No. 24-803

IN THE
Supreme Court of the United States

MICHAEL QUINN SULLIVAN,
Petitioner,

v.

TEXAS ETHICS COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the Texas Court of Appeals, Third District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the record of this matter—which involves undisputed facts that Petitioner failed to register as a Texas lobbyist even though he (1) was paid to lobby and (2) spent significant time lobbying on specific Texas legislative matters—merit any reconsideration of well-established Court precedent that lobbyist registration laws do not violate the First Amendment?

CORPORATE DISCLOSURE STATEMENT

Neither Petitioner nor Respondent is a corporation.

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INTRODUCTION

This case is about the registration and disclosure requirements set out in Texas law for a professional and paid lobbyist. This case is not about the right of anyone whom Petitioner terms an "ordinary" citizen to speak to his or her lawmakers. The Petitioner in this case was paid amply by an advocacy organization to send direct communications to Texas legislators and members of their staffs and Texas state officials to influence votes and action on specific legislative matters. *See* Appx.A-T. Paid lobbyists representing all manner of organizations and interests routinely comply with Texas lobbyist registration laws in such circumstances, as Petitioner himself did from 2001 to 2009 before declining to do so in the years at issue.

This matter also involves application of this Court's well-established precedent. In *United States v. Harriss*, 347 U.S. 612 (1954), this Court held that lobbyists who are paid to make direct communications with legislators to influence legislative matters can be required—in a wholly constitutional manner—to register and disclose their lobbying clients and compensation. The Court explained that "Congress has not sought to prohibit" lobbying, but "merely provided for a modicum of information from those who for hire attempt to influence legislation." *Id.* at 625. Congress "only" wanted "to know who is being hired, who is putting up the money, and how much." *Id.* Such disclosure requirements for paid lobbyists "do not offend the First Amendment." *Id.*

Given the public policy preference for shining a light on professional lobbying activity, all fifty States

have some form of lobbyist disclosure laws on the books. Pet.27. Texas defines lobbying as "communicat[ing] directly with one or more members of the legislative or executive branch to influence legislation or administrative action." TEX. GOV'T CODE § 305.003(a)(1)–(2). This definition tracks the First Amendment principles that this Court has articulated in *Harriss* and its progeny.

Texas law is in fact even more speech-protective than the federal law at issue in *Harriss*, in two ways. First, those who are not paid above a certain minimum threshold for lobbying are exempt from the registration and disclosure requirements. Second, those who do not spend time above a certain minimum threshold on lobbying are also exempt from those requirements. Texas law is carefully drawn to exempt from registration and disclosure requirements citizens who are not paid to influence government officials or who occasionally talk to lawmakers in the course of their jobs.

The Texas registration and disclosure requirements for paid lobbyists are plainly constitutional under principles set forth in *Harriss* and its progeny, and the application of those Texas laws to the facts of this case is unremarkable. Nevertheless, Petitioner has engaged in more than a decade of litigation against the Texas Ethics Commission, asserting multifarious claims in several venues. The Texas Supreme Court twice denied his petitions for review without any written opinions or dissents. The petition to this Court not only represents a meritless request for this Court's review

but also the invocation of arguments that Petitioner did not preserve in the intermediate Texas Court of Appeals.

The Court should deny the petition.

STATEMENT OF THE CASE

I. Legal and Factual Background

A. The Texas Ethics Commission Enforces State Financial Disclosure Laws that Promote Transparency in the Legislative Process

The Texas Legislature and voters created the Texas Ethics Commission (the "Commission") pursuant to enabling legislation and a corresponding state constitutional amendment in 1991. The Commission is statutorily charged with administering and enforcing various financial-disclosure laws that apply to political candidates, political committees, and lobbyists. As this Court has recognized in its campaign-finance and lobbyist-registration jurisprudence, requiring the disclosure of the funding source for political speech is consistent with the First Amendment. *E.g., Citizens United v. FEC*, 558 U.S. 310, 366–71 (2010) (noting that disclosure laws in the campaign-finance context "do not prevent anyone from speaking"); *Harriss*, 347 U.S. at 625 (noting that disclosure laws in the lobbyist-registration context seek "not . . . to prohibit" speech, but "merely provide[] for a modicum of information" that must be disclosed).

In a manner wholly consistent with the First Amendment principles set forth in *Harriss*, Texas law

defines lobbying as "communicat[ing] directly with a member of the legislative or executive branch to influence legislation or administrative action." TEX. GOV'T CODE § 353.003(a)(1)–(2). In 2010 and 2011, the time period at issue, the Texas lobbyist registration requirement applied to those who (1) received more than $1,000 in compensation for lobbying in a calendar quarter and (2) spent more than 5 percent of their compensated time during a calendar quarter on lobbying. 1 TEX. ADMIN. CODE § 34.43 (2011).[1] This included compensation for and time spent preparing to lobby, such as participation in strategy sessions, analysis of legislation or administrative matters, research, and communication with the client or employer, if the lobbying ultimately occurred. *Id.* §§ 34.3, 34.43 (2011).

For purposes of calculating the minimum compensation threshold, the following are excluded:

- Reimbursement for personal expenses such as travel, food and beverage, lodging, and membership dues. TEX. GOV'T CODE § 305.003(2); 1 TEX. ADMIN. CODE § 34.43(a).
- Reimbursement for office expenses such as office supplies, photocopying, postage, and dues and subscriptions. 1 TEX. ADMIN. CODE § 34.7.
- Compensation for communicating with government officials to obtain an interpretation

[1]Today, a person's conduct triggers registration requirements if that person receives more than $1,930 for and spends more than 40 hours on lobbying in a calendar quarter. *Id.* §§ 18.31(a), Figure 2; 34.43(a)–(b).

of the law, comply with legal requirements, respond to requests for information, or participate in public government proceedings such as notice-and-comment rulemaking or testifying at a legislative hearing. *Id.* § 34.5.

- If compensation is for both lobbying and non-lobbying services, a reasonable allocation must be made to lobbying, and amounts not attributable to lobbying are excluded. *Id.* § 34.43(c).

Those required to register as a paid lobbyist must disclose to the Commission their contact information, the identities of their employer or clients, the general subject matter of their advocacy, and the approximate range of compensation for the representation. TEX. GOV'T CODE § 305.005(f)–(g). Registrants must also pay an administrative fee, which in 2010 and most of 2011, was $100 per year for someone employed by a non-profit. *Id.* § 305.005(c)(1) (2011 version).

To promote sunshine in the legislative process, the Commission publishes summaries of the information disclosed by lobbyists on its website. Government officials, lobbyists, potential clients of lobbyists, and anyone studying the role of paid advocacy in government decision-making frequently rely on such published summaries. For government officials, the information helps them understand "who is being hired" to influence them, "who is putting up the money, and how much." *Harriss*, 347 U.S. at 625. For lobbyists, the disclosures serve to identify others advocating for or against their clients' interests, to facilitate networking within the profession, and to

publicize their work history. Potential clients can use the disclosures to evaluate which lobbyists to hire and to help them determine whether lobbyists have conflicts of interest prohibited by state law. TEX. GOV'T CODE § 305.028.

Although some of the highest-paid lobbyists operate as independent contractors with multiple clients, there are also many full-time employees of non-profit advocacy organizations who are classified and who register as lobbyists. For example, the 2025 list of registered lobbyists includes employees of Planned Parenthood Gulf Coast, Texas Right to Life, the Innocence Project, and the Texas Catholic Conference of Bishops.[2] Many for-profit businesses and professions are represented by non-profit organizations with full-time employees who lobby for their interests, such as the Texas Oil and Gas Association, the Texas Trial Lawyers Association, and the U.S. Chamber of Commerce. Petitioner's suggestion that a full-time employee of a non-profit organization is an "ordinary citizen" rather than a "lobbyist" ignores the reality that non-profit organizations can and often do lobby in the same way as for-profit organizations. The Texas lobbyist registration requirements look not to corporate formalities (except to determine whether the reduced non-profit registration fee applies), but at whether an individual is sufficiently compensated for, and devotes enough time to, directly communicating with

[2]https://www.ethics.state.tx.us/search/lobby/loblistsREG2021-2025.php.

government officials to influence their decisions.[3] If persons paid by non-profits to lobby meet the registration thresholds, they must register under Texas law, just like their counterparts who do similar work for for-profit entities.

Individuals may file a sworn complaint with the Commission alleging the violation of a law within its jurisdiction. TEX. GOV'T CODE § 571.122. The Commission has authority to seek documents, answers to questions, and witness testimony to investigate potential violations. *Id.* §§ 571.1242(f), .137(a-1). At multiple steps in the investigatory process, the Commission is statutorily obligated to propose a settlement to resolve an alleged violation before proceeding with an agency adjudication. *Id.* §§ 571.1242(g), .126(b). Unsurprisingly, the vast majority of Commission investigations are resolved through a settlement without any formal finding of a violation.

The Commission offered to settle the alleged violations by Petitioner for $1,000 in 2013. Petitioner responded by issuing a press release rejecting the proposed settlement and calling the offer "NUTS."[4]

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[3]Alternatively, individuals who make sufficient expenditures for the benefit of government officials and who devote enough time to lobbying are also required to register. However, the Commission based its enforcement here on the compensation Sullivan actually received, which is public information that his employer disclosed on its IRS Form 990.

[4]John Reynolds, *Sullivan Rejects Ethics Commission Settlement Offer*, TEX. TRIBUNE (Nov. 13, 2013),

Petitioner instead has pursued more than a decade of contentious and costly litigation in courts throughout Texas and now on petition to this Court.

B. Petitioner Registers as a Paid Lobbyist From 2001 to 2009, Before Refusing to Do So in 2010 and 2011

During the time period at issue in the Texas law violations—2010 and 2011—Petitioner Michael Quinn Sullivan ("Sullivan") was the President and CEO of Empower Texans, a non-profit organization from which he drew a salary. Sullivan registered as a lobbyist with the Commission from 2001 to 2009, including as a lobbyist on behalf of Empower Texans in 2008 and 2009, but he did not register in 2010, 2011, or any year thereafter. CR2574. The factual record below contains undisputed evidence that Empower Texans and its related entities[5] paid Sullivan compensation exceeding $1,000 per calendar quarter in 2010 and 2011: $132,399 in 2010 and $128,571 in 2011. CR39, 2242-43, 2344-91. That factual record also includes Sullivan's stipulation that he spent more than five percent of his compensated time in 2010 and 2011 engaged in lobbying. CR2497–98.[6]

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https://www.texastribune.org/2013/11/13/michael-quinn-sullivan-says-nuts-ethics-commission.

[5]The record further demonstrates that Empower Texans and its related entities are the types of "special interest groups" that, as *Harriss* recognizes, could "drown[] out" the "voice of the people" in a manner that supports registration and disclosure requirements. CR2172, 2241, 2266]; *see* Pet.5-6.

[6]Sullivan entered this stipulation on the factual basis for this registration threshold factor in lieu of disclosing his complete

Sullivan's petition does not contend that the Texas lobbyist registration and disclosure requirements did not apply to his conduct in 2010 and 2011. Instead, Sullivan now contends—and various amici appear to assume, without any real analysis of the record[7]—that Sullivan did nothing more than write a newsletter and work on a website that "rated" legislators. Such characterizations belie the actual record that led to a Texas court granting summary judgment in the Commission's favor on the merits of the claims that Sullivan violated Texas law.

In fact, if the Court were to grant review in this case—which it should not—the Court would be faced with a record that includes many direct and targeted communications to legislators and executive branch officials about specific legislation and legislative action. In these communications, Sullivan repeatedly urged legislators to support or oppose various bills and amendments. *See generally* Respondent's Appendix (Appx.) A-T (collecting examples of Sullivan's direct

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calendar and other records of how he spent his working time. CR2497.

[7]*E.g.*, *Brief of Institute of Free Speech as Amicus Curiae Supporting Petitioner* at 7-8; *Brief of Amicus Curiae Ken Paxton, Attorney General of Texas, in Support of Petitioner* at 2-5; *Brief of United States Senators John Cornyn and Ted Cruz as Amici Curiae in Support of Petitioner* at 9; *Brief of the Cato Institute and Foundation for Individual Rights and Expression as Amici Curiae in Support of Petitioner* at 3; *Brief of Texas Home School Coalition as Amicus Curiae in Support of Petitioner* at 5; *Brief of Amicus Curiae Institute for Justice in Support of Petitioner* at 10, 13-15.

lobbying communications in 2010 and 2011).[8] Examples include the following communications by Sullivan to individual legislators or members of their staffs:

> As you take up business today, we urge great caution on the amendments being offered on HB 3790 and recommend opposing HB 3640.
>
> While there are good reforms being offered to HB 3790 – such as those by Reps. Weber, Cain and Isaac, for example – many leave much to be desired. Indeed, many would move the state toward the failed fiscal model of California and other big-spending, big-taxing states.

Appx.D, CR225 (*Communication from Michael Quinn Sullivan to Matthew Miller, Legislative Director for Representative Orr, re: ALERT: HB 3790 and HB 3640; May 3, 2011*).

[8]The record also includes a 2011 Legislative Staff Directory identifying the recipients of Sullivan's communications and their positions during the 82nd Session of the Texas Legislature, as described in the Table of Contents to the Appendix. CR2208-2233.

> As you take up business this afternoon, I want to remind you of our opposition to House Bill 3640.
>
> MB 3640 brings in $1.3 billion in one-time revenues by speeding up collection of the Gross Margins and other taxes. It is a very real additional burden on Texas' economy. (The margins tax should be repealed, not used to further squeeze the life out of businesses during a time of fragile economic recovery.) Reliance on one-time revenue sources of any sort to balance ongoing expenses is not responsible.

Appx.M, CR2301 (*Communication from Michael Quinn Sullivan to Matthew Miller, Legislative Director for Representative Orr, re: Reminder on HB 3640; May 10, 2011*).

> I write to urge you to carefully consider the vote on the Eiland Amendment to CSSB1811 dealing with swapping higher satellite taxes for the permanent small business tax exemption. Despite what some might suggest, we do not support the swap.
> Tax swaps, while not violating of the Taxpayer Protection Pledge, can be fraught with political and economic problems. The Eiland Amendment pits your constituents who subscribe to satellite TV against your constituents who own small businesses.

Appx.E, CR248 (*Communication from Michael Quinn Sullivan to Matthew Miller, Legislative Director for Representative Orr, re: Eiland Satellite Tax Swap Amendment; May 20, 2011*).

> On today's calendar is Senate Bill 8, bringing needed reforms to health care policy with goal of improving efficiency and quality. This legislation, authored by Sen. Jane Nelson and carried in the House by Rep. Lois Kolkhorst, is important for all Texans concerned about fostering good public policy innovation. I urge you to support SB 8.

Appx.F, CR254 (*Communication from Michael Quinn Sullivan to Representative Bill Zedler re: Senate Bill 8; May 24, 2011*).

> There will be a number of very good amendments by your colleagues today that we encourage you to support: reducing tax burdens, increasing transparency and protecting taxpayers.
> We would specifically call to your attention amendments that would strip the so-called "Amazon" tax from SB1. Levying taxes, even in cyberspace, can have significant consequences in the physical world, affecting employment and economic growth. Before the legislature takes the state down a new tax path, there should be a lot more <u>study and discussion</u> about the ramifications.

Appx.G, CR256 (*Communication from Michael Quinn Sullivan to Mark Dalton, Chief of Staff for Representative Anderson, re: Votes on Today's Calendar; June 9, 2011*).

Sullivan also advocated directly to legislators on whom they should support through voting to become Speaker of the Texas House of Representatives:

> We will therefore negatively score a vote for Joe Straus as Speaker of the House on the next Fiscal Responsibility Index. Similarly, we will positively score a vote for Ken Paxton as Speaker of the House.

Appx.K, CR2272 (*Letter from Michael Quinn Sullivan to Representative Patricia Harless Advocating to Vote Against Joe Straus for Speaker; January 5, 2010*).[9]

In most of his emails addressed to the members of the Texas House, Sullivan included his personal contact information and expressed willingness to talk to individual legislators about the votes he was urging

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[9]The first action taken by the Texas House of Representatives in each legislative session is to elect by vote of House membership a Speaker of the House. TEX. CONST. art. 3 § 9(b). The Speaker of the House acts as the House's presiding officer, and drives the House legislative agenda through such actions as committee appointments and referral of bills to committees. Emails advocating for a particular Speaker candidate fall within the definition of "direct communication" about "legislation" under the Texas statute, as a Speaker election represents "a[] matter that is or may be the subject of action by either house." TEX. GOV'T CODE §§ 305.002(6), 305.003(b).

them to take. *E.g.*, Appx. D, CR225, Appx.M, CR2301. The record also includes several examples of Sullivan scheduling in person meetings with legislative members to discuss such topics. *E.g.*, Appx. R-T, CR2278-2280.

The content and frequency displayed in the factual record of Sullivan's communications leading to the Texas court findings that he violated Texas law take this matter worlds apart from "ordinary citizens who merely wish to express their concerns to their elected representatives about the laws that impact their livelihoods, their schools, and their communities." Pet.1.

II. Procedural History

In 2012, two members of the Texas House of Representatives filed complaints with the Commission alleging that Sullivan violated the statute by failing to register. The Commission conducted an investigation and agency adjudication, culminating in a final order of the Commission in 2014 finding that Sullivan was legally required to register as a lobbyist in 2010 and 2011 but had failed to do so. In explaining its decision, the Commission made clear that it did **not** consider any of the following to be direct communications with legislators that would constitute lobbying:

- writing about what is going on in the Legislature;
- maintaining a website that provides information regarding the Legislature;

- publishing a rating on a website of how fiscally responsible legislators are;
- writing news articles and posting them to a website;
- communicating with donors to the organization;
- publishing a legislative scorecard on a website;
- publishing on a website a list of bills and amendments that will be on the scorecard;
- publishing a legislator's "fiscal responsibility grade" on a website;
- telling the public through a website or otherwise how legislators will be graded;
- giving awards to legislators;
- owning, publishing, or writing for a newspaper;
- publishing paid advertisements that directly or indirectly oppose or promote legislation or administrative action;
- posting on social media like Facebook or X (formerly Twitter).

CR997.

The Commission's final order imposed a $5,000 civil penalty for each year of Sullivan's failure-to-register violations ($10,000 total). Rather than paying the penalty, Sullivan spent more than a decade lodging a multiplicity of legal challenges to the Commission's authority to enforce the lobbyist-registration laws to his undisputed conduct. To give the Court a sense of the magnitude of the legal expenses and judicial

resources that have been expended because of Sullivan's lawsuits, those cases are summarized below.

Sullivan appealed the Commission's final order to a state district court, as authorized by Texas law. TEX. GOV'T CODE § 571.133. He filed his statutory appeal in the wrong venue, based on his rental of an apartment in a Texas county after the Commission issued its final order. *Texas Ethics Comm'n v. Sullivan*, No. 02-15-00103-CV, 2015 WL 6759306, at *9 (Tex. App.—Fort Worth Nov. 5, 2015, pet. denied) (per curiam).

In this incorrect venue, Sullivan moved to realign the parties to make the Commission the "plaintiff," even though the proceeding was his appeal of the Commission order. CR15-21. After the case was transferred to a county of proper venue, Sullivan attempted to dismiss his own case in a manner that would allow him to avoid civil enforcement altogether. Again, the Texas courts rejected his arguments. *Sullivan v. Tex. Ethics Comm'n*, 551 S.W.3d 848 (Tex. App.—Austin 2018, pet. denied) (affirming denial of motion to dismiss).

Following that maneuvering, Sullivan then argued that (1) the Commission is a "legislative branch agency" that cannot exercise enforcement powers without violating the Texas Constitution's separation of powers; (2) Sullivan was denied due process of law because the civil penalty assessed against him was essentially a criminal penalty imposed without the procedural protections of a criminal proceeding; and (3) the imposition of the $100 registration fee violated the First Amendment. The state district court granted

summary judgment in favor of the Commission—again unremarkably, based on the uncontested evidence and stipulations on the summary judgment record. CR3103-04. The court of appeals affirmed the liability determination, while remanding the penalty determination for a jury finding. *Sullivan v. Texas Ethics Comm'n*, 660 S.W.3d 225, 246 (Tex. App.—Austin 2022, pet. denied).

In a petition for review to the Texas Supreme Court,[10] Sullivan re-urged his rejected arguments and additionally argued that the Commission lacked an injury in fact sufficient to confer standing to bring an enforcement proceeding.[11] The Texas Supreme Court denied his petition without any written opinion or dissents and denied his motion for rehearing (No. 23-0080).

Sullivan also filed a declaratory judgment claim in a separate Texas state court proceeding to enforce Commission subpoenas in an investigation concerning alleged campaign-finance violations in which he duplicated his argument that the Commission is a "legislative branch agency" that cannot exercise enforcement powers without violating the Texas Constitution's separation of powers. The state district court and court of appeals rejected his arguments.

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[10]As this Court is well aware, a petition for review in the Texas Supreme Court functions similarly to a petition for a writ of certiorari in this Court.

[11]Texas courts have adopted a standing analysis rooted in the Texas Constitution that mirrors this Court's Article III standing analysis. *E.g. Heckman v. Williamson Cnty.,* 369 S.W.3d 137, 154 (Tex. 2012).

Empower Texans, Inc. v. Tex. Ethics Comm'n, 657 S.W.3d 737 (Tex. App.—El Paso 2022, pet. denied). The Texas Supreme Court denied his petition for review in that litigation without any written opinion or dissents (No. 22-1064).

In addition, Sullivan filed a federal lawsuit seeking injunctive and declaratory relief arguing that the Commission violated his rights to due process, equal protection, and free speech under the U.S. Constitution. The case was dismissed based on *Younger* abstention. *Empower Texans, Inc. v. Tex. Ethics Comm'n*, No. 1:14-cv-172, 2014 WL 1666389 (W.D. Tex. Apr. 25, 2014).

Sullivan also filed a similar suit for injunctive and declaratory relief in state district court focusing on the issue of due process that was ultimately dismissed for lack of subject-matter jurisdiction. *Empower Texans, Inc. v. Tex. Ethics Comm'n*, No. 03-16-00019-CV, 2016 WL 6946810 (Tex. App.—Austin Nov. 22, 2016, no pet.).

It has now been fourteen years since the conduct at issue in this case took place, twelve years since the Commission offered to settle this matter for $1,000, and eleven years since the Commission issued its $10,000 penalty against Sullivan. Those eleven years of litigation before multiple courts have not adduced any meritorious challenge to the Commission's authority to enforce the Texas lobbyist registration and disclosure laws.

REASONS TO DENY THE PETITION

I. This Is Not a Proper Case on Which to Engage in Any Potential Re-Evaluation of *Harriss* and Its Progeny.

Throughout this case Sullivan has sought to challenge the constitutionality of Texas's lobbyist registration and disclosure laws based on facts other than his own. Rather than focus on what he actually did for pay, he posits hypotheticals such as those of a "pastor," "dairy farmer," "owner of a small auto body shop," or "journalist" who happens to talk to a lawmaker about a legislative matter. Of course, there is no evidence in this record that the Commission has ever taken a single action against any such hypothetical person under such hypothetical situations.

In an effort to have the lower court consider those hypothetical facts that are not his own, Sullivan even framed his First Amendment argument as a facial or overbreadth challenge. *Sullivan*, 660 S.W.3d at 232. This was despite this Court's admonitions that such challenges carry a higher burden than as-applied challenges because they require the challenged law to be unconstitutional in all or most applications. *See, e.g.*, *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (noting that bringing a facial challenge "comes at a cost" and that they are "hard to win" because the party must show that "no set of circumstances exists" under which the law could be valid); *United States v. Williams*, 553 U.S. 285, 293 (2008) (describing invalidation for overbreadth as "strong medicine" that is not to be "casually employed").

As indicated above, Sullivan's actions at issue are hardly those of an average citizen who happened to visit with a lawmaker or who spent a day or two at the Texas Capitol during a legislative session. Sullivan was paid to attempt to influence or persuade members of the Texas Legislature, including members of the Texas House, to adopt the preferred positions of his employer on legislative matters during a Texas legislative session. He held recurring, weekly in-person gatherings with legislators that he described as "off-the-record" and "invitation-only." Appx.S, CR2279; *see also* CR1116, 1168–69, 1171. He sent a letter marked "Private & Confidential" to the Lieutenant Governor urging him not to allow the budget to spend money from a state fund. CR602. And in the busiest final weeks of the legislative session in May 2011, he sent a flurry of emails urging lawmakers to vote for or against various bills that were about to be considered by the Texas House and invited them to reach out to him personally to further discuss the bills. Appx.D-F, M, O-P, CR225, 248, 252, 254, 2301, 2309, 2314. In light of this overwhelming evidence of Sullivan's direct lobbying communications, he stipulated that the de minimus exception to registration did not apply to him, unlike an "ordinary citizen" who occasionally communicates with an elected official.

Requiring Sullivan to pay $100 per year and disclose information that was otherwise voluntarily disclosed in his organization's IRS Form 990, Pet.31—such as the name of his employer and his salary—hardly could be shown as an actionable burden on his

speech rights. The reality is that paid lobbyists comply with the Texas registration and disclosure requirements every year without a problem.

Even if a re-review of *Harriss* would be appropriate—which the Commission respectfully contends is not needed—this case, on these facts, would not be a proper platform to do so. On the facts of this matter, Sullivan's ability to advocate to legislators was hardly burdened by Texas's modest registration and disclosure requirements.

In short, the Court should decline Sullivan's invitation to consider hypotheticals that would not be properly before this Court in any review of this matter. *Cf. United States v. Sineneng-Smith*, 590 U.S. 371, 388 (2020) (Thomas, J., concurring) (observing that invalidating a law based on facts that are not particularized to the litigant before the Court is at odds with the principles of Article III standing).

II. The Decision Below Correctly Applies this Court's Precedent in *Harriss*.

Even if Sullivan had properly preserved a First Amendment challenge to the registration and disclosure requirements in addition to the registration fee, *see infra* section V, there is no genuine issue about whether those requirements are constitutional under this Court's precedent in *Harriss*. That case considered the constitutionality of the Federal Regulation of Lobbying Act. In interpreting the statute, the Court construed it to cover only those who "solicit, collect, or receive" compensation, "one of the main purposes" of which is "to influence the passage or

defeat of legislation" by making "direct communication with members of Congress." *Harriss*, 347 U.S. at 623. "Thus construed," the statute did "not violate the freedoms guaranteed by the First Amendment." *Id*. at 625.

Those covered by the statute had to "register with the Clerk of the House of Representatives and the Secretary of the Senate" and disclose their name, business address, employer, client, duration of representation, compensation, and expenses. *Id*. at 615 n.2. In upholding these requirements as constitutional, the Court explained:

> Congress has not sought to prohibit [the] pressures [of lobbyists]. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much. . . . .
>
> Under these circumstances, we believe that Congress, at least within the bounds of the act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities. To do so would be to deny Congress in large measure the power of self-protection. And here Congress used that power in a manner restricted to its appropriate end. We conclude that [the challenged provisions of the Act] do not offend the First Amendment.

Id. at 625–26.

In this case, Sullivan needed to register as a paid lobbyist in 2010 and 2011 because he received compensation exceeding $1,000 per calendar quarter "to communicate directly with a member of the legislative . . . branch to influence legislation," TEX. GOV'T CODE § 305.003(a)(2), and spent more than five percent of his compensated time on lobbying, 1 TEX. ADMIN. CODE § 34.439(b) (2011). The Texas definition of "lobbying" tracks this Court's definition in *Harriss*, and its exemptions for incidental lobbying below the minimum thresholds for compensation or time provide greater protections for speech rights than the law at issue in *Harriss*.

As for the $100 registration fee, Sullivan does not challenge the fee based on any facts in the record demonstrating that requiring him to pay the fee imposed a significant hardship on his ability to communicate with legislators. No such facts exist, as Sullivan received $132,399 in 2010 and $128,571 in 2011. CR39, 2242-43, 2344-91. Given that registration is required only for those who receive significant compensation for lobbying or who make significant expenditures for the benefit of government officials, the ordinary citizen who engages in incidental communication with legislative members is not required to pay the registration fee. The petition acknowledges that most States charge a registration fee for lobbyists and cites no cases holding such a fee unconstitutional. Pet.27–28. This Court should not take up the invitation of Sullivan and various amici to consider disrupting the well-settled practices of

various States that charge a reasonable lobbyist registration fee, especially on this factual record.

III. There is No Conflict Among Courts About Whether *Harriss* Remains Controlling Law.

Throughout this case, Sullivan has cited the Eighth Circuit's decision in *Calzone v. Summers*, 942 F.3d 415 (8th Cir. 2019) (en banc), as his central legal authority in support of this Court's review of his case. However, *Calzone* does not conflict with *Harriss* or the lower court's decision in this case. *Calzone* dealt with imposition of registration and disclosure requirements on a person who was not paid for his communications with legislators. 942 F.3d at 424. In finding a First Amendment violation under those circumstances, the Eighth Circuit emphasized repeatedly that its decision rested on the fact that Calzone "neither spends nor receives money in connection with his advocacy." *Id.* at 422, 424, 425; *see also id.* at 418 (stating that "no one pays him" and that he "does not get paid").

Sullivan's petition suggests that *Calzone*'s reference to the "risk of quid pro quo corruption" constitutes a different and narrower understanding of the governmental interest that justifies lobbying regulations than the interest identified in *Harriss* in the transparency provided by the disclosure of information. Pet.22–25. But the full context of the Eighth Circuit's statement was that it did "not doubt that when money changes hands, the nature of Missouri's transparency interest changes too, because the risk of quid pro quo corruption increases." *Calzone*, 942 F.3d at 425 (citing *Harriss*, 347 U.S. at 625). The Eighth Circuit took pains to make clear that

its decision was consistent with *Harriss*, even going so far as to quote *Harriss*'s statement that the legislature has a legitimate interest in knowing "who is being hired, who is putting up the money, and how much." *Id*.

The record in this matter demonstrates that unlike the individual subject to regulatory action in *Calzone*, Sullivan was a full-time paid political advocate. His compensation as a paid advocate implicates the government's legitimate interest in requiring "a modicum of information from those who for hire attempt to influence legislation." *Harriss*, 347 U.S. at 625. Under *Harriss*, which *Calzone* reaffirmed, the Texas laws applied to Sullivan do "not offend the First Amendment." *Id*. at 626.

Following *Harriss*, various federal courts of appeals have rendered opinions upholding various aspects of laws that promote sunshine in the legislative process. Sullivan himself cites *National Association of Manufacturers v. Taylor*, 582 F.3d 1, 14 (D.C. Cir. 2009), and *Florida League of Professional Lobbyists, Inc. v. Meggs*, 87 F.3d 457 (11th Cir. 1996). Both of those cases upheld regulations of lobbying based on *Harriss*, which they cited as good authority. The Texas Court of Appeals decision at issue here falls within *Harriss's* progenital authority.

No genuine conflict among courts exists, and no court has endorsed the positions taken by Sullivan as a paid, professional lobbyist. Given that all fifty States have some form of lobbying disclosure requirements, and most States charge a registration fee, this Court should not entertain further consideration of positions

that call into question the constitutionality the laws of all fifty States, especially on a record that evidences no infringement of the petitioner's rights and fails to preserve the primary issue presented. This Court should follow its "ordinary practice of denying petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals." *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 493 (2019) (per curiam) (citing Supreme Court Rule 10).

IV. The Court Should Not Inject the Tiers of Scrutiny Into a New Area of Law.

In an effort to find a legal issue for potential review, Sullivan suggests that the Court could consider what tier of scrutiny should apply to lobbyist registration and disclosure laws, noting that *Harriss* was decided before the modern tiers of scrutiny. Pet.20. The "tiers of scrutiny . . . are of recent vintage" and "[o]nly in the 1960's did the Court begin in earnest to . . . develop the contours of these tests." *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 638 (2016) (Thomas, J., dissenting). "Jurists from every perspective have expressed concern" that the tiers of scrutiny are not "moored in the Constitution's text and original meaning" and open the door to unpredictable interest balancing by judges. *Tex. Dep't of Ins. v. Stonewater Roofing, Ltd.*, 696 S.W.3d 646, 671 (Tex. 2024) (Young, J., concurring); *see also* Joel Alicea & John D. Ohlendorf, *Against the Tiers of Constitutional Scrutiny*, 41 NAT'L AFFAIRS 72, 79 (2019) (noting that the tiers of scrutiny fail to "serve as a meaningful guide to legal analysis" because "each step of the

scrutiny process is marked by indeterminacy and manipulability").

Perhaps for these reasons, the Court has sought to limit the expansion of the tiers of scrutiny into new areas of First Amendment jurisprudence that have not traditionally used that framework. *See, e.g.*, *Vidal v. Elster*, 602 U.S. 286, 295 (2024) (declining to adopt "a per se rule of applying heightened scrutiny to viewpoint-neutral, but content-based trademark regulations" because longstanding precedent was sufficient to enable the Court to determine that the challenged law was constitutional); *United States v. Alvarez*, 567 U.S. 709, 730 (2012) (Breyer, J., concurring in the judgment) (noting that although the Court sometimes identifies a tier of scrutiny for First Amendment analysis, it has on other occasions "avoided the application of any label at all"); *United States v. Stevens*, 559 U.S. 460 (2010) (analyzing criminal prohibition on the creation, sale, or possession of depictions of animal cruelty without referencing any tier of scrutiny); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (same, regarding statute banning child pornography).

In other areas of constitutional law, the Court has also increasingly relied on methods of analysis that do not involve tiers of scrutiny. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 218 (2023) (holding that in addition to their inability to satisfy strict scrutiny, Harvard and UNC also "fail[ed] to comply with the twin commands of the Equal Protection Clause that race may never be used as a 'negative' and that it may

not operate as a stereotype"); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 103 (2022) (Breyer, J., dissenting) (noting in the Second Amendment context that the Court replaced "means-end" scrutiny with a test based on "history").

If anything, *Harriss's* categorical reasoning that pre-dates the tiers of scrutiny is more faithful to this Court's modern jurisprudence than cases that treat the tiers of scrutiny as talismanic. *See, e.g.*, *TikTok Inc. v. Garland*, 145 S. Ct. 57, 74 (2025) (Gorsuch, J., concurring) ("I worry that litigation over [the tiers of scrutiny] can sometimes take on a life of its own and do more to obscure than to clarify the ultimate constitutional questions."); *United States v. Rahimi*, 602 U.S. 680, 731–32 (2024) (Kavanaugh, J., concurring) (stating that the tiers of scrutiny depart from historical methods of constitutional interpretation and "arguing against extending those tests to new areas"); *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 457 (2015) (Breyer, J., concurring) (stating that the tiers of scrutiny are "not tests to be mechanically applied").

Sullivan's assertion of tiers of scrutiny does not justify the request for review of his case by this Court.

V. Sullivan Did Not Raise His First Amendment Arguments in the Texas Court of Appeals, Except for His Challenge to the Registration Fee.

When a party fails to raise an argument in the court below, this Court will "normally decline to entertain" the argument and treat it as "forfeited."

Kingdomware Techs., Inc. v. United States, 579 U.S. 162, 173 (2016); *see also Ohio v. EPA*, 603 U.S. 279, 298 (2024). Sullivan's brief in the Texas Court of Appeals focused only on arguing that Texas could not constitutionally require paid lobbyists to pay a "registration fee," which was $100 for those employed by a non-profit such as Sullivan. *Appellant's Brief*, No. 03-21-00033-CV, 2021 WL 2006245, at, *e.g.*, *11, 17-18 (Tex. App.—Austin, May 14, 2021). Sullivan did not separately challenge the registration and disclosure requirements, which required him to disclose his client's name and compensation. As a result, the Commission's brief similarly focused on only the registration fee, observing in a footnote that Sullivan's brief "appears to limit his First Amendment challenge to only the registration fee" and thus "abandons" any challenge to the registration and disclosure requirements." *Appellee's Brief*, No. 03-21-00033-CV, 2021 WL 3775650, at *8 n.6 (Tex. App.—Austin, Aug. 13, 2021).

Sullivan's failure to challenge the registration and disclosure requirements may have been a strategic decision because he publicly identified as the President and CEO of Empower Texans and publicly disclosed his compensation of over $100,000 per year in that organization's IRS Form 990. The Texas registration and disclosure requirements arguably caused him no injury at all, as they merely required him to report information that Sullivan made publicly available.[12] And in any event, those registration and disclosure requirements fit squarely within the First

[12] Sullivan's petition acknowledges this. Pet.31.

Amendment principles that this Court articulated in *Harriss*.

Sullivan's ever-changing legal theories have been part of a protracted campaign to avoid finality in an enforcement proceeding that assessed a $10,000 civil penalty for conduct occurring in 2010 and 2011. Sullivan asked the Texas Supreme Court to hold, among other things, that: (1) the Commission as a state agency lacked an injury in fact sufficient to confer standing to bring an enforcement proceeding; (2) the Commission's enforcement powers violated the Texas Constitution's separation of powers provision because the Commission is somehow part of the legislative branch of government; and (3) Sullivan was denied due process because the civil penalty assessed against him was essentially a criminal penalty imposed without the procedural protections of a criminal proceeding. *Petition for Review*, No. 23-0080, 2023 WL 3814882, at *11, *15-16 (Tex. Feb. 2, 2023). The Texas Supreme Court denied review without a written opinion or any dissents and denied his motion for rehearing,[13] which is why Sullivan's petition now asks this Court to review the decision of the intermediate Texas Court of Appeals.

Sullivan asks the Court to hold that *Harriss* has been eroded by subsequent cases and may no longer be

[13] Unlike this Court, the Texas Supreme Court has in recent history frequently ordered merits briefing from the parties prior to deciding whether to grant discretionary review of a case. In this case, the Texas Supreme Court ordered merits briefing, but denied Sullivan's petition for review, which is the equivalent of a denial of certiorari in this Court.

good precedent, an argument that implicates the constitutionality of all fifty States' lobbyist disclosure requirements. His briefing in the lower court, however, focused narrowly on only the $100 registration fee that he was required to pay in connection with Texas lobbyist registration, which *Harriss* did not address. Thus, even if Sullivan had presented in his petition a firm basis for requesting that this Court reexamine *Harriss* and its progeny—which he has not—his failure to raise that issue in the lower court would serve to forfeit his ability to seek such a review.

CONCLUSION

Respondent the Texas Ethics Commission respectfully submits that for the reasons set forth above, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

ERIC J.R. NICHOLS
Counsel of Record
CRAIG T. ENOCH
AMANDA G. TAYLOR
BUTLER SNOW LLP
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Austin, Texas 78701
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eric.nichols@butlersnow.com

APRIL 24, 2025

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

Cody Hill

From: Catherine Rodman on behalf of Charles Perry
Sent: Monday, May 23, 2011 12:27 PM
To: Cody Hill
Subject: FW: SB1851 Amendments
Catherine Rodman
Legislative Aide/Scheduler
State Representative Charles Perry
512.463.0542

From: Michael Quinn Sullivan [redacted]
Sent: Monday, May 23, 2011 10:21 AM
To: Charles Perry
Subject: SB1851 Amendments

Honorable Members of the Texas House,

As with other fiscal matters legislation, votes on amendments to Senate Bill 1581 are subject to scoring based on our statement of general principles and the legislative priorities noted at the start of the Session.

I would like to specifically highlight an issue the House addressed in S.B.5, but which is also an issue in S.B. 1581 Currently, there is a provision that would allow institutions of higher education to compete with private industry by selling telecomm services.

This provision should be removed; it is violative of free market principles. Our state-funded universities should not be using their protected status to compete with the industry. Unlike their potential competitors, these state agencies pay no property taxes, and are not burdened by the costs of margins taxes and sales taxes. The language from the Senate would even allow the universities to be exempt in providing these

services from laws regarding open and competitive bidding process.

Given how little transparency public universities provide as it is, they should not be allowed to divert funds and resources to competing in the marketplace against the private sector. The "yellow pages" test is worthwhile to consider here.

State Rep. Charlie Geren successfully added an amendment to SB5 to prevent such activities, and will be offering a similar amendment to SB1581 if necessary. We urge you to *support* the Geren Amendment should it be necessary.

Respectfully Yours,

Michael Quinn Sullivan
Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
[redacted]

APPENDIX B

TEXANS FOR FISCAL RESPONSIBILITY

Tim Dunn
Chairman

Michael Quinn Sullivan
President

MEMORANDUM

DATE: March 4, 2011
TO: Honorable Members of the Texas House
FROM: Michael Quinn Sullivan
SUBJECT: Economic Stabilization Fund vote

It is possible that within the next week or so the Texas House will consider legislation enabling the use of the Economic Stabilization Fund for the current biennium.

We **oppose** taking such an action at this time, and will negatively score such an action on the 2011 Fiscal Responsibility Index.

While it might be necessary later in session to use some funds for the current biennium, it would be neither prudent nor responsible for the legislature to drain half of the ESF dollars before making cuts in current spending. Rather than tap the ESF first, the legislature should instead implement current-biennium cost savings, such as furloughing non-essential employees and immediately shuttering agencies and programs targeted for closure in the next biennial budget.

Texas voters are anxious to see if campaign promises will match governing reality. Deciding to use the ESF now politically punts the budget ball dangerously into the next session.

We must remember every dollar taken from the fund leaves Texas that much more exposed should the

national economy dip again, or the state face a series of costly hurricanes. Comptroller Susan Combs has even warned that the next session could be difficult — one reason being an explosion in Medicaid costs and caseloads that the Texas Public Policy Foundation recently estimated would require an additional $10 billion to $14 billion in general revenue.

It's popular to say Texas has a structural problem. I agree: a structural *spending* problem that cannot be fixed by raiding the state's piggy bank. Putting the state's spending in order should begin now, breaking the piggy bank as only a last resort.

Thank you for your service to the people of Texas.

P.O. Box 200248 • Austin, TX 78720
www.EmpowerTexans.com

APPENDIX C

Matthew Miller

From Michael Quinn Sullivan [msullivan@empowertexans.com]
Sent: Thursday, April 28, 2011 1:46 PM
To: Matthew Miller
Subject: ALERT: Support the House version of SB 655

Honorable Members of the Texas House,

As you consider SB 655 today, please know that we **support** the bill as carried by Rep. Keffer, and appreciate his hard work on the subject. (We did oppose the version passed by the Senate.)

Specifically, we believe the Texas Railroad Commission's continuity should be continued, so as to protect the state's ability to regulate the industry as Texans deem appropriate. Next, we want to ensure the Commission (regardless of the name) maintains three commissioners and keeps the administrative hearings under their purview.

Votes regarding these issues will be considered on the 2011 Fiscal Responsibility Index.

Respectfully,
Michael Quinn Sullivan

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX D

Matthew Miller

From: Michael Quinn Sullivan
[msullivan@empowertexans.com]
Sent: Tuesday, May 03, 2011 10:05 AM
To: Matthew Miller
Subject: ALERT: HB 3790 & HB 3640

Honorable Members of the Texas House,

As you take up business today, we urge great caution on the amendments being offered on HB 3790 and recommend opposing HB 3640.

While there are good reforms being offered to HB 3790 – such as those by Reps. Weber, Cain and Isaac, for example – many leave much to be desired. Indeed, many would move the state toward the failed fiscal model of California and other big-spending, big-taxing states.

In keeping with our letter from earlier this Session, and our general principles and legislative goals, we will very likely score votes on many of the amendments to HB 3790 on the Fiscal Responsibility Index.

For HB 3640, speeding up collection of the Gross Margins Tax represents a very real increase on tax burden in our economy. Not only must businesses not making money have to pay the tax, but this adds the additional insult of paying it more quickly. The tax should be repealed, not used to further squeeze the life out of businesses during a time of fragile economic recovery. ***We will negatively score HB 3640.***

It is disappointing that while the House is rushing legislation to secure new revenues — revenues many of your voters will no doubt feel as higher costs, even if they are not truly tax increases — we have not seen

move out of the Appropriations Committee any of the truly meaningful fiscal reforms, such as restructuring the state's spending limit.

With less than a month left in the Session, we should have seen those popularly supported measures move. No doubt, many conservative voters will be left wondering why this legislature did not take those measures to floor. Whether a wholesale change of the spending limit through a constitutional change, or a statutory restructuring, this is the perfect time to adjust how fast government can grow in the future.

Thank you for your service to the people of Texas. As we can of assistance or answer questions, please do not hesitate to call us at (512) 236-0201; my direct line is (512) 850-4336.

Respectfully Yours,

Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

APPENDIX E

Matthew Miller

From: Michael Quinn Sullivan
[msullivan@empowertexans.com]
Sent: Friday, May 20, 2011 11:37 PM
To: Matthew Miller
Subject: Eiland satellite tax swap amendment

Honorable Members of the Texas House,

I write to urge you to carefully consider the vote on the Eiland Amendment to CSSB1811 dealing with swapping higher satellite taxes for the permanent small business tax exemption. Despite what some might suggest, we *do not support the swap.*

Tax swaps, while not violating of the Taxpayer Protection Pledge, can be fraught with political and economic problems. The Eiland Amendment pits your constituents who subscribe to satellite TV against your constituents who own small businesses.

Small businesses will *rightly* consider the loss of the exemption at the end of this fiscal year as a tax hike. Not making that exemption permanent will be a stain on the legislature. Of course, satellite consumers who get hit with the higher bills will consider that a tax hike.

As with any tax swap, legislators must carefully consider who they make happy and who they anger. For some voters, this will be viewed a tax hike. For others, it'll be a tax cut.

You are being put in this position because of competing tax interests in the video/telecom world. Legislators should be always cautious about letting tax policy be a place where competitors punish each other based on the comparative strength of their lobby teams.

Cable providers argue that satellite providers have a certain advantage due to the state's franchise fee and local sales tax being applied to them but not satellite services. Clearly, a better course of action would have been to *lower* taxes on cable providers (not to impose them on satellite providers), while also making the small business exemption to the GMT permanent. You were not given that option.

This amendment vote will not be **used on the Fiscal Responsibility Index.** But as with any tax swap, legislators should carefully consider who they make happy and who they anger. For some voters, this will be viewed a tax hike. For others, it'll be a tax cut.

Respectfully Yours,
Michael Quinn Sullivan

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248

APPENDIX F

Bryan Shufelt

From: Deanna Zimmerman on behalf of Bill Zedler
Sent: Tuesday, May 24, 2011 1:45 PM
To: Bryan Shufelt
Subject: FW: Senate Bill 8

From: Michael Quinn Sullivan
[mailto: msullivan@empowertexans.com]
Sent: Tuesday, May 24, 2011 1:32 PM
To: Bill Zedler
Subject: Senate Bill 8

Honorable Members of the Texas House,

Thank you for your service to the people of Texas. As the legislative session enters its final days, we appreciate the hard work you face you in considering solutions and remedies to the important issues facing our state.

On today's calendar is Senate Bill 8, bringing needed reforms to health care policy with goal of improving efficiency and quality. This legislation, authored by Sen. Jane Nelson and carried in the House by Rep. Lois Kolkhorst, is important for all Texans concerned about fostering good public policy innovation. I urge you to support SB 8.

If you have questions, please do not hesitate to contact me at your convenience. My direct line is

While we may not always agree on the solutions to the issues facing Texas, know that we are grateful for your willingness to honorably serve in the Legislature.

Respectfully,
Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX G

Mark Dalton

From: Michael Quinn Sullivan
[mqsullivan@empowertexans.com]
Sent: Thursday, June 09, 2011 10:02 AM
To: Mark Dalton
Subject: Votes on today's calendar

Honorable Members of the Texas House,

As with other fiscal matters legislation, votes on amendments to Senate Bills 1 and 2 today are subject to scoring on the Fiscal Responsibility Index, based on our general principles and the legislative priorities noted at the start of the Regular Session.

There will be a number of very good amendments by your colleagues today that we encourage you to support: reducing tax burdens, increasing transparency and protecting taxpayers.

We would specifically call to your attention amendments that would strip the so-called "Amazon" tax from SB1. Levying taxes, even in cyberspace, can have significant consequences in the physical world, affecting employment and economic growth. Before the legislature takes the state down a new tax path, there should be a lot more study and discussion about the ramifications.

If you have any questions, please do not hesitate to call TFR's executive director, Andrew Kerr, at 512-522-5355, or me at the number below.

Respectfully Yours,
Michael Quinn Sullivan

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
Direct: (512) 850-4336
Main: (512) 236-0201
msullivan@empowertexans.com

APPENDIX H

TEXANS FOR FISCAL RESPONSIBILITY

Tim Dunn
Chairman

Michael Quinn Sullivan
President

May 6, 2011

The Honorable Rob Orr
Texas House
PO Box 2910
Austin, TX 78701

Dear Rep. Orr,

As we enter the final weeks of the legislative session, I want to again thank you for your service to the people of Texas. While we may not always agree on the appropriate response to the issues facing our beloved state, we know you serve Texas with the most honorable of intentions.

As we have done each legislative session, I am writing to inform you of the *draft* status of our 2011 Fiscal Responsibility Index. While the Session is not complete, and there will be many votes ahead, I wanted you to both be aware of what we are currently scoring, and where that places your rating.

We will ***not*** release the Index until after the legislative session. We will ***not*** share these draft rankings publically or with other members.

On the votes used: we have *never* applied, and have repeatedly made clear that we do not apply, any "weightings" to votes. Some groups do that, or have suggested that they will, but we have not. We have, though, always provided opportunities for "extra

credit" – as your office was notified at the outset of the Session – by co-authoring priority legislation.

Our rating system is very straightforward, like a school report card: a 100% is the best one can score. We automatically endorse for re-election all legislators scoring an 80% or better.

Based on the votes, **your *draft* rating on the 2011 Fiscal Responsibility Index is a 85%**. The House Republican average is a 77% and the House chairs average a 59%.

You will find on the next page the votes currently used on the Fiscal Responsibility Index (again, others will be added in these final weeks of Session) and our stated position. Each member is rated *only* on the votes they take (including correcting statements in the Journal); *absence* or *present-not-voting* do not count against the rating.

I would welcome your input on votes we might have overlooked, but which meet with our general principles and the legislative priorities noted on our website at www.empowertexans.com/index. I can be contacted at (512) 850-4336, or by email at msullivan@empowertexans.com.

Thank you again for your service in the Texas House.

Respectfully,
/s/ Michael Quinn Sullivan
Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

APPENDIX I

Suzanne Bowers

From: Michael Quinn Sullivan [redacted]
Sent: Tuesday, May 10, 2011 11:41 AM
To: Jodie Laubenberg
Subject: Supporting HB 272

Honorable Members of the Texas House,

As a reminder, we will be including House Bill 272 on the 2011 Fiscal Responsibility Index.

We hope you will support this important legislation reforming the Texas Windstorm Insurance Association (TWIA).

In keeping with out letter from earlier this Session, we attempt to notify legislators in writing through regular mail, email, and notices on our website, about votes that might be used on the Index.

Thank you for your service to the people of Texas. As we can of assistance or answer questions, please do not hesitate to call us at (512) 236-0201; my direct line is (512) 850-4336.

Respectfully yours,
Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
[redacted]

APPENDIX J

TEXANS FOR FISCAL RESPONSIBILITY

Tim Dunn
Chairman

Michael Quinn Sullivan
President

December 20, 2010

The Honorable Tom Craddick
Texas House
PO Box 2910
Austin, TX 78701

Dear Representative Craddick,

Thank you for your service to the people of Texas,

As you know, Empower Texans / Texans for Fiscal Responsibility is a non-profit, non-partisan organization through which tens of thousands of voters from around the state work with and through to advance free market solutions, transparency, responsible government, and low taxes for the empowerment of all Texans.

With the start of the 82nd Session of the Texas Legislature, I wanted to share with you our organization's priorities and interests.

- Balance the budget without increasing taxes or creating new revenue sources.
- Oppose the creation of new taxes, granting of additional taxing authority, or creating any new taxing entities.
- Strengthen the constitutional expenditure limit, such as by requiring that the Legislature choose

the lower of the change in the sum of population-plus-inflation or the current measure.

- Apply the same limitation to all political subdivisions and entities, while providing the option for an election to exceed the spending limit.
- Protect the state's Rainy Day Fund; RDF dollars should not be used for new or expanded programs and services. If RDF dollars are used to balance the budget, those funds should be applied only to non-recurring expenses.
- Reform the gross margins tax to limit its negative impact on all businesses.
- Expand 2007's HB 3430 to all taxpayer funded entities in Texas, including cities, counties, transit authorities and school districts – requiring the posting of expenditures online in a searchable format for public review.
- Reduce property taxes, and pursue policies to phase out the school M&O tax.
- Eliminate the burdensome and costly rollback petition gathering process by requiring an election if a local entity seeks to exceed the effective tax rate.
- Ensure fees and dedicated funds arc used only for their statutory (constitutional) purposes.
- Enhance parental options in public education, and uncap the number of charter schools *that can* exist in Texas.
- Work against federal overreach by limiting Texas' reliance on federal grants and other funds, resist encroachment of federal regulations, and circumventing or overturning ObamaCare.

- Strengthen the integrity of the state's elections through voter ID and by securing voter registration and ballot-by-mail programs.

As we have done in the past, scores on the *Fiscal Responsibility Index* will be based on votes related to these issues. We will calculate individual members' scores only on the votes actually taken, including any clarifying statements in the Journal. Sponsoring and co-sponsoring targeted legislation is likewise included in the scoring.

We will make every attempt during the legislative session to notify your office of the specific votes and legislation we will be scoring. Those will also be noted on our website.

Given the important role of the Speaker of the House in determining committee assignments and chairmanships, and thereby affecting the flow of legislation, the vote on the speakership may be included in the Index.

As we can be of assistance to you, or answer questions regarding these priorities, please do not hesitate to contact me. I can be reached on my direct line at 512-850-4336, or e-mail at [redacted]

While we may not always agree on the solutions to the issues facing our beloved state, please know we appreciate the sacrifice you make by honorably serving the people of Texas.

Respectfully,

/s/ Michael Quinn Sullivan
Michael Quinn Sullivan

PO Box 200248 • Austin, TX 78720
www.EmpowerTexans.com

APPENDIX K

TEXANS FOR FISCAL RESPONSIBILITY

Tim Dunn
Chairman

Michael Quinn Sullivan
President

January 5, 2010

The Honorable Patricia Harless
Texas House
PO Box 2910
Austin, TX 78701

Dear Rep. Harless,

After questions from several of your colleagues, this is following up on our December 20th letter about the *Fiscal Responsibility Index* and how we will score the speakership vote.

As you know, at Texans for Fiscal Responsibility we are driven by policy outcomes, and therefore the speakership race is about the likelihood of achieving the policy victories Texas conservatives have been demanding. The first substantive vote of the first day of Session will set the policy tone for the following 139 days.

Joe Straus' record as the state's third-ranking constitutional officer leaves much to be desired for fiscal conservatives.

For example, the Speaker has said he opposes placing caps on property taxes, so the liberal Democrat he appointed to chair the Ways and Means Committee has promised to continue stopping taxpayer protections from seeing the light of day.

Mr. Straus' Transportation Committee chairman traveled the state this fall championing an increase in the gas tax, while another committee chairman is this week pushing for an increased sales tax to generate new revenues for the state.

For more than a year, we have publicly and privately asked the speaker to appoint better committee chairs by replacing the liberals he elevated to positions of House leadership. He could have replaced them at any time during the last year, or distanced himself from their policies, but chose not to do so – allowing them to subtly mold the legislative priorities of 2011 just as he did in 2009.

We will therefore <u>negatively</u> score a vote for Joe Straus as Speaker of the House on the next *Fiscal Responsibility Index.* Similarly, we will <u>positively</u> score a vote for Ken Paxton as Speaker of the House.

In 2007, when both Mr. Straus and Mr. Paxton served in the Texas House and were rated on the *Fiscal Responsibility Index,* Rep. Straus earned a 71% rating – performing below the Republican average of 75%. Rep. Paxton earned a 100% rating.

In 2009, Mr. Paxton again earned a 100% rating. Meanwhile, Speaker Straus' committee chairs – who serve as a proxy reflecting the Speaker's leadership style and agenda – earned a 54% rating, *under-performing* the House' 56.8% average Even the Straus GOP chairs earned only a 75%, significantly *lower* than the caucus' 82% average rating.

Mr. Straus and his leadership team are *less* fiscally conservative than the House and the Republican caucus.

When voting for the speaker, legislators are in effect voting for the leadership team and legislative priorities of the committee chairmen that speaker appoints. So regardless of *who* the speaker is this Session, we will assign on the *Index* additional positive and negative points for legislators based on whether or not their speaker's committee chairs hold hearings and votes on the conservative movement's priority legislation.

Speaker races arc notoriously fluid. As the situation changes or updates, we will he in contact with your office. As always, please feel free to contact me at your convenience.

As always, I thank you for your service to the people of Texas and look forward to working with you throughout Session for sound public policy that enhances liberty and promotes opportunity for all Texans.

Respectfully Yours,

/s/ Michael Quinn Sullivan
Michael Quinn Sullivan

PO Box 200248 • Austin, TX 78720
www.EmpowerTexans.com

APPENDIX L

Araminta Everton

From: Michael Quinn Sullivan
[msullivan@empowertexans.com]
Sent: Thursday, April 28, 2011 1:46 PM
To: Araminta Everton
Subject: ALERT: Support the House version of SB 655

Honorable Members of the Texas House,

As you consider SB 655 today, please know that we **support** the bill as carried by Rep. Keffer, and appreciate his hard work on the subject. (We did oppose the version passed by the Senate.)

Specifically, we believe the Texas Railroad Commission's continuity should be continued, so as to protect the state's ability to regulate the industry as Texans deem appropriate. Next, we want to ensure the Commission (regardless of the name) maintains three commissioners and keeps the administrative hearings under their purview.

Votes regarding these issues will be considered on the 2011 Fiscal Responsibility Index.

Respectfully,
Michael Quinn Sullivan

Michael Quinn Sullivan
Empower Texans/Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX M

Matthew Miller

From: Michael Quinn Sullivan [msullivan@empowertexans.com]
Sent: Tuesday, May 10, 2011 3:12 PM
To: Matthew Miller
Subject: Reminder on HB 3640

Honorable Members of the Texas House,

As you take up business this afternoon, I want to remind you of our opposition to House Bill 3640.

MB 3640 brings in $1.3 billion in one-time revenues by speeding up collection of the Gross Margins and other taxes. It is a very real additional burden on Texas' economy. (The margins tax should be repealed, not used to further squeeze the life out of businesses during a time of fragile economic recovery.) Reliance on one-time revenue sources of any sort to balance ongoing expenses is not responsible.

We will therefore negatively score a vote on HB 3640 on the Fiscal Responsibility Index. After careful review, we find the legislation is simply too flawed to be improved.

It is disappointing that while the House is pushing this legislation to secure new revenues – revenues many of your voters will no doubt feel as higher costs, even if they are not truly tax increases – we have still not seen movement from the Appropriations Committee on one of the truly *meaningful* fiscal reforms, restructuring the state's spending limit.

The fiscally conservative position for lawmakers would be to **vote *against* HB 3640,** demand **action from leadership on legislation making the small business GMT exemptions permanent,** as well as

legislation improving the state's spending limit to control expenditure growth in the future.

Thank you for your service to the people of Texas. As we can of assistance or answer questions, please do not hesitate to call us at (512) 236-0201; my direct line is (512) 850-4336.

Respectfully Yours,
Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX N

From: Michael Quinn Sullivan
[mailto:msullivan@empowertexans.com]
Sent: Tuesday, May 10, 2011 3:12 PM
To: Bill Zedler
Subject: Reminder on HB 3640

Honorable Members of the Texas House,

As you take up business this afternoon, l want to remind you of our opposition to House Bill 3640.

HB 3640 brings in $1.3 billion in one-time revenues by speeding up collection of the Gross Margins and other taxes. It is a very real additional burden on Texas' economy. (The margins tax should be repealed, not used to further squeeze the life out of businesses during a time of fragile economic recovery.) Reliance on one-time revenue sources of any sort to balance ongoing expenses is not responsible.

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The fiscally conservative position for lawmakers would be to **vote *against* HB 3640**, demand **action from leadership on legislation making the small business GMT exemptions permanent,** as well as

legislation improving the state's spending limit to control expenditure growth in the future.

Thank you for your service to the people of Texas. As we can of assistance or answer questions, please do not hesitate to call us at (512) 236-0201; my direct line is _____

Respectfully Yours,
Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

Michael Quinn Sullivan
Empower Texans/Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX O

Allison Billodeau

From: Michael Quinn Sullivan [msullivan@empowertexans.com]
Sent: Thursday, May 12, 2011 2:07 PM
To: Cindy Burkett
Subject: HBs 2593 and HB 2594

Honorable Members of the Texas House,

Based on discussions with several members about possible confusion, we oppose HBs 2593 and 2594 because of their interference in the free market.

We recommend a vote *against* HB 2593 and 2594.

Thank you for your service to the people of Texas. As we can of assistance or answer questions, please do not hesitate to call us at (512) 236-0201; my direct line is (512) 850-4336.

Respectfully Yours,

Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

Michael Quinn Sullivan
Empower Texans/Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX P

Matthew Miller

From: Michael Quinn Sullivan [msullivan@empowertexans.com]
Sent: Wednesday, May 18, 2011 7:28 AM
To: Matthew Miller
Subject: Votes in House today

Honorable Members of the Texas House,

As the legislative session enters these final days, we appreciate the task you have in addressing so many important issues.

We did want to keep you informed of potential votes we will be using on the Fiscal Responsibility Index. The guiding principles, of course, are no new taxes, keeping the burden of government to a minimum and increasing transparency while protecting taxpayers.

Most notable on the calendar, of course, are the amendments to SB1811 and SB1581. But we would also point you to legislation such as SB 764, which prohibits school districts from operating a hotel (doing so is clearly an inappropriate role for government).

Finally, please note that we generally support Senate Bill 23, bringing about important cost savings in various health and human services programs and operations.

If you have questions, please do not hesitate to contact me at your convenience. My direct line is (512) 850-4336.

While we may not always agree on the solutions to the issues facing Texas, know that we are grateful for your willingness to honorably serve in the Legislature.

Respectfully,
Michael Quinn Sullivan
President, Texans for Fiscal Responsibility

Michael Quinn Sullivan
Empower Texans/Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
msullivan@empowertexans.com

APPENDIX Q

Vote on HB5

From: Michael Quinn Sullivan <mqsullivan@empowertexans.com>
To: Lyle.Larson@house.state.tx.us
Date: Jun 15 2011 – 12:35pm

Honorable Members of the Texas House:

On the House Calendar for today is House Bill 5, allowing Texas to enter the Health Care Compact. The Health Care Compact empowers Texas – not Washington, DC, bureaucrats – with the responsibility and authority to regulate Texas' health care.

As you know, we support House Bill 5 and will positively score it on the Fiscal Responsibility Index. We encourage members of the Texas House to vote for the Health Care Compact and HB5. You can learn more about the Compact at HYPERLINK "http://app.streamsend.com/c/14115515/10238/dEzX3ky/hr1x?redirect_to=http%3A%2F%2Fwww.HealthCareCompact.org%2F"http://www.HealthCareCompact.org/.

If you have questions, please do not hesitate to contact me via e-mail or my direct phone number, 512-522-5355.

Thank you for your service to the people of Texas.

Respectfully Yours,

Michael Quinn Sullivan
Empower Texans / Texans for Fiscal Responsibility
P.O. Box 200248
Austin, TX 78720
Main: (512) 236-0201
Direct: (512) 850-4336

APPENDIX R

Desiree Smith

Subject:	Dinner with Michael Sullivan
Location:	Papadeaux
Start:	Mon 1/31/2011 7:00 PM
End:	Mon 1/31/2011 8:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Bryan Hughes
Required Attendees:	Daniel Deslatte; Courtney A. Smith; Cody Terry

1/31/2011 by DNS. Confirmed

APPENDIX S

Wes Starnes

Subject:	MQ Meeting-ws
Location:	TPPF: 900 Congress, Ste. 400
Start:	Wed 2/2/2011 8:00 AM
End:	Wed 2/2/2011 9:00 AM
Recurrence:	Weekly
Recurrence Pattern:	every Wednesday from 8:00 AM to 9:00 AM
Meeting Status:	Accepted
RealReminderSet :	900

Larry,

On February 2, we will re-start for 2011 and the legislative session the Wednesday gather of the center-right movement. As we do during session, the meetings will start promptly at 8am, ending at 9am. We'll have healthy things like doughnuts and coffee at the ready...

As always, the meeting is off-the-record and by invitation-only. It's an opportunity to visit with your colleagues in conservative organizations and legislative offices, as well as friendly advocates.

Rain or shine, ice or heat, we will meet every Wednesday at 8am throughout Session. Well try to send a reminder out on Tuesdays, especially when there is a particular item or issue on the docket!

Speaking of which, if you have something you want to pitch or talk about, let me know in advance so we can make sure the agenda has room – but we'll also generally make sure at each gathering everyone can talk up their priorities.

There's no obligation to attend, just because you are on the invite list.

Again, these meetings are off-the-record and invite-only. If there is someone you would like to have invited, please let me know in advance.

Finally, our friends at TPPF generously let us use their conference room, 900 Congress, Ste. 400, for these gatherings.

Look forward to seeing you February 21

-mq

APPENDIX T

Desiree Smith

Subject:	Meeting with Van Taylor and 18 other Reps about Amendments for HB 4 and HB 275
Location:	E2.020
Start:	Tue 3/29/2011 4:30 PM
End:	Tue 3/29/2011 6:30 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Bryan Hughes
Required Attendees:	Daniel Deslatte; Cody Terry

3/29/2011 by DNS. Not confirmed.

Attendees: Confirmed: Talmadge Heflin from Texas Public Policy Foundation, Michael Quinn Sullivan of Empower Texans, Representative Phil King, Representative Ken Paxton, Representative Jodie Laubenberg, Representative Wayne Christian, Representative Leo Berman, Representative Jim Landtroop, Representative Bryan Hughes, Representative Tan Parker, Representative James White, Representative Van Taylor, Representative Bill Zedler

Tentative: Representative Ken Legler, Representative Erwin Cain, Representative Dan Flynn, Representative Charlie Howard