



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FEDERAL EXPRESS**

E. Mark Braden  
Baker & Hostetler LLP  
1050 Connecticut Avenue, N.W.  
Suite 1100  
Washington, DC 20036

AUG - 2 2007

Re: MUR 5888  
John Raese  
Raese for Senate Committee and James Troy, in his  
official capacity as Treasurer

Dear Mr. Braden

On December 18, 2006, the Federal Election Commission (the "Commission") found that there was reason to believe that your clients, John Raese and Raese for Senate Committee and James Troy, in his official capacity as Treasurer, violated various provisions of the Federal Election Campaign Act, as amended, (the "Act") \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ the  
Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that John Raese and Raese for Senate Committee and James Troy, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) and 11 C.F.R. §§ 400.21(a) and 400.22(a).

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review are two briefs stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the briefs of the General Counsel (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's briefs and any brief that you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

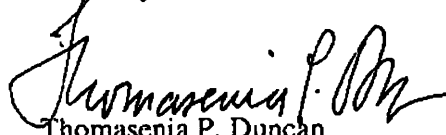
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You may also request an oral hearing before the Commission. *See* Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Adam Schwartz, the attorney assigned to this matter, at (202) 694-1341

Sincerely,

  
Thomasenia P. Duncan  
General Counsel

Enclosures  
General Counsel's Briefs

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 )  
3 In the Matter of )

4 ) MUR 5888

5 Raese for Senate Committee and James Troy, )  
6 in his official capacity as Treasurer, )  
7 )

8  
9 **GENERAL COUNSEL'S BRIEF**

10  
11 **I. INTRODUCTION**

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13 On March 6, 2007, the Federal Election Commission (the "Commission") found reason to  
14 believe that Raese for Senate Committee and James Troy, in his official capacity as treasurer,  
15 violated provisions of the "Millionaire's Amendment" of the Bipartisan Campaign Finance  
16 Reform Act of 2002. Specifically, the Commission found reason to believe that Raese for Senate  
17 Committee and James Troy, in his official capacity as treasurer, violated. 2 U.S.C.  
18 § 434(a)(6)(B)(iii) by failing to timely file an initial notification of personal expenditures greater  
19 than the applicable threshold amount, and 2 U S C § 434(a)(6)(B)(iv) by failing to timely file  
20 notification of an additional expenditure of personal funds.

21 Based on the following factual and legal analysis, the General Counsel is prepared to  
22 recommend that the Commission find probable cause to believe that Raese for Senate Committee  
23 and James Troy, in his official capacity as treasurer violated 2 U S C §§ 434(a)(6)(B)(iii) and  
24 434(a)(6)(B)(iv) by failing to timely file two notifications of expenditures of personal funds

25 **II. SUMMARY OF FACTS**

26 On February 10, 2006, John Raese filed FEC Form 2, his Statement of Candidacy, for the  
27 West Virginia 2006 Senate race. Mr. Raese's Form 2 stated "0" as the amount of personal funds

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Raese for Senate Committee and James Troy  
in his official capacity as treasurer  
General Counsel's Brief

he intended to expend in excess of the West Virginia threshold (\$207,360) for the Primary and General Elections.<sup>1</sup>

Mr. Raese started spending personal funds on his campaign on January 31, 2006 with a \$35,000 loan. Between January 31 and May 3, 2006, Mr. Raese made loans to the Raese for Senate Committee ("Committee") totaling \$525,000. All loans from the candidate were designated for the primary election. The following chart outlines all disclosed loans made by Mr. Raese to the Committee. As illustrated, Mr. Raese exceeded the \$414,720 personal funds threshold when he lent \$70,000 to his campaign on April 19, 2006.

Date	Amount	Type	Total to Date
January 31, 2006	\$35,000	Loan	\$35,000
March 24, 2006	\$ 90,000	Loan	\$125,000
April 7, 2006	\$30,000	Loan	\$155,000
April 11, 2006	\$200,000	Loan	\$355,000
April 19, 2006	\$70,000	Loan	\$425,000
April 27, 2006	\$100,000	Loan	\$525,000
May 3, 2006	\$80,000	Loan	\$605,000

On May 3, 2006, the Committee filed its initial FEC Form 10 (24-hour Notice of Expenditure from Candidate's Personal Funds) disclosing the April 19 \$70,000 loan, the April 27 \$100,000 loan, and the May 3 \$80,000 loan. On July 20, 2006, the Commission sent the Committee a Request For Additional Information noting that the candidate and the Committee appeared to have filed notice of the April 19 and April 27 loans from the candidate thirteen days and five days late, respectively.<sup>2</sup>

<sup>1</sup> For Senate races, "threshold amount means the sum of \$150,000 plus an amount equal to the voting age population of the State multiplied by \$0.04." 11 C.F.R. § 400.9(a). For the 2006 West Virginia Senate race, the calculation is \$150,000 + (1,434,000 x \$0.04) = \$207,360. The reporting threshold amount, which triggers the Millionaire Amendment's Form 10 and notice requirements, is twice the threshold amount -- \$414,720.

<sup>2</sup> The Committee does not dispute these facts, but claims that the failure to file the necessary Form 10s was not intentional but rather the result of a treasurer who was not experienced or knowledgeable about the reporting

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1 **III. ANALYSIS**

2 When a candidate to the United States Senate makes aggregate expenditures from  
3 personal funds greater than the threshold amount, the candidate or his or her authorized  
4 committee shall file a notification of the expenditure (FEC Form 10) within twenty-four hours of  
5 exceeding the applicable threshold with the Commission and each candidate in the same  
6 election.<sup>3</sup> 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). Thereafter, the candidate and  
7 committee must file an additional Form 10 each time the candidate expends more than \$10,000  
8 in personal funds. 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a).

9 Mr. Raese exceeded the \$414,720 reporting threshold on April 19, 2006. The Committee  
10 did not file the required Form 10 until May 3, 2006, thirteen days late. In addition, the  
11 Committee failed to file an additional FEC Form 10 for the \$100,000 loan made by Mr. Raese to  
12 the Committee on April 27, 2006 within 24 hours. This Form 10 was not filed until May 3,  
13 2006, five days late. Accordingly, the General Counsel is prepared to recommend the  
14 Commission find probable cause to believe that Raese for Senate Committee and James Troy, in  
15 his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and 434(a)(6)(B)(iv)

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requirements of the Millionaire's Amendment and who relied upon "expert advisors" who did not ensure that the respondents complied with the law

<sup>3</sup> An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by a candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 441a-1(b)(1)(A). Although Mr. Raese established a line of credit on March, 14, 2006, this does not, in and of itself, constitute a contribution. The Commission's regulations define when an "expenditure from personal funds" is made, and it is either the date the funds are deposited into the account designated by the candidate's authorized committee as the campaign depository, the date the instrument transferring the funds is signed, or the date the contract obligating the personal funds is executed, whichever is earlier. 11 C.F.R. § 400.4(b)

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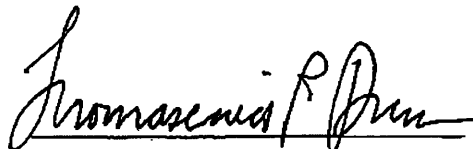
Raese for Senate Committee and James Troy  
in his official capacity as treasurer  
General Counsel's Brief

IV. GENERAL COUNSEL'S RECOMMENDATION

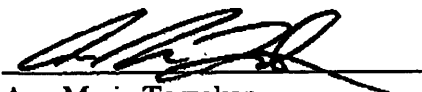
- 1) Find probable cause to believe that Raese for Senate Committee and James Troy, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and 434(a)(6)(B)(iv).

August 2, 2007

Date



Thomasenia P. Duncan  
General Counsel



Ann Marie Terzaken  
Acting Associate General Counsel  
for Enforcement



Julie K. McConnell  
Acting Assistant General Counsel



Adam Schwartz  
Attorney

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8 **GENERAL COUNSEL'S BRIEF**

9 **I. INTRODUCTION**

10 On March 6, 2007, the Federal Election Commission (the "Commission") found reason to  
11 believe that John R. Raese violated provisions of the "Millionaire's Amendment" of the  
12 Bipartisan Campaign Finance Reform Act of 2002. Specifically, the Commission found reason  
13 to believe that Mr. Raese violated 2 U.S.C. § 434(a)(6)(B)(iii) by failing to timely file an initial  
14 notification of personal expenditures greater than the applicable threshold amount; and 2 U.S.C.  
15 § 434(a)(6)(B)(iv) by failing to timely file notification of an additional expenditure of personal  
16 funds.

17 Based on the following factual and legal analysis, the General Counsel is prepared to  
18 recommend that the Commission find probable cause to believe that Mr. Raese violated 2 U.S.C.  
19 §§ 434(a)(6)(B)(iii) and 434(a)(6)(B)(iv) by failing to timely file two notifications of  
20 expenditures of personal funds.

21 **II. SUMMARY OF FACTS**

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23 West Virginia 2006 Senate race. Mr. Raese's Form 2 stated "0" as the amount of personal funds  
24 he intended to expend in excess of the West Virginia threshold (\$207,360) for the Primary and  
25 General Elections.<sup>1</sup>

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### III. ANALYSIS

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$\$150,000 + (1,434,000 \times \$0.04) = \$207,360$  The reporting threshold amount, which triggers the Millionaire Amendment's Form 10 and notice requirements, is twice the threshold amount -- \$414,720.

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1 committee shall file a notification of the expenditure (FEC Form 10) within twenty-four hours of  
2 exceeding the applicable threshold with the Commission and each candidate in the same  
3 election<sup>3</sup> 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). Thereafter, the candidate and  
4 committee must file an additional Form 10 each time the candidate expends more than \$10,000  
5 in personal funds. 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a). Candidates must  
6 ensure that their principal campaign committees file all reports required by these provisions in a  
7 timely manner 11 C.F.R. § 400.25.

8 Mr. Raese exceeded the \$414,720 reporting threshold on April 19, 2006, which obligated  
9 the Committee and the candidate to file an initial FEC Form 10, Notification of Expenditures  
10 from Personal Funds, within 24 hours of the threshold expenditure, or by April 20, 2006. See 2  
11 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). The respondent did not file the Form 10  
12 until May 3, 2006, thirteen days late. In addition, Mr. Raese failed to file an additional FEC  
13 Form 10 for the \$100,000 loan made by Mr. Raese to the Committee on April 27, 2006 within 24  
14 hours. This Form 10 was not filed until May 3, 2006, five days late. Accordingly, the General  
15 Counsel is prepared to recommend the Commission find probable cause to believe that John R.  
16 Raese violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and 434(a)(6)(B)(iv).

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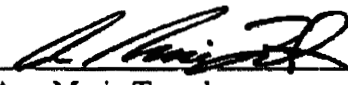
IV. GENERAL COUNSEL'S RECOMMENDATION

- 1) Find probable cause to believe that John R. Raese violated 2 U.S.C.  
§§ 434(a)(6)(B)(iii) and 434(a)(6)(B)(iv).

August 2, 2007  
Date



Thomasenia P. Duncan  
General Counsel



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Acting Associate General Counsel  
for Enforcement



Julie K. McConnell  
Acting Assistant General Counsel



Adam Schwartz  
Attorney

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