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FEDERAL ELECTION COMMISSION

AUGUST 4, 2021 1:46 PM

OFFICE OF GENERAL COUNSEL

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Scott Hogan]  
501 Pulliam St SW  
Suite 400  
Atlanta, GA, 30312

**MUR 7921**

Complainant,

v.

Earl L. “Buddy” Carter  
PO Box 10570  
Savannah, GA 31412

Buddy Carter for Congress  
PO Box 10570  
Savannah, GA 31412

Respondents.

**COMPLAINT**

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against Representative Earl L. “Buddy” Carter and his authorized candidate committee Buddy Carter for Congress (the “Committee” and collectively, the “Respondents”). According to public reports and his own admission, Representative Carter has spent significant sums of money to advance his candidacy for U.S. Senate in Georgia—hiring a campaign team, preparing a launch statement, and running a statewide television advertisement. Yet, he has failed to file any paperwork with the Federal Election Commission (the “Commission”) to alert the public of his candidacy as required by law. Accordingly, Representative Carter appears to have violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by failing to file a Statement of Candidacy within fifteen days of becoming a candidate for United States Senate in Georgia. This

filing requirement serves a vital public interest—it alerts the general public when an individual has decided to seek federal office and when they begin to raise and spend money to advance their candidacy. Further, his Committee failed to amend its Statement of Organization within ten days of him triggering Senate candidacy to update the office sought. The Commission should immediately investigate whether Representative Carter has triggered candidacy for the U.S. Senate without disclosing his candidacy to the Commission and whether his Committee failed to timely amend its registration as required by law.

### FACTUAL BACKGROUND

Representative Carter serves as the U.S. Representative for Georgia’s first congressional district.<sup>1</sup> Representative Carter has an active principal candidate committee named Buddy Carter for Congress.<sup>2</sup> According to the current version of the Committee’s Statement of Organization, Representative Carter is seeking re-election to Georgia’s first congressional district.<sup>3</sup>

On July 8, 2021, the Atlanta Journal-Constitution reported that Representative Carter “is not just considering a bid for U.S. Senate [in 2022], he’s actively preparing for it.”<sup>4</sup>

Representative Carter has “hired an early campaign team, traveled the state to drum up support, and even written a campaign launch announcement that’s ‘on the shelf and ready to go.’”<sup>5</sup>

Representative Carter himself directly and publicly stated, “I’ve spent a lot of money.”<sup>6</sup>

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<sup>1</sup> *Directory of Representatives*, U.S. HOUSE OF REP., available at <https://www.house.gov/representatives#state-georgia> (last visited July 21, 2021).

<sup>2</sup> *Buddy Carter for Congress* (C00543967), FED. ELEC. COMM’N, available at <https://www.fec.gov/data/committee/C00543967/?tab=summary&cycle=2022> (last visited July 21, 2021).

<sup>3</sup> *FEC Form 1*, FED. ELEC. COMM’N., <https://docquery.fec.gov/cgi-bin/forms/C00543967/1362448/> (last visited July 21, 2021).

<sup>4</sup> Tia Mitchell, Patricia Murphy & Greg Bluestein, *The Jolt: Buddy Carter’s Waiting Game Has a Name, ‘Herschel Walker’*, ATL. JOURNAL-CONSTITUTION (July 8, 2021), available at <https://www.ajc.com/politics/politics-blog/the-jolt-the-jolt-buddy-carters-waiting-game-has-a-name-herschel-walker/OKHGUVNTKJF2TK42QALUJG57TA/>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

On July 13, 2021, Representative Carter’s congressional campaign press team announced it released a new TV ad titled “Step up to the Plate.”<sup>7</sup> The press release explained that “[t]he ad will run statewide.”<sup>8</sup> The advertisement makes no reference to Representative Carter’s congressional re-election, the district he represents, nor any challengers seeking his current office.<sup>9</sup> The advertisement also does not include a fundraising solicitation.<sup>10</sup> Instead, the advertisement highlights Representative Carter, his legislative record, leadership qualities and willingness to take on the Democratic Party. In the advertisement he states:

Baseball used to be as America as it gets, but the radical Left had other plans. I’m Buddy Carter, and I’m not afraid to go toe-to-toe against the leftist Democrats to save America. In Congress, I fought alongside President Trump to defeat the big-government leftists. We need leaders who will take on big tech, big business and the big lies being forced down our throats. I’m Buddy Carter, and I approve this message because together, we can un-cancel America.<sup>11</sup>

Consistent with the campaign’s press announcement, public data provides that the campaign placed an advertising buy on July 12, 2021 for \$75,000 during the weeks of July 13, 2021 and July 20, 2021, of which \$50,000 is for money spent in media markets *outside* of Representative Carter’s congressional district.<sup>12</sup>

Representative Carter has publicly claimed that he has not decided whether he will run for U.S. Senate.<sup>13</sup> He has stated that if Herschel Walker, a prospective U.S. Senate candidate in

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<sup>7</sup> Exhibit A.

<sup>8</sup> *Id.*

<sup>9</sup> *Step Up to the Plate*, YOUTUBE (July 13, 2021), available at <https://www.youtube.com/watch?v=jX-FZipgHFc>. Representative Carter.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Exhibit B. As shown in Exhibit B, over \$50,000 was spent to place the advertisement in the Atlanta media market, which is outside of Representative Carter’s jurisdiction.

<sup>13</sup> Tia Mitchell, Patricia Murphy & Greg Bluestein, *The Jolt: Buddy Carter’s Waiting Game Has a Name, ‘Herschel Walker’*, ATL. JOURNAL-CONSTITUTION (July 8, 2021).

Georgia, decides to run for Senate, then he will instead plan to run for re-election in the first congressional district.<sup>14</sup>

### LEGAL ANALYSIS

Under the Act, an individual becomes a “candidate” for federal office upon receiving contributions or making expenditures in excess of \$5,000 in support of his or her election to that federal office.<sup>15</sup> Under Commission regulations, a promise or agreement to make a payment is an expenditure. A “written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure *as of the date such contract, promise or obligation is made.*”<sup>16</sup> An individual must file a Statement of Candidacy and designate a principal campaign committee within fifteen days of meeting the \$5,000 threshold for becoming a “candidate.”<sup>17</sup> If a candidate intends to convert an existing House candidate committee into a Senate candidate committee, this timeline is shortened -- the committee must amend its previously filed Statement of Organization no later than ten days following the date candidacy for the new office is triggered.<sup>18</sup>

There is a narrow exception to the candidacy threshold for individuals that raise or spend money not to advance their candidacy but instead to evaluate *whether or not they will run for office*. Commission regulations allow potential candidates to collect contributions and make expenditures in excess of \$5,000 without triggering candidacy if the expenditures are made for the sole purpose of “testing the waters.”<sup>19</sup> Examples of “testing the waters” activities include conducting polls, travelling, and making telephone calls to determine the viability of a potential federal candidacy.<sup>20</sup> A “testing the waters” expense is one made “*solely* for the purpose of

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<sup>14</sup> *Id.*

<sup>15</sup> See 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3.

<sup>16</sup> 11 C.F.R. § 100.112 (emphasis added).

<sup>17</sup> 52 U.S.C. 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>18</sup> See 52 U.S.C. 30103(c); 11 C.F.R. § 102.2(a)(2).

<sup>19</sup> 11 C.F.R. §§ 100.72, 100.131.

<sup>20</sup> *Id.* § 100.131(a).

determining whether an individual should become a candidate.”<sup>21</sup> Significantly, the exemption does not apply to payments made for activities that are “relevant to conducting a campaign.”<sup>22</sup>

The Commission has emphasized that the testing-the-waters exemption “explicitly limits the [exempt] activities . . . to those ‘solely’ for [the] purpose” of determining whether to run.<sup>23</sup> Activities that “appear to project [an individual] to the public as a person qualified to be taken seriously . . . rather than as a means to ascertain if he would be so perceived by the public” would not qualify under the exemption.<sup>24</sup> Similarly, public activities of an individual that take on a “partisan political quality” and “entail a purposeful, active effort to gain all possible benefits from th[e]se contacts” are not considered activities to test the waters if they are “designed to heighten [the individual’s] political appeal to the electorate.”<sup>25</sup>

Here, Representative Carter has been careful to couch his intention to run for Senate in conditional terms, stating that he will run only if another candidate, Herschel Walker, does not.<sup>26</sup> Regardless of whether Representative Carter has already determined whether he should become a candidate, he has triggered candidacy by making expenditures exceeding \$5,000 that do not fit within the testing-the-waters exemption.

The activities Representative Carter engaged in are “relevant to conducting a campaign”—for which the testing-the-waters exemption is not available—rather than for the purpose of determining the feasibility of his candidacy.<sup>27</sup> *First*, public reports indicate that

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<sup>21</sup> *Id.* §§ 100.72, 100.131 (emphasis added).

<sup>22</sup> *Id.* § 100.131(b).

<sup>23</sup> FEC Adv. Op. 1981-32 (Askew) at 4.

<sup>24</sup> *See id.* at 5

<sup>25</sup> *See id.*

<sup>26</sup> *See, e.g.,* Hank Rowland, *Representative Carter Clarifies Plans for Potential U.S. Senate Run*, BRUNSWICK NEWS (Apr. 21, 2021), available at [https://thebrunswicknews.com/news/local\\_news/rep-carter-clarifies-plans-for-potential-u-s-senate-run/article\\_60fefce0-09dc-5aef-a33e-5506cb3d4a57.html](https://thebrunswicknews.com/news/local_news/rep-carter-clarifies-plans-for-potential-u-s-senate-run/article_60fefce0-09dc-5aef-a33e-5506cb3d4a57.html) (Carter stated: “If [Herschel Walker] doesn’t run, I will because we need a senator who is going to fight for Georgians and our values.”).

<sup>27</sup> 11 C.F.R. § 100.131(b).

Representative Carter has already “assembl[ed] a *campaign* team for a likely U.S. Senate bid.”<sup>28</sup> Presumably, Representative Carter is paying his assembled team since he has admitted that he has “spent a lot of money.”<sup>29</sup> *Second*, Representative Carter has apparently used this team to write a “campaign launch announcement that’s ‘on the shelf and ready to go.’”<sup>30</sup> *Finally*, Representative Carter has spent \$75,000 to run a *statewide* television advertisement, which includes over \$50,000 of airtime in media markets entirely outside of his congressional district.<sup>31</sup> These activities fall squarely outside of the testing-the-waters exemption: they are campaign activities, not activities taken to aid Representative Carter in his decision of whether or not to run.

In particular, the spending of over \$50,000 on airtime in media markets outside of one’s congressional district is a clear demonstration of promotional, partisan spending that does not qualify as testing-the-waters. There is no other legitimate purpose for the \$50,000 expenditure other than to generate support for his candidacy for U.S. Senate. The individuals viewing the ad outside of his congressional district are not able to vote for him for the U.S. House, nor does the advertisement ask for financial support of any kind for his Congressional campaign. The only logical goal of spending money to air the advertisement outside of his district is to generate name recognition and support for him as a candidate for U.S. Senate. The Commission has made clear that activities that are designed to heighten an individual’s political appeal by projecting the

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<sup>28</sup> Greg Bluestein, *Georgia 2022: Republican Buddy Carter Gears Up for a Senate Run*, ATL. JOURNAL-CONSTITUTION (Apr. 19, 2021), available at <https://www.ajc.com/politics/politics-blog/georgia-2022-republican-buddy-carter-gears-up-for-a-senate-run/ZAAQFMD3HZCNXLGRPFMOYBV7F4/>.

<sup>29</sup> Tia Mitchell, Patricia Murphy & Greg Bluestein, *The Jolt: Buddy Carter’s Waiting Game Has a Name, ‘Herschel Walker’*, ATL. JOURNAL-CONSTITUTION (July 8, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> *See* Exhibit B.

individual to the public as a serious contender for office fall outside of the testing-the-waters allowance and count towards the \$5,000 candidacy trigger.<sup>32</sup>

Accordingly, the available facts strongly suggest that Buddy Carter for Congress has made expenditures exceeding \$5,000 in furtherance of Representative Carter's Senate candidacy, and those expenditures do not qualify under the testing-the-waters exemption. This \$5,000 threshold was certainly crossed by July 12th, when the reservation of \$75,000 in airtime was completed. However, the threshold was likely crossed even sooner given Mr. Carter's admission on or before July 8th that he "spent a lot of money." In making the television advertisement by July 13th, Mr. Carter almost surely incurred an obligation to pay vendors over \$5,000. A camera crew and media consultant were presumably involved in the production and editing of the professional television advertisement, costing well over \$5,000. The Committee has thus failed to timely amend its Statement of Organization within ten days and Representative Carter has failed to file a Statement of Candidacy for U.S. Senate within fifteen days of triggering candidacy as required by law. Respondents cannot continue to skirt the Act's registration, disclosure, and other requirements by spending money to further Representative Carter's Senate candidacy under the guise of testing-the-waters.

### **REQUESTED ACTION**

In light of the foregoing, the Commission should immediately investigate whether Respondents did in fact violate the Federal Election Campaign Act, and if so, the exact date that Representative Carter's Senate candidacy began. If a violation is found, we respectfully request the Commission compel disclosure of any expenditures made to further Representative Carter's candidacy, enjoin Respondents from further violations, and fine Respondents the maximum amount permitted by law.

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<sup>32</sup> FEC Adv. Op. 1981-32 (Askew) at 5.

Sincerely,

*Scott Hogan*

Scott Hogan

501 Pulliam St SW  
Suite 400  
Atlanta, GA 30312

State of Florida County Of Polk

Sworn to (or affirmed) and subscribed before me by means of Online Notarization,  
Produced Identification Type of Identification Produced Driver License

SUBSCRIBED AND SWORN to before me this 2nd day of August, 2021.

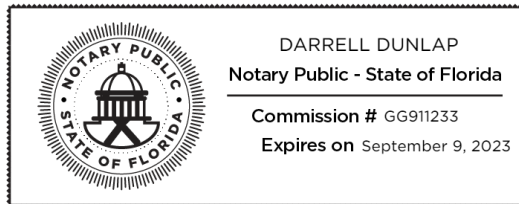
Name of Person Swearing or Affirming Scott Hogan

*[Signature]*

Notary Public

Name of Notary Typed : Darrell Dunlap

My Commission Expires:



09/09/2023

Notarized online using audio-video communication

# EXHIBIT A

From: Carter Press Team <[chris@buddycarterforcongress.com](mailto:chris@buddycarterforcongress.com)> MUR792100010

Date: July 13, 2021 at 9:05:22 AM EDT

To:

Subject: [EXTERNAL] Congressman Buddy Carter Releases New TV Ad: "Step Up To The Plate"

Reply-To: [chris@buddycarterforcongress.com](mailto:chris@buddycarterforcongress.com)

# BUDDY CARTER

## FOR GEORGIA

FOR IMMEDIATE RELEASE:

July 13, 2021

CONTACT:

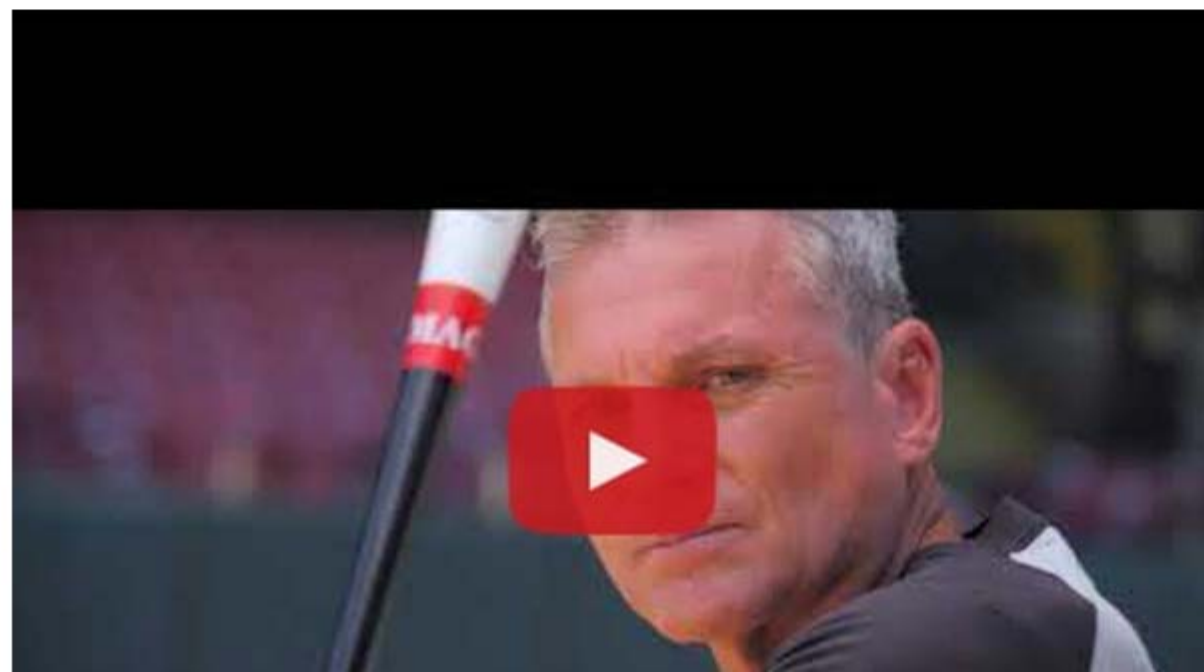
[chris@buddycarterforcongress.com](mailto:chris@buddycarterforcongress.com)

### Congressman Buddy Carter Releases New TV Ad: "Step Up To The Plate"

**Pooler, GA** -- Ahead of the MLB's All-Star Game in Denver, Colorado, Congressman Buddy Carter today released a television ad targeting the radical left, big business and big tech for canceling Georgia and America. The ad will run statewide.

"Baseball used to be as America as it gets, but the radical Left and woke corporations have ruined America's favorite pastime," said Congressman Carter. "In Congress, I've gone toe-to-toe against the leftist Democrats and fought alongside President Trump to protect our values. But, we need more leaders who will step up to the plate and take on big tech, big business and the big lies being forced down our throats. It's time to un-cancel America once and for all."

Watch "Step Up To The Plate" [HERE](#).



## EXHIBIT B

7/12/2021-7/31/2022

Race Type  
House

Select a Race  
GA CD-01 2022

Select Start Date  
7/12/2021

Select End Date  
7/31/2022

Market  
All

Team Party  
All

Advertiser  
All

Language  
All

Format  
All

Media Type  
All

Advertiser Type  
Candidate

Election State  
All

Spot Length  
All

HIDE FILTERS

HELP

33.91  
Republican GRPs

Spending and GRPs over time

Select "+" while hovering on market to view by radio format and station

							Grand Total		July 13, 2021		July 20, 2021	
							GRPs	\$	GRPs	\$	GRPs	\$
GA CD-01 2022	GA	Atlanta, GA	Republican	CA	English	Carter		\$50,273		\$25,137		\$25,137
				TV	English	Carter	0	\$0	0	\$0		
				Total			0	\$50,273	0	\$25,137		\$25,137
		Savannah, GA	Republican	CA	English	Carter		\$19,527		\$9,764		\$9,764
				TV	English	Carter	21	\$3,850	21	\$3,850		
				Total			21	\$23,377	21	\$13,614		\$9,764
		Macon, GA	Republican	TV	English	Carter	13	\$1,350	13	\$1,350		
				Total			13	\$1,350	13	\$1,350		
		Augusta, GA	Republican	TV	English	Carter	0	\$0	0	\$0		
				Total			0	\$0	0	\$0		
		Columbus, GA	Republican	TV	English	Carter	0	\$0	0	\$0		
				Total			0	\$0	0	\$0		
	Grand Total							34	\$75,000	34	\$40,100	