



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4287

DATE FILMED 7-11-97 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK007301

December 7, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA *RK*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FRIENDS OF SHERROD BROWN - MATTERS REFERABLE TO THE
OFFICE OF GENERAL COUNSEL

On November 22, 1995, the Commission approved the Final Audit Report on Friends of Sherrod Brown. Two findings are being referred to your office:

II.C. 48 Hour Notices - Individual and Political Committees

II.D. Untimely Deposit of Contributions

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

Attachment:
Final Audit report on Friends of Sherrod Brown

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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AR#95-13

REPORT OF THE AUDIT DIVISION
ON
FRIENDS OF SHERROD BROWN

I. Background

A. Overview

This report is based on an audit of Friends of Sherrod Brown (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 January 1, 1993, until December 31, 1994. The Committee reported a beginning cash balance of \$8,920; total receipts for the period of \$965,839; total disbursements for the period of \$974,228; and an ending cash balance of \$6,031.^{1/}

B. Campaign Organization

The Committee first registered with the U.S. House of Representatives on April 17, 1992 as Brown for Congress. On June 14, 1994, the Committee filed an amended Statement of Organization, changing its name to Friends of Sherrod Brown, the

^{1/} The amounts do not foot due to mathematical errors on the Committee's disclosure reports. Also, see Finding II.A., Misstatement of Financial Activity.

All figures within this report have been rounded to an even dollar amount.

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principal campaign committee for Sherrod Campbell Brown, Democratic candidate for the U.S. House of Representatives, District 13, from the state of Ohio. The Committee maintained its headquarters in Elyria, Ohio.

The audit indicated that approximately 33% (\$327,180) of the Committee's receipts were contributions from individuals, 66% (\$650,051) from political action committees and other committees such as party committees, candidate committees and non-registered committees with the remaining 1% 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 Phyllis Cullen (January 1, 1993 - February 1, 1993), Mr. Christopher R. Rothgery (March 1993 - February 1994) and Mr. Daniel Harris (April 18, 1994 to present).

D. Scope

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);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
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 (Finding II.D).

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 state, in relevant part, that each report shall disclose the amount of cash on hand at the beginning of each reporting period, the total amount of all receipts, and the total amount of all disbursements for the period and calendar year.

The Audit staff's reconciliation of the Committee's reported activity to its bank activity for the audit period revealed the following misstatements:

1. January 1, 1993 through December 31, 1994

a. Receipts

The Committee reported total receipts of \$965,839. Based on our analysis of the Committee bank records, the Audit staff determined that the Committee should have reported total receipts of \$987,344. Therefore the Committee's reported receipts were understated by a net amount of \$21,505. This understatement was the result of the following:

° Contributions deposited, not reported	\$14,186.00
° Refunds and Rebates not reported	\$ 5,599.00
° Interest Received, not reported	\$ 2,220.00
° Miscellaneous reconciling adjustment	<u>\$(500.00)</u>
° Total (net) Understatement	<u>\$21,505.00</u>

b. Disbursements

The Committee reported total disbursements of \$974,228. Based on the Audit staff's review of the bank records, it was determined that the Committee should have reported total disbursements of \$973,320. Therefore, the Committee's reported disbursements were overstated by a net amount of \$908. This overstatement resulted from the following:

° Reported voided checks	\$(13,363)
° NSF disbursements reported	\$ (164)
° Disbursements made; not reported	\$ 6,339
° Mathematical Discrepancies	\$ (1,577)
° In-kind contributions not reported as disbursements	\$ 4,996
° Refunds made; not reported	\$ 1,550
° Miscellaneous reconciling adjustment	\$ <u>1,311</u>
° Total (net) Understatement	<u>\$ 908</u>

c. Ending Cash-on-Hand Balance

The Committee reported an ending cash on hand balance on December 31, 1994 of \$6,031. The Audit staff determined that this amount was understated by \$16,913. This understatement was due to the misstatements noted above and two errors totaling \$5,500 made by the Committee in computing cash on hand during 1993 and 1994.^{2/}

At the exit conference, the Committee was provided with workpapers detailing the adjustments. The Committee treasurer stated that he would review the workpapers and file any necessary amendments.

In the interim audit report the Audit staff recommended that the Committee file amended reports for calendar years 1993 and 1994 to correct the misstatements noted above.

In response to the interim audit report, the Committee filed amended reports for each report period. The amended reports materially correct problems noted.

^{2/} The Committee was unable to explain the discrepancies in computing cash on hand.

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B. Apparent Excessive Contributions - Individuals

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in relevant part, that no person 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.

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), the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person and informs 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; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors 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.

Sections 103.3(b)(3) and (4) of Title 11 of the Code of Federal Regulations state, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) and 110.1(k), 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.

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 all such refunds.

A review of the Committee's records relating to contributions equaling or aggregating \$1,000 or more, identified (9) contributors who exceeded their contribution limitation by a

total of \$4,550. The Committee refunded \$1,500 ^{3/} to (6) contributors on September 22, 1994, well beyond the 60 day period provided for making such refunds, leaving \$3,050 unresolved (\$4,550.00 - \$1,500.00 = \$3,050). The Committee did not establish a separate account in a campaign depository for such contributions; however it has maintained sufficient funds to make the refunds pursuant to 11 CFR 103.3(b)(4).

At the exit conference, the Committee was supplied with copies of the workpapers detailing the excessive contributors. The Committee treasurer, Daniel Harris, explained that before the implementation of their computer system in 1994, the Committee had no formal aggregation system. Thus, they were unable to determine when a contributor had reached his contribution limit. Upon completion of data input procedures, the Committee was able to identify excessive contributions and they were refunded.

The remaining three excessive contributions were in the form of \$2,000 checks with one signature. The Committee commented that it had not fully understood the need for two signatures, and so had not considered the contributions excessive.

Subsequent to the end of fieldwork, the Committee supplied the Audit staff with designation letters for the three checks. These letters did not contain the necessary signatures and were mailed after both the 60 day period provided and the identification of the excessive contributions by the Audit staff and so were unacceptable for designation purposes.

In the interim audit report the Audit staff recommended that the Committee provide evidence of refunds for all unresolved excessive contributions in the form of photocopies of the front and back of negotiated refund checks.

In response to the interim audit report, the Committee provided copies of the front of refund checks for the remaining excessive contributions. In a letter included with the Committee's response, the Committee's treasurer stated that he would forward copies of the back of the refund checks upon receipt.

C. 48 Hour Notices - Individual and Political Committees

Section 434(a)(6) of Title 2 of the United States Code states, in relevant part, that the treasurer of a principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission and the Secretary of State, as

^{3/} One contributor had contributed a total of \$300 in excess of the limits, but the Committee refunded only \$250. The Audit staff was unable to ascertain the reason for this.

appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but not more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

The Audit staff's review identified a total of 26 contributions totaling \$47,500 requiring 48 hour notices for the Primary election. Of these, the Committee failed to file notices for 16 contributions totaling \$24,500. This produced an error rate of 52% (\$24,500/\$47,500). Of the 16 contributions, all were from Political Action Committees.

The Audit staff discussed this problem with the Committee treasurer at the exit conference and workpapers detailing the errors were supplied to the Committee. In a letter received by the Audit staff subsequent to the end of fieldwork (August 16, 1995), the current treasurer, Mr. Daniel Harris, explained that after taking over the treasurer responsibilities in March of 1994, he and an assistant had to reconcile 1993 bank activity, establish their accounting system and file the first quarter FEC report. In getting acclimated to the Federal Election Commission Regulations, he was not fully clear on the date used to determine 48-hour notice, either deposit date, check date, or date received. As a result, 48 hour notices for \$24,500 in contributions were not filed.

For the General election, all required 48 hour notices were filed.

In the interim audit report the Audit staff recommended that the Committee make any additional comments it believed relevant to the situation.

In response to the interim audit report, the Committee Treasurer made the following statement:

"Although it is not an excuse for untimely submittal of 48 hour notices and we fully understand the importance of timely filing, please note that Congressman Sherrod Brown was unopposed in the primary election, which is the election in which our error occurred. The problem was corrected and all required 48 hour notices for the general election were properly filed."

D. Untimely Deposit of Contributions

Section 103.3(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that all receipts by a

political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt.

During the entrance conference the Audit staff was informed that in 1993, the previous treasurer, had failed to deposit funds in the amount of \$94,192 within the ten day time frame. The current treasurer explained that he did not know the reason for the delay in depositing the funds. The deposits were comprised of 230 checks which were dated from June through December, 1993. The funds were deposited in two deposits, one for \$63,130 on February 4, 1994 and the other for \$31,062 on February 7, 1994.

In the interim audit report, the Audit staff recommended that the Committee provide an explanation as to why these contributions were not deposited in a timely manner.

In response to the interim audit report the Committee treasurer, Mr. Daniel Harris, stated that he had spoken to the previous treasurer about this problem. Mr. Harris concluded that the prior treasurer had been overwhelmed with the combined workload of his law practice and the ever increasing work associated with the treasurer's position. Once Mr. Rothgery got behind, the problem continued to increase. This situation continued undetected until the Congressman began to receive calls from concerned contributors asking why their checks had not been cashed.

Mr. Harris also stated that the Congressman took immediate action as soon as he became aware of the problem. The result is that the Congressman replaced the treasurer with a person who had a professional background in accounting. Mr. Harris ends by stating that Congressman Brown took appropriate and immediate action after becoming aware that a problem existed.

SHERROD BROWN

13th District, Ohio

May 16, 1996

United States Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Sir:

On the advice of the Federal Election Commission, enclosed please find a check in the amount of \$2,000, which reflects an unsolicited contribution made to the Friends of Sherrod Brown committee in 1994.

It has come to my attention that this contribution should not have been made. Since we do not know to whom the check should be returned, we are sending it to the US Treasury to use toward deficit reduction.

Thank you for your assistance in this matter.

Sincerely,

Libby Betounes

Libby Betounes
Assistant Treasurer

BROWN FOR CONGRESS COMMITTEE

111 EDGEFIELD DRIVE
ELYRIA, OHIO 44035

2464

56-111/412

PAY
TO THE
ORDER OF

United States Treasury

DOLLARS

\$ 2000.00

DOLLARS



FOR

#002464# 041201114 13107364#

Elizabeth Betman

78932303407.6

MAY 21 9 56 AM '96



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

5/21/96

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Brown for Congress
Committee, check number 2464, dated 5/16/96,
and in the amount of \$2,000.00.
Attached is a copy of the check and any correspondence that
was forwarded. Please indicate below the account into which
it should be deposited, and the MUR number and name.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC, Docket By aa

In reference to the above check in the amount of
\$2,000.00, the MUR number is 4287 and in the name of
Friends of Sherrod Brown CITE. The account into
which it should be deposited is indicated below:

- ☒ Budget Clearing Account (OGC), 95F3875.16
- ☐ Civil Penalties Account, 95-1099.160
- ☐ Other: _____

Anita Alexander
Signature

5-22-96
Date

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARY

JUN 19 4 30 PM '97

In the Matter of)

MUR 4287

Enforcement Priority System II)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The case noted below has been identified as a "stale" matter under the Enforcement Priority System II ("EPS II") for cases assigned to OGC Public Financing, Ethics & Special Projects ("PFESP") staff. This report recommends that the Commission take no action and close the file in MUR 4287, Friends of Sherrod Brown and Daniel Harris, as treasurer.

II. STALE CASE

Investigations require greater resources of time and funds when the activity and factual evidence are not current. By focusing our investigative efforts on cases involving recent activity, we more efficiently allocate our limited resources where they can significantly effect the electoral process.

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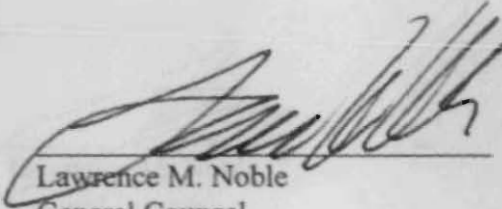
Accordingly, this Office has identified one stale PFESP enforcement case that we believe does not warrant further investment of significant Commission resources. Therefore, this Office recommends that the Commission exercise its prosecutorial discretion and close the file in MUR 4287.

III. RECOMMENDATION

1. Take no action, close the file, and approve the appropriate letter with respect to MUR 4287.

Date

6/19/97


Lawrence M. Noble
General Counsel

Attachments

- A. Referral materials not previously circulated

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Enforcement Priority System II.

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)
)

MUR 4287

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 25, 1997, the Commission decided by a vote of 5-0 to take no action, close the file, and approve the appropriate letter with respect to MUR 4287, as recommended in the General Counsel's Memorandum dated June 19, 1997.

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

Attest:

6-25-97

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., June 19, 1997 4:30 p.m.
Circulated to the Commission: Fri., June 20, 1997 12:00 p.m.
Deadline for vote: Wed., June 25, 1997 4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 8, 1997

Daniel J. Harris, Treasurer
Friends of Sherrod Brown Committee
111 Edgefield Drive
Elyria, Ohio 44035

RE: MUR 4287

Dear Mr. Harris:

On December 7, 1995, the Federal Election Commission's Audit Division referred certain matters to the Office of General Counsel involving the Friends of Sherrod Brown Committee ("the Committee") and Daniel J. Harris, as treasurer, for possible enforcement action. See Referral Materials. The referral resulted from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b).

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against the Friends of Sherrod Brown Committee ("the Committee") and Daniel J. Harris, as treasurer. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in the matter on June 25, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and 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 when received.

If you have any questions, please contact me at (800) 424-9530 or (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory R. Baker", is written over the typed name.

Gregory R. Baker
Special Assistant General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4287

DATE FILMED 7-11-97 CAMERA NO. 4

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