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April 26, 2001

CLOSED

CONFIDENTIAL TREATMENT REQUESTED

VIA FACSIMILE

The Honorable Danny Lee McDonald
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20643

OUR FILE NUMBER
013,117-004

WRITER'S DIRECT DIAL
202-383-5388

WRITER'S E-MAIL ADDRESS
aculvahouse@omm.com

Re: MUR 5033

Dear Chairman McDonald:

On behalf of the Alexander for President 1996 Committee ("Committee") and its Treasurer, Mr. Todd Eardensohn, I write to express our deep concern with the manner in which the Federal Election Commission ("Commission") concluded its investigation in MUR 5033. While we certainly agree with the Commission's decision to take no further action in this matter – indeed, there is no evidence that the Alexander for President 1996 Committee or its Treasurer, Mr. Todd Eardensohn, violated federal election law – we object to the Commission's failure to notify our client that it was subject to an investigation which resulted in a default conclusion that there was "reason to believe" that the Committee and its Treasurer may have violated federal election law.

On June 26, 2000, the Commission erroneously notified the Alexander Audit Fund, Inc. and its Treasurer, Mr. Todd Eardensohn, that it was a respondent to the preliminary investigation under MUR 5033. After realizing that the proper respondent was in fact the Alexander for President 1996 Committee and its Treasurer, Mr. Scott Eardensohn, the Commission sent notification to the Committee on January 9, 2001. The Commission mailed this notification to the Committee's last address even though it knew that the Committee had been legally defunct since May 7, 1999. Under any reasonable reading of U.S.C. § 437g(1), this correspondence cannot be construed as the proper notification of investigation to which the Committee is entitled.

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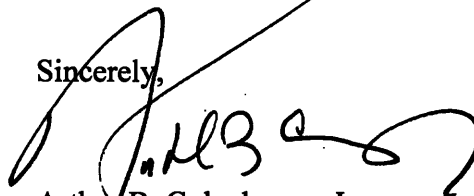
As a result of the Commission's failure to notify, the Committee could not exercise its right under U.S.C. § 437g(1) to demonstrate, in writing, that no action should be taken against it by the Commission.

Despite its failure to consider any response from the Committee to the allegations in MUR 5033, the General Counsel's office concluded that there was "reason to believe" that the Alexander for President 1996 Committee and its Treasurer, Mr. Todd Eardensohn, may have violated federal election law. See First General Counsel's Report, MUR 5033, (Federal Election Commission Mar. 3, 2001) at 7-8. Although the Commission followed the General Counsel's recommendation and closed MUR 5033 without taking further action, the General Counsel's "reason to believe" finding will appear in the FEC's public record as an unsubstantiated and unfair impeachment of the Committee. The General Counsel's finding has virtually no factual support. Indeed, the General Counsel's office concedes that a "reason to believe" finding requires virtually no factual support – it is merely a *de minimis* threshold finding at the earliest stage of a Commission investigation. We are concerned, however, that this subtle distinction will be lost on viewers of the public record, some of whom will incorrectly assume that the Committee ran afoul of federal election law.

Accordingly, we request that the Commission reopen MUR 5033 in order to allow the Committee to exercise its statutory right to respond to the investigation. Of course, we expect that the FEC will not place MUR 5033 in the public record until this investigation is properly closed.

Please do not hesitate to contact Suzanne Rich Folsom of my office at (202) 383-5220 should you have any questions regarding this matter. We look forward to an expedient resolution of this matter.

Sincerely,



Arthur B. Culvahouse, Jr.
of O'MELVENY & MYERS LLP

cc: Lois G. Lerner, Esq.
Dawn R. Jackson, Esq.

21-04-40-13