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Date: February 4, 2015

To: [REDACTED]

Cc: [REDACTED]

Subject: Coordinated effort on end-of-life issue

My client, Texas Right to Life, forward me an e-mail wherein you invited them to participate in a coordinated effort to influence end-of-life legislation. Unfortunately, I've had to urge them not to participate in the effort due to new rules recently adopted by the Texas Ethics Commission that are aimed at curbing the political speech of non-profit entities like Texas Right to Life and the others that you have invited to participate.

While the new rules are broad and ambiguous, they center on the coordination of non-profit corporate entities working towards a common goal in politics and legislation. Some in the pro-life community have praised these new rules without fully examining the consequences of the new speech regulations. Most notably, if non-profit corporations are found to run afoul of the Commission's latest rules, they are subjected to the same requirements as a political action committee – including the disclosure of all their donors.

In Rule § 22.6(b), the Commission added a definition of what constitutes, "acting in concert" amongst non-profit corporations:

(b) For purposes of Section 254.261 of the Election Code, "acting in concert" means acting in cooperation or consultation with another, or under an express or implied agreement, to pursue a common activity.

In your email you propose that the groups "...work together to accomplish improvements of existing state law" surrounding end-of-life legislation. Clearly such a focused effort, one that is sorely needed, would meet the common activity portion of the TEC's new acting in concert definition. In fact, it is the singular focus of the group that would evidence the common activity of the participating entities. If the end-of-life issue were ever discussed by any one of the participating entities in a campaign (notice the new rule, by design, has no limitation on when the cooperation or consultation had to occur in relation to a campaign expenditure) it could have the effect of forcing all the entities into donor disclosure.

Participation by several non-profit entities in an organized and coordinated effort that has as its singular focus the discussion of one pending legislative/political issue jeopardizes the constitutionally protected private right of association of the donors to each entity because of the ambiguous and ill-conceived rulemaking of the Texas Ethics Commission.

Accordingly, until the Commission's rules are adjudicated unconstitutional (as I strongly believe they are), I believe it would be detrimental to the end-of-life efforts to have such a group given the growing use of speech regulations as a tool to attempt to silence pro-life advocates.

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