

LIBERTY INSTITUTE

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Dear Members and Members-elect of the Texas House of Representatives

It has come to my attention that you received a letter dated November 15, 2010 from Representative Hopson warning against “communications between members, members-elect, and private citizens [who] have sought to influence [y]our vote for the next Speaker.” It is true that it was once a crime for citizens to exercise their collective freedoms to voice their opposition or support for candidates seeking to be the Speaker of the House. However, as anyone with a basic understanding of the Constitution should know, such restrictions violate the First Amendment. We successfully sued the Texas Ethics Commission in federal court in 2008 on this very issue, winning a great victory for citizens, corporations, and other organizations seeking to influence the election of the Speaker of the House. The federal court ruled that the bans on corporate, organizational, and private citizens advocating their preference for the Speaker of the House violated the First Amendment and declared those bans unconstitutional.

As the federal court ruled, “[t]he election of the Speaker is not, therefore, a matter of internal Housekeeping. It is an issue of great political importance and a legitimate subject of public debate.” *Free Market Foundation v. Reisman*, 573 F.Supp.2d 952, 955 (W.D. Tex. 2008). Citizens, corporations, and other organizations are free to express their views to Representatives and engage in the same level of discussion about the election of the Speaker as they may about any matter before the House of Representatives, including legislation.

Legislators are also protected by the First Amendment when they publicly and privately express their views regarding who should be selected as Speaker of the House. See *Bond v. Floyd*, 385 U.S. 116, 135-36 (1966) (“The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views”). It is my hope that Representative Hopson did not intend to unconstitutionally chill protected First Amendment speech in his letter. In any event, the law is clear. Citizens, organizations, corporations, and legislators enjoy broad protection to discuss who shall be selected as Speaker. Any attempt to chill that constitutionally protected speech is illegal.

Sincerely,

/s/ Kelly Shackelford
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President/Chief Counsel
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