FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4370

DATE FILMED 4-16-97 CAMERA NO. 1

CAMERAMAN Jm B

9704379211 31

AK008109

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: CAROL MOSELEY BRAUN FOR U.S. SENATE - MATTERS REFERABLE TO THE OFFICE OF GENERAL COUNSEL

On May 6, 1996, the Commission approved the Final Audit Report on Carol Moseley Braun for U.S. Senate. The report was released to the public on May 10, 1996. The findings noted below meet the threshold for referral to your office:

II.B.1.a. Excessive Contributions - Contributions from Individuals

II.B.1.b. Contributions to Retire Primary Debt

II.B.1.c. Receipt of Anonymous Contributions of Currency in Excess of the Limitation

Should you have any questions regarding these matters, please contact Rhonda Simmons or Ray Lisi at 219-3720. Workpapers are available for your review if necessary.

Attachment:
Findings as noted.

9704379217 2

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.

9704379213 3

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 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%

9704379213 4

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.

9704379213 5

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

9704379217 6

4/ 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.)

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.

9704379217

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

9704379217 8

- 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)

9704379213 9

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.

9704379214C

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.

9704379214 1

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.

9704379212

- 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.

9704379214 3

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.

9704379214 4

AGENDA DOCUMENT No. X97-15

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 4 3 10 PM '97

In the Matter of	)	28 U.S.C. § 2462
	)	Statute of Limitations
	)	
	)	
	)	

SENSITIVE

MAR 11 1997

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

MAR 11 AM '97

I. INTRODUCTION

On December 26, 1996, the United States Court of Appeals for the Ninth Circuit issued a decision in *Federal Election Commission v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996). That decision held, *inter alia*, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6).

As noted in the memorandum regarding the filing of a petition for rehearing, the Office of General Counsel believes that the Commission should accept the court's core application of 28 U.S.C. § 2462 to its enforcement suits as the current state of the law. *See* Memorandum to the Commission, *Petition for Rehearing, and Suggestion for Rehearing En Banc, In Federal Election Commission v. Williams*, dated January 10, 1997. As also noted, however, we have sought further review of the court's decision

9704379214 5

relating to issues of equitable relief and equitable tolling.[1] *Id. See also FEC v. NRSC*, 877 F. Supp. 15, 21 (D.D.C. 1995).

This General Counsel's Report discusses the impact of 28 U.S.C. § 2462 on the Office of General Counsel's enforcement caseload.[2] This Report describes the active and inactive enforcement matters which are potentially affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462, and makes recommendations for each of the potentially affected matters. This Report addresses all cases where the statute of limitations potentially expires, or partially expires, by the end of calendar year 1997 (December 31, 1997).

The Office of General Counsel is recommending that

18 matters be closed at this time. By doing so, this Office believes that it will be able to devote more resources toward more recent activity, particularly those matters that arose from the 1996 election cycle. To avoid potential statute of limitations problems in the future, this Office will track its cases against the relevant statute of limitations and will perform regular reviews of its caseload. In addition, this Office will be making periodic recommendations to the Commission with respect to matters that may be affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462.

9704379214 6

---

[1] Pending the court's decision, issues such as equitable relief, equitable tolling and ongoing violations, will remain open. In some instances, although issues such as equitable tolling and equitable relief may still be viable, this Office has cited other factors to support our recommendation to close the matter. *See, e.g.*, cases involving apparent violations of 2 U.S.C. § 441a(f).

[2] This Report addresses enforcement matters assigned to the Public Financing, Ethics & Special Projects ("PFESP") and Enforcement areas.

III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

B. Take no action, close the file and approve the appropriate letters in the following matters:

1. MUR 4267
2. MUR 4370
3. MUR 4392
4. MUR 4432
5. MUR 4468
6. MUR 4591
7. MUR 4614

C. Take no further action, close the file and approve the appropriate letters in the following matters:

1. MUR 3351
2. MUR 3571
3. MUR 3582
4. MUR 3586
5. MUR 3838
6. MUR 3841
7. MUR 3969
8. MUR 4091
9. MUR 4183
10. MUR 4209

97043792147

3/4/97
Date

Lawrence M. Noble
General Counsel

9704379214 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #X97-15
28 U.S.C. § 2462,	)	
Statute of Limitations	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document #X97-15:

1. Decided by a vote of 5-0 to -

   A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

   B. Take no action, close the file, and approve the appropriate letters in the following matters:

      1. MUR 4267;
      2. MUR 4370;
      3. MUR 4392;
      4. MUR 4432;
      5. MUR 4468;
      6. MUR 4591;
      7. MUR 4614.

(continued)

97043792149

C. Take no further action, close the file, and approve the appropriate letters in the following matters:

1. MUR 3351;
2. MUR 3571;
3. MUR 3582;
4. MUR 3586;
5. MUR 3838;
6. MUR 3841;
7. MUR 3969;
8. MUR 4091;
9. MUR 4183;
10. MUR 4209.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

9704379215C

(continued)

9704379215 1

Attest:

3-12-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 31, 1997

Lyn Utrecht
Oldaker, Ryan & Leonard
818 Connecticut Ave., N.W., Suite 1100
Washington, D.C. 20006

RE: MUR 4370
Carol Moseley Braun for U.S. Senate and
Billie Paige, as treasurer

Dear Ms. Utrecht:

On May 21, 1996, the Audit Division referred the enclosed matters involving Carol Moseley Braun for U.S. Senate ("Committee") and Billie Paige, as treasurer, to the Office of General Counsel for possible enforcement action. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b).

After considering all the facts and circumstances of this case, including but not limited to the fact that the statute of limitations may expire in the near future as to some or all of the activity described in the complaint, the Commission has exercised its prosecutorial discretion to take no further action in this matter. The Commission reached this determination objectively based upon the information on the record as a whole, the significance of the case relative to others, and other relevant factors. The Commission closed its file in this matter effective March 11, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply; this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record upon receipt.

97043792152

Please contact me at (202) 219-3400 if you have any questions.

Sincerely,

Jane J. Whang
Attorney

97043792153

MUR 4370 (Carol Moseley Braun for U.S. Senate)
(audit referral) ('92 cycle)
PFESP Team I

This matter was referred on May 22, 1996. The three issues referred to this Office involve: (1) $56,941 in contributions that were received in excess of net primary debt; (2) $88,192 in excessive contributions and a $2,700 in-kind contribution; and (3) $12,785 in anonymous cash contributions in excess of $50. The Committee received the $56,941 in excess of primary debt in March 1992; the excessive contributions from November 1991 through October 1992; and the $2,700 in-kind contribution occurred in September 1992. Further, the Committee received the $12,785 in anonymous cash contributions in excess of $50 in July 1992.

The Commission has not found reason to believe on any of these findings. In light of the age of the violations at issue and the *Williams* holding, it would be difficult to continue this matter in light of the impending expiration of the statute of limitations. Thus, we recommend that the Commission exercise its prosecutorial discretion and take no action on these apparent violations, and close the file in this matter. If the Commission adopts this recommendation, this Office will include appropriate admonishment language in the notification letters to the respondents.

9704379215 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4370

DATE FILMED 4-16-97 CAMERA NO. 1

CAMERAMAN Jm H

9704379215 5