



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

FEB 23 2011

**VIA FACSIMILE AND FIRST CLASS MAIL**

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RE: MUR 6315

Dear Mr. Carter:

On June 22, 2010, the Federal Election Commission (the "Commission") notified your client, Alvin M. Greene, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on February 16, 2011, found that there is reason to believe 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), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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

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

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

If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Cynthia L. Bauerly  
Chair

Enclosure  
Factual and Legal Analysis

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**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Alvin M. Greene  
Alvin M. Greene for Senate**

**MUR: 6315**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (the "Commission") alleging 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 Commission as a "candidate" within ten days of making in excess of \$5,000 in expenditures. *See* 2 U.S.C. § 431(2). Specifically, the complainant alleges that Mr. Greene should have registered with the Commission ten days after March 16, 2010, when he paid the South Carolina Democratic Party \$10,440 for ballot access in the South Carolina primary. Further, the complaint alleges that Mr. Greene's purported campaign committee, Alvin M. Greene for Senate, (the "Committee") failed to file a Statement of Organization, *see* 2 U.S.C. § 433(a), and failed to file disclosure reports with the Commission in accordance with 2 U.S.C. § 434(a) and (b), specifically its 2010 April Quarterly Report and its 2010 12-Day Pre-Primary Report. To support the allegations, the complaint included the following documents: (1) a copy of a "Statement of Intention of Candidacy" signed by Mr. Greene, marked as received by the South Carolina Democratic Party on March 16, 2010; (2) a Democratic Party of South Carolina "Notice of Candidacy and Pledge" signed by Mr. Greene on March 16, 2010; and (3) a copy of a check dated March 16, 2010, from Mr. Greene to the South Carolina Democratic Party for \$10,440. To date, Mr. Greene

1 has not registered with the Commission as a candidate or designated a principal campaign  
2 committee, and there has been no disclosure of financial activity related to his campaign.

3 On June 22, 2010, the Commission's Office of Complaints Examination and  
4 Legal Administration ("CELA") notified Mr. Greene of the complaint. On July 19, 2010,  
5 Eleazer Carter, Esq., contacted CELA and stated that he had been retained to represent  
6 Mr. Greene in this matter. Subsequently, on July 23, 2010, Mr. Greene sent a signed  
7 Designation of Counsel by facsimile, as well as a letter from Mr. Carter requesting an  
8 extension of 30 days to "properly file all documents now due." CELA granted that  
9 request in a letter to Mr. Carter dated July 27, 2010, with the deadline to respond to the  
10 complaint set for August 20, 2010. Despite numerous attempts thereafter to contact Mr.  
11 Carter, neither he nor Mr. Greene has submitted a response to the complaint.

12 As discussed below, it appears that Mr. Greene became a "candidate" under the  
13 Act ten days after his ballot access payment to the South Carolina Democratic Party, and  
14 that he failed to timely register with the Commission and to timely designate his principal  
15 campaign committee. Alvin M. Greene for Senate, Mr. Greene's purported campaign  
16 committee, has never registered with or reported to the Commission. Therefore, the  
17 Commission found reason to believe that Alvin M. Greene violated 2 U.S.C. § 432(e)(1)  
18 and that Alvin M. Greene for Senate violated 2 U.S.C. §§ 433(a) and 434(a) and (b).

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**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 wrote a check for \$10,440 to the "SC Democratic Party" with the handwritten words "Alvin M. Greene for Senate" on the upper left-hand corner, apparently to cover the filing fee for ballot access. See MUR 6315, Complaint, Exh.1. Mr. Greene appeared on the ballot for the primary election held on June 8, 2010, and won the Democratic nomination.

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

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1 days of its designation, *see* 2 U.S.C. § 433(a), and must file disclosure reports with the  
2 Commission in accordance with 2 U.S.C. § 434(a) and (b).

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

9 Under the Act and the Commission's regulations, a "contribution includes neither  
10 payments made by a candidate or authorized committee of a candidate as a condition of  
11 ballot access, nor payments received by any political party committee as a condition of  
12 ballot access." 2 U.S.C. § 431(8)(B)(xii) and 11 C.F.R. § 100.90. In addition, an  
13 expenditure does not include payments received by a political party committee from  
14 candidates or their authorized committees as a condition of ballot access that are  
15 transferred to another political party committee or the appropriate State official.  
16 2 U.S.C. § 431(9)(B)(x) and 11 C.F.R. § 100.150. However, the Act does not exclude  
17 from the definition of expenditure payments made by the candidate or the candidate's  
18 authorized committee for ballot access fees; thus, an authorized committee must report

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1 such payments as expenditures pursuant to 2 U.S.C. § 434(b).<sup>1</sup> Since Congress excluded  
2 ballot access payments made by a candidate or authorized committee from the definition  
3 of "contribution" but did not include a similar exclusion from the definition of an  
4 "expenditure," and since "it is generally presumed that Congress acts intentionally and  
5 purposely in the disparate inclusion or exclusion,"<sup>2</sup> ballot access fees paid by a federal  
6 candidate or authorized committee are expenditures under the Act. Additionally, under  
7 the Commission's "testing the waters" regulations, payments made by an individual to  
8 qualify for the ballot under State law are not excluded from the definition of an  
9 "expenditure." 11 C.F.R. § 100.131(b)(5).

10 Therefore, once Mr. Greene paid the South Carolina Democratic Party \$10,440 in  
11 ballot access fees on March 16, 2010, the same day he filed his Notice of Candidacy with  
12 the party, he exceeded the expenditure threshold for candidacy, and triggered the  
13 registration and reporting requirements for himself and his authorized committee. By  
14 failing to timely register and report, Mr. Greene and Alvin Greene for Senate violated the  
15 Act, including the possible failure to report an unknown amount of contributions he may  
16 have received and possibly spent after the primary election. Therefore, there is reason to

<sup>1</sup> This is consistent with the legislative history for the 1979 amendments to the Act, which added 2 U.S.C. §§ 431(8)(B)(xii) and (9)(B)(x) out of an apparent concern for state political parties. During the hearings, the FEC recommended that, in order to give the state political parties a "strengthened role in the political process," Congress amend the Act to exempt from the definitions of "contribution" and "expenditure" ballot access fees paid to and received by state political party committees when the committees subsequently transferred these fees to the State to defray the costs of the elections. See FECA Amendments: Hearing Before the Committee on Rules and Administration, United States Senate, 96th Cong. 4-25, app. at 21 ("Legislative Recommendations" attached as Appendix A to then-FEC Chairman Robert Tiernan's Statement before the U.S. Senate Committee on Rules and Administration, FECA Amendments) (July 13, 1979). The FEC was apparently concerned that state political parties were financially disadvantaged when ballot access fees merely flowing through them to others were treated as "contributions" mounted toward (and even exceeding) the candidate committees' contribution limitations. See *id.*

<sup>2</sup> *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

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- 1 believe that Alvin M. Greene violated 2 U.S.C. § 432(e)(1) and that Alvin M. Greene for**
- 2 Senate violated 2 U.S.C. §§ 433(a) and 434(a) and (b).**

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