



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

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MAR 11 2004

Kendall Coffey, Esq.  
Coffey & Wright, LLP  
Grand Bay Plaza  
Penthouse 2B  
2665 South Bayshore Drive  
Miami, FL 33133

RE: MUR 5379  
Alex Penelas US Senate Campaign  
and Carlos M. Trueba, as treasurer

Dear Mr. Coffey:

On July 30, 2003, the Federal Election Commission notified your clients, Alex Penelas US Senate Campaign and its treasurer, Carlos M. Trueba (the "Committee"), of a complaint (MUR 5379) alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information provided by your client, the Commission, on February 13, 2004, found that there is reason to believe the Committee violated 2 U.S.C. § 441b(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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MUR 5379  
Alex Penelas US Senate Campaign  
and Carlos M. Trueba, as treasurer

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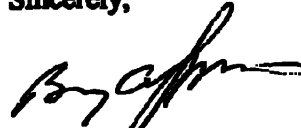
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Jack Gould or Renee Salzmnn, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Alex Penelas US Senate Campaign MUR: 5379  
6 and Carlos M. Trueba, as treasurer  
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8 **I. GENERATION OF MATTER**

9 This matter was generated by a complaint filed with the Federal Election Commission by  
10 Ryan Hampton, Financial Director, Peter Deutsch for Senate. See 2 U.S.C. § 437g(a)(1).

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Facts**

13 The complaint, citing to an article published in The Miami Herald, alleges that employees  
14 and vendors of CarePlus Medical Centers, Inc. ("CarePlus") were solicited in an illegally  
15 coercive manner to make contributions to Alex Penelas' U.S. Senate campaign committee  
16 ("Penelas Committee"). Michael B. Fernandez, owner and chief executive officer of CarePlus,  
17 reportedly instructed Heriberto Valdes, Vice President of CarePlus, to collect contributions from  
18 CarePlus employees for Mayor Penelas' Senate campaign. Jim DeFede, *Fundraising effort*  
19 *raises concerns*, The Miami Herald, March 30, 2003. Mr. Valdes reportedly sent an email to all  
20 "physicians and executive level staff." According to The Miami Herald, the Valdes email stated,  
21 among other things:

22 Mr. Mike Fernandez is asking each of you for a \$1,000 campaign  
23 contribution for the Alex Penelas for Senate Campaign. The deadline for  
24 this contribution is Friday the 28<sup>th</sup>. He has asked for an accounting of the  
25 individuals that donate and those that did not. \* \* \* All physicians, large  
26 vendors and executive level staff will be expected to donate.

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1 Carlos M. Trueba, the Penelas Committee's treasurer, became aware of the Valdes email  
2 and the controversy surrounding the solicitation of CarePlus employees when the March 30, 2003  
3 article was published. Carlos M. Trueba Affidavit ¶ 2. Four days later, on April 3, 2003, The  
4 Miami Herald published an article questioning whether Mayor Penelas, directly or through  
5 intermediaries, asked Mr. Fernandez to start raising money before the campaign account was  
6 opened. Jim DeFede, *Did fundraising break the rules?* The Miami Herald, April 3, 2003. Mayor  
7 Penelas' spokesman, Ric Katz, reportedly stated, "no one connected to the mayor authorized  
8 anyone at CarePlus to start raising money." *Id.* Mr. Katz also told the newspaper, "the money  
9 raised by CarePlus would not be accepted by Penelas." *Id.* The April 3, 2003 article also drew  
10 attention to another problem - - that the checks would be collected by company officials. *Id.*

11 On April 8, 2003, The Miami Herald published another article concerning the Valdes  
12 email. In that article, The Miami Herald reported that the "employees who were pressured to  
13 write checks for Alex Penelas' Senate campaign were given those checks back." Jim DeFede,  
14 *Was helping hand from strong arm?* The Miami Herald, April 8, 2003. That article also pointed  
15 out that CarePlus employees were pressured into making contributions to Senator Bill Nelson's  
16 campaign committee in April of 2002. *Id.*

17 On May 8, 2003, Mr. Fernandez held a fundraiser for Mayor Penelas' senate campaign.  
18 Sometime after the fundraiser, the Penelas Committee received contribution checks from that  
19 event. Carlos M. Trueba Affidavit ¶ 3. Nelson Hincapie, assistant to the Penelas Committee  
20 finance director, examined the checks to verify the names, employers, and occupations of the  
21 contributors. Nelson Hincapie Affidavit ¶ 3. Mr. Trueba reviewed a printout of the  
22 contributions. Carlos M. Trueba Affidavit ¶ 3. However, neither Mr. Hincapie nor Mr. Trueba

questioned the legality of the contributions; they merely assumed that the CarePlus employees' contributions were in connection with the fundraiser and not the Valdes email. Nelson Hincapie Affidavit ¶ 4, 5; Carlos M. Trueba Affidavit ¶ 4.

**B. Law and Analysis**

Under the Federal Election Campaign Act of 1971, as amended ("Act"), candidates and their committees are prohibited from knowingly accepting or receiving corporate contributions. 2 U.S.C. § 441b(a).

The Act's broad prohibition on corporate contributions extends to "anything of value" given to any candidate in connection with any federal election. 2 U.S.C. § 441b(b)(2). When a corporation fundraises for a federal candidate and the campaign accepts contributions collected by the corporation, the committee has accepted something of value from that corporation. See MUR 3987 (Friends of Jane Harman) (Commission found probable cause to believe that Committee violated section 441b(a) by accepting contributions that were solicited, collected, and forwarded by corporate employees).

Corporations are permitted to communicate to their stockholders and executive or administrative personnel and their families on any subject. 2 U.S.C. § 441b(b)(2)(A). Such communications can include a solicitation or suggestion that they contribute to a particular candidate, "so long as the corporation limits its activity to communication only and does not actually facilitate the making of the member's contribution to the candidate." Advisory Opinion 1987-29 (*citing* 11 C.F.R. § 114.3). The Commission's regulations define "facilitation" as "using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election . . . ." 11 C.F.R. § 114.2(f)(1). Facilitation can also involve "[u]sing

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1 coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal,  
2 or the threat of force, to urge any individual to make a contribution or engage in fundraising  
3 activities on behalf of a candidate or political committee." 11 C.F.R. § 114.2(f)(2)(iv).

4       The Valdes email appears to coercively solicit contributions to the Penelas Committee.  
5 First, the email says that Mr. Fernandez is asking for the contribution. Thus, recipients of the  
6 email know that the person who is ultimately responsible for making decisions regarding salaries,  
7 bonuses, and promotions is asking them to contribute. Second, it states that Mr. Fernandez has  
8 asked for an accounting of the individuals who do and do not contribute. As such, Mr.  
9 Fernandez will know who has not complied with his request for contributions. Third, and most  
10 significantly, it allegedly states that all physicians, large vendors, and executive level staff are  
11 "expected" to contribute, thereby signifying that this is a requirement and not merely a request.

12       The Valdes email also stated that the checks would be collected by company officials.  
13 Corporate facilitation includes collecting earmarked contributions and delivering them to the  
14 candidate. See Advisory Opinion 1986-4. For a corporation to properly collect and forward  
15 contributions earmarked to a candidate, such activity must be performed by the corporation's  
16 separate segregated fund, in accordance with the provisions of 11 C.F.R. § 110.6; otherwise, such  
17 activity is considered improper facilitation. 11 C.F.R. § 114.2(f)(3)(ii). CarePlus does not have a  
18 separate segregated fund.

19       Under the Act, the Penelas Committee's treasurer is responsible for examining all  
20 contributions for evidence of illegality. 11 C.F.R. § 103.3(b). Contributions that, when received,  
21 present genuine questions as to whether they were made by corporations or other prohibited  
22 sources may either be deposited into a campaign depository or returned to the contributor within

1 ten days of the receipt. If any such contribution is deposited, the treasurer shall make his or her  
2 best efforts to determine the legality of the contribution. 11 C.F.R. § 103.3(b)(1). See Advisory  
3 Opinion 1995-19.

4       Advisory Opinion 1995-19 is instructive on the issue of a treasurer's duty when  
5 confronted with information that contributions received by the committee may be illegal. There,  
6 the treasurer of the Indian-American Leadership Investment Fund ("Fund") learned from a  
7 reporter that some of the individuals who contributed to the Fund did not appear to have the  
8 financial means to make contributions in the amount they made. An article containing those  
9 allegations later appeared in the newspaper. Advisory Opinion 1995-19 at 1. The Fund's  
10 treasurer requested the advisory opinion because the checks, on their face, did not present a  
11 question of their legality and the treasurer had no information verifying the illegality of the  
12 contributions other than what was reported in the newspaper. *Id.* at 2. The Commission  
13 concluded, "These circumstances present a sufficient basis to question the legality of at least  
14 some of the contributions at issue." *Id.* at 4. The Commission advised the Fund's treasurer that  
15 he should either (1) contact the contributors by mail and request a signed statement confirming  
16 the legality of the contribution, or (2) contact the contributors by telephone, request oral  
17 conformation of the legality of the contributions, and memorialize the conversations in a written  
18 memorandum. *Id.* at 2.

19       By the time the Penelas Committee accepted the CarePlus employees' campaign  
20 contributions, the Committee was already aware of the questionable methods employed by  
21 CarePlus executives to obtain contributions from its employees. These circumstances present a

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- 1 sufficient basis to question the legality of the contributions received from CarePlus employees,  
2 which the Penelas Committee failed to do.

3 **III. CONCLUSION**

- 4 Therefore, there is reason to believe Alex Penelas US Senate Campaign and Carlos M.  
5 Trueba, as treasurer, violated 2 U.S.C. § 441b(a) by knowingly accepting or receiving  
6 contributions facilitated by CarePlus Medical Centers, Inc.

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