

TEXAS ETHICS COMMISSION

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October 22, 2014

Mr. Bob Hall
728 Private Road 7005
Edgewood, Texas 75117

Dear Mr. Hall:

Thank you for your letter of October 11, 2014. I assure you that I share your concerns about the regulatory burden on those who are required to report to the Texas Ethics Commission and the utmost importance of political speech. You may not be aware of the actions of those who fear they fall within the scope of Texas's existing PAC registration statute when they do not.

In July, the Texas Home School Coalition (THSC) sued me and the Texas Ethics Commission claiming that the Commission, which I chair, seeks to enforce PAC registration requirements on a grassroots advocacy organization that only spends 9% of its budget on political expenditures. As a parent who home schooled his children, attended the conferences put on by the coalition, and gave pro bono legal advice to home school parents in South Texas, this lawsuit is very troubling. My wife and I benefitted from the training the coalition provided and the curriculum sharing and discounts it arranged. I have personal experience with the important education offered by THSC, and its principal purpose, as I know it, is definitely not political activity.

To prevent chilling political speech in the upcoming general election, last month the Commission entered into an agreed order that if the political expenditures of THSC did not exceed 20% of its resources, THSC would not be required to register as a PAC.

Similarly, this summer, the Commission received a request for an advisory opinion from an anonymous organization that was also concerned it was required to register as a PAC. An opinion by the Commission provides a safe harbor from prosecution under the facts submitted. This organization planned to spend only 20% of its available funds on political expenditures. The request for an opinion was argued to the Commission by a First Amendment attorney who recently recovered over \$100,000 in attorney's fees from the state for challenging the constitutionality of another Texas campaign finance statute. The Commission responded to the request by writing an opinion that provided a safe harbor for an organization that spends 20% of its available funds on political expenditures. If it spends 20%, it is not a PAC.

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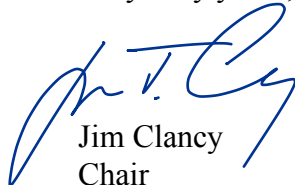
The Texas Ethics Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

The Commission has limited enforcement and rule making authority. The legislature passes the laws. The Commission can only enforce them as written and must use common sense. In May 2014, when I testified to the House State Affairs Committee, I explained to the committee that SB 346 was a bill that expressly did not apply to PACs but applied to groups that were not PACs but made political expenditures in excess of \$25,000. Imposing a dollar limit on organizations that are not PACs is a new requirement that can only be addressed by the legislature. The committee requested that the Commission write rules to address “dark money.” I told the committee that the Commission does not have the power to write an SB 346 rule. SB 346 addressed organizations that are not PACs. The Proposed Ethics Commission Rule Section 20.1(20) only addresses PACs defined in existing law.

The current Texas PAC statute requires registration (and disclosure of contributors of more than \$50 in a reporting period) for groups that have as a principal purpose, political activity. This principal purpose language is the subject of the THSC lawsuit and the anonymous advisory opinion request. The Commission’s lawyers tell me that the use of the word “a” in the statute instead of “the” means the legislature meant there could be more than one principal purpose. To provide fair and predictable regulations, the Commission needs to inform the regulated community how broad this principal purpose may be. Our decision is simple, we have already published an advisory opinion that says 20% is not a principal purpose, and therefore a group cannot have four principal purposes. The legislature has said that there can be more than one principal purpose. That leaves us with two options for a clear definition: Can an organization have two or three principal purposes? If it can have two, the percentage threshold should be greater than 34%. If it can have three, the percentage threshold should be greater than 25%.

With regard to your comments on the rule, do you prefer a two or three principal purpose threshold? If your schedule permits, my fellow Commissioners and I would very much appreciate your testimony or that of your representatives at our next meeting scheduled for October 29, 2014, so that we can publish fair and predictable PAC regulations.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jim Clancy". The signature is stylized and cursive.

Jim Clancy
Chair
Texas Ethics Commission