

February 28, 2008

Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Complaint against James Oberweis and Oberweis for Congress

Dear Ms. Duncan,

I write this letter to file a complaint pursuant to 2 U.S.C. Â§ 437g(a)(1) against James Oberweis, Republican candidate for Congress in Illinois' 14th Congressional District, and his principal campaign committee, Oberweis for Congress ("the Committee").

The facts show that Oberweis triggered the Millionaires' Amendment in the March 8 special general election, and yet failed to provide the notice that would allow his opponent, Bill Foster, to benefit from higher limits. Moreover, news media accounts and Committee filings indicate that Oberweis is knowingly and willfully refusing to file. The Commission should aggressively investigate this matter and seek the highest civil penalties required by law.

THE FACTS

Oberweis is the Republican nominee for Congress in the special general election to be held on March 8, 2008, in Illinois' 14th Congressional District. Oberweis is also the Republican nominee for Congress in the regular general election to be held on November 4, 2008. Bill Foster is the Democratic nominee for Congress in both the special general election and the regular general election.

Oberweis has violated the Federal Election Campaign Act before. In MUR 5410, he was found by the Commission to have illegally coordinated ads that were sponsored by his dairy company and featured him before his Senate election. He and the other respondents did not "contest the [Commission's] finding ... that they violated" the law. Conciliation Agreement, MUR 5410 Â¶ V (Exhibit A). The Commission obtained a \$21,000 civil penalty, and enjoined Oberweis from future violations of campaign finance law. Id. Â¶Â¶ V, VI.

Oberweis's own filings with the Commission show that he has made personal loans totaling at least \$690,000 in the March 8 special general election. He made a personal loan of \$300,000 on February 7, 2008, a second loan of \$340,000 on February 11, and a third loan of \$50,000 on February 25 (Exhibit B). But he did not file FEC Form 10 after exceeding the \$350,000 reporting threshold for expenditures from the candidate's personal funds, as the law requires him to do.

LEGAL DISCUSSION

A. The Millionaires' Amendment

Under the "Millionaires' Amendment," a self-financing candidate may trigger higher contribution limits and coordinated party spending limits for his opponent. See 2 U.S.C. Â§ 441a(i). The Millionaires' Amendment can be triggered when personal spending in an election exceeds \$350,000.

The Millionaires' Amendment treats the special general election and the regular general election as two separate "election cycles." See 11 C.F.R. Â§ 400.2; Advisory Opinion. 2006-6. Each election cycle runs from the day after the last election for the office the candidate is seeking, and ends on the date of the next election for that office. See *id.* For Millionaires' Amendment purposes, the special general election cycle in Illinois' 14th Congressional District began on February 6 and ends on March 8. "An expenditure from personal funds made during a particular election cycle is made for the purpose of influencing that election, unless designated for a different election campaign on FEC Form 3Z-1." Advisory Opinion 2006-6.[1][1]

The law places the burden on a self-financing candidate to file the reports that trigger the Millionaires' Amendment. Once the self-financing candidate's personal funding in an election aggregates to more than \$350,000, the candidate must send a notice within 24 hours, on FEC Form 10, to the Commission and to each opposing candidate. See 11 C.F.R. Â§Â§ 400.21(b), 400.23(b).

B. Application of Law to Facts

Oberweis's own FEC reports show that his personal spending in the special general election cycle exceeded \$350,000 on February 11, 2008. His February 25 pre-general report showed both the February 7 and February 11 loans, and correctly reported them as in connection with the March 8 general election. By law, he was required to file an FEC Form 10 disclosing Oberweis's expenditures no later than February 12, 2008. But he never filed FEC Form 10 with the Commission, and never sent a copy of such form to Foster or the national Democratic Party, as he was required to do.

Indeed, the facts show that Oberweis - when presented with the lapse - decided to flout the law instead. When his failure to file first became publicly known, his campaign amended its pre-special election report to purport that the February 7 loan was actually made in connection with the November general election (Exhibit C). But how the campaign chooses to characterize the loan, whether falsely or not, makes no difference under the Millionaires' Amendment. As the Commission has clearly told candidates before, "[a]n expenditure from personal funds made during a particular election cycle is made for the purpose of influencing that election ... Thus, if [a candidate's] total expenditures from personal funds exceed \$350,000 at any time during the Special General Election Cycle, the Committee must, within 24 hours, file ... FEC Form 10." Advisory Opinion 2006-6.

All the circumstances make Oberweis's violation among the most chilling that the Commission has recently had occasion to consider. His past record of violating the Act; his failure to meet a personal obligation that is necessary to ensure the operation of the law; his apparent knowing and willful decision to persist in that violation - all of this warrants the severest possible response. Cf. 2 U.S.C. Â§ 437g(d)(1)(A) (providing for five years' imprisonment for knowing and willful reporting violations aggregating \$25,000 or more in a calendar year). Failure to respond strongly to Oberweis's latest episode of misconduct will tell self-financing candidates all across the land that they need not follow the law to make the Millionaires' Amendment work, but can sandbag their opponents with no fear of imminent response.

For the foregoing reasons, we demand that the Commission investigate immediately the violations presented herein and seek the largest penalties permitted under law. We further demand that the Commission review Oberweis's compliance with the conciliation agreement in MUR 5410, which enjoined him personally from future violations of the law, and initiate a civil action for relief against him in the United States District Court for the District of Columbia. Finally, we ask the Commission to take whatever other action in response to these violations that it deems appropriate or necessary.

Sincerely,

Brian Wolff Executive Director Democratic Congressional Campaign Committee