

2006 MAR 27 A 11:04
FEDERAL ELECTION COMMISSION
OFFICE GENERAL COUNCIL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 5388
Jim Treffinger for Senate, Inc.)	
Robert A. Mathers, as treasurer)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and by a Complaint filed with the Commission by Jay Hochberg. The Commission found reason to believe that Jim Treffinger for Senate, Inc. and Robert A. Mathers, as treasurer ("Respondents"), knowingly and willfully violated 2 U.S.C. § 441a(f).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) and 11 C.F.R. § 111.18(d).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

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1 IV. The pertinent facts in this matter are as follows:

2 1. James Treffinger was a candidate for the U.S. Senate in New Jersey in the
3 June 6, 2000 Republican primary election. Jim Treffinger for Senate, Inc. ("the Committee") is a
4 political committee within the meaning of 2 U.S.C. § 431(4) and is the authorized principal
5 campaign committee for Mr. Treffinger's 2000 and 2002 Senatorial campaigns.

6 2. Robert A. Mathers became the treasurer of the Committee in March 2002.

7 3. The Federal Election Campaign Act of 1971, as amended ("the Act"),
8 provides that no person may make a contribution to a candidate for federal office, or his
9 authorized political committees, in excess of \$1,000 per election.¹ 2 U.S.C. § 441a(a)(1)(A).
10 The Act also makes it unlawful for candidates and political committees to knowingly accept any
11 contribution in violation of section 441a. See 2 U.S.C. § 441a(f).

12 4. The treasurer of a political committee has the responsibility for determining
13 the legality of any contributions received by the committee. 11 C.F.R. §§ 103.3(b)(3),
14 110.1(b)(3), 110.2(b)(3). In the case of excessive contributions, the treasurer has sixty days from
15 the date of receipt to reattribute, redesignate, or refund the contribution to cure the illegality.
16 11 C.F.R. § 102.9(e); AO 1992-15; AO 1988-41.

17 5. In an election cycle, the Act treats primary and general elections as two
18 separate elections. 2 U.S.C. § 431(1)(A); 11 C.F.R. § 110.1(b)(2).

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¹ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Conciliation Agreement exclude the changes made by or subsequent to BCRA.

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1 6. While it is permissible to accept contributions for the general election prior to
2 the primary election, the Committee must employ an acceptable accounting method to
3 distinguish between primary and general election contributions. 2 U.S.C. § 441a(a)(6); 11 C.F.R.
4 § 102.9(e); AO 1992-15; AO 1980-122; AO 1988-41.

5 7. Prior to the 2000 Republican primary election for the U.S. Senate in New
6 Jersey, Respondents received \$227,080 in contributions designated for the 2000 general election.
7 On June 6, 2000, Mr. Treffinger lost the primary election.

8 8. Respondents failed to use acceptable accounting methods as required by
9 11 C.F.R. § 102.9(e) and used \$50,000 of the money designated for the 2000 general election for
10 activities associated with the primary election, making the contributions excessive and in
11 violation of 2 U.S.C. § 441a(a).

12 9. Additionally, since Mr. Treffinger did not participate in the 2000 general
13 election, the general election contributions became excessive and Respondents were required to
14 obtain reattribution of the contributions to another contributor in accordance with 11 C.F.R.
15 § 110.1(k)(3), to obtain redesignation of the contributions to another election in accordance with
16 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5), or to refund the contributions within sixty days of the
17 June 6, 2000 primary election. 2 U.S.C. § 441a(f); 11 C.F.R. § 102.9(e); AO 1992-15; AO 1988-
18 41; *see also* 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3), 103.3(b)(3).

19 10. Respondents, however, failed to disclose any refunds, reattributions, or
20 redesignations of these excessive contributions in any report filed within sixty days after the
21 primary date. To date, Respondents have refunded only nine of these excessive contributions
22 totaling \$6,400.

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1 11. Respondents also received \$10,550 in excessive 2000 primary election
2 contributions. The contributions originated from thirteen individuals who had already met their
3 \$1,000 contribution limits for the 2000 primary election. Respondents had sixty days from the
4 date of receipt to reattribute, redesignate, or refund the excessive primary election contributions.

5 12. Respondents, however, failed to disclose any refunds, reattributions, or
6 redesignations of these excessive contributions in any report filed within sixty days of receipt of
7 the contributions. To date, Respondents have refunded only \$1,250 of these excessive
8 contributions.

9 13. Twice during 2002, the Commission's Reports Analysis Division ("RAD")
10 provided Respondents with detailed information on the excessive 2000 contributions. RAD
11 notified Respondents of their obligation to refund the outstanding contributions.

12 14. Respondents failed to refund the remaining excessive 2000 contributions.

13 15. On July 25, 2003, the Commission issued Advisory Opinion 2003-17 ("the
14 AO"). In the AO the Commission noted that the Committee had accepted contributions for both
15 the 2000 and 2002 general elections, and warned that to the extent funds were needed for the
16 purpose of refunding those contributions, no funds could be used to pay legal expenses related to
17 Mr. Treffinger's criminal defense.

18 16. At the time the AO was issued, Respondents' refund obligation already
19 exceeded the Committee's cash on hand. Nevertheless, beginning in August 2003, Respondents
20 made six payments to law firms that represented Mr. Treffinger in his May 2003 court
21 appearance and October 2003 criminal sentencing. Thus, contrary to the explicit language of the

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1 AO, Respondents used the funds needed to meet the refund obligation to pay Mr. Treffinger's
2 legal fees.

3 V. Respondents violated 2 U.S.C. § 441a(f) by accepting \$237,630 in excessive
4 contributions. Respondents will cease and desist from violating 2 U.S.C. § 441a(f).

5 VI. Respondents will pay a civil penalty to the Federal Election Commission in the
6 amount of Fifty-Seven Thousand Dollars (\$57,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

7 VII. Respondents shall report as debt on Schedule D of their periodic disclosure
8 reports filed with the Commission pursuant to 2 U.S.C. § 434 each unrefunded excessive
9 contribution at issue in this matter. None of the respondent Committee's future receipts, if any,
10 may be disbursed for any purpose other than refunding the excessive contributions until the entire
11 amount of excessive contributions has been refunded.

12 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
13 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
14 with this agreement. If the Commission believes that this agreement or any requirement thereof
15 has been violated, it may institute a civil action for relief in the United States District Court for
16 the District of Columbia.

17 IX. This agreement shall become effective as of the date that all parties hereto have
18 executed same and the Commission has approved the entire agreement.

19 X. Respondents shall have no more than 30 days from the date this agreement
20 becomes effective to comply with and implement the requirements contained in this agreement
21 and to so notify the Commission.

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1 XI. This Conciliation Agreement constitutes the entire agreement between the parties
2 on the matters raised herein, and no other statement, promise, or agreement, either written or
3 oral, made by either party or by agents of either party that is not contained in this written
4 agreement shall be enforceable.

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FOR THE COMMISSION:

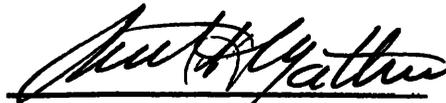
8 Lawrence H. Norton
9 General Counsel

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BY:  4/29/06
Rhonda J. Vosdingh Date
Associate General Counsel
for Enforcement

19 FOR THE RESPONDENTS:

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 3/22/06
Robert A. Mathers Date
Treasurer

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