FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 31, 2009

✓ The Honorable John Garamendi
Lieutenant Governor

REDACTED

Re: FPPC No. 06/409, John Garamendi, Ad Hoc Consumer Coalition for Fair Auto Insurance Rates

Dear Lieutenant Governor Garamendi:

On June 2, 2006, we received a complaint alleging that you and the Ad Hoc Consumer Coalition for Fair Auto Insurance Rates (hereafter the "Ad Hoc Coalition") violated the campaign reporting and contribution limit provisions of the Political Reform Act (the "Act").[1] The complaint concerned activities during the June 6, 2006 state primary election in which you were a candidate for Lieutenant Governor.

The complaint alleged that the Ad Hoc Coalition paid for television ads in late May and early June 2006, which benefited your bid for Lieutenant Governor, and may have qualified as contributions to your campaign. The ads did not contain "express advocacy" urging a vote for you in the upcoming primary, but rather, were a response to insurance issue ads being run by "Californians to Stop Unfair Rate Increases," a recipient committee funded by the insurance industry. The complaint alleged that the Ad Hoc Coalition was established by you, was being used to evade the contribution limits applicable to candidates for state elective office, and that you were "blurring the lines" between your Lieutenant Governor campaign and the issue ads sponsored by the Ad Hoc Coalition.

Based on our review and investigation, we found insufficient evidence to conclude that you controlled the Ad Hoc Coalition, or that any payments made by the Ad Hoc Coalition for the television ads constituted contributions to your campaign for Lieutenant Governor. Pursuant to Section 85310, the Ad Hoc Coalition filed reports disclosing its payment for the television ads that featured you. Section 85310, subdivision (a) requires that any person who makes a payment of $50,000 or more for a communication that clearly identifies a candidate for state elective office, but does not expressly advocate the election or defeat of the candidate, and that is disseminated, broadcast, or otherwise published within 45 days of an election, shall file online or electronically with the Secretary of State a report disclosing the name of the person, address, occupation and employer,

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 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.

and the amount of the payment. The report must be filed within 48 hours of making the payment or the promise to make the payment. Pursuant to subdivision (b), if any person receives payment from another person in the amount of $5,000 or more for the communication described in subdivision (a), the disclosure of specific information regarding those persons is required by the person receiving the payment.

The Ad Hoc Coalition filed the required reports (Form E-530) with the Secretary of State's Office on June 2, 2006 and June 6, 2006. The reports disclosed 17 payments of $5,000 or more received from various political action committees, individuals and businesses. The payments were reportedly made between May 25, 2006 and June 5, 2006, and totaled $297,400. The reports indicated that the payments were for television and cable airtime and production costs, and that they were made for a governmental purpose. According to these filings, the Ad Hoc Coalition did not file a report within 48 hours for two payments totaling $37,900 made on May 25, 2006. Since these two payments were reported only 6 days late, were reported before the primary election, and were relatively small, we determined that further enforcement action for the late filing was not warranted.

Under Section 82015, subdivision (b)(2)(B)(iii), payments that are made principally for a legislative, governmental or charitable purpose are neither contributions nor gifts to the elected official. However, the payments made at the behest of a candidate who is an elected official must be reported by the official within 30 days following the date on which the payment or payments are made, if they equal or exceed $5,000 in the aggregate, and are from the same source in the same calendar year. On July 21, 2006, you reported the seventeen payments of $5,000 or more, reported by the Ad Hoc Coalition between June 2, 2006 and June 6, 2006 as discussed above, as required by Section 82015, subdivision (b)(2)(B)(iii). Although this filing was not made within 30 days of the actual dates of payment, we determined that further enforcement action for the late filing of this report was not warranted since the Ad Hoc Coalition reported the payments before the election and there was little public harm from your late filing.

Based on the foregoing, we will not be pursuing this matter further and have closed our file. However, in the future, please be advised of your reporting obligations set forth in the Act with respect to the filing of behested payment reports.

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

Sincerely,

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Melodee A. Mathay
Staff Counsel IV
Enforcement Division