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Via Facsimile Transmission (202-219-3923) and U.S. Mail

Jeff S. Jordan, Esq.
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: *FEC Complaint of the National Republican Congressional Committee
Against Jorge Mas, September 26, 2002.
FEC MUR Number 5305***

Dear Mr. Jordan:

Please accept this letter as the timely response of Mr. Jorge Mas to the above referenced complaint (the "Complaint").

A review of the facts regarding the allegations of the Complaint, and its subsequent distribution to the press by the National Republican Congressional Committee ("NRCC"), will show that Mr. Mas was merely an innocent bystander caught up in the NRCC's political smear campaign against Dario Herrera and Herrera for Congress. The FEC should not waste its limited resources by investigating the allegations against Mr. Mas, and should immediately dismiss the Complaint with regard to him.

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1. **The Allegations Against Jorge Mas Have No Basis In Fact**

a) The donations in question were merely routine donations for Mr. Mas.

Mr. Mas is a frequent and generous donor to political interest groups, campaigns, and organizations involved in promoting a free Cuba. There is nothing unusual about the donations made to the Free Cuba PAC that form the basis of the Complaint against Mr. Mas. Similar donations to the Free Cuba PAC have been made in the past, as FEC records will show. In short, these donations were merely routine donations for Mr. Mas, nothing more.

b) Mr. Mas has no control over the Free Cuba PAC or its use of donations.

Mr. Mas does not now, and never has had, control over the Free Cuba PAC, or how the Free Cuba PAC uses donated funds. Mr. Mas is not now, and has never been, an officer of the Free Cuba PAC. Nor has Mr. Mas ever served on the Board of Directors of the Free Cuba PAC. Mr. Mas' only affiliation with the Free Cuba PAC has been as a donor. The contributions made by Jorge and Aleyda Mas on April 9, 2002, were in no way "orchestrated" as alleged in the Complaint, and no facts exist which would support such an allegation. In short, the allegations against Mr. Mas are entirely without basis in fact, and the Complaint should be immediately dismissed as to Mr. Mas.

c) The testimony of the Free Cuba PAC proves the allegations against Mr. Mas are false.

Attached hereto as Exhibit A is the sworn affidavit of Mario L. del Valle, the Treasurer of the Free Cuba PAC, which clearly shows that the allegations of the Complaint against Mr. Mas have no basis in fact. The Complaint seizes upon a routine donation made by Mr. Mas, and adds totally unsupported speculation as to a conspiracy between Mr. Mas, the Herrera campaign, and the Free Cuba PAC, in an attempt to discredit the Herrera campaign. It is clear that in filing the Complaint, the NRCC was merely attempting to create a political issue to generate negative publicity for the Herrera campaign.

2. **The Complaint Is Politically Motivated**

An examination of the facts will show that the NRCC filed the Complaint as part of a political strategy to discredit the Herrera campaign. It is obvious that the NRCC desired the defeat of Mr. Herrera, a Democrat Congressional candidate and Cuban-American. As noted above, no facts exist which would support the allegation of an "orchestration" of the use of Mr. Mas's donation to the Free Cuba PAC. No meetings took place, no directions were given, and none are alleged. The NRCC merely speculates that such an "orchestration" existed, and offers no facts to support this speculation. This should alert the Commission to the political motivation for the filing of the Complaint.

The actions by the NRCC following the filing of the Complaint confirm the fact that it was merely a political ploy to damage the Herrera campaign. It appears that following his filing of the Complaint, the General Counsel for the NRCC, Mr. Donald F. McGahn, faxed the entire

complaint to newspaper reporters in an attempt to generate negative publicity for the Herrera campaign in areas that would be key to its support. Attached hereto as Exhibit B is a copy of the Complaint as faxed by Mr. Donald F. McGahn to Dan Christensen, a reporter with the South Florida Daily Business Review. Indeed, a few days after Mr. Christensen's receipt of the Complaint, in its entirety, from Mr. McGahn, the Daily Business Review published a front-page article regarding the Complaint. Similar articles about the Complaint appeared in Nevada, Mr. Herrera's home state, during the same time period.

It is clear that Mr. McGahn sought to create negative publicity for Mr. Herrera, a Democrat and Cuban-American, in both the district in which he was seeking election, as well as in South Florida, a traditional base of support for Cuban-American candidates for office.

In short, the Complaint is not legitimate, but is merely a political ploy by the NRCC to discredit a Democrat candidate for office. It should therefore be dismissed as to Mr. Mas.

3. The NRCC and its General Counsel Violated the FEC's Confidentiality Regulations

A legitimate question for the FEC is presented by the fact that Mr. McGahn faxed the complaint, in its entirety, to Mr. Christensen, and, we believe, other reporters. 11 CFR 111.21 states in part:

" . . . no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed . . ." (emphasis supplied).

While certain advisory opinions have discussed whether the contents of a complaint may be discussed with the press, no advisory opinion has addressed the abuse of the FEC complaint process to create a platform upon which to generate meritless negative press just prior to a national election. Nor has any advisory opinion discussed the wholesale faxing of a complaint in its entirety, including unsupported defamatory speculation, to newspaper reporters across the country. It is difficult to believe that the FEC would allow the complaint process to become just another tool in political smear campaigns carried on by political operatives.

Indeed, it would appear that the confidentiality provisions of 11 CFR 111.21 were designed to prevent just such an abuse. If allegations must remain confidential, the incentive to make unfounded defamatory allegations in a complaint, and then fax that complaint to numerous media outlets to generate negative publicity during a campaign, is removed. The FEC has wisely designed its regulations in a way that removes the incentive for political operatives to abuse the process.¹

¹ It is particularly important that the incentive for abuse be controlled by the FEC in light of the fact that the filing of an FEC complaint may be a legally privileged act, which may shield the party abusing the process from a lawsuit by the respondent to vindicate its reputation. Note that one of Mr. McGahn's first responses to our informing him that the Complaint was entirely without merit, and contained defamatory statements, was to run for cover under this protection. See Exhibit C, page 1, paragraph 2.

While the Complaint against Mr. Mas does not merit investigation, we submit that Mr. McGahn's violation of the FEC regulation noted above, does.

4. The NRCC Claims it has no Complaint Against Mr. Mas

Since the filing of the Complaint, the RNCC has taken the position that it has not filed a complaint against Mr. Mas. Attached hereto as Exhibit C is correspondence to the undersigned from Mr. McGahn dated October 18, 2002, stating that the NRCC has not named Mr. Mas as a respondent in the Complaint, and that the Complaint was directed solely at Dario Herrera and Herrera for Congress.

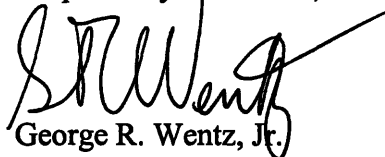
Apparently, having achieved its desired negative political press, and having discovered that Mr. Mas can and will vigorously defend himself, the NRCC now wishes to make the allegations against Mr. Mas disappear. To this extent, we are in agreement with the NRCC.

5. Conclusion

The FEC should not waste its limited resources investigating the Complaint with regard to Mr. Mas. In light of the fact that: a) there are no facts to support the allegations against Mr. Mas; b) the Complaint was merely a political ploy to generate negative publicity for the Herrera campaign in Nevada and South Florida; and, c) the NRCC now claims it has no complaint against Mr. Mas, we respectfully request that the Complaint be dismissed as to Mr. Mas. It appears that Mr. Mas was merely an innocent bystander caught up in a malicious and defamatory campaign by the NRCC to discredit Dario Herrera and Herrera for Congress. He has done nothing wrong. He has violated no law or regulation in this matter. The Complaint, to the extent it involved Mr. Mas, should be promptly dismissed.

Accordingly, we respectfully request that the Office of the General Counsel for the Federal Election Commission determine that the Complaint does not warrant the use of the Commission's limited resources, and that the Complaint be immediately dismissed as to Mr. Mas.

Respectfully Submitted,


George R. Wentz, Jr.

cc: Mr. Jorge Mas
George J. Fowler, III