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JOE NIXON: Eroding constitutional speech



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Posted: Saturday, November 30, 2013 2:09 am

By JOE NIXON

In believing the citizens of Texas should be empowered with the most influence over their [elected officials](#), lobbying used to be a criminal offense in Texas. When that law changed in 1957, Texas voters lost their voice to special interests.

Today, however, [Michael Quinn](#) Sullivan and Empower Texans are trying to re-establish the voice of Texas voters as the most influential with elected officials.

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Not surprisingly, an active registered lobbyist with the [Texas Trial Lawyers](#) Association is behind the efforts to try to silence Sullivan and his group. He had two disgruntled state representatives (one later defeated in her re-election bid) sign the forms so his role would be obfuscated for 18 months. In filing the frivolous complaint, the legislators were doing the bidding of a lobbyist and not the citizens.

As long as common citizens have to register as lobbyists, pay the state a \$750 yearly fee, and fill out monthly forms before they may contact their representatives on issues facing the state, only the lobby of special interests will be empowered in the Legislature – not the voters. This is exactly what the complaints against Sullivan and Empower Texans are about. Are we going to keep only the lobby empowered, or are we going to

empower Texans?

So, what did Sullivan and his group do to cause these complaints to be filed against them? They graded legislators on the principal areas of [fiscal responsibility](#) and limited government. They told the public and legislators in emails they would be graded, and on which votes. Then they sent the report cards to the voters.

The complaints don't say Sullivan came to their offices. He didn't. They do not complain that Sullivan took anyone to big, fancy dinners. He didn't. They do not complain that Sullivan took legislators golfing, fishing, or on some other junket. He didn't. They don't even complain that Sullivan wrote legislation to file. He didn't.

Their only complaint is that Sullivan sent them an EMAIL telling them he was going to grade them, and on which bills they would receive a grade. That's it. That's the complaint. Not a phone call. Not a personal visit. Just a very public notice of a scorecard.

When the two complaints were filed more than 21 months ago, the legislators who filed them immediately made the complaints public, then publically asserted that Sullivan and Empower Texans were "under investigation" by the Texas Ethic Commission. This has now become a common ploy. File a complaint, make it public, and assert your political opponent is "under investigation."

What is surprising is that the Ethics Commission would chose to play this game.

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Is Texas lobby law really so expansive that it covers sending an email? Prior to hearing any evidence, one commissioner stated that this would all go away if Sullivan just agreed to a \$500 fine. After two days of evidence, the Commission made the same offer – apparently the Commission really does think Texas' lobby law is that expansive. A fine for doing what, specifically, the Commission has refused to explain. Call it a "we don't like what you are saying" fine.

Sullivan responded to the offer by writing "NUTS" across the top of their proposal.

Sullivan rejected their proposal, because by agreeing to it he would have agreed that any citizen activist would have to register as a lobbyist, pay a fee of \$750 to the Ethics Commission and fill out monthly forms before they send even an email (or a phone call, or an old fashioned letter) to their legislator. And heaven help someone who decides to actually show up at the Capitol in Austin!

Or, at least, every citizen would have the threat of an investigation and fine hanging over their head for saying something a powerful politician or well-connected lobbyist didn't want to hear.

The overly-broad and expansive interpretation of Texas' lobby statute being asserted by lobbyists and the Texas Ethics Commission is truly NUTS. Sullivan is right to be standing on his constitutional rights of free speech and to petition government. Any other course of action fails to empower Texans.

Joe Nixon is a former state representative (R-Houston, 1995-2007), a former chairman of the House Committee on Civil Practice, senior fellow of the Texas Public Policy Foundation, a partner in Beirne, Maynard, & Parsons, LLP and the lawyer for Michael Quinn Sullivan and Empower Texans.

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