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October 14, 1997

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VIA HAND DELIVERY AND FIRST CLASS MAIL

Kamau Philbert, Esquire
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MURs 4322 and 4650
Apparent Violations of 2 U.S.C. 437g(a)(12)

Dear Mr. Philbert:

We have received your letter of October 8, 1997 in which you, on behalf of the Federal Election Commission, refused to investigate several apparent violations of 2 U.S.C. 437g(a)(12) that we brought to your attention in a letter that was hand delivered to you on October 2, 1997. We are appalled by your response. You attempt to justify your refusal to initiate an investigation of the three individuals named in our October 2 letter by noting that our letter was not notarized and, therefore, could not be treated as a complaint. Incredibly, you then assert that the Commission is not statutorily empowered to proceed with the handling of a compliance action unless we file a formal complaint with your office.

As any lawyer with even a passing familiarity with the Federal Election Campaign Act knows, the Commission need not wait for the filing of a formal complaint, but may initiate an investigation of a possible violation of the Act "on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities . . ." 2 U.S.C. 437g(a)(2). The Commission has historically read section 437g(a)(2) broadly, and has publicly stated that it will initiate a MUR based on information obtained "through a review of reports or an audit of a committee (internal monitoring procedures), the receipt of a referral from a government agency or through the receipt of a sua sponte submission from a respondent . . ." Scott E. Thomas, The Enforcement Process of the Federal Election Commission - The Commission's Viewpoint 3 (1996)(emphasis added). Our October 2 letter is just such a sua sponte submission.

We are, frankly, dumbfounded at your cavalier attitude towards the information we brought to your attention on October 2. As we indicated in our letter, the apparent violations of 2 U.S.C. 437g(a)(12) committed by the witnesses you or others from the Office of General

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Counsel interviewed in August or September could only have come about in one of two ways. Either the witnesses were adequately advised of their responsibilities under section 437g and they chose to ignore them, in which case they each committed a knowing and willful violation of the Act, or they were not adequately advised about their duties, in which case the Commission needs to examine whether its procedures are adequate to maintain the statutorily mandated confidentiality of its investigations.

Congress chose to make Commission enforcement actions confidential for a very good reason. Our client, Enid Greene, is already suffering the consequences of the breach of confidentiality that occurred in this matter. One week after the existence of the Commission's investigation was made public, Ms. Greene received the attached letter from the Office of Attorney Discipline of the Utah State Bar. The letter indicates that the Office of Attorney Discipline has opened a file concerning the Commission's investigation of Ms. Greene's 1994 campaign and may take formal disciplinary action against Ms. Greene once the Commission's investigation is concluded.

Up to this point, our clients - D. Forrest Greene, Enid Greene, Enid '94 and Enid '96 - have cooperated fully with the Commission's investigation (as they did in the year-long Department of Justice investigation of these very same issues). All of this is at great financial and emotional expense to our clients. We have provided you with thousands of pages of documents (all of which indicate that Joseph P. Waldholtz is the person solely responsible for the alleged violations in these MURs) and you have subjected our clients to two full days of depositions (for which, frankly, you were mostly unprepared). We cannot in good faith recommend to our clients that they continue to cooperate in your investigation unless we can be assured that its integrity and professionalism will be maintained.

Sincerely,


Charles H. Roistacher


Brett G. Kappel

FOR POWELL, GOLDSTEIN, FRAZER & MURPHY LLP
Counsel to D. Forrest Greene, Enid Greene, Enid '94 and Enid '96

Attachment

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cc: Lawrence Noble, Esq.
Mark Allen, Esq.
D. Forrest Greene
Enid Greene

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