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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6315

DATE COMPLAINT FILED: June 15, 2010

DATE OF NOTIFICATION: June 22, 2010

DATE OF LAST RESPONSE: N/A

DATE ACTIVATED: September 23, 2010

EXPIRATION OF SOL: March 26, 2015

COMPLAINANT:

Melanie Sloan, Executive Director
Citizens for Responsibility and Ethics in
Washington ("CREW")

RESPONDENTS:

Alvin M. Greene
Alvin M. Greene for Senate

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(2)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 431(9)(B)(x)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a) and (b)
11 C.F.R. § 101.1(a)
11 C.F.R. § 100.150

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that Alvin M. Greene, a candidate for United States Senate from South Carolina, violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by failing to register with the Federal Election Commission (the "Commission") as a "candidate" within ten days of making in excess of \$5,000 in expenditures. See 2 U.S.C.

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1 § 431(2). Specifically, the complainant alleges that Mr. Greene should have registered with the
2 Commission ten days after March 16, 2010, when he paid the South Carolina Democratic Party
3 \$10,440 for ballot access in the South Carolina primary. Further, the complaint alleges that Mr.
4 Greene's purported campaign committee, Alvin M. Greene for Senate, (the "Committee") failed
5 to file a Statement of Organization, *see* 2 U.S.C. § 433(a), and failed to file disclosure reports
6 with the Commission in accordance with 2 U.S.C. § 434(a) and (b), specifically its 2010 April
7 Quarterly Report and its 2010 12-Day Pre-Primary Report. To support the allegations, the
8 complaint included the following documents: (1) a copy of a "Statement of Intention of
9 Candidacy" signed by Mr. Greene, marked as received by the South Carolina Democratic Party
10 on March 16, 2010; (2) a Democratic Party of South Carolina "Notice of Candidacy and
11 Pledge" signed by Mr. Greene on March 16, 2010; and (3) a copy of a check dated March 16,
12 2010, from Mr. Greene to the South Carolina Democratic Party for \$10,440. To date, Mr.
13 Greene has not registered with the Commission as a candidate or designated a principal
14 campaign committee, and there has been no disclosure of financial activity related to his
15 campaign.

16 On June 22, 2010, the Commission's Office of Complaints Examination and Legal
17 Administration ("CELA") notified Mr. Greene of the complaint. On July 19, 2010, Eleazer
18 Carter, Esq., contacted CELA and stated that he had been retained to represent Mr. Greene in
19 this matter. Subsequently, on July 23, 2010, Mr. Greene sent a signed Designation of Counsel
20 by facsimile, as well as a letter from Mr. Carter requesting an extension of 30 days to "properly
21 file all documents now due." CELA granted that request in a letter to Mr. Carter dated July 27,
22 2010, with the deadline to respond to the complaint set for August 20, 2010. Despite numerous

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1 attempts thereafter to contact Mr. Carter, neither he nor Mr. Greene has submitted a response to
2 the complaint.

3 As discussed below, it appears that Mr. Greene became a "candidate" under the Act ten
4 days after his ballot access payment to the South Carolina Democratic Party, and that he failed
5 to timely register with the Commission and to timely designate his principal campaign
6 committee. Alvin M. Greene for Senate, Mr. Greene's purported campaign committee, has
7 never registered with or reported to the Commission.¹ Therefore, we recommend that the
8 Commission find reason to believe that Alvin M. Greene violated 2 U.S.C. § 432(c)(1)
9 and that Alvin M. Greene for Senate violated 2 U.S.C. § 433(a) and 434(a) and (b).

10 We have limited information regarding the financial activity related to Mr. Greene's
11 candidacy. However, available information indicates that after winning the primary election,
12 Mr. Greene and Alvin M. Greene for Senate solicited contributions and may have received
13 contributions solicited on his behalf by others on various websites and social networks.
14 Therefore, because the Committee did not report its financial activity to the Commission or
15 respond to the complaint, we recommend that the Commission authorize an investigation into
16 Mr. Greene's campaign receipts and expenditures in order to determine the extent of the
17 reporting violations.

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¹ "Alvin M. Greene for Senate" was the committee name handwritten on the check Mr. Greene used to pay his ballot access fees to the South Carolina Democratic Party, and the name used by the complainant. However, the Committee's website address is "<http://AlvinGreeneforUSSenator.com>," and the website disclaimer states "Paid for by Alvin M. Greene for US Senate." If the Commission approves our recommendations, we will ascertain during our investigation the correct name of Mr. Greene's authorized committee, assuming that such an entity exists.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

Alvin M. Greene was a candidate in South Carolina's 2010 Democratic primary and general elections for United States Senate. On March 16, 2010, Mr. Greene filed a "Notice of Candidacy and Pledge" with the Democratic Party of South Carolina indicating his intent to run for United States Senate. On the same date, Mr. Greene reportedly tried to tender a personal check to pay the filing fee, but the county Chairwoman informed him that only checks from campaign committees were accepted. Mr. Greene reportedly left, opened a new bank account, and returned with a check for \$10,440 made out to "SC Democratic Party" with the handwritten words "Alvin M. Greene for Senate" on the upper left-hand corner. *See* Mary Ann Chastain, "What Makes Alvin Greene Run?" Newsweek, June 24, 2010 (<http://www.newsweek.com/2010/06/24/what-makes-alvin-greene-run.html>); *see also* Justin Elliot, *Greene's Filing Fee Check Featured Hand-Scrawled 'Alvin M. Greene for Senate,'* TPMuckraker, June 10, 2010 (http://tpmmuckraker.talkingpointsmemo.com/2010/06/alvin_greene_filing_fee_check.php). Mr. Greene appeared on the ballot for the primary election held on June 8, 2010, and won the Democratic nomination, despite reports that he did not actively campaign or raise any money prior to the primary election. *See, e.g.,* Manuel Roig-Franzia, *In South Carolina, Greene is a Mystery Man Despite Winning Democratic Senate Nod*, Washington Post, June 11, 2010.

Following the primary, on June 29, 2010, Mr. Greene announced that he had developed an official website at <http://www.AlvinGreeneForUSSenator.com>. Frances Martel, *South Carolina Dem, Senate Candidate Alvin Greene Launches Official Website*, Wonkette, June 29, 2010 (<http://www.mediaite.com/online/south-carolina-dem-senate-candidate-alvin-greene->

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1 launches-official-website). That website has a donations page with the words "DONATE
2 HERE!" under the logo "Alvin Greene 2010," and states "We thank you for your support! Your
3 contribution is greatly appreciated." A disclaimer at the bottom of the page states "Paid for by
4 Alvin M. Greene for US Senate." Pressing the words "DONATE HERE!" brings a potential
5 donor to a PayPal account page for contributing to Mr. Greene on-line. Another page on the
6 website, entitled "How to Donate to Alvin's Campaign," instructs potential donors they may
7 donate by check, credit card or PayPal, requests the contributor's personal and employment
8 information, contains the Act's source and contribution limitations, provides a mailing address
9 for sending contributions, and ends with the disclaimer "paid for by Alvin Greene for Senate,"
10 followed by the same mailing address.²

11 In addition, following Mr. Greene's primary election victory, other websites and social
12 networking pages appeared that supported Mr. Greene's candidacy and solicited contributions
13 on his behalf to be sent to the same mailing address as the one on Mr. Greene's website. See
14 <http://www.GoGreene2010.com>; <http://www.alvingreene2010.com>; [http://www.alvin-](http://www.alvin-green.com)
15 [green.com](http://www.alvin-green.com); see also "Send a Dollar to Alvin Greene" Facebook Page,
16 <http://www.facebook.com/group.php?gid=136980396994388&ref=mf#!/group.php?gid=13698>
17 [0396334388&v=wall](http://www.facebook.com/group.php?gid=136980396994388&v=wall); "One Million Strong for Alvin Greene" Facebook Page,
18 <http://www.facebook.com/group.php?gid=130073940349784&ref=mf#!/group.php?gid=13007>

² It appears that The Warren Group, a Los Angeles-based political consulting firm retained by Mr. Greene, developed the website. The Warren Group reportedly agreed to manage Mr. Greene's campaign in July on a pro bono basis. James Richardson, *Senate Candidate Alvin Greene hires L.A. Consulting Firm*, July 26, 2010, <http://examiner.com/courts-in-greenville/senate-candidate-alvin-greene-hires-la-consulting-firm>. On its website, <http://www.thewarrengroup.biz>, the Warren Group states that it is a "political advisor" to Mr. Greene, and that it has, among other things, prepared campaign literature, posted videos to <http://www.youtube.com>, engaged in "phone banking and precinct walking analysis and implementation," handled "oversight of the campaign account within FEC/State/municipality requirements," and trained the candidate to speak effectively to reporters and groups. See, e.g., *Al Greene Is on the Scene*, <http://www.youtube.com/watch?v=Ar0QzbbE38g>.

3940349784&v=wall; "*Alvin Greene for United States Senate*" Facebook Page,
<http://www.facebook.com/group.php?gid=127798600576498&ref=ts#/group.php?gid=127798600576498&v=info>; and "*GoGreene2010*" Twitter, <http://www.twitter.com/GoGreene2010>.

Mr. Greene lost his bid for the U.S. Senate, receiving 27.65% of the votes in the November 2, 2010 general election. During the entire course of his candidacy, Mr. Greene has never filed a Statement of Candidacy with the Commission, and never designated a principal campaign committee. Neither Alvin M. Greene for Senate nor any other committee purporting to be Mr. Greene's authorized campaign committee has ever filed a Statement of Organization or disclosure reports with the Commission.

B. Legal Analysis

An individual becomes a candidate for federal office when he or she has received or made in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). Once an individual meets the \$5,000 threshold and has decided to become a candidate, he or she has 15 days to designate a principal campaign committee by filing a Statement of Candidacy with the Commission. See 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). The principal campaign committee must then file a Statement of Organization within 10 days of its designation, see 2 U.S.C. § 433(a), and must file disclosure reports with the Commission in accordance with 2 U.S.C. § 434(a) and (b).

Under the Act, a "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. § 431(8)(A)(i). An "expenditure" is a "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).

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1 It appears that ballot access fees paid by a federal candidate or authorized committee are
2 expenditures since such payments are for the purpose of influencing the candidate's election for
3 Federal office by securing placement on the state ballot.³ See Advisory Opinion 1994-05
4 (White) (expenses incurred in gathering signatures to qualify for a ballot are expenditures); see
5 also Advisory Opinion 1984-11 (Serrette) (determining that expenses made to collect petition
6 signatures for the general election ballot are expenditures, and therefore are, "qualified
7 campaign expenses," which are expenses made in connection with a candidate's campaign for
8 nomination, see 11 C.F.R. § 9032.9); Advisory Opinion 2006-20 (Unity 08) (payments to obtain
9 ballot access through petition drives are expenditures) (vacated on other grounds by *Unity08 v.*
10 *F.E.C.*, 596 F.3d 861 (D.C.Cir. 2010)); cf., Advisory Opinion 2000-26 (Deckard)(cautioning
11 that guidance concerning the specific ballot access fee transactions at issue were exempt from
12 the definitions of "contribution" and "expenditure," should not be construed as generally
13 exempting from the definition of "contribution" payments to an authorized committee or
14 candidate to assist in the payment of ballot access fees).

15 Although the Act and the Commission's regulations exclude from the definition of
16 "contribution" payments made by a candidate or authorized committee of a candidate as a
17 condition of ballot access and payments received by any political party committee as a
18 condition of ballot access, 2 U.S.C. § 431(8)(B)(xii) and 11 C.F.R. § 100.90, and exclude from
19 the definition of "expenditure" payments received by a political party committee from
20 candidates or their authorized committees as a condition of ballot access that are transferred to
21 another political party committee or the appropriate State official, 2 U.S.C. § 431(9)(B)(x) and

³ This Office contacted the Reports Analysis Division, which confirmed that, in its experience, authorized committees generally report ballot access fee costs on disclosure reports filed with the Commission. See MUR 4785 (Taber) (payment made for ballot access included in aggregate amount of expenditures which deemed Taber a "candidate" under the Act).

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1 11 C.F.R. § 100.150, there is no exclusion from the definition of "expenditure" for the
2 candidate's or the candidate's authorized committee's payment of ballot access fees. This is
3 consistent with the legislative history for the 1979 amendments to the Act, which added
4 2 U.S.C. § 431(8)(B)(xii) and (9)(B)(x) out of an apparent concern for state political parties.
5 During the hearings, the FEC recommended that, in order to give the state political parties a
6 "strengthened role in the political process," Congress amend the Act to exempt from the
7 definitions of "contribution" and "expenditure" ballot access fees paid to and received by state
8 political party committees when the committees subsequently transferred these fees to the state
9 to defray the costs of the elections. *See FECA Amendments: Hearing Before the Committee on*
10 *Rules and Administration, United States Senate, 96th Cong. 4-25, app. at 21 ("Legislative*
11 *Recommendations" attached as Appendix A to then-FEC Chairman Robert Tiernan's Statement*
12 *before the U.S. Senate Committee on Rules and Administration, FECA Amendments) (July 13,*
13 *1979). The FEC was apparently concerned that state political parties were financially*
14 *disadvantaged when ballot access fees merely flowing through them to others were treated as*
15 *"contributions" counted toward (and even exceeding) the candidate committees' contribution*
16 *limitations. See id.*

17 Therefore, it appears that once Mr. Greene paid the South Carolina Democratic Party
18 \$10,440 in ballot access fees on March 16, 2010, the same day he filed his Notice of Candidacy
19 with the party, he exceeded the expenditure threshold for candidacy, and triggered the
20 registration and reporting requirements for himself and his authorized committee. By failing to
21 timely register and report, Mr. Greene and Alvin Greene for Senate violated the Act, including
22 the possible failure to report an unknown amount of contributions he may have received and
23 possibly spent after the primary election. Therefore, we recommend that the Commission find

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reason to believe that Alvin M. Greene violated 2 U.S.C. § 432(e)(1) and that Alvin M. Greene for Senate violated 2 U.S.C. §§ 433(a) and 434(a) and (b), and authorize an investigation, including the use of compulsory process, to determine the financial extent, if any, of the lack of disclosure by the campaign.

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IV. RECOMMENDATIONS

1. Find reason to believe that Alvin M. Greene violated 2 U.S.C. § 432(e)(1);
2. Find reason to believe that Alvin M. Greene for Senate violated 2 U.S.C. §§ 433(a) and 434(a) and (b);
3. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas, and deposition subpoenas;
4. Approve the attached Factual and Legal Analysis; and
5. Approve the appropriate letters.

Christopher Hughey
Acting General Counsel

Date: 12/22/10

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