

CREW | citizens for responsibility and ethics in washington

May 11, 2007

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

MUR # 5915

2007 MAY 11 P 12:37

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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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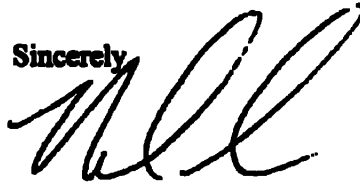
General Counsel Duncan

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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

A handwritten signature in black ink, appearing to read 'MS', is written over the word 'Sincerely'.

Melanie Sloan
Executive Director

Encl.

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FEDERAL ELECTION COMMISSION

In the matter of: **Martinez for Senate**
Nancy H. Watkins, Treasurer MUR No: **5915**

COMPLAINT

1. **Citizens for Responsibility and Ethics in Washington ("CREW"), Melanie Sloan and Afton Wilcox bring this complaint before the Federal Election Commission ("FEC") seeking an immediate investigation and enforcement action against Martinez for Senate ("MFS") and Nancy H. Watkins, treasurer, for direct and serious violations of the Federal Election Campaign Act ("FECA").**

Complainants

2. **Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.**

3. **In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws. Through its website, press releases and other methods of distribution, CREW also files complaints**

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with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serves CREW's mission of keeping the public informed about individuals and entities who violate campaign finance laws and deterring future violations of campaign finance law.

4. In order to assess whether an individual, candidate, political committee or other regulated entity is complying with federal campaign finance law, CREW needs the information contained in receipts and disbursements reports that political committees must file pursuant to the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. CREW is hindered in its programmatic activity when an individual, candidate, political committee or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

5. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated reports of receipts and disbursements are the only source of information CREW can use to determine if a candidate, political committee or other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all reports of receipts and disbursements required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

6. Complainant Melanie Sloan is the executive director of Citizens for Responsibility and Ethics in Washington, a citizen of the United States and a registered voter and resident of the District of Columbia. Afton Wilcox is a citizen of the United States and a registered voter and resident of Florida. As registered voters, Ms.

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Sloan and Ms. Wilcox are entitled to receive information contained in reports of receipts and disbursements required by the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Ms. Sloan and Ms. Wilcox are harmed when a candidate, political committee or other regulated entity fails to report campaign finance activity as required by the FECA. See FEC v. Akins, 524 U.S. 11, 19 (1998), quoting Buckley v. Valeo, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Ms. Sloan and Ms. Wilcox are further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting their ability to review campaign finance information.

Respondents

7. Mel Martinez is a United States Senator representing Florida. Martinez for Senate ("MFS") is the principal campaign committee for Senator Martinez's 2004 campaign. Nancy H. Watkins is the current treasurer of Martinez for Senate. Ms Watkins succeeded Charles W. Puckett who served as treasurer at the time of the events described in this complaint.

Factual Allegations

8. On May 18, 2004, Jill L. Sugarman of the FEC's Reports Analysis Division sent Martinez for Senate a Request for Additional Information ("RFAI") letter (attached as Exhibit A) indicating that a review of the April 15th Quarterly Report filed by Martinez for Senate revealed that MFS had accepted thirty-four (34) contributions that appeared to exceed the dollar limits set forth in FECA. The letter instructed MFS to retribute or redesignate the apparently excessive contributions, or, if that was not possible, to refund the excessive contributions within 60 days as required by 11 C.F.R.

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§ 103.3(b)(1). The letter warned that, "The acceptance of excessive contributions is a serious problem. Again, the committee's procedures for processing contributions should be examined and corrected in order to avoid this problem." *Id.* at 3. The letter also informed MFS that the April 15th Quarterly Report failed to provide complete information disclosing the identity of contributors who contributed in excess of \$200 in an election cycle. The letter directed MFS to "provide the missing information, or if you are unable to do so, you must demonstrate that 'best efforts' have been used to obtain the information. To establish 'best efforts,' you must provide the Commission with a detailed description of your procedures for requesting the information." *Id.* at 5.

9. On August 31, 2004, Jill L. Sugarman of the FEC's Reports Analysis Division sent MFS a RFAI letter (attached as Exhibit B) indicating that a review of the July 15th Quarterly Report filed by MFS revealed that MFS had again failed to provide complete information disclosing the identity of contributors who contributed in excess of \$200 in an election cycle. The letter directed MFS to "provide the missing information, or if you are unable to do so, you must demonstrate that 'best efforts' have been used to obtain the information. To establish 'best efforts,' you must provide the Commission with a detailed description of your procedures for requesting the information." *Id.* at 1.

10. On September 28, 2004, Jill L. Sugarman of the FEC's Reports Analysis Division sent MFS a RFAI letter (attached as Exhibit C) indicating that a review of the 12 Day Pre-Primary Report filed by MFS revealed that MFS had once again failed to provide complete information disclosing the identity of contributors who contributed in excess of \$200 in an election cycle. The letter directed MFS to "provide the missing

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information, or if you are unable to do so, you must demonstrate that 'best efforts' have been used to obtain the information. To establish 'best efforts,' you must provide the Commission with a detailed description of your procedures for requesting the information." *Id.* at 1.

11. Pursuant to its authority under the FECA, 2 U.S.C. § 438(b), the FEC conducted an audit of Martinez for Senate for its activities during the 2004 primary and general election. Federal Election Commission, Report of the Audit Division on Martinez for Senate, January 5, 2004 - December 31, 2004 (April 17, 2007) (attached as Exhibit D). On April 10, 2007, the FEC approved the audit's findings and on April 17, 2007, released the audit's results to the public. *Id.*

12. The FEC Audit Division determined that MFS accepted 186 contributions from individuals that exceeded the statutory limit by a total of \$313,235 in violation of 2 U.S.C. § 441a(a). Moreover, the Audit Division found that MFS routinely redesignated contributions to another election or reattributed contributions to another contributor, but failed to provide any documentation to support these redesignations and reattributions, in violation of 11 C.F.R. §§ 110.1(b)(5)(ii)(A), 110.1(k)(3)(ii)(A), 103.3(b)(3). Exhibit D at 4-6. In response to the interim audit report – and more than two full years after the 2004 general election – MFS refunded \$94,607 to individuals who had contributed in excess of the statutory limit. *Id.* at 6.

13. The FEC Audit Division determined that MFS failed to file 109 48-hour reports totaling \$162,014 in contributions prior to both the 2004 primary and general elections, in violation of 2 U.S.C. § 434(a)(6)(A) and 11 C.F.R. § 104.5(f). Exhibit D at 7. MFS failed to file 48-hour notices totaling \$21,500 for the 2004 primary

election and \$140,514 for the 2004 general election. Id. MFS conceded that it failed to 48-hour reports for the contributions in question. Id.

14. The FEC Audit Division determined that MFS failed to itemize \$319,816 in net proceeds it received from four joint fundraising committees in violation of 11 C.F.R. § 102.17(c)(8)(i)(B). Exhibit D at 7-8. Specifically, MFS failed to itemize contributions from the original contributors for transfers totaling \$260,487 from the 2004 Joint Candidate Committee II and the Majority Fund for America's Future. Id. at 8. In addition, MFS failed to itemize transfers totaling \$59,329 from the Senate Majority Committee or the Martinez Victory Fund. Id.

15. The FEC Audit Division determined that MFS failed to disclose occupation and/or employer information for approximately 46% of the contributions it received from individuals in violation of 2 U.S.C. §§ 434(b)(3)(A), 431(13) and 11 C.F.R. §§ 104.7(b), 100.12. Exhibit D at 9. MFS received \$9,659,738 in contributions from individuals. Exhibit D at 2. Accordingly, MFS failed to adequately disclose the source of approximately \$4,440, 000 that MFS raised for the 2004 primary and general election. Moreover, the FEC Audit Division determined that MFS failed to demonstrate that it had used its "best efforts" to obtain, maintain, and submit the information required by the FECA. 2 U.S.C. § 432(i). The FEC Audit Division determined that MFS never established a mechanism to send follow-up requests for missing contributor information. Exhibit D at 9-10. As noted above, the Reports Analysis Division sent MFS three separate RFAI letters during the 2004 campaign informing MFS that its reports failed to adequately identify its contributors and requesting that MFS provide the FEC with a

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detailed description of its procedures for requesting missing contributor information.
Exhibit A at 5, Exhibit B at 1, and Exhibit C at 1.

COUNT I

16. The FECA limits the amount of money an individual can contribute to a candidate for federal office to \$2,000 per election. 2 U.S.C. § 441a(a)(1)(A). The FECA provides increased contribution limits for candidates facing self-financed candidates in certain situations. 2 U.S.C. § 441a(i). On January 4, 2004, the maximum permissible contribution to MFS was \$2,000 per election. 2 U.S.C. § 441a(a)(1)(A). In accordance with 2 U.S.C. § 441a(i), that limit was increased to \$6,000 per election on June 14, 2004, and then to \$12,000 per election on July 16, 2004. Exhibit D at 5.

17. Martinez for Senate was explicitly warned by the FEC Reports Analysis Division on May 18, 2004, that MFS had accepted 34 excessive contributions in the first quarter of 2004 and was instructed to retribute or redesignate the excessive contributions or refund them within 30 days. Exhibit A at 3.

18. Despite this explicit warning from the FEC, Martinez for Senate eventually accepted a total of 186 contributions from individuals that exceeded the applicable limits by a total of \$313,235 in violation of 2 U.S.C. §§ 441a(a)(1)(a) and 441a(i).

19. A principal campaign committee that receives an excessive contribution is permitted to redesignate or retribute the contribution, provided that the committee provides notice to the contributor requesting the retribution/redesignation and that the committee receives written permission from the contributor authorizing the

retribution/redesignation. 11 C.F.R. §§ 110.1(b)(5)(ii)(A),
110.1(k)(3)(ii)(A), 103.3(b)(3).

20. Martinez for Senate reattributed or redesignated \$218,628 in
excessive contributions without first obtaining written permission from the contributors
in violation of 11 C.F.R. § 110.1(b)(5)(ii)(A), § 110.1(k)(3)(ii)(A) and § 103.3(b)(3).

COUNT II

21. The FECA requires a principal campaign committee that
receives contributions in excess of \$1,000 between two and twenty days prior to an
election to notify the FEC in writing within 48 hours. 2 U.S.C. § 434(a)(6)(A); 11
C.F.R. § 104.5(f).

22. Martinez for Senate failed to file 109 48-hour contribution
notices totaling \$162,014 in violation of 2 U.S.C. § 434(a)(6)(A) and 11 C.F.R.
§ 104.5(f).

COUNT III

23. FEC regulations require a principal campaign committee that
receives a transfer from a joint fundraising committee to itemize its share of gross
receipts as contributions from the original contributors. 11 C.F.R. § 102.17(c)(8)(i)(B).

24. MFS failed to itemize a total of \$319,816 in net proceeds that it
received from four different joint fundraising committees in violation of 11 C.F.R. §
102.17(c)(8)(i)(B).

COUNT IV

25. The FECA requires a principal campaign committee to use its
best efforts to obtain, maintain and report the identification, including name, mailing

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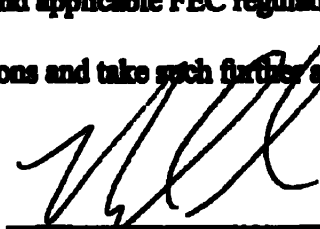
address, occupation and employer name, of each contributor who contributes \$200 or more. 2 U.S.C. § § 434(b)(3)(A), 431(13), 432(i); 11 C.F.R. §§ 104.7(b), 100.12.

26. MFS received three explicit warnings from the FEC Reports Analysis Division throughout the 2004 campaign that MFS was failing to use its best efforts to collect occupation and employer information from its contributors. Exhibit A at 5, Exhibit B at 1 and Exhibit C at 1.

27. Despite those three explicit warnings, MFS failed to disclose occupation and/or employer information for approximately 46% of the contributions it received from individuals – a total of approximately \$4,440,000 or more than one-third of the entire \$12,363,051 raised by MFS in 2004 – in violation of 2 U.S.C. §§ 434(b)(3)(A), 431(13) and 432(i); and 11 C.F.R. §§ 104.7(b) and 100.12.

CONCLUSION

WHEREFORE, Citizens for Responsibility and Ethics in Washington, Melanie Sloan and Afton Wilcox request that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated the Federal Election Campaign Act and applicable FEC regulations, and impose sanctions appropriate to these violations and take such further action as may be appropriate.




ON BEHALF OF COMPLAINANTS

Melanie Sloan
Executive Director
Citizens for Responsibility and Ethics in
Washington
1400 Eye Street, NW, Suite 450
Washington, DC 20005
(202) 408-5565

Verification

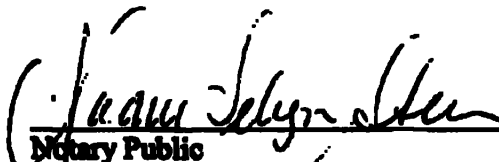
Citizens for Responsibility and Ethics in Washington, acting through Melanie Sloan, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



Melanie Sloan

Sworn to and subscribed before me this 11th day of May, 2007.



Notary Public

**NAOMI SELIGMAN STEINER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 30, 2011**

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EXHIBIT A



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

RQ-2

May 18, 2004

Charles W. Puckett, Treasurer
Martinez for Senate
P.O. Box 536176
Orlando, FL 32853

Response Due Date:
June 17, 2004

Identification Number: C00394335

Reference: April Quarterly Report (1/1/04-3/31/04)

Dear Mr. Puckett:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. An adequate response must be received at the Senate Public Records Office by the response date noted above. An itemization of the information needed follows:

-Schedule A of your report discloses one or more contributions that appear to exceed the limits set forth in the Act (see attached). You should examine all of your contributions to check for additional excessive contributions. The Committee's procedures for processing contributions should also be reviewed.

An individual or a political committee other than an authorized committee or qualified multi-candidate committee may not make a contribution to a candidate for federal office in excess of \$2,000 per election. An authorized committee may not make a contribution to a candidate for federal office in excess of \$1,000 per election. A qualified multi-candidate committee and all affiliated committees may not make a contribution(s) to a candidate for federal office in excess of \$5,000 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. (2 U.S.C. §441a(a) and (f); 11 CFR §110.1(b), (e) and (k))

If any apparently excessive contribution in question was incompletely or incorrectly disclosed, you must amend your original report with the clarifying information. If any contribution you received exceeds the limits, you may have to refund the excessive amount.

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Excessive contributions may be retained if within sixty (60) days of receipt, the excessive portions are properly redesignated or reattributed. Guidelines for each option are provided below:

For reattributions, excessive contributions from individuals can be retained, if within sixty (60) days of receipt, the excessive amount is properly reattributed to another person. Please note that reattributions only apply to excessive contributions from individuals. An excessive contribution is considered properly reattributed if (1) the contributors provide the committee with written documentation, signed by each contributor, authorizing a retribution and indicating the amount of the contribution to be attributed to each contributor, or (2) the committee reattributes, by presumption, the excessive portion of the contribution if the contribution was made on a written instrument from a joint account and was signed by only one of the account holders. In this case, the treasurer must notify the contributors in writing within 60 days of receiving the contribution that the committee intends to retribute the excessive portion and must give the contributor an opportunity to request a refund. (11 CFR 110.1(k)(3)(ii)(B))

For redesignations, the funds can be retained if within sixty (60) days of receipt the excessive amount is properly redesignated for a different election. An excessive contribution is considered properly redesignated if (1) the committee obtains signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election, provided that the new designation does not exceed the limitations on contributions made with respect to that election, or (2) your committee redesignates by presumption the excessive portion of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing within 60 days of the treasurer's receipt of the contribution. The notification must give the contributor an opportunity to request a refund. (11 CFR §110.1(b)(5)(i)(B)) Please note that you cannot presumptively redesignate an excessive contribution from a multi-candidate committee. Also, a contribution can only be redesignated to a previous election to the extent that the contribution does not exceed the committee's net debts outstanding for that election. (11 CFR §110.1(b)(5)(i))

If the foregoing conditions for reattributions or redesignations are not met within 60 days of receipt of the contribution, the excessive amount must be refunded. See 11 CFR §103.3(b)(1).

Please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks and/ or letters

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recontributing or redesignating the contributions in question. Refunds are reported on Line 20 of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. Redesignations and recontributions are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation and/or retribution is received. (11 CFR §104.8(d)(2), (3) and (4))

The acceptance of excessive contributions is a serious problem. Again, the committee's procedures for processing contributions should be examined and corrected in order to avoid this problem. Although the Commission may take further legal action, prompt action by you to refund, redesignate, and/or retribute of the excessive amount will be taken into consideration.

-Schedule A for Line 11(a)(1) of your report discloses one or more contributions that appear to exceed the limits set forth in the Act (see attached). You should examine all of your contributions to check for additional excessive contributions. The Committee's procedures for processing contributions should also be reviewed.

In-kind contributions of equipment, such as computers, with a long-term useful life (e.g., an election cycle, or perhaps longer) are similar to contributions of money and may be designated for elections beyond the next election, provided the contributor designates the contribution as such in writing. A contribution of this type of equipment is distinguishable from in-kind contributions that are used only for one particular election, such as non-exempt contributions of food or beverages consumed by primary election day workers, or printing or mailing costs related to general election events or fundraisers.

The in-kind contribution on your report does not have a "long-term useful life" and constitutes an excessive contribution for the primary election (see Advisory Opinion 1996-29). You must refund the excessive amount to the donor.

If any apparently excessive contribution in question was incompletely or incorrectly reported, you must amend your original report with the clarifying information.

Please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks. Refunds are reported on Line 20 of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. (11 CFR §104.8(d)(2), (3) and (4))

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MARTINEZ FOR SENATE
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The acceptance of excessive contributions is a serious problem. Again, the committee's procedures for processing contributions should be examined and corrected in order to avoid this problem. Although the Commission may take further legal action, prompt action by you to refund the excessive amount will be taken into consideration.

-Schedule A of your report discloses one or more in-kind contributions that appear to exceed the limits set forth in the Act (see attached). You should examine all of your contributions to check for additional excessive contributions. The Committee's procedures for processing contributions should also be reviewed.

Your report discloses one or more in-kind contributions designated for the general election made before the primary election. In-kind contributions of equipment, such as computers, with a long-term useful life (e.g., an election cycle, or perhaps longer) are similar to contributions of money and may be designated for elections beyond the next election, provided the contributor designates the contribution as such in writing. A contribution of this type of equipment is distinguishable from in-kind contributions that are used only for one particular election, such as non-exempt contributions of food or beverages consumed by primary election day workers, or printing or mailing costs related to general election events or fundraisers. Please amend your report to include a description of the nature of the in-kind contribution in question.

If the in-kind contribution on your report does not have a "long-term useful life", it constitutes an excessive contribution for the primary election (see Advisory Opinion 1996-29). If this is the case, you must refund the excessive amount to the donor.

If any apparently excessive contribution in question was incompletely or incorrectly reported, you must amend your original report with the clarifying information.

Please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks. Refunds are reported on Line 20 of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. (11 CFR §104.8(d)(2), (3) and (4))

The acceptance of excessive contributions is a serious problem. Again, the committee's procedures for processing contributions should be examined and corrected in order to avoid this problem. Although the Commission may take further legal action, prompt action by you to the excessive amount will be taken into consideration.

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-Commission Regulations require that a committee disclose the identification of all individuals who contribute in excess of \$200 in an election cycle. (11 CFR §104.3(a)(4)(i)) Identification for an individual is defined as the full name, mailing address, occupation and name of employer. (11 CFR §100.12) Your report discloses contributions from individuals for which the identification is not complete.

You must provide the missing information, or if you are unable to do so, you must demonstrate that "best efforts" have been used to obtain the information. To establish "best efforts," you must provide the Commission with a detailed description of your procedures for requesting the information. Establishing "best efforts" is a three-fold process.

First, your original solicitation must include a clear and conspicuous request for the contributor information and must inform the contributor of the requirements of federal law for the reporting of such information. (11 CFR §104.7(b)(1)) See 11 CFR §104.7(b)(1)(B) for examples of acceptable statements regarding the requirements of federal law.

Second, if the information is not provided, you must make one follow-up, stand alone effort to obtain this information, regardless of whether the contribution(s) was solicited or not. This effort must occur no later than 30 days after receipt of the contribution and may be in the form of a request via mail, e-mail or telephone documented in writing. (11 CFR § 104.7(b)(2)) Follow-up requests should be done, if necessary. These requests must be documented clearly in the form of written records. The requests must:

- clearly ask for the missing information, without soliciting a contribution;
- inform the contributor of the requirements of federal law for the reporting of such information, and
- if the request is written, include a pre-addressed post card or return envelope.

Third, if you receive contributor information after the contribution(s) has been reported, you should either a) file with your next regularly scheduled report, an amended memo Schedule A listing all the contributions for which additional information was received; or b) file on or before your next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s). (11 CFR §104.7(b)(4))

Please amend your report to provide the missing information and a detailed description of your procedures for requesting the information. For more

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MARTINEZ FOR SENATE

PAGE 6

information on demonstrating "best efforts," please refer to the Campaign Guide for Congressional Committees and Candidates.

Unlike previous election cycles, you will not receive an additional notice from the Commission on this matter. Adequate responses received on or before this date will be taken into consideration in determining whether audit action will be initiated. Requests for extensions of time in which to respond will not be considered. Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action.

A written response or an amendment to your original report(s) correcting the above problems should be filed with the Senate Public Records Office. Please contact the Senate Public Records Office at (202) 224-0322 for instructions on how and where to file an amendment. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 1, then press 2 to reach the Reports Analysis Division) or my local number (202) 694-1165.

Sincerely,



Jill L. Sugarman
Senior Campaign Finance Analyst
Reports Analysis Division

2403B413080

Excessive and/or Prohibited Contributions
 Martinez for Senate (C00394338)
 April Quarterly Report (1/1/04-3/31/04)

P = Primary Election
 G = General Election

CONTRIBUTOR NAME		DATE	AMOUNT	ELECTION
AWNER	JONATHAN	2/8/04	\$4,000.00	P2004
A-DE LA FE	ERNESTO	3/28/04	\$4,000.00	P2004
CHRISTIANSEN	PATRICK	1/18/04	\$2,000.00	P2004
CHRISTIANSEN	PATRICK	2/5/04	\$2,000.00	P2004
CHRISTIANSEN	SEAN C	1/18/04	\$2,000.00	P2004
CHRISTIANSEN	SEAN C	2/21/04	\$2,000.00	P2004
COLLINS	CHRISTOPHER	3/22/04	\$2,800.00	P2004
COLLINS	HERBERT	3/30/04	\$4,000.00	P2004
DE LA CRUZ	ROSA	2/5/04	\$2,000.00	P2004
DE LA CRUZ	ROSA	2/5/04	\$2,000.00	P2004
DE GESPEDES	CARLOS	2/19/04	\$4,000.00	P2004
DE GESPEDES	YVONNE	2/19/04	\$2,000.00	P2004
DE GESPEDES	YVONNE	2/19/04	\$2,000.00	P2004
FLUHARTY	J JOHN	2/8/04	\$4,000.00	P2004
GRINDSTAFF	MICHAEL	1/21/04	\$2,000.00	P2004
GRINDSTAFF	MICHAEL	3/22/04	\$2,000.00	P2004
GARDNER	ROBERT N	2/12/04	\$2,800.00	P2004
GARDNER	ROBERT N	2/12/04	\$2,000.00	P2004
GARDNER	JOSEPH J	2/12/04	\$2,000.00	P2004
GARDNER	JOSEPH J	2/12/04	\$2,000.00	P2004
GARDNER	PATRICIA	3/31/04	\$2,000.00	P2004
GARDNER	PATRICIA	3/31/04	\$2,000.00	G2004
GOODMAN	MURRAY	2/8/04	\$1,000.00	P2004
GOODMAN	MURRAY	2/8/04	\$1,000.00	P2004
GOODMAN	MURRAY	3/4/04	\$1,000.00	P2004
GARCIA	MA	2/17/04	\$2,000.00	P2004
GARCIA	MA	2/17/04	\$2,000.00	P2004
HOPPING	JULIA	3/25/04	\$2,000.00	G2004
HOPPING	JULIA	3/25/04	\$2,000.00	P2004
HOPPING	JULIA	3/30/04	-\$1,000.50	P2004
KATBUR	JAMES	2/14/04	\$4,000.00	P2004
KATBUR	DOLORES	2/14/04	\$4,000.00	P2004
MALIN	WALTER	3/22/04	\$2,800.00	P2004
MALIN	WALTER	3/22/04	\$1,800.02	G2004

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Excessive and/or Prohibited Contributions
 Martinez for Senate (C00384338)
 April Quarterly Report (1/1/04-3/31/04)

F = Primary Election
 G = General Election

CONTRIBUTOR NAME		DATE	AMOUNT	ELECTION
MONAGHAN	THOMAS	3/18/04	\$4,000.00	P2004
MONAGHAN	MARGIE	3/18/04	\$4,000.00	P2004
NOCH	MICHAEL	3/18/04	\$4,000.00	P2004
NOCH	REGINA	3/18/04	\$4,000.00	P2004
OVERSTREET	JACK	2/7/04	\$4,000.00	P2004
PENH	CARLOS	1/23/04	\$4,000.00	P2004
PEREZ	LUIS	1/19/04	\$4,000.00	P2004
PETRIZZO	THOMAS	2/10/04	\$4,000.00	P2004
PETWAY	THOMAS	3/22/04	\$4,000.00	P2004
PETWAY	ALANA	3/22/04	\$4,000.00	P2004
REED	SCOTT W	2/1/04	\$4,000.00	P2004
SUAREZ	JESUS	3/22/04	\$1,000.00	P2004
SUAREZ	JESUS	3/22/04	\$1,000.00	P2004
SUAREZ	JESUS	3/22/04	\$1,000.00	P2004
UPSPAC		2/10/04	\$5,000.00	P2004
UPSPAC		3/24/04	\$5,000.00	P2004

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EXHIBIT B



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

RQ-2

August 31, 2004

Charles W. Puckett, Treasurer
Martinez for Senate
P.O. Box 536176
Orlando, FL 32853

Response Due Date:
September 30, 2004

Identification Number: C00394335

Reference: July Quarterly Report (4/1/04-6/30/04)

Dear Mr. Puckett:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. An adequate response must be received at the Senate Public Records Office by the response date noted above. An itemization of the information needed follows:

-Commission Regulations require that a committee disclose the identification of all individuals who contribute in excess of \$200 in an election cycle. (11 CFR §104.3(a)(4)(i)) Identification for an individual is defined as the full name, mailing address, occupation and name of employer. (11 CFR §100.12) Your report discloses contributions from individuals for which the identification is not complete.

You must provide the missing information, or if you are unable to do so, you must demonstrate that "best efforts" have been used to obtain the information. To establish "best efforts," you must provide the Commission with a detailed description of your procedures for requesting the information. Establishing "best efforts" is a three-fold process.

First, your original solicitation must include a clear and conspicuous request for the contributor information and must inform the contributor of the requirements of federal law for the reporting of such information. (11 CFR §104.7(b)(1)) See 11 CFR §104.7(b)(1)(B) for examples of acceptable statements regarding the requirements of federal law.

Second, if the information is not provided, you must make one follow-up, stand alone effort to obtain this information, regardless of whether the contribution(s) was solicited or not. This effort must occur no later than 30 days after receipt of the contribution and may be in the form of a request

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via mail, e-mail or telephone documented in writing. (11 CFR § 104.7(b)(2)) Follow-up requests should be done, if necessary. These requests must be documented clearly in the form of written records. The requests must:

- clearly ask for the missing information, without soliciting a contribution;
- inform the contributor of the requirements of federal law for the reporting of such information, and
- if the request is written, include a pre-addressed post card or return envelope.

Third, if you receive contributor information after the contribution(s) has been reported, you should either a) file with your next regularly scheduled report, an amended memo Schedule A listing all the contributions for which additional information was received; or b) file on or before your next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s). (11 CFR §104.7(b)(4))

Please amend your report to provide the missing information and a detailed description of your procedures for requesting the information. For more information on demonstrating "best efforts," please refer to the Campaign Guide for Congressional Committees and Candidates.

Unlike previous election cycles, you will not receive an additional notice from the Commission on this matter. Adequate responses received on or before this date will be taken into consideration in determining whether audit action will be initiated. Requests for extensions of time in which to respond will not be considered. Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action.

A written response or an amendment to your original report(s) correcting the above problems should be filed with the Senate Public Records Office. Please contact the Senate Public Records Office at (202) 224-0322 for instructions on how and where to file an amendment. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1165.

Sincerely,

Gill L. Sugarman

Gill L. Sugarman
Senior Campaign Finance Analyst
Reports Analysis Division

EXHIBIT C



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

September 28, 2004

Charles W. Puckett, Treasurer
Martinez for Senate
P.O. Box 536176
Orlando, FL 32853

Response Due Date:
October 28, 2004

Identification Number: C00394338

Reference: 12 Day Pre-Primary Report (7/1/04-8/11/04)

Dear Mr. Puckett:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. An adequate response must be received at the Senate Public Records Office by the response date noted above. An itemization of the information needed follows:

-Column B figures for the Summary and Detailed Summary Page information should equal the sum of the Column B figures on your previous report and the Column A figures on this report. Please file an amendment to your report to correct the Column B discrepancies for Lines 6(a), 6(c), 11(a)(iii), 11(c), 11(e), 16 and all subsequent report(s) which may be affected by this correction. Note that Column B should reflect only the election cycle-to-date totals. (2 U.S.C. §434(b))

-Commission Regulations require that a committee disclose the identification of all individuals who contribute in excess of \$200 in an election cycle. (11 CFR §104.3(a)(4)(i)) Identification for an individual is defined as the full name, mailing address, occupation and name of employer. (11 CFR §100.12) Your report discloses contributions from individuals for which the identification is not complete.

You must provide the missing information, or if you are unable to do so, you must demonstrate that "best efforts" have been used to obtain the information. To establish "best efforts," you must provide the Commission with a detailed description of your procedures for requesting the information. Establishing "best efforts" is a three-fold process.

First, your original solicitation must include a clear and conspicuous request for the contributor information and must inform the contributor of

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MARTINEZ FOR SENATE
PAGE 2

the requirements of federal law for the reporting of such information. (11 CFR §104.7(b)(1)) See 11 CFR §104.7(b)(1)(B) for examples of acceptable statements regarding the requirements of federal law.

Second, if the information is not provided, you must make one follow-up, stand alone effort to obtain this information, regardless of whether the contribution(s) was solicited or not. This effort must occur no later than 30 days after receipt of the contribution and may be in the form of a request via mail, e-mail or telephone documented in writing. (11 CFR § 104.7(b)(2)) Follow-up requests should be done, if necessary. These requests must be documented clearly in the form of written records. The requests must:

- clearly ask for the missing information, without soliciting a contribution;
- inform the contributor of the requirements of federal law for the reporting of such information, and
- if the request is written, include a pre-addressed post card or return envelope.

Third, if you receive contributor information after the contribution(s) has been reported, you should either a) file with your next regularly scheduled report, an amended memo Schedule A listing all the contributions for which additional information was received; or b) file on or before your next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s). (11 CFR §104.7(b)(4))

Please amend your report to provide the missing information and a detailed description of your procedures for requesting the information. For more information on demonstrating "best efforts," please refer to the Campaign Guide for Congressional Committees and Candidates.

-For future reports, please be advised that contributions from individuals and political committees should be itemized on a separate Schedule A. Additionally, the total amount of these contributions should be reported on the appropriate line of the Detailed Summary Page information - (11(a), 11(b) and 11(c)). (2 U.S.C. §434)

Unlike previous election cycles, you will not receive an additional notice from the Commission on this matter. Adequate responses received on or before this date will be taken into consideration in determining whether audit action will be initiated. Requests for extensions of time in which to respond will not be considered. Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action.

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MARTINEZ FOR SENATE
PAGE 3

against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action.

A written response or an amendment to your original report(s) correcting the above problems should be filed with the Senate Public Records Office. Please contact the Senate Public Records Office at (202) 224-0322 for instructions on how and where to file an amendment. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1165.

Sincerely,



Jill I. Sugarman
Senior Campaign Finance Analyst
Reports Analysis Division

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EXHIBIT D



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 17, 2007

MEMORANDUM

To: Robert W. Biersack
Press Officer

From: Joseph F. Stoltz, *JFS*
Assistant Staff Director
Audit Division

Subject: Public Issuance of the Report of the Audit Division on Martinez for Senate

Attached please find a copy of the audit report which was approved by the Commission on April 10, 2007.

The report may be released to the public on April 17, 2007.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library
✓DSDD Website

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Report of the Audit Division on Martinez for Senate

January 5, 2004 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Martinez for Senate is the principal campaign committee for Mel Martinez, Republican candidate for the U.S. Senate from the state of Florida, and is headquartered in Tampa, Florida. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 9,659,738
○ From Political Committees	1,983,294
○ Transfers from Affiliated/Other Party Committees	705,173
○ Other Receipts	14,846
○ Total Receipts	\$ 12,363,051
• Disbursements	
○ Operating Expenditures	\$ 12,314,097
○ Contribution Refunds	28,290
○ Total Disbursements	\$ 12,342,387

Findings and Recommendations (p. 3)

- Receipt of Contributions that Exceed Limits (Finding 1)
- Failure to File 48-Hour Notices (Finding 2)
- Disclosure of Proceeds from Joint Fundraising Activity (Finding 3)
- Disclosure of Occupation and Name of Employer (Finding 4)

¹ 2 U.S.C. §438(b).

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Finding 4. Disclosure of Occupation and Name of Employer	9

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Part I

Background

Authority for Audit

This report is based on an audit of Martinez for Senate (MFS), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. The receipt of excessive contributions.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

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Part II

Overview of Campaign

Campaign Organization

Important Dates	Martinez for Senate
• Date of Registration	January 5, 2004
• Audit Coverage	January 5, 2004 through December 31, 2004
Headquarters	Tampa, Florida
Bank Information	
• Bank Depositories	Three
• Bank Accounts	Four
Treasurer	
• Treasurer When Audit Was Conducted	Nancy H. Watkins
• Treasurer During Period Covered by Audit	Charles W. Puckett
Management Information	
• Attended FEC Campaign Finance Seminar	Yes (current Treasurer only)
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting, Recordkeeping Tasks and Other Day-to-Day Operations	Paid and Volunteer Staff

Overview of Financial Activity

(Audited Amounts)

Cash on hand @ January 13, 2004	\$	0
Receipts		
o From Individuals	\$	9,639,738
o From Political Committees		1,983,294
o Transfers from Affiliated/Other Party Committees		705,173
o Other Receipts		14,846
o Total Receipts	\$	12,342,951
Disbursements		
o Operating Expenditures	\$	12,314,097
o Contribution Refunds		28,290
o Total Disbursements	\$	12,342,387
Cash on hand @ December 31, 2004	\$	28,664

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Part III Summaries

Findings and Recommendations

Finding 1. Receipt of Contributions that Exceed Limits

MFS accepted 186 contributions from individuals that exceeded the limit by \$313,235. Most of these excessive contributions resulted from improper redesignations and/or reattributions. In response to the interim audit report recommendation, MFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. In addition, MFS provided copies of negotiated refund checks and/or copies of refund checks prepared but not negotiated. (For more detail, see page 4.)

Finding 2. Failure to File 48-Hour Notices

MFS did not file 48-hour notices for 109 contributions totaling \$162,014 prior to both the primary and general elections. In response to the interim audit report recommendation, MFS agreed that 48-hour notices were not filed for the contributions in question. (For more detail, see page 7.)

Finding 3. Disclosure of Proceeds from Joint Fundraising Activity

MFS did not properly disclose the receipt of net proceeds from four joint fundraising committees. In response to the interim audit report recommendation, MFS filed amended reports that corrected the disclosure discrepancies. (For more detail, see page 7.)

Finding 4. Disclosure of Occupation and Name of Employer

MFS did not adequately disclose occupation and/or name of employer information for approximately 46% of the contributions from individuals tested on a sample basis. In addition, MFS did not demonstrate best efforts to obtain, maintain and submit the information. In response to the interim audit report recommendation, MFS filed the necessary amendments to materially correct the deficiencies noted. (For more detail, see page 9.)

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Part IV

Findings and Recommendations

Finding 1. Receipt of Contributions that Exceed Limits

Summary

MFS accepted 186 contributions from individuals that exceeded the limit by \$313,235. Most of these excessive contributions resulted from improper redesignations and/or reattributions. In response to the interim audit report recommendation, MFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. In addition, MFS provided copies of negotiated refund checks and/or copies of refund checks prepared but not negotiated.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. Increased contribution limits are provided for candidates facing self-financed candidates once the self-financed candidates make expenditures from their personal funds that exceed a specific amount. 2 U.S.C. §441a(a)(1)(A) and §441a(l); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

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Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

Martinez for Senate qualified for increased limits afforded candidates opposing self-financed opponents. MFS's limitation was increased threefold (\$6,000) on June 14, 2004 and subsequently sixfold (\$12,000) on July 16, 2004. The increased limitation period ended on August 31, 2004, the date of the primary election.

The Audit staff reviewed all contributions from individuals to determine if excessive contributions were received. The Audit staff identified 186 contributions from individuals that exceeded the limit by \$313,235. During this review, it was noted that MFS routinely redesignated contributions to another election or reattributed contributions to another contributor. However, no documentation was provided by MFS in support of these redesignations and reattributions; neither signed redesignations or reattributions, nor the contributor notifications required to take advantage of the presumptive reattribution or redesignation options discussed above.

29044223506

Of the excessive contributions, \$218,628 (70%) resulted from improper presumptive redesignations and/or reattributions. The remaining excessive contributions totaling \$94,607 exceeded the limits per election cycle and could not be resolved through redesignation and/or reattribution based upon available documentation. MFS did not maintain sufficient funds in its bank accounts to make the necessary refunds.

At the exit conference, the Audit staff provided the MFS treasurer with schedules of the excessive contributions noted above. She agreed to review these schedules to determine whether she concurred with the exceptions listed and respond accordingly.

Interim Audit Report Recommendation and Committee Response
The Audit staff recommended that MFS:

- Send notices to those contributors that were eligible for presumptive redesignation and/or reattribution (\$218,628) to inform those contributors how the contribution was designated and/or attributed and offer a refund of the excessive portion. Absent a request for a refund by the contributors, these notices would have obviated the need for contribution refunds or payments to the U.S. Treasury. For notices sent to contributors, MFS should have provided a copy of each notice and evidence that it was sent. Such notice must demonstrate that both the contributor and the individual to whom the contribution was reattributed were notified; and
- Provide evidence demonstrating that the remaining contributions totaling \$94,607 were not excessive. Such evidence should have included, but not be limited to, documentation that the contributions were reattributed or redesignated in a timely manner or that the excessive contributions were timely refunded; or
- Absent such evidence, refund \$94,607 to the contributors or to the U.S. Treasury and provide evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendation, MFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. MFS also provided evidence (declaration from the treasurer) that the notices were sent to both the contributors and the individuals to whom the contributions were reattributed. For the remaining contributions totaling \$94,607, MFS provided copies of negotiated refund checks (\$57,990) and copies of refund checks prepared but not negotiated (\$36,617). Of the \$36,617, refunds totaling \$6,417 were reported. Until copies of negotiated refund checks are submitted, the \$36,617 is considered unresolved. MFS stated its intention to provide copies of the remaining negotiated refund checks once they clear the bank.

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Finding 2. Failure to File 48-Hour Notices

Summary

MFS did not file 48-hour notices for 109 contributions totaling \$162,014 prior to both the primary and general elections. In response to the interim audit report recommendation, MFS agreed that 48-hour notices were not filed for the contributions in question.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 1,496 contributions, totaling \$2,743,379, which were greater than or equal to \$1,000 and received during the 48-hour notice filing periods of both the primary and general elections. MFS did not file 48-hour notices for 109 contributions totaling \$162,014 (\$21,500 for the primary election and \$140,514 for the general election). Most of the 48-hour notices that were not filed arose from credit card contributions (\$67,000) and contributions received by a telemarketer for MFS.

At the exit conference, MFS was provided schedules of the 48-hour notices not filed. The MFS treasurer stated that these schedules would be reviewed and any comments or corrections would be submitted in writing.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that MFS provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any written comments it considers relevant.

In response to the interim audit report recommendation, MFS indicated that they had reviewed the records and agreed that 48-hour notices were not filed for the contributions in question.

Finding 3. Disclosure of Proceeds from Joint Fundraising Activity

Summary

MFS did not properly disclose the receipt of net proceeds from four joint fundraising committees. In response to the interim audit report recommendation, MFS filed amended reports that corrected the disclosure discrepancies.

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Legal Standard

Itemization of Contributions from Joint Fundraising Efforts. Participating political committees must report joint fundraising proceeds in accordance with 11 CFR 102.17(c)(8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).

Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and must also file a memo Schedule A (Itemized Receipts) itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR 104.3(a). 11 CFR §102.17(c)(8)(i)(B).

Facts and Analysis

MFS was a participant in four joint fundraising committees. It received a total of \$319,816 in net proceeds from these committees; \$245,370 from the 2004 Joint Candidate Committee II (JCC2), \$43,329 from the Senate Majority Committee (SMC), \$16,000 from Martinez Victory Fund (MVF), and \$15,117 from the Majority Fund for America's Future (MFAF). The Audit staff's review of these transfers noted the following:

- MFS did not itemize its share of the gross receipts as contributions from the original contributors as required on memo Schedules A for transfers totaling \$260,487 from JCC2 and MFAF. MFS's records did contain the contributor information for the transfer (\$245,370) from JCC2.
- MFS did not itemize transfers totaling \$59,329 from the SMC or MVF on Schedule A, line 12, Transfers from Other Authorized Committees, as required. Instead MFS disclosed the contributors at a net amount on Schedule A, line 11a, Contributions from Individuals, without any reference as to the source of the contribution.

The Audit staff discussed this matter with MFS' treasurer at the exit conference. The treasurer stated that amendments had already been prepared to correct the deficiencies noted above.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that MFS file amended Schedules A to correctly disclose the receipt of net fundraising proceeds, along with the required memo entries.

In response to the interim audit report recommendation, MFS filed amended reports that corrected the disclosure discrepancies.

Finding 4. Disclosure of Occupation and Name of Employer

Summary

MFS did not adequately disclose occupation and/or name of employer information for approximately 46% of the contributions from individuals tested on a sample basis. In addition, MFS did not demonstrate best efforts to obtain, maintain and submit the information. In response to the interim audit report recommendation, MFS filed the necessary amendments to materially correct the deficiencies noted.

Legal Standard

A. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the contributor's occupation and the name of his or her employer. 2 U.S.C. §431(13) and 11 CFR §100.12.

B. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - A statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

The Audit staff reviewed reported contributions from individuals on a sample basis as the reports existed when MFS was notified of the audit² to determine if the necessary contributor information was disclosed. The review indicated that MFS had not disclosed the occupation and/or name of employer for 46% of the contributions tested. It was noted that MFS solicitation devices properly contained a request for occupation and name of employer. However, the records provided to the Audit staff did not contain any follow-

² Subsequent to receipt of the audit notification letter, MFS contacted contributors in an effort to obtain the missing contributor information. Amendments were prepared, but not filed until after receipt of the interim audit report.

up requests for missing contributor information. As a result, MFS did not appear to have made "best efforts" to obtain, maintain and report occupation and name of employer information.

The Audit staff discussed this matter with the MFS treasurer at the exit conference. The treasurer stated that most of the omissions had been corrected in the database and amendments had already been prepared.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that MFS take the following action:

- Provide documentation such as phone logs, returned contributor letters, completed contributor contact information sheets or other materials which demonstrate that MFS timely made best efforts to obtain, maintain, and submit the required disclosure information; or
- Absent such a demonstration, make an effort to contact those individuals for whom required information is missing or incomplete and for which no documented effort to obtain the information has been made, provide documentation of such contacts (such as copies of letters to the contributors and/or phone logs), and amend its reports to disclose any information obtained from those contacts.

In response to the interim audit report recommendation, the treasurer indicated that MFS had already contacted the contributors in an effort to acquire the missing information. Amended reports had already been prepared at the time of the exit conference and were subsequently filed on February 26th and 27th of 2007. She stated that overall compliance for all 2004 reports now stands at 93.05%. The amendments filed by MFS materially corrected the deficiencies noted above.

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