



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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2008 JUL 23 P 4: 28

**MEMORANDUM**

**SENSITIVE**

TO: The Commission

JUL 23 2008

FROM: Thomasenia P. Duncan  
General Counsel

BY: Ann Marie Terzaken   
Associate General Counsel for Enforcement

Susan L. Lebeaux   
Assistant General Counsel

Ruth I. Heilizer   
Attorney

SUBJECT: MUR 5785 (Pederson 2006, et. al.)

RE: Withdrawal and Resubmission of General Counsel's Report # 2

On June 26, 2008, the Supreme Court ruled that the Millionaires' Amendment, a provision of the Federal Election Campaign Act of 1971, as amended, which governed races involving certain self-financed candidacies for Congress, was unconstitutional. *Davis v. Federal Election Commission*, 128 S.Ct. 2759 (June 26, 2008). Although the lawsuit challenged only the House provisions of the Amendment, we believe that the analysis in *Davis* effectively precludes enforcement of the Senate provisions as well. In light of this decision, we are withdrawing our General Counsel's Report # 2 ("Report"), dated February 1, 2008, which made probable cause recommendations as to Respondents.

A new Report with revised recommendations is being circulated simultaneously with this Memorandum. See Attachment. Because this case does not involve any non-Millionaires' Amendment-related issues, the attached Report recommends that the Commission take no further action and close the file.

Attachment:  
Resubmitted General Counsel's Report # 2



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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
Pederson 2006 and Jeff Marella, in his official ) MUR 5785
capacity as treasurer )
James E. Pederson )

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Take no further action with respect to the Commission's reason to believe findings concerning Respondents James E. Pederson and Pederson 2006 and Jeff Marella, in his official capacity as treasurer ("the Committee"), and close the file.

II. BACKGROUND

MUR 5785 concerns the untimely filing of two 24-Hour Notices of Expenditures from Personal Funds ("FEC Form 10's") pursuant to the so-called "Millionaires' Amendment" of the Bipartisan Campaign Reform Act of 2002. On March 31, 2006, James E. Pederson, a 2006 candidate for U.S. Senator from Arizona, made a \$2,000,000 contribution from his personal funds to the Committee, which required the filing of an FEC Form 10 within 24 hours, or by April 1, 2006. However, neither he nor his Committee filed the initial FEC Form 10 until six days later, on April 7, 2006. On June 30, 2006, Pederson made another \$275,000 contribution from his personal funds to the Committee, which required a notice to be filed by July 1, 2006, but neither Pederson nor the Committee filed the requisite FEC Form 10 until three days later, on July 4, 2006.

On March 6, 2007, the Commission found reason to believe that Respondents violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv), and that the Committee also violated 11 C.F.R.



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1 §§ 400.21(a) and 400.22(a) [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 After informing the Commission that pre-probable cause negotiations had been

7 unsuccessful, we issued General Counsel's Briefs to the Respondents. Respondents submitted

8 a Response Brief which, once again, did not dispute the facts or liability, but argued that the

9 civil penalty in this matter was too high, and should have been calculated pursuant to the

10 Administrative Fine Program's non-election sensitive schedule, which would have produced a

11 far lower figure. The Commission granted a probable cause hearing request and held the

12 hearing on October 9, 2007.

13 **III. ANALYSIS**

14 On June 26, 2008, the Supreme Court ruled that the Millionaires' Amendment, a

15 provision of the Act which governed races involving certain self-financed candidacies for

16 Congress, was unconstitutional. *Davis v. Federal Election Commission*, 128 S.Ct. 2759

17 (June 26, 2008). Although the lawsuit challenged only the House provisions of the

18 Amendment, we believe that the analysis in *Davis* effectively precludes enforcement of the

19 Senate provisions as well. In light of this decision, this Office recommends that the

20 Commission take no further action with respect to the Respondents in this matter and close

21 the file.

[REDACTED]

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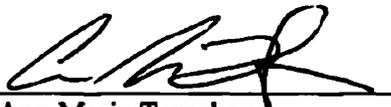
1 **IV. RECOMMENDATIONS**

- 2  
3 1. Take no further action as to James E. Pederson and Pederson 2006, and Jeff  
4 Marella, in his official capacity as treasurer;
- 5 2. Approve the appropriate letters; and
- 6 3. Close the file.

7 Thomasenia P. Duncan  
8 General Counsel

9  
10  
11 7/23/08  
12 Date

13 BY:

14   
15 Ann Marie Terzaken  
16 Associate General Counsel for  
17 Enforcement

18   
19 Susan L. Lebeaux  
20 Assistant General Counsel

21   
22 Ruth I. Heilizer  
23 Attorney

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