



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2015

JAMES E. DAVIS
DEPUTY ATTORNEY GENERAL
FOR CIVIL LITIGATION
DIRECT DIAL: (512) 475-0131

Joseph M. Nixon
1300 Post Oak Blvd., Suite 2300
Houston, Texas 77056
jnixon@bmpllp.com

James E. "Trey" Trainor, III
401 W. 15th Street, Suite 845
Austin, Texas 78701
ttrainor@bmpllp.com

Re: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*,
Cause No. D-1-GN-15-004455, in the 345th District Court of Travis County, Texas

Empower Texans, Inc., et al. v. Texas Ethics Commission, et al., Cause No. D-1-
GN-14-001252, in the 53rd District Court of Travis County, Texas

Dear Mr. Nixon:

Thank you again for your December 8, 2015 email and subsequent communications. In order to efficiently use the Court's time and resources on Monday, this letter clarifies the scope of the Texas Ethics Commission's ("TEC") request for information from your clients.

For the reasons outlined below, the TEC requires additional information in response to the April 7, 2014 subpoenas to Empower Texans, Inc. and Michael Quinn Sullivan at issue in the above-referenced matters (the "Subpoenas"). Specifically, the TEC requires the production of documents responsive to requests 3, 13, and 16 in the Subpoenas as outlined below. The TEC's need for additional information arises from our ongoing discussions, the attached spreadsheet from your December 8, 2015 email, marked as Exhibit 1, and the content of your December 8, 2015 emails, marked as Exhibit 2.

The spreadsheet appears to reflect eleven transactions for varying amounts over a six-week period between November 6, 2011 and December 16, 2011. In your first email on December 8, 2015, you represent that this information is "the spreadsheet of donations

December 17, 2015

Page 2

received during the time period the donate button was attached to the four emails." You did not, however, provide a copy of the four emails you reference.

I asked you to confirm whether the spreadsheet reports all donations that reasonably could have been received by Empower Texans, Inc. in response to any Empower Texans solicitation that expressly requested donations for the purpose of making an independent expenditure. I asked you to confirm if there were other "button ads" published in the timeframe covered by the pending subpoena or other forms of solicitation in that timeframe that expressly request money for Empower Texans to make independent expenditures. I also asked you to explain the specific beginning and end dates in the spreadsheet.

In your response email on the same day, you represented that "the spreadsheet lists all donations received during the timespan the donate button was on an email." You also represented, "[t]hose are all the donations to Empower Texans during the time period the donate button could have been used. \$375. That's it." You did not respond as to whether there were other "button ads" published in the timeframe covered by the pending subpoena or other forms of solicitation in that timeframe that expressly request money for Empower Texans, Inc. to make independent expenditures.

Attached as Exhibit 3 is an October 21, 2011, Empower Texans, Inc. communication with a donate button seeking a monthly or one time contribution of \$5, \$10 or \$25 to "fund independent expenditure activities that promote conservative leadership in the Lone Star State." The text of this solicitation is the same as four other communications dated November 6, 13, 20, and 27.

The October 21, 2011 communication raises several questions. First, the spreadsheet begins with transactions on November 6, 2011. This suggests the spreadsheet that you represented "lists all donations received during the timespan the donate button was on an email" is incomplete. Second, your representation regarding four emails with solicitation buttons and, more particularly, the omission of the October 21, 2011 solicitation, creates doubt as to whether Empower Texans has revealed all solicitations that expressly seek contributions to make independent expenditures. Third, that the solicitations specifically ask for monthly contributions does not support the conclusion that the appropriate timeframe of relevant contributions ends on December 16, 2011.

TEC undeniably has the right and statutory mandate to issue subpoenas in connection with an investigation of a sworn complaint. However, the Office of the Attorney General and the TEC have listened to Empower Texans and Michael Quinn Sullivan's concerns and objections regarding the scope of information requested in the subpoenas relevant to this action. In view of those concerns, and in the interest of seeking a speedy and fair resolution of this matter, the TEC hereby withdraws and agrees not to enforce the Subpoenas, with the exception of requests 3, 13 and 16. Furthermore, the TEC, at this time, only seeks responses to Subpoena requests 3, 13 and 16 limited to the following information:

December 17, 2015

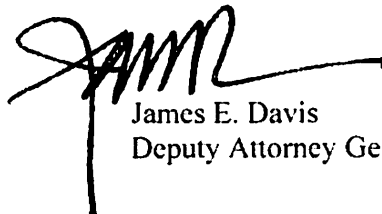
Page 3

1. All solicitations for contributions published between January 1, 2011 and December 31, 2011 in which Empower Texans, Inc. solicits contributions to fund independent expenditure activities.
2. All other solicitations for contributions published by Empower Texans, Inc. between January 1, 2011 and December 31, 2011 that are not produced in response to category 1 above. This information will allow the TEC to evaluate whether Empower Texans requested donations without earmarking funds for independent expenditures during the relevant timeframe and whether donations made in a particular timeframe could be responsive to one or more solicitations.
3. Documents sufficient to show all contributions received by Empower Texans, Inc. between January 1, 2011 and December 31, 2011 in response to a solicitation produced in category 1 above. This response may be produced in the form of a spreadsheet compiled from the books and records of Empower Texans, Inc. Empower Texans may redact the name, address and other personal identifying information of donors, but must create a unique identifier for each donor (such as "Donor 1") so that the TEC can evaluate whether a donor made a one-time or monthly contribution.
4. If Empower Texans is unable to identify contributions made in response to a specific solicitation, as requested in category 3, then all contributions received by Empower Texans, Inc. between the publication date of the earliest solicitation produced in response to category 1 through December 31, 2011. This response may be produced in the form of a spreadsheet compiled from the books and records of Empower Texans, Inc. Empower Texans, Inc. may redact the name, address and other personal identifying information of the donors, but must create a unique identifier for each donor (such as "Donor 1") so that the TEC can evaluate whether a donor made a one-time or monthly contribution.

In addition, Empower Texans, Inc. must provide an affidavit from a person with knowledge affirming that Empower Texans, Inc. has produced all documents in its custody or control that are responsive to Subpoena requests 3, 13 and 16 as limited. The TEC reserves all rights to seek follow-up information within the scope of the limited requests and, to the extent necessary, issue new subpoenas for additional relevant information.

Please let me know by 5:00 p.m. on Friday, December 18, whether Empower Texans, Inc. will agree to provide the information requested in this letter on or before December 31, 2015.

Sincerely,

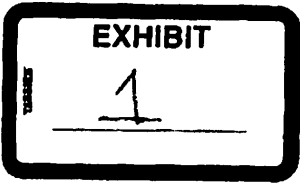


James E. Davis
Deputy Attorney General for Civil Litigation

Exhibits

Date	Amount	Pay Amount	Net Pay	Deposit	Imp. Date	Imp. Cycle	Campaign Title	Country
11/06/2011 5:30pm CST	\$15.00	\$1.13	\$13.87	11/9/2011	Term. for Fiscal Responsibility	US		
11/13/2011 8:42pm CST	\$15.00	\$1.13	\$13.87	11/16/2011	Term. for Fiscal Responsibility	US		
11/20/2011 7:06pm CST	\$15.00	\$1.13	\$13.87	11/23/2011	Term. for Fiscal Responsibility	US		
11/27/2011 9:53pm CST	\$15.00	\$1.13	\$13.87	11/29/2011	Term. for Fiscal Responsibility	US		
11/27/2011 9:39pm CST	\$15.00	\$1.13	\$13.87	11/30/2011	Term. for Fiscal Responsibility	US		
11/27/2011 11:36am CST	\$15.00	\$1.13	\$13.87	11/30/2011	Term. for Fiscal Responsibility	US		
11/27/2011 7:35pm CST	\$15.00	\$1.13	\$13.87	11/30/2011	Term. for Fiscal Responsibility	US		
11/28/2011 6:36pm CST	\$15.00	\$1.13	\$13.87	12/1/2011	Term. for Fiscal Responsibility	US		
11/27/2011 10:30pm CST	\$15.00	\$1.13	\$13.87	12/1/2011	Term. for Fiscal Responsibility	US		
11/13/2011 2:24pm CST	\$15.00	\$1.13	\$13.87	12/16/2011	Term. for Fiscal Responsibility	US		
11/16/2011 9:46pm CST	\$15.00	\$1.13	\$13.87	12/21/2011	Term. for Fiscal Responsibility	US		

First Name	Middle Name	Last Name	Occupation	Employer	Home Address	City	State	Zip	Country
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



Davis, Jim

From: Nixon, Joe <jnixon@bmqllp.com>
Sent: Tuesday, December 08, 2015 5:05 PM
To: Davis, Jim
Cc: Holman, Melissa; Trainor, Trey
Subject: RE: ET Spreadsheet_001

Jim:

Yes, the spreadsheet lists all donation received during the timespan the donate button was on an email. There is absolutely no way to determine whether a donation was received as a result of the donate button. Or, whether the donate button was ever used once. Those are all the donations to Empower Texans during the time period the donate button could have been used. \$375. That's it. And, the TEC has had this information for more than 2 years. And we publicly provided this information and confirmed it with the TEC in a public meeting.

Joseph M. Nixon
Board Certified Civil Trial Law, Texas Board of Legal Specialization

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From: Davis, Jim [mailto:Jim.Davis@texasattorneygeneral.gov]
Sent: Tuesday, December 08, 2015 4:52 PM
To: Nixon, Joe
Cc: Holman, Melissa; Trainor, Trey
Subject: Re: ET Spreadsheet_001

Thank you. Is it correct to say that the spreadsheet reports all donations that reasonably could have been received by Empower Texans Inc. in response to any Empower Texans solicitation that expressly requested donations for the purpose of making an independent expenditure? In other words, are there other button ads published in the timeframe covered by the pending subpoena or other forms of solicitation in that timeframe that expressly request money for Empower Texans to make independent expenditures?

Also, as to the amounts in the spreadsheet, I recall you mentioning that Empower Texans doesn't track donations by solicitation, thus the spreadsheet reports ALL donations in a set timeframe, not just donations that may have been made in response to a button ad. That said, can you confirm that the donations reported cover the relevant timeframe? Why those specific beginning and end dates in the spreadsheet?

Thanks again for bringing these facts to our attention.

