

FEDERAL ELECTION COMMISSION

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 98-02

AUDIT REFERRAL DATE: March 2, 1998

DATE ACTIVATED: May 6, 1998

STAFF MEMBER: Delbert Keith Rigsby

SOURCE: AUDIT REFERRAL

RESPONDENTS: Bob Barr - Congress and Charles C. Black, as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 434(a)(6)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(4)
2 U.S.C. § 438(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 103.3(b)(4)
11 C.F.R. § 104.3(a)(4)(i)
11 C.F.R. § 104.8
11 C.F.R. § 110.1(b)(2)(ii)
11 C.F.R. § 110.1(b)(3)
11 C.F.R. § 110.1(b)(5)
11 C.F.R. § 110.1(k)(1)
11 C.F.R. § 110.1(k)(3)
11 C.F.R. § 110.3(B)(4)

INTERNAL REPORTS CHECKED: Disclosure Reports, Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of Bob Barr - Congress (the "Committee") and Charles C. Black, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b).¹ The Audit Division's referral materials are attached. See Attachment 1. The audit covered the period from January 27, 1995 to December 31, 1996.²

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contributions

1. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that no person may make contributions to a candidate and his or her committees which, in the aggregate, exceed \$1,000 per federal election. 2 U.S.C. § 441a(a)(1)(A). Furthermore, no candidate or political committee shall knowingly accept any contribution which exceeds the contribution limitations of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

Contributions not designated in writing for a particular election are considered designated for the candidate's next election for federal office. 11 C.F.R. § 110.1(b)(2)(ii). A joint contribution must include the signatures of each contributor on the check or in a separate writing. 11 C.F.R. § 110.1(k)(1). If a contribution on its face or in the aggregate exceeds the contribution

¹ Robert L. Barr, Jr. won the 1996 general election for the U.S. House of Representatives, Seventh Congressional District of Georgia on November 5, 1996. Mr. Barr won a primary election on July 9, 1996.

² In light of the decisions in *FEC v. Williams*, 104 F.3d 237 (9th Cir. 1996) and *FEC v. National Republican Senatorial Committee*, 877 F.Supp. 15 (D.D.C. 1995), concerning the application of a five-year statute of limitations to enforcement actions, this Office notes that all of the activity that is the basis of this Audit Referral occurred less than five years ago. See 28 U.S.C. § 2462. This Office anticipates that the matter will be resolved before the statute of limitations runs for the activity involved. The Committee's acceptance of excessive contributions occurred between May 5, 1995 and November 4, 1996. The Committee's failure to itemize excessive contributions occurred between June 26, 1995 and June 26, 1996. The Committee failed to file 48-hour notices for certain contributions received between June 20, 1996 and July 6, 1996 for the primary election, and between October 17, 1996 and November 2, 1996 for the general election.

limitations, the committee must return the contribution to the contributor or deposit the contribution in a designated campaign depository and obtain a written redesignation or reattribution from the contributor within 60 days. 11 C.F.R. §§ 103.3(b)(3) and 110.3(b)(4). If no written redesignation or reattribution is obtained within 60 days, the committee must refund the contribution. *Id.*, 11 C.F.R. §§ 110.1(b)(5)(ii) and 110.1(k)(3)(i).

Committees must report the identity of each person who makes a contribution or contributions which exceed \$200, along with the date and amount of the contribution. 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

2. Facts

The Audit Division's review of the contribution records revealed that the Committee accepted 94 excessive contributions totaling \$54,971.³ The Audit Division's review included a computer file of contribution records and deposit records, such as copies of checks and deposit tickets. The Audit Division determined that the documentation was virtually complete with respect to contributions received by the Committee from January 27, 1995 (the date of the first contribution) to August 31, 1996, and documentation was incomplete concerning contributions received between September 1, 1996 and December 31, 1996. For example, for the latter period, the check copies that were available totaled only 77% of the amount of contributions for the period.

With respect to the excessive contributions, the Committee did not properly report \$50,615. First, the Committee did not itemize contributor names and amounts of 12 excessive

³ Subsequently, the Committee provided documentation to demonstrate that two contributions attributed to a contributor were not excessive because the contributions were actually attributable to the contributor and to his spouse. Thus, the amount of excessive contributions totaled \$52,971.

contributions totaling \$7,945. Second, the Committee reported an excessive contribution of \$2,000 as a \$1,000 contribution. Third, the Committee reattributed 24 excessive contributions totaling \$22,700 and redesignated 19 excessive contributions totaling \$17,970 without obtaining written authorizations.

In response to the Interim Audit Report, the Committee stated that the excessive contributions were not detected "due to a data management that could not keep up with the volume of contributions." The Committee filed amended reports to itemize the excessive contributions. The Committee also refunded the excessive contributions. It appears that the Committee maintained sufficient funds in its account to make refunds, but the refunds were not made within the required time period for making refunds.⁴ 11 C.F.R. § 103.3(b)(3).

3. Analysis

The Committee accepted 92 excessive contributions totaling \$52,971, which was approximately 8% of the dollar amount of all contributions from individuals. The excessive contributions were refunded eventually, but not refunded within sixty days of receipt of the contributions in accordance with 11 C.F.R. § 103.3(b)(3). It appears that the Committee reported \$50,615 of these excessive contributions incorrectly. Thus, the Committee caused the public record to be inaccurate with respect to these contributions and made it appear as if the contributions were within the Act's limitations.

⁴ In September 1996, the Committee prepared refund checks to contributors who had exceeded the contribution limit, but subsequently voided those checks. However, the Committee reissued the refund checks in October 1996. Upon being questioned by the Audit Division regarding the voiding of the checks, a Committee staffer stated that the Committee wanted to keep their cash on hand position looking as strong as possible. In response to the Interim Audit Report, the Committee issued refund checks to additional contributors that the Audit staff identified as having exceeded the contribution limit. As of May 12, 1998, the Committee has provided documentation to the Audit staff that all refund checks have cleared the Committee's checking account except four checks totaling \$2,180.

In regard to 12 of these 92 excessive contributions, the Committee deposited the excessive contribution checks, but did not itemize the contributions. The contributions either exceeded \$200 on their face or when aggregated with other contributions from the contributors exceeded \$200. Thus, the Committee was required to itemize the name and address of the contributor and the amount of the contribution. 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i). However, the Committee reported the contributions only as part of the total amount of unitemized contributions. By not itemizing these contributions, the contributor names and amounts do not appear on the public record.

In regard to an excessive contribution of \$2,000, the Committee reported the contribution in the amount of \$1,000. *See* 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i). By not reporting the actual amount of the contribution on the public record, the excessive nature of the contribution was not evident.

Furthermore, the Committee appeared to reattribute and redesignate contributions without authorizations. During the 1996 election cycle, the Commission's Report Analysis Division sent numerous inquiries to the Committee regarding the Committee's acceptance of excessive contributions.⁵ Thereafter, the Committee amended its disclosure reports to reflect the reattribution of 24 contributions totaling \$22,700 and the redesignation of 19 contributions totaling \$17,970. However, the Committee did not obtain written authorizations for the reattributions and redesignations. Attachment 1. *See* 11 C.F.R. §§ 110.1(b)(5)(ii) and

⁵ The Reports Analysis Division issued six Request for Additional Information letters and two follow-up letters to the Committee. Seven letters related to excessive contribution problems similar to those of Representative Barr's 1994 campaign committee. Thus, it appears that the acceptance of excessive contributions is an ongoing problem with Representative Barr's campaign committees. Bob Barr for Congress '94 accepted 62 excessive contributions totaling \$40,804, improperly reported contributions totaling \$29,600, improperly reattributed contributions totaling \$10,500, and improperly redesignated contributions totaling \$5,000.

110.1(k)(3)(ii). Therefore, the Committee's reattribution and redesignation of those contributions were improper. As a consequence of the Committee's actions, the actual contributors or actual designated elections were not timely disclosed on the public record.

11 C.F.R. §§ 104.3 and 104.8.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Bob Barr - Congress and Charles C. Black, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

B. Itemized Reporting of Contributions

Committees must report the identity of each person who makes a contribution or contributions which exceed \$200, along with the date and amount of the contribution. 2 U.S.C. § 434(b)(3)(A).

The Committee did not itemize 12 contributions totaling \$7,945. In response to the Interim Audit Report, the Committee filed amended disclosure reports to correct the public record.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Bob Barr - Congress and Charles C. Black, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

C. Failure to File Forty-Eight Hour Notices

The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6). 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. 2 U.S.C. § 434(a)(6).

The primary election was held on July 9, 1996. The Audit staff identified 19 contributions totaling \$29,804, deposited between June 20, 1996 and July 6, 1996, requiring 48-hour notices. The Committee failed to file the required notices for all of these contributions. In response to the Interim Audit Report, the Committee argued that it assumed the notices were unnecessary since the candidate was unopposed in the primary election.

Moreover, the general election was held on November 5, 1996. The Audit staff identified 60 contributions totaling \$74,000 deposited between October 17, 1996 and November 2, 1996 requiring 48-hour notices. Of those 60 contributions, the Committee failed to file the required notices for 18 contributions totaling \$20,000. In response to the Interim Audit Report, the Committee conceded that it had failed to file 48-hour notices for 18 contributions received during the general election.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Bob Barr - Congress and Charles C. Black, as treasurer, violated 2 U.S.C. § 434(a)(6) by failing to file 48-hour notices on 19 contributions received for the primary election, and on 18 contributions received for the general election.

III. JOINT CONCILIATION AGREEMENT

The activity at issue in this matter is similar to the activity for which the Commission found reason to believe that Representative Barr's 1994 Committee violated 2 U.S.C. §§ 441a(f), 434(b)(3)(A), 434(B)(2) and (4) and 11 C.F.R. § 110.4(c)(2). MUR 4357; *see supra* footnote 5. Thus, if the Commission approves the recommendations in this matter, this Office plans to attempt to reach a joint conciliation agreement with respect to this matter and MUR 4357,

in which the Office of General Counsel is recommending that the Commission find probable cause to believe that the 1994 Barr Committee violated the Act.⁶

IV. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Bob Barr - Congress and Charles C. Black, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions;
3. Find reason to believe that Bob Barr - Congress and Charles C. Black, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to itemize contributions.
4. Find reason to believe that Bob Barr - Congress and Charles C. Black, as treasurer, violated 2 U.S.C. § 434(a)(6) by failing to file 48-hour notices on 19 contributions for the primary election and 18 contributions for the general election.
5. Authorize the Office of General Counsel to enter into conciliation prior to a finding of probable cause to believe with Bob Barr - Congress and Charles C. Black, as treasurer
6. Approve the attached Factual and Legal Analysis;
7. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

8/21/98
Date

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachments

1. Audit Referral Materials
2. Factual and Legal Analysis

⁶ In MUR 4357, the Office of General Counsel has drafted a probable cause to believe brief that will be sent to the 1994 Barr Committee shortly.