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November 9, 1998

Delbert K. Rigsby, Esquire
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

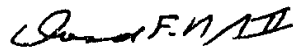
Re: MUR 4802

Dear Mr. Rigsby:

Enclosed please find the response of Barr -- Congress and Charles C. Black, Treasurer, to the Factual and Legal Analysis in the above-referenced matter. Also enclosed is an executed Designation of Counsel form.

Thank you for your attention to this matter.

Sincerely,



Benjamin L. Ginsberg
Donald F. McGahn II

Enc.

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BEFORE THE FEDERAL ELECTION COMMISSION

Bob Barr - Congress, and
Charles C. Black, Treasurer

MUR 4802

RESPONSE TO FACTUAL AND LEGAL ANALYSIS

Bob Barr for Congress '96 and Charles C. Black, as treasurer (the "Committee"), hereby respond, by and through the undersigned counsel, to the Commission's Factual and Legal Analysis in the above-referenced Matter Under Review. The Committee is interested in pursuing pre-probable cause conciliation in this matter, but does disagree with portions of the Factual and Legal Analysis, as described herein.

I. BACKGROUND

Given that this matter is based on a full-scale field audit of the Committee from the 1996 cycle, the amounts involved are relatively minor, and the violations alleged are ones of "omission rather than commission." Final Audit Report ("Audit") at 7. While there may have been some failures to comply with each letter of the Federal Election Campaign Act of 1971, as amended (the "Act"), the Committee certainly complied with the overall spirit of the Act. In addition, as the Factual and Legal Analysis notes, "[t]he Committee filed amended reports to itemize the excessive contributions." Factual and Legal Analysis ("Analysis") at 3. Similarly, "[t]he Committee also refunded the excessive contributions." *Id.*

The Committee has already taken major corrective steps to ensure that all past mistakes have been corrected and that future ones do not occur. These include: the hiring of a compliance director whose sole duties are to ensure the recordation and monitoring of campaign contributions; the updating and installation of computers, including the use of a program

dedicated to the task of campaign-related record keeping; attendance by Committee personnel at the Commission's instructional course; and a commitment to follow internal procedures designed to prevent the acceptance of excessive contributions, and the failure to obtain proper information and misreporting.

II. ANALYSIS

A. Excessive Contributions

At issue are contributions from seventy-two contributors totaling \$52,971. Analysis at 2, nt.1; Audit, Executive Summary. The Factual and Legal Analysis alleges that of that amount, the Committee did not properly report \$50,615. *Id.* To put such figures into perspective, the Committee receipts totaled \$1,173,888, Audit at 1, of which \$1,129,318 were contributions. Audit at 2. Of that amount, \$708,670 were contributions from individuals. *Id.* Thus, the \$52,971 represents a mere 4.5 percent of the Committee's total receipts.

Most of the specific allegations contained in the Analysis can be traced back to the failure to obtain written designations and reattributions. Of the \$52,971 at issue, \$40,670¹ were due to the failure to strictly comply with applicable regulations regarding redesignation and reattribution of contributions. Audit at 5. Further, with respect to the reattributions, all 24 were attributed to multiple account holders, although only one of the account holders signed the pertinent contribution check. Audit at 5.

Although the Committee mailed redesignation and reattribution forms or otherwise attempted to contact virtually all the contributors at issue, it failed to maintain records of such mailings and efforts, and was able to produce only four pertinent letters during the Audit, three of

¹ This amount constitutes 3.46 % of the Committee's total receipts.

which did not cure the particular defect at issue.² Audit at 7. Despite its failure to adhere to the technical requirements of the Act, the Committee nonetheless "filed comprehensive amended disclosure reports for years 1995 and 1996 that materially corrected the disclosure errors noted [in the Audit]." Audit at 7.

The remaining \$12,301 at issue constitutes 1.05 percent of the total raised by the Committee. One \$2,000 contribution was itemized as an \$1,000 contribution; the remaining \$1,000 has since been refunded. Audit at 5, 7. The other minor infractions were caused by the Committee's failure to keep complete records, due to pressures of the campaign and inability to keep up with the volume of contributions received. As the Committee informed the Audit staff: "[T]he failure to detect these excessive contributions was due to a data management failure that could not keep up with the volume of contributions." Audit at 7. This situation has been corrected. See pp. 1-2, *supra*.

Specifically, the Committee was unable to document every contribution between September 1, 1996 and the end of that year. Analysis at 2. Although the Committee nonetheless provided check copies for more than three quarters of the contributions during that period,³ the remaining gaps resulted in contributions not being aggregated with previous contributions, and thus not itemized. Many of the contributions were not excessive on their face. Analysis at 3-4.

However, such technical errors are mitigated. The public was not misled as to the total amount raised by the Committee, since the amounts were fully reported, albeit not itemized. The

² As noted by the Audit, the fourth letter "appropriately redesignated the excessive amount but the Committee refunded the contribution anyway." Audit at 7.

³ However, the Committee's records were "virtually complete with respect to contributions received by the Committee from January 27, 1995 (the date of the first contribution) to August 31, 1996." Analysis at 2; see Audit at 4 (finding the records 98% complete). Such completeness is a marked improvement over the Committee's records during the 1994 cycle, and demonstrates the Committee's commitment to comply with the Act and Commission regulations.

Audit Report noted that "testing did not indicate a material overall failure to itemize contributions." Audit at 5. Finally, the Committee has filed amended reports and made the appropriate refunds: "[t]he Committee also filed comprehensive amended disclosure reports for years 1995 and 1996 that materially corrected the disclosure errors noted above." Audit at 7. Thus, such actions by the Committee mitigate against further Commission action.

B. Itemized Reporting of Contributions

Although the Committee failed to itemize twelve contributions, the \$7,945 at issue constitutes less than one percent of the Committee's total receipts. Ultimately, as discussed above, such failures to itemize were caused by the Committee's data management shortcomings and these shortcomings have been corrected. Several of the contributions were not excessive on their face. Analysis at 3-4. Because they were not properly aggregated with prior contributions, however, they were not itemized. Nonetheless, "the Committee filed amended Schedules A for both 1995 and 1996, correcting aggregate year to date figures for a material number of contributors." Audit at 10. The minor nature of the infractions and the Committee's subsequent full disclosure also mitigates against further Commission action.

C. Failure to File 48 Hour Notices

With respect to the allegation regarding the 1996 primary election, the Committee has already conceded that it should have filed 48-Hour notices. Audit at 11. However, several factors dictate that the Commission take no further action with respect to this issue. As the Committee informed the Audit staff, "[t]his failure was due to a misunderstanding of the applicable law." *Id.* Because Congressman Barr was unopposed, the Committee assumed that such notices were not needed. Also, such a failure did not affect the election since the absence of

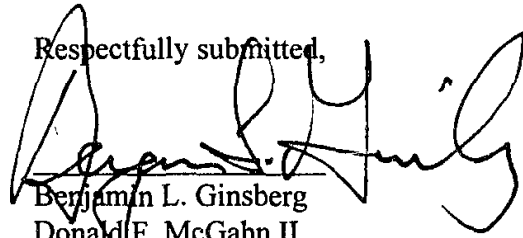
opposition rendered the election a non-event. The Committee subsequently reported these contributions, and now understands that such 48-Hour reports are required regardless of whether a candidate is unopposed or not.

As for the general election, the Committee's inability to keep up with the volume of contributions apparently affected its 48-Hour reports as well. Although the Committee believed in good faith that it had filed all the required 48-Hour reports, a post-election review showed it had not. However, the Committee did file 48-Hour reports for at least 42 of the 60 contributions requiring such notices -- or, in terms of actual dollars, \$55,000 of the \$74,000 requiring reports. Thus, the public record was, for the most part, correct. Further, such contributions were ultimately reported by the Committee after the election. Such a minimal violation does not warrant further action by the Commission.

III. CONCLUSION

For the foregoing reasons, the Committee supports a prompt resolution to this matter

Respectfully submitted,



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Dated: November 6, 1998

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4802

NAME OF COUNSEL: BENJAMIN L. GINSBERG

ADDRESS: PATTON BOGGS, LLP

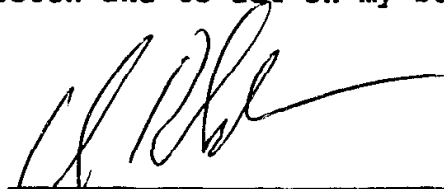
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WASHINGTON, DC 20037-1350

TELEPHONE: (202) 457-6000

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10-26-98
Date


Signature

RESPONDENT'S NAME: BARR-CONGRESS, CHARLES C. BLACK

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AUSTELL, GA 30168

HOME PHONE: _____

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U.S. DEPARTMENT OF JUSTICE

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