherwise, the voice of the people

1 may all too easily be drowned out by the voice of
2 special interest groups seeking favored treatment
3 while masquerading as proponents of the public will.
4 This is the evil which the Lobbying Act was designed
5 to prevent."

6 Thank you for the opportunity to make a
7 statement.

8 MR. NIXON: Mr. Chairman, I ask that
9 the opening statement of Mr. Bresnen be completely
10 disregarded as expert testimony and not as a
11 statement of any fact relevant to this case.

12 It's a legal argument that's reserved
13 specifically to counsel for the State and the
14 Respondent.

15 MR. STEUSLOFF: Well, he's not
16 providing -- he's not providing legal advice. He's
17 just citing applicable case law --

18 MR. NIXON: My point entirely.

19 MR. STEUSLOFF: -- made by the U.S.
20 Supreme Court. He's not providing his own
21 testimony.

22 MR. NIXON: It appears as if
23 Mr. Steusloff agrees with me.

24 CHAIR CLANCY: The -- the Chair's
25 going to let the witness say what he wants to say.

1 And if he wants to quote Supreme Court Justices he
2 can do that. But as the Commission knows, this
3 witness does not decide what the law is that applies
4 to this session.

5 So you may begin your questioning.

6 STEVE BRESNEN,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STEUSLOFF:

10 Q For the record, could you please state
11 your name.

12 A My name is Steve Bresnen.

13 Q And what is your current occupation?

14 A I'm an attorney and lobbyist.

15 Q Are you a registered lobbyist?

16 A I am.

17 Q And how long have you been a registered
18 lobbyist?

19 A Since 1996.

20 Q How long have you been a practicing
21 attorney?

22 A I was licensed to practice law in 1988.

23 Q Okay. Before you is a large notebook. I
24 would like you to turn to Tab No. 2 that has already
25 been admitted into evidence. Do you recognize that

1 document?

2 A Hold on just a minute.

3 Q All right. Please take your time.

4 A Quite a load here.

5 Yes, I recognize that document.

6 Q And what is that document?

7 A That is a complaint filed by
8 Representative Jim Keffer against Mike Sullivan. It
9 is dated April 3rd, 2012 and is the subject matter
10 of this hearing, as I understand it.

11 Q Did you -- did you prepare this complaint?

12 A I did.

13 Q And is that your -- is that your
14 handwriting on any of these pages?

15 A It is.

16 Q Okay. Can you please turn to Tab No. 3?

17 A Okay.

18 Q Do you recognize those documents behind
19 Tab No. 3?

20 A I do.

21 Q What are those documents?

22 A That is sworn complaint filed by then
23 Representative Vicki Truitt against Mike Sullivan
24 again dated April 3rd, 2012.

25 Q And, again, is that your handwriting?

1 A Yes, it is.

2 Q So did you prepare these complaints?

3 A I did.

4 Q Are you familiar with the documents that
5 are included with these complaints?

6 A I am.

7 Q The -- the documents labeled exhibits?

8 A Yes, sir.

9 Q And what are those documents?

10 A Well, there's a variety of documents, some
11 of them are corporate -- well, let me -- hold on,
12 let me look --

13 MR. NIXON: Mr. Chairman, the
14 documents speak for themselves; objection.

15 CHAIR CLANCY: The complaint?

16 MR. NIXON: Yes. The documents all
17 speak for themselves. The witness doesn't need to
18 testify what they are.

19 MR. STEUSLOFF: Well, I'm asking him
20 to explain these individual letters and other
21 exhibits that were included. I'm building a
22 foundation to admit --

23 CHAIR CLANCY: Are they admitted?

24 MR. STEUSLOFF: Well, these
25 complaints themselves, yes, but I do have additional

1 documents that I'm going to ask him about.

2 CHAIR CLANCY: Okay. Let's move
3 along.

4 MR. STEUSLOFF: Okay.

5 A Generally speaking, the documents --

6 MR. NIXON: There's no question at
7 this time, Mr. Chairman.

8 CHAIR CLANCY: That's correct.

9 Q (By Mr. Steusloff) So how did you prepare
10 these particular complaints?

11 A I performed research over a number of
12 months' period of time and obtained information from
13 various sources, including members of the Texas
14 Legislature. And then went back and analyzed the
15 law and concluded that there had been violations of
16 the Lobby Act. And so I wrote up a statement about
17 the violations in following the portions of the
18 Lobby Registration Act and the Chapter 571 of the
19 Government Code which speak to the complaint process
20 here, wrote the complaints and assembled the
21 evidence supporting each one of them.

22 Q And where did you obtain the evidence that
23 you included with the complaints?

24 A This -- this particular -- most of this --
25 I'm looking at Page 85 of the Truitt complaint.

1 Q Okay.

2 A Those things from Item Exhibit 14 and up
3 were things that I obtained to be an Open Records
4 request that was made on my behalf to members of the
5 Texas Legislature.

6 Exhibit 14 are documents -- the tax
7 returns for the organization Empower Texans that I
8 obtained from the foundation center online, which is
9 a common source for those documents.

10 The -- Exhibit 15 is a letter from the
11 Ethics Commission to me at my request. I wrote the
12 Commission and asked if Mr. Sullivan had been
13 registered to lobby in 2010 or 2011 and was -- got a
14 reply from the Ethics Commission that --

15 CHAIR CLANCY: Counsel, these
16 document are admitted by agreement.

17 MR. STEUSLOFF: Yes.

18 CHAIR CLANCY: Okay. So let's talk
19 about what's relevant about these documents. We
20 don't need to authenticate them anymore.

21 MR. STEUSLOFF: Okay. I'm getting
22 there.

23 Q (By Mr. Steusloff) I'm going to hand you
24 some exhibits.

25 MR. STEUSLOFF: And in the interest

1 of time, I would like to hand these to Mr. Bresnen
2 as a group. I mean, we could go through them
3 individually one by one. But for purposes of -- in
4 the interest of time I would like to ask him to
5 review these exhibits as a group.

6 CHAIR CLANCY: What are you trying to
7 do?

8 MR. STEUSLOFF: These are
9 documents --

10 CHAIR CLANCY: What exhibits, what
11 exhibit numbers?

12 MR. STEUSLOFF: These are exhibits
13 from Nos. 13 -- starting on No. 13 to 67.

14 CHAIR CLANCY: They're sequential?

15 MR. STEUSLOFF: Yes, sir.

16 CHAIR CLANCY: Okay. So for
17 logistics purposes, he may have the stack.

18 MR. STEUSLOFF: Okay.

19 MR. NIXON: Are these -- are these
20 the original documents?

21 CHAIR CLANCY: I don't know.

22 MR. NIXON: I don't know.

23 CHAIR CLANCY: Counsel?

24 MR. STEUSLOFF: Well --

25 MR. NIXON: I've never seen them

1 before.

2 MR. STEUSLOFF: -- they are --

3 CHAIR CLANCY: The originals you've
4 never seen?

5 MR. NIXON: I've never seen the
6 originals. And until Thursday of last week was the
7 first time I saw what I think may be copies of them.
8 And, of course, I have objections to them.

9 CHAIR CLANCY: Sure.

10 MR. NIXON: I don't know when you
11 want my objections.

12 CHAIR CLANCY: Uh-huh. I want your
13 objections when they're offered.

14 MR. NIXON: Thank you.

15 MR. STEUSLOFF: Now, copies of all
16 these documents are included in the notebooks
17 that -- that you have before you. They are in your
18 joint exhibit notebook.

19 MR. NIXON: 13 through?

20 MR. STEUSLOFF: 13 through 67.

21 Q (By Mr. Steusloff) Now, Mr. Bresnen, I
22 would like you to look through -- well, we'll begin
23 with Exhibit No. 13. That should have been at the
24 very top of the stack. Do you see that?

25 A Yes, sir.

1 Q Do you recognize those documents?

2 A I do.

3 Q And what are they?

4 A The Exhibit No. 13 is a response to the
5 Open Records request submitted on my behalf, and
6 it -- this was from the office of Representative
7 Rodney Anderson. And it conveys a number of E-mail
8 communications styled to Mark Dalton, who was a
9 staff person in Representative Anderson's office at
10 the time. And these appear to be the documents that
11 were responsive to my requests.

12 MR. NIXON: Mr. Chairman, I would
13 object to this witness testifying any further with
14 regard to these documents. These are addressed to a
15 Mr. William Greenhaw, not Mr. Clancy -- I mean,
16 excuse me, not Mr. Bresnen. Mr. Greenhaw received
17 all these documents from -- he was the one that did
18 the Open Records request. And he was the one who
19 received all these documents. This witness has --
20 at this time there's no predicate for this witness
21 to be testifying for any of these documents. And I
22 note, and I think the Commission should note, that
23 the witness was very careful in not stating that the
24 letter was addressed to Mr. Greenhaw. He's
25 testified that this is documents that he -- that he

1 personally requested or done at his -- his request,
2 but the document itself contradicts that testimony.

3 I would object to any further discussion
4 from this witness with regard to this.

5 CHAIR CLANCY: So is your request
6 that we bring Mr. Greenhaw in here to deal with
7 these documents?

8 MR. NIXON: Yes.

9 CHAIR CLANCY: Counsel, do you have
10 any objection to that?

11 MR. STEUSLOFF: Well, he is one of
12 our witnesses, and I do intend to call him after
13 Mr. Bresnen.

14 CHAIR CLANCY: Do you have a problem
15 with us getting these documents admitted so then we
16 can talk to Mr. Bresnen about them?

17 MR. STEUSLOFF: I do not.

18 CHAIR CLANCY: Will that work?

19 MR. NIXON: Let's proceed that way.

20 CHAIR CLANCY: Mr. Bresnen, you're
21 not excused --

22 THE WITNESS: I understand.

23 CHAIR CLANCY: -- but if you'll step
24 down, we're going to call Mr. Greenhaw and see
25 whether or not Exhibits 13 through 67 will be

1 admitted in this case.

2 THE WITNESS: Should I leave the pile
3 here?

4 MR. STEUSLOFF: I will take those.

5 (Witness Bresnen exits hearing)

6 MR. STEUSLOFF: Mr. Greenhaw, if you
7 could please take a seat.

8 CHAIR CLANCY: Counsel, we're going
9 to wait for just a minute until we're all present.

10 Just for members of the public, we'll take
11 a break around 12:30, at the time when -- hopefully
12 when a witness is completed so we can let them be
13 excused for the day. And then we'll break for an
14 hour lunch.

15 WILLIAM GREENHAW,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. STEUSLOFF:

19 Q Good morning, Mr. Greenhaw.

20 A Good morning.

21 CHAIR CLANCY: Not yet, Counsel.

22 MR. STEUSLOFF: Oh, I'm sorry. I'm
23 sorry.

24 Are you trying to project something?

25 MR. NIXON: Not yet.

1 MR. STEUSLOFF: Okay. Because we
2 need to turn the projector on.

3 CHAIR CLANCY: Mr. Greenhaw, the
4 Government Code gives each witness the opportunity
5 to make a brief statement to the Commission before
6 they testify. Would you care to make a statement
7 today?

8 THE WITNESS: No.

9 CHAIR CLANCY: All right. Thank you,
10 sir. Counsel proceed.

11 Q (By Mr. Steusloff) For the record, could
12 you please state your name.

13 A My name is William Randall Greenhaw.

14 Q And are you currently employed?

15 A No.

16 Q Are you retired?

17 A I am retired.

18 Q Okay. And how long have you been retired?

19 A I've been retired for ten years.

20 Q And what did you do before you retired --

21 A I worked for the federal government.

22 Q Okay. Are you familiar with the -- the
23 complaints that are at issue in this hearing?

24 A Somewhat familiar, yes.

25 Q How are you familiar with the complaints?

1 A Well, in that Mr. Bresnen asked me if I
2 would help him to file a Freedom of Information
3 request and that he would make up the request and
4 I -- I read over it and then we sent them out. And
5 then as they came in -- okay.

6 Q Okay. That's fine. I'll ask you more
7 questions about that.

8 So you -- are you a friend of Mr. Bresnen?

9 A Yes, for about 30 years.

10 Q And -- and you said that you worked with
11 him to submit Open Records requests --

12 A Yes.

13 Q -- is that right?

14 A Yes.

15 Q Is that something that he asked you to do?

16 A Yes.

17 Q And he asked you -- did he ask you to
18 prepare a document or -- I mean, what specifically
19 did you do for --

20 A He --

21 Q -- Mr. Bresnen?

22 A -- he prepared it and then I signed it and
23 that's what he sent out.

24 Q He prepared a letter?

25 A He prepared a form letter.

1 Q And did he give that letter to you?

2 A He showed it to me and then he sent it
3 out.

4 Q Okay. Did you put your signature on it
5 personally?

6 A Yes.

7 Q So, I mean, did you -- did you actually
8 sign --

9 A Oh --

10 Q -- the documents or --

11 A -- I signed one document. And then he
12 used my signature as a stamp basically on -- from
13 there on.

14 Q You mean you -- you signed what, a piece
15 of paper or was it a file --

16 A I signed a piece of paper and then we
17 scanned it.

18 Q Okay. And then you gave that to
19 Mr. Bresnen?

20 A Yes.

21 Q And it was your understanding that he was
22 going to use that signature in a letter?

23 A Yes.

24 Q And -- and what would he do with that
25 letter?

1 A That he was going to send it out, Freedom
2 of Information request, and they would come back
3 to -- to me. So as they came in, I saved them and
4 gave them to him.

5 Q So did -- did you personally mail out
6 those requests?

7 A No, I did not.

8 Q Okay. Do you believe Mr. Bresnen did?

9 A Yes.

10 Q Did you receive any documents from the
11 Legislators' offices?

12 A Yes, quite a few.

13 Q Quite a few.

14 Do you know how many?

15 A I didn't count them. They would come in
16 in stacks of like eight or ten a day.

17 Q And what -- at what time did this
18 letter -- did the Open Records letter go out?

19 A At what time? Whichever the first one
20 was, I think, was in January of 2012, I believe.

21 Q Okay. So after -- so -- so you started
22 receiving documents from Legislators' offices?

23 A Yes.

24 Q How did you know they were from
25 Legislators' offices?

1 A They all had their names on the outside on
2 the envelopes.

3 Q So you were receiving envelopes in the
4 mail?

5 A Yes.

6 Q And this was at what time, in what time
7 frame?

8 A I believe the -- that was in January of
9 2012. I -- I couldn't --

10 Q Okay. But -- but -- do you recall
11 generally how many individual doc -- how many
12 individual envelopes you had received?

13 A Total probably 35, 40.

14 Q Okay. And what did you do with the doc --
15 with those envelopes after you received them?

16 A I saved them and I would call Mr. Bresnen
17 every so often, and he would come over and pick them
18 up.

19 Q He -- he came to your -- what, to your
20 house --

21 A My house.

22 Q -- to your home?

23 A Yes.

24 Q So you called him and told him the doc --
25 that you had documents?

1 A That I had some more documents.

2 Q Okay. And you gave those documents to
3 Mr. Bresnen?

4 A Yes.

5 Q Did you open the envelopes that you
6 received?

7 A No.

8 Q Did you modify them in any way?

9 A No. I put them in a sack.

10 Q And gave those to Mr. Bresnen?

11 A Uh-huh.

12 Q And do you know what he did with those
13 documents after -- after that point?

14 A No, not really.

15 Q Okay. Did you receive documents from --
16 in any other way other than -- other than by mail?

17 A There were probably five or six that
18 responded by E-mail, and I printed those out to .pdf
19 format and put them on a disk and gave those to
20 Mr. Bresnen.

21 Q Okay. And how did you save them to the
22 disk? Just they were -- they were in a .pdf format.
23 Is that --

24 A Well, they were -- they were E-mails, and
25 I have Acrobat on my computer, so I just saved them

1 in a .pdf format.

2 Q Did you modify them in any way other than
3 just saving them as a .pdf?

4 A No.

5 Q You didn't edit them in any way?

6 A No.

7 Q And do you know about what time you gave
8 Mr. Bresnen that CD?

9 A Probably within eight to ten days after
10 the -- the first letters started coming in. And I
11 don't believe there were too many of them that came
12 in by E-mail. And when -- when I -- they all seemed
13 to come in within a group within a two or three-day
14 time period. So I wrote them off, gave them -- with
15 the other letters that weren't opened, his CD.

16 Q Okay.

17 MR. STEUSLOFF: So I would like to
18 give Mr. Greenhaw Exhibit No. 11.

19 Q (By Mr. Steusloff) Mr. Greenhaw, there are
20 two pages in that exhibit. Do you recognize the
21 first page that's numbered 267 at the bottom?

22 A Yes. That's what Steve had shown me to
23 begin with.

24 Q What -- what do you mean that he showed
25 you to begin with?

1 A That -- when we first talked about doing a
2 Freedom of Information Act request that he said this
3 is what it would look like.

4 Q Okay. And so you didn't -- you didn't
5 write this letter?

6 A No.

7 Q Okay. But -- and is that -- is that your
8 name and your address at the bottom?

9 A Yes.

10 Q And now, was this -- was this a form
11 letter? What sort of letter was this? I mean --

12 A Well, when he showed it to me, this is
13 what it looked like, just printed out. I'm assuming
14 it's a form letter.

15 Q All right. Okay.

16 Can you look at the next page?

17 A Yes.

18 Q And do you recognize this document?

19 A Yes. This is one that would have my
20 signature affixed on it.

21 Q Okay. So is that -- that is your
22 signature at the bottom?

23 A Yes.

24 Q And is that your -- your full name and
25 address?

1 A Yes.

2 Q Is that your E-mail address, as well?

3 A It is.

4 Q Were you -- you were residing at that
5 address at the time that the documents were being
6 sent to you?

7 A Yes.

8 Q And is that where they were mailed?

9 A Yes.

10 Q And that E-mail address
11 southaustin.randy@e-mail.com, is that the E-mail
12 address to which the responses by E-mail --

13 A Yes.

14 Q -- were also being sent?

15 A Yes.

16 Q Okay.

17 MR. STEUSLOFF: I pass the witness.

18 CROSS-EXAMINATION

19 BY MR. NIXON:

20 Q Let's -- let's look at I think it's 268,
21 Bates stamp 268, Mr. Greenhaw, on the second page of
22 Exhibit 11.

23 A Oh, okay. Okay.

24 Q Do you see -- now, it's addressed to
25 Mrs. -- to the Honorable Charles Perry. Did you

1 make that address?

2 A No.

3 Q You didn't -- so you didn't do this
4 letter?

5 A No. In -- in -- in the sense that -- what
6 was written, no, I did not.

7 Q Okay. Do you know to whom you sent any
8 letter?

9 A No.

10 Q In fact, you didn't keep a list of who you
11 sent them to or who you got back from?

12 A No.

13 Q And you didn't open any of them?

14 A I did not open anything.

15 Q Do you remember doing an affidavit for
16 the -- in this -- in this file?

17 A An affidavit?

18 Q An affidavit.

19 A I've done several. One was stating that I
20 wasn't going to be in town and --

21 Q Well, there was one you were, like, in
22 California?

23 A Yes. I have a house in California.

24 Q Okay. And you said in your affidavit --
25 I'm going to read it to you; I want to make sure

1 that -- if I read this correctly.

2 "Upon receipt of the responses, I notified
3 Mr. Bresnen, to whom I personally delivered each
4 response."

5 Is that true?

6 A Yes.

7 Q "All but a few of the responses came to me
8 via the U.S. Postal Service."

9 A Correct.

10 Q "I did not personally open any of the
11 envelopes conveying those responses, but delivered
12 them unopened to Mr. Bresnen."

13 A Correct.

14 Q "Who personally took custody of the
15 responses directly from me."

16 A Correct.

17 Q Okay. You are unable to testify today as
18 to what was in any envelope?

19 A I did not open the envelopes.

20 Q Right.

21 Without opening the envelopes you do not
22 know whether any of the exhibits attached to -- that
23 are -- that are purported to be responses are
24 actually true and correct, do you?

25 A Whatever was in the envelope Mr. Bresnen

1 has.

2 Q But you can't tell us --

3 A What was inside the envelopes, no.

4 Q No.

5 You don't know whether any of these
6 exhibits are accurate, do you?

7 A I can't speak to that.

8 Q Okay. Do you still have your computer?

9 A Yes.

10 Q Had you ever done any Open Records
11 requests before?

12 A No.

13 MR. NIXON: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. STEUSLOFF:

16 Q So, again, Mr. Greenhaw, you don't know
17 specifically what was in the -- the envelopes that
18 you received from the Legislators' offices.
19 Correct?

20 A No. There were some that were very large
21 packages, others that were obviously like just one
22 or two pages.

23 Q But you gave them to Mr. Greenhaw [sic]
24 exactly as how you received them -- excuse me.

25 A Mr. Bresnen.

1 Q -- to Mr. Bresnen exactly as you had
2 received them in the mail. Is that correct?

3 A Yes.

4 MR. STEUSLOFF: I have no further
5 questions.

6 CHAIR CLANCY: Counselors, any more
7 questions for this witness?

8 MR. NIXON: No.

9 CHAIR CLANCY: May the witness be
10 excused?

11 MR. NIXON: Yes.

12 MR. STEUSLOFF: Yes.

13 CHAIR CLANCY: Any questions by
14 Commissioners? Okay. Thank you, sir.
15 Mr. Greenhaw, you're excused.

16 THE WITNESS: Thank you.

17 (Witness excused from the hearing)

18 CHAIR CLANCY: You're welcome to
19 remain in the hearing room or to leave.

20 THE WITNESS: Going to go home.

21 COMMISSIONER DELCO: That's what I
22 would do.

23 MR. STEUSLOFF: So I would like to
24 recall Mr. Bresnen.

25 CHAIR CLANCY: Yes, sir.

1 Sir, you're still under oath.

2 THE WITNESS: Yes, sir.

3 DIRECT EXAMINATION (Continued)

4 BY MR. STEUSLOFF:

5 Q I would like to give you, Mr. Bresnen,
6 Exhibit No. 11. Mr. Bresnen, do you recognize
7 the -- those two pages that I've handed you?

8 A I do.

9 Q And what are those pages?

10 A The first page -- excuse me.

11 The first page is a draft of the letter
12 that Mr. Greenhaw submitted at my request that -- by
13 which the public records were obtained from
14 Legislators' offices. And the second one -- that
15 was the format. And the second one is a completed
16 copy to the office of Representative Charles Perry
17 requesting records.

18 Q So the document that has the Page No. 267
19 at the bottom, that is -- is that the Open Records
20 request letter that was sent to Legislators'
21 offices?

22 A Yes, that's the text of it.

23 Q That's the text of it?

24 A Yes, sir.

25 Q So did you use that as a basis to prepare

1 the other letters that were sent to Legislators?

2 A All the letters were identical except for
3 the addressee.

4 Q Did those letters include Mr. Greenhaw's
5 signature?

6 A They did.

7 Q Is that the same signature that's included
8 on Page 268?

9 A Yes, sir.

10 Q Did it also include his return address and
11 E-mail address?

12 A Yes.

13 Q Is that his return address and E-mail
14 address at the bottom of that --

15 A Yes, sir.

16 Q -- document on Page 268?

17 A Yes, it is.

18 Q So this was just one example of an Open
19 Records letter that was sent to a Legislator's
20 office?

21 A That's correct.

22 Q And was that Charles Perry --

23 A Yes.

24 Q -- on that particular letter?

25 Did you personally send -- send these Open

1 Records request letters to Legislators' offices?

2 A I did.

3 Q It wasn't Mr. Greenhaw who sent it?

4 A I -- I printed them out and put them in
5 the envelopes and put the stamps on them.

6 Q So you personally mailed them?

7 A I did.

8 Q But they had Mr. Greenhaw's contact
9 information on them?

10 A That is correct.

11 Q Okay. And why did they have
12 Mr. Greenhaw's contact information instead of yours?

13 A He agreed to submit the Open Records
14 request on -- on my behalf and to receive the
15 answers at his address.

16 Q But you requested him to --

17 A I did.

18 Q You asked him if his name and address
19 could be included on the letters?

20 A Yes, sir.

21 Q And what was the purpose for doing that?
22 Why did you ask him for that?

23 A That was to make the request from him and
24 not from me.

25 Q Okay.

1 A Is that -- is that what you're asking?

2 Q Yes. But I mean, is there a specific
3 reason --

4 A Yeah.

5 Q -- that you wanted the request to come
6 from Mr. Greenhaw and not from you?

7 A Yes. At that point in time I did not want
8 members of the Legislature to know that I was
9 agreeing to work for them and inquiring about these
10 matters.

11 Q Okay. So it's your testimony, though,
12 today that this is a sample letter, this is a
13 representation of all of the Open Records request
14 letters that you personally sent to Legislators'
15 offices?

16 A That is request -- that is correct.

17 Q Okay. I would like to give -- to offer
18 you Exhibit 12. Mr. Bresnen, do you recognize this
19 document?

20 A I'm not sure that I do.

21 Q Okay.

22 A I think I -- yeah, maybe I do. I think
23 this -- I can't remember if maybe I created this.
24 But it's -- it appears to be a listing of people who
25 responded to the Open Records request, an inventory

1 that was made. After I received all these things
2 back, I -- I laid them out and organized them and
3 Mr. Greenhaw and I went through them. He assisted
4 me to organize the -- the records. So this may --
5 this may have been the inventory that -- that we put
6 together as a result of that. That's -- this has
7 been going on for a long time, so...

8 Q Okay. So how many Legislators' offices --
9 to how many offices did you send an Open Records
10 request?

11 A I believe it was 95 at the time.

12 Q Okay. And --

13 A So there would have been -- and there were
14 some who did not respond.

15 Q Okay. And which -- do you recall which 95
16 offices you sent them to?

17 A Yes, sir. It would have been all the
18 Republican members of the Texas House of
19 Representatives.

20 Q Did you send any to the Senate?

21 A No, sir.

22 Q Did you send any to any Democratic
23 officers?

24 A No.

25 Q But not all of the offices responded?

1 A No, sir.

2 Q Did you ever follow up to ask them --

3 A No, sir.

4 Q -- about responding?

5 A No, sir.

6 Q Okay. Now, how did the documents produced
7 by legislative offices, how did they come to your
8 possession?

9 A Mr. Greenhaw would call me when a number
10 of envelopes had showed up at his house, and I would
11 go to his house and pick them all up.

12 Q And when did that happen, at what time? I
13 mean, what dates, what periods of --

14 A Well, it happened several times. And I
15 can't tell you specific dates. But members would
16 respond periodically. I suspect if we look there
17 will be different dates on the reply letters here.
18 They would respond periodically. They would stack
19 up in Mr. Greenhaw's mailbox and he would call and
20 say, "Hey, I've got some." And I would go by and
21 pick them up. So I probably made three or four
22 trips over to his home and picked those up.

23 Q And in what format were those -- did
24 Mr. Greenhaw give them to you? How -- how were --

25 A The envelopes were unopened, closed,

1 sealed just as he got them.

2 Q Okay. They were in envelopes. What did
3 the envelopes appear -- how did they appear? Did
4 they have any return addresses on them?

5 A Sure. They appeared to come from members
6 of the House of Representatives with return
7 addresses.

8 Q But they were addressed to Mr. Greenhaw?

9 A Yes.

10 Q Do you have those envelopes?

11 A I've looked for those envelopes and I
12 cannot find them.

13 Q Okay.

14 A I thought they were -- I thought they were
15 in that box that I gave you all, but apparently not.
16 So I don't know where they are. I have moved my
17 office three times since this started, so apparently
18 I don't have the envelopes.

19 Q Okay. But when you received envelopes
20 from Mr. Greenhaw they were unopened?

21 A Yes, sir.

22 Q And they did not appear altered in any
23 way?

24 A No, sir. There were a few responses that
25 came by E-mail, and those he printed out and gave

1 me. But there were maybe -- I don't know, I would
2 say two or three maybe.

3 Q And how did Mr. Greenhaw give those E-mail
4 documents to you?

5 A Well, at first he gave them to me printed
6 out, and I think at a subsequent time he put them on
7 a -- on a, you know, CD.

8 Q Okay. And what did you do with those
9 documents after you had -- after Mr. Greenhaw gave
10 them to you --

11 A Well, I --

12 Q -- just in general?

13 A -- took the envelopes home, opened the
14 envelopes, clipped each package together with a
15 binder clip and then proceeded to go through them
16 and see what they were about.

17 Q And so did you use any of those documents
18 as a basis to file complaints?

19 A Oh, sure. Yeah. After I went -- after
20 I -- after the responses stopped coming, then by
21 that point I had gone through and, you know, flipped
22 them and analyzed the documents. And I saw a number
23 of instances of -- of what I concluded were direct
24 communication to influence legislation. And copied
25 those portions of those documents and used some of

1 them to put with the complaint that I ultimately
2 wrote after doing that research.

3 Q Did you include all of the documents with
4 the complaints?

5 A All of the documents that came from the
6 requests?

7 Q Yes.

8 A No.

9 Q You only included some of them?

10 A That's correct.

11 Q And why did you only include some of them,
12 but not all?

13 A I didn't include things that weren't
14 relevant to the complaint.

15 Q But after the complaints were filed,
16 what -- what did you do with the documents that you
17 received from the Legislators' offices?

18 A Well, I boxed them up and set them aside.
19 That would have been, I guess, late April or early
20 May of 2012. Boxed them up and set them over in the
21 corner and waited for you all to do your work.

22 Sometime subsequent to that - and you'll
23 have to help me with my memory - I went back to the
24 documents and determined that a number of other
25 items in those documents were also evidence of

1 violation of the Lobby Registration Act, and I
2 supplied the Commission with an affidavit that
3 itemized those additional documents. There were 58
4 of them that relate to this complaint. And I
5 itemized those, where the documents had come from
6 and provided them to the Commission.

7 Q Okay. And I would like to hand
8 you, again, the Exhibits 13 through 67.

9 So, Mr. Bresnen, do you recognize these
10 documents that I've handed you?

11 A I do.

12 Q Okay. And if you need additional time,
13 feel free to --

14 A No, that's okay. I'm pretty familiar with
15 this pile.

16 Q Okay. So what are those documents?

17 A Well, these appear to be the responses to
18 the January 10 Open Records request, January 10th,
19 2012 Open Records request that went to the House.

20 Q So you personally gave those documents to
21 staff at the Ethics Commission?

22 A I did.

23 Q And at the time that you gave --

24 A Wait just a minute. After the complaints
25 were filed, after -- as part of your investigation I

1 supplied all of these documents to the Commission.

2 Q After the complaints were filed. Do you
3 recall what time that -- what time that was?

4 A Oh, I think I gave you the whole box of
5 them earlier this year.

6 Q Okay. And at -- at the time that you gave
7 us the documents had -- I mean, were -- did you
8 modify any of those documents before you gave them
9 to Commission staff?

10 A There is a few of them that I had
11 highlighted some with a yellow highlighter, but
12 otherwise, they're un -- unaltered.

13 Q So you didn't change them in any way?

14 A What you have is exactly what I got from
15 the members of the House with the exception of --
16 there's a few places where I highlighted them to
17 like, that's a violation or this is an election
18 hearing or in the case of the subsequent -- or the
19 other complaint. But that's the only change I made
20 in any of these documents.

21 Q Okay. And I would like to -- is there a
22 CD included with the doc --

23 A Yes, sir.

24 Q -- with the documents that I gave you?

25 A Yeah, I think so.

1 Q Can you look at that?

2 A Yes.

3 Q That's Exhibit 42?

4 A Yes. And I just got this out of order, so
5 sorry about that.

6 Q That's fine.

7 Do you recognize that CD?

8 A This appears to be the CD that
9 Mr. Greenhaw gave me.

10 Q Do you know -- and have you reviewed that
11 CD?

12 A Well, I did at the time. I couldn't tell
13 you which ones are on there right now, but I did at
14 the time.

15 Q Okay. But you gave that CD to Commission
16 staff --

17 A Yes, sir --

18 Q -- as well?

19 A -- at the same time I gave you all the
20 rest of this.

21 Q And did you alter any of the files or any
22 of the information --

23 A No.

24 Q -- that were on that CD?

25 MR. STEUSLOFF: I would like at this

1 time to offer the Exhibits 11 through 67 as
2 evidence.

3 (Exhibit Nos. 11-67 offered.)

4 CHAIR CLANCY: Counsel?

5 MR. NIXON: I have no objection to
6 Exhibit 11.

7 CHAIR CLANCY: Exhibit 11 will be
8 admitted.

9 (Exhibit No. 11 admitted)

10 MR. NIXON: I object to 12 through
11 67.

12 CHAIR CLANCY: What's the basis of
13 your objection?

14 MR. NIXON: Under Rule 901 and 902 of
15 the Texas Rules of Evidence, these are not
16 authenticated as business records. They are not and
17 they don't fit any other -- they don't fit any other
18 exception under Rule 804 for hearsay of sections in
19 either 803 or 804.

20 Plus we've got a massive chain of custody
21 problem.

22 CHAIR CLANCY: All right. I think
23 we're at a good stopping point. We're going to
24 recess for lunch and we'll return in 60 minutes.

25 (Off the record from 12:11 to 1:15)

1 MR. NIXON: Mr. Chairman, before you
2 rule, there's another matter I have to bring to your
3 attention.

4 CHAIR CLANCY: Okay.

5 MR. NIXON: It's on the screen.

6 Of course, you remember all the witnesses
7 were put under the Rule and were instructed not to
8 participate or communicate with regard to any -- any
9 testimony be involved in this trial.

10 We now find that Mr. Bresnen has been
11 tweeting -- while waiting outside he has been
12 tweeting with people who are in the room regarding
13 the testimony that was delivered.

14 Mr. Bresnen says Emily Wright --

15 CHAIR CLANCY: Counsel, let me
16 just -- what I would like you to do is reserve that
17 for cross, and we'll take that up at that time.

18 MR. NIXON: Mr. Chairman, this is a
19 violation of your rule. This is not a matter of
20 cross. This witness has now --

21 CHAIR CLANCY: Well, let me ask this
22 question, is he violating at this moment?

23 MR. NIXON: Is he violating the rule
24 at this moment?

25 CHAIR CLANCY: Yeah.

1 MR. NIXON: What were his tweets
2 during lunch?

3 CHAIR CLANCY: At this moment.

4 MR. NIXON: At this moment he is
5 sitting quietly in the witness stand.

6 CHAIR CLANCY: All right.

7 Mr. Bresnen, don't tweet right now.

8 THE WITNESS: Yes.

9 MR. NIXON: He communicated --

10 CHAIR CLANCY: I would like you to
11 address that during your cross-examination and we'll
12 address it at that time.

13 MR. NIXON: The Chair needs to be
14 advised --

15 CHAIR CLANCY: Uh-huh.

16 MR. NIXON: -- of a violation of the
17 Chair's rule --

18 CHAIR CLANCY: Uh-huh.

19 MR. NIXON: -- by a member of the
20 State Bar. And the Chair -- I -- the Respondent at
21 this point moves to strike Mr. Bresnen's -- the
22 entirety of his testimony for his violation of the
23 Rule. And the Respondent requests that the Chair
24 advise the State Bar of this witness' violation,
25 knowing violation, of the Rule of Evidence that

1 the -- that -- and the order that the Chair imposed
2 on each of the witnesses. This is a very, very
3 serious matter, not to be delegated to
4 cross-examination. This is --

5 CHAIR CLANCY: It's not that it's
6 delegated. It's that I would like a little more
7 exploration of the facts surrounding your motion,
8 and I think those are going to be best taken up in
9 cross-examination. For the moment your motion will
10 be carried. I will not rule on it.

11 MR. NIXON: All right.

12 CHAIR CLANCY: So if I understand
13 where we left off, there was an offer of Exhibits 12
14 through 67. Is that correct?

15 MR. STEUSLOFF: Yes, Mr. Chairman,
16 that's correct.

17 CHAIR CLANCY: Okay. Exhibit 12 is
18 denied. Okay. Exhibits 13 through 67 is going --
19 are going to be admitted but with this caveat, okay,
20 the Commission is only going to consider those pages
21 that are subject to an exclusion or exception under
22 the rules, specifically -- well, that -- there are
23 some things in these exhibits that are objectionable
24 and concerning to the Commission. But in light of
25 the number of pages that are in these exhibits,

1 they're going to be admitted, but the Commission is
2 only going to consider those pages that are subject
3 to an exclusion or an exception under the hearsay
4 rule. So, Counsel, you may proceed.

5 (Exhibit Nos. 13-67 admitted
6 conditionally)

7 MR. STEUSLOFF: Okay. And will I
8 know which specific pages would be admitted, or is
9 that something that would be determined at a time --

10 CHAIR CLANCY: Well --

11 MR. STEUSLOFF: -- at a later time?

12 I can --

13 CHAIR CLANCY: Part of -- part of the
14 difficulty is you've submitted a collection of
15 exhibits under each exhibit number, some of which
16 have appropriate exemptions or exclusion and others
17 that do not. And so I am not going to spend your
18 time or Mr. Nixon's time going through each page of
19 that.

20 MR. STEUSLOFF: Okay.

21 CHAIR CLANCY: So you may continue to
22 question this witness.

23 MR. STEUSLOFF: Okay. Thank you,
24 Mr. Chairman.

25 CHAIR CLANCY: One last -- just a

1 housekeeping matter. At the end of our break, the
2 remaining time for the Staff is two hours and 41
3 minutes and for the Respondent's it's two hours and
4 58 minutes.

5 MR. STEUSLOFF: I would like to -- to
6 inform -- inform you, Mr. Chairman, and members of
7 the Commission, we have received the -- the document
8 from Ms. Truitt as requested. Would it be
9 appropriate to distribute that at this time or
10 should we wait until after Mr. Bresnen's testimony?

11 CHAIR CLANCY: Are you talking about
12 her notes?

13 MR. STEUSLOFF: Yes.

14 CHAIR CLANCY: Counsel, we're
15 operating under the Rules of Evidence.

16 MR. STEUSLOFF: Okay.

17 CHAIR CLANCY: And so if those
18 documents are going to be offered, they need to be
19 offered in the proper way. So we're not just going
20 to hand them out.

21 MR. STEUSLOFF: All right.

22 CHAIR CLANCY: All right.

23 MR. STEUSLOFF: Now, I would -- I
24 need to use the projector. May I connect this?
25 Thank you.

1 COMMISSIONER RAMSAY: Mr. Chairman?

2 CHAIR CLANCY: Commissioner Ramsay.

3 COMMISSIONER RAMSAY: Your
4 declaration on no cell phones or iPads, is that for
5 everybody or just people who were going to be
6 testifying?

7 CHAIR CLANCY: What I was referring
8 to is those testifying witnesses in terms of what
9 they were going to refer to. So to the extent that
10 they were going to use notes or electronic devices
11 to refresh their testimony, that Counsel would have
12 the opportunity to know what they were going to be
13 referring to for their testimony.

14 COMMISSIONER RAMSAY: Thank you, sir.

15 MR. STEUSLOFF: What I would like to
16 do at this time is project the exhibits that have
17 already been admitted into the evidence and ask --
18 ask Mr. Bresnen if he can read certain portions of
19 the -- of those documents into the record, if
20 that's -- if that's permissible at this time.

21 MR. NIXON: The documents speak for
22 themselves, Mr. Chairman.

23 CHAIR CLANCY: Yeah, they do. I'd
24 like you to ask questions about documents, if you
25 need to, but I certainly don't want to spend the

1 Commission's time reading something that we already
2 have.

3 MR. STEUSLOFF: Okay.

4 CHAIR CLANCY: Counsel, you have
5 questions about the documents. Right?

6 MR. STEUSLOFF: I do.

7 CHAIR CLANCY: You just don't need to
8 tell him to read it.

9 MR. STEUSLOFF: Okay. Okay.

10 CHAIR CLANCY: I'm not trying to
11 interrupt your flow.

12 MR. STEUSLOFF: All right.

13 CHAIR CLANCY: Because I don't want
14 him to read it, because we've got the pages in front
15 of us. And we can read it ourselves if you need us
16 to do that.

17 MR. STEUSLOFF: I understand, yes,
18 sir. I'm having a technical difficulty. It's not
19 responding.

20 CHAIR CLANCY: The computer?

21 MR. STEUSLOFF: The computer. It
22 says it's not responding.

23 Okay. Well, we'll -- I'll proceed with
24 our -- our notebook instead of the -- instead of the
25 projector.

1 THE WITNESS: I've never seen one
2 work in a trial.

3 CHAIR CLANCY: There it goes. It's
4 just so big.

5 MR. STEUSLOFF: Okay. Well, let's --
6 let's see if this -- if this works here. Thanks.
7 Thank you. Just a minute. A loose cable. Okay.

8 Q (By Mr. Steusloff) Mr. Bresnen, can you --
9 can you read -- I mean, is that -- is that exhibit
10 legible?

11 A Can I read that? Is this a driver's
12 license test? I'm in trouble if it is.

13 Q That's all right.

14 MR. NIXON: What page is that?

15 Q (By Mr. Steusloff) So can you read the
16 page number at the bottom of this exhibit?

17 A Yes, sir. May I flip to it and refer to
18 the document in the notebook?

19 Q Yes. I -- I will find that here.

20 CHAIR CLANCY: Counsel, the witness
21 may be able to read it, but there is no way any of
22 us can.

23 MR. STEUSLOFF: Okay.

24 CHAIR CLANCY: So tell us what the
25 document number is.

1 MR. STEUSLOFF: This is behind Tab
2 No. 45 starting at Page 858.

3 Q (By Mr. Steusloff) So, Mr. Bresnen, you --
4 did you include this document in the packet of
5 documents that you gave to the Commission?

6 A I did.

7 Q Okay. And why did you include this
8 particular document in with the documents that you
9 gave to the Commission?

10 A Because it addresses a matter within the
11 definition of legislation in Chapter 305 of the
12 Government Code and urges a vote on that
13 legislation.

14 MR. TRAINOR: Calls for a legal
15 conclusion.

16 MR. NIXON: Excuse me. I object to
17 the responsiveness of the answer as including a
18 legal opinion and not just facts.

19 CHAIR CLANCY: Sustained.

20 Q (By Mr. Steusloff) Does this particular
21 document address the election of the voting Speaker
22 of the House?

23 MR. NIXON: Document speaks for
24 itself.

25 A Yes, it does.

1 CHAIR CLANCY: I'll allow it.

2 Overruled.

3 Q (By Mr. Steusloff) And can you refer to
4 Paragraph 3 on that letter? What is the -- the
5 first sentence on that letter?

6 A "Change to a more conservative Speaker is
7 in order."

8 Q Okay. Can you read the very last sentence
9 on that document?

10 A "We look forward to working with this
11 reinvigorating conservative forum throughout the
12 coming Legislative session."

13 Q Okay. So was it because of those
14 particular statements that you included that
15 document -- you provided that document to the
16 Commission?

17 A Yes.

18 Q Are you aware of whether there were
19 multiple communications of the same sort sent to
20 legislative offices?

21 A I believe -- I believe there were. I
22 believe there were.

23 Q And -- and on what do you base that
24 belief?

25 A Well, I believe, if I recall correctly,

1 this -- this letter or a version of it appeared in
2 multiple responses that came back from members of
3 the Legislature in response to the Open Records
4 requests.

5 Q Okay. Can you turn to Tab 19 in your
6 notebook, please, Page 464.

7 A Okay.

8 Q Do you recognize that document?

9 A I do.

10 Q And what is that document?

11 A That is a letter to the Honorable Tom
12 Craddick on Texans for Fiscal Responsibility
13 letterhead dated December 20th, 2010 signed by Mike
14 Sullivan and addresses a number of issues that would
15 be considered by the House of Representatives in the
16 82nd Session.

17 Q And did you include this particular
18 document in with the documents that you gave to
19 the -- to the Commission?

20 A Yes, I did.

21 Q Okay. Now, you also provided a number of
22 other letters and memoranda to the Commission.
23 Correct?

24 A Yes.

25 Q And you also included a number of E-mails

1 to the members -- to the Commission?

2 A Yes.

3 Q Pardon me for one moment. I'm getting a
4 stutter on this laptop here.

5 Could you turn to Tab 33, please.

6 A Okay.

7 Q And could you specifically turn to
8 Page 653.

9 CHAIR CLANCY: Counsel, for the court
10 reporter's benefit, would you refer to that as
11 Exhibit 33?

12 MR. STEUSLOFF: Yes, Mr. Chairman.
13 Exhibit 33.

14 CHAIR CLANCY: Okay. I mean, we
15 understand where it's located, but she needs to know
16 that's the exhibit we just talked about.

17 MR. STEUSLOFF: I understand. For
18 the record.

19 CHAIR CLANCY: What page?

20 MR. STEUSLOFF: Page 653.

21 Q (By Mr. Steusloff) Do you recognize this
22 document, Mr. Bresnen?

23 A I do.

24 Q And what is that document?

25 A That is an E-mail from Mike Sullivan to

1 Matthew Miller, who was paid for Representative Rob
2 Lory in the relevant time period, stating an opinion
3 asking them to vote for Senate Bill 655 as carried
4 by Mr. Keffer. And I don't know who the second
5 sponsor was on that --

6 MR. NIXON: Objection; document
7 speaks for itself, what it says. It -- it -- and we
8 still have an evidentiary issue with regard to is
9 that truly a document out of their file, because
10 we're -- we're not sure. But the main deal is this
11 witness doesn't need to be testifying about his
12 interpretation of what he thinks a document says.

13 CHAIR CLANCY: Very well. Move
14 along.

15 MR. STEUSLOFF: Okay.

16 Q (By Mr. Steusloff) So, Mr. Bresnen, you
17 provided a number of E-mails to the Commission. Is
18 that correct?

19 A Yes, sir.

20 Q And you believe that a number of those
21 E-mails were submitted to the offices of Legislators
22 including legislative -- members of the
23 Legislators -- excuse me, members of the Legislature
24 and their staff?

25 MR. NIXON: Objection; his belief is

1 irrelevant. What he knows.

2 MR. STEUSLOFF: I'm -- I'm getting
3 there.

4 MR. NIXON: No. We have a different
5 of opinion on that, but still the question -- this
6 witness should not answer that question as asked.

7 CHAIR CLANCY: As to the -- as to the
8 relevance objection, it's sustained.

9 MR. STEUSLOFF: Okay.

10 Q (By Mr. Steusloff) I would like to show
11 you, Mr. Bresnen, Exhibit No. 10. Do you recognize
12 that document, Mr. Bresnen?

13 A Yes, I do.

14 Q And what is that document?

15 A This is a report by the House Research
16 Organization of Legislative Staff from the 82nd
17 Legislature dated March 8, 2011 addressed to all the
18 officers and committee officers and the staff and
19 contact information for the members of the
20 Legislature.

21 Q Did you -- where did you obtain this
22 document?

23 A I printed it off from online from the
24 House Research Organization website.

25 Q Okay. And what's the House Research

1 Organization?

2 A House Research Organization is governed by
3 a number of members of the House. It's paid for, I
4 believe, by subscriptions from the House members.
5 And they produce issue things, informational items
6 like this for the House. It's a bipartisan
7 governance that the Legislature relies on for bill
8 analysis or information about, you know, various
9 things, you know, like this or like legislation or
10 about legislation.

11 Q So the House Research Organization is a
12 part of the House of Representatives?

13 A Yes, sir.

14 MR. NIXON: I object to the leading
15 question, plus the question contradicts what the
16 witness just said. Exhibit 10 is hearsay. This is
17 not a government document, as you just heard the
18 witness testify. It's paid for by subscription by
19 some, but not all House members, who were members of
20 the research organization. It is not a government
21 document. It fits no exception to the hearsay rule.

22 THE WITNESS: This is a publication
23 of the House.

24 MR. NIXON: Plus we know it's full of
25 mistakes from our own experience.

1 But, you know, we've got an issue with
2 regard to relevance and hearsay as to this document.

3 THE WITNESS: Well --

4 MR. STEUSLOFF: Sir --

5 CHAIR CLANCY: What's the relevance
6 of the list of representatives in 2011?

7 MR. STEUSLOFF: Sir, it's not -- it's
8 not being introduced for purposes of showing who the
9 representatives are --

10 CHAIR CLANCY: What's the purpose --

11 MR. STEUSLOFF: -- but the staff
12 members. There are a number of documents that are
13 E-mails, and they appear to be addressed to
14 individuals who are employees of the Legislature.
15 And their names are included in this directory.

16 CHAIR CLANCY: So that's the --

17 MR. STEUSLOFF: Yes. As -- as
18 evidence that the E-mails that are at issue, some of
19 them, were addressed to staff members of
20 Legislators.

21 CHAIR CLANCY: Well, let's hear from
22 this witness about his reliance on this document.

23 MR. STEUSLOFF: Okay.

24 CHAIR CLANCY: Because I'm uncertain
25 as to whether or not it's appropriate.

1 MR. STEUSLOFF: Okay.

2 Q (By Mr. Steusloff) So, Mr. Bresnen, why
3 did you provide this document to -- to staff?

4 A Because on the face of it, for example,
5 Exhibit 653 that you asked me about, it is not
6 apparent who Matthew Miller worked for three-plus
7 years ago. This is a publication of the Texas House
8 of Representatives as it says on the front page.
9 And this is the way that I traced and went back and
10 found out who Matthew Miller worked for, because
11 when I received the response, which is subject to
12 the cover letter from Representative Orr, which is
13 on Page 628, there's nothing to connect that cover
14 letter to this particular E-mail and that it came
15 from Representative Orr's office. And a legislative
16 staff member is covered under the Lobby Registration
17 Act in terms of direct communication. So --

18 CHAIR CLANCY: So is that person's
19 name in it?

20 THE WITNESS: Pardon?

21 CHAIR CLANCY: Is that person's name
22 in it?

23 THE WITNESS: Yes, sir.

24 CHAIR CLANCY: What page?

25 THE WITNESS: Page 251, right-hand

1 column, second set of entries from the bottom under
2 Orr, Rob. And Matthew Miller is listed as
3 Legislative Director.

4 CHAIR CLANCY: Very good. It will be
5 admitted.

6 MR. STEUSLOFF: Very good. Thank
7 you.

8 (Exhibit No. 10 admitted)

9 MR. STEUSLOFF: I would like to offer
10 into evidence Exhibit 106, certified copies of
11 Form 990s from Empower Texans. It's behind Tab
12 No. 106 in your -- in your notebook.

13 (Exhibit No. 106 offered)

14 CHAIR CLANCY: Counsel, any
15 objection?

16 MR. NIXON: One moment. I believe we
17 have an objection based upon relevance. I'm not
18 sure if these are -- let me look very quickly.

19 Yes, this is for year 2007. These are
20 990s for the years 2007 through 2011. Our objection
21 would be to any 990 other than for year 2010 and
22 2011.

23 CHAIR CLANCY: Counsel, your
24 response?

25 MR. STEUSLOFF: I don't have a

1 problem with the exclusion of those other years.

2 CHAIR CLANCY: So Exhibit 106 is
3 admitted with the exception of the 990s for the
4 years other than 2010 and 2011.

5 MR. STEUSLOFF: Thank you.

6 (Exhibit No. 106 admitted)

7 Q (By Mr. Steusloff) Mr. Bresnen, could you
8 turn to Tab 106 in the slim notebook?

9 A What page you want?

10 Q Page 1497.

11 A Okay.

12 Q Have you seen these documents before?

13 A I have.

14 MR. NIXON: 1497's been excluded,
15 Mr. Chairman.

16 MR. STEUSLOFF: 2010 and 2011.

17 MR. NIXON: Okay. I'm sorry.

18 CHAIR CLANCY: Let's stick with 2010
19 and '11.

20 MR. STEUSLOFF: Right. That's where
21 we are, Mr. Chairman.

22 MR. NIXON: Thank you.

23 CHAIR CLANCY: Okay. Continue.

24 Q (By Mr. Steusloff) So, Mr. Bresnen, are
25 you familiar with what a Form 990 is?

1 A Yes, sir.

2 Q And what is a Form 990 used for?

3 A It's the -- basically the federal tax
4 return for -- for certain tax exempt organizations
5 done under the Federal Internal Revenue Code.

6 Q You included copies of Form 990s with --
7 with the complaints. Is that correct?

8 A Yes.

9 Q And what was the purpose for including
10 those documents in the complaints?

11 A Well, to provide a reasonable basis to
12 conclude that Mr. Sullivan was paid more than \$1,000
13 in a calendar quarter in the course of his duties.

14 Q Can you turn to Page 1503, please?

15 A Yes.

16 Q What is that page on 1503?

17 A This is a Form 990, Part VII, Section A,
18 "Officers, directors, trustees, key employees and
19 highest compensated employees," and it lists among
20 other things the compensation of Mr. Sullivan for
21 the relevant tax year.

22 Q And where is -- where is the indication of
23 Mr. Sullivan's compensation on that document?

24 A It's under the fourth line where the
25 listing of those officers and directors and staff

1 are listed.

2 Q And what is Column B used for?

3 A The amount of hours -- average hours per
4 week that that person spent on the business of the
5 organization.

6 Q And where is the amount of compensation
7 reported?

8 A It's in Column D and E.

9 Q And so -- so Column D, what's the amount
10 in Column D?

11 A \$64,148.

12 Q And what's the caption under Column D?

13 A "Reportable compensation" --

14 MR. NIXON: Mr. Chairman, all of
15 these documents speak for themselves. I mean, this
16 witness is not a CPA, not an accountant, he's not an
17 expert in tax forms. If he's just going to read
18 them to us, that's not relevant testimony. And if
19 he has expert testimony he's not been noticed as an
20 expert. He didn't fill out the form. He doesn't
21 have any clue as to whether these are true or
22 correct, the reporting is accurate. I don't think
23 that's an issue. We've admitted them into evidence.
24 We just don't need to be having him read evidence to
25 us.

1 CHAIR CLANCY: Counselor, I think a
2 more effective question would be what does this
3 document reflect about Mr. Sullivan's compensation
4 rather than why did you include it. And so if we
5 could get to the substance of what Mr. Bresnen's
6 testimony is, that would help us.

7 MR. STEUSLOFF: Okay. I understand.

8 Q (By Mr. Steusloff) So, Mr. Bresnen, what
9 does this document show as to what Mr. Sullivan's
10 compensation was?

11 MR. NIXON: Same objection.

12 CHAIR CLANCY: And I think what he's
13 saying is what does this document show with regard
14 to what Empower Texans reported in compensation.
15 Right?

16 MR. STEUSLOFF: That's correct.

17 CHAIR CLANCY: Okay. So,
18 Mr. Bresnen, what's the answer to that question?

19 THE WITNESS: There is actually two
20 organizations reflected in the total compensation as
21 \$132,000 and some change for the relevant tax year.

22 CHAIR CLANCY: Which is the relevant
23 tax year, '10 or '11?

24 THE WITNESS: This was '10, I
25 believe, sir. For this requirement, I think we're

1 still in '10. Yes.

2 Q (By Mr. Steusloff) Can you turn
3 to Page 1525, please?

4 A Okay.

5 Q And what is this section of the form used
6 to disclose, to report?

7 A This is the Form 990 for the tax year
8 2011. Same section of the Form 990, and it
9 discloses annual compensation between the two
10 related organizations of, help me, 90 and 38 --
11 about \$130,000 a year for the relevant tax year.

12 Q And does this document continue to
13 indicate the amount of compensation received by
14 Mr. Sullivan?

15 A It does. 40 hours a week average.

16 Q And what does this document reveal as to
17 how Empower Texans reported Mr. Sullivan's
18 compensation in 2011?

19 MR. NIXON: Once again, the document
20 speaks for itself. We've never -- it's not in
21 dispute that Mr. Sullivan is an employee of Empower
22 Texans and that he gets paid for it.

23 CHAIR CLANCY: Overruled.
24 Mr. Bresnen?

25 THE WITNESS: What's the question?

1 CHAIR CLANCY: Counsel?

2 A What does it say about his compensation?
3 Is that the question?

4 Q (By Mr. Steusloff) Well, my question
5 was -- my question was overruled, but --

6 COMMISSIONER HOBBY: Objection was --

7 CHAIR CLANCY: Overruled.

8 MR. STEUSLOFF: I'm sorry.

9 CHAIR CLANCY: Mr. Nixon's objection
10 was overruled. He can answer your question.

11 MR. STEUSLOFF: That's correct.

12 Q (By Mr. Steusloff) So the question is what
13 does this particular document reveal as to the
14 amount of compensation that Empower Texans reported
15 paying to Mr. Sullivan during 2011?

16 A Empower Texans, \$38,842 and the related
17 organization, which I would have to look back at,
18 it's \$89,729 for a combined total of about 130,000
19 if my math is -- will withstand scrutiny.

20 Q Okay.

21 MR. STEUSLOFF: I pass the witness.

22 CHAIR CLANCY: Counsel?

23 MR. NIXON: I will issue a
24 clarification for the Chair. It is our intent to
25 not ask any questions of Mr. Bresnen at this time

1 and reserve our questions for our case in chief.

2 CHAIR CLANCY: Okay.

3 MR. NIXON: However --

4 CHAIR CLANCY: Do you want to take up
5 the tweet thing now?

6 MR. NIXON: That would be the only
7 thing I would ask.

8 CHAIR CLANCY: Please.

9 MR. NIXON: Does the Chairman want
10 me -- and in doing so, I do not waive my right to
11 recall Mr. Bresnen back at another time.

12 CHAIR CLANCY: I am concerned about
13 communications that are outside the record of this
14 proceeding that are relevant to this proceeding
15 however they may be transmitted over the airwaves.

16 MR. NIXON: All right.

17 CROSS-EXAMINATION

18 BY MR. NIXON:

19 Q Mr. Bresnen, you were put under the Rule
20 and sequestered from the proceedings. Is that
21 correct?

22 A I was.

23 Q Did you communicate electronically while
24 you were under sequester with any person who was in
25 this room?

1 A I have no knowledge of anybody in this
2 room that I communicated with. I tweeted, but I had
3 no knowledge of that person being in this room.

4 Q Even though the person tweeted about the
5 question I just asked Mr. Keffer?

6 A There is -- check the Twitter first and
7 you'll see that there's lots of tweeting going on
8 out there. And I do not know that person -- I don't
9 know that personally, so I did not know that person
10 was in the room.

11 Q With whom did you tweet?

12 A Well, I'd have to look back at my iPad to
13 do that, if you want to allow me to do that.

14 Q I would suggest that we have the ability
15 to show you the tweets in a moment.

16 A That would be fine. Well, be sure to show
17 all of them, then.

18 Q Okay. Here's one to Emily --

19 THE WITNESS: Mr. Chairman --

20 Q -- Horne.

21 THE WITNESS: -- may I refer to my
22 own record?

23 MR. NIXON: Let's all look at them
24 together. I don't want Mr. Bresnen looking at
25 something that we don't know what it is.

1 THE WITNESS: You want it,
2 Mr. Chairman, right here.

3 CHAIR CLANCY: Well, let me --
4 Mr. Bresnen --

5 THE WITNESS: Yes.

6 CHAIR CLANCY: -- what I would like
7 you to do is look at Mr. Nixon's evidence.

8 THE WITNESS: All right.

9 CHAIR CLANCY: Then when we're
10 finished looking at his evidence we can figure out
11 how everybody can look at your evidence.

12 THE WITNESS: Okay. All right. Good
13 luck to us.

14 Q (By Mr. Nixon) Do you know who Emily
15 Horne is?

16 A I do not.

17 Q She writes, "Nixon asked Rep. Keffer if
18 his complaint accusing Sullivan of lobbying
19 references a single conversation or phone call."

20 "Keffer says, "No."

21 A Okay.

22 Q Did you believe Ms. Horne, H-O-R-N-E, was
23 in the room?

24 A No.

25 Q And was she out in the hallway with you?

1 A No, not to my knowledge. This -- I
2 believe I was at lunch. Do you have the time on
3 that? Yeah. That was during the lunch hour. I'm
4 sitting in the Chili Parlor by myself.

5 Q That's your response at 12 --

6 A It was a response to her, if I recall
7 correctly. Is that correct?

8 Q You understand the sequester says not just
9 anybody in the room but anybody -- anybody who's
10 even watching on the Internet? You understand this
11 is being broadcast throughout the State of Texas?

12 A It is my understanding, sir, that I'm not
13 to communicate with any other witnesses, any
14 parties, any of the staff, any of the members on the
15 desk, any sort of ex parte communication about my
16 testimony or any of the other witness' testimony.
17 It is further my understanding --

18 Q And you're a lawyer. Right?

19 A Yes, I am.

20 Q Okay. You've been --

21 A You asked me my understanding. I'm trying
22 to answer you.

23 Q Just answer my questions. How long have
24 you been practicing law?

25 A I've been a member of the Bar since 1988.

1 Q The exclusionary rule is Rule 614 under
2 the Texas Rules of Evidence, is it not?

3 A I was familiar with it in law school.

4 Q All right. So your testimony today as to
5 what your restriction is, is based upon your
6 recollection from law school only and not from any
7 current review of the Rules of Evidence?

8 A That's correct, because --

9 Q All right. Well, the Rules of Evidence
10 says that you're not allowed to talk to anybody
11 regarding anything going on in this -- in this
12 proceeding at any time regardless of where they are,
13 or who employs them. Not Court staff, not just
14 witnesses, nobody, no how, no way, because your
15 testimony could be influenced by outside
16 information. That's what the Rule says. Do you
17 remember that from law school?

18 A No, I don't.

19 Q All right. Well, what other tweets do we
20 have here that you responded to?

21 Do you know who Sarah Rumpf is?

22 A I do not.

23 Q All right. She's tweeted you right back.
24 "Read Chapter 305, Government Code. Get paid
25 directly to communicate to influence legislation

1 must register. Fits Mike (phonetic)."

2 You're arguing this case with people who
3 were watching what's going on, aren't you?

4 A I certainly was responding to the text
5 message --

6 Q Next one.

7 A -- where she said that the First Amendment
8 was on trial.

9 Q Next one.

10 A I believe that's the same one.

11 Q Documentary evidence, first communication.

12 A I believe that was the prior one.

13 Q Oh, here "It's agreed. Shared First
14 Amendment rights."

15 You were arguing this case.

16 A That's a response to her saying we agree
17 we all have First Amendment rights for our opinions,
18 and I agreed with her.

19 Q Mr. Bresnen, you were sequestered. You
20 didn't honor that, did you?

21 A I did not communicate with anybody that
22 has anything to do with this trial or any way could
23 influence this trial.

24 MR. NIXON: Pass the witness.

25 THE WITNESS: And I certainly have no

1 knowledge of people who were in the room.

2 CHAIR CLANCY: Mr. Nixon, is Sarah
3 Rumpf in the room?

4 UNIDENTIFIED SPEAKER: She stepped
5 out to fix her parking meter.

6 CHAIR CLANCY: Is Emily Horne in the
7 room? Okay. Mr. Bresnen, I know this --

8 THE WITNESS: Yes.

9 CHAIR CLANCY: -- this matter is
10 significant to you.

11 THE WITNESS: Yes, sir.

12 CHAIR CLANCY: And the debate is
13 important. But I would -- I would admonish you to
14 pretend like the Internet doesn't exist for the next
15 four-and-a-half hours.

16 THE WITNESS: Yes, sir.

17 CHAIR CLANCY: You know, let the
18 blogosphere do what it does, but let the Commission
19 do what it does.

20 THE WITNESS: Yes, sir.

21 CHAIR CLANCY: If counsel for the
22 Respondent provides us another communication showing
23 that you are communicating about this case while
24 you're under subpoena, I'm going to strike your
25 testimony.

1 THE WITNESS: Yes, sir.

2 CHAIR CLANCY: All right. Counsel,
3 you are -- I mean, Mr. Bresnen, you are not excused,
4 but we would ask you to step down.

5 THE WITNESS: Understood. Thank you.

6 MR. NIXON: Mr. Chairman, we would
7 reurge our motion to strike Mr. Bresnen's testimony
8 now. Let's don't wait.

9 CHAIR CLANCY: I've made my ruling.

10 MR. NIXON: All right. Mr. Chairman,
11 I would request that you take possession of
12 Mr. Bresnen's iPad and iPhone until such time that
13 he is no longer under the Rule.

14 CHAIR CLANCY: I'm not going to do
15 that to a fellow member of the Bar.

16 All right. Counsel, your next witness.

17 MR. STEUSLOFF: I call Robbie
18 Douglas.

19 ROBBIE DOUGLAS,
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. STEUSLOFF:

23 Q Good afternoon, Robbie.

24 A Good afternoon.

25 MR. STEUSLOFF: I would like to offer

1 at this time Exhibits 70, 71. I believe 72 is
2 already admitted per stipulation.

3 (Exhibit Nos. 70-71 offered)

4 CHAIR CLANCY: Counsel, why isn't
5 this one agreed to? I mean, these are records at
6 the Commission and properly certified.

7 MR. NIXON: These are lobby
8 registrations for the years 2001 to 2009. They have
9 no relevance here.

10 CHAIR CLANCY: Mr. Steusloff, what's
11 the relevance of these document?

12 MR. STEUSLOFF: The relevance is the
13 lobby registrations show that -- I mean, they're
14 lobby registrations filed by Mr. Sullivan indicating
15 that he was registered as a lobbyist for several
16 years for the Texas Public Policy Foundation, and
17 just based on what was disclosed in reports and that
18 he was registered as a lobbyist for Empower Texans
19 from 2007 to 2009. That's certainly relevant,
20 because it indicates that he was previously employed
21 and publicly stated in reports that he was being
22 paid for the purpose of influencing the Legislature.

23 CHAIR CLANCY: Objection is
24 overruled. Exhibit 70 is admitted.

25 (Exhibit No. 70 admitted)

1 MR. STEUSLOFF: Now, Exhibit 71,
2 those are lobby activities reports. Mr. Chairman, I
3 can provide you with the certified copies, as well.

4 CHAIR CLANCY: Same basis?

5 MR. STEUSLOFF: The same basis is --

6 CHAIR CLANCY: Counsel, is your
7 objection relevance?

8 MR. NIXON: Yes. I mean, we're
9 talking about what activity, what conduct in 2010
10 and 2011 violated a statute. These prior years are
11 not relevant.

12 CHAIR CLANCY: Overruled. 71 will be
13 admitted.

14 (Exhibit No. 71 admitted)

15 MR. STEUSLOFF: And 72 has been
16 admitted by stipulation, and that's the statement
17 that there were no lobby registrations involving
18 activities report filed by Mr. Sullivan for any of
19 the calendar years 2010 to 2014.

20 CHAIR CLANCY: Any objection to this
21 one?

22 MR. NIXON: For two -- 72? No.

23 CHAIR CLANCY: Okay. 72 is admitted.

24 (Exhibit No. 72 admitted)

25 MR. NIXON: Have you withdrawn 73 and

1 four?

2 MR. STEUSLOFF: 73 and four? Yes.

3 MR. NIXON: Those are all -- are they
4 in anybody's notebooks?

5 CHAIR CLANCY: No, sir.

6 MR. STEUSLOFF: No. I have not
7 provided those to anyone.

8 MR. NIXON: Thank you.

9 MR. STEUSLOFF: And I have
10 Exhibit 77, certified copies of a campaign
11 expenditure report and attachments filed by
12 Mr. Sullivan on behalf of Empower Texans in May of
13 2012.

14 MR. NIXON: Same issue, relevance.
15 What relevance does this have to the years 2010 and
16 2011?

17 CHAIR CLANCY: Overruled. 77 is
18 admitted.

19 (Exhibit No. 77 admitted)

20 Q (By Mr. Steusloff) Could you please state
21 your name for the record.

22 A Robbie Douglas.

23 Q And what is your current occupation?

24 A I'm the Director of the Commission for
25 Disclosure Filings.

1 Q And how long have you held that position?

2 A Since February of 2014.

3 Q Were you employed at the Commission before
4 you held your current position?

5 A Yes.

6 Q And what was your position prior to your
7 current one?

8 A Analyst.

9 Q And how long were you an analyst for the
10 Commission?

11 A From September of 2000.

12 Q Okay. And what are your -- what are your
13 job responsibilities for -- from being an analyst as
14 well as your current -- in -- in your current
15 position?

16 A I was responsible for making sure that all
17 documents relating to campaign finance or lobby or
18 personal financial statements were received in the
19 proper format and made visible to the public within
20 a 24-hour period.

21 Q Could you turn to Tab 72 in your notebook,
22 please, Robbie? I'm sorry, that would be
23 Exhibit 72. I apologize. 71, excuse me, 71.
24 Are -- are you there, Robbie?

25 A Yes, I am.

1 Q Okay. Can you turn to Tab 8 -- I'm sorry,
2 Tab G beginning Page 1198?

3 And can you please turn now to Page 1205.
4 That's also within Tab G.

5 What is the -- now, are you familiar with
6 this report?

7 A Yes, I am.

8 Q And what type of report is this?

9 A This is a lobby activities report.

10 Q And what is a lobby activities report used
11 for?

12 A It is to declare expenditures for a
13 lobbyist.

14 Q And what is the name of the registrant
15 indicated on this report?

16 A Michael Sullivan.

17 Q And what's the period covered by that
18 report?

19 A August 1st, 2007 to August 31st, 2007.

20 Q Does this report disclose any
21 expenditures?

22 A Yes, it does.

23 Q And what are those expenditures?

24 A \$600, awards and mementos.

25 Q Does it indicate who benefited -- or does

1 it disclose expenditures by persons benefited, as
2 well?

3 A Yes, it does. State Representatives.

4 Q And what's the amount?

5 A \$600.

6 Q Can you turn to Tab I, please, Page 1212.
7 And do you recognize this report?

8 A Yes, I do.

9 Q What type of report is it?

10 A It is a lobby activities report.

11 Q And what's the period covered by that
12 report?

13 A January 1st, 2009 through December 31st,
14 2009.

15 Q And what is the name of the registrant on
16 that report?

17 A Michael Sullivan.

18 Q Does that report disclose any
19 expenditures?

20 A Yes, it does.

21 Q And what expenditures does it disclose?

22 A Awards and mementos, \$1,830.

23 Q Does it disclose any expenditures by
24 persons benefited?

25 A Yes, it does.

1 Q And what are the amounts that it
2 discloses?

3 A State Senators, \$120, State
4 Representatives, \$1,710.

5 Q Does it indicate that the registrant was
6 disclosing expenditures for an entity?

7 A Yes, it does.

8 Q Is that Section 9 of that report?

9 A Yes, it is.

10 Q And what's the name of the entity
11 identified?

12 A Empower Texans, Texans for Fiscal
13 Responsibility.

14 Q And what's the amount that's listed?

15 A \$1,830.

16 Q Can you turn to the next page, please.

17 Do you recognize this page?

18 A Yes, I do.

19 Q And what exactly is that page used to
20 disclose?

21 A Basically it's information entered by
22 filer as a memo. It's additional information.

23 Q So it's information that somebody filing a
24 report -- they can just add to the report?

25 A Yes, sir, it is.

1 Q Okay. Does this report disclose
2 information as -- as a memo?

3 A Yes, it does.

4 Q And what does that memo state?

5 A It states, "No award exceeded \$50 per
6 House and Senate member. The House members
7 receiving awards included Wayne Christian, Charles
8 "Doc" Anderson, Ken Paxton, Jodie Laubenberg, Dan
9 Flynn, Randy Weber, Tan Parker, Ken Legler, Charlie
10 Howard, Carl Espith (phonetic), Jimmie Don Aycock,
11 Larry Phillips, Kelly Hancock, Tim Kleinschmidt --

12 Q Okay. And if I can stop you there.

13 A Okay.

14 Q Does it -- does it indicate any Senate
15 members?

16 A Yes, it does.

17 Q And where is that indicated?

18 A It is indicated further down.

19 Q And what does it state?

20 A Jane Nelson, Troy Fraser, Mike Jackson,
21 Dan Patrick.

22 Q And is there -- is there a sentence
23 beginning -- beginning above those names?

24 A Yes, there is.

25 Q And what -- what is that sentence? In the

1 second to last line.

2 A Second to last line, "Rick Hardcastle,
3 Patrick Harless [sic], Mike Hamilton. The Senate
4 members receiving awards including Jane Nelson, Troy
5 Fraser, Mike Jackson, Dan Patrick."

6 Q Okay. And just -- just very briefly can
7 you turn to Page 70, please, and can you turn to Tab
8 G, very first page. And this is behind -- again,
9 behind Exhibit 70, Tab G, Page 1117. Do you
10 recognize this document?

11 A Yes, I do.

12 Q What is this document?

13 A This is a lobby registration for 2007.

14 Q And what is the name of the registrant on
15 that form?

16 A Michael Sullivan.

17 Q And on Section 6 for registrant's normal
18 business, what does that state?

19 A "President, Texans for Fiscal
20 Responsibility."

21 Q And can you turn to Page 1119. What is
22 that section of the form used to report?

23 A This is employer client general
24 information.

25 Q So what does a -- what does a person

1 disclose by including information in that section of
2 the form?

3 A Compensation as well as organizational
4 information.

5 Q Okay. And what is the -- the name of --
6 is there an employer or client who's listed on that
7 section of the form?

8 A Yes, sir.

9 Q And what is the name of the employer or
10 client?

11 A Texans for Fiscal Responsibility.

12 Q Can you turn to Tab H, please, Page 1123.
13 Is this another lobby registration form?

14 A Yes, sir.

15 Q And what is the name of the registrant on
16 this form?

17 A Michael Sullivan.

18 Q And what is the registrant's normal
19 business as stated?

20 A "President, Texans for Fiscal
21 Responsibility."

22 Q And what is the -- what is the period of
23 time covered by this form? Does it cover a
24 particular calendar year?

25 Is there -- is there an indicator at

1 the -- at the top of the form that indicates how --

2 A Yes, sir.

3 Q -- what period of time?

4 A It is through December 31st, 2008.

5 Q And can you turn to Page 1125, please.

6 And, again, is this a section of the form that's
7 used to disclose a client or an employer?

8 A Yes, it does.

9 Q And what is the name of the employer or
10 client that's disclosed on this section?

11 A Empower Texans.

12 Q Can you turn to Tab I, please, Page 29.

13 Is this another lobby registration form?

14 A Yes, it is.

15 Q And what calendar year does it cover?

16 A December 31st, 2009.

17 Q You mean that -- that's the -- you mean,
18 it covers the entire calendar year ending on
19 December 31st, 2009?

20 A Yes, that is correct.

21 Q Okay. And what's the name of the
22 registrant disclosed on that form?

23 A Michael Sullivan.

24 Q And what's the registrant's normal
25 business disclosed on that form?

1 A "President, Empower Texans."

2 Q And can you turn to Page 1131, please. Is
3 there an employer or client identified on this
4 section of the form?

5 A Yes.

6 Q And what is the name of that employer or
7 client?

8 A Empower Texans.

9 MR. STEUSLOFF: I pass the witness.

10 MR. NIXON: No questions.

11 CHAIR CLANCY: Okay. Counsel, who's
12 your next witness?

13 MR. STEUSLOFF: The next witness is
14 Robbie Haug -- excuse me, Jessie Haug.

15 CHAIR CLANCY: Okay. Call your next
16 witness. May this witness be excused?

17 MR. STEUSLOFF: Yes, she may be
18 excused.

19 (Witness excused from hearing)

20 JESSIE HAUG,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STEUSLOFF:

24 Q Good afternoon, Jessie.

25 A Good afternoon.

1 MR. STEUSLOFF: Now I have
2 Exhibits 79 through 104 that have been stipulated to
3 as admissible.

4 CHAIR CLANCY: They're admitted.

5 MR. STEUSLOFF: Okay.

6 (Exhibit Nos. 79-104 admitted)

7 Q (By Mr. Steusloff) So, Jessie, I'd like to
8 refer you to the notebook in front of you, the large
9 notebook. Turning to Page 79.

10 CHAIR CLANCY: Exhibit 79, correct?

11 MR. STEUSLOFF: Exhibit 79, yes.

12 A Okay.

13 Q (By Mr. Steusloff) And I'd like to ask my
14 introductory questions first.

15 So for the record, please state your name.

16 A Jessie Haug.

17 Q And how do you spell -- how do you spell
18 that name, just for the record?

19 A My last name?

20 Q Both.

21 A J-E-S-S-I-E, H-A-U-G.

22 Q And what is your current occupation?

23 A I'm a Director of Computer Services with
24 the Texas Ethics Commission. My occupation is
25 probably software engineer.

1 Q Okay. So you oversee the IT division of
2 the Ethics Commission?

3 A Yes.

4 Q And how long have you been with the
5 Commission?

6 A Three years.

7 Q Okay. Now, you -- you printed a number
8 of -- of websites from the Empowertexans.com
9 website. Is that correct?

10 A That is correct.

11 Q Okay. And can you look at tab --
12 Exhibit 81, just behind Tab 81. Does that appear to
13 be a -- a true and correct copy of the website
14 indicated at the bottom of that page?

15 A Yes, it does.

16 Q Okay. And is there an E-mail address for
17 the -- indicated on that page above -- above the
18 photograph?

19 A Yes, there is.

20 Q Okay. And what is that E-mail address?

21 A MQSullivan@EmpowerTexans.com.

22 Q Okay. Can you turn to Exhibit 83, please.
23 Is this a true and correct copy of the web page that
24 you printed out, and is that indicated at the bottom
25 of that page -- excuse me, at the bottom of that

1 document?

2 A Yes, it is.

3 Q Okay. Can you read that first paragraph,
4 please.

5 A "Austin, Texas. Unveiled in Austin today
6 is a new organization, Texans for Fiscal
7 Responsibility, developed to promote government
8 accountability to taxpayers and citizens. The
9 Mission of TFR is to create and sustain a system of
10 strong fiscal stewardship within all levels of State
11 government that serves to empower all Texans."

12 Q Do you see the box that's to the right of
13 that paragraph?

14 A Yes.

15 Q Can you read those -- those two sentences
16 that are in that box?

17 A "New organization offers vision,
18 leadership on tax relief, spending reforms.
19 Advocacy efforts promoted on sound fiscal policy
20 among lawmakers, taxpayers."

21 Q Yeah, I believe it --

22 A That's it.

23 Q -- ends there.

24 So on Page 1265 -- and -- and first,
25 excuse me, if you can look at -- look at 1264, is

1 there a date on that page?

2 A Yes, there is.

3 Q And what is that date?

4 A December 6th, 2006.

5 Q Okay. Can you turn to Page 1265, please.

6 And I would like you to -- if you could, could you
7 please read the last paragraph on that page?

8 A "In addition, TFR will promote a series of
9 budget reforms this legislative session including
10 reducing the impact of the newly created business
11 tax, urging lawmakers to not exceed the current
12 spending cap, protecting dedicated revenues for
13 their designed purpose, requiring lawmakers to
14 provide greater budget detail, enacting reforms to
15 the current appraisal system and promoting
16 transparency in spending."

17 Q And can you turn to Exhibit 87, please,
18 beginning at 12 -- at Page 1277. Is that a true and
19 correct copy of a website -- the website indicated
20 at the bottom of that page?

21 A Yes, it is.

22 Q And can you turn to Page 1279, please.
23 And the very first sentence at the top of that page,
24 could you read that -- that sentence?

25 A "At TFR discussions with Legislators are

1 secondary to our work informing Texans about the
2 activities with their lawmakers."

3 Q And can you read the second paragraph?

4 A "Our communications with Legislators are
5 an extension of our expression with Texas citizens."

6 Q Okay. And can you turn to Exhibit 91,
7 beginning Page 1309. And is this a true and correct
8 copy of the website at the bottom of that page?

9 A Yes, it is.

10 Q And what is the title of that page -- or,
11 I mean, is there text at the very top of that page?

12 A The text at the very top, which is an html
13 title is, "Fiscal Index 2001" there's a pipe,
14 "Empower Texans."

15 Q Is that 2001 or 2011?

16 A Oh, sorry. Sorry. 2011. My apology.

17 Q And is there a date on that article?

18 A December 27th, 2010.

19 Q Does it indicate who it's from, who wrote
20 it?

21 A Michael Quinn Sullivan.

22 Q Okay. Can you read the first paragraph
23 beginning with the word, "Preparing," please?

24 A "Preparing for the start of the
25 legislative session we last week sent lawmakers a

1 letter outlining our priorities and reminding them
2 how our scorecards, the Fiscal Responsibility Index,
3 works. Of more immediate significance we noted that
4 House members' first vote could be graded."

5 Q And can you turn to Page 1310 of that
6 exhibit, please. And the second paragraph, can you
7 read that -- that paragraph?

8 A Would you like me to include all the
9 bullets?

10 Q Not yet.

11 A Okay.

12 Q Just -- just the first -- first sentence.

13 A "Broadly speaking here are our issue
14 priorities going into the Senate [sic]."

15 Q Session?

16 A I'm sorry, going into the session, thank
17 you.

18 Q And that document -- that website has a
19 number of bullet points beneath. Is that correct?

20 A Yes, that is correct.

21 Q Okay. And what's the very first bullet
22 point?

23 A "Balance the budget without increasing
24 taxes or creating new revenue sources."

25 Q Okay. And what's the second bullet point?

1 A "Oppose the creation of new taxes,
2 granting of additional tax -- taxing authority or
3 creating any new taxing entities."

4 Q And what's the third bullet point, please?

5 A "Strengthen the constitutional expenditure
6 limit such as by requiring that the Legislature
7 choose the lower of the change in the sum of
8 population plus inflation for the current measure."

9 Q And can you turn to page -- look at
10 Page 1311, please, and can you read the first
11 paragraph on that page?

12 A "For House members, we noted in a
13 December 20th hard copy letter mailed to their
14 Capitol offices that their first major vote of the
15 82nd Session could well be the first vote on the
16 index; that is, their vote for the House Speaker."

17 Q Can you turn to page -- Exhibit 93 please,
18 beginning Page 1317.

19 Does this document -- is this a -- a true
20 and correct copy of the website indicated at the
21 bottom of the page?

22 A Yes, it is.

23 Q And what is the title of that website?

24 A The title at the top, which is the html
25 title, "TFR announces priority legislation" then a

1 pipe, "Empower Texans."

2 Q And what is the date on that article?

3 A February 2, 2011.

4 Q Does it indicate who wrote it?

5 A Yes.

6 Q And what is that name?

7 A Andrew Kerr.

8 Q Okay. Can you read the first paragraph,
9 please?

10 A "Yesterday, Texans for Fiscal
11 Responsibility mailed each member of the Texas House
12 highlighting legislation filed for the 82nd Session
13 that exemplifies limited government and fiscal
14 responsibility."

15 Q And can you read the second paragraph
16 please?

17 A "The priority legislation featured
18 includes bills and joint resolutions that aim to
19 strengthen the constitutional spending limit,
20 protect taxpayers, reform the gross margins tax,
21 advance tax reforms protecting veterans and active
22 duty service members, limit government outreach and
23 promote integrity in government. Because these
24 pieces of legislation are central examples of public
25 policy designed to enhance freedom and prosperity

1 for all Texans, Texans for Fiscal Responsibility
2 will feature them in our Fiscal Responsibility
3 Index."

4 Q And can you turn to Exhibit 96, please.
5 Is that a true and correct copy of the website
6 that's indicated at the bottom of that page?

7 A Yes, it is.

8 Q And what is the title of that website?

9 A Again the html title, "Fiscal
10 Responsibility Index 82nd Session," then a pipe,
11 "Empower Texans/Texans for Fiscal Response." And
12 then it was too long, so it stops there.

13 Q Okay. Can you read the -- can you please
14 read the first paragraph beginning, "The Fiscal
15 Responsibility Index"?

16 A "The Fiscal Responsibility Index is a
17 measurement of how lawmakers perform on size and
18 role of government issues. We use exemplar votes on
19 core budget and free enterprise issues that
20 demonstrate Legislators' governing philosophy."

21 Q And can you read the second paragraph?

22 A "Lawmakers and their offices are notified
23 in advance of TFR's position on the issues' rating
24 and often prior to votes taken on the floor."

25 Q Can you read the third paragraph, please?

1 A "At the beginning of 82nd Session we
2 notified lawmakers of our legislative priorities and
3 the priority legislation we encourage them to
4 support."

5 Q Can you turn to Exhibit 100, please.
6 Page 1386. Is this document a true and correct copy
7 of the website that's indicated at the bottom of
8 that page?

9 A Yes, it is.

10 Q And what's the title of that website?

11 A Again, the html title, "TFR releases Texas
12 scorecard, names taxpayer heroes" and a pipe and,
13 "Empower Texans." That's all I could get on that
14 line.

15 Q And what is the date on that article?

16 A June 27th, 2007.

17 Q Okay. Can you read the first paragraph,
18 please?

19 A "Austin, Texas. Texans for Fiscal
20 Responsibility today released its scorecard at the
21 Texas House. The TFR analysis of votes demonstrates
22 that far too many lawmakers failed to work in the
23 interest of Texas taxpayers by working against
24 commonsense protections and responsible spending."

25 Q And can you turn to the next page, 1387,

1 please. And can you read the third paragraph on
2 that page?

3 A "TFR used an index of 14 votes in the
4 Texas House that provided a clear picture of fiscal
5 responsibility trends."

6 Q And can you read the next paragraph,
7 please?

8 A "The good news is that there are 15 highly
9 dedicated members of Texas House working to do the
10 right thing for Texas, earning an A on the
11 scorecards," said Sullivan. "Unfortunately, that's
12 only 10 percent of the House. Far too many
13 Legislators are spending too much time working to
14 grow government and expand spending while ignoring
15 the needs of Texas families."

16 Q And can you read the very first sentence
17 of the next paragraph?

18 A "Earning the Texas Taxpayer Hero award
19 were."

20 Q Okay. And does that include a list of
21 names?

22 A Yes, it does.

23 Q State Representatives?

24 A Yes.

25 Q Okay. Can you turn to Page 1390, please.

1 Is that a true and correct copy of the website
2 indicated at the bottom of that page?

3 A Yes, it does.

4 Q And what's the title of that page?

5 A The html title?

6 Q Yes.

7 A "2011 Taxpayer Champions," pipe, "Empower
8 Texans/Texans for Fiscal Responsibility" then a
9 pipe, "Empow," and the rest was too big to put on
10 there.

11 Q And beneath where it says, "2011 Taxpayer
12 Champions," can you read that paragraph?

13 A "The top award presented by Texans for
14 Fiscal Responsibility to Legislators based on their
15 rating on the most recent Fiscal Responsibility
16 Index."

17 Q And can you turn to the next page, please.
18 And is that page a true and correct copy of the
19 website that's indicated at the bottom of that page?

20 A Are we speaking of 1390 or 1392?

21 Q I'm sorry. 1392, yes.

22 A Yes, it is.

23 Q And what's the title of that page?

24 A Html title to be clear, "2011 taxpayer
25 advocates," pipe, "Empower Texans/Texans for Fiscal

1 Responsibility" pipe, "Empow," and there's not
2 enough room to print the rest.

3 Q And can you read the first paragraph
4 under, "2011 Taxpayers Advocates"?

5 A "An award presented to by Texans for
6 Fiscal Responsibility to Legislators based on their
7 strong rating on the most recent Fiscal
8 Responsibility Index."

9 Q And I'd like you to go to the slim
10 notebook, the exhibit book. There's a -- it's from
11 Exhibits 101 through 112. And if you could turn to
12 Exhibit 101, please. Are those documents a true and
13 correct copy of the website that's at the bottom of
14 that page or --

15 A Yes.

16 Q -- with respect to the very first page?

17 A Yes, it is.

18 Q Okay. And what's the title of that
19 website?

20 A Again the html title, "Endorsement
21 documents by Empower Texans."

22 Q And can you read the second full paragraph
23 on that page, please?

24 A "In making an endorsement, we consider a
25 candidate's record in public office, their answers

1 to the questionnaire, signing the taxpayers' pledge
2 and comments from our friends and E-mail list
3 subscribers in the legislative districts."

4 Q And beneath that paragraph were there --
5 were there a couple links embedded on that website
6 where it says, "Texas House Pledge" or "Texas Senate
7 Pledge"?

8 A Yes, there were.

9 Q And did you -- did you click on those
10 links?

11 A Yes, I did.

12 Q And did you print them out?

13 A Yes, I did.

14 Q Are those located here in this exhibit?

15 A Yes, they are.

16 Q So on Page 1396, that's a copy of the
17 document that -- that you were directed to when you
18 clicked on the link, "Texas Taxpayer Pledge" on that
19 website?

20 A Yes, they are.

21 Q Can you read the title of that document?

22 A "Texas State pledge: Taxpayer Protection
23 Pledge."

24 Q Okay. And what does that pledge state?

25 A "I, blank, pledge to the taxpayers of

1 Senate District, blank, of the State of Texas and
2 all the people of this state that I will oppose and
3 vote against any and all efforts to increase taxes."

4 Then there are locations to sign.

5 Q And is there a -- a paragraph beneath the
6 dates and the witness spaces?

7 A Yes, there is.

8 Q Can you read that paragraph, please?

9 A "The Taxpayer Protection Pledge is a
10 project of Americans for Tax Reform, ATR.

11 ATR works with taxpayer groups such as
12 Texans for Fiscal Responsibility and activists
13 around the country to ask all candidates and elected
14 officials to make this important commitment to
15 taxpayers. The national list of signers can be
16 accessed at www.atr.org."

17 Q And can you turn to the next page, please,
18 No. 1397. Is that a -- is that a copy of the
19 document that you were directed to when you clicked
20 on the Taxpayer Protection Pledge link on the
21 Empower Texans' website?

22 A Yes, it was.

23 Q Okay. And can you read the language of
24 the pledge?

25 A "Taxpayer Protection Pledge. I, blank,

1 pledge to the taxpayers of House District, blank, of
2 the State of Texas and all the people of this State
3 that I will oppose and vote against any and all
4 efforts to increase taxes." Then there are
5 locations for signatures.

6 Q Can you read the paragraph beneath the
7 locations for the signatures?

8 A "The Taxpayer Protection Pledge is a
9 project in Texas of Texans for Fiscal Responsibility
10 asking all candidates and elected officials to make
11 this important commitment to taxpayers. The
12 national list of signers can be accessed at
13 www.atr.org. A list of Texas signers will be
14 available at www.taxpayerpledge.com."

15 Q And can you turn to Exhibit 102, please.
16 Is that a true and correct copy of the website
17 that's indicated at the bottom of that page?

18 A And to be sure, this is Document 1402?

19 Q That is the page number, yes.

20 A Thank you.

21 Yes, it is.

22 Q And what's the title of that page?

23 A "TFR's 2012 endorsements," pipe, "Empower
24 Texans."

25 Q And can you read the paragraph that

1 begins, "Texans for Fiscal Responsibility."

2 A "Texans for Fiscal Responsibility is
3 pleased to present our endorsements in the 2012
4 election sequence. While we will not thoroughly
5 endorse in every way, we endorse the candidate we
6 believe to be the strongest advocates for common
7 sense, conservative principles proven to Empower
8 Texans."

9 Q And two lines beneath that paragraph can
10 you read the -- the line that -- that -- can you
11 read the paragraph beneath 2011, the word recipient?
12 Is that legible to you?

13 A Yes.

14 Q Okay.

15 A "See a complete list of the Legislators
16 who earned the 2011 Taxpayer Champion and Taxpayer
17 Advocate awards for their voting record in the 82nd
18 Legislative Session. Generally we automatically" --
19 I'm sorry, I can't read it after that, "endorse" --
20 I'm sorry, I can't read after that, highlighted
21 something.

22 Q Okay. That's fine.

23 MR. STEUSLOFF: I pass the witness.

24 CROSS-EXAMINATION

25 BY MR. NIXON:

1 Q Hi, Ms. Haug. I'm Joe Nixon. How are
2 you?

3 A I'm fine. Thank you.

4 Q Good.

5 Everything you read for the last, I don't
6 know, half hour or so are all off the web page.
7 Right?

8 A Yes, they are off the website.

9 Q Nothing you read was an E-mail, letter,
10 correspondence to a Legislator or their staff.
11 Right?

12 A That is correct.

13 Q Okay. One other question, do you
14 subscribe to a newspaper?

15 A Yes, I do.

16 Q Which one?

17 A The Austin American Statesman.

18 Q Is that the only place you get your news?

19 A No.

20 Q Where else do you get your news?

21 MR. STEUSLOFF: I object to
22 relevance.

23 MR. NIXON: Broad latitude on
24 cross-examination in Texas.

25 CHAIR CLANCY: I thought you were

1 asserting an advertising exception? I don't think
2 you -- or a newspaper exception.

3 MR. NIXON: Right.

4 CHAIR CLANCY: Go ahead. It's not
5 broad latitude. It's relevant.

6 MR. NIXON: Relevant.

7 Q (By Mr. Nixon) Do you get your news
8 someplace else?

9 A Pardon me?

10 Q Do you go to web pages to get your news?

11 A Sometimes.

12 Q You're the director of IT, you know all
13 about going around the Internet, don't you?

14 A I'm experienced with going around the
15 Internet, yes.

16 Q What are some of the web pages that you go
17 to for news?

18 A Oh, for news?

19 Q Yes, ma'am.

20 A Sometimes Wall Street Journal. Sometimes
21 YAHOO! is interesting, YAHOO! news. Sometimes I
22 don't know the source.

23 Q You just surf around?

24 A Sometimes, yes.

25 Q Okay. Do you know anything about Twitter?

1 A A little bit.

2 Q Do you have to know somebody to be able to
3 receive their tweets?

4 A You do not have to know someone
5 personally, no.

6 Q But, I mean, you have to know who it
7 was -- whose tweets you're receiving. Right?

8 A You have to sign up to receive the tweets.

9 Q So if you're getting a tweet you have to
10 sign up to receive that person's tweet?

11 A Your -- your name has -- your account has
12 to be signed up, yes.

13 Q So if like -- like if I'm on Twitter and
14 you're on Twitter, you can be tweeting and I'm not
15 getting your tweets unless I sign up to receive your
16 tweets. Correct?

17 A That is correct.

18 Q Okay. So in order to receive tweets, I
19 have to sign -- I have to know you enough to sign up
20 for them. Right?

21 A You have to sign up for them, yes.

22 Q So for me to respond to your tweets I have
23 to know who you are?

24 A You would have to know my --

25 Q Thank you.

1 A -- address, yes.

2 Q Thank you.

3 CHAIR CLANCY: Commissioners, any
4 questions for this witness? Counsel, redirect.

5 REDIRECT EXAMINATION

6 BY MR. STEUSLOFF:

7 Q Just to -- to clarify, Ms. Haug, in order
8 to send a tweet on Twitter, you have to create an
9 account on Twitter. Is that right?

10 A I believe that is true.

11 Q And each -- each user's name on Twitter
12 has a unique account name. Is that correct?

13 A That would be correct.

14 Q So does it typically begin with an @ --
15 you know, @so and so?

16 A I believe so, yes.

17 Q When somebody uses a -- when somebody
18 sends a tweet and they want to direct a message to a
19 particular person, they can do that by using a
20 reference to their user name in -- in the text of
21 their tweet. Is that right?

22 A I'm not a Twitter user myself, so I don't
23 know the exact protocol for sending a tweet. I
24 mean, I've read about it, but I've not -- I don't
25 have a Twitter account. So I'm not 100 percent sure

1 exactly what the protocol is for sending a tweet to
2 a person that may be subscribed to you.

3 Q Okay. But if someone is a user of Twitter
4 and say their name is @John Doe, and another person
5 was to send out a tweet with the user account name
6 @John Doe, I think you're, you know, a terrible
7 person or I think you're a great person, somebody
8 can send that tweet and direct it to @John Doe
9 without John Doe ever asking them or having any
10 affiliation with the sender. Is that right?

11 A I do not know the answer to that question.

12 Q Okay.

13 MR. STEUSLOFF: I have no further
14 questions.

15 MR. NIXON: Nothing further. Thank
16 you.

17 CHAIR CLANCY: All right. Where do
18 we stand in terms of time, timekeepers?

19 UNIDENTIFIED SPEAKER: TE [sic] staff
20 time remaining is an hour and 32 minutes, and for
21 Respondent's time remaining is two hours and 45
22 minutes.

23 CHAIR CLANCY: All right. We're
24 going to take a ten-minute break. Who's your next
25 witness?

1 MR. STEUSLOFF: My next witness is
2 Michael Quinn Sullivan. Is Ms. Haug excused?

3 CHAIR CLANCY: She is.

4 MR. STEUSLOFF: Thank you.

5 (Witness excused from hearing)

6 CHAIR CLANCY: Thank you. Ladies and
7 gentlemen, we're going to take a ten-minute recess.

8 (Off the record from 2:46 to 3:00)

9 CHAIR CLANCY: All right. We're
10 continuing our formal hearing on SC-3120487 and
11 3120488.

12 Counsel, please call your next witness.

13 MR. STEUSLOFF: We call Michael Quinn
14 Sullivan.

15 CHAIR CLANCY: And, Mr. Sullivan,
16 just a second, please. Continue.

17 MICHAEL QUINN SULLIVAN,
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. STEUSLOFF:

21 Q Good afternoon, Mr. Sullivan. Could you
22 state your name, please.

23 A My name is Michael --

24 CHAIR CLANCY: Counsel, if I could, I
25 just -- the witness has a chance to give an opening

1 statement --

2 MR. STEUSLOFF: Oh, you're right.

3 CHAIR CLANCY: -- under
4 Section 571.130(C) of the Government Code.

5 Mr. Sullivan, would you like to give a statement?

6 THE WITNESS: Mr. Chairman, on the
7 advice of counsel, I'm not going to testify today.

8 CHAIR CLANCY: All right. Counsel,
9 please.

10 Q (By Mr. Steusloff) So, again, could you
11 state your name for the record, please.

12 A My name is Michael Quinn Sullivan.

13 Q And what is your current occupation?

14 A On the advice of my counsel, I'm not going
15 to testify today.

16 Q So do you mean that your attorney advised
17 you not to testify today? Is that what you mean?

18 MR. NIXON: Objection;
19 attorney/client privilege.

20 CHAIR CLANCY: Counsel, help us
21 understand the privileges for which you seek
22 protection.

23 MR. NIXON: Well, on that question
24 it's attorney/client privilege.

25 CHAIR CLANCY: And that -- that

1 objection is sustained.

2 MR. NIXON: Thank you.

3 MR. STEUSLOFF: But -- but a person
4 can waive their attorney/client privilege by
5 publicly disclosing that they received advice -- you
6 know, the advice that they received from their
7 attorney.

8 CHAIR CLANCY: I don't think he's
9 going to waive it. Why don't you go ahead and ask
10 questions.

11 MR. STEUSLOFF: Okay.

12 Q (By Mr. Steusloff) You are the president
13 of Empower Texans. Is that correct?

14 A On the advice of counsel, I'm not going to
15 testify today.

16 Q And you were president of Empower Texans
17 during 2010 and 2011?

18 A On the advice of counsel, I'm not going to
19 be testifying today.

20 Q The responsibilities of your employment in
21 2010 and 2011 for Empower Texans included
22 communicating with members and employees of the
23 Texas Legislature. Is that right?

24 A On the advice of counsel, I'm not
25 testifying today.

1 Q During those two years isn't it true that
2 you routinely sent letters, memos and E-mails to
3 members and employees of the Texas Legislature?

4 A On the advice of counsel, I'm not
5 testifying today.

6 CHAIR CLANCY: Counselor, I just --
7 I'm just unclear on the basis for the witness'
8 assertion of refusing to testify before this
9 Commission. So would you try to flesh that out?

10 MR. STEUSLOFF: Sure.

11 Q (By Mr. Steusloff) So, Mr. Sullivan, are
12 you refusing to testify just based on the advice of
13 counsel, or do you have another basis to refuse to
14 testify today?

15 A On the advice of counsel, I'm not going to
16 testify today.

17 Q Are you pleading the Fifth Amendment
18 today?

19 A On the advice of counsel, I'm not
20 testifying today.

21 MR. NIXON: If it helps the
22 Commission and its process, we will inform the
23 Commission that the Respondent is asserting his
24 rights under the First, Fourth, and Fourteenth
25 Amendments and --

1 MR. STEUSLOFF: I don't believe --

2 MR. NIXON: -- I don't believe
3 counsel -- I don't believe the Respondent will be
4 answering any substantive questions other than what
5 you've heard so far.

6 CHAIR CLANCY: So his -- what portion
7 of the First Amendment is he claiming protection of
8 in this proceeding?

9 MR. NIXON: I don't believe that we
10 are required to be any more specific than what we
11 have been.

12 CHAIR CLANCY: And what portion of
13 the Fourth Amendment is he seeking protection from
14 in this proceeding?

15 MR. NIXON: The same -- it's the
16 same -- you're going to get the same response from
17 me. I don't have to be any more specific.

18 CHAIR CLANCY: Okay. And I presume
19 your assertion of the Fourteenth Amendment is just
20 simply how those two amendments apply to the State
21 action in this proceeding. Is that correct?

22 MR. NIXON: Once again, I don't have
23 to be any more specific other than the assertion of
24 the Fourteenth Amendment.

25 CHAIR CLANCY: Okay. And so if I

1 understand things correctly, he is not asserting a
2 privilege against self-incrimination under the Fifth
3 Amendment?

4 MR. NIXON: We are asserting
5 privileges under the First, Fourth, Fourteenth
6 Amendments.

7 CHAIR CLANCY: Okay. Counsel, what's
8 your response to that assertion of privilege?

9 MR. STEUSLOFF: Well, there's no
10 basis to refuse to testify based on the First,
11 Fourth and Fourteenth Amendments. You have to
12 properly state the basis for refusing to testify and
13 what that privilege is. And whether there's a --
14 a -- an actual privilege or not is up to the -- it's
15 up to the Chair or the fact-finding body to -- I
16 should say the presiding officer of the fact-finding
17 body to determine whether there's a proper privilege
18 or not. They can't just invoke it and say First
19 Amendment, Fourth Amendment, without providing any
20 additional details.

21 There -- there are a number of Supreme
22 Court cases that have said generally that just
23 remaining silent in response to questions under oath
24 and remaining silent can be taken as -- as an
25 invocation of the Fifth Amendment.

1 Now, I don't -- we have done some
2 research, and we haven't found any specific cases
3 that -- that state that just -- stating "on advice
4 of counsel I'm not testifying," that that's the same
5 as invoking the Fifth. But it's -- you know, it's
6 pretty -- it sounds pretty close to silence to me.

7 There is one Supreme Court case in which
8 the Supreme Court said that just standing mute is an
9 invocation of the Fifth. And in those cases where
10 someone is pleading the Fifth, a fact-finding body
11 in a civil case providing that they have additional
12 evidence, they can make a negative inference from
13 that refusal to testify.

14 But, again, you know, as to whether
15 just -- I haven't -- we haven't found any specific
16 case that specifically address just stating advice
17 of counsel refusal to testify. But -- but I do
18 believe that it is an improper invocation of -- of
19 any privilege and it's not a valid basis for
20 refusing to testify under subpoena.

21 CHAIR CLANCY: Mr. Nixon, if you
22 could address a question that I have. This issue
23 came up in the preliminary hearings where
24 Mr. Sullivan invoked all of the privileges of his
25 constitutional rights. Section 571.131(B) of the

1 Texas Government Code addressing formal hearings
2 states that, "The Respondent may not be compelled to
3 give evidence or testimony that violates the
4 Respondent's right against self-incrimination under
5 the United States Constitution or the Texas
6 Constitution."

7 You agree with me that that is a Fifth
8 Amendment assertion of privilege. Correct?

9 MR. NIXON: It's more than the Fifth
10 Amendment, so no.

11 CHAIR CLANCY: No. I mean, my --
12 with regard to that statutory provision, that
13 addresses his Fifth Amendment right to not give
14 testimony that might be incriminating.

15 MR. NIXON: Only in part. So the
16 answer to your question is no.

17 CHAIR CLANCY: Well --

18 MR. NIXON: There are more -- there
19 are more -- the rights against self-incrimination
20 are broader than just the Fifth Amendment.

21 CHAIR CLANCY: Well, and I understand
22 that. I'm talking about this formal hearing
23 procedure.

24 MR. NIXON: In the Texas
25 Constitution, as well. The Texas Constitution --

1 it's not -- it's -- I think it's Article 8 of --
2 Article 1, Section 8, excuse me.

3 In addition, as you know, the one that --
4 Chapter 571.131(C) requires the Commission to adopt
5 rules regarding discovery hearing and related
6 procedures consistent with the chapter. The chapter
7 of course is involving, you know, Section B, which
8 you referred to and the Commission has not yet
9 adopted any of such rules.

10 CHAIR CLANCY: That was the rule
11 argument you made that we went to Judge Sparks on.
12 Right?

13 MR. NIXON: No. Oh, we went to Judge
14 Sparks on the over-breadth of the subpoenas which he
15 ruled were absurd.

16 CHAIR CLANCY: Well, I thought they
17 were due process arguments that we went to Judge
18 Sparks on, as well.

19 MR. NIXON: Yeah. And let me tell
20 you, we're not shy about going back over there if
21 need be because -- because since Judge Sparks ruled,
22 the Supreme Court has ruled in the case of Susan B.
23 Anthony versus the Ohio Ethics Commission. And in
24 that case it instructed the District Judge to not
25 reply upon the younger doctrine as Sparks did, but

1 to proceed to hear the case in due course because
2 they felt as if Susan B. Anthony's rights were being
3 infringed upon. And in that case it was very
4 significant because Susan B. Anthony said, look,
5 I'm -- even though they've dismissed the complaint
6 against me, I'm subject to the same complaint being
7 filed again, because I'm going to -- I'm going to
8 engage in the same activity of public comment. And
9 so Justice Scalia wrote and said to the Sam Sparks
10 in that district, "Hear this case now."

11 So if that's what you are asking us to go
12 do, I don't have a problem proceeding that
13 direction. But quite frankly, Mr. Sullivan's not
14 going to testify today to anything substantive other
15 than his name. He's here in honor of the subpoena,
16 but he's going to utilize all of his constitutional
17 rights except the Fifth Amendment at this point,
18 but -- but his rights against self-incrimination go
19 beyond just those enumerated in the Fifth Amendment.

20 CHAIR CLANCY: Well, what I'm trying
21 to understand is how does his First Amendment right
22 to speak freely prevent him from answering questions
23 that we're permitted to subpoena him to answer?

24 MR. NIXON: Well, Justice -- as
25 Justice Scalia said in Susan B. Anthony, this issued

1 about a week ago, that laws on the books of the
2 Ohio -- in the Ohio statutes squelch free speech and
3 those laws hamper the ability of people to speak
4 freely on political issues and people self-regulate.
5 And Susan B. Anthony doesn't have to state that they
6 are going to violate the law. They have to say that
7 they're worried about being violated by the statute.
8 The statute prohibits them.

9 So we don't have to say that we engage in
10 conduct or don't engage in conduct. And we don't
11 have to say that -- we don't have to say anything.
12 We don't -- it is incumbent upon this Commission to
13 make its case in and of itself without our help.

14 CHAIR CLANCY: So you're making --

15 MR. NIXON: So we have the right to
16 make you do that.

17 CHAIR CLANCY: You're making an
18 argument that the Lobby statute is unconstitutional.
19 Correct? That's why you're referencing Susan B.
20 Anthony.

21 MR. NIXON: That is in part, yes.
22 Remember the First Amendment gives the right to
23 speak; also gives you the right not to speak, the
24 right to be silent.

25 CHAIR CLANCY: All right. We're

1 going to take another ten-minute recess and think
2 about this for a minute.

3 MR. NIXON: Thank you, Mr. Chair.

4 CHAIR CLANCY: We're in recess.

5 (Off the record from 3:13 to 3:26)

6 CHAIR CLANCY: Thank you. You may be
7 seated. All right. We're back on the record in
8 formal hearing SC-3120487 and 3120488. Sometimes
9 the Chair needs to consult with his counsel and
10 figure out what to do next. And -- and so this --
11 this is my ruling with regard to the current
12 objections.

13 Because the only provision that we're
14 prohibited from seeking is information that might be
15 self-incriminating, any objection to other
16 constitutional provisions is overruled.

17 You may continue, Counsel.

18 MR. NIXON: Mr. Chairman, I would --
19 couple -- couple of matters in response.

20 CHAIR CLANCY: Sir, I didn't ask for
21 a response. Counsel, you can make a question. If
22 you have some sort of an objection, Mr. Nixon,
23 please assert it at the appropriate time.

24 MR. NIXON: All right. I object.
25 Now, I object that the Commission went into the back

1 room and deliberated not in public. That is a
2 violation of the Open Meetings Act, and I object
3 that the Commission did that.

4 I object that the Commission went back,
5 under your admission consulted with Mr. Nichols.
6 Mr. Nichols exited the room at the same time you
7 did. Mr. Nichols is not a member of the Commission,
8 and Mr. Nichols is engaged by Commission vote on a
9 case pending in Travis County not in -- on this
10 case.

11 And I further object under
12 Section 2001.083 under the Administrative Procedures
13 Act, which is in the Government Code. It says,
14 "Privilege: In a contested case, a State agency
15 shall give effect to the rules of privilege
16 recognized by law."

17 There is no limitation as to which
18 privilege you may assert or may not assert.
19 Mr. Sullivan is asserting all privileges that are
20 recognized by law.

21 To be clear, those are the First, Fourth,
22 Fourteenth Amendment, Article 1 of the Texas
23 Constitution, Section 8, Section 3, Section 9.

24 Most importantly, Mr. Sullivan is free
25 from unlawful search and seizure. And unless and

1 until there is probable cause, none of which has
2 been asserted yet today, Mr. Sullivan does not have
3 to provide any kind of testimony or information
4 either from his personal knowledge or his property.

5 Mr. Sullivan is going to follow the
6 admonition of counsel and will not be testifying
7 today.

8 CHAIR CLANCY: Counsel, do you have a
9 case in Texas that permits a witness not to testify
10 because he asserted his First Amendment privilege?

11 MR. NIXON: I do not have a Texas
12 case where that has been asserted.

13 CHAIR CLANCY: Do you have a case
14 that cites the Texas Rule of Evidence on assertion
15 of privilege that permits a witness not to testify
16 because they assert the First Amendment privilege?

17 MR. NIXON: If the Court is -- or the
18 Commission is requesting a brief, I'd be happy to
19 provide it a brief.

20 CHAIR CLANCY: No. I'm asking if you
21 have case authority --

22 MR. NIXON: But I'm not prepared --

23 CHAIR CLANCY: -- authority on this?

24 MR. NIXON: Look, this is not exactly
25 new -- I mean, we -- we have gone through -- this is

1 the third time that you have called Mr. Sullivan to
2 come testify. And on each of the separate cases
3 I've made the same assertion.

4 CHAIR CLANCY: Now, I'm sure in
5 previous instances you made a Fifth Amendment
6 assertion.

7 MR. NIXON: No. We have the
8 transcript, and I'll be happy to go back over it
9 with you. And I can go over it with you.

10 CHAIR CLANCY: This time you said all
11 of his constitutional privileges, including the
12 Fifth Amendment.

13 MR. NIXON: Any and all that might
14 apply.

15 CHAIR CLANCY: This time you said
16 excluding.

17 MR. NIXON: Right. And look, I
18 understand what the Commission wants, because there
19 is a mistaken belief by some, as we discussed at the
20 last hearing, that the assertion of a Fifth
21 Amendment privilege allows the Commission to draw an
22 inference.

23 Okay. Well, I do have case law that --
24 that -- that instructs the Commission and anybody
25 else that wants to be advised that in Texas the

1 inference that is drawn from a pleading of the Fifth
2 Amendment is no greater than -- is less than a
3 scintilla of evidence. Basically, it is not even a
4 feather on the scales of justice.

5 CHAIR CLANCY: But we talked about
6 that in prehearing conference. I understand now
7 you're not asserting a Fifth Amendment.

8 MR. NIXON: I do not have to. I do
9 not have to at this time.

10 CHAIR CLANCY: Right.

11 MR. NIXON: Okay.

12 CHAIR CLANCY: So what we're talking
13 about is First Amendment privilege, Fourteenth.

14 MR. NIXON: All right. Mr. Chairman,
15 I do have a case, Perry versus Schwarzenegger, 597
16 Federal 3D, 1147. You have a right under the First
17 Amendment Freedom of Association to not have to
18 testify.

19 CHAIR CLANCY: That's a PAC case.

20 MR. NIXON: That is -- doesn't
21 matter.

22 CHAIR CLANCY: We're talking about a
23 lobby case.

24 MR. NIXON: Doesn't matter. Doesn't
25 matter. The issue doesn't matter. It's the rule of

1 law that matters.

2 MR. STEUSLOFF: This is not a freedom
3 of association case. This is a lobby disclosure
4 case.

5 CHAIR CLANCY: Right. I understand.

6 MR. NIXON: That's the law. You have
7 a First Amendment right. And we are asserting his
8 First Amendment rights, Freedom of Speech, Freedom
9 of Association, all of them, Freedom to Petition the
10 Government.

11 CHAIR CLANCY: Just so you
12 understand, it's the ruling of the Chair that your
13 substantive challenge to the Texas Lobby Statute --
14 okay, that it is violative of First Amendment rights
15 is a separate question. What we have before us is a
16 procedural question regarding this formal hearing.
17 And with regard to this formal hearing and the
18 subpoena powers of this agency, we have subpoenaed
19 Mr. Sullivan to testify. And with the exception of
20 the Fifth Amendment privilege, which you are not
21 asserting, those First Amendment privileges are
22 overruled.

23 MR. NIXON: Is the -- is the
24 Commission then ignoring the Government
25 Code 2001.083?

1 CHAIR CLANCY: No, absolutely not.

2 MR. NIXON: In a contested case the
3 State agency shall give effect to the rules of
4 privilege recognized by law. Doesn't limit it --

5 CHAIR CLANCY: That's why I asked you
6 for any authority under the Texas Rules of Evidence
7 to be a First Amendment privilege to prevent you
8 from testifying.

9 MR. NIXON: I just gave you a Federal
10 Court case that says under the United States
11 Constitution there's such a First Amendment.

12 CHAIR CLANCY: I'm enforcing the
13 Texas Rules of Evidence in this proceeding.

14 MR. NIXON: So the Texas Rules of
15 Evidence supercede the United States Constitution?

16 CHAIR CLANCY: No, sir.

17 What I'm talking about is -- you asked me
18 with regard to 2001.083.

19 Now, if you wish to make a Fifth Amendment
20 assertion of privilege, that's a different question.
21 But right now you're not, and those objections are
22 overruled.

23 MR. NIXON: I understand. Please
24 understand, Mr. Chairman, with all due respect, the
25 witness will not testify to anything other than --

1 CHAIR CLANCY: Well, then the witness
2 is going to have to bear the consequences of his
3 actions.

4 MR. NIXON: That's fine.

5 CHAIR CLANCY: Counsel, please
6 proceed.

7 Q (By Mr. Steusloff) Mr. Sullivan, during
8 the years of 2010 and 2011, did you not routinely
9 send letters, memos and E-mails to members and
10 employees of the Texas Legislature?

11 A On the advice of counsel, I'm not going to
12 be testifying today.

13 Q How many E-mails and letters did you send
14 to Legislators and their staff in 2010 and 2011?

15 A On the advice of counsel, I'm not going to
16 be testifying today.

17 Q Could you turn to Exhibit 13 in the
18 notebook that's in front of you?

19 A On the advice of counsel, I'm not going to
20 be testifying today.

21 Q So you're not able to look at a particular
22 exhibit so that I may ask you questions about that
23 exhibit?

24 A On the advice of counsel, I'm not going to
25 be testifying today.

1 Q Okay. So behind Tab 13, Page No. 296
2 there's an E-mail from Michael Quinn Sullivan to
3 Mark Dalton dated June 15, 2011 with the subject of,
4 "Vote on House Bill 5." Do you recall that E-mail?

5 A On the advice of counsel, I'm not going to
6 be testifying today.

7 Q And it is addressed to Honorable Members
8 of the Texas House. Is that right?

9 A On the advice of counsel, I'm not going to
10 be testifying today.

11 Q And it states, "To begin on the House
12 calendar for today is House Bill 5 allowing Texas to
13 enter the healthcare compact." Is that correct?

14 A On the advice of counsel, I'm not going to
15 be testifying today.

16 Q And the E-mail also states, "As you know,
17 we support House Bill 5 and will positively score it
18 on the Fiscal Responsibility Index." Is that right?

19 A On the advice of counsel, I'm not going to
20 be testifying today.

21 Q That same E-mail also states, "We
22 encourage members of the Texas House to vote for the
23 healthcare compact and HB 5." Is that correct?

24 A On the advice of counsel, I'm not going to
25 be testifying today.

1 Q So you sent that E-mail. Is that correct?

2 A On the advice of counsel, I'm not going to
3 be testifying today.

4 Q And you do not deny sending that E-mail.
5 Is that correct?

6 A On the advice of counsel, I'm not going to
7 be testifying today.

8 Q Isn't it true that that E-mail was sent
9 with a specific purpose of influencing members of
10 the House to vote for House Bill 5?

11 A On the advice of counsel, I'm not going to
12 be testifying today.

13 Q And none of those Representatives to whom
14 the E-mail were sent asked you to send that E-mail
15 to them. Is that correct?

16 A On the advice of counsel, I'm not going to
17 be testifying today.

18 Q And that particular E-mail is not an
19 example of news or editorial. Is that correct?

20 A On the advice of counsel, I'm not going to
21 be testifying today.

22 Q In fact, that's a direct advocacy. Isn't
23 that correct?

24 A On the advice of counsel, I'm not going to
25 be testifying today.

1 Q Did you also contact members and employees
2 of the Texas House in person in 2010 and 2011?

3 A On the advice of counsel, I'm not
4 testifying today.

5 Q Didn't your communications to members and
6 employees of Legislature during that time urge
7 specific votes for and against legislative bills and
8 amendments?

9 A On the advice of counsel, I'm not going to
10 be testifying today.

11 Q Didn't those communications also urge
12 votes for and against candidates for Speaker of the
13 Texas House at the beginning of the 2011 session?

14 A On the advice of counsel, I'm not going to
15 be testifying today.

16 Q Isn't it true that you also informed
17 members and employees of Texas Legislature of
18 Empower Texans' legislative priorities?

19 A On the advice of counsel, I'm not going to
20 be testifying today.

21 Q And wasn't the purpose of those
22 communications that were sent in 2010 and 2011 to
23 influence members and employees of the Legislature
24 to support legislation that was in accordance with
25 Empower Texans policy goals?

1 A On the advice of counsel, I'm not going to
2 be testifying today.

3 Q Isn't it true that those communications
4 were also made on behalf of Empower Texans?

5 A On the advice of counsel, I'm not going to
6 be testifying today.

7 Q Isn't it also true that your employer
8 required you, as president, to make those
9 communications?

10 A On the advice of counsel, I'm not going to
11 be testifying today.

12 Q You were receiving compensation from
13 Empower Texans during this time period. Is that
14 right?

15 A On the advice of counsel, I'm not going to
16 be testifying today.

17 Q And did your compensation from Empower
18 Texans exceed \$1,000 during each calendar quarter of
19 2010 and 2011?

20 A On the advice of counsel, I'm not going to
21 be testifying today.

22 Q And isn't it true that you sent those
23 communications to Legislators and their staff who
24 had never asked you to send those communications to
25 them?

1 A On the advice of counsel, I'm not going to
2 be testifying today.

3 Q Now, Empower Texans creates and
4 distributes scorecards that assigns grades to the
5 Legislators. Is that right?

6 A On the advice of counsel, I'm not going to
7 be testifying today.

8 Q And isn't it correct that you notify
9 Legislators of those grades to pressure them to vote
10 in accord with Empower Texans' policy goals?

11 A On the advice of counsel, I'm not going to
12 be testifying today.

13 Q Empower Texans also gives awards to
14 Legislators based on their scorecard grades, isn't
15 that right?

16 A On the advice of counsel, I'm not going to
17 be testifying today.

18 Q And aren't those awards given to
19 Legislators as a sign of support for the votes that
20 they've cast?

21 A On the advice of counsel, I'm not going to
22 be testifying today.

23 Q Isn't the purpose of the Texas Champion
24 and Texas Advocate awards that are given to
25 Legislators a sign of -- excuse me. Let me

1 rephrase.

2 Isn't the purpose of the Texas Taxpayer
3 Champion and Texas Taxpayer Advocate awards to
4 generate goodwill with Legislators on behalf of
5 Empower Texans?

6 A On the advice of counsel, I'm not going to
7 be testifying today.

8 Q In fact, in calendar year 2007 you were
9 registered as a lobbyist for Empower Texans. Is
10 that right?

11 A On the advice of counsel, I'm not
12 testifying today.

13 Q And you also registered as a lobbyist for
14 Empower Texans in 2008 and 2009. Is that right?

15 A On the advice of counsel, I'm not
16 testifying today.

17 Q And isn't it correct that in 2007 you
18 filed a Lobby Activities Report with the Ethics
19 Commission that disclosed \$600 for award and
20 mementos that were given to State Representatives?

21 A On the advice of counsel, I'm not
22 testifying today.

23 Q And those awards were the Texas Taxpayer
24 Awards. Is that right?

25 A On the advice of counsel, I'm not going to

1 be testifying today.

2 Q And in 2009 didn't you also disclose in a
3 Lobby Activities Report \$1,830 for awards and
4 mementos given to Legislators?

5 A On the advice of counsel, I'm not going to
6 be testifying today.

7 Q And isn't it true that at the end of the
8 report there was a memo that listed all of the
9 Representatives and Senators who had received the
10 taxpayer awards from Empower Texans?

11 A On the advice of counsel, I'm not going to
12 be testifying today.

13 Q So you filed campaign finance reports with
14 the Ethics Commission that were under oath. Is that
15 correct?

16 A On the advice of counsel, I'm not going to
17 be testifying today.

18 Q And so those reports were required to be
19 true and accurate. Is that right?

20 A On the advice of counsel, I'm not going to
21 be testifying today.

22 Q So you were swearing in those reports that
23 the expenditures that Empower Texans made for the
24 taxpayer awards in 2007 and 2009 were made to
25 influence Legislators. Is that right?

1 A On the advice of counsel, I'm not going to
2 be testifying today.

3 Q Isn't it true that in previous court
4 filings that you filed in cases against the
5 Commission, against the Texas Ethics Commission, you
6 described Empower Texans as a direct advocacy
7 organization. Is that right?

8 A On the advice of counsel, I'm not going to
9 be testifying today.

10 Q And a direct advocacy organization is very
11 different from a news organization. Isn't that
12 right?

13 A On the advice of counsel, I'm not going to
14 be testifying today.

15 Q And you're not a journalist for Empower
16 Texans. Is that correct?

17 A On the advice of counsel, I'm not going to
18 be testifying today.

19 Q And you were not a journalist for anyone
20 in 2010 or 2011. Is that right?

21 A On the advice of counsel, I'm not going to
22 be testifying today.

23 Q And is it more accurate that in your role
24 as president of Empower Texans you are an activist?

25 A On the advice of counsel, I'm not going to

1 be testifying today.

2 Q In your communications with Legislators on
3 behalf of Empower Texans, the -- the purpose of
4 those communications is -- is generally for
5 influencing them, not for gathering news. Is that
6 correct?

7 A On the advice of counsel, I'm not going to
8 be testifying today.

9 Q And is it true that you only started
10 contributing to the website Breitbart Texas within
11 the past year?

12 A On the advice of counsel, I'm not going to
13 be testifying today.

14 Q Is it correct that your job
15 responsibilities with Empower Texans includes the
16 review and analysis of legislation?

17 A On the advice of counsel, I'm not going to
18 be testifying today.

19 Q And were you required to discuss
20 legislation and legislative policies with others
21 both inside and outside of Empower Texans in 2010
22 and 2011?

23 A On the advice of counsel, I'm not going to
24 be testifying today.

25 Q Weren't you also required to research

1 legislation and discuss with others your strategies
2 and how best to communicate with Legislators about
3 Empower Texans' legislative goals in 2010 and 2011?

4 A On the advice of counsel, I'm not going to
5 be testifying today.

6 Q In fact, in 2010 and 2011 you spent far
7 more than 5 percent of your total time working as
8 president of Empower Texans to communicate with and
9 preparing to communicate with Legislators to
10 influence them. Is that correct?

11 A On the advice of counsel, I'm not going to
12 be testifying today.

13 MR. STEUSLOFF: I pass the witness.

14 MR. NIXON: No questions.

15 CHAIR CLANCY: Commissioners?
16 Commission Hobby?

17 EXAMINATION

18 BY COMMISSIONER HOBBY:

19 Q Thank you, Mr. Chairman.

20 The record previously has indicated that
21 you did file, Mr. Sullivan, as a lobbyist 2007, 2008
22 and 2009. Is that correct?

23 A On the advice of counsel, I'm not going to
24 be testifying today.

25 Q Well, I think the record indicates that

1 that is a fact. What changed? What made you stop?

2 A On the advice of counsel, I'm not going to
3 be testifying today.

4 Q Did the law change?

5 A On the advice of counsel, I'm not going to
6 be testifying today.

7 Q Did your job responsibilities change?

8 A On the advice of counsel, I'm not going to
9 be testifying today.

10 Q Did your contempt for this body change?

11 A On the advice of counsel, I'm not going to
12 be testifying today.

13 Q Various direct communications, I believe,
14 from you to Legislators that were clearly subpoenaed
15 and then narrowed these proceedings such that
16 subpoenas were much less broad than they originally
17 had been, direct communications between yourself and
18 lobbyists weren't, in fact, produced by you in
19 response to legitimate discovery requests and were
20 produced by third parties. How do you justify that?

21 A On the advice of counsel, I'm not going to
22 be testifying today, sir.

23 Q I'm just interested. I'm interested in
24 where the anger comes from, where the venom comes
25 from.

1 You know, you have a constitutional
2 argument you want to make to the Supreme Court.
3 Correct?

4 A Sir, on the advice of counsel, I'm not
5 going to be testifying today.

6 Q Anything about this body that hasn't been
7 helpful to you in your larger effort in that regard?

8 A Sir, on the advice of counsel, I'm not
9 going to be testifying today.

10 Q So you're a journalist. Is that -- is
11 that what you are in your full-time occupation?

12 A On the advice of counsel, I'm not going to
13 be testifying today.

14 Q Again, I hate to come back to the tone of
15 it, but the unwillingness to participate in a
16 registration scheme, the unwillingness to want to
17 participate in an investigation that we're
18 statutorily compelled to perform, the unwillingness
19 to participate in any administrative proceeding such
20 as this one or the previous hearings, why?

21 A Sir, on the advice of counsel, I'm not
22 going to be testifying today.

23 Q On Monday, you wrote a -- you wrote a
24 blast E-mail that said, "Clancy and his cronies try
25 to intimidate Texans from exercising their

1 constitutional rights...Barack Obama, Joe Straus,
2 Jim Clancy want to chill your freedom."

3 Do you believe that?

4 A Sir, on the advice of counsel, I'm not
5 going to be testifying today.

6 Q Yesterday you wrote in a blast E-mail,
7 "Cowardice and incompetence of these want-to-be
8 speech regulators and faux prosecutors."

9 To whom were you referring?

10 A Sir, on the advice of counsel, I'm not
11 testifying today.

12 Q It is -- who's the want-to-be speech
13 enforcer? Is it the civil rights pioneer at the end
14 of the table?

15 A Sir, on the advice of counsel, I'm not
16 testifying today.

17 Q Is it the pastor from Bastrop beside her?

18 A Sir, on the advice of counsel I'm not
19 testifying today.

20 Q Is it the career public servants to my
21 right?

22 A Sir, on the advice of counsel, I'm not
23 going to be testifying today.

24 Q Is it the formal elected official to his
25 right?

1 A Sir, on the advice of counsel, I'm not
2 going to be testifying today.

3 Q Is it the Bronze star winner to my left?

4 A Sir, on the advice of counsel, I'm not
5 going to be testifying today.

6 Q I just -- I don't understand the venom of
7 it. And to say that you've got to have thick skin
8 and sharp elbows in this town and this is all about
9 fundraising and it should roll-off your back, at
10 some point this constitutional Commission has to
11 have a sense of integrity, and we've tried very hard
12 to do that.

13 Your boss a couple of weeks ago in my West
14 Texas wrote the following, "Because Team Straus
15 controls many appointees to the EBC as well as its
16 funding, Texans for Fiscal Responsibility was not
17 surprised when the Commission announced that the
18 group was guilty of the alleged violation before it
19 began its investigation."

20 To what was he referring?

21 A Sir, on the advice of counsel, I'm not
22 testifying today.

23 Q So you don't have any clue what that's
24 about?

25 A Sir, on the advice of counsel, I'm not

1 going to be testifying today.

2 COMMISSIONER HOBBY: Thank you.

3 CHAIR CLANCY: Commissioner Long?

4 COMMISSIONER LONG: May I speak?

5 CHAIR CLANCY: Please.

6 COMMISSIONER LONG: Mr. Sullivan, our
7 job at the Texas Ethics Commission is to receive
8 complaints -- one of our jobs, and to see that the
9 complaints agree or not agree with Texas statutes.
10 And then we're to adjudicate accordingly. That's
11 our job -- one of the jobs.

12 If the statutes are something that you're
13 in disagreement with, I think where you need to go
14 is the Texas Legislature and try to change the
15 statutes. We're here to follow the statutes.

16 We've all been appointed here, the whole
17 Commission, by the Governor, Lieutenant Governor or
18 Speaker Straus, maybe Speaker Craddick a long time
19 ago. But those are the people that appoint us. And
20 one of the reasons we're appointed is we've been
21 politically active probably. I was the County
22 Chairman 25 years, served on the State Republican
23 Executive Committee twice. I was the chaplain of
24 the Republican Party for ten years. Obviously, you
25 know me, because my name is on Tab 112 that I have

1 signed up on your list to speak against -- let's
2 see. I don't even have a date on it. Tab 112, my
3 name's on it. I don't remember putting it there.
4 Of course, I know, you know, Peggy Venerable and
5 Kelly Shackelford and Tim Lambert, all friends of
6 mine from the past.

7 I'm just saying that we're not in
8 opposition to the principles you may be presenting.
9 Obviously, I'm a Republican, 25 years as the
10 Chairman.

11 But I think the matter that we're talking
12 about is that we have a job to do, and we've been --
13 we've received complaints. We've talked about them
14 today. And we have to adjudicate on that. I think
15 that a lot of the people that are here, as
16 Commissioner Hobby was alluding to, think we're some
17 kind of ogre and our philosophy is something that's
18 from other world. I probably agree with a lot of
19 your philosophy. I'm not sure I agree with all the
20 tactics. But I just wanted to say that you've
21 probably read these. You've been sitting out here
22 today. And we have been advised by counsel that
23 according to Texas Statutes those who received
24 compensation or reimbursement or make expenditures
25 to influence legislation are to file a registration

1 with the TEC and pay a registration fee to lobby or
2 be subject to civil penalty. That's what we're here
3 for. We're not here to be mean, disagree with what
4 you do, except you didn't file and you received
5 remuneration.

6 To me -- I'm pretty simple. As he said,
7 I'm a Pastor from Bastrop. I don't -- I'm not a --
8 I started to not speak. I'm not a lawyer. I don't
9 even understand half of this stuff. But sometimes
10 we need to get simple, and the simplicity is we've
11 had a complaint, we've got to adjudicate on it. And
12 it looks like from what we see that there were
13 expenditures made when you influenced the
14 Legislature. If I'm out of line, my Chair will tell
15 me different.

16 CHAIR CLANCY: Thank you,
17 Commissioner Long.

18 EXAMINATION

19 BY CHAIR CLANCY:

20 Q Mr. Sullivan, how long have you been
21 involved in grassroots politics?

22 A Sir, on the advice of counsel, I'm not
23 going to be testifying today.

24 Q Do you share the frustration of many in --
25 in the grassroots who work so hard to get people

1 elected and then when they get to the pink dome they
2 seem to forget why people sent them there?

3 A Sir, on the advice of counsel, I'm not
4 going to be testifying today.

5 Q Do you share the feeling that sometimes
6 the folks that pounded signs and walked blocks and
7 gave them their 15 and 20-dollar donations for a
8 particular set of values feel like when they come to
9 the Capitol the lobby takes over and -- and they
10 never get a say for how things happen?

11 A Sir, on the advice of counsel, I'm not
12 testifying today.

13 Q Do you think it's helpful to have an
14 organization that keeps track of what the
15 Legislators are doing?

16 A Sir, on the advice of counsel, I'm not
17 testifying today.

18 Q Do you think it's helpful that the -- the
19 people that subscribe to the -- the service know
20 what votes are coming up?

21 A Sir, on the advice of counsel, I'm not
22 going to be testifying today.

23 Q Do you think it's helpful that they have
24 the capability of knowing who their elected official
25 is and sending them an E-mail about an important

1 vote that might be coming up?

2 A Sir, on the advice of counsel, I'm not
3 going to be testifying today.

4 Q Okay. Do you agree with me that one of
5 the things that Empower Texans does is it educates
6 grassroots people about how to get involved in the
7 political process?

8 A Sir, on the advice of counsel, I'm not
9 going to be testifying today.

10 Q Do you agree with me that Empower Texans
11 maintains a very informative website that informs
12 people what's going on in the Capitol?

13 A Sir, on the advice of counsel, I'm not
14 going to be testifying today.

15 Q Do you realize that there's no allegation
16 against you that anything that was published on your
17 website is a violation of the Texas Lobby
18 Registration statute?

19 A Sir, on the advice of counsel, I'm not
20 going to be testifying today.

21 Q Do you realize that there's no editorial
22 that you've ever written that forms the basis for an
23 allegation against you in this complaint?

24 A Sir, on the advice of counsel, I'm not
25 going to be testifying today.

1 Q Now, I understand that your counsel has
2 argued that the entire process of registering
3 lobbyists is unconstitutional here in Texas. Do you
4 agree with that position?

5 A Sir, on the advice of counsel, I'm not
6 going to be testifying today.

7 Q Do you think that Bill Hammond and the
8 Texas Association of Business guys should no longer
9 have to register their lobbying activity?

10 A Sir, on the advice of counsel, I'm not
11 going to be testifying today.

12 Q Do you believe that Steve Mostyn and the
13 Texas Trial Lawyers people no longer have to
14 register as lobbyists?

15 A Sir, on the advice of counsel, I'm not
16 going to be testifying today.

17 Q How about Planned Parenthood and those
18 folks, do they have to register as lobbyists?

19 A Sir, on the advice of counsel, I'm not
20 going to be testifying today.

21 Q Now, do you also know that there's no
22 allegation against you that a scorecard after a vote
23 is conducted is a violation of any Lobby
24 Registration statute?

25 A Sir, on the advice of counsel, I'm not

1 going to be testifying today.

2 Q Do you know that a scorecard posted on
3 your website is not a violation of any Lobby
4 Registration statute?

5 A Sir, on the advice of counsel I'm not
6 going to be testifying today.

7 Q Do you know that a scorecard that you send
8 to voters in the District is not a lobbying activity
9 that subjects you to registration?

10 A Sir, on the advice of counsel, I'm not
11 going to be testifying today.

12 Q Okay. Do you think the people of Texas
13 deserve to know who's paid to lobby the Legislature?

14 A Sir, on the advice of counsel, I'm not
15 going to be testifying today.

16 Q Do you think the people of Texas deserve
17 to know the agenda for the people who pay to
18 influence the Legislature?

19 A Sir, on the advice of counsel, I'm not
20 going to be testifying today.

21 Q How does Empower Texans decide which
22 matters go on their score?

23 A Sir, on the advice of counsel I'm not
24 going to be testifying today.

25 Q Is it correct that that's a decision of

1 your Board?

2 A Sir, on the advice of counsel, I'm not
3 going to be testifying today.

4 Q Is it correct that your Board consists of
5 just yourself, Mr. Tim Dunn, Lee Dunn and Luke Dunn?

6 A Sir, on the advice of counsel, I'm not
7 going to be testifying today.

8 Q Is it that group along with the paid staff
9 that decide what issues are going to be lobbied for
10 or against in the legislative session?

11 A Sir, on the advice of counsel, I'm not
12 going to be testifying today.

13 Q Now, you admit that you've said vote
14 against Michael Straus [sic] in direct
15 communications to Legislators. Is that right? I'm
16 sorry, Joe Straus.

17 A Sir, on the advice of counsel, I'm not
18 going to be testifying today.

19 Q And you admit that you've sent direct
20 communications to members of the House and Senate to
21 vote for or against legislation in the 2011 session?

22 A Sir, on the advice of counsel, I'm not
23 going to be testifying today.

24 Q Now, do you think that any paid lobbyist
25 should be able to make those communications to the

1 Legislature --

2 A Sir, on the advice of counsel, I'm not
3 going to be testifying today.

4 Q -- without those ever being disclosed?

5 A Sir, on the advice of counsel, I'm not
6 going to be testifying today.

7 Q Do you receive a W-2 or 1099 compensation
8 from Empower Texans?

9 A Sir, on the advice of counsel, I'm not
10 going to be testifying today.

11 Q Do you get one check or two?

12 A Sir, on the advice of counsel, I'm not
13 going to be testifying today.

14 Q Does your check have the same amount each
15 month or does it vary?

16 A Sir, on the advice of counsel, I'm not
17 going to be testifying today.

18 Q Now, in your organization you maintain
19 E-mail. Is that right?

20 A Sir, on the advice of counsel, I'm not
21 going to be testifying today.

22 Q And you have some E-mails for things that
23 are subscribed to. Is that right?

24 A Sir, on the advice of counsel, I'm not
25 testifying today.

1 Q And you also have E-mails that go directly
2 from you. Right?

3 A Sir, on the advice of counsel, I'm not
4 going to be testifying today.

5 Q Now, the E-mails that go out with your
6 name, are those sent from you or someone who's
7 authorized by you?

8 A Sir, on the advice of counsel, I'm not
9 going to be testifying today.

10 Q So we can assume that if -- if there is an
11 E-mail or a letter that's -- has Michael Sullivan at
12 the bottom of it, you either sent that E-mail or
13 directed that it be sent?

14 A Sir, on the advice of counsel, I'm not
15 going to be testifying today.

16 Q All right. Now, I just want to just
17 address some specific things to 2011.

18 Did you directly communicate with members
19 of the Texas House asking them to vote against Joe
20 Straus?

21 A Sir, on the advice of counsel, I'm not
22 going to be testifying today.

23 Q Okay. Is it true that the purpose of
24 notifying someone that they're going to get a
25 negative report on a scorecard vote is to influence

1 that vote?

2 A Sir, on the advice of counsel, I'm not
3 testifying today.

4 Q Is it -- is it correct that the reason for
5 putting an item on the scorecard is so that they
6 know which way to vote in that particular matter?

7 A Sir, on the advice of counsel, I'm not
8 going to be testifying today.

9 Q Okay. In 2011, did -- did -- did you send
10 a direct communication to Representative Perry
11 regarding House Bill 4 and House Bill 275?

12 A Sir, on the advice of counsel, I'm not
13 going to be testifying today.

14 Q In the -- in the 2011 session on May 2nd,
15 2011, did you send a direct communication to
16 Representative Laubenberg regarding House Bill 3640
17 and 3790?

18 A Sir, on the advice of counsel, I'm not
19 going to be testifying today.

20 Q Okay. Now, you're aware that nothing
21 about your lobby registration has anything to do
22 with asking a member to complete a questionnaire?
23 You know that. Right?

24 A Sir, on the advice of counsel, I'm not
25 going to be testifying today.

1 Q And -- and you know that there's nothing
2 in the lobby allegations against you that have to do
3 with asking someone to take a taxpayer pledge?

4 A Sir, on the advice of counsel, I'm not
5 going to be testifying today.

6 Q Are you aware that you made a direct
7 communication to Representative Cindy Burkett on
8 April 18th, 2011 regarding House Bill 5?

9 A Sir, on the advice of counsel, I'm not
10 going to be testifying today on that.

11 Q Did you make a direct communication to
12 Representative Rob Orr on April 28th, 2011 regarding
13 Senate Bill 655?

14 A Sir, on the advice of counsel, I'm not
15 going to be testifying today.

16 Q Did you make a direct communication to
17 Cindy Burkett on May 3rd, 2011 regarding House
18 Bill 3790 and House Bill 3640?

19 A Sir, on the advice of counsel, I'm not
20 going to be testifying today.

21 Q On May 10th, 2011 did you make a direct
22 communication to Representative Rob Orr supporting
23 House Bill 272?

24 A Sir, on the advice of counsel, I'm not
25 going to be testifying today.

1 Q Did you make a similar communication on
2 the same day reminding him about House Bill 3640?

3 A Sir, on the advice of counsel, I'm not
4 going to be testifying today.

5 Q Okay. Did you communicate with
6 Representative Cindy Burkett on May 12th, 2011
7 regarding House Bill 2593 and House Bill 2594?

8 A Sir, on the advice of counsel, I'm not
9 testifying today.

10 Q On May 23rd, 2011, did you make a direct
11 communication to Representative Rob Orr regarding
12 Senate Bill 1581 amendments?

13 A Sir, on the advice of counsel, I'm not
14 testifying today.

15 Q And did you communicate with that same
16 representative the next day regarding Senate Bill 8?

17 A Sir, on the advice of counsel I'm not
18 going to be testifying today.

19 Q Is it correct that towards the end of the
20 session you typically make multiple communications a
21 day with members of the legislation about how to
22 vote on various bills and amendments that are
23 pending?

24 A Sir, on the advice of counsel, I'm not
25 going to be testifying today.

1 Q I also know that you host a -- a meeting
2 on Wednesdays to the Center Rights Coalition. Is
3 that correct?

4 A Sir, on the advice of counsel, I'm not
5 going to be testifying today.

6 Q Is that a group that's hosted at the Texas
7 Public Policy Foundation?

8 A Sir, on the advice of counsel, I'm not
9 going to be testifying today.

10 Q Who pays the expenses for that meeting?

11 A Sir, on the advice of counsel, I'm not
12 going to be testifying today.

13 Q The materials that are in the record
14 before us indicate that that meeting is by
15 invitation only.

16 Who decides who is invited to that by you?

17 A Sir, on the advice of counsel, I'm not
18 going to be testifying today.

19 Q Isn't it correct that at those meetings
20 there are handouts regarding the bills that have
21 been calendared to come to vote before committees
22 and before the general House?

23 A Sir, on the advice of counsel, I'm not
24 going to be testifying today.

25 Q And isn't it also true that there are

1 handouts for that meeting that indicate which
2 position your -- you and your organization support
3 in voting on those bills?

4 A Sir, on the advice of counsel, I'm not
5 testifying today.

6 Q Okay. Now, the Commission has sent you a
7 series of -- of subpoenas requesting those
8 documents. Do you have documents regarding the
9 Wednesday morning Center Right Coalition meeting?

10 A Sir, on the advice of counsel, I'm not
11 going to be testifying today.

12 Q Do you keep track of who you have
13 communicated to, for or against legislation so that
14 you can follow up with which Legislators have
15 supported your agenda and which have not?

16 A Sir, on the advice of counsel, I'm not
17 going to be testifying today.

18 Q Do you have a collection of the E-mails
19 that you sent out when you send them in support or
20 against particular pieces of legislation?

21 A I'm not going to be testifying today on
22 the advice of counsel, sir.

23 Q Do you agree that despite the fact that
24 these Open Records requests show dozens of these
25 communications, in response to the subpoena your

1 organization has produced not one?

2 A Sir, on the advice of counsel, I'm not
3 going to be testifying today.

4 Q That is because those E-mails were
5 destroyed by your business?

6 A Sir, on the advice of counsel, I'm not
7 going to be testifying today.

8 Q Have you destroyed the E-mails that
9 indicate direct communications between you and
10 members of the Texas House during the 2011 session?

11 A Sir, on the advice of counsel, I'm not
12 going to be testifying today.

13 Q Have you destroyed the letters or copies
14 of the letter that were sent to members of the Texas
15 House urging them to vote for or against legislation
16 during the 2011 session?

17 A Sir, on the advice of counsel, I'm not
18 going to be testifying today.

19 Q Is it your argument that the lobby statute
20 is unconstitutional as it's applied to you or as
21 it's applied to everyone who currently registers as
22 a lobbyist -- lobbyist in Texas?

23 A Sir, on the advice of counsel, I'm not
24 going to be testifying today.

25 CHAIR CLANCY: All right.

1 Commissioners, any further questions?

2 COMMISSIONER LONG: You did good.

3 COMMISSIONER DELCO: Good job.

4 COMMISSIONER RAMSAY: Mr. Chairman?

5 CHAIR CLANCY: Commissioner Ramsay?

6 COMMISSIONER RAMSAY: Will Mr. Nixon
7 be on the stand today?

8 CHAIR CLANCY: Sure. He's got his
9 whole case to burn up.

10 COMMISSIONER RAMSAY: I would like to
11 ask him some questions.

12 CHAIR CLANCY: Well, we'll wait for
13 that when that time comes.

14 COMMISSIONER RAMSAY: Okay.

15 CHAIR CLANCY: Counsel, any further
16 questions for this witness?

17 MR. STEUSLOFF: I have no further
18 questions. I have no further questions at this
19 time. However, I -- I would -- in considering that
20 no proper privilege has been raised with respect to
21 Mr. Sullivan's refusal to testify, I would ask that
22 the Commission enforce the subpoena as served on
23 Mr. Sullivan to require him to testify before the
24 Commission.

25 CHAIR CLANCY: Okay. Thank you, sir.

1 You may step down. You may call your next witness.

2 MR. STEUSLOFF: Well, I have no
3 further witnesses.

4 CHAIR CLANCY: Okay.

5 MR. STEUSLOFF: And now I -- I do
6 have a couple more exhibits that I would like to
7 offer before -- before turning it over to Mr. Nixon.

8 CHAIR CLANCY: How are you going to
9 do that?

10 MR. STEUSLOFF: Well, I'll -- I'll --
11 I'll describe them to you. One is -- it's in your
12 tab as Exhibit 69. And I would like to offer this
13 as -- not as evidence, but as a guide, as a visual
14 aid for the members of the Commission to review when
15 they -- when you are considering the voluminous
16 amount of documents that are included in your -- in
17 your notebooks.

18 It is essentially a list of the documents
19 that have been provided by Mr. Bresnen as well as
20 selected documents provided by Mr. Nixon or by the
21 Respondent in response to the subpoenas to produce
22 documents. It's a list that would give you a guide
23 as to where multiple copies of documents are located
24 throughout the exhibit notebook.

25 CHAIR CLANCY: So it's just summary

1 of what's already been admitted into evidence?

2 MR. STEUSLOFF: Yes, sir.

3 CHAIR CLANCY: Mr. Nixon, any
4 objection?

5 MR. NIXON: So long as the Commission
6 understands that it's not evidence. It may be a
7 demonstrative aid for your benefit. I have no
8 problem with that.

9 CHAIR CLANCY: We'll admit it for
10 that limited purpose.

11 (Exhibit No. 69 offered and admitted)

12 MR. STEUSLOFF: The second is -- and
13 I have copies -- I have not -- I got these -- these
14 came in at the end of the day on June the 23rd. And
15 they are letters from a Jeff Archer. He's the
16 Interim Assistant Executive Director with the Texas
17 Legislature Council. This I would offer just to
18 help explain some of the E-mail documents that are
19 included with your notebooks. You may note that
20 some of the E-mails include a name at the very top
21 of the E-mail. And just so that there's no
22 confusion as to what that name indicates, I offer
23 this just as additional information to, you
24 know, help -- help the Commission understand what
25 that name refers to. It's from, again, Jeff Archer

1 with the Interim Assistant Executive Director, who
2 explains what -- what that name at the top of the
3 E-mail indicates.

4 CHAIR CLANCY: What -- what exhibit
5 is this?

6 MR. STEUSLOFF: This is Exhibit 113,
7 and it has not been provided to you. It's not in
8 your notebook. It's one that we received just on
9 the 23rd, two days ago. I do have copies for you if
10 it's permitted.

11 CHAIR CLANCY: What -- counsel?

12 MR. NIXON: This -- this is all
13 hearsay. We would object to it on that basis and
14 that, you know, Mr. Archer is not qualified to
15 really offer the explanation that he seems to offer
16 in his letter whatsoever.

17 I mean, if the issue is when a -- when --
18 it gets back to fundamental issues, what of the
19 Bresnen documents are going to be admitted? Because
20 if they're not admitted, then this is not necessary.
21 And which of them are, it may offer an explanation
22 as to why there was an E-mail on somebody's computer
23 at a particular time, because when you print it off,
24 it's going to show your name. But -- but that's not
25 how the E-mail was sent.

1 So the E-mail -- the document that's in
2 the exhibits isn't a true and correct copy of
3 whatever was sent, if any, by Mr. Sullivan or
4 Empower Texans.

5 CHAIR CLANCY: Okay.

6 MR. NIXON: So this is an effort to
7 explain that, except for the problem is, is that we
8 don't have the witness here to -- to cross-examine.

9 MR. STEUSLOFF: Well, that's not
10 necessary under Rule 803.8, Public Records and
11 Reports, "Any records, reports, statements or data
12 compilation in any form of public offices or
13 agencies setting forth the activities of the office
14 or agency or matters observed pursuant to duty
15 imposed by law as to which matters there was a duty
16 to report," under that rule, records -- public
17 records of the activities of an agency, they do not
18 have to be sworn to in order to be admissible. So
19 there is hearsay exception for that.

20 CHAIR CLANCY: Counsel, I'm ready to
21 rule. This clearly is of limited value, but I'm
22 going to admit it and ask you to put it forward with
23 that caveat.

24 (Exhibit No. 113 offered and
25 admitted)

1 CHAIR CLANCY: Commissioners, do we
2 need a short break or are we ready to continue?
3 We're going to take a short break? All right.

4 Mr. Nixon, we're going to take a
5 ten-minute break and then we'll be back.

6 MR. NIXON: Thank you.

7 (Off the record from 4:14 to 4:28)

8 CHAIR CLANCY: Thank you. You may be
9 seated. We're back on the record in SC-3120487 and
10 3120488. Counsel for the Respondent, you may
11 proceed.

12 MR. NIXON: Mr. Chairman, I'm looking
13 for a legal pad, and as soon as I find it I will.
14 No.

15 MR. TRAINOR: Is it one of these?

16 MR. NIXON: Yes. Okay.

17 Mr. Chairman, Commissioners, at this time
18 I would like to move for a directed verdict, but I
19 guess we would call it a directed decision. May I
20 make such a motion at this time?

21 CHAIR CLANCY: Sure.

22 MR. NIXON: Mr. Chairman, a few years
23 ago I had the privilege of representing Governor
24 Perry in Virginia in federal court challenging the
25 validity of the Virginia ballot access statute. And

1 I along with counsel for Gingrich, Santor
2 (phonetic), Bachman -- one other had an interesting
3 day like today discussing the constitutional
4 validity of the Virginia ballot access law.

5 When he was making his ruling at the end
6 of the day, Judge Gabby told me, "Mr. Nixon, I'm
7 glad I'm a judge, because as a lawyer I never would
8 want to try a case against you."

9 And, Mr. Chairman, I think I would say the
10 same thing to you today. I'm glad you're not
11 counsel for the State, because until you began
12 asking questions, there were no relevant questions
13 asked of any witness as it relates to the lobby law.

14 Remember when I told you you weren't going
15 to have any evidence of regulatable [sic] speech,
16 and you don't. Let's go through it. The issue
17 regarding the Speaker's race, there's not a race
18 until you have a candidate. And there's not a
19 candidate until the day -- until -- until they're
20 nominated. And they cannot be nominated until the
21 Legislature is called into session. So what you
22 have, you have an intentionally incomplete petition
23 letter attached to the complaint by both the
24 complainants. You have in contrast to that a
25 complete letter, one written and one digital, that

1 really show that these are petitions from citizens
2 of the State, not efforts to lobby, but people
3 saying, "I want you to consider voting for somebody
4 more conservative than Speaker Straus." That's not
5 lobbying. That's a petitioning your government.
6 And there isn't any evidence from any witness that
7 said Mr. Sullivan communicated with them in person.

8 On the issue of scorecarding, I think it's
9 fascinating. Members of the Texas Legislature,
10 Mr. Ramsay, get elected and knowing the people are
11 going to be paying attention to what you do. Every
12 vote that's recorded, people pay attention. They're
13 supposed to.

14 Is this Commission prepared to say to
15 someone who makes his business paying attention to
16 the Legislature, I'm paying attention to you, that
17 constitutes lobbying?

18 Every member ought to know that every vote
19 they take somebody's going to be watching.

20 Empower Texans as part of its reporting
21 identifies issues that are important to them,
22 advises members and then tells members, "These are
23 the votes. You're going to get a good grade or a
24 bad grade."

25 None of this stuff says vote for, vote

1 against. It says, "We're going to grade you
2 positively or negatively. What grade you get is up
3 to you. And we're going to report your grade to
4 your voters." That's not lobbying.

5 When we have a problem of using a word
6 like influence, Commissioner Long, you said, "Look,
7 seems pretty simple to me."

8 COMMISSIONER LONG: I'm a simple man.

9 MR. NIXON: Well, you're asked to do
10 more than be a simple man today. That's not a good
11 excuse. You've got to think today. Today being
12 simple isn't enough. Today you're going to have to
13 be thoughtful. Today you need to be Solomon. You
14 need to be wise. Because today you need to do more
15 than say, "I accept the term influence."

16 Anybody could say anything constitutes
17 influence. They come by every day and say hi.
18 They're the nicest friendliest person and they make
19 a point of coming by and saying hi every day.

20 Well, have they ever asked you to vote yes
21 or no?

22 No. But they're coming by to say hi. I
23 know -- I -- I know what they want. They want me to
24 vote positively on their legislation.

25 You could say that's influence. Mr. Long,

1 that's why the United States Supreme Court said
2 influence is unconstitutionally vague, because when
3 we get down to having to deal with restrictions on
4 speech it takes more than being simple.

5 The law says the First Amendment requires
6 a heightened degree of regular -- regular --
7 regulatory clarity, not simplicity. And a close fit
8 between the government's means and its end. The
9 word influence had already been constitutionally
10 ruled vague, because people need a bright line. Is
11 there a garden club in Bastrop?

12 COMMISSIONER LONG: Yes, there is.

13 MR. NIXON: The garden club ladies
14 came here and wanted to -- to assert that they have
15 a right to use a certain kind of pesticides to
16 control aphids on their roses. Would you require
17 that they pay each \$750 before they spoke to a
18 legislator? That's an important question. And
19 that's the one you're being asked to decide today.
20 It's not simple.

21 If you do anything - remember, this isn't
22 the only test - if you spend amount of money -- even
23 if you're not getting paid for it, but if you spend
24 a certain amount of money a quarter as it relates to
25 influencing legislation then you have to register,

1 too.

2 So show of hands, who's been to the
3 Empower Texans' web page, any of you? Okay.
4 Empower Texans' web page -- and I think that's
5 significant --

6 CHAIR CLANCY: Are we allowed to take
7 the Fifth, Mr. Nixon?

8 MR. NIXON: That is your call, not
9 mine.

10 CHAIR CLANCY: I have absolutely been
11 to the Empower Texans' web page. It's a great
12 resource.

13 MR. NIXON: Good.

14 And you'll note that they report,
15 Mr. Clancy, that as a part of their scorecarding
16 they inform the public that each member of the
17 Legislature was advised on the vote ahead of time,
18 something that a lot of other places don't do -- a
19 lot of other people that do scorecards don't do.
20 But they do. They do, and they report that, because
21 it's persuasive to the voters. This vote, this
22 grade, isn't given in a vacuum. It is not given
23 without prior knowledge. The Legislators knew that
24 they were being watched on this vote. That's part
25 of their reporting.

1 So that's all you have. That's all you
2 have. And I note that there is not a single witness
3 that testified with regard to anything involving the
4 Center Right meetings. Mr. Clancy, you asked some
5 questions as to what went on there. There are
6 people in this room that go to the Center Right
7 meetings. Your staff didn't bother to find out who
8 went and didn't call a single person today. There's
9 no evidence. You're not allowed to presume that any
10 kind of influence took place.

11 Mr. Clancy, you referred to a document
12 handed out at the Center Right meetings telling
13 Legislators how they ought to vote. But,
14 Mr. Clancy, is there -- is there any evidence before
15 this Commission today that a single Legislator
16 attended a Center Right meeting?

17 Did the Commission staff tell you who was
18 there? Do you know? Anyone? You can't presume
19 that Legislators were there. You have no evidence
20 of that.

21 So here's where we are. You have no case.
22 The State has no case.

23 Mr. Hobby, you asked questions with regard
24 to anger, hostility and venom. Those were all
25 argumentative questions. I could have objected to

1 every one. But it's interesting, you didn't ask for
2 any facts. You wanted to know why he was angry.
3 Mr. Hobby, did you ask a single question about an
4 exception to the lobby statute? Did you ask a
5 single question with regard to the Texas Government
6 Code 305.0041?

7 COMMISSIONER HOBBY: This is really
8 what you're doing? You're picking out questions
9 from your witness who won't answer? Is that really
10 what you're doing?

11 MR. NIXON: Now you begin to
12 understand.

13 COMMISSIONER HOBBY: No, no. Maybe
14 you begin to understand.

15 MR. NIXON: No, I --

16 COMMISSIONER HOBBY: You have the
17 full attention of some very fine people up here, and
18 if you continue to accuse decent people of indecent
19 acts when it doesn't seem to be in your interest to
20 do that, I don't understand. I'm entitled to ask
21 that question of your client and of you.

22 MR. NIXON: You know, you -- you --
23 but look where we are today. Look what we saw this
24 morning. From over here we heard from people who
25 said, "I didn't read the complaint. I don't know

1 whether it's accurate. I don't know whether the
2 exhibits are complete. I didn't write it. Somebody
3 else did it. My political consultant suggested that
4 I do it." The lobbyist for the trial lawyers who
5 claims it's his hid behind a friend who did the Open
6 Records request. What you should be asking, all of
7 you, is why this staff didn't investigate these
8 people. You have a basis, you have a right, your
9 statute allows you to throw out frivolous
10 complaints. You do it all the time. Where was the
11 investigation into the validity of the complaint?

12 It was clear from the outset --

13 COMMISSIONER HOBBY: Is this part of
14 a Motion To Dismiss or closing argument? I've lost
15 track.

16 MR. NIXON: It is. It is part of the
17 Motion To Dismiss. We're getting there. I -- I
18 still have two hours and 27 minutes.

19 COMMISSIONER HOBBY: I'm just trying
20 to be clear. I understand the distraction. But the
21 core issue is do you --

22 MR. NIXON: There's no evidence.

23 COMMISSIONER HOBBY: -- do you want
24 to make a Motion To Dismiss or not?

25 MR. NIXON: There's no evidence. And

1 what's disturbing of me is that you asked my client
2 where the anger, the hostility, the venom is, but
3 you did not ask those questions of those witnesses
4 who clearly had anger, hostility and venom against
5 my client. What's the genesis and the basis of
6 filing incomplete documents in complaints you didn't
7 read, research, support or write? That's what's
8 very important.

9 As part of my motion, I'm going to urge
10 the Commission not only to dismiss the complaints,
11 but to find that they were frivolously done and
12 sanction those -- all of those who participated in
13 them being filed.

14 What is terribly shocking is the lack of
15 investigation into any exception, any -- everybody
16 said they went to the Empower Texans' website. And
17 if you go to it and you have been to it you know
18 that they disseminate news and opinion. And our
19 statute says, "A person who owns, publishes or
20 employed by a newspaper or any other
21 regularly-published periodical, a radio station, a
22 television station, a wire service or any other bona
23 fide news medium that in the ordinary course of
24 business disseminates news, letters to the editor,
25 editorial or other comment, that person is not

1 required to register under this chapter."

2 CHAIR CLANCY: Mr. Nixon, you agree
3 that you bear the burden of proof on an affirmative
4 action?

5 MR. NIXON: I do agree that I bear
6 the burden of proof on the affirmative defense.

7 CHAIR CLANCY: Let's stick to the
8 directed verdict portion of this motion.

9 MR. NIXON: Right.

10 That portion is the failure of this -- of
11 this Commission and the staff of this Commission to
12 take a broad look. Instead, and I read it earlier
13 to the Commissioners, the statement of the original
14 staff, "Pay your fine and get on down the road."
15 Those were his exact words. So you can understand
16 between the lack of rules and the lack of process
17 and the delay of more than 28 months and having a
18 hearing, there's some -- there are some credibility
19 issues with this environment that are fairly well
20 grounded.

21 When you look at the evidence -- and look,
22 look at what we have today. This big stack that was
23 delivered to me Wednesday at my hotel at 5:00 in the
24 afternoon, the first time I'd seen the vast
25 majority. The only documents I'd ever seen before

1 were those attached to the petition. And suddenly,
2 I get this. And what are they? Income tax returns,
3 Form 990s that say Mr. Sullivan is employed by a
4 person who owns, publishes or employed by a
5 newspaper.

6 What else are they? Web pages, it's web
7 pages. A third of this is web pages.

8 Another bunch are documents that don't
9 meet the business exception, they weren't proven up,
10 they weren't authenticated under the Rules of
11 Evidence and you've got a massive custody problem.

12 So -- and no one has addressed from the
13 State the issues of the unconstitutionality of the
14 statute. It's just not enforceable.

15 Now, Mr. Clancy, you asked a series of
16 questions and I thought they were good ones. Do you
17 think the State has an opportunity to right -- to
18 regulate those who earn a living lobbying the
19 Legislature? It's irrelevant to the question. It's
20 irrelevant. It doesn't matter what the witness
21 thinks about that at all, and it really doesn't
22 matter what you or I think about that at all.
23 You're charged solely with the duty of enforcing
24 certain statutes that are enforceable. And if
25 they're unenforceable, you cannot enforce them.

1 It's not your problem that you -- that the statute
2 is badly written. It's not your problem that we
3 find ourselves today without any rules. But you're
4 in a position to do something about it. There is a
5 way to write a constitutionally valid lobby statute.
6 This one wasn't written that way.

7 It is time, Mr. Long, to not be simple,
8 but to understand the reality. If you really want a
9 lobby statute that works, then you have to do the
10 right thing today, today, and say this statute we
11 recognize is unconstitutional. You have a real
12 problem. You have an exception that the United
13 States Supreme Court says invalidates the rest of
14 your statute. Either Mr. Sullivan fits here or your
15 statute's invalid. That's where you are. You
16 have -- it is important to recognize that and to go
17 ask the Legislature to deal with it.

18 Someone suggested, and I can't remember
19 who, that Mr. Sullivan should go back and lobby the
20 Legislature to change its lobby laws. Who was -- do
21 you remember who it was? You.

22 CHAIR CLANCY: Mr. Nixon, I would
23 prefer if you didn't address the Commissioners
24 directly. If you feel the need to refer to them by
25 name, use their title as well.

1 MR. NIXON: All right. Commissioner
2 Long, I guess that was you. But that's not what we
3 do. Courts --

4 COMMISSIONER LONG: Anybody can do
5 it.

6 MR. NIXON: Well, we can get to that
7 in a minute maybe. But Courts do a binary function.
8 It's a one or a zero. It's either constitutional or
9 not constitutional. That's all you get to do. We
10 don't get to rewrite it today. And I want to remind
11 you, Mr. Sullivan didn't pick this fight. Somebody
12 else did. Somebody else filed. And you know why?
13 It's the elephant in the middle of the room. It's
14 because Mr. Sullivan signed a petition along with
15 seven other thousand Texans to say, "Let's have a
16 different Speaker." So the Speaker's Lieutenants
17 filed a complaint in retribution. That's all this
18 case is about. This Commission is being used for
19 political vendetta, not for real complaint. They
20 didn't even bother to read it. They didn't even
21 bother to figure out if it was valid.

22 So here you are today. Here's where you
23 are right now. Here's what the evidence shows.
24 Mr. Keffer, incomplete complaint, "I didn't read it,
25 somebody else wrote it. My political consultant

1 along with the lobby for the trial lawyers."

2 Ms. Truitt, "Not only did I not read it, I
3 read notes from -- I didn't even testify under oath.
4 I read notes from my iPad."

5 And then, you know, by the way, I turned
6 around and did just what this Commission thinks is a
7 real bad idea, filed a complaint and then turned
8 around and said, oh, my opponent is under
9 investigation.

10 And then you have -- then you have
11 Mister -- Mr. Greenhaw who says, "I don't know if I
12 signed my name. I signed my name one time and it
13 went out on all these letters, and I don't know how
14 many went out, about 30. And I -- that's the end of
15 that."

16 Then you have Mr. Bresnen who was Tweeting
17 during his -- during his sequester, and then says,
18 "Oh, yeah, Mr. Greenhaw came over and did a whole
19 bunch of other stuff with me. And no one ever kept
20 records of any of this and I put together a list of
21 who all I sent the letter and I don't have the
22 envelopes it came in. I don't have the envelopes
23 that came in." So you have a trust issue there. So
24 you don't have any evidence. That was their case.

25 So Commissioners, let's end the day right

1 now. Let's end the day right now. I'm urging you
2 to make a decision today, right now, this moment and
3 I'll give you back the -- my two hours that I have
4 left --

5 UNIDENTIFIED SPEAKER: 2:16.

6 MR. NIXON: 2:16. I'll give you back
7 2:16 and we can end this. We can send a message and
8 say there's no evidence and we're not going to be
9 used for political retribution. We're going to
10 follow the law, all of the law, not just the Texas
11 law, but that of the United States Supreme Court,
12 that of the United States Constitution and that of
13 the Texas Constitution.

14 My motion now, dismiss these -- these
15 complaints, find them to be frivolous and sanction
16 those who made them.

17 CHAIR CLANCY: Counsel?

18 MR. STEUSLOFF: In 1954 the U.S.
19 Supreme Court issued an opinion in United States
20 versus Harriss, and Mr. Bresnen previously quoted
21 from that. This was a -- an opinion that looked at
22 the -- looked at certain provisions of the Federal
23 Regulation of Lobbying Act and they specifically
24 addressed whether or not that act was
25 constitutional. And I'll read a portion of the law

1 that was at issue. And this was in Section 307 of
2 the Federal Regulation of Lobbying Act.

3 What it required was, "A person to
4 register" -- I'll -- I'll read this from
5 specifically Section 308. "Any person who shall
6 engage himself for pay or for any consideration for
7 the purpose of attempting to influence the passage
8 or defeat of any legislation by the Congress of the
9 United States shall, before doing anything in
10 furtherance of such object, register with the Clerk
11 of the House of Representatives and the Secretary of
12 State and provide additional information."

13 In Section 307, similarly used the
14 language, "Passage or defeat of any legislation by
15 the Congress of the United States and to influence
16 directly or indirectly the passage or defeat of any
17 legislation by the Congress of the United States."

18 And what the Supreme Court said -- they
19 said, "We now turn to the alleged vagueness of the
20 purpose set forth in 307(A) and m(B)," and they're
21 referring to an earlier case, United States versus
22 Rumley, which involved the interpretation of similar
23 language. "We believe this language should be
24 construed to refer only to lobbying in its commonly
25 accepted sense, to direct communication with members

1 of Congress on pending or proposed federal
2 legislation. The legislative history of the Act
3 makes clear that at the very least Congress sought
4 disclosure of such direct pressures exerted by the
5 lobbyists themselves or through their hirelings or
6 through an artificially stimulated letter campaign."

7 And they have additional language about
8 the history of the Act and what they -- what they
9 state, and this is in Section 2 of the opinion,
10 "Present day legislative complexities are such that
11 individual members of Congress cannot be expected to
12 explore the myriad pressures to which they are
13 regularly subjected, yet full realization of the
14 American ideal of government by elected
15 representatives depends to no small extent on their
16 ability to properly evaluate such pressures.
17 Otherwise, the voice of the people may all too
18 easily be drowned out by the voice of special
19 interests groups seeking favor treatment while
20 masquerading as proponents of the public wheel.
21 This is the evil which the Lobbying Act was designed
22 to help prevent. Toward that end, Congress has not
23 sought to prohibit these pressures. It has merely
24 provided for a modicum of information from those who
25 for hire attempt to influence legislation or who

1 collect or spend funds for that purpose."

2 It only wants to know who is being hired,
3 who is putting up the money and how much. It acted
4 in the same spirit and for a similar purpose in
5 passing the Federal Corrupt Practices Act to
6 maintain the integrity of a basic governmental
7 process. They upheld the Federal Lobby law as it
8 was written which included the provision,
9 influencing.

10 Now -- now, in other circumstances. The
11 U.S. Supreme Court has -- has said that there are
12 problems with the use of the term influence. But
13 that's in the cases of campaign finance disclosure
14 requirements. Even most recently in the case of
15 Citizens United, the U.S. Supreme Court referred to
16 the opinion of U.S. versus Harriss and pointed out
17 that lobby disclosure requirements have been upheld
18 as constitutional.

19 Now, as far as the Texas law is concerned
20 there is an advisory opinion, it's H18 and it was
21 written or adopted by March 13 of 1973 by John Hill
22 the Attorney General of Texas. He was looking at
23 the constitutionality of a House Bill 2 that was
24 currently pending in the Legislature during the '73
25 session. And the language in that statute again

1 used the same references to influencing legislation
2 as it's written today. And they said, and I'm
3 quoting on Paragraph 2 of this opinion, "Basically,
4 House Bill 2 provides in Sections 3 through 5 for
5 registration of those engaged in efforts to
6 influence legislation or administrative action for
7 activities reports by those required to register and
8 for a State Ethics Commission to investigate
9 violations of the Act, render advisory opinions and
10 to advise other state officers of violation.

11 Although the Legislature undoubtedly has the right
12 to so provide for the registration of those engaged
13 and efforts to directly influence legislative or
14 executive action, and to require such registrants to
15 furnish relevant information, the classifications of
16 persons covered and of the information sought must
17 be reasonable so as to not essentially violate the
18 constitution."

19 And they note that, "The path to be taken
20 and much of the ground to be avoided was shown by
21 the Supreme Court of the United States in United
22 States versus Harriss construing the federal law."

23 They go on to say that, "The legislation
24 approved in Harriss was construed by the Court to
25 cover those who solicit, collect or receive money or

1 other things of value to directly influence
2 legislation or who engage agents to do so. In our
3 opinion the regulatory scheme of House Bill 2
4 requiring registration also of those who spend money
5 or other things of value to directly influence
6 legislative or administrative action is equally
7 permissible. In selecting monetary parameters for
8 such regulations the Legislature is invested with
9 broad discretion so long as the selection is
10 reasonable."

11 And they further state that, at least for
12 purposes of vagueness, "Vagueness in the statute is
13 often a failed vice. And while the Courts have
14 sometimes tolerated less precise language and lobby
15 the regulatory legislation than they might otherwise
16 do," citing U.S. versus Harriss, "There are still
17 limits that must be involved."

18 And that opinion goes on to raise some
19 questions about other areas of the law. But those
20 areas were addressed through the legislative process
21 because that was still a bill pending.

22 Ultimately what the Texas Attorney
23 General's opinion was was that there wasn't a
24 problem with the language, there wasn't a problem
25 with the vagueness issue regarding the use of the

1 term influencing legislation in the Texas lobby law.

2 So as far as the -- the objections that
3 this statute is unconstitutional the United States
4 Supreme Court, the Texas Attorney General and
5 numerous other courts around the State, around the
6 country, both in federal and State Courts, have
7 upheld lobby registration laws.

8 With respect to the -- the definition of
9 legislation itself and the lobby law, I would like
10 to point you to Section 305.004, which is up -- or
11 excuse me, 305.002, which is up on that board before
12 you. And it defines legislation as, "A, a bill,
13 resolution, amendment, nomination or other matter
14 pending in either House of the Legislature." But it
15 goes to say, "B, any matter that is or may be the
16 subject of action by either House or by legislative
17 committee including the introduction, consideration,
18 passage, defeat, approval or veto of a matter."

19 The definition of legislation is not
20 confined just to what is pending at the time the
21 communication is made. It applies to any matter
22 that may be before the House -- the House or the
23 Senate.

24 That would include the decision of House
25 members of who they're going to elect on the first

1 day of the session as Speaker of the House. If
2 someone is communicating with Legislators a month
3 before the session begins telling them who to
4 support, who to oppose, who to nominate, that's
5 still lobbying, because that is still a matter that
6 is subject -- it's a matter that may be the subject
7 of action by the House of Representatives.

8 So it doesn't matter for purposes of this
9 case when the individuals whom Empower Texans
10 supported and opposed were nominated. What matters
11 is that there were communications made before the
12 election of the Speaker and that were -- there were
13 actually efforts to influence their votes.

14 Now, regarding scorecards, there's more
15 than just the simple statement that, "We're grading
16 it, and here is your grade."

17 You've seen letters listing Empower
18 Texans' legislative priorities. There are letters
19 advocating for or against Speaker candidates,
20 E-mails telling members how to vote. Those were all
21 made to influence. It's not just the scorecard that
22 we're talking about. And it -- it also doesn't
23 matter whether or not the individual complainants
24 were aware of all of the documents that were at
25 issue in this case. What matters is that they filed

1 the complaint and they had legitimate reasons for
2 doing so at the time. The Commission accepted has
3 jurisdiction over those complaints and so here we
4 are.

5 We have witnesses who have testified as to
6 where they obtained the documents and what the
7 documents are that were presented to you. They've
8 sworn that they were provided in response to Open
9 Records requests. They've sworn that they were
10 received from legislative offices and that they were
11 unopened at the time that -- when Mr. Greenhaw gave
12 them to Mr. Bresnen, they were unopened. And
13 Mr. Bresnen swore that he provided those documents
14 to the Ethics Commission and that they were
15 unaltered.

16 There's plenty of evidence for -- for the
17 Commission to determine that there was a clear chain
18 of custody, that these documents were received from
19 legislators' offices and that Mr. Sullivan made
20 those communications with the intent to influence.
21 It's the province of this Commission to determine
22 just how credible the witnesses are and how much of
23 their testimony to believe. But there's certainly
24 enough testimony from them, from the both of them,
25 to -- to show that -- to the Commission to prove by

1 preponderance of the evidence that these were
2 communications made by Mr. Sullivan to members of
3 the Legislature.

4 Now, regarding the -- the documents that
5 were provided to Mr. Nixon last Wednesday, they were
6 provided as required by Commission statute as well
7 as by order of the Commission that we provide those
8 documents by last Wednesday and that's what we did.
9 And Mr. Nixon had an opportunity to ask the
10 Commission to issue a subpoena to require us to
11 produce those records to him. It even was made
12 available to him at prehearing conferences in these
13 proceedings. He never requested that the Commission
14 do so, never filed a motion.

15 And lastly I would -- I would like to read
16 from Section 305.004 of Government Code providing an
17 exception. And I will read it in full.

18 "A person who -- the following persons are
19 not required to register under this chapter. A
20 person who owns, publishes or is employed by a
21 newspaper or any other regularly published
22 periodical, a radio station, a television station, a
23 wire service or any other bona fide news medium that
24 in the ordinary course of business disseminates
25 news, letters to the editor, editorial or other

1 comment or paid advertisements that directly or
2 indirectly oppose or promote legislation or
3 administrative action, if the person does not engage
4 in further or other activities that require
5 registration under this chapter and does not
6 represent another person in connection with
7 influencing legislation or administrative action."

8 It's not the blanket exception that
9 Mr. Nixon is arguing. The Legislature included a
10 specific provision that said if you're engaging in
11 other activities that require you to register, then
12 you have to register, which is you're engaging in
13 other activities beyond the dissemination of news on
14 behalf of the bone fide news media.

15 The number of E-mails and the letters and
16 the direct -- the direct communication specifically
17 sent to Legislators, not to the general public, not
18 to a mass E-mail list, those were targeted
19 communications specifically sent to Legislators, not
20 news disseminated in the ordinary course of
21 business. It clearly does not fall within that
22 exception. There are plenty of reasons or plenty of
23 evidence in -- in the binders that have been given
24 to you to -- to warrant continuation of this hearing
25 and to justify a finding by preponderance of the

1 evidence that Mr. Sullivan was required to register
2 in 2010 and 2011 and that he failed to do so.

3 I ask that Mr. Nixon's motion be dismissed
4 or refused.

5 MR. NIXON: Briefly. I'm going to
6 make four points.

7 Mr. Steusloff just admitted to you that
8 the word influence is unconstitutionally vague. He
9 said it. He said, well, I agree, sometimes it's
10 been held to be vague. You know what that means?
11 It's vague.

12 He also tried to confuse you a little bit
13 by saying it's constitutional to register lobbyists.
14 We've never said it's not. We don't disagree. You
15 may. The State may.

16 Constitutionally regulate lobbyists. Our
17 argument to you is this statute doesn't do that, not
18 this one; it has problems, big serious ones. And
19 it's important. I tell my kids all the time, "It's
20 okay to have problems. It's not okay to fail to
21 address them."

22 We can't just ignore the problems of our
23 statute.

24 Now, Point No. 3, the Supreme Court case
25 of Harriss, Harriss -- the Court essentially rewrote

1 the statute by interpreting it in a way that they
2 said it was constitutional. But they didn't approve
3 the statute on its face. And don't mistake that.
4 Counsel misspoke or is confused, for the Court in
5 Harriss rewrote the lobby statute that Congress
6 passed regarding itself to make it constitutional,
7 because it was otherwise vague. And the strong
8 dissent in that opinion identified the problems in
9 the majority.

10 Now, Mr. Steusloff identified something
11 that I'm just flabbergasted, and gave you another
12 reason to stand up and say we've got a problem.
13 Legislation is not confined to what's pending before
14 the Legislature.

15 How in the world is a citizen of the State
16 of Texas to know what they can say to their
17 representative and when, if at any time, any comment
18 can be interpreted as trying to influence even that
19 which is not pending?

20 Do you want that to be the law of this
21 state? That's an unreasonable interpretation.
22 That -- I wasn't even going to argue with what the
23 legislation includes. But when it -- when you're
24 told you must consider that which isn't even
25 pending? And there's a huge difference between --

1 there's a huge difference between the Texas statute
2 and the Congressional statute. Congressional
3 statute is very narrowed. Does anybody know what
4 the fee is to pay to a lobbyist in D.C.? It's
5 nothing. You pay no fee. There's no fee to
6 register. And most people don't. It's very
7 narrowly drafted and interpreted and applied.

8 In the State, however, it's a 750-dollar
9 fee to the State of Texas.

10 Now, I'm not going to read this to you,
11 but I'm going to provide everybody one. It's
12 called, "The Citizen Handbook, How The Legislature
13 Works" and it's printed by the Texas Senate and it
14 tells everybody what to do. If you go through it
15 they say, "Meet candidates and ask them about issues
16 of importance to you. Phone district offices, meet
17 with legislative staffs, meet with Legislators in
18 their office. Talk about certain bills. Attend
19 hearings and testify. Telephone, write, send
20 telegrams to your Legislator. Keep the issue before
21 the public with speeches and media coverage. Meet
22 your telephone staff's of Legislators, check on the
23 progress of bills, invite the Legislator to local
24 programs in your area, form a coalition of persons
25 in your area to support issues of mutual concern."

1 It doesn't say to go register. It doesn't
2 say pay a 750-dollar fee to the State of Texas. So
3 what do you got? You've got a bunch of hearsay.
4 You've got two people who were upset and their
5 political consultants told them, "You ought to file
6 a complaint." One person used it in her campaign.
7 You don't have any hard evidence. You have hearsay.
8 And your staff doesn't even know how to get around a
9 hearsay objection. It's real simple, but they
10 didn't do that. They spent 28 months of sending us
11 crazy interrogatories. The interrogatories were so
12 bad -- we tried to answer them, and we sent them tax
13 records and stuff, but they asked for our bank
14 accounts. They asked for the signature cards. They
15 asked for things that this Commission doesn't have
16 the authority to investigate. They weren't trying
17 to be reasonable. They, instead, were trying to
18 make a point. They were being used by the people
19 who filed the complaints to exact a political
20 vendetta.

21 You don't have evidence of a violation of
22 a constitutional statute. I urge you, again,
23 dismiss the complaint now, find it to be frivolous
24 and sanction those who brought it.

25 CHAIR CLANCY: Commission declines to

1 grant your motion at this time. You may call your
2 first witness.

3 MR. NIXON: Mr. Chairman, I'd like to
4 have a vote of the Commission before that ruling is
5 decided by you alone.

6 CHAIR CLANCY: Sure. We -- we
7 addressed that.

8 MR. NIXON: You addressed it already
9 or --

10 CHAIR CLANCY: No, no, no.

11 MR. NIXON: Okay.

12 CHAIR CLANCY: We talked about that
13 in one of our prior matters. We need a motion
14 regarding support in the rule of the Chair.

15 COMMISSIONER HOBBY: Submitted.

16 COMMISSIONER HARRISON: Second.

17 COMMISSIONER AKIN: Second.

18 CHAIR CLANCY: All in favor of
19 supporting the rule of the Chair, say aye. Anyone
20 opposed? The ruling stands.

21 You may call your first witness.

22 RESPONDENT'S CASE IN CHIEF

23 MR. NIXON: I call Mark Lisheron.
24 We're going to take a moment to connect the
25 projector.

1 CHAIR CLANCY: Sure.

2 MR. STEUSLOFF: We object to the
3 calling of Mark Lisheron as a witness.

4 CHAIR CLANCY: I understand your
5 objection, Counsel. And I'm going to let him
6 testify without ruling on your objection at this
7 moment.

8 MR. STEUSLOFF: Would I be able to --
9 to voir dire Mr. Lisheron?

10 CHAIR CLANCY: Sure. He's taking him
11 on voir dire.

12 MR. NIXON: Before I ask him his
13 name?

14 CHAIR CLANCY: Yeah.

15 MR. NIXON: Okay. If that's the way
16 you want to do it. Mr. Chairman, we've -- we have
17 considered and I want to -- to tell you that I think
18 it's okay -- okay if Ms. Truitt is released. I
19 don't anticipate calling her this afternoon.

20 CHAIR CLANCY: Counsel?

21 MR. STEUSLOFF: I have no objection
22 to releasing her.

23 CHAIR CLANCY: Okay. If you would
24 let the witness know, Representative Truitt, that
25 she is excused. Counsel.

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MARK LISHERON,
having been duly sworn, testified as follows:
VOIR DIRE EXAMINATION
BY MR. STEUSLOFF:
Q Good afternoon, Mr. Lisheron.
A Good afternoon.
Q Can you state your name --
A I'm sorry. Can you -- can you hear me?
Q Yes, I can hear you.
Can you please state your name for the
record?
A Mark Lisheron.
Q And what is your occupation?
A I'm a deputy editor watchdog.org.
Q So watchdog.org, that's your current
employer?
A Yes.
Q And what is watchdog.org?
A It's an online -- a national online news
organization.
Q What -- where does watchdog.org operate
out of? Is it in Texas or --
A Our administrative offices are in --
CHAIR CLANCY: Counsel, let's focus
on his qualifications.

1 MR. STEUSLOFF: Okay.

2 CHAIR CLANCY: Mr. Nixon can get his
3 background and information.

4 THE WITNESS: So you don't want me to
5 answer that?

6 Q (By Mr. Steusloff) And so what is your
7 current title at watch dog.org?

8 A Deputy Editor.

9 Q So what do you do for watchdog.org?

10 A As Deputy Editor, I -- I coordinate a
11 staff. We have bureaus in about two dozen states
12 around the country. We also have a national staff.
13 I work with the top editor. I'm second in command.
14 The two of us direct the -- the editorial mission of
15 watchdog.org.

16 Q Do you have any academic degrees?

17 A Yes. I've got two degrees.

18 Q And -- and what are those?

19 A Journalism and history.

20 Q Is that a Bachelor's degree, Bachelor --

21 A Bachelor of Arts.

22 Q Bachelor of Arts. And what universities
23 are those from?

24 A The University of Wisconsin, Madison.

25 Q And that's for both?

1 A I'm sorry?

2 Q For both, both degrees?

3 A Yes.

4 Q Okay. Are those -- are those degrees, are
5 they specialized or is there any specific fields?

6 A No.

7 Q I mean, aside from no specializations, no
8 area of specializations in your degree?

9 A No.

10 Q Okay. What sort of training have you had
11 in the area of news and journalism?

12 A I've spent 34 years in the news -- in the
13 news business.

14 Q Writing as a journalist or in what
15 capacities?

16 A As a reporter and as an editor.

17 Q And for how long were you a reporter?

18 A 30 years.

19 Q And so have you been -- have you been an
20 editor for four years or --

21 A Yes.

22 Q Yes?

23 At -- at watchdog.org or --

24 A Yes.

25 Q Okay. Is there any sort of a

1 certification, a board certification for journalists
2 or -- or editors?

3 A No.

4 Q There's not? Okay.

5 A No.

6 Q So what was your -- who was your employer
7 before you were employed for -- by watchdog.org?

8 A Immediately before?

9 Q Yes.

10 I mean, could you -- could you
11 chronologically go back?

12 Who was your immediate employer prior to
13 watchdog.org?

14 A The Austin American Statesman.

15 Q Okay.

16 A Newspaper.

17 Q And how long were you employed at the
18 Austin American Statesman?

19 A Ten years.

20 Q And where were you employed before the
21 Austin American Statesman?

22 A The Milwaukee Journal Sentinel.

23 Q How long were you employed for the
24 Sentinel?

25 A It was the Milwaukee Journal when I joined

1 it and then Milwaukee Journal Sentinel, and I was
2 there for 14 years.

3 Q Do you teach or lecture in the areas of
4 journalism or in the journalistic field?

5 A I have been a guest lecturer for the past
6 eight years, roughly eight years at the University
7 of Texas both in their Schools of Journalism and the
8 School of Law.

9 I'm currently teaching a three-credit
10 journalism course, an online course, through the
11 University of California, Irvine.

12 Q And as guest lecturer, what were the --
13 what were the topics that you lectured on?

14 A A variety of media topics. In journalism
15 classes, mostly techniques of reporting, editing,
16 ethical issues involving journalism.

17 On the -- on the law school side how --
18 how media interacts with the law and how do -- I --
19 I teach a human rights course. And -- or guest
20 lecturer and talk about getting human rights issues
21 into the media.

22 Q Have you lectured about the field or the
23 practice of media in general, like of what a news
24 organization is?

25 A Yes.

1 Q And -- and was that for -- at the school
2 of journalism at -- at -- at the University of
3 Texas? Is that --

4 A In -- in all -- in all of those capacities
5 that I spoke of.

6 Q Okay. Do you belong to any professional
7 societies or organizations?

8 A Yes.

9 Q And what are they?

10 A I'm on a Board of Directors of the Freedom
11 of Information Foundation of Texas.

12 Q Are there others?

13 A Not journalism-related.

14 Q Not related to journalism. Okay.

15 Do you have any publications in the field
16 of journalism?

17 A Beyond --

18 Q I'm sorry. I should rephrase that.

19 Publications, I mean like academic
20 journals or professional journals, not -- not news
21 stories or news articles.

22 A Well, if I'm -- well, let me -- I'll just
23 say it. For the past 18 years I've been a senior
24 contributing writer for American Journalism Review,
25 which is one of the top two or three journalism

1 periodicals in the field. I've been doing media
2 analysis both newspapers, new media, analysis and
3 critique, criticism of -- of the media industry.

4 Q And has that been for the American
5 Journalistic Review?

6 A It's American Journalism Review.

7 Q Okay. Have you provided testimony in any
8 Court proceedings before?

9 A No.

10 Q So you've never testified as an expert
11 witness before?

12 A No.

13 Q Have you ever consulted for anyone
14 regarding -- regarding the field of journalism or
15 news?

16 A No.

17 Q Did you conduct any examination of -- of
18 documents in preparing for this case?

19 A No.

20 Q So you didn't look at Empower Texans'
21 website?

22 A I've looked at Empower Texans' website
23 many, many times.

24 Q But in preparation for your expert
25 testimony today did you review --

1 A No more or less than the number of times
2 I've looked at Empower Texans' website. And I -- I
3 would do that normally in my field.

4 Q So in -- in preparing for your testimony,
5 what -- what did you review today or what did you
6 review in preparation for your testimony today?

7 A I did -- I did talk a bit about the media
8 exception and -- and looked at that statute, and I
9 did discuss that with -- with Mr. Sullivan's
10 attorneys.

11 Q So you looked at this -- at the particular
12 provision of law that Mr. Nixon is stating exempts
13 Mr. Sullivan?

14 A Yes.

15 Q What else did you look at?

16 A I -- I can't think of anything else.

17 Q So did -- did you look at -- at
18 Mr. Sullivan's publications or his writings or his
19 articles?

20 A Other than what I've seen on Empower
21 Texans. And Mr. Sullivan also writes editorials and
22 hot bed pieces that appear in other places. Those
23 are the only -- the -- those are the only
24 publications I can speak to.

25 Q So on Empower Texans' website what exactly

1 did you -- did you review for purposes of -- of your
2 opinion?

3 A Well, not for my opinion. I go to -- I
4 regularly go to Empower Texans' website, because
5 as -- as one of the -- I consider it one of the top
6 conservative news websites in the State of Texas.
7 And I don't think you can know -- really know
8 anything about what's going on with conservative
9 politics in the State of Texas if you don't at least
10 consult Empower Texans.

11 Q Did you review any of Empower Texans'
12 organizational documents?

13 A No.

14 Q Did you review any of Empower Texans'
15 internal documents?

16 A I --

17 Q I mean, like meeting minutes?

18 A I -- no, I don't think I would have been
19 privy to those.

20 Q Okay. Did you look at any of the
21 documents that are issue in this case, any of the
22 exhibits?

23 A No. I was asked for my opinion as a media
24 expert.

25 Q Did you speak to Mr. Sullivan at all

1 about -- about your testimony?

2 A No.

3 Q So you didn't ask him about what he does
4 for Empower Texans or what he writes?

5 A In my capacity as a reporter in the past
6 I've spoken to Mr. Sullivan about what he does with
7 Empower Texans. But beyond journalism questions,
8 no.

9 Q And in the past, I mean, what did
10 Mr. Sullivan tell you when you have spoken with him
11 in the past?

12 A Well, beyond him being an advocate and
13 being a -- what I would consider a -- a news
14 gatherer, an advocate, that's pretty much -- that's
15 pretty much the confines of that discussion.

16 Q Okay. Have you prepared any sort of
17 report based on your testimony today or your
18 anticipated testimony?

19 A No. And I did not want to give up my
20 iPad.

21 Q Did you take any notes from -- from -- in
22 the process of preparing your testimony?

23 A I did not want those confiscated, either.
24 I did not take a note --

25 Q Oh, documents --

1 A Sorry, I didn't mean to be flip. No, not
2 a note.

3 Q Okay.

4 MR. STEUSLOFF: Well, I -- I don't
5 have additional questions. But I would like to
6 object to his providing testimony. If he's going to
7 be providing an expert opinion as to Empower Texans
8 being a news organization, he has to do more than
9 just look at their website. I mean, he hasn't seen
10 the documents in this case. He doesn't know the
11 specific communications that are at issue. I don't
12 think he has enough of a -- of a basis to just say
13 that Empower Texans is a news organization when --
14 when the only thing that he's done is looked at
15 their website.

16 CHAIR CLANCY: That goes to the
17 weight of his testimony, not the admissibility.
18 Your objection's overruled, Counsel.

19 DIRECT EXAMINATION

20 BY MR. NIXON:

21 Q Mr. Lisheron, thank you very much for your
22 background. Let me fill in a couple places. The
23 American Journalism Review, is that associated with
24 the University?

25 A University of Maryland.

1 Q Okay. And it's one of the top two or
2 three media analysis and critical journals in
3 America?

4 A Yes.

5 Q All right. Have you done any writing
6 that -- that -- for them that was grant-based?

7 A Yes.

8 Q What was it?

9 A We embarked on a series of stories - there
10 were three of them - and I was assigned one. The
11 purpose of my story -- in fact, the purpose of all
12 three stories was to investigate the result of what
13 I call legacy media leaving State Houses across the
14 country. And my specific role in the series was to
15 talk about how new media, mostly online or digital
16 media, was beginning to take the place of and
17 supplement the -- the coverage at State Houses,
18 because we're in a kind of critical state with
19 newspapers losing staff, television stations pulling
20 out of -- out of State Houses. And that was my --
21 it was an 8,000-word piece, rather in-depth.

22 Q Is the in-depth study of online
23 journalists only reporting about State House news?

24 A Not online journalism only --

25 Q Right.

1 A -- but primarily about those success
2 stories in new media.

3 Q All right. Let's back up a little bit.
4 You graduated from University of Wisconsin
5 Madison, and then -- then what did you do?

6 A I started -- my first job was stringing,
7 which would be freelance work, with the Capitol
8 Times in Madison, Wisconsin. I --

9 Q What did you do next?

10 A From there I took my first daily newspaper
11 job at the Tyler Morning Telegraph in Tyler, Texas,
12 in 1980. I was there for two years. I won a couple
13 of awards there, so I got stolen away by the
14 prestigious Beaumont Enterprise.

15 I was there until 1984. Wanted to make my
16 way back to -- closer to the Milwaukee Journal,
17 which was a job that I wanted. I took a job with
18 Waukesha Freeman, which is just outside of
19 Milwaukee, did that for two years. Started with
20 Milwaukee Journal in 1986 and was there until the
21 end of 1999 when I went to work for the Austin
22 American Statesman.

23 Q Tell us some of the things you did for the
24 Austin American Statesman.

25 A I -- I was hired -- I was hired to do

1 large magazine-style takeouts when I was hired. By
2 takeout, I mean a big picture, 2,000, 3,000-word
3 stories that were designed for the front page.

4 Q By the way, how -- how did you end up
5 coming from Milwaukee back to Texas?

6 A I got a cold call from one of the editors
7 at the Statesman who had seen some of my magazine
8 work in American Journalism Review, and they were
9 interested in hiring someone who could write
10 magazine-style stories for the paper.

11 Q Okay. So let's get back to what you were
12 doing for the Statesman. How long did you do the
13 magazine-style stories?

14 A About four years.

15 After that I was asked by one of our
16 editors -- we were reviving our investigative team.
17 And I was anchored -- asked to anchor a team of four
18 investigative reporters. I did that for
19 three-and-a-half years, I think.

20 Q Okay. And then in 2010 you went to work
21 for watchdog.org?

22 A Yes. Well, it was -- it's actually Texas
23 Watchdog. It was part of the Watchdog network. I
24 went to work as the -- their first Austin Bureau
25 Chief. I was basically covering state government

1 for them for the first time.

2 Q Only digital?

3 A Yes.

4 Q No print?

5 A No print.

6 Q And then now you're -- you're the Deputy
7 Editor of all of Watchdog?

8 A I was a national reporter for a brief time
9 and then asked to step up to Deputy Editor.

10 Q You mentioned you won some awards while
11 with the Beaumont Journal. Those aren't the only
12 awards you won, are they?

13 A No. And I'm not going to pretend for
14 anyone in the room that I will remember all of
15 these, but to my best recollection would you like me
16 to tick them off?

17 Q Let's talk about AP and UPI awards for
18 now.

19 A Okay. I may be underestimating, but I can
20 think of at least six Associated Press first place
21 writing awards and at least two United Press
22 international awards.

23 Q Now, my understanding is while you were
24 with the Austin American Statesman you were
25 nominated on three different occasions for a

1 Pulitzer Prize?

2 A That's true.

3 Q All right. But those aren't -- that isn't
4 it. Have you won any other awards?

5 A Yes. I won the Stanley Walker Award of --
6 which is presented by the Texas Institute of
7 Letters. It's their top journalism award.

8 The -- and in 2011 I won the Society of
9 Professional Journalists Award. They gave out a
10 First Amended Award for the series of stories I did
11 on how the stimulus played out in -- in Texas.

12 Q All right. Now, you said you've been to
13 the Empower Texans' web page?

14 A Yes, I have.

15 Q Let's -- it's warming up.

16 MR. TRAINOR: I hope you can fit it
17 in?

18 MR. NIXON: Two hours?

19 MR. TRAINOR: Two hours.

20 MR. NIXON: I don't know if it's good
21 news or bad news, Mr. Chairman, but I've been told I
22 have two hours left. I still have half my time.

23 CHAIR CLANCY: Oh, that's good news.

24 Q (By Mr. Nixon) Okay. Are you able to see
25 the screen?

1 A Yes.

2 Q All right. Do you know what that is?

3 A It's the Empower Texans' website.

4 Q This is the one you've been going to for
5 years?

6 A Yes.

7 Q What sections do you go to?

8 A I almost always news -- well, primarily
9 news. Who Represents Me, Scorecard. And that would
10 be pretty much it. I look mostly for news and
11 commentary.

12 Q Do you find news and commentary under
13 news?

14 A Yes.

15 Q Let's quickly go to scorecard. Have you
16 been there before?

17 A Yes.

18 Q Scroll down. I want to make note, have
19 you seen this statement, "Lawmakers and their
20 offices are notified in advance of TFR's position on
21 the issues graded and prior to votes taken on the
22 floor"?

23 A Yes.

24 Q Is that reporting?

25 A Absolutely. It's -- your -- you're

1 offering information to the public, and I consider
2 it a public service to have -- to lay out in advance
3 of how -- how you're going to grade Legislators.

4 Q Is this the only scorecard that you go to
5 or have seen?

6 A Well, no. Many advocacy organizations use
7 scorecards, but so do news sites. The Texas Tribune
8 does the scorecards.

9 Q Is this the Texas Tribune scorecard?

10 A One of them. They also -- they also
11 offer -- during the legislative session they offer
12 the public, the reading public, a chance to make
13 their own scorecard. And they do the same thing.
14 They tell you in advance what -- what you'll be
15 graded on.

16 And so both the professionals and the
17 public on Texas Tribune offers scorecards.

18 Q Let's go back up to the top.

19 Is there any -- any description on how
20 these votes were tabulated or done here?

21 A No, not -- well, I mean, not that I can
22 see.

23 Q All right. Who else does scorecarding in
24 Texas?

25 A Not -- not a graded scorecard, but the one

1 I'm most familiar with is Texas Monthly, the --

2 Q Let's take a look at that. They do Top
3 Ten and --

4 A Best and Worst, yeah.

5 Q -- Best and Worst. Do you consider that a
6 scorecard?

7 A Absolutely. And I believe Paul Burka, who
8 does it, also lays out his criteria for why he
9 voted -- or why he put one on the best list or one
10 on the worst list.

11 Q Let's go to the watchdog.org web page. Is
12 that your web page?

13 A Yes.

14 Q That looks remarkable [sic] like the
15 Empower Texans' web page, doesn't it?

16 A Yes.

17 Q Home, states, national news, video,
18 watchblog, same kind of information, but yours is on
19 a more national basis and can do many states.
20 Right?

21 A Yes.

22 Q All right.

23 A Primarily news and commentary.

24 Q Now, is this new media? Is what you're
25 doing, is that what we hear is the term new media?

1 A Yeah, new media. If I can go on, new
2 media is --

3 Q Tell us what is new media.

4 A Well, it's kind of a catch-all phrase for
5 media that sprung up since the advent of the
6 Internet. And the reasons are myriad for why
7 websites have sprung up. Their -- for example, when
8 I did my -- my series on websites helping out the
9 coverage of the State House, there are literally
10 hundreds of ex-newspaper people who started their
11 own blogs based on original reporting without even
12 taking any pay. I would consider that new media.

13 There's -- there's also -- not unlike
14 the -- I spent a six-month stint on the Editorial
15 Board at the Austin American Statesman. Many of the
16 new media sites take original reporting like
17 Mr. Sullivan does, take original reporting and use
18 it as an instrument to advocate.

19 I did -- I did exactly the same thing when
20 I would interview Legislators for editorials that I
21 wrote advocating for a position or for a vote on a
22 bill on the Editorial Board at the Austin American
23 Statesman.

24 Q Well, I note that our -- our exemption
25 here -- and you and I had a chance to go over it.

1 But it was written in 1992. That's when it passed,
2 the exemption -- the media exemption of the Texas
3 statutes passed in 1992. Was the Internet something
4 utilized at that time?

5 A No.

6 Q Some people talk about old media versus
7 new media. What is your thought on that?

8 A Well, I think one of the reasons why
9 new -- it's easy to embrace new media is that -- it
10 does so many more things than -- and I've spent a
11 career in old media. And I think all of the
12 boundaries have been pushed and I think -- I think
13 people are far more informed with new media than old
14 media. And I might also point out that new media
15 looks a heck of a lot like old, old media. I liken
16 some of the more informed blogs to like the
17 pamphleteers like a Tom Paine during the
18 revolutionary period or there were a whole body of
19 left wing and socialist journalists at the turn of
20 the century like the Muck Rangers, whose sole
21 purpose of gathering news was to change policies, to
22 change minds, to change legislation. And they were
23 activist journalists. I think it's only recently in
24 our history where you've tried to compartmentalize
25 journalism in a certain way. That has been blown up

1 by the new media.

2 Q So what you're saying is you're sort of
3 going back to the days when news and advocacy were
4 combined?

5 A Combined sometimes, but not necessarily
6 always. And I think that's why some people wrestle
7 with the issue.

8 Q Are you familiar with the term yellow
9 journalism?

10 A Yes.

11 Q What does that mean?

12 A Well, yellow or sensational journalism?

13 Q Yes.

14 A Around at the same time roughly as the
15 Muck Rangers, you had -- you had corporate
16 journalists like Hearst who sold newspapers by
17 making stories and covering events in as sensational
18 a way as possible. Some people would say yellow
19 journalism was irresponsible, but it sold a lot of
20 papers.

21 Q Have you been to the Daily Kos website?

22 A Yes.

23 Q Is there any real difference between
24 Empower Texans and the Daily Kos?

25 A Yes, there's a big difference.

1 Q What is that?

2 A Mr. Sullivan's website is very
3 conservative, and Daily Kos just is advocacy based,
4 but it's a left wing website.

5 Q But other than contents, one's from the
6 right, one's from the left?

7 A Yes. They're both -- they're both
8 websites that use journalism to advocate.

9 Q Otherwise, they're the same?

10 A Yes.

11 Q Okay. All right. Now, let's get to the
12 heart of this. Based upon your 34 years of
13 experience as a journalist in media, as a scholar,
14 as an editor, as an award-winning writer, as an
15 instructor at UC Irvine and at the University of
16 Texas, do you have an opinion on whether or not
17 Empower Texans is a bona fide news medium?

18 A Yes.

19 Q What is your opinion?

20 A Empower Texans is a bona fide news medium.

21 MR. NIXON: Pass the witness.

22 CHAIR CLANCY: Counsel?

23 CROSS-EXAMINATION

24 BY MR. STEUSLOFF:

25 Q I'll wait a moment.

1 A Sorry. I got very dry.

2 Q It's all right. I understand.

3 So, Mr. Lisheron, were you paid for your
4 testimony today?

5 A I'm glad you asked. Yes, I was offered a
6 fee, but I've made an arrangement to give that fee
7 as a donation to the Freedom of Information
8 Foundation in Texas, which I mentioned I was a Board
9 member.

10 Q So you -- so it was offered to you, and
11 you -- you had the discretion to decide where it
12 would be donated?

13 A I -- no. I asked the attorneys who called
14 me in as an expert witness to make a donation to the
15 Freedom of Information Foundation of Texas on my
16 behalf.

17 Q Okay. And what was the amount of that
18 donation?

19 A It -- I'm -- I'm still on the stand, so I
20 think the fee is based on how much time I've been
21 spending here. The fee wasn't settled.

22 Q So is it based on an hourly rate of how
23 long your testimony lasts or --

24 A It was not discussed.

25 Q Okay. So it's an unspecified -- it would

1 be an unspecified donation?

2 A We didn't talk about it, because I -- I
3 wanted it to be a donation and not a payment to me.
4 I -- I assume that we could talk about the details
5 later.

6 Q Okay. So it's going to be decided, in
7 other words, after your testimony today?

8 A The amount.

9 Q The amount, correct.

10 A Yes.

11 Q Okay. Do you know Mr. Sullivan
12 personally?

13 A I would say more professionally. I've --
14 we've never socialized. I like Mr. Sullivan, but I
15 can't really say that we're friends.

16 Q How long have you been aware of
17 Mr. Sullivan?

18 A Well, I've been in Austin since 2000, and
19 I -- Mr. Sullivan's been on the scene for most, if
20 not all, of that time.

21 Q Were you following the Empower Texans'
22 website in -- in 2010?

23 A Not following it. Again, going to it.
24 I'm not -- I'm not slavish, but yeah, I follow the
25 issues.

1 Q And so you were visiting their website in
2 2010?

3 A I'm not -- I'm not honestly sure when --
4 when the website went up. I've -- I've been going
5 to Empower Texans from the time that the website
6 existed, yes, but if you ask me when they -- when
7 the site went up, I couldn't tell you.

8 Q So in 2010 you don't know what the website
9 appeared to be, how their website appeared, what it
10 looked like, what was on it, what it's
11 content was -- let me rephrase.

12 In 2010, what was posted on Empower
13 Texans' website?

14 A I don't believe it's significantly
15 different than what's on their website today.

16 Q Do you know what sort of information was
17 posted specifically, what sort of articles was
18 posted?

19 A I would assume that it's -- it was a mix
20 of news and commentary, pretty much the way it is
21 today. Mr. Sullivan's made no bones about
22 advocating, but -- but I -- that's always been a --
23 a news component as well as a commentary component.

24 Q Were you visiting their website in 2011?

25 A Yes.

1 Q How often were you visiting their website
2 in 2010 and 2011?

3 A Specifically? Maybe once a week. I --
4 that will be my best guess.

5 Q And do you know what was posted to their
6 website in 2011?

7 A I'll provide the same answer. I would
8 say -- I would assume it -- I can't answer about
9 specific stories or specific issues in that year.
10 I'm assuming that it would be a mix of news and
11 commentary.

12 Q Okay. But you don't know for sure?

13 A Well, yes, I do know for sure.

14 Q Okay.

15 A That it was a mix of news and commentary,
16 but I can't be more specific than that.

17 Q What's the difference between news and
18 commentary?

19 A That's a good question.

20 News -- news is fact-based, events,
21 observation.

22 Commentary is the use of that information
23 to make a point.

24 Q To make what sort of point? Do you mean
25 like a --

1 A Whatever your point is.

2 Q Okay. Like a political point?

3 A Yes.

4 Q Advocacy?

5 A Yes.

6 Q Lobbying?

7 A I can't speak to a -- a point about
8 lobbying. It's -- lobbying -- I'm not a -- I'm not
9 an expert about lobby law or lobbying.

10 Q Are you aware of the -- of the exception
11 that Mr. Nixon has addressed and the exception in
12 the lobby law for someone who's employed by a bona
13 fide news organization?

14 A I believe I testified that Mr. Nixon and I
15 talked about that --

16 Q Okay. Do you --

17 A -- about that exception and we read it
18 over together.

19 Q And do you know how long that exception
20 has been in the law?

21 A I believe it's 1992 or '93.

22 Q Okay.

23 A I'm not sure. I am not sure.

24 Q Okay. Would you be surprised if there was
25 a -- a bill written in 1975 and adopted in 1975 that

1 included the language -- "The following persons are
2 not required to register under the provisions of
3 this act. Persons who own, publish or are employed
4 by a newspaper or other regularly-published
5 periodical or a radio station, television station,
6 wire service or other bona fide news medium which in
7 the ordinary course of business disseminates news,
8 letters to the editors, editorial or other comment
9 or paid advertisements which directly or indirectly
10 oppose or promote legislation if such person's
11 engaged in no further or other activities and
12 represent no other persons in connection with
13 influencing legislation."

14 Would it surprise you if that existed in
15 the law in 1975?

16 MR. NIXON: This witness' surprise or
17 lack thereof is not relevant.

18 CHAIR CLANCY: I'll allow it.

19 A I guess I -- I guess I wouldn't be
20 surprised. I don't -- I -- I wouldn't be surprised.

21 Q (By Mr. Steusloff) Okay. So you said
22 earlier that you were taking a position on a bill
23 when you were with the Austin American Statesman and
24 you published an editorial. Is that right? Or did
25 I mischaracterize what you said?

1 A Yes.

2 Q Okay.

3 A It -- I -- I published -- I didn't
4 publish. Our newspaper published, but I -- I was
5 the author of dozens of editorials. And I believe
6 in my testimony what I was -- or at least what I was
7 trying to convey was that in the act of producing
8 those editorials, I would do original reporting and
9 I would marshal original reporting to make a point.
10 And often it would be to advocate for a policy
11 change. It could be to take a legislator to task
12 for something that I believe they did or didn't
13 don't, but the -- but the point was it was the
14 gathering of -- it was the gathering of facts to
15 marshal an argument in the form of a written
16 editorial. And I did that many times.

17 Q And were those editorials opposing or
18 supporting legislation?

19 A Yes.

20 Q And how were those editorials published?

21 A I -- published in the -- they appeared in
22 the editorial section of our newspaper. Did I
23 answer that correct?

24 Q Yes, you did -- well, you answered it.

25 So did you -- did you send copies of that

1 editorial to Legislators or any of those editorials
2 to Legislators?

3 A Well, by the time I was on the Editorial
4 Board, I was able to send links. Very often I would
5 send -- I think it's common if you do an editorial
6 that you're proud of, you would send it to anybody
7 that you wanted to see that editorial. And as far
8 as I was concerned the -- the -- the wider the
9 distribution of my editorial, the more impact it
10 would have. And, yes, Legislators got my
11 editorials.

12 Q And how did -- so did you send them to
13 Legislators personally or how -- how were they sent
14 to Legislators?

15 A We would usually send them in E-mail form
16 with a link to the editorial.

17 Q So you would send it to them as an E-mail,
18 just an E-mail to their House E-mail address or
19 their -- or their House or Senate E-mail address?

20 A Yes, or -- or to staff, if I didn't have a
21 personal E-mail address -- I mean, specific to the
22 House or Senate member.

23 Q Okay.

24 UNIDENTIFIED SPEAKER: 37 minutes.

25 MR. STEUSLOFF: Just a moment.

1 Q (By Mr. Steusloff) Mr. Lisheron, do you
2 recall an article written for Texas Watchdog April 4
3 of 2012 titled, "Republican in-fighting or ethics
4 problem. Conservative activist failed to register
5 as lobbyist as required according to ethics
6 complaint"?

7 A No, I don't.

8 Q Written by you?

9 A Oh. Yes.

10 Q Okay. Let me -- let me pull that up just
11 for one moment, please. Okay. I'll -- I'll let you
12 look at this. Sorry.

13 MR. MOORE: Do you have copies? Do
14 you have copies?

15 MR. STEUSLOFF: Here's a copy.

16 Q (By Mr. Steusloff) So do you recall
17 writing this article --

18 A I do.

19 Q -- Mr. Lisheron?

20 A Yes.

21 Q And it's addressing these complaints that
22 were filed with the Commission. Is that right?

23 A Yes.

24 Q And in this article you refer to
25 Mr. Sullivan as a conservative activist. Is that

1 correct?

2 A Yes.

3 Q But you didn't refer to him as a -- as a
4 journalist?

5 A No.

6 Q Do you recall any discussions that you had
7 with Mr. Sullivan at that time regarding this
8 article -- this -- this particular article?

9 A Having seen the story, I -- I recall the
10 conversation about the political motivation.

11 Q Did Mr. Sullivan represent to you at that
12 time that he was a journalist or a reporter?

13 A We've never had that discussion.

14 Q Okay.

15 A By the way I don't refer to myself as a
16 journalist, either.

17 Q How do you refer to yourself?

18 A As an editor.

19 Q Okay. I would like to refer you to
20 documents that are in that large notebook that's in
21 front of you, if you could --

22 COMMISSIONER AKIN: Right there.

23 Q (By Mr. Steusloff) -- big black binder.
24 And if you could please turn to Exhibit 13 in that
25 notebook.

1 COMMISSIONER AKIN: It's this one.

2 Q (By Mr. Steusloff) It's the large one.

3 Are you at Tab 13?

4 A Yes.

5 Q Okay. Could you please turn to Page 296
6 that's behind that tab. And does that article
7 appear to be -- or excuse me, what does that
8 document appear to be?

9 A It appears to be a memo from Michael Quinn
10 Sullivan to Honorable Members of the Texas House
11 with the subject, "Vote on HB 5."

12 Q Okay. And can you read the first two
13 paragraphs in that document?

14 A "On the House calendar for today is House
15 Bill 5 allowing Texas to enter the healthcare
16 compact. The healthcare compact empowers Texans,
17 not Washington D.C. bureaucrats, with responsibility
18 and authority to regulate Texas' healthcare. As you
19 know, we support House Bill 5 and will positively
20 score it on the Fiscal Responsibility Index. We
21 encourage members of the Texas House to vote for the
22 healthcare compact at HB 5. You can learn more
23 about the compact at <http://www.healthcarecompact.org>.

24 Q Okay. So Mr. Lisher, is that news?

25 A Yes.

1 Q In what way is that news?

2 A There was a -- in many ways. You have
3 a -- a bill that's coming up before the House, House
4 Bill 5. We're talking about healthcare. I would
5 assume that this is of great interest to the public.

6 Q Was this E-mail sent to the public?

7 A It was sent to members of the Texas House.

8 Q Okay.

9 A I'm -- I'm assuming, based on what it says
10 here.

11 Q Okay. So if it was sent to --
12 specifically to members of the Texas House, in your
13 opinion a -- a specific directive that Legislators
14 vote in a particular way on a particular bill is
15 news?

16 A You mean the act of asking that -- asking
17 for that vote?

18 Q I mean, the E-mail itself.

19 A Not unless -- not unless the E-mail was
20 given to a member of the media who could report on
21 that.

22 Q But -- but the E-mail itself, is it a news
23 story?

24 A The E-mail itself, no.

25 Q Is it -- is it a periodical?

1 A I'm not sure I understand the question.

2 Q I mean, the E-mail -- the E-mail itself,
3 is it a periodical, is it a news story or is it an
4 editorial?

5 A None of the above.

6 Q Okay.

7 CHAIR CLANCY: Counselor, you have 30
8 minutes left.

9 Q (By Mr. Steusloff) Can you look at
10 Page 297, please. It's the very next page.

11 A Yes.

12 Q And what does that document appear to be?

13 A It appears to be similar to the one I just
14 read.

15 Q Can you read the first two paragraphs in
16 that document?

17 A "As with other fiscal matters, legislation
18 votes on amendments to Senate Bills 1 and 2 today
19 are subject to scoring on the Fiscal Responsibility
20 Index, based on our general principles and the
21 legislative priorities noted at the start of the
22 regular session. There will be a number of very
23 good amendments by your colleagues today that we
24 encourage you to support reducing tax burdens,
25 increasing transparency and protecting taxpayers."

1 Q Is that document a news story?

2 A The document itself is not a news story.

3 Q Is it an editorial?

4 A No.

5 Q And why is it not a news story or an
6 editorial?

7 A Because it's not -- it's delivered to
8 members of the Texas House, and it's not delivered
9 to the public.

10 Q So if it were delivered to the public then
11 it could be a news story or an editorial?

12 A Well, I think I can answer it this way.
13 These -- these positions in these E-mails -- both of
14 the E-mails that I read are positions that I've seen
15 on his website about both of these issues. So I
16 believe that he's made those positions public
17 treating them as a news story. But you're asking me
18 to answer a question about these documents. And I
19 can only tell you that they're -- they appear to be
20 E-mails to me.

21 Q But they're different, they're not posted
22 on Empower Texans' website to your knowledge? At
23 least -- at least they don't appear to be published
24 on Empower Texans' website, those particular
25 documents?

1 A Not in that format.

2 Q Can you turn to Exhibit 16, please, in
3 your notebook. And I would like you, if you could,
4 please turn to Page 420 behind that Tab 16. What is
5 that document -- what does that document appear to
6 be?

7 A It says on the top it's a memorandum.

8 Q Okay. And is that letterhead from
9 Empower -- Texans for Fiscal Responsibility at the
10 top? Is that what it appears to be?

11 A It says that, yes.

12 Q Okay. And can you read the two -- the
13 first two paragraphs in that document?

14 A "It is possible that within the next week
15 or so the Texas House will consider legislation
16 enabling the use of the economic stabilization fund
17 for the current biennium. We oppose taking such an
18 action at this time and will negatively score such
19 an action on the 2011 Fiscal Responsibility Index."

20 Q So if that document was sent to members of
21 the Texas Legislature and no one else, in your
22 opinion would that memorandum be a news story?

23 A The memorandum if it -- if it fell into a
24 reporter's hand, it would certainly be a great news
25 story.

1 Q No, not the fact that it was sent.

2 I'm talking about the document itself.

3 A The -- I think I see what you're driving
4 at. And are you suggesting that news cannot be
5 conveyed via E-mail? Are you suggesting that news
6 cannot be conveyed via text?

7 Q I'm asking a question.

8 A Well, I -- I would suggest that -- and
9 because we do this all the time with stories and
10 commentary that we write at watchdog.org we make use
11 of all social media to get our news and our
12 commentary out into the world.

13 This appears to me to be an extension of
14 what Michael Quinn Sullivan does on his website, and
15 he is directing this memorandum to specific people.
16 That's my interpretation of it.

17 Q But in -- when -- in your capacity as --
18 as -- I'm sorry, as editor with -- Deputy Editor
19 with watchdog.org, do you -- do you have a practice
20 of sending communication specifically to Legislators
21 only telling them how to vote?

22 A Not specifically Legislators only, but
23 Legislators, yes.

24 Q So -- so -- but you -- you don't send them
25 only to Legislators. How -- if you wanted to -- to

1 express your view on legislation, how would you make
2 Legislators known -- how would you make Legislators
3 know about your view?

4 A As a -- as a bona fide member of the --
5 what I consider the new media, we are -- we are not
6 in the advocacy business to the extent that
7 Mr. Sullivan is. We -- we both gather news. I
8 would consider both of us journalists. But we
9 deliver our news in a different way than
10 Mr. Sullivan, who, from what I can see, makes no
11 bones about his advocacy.

12 Q Is there an adopted Code of Ethics for
13 journalists?

14 A No. There are organizations that have
15 Codes of Ethics, Society of Professional
16 Journalists, whatever, but there is no Code of
17 Ethics for journalists.

18 Q Is there any sort of a generally
19 acceptable form that -- that a form of writing, of
20 gathering information, of disseminating news that
21 journalists tend to follow?

22 A I think I pointed out in my testimony that
23 one of the things that's occurred with this
24 explosion of new media that there are a million
25 different ways to deliver journalism, to create

1 journalism, to disseminate journalism and that any
2 attempt to try to say that there is one rule or one
3 set of rules for how journalism is delivered these
4 days is obsolete.

5 Q Do you know if Empower Texans operates
6 with any sort of Code of Ethics?

7 A I don't know that at all.

8 Q Do you know if they've adopted any sort of
9 editorial policy?

10 A No, I don't know that.

11 Q Okay.

12 MR. STEUSLOFF: I have no further
13 questions.

14 CHAIR CLANCY: Counsel?

15 COMMISSIONER HOBBY: Can somebody
16 scroll that to the bottom of the media exemption
17 shown? I'm dying to read the rest of it. Went on
18 the language earlier. This is the advocacy. Okay.
19 That's the current definition, not the 1975.

20 MR. TRAINOR: Yes.

21 MR. NIXON: Yes. And we'll have a
22 chance to talk about the whole thing in my closing.

23 REDIRECT EXAMINATION

24 BY MR. NIXON:

25 Q Your testimony has been very helpful.

1 Thank you.

2 Just a couple little deals. Under the
3 surprise theory of questioning, would it surprise
4 you to learn that the Federal Election Commission
5 has ruled that Daily Kos is a member -- bona fide
6 member of the media?

7 A No, it wouldn't surprise me at all.

8 Q They did it on September 4th, 2007.

9 Are you familiar with the Shield Law in
10 Texas?

11 A Yes.

12 Q What is it?

13 A It's a -- it's a law that the Legislature
14 passed to allow reporters to protect their sources
15 and not be prosecuted for it.

16 Q And how were you -- with whom were you
17 employed when it was passing?

18 A The Austin American Statesman.

19 Q Did the Statesman advocate in favor of the
20 Shield Law?

21 A Absolutely.

22 Q Did the Statesman have reporters with
23 media credentials on the House floor?

24 A Yes.

25 Q Were they the only news media that had

1 credentialed employees on the House and Senate
2 floors while the Shield Law was being debated and
3 discussed that session?

4 Was the Statesman it or were there others?

5 A No. I would assume that -- that -- I can
6 be pretty sure that there were representatives from
7 all the major media.

8 Q So you're telling me that while an
9 important piece of legislation was being debated in
10 the Texas Legislature members of the media
11 themselves were allowed on the floor of the House
12 and Senate and lobbied in favor of that piece of
13 legislation while their report -- while the
14 newspapers were writing editorials in favor of it?

15 A Can you -- can you give me the question
16 again?

17 Q I don't know that I can do it as well as I
18 did it that time, but I'll try.

19 MR. TRAINOR: You can do it.

20 Q (By Mr. Nixon) I was trying to feign some
21 shock at the products, but let's just go through it.
22 So while an important piece of legislation was being
23 debated on the House floor, members of the media
24 were on the floor lobbying in favor of that piece of
25 legislation?

1 A They might have been. I can't speculate
2 on what individual reporters were doing on the House
3 floor. But I will say they were on the House floor
4 while that legislation was being debated.

5 Q Did the Statesman -- I know it did when I
6 was a member of the Legislature, but do you know
7 whether they delivered the copy of the newspaper to
8 everybody every day, every member every day?

9 A I think at the time that we were -- how
10 should I put this? That our resources were being
11 stretched. I think we might not have done that
12 practice. But there -- but there is a news service
13 at -- at the Capitol that gathers up all relevant
14 clips from all of the media, including the Austin
15 American Statesman, and makes that available not
16 only to reporters, but I believe it's made available
17 to members of the Legislature themselves.

18 Q Sure. It's a clipping service?

19 A Clipping services, yes.

20 Q And you get a stack every day?

21 A Yes.

22 Q Now it probably comes by what, Internet
23 probably, huh?

24 A I don't know that for sure, but it would
25 seem smart.

1 Q Have you ever been to the Quorum Report
2 web page?

3 A Yes.

4 Q What are they? What is a Quorum Report?

5 A It's a -- the Quorum Report is a
6 subscription, all digital subscription news service
7 based here in Austin.

8 Q The news service -- I see they have a
9 quote of the day. I guess you were here. "On the
10 advice of counsel, I'm not going to be testifying
11 today." The quote de jour. I'm not seeing a quote
12 de jour for yesterday. Harvey Kronberg, part of the
13 new media?

14 A Absolutely.

15 Q So let's focus again.

16 Journalism, a journalist is that a subset
17 of media?

18 A Yes.

19 Q Editor is a subset of media?

20 A Yes.

21 Q Okay. The test isn't whether or not
22 you're a journalist; the test is are you -- other
23 bona fide news medium that in the ordinary course of
24 business disseminates news, letters to the editors,
25 editorials or other comment.

1 Is -- clarify one more time, is Empower
2 Texans bona fide news medium?

3 A As I'm looking at that definition, Empower
4 Texans - and I'll say this emphatically - is a bona
5 fide news medium.

6 MR. NIXON: Thank you. That's it.

7 CHAIR CLANCY: Commissioner Hobby?

8 EXAMINATION

9 BY COMMISSIONER HOBBY:

10 Q Thank you for your testimony today. Just
11 a few questions. Watchdog.org what's the business
12 model?

13 A 501(C)3, not for profit.

14 Q No ad on there?

15 A It's -- I've seen ads, but we -- we're not
16 ad-based. I don't often get involved in the
17 business side.

18 Q So you're more on the --

19 A We are -- we are -- yes.

20 Q I can't even remember. No, he's on the
21 writing side of the house, not the business side of
22 the house.

23 Quickly, you were here for Mr. Nixon's
24 opening. He said if the conglomerate owns any news
25 media the rest of the conglomerate is exempt from

1 lobby registration. I understand you're not a
2 lawyer, you're not a lobby expert, but that was news
3 to me and I've been around this stuff for a while.
4 Do you understand that that's true, that any
5 conglomerate that wants to avoid lobby registration
6 can just find a media outlet somewhere and they're
7 good to go? Have you ever heard that before?

8 A Because I was hearing it from Mr. Nixon
9 for the first time, I would -- before I rendered an
10 expert opinion on it, I would -- I would want to
11 examine that.

12 Q Have you ever heard that before?

13 A Well, it's not --

14 Q Yes or no?

15 A That specific statement, no.

16 Q Okay. All right. Now, there's
17 something --

18 MR. NIXON: Mr. Hobby, I can read to
19 you that the Supreme Court considered that very
20 issue in Citizens United and in fact used the term
21 conglomerate.

22 CHAIR CLANCY: Let's let Commissioner
23 Hobby finish his questions.

24 COMMISSIONER HOBBY: I will talk to
25 you later.

1 Q (By Commissioner Hobby) Let's go back to
2 the media exception. In the law there's something
3 that says when the exceptions follow the rule,
4 there's no more rule.

5 Scroll down. Let's look at the plain
6 language. Again, you're not a lawyer, but the first
7 rule of statutory interpretation is to read it.

8 Start with, "If." Can you read that to
9 me?

10 A "If the person does not engage in further
11 or other activities that require registration under
12 this chapter and does not represent another person
13 in connection with influencing legislation or
14 administrative action."

15 Q Okay. What does that say to you about the
16 media exception in Texas? Does it say you can do a
17 little bit of media and get that pixie dust effect
18 and it covers everything else you do, or does it say
19 you only have to do media?

20 A I think it's so vague as to be unhelpful.

21 Q Okay. Okay. Well done. That's it.

22 MR. NIXON: And for the record, I did
23 not go over this section of the statute with him.
24 That was truly his own answer.

25 COMMISSIONER HOBBY: But he's a good

1 learner and a good listener. He's been here all
2 day.

3 CHAIR CLANCY: All right. Whose turn
4 is it to ask -- I think your turn, Mr. Nixon.

5 MR. NIXON: Yeah. If -- if I may,
6 and I just want to -- I just want to address
7 Mr. Hobby's question.

8 CHAIR CLANCY: Commissioner Hobby,
9 please.

10 MR. NIXON: Commissioner Hobby. "The
11 exemption results in further separate reason for
12 finding the law invalid in reference to the media
13 exemption. Again, by its own term the law exempts
14 some in corporations but covers others even though
15 both have the need or motive to communicate their
16 views. The exemption applies to media corporations
17 owned or controlled by corporations that have
18 diversion and substantial investments and
19 participate in endeavors other than news."

20 So even assuming the most doubtful
21 proposition that a news organization has the right
22 to speak when others do not, the exemption would
23 allow a conglomerate that owns both the media
24 business and an unrelated business to influence or
25 control the media in order to advance its overall

1 business interests.

2 At the same time some other corporation
3 with identical business interest but no media outlet
4 in its ownership structure would be forbidden to
5 speak or inform the public without the same issue.
6 This differential treatment cannot be squared with
7 the First Amendment.

8 COMMISSIONER HOBBY: But you agree
9 that this language exempts the conglomerate.
10 Whatever you're talking about, that language
11 somewhere else that's it not that. This says if you
12 do it, you've got to --

13 MR. NIXON: Yeah. And really that's
14 the point is that this is a very, very broad, poorly
15 written exception except for the fact that if it was
16 narrowly drafted it really -- you don't get around
17 the fact that -- that media doesn't have any special
18 First Amendment privileges. And so it is a tough
19 deal for the Commission to be confronted with, but
20 you're damned if you do and damned if you don't.

21 But this is -- and I agree with him, and
22 we've had many, many discussions over the last
23 several weeks over what the heck does the bottom
24 part of this statute mean. If you don't do anything
25 else -- well, wait. It doesn't define what that is.

1 And so you've got to -- you've got to look -- come
2 back again to clear First Amendment law and say, if
3 I can't figure it out, clearly then the restriction
4 is invalid.

5 But in this situation, truthfully, it's so
6 broad and so overly, overly -- poorly drafted that
7 almost everybody is exempt if they own some kind of
8 media outlet. And remember the bottom part if we
9 scroll to the bottom, that's a binary test. "If the
10 person, one, does not engage in other further
11 activities and does not represent another person."
12 So you have to do two things. This is conjunctive,
13 so you have to be this and this. Or -- first of
14 all, even if you could figure out what the first
15 preposition means, if you weren't -- if you weren't
16 doing it for somebody for Company B --

17 COMMISSIONER HOBBY: You're not --
18 you're using your time.

19 MR. NIXON: I'm fine. I'm fine. I
20 have two hours.

21 COMMISSIONER HOBBY: I'm just saying
22 it's easy to criticize the legislature's work. If
23 every Border Commission just came to work and said,
24 "I couldn't let the Legislature work and I refuse to
25 do my best and not interpret this. I'm going to go

1 home until they fix it," wouldn't much be happening
2 around State government.

3 MR. NIXON: Well, maybe a lot of good
4 things would be happening around State government in
5 relation to that.

6 But point is this is not a situation where
7 you say I don't like the language. You have been
8 given very clear instruction from our United States
9 Supreme Court. And here's what -- I'm going to pass
10 the witness at this time. I don't have any other --
11 any other questions, but I did want to engage you in
12 that conversation.

13 CHAIR CLANCY: Any more questions,
14 Counselor?

15 MR. STEUSLOFF: No further questions,
16 Mr. Chairman.

17 CHAIR CLANCY: All right.

18 MR. NIXON: We have no further
19 witnesses. We rest.

20 CHAIR CLANCY: Very good. Counsel,
21 we've -- we've sort of created a little charge for
22 us as Commissioners based on the lobby registration
23 statute. Do you have that to hand out to them?
24 This one? The one that's --

25 MS. ASHLEY: Oh, that one.

1 CHAIR CLANCY: We're going to take a
2 ten-minute break as you all get ready for closing.
3 But I did want you to see the -- the analysis that
4 we received regarding what we think these elements
5 are so that you all, if you need to tail your
6 arguments, can. Would you hand those out? All
7 right. We're going to --

8 MR. NIXON: Is there some place in
9 the Texas Register I could go look to see what rule
10 you utilized to charge yourself?

11 CHAIR CLANCY: No, no, no, no. You'd
12 have to go to the Government Code and Title 15.
13 That's where it all is. But I think for our -- for
14 our help in analyzing these issues before us, we
15 wanted to have it all in one place. All right?

16 MR. NIXON: And we did not have an
17 opportunity to participate in the drafting of that
18 charge.

19 CHAIR CLANCY: Nor did the
20 Commission. So all right. We're in recess, ten
21 minutes.

22 (Off the record from 6:33 to 6:53)

23 CHAIR CLANCY: We're back on the
24 record in formal hearing SC-3120487 and 3120488.

25 Mr. Steusloff.

1 MR. STEUSLOFF: Yes, Mr. Chairman.

2 CHAIR CLANCY: Are you ready to
3 close?

4 MR. STEUSLOFF: I am.

5 CHAIR CLANCY: Please.

6 OPENING CLOSING STATEMENT ON BEHALF OF THE
7 COMMISSION

8 MR. STEUSLOFF: And I'd also like the
9 Chair beforehand -- Mr. Bresnen is still here. Is
10 he excused?

11 CHAIR CLANCY: Yes.

12 MR. STEUSLOFF: Okay. Thank you.

13 Mr. Chairman and members of the
14 Commission, this is a case about transparency in
15 State government. The Texas Lobby Law requires
16 people to register when they are paid to influence
17 Legislators and legislative staff.

18 The elements of a violation of the Lobby
19 Law are up on that board, and they've also been
20 indicated in the -- in the charges that were
21 distributed. And essentially they are this: If a
22 person communicates directly with a member of the
23 legislature, including a member of the legislature
24 and/or an employee of the legislature, with the
25 purpose to influence legislation and they're making

1 that communication as a part of their regular
2 employment and their employer is paying them over
3 \$1,000 in a calendar quarter to make those
4 communications, then that person has to register.

5 It's important to point out again that
6 the -- the definition of legislation as provided by
7 the Texas Legislature is the definition that -- that
8 the Commission is required to apply, and that's set
9 out in Section 305.002 Subsection 6. And it is very
10 broadly written to not only include bills,
11 resolutions, amendments, nominations and other
12 matters that are pending in a House, but it also
13 includes any matter that is or may be the subject of
14 action by either House. And that would include the
15 matter of the election of the Speaker of the House.
16 And to find otherwise that -- to find that the Lobby
17 Law only applies to a bill or some matter that is
18 currently pending at that time would mean that any
19 person could communicate with Legislators by giving
20 them a draft of a bill to propose, asking them to
21 push it through the House and make it law. Those
22 communications would be completely exempt, because
23 they wouldn't be legislation. And that doesn't make
24 any sense. It's any matter that is or may be the
25 subject of action by either House. And that would

1 include asking someone in December of 2010 to
2 support a particular individual for Speaker of the
3 House or to not vote for any bills that are going to
4 increase taxes or asking them to support a bill
5 that's going to increase a tax - let's say the
6 gasoline tax - it doesn't matter whether it's
7 currently been introduced by a member, it doesn't
8 matter whether it's pending on the floor at that
9 time. If it's subject to action -- if it may be
10 subject to action by the House, then it is
11 legislation, and that's the definition that we have.

12 Now, the evidence before you is -- it
13 includes testimony from Mr. Bresnen and Mr. Greenhaw
14 regarding the documents that are at issue in this
15 case. They testified that those documents
16 originated from the offices of Legislators. And the
17 content of those documents also indicate that they
18 were made not only by Mr. Sullivan, but they were
19 made by Mr. Sullivan on behalf of his employer and
20 they were part of his employment as president of
21 Empower Texans.

22 The content of the communications
23 themselves is plain enough to show that they were
24 made with the purpose of influencing Legislators,
25 specifically told them to vote and in other cases

1 they listed the priorities of Empower Texans.

2 You've seen scorecard notices that were
3 sent out before the votes were issued and notices
4 stating that Legislators were going to be -- were
5 going to be graded. And in those circumstances
6 where the intent is to influence Legislators, then
7 even those notices about the scorecards are subject
8 to the Lobby Law, because it depends on whether they
9 were made with the intent to influence. And the
10 intent behind the scorecards is clear and it is
11 essentially that here are our legislative
12 priorities, this is what we stand for, we're going
13 to issue a scorecard at the end of session, you're
14 going to be graded based on how you perform. And in
15 the end we'll give you an A if you do very well, if
16 you vote in accordance with our goals, or you're
17 going to get a C or, worse, you're going to get an
18 F.

19 Now, some Legislators may not be swayed by
20 that. Some may. It doesn't matter. What matters
21 is whether they were made with the intent to
22 influence.

23 The Form 990s that are also introduced
24 into evidence, they show Mr. Sullivan's salary
25 during 2010 and 2011, they show he was paid over

1 \$1,000 in each calendar quarter of those years and
2 so the compensation threshold was clearly exceeded
3 in these cases for both calendar years.

4 Mr. Sullivan met all of the elements under
5 the registration requirement based on compensation
6 and based on lobbying as part of regular employment.
7 And, again, it's -- the issue is not whether a
8 citizen of this State has the right to petition
9 their government. They clearly do. And the law
10 does not require every person in the State to
11 register just because they happen to send their
12 Legislator a letter or because they call them on the
13 phone or send them a text message or send them a
14 Tweet. What matters is that the Texas Legislature
15 has set out certain boundaries to say if you are
16 acting within these boundaries - in other words, if
17 you're spending certain amounts of money or you're
18 receiving certain amounts of money to influence the
19 State Legislature or members of the Executive
20 Branch, then you have to register.

21 And the fee -- that fee required for a
22 person to register as a lobbyist in this State.
23 It's not always \$750. It -- in many cases it's
24 actually \$150. If you are an employee of a
25 501(c)(3), (c)(4) or (c)(6) organization and that's

1 the only person who you're lobbying on behalf of,
2 \$150 is your fee. That's not a burdensome amount.

3 Now, Mr. Nixon has -- has argued that
4 Mr. Sullivan was exempt from the Lobby Law because
5 he's a journalist, but there's no evidence that
6 Empower Texans was an actual news organization
7 during this time in question. You have one man's
8 opinion.

9 And Mr. Lisher on did not review the
10 documents in this case to come to his -- his
11 opinion. He had some familiarity with their website
12 in 2010, 2011, but could not specify as to what the
13 actual contents of the website were at that time.
14 And it doesn't matter that Mr. Sullivan happens to
15 write for some other organization, whether it's
16 Breitbart Texas or some other -- some other website.
17 It doesn't matter whether he's doing that now. What
18 matters is the activity during 2010 and 2011.

19 Now, Section 305.004(a) of the Government
20 Code creates an exception, but you're only exempt if
21 you're communicating in the forms of news, if you
22 are -- if your actions are the dissemination of
23 news, letters to the editor, editorial or other
24 comment, that are distributed in the ordinary course
25 of -- of business. Now, in 1975, when the

1 Legislature adopted House Bill 2, they specifically
2 added the second sentence, the second full provision
3 in 305.004(1), the one that says, "If the person
4 does not engage in further or other activities that
5 require registration under this chapter and does not
6 represent another person in connection with
7 influencing legislation or administrative action."

8 The fact that the Legislature included
9 that provision shows that they recognize that if the
10 exception were as broad as Mr. Nixon claims, then we
11 may as well exempt everyone from the lobby
12 registration requirements. If you're going to have
13 a news -- a -- a website that has a section called
14 news and you're employed by them, it doesn't matter
15 what else you send to the Legislature, because
16 you're -- you're an employee of a news organization.
17 Clearly, the Legislature did not allow -- did not
18 intend for that result in the law. It would be an
19 absurd result. And in fact, the Lobby Law would --
20 you would -- I think there would be a substantial
21 gap created, which -- which the law really does not
22 support.

23 So I would -- I would refer you again to
24 the evidence that's before you, the -- the -- the
25 very substantial number of documents including

1 E-mails, letters and memoranda that -- that contain
2 specific directives to vote for and against bills
3 and amendments as well as vote for and against
4 specific candidates for the Speaker election in
5 2010.

6 And I would also point out that the
7 Attorney General has issued another opinion, and
8 it's actually H -- excuse me, H 583. This was
9 adopted in 1975, an interpretation of the Lobby
10 Control Act. And what they state - this is on Page
11 2 - the question was, "What is the test for
12 determining whether a salaried individual
13 communicates directly with a member of the
14 Legislative or Executive Branch to influence
15 legislation as a part of his regular employment as
16 the quoted phrase is used in Section 3(B)," this is
17 when the law was still in -- this was in Article
18 6252-9(c). And I'll point out that the law at the
19 time did not include a compensation threshold. That
20 came later. At this point there actually was no
21 compensation threshold. And what it says is that
22 the Attorney General responded by stating, "It is
23 our view that a person communicates with a public
24 official or candidate within the scope of his
25 regular employment when the communication is on

1 behalf of and at the express or implied direction of
2 his employer or is ratified by his employer. We do
3 not believe that it is necessary that a specific
4 portion of his salary be allocable to his role of
5 communicating with members of the Legislative and
6 Executive Branches. It is sufficient that he be
7 employed and that he communicate with public
8 officials or candidates to influence legislation as
9 an incident of his employment."

10 Now, it's an Attorney General -- an
11 opinion from the Texas Attorney General. Again,
12 it's available to -- to provide guidance to the
13 Commission in -- in your application of the law
14 here. And I offer that to you.

15 The standard for the Commission finding
16 a -- a violation in this case is by preponderance of
17 the evidence, which means more likely than not. Is
18 it more likely the case that Mr. Sullivan
19 communicated directly with Legislators in 2010 and
20 2011 for the purpose of influencing legislation on
21 behalf of Empower Texans? And is it more likely
22 than not that he received compensation, over \$1,000,
23 in the calendar quarter within that time period?
24 And is it also more likely than not that
25 Mr. Sullivan was making those communications as part

1 of his regular employment or as the Attorney General
2 said, as an incident of his employment, whether at
3 the express or implied direction of his employer or
4 ratified by his employer.

5 I think the evidence in this case is -- it
6 meets that standard and that Mr. Sullivan was
7 directly communicating with Legislators and their
8 staff in 2010 and 2011 to influence them. He far
9 exceeds the compensation threshold, and that those
10 communications were made as part of his regular
11 employment. Thank you.

12 CHAIR CLANCY: You have five minutes
13 left for rebuttal, Counsel.

14 CLOSING STATEMENT ON BEHALF OF THE RESPONDENT

15 MR. NIXON: Mr. Chairman,
16 Commissioners, Counsel, thank you for giving us an
17 opportunity to be heard today. We're grateful for
18 it. We're grateful for the opportunity to be in an
19 open forum. Counsel used the word transparency, and
20 we're grateful for the opportunity that the evidence
21 regarding these complaints, the witnesses who
22 brought them, how they were collected and made have
23 now become all transparent for all of Texas to see.

24 Commissioner Ramsay, you were going to ask
25 me a question earlier. Before I get going, I want

1 to give you the opportunity to ask it.

2 COMMISSIONER RAMSAY: Did you advise
3 your client not to speak, to use the First, Fourth
4 and Fourteenth Amendment?

5 MR. NIXON: Well, that -- I can't
6 answer it, because it requires me to divulge
7 attorney/client privileged information.

8 COMMISSIONER RAMSAY: So no one
9 representing Mr. Sullivan would speak to that, that
10 you know, in that group right there?

11 MR. NIXON: That's correct, because
12 we have an opportunity that's zealously guarded in
13 this State to advise our clients without the advice
14 becoming public or subject to cross-examination.

15 COMMISSIONER RAMSAY: Well, let's get
16 to the heart of the matter, as a great lawyer once
17 said. Why would you be -- if we're after facts in
18 this forum, in this setting, why wouldn't you
19 include what facts you have to the process? I mean
20 we've got no axe to grind, so to speak. We're not
21 after anybody. We're appointed to uphold the law
22 that was passed by the Legislature. And we are here
23 today looking for the answer. But you and your
24 client refuse to help us find the answer. And I --
25 I'm just curious, because most of the time -- all

1 the time except in those cases, you are pro
2 transparency, you make eloquent remarks that give me
3 the impression that you're for open government,
4 you're -- you know, all those things you're for.
5 And then on the other side of that nickel you turn
6 around and protect your client by telling him not to
7 help us find the answers. That's my question. And
8 you've answered it.

9 MR. NIXON: You know, Commissioner
10 Hobby asked the same question in a different way,
11 why the venom.

12 COMMISSIONER RAMSAY: Me? No, I
13 don't have any.

14 MR. NIXON: I know. No, no, not you.
15 Why -- why -- why -- in his opinion why -- what's
16 the distrust. Is that a fair way to answer the
17 question?

18 COMMISSIONER RAMSAY: I don't know
19 the answer to that, but let me tell you, this --
20 this group --

21 MR. NIXON: Well, I'm going to answer
22 your question about why the distrust if you want to
23 know.

24 COMMISSIONER RAMSAY: Okay. All
25 right, sir.

1 MR. NIXON: It goes to the heart of
2 why these complaints were filed. It's a vendetta
3 against somebody who said something that you don't
4 like. And this Commission has been used. Those two
5 Complainants immediately made their complaints
6 public in contravention of statute and used those
7 public statements to then say that Mr. Sullivan was
8 being investigated. We asked for a speedy trial.
9 We filed an answer and said, "We want to have this
10 heard as soon as possible." It was 18 months later
11 before the Commission began to do anything, and when
12 it started, it sent us a set of interrogatories
13 asking for our bank accounts. It -- that's not
14 trustworthy behavior. That kind of behavior
15 generates distrust and a desire to be
16 self-protective. When we first came to the original
17 preliminary hearing I asked that the Complainants be
18 subpoenaed. Instead, they were sent letters saying
19 you do not have to show up.

20 COMMISSIONER RAMSAY: Mr. Nixon,
21 you've answered my question, and I appreciate it.
22 You answered it. I just want you to think about
23 that question and think about whether you are
24 helping the process or you're hindering it. And
25 that includes the length of time that it's taken to

1 get to this point after these complaints were filed.

2 MR. NIXON: Right. Let me go on.

3 COMMISSIONER RAMSAY: No, you don't
4 have to. Not for me.

5 MR. NIXON: No, it's very important.
6 Because the process is now required, we showed up
7 for the preliminary hearing and your lawyers weren't
8 prepared. They put Michael Sullivan -- they were
9 going to have Michael Sullivan come testify. They
10 had no other witness and no other documents. None.
11 Not this stack. They didn't have that stack. They
12 just had the complaint. And everybody was surprised
13 and, quite frankly, angered that Mr. Sullivan
14 wouldn't just come in here and apologize.

15 You, Mr. Ramsay, suggested to us, just pay
16 a -- before you heard a bit of evidence you said,
17 "Pay a 500-dollar fine, and we'll just make this go
18 away."

19 At the conclusion of the first
20 preliminary -- or the second preliminary hearing
21 where there was not this stack, but just a couple of
22 exhibits attached to the complaints, the Chairman
23 says, "When you become the face in front of the
24 person that is saying vote for or against this, now
25 you've crossed the line. And when you're

1 compensated and you commit direct communication and
2 when you don't meet the exemption, then that's what
3 ends up happening. And so we have a proposed order
4 today that we would ask you to agree to or not agree
5 to by November 1st."

6 When you talk about transparency, the
7 consideration of both sides and all of the facts is
8 not being considered.

9 COMMISSIONER RAMSAY: That's not true
10 in this case.

11 MR. NIXON: Why, then, were we
12 offered an opportunity to pay a 500-dollar fine
13 before a -- a word was spoken from the witness chair
14 or a document was entered?

15 COMMISSIONER RAMSAY: Mr. Nixon, I'll
16 answer that.

17 MR. NIXON: I -- I -- you --

18 COMMISSIONER RAMSAY: I'll answer
19 that, because that is --

20 CHAIR CLANCY: Counselor, Mr. Ramsay.
21 If you have a question for this gentleman --

22 COMMISSIONER RAMSAY: Okay. He's
23 answered my question. He's answered my question, so
24 I'm through.

25 CHAIR CLANCY: Mr. Nixon, are we

1 outside the record?

2 MR. NIXON: No. Members --

3 CHAIR CLANCY: Are we outside the
4 record? What exhibit are you referring to with
5 regard to your testimony that you're referring to
6 now?

7 MR. NIXON: I'm -- I am -- I am
8 engaged in argument at this time.

9 CHAIR CLANCY: Well, no, you're
10 citing -- you're citing testimony from a transcript.
11 Is that in the record?

12 MR. NIXON: I was referring to the
13 preliminary -- the transcript that was provided to
14 me of the preliminary -- second preliminary hearing.

15 CHAIR CLANCY: And my question to
16 you, sir, is that in the record?

17 MR. NIXON: That is not in the
18 record. But in answer to Mister --

19 CHAIR CLANCY: I'd ask you to
20 restrict your remarks to the record before this
21 formal hearing.

22 MR. NIXON: And I will quote
23 Mr. Steusloff, this case is about transparency in
24 State government. And you're asking me to restrict
25 my comments. I understand.

1 Now --

2 CHAIR CLANCY: Counsel, your sidebar
3 is inappropriate, and you know it. That's
4 inappropriate. We have a rule that we're doing here
5 under the Administrative Procedures Act and you're
6 closing based on evidence that we've had hours and
7 hours to discuss.

8 MR. NIXON: The close includes the
9 opportunity to argue the law.

10 CHAIR CLANCY: Absolutely.

11 MR. NIXON: Let's get on to the
12 arguing of the law.

13 CHAIR CLANCY: I look forward to it.

14 MR. NIXON: Okay. And I would
15 suggest, Mr. Chairman, those kind of sidebars are
16 inappropriate if you think mine are.

17 So where are we right now? We have
18 complaints filed as political vendettas and
19 prosecuted as an agent of those who filed the
20 complaint with a statute that is nearly
21 indecipherable. There's a difference from what you
22 want regulated and what you may constitutionally
23 regulate. And I will cite to you some language from
24 Citizens United that I have not yet read, "When
25 government seeks to use its full power, including

1 the criminal law, to command where a person may get
2 his information, his or her information, and what
3 distrusted source he or she may not hear, it uses
4 censorship to control -- to control thought. This
5 is unlawful. The First Amendment confirms freedom
6 to think for ourselves."

7 But more importantly, just on April 2nd of
8 this year, the Supreme Court reaffirmed that type
9 of -- that analysis and that type of thinking and
10 the protection of First Amendment rights for
11 individuals. And I'm going to say something here
12 that I -- that I'm going to come back to time and
13 time again, so I want us to all focus on this. Any
14 regulation must instead target what we have called
15 quid pro quo corruption or its appearance. What
16 that means is payment for political favors. That is
17 the only permissible activity of speech that
18 government may regulate.

19 Campaign finance laws are restrictions
20 that pursue other objectives like transparency. We
21 have explained -- or fairness or any other high
22 mighty idea we have explained impermissibly inject
23 government into the debate over who should govern.
24 And those who govern should be the last people to
25 help decide who should govern. Government is the

1 last stop over who should decide.

2 Therefore, when it comes time to
3 regulations of speech and petitioning the
4 government, any regulation involving petitioning the
5 government has a heightened degree of scrutiny.

6 So let's talk about your burden of proof.
7 You've been told and the statute reads that it's by
8 a preponderance of the evidence. But I would assert
9 to you that in this case that is not the standard,
10 because this case involves the restriction of First
11 Amendment rights; the standard is strict scrutiny.
12 The standard is that you have -- you have to have
13 evidence which is beyond clear and convincing. It
14 has to be very strict and very precise. And you
15 don't have that. You have a chain of custody
16 problem that would get thrown out of any court, and
17 I think that you know that.

18 You have hearsay objections in the
19 documents themselves that make them impermissible.
20 There is a clear way to make a lot of that admitted,
21 but it wasn't utilized by your staff.

22 You're not allowed to cover for them. But
23 what I -- I think -- and I will get to that in a
24 minute.

25 But where we are here is with a strict

1 scrutiny standard. Oh, let's just don't apply that,
2 if that's what you want to do. Well, here's what
3 you're then mandated to do. You're mandated to
4 do -- to use a clear and convincing standard,
5 because this is a First Amendment case involving the
6 media. New York Times versus Sullivan requires that
7 you consider the evidence in this case with a clear
8 and convincing standard. Clear and convincing has
9 not been defined by your chart, but it's defined in
10 the law. It means the scales of justice are
11 extraordinarily tilted. One touches the bottom and
12 one is on the top. It's clear and convincing, not
13 subject to much dispute.

14 If you want to ignore that and just go on
15 a preponderance of the evidence, what you have is no
16 evidence at all. Now, I know, Mr. Chairman, that
17 you asked a lot of questions designed as a setup to
18 be able to utilize an inference by his failure to
19 answer them. And he didn't use the amendment that
20 you wanted that allowed you to utilize an inference.
21 Therefore, you can draw no inference.

22 But if you ignore that and want to utilize
23 an inference, the inference carries the weight of a
24 feather on the scales of justice. It's less than a
25 scintilla. It's not enough to base any kind of

1 decision. So here we are with no evidence.

2 I am really surprised that counsel for the
3 Commission seems to base his entire case on a
4 definition of legislation which he focused on these
5 words, "May be the subject of action by either House
6 or a Legislative Committee."

7 How is anyone to know whether they're
8 allowed to speak on an issue. Something that may
9 come before the House or Senate is defined as
10 legislation. Would any of you like to be subject to
11 a law that broad? Remember, this issue about
12 failing to register doesn't come with a suggested
13 fine of \$500. There are criminal sanctions.

14 We talked before about the fact that
15 Courts recognize that laws like this result in the
16 gulag or the guillotine, and in Texas it's the
17 gulag. That's not what free society is about.
18 That's not what free speech is about. That's not
19 what any of the Supreme Court cases have defined and
20 given you direction. This is the first time anybody
21 in the history of the State has challenged in a
22 direct fashion the language of the statute. And it
23 is not enough to say, well, that's just what the
24 Legislature wrote. Today, more is demanded of us.
25 Today we've got to be thoughtful, contemplative.

1 We've got to stand up, we've got to stand up for
2 what's right.

3 I used the term earlier, and I hope you
4 understand this, Mr. Ramsay -- Commissioner Ramsay,
5 that today is a day we stand on a wall between
6 tyranny and freedom. Are we going to be a State
7 where people who say unpopular things are prosecuted
8 for those? There are many, many brave souls who
9 held the butt end of a gun defending the First
10 Amendment, some here in this room. But holding the
11 butt end of a gun isn't the only way our rights are
12 defended. Sometimes it's by holding the butt end of
13 a pen. We have the right to speak freely, to be
14 free, to challenge government, to challenge
15 authority, to do what I'm doing today on behalf of
16 my client in good faith and apparently unpopular to
17 some of you, to challenge what we know to be wrong.

18 When you have a statute that says you are
19 subject, you must first pay the State a fee of \$750,
20 and it matters little if sometimes it's only 150,
21 but you have to pay the State a fee because you
22 might talk to somebody who might consider what you
23 say to be influence on something that might one day
24 be a bill. That's wrong. It -- that is violative
25 of the First Amendment to require a restriction on

1 speech. You've never heard me say today that lobby
2 activity may not be regulated. It may, just not
3 with this statute. This statute is a poorly-drafted
4 statute.

5 People have the right to petition
6 government in the same way they have the right to
7 speak freely. So when we're here today we ask
8 ourselves a very important question, influence, to
9 influence legislation for whom? Influence is the
10 intent to influence on behalf of the speaker or on
11 behalf of the listener? Can we tell that from the
12 statute? Are we -- do we know whose intent to
13 influence legislation or are we allowed to prosecute
14 somebody who accidentally influences legislation
15 without intent? You have no evidence that supports
16 anything in that definition. And so the first
17 choice that you should make is to dismiss these
18 complaints just on a lack of evidence.

19 Transparency in government. I had somebody
20 else fill out the Open Records request because I
21 didn't want the Legislators to know what I was
22 doing. That's very transparent.

23 How about, I -- I never opened any of the
24 mail, so I don't know what's in them; that's real
25 transparent.

1 Well, I didn't keep a list or I didn't
2 have anything to do with it, but oh, yeah, he came
3 over and helped me. We assembled -- we assembled
4 everything and made a list. That's real
5 transparent.

6 By the way, don't communicate with anybody
7 about this case while it's going on. Tweet, Tweet,
8 Tweet. That's real transparent.

9 In order to find Mr. Sullivan liable under
10 the statute, you've got to give credence to that
11 behavior. You've got to say, we like that behavior;
12 that's good for the State of Texas. We can ignore
13 sequestration, we can ignore -- we can hide behind
14 our friends, we can avoid transparency. Oh, and the
15 best transparent thing of all, well, I signed it
16 under information and belief, because I didn't have
17 any personal knowledge of any of it. And I didn't
18 really read it. And by the way, some of the
19 exhibits are incomplete.

20 That's the State's case. Real
21 transparent.

22 The purpose of those complaints was to
23 punish somebody who said something that they didn't
24 like, vote for another Speaker even though the
25 Speaker's race might or might not have ever

1 occurred, and in this case didn't. So here we go,
2 we have no evidence.

3 No. 2, Mr. Sullivan fits into a media
4 exception. I really appreciate Mr. Lisher coming
5 in and telling us, someone with that kind of
6 experience, print media all of his life, has moved
7 over to nonprint media and said, look, bona fide
8 news media is people who deliver news in editorials
9 content in a new way. That's new media. But don't
10 get confused that there's such a thing as old media,
11 because everybody's been doing it the same way for
12 forever, whether you're a muckraker, or yellow
13 journalist, whether you're Thomas Paine, you can be
14 an advocate, a journalist and an editorial writer
15 all at the same time, because there aren't any
16 rules. It's free speech, and there's not supposed
17 to be rules. There's not supposed to be guidelines
18 in an organization that you have to be a member of
19 and a test you have to take to pass. You get to say
20 anything you want, because you have the right to say
21 it. That's what this is about. And don't think for
22 a second that this is really an exception, because
23 here's where we are. If you don't have a media
24 exception, the statute's invalid on its face. All
25 statutes without a media exception like this are

1 completely invalid. Could you imagine having a
2 lobby statute that required the media to register?
3 Every day when I was a member I got a copy of the
4 Post, the Chronicle, the Dallas Morning News, the
5 San Antonio Express News and the Austin American
6 Statesman for free. And we could log on to Harvey
7 Kronberg's deal later on when that got going and we
8 learned about the Internet a little bit for free.
9 They delivered to my office their opinion every day,
10 whether I wanted to see it or not. And what did
11 those -- all those reporters do? They come in, they
12 ask the questions, they talk to you about stuff,
13 well, don't you think about this, don't you think
14 about that?

15 Do you for a second consider that any of
16 these E-mails are anything other than a new way of
17 reporting and engaging people in conversation for
18 which you can then write about? That's exactly what
19 it is.

20 My kids -- you're going to not like to
21 hear this, Mr. Hobby. My kids are never going to
22 subscribe to a newspaper or a magazine, and yet my
23 mom wrote for your family's paper for seven years.
24 They're never going to subscribe to a paper. That's
25 not where they get their news. That's not where the

1 Information Director of the State of Texas gets her
2 news. Some from the Statesman. She's all over the
3 Internet like everybody else.

4 This is so broadly written that, yeah, I
5 think so many people could fit under that definition
6 that it almost essentially invalidates the rest of
7 the statute in and of itself.

8 Does Michael fit? Absolutely. One
9 opinion that, when pressed, became even more
10 certain. And let's scroll down to the bottom. This
11 phrase, "If the person does not engage in further or
12 other activities that require registration."

13 What does that mean? What to the average
14 person does a further -- you can be a member of the
15 media as long as you don't engage in further
16 activity. What does that mean? You're exempt from
17 all lobby registration unless you do something else,
18 but it doesn't define what that other else is. So
19 you've had a very frank and honest answer from this
20 witness that said that doesn't make sense.

21 And he's right. It doesn't make sense.
22 But not only that it doesn't say "or," it says "and"
23 does not work for somebody else. So as long as you
24 don't have another lobby client. Well, does this
25 mean that Texas -- what do you call it, business

1 association, Bill Hammond's group doesn't have to
2 lobby? I don't know what he puts up on the web. I
3 don't know what he does, but it might. That's a
4 problem. And we don't like that. It makes us
5 uncomfortable. When we're confronted with reading
6 words that read more than what we want them to read,
7 it makes us uncomfortable. Oh, no, this could be a
8 real problem. Well, look, it's okay to have a
9 problem. It's not okay to fail to address it.
10 You've got to address your problem.

11 So -- so far, right now the evidence shows
12 two things, one, you don't have any evidence against
13 any regulated activity. And two, it doesn't matter
14 whether you do or you don't, because now
15 Mr. Sullivan's a member of the media. And he has
16 been. He's been always.

17 Oh, was he in 2010, 2011? Yes. Members,
18 Commissioners, look at Exhibits 83 to 102. Those
19 were the ones that the media consulted from the
20 State -- can testify to. The ethics -- the --
21 the -- the ethics IT lady, Ms. Haug, said, you know
22 what are those? All of those are web pages from
23 2010 and 2011. All of those exhibits demonstrate
24 that Empower Texans had a web page that provided
25 news and editorial comment. State's own evidence

1 shows that Mr. Sullivan fit into the media
2 exception.

3 Let's scroll down -- let's scroll back up.
4 The person who owns, publishes or employ. Guess
5 what, the State thankfully provided the 990s, which
6 showed that Mr. Sullivan is an employee of a -- of a
7 bona fide news medium. Wasn't me. I didn't have to
8 do that. So the State's own evidence demonstrates
9 that Mr. Sullivan is an employee of an entity
10 that -- that is an other bona fide news media. The
11 990s, Exhibits 83 through 102.

12 Now, finally, let's talk about whether or
13 not -- where we are in constitutionality of our
14 entire statute. Forget about the vagueness, forget
15 about the no evidence, forget about the media
16 exception for Mr. Sullivan. If you don't want to
17 find he's a member of the media, here's your
18 problem. Because you've given the media an
19 exception, the fact that you are regulating
20 everybody else is unconstitutional, because Citizens
21 United, the Supreme Court of the United States, says
22 that the media has no greater rights than the
23 average citizen. So you're in a box with no way
24 out.

25 Now, we had an opportunity to talk to the

1 staff's attorneys, and we told them this. We told
2 them all of this. And we told them more. Don't
3 think for a member -- for a minute that any E-mail
4 that's addressed to members of the House went only
5 to members of the House. They went to donors. They
6 went to other subscribers.

7 Mr. Hobby, do you not like the facts?

8 COMMISSIONER HOBBY: No, I don't
9 recall any testimony to that fact. I just wanted to
10 admonish the other Commissioners that I heard
11 nothing in the record, what you tried to put in.

12 MR. NIXON: Right. It gets back
13 to -- you know what, I've told you this before, and
14 I've told you this at prior meetings, this was a big
15 fight about the documents. This is why we went over
16 to federal court. Mr. Sullivan testified -- by the
17 way, Mr. Ramsay, Mr. Sullivan testified in front of
18 federal judge, Judge Sparks. I called him. I had
19 him testify. He was my first witness. Your
20 Commission staff knows all this. And what's
21 shocking is you know it, because I've said it to
22 you, too, is that all of those E-mails, anything
23 that got sent to anybody was a blast. If it said
24 Dear Cindy, it is individualized and it's a blast to
25 subscribers. And we've gone through and talked

1 about the part of the E-mails that said if you want
2 to unsubscribe click here.

3 CHAIR CLANCY: Where -- where is this
4 record coming from? Who said that?

5 MR. NIXON: I can pull up -- I said
6 it to you, and I've said to your staff.

7 CHAIR CLANCY: Let's talk about the
8 evidence that's in the record, that is in the
9 record.

10 MR. NIXON: Yes, as it -- it's all
11 part --

12 CHAIR CLANCY: That is in the record
13 today? Which witness said that? I want my
14 Commission to be clear. Which witness testified
15 about blast E-mails that you claimed --

16 MR. NIXON: Did you not know? Did
17 you not hear me say that to you before?

18 CHAIR CLANCY: Were you offering
19 testimony today?

20 MR. NIXON: This is why -- I am
21 offering testimony, and here's what it is.

22 CHAIR CLANCY: No, Counsel. You're
23 offering argument. Was there a witness today who
24 testified to that fact?

25 MR. NIXON: Offering -- I am

1 offering an argument. No --

2 CHAIR CLANCY: You're outside the
3 record. Restrain your argument to the record, the
4 evidence that was provided here today.

5 MR. NIXON: Mr. Chairman, what is
6 shocking is that Commission staff knows facts that
7 it intentionally did not disclose to this
8 Commission. It knows facts that it intentionally
9 did not disclose to this Commission. It has been
10 discussed in this -- before this Commission in prior
11 formal public hearings as well as in other venues --

12 CHAIR CLANCY: Which is outside this
13 record.

14 MR. NIXON: No, it's not outside this
15 record, because the record is the entirety of the
16 record.

17 CHAIR CLANCY: No, it's not. Sir,
18 restrict your argument to the evidence that's
19 brought before us today in this formal hearing.

20 MR. NIXON: All right. I would like
21 to -- to point out to the Commission particularly in
22 light of that --

23 MR. TRAINOR: 107 or 108.

24 MR. NIXON: What's that?

25 MR. TRAINOR: 107 or 108.

1 MR. NIXON: Oh, 107 -- oh, here they
2 are. 107 -- Exhibits 107 and 108 to which we
3 stipulated are the pleadings in the federal court
4 case that set out those facts. So yes,
5 Commissioner, they are in the record.

6 CHAIR CLANCY: The pleadings?

7 MR. NIXON: The pleading, our
8 pleadings.

9 COMMISSIONER HOBBY: Not the
10 transcript, the pleadings.

11 MR. NIXON: Our pleadings. Verified
12 Complaint and Application for Injunctive Relief
13 filed by Empower Texans and Michael Quinn Sullivan.
14 Plaintiff's Motion for Temporary Restraining Order
15 and brief in support filed by Empower Texans and
16 Michael Sullivan. They are Exhibits 107 and 108 to
17 this hearing and they set out those facts. So I'm
18 not outside the record.

19 CHAIR CLANCY: You're saying that the
20 facts that you recited in a pleading were admitted
21 in evidence in this case?

22 MR. NIXON: By your staff.

23 CHAIR CLANCY: No. The pleading was.

24 MR. NIXON: The pleading was.

25 CHAIR CLANCY: Not the facts that's

1 in the pleading.

2 MR. NIXON: The fact that those are
3 the judicial admissions and you know that.

4 CHAIR CLANCY: By you.

5 MR. NIXON: Yes, that's exactly
6 right. I can use evidence submitted by me.

7 CHAIR CLANCY: Counsel, you're
8 outside the record.

9 MR. NIXON: I appreciate the -- the
10 Commissioner's ruling, which brings me to one last
11 point. Sometimes facts are uncomfortable.
12 Sometimes they're stubborn. But they are what they
13 are. But the dissemination of facts in the process
14 of rulings throughout this proceeding from the
15 beginning, 28 months ago to today, is a problem, is
16 a due process problem.

17 Your ruling a minute ago, you didn't want
18 to recognize what your staff entered into evidence
19 was a -- allowed me to make arguments. You were
20 comfortable with the arguments. I've made a lot of
21 arguments before this Commission that the
22 Commission's not comfortable with, because it
23 challenges you to be more than just simple. It
24 demands that you be wise. It demands that you do
25 some hard work. It demands that you think and you

1 read. This whole situation is a situation -- this
2 whole complaint process is a situation that requires
3 more of all of us than maybe some of us are willing
4 to give. But when you look at all the hard facts,
5 when you look at all the hard facts, you realize you
6 don't have any. You've got a bad statute, and
7 you've got a vendetta. It's time to recognize that,
8 dismiss these complaints, do what you need to do
9 with regard to dealing with the unpleasant and in --
10 inappropriately drafted statute. And then you need
11 to send a message to people who would cause us so
12 much time and trouble and expense and the Commission
13 to have to hear the -- the request, to please quiet
14 my opponent.

15 Thank you.

16 CHAIR CLANCY: Mr. Steusloff.

17 CLOSING STATEMENT ON BEHALF OF THE COMMISSION

18 MR. STEUSLOFF: I have -- is that
19 five minutes now? Okay. So I will -- I will be
20 brief.

21 Mr. Nixon has asked you to -- to read, and
22 I agree. I asked you to read and focus your
23 attention on the exhibits that are in the books
24 before you, specifically and most importantly,
25 Exhibits 13 and 68. Those are the documents that

1 are most relevant here. Those are the documents
2 that constitute the communications from Mr. Sullivan
3 to Legislators and their staff.

4 I do want to point out the -- the comment
5 Mr. Nixon has quoted, "Pay your fine and get on down
6 the road." And I believe on two accounts he said
7 that that was from staff. I would like to, for the
8 record, state that that was not a statement that I
9 made.

10 CHAIR CLANCY: Is that in the record
11 today?

12 MR. STEUSLOFF: I'm sorry?

13 CHAIR CLANCY: Is that in the record
14 today?

15 MR. STEUSLOFF: The statement, "Pay
16 your fine and get on down the road," is that what
17 you mean?

18 CHAIR CLANCY: Yes. Is that in the
19 record?

20 MR. STEUSLOFF: Well, Mr. Nixon had
21 referred to it a couple of times and --

22 CHAIR CLANCY: I know. I let him get
23 away with it, and I'm not going to let you get away
24 with it. Let's talk about today's formal hearing,
25 please.

1 MR. STEUSLOFF: Okay. As far as the
2 Complainants, and their motives in filing the
3 complaints what's relevant here is that they, in
4 fact, filed them and that the jurisdiction over the
5 complaints was properly accepted. The complaints
6 included a number of documents. They were
7 properly -- there was an affidavit that was included
8 with each complaint. The allegations were made on
9 information and belief. The Commission statutes
10 allow a person to file a complaint based on
11 information and belief. They don't need to have
12 personal knowledge of each and every matter that is
13 at issue.

14 I would also like to state that with
15 respect to the statutes, the Lobby Law is not
16 indecipherable. People have been registering with
17 the Commission and our predecessors for decades, and
18 the Texas Attorney General when they considered
19 House Bill 2 in 1975, they didn't think that the
20 Lobby Law was indecipherable. They did clarify it.
21 They did make a few suggested changes, but they did
22 not find it indecipherable. And the key language of
23 influencing legislation was reviewed by United
24 States versus Harriss. Again, United States Supreme
25 Court did not find that language to be

1 unconstitutionally vague.

2 The standard for considering the evidence
3 in this case, it is not one of strict scrutiny. It
4 may be that a Court can apply strict scrutiny when
5 determining whether a statute is constitutional or
6 not. But the -- the issue of whether a statute is
7 constitutional, that decision has to be made -- that
8 decision cannot be made by the Commission in this
9 proceeding. The issue is whether there is a
10 preponderance of the evidence that a violation
11 occurred. And to the extent that -- Courts have
12 looked at the Ethics Commission's Lobby Laws, they
13 have not found them to be infirm on constitutional
14 grounds.

15 The Commission is required to apply the
16 laws as they are written as well as other State
17 agencies; they're charged with applying the law as
18 they are given to them by the Legislature.

19 The definitions of legislation, the
20 standards for the registration requirements are
21 clear. There's nothing in the law indicating that a
22 person simply by being employed by a news
23 organization is suddenly exempt under some kind of a
24 blanket from registration requirements, because an
25 organization -- and not to -- not to target any

1 organization, but an organization like Exxon, they
2 have a newsletter. And many organizations around
3 the -- the State have newsletters. That does not
4 suddenly mean that anybody who is employed by those
5 organizations is exempt from the Lobby Law. If
6 they're engaging in additional activities that
7 require them to register such as specific directed
8 communications to Legislators with the intent to
9 influence on behalf of their employers and they're
10 receiving compensation over the threshold to make
11 those communications or they're doing it in part of
12 their employment and they're receiving over \$1,000
13 in a quarter in a salary, they're required to
14 register.

15 And I ask you to, again, review the
16 evidence that is before you and find by
17 preponderance of the evidence that Mr. Sullivan was
18 required to register in these calendar years and
19 failed to do so.

20 Thank you.

21 CHAIR CLANCY: Counsel, ladies and
22 gentlemen, every Texan, all 26 million of them, has
23 the right to petition, to publicly advocate and to
24 lobby their government. Every Texan should engage
25 in those behaviors. If they're not paid, they do

1 not need to register. Only some of those who are
2 paid to do that have to register.

3 To be very clear, this hearing and these
4 complaints are not because of matters posted on
5 websites or social media or communications made to
6 an organization. Merely writing about what is going
7 on in the Legislature does not require a
8 registration. Merely maintaining a website does not
9 require registration. Merely publishing a rating of
10 how fiscally responsible Legislators are does not
11 require registration.

12 COMMISSIONER LONG: Amen.

13 CHAIR CLANCY: Merely writing news
14 and opinions and distributing them in modern press
15 does not require registration.

16 This Commission is going to make a
17 decision based on the facts and the law as passed by
18 the Legislature.

19 Counsel, I personally appreciate the
20 constitutional arguments. But I am not aware of any
21 instance where this Commission has declared laws
22 passed by the Legislature and upheld by the Courts
23 as unconstitutional. The law that we're going to
24 apply is from the Government Code Section 305. I'm
25 sorry, sir, I didn't mean to make you stand.

1 What it says is, "Any person who receives
2 compensation to communicate directly with one or
3 more members of the Legislature -- Legislative or
4 Executive Branch to influence legislation shall file
5 a written registration unless an exception applies."

6 Now, as the presiding officer of this
7 hearing, I personally am very troubled by the dozens
8 of letters and E-mails that were produced pursuant
9 to the Open Records request but were not produced
10 responsive to the subpoena. And means one of two
11 things, either the subpoena was ignored or the
12 evidence was destroyed.

13 I'm also personally troubled by the
14 assertion of a First Amendment privilege for the
15 refusal to testify. There's 456 District Courts in
16 Texas and every one of them would laugh you out of
17 the courtroom if you made that allegation.

18 Now, simply put, there's nothing wrong
19 with communicating directly with Legislators and
20 attempting to influence them on legislative matters.
21 But if you get paid to do that, you have to
22 register.

23 We appreciate the presentations made by
24 both sides today and have listened to the evidence
25 carefully. The Commission will deliberate on what

1 we have heard and the matter provided by law and we
2 will provide the parties with a final written order
3 promptly. At this time the Chair will entertain a
4 motion to adjourn.

5 COMMISSIONER RAMSAY: So moved.

6 COMMISSIONER AKIN: Second.

7 CHAIR CLANCY: Motion by Commissioner
8 Ramsay, second by Commission Akin. All in favor say
9 aye.

10 This concludes the formal hearing and the
11 taking of notes.

12 (Hearing concluded at 8:02 p.m.)
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25

1 THE STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, Rhonda Howard, Reporter in and for the
4 State of Texas, do hereby certify that the above and
5 foregoing contains a true and correct transcription
6 of all portions of evidence and other proceedings
7 requested in writing by counsel for the parties to
8 be included in this volume of the Reporter's Record,
9 in the above-styled and numbered cause, all of which
10 occurred in open court or in chambers and were
11 reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly
14 reflects the exhibits, if any, offered by the
15 respective parties.

16 I further certify that the total cost for
17 the preparation of this Reporter's Record is \$
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