

REPORT OF THE AUDIT DIVISION
ON

Carol Moseley Braun for U.S. Senate

Approved May 6, 1996

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FEDERAL ELECTION COMMISSION
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WASHINGTON, D.C.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

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

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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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20542

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 Hopcwell (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

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 State-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>86,489,111</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 51,473,141 (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)(5) 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.

e. 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 127 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 20, 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.