

JUL 23 2008

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5979
DATE COMPLAINT FILED: 03/04/08
DATE OF NOTIFICATION: 03/10/08
LAST RESPONSE RECEIVED: 04/01/08
DATE ACTIVATED: 04/07/08

EXPIRATION OF SOL: 02/07/13-02/25/13

COMPLAINANT:

Democratic Congressional Campaign
Committee

RESPONDENTS:

Oberweis for Congress and Sharon Martin,
in her official capacity as treasurer
James Oberweis, in his individual capacity

RELEVANT STATUTES AND
REGULATIONS

2 U.S.C. § 431(25)
2 U.S.C. § 441a-1(b)(1)(C)
11 C.F.R. § 104.19
11 C.F.R. § 400.21
11 C.F.R. § 400.25
11 C.F.R. § 400.30(b)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that Oberweis for Congress and Sharon Martin, in her official capacity as treasurer ("Committee"), and James Oberweis, in his individual capacity ("Candidate") (also collectively known as "Respondents") triggered the Millionaires' Amendment in the March 8, 2008, Special General Election ("Special General") and failed to

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1 provide notice by filing a Form 10 that would have allowed his opponent, Bill Foster, to benefit
2 from higher contribution and coordinated party expenditure limits. *See* Complaint.

3 In accordance with the Millionaires' Amendment of the Bipartisan Campaign Finance
4 Reform Act, whenever a candidate for the United States House of Representatives makes or
5 obligated to make an aggregate amount of expenditures from personal funds in excess of
6 \$350,000 in connection with any election, the candidate or his authorized committee must notify
7 the Commission, along with each opposing candidate in the same election, by filing a Form 10
8 with the Commission within twenty-four hours after exceeding the threshold. 2 U.S.C. § 441a-
9 1(b)(1)(C); 11 C.F.R. § 400.21(b).¹

10 The Committee, in response, argues that the plain reading of the statute and regulations
11 tie the notification requirements to an "election" and not an "election cycle," such that the
12 Millionaires' Amendment triggers when a candidate makes expenditures from personal funds in
13 excess of \$350,000 in connection with any "election" and the special general and general
14 elections by definition are separate "elections." *See* Response at 6. *See also* 2 U.S.C.
15 § 441a-1(b)(1)(C). The Committee also argues that it exercised due diligence in seeking advice
16 from the Reports Analysis Division ("RAD") to its detriment. *Id.* Therefore, it asserts that the
17 Commission should be estopped from proceeding against it in this matter since it followed the
18 advice provided by RAD. *Id.*

19 On June 26, 2008, the U.S. Supreme Court ruled that the Millionaires' Amendment and
20 its related reporting requirements are unconstitutional. *Davis v. FEC*, 128 S. Ct. 2759 (2008).
21 The statutory provisions pertaining to the Millionaires' Amendment were voided by *Davis*.

¹ For each additional expenditure of \$10,000 or more, the candidate is required to notify the Commission and each candidate in the same election, and the national party of each such candidate in a Form 10 filing within twenty-four hours of the time such expenditure is made. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R. § 400.22(b).

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Accordingly, in light of *Davis*, and since there are no other legal issues raised in the complaint, we recommend that the Commission dismiss the complaint and close the file.

II. RECOMMENDATIONS

1. Dismiss the complaint in MUR 5979;
2. Approve the attached Factual and Legal Analyses;
3. Approve the appropriate letters; and
4. Close the file.

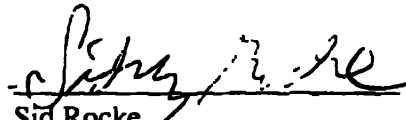
Thomasenia P. Duncan
General Counsel

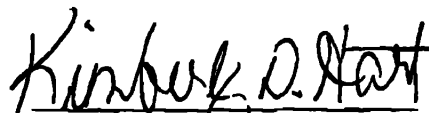
Ann Marie Terzaken
Associate General Counsel
for Enforcement

Date

7.2.08

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