

May 11, 2007

Thomaseina Duncan
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Complaint against Martinez for Senate

Dear Ms. Duncan:

Enclosed for filing please find a complaint against Martinez for Senate, the principal campaign committee of Senator Mel Martinez, which alleges multiple egregious violations of the Federal Election Campaign Act (“FECA”) and Federal Election Commission (“FEC” or “the Commission”) regulations. The complaint is based primarily upon the Commission’s recent audit of Martinez for Senate. Federal Election Commission, Report of the Audit Division on Martinez for Senate, January 5, 2004 – December 31, 2004 (April 17, 2007).

The audit of Martinez for Senate reveals a campaign committee that failed in its duty to comply with the most basic disclosure provisions of FECA and FEC regulations. As you know, FECA requires a principal campaign committee to “disclose contributors and disbursements to help voters understand who provides which candidates with financial support.” Federal Election Commission v. Akins, 524 U.S. 11, 19 (1998), quoting Buckley v. Valeo, 424 U.S. 1, 66-67 (1976).

Martinez for Senate’s failure to comply with this most basic tenet of FECA is unprecedented in size and scope. The Audit Division found that Martinez for Senate violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.7(b) by failing to disclose occupation and/or employer information for an astonishing forty-six percent (46%) of the individuals who contributed to the campaign. Martinez for Senate raised approximately \$9.6 million from individuals, meaning that the campaign failed to adequately disclose the source of approximately \$4.4 million in contributions – over one-third of the entire \$12.4 million raised by Martinez for Senate in 2004. In addition, the Audit Division found that Martinez for Senate failed to provide any contributor identification information at all for approximately \$320,000 in contributions that were made to Martinez for Senate through four different joint fundraising committees in violation of 11 C.F.R. § 102.17(c)(8)(i)(B).

These violations are especially troubling because, during the course of the ten-month campaign, Martinez for Senate received no fewer than three written warnings from the Commission that its reports failed to adequately identify its contributors. Moreover, the Commission admonished Martinez for Senate in MUR 5789 for violating 2 U.S.C.

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§ 434(b)(3)(A) and 11 C.F.R. § 104.7(b) by failing to obtain and disclose employer information for contributors to Martinez for Senate who attended a May 11, 2004 fundraiser held by Bacardi USA, Inc.

The Audit Division Report is also disturbing because it reveals not one, but two additional violations of FECA that may have affected the outcome of the 2004 U.S. Senate race in Florida. The 2004 Florida Senate race was extremely close, with Mel Martinez winning by a margin of 82,000 votes out of a total of 7.4 million votes cast – a margin of just over one percent (1%). The recently released Audit Division Report now shows, two-and-a-half years after the election, that Martinez for Senate committed two serious FECA violations that gave Martinez for Senate an unfair advantage in the closing days of the 2004 campaign.

Martinez for Senate raised \$12,360,000 and spent all but \$20,000 in order to eke out a victory by a margin of one percent (1%). The Audit Division found that Martinez for Senate accepted \$313,325 in excessive contributions in violation of 2 U.S.C. § 441a(a). Virtually all of those illegal funds were spent by Martinez for Senate in order to win the 2004 general election when, in fact, they should not have been available for use. In addition, the Audit Division found that, in the twenty days before the 2004 general election, Martinez for Senate received, but failed to disclose, \$140,514 in contributions in violation of 2 U.S.C. § 434(a)(6)(A) and 11 C.F.R. § 104.5(f).

In the closing days of a campaign, candidates make their advertising spending decisions, in part, based on the amount of money they know their opponents have available to spend on their advertising. By failing to disclose over \$140,000 in contributions received in the last days of the campaign, Martinez for Senate gained a tactical advantage over Mr. Martinez's opponent – a tactical advantage that compliance with FECA would have prevented.

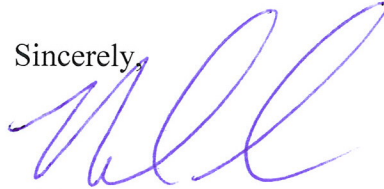
The FECA disclosure violations committed by Martinez for Senate are unprecedented in size and scope, making the campaign's FEC reports virtually worthless to both voters and opposing candidates. Moreover, Martinez for Senate committed two serious financial violations of FECA, which, either together or separately, may have affected the outcome of the race.

The FECA allows the Commission to seek civil penalties that do not exceed the greater of \$5,000 per violation or an amount equal to the amount involved in the violation. 2 U.S.C. § 437g(a)(5)(A). The Audit Division identified multiple violations of FECA and FEC regulations committed by Martinez for Senate that cumulatively involved contributions totaling approximately \$800,000.

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Based on the Audit Division's findings and in accordance with the FECA, Citizens for Responsibility and Ethics in Washington requests that the Commission sanction Martinez for Senate the amount of the violation: \$800,000. Anything less severe would send a message to all future candidates that compliance with FECA is optional, with a token penalty to be paid, if ever, years after the election is over and the candidate has become federal officeholder.

Sincerely,



Melanie Sloan
Executive Director

Encl.