FAIR POLITICAL PRACTICES COMMISSION
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April 29, 2011

Terris, Barnes and Walters ("TBW")
c/o Jesse Mainardi, Esq.
The Sutton Law Firm
REDACTED

RE: Warning Letter – FPPC No. 10/056; Henry T. Perea, Henry R. Perea, Fresno County Democratic Central Committee, and Larry Johnson, Treasurer

Dear Sirs:

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] 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 as a consultant to the Fresno County Democratic Central Committee ("FCDCC"). The investigation involved the making of four contributions by Henry R. Perea to the FCDCC, 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 almost immediately used by the political party to make expenditures which were reported by the FCDCC as "member communications" in support of Henry T. Perea. The expenditures were for several mailers sent to registered Democrats. Our investigation revealed that there is substantial evidence showing the mailers you produced for the FCDCC were completed with significant influence by Henry R. Perea regarding the use and content of the mailers. At the relevant times, TBW was under contract for campaign services with both Henry T. Perea and the FCDCC.

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 not to prosecute

[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.

you for this specific activity. 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 you caused the FCDCC to underreport subvendor payments by approximately $29,328 in the semi-annual campaign statement ending December 31, 2008, in violation of Section 84211 of the Act. (Section 83116.5.) The campaign statement has been amended. This letter serves as a written warning regarding that violation. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

We also encourage you to obtain written legal advice from the Commission in the future, particularly if you simultaneously hold contracts with a candidate and a political party, and you produce, for the party, similar or identical mailers as mailers set by the candidate which contracted you. 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, Treasurer, FCDCC