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**REPORT OF THE AUDIT DIVISION
ON**

Carol Moseley Braun for U.S. Senate

Approved May 6, 1996



**FEDERAL ELECTION COMMISSION
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WASHINGTON, D.C.**

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FINAL AUDIT REPORT
ON
CAROL MOSELEY BRAUN FOR U.S. SENATE
EXECUTIVE SUMMARY

Carol Moseley Braun for U.S. Senate (the Committee) registered with the Secretary of the Senate on December 6, 1991 as the principal campaign committee for Carol Moseley Braun, Democratic candidate for the U.S. Senate, from the state of Illinois.

The audit was conducted pursuant to 2 U.S.C. §438(b) which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to the Committee at an exit conference held after the audit fieldwork on February 16, 1995 and later in an interim audit report. The Committee's responses to those findings are included in this final audit report.

The following is an overview of the findings contained in the final audit report.

Misstatement of Financial Activity - 2 U.S.C Sections 434(b)(1), (2) and (4). The Committee overstated both receipts and disbursements by a total of \$283,336 and \$249,212 respectively.

Ending cash on hand was overstated by a total of \$34,124 resulting from the misstatements detailed in the Final Audit Report and an addition error on the reported totals of \$493.

Subsequent to the commencement of fieldwork, the Committee filed amended disclosure reports which materially corrected the disbursement misstatements but did not correct the receipts misstatements. In response to the interim report, the Committee filed amended reports which materially corrected the receipts misstatements.

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Apparent Excessive Contributions - Individuals - 2 U.S.C. Sections 441a(a)(1)(A) and (2)(A). The audit identified 138 individuals who exceeded their contribution limitations by a total of \$85,542. The Audit staff also noted four individuals who exceeded their contribution limitations for the 1998 primary election by a total of \$3,338. Further, an unregistered committee made an in-kind contribution which exceeded its contribution limitation by \$3,500.

In response to the interim audit report, the Committee refunded 69 contributions totaling \$54,648, reported 58 contributions as debts (due to the fact that funds were not available to make immediate refunds) and provided evidence that 7 contributions totaling \$4,228 were not excessive. In addition, the three remaining excessive 1998 contributions were also reported as debts. The Committee did not adequately resolve the remaining excessive contributions (\$4,900) nor the excessive in-kind contribution received from the unregistered committee.

Contributions Received to Retire Primary Debt - 11 CFR Section 110.1(b)(3)(i). The Committee solicited contributions from political action committees to retire its net primary debt. The Committee calculated its primary net debt to be \$125,357. Contributions totaling \$106,500 were received from political action committees to retire the debt, leaving \$18,857 in debt remaining. The Audit staff determined that the Committee's net primary debt totaled \$73,776, with \$143,875 in contributions received for debt retirement which resulted in the Committee receiving \$70,099 in excess of the allowable limit.

In response to the interim audit report, the Committee stated that sufficient documentation had been supplied to support its original primary debt calculation. The Committee also stated that the Audit staff had not allowed for expenses such as post-primary per-diem payments, post-election fundraising expenses relating to debt retirement and post-election legal and accounting costs attributable to the primary. The Committee did supply additional limited documentation relating to these issues. Based on a review of this documentation, the Audit staff revised the net primary debt total to \$86,934. This amount when compared to total contributions received to retire debt (\$143,875) results in \$56,941 in contributions in excess of the allowable limit.

Receipt of Anonymous Contributions of Currency in Excess of the Limitation - 11 CFR Section 110.4(c)(3). The Audit staff's review revealed six deposits totaling \$13,085 which included currency in excess of \$50 and inadequate documentation as to the source of funds. The Audit staff concluded that the portion in excess of the \$50 (13,085 - 300 [6 x 50]) limitation was \$12,785. The Committee contends that they had established and provided to their fundraisers, clear written procedures in compliance with FEC regulations for collection of small cash

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contributions at grass roots events and for the sale of campaign materials. These fundraisers were required to fill out receipts which would provide an audit trail. However, the Committee was unable to provide any such evidence for the six deposits noted in the report.

Contributions from Individuals: Itemization and Disclosure
- 2 U.S.C Section 434(b)(3)(A). A sample review of contributions from individuals received by the Committee revealed material problems relating to itemization and improper disclosure of itemized individual contributions. Amendments filed during fieldwork materially corrected the itemization problems, but material disclosure problems remained.

In response to the interim report, the Committee filed amended reports which materially corrected remaining disclosure problems.

Telemarketing and Direct Mail - A review of contributions from individuals raised by telemarketing and direct mail firms revealed material itemization and disclosure problems. The majority of the disclosure errors were the result of incorrect aggregate year-to-date amounts. Amended reports filed during fieldwork did not correct these problems. In response to the interim report, the Committee filed amended reports which materially corrected the problems.

Joint Fundraisers - A review of contributions from individuals raised by joint fundraising entities, Faces of Change and Hollywood Women for a Change, revealed that the Committee had not itemized any of the required contributions, but had included the entire amount on line 11(a)(ii) (unitemized contributions from individuals). Amendments filed during fieldwork correctly itemized these contributions.

Partnership Contributions - 11 CFR 110.1(e). The Committee did not itemize 15 partnership contributions (\$10,480) and incorrectly disclosed 13 partnership contributions (\$10,600). The disclosure problems related primarily to the Committee's omission of memo entries to disclose the individual partner's share of each partnership contribution. Amended reports filed during fieldwork did not materially correct these problems. In response to the interim report, the Committee commented that "the original software did not have the capacity to produce the memo entries required for partnership contributions but all such contributions were disclosed." Additionally, the Committee filed amendments which materially corrected the itemization and disclosure problems noted above.

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In-Kind Contributions - 11 CFR Section 104.13(a)(1).

In-kind contributions totaling \$32,148 and in-kind disbursements totaling \$37,678 were not itemized on the Committee's disclosure reports. Reports filed during fieldwork did not correct the problems noted. In response to the interim report, the Committee filed amendments which materially corrected these problems.

Contributions From Political Committees Disclosure - 2

U.S.C. Sections 434(b)(2)(D) and (3)(B). The Committee did not itemize contributions totaling \$160,729 from other political committees. Reports filed during fieldwork corrected \$46,358 of the errors. In response to the interim report, the Committee filed an amended report which corrected the remaining errors.

Disbursements - Itemization and Disclosure - 2 U.S.C.

Section 434(b)(5)(A) and 11 CFR Section 104.3(b)(4)(i)(A). Material problems for both itemization and disclosure of disbursements were noted. The majority of the itemization problems were related to activity included in the July 1, through September 30, 1992 report period. The errors were primarily expenditures of less than \$200 which aggregated in excess of \$200. The majority of the disclosure problems were related to activity included in the January 1, through March 31, 1992 report periods. The Committee asserted in a letter that a flood denied the campaign staff access to disbursement records for the first quarter of 1992. Reports filed during fieldwork materially corrected these problems.

Amalgamated Mastercard - The Committee did not itemize

seven payments (\$6,906) and 67 associated memo entries (\$36,677) related to credit card transactions. Furthermore, disclosure errors were identified relative to information regarding the payments and charges which were itemized on the Committee's reports. Reports filed during fieldwork materially corrected the itemization and disclosure problems.

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REPORT OF THE AUDIT DIVISION
ON
CAROL MOSELEY BRAUN FOR U.S. SENATE

I. Background

A. Audit Authority

This report is based on an audit of Carol Moseley Braun For U.S. Senate (the Committee), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The audit covered the period from November 15, 1991, the date of the Committee's first recorded transaction, through December 31, 1992. In addition certain transactions were reviewed through June, 1993. The Committee reported a beginning cash balance of \$0; total receipts for the period of \$6,777,135; total disbursements for the period of \$6,744,473; and an ending cash balance of \$30,144 ^{1/}

1/ All figures in this report have been rounded to the nearest dollar. The amounts do not foot due to mathematical errors on the Committee's disclosure reports. These errors stem from a reported understatement of receipts in the amount of \$1,825, an understatement of disbursements in the amount of \$3,850 and a carry-over error of \$493 in computing cash on hand for the October quarterly report (see Finding II.A.).

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B. Campaign Organization

The Committee registered with the Secretary of the Senate on December 6, 1991 as the principal campaign committee for Carol Moseley Braun, Democratic candidate for the U.S. Senate, from the state of Illinois. The Committee maintained its headquarters in Chicago, Illinois.

The audit indicated that 86% (\$5,598,523) of the Committee's receipts were contributions from individuals, 13% (\$834,236) from political party committees and other party committees, with the remaining 1% (\$62,866) of receipts from offsets to operating expenditures and interest.

This report is based on documents and workpapers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to the Commissioners and appropriate staff for review.

C. Key Personnel

The treasurers of the Committee during the period covered by the audit were Senator Ethel Skyles Alexander (December 6, 1991 through February 6, 1992) and Mr. Earl Hopewell (February 7, 1992 until present).

D. Scope

Although the receipt records maintained by the Committee met the minimum recordkeeping requirements of Section 432(c) of Title 2 of the United States Code and Section 102.9 of Title 11 the Code of Federal Regulations, contribution records supplied by telemarketers and direct mail vendors, which comprised 23% of total receipts, consisted of magnetic media only without third party source documents. As a result, testing of contributions received from telemarketers and direct mail vendors was limited to the information provided.

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (Finding II.B.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of

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contributions when required, as well as, the completeness and accuracy of the information disclosed (Finding II.C. and II.D.);

- 4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (Finding II.E.);
- 5. proper disclosure of campaign debts and obligations;
- 6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (Finding II.A.);
- 7. adequate recordkeeping for campaign transactions;
- 8. other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. Findings and Recommendations

A. Misstatement of Financial Activity

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code require, in part, a committee to disclose the amount of cash on hand at the beginning of each reporting period and the total amount of all receipts and disbursements for the reporting period and the calendar year.

The Audit staff's reconciliation of reported financial activity to bank activity for calendar years 1991 and 1992 revealed the following misstatements:

1. Receipts

The Committee's reported receipts were overstated by a net amount of \$283,336. The components of the misstatement are as follows:

Reported Receipts	\$6,778,960 ^{2/}
Inter-account Transfer Reported as a Loan	(150,000)

^{2/} The reported financial activity has been adjusted for the math errors noted in Footnote 1.

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Mathematical Errors	4,671	
NSF Contributions Reported as Receipts Without Proper Adjustment	(36,801)	
Receipts Reported Twice	(23,565)	
Joint Fundraising Proceeds Reported Twice	(68,000)	
PAC Contributions Reported Twice	(9,800)	
In-kind Contributions not Reported	31,278	
Reconciling Item	<u>(31,119)</u>	<u>(283,336)</u>
Correct Reportable Receipts		<u>\$6,495,625</u>

2. Disbursements

The Committee's reported disbursements were overstated by a net amount of \$249,212. The components of the misstatement are as follows:

Reported Disbursements		\$6,748,323 <u>2/</u>
Inter-account Transfer Reported as a Loan Repayment	(150,000)	
Reported Void and Stop Payment Checks Not Properly Adjusted	(115,977)	
Disbursements Not Reported	177,849	
Disbursements Reported Twice	(91,825)	
NSF Contributions Reported as Disbursements	(11,736)	
Disbursements Reported but No Checks Were Issued	(14,552)	
Incorrect Disclosure Amounts	(13,689)	
Disbursements to Telemarketers Not reported	12,059	

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Refunds Reported, but Refund Checks Were Not Issued, or Refund Checks Were Not Negotiated	(13,420)	
Reported Stale-dated Checks Not Properly Adjusted	(5,105)	
In-kind Contributions not Reported	32,380	
Reconciling Item	<u>(55,196)</u>	<u>(249,212)</u>
Correct Reportable Disbursements		<u>\$6,499,111</u>

3. Ending Balance

The reported ending balance at December 31, 1992 was overstated by \$34,124, resulting from the misstatements detailed above and an addition error on the reported totals of \$493. The correct ending balance was (\$3,486).

Subsequent to the commencement of fieldwork, the Committee filed amended disclosure reports which materially corrected the disbursement misstatements but did not correct the receipts misstatements.

At an interim conference on December 28, 1994, the Audit staff provided the Committee representatives schedules detailing the misstatements for both the original and amended reports. Remaining problems with receipts were also discussed.

At the February 16, 1995 exit conference, Committee representatives provided the Audit staff a memorandum detailing corrections to reported receipts and agreed to file comprehensive amendments to correct the errors.

In the interim audit report, the Audit staff recommended the Committee file a comprehensive amendment to correct the receipts misstatements noted above.

In the response to the interim audit report, the Committee indicated disagreement with the proposed finding because "the data the auditors refer to was based on the financial activity of the Committee at the time of the original report and not on the amendments filed subsequently." However, as part of its response, the Committee did file amended disclosure reports which materially corrected the remaining receipts misstatements.

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B. Apparent Excessive Contributions

Introduction

The Committee's receipt records consisted of a data base containing contributions from all sources and copies of contributor checks for contributions received directly at the campaign headquarters. For contributions totaling \$1,473,141 (23% of total receipts) raised by telemarketers and direct mail firms under contract to the Committee, copies of contributor checks were not available. At the commencement of audit fieldwork on January 25, 1994, the Committee's treasurer informed the Audit staff that the receipts data base was unavailable at that time due to damage to the Committee's computer equipment. The treasurer explained that in December 1993 the Committee's headquarters experienced a power surge which resulted in damage to its computer files. Committee personnel and the computer vendor attempted to repair the damage to the files.

On March 17, 1994, at an interim conference, Committee officials notified the Audit staff that the receipts data base could not be salvaged. No back-up documentation had been maintained. An agreement was reached that the receipts data would be re-entered by the Committee using the copies of the contributor checks as a source. The Audit staff also contacted a number of the Committee's direct mail firms and telemarketing firms to obtain computer files related to Committee receipts. In August, 1994 a new receipts data base containing the re-entered information was provided to the Audit staff. The Audit staff merged the receipts data base with the computer files provided by the direct mail firms and telemarketing firms. The combined data base amounts were reconciled to the Committee's bank activity and were found to be materially complete.

The Audit staff based all receipts testing on the combined data base and other available documentation supplied by the Committee.

1. Excessive Contributions - Individuals and Political Action Committees

Sections 441a(a)(1)(A) and (2)(A) of Title 2 of the United States Code state, in relevant part, that no person or multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000 or \$5,000 respectively.

Section 100.10 of Title 11 of the Code of Federal Regulations states that the term person means an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of persons, but does not include the Federal government or any authority of the Federal government.

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Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value.

Section 110.1(k) of the Code of Federal Regulations states in relevant part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.

If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. The treasurer must inform the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. Within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation set forth in 11 CFR 110.1 or 110.2 may be deposited into a campaign depository. If such contributions are deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

a. Contributions from Individuals

A 100% review of the Committee's receipt records identified 138 individuals who exceeded their contribution limitations by a total of \$85,542. This amount represented 1.5%

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of the total amount of receipts from individuals. Thirteen excessive contributions totaling \$7,635 related to the 1992 primary election. The remaining 27 excessive contributions totaling \$77,907 related to the 1992 general election.^{3/} The Audit staff also noted four individuals who exceeded their contribution limitations for the 1998 primary election by a total of \$3,338. Further, an unregistered committee made an in-kind contribution which exceeded its contribution limitation by \$3,500. The Audit staff could find no evidence in the Committee's files that any attempt was made to refund, reattribute, or redesignate these contributions.

The Committee's attorney explained at an interim conference, that the Committee's internal control structure, established when "the campaign was operating on a shoestring," was unable to keep pace with the candidate's sudden success and appeal to contributors after winning the primary.

In the interim audit report, the Audit staff recommended that the Committee:

- ° Provide evidence that the contributions in question were not excessive; or
- ° Refund the excessive contributions and provide evidence of such refunds (i.e., copies of the front and back of the negotiated refund checks); or
- ° If funds were not available to make such refunds, the Committee should disclose the excessive contributions as debts owed by the Committee on Schedule D (Debts and Obligations).

In response to the interim audit report, the Committee supplied canceled refund checks and front copies of refund checks (not yet cleared) along with amended debt schedules.

The Committee also maintains that some of the apparent excessive contributions were actually:

- 1) duplicate postings of one check; or
- 2) separate contributions made by individuals with similar names; or
- 3) intended by contributors to be allocated to more than one person.

^{3/} Two contributors were found to have made excessive contributions with respect to both the 1992 primary and the 1992 general elections.

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The Committee also contends that "the alleged excessive in-kind contribution was actually not a contribution to the Committee but a contribution to the Illinois Democratic Party Coordinated Campaign. Only a very modest portion of it was allocated to the Committee."

Finally, while the Committee does admit "some supporters unintentionally exceeded the FEC limit, because of the overwhelming number of contributions to retire the primary debt and mount a general campaign, the total amount of the contributions over the limit represented just over 1% of the Committee's receipts from individuals and that the Committee has refunded every single one of those contributions."

Audit Analysis

The Audit staff reviewed all documentation and written rebuttal supplied by the Committee and made the following determination relating to the \$85,542 in excessive contributions.

1. 43 contributions totaling \$37,148 were refunded (front and back copies of canceled checks supplied);^{4/}
2. 26 contributions totaling \$17,500 were also refunded, (front copies of checks only were supplied);
3. 58 contributions totaling \$22,104 were reported on Schedules D as debt;
4. 6 contributions totaling \$3,890 were determined to be not excessive based on documentation supplied by the Committee and;
5. 8 contributions totaling \$4,900 for which the Committee supplied additional documentation were

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The Audit staff found that ten checks, totaling \$10,250, were written to LaRabida Hospital on behalf of the original contributors. The Committee indicated it had been unable to locate the original donors and so had contributed the excess contributions to a tax-exempt, non-profit organization. In the future, such money should be paid to the U.S. Treasury. (See generally, Advisory Opinion 1996-05.)

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still considered excessive by the Audit staff after review of the documentation.^{5/}

The Committee also supplied documentation which indicated that 17 additional contributors made excessive contributions totaling \$6,540 for the 1992 general election. This amount added to previous amounts noted, brings the adjusted total of excessive contributions to \$88,192.

Of the 4 excessive contributions totaling \$3,337 designated for the 1998 primary election, \$3,000 were reported on Schedule D as debt. The Committee provided documentation to verify that the remaining \$337 was not excessive.

Regarding the in-kind contribution from the unregistered committee, the Committee stated that the excessive contribution valued by the Audit staff at \$3,500, should be at the most \$160. The Committee argues that while the unregistered committee provided office space for approximately 4 months from August 3, 1992, through November 30, 1992, the space was used in connection with the general election coordinated campaign for both the candidate and President Clinton. The Committee provided a letter dated November 16, 1992 from the chairman of the unregistered committee in which he states that the value of the space (\$4,500) is an in-kind contribution to the coordinated campaign. The letter does not provide an amount allocable to each campaign but does state that the agreement was initiated on July 30, 1992.

The Committee also provided an affidavit from its treasurer, dated December 13, 1995, in which he states that the fair market value of the rental was approximately \$200 to \$240 per month for a period not to exceed 4 months for a total of between \$800 to \$960. Since the Committee paid \$800 the remaining liability is approximately \$160. In the affidavit the treasurer does not provide any information as to how he arrived at the fair market value.

This affidavit contradicts an October 25, 1992 letter from the treasurer to the office manager of the unregistered committee which includes an agreement by the Committee to lease the entire space occupied by the unregistered committee between August 3, 1992 through November 30, 1992 at a fair market value of \$2,400. The agreement also called for the

^{5/} These numbers total 141 rather than 138 because one contribution was partially explained and the difference refunded; one contribution was partially explained and the remainder was listed on the debt schedule; and, for a third contribution the Committee had provided inadequate documentation to explain part of the contribution and the remainder was reported on the debt schedule.

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Committee paying utilities, telephones and \$40 per week for janitorial services. The use of furniture in the office was provided as an in-kind contribution.

During the period the Audit staff was reviewing the Committee's response, counsel for the Committee informed the Audit staff that an affidavit would be provided from someone associated with the unregistered committee however counsel has now informed the Audit staff that the affidavit cannot be provided.

Based on the information provided by the Committee, it is the opinion of the Audit staff the excessive in-kind contribution from the unregistered committee is at least \$2,700 (\$4,500 - \$800 payment - \$1,000 contribution limit). The Committee has not provided sufficient documentary evidence to support a reduction of this amount.

b. Contributions Received To Retire Primary Debt

Section 110.1(b)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, a contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contribution within ten days from the date of the treasurer's receipt of the contribution as provided by 11 CFR 103.3(a), and if deposited, then within sixty days from the date of the treasurer's receipt the treasurer shall take the following action:

- ° Either refund the contribution; or,
- ° obtain a written redesignation by the contributor for another election in accordance with 11 CFR 110.1(b)(5); or

Section 110.1(b)(5)(ii) of Title 11 of the Code of Federal Regulations states, in part, that a contribution shall be considered to be redesignated for another election if:

- ° The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that he or she may request the refund of the contribution as an alternative to providing a redesignation; and

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- ° within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Contributions were received to pay off outstanding debts incurred in connection with the primary election (March 17, 1992). The Committee provided information to the Audit staff concerning the primary debt position and the total amount of contributions received for the extinguishment of this debt. According to the Committee, as of March 17, 1992, cash on hand totaled \$7,216 and outstanding debt totaled \$132,573 leaving net debt of \$125,357. The Committee's workpapers showed a total of \$106,500 in contributions received from political action committees for debt retirement, leaving a remaining net debt of \$18,857 as of May 28, 1992.

Audit Staff Analysis - Net Debt

The Audit staff's analysis revealed actual cash on hand as of 3/17/92 to be a negative \$4,157.

In addition, the Audit staff reviewed documentation supporting the Committee's calculation of primary debt including invoices, receipts, and canceled checks. Of the \$132,573 initially listed as debt, the Audit staff disallowed \$40,318 for the following reasons:

- ° There was no supporting documentation;
- ° the documentation provided did not support the Committee's position that the expenses should be included in its primary debt position; or
- ° the documentation provided indicated that the item was related to the general election.

The Audit staff's review further revealed \$3,162 of primary debt that the Committee had not included in its debt calculation. The review also found \$6,394 in telephone and lease deposits which the Committee did not include as assets in computing the net debt position.

Given the information noted above, the Audit staff determined that the Committee's net debt position as of the date of the primary to be \$73,776.

Contributions from political action committees and individuals which were received after the date of the primary and designated for primary debt were reviewed. This review revealed that the Committee accepted 54 contributions totaling \$143,875 designated by the contributors to retire primary debt. The contributions were comprised of 46 contributions (\$133,075)

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received in 1992 from political action committees, 6 contributions from 5 individuals (\$4,800) and 2 contributions (\$6,000) received in 1993 from political action committees. When compared with the net debt at the date of the primary, it appears that the Committee solicited and received contributions in excess of net primary debt in the amount of \$70,099.

Prior to the exit conference, Committee representatives were provided copies of workpapers detailing the Audit staff's calculations. At the exit conference, Committee representatives stated that additional information would be provided to the Audit staff which would show that the contributions were acceptable.

In the interim audit report, the Audit staff recommended that the Committee:

- ° Provide evidence that the \$70,099 of contributions were not received in excess of net primary debt; or
- ° refund the contributions and provide evidence of such refunds (i.e., copies of the front and back of the negotiated refund checks); or
- ° if funds are not available to make such refunds, it is further recommended that the Committee disclose these contributions as debts owed by the Committee on Schedule D (Debts and Obligations).

In its response to the interim audit report, the Committee stated that it had provided sufficient documentation to support its original primary debt calculation. Furthermore, in computing the net debt position, the Audit staff did not give the Committee credit for approximately \$30,000 in post-primary per-diem payments for which the Committee is now submitting affidavits from the recipients. In fact, the Audit staff had previously reviewed the available documentation including affidavits and had allowed approximately \$15,598 of this amount. After reviewing affidavits submitted with the Committee's response, the Audit staff allowed an additional \$3,784 to be included in the net primary debt figure. In addition, the Committee supplied an invoice for \$240 which related to primary debt.

The Committee also contends that at the time of the interim audit report, the Audit staff had not allowed for calculation of post-election debt retirement fundraising costs relating to primary debt or post-election legal and accounting costs attributable to the primary. The Committee provided a summary schedule of 1992 primary fundraising and legal and accounting expenses totaling \$167,788. The Committee's current position is that the original net debt was understated by over \$165,000.

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In support of its position, the Committee submitted a copy of a contract with a fundraising entity and copies of checks made payable to the firm and three individuals including the Finance Director and assistant to Finance Director. Payments for fundraising expenses total \$49,838. The remaining \$117,950 relates to a portion of legal and accounting fees and fees paid to the Committee's treasurer for work considered primary related. No supporting documentation was supplied for the Committee's calculation of numbers for these legal and professional fees allocable to primary debt. The Committee's position is that under 11 CFR Section 110.1(b)(3)(ii), it is entitled to treat these costs as primary debt.

Section 110.1(b)(3)(ii) of Title 11 of the Code of Federal Regulations states in part, net debts outstanding means the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election and, if the candidate's authorized committee terminates or if the candidate will not be a candidate for the next election, estimated necessary costs associated with termination of political activity, such as the costs of complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies. The Explanation and Justification for the above Regulation [Federal Register, Volume 52, NO. 6, PAGE 762] states, "It would be difficult to distinguish post-election expenses legitimately related to that election from expenses that are intended to benefit the candidate in future elections."

After consideration of the documentation supplied by the Committee, the Audit staff determined that approximately \$11,134 of the fundraising costs would be allowed for inclusion in the net primary debt calculation. This amount was based upon the ratio of moneys raised to retire primary debt to total funds raised during the period from the day after the primary until sufficient money had been raised to retire existing primary debt.^{6/} This ratio was then applied to the summary of fundraising fees supplied by the Committee.

Regarding the Committee's contention that legal and accounting fees incurred subsequent to the date of the primary should be included in the primary debt total, it is the opinion of the Audit staff that these fees are winding down costs and are not permissible under 11 CFR 110.1(b)(3)(ii).

^{6/} This ratio was used because the documents do not indicate that the cost for fundraising was solely to retire the primary debt, nor do they specifically mention the Committee's primary debt.

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Furthermore, at the time the primary debt was revised (May 28, 1992) and the Committee solicited contributions for debt retirement, these costs had not been incurred.

As a final note, the Audit staff had originally allowed a payment for \$10,000 written on 4/10/92 for consulting services to be included in the net primary debt figure, but has now revised this figure down to \$8,000 based upon documentation supplied by the Committee in its response to the interim audit report.

Based on the adjustments noted above the Audit staff's revised net primary debt figure totals \$86,934. This amount, when compared to the total contributions received to retire debt (\$143,875) results in a total of \$56,941 in contributions in excess net primary debt.

c. Receipt of Anonymous Contributions of Currency in Excess of the Limitation

Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations states that a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

The Audit staff's review of Committee receipt documentation identified six deposits which included currency in excess of \$50 and inadequate documentation as to the source of funds. Based upon the documentation provided, the Audit staff was unable to determine how many individual contributors were represented by these totals. Each deposit was greater than \$1,000. The six deposits, totaling \$13,085, appear to consist of revenues from fundraising events or sale of campaign materials. The Audit staff concluded that the portion in excess of the \$50 (\$13,085 - 300 [6 x 50]) limitation was \$12,785.

At the exit conference, Committee representatives were provided with a list of the currency deposits in question.

In the interim audit report the Audit staff recommended that the Committee:

- ° Provide evidence that the currency deposits in excess of \$50 are not excessive anonymous contributions of currency or;
- ° dispose of the excessive portions for any lawful purpose unrelated to any federal election, campaign, or candidate.

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- ° If funds are not available to make such disposition, it is further recommended that the Committee disclose the excessive contributions as debts owed by the Committee on Schedule D (Debts and Obligations).

In its response to the interim audit report the Committee supplied one affidavit for a deposit totaling \$561 collected at a fundraiser on or about August 5, 1992. In this affidavit, the fundraiser attests that the money was collected in accordance with 11 CFR 102.6(c)(5), as to contributor information for mass contributions of \$50.00 or less.

Although 11 CFR 102.6(c)(5) refers to separate segregated funds and not to authorized committees, Advisory Opinions 1980-99 and 1981-48 detailed similar accounting requirements for gate receipts and small cash contributions. In these Advisory Opinions the Commission suggested that an alternative method for accounting for contributions under \$50 received at mass collections was to record the name of the event, the date the contributions were received for that event and the total amount of contributions received on each day for that event.

This affidavit does not supply any additional information for the 6 deposits mentioned above. It should also be noted that this affidavit does not list the exact date or name of the fundraiser to which it refers as is suggested in the Advisory Opinions noted above.

In addition to this affidavit, the Committee made the following statements attesting to its belief that every precaution was taken to ensure that the collection of cash contributions fully complied with FEC regulations:

1. The Committee established clear written procedures in compliance with FEC regulations for collection of small cash contributions at grass roots events and for the sale of campaign materials such as T-shirts.
2. Each individual who collected these funds was furnished a copy of the Committee's compliance manual and specifically instructed about the anonymous cash limit of \$50 and the \$100 limit on cash.
3. Pursuant to the compliance manual, the individuals who collected these funds filled out receipts providing an audit trail that indicates the collector and source of each cash deposit.

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4. These receipts were previously provided to the auditors.
5. The Committee has obtained an affidavit from an individual collector explaining compliance with the Committee's procedures. This affidavit confirms that the Committee's procedures were made known to the individuals who collected cash and filled out receipts.
6. Inasmuch as the Committee promulgated written rules relating to the collection of small contributions, the Committee's procedures were followed, and receipts were obtained, it is clear that these collections complied with the regulations, and no further action should be required.

It is the Audit staff's position that although the Committee did supply substantial documentation relating to currency deposits prior to the issuance of the interim audit report, the information did not pertain to the six deposits listed or was inadequate to supply necessary clarifying information. Further, the Committee has supplied no new information relating to the deposits mentioned in the report. While the Committee's compliance manual does provide procedures for the collection of cash contributions, the Committee has admitted that for other areas such as the refunding of prohibited or excessive contributions the procedures listed in the manual were not always followed. Finally, if procedures listed in the manual had been followed, the Committee should have been able to provide the requested receipts. To date, it has not done so.

C. Contributions from Individuals: Itemization and Disclosure

Section 434(b)(3)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 104.3(a)(4) of Title 11 of the Code of Federal Regulations states, in part, that the identification of each contributor and the aggregate year-to-date total for such contributor shall be reported.

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Section 431(13)(A) of Title 2 of the United States Code states that the term "identification" means in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

OVERVIEW

The Audit staff tested the Committee's contributions from individuals for proper itemization and disclosure on a sample basis. During the review, the Audit staff noted material problems relating to itemization and disclosure of itemized individual contributions. The itemization problems with individual contributions appeared to be associated primarily with contributions received by the Committee's direct mail firm, the Committee's telemarketing firms, and two joint fundraising entities. These contributions were removed from the sample and were tested separately.

1. Contributions from Individuals: Sample

The sample review of the Committee's contributions from individuals, after the removal of the contributions noted above, revealed material problems relating to itemization and improper disclosure of itemized individual contributions. The majority of the disclosure errors related to disclosure of aggregate year-to-date totals. Other errors noted were related to name, address or amount. According to the Committee treasurer, the majority of the itemization errors resulted from the computer system software's inability to accurately compute the individual contributors' aggregate year-to-date totals.

The Committee filed amended disclosure reports subsequent to the commencement of audit fieldwork which materially corrected the itemization problems noted above. However, the amended reports did not materially correct the disclosure problems. The majority of the remaining disclosure errors related to disclosure of aggregate year-to-date totals.

At the exit conference the Committee was provided with workpapers which indicated the types of disclosure errors noted during the review. The Committee agreed to file amendments to correct the disclosure errors.

In the interim audit report, the Audit staff recommended that the Committee file a comprehensive amendment correcting the disclosure errors.

The Committee stated that software limitations and failures made it difficult for the Committee to properly aggregate some individual contributions. In response to the interim audit report, the Committee did file amended reports which materially corrected the disclosure problems noted above.

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2. Telemarketing and Direct Mail

The Committee contracted with one direct mail firm and three telemarketing firms to conduct fundraising on its behalf. The receipt records for these contributions were tested separately from the contributions received at the Committee headquarters.

The review of these receipts revealed that 154 contributions totaling \$59,960 were not itemized as required. The Committee filed a number of amended reports, however these errors were not materially corrected.

The review also revealed a material problem with disclosure of itemized contributions from individuals. The majority of the errors were the result of incorrect aggregate year-to-date amounts. Amended reports did not materially correct these errors.

At the exit conference, the Committee was supplied with examples of the itemization and disclosure errors. The Committee stated that an amended report would be filed to correct the errors.

In the interim audit report, the Audit staff recommended that the Committee file a comprehensive amendment correcting the itemization and disclosure problems noted above.

In response to the interim audit report, the Committee contends that only after the FEC auditors intervened, did the Committee's telemarketers forward to the Committee itemized contributor information required for \$59,000 in contributions. The telemarketing firms had deposited the funds to Committee bank accounts but had not responded to the Committee's request for itemized data. The Committee did file amended reports which materially corrected itemization and disclosure errors noted above.

3. Joint Fundraisers

The Committee also participated with four entities to conduct joint fundraisers. Two of these entities, Faces of Change (FOCUS) and Hollywood Women for a Change maintained separate bank accounts into which the contributions were apparently deposited. After the funds were received and deposited, a check for the net proceeds was forwarded to the Committee along with a list of the contributors.

The remaining two entities, Emily's List and Council for a Livable World forwarded the contributors' checks directly to the Committee where they were deposited into the Committee's account. Expenses related to the fundraisers were paid from the joint fundraisers' bank accounts.

The Audit staff tested receipts from Faces of Change and Hollywood Women for a Change on a 100% basis.^{7/} The results showed that the Committee had not itemized any of the required contributions from Faces of Change and Hollywood Women for a Change. A September 23, 1994 memorandum from the Committee's treasurer states, "In the original filing of September 30, 1992, signed October 15, 1992, the Joint fundraising was included in line 11(a)(ii) which is for contributions by individual, unitemized... The Aggregate joint fundraising checks were deposited into the Amalgamated Bank Account, and the detailed contribution records supporting the aggregate checks had not been made available to the Committee. Thus, we had no detailed itemized information to record the joint fundraising contributions as of October 15, 1992."

When the Audit staff reviewed the Committee's amended reports, filed subsequent to the commencement of audit fieldwork, the Audit staff found that all required contributions had been itemized correctly.

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4. Partnership Contributions

Section 110.1 (e) of Title 11 of the Code of Federal Regulations states, in part, a contribution by a partnership shall be attributed to the partnership and to each partner.

The Audit staff performed a separate review of contributions from partnerships. The results of this review identified 15 contributions from partnerships, totaling \$10,480, that were not itemized as required. Amended reports, filed subsequent to commencement of fieldwork, did not materially correct the errors.

In addition, the review identified 13 errors, totaling \$10,600, relating mainly to the Committee's omission of memo entries to disclose the individual partner's share of each partnership contribution. Other problems noted were incorrect individual partner allocation on memo entries, incorrect partnership names and incomplete disclosure information, such as missing first names of individual partners, on memo entries. Amended reports did not correct these problems.

At the exit conference, Committee representatives were provided with workpapers that listed remaining itemization and disclosure problems. The Committee indicated a comprehensive amendment would be filed to correct the remaining errors.

^{7/} Receipts from Emily's List and Council for a Livable World were tested on a sample basis along with other individual contributions.

In the interim audit report, the Audit staff recommended that the Committee file a comprehensive amendment correcting the itemization and disclosure errors noted above.

In response to the interim audit report, the Committee commented that "the original software did not have the capacity to produce the memo entries required for partnership contributions but all such contributions were disclosed." Additionally, the Committee did file amended reports which materially corrected itemization and disclosure problems noted above.

5. In-Kind Contributions

Section 104.13(a)(1) of Title 11 of the Code of Federal Regulations states in relevant part, each in-kind contribution shall be reported as a contribution in accordance with 11 CFR 104.3(a). In addition, Section 104.13(a)(2) states, in part, each in-kind contribution shall also be reported as an expenditure at the same usual and normal value and reported on the appropriate expenditure schedule.

The Audit staff performed a 100% review of in-kind contributions from both individuals and political committees. The sources available for the review were original and amended reports filed by the Committee, conduit reports, contracts for contributed office space, and files relating to the in-kind contributors supplied by the Committee. The review revealed that a total of \$32,148 of in-kind contributions were not itemized as contributions and \$37,678 were not itemized as expenditures. These consisted primarily of contributions from political action committees. The Audit staff also noted differences between the amounts itemized by the Committee and the records maintained by the Committee for certain in-kind contributions. Amended reports did not materially correct these problems.

At the exit conference, the Audit staff supplied the Committee with workpapers detailing necessary adjustments. The Committee representatives stated that a comprehensive amendment which included adjustments for political committee in-kind contributions not itemized would be filed.

In the interim audit report, the Audit staff recommended that the Committee file a comprehensive amendment correcting the itemization problems noted above.

In response to the interim audit report, the Committee filed amended reports which materially corrected the problems noted above.

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D. Contributions From Political Committees - Disclosure

Sections 434(b)(2)(D) and (3)(B) of Title 2 of the United States Code state that each report under this section shall disclose for the reporting period and calendar year the total amount of all contributions from other political committees and the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

The Audit staff reviewed contributions from other political committees such as political action committees on a 100% basis. Since the Committee had filed amended reports as of the date the review was performed, the Audit staff reviewed both sets of reports, original and amended. The review revealed that contributions from other political committees, totaling \$160,729, were not itemized as required on the original reports. Amended reports filed subsequent to the commencement of fieldwork corrected \$46,358 of the errors.

At the exit conference, the Audit staff notified the Committee of its finding. The Committee indicated a willingness to file a comprehensive amendment to correct the remaining errors.

In the interim audit report, the Audit staff recommended that the Committee file a comprehensive amendment correcting the remaining itemization errors noted above.

In response to the interim audit report, the Committee filed a comprehensive amendment which materially corrected the remaining political committee itemization problems.

E. Disbursements - Itemization and Disclosure

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Section 104.3(b)(4)(i)(A) of Title 11 of the Code of Federal Regulations states, in part, that purpose means a brief description of why the disbursement was made.

The Audit staff reviewed 12 accounts relating to the Committee's financial activity. The audit indicated that 73% (\$4,728,474) of all disbursements made by the Committee during the

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period covered by the audit came from the general operating fund. The remainder were drawn on eight smaller accounts; five of these related to telemarketing or direct mail activities.^{8/}

1. Itemization

A sample review of the Committee's general operating account disclosed a material problem relating to itemization of expenditures on the original disclosure reports. During the review it became apparent that the majority of itemization errors appeared to be in the October Quarterly report which covered the period July 1, 1992 through September 30, 1992. The errors were primarily expenditures less than \$200 which aggregated in excess of \$200.

2. Disclosure

A sample review of the Committee's general operating account revealed a material problem with disclosure in the original reports. The majority of the disclosure errors appeared to be related to activity included in the January 1, through March 31, 1992 report periods. The Committee asserted in a letter that a flood denied the campaign staff access to disbursement records for the first quarter of 1992. Because of this, the Committee filed what appeared to be a disbursement ledger, instead of the required Schedules B. This ledger did not contain required addresses nor did it provide a purpose for all disbursements listed.

At the exit conference on February 16, 1995, the Committee was informed of the results of this review.

Subsequent to the commencement of audit fieldwork, the Committee filed amended reports which materially corrected both the itemization and the disclosure problems noted above.

3. Amalgamated Mastercard

In March of 1992, the Committee applied for and received two Mastercard credit card accounts, one for the

^{8/} Three accounts, Franklin National Money Market Account, Seaway National NOW Account, and Seaway National Money Market Account had only limited activity, mostly comprised of inter-account transfers to and from other accounts. These transfers were reviewed in the bank reconciliation process.

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Candidate and the other for the Campaign Manager.^{9/} These cards were then used primarily for campaign-related expenses.

In correspondence with the Commission, the campaign initially described the credit cards as "Debit cards" and stated that the Committee made advance payments against which the card holders would then charge campaign expenses. In a Summary of Debit Card Transactions filed with the Commission on May 25, 1992, the Committee Treasurer, Earl Hopewell stated that "Each debit card is secured and activated by an amount placed with Amalgamated Bank. By making advance payments for authorization to use the Mastercard debit card, the Braun Campaign is able to establish a record of how each dollar is utilized on the Mastercard account, while avoiding credit risks to the Campaign. In contrast, if the Campaign were to utilize credit cards or cash advances, there would be less control, more risks and possibly fewer records."

The Audit staff's review of these bank cards disclosed that the cards were not debit cards but rather credit cards. This conclusion is based on the fact that except for a few instances no advance payments were made on the accounts, interest was charged on unpaid balances, and the bank refers to a credit line in correspondence to the Committee.

The Audit staff performed a 100% review of all credit card activity. That review revealed that seven payments to the credit card vendor, totaling \$6,906 were not itemized. In addition, 67 associated memo entries to the individual vendors, totaling \$36,677, were not itemized. Further, irregularities were identified relative to information disclosed regarding the payments and charges which were itemized on the Committee's reports.

Subsequent to the commencement of audit fieldwork, the Committee filed amended reports which materially corrected the itemization and disclosure problems noted above.

^{9/} The first account for the Campaign Manager was closed and its balance was transferred to a new card number on August 16, 1992. The Campaign Manager used this account throughout the remainder of the campaign. As of November 3, 1992, this account became a personal account of the Campaign Manager.

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

April 19, 1996

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Abel P. Montez
Attorney

SUBJECT Proposed Final Audit Report on Carol Moseley Braun for U.S. Senate
Committee (LRA #474)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Carol Moseley Braun for U.S. Senate Committee ("the Committee") submitted to this Office on March 6, 1996.¹ The following memorandum summarizes our comments on the proposed report. We concur with findings in the proposed report which are not discussed separately in the following memorandum. If you have any questions concerning our comments, please contact Abel P. Montez, the attorney assigned to this audit.

¹ Because the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 24, we recommend that the Commission's discussion of this document be conducted in open session.

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II. EXCESSIVE CONTRIBUTIONS FROM INDIVIDUALS (II.1.a.)

The Interim Audit Report found that the Committee received \$85,542 in contributions from 138 individuals, who exceeded their contribution limitations. In its response to the Interim Audit Report, the Committee provided documents showing that it refunded 69 contributions totaling \$54,648. As part of these refunds, the Committee wrote ten checks, totaling \$10,250, to LaRabida Hospital, a tax-exempt, non-profit organization. The Committee paid LaRabida Hospital when the Committee was unable to locate ten contributors in order to make refunds to them. However, the proposed report states that future refunds "should be paid to the U.S. Treasury."

The Office of General Counsel recommends that the Audit Division revise its proposed report to reflect the Commission's current policy on the refunding of excessive contributions. In Advisory Opinion 1996-05, the Commission allowed a committee the option of either refunding an illegal contribution to the contributor or submitting the amount to the United States Treasury.² Therefore, if in the present case the Committee discovers that it is unable to locate additional contributors, then the Committee should submit the amount to the United States Treasury. Thus, the Office of General Counsel recommends that the Audit Division revise its proposed report to include a cite to Advisory Opinion 1996-05.³

III. CONTRIBUTIONS RECEIVED TO RETIRE PRIMARY DEBT: ANALYSIS OF NET DEBT (II.1.b.)

The proposed report raises the issue of what costs may be considered in calculating the Committee's "net debts outstanding" for the purpose of determining whether the Committee may continue to receive contributions after the primary election. See 11 C.F.R. § 110.1(b)(2)(ii). The Interim Audit Report found that the Committee accepted 54 contributions totaling \$143,875 designated by the contributors to retire primary debt. The report found that the Committee's net debt position as of the date of the primary was \$73,776. Thus, the report found that the Committee solicited and received contributions in excess of net primary debt in the amount of \$70,099 (\$143,875 contributions to retire primary debt - \$73,776 net debt position as of date of primary). The report recommended that the Committee provide evidence that \$70,099 in

² In Advisory Opinions 1995-19 and 1991-39, the Commission explained that when the source of the contribution cannot be determined the required payments could be made to a government entity at the Federal, State or local level, or to a public charity that qualified under 26 U.S.C. § 170(c). In the present case, these options are not available to the Committee because the actual sources of the contributions in question have been determined, but cannot be located.

³ Although the activity at issue pre-dates the current policy, we note that the current policy is less burdensome for the Committee than the previous practice.

contributions were not received in excess of the net primary debt. If the Committee did not provide this evidence, the report recommended that it refund the contributions and provide evidence of such refunds. If the Committee could not make the refunds for lack of funds, the Interim Audit Report recommended that it report these contributions as debts.

In its response to the Interim Audit Report, the Committee contends that the Audit Division has not allowed for calculation of post-election (1) legal and accounting costs attributable to the primary, and (2) debt retirement fundraising costs relating to primary debt. The Committee provided a summary schedule of 1992 legal and accounting expenses (totaling \$117,950) incurred subsequent to the date of the primary⁴ and primary fundraising (totaling \$49,838). Thus, the Committee argues that the Audit Division understated its original net debt by over \$165,000.

Based on information provided by the Committee in response to the Interim Audit Report, the proposed Final Audit Report increased the Committee's net primary debt to \$86,934.⁵ Thus, the proposed report reduced the Committee's contributions received in excess of net primary debt to \$56,941 (\$143,875 contributions to retire primary debt - \$86,934 net debt position as of date of primary).

In the proposed report, the Audit Division does not include the legal and accounting expenses in the calculation of the Committee's net debt because the expenses were incurred subsequent to the date of the primary and are expenses disallowed by the regulation. See 11 C.F.R. § 110.1(b)(3)(ii). In the proposed report, the Audit Division also considered the Committee's documentation and estimated that approximately \$11,134 of the \$49,838 in fundraising costs could be included in the net primary debt calculation.

Commission regulations limit the contributions that an authorized committee may accept with respect to an election already held. An authorized committee may accept contributions made after the date of the election if such contributions are designated in writing by the contributor for that election, but only to the extent such contributions do not exceed the amount of net debts outstanding from such election. 11 C.F.R. § 110.1(b)(3)(i). "[N]et debts outstanding" are defined as the total unpaid debts and obligations incurred with respect to a particular election (including the estimated cost of

⁴ The Committee did not provide any supporting documentation for its calculation of these legal and professional fees.

⁵ The Audit Division adjusted the Committee's net debt position as of the date of the primary to \$86,934 from the \$73,776 figure contained in the Interim Audit Report. To determine the Committee's revised net debt position, the Audit Division: (1) added \$3,784 to account for post-primary per-diem payments; (2) added \$240 based on an invoice related to primary debt; (3) added \$11,134 to account for fundraising costs; and (4) subtracted \$2,000 to account for a \$10,000 payment for consulting services previously included in the net primary debt figure that should have been \$8,000.

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raising funds to liquidate such debts) minus cash on hand and receivables available to pay those expenses as of the date of the election 11 C.F.R. § 110.1(b)(3)(ii).

In calculating the net debts outstanding, a candidate can account for the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election. 11 C.F.R. § 110.1(b)(3)(ii). In calculating election-related expenses, a candidate who will not be participating in the next election, or whose authorized committee is terminating, may include necessary costs associated with termination of political activity and necessary winding down costs. 11 C.F.R. § 110.1(b)(3)(ii).⁶ Explanation and Justification of 11 C.F.R. § 110.1(b)(3)(ii), 52 Fed Reg 762 (January 9, 1987). However, a candidate who will be running in the next election may not include such costs because he or she is not terminating political activity. *Id.* The Commission has stated its rationale for not allowing such costs to be included in the calculation: "It would be difficult to distinguish post-election expenses that are intended to benefit the candidate in future elections." Explanation and Justification of 11 C.F.R. § 110.1(b)(3)(ii), 52 Fed Reg 762 (January 9, 1987).

The Office of General Counsel concurs with the Audit Division's analysis that winding down costs (legal and accounting expenses) may not be included in determining the Committee's net debts outstanding, because the Committee is not terminating political activity. 11 C.F.R. § 110.1(b)(3)(ii). The Committee did not file a termination report.⁷ See Advisory Opinion 1990-17 (Funds provided to pay for legal expenses incurred in connection with a complaint filed with the Commission are considered contributions, committee viewed as not terminating political activity because its filings did not disclose a termination report). Furthermore, on February 8, 1994, the candidate filed a statement of candidacy for the 1998 United States Senate election. Therefore, some of the Committee's post-election expenses could be used to benefit a future election. See Explanation and Justification of 11 C.F.R. § 110.1(b)(3)(ii), 52 Fed Reg 762 (January 9, 1987).

The Office of General Counsel also concurs with the Audit Division's treatment of the fundraising expenses. In the proposed report, the Audit Division considered the Committee's documentation for fundraising expenses, which consisted of a summary of fundraising fees paid to an entity called Campaign Finance Consultants and three

⁶ The regulation defines these costs as those "associated with termination of political activity, such as costs associated with the post-election requirements of the [Federal Election Campaign] Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies." 11 C.F.R. § 110.1(b)(3)(iii).

⁷ We note that the Committee cannot terminate because the Commission's regulations state that "only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations." See 11 C.F.R. § 102.3(a)(1).

individuals, along with the canceled checks issued to the entity and the individuals.⁸ The Committee also provided the contract it entered into with Campaign Finance Consultants on May 5, 1992. The Audit Division then estimated that approximately \$11,134 of the \$49,838 in fundraising costs could be included in the net primary debt calculation. The Audit Division's estimation was based upon the ratio of moneys raised to retire primary debt to total funds raised during the period from the day after the primary until sufficient money had been raised to retire existing primary debt. The Audit Division then applied this ratio to the \$49,838 in fundraising fees documented by the Committee to produce the \$11,134 figure.

This Office believes that the Audit Division's method of calculation is consistent with the Commission's regulation at 11 C.F.R. § 110.1(b)(3)(ii), which provides that the "estimated cost of raising funds to liquidate debts incurred with respect to the election" should be included in "net debts outstanding." The supporting documents, i.e. the Campaign Finance Consultants contract and the canceled checks, do not indicate that the cost for fundraising was solely to retire the primary debt.⁹ The Committee merely provided a summary of expenses stating that the fees paid to the entity and the individuals were for primary fundraising. Therefore, this Office believes it was reasonable for the Audit Division to pro-rate the cost of fundraising to reflect the cost that is estimated for the primary election. See 11 C.F.R. § 110.1(b)(3)(ii). However, in order to show that the methodology of pro-rating the fundraising cost is warranted, the Office of General Counsel recommends that the Audit Division revise its report to specifically note that it estimated the amount because the Committee failed to demonstrate that the entire amount (\$49,838) was for raising funds to retire the primary debt.

⁸ The individuals include Jan Hensley listed as "Consultant/Director of Finance" on checks she received from the Committee, Stephanie Holtz, listed as "Assistant Finance Director" on checks, Tina S Stoll, listed as associated with Campaign Finance Consultants.

⁹ In addition, we note that these documents do not specifically mention the Committee's primary debt.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20546

May 7, 1996

Ms. Billie Paige, Treasurer
c/o Braun for U.S. Senate, Suite 600
819 South Wabash Avenue
Chicago, IL 60605

Dear Ms. Paige:

Attached please find the Final Audit Report on Carol Moseley Braun for U.S. Senate. The Commission approved the report on May 6, 1996.

The Commission approved final audit report will be placed on the public record on May 8, 1996. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155. Any questions you have related to the matters covered during the audit or in the report should be directed to Rhonda Simmons or Raymond Lisi of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

cc: Lyn Utrecht

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CHRONOLOGY

CAROL MOSELEY BRAUN FOR U.S. SENATE

Audit Fieldwork	1/26/94 - 2/16/95
Interim Audit Report to the Committee	9/25/95
Response Received to the Interim Audit Report	12/14/95
Final Audit Report Approved	5/6/96

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