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October 2, 1997

**VIA HAND DELIVERY**

Kamau Philbert, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MURs 4322 and 4650  
Apparent Violations of Confidentiality Provisions of FECA

Dear Mr. Philbert:

We are writing to inform you of several apparent violations of 2 U.S.C. 437g(a)(12) and 11 C.F.R. 111.21 in the above-referenced matters. Yesterday, The Salt Lake Tribune published an article entitled "FEC Starts Greene Probe" (attached) in which three former employees of Enid '94 - David Harmer, Kaylin Loveland, and Peter Valcarce - confirmed to the press that they had been interviewed by representatives of the Office of General Counsel within the past two months. Moreover, the former campaign workers characterized the interviews as "wide-ranging" and apparently gave that newspaper the impression that "the [FEC] investigation is a new one and not limited to allegations and issues raised in Greene's complaint." In Mr. Harmer's case, he told the Tribune that "he was interviewed for about four hours on consecutive days just two weeks ago."

As you know, the Federal Election Campaign Act (FECA) prohibits any person from disclosing the existence of an FEC investigation without the written consent of the person who is the subject of that investigation. 2 U.S.C. 437g(a)(12)(A). Violations of section 437g(a)(12) are punishable by civil penalties of up to \$2,000. Knowing and willful violations of section 437g(a)(12) are punishable by civil penalties of up to \$5,000. 2 U.S.C. 437g(a)(12)(B).

Kamau Philbert, Esq.

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There appears to be little doubt that the three named campaign workers have violated 2 U.S.C. 437g(a)(12). The Commission's regulations implementing section 437g(a)(12) clearly state that "no . . . investigation conducted by the Commission . . . shall be made public . . . by any person or entity without the written consent of the respondent with respect to whom . . . the investigation [is] conducted . . . ." 11 C.F.R. 111.21(a). The Commission has consistently interpreted 2 U.S.C. 437g(a)(12) and 11 C.F.R. 111.21 to mean that no one may discuss with the press "any action taken by the Commission in an investigation until the case is closed or the respondent waives the right to confidentiality."<sup>1</sup> Advisory Opinions 1995-1, 1994-32. Members of the federal election bar have uniformly understood 2 U.S.C. 437g(a)(12) and 11 C.F.R. 111.21 to mean that "[w]ithout the respondent's written consent, *no aspect of the Commission's investigation may be made public by any person*, including Commission members and employees." Baran, The Federal Election Commission: A Guide for Corporate Counsel, 22 Ariz. L. Rev. 519, 532-33 (1980)(emphasis added).

None of our clients – D. Forrest Greene, Enid Greene, Enid '94 or Enid '96 – gave their consent for these individuals to discuss with the press the Commission's ongoing investigation of Ms. Greene's 1994 campaign. Accordingly, by disclosing to the press the fact that they had been interviewed by the Office of General Counsel, by discussing the scope of the interviews, and by speculating as to the targets of the investigation, the three former campaign workers have apparently committed multiple violations of 2 U.S.C. 437g(a)(12) and 11 C.F.R. 111.21.

Moreover, there is at least some reason to believe that these violations were knowing and willful. All three of the former campaign workers cited FECA's confidentiality provisions in declining to discuss specific issues raised in their interviews. The fact that they then confirmed that they had been interviewed by the Office of General Counsel and felt free to characterize the interviews as "wide-ranging" indicates that the violations were either willful or that the witnesses had not been adequately advised as to their duties under the Act by the Office of General Counsel.

<sup>1</sup> This prohibition, of course, does not apply to the respondent. Stockman v. FEC, No. 1:95-CV-1049, 1996 U.S. Dist. LEXIS 10171, at \*12-13 (E.D. Tex. June 13, 1996).

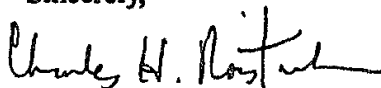
Kamau Philbert, Esq.

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We trust that, having been informed of these apparent violations, the Commission will take appropriate action.

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

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

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# Starts Greene Probe

BY DAN HARRIE

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The Federal Election Commission has launched an investigation into Enid Greene's 1994 congressional campaign, and the admitted \$1.8 million illegally funneled into her victorious election.

Three former campaign aides to the one-term Republican congresswoman from Salt Lake City confirmed to *The Salt Lake Tribune* that they have been interviewed by FEC investigators.

Greene, who recently moved back to Salt Lake City from Washington, D.C., said Tuesday she was aware of the probe — and welcomed it.

"I'm talking with the FEC. We talk with them whenever they make a request," she said. "I'd like to get this resolved once and for all."

Unlike the previous FBI and Justice Department probe into the tangled cash and political intrigue of Greene and her ex-husband, Joe Waldholtz, the FEC investigation carries no threat of criminal prosecution. That earlier case ended in Waldholtz going to prison for bank, election and tax fraud. Greene was cleared of crimes.

But millions of dollars in fines could be at stake in the FEC case.

"Knowing and willful" campaign-finance violations carry civil penalties up to double the amount involved — in this case \$1.8 million.

The source of the cash illegally poured into Greene's victorious 1994 election was the candidate's father — retired stock broker D. Forrest Greene. A relative, like any other individual, is allowed to contribute a maximum of \$3,000 per election cycle.

Throughout the 1994 campaign and for most of 1995, Greene maintained the money legally

e. outlines proposed to increase

## YES NO

without documentation. For most of Tuesday's discussion most of the questions and catcalls, loud vocal, the crowd never fell. The closest they came to a display when Howick told them they ejected from the building shortly after the assistance of facility management was held at the Keaton Theater because the adjacent church were too small to accommodate

not attending the hearing urged the session until after the Nov. 4 election two of the three board members.

Attendance in the board entirely Porter of Keaton

is a for the board called support on he urged that prot not be

# Greene: FEC Begins Investigation

Continued from B-1

hour December 1995 tell-all news conference, she acknowledged the money came from her father. And she claimed Joe — posing as a millionaire whose funds were temporarily tied up — tricked her father into loaning him \$4 million. About half of that went into the campaign.

FEC spokesman Ian Sturton said he could neither confirm nor deny the long-awaited probe because of confidentiality restrictions.

But representatives from the FEC's office of general counsel recently have contacted at least three former campaign workers in connection with the ongoing probe.

Former Greene campaign manager and one-time congressional aide David Harner said he was interviewed for about four hours

on consecutive days just two weeks ago.

Another ex-campaign manager, Kaylin Loveland, was questioned about a month ago, and former Greene political consultant Peter Valcarlos was interviewed in mid-August.

None of the three would talk about specific issues covered, citing confidentiality provisions. They did say the interviews were wide-ranging, and that many questions covered familiar territory, reminiscent of the earlier Justice Department case, which included an intensive grand jury investigation.

Greene pointed out the FEC investigation may be connected to the complaint she filed in March 1996 accusing former husband and one-time campaign treasurer Waldholz of 858 violations of election law.

Sturton confirmed that complaint still is open. But he refused to comment on whether the FEC has initiated its own probe to look at a wider cast of potential wrongdoers, including Greene or her father.

However, there are indications the investigation is a new one and not limited to allegations and issues raised in Greene's complaint.

Loveland said she had been questioned in connection with that matter much earlier. She said she felt free to talk about that because she was listed as a party, along with Waldholz.

But Loveland declined to discuss the more recent interview session — except to confirm that it occurred.

"It was just an interview with the FEC and I can't really tell you what the subject of it was," she said, adding she was following the instructions of agency officials.

Greene said she did not know how the investigation is "structured" and whether it includes or is separate from the complaint she filed in early 1996.

"The only thing certain, she added, was that "they're looking at the 1994 campaign."

Greene also ran for Congress in 1992, but narrowly lost to Democrat Karen Shepherd, who Greene then returned to defeat two years later. There have been questions about the financing of that campaign because Greene used proceeds from the sale of a house to her parents, although county records indicate the transaction was not finalized until after the election.

The former congresswoman,

who is exploring "a variety" of employment options in Utah, said she is confident the current probe will end as did the first one — laying all culpability at the feet of Waldholz.

"The Justice Department after a year's extensive investigation discovered it all went back to Joe. I'm sure the FEC will find the same thing," Greene said.

She said there "shouldn't be any risk" of fines against her or her father.

"There have been cases where there have been rogue treasurers who have used the campaigns for their own purposes and in each of those instances, the treasurer has been fined but the candidate and the campaign have not been," she said.

Waldholz already faces a \$3 million civil judgment in 3rd District Court for lying to D. Forre Greene to obtain loans from her. Waldholz, who remains in federal prison and is purportedly broke, has paid just \$20,000 against that year-old debt.

Greene said her ex-husband's ability to pay any judgment FEC fines is beside the point. "What he did needs to be acknowledged," she said.