



December 11, 2024

Dear Chairman Bell, Vice-Chairman Parker and Members of the Texas Sunset Advisory Commission,

We write to express our deep concerns about the Texas Ethics Commission (TEC) and its continued abuse of power against grassroots citizens. Over the years, the TEC has shifted from its intended mission of ensuring transparency in government to becoming an instrument of punishment, disproportionately targeting ordinary Texans with punitive enforcement practices while neglecting its core responsibilities. The TEC's actions have undermined trust, discouraged civic participation, and violated basic principles of fairness and due process.

Moreover, the TEC is now wielding the powers of all three branches of government. And it does so through a secretive process that subjects citizens to violations of their fundamental rights.

The Sunset Advisory Commission now has an opportunity to correct these systemic failures. The TEC's jurisdiction over private citizens must end, and its resources must be refocused on providing transparency and accountability for public officials rather than prosecuting Texans who attempt to comply with its burdensome and confusing rules.

The TEC's Sworn Complaint Process: A System of Punitive Overreach

The TEC enforces its rules through the sworn complaint process, a system that combines civil and criminal enforcement without offering the procedural protections afforded in a traditional courtroom. Investigations are triggered by sworn complaints, often filed by political opponents, based solely on "information and belief." Once initiated, these complaints force respondents into an opaque process that includes answering written questions, providing evidence against themselves, and complying with discovery requests, all under threat of escalating fines. Refusing to respond or even invoking constitutional rights, such as the Fifth Amendment, often results in default judgments or additional penalties.



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According to the TEC's most recent appropriations request, 2024 has set a record with 10,332 individual filers forced to file reports with the commission. This volume has filing has yielded a record 7,045 phone calls to the TEC's legal helpline from Texans confused about how to comply with their filing obligations.

Consequently, in 2023 the TEC saw an all-time high revenue of \$1,471,328 in licenses, fees, fines, and penalties collected from Texans who are under their thumb.

The TEC's own records reveal the explosive growth of its sworn complaint process. In Fiscal Year 2024, the TEC received 543 complaints, a staggering 40% increase from the 390 complaints filed in 2023.

Instead of streamlining its procedures or focusing on significant violations, the TEC has doubled down on its approach, turning minor infractions into major punishments. Former TEC Chairman Jim Clancy described this system plainly:

“Those people who come to us, who try to disclose, are typically the ones who are fined. People who don't report, who ignore the disclosure system, those folks are rarely involved. ... **[T]hose people who try to comply are punished for doing so.**”

This sentiment was echoed by Vice Chair Paul Hobby, who described the chilling effect the TEC's practices have on public participation.

“You ought to see these people who leave our meetings in tears, these **sweet, simple people** who missed a box, missed a deadline. They get a letter and they can't sleep at night, they hire a lawyer they can't afford. ... **[T]hese people swear, they promise, 'I'll never participate in the process again.'**”

Meanwhile, the TEC has repeatedly stated they do not care about constitutional arguments against their actions and have encouraged litigants to take the fight to the courts in order to find redress.

TEC director of enforcement John Moore infamously argued that “**constitutional issues don't matter**” and, as chairman, Paul Hobby defiantly stated the Commission isn't required to read or follow binding court opinions. TEC Chairman Steve Wolens added that due process at the Commission “doesn't really count at the end of the day; it doesn't matter.”



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This system, which punishes well-meaning individuals who are trying to comply with a byzantine system of regulation while allowing larger players to evade scrutiny, silences grassroots voices and undermines public trust.

The Sunset Staff Report: Criticisms Without Meaningful Solutions

The Sunset Advisory Commission staff report lays bare many of the TEC's systemic issues and yet the staff recommend less oversight for the TEC, not more. This recommendation is bewildering, and presents a further threat to Texans who simply desire to be involved in their government as citizens.

The staff report notes that the agency's enforcement practices disproportionately burden filers, even for minor errors, and that the TEC's rules are confusing and outdated. Specific findings from the report include:

- "TEC's sworn complaint process fails to promote efficiency and weakens the Commission's role in enforcing disclosure laws."
- "Confusion about reporting and other disclosure requirements can lead to serious consequences for filers. Even if a filer makes a simple error or submits a report just minutes late, these mistakes are often violations under the law that carry civil penalties."
- "TEC's audit function is ineffective and inefficient ... overly focused on minor errors."
- "Filers lament how challenging complying with the law can be."
- "[A] filer could face a third-degree felony charge for unintentionally accepting a small corporate contribution — like receiving a contribution from a church (a nonprofit corporation) which the filer subsequently returned."
- "The consequence of statute's overall lack of clarity means those found in violation of the state's disclosure laws may be stigmatized as ethics violators regardless of the seriousness of the violation in question. This can distort voters' perception of candidates and public officials, potentially influencing their decisions at the ballot box."

Citizen comments received by Sunset staff describe the TEC's systems as difficult to navigate, overly complex, and confusing even for those with professional assistance:

- "The way the items must be filed is insanely complicated. It makes no logical sense...it took FOREVER!"
- "Difficult to understand for a regular guy with no experience and no accountant."
- "This report is very time consuming. It takes me and 2 investment agents many hours to create reports to provide the information required."



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- “The way the items must be filed is insanely complicated. It makes no logical sense. If something was charged on a credit card, it seemed to be counted twice. Maybe I did it wrong.... but it took FOREVER!!!!”

Despite these damning observations, the Sunset staff report inexplicably recommends reducing judicial oversight of the TEC by replacing *de novo* review in district court with a weaker “substantial evidence” standard. This shift would further erode due process protections, concentrating even more unchecked power in the TEC’s hands. It is also contrary to prevailing First Amendment jurisprudence, which ensures that Courts have the power to make substantive decision about the nature of speech. Such a recommendation is wholly inconsistent with the constitutional principles that require rigorous protections in cases involving free speech and political participation.

Mismanagement, Website Failures, and Misplaced Priorities

While aggressively pursuing enforcement actions, the TEC has consistently failed to perform its most basic operational responsibilities. The agency’s website is a glaring example of its mismanagement. Despite receiving \$3.5 million from the legislature in 2014 to upgrade its electronic filing system, the TEC’s website remains dysfunctional. A 2016 study by the Campaign Finance Institute ranked Texas dead last in the nation for campaign finance transparency, citing high task failure rates, confusing terminology, and low user confidence. Eight years later, the TEC’s website still does not function properly on mobile devices, and users report frequent crashes during high-traffic periods.

In July 2022, the system suffered a complete breakdown, preventing the timely submission of campaign finance reports. To cope with the limitations of its aging infrastructure, the TEC has even advised users to file reports late at night or early in the morning to reduce strain on the system. These failures have forced nonprofit organizations, like Transparency USA, to step in and provide the public with access to campaign finance data that the TEC should be managing.

Instead of addressing these issues, the TEC has chosen to prioritize expanding its enforcement powers and pursuing costly legal battles. Since 2014, the TEC has spent over \$1 million on outside legal counsel, including a years-long effort to collect a \$10,000 fine from Michael Quinn Sullivan for allegedly failing to register as a lobbyist.

Despite this wasteful spending, the TEC is now requesting a 25% pay raise for its executive staff, which would make its director one of the highest-paid officials in state government, earning more



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than most appellate judges. These demands are indefensible given the TEC's continued operational failures.

The Case of Darnella Wilkerson: A Case Study in Overreach

The TEC's enforcement practices are best exemplified by the case of Darnella Wilkerson, a grassroots activist from Houston. As treasurer for a small political action committee, Wilkerson managed less than \$4,000 in contributions and expenditures. A rival blogger filed a sworn complaint over minor reporting errors, triggering a TEC investigation (including subpoenas of the woman's bank records) that culminated in a \$17,500 fine. Unable to afford legal representation or travel to Austin for TEC hearings, Wilkerson was left defenseless against the TEC's default judgment. She shut down her PAC, resigned her position, and apparently fled Texas to live in New York.

Wilkerson's story is not unique. It reflects a broader pattern of TEC enforcement that disproportionately targets small-scale activists for minor paperwork errors while ignoring larger actors with significant resources. For instance in 2015, when the TEC considered complaints against Texans for Lawsuit Reform PAC and its lobbyists for failing to file proper reports, those complaints were settled with \$100 fines against Dick Trabulsi, Lee Parsley, Mary Tipps, Drew Lawson and a \$150 fine against Mike Toomey.

The TEC has a pattern. Those who are wealthy and well-connected and can "lawyer-up" get slaps on the wrist. Those citizens like Darnella Wilkerson who can't even afford a trip to Austin are crushed by the TEC's massive fines. This approach discourages grassroots participation, undermines public trust, and reinforces the perception that the TEC exists to punish rather than promote transparency.

The TEC's Expanding Power and Constitutional Concerns

The TEC's recent actions demonstrate a troubling trend of overreach. Just this year, the agency is now asserting authority to regulate political speech on social media valued at less than \$100, is criminalizing the provision of nonprofit legal assistance, and is saying that political parties must provide resources to voters equally to those voters who support **or oppose** the party's candidates.

More shockingly, the recent *Charette* decision by the Texas Court of Criminal Appeals further expanded the TEC's power, granting it exclusive jurisdiction—as a court—over certain election-related criminal violations. The court held that even elected prosecutors cannot enforce state laws without the TEC's referral. This concentration of executive and judicial authority within an



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agency composed of legislative appointees violates constitutional principles and highlights the urgent need for reform.

A Call for Reform

The Sunset Advisory Commission must take bold action to address these systemic failures. The TEC's jurisdiction must be limited to officeholders, and its enforcement authority over private citizens must end.

Reforms should focus on the following principles:

- **Transparency:** The TEC must fix its broken website and provide functional tools to support compliance with campaign finance and ethics laws. This cannot happen if the agency is wasting its resources harassing citizens.
- **Accountability:** Judicial oversight, including *de novo* review, must be preserved to ensure due process and protect First Amendment rights.
- **Refocusing Priorities:** The TEC must prioritize holding public officials accountable rather than targeting grassroots activists and ordinary Texans.
- **Ethical Obligations:** Ethics burdens should rest **entirely** with officeholders, who have access to legal counsel and resources, rather than private citizens attempting to navigate an overly complex system.

Conclusion

The TEC's current practices are incompatible with the principles of fairness, transparency, and citizen participation. By prioritizing punitive enforcement over transparency and accountability, the TEC has created a system that silences grassroots voices and discourages civic engagement. The Sunset Advisory Commission has an opportunity to correct these systemic failures by recommending reforms that restore balance and fairness to the TEC's operations.

Texans deserve a government that supports their participation in the political process, not one that punishes those "sweet simple people" who attempt to comply.

Sincerely,

Julie McCarty, CEO, True Texas Project, Fran Rhodes, President, True Texas Project

Grassroots Leaders of Texas (see attached list)

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