

May 23, 2014

Mr. Lyle W. Cayce
Clerk, U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

RE: No. 13-50582, Cath. Ldrshp Coaltn of TX, et al. v. David Reisman, et al.

Dear Mr. Cayce:

Pursuant to Rule 28(j), appellants inform the Court of *EMPOWER Texans, Inc., et al. v. Tex. Ethics Com'n, et al.*, No. 14-CV-172-SS (W.D. Tex. filed Feb. 26, 2014).¹

The TEC is presently investigating EMPOWER Texans, Inc. (“ETI”), a 501(c)(4) organization, to determine “whether the activities of ETI render it a political committee...such that it is required to file a campaign treasurer appointment and comply with the statutory reporting and disclosure requirements for political committees.” Ex. B at 7. TEC claims evidence “indicates that ETI solicits political contributions and makes political expenditures on behalf of its donors in support of a slate of political candidates and measures.” *Id.* at 1. TEC argues that by objecting to its subpoenas, ETI “invite[s] th[e] Court to enjoin the state’s lawful efforts to promote...transparency by sanctioning the use of the corporate form to circumvent the disclosure of political contributors.” *Id.* at 2.

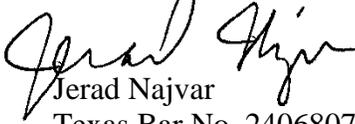
In other words, TEC acknowledges that corporations do not disclose contributors, but political committees do, and this very fact propels its vigorous investigation of ETI. However, at oral argument in the instant case, TEC Defendants suggested a nonprofit could simply fund election ads from its corporate account rather than register a political committee subject to § 253.037(a). *EMPOWER Texans* illustrates why this suggestion misrepresents the record and the law.

Unlike ETI, there is no question here that appellants established their intention to (i) raise “political contributions” (ii) to pay for express advocacy, requiring a political committee. USCA5 at 522-28 (¶¶ 30-32, 40-41, 46-47, 50); Gray Br. 24-25; *cf.* Tex. Elec. Code § 254.261.

¹ Ex. A. The federal case was dismissed 4/25/14 on abstention grounds, Ex. C, and ETI re-filed in state court. *EMPOWER Texans, Inc., et al. v. Tex. Ethics Com'n*, No. D-1-GN-14-001252 (53rd Dist. Ct., Travis County, Tex. Apr. 30, 2014). TEC has not yet filed any pleadings in the state case.

As the investigation of ETI shows, status as a nonprofit for federal tax purposes is no shield against the Election Code. Even if nonprofits were relevant in this facial challenge, appellants had no way to avoid status as general-purpose-committees.

Very respectfully,

A handwritten signature in black ink, appearing to read "Jerad Najvar". The signature is fluid and cursive, with the first name "Jerad" being more prominent than the last name "Najvar".

Jerad Najvar
Texas Bar No. 24068079
Counsel for Appellants

cc:

Appellees via CM/ECF system