FAIR POLITICAL PRACTICES COMMISSION
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April 29, 2011

Fresno County Democratic Central Committee
Larry Johnson
c/o Stephen A. Smith, Esq.
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RE: Advisory Letter – FPPC No. 10/056; Henry T. Perea, Henry R. Perea, Fresno County Democratic Central Committee, and Larry Johnson, Treasurer

Dear FCDCC and Mr. Johnson:

The Fair Political Practices Commission ("Commission") is charged with the duty to administer, implement and enforce the provisions of the Political Reform Act ("Act").[1] By enacting the Political Reform Act, California voters specifically found and declared that previous laws regulating political practices had suffered from inadequate enforcement, and that it was their purpose to ensure that the Act be vigorously enforced. (Section 81001, subdivision (h), and 81002, subdivision (f).) The purpose of campaign reporting under the Act is that "receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." (Section 81002, subdivision (a).) Timely and truthful disclosure of the source of campaign contributions is an essential part of the Act's mandate.

In furtherance of the aforementioned purposes, the Commission was investigating whether you were in violation of the Act's campaign reporting and related provisions. The investigation involved the making of four contributions to the central committee by Henry R. Perea, member of the Fresno County Board of Supervisors, totaling $133,000 in connection with Henry T. Perea's mayoral race in the City of Fresno in the November 4, 2008, election. The contributions were made to the Fresno County Democratic Central Committee ("FCDCC") and were almost immediately used to make expenditures which were reported by the FCDCC as "member communications" in support of Henry T. Perea, Henry R. Perea's son. The expenditures were for several mailers sent to registered Democrats.

Our investigation revealed that there is substantial evidence showing the mailers sent out by the FCDCC were sent with significant influence by Henry R. Perea over the use and content

[1] The Political Reform Act is contained in Gov. Code Sections 81000 to 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

of the mailers, primarily in consultation with Barry Barnes, CEO of Terris, Barnes, and Walters ("TBW"), your campaign consultant firm.

However, currently, there is no regulation setting forth when a communication *by* a political party may be considered a "member communication" and when the exception does not apply. Therefore, while several statutes in the Act may be violated if a political party is used as a mere conduit for the making of contributions to a specific candidate, we have decided to close this specific case with this Advisory Letter. Please note, however, that where the facts show that any provision of the Act has been violated, notwithstanding the possible application of any exception, which must be narrowly construed, the Enforcement Division will pursue enforcement of the Act. For example, Section 85704 prohibits the "earmarking" of contributions without identification of the true source. This provision prohibits contributions *to* a political party from being earmarked for a particular candidate, unless the contribution is reported as being made through an intermediary under Section 84302.

Our investigation also revealed that TBW caused you to underreport subvendor payments by approximately $29,328 in your semi-annual campaign statement ending December 31, 2008. The campaign statement has been amended.

In the future, we encourage you to obtain written legal advice from the Commission, particularly if your campaign consultant is also a consultant of the candidate which you seek to support, or if a consultant contract is paid for with funds from a contributor which may be construed as being under the agreement or under the condition that the payment be used in support of a specific candidate. Written advice from the Commission is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in a civil or criminal proceeding. (Section 83114, subdivision (b).)

If you have any questions, please contact me at (916) 322-8062.

Sincerely

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Luisa Menchaca
Senior Commission Counsel
Enforcement Division

cc: Joel Murillo, Esq., FCDCC
Larry Johnson, FCDCC