



Legislative and Campaign Law

The State Bar of Texas

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October 16, 2015



Letter from the Chair

XX Greetings from the Legislative and Campaign Law Section of the State Bar. Now that the Legislature has adjourned and new laws have taken effect, we want to draw your attention to those laws as well as noteworthy legal developments in the world of political law. We hope you find this useful. Please mark your calendars for a year-end seminar highlighting changes to procurement law; you'll want to know about important legal changes related to the practice of contracting with, selling to, or influencing state and local government. See more details below...

Interesting Cases and Legal Developments

Texas Ethics Commission adopts rules aimed at disclosing so-called “dark money.” In an effort to address the growing involvement of nonprofit corporations in the political process, the Texas Ethics Commission sought – by rule – to clarify what it means for a corporation to act “in connection with a campaign” and when an entity has “a principal purpose of making campaign expenditures.” Under the first new rule, communications from a group like a 501(c)4 nonprofit will qualify as a political expenditure if it is distributed within 30 days of an election and is “susceptible to no other reasonable interpretation than to urge the passage or defeat” of a candidate or a ballot measure. Under the second new rule, the commission sought to establish criteria that would indicate when a group’s political activity becomes a “principal purpose” of the organization. Read the rules [here](#).

Texas Ethics Commission sues to enforce its subpoenas in campaign finance investigation. For the first time in its history, the Texas Ethics Commission has brought suit to enforce subpoenas that it has issued. The commission argues that subpoenas, issued to Empower Texans in February 2014, have been ignored, denying the commission of information it needs to fulfill its statutory duties. Read the pleading [here](#).

***Evenwel v. Abbott*. Supreme Court of the United States, No. 14-940.** This fall, Texas will be at the center of a U.S. Supreme Court redistricting case that could fundamentally change the meaning of “one person, one vote.” The dispute, which highlights the tension between the requirement to preserve minority strength and the requirement to weigh all votes equally – has the potential to change the political landscape in Texas and beyond. [Read more](#).

***Center for Competitive Politics v. Harris*. [United States Court of Appeals for the Ninth Circuit, No. 14-15978](#).** In Texas, the so-called “dark money” issue has been the subject of rulemaking and failed legislation, and this spring resulted in a legislative standoff that killed what was viewed as the Legislature’s omnibus ethics reform bill. The debate centers on appropriateness of requiring nonprofit corporations to disclose large donors if the entities engage in political activities. A pending California case could provide some guidance in the ongoing effort to address the issue of so-called “dark money.” California state law requires certain nonprofits to disclose the names of all donors contributing more than \$5,000. The Center for Competitive Politics (CCP) sought to enjoin the California Attorney General from requiring the disclosure of its major donors, arguing that freedom of association barred disclosure as set forth in *NAACP v. Alabama*. CCP introduced the theory that compelled disclosures risk a chilling effect, which alone triggers strict scrutiny. The Ninth Circuit rejected this theory, affirming the lower court’s decision allowing disclosure. The Ninth Circuit stated that in order to prevent compelled disclosures, the seriousness of the actual burden on a plaintiff’s First Amendment rights must be balanced with government interests. CCP plans to appeal the decision to the U.S. Supreme Court.

***Texas Ethics Commission v. Sullivan*. [Denton County, 158th Judicial District, No. 14-06508-16](#).** The saga resulting from the first ever formal hearing involving a violation of the Texas lobby law continues, with recent arguments being heard before an appellate panel. In 2014, the Texas Ethics Commission (TEC)

ruled that Michael Quinn Sullivan, president of Empower Texans, violated lobby statutes by failing to register as a lobbyist in 2010 and 2011; the commission assessed him a fine of \$10,000. TEC contends Sullivan was paid by Empower Texans to communicate with legislators on the organization's behalf without registering as a lobbyist. Sullivan argues that he enjoys the "media exception" to lobby registration, and that he is further immune from suit under the Texas Citizens Participation Act. The Denton court reviewed the appeal de novo the TEC action and dismissed the action against Sullivan based on Anti-SLAPP (Strategic Lawsuits Against Public Participation) laws. TEC appealed to the Second Court of Appeals in Fort Worth, arguing that the case should have been transferred to Travis County under a mandatory venue provision because Sullivan's residency in Denton was questionably "venue shopping" for a friendly judge. TEC also argues that Anti-SLAPP laws, meant to protect free speech, were misapplied to the case, which was brought by an arm of the government. Arguments were heard in Fort Worth on September 22, 2015. [Read more.](#)

New Laws of Interest from the 84th Legislative Session

Several new laws took effect on September 1 that have ethical implications for public servants and those professionals who seek to influence public policy at the state and local levels of government.

[HB 23](#). This law rewrites Chapter 176 of the Local Government Code, requiring additional disclosures regarding relationships between vendors and local officials. The law clarifies the definitions of "local government officer" and "vendor." Notably, it expands the types of relationships and activities that must be disclosed, extending disclosure requirements beyond elected officials to public employees involved in procurement decisions. The new law also requires disclosure of family relationships between vendors and public officers, as well as reporting of certain expenses related to entertainment, transportation and lodging. The law authorizes a local government body to declare a contract void if a vendor failed to file a conflict of interest questionnaire.

[HB 408](#). Prohibits the practice of "**double dipping**" by prohibiting elected state officials from simultaneously collecting both a salary and a public pension.

[HB 1295](#). This new law requires that local governmental entities disclose to the Texas Ethics Commission all parties who stand to benefit financially from a contract, including brokers, intermediaries, lawyers, or advisers. The bill applies to contracts that must be approved by a governing body or that have a value over \$1 million. Additionally, public colleges must disclose each sponsor of academic research when a sponsor pays for more than half of a study. The Texas Ethics Commission has been tasked with adopting forms for use by the local governmental entities.

[HB 1690](#). This law changes the manner in which criminal offenses for public corruption are prosecuted, essentially divesting the Travis County District Attorney's Office of jurisdiction. Now, allegations of public corruption cases will first be investigated by a public integrity unit within the Texas Rangers. Then, if prosecution is warranted, the case will be referred to a prosecuting attorney in the defendant's county of residence. This section covers offenses under Title 8 of the Penal Code, certain provisions of Title 15 of the Election Code, and Chapters 301, 302, 571, 572, 573 and 2004 of the Government Code.

[HB 3511](#). Clarifies that public officials that file a **personal financial statement must disclose public pension benefits** received.

[HB 3512](#). Codifies Ethics Commission rules and opinions on lobbyist registration requirements. A person spending more than 26 hours of compensated work in a calendar quarter communicating, or preparing to communicate with a member of the executive or legislative branch, must register as a lobbyist.

[HB 3517](#). Amends Government Code § 305.022, regulating contingency fees for the sale of goods or services to the state. **Independent contractors are now clearly prohibited from being paid on a contingent fee basis for procurements of less than \$10 million.** If independent contractors of vendors attempt to influence purchasing decisions, the bill requires them to register as lobbyists.

Save the Date!
Update on Procurement & Contracting Laws
9 a.m. - 1 p.m. ~ December 15, 2015
Texas Law Center, 1414 Colorado, Austin, Texas

The Texas Legislature made significant changes to the laws governing contracting with the State of Texas, as well as increasing disclosure requirements at the local level. These changes will have a significant impact on

how vendors, and their legal counsel, interact with governmental entities on both the state and local levels. Get the scoop and earn some last-minute CLE on December 15t at the Texas Law Center. [Join](#) the Legislative & Campaign Law Section for a discounted rate!

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If you join now, your membership will last through May 31 of 2017!

Sincerely,

[Ross Fischer](#), Chair
[Legislative and Campaign Law Section](#)

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