



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mike Braun for Indiana and)	MUR 8107
Thomas Datwyler in his official capacity)	
as treasurer)	
)	

**STATEMENT OF
VICE CHAIR ELLEN L. WEINTRAUB**

The conciliation agreement in this matter concludes a long saga that began with an audit of the 2017-2018 election cycle activity of Mike Braun for Indiana, Braun's 2018 Senate campaign committee (A19-02).¹ I supported the conciliation agreement, which I believe vindicates the Commission's interest in enforcing the provisions of law addressed therein. There was another issue, however, that was never addressed because it was excluded from the audit.

At the conclusion of an audit, findings approved by the Commission may be referred to the Office of General Counsel for enforcement action. Proposed findings that do not receive the requisite four votes do not get included in any subsequent referral.

During the audit of the Braun committee, the Commission's auditors identified hundreds of thousands of dollars in potentially excessive contributions. A portion of those potential excessives were attributable to contributions received after the primary election to pay off the committee's debt. The precise amount of that debt (and therefore the precise amount of excessive contributions) hinged in part on the Commission's application of the candidate loan repayment provision of the Federal Election Campaign Act of 1971, as amended.²

The Commission considered this audit while the candidate loan repayment provision's constitutionality was being challenged in court.³ For that reason, the audit division recommended that the Commission postpone consideration of that finding until the Supreme Court handed

¹ Mike Braun for Indiana (2018), FEC AUDIT REPORTS, <https://www.fec.gov/legal-resources/enforcement/audit-reports/authorized-committee-audit-reports/mike-braun-for-indiana-2018/>.

² 52 U.S.C. § 30116(j).

³ The Supreme Court ultimately held the provision to be unconstitutional. *FEC v. Ted Cruz for Senate*, 596 U.S. 289 (2022).

down its ruling. That seemed like a reasonable approach to me. Some of my colleagues, however, wanted to vote to reject any proposed finding on excessive contributions, based on their prediction that the Supreme Court would strike down the candidate loan repayment provision. While I think it would have been preferable (and would have caused no prejudice) to wait until the Supreme Court actually ruled, my colleagues did accurately predict the result.

The problem is that they threw the proverbial baby out with the bathwater. A portion of the proposed finding on excessive contributions would have been affected by the outcome of the Cruz litigation, but the vast majority of the finding would not. At the meeting when the Audit Division Recommendation Memorandum was considered, I pointed out (and audit staff confirmed) that hundreds of thousands of dollars in excessive contributions had nothing to do with the challenged provision.⁴ Nevertheless, a motion to approve the audit division's recommendations, including the recommendation to postpone consideration of the finding on excessive contributions, failed to garner the requisite four votes.⁵ And a motion to approve only the portion of the excessive contribution finding that would be totally unaffected by the outcome of the Cruz litigation similarly failed.⁶

Three months later, the Commission considered the Proposed Final Audit Report. At that time, I introduced a document (attached hereto) prepared by the audit staff that detailed the \$732,429 in excessive contributions that remained after the elimination of any potentially excessive contributions attributable to the now-struck-down candidate loan repayment provision.⁷ Once again, I attempted to include a finding on those excessive contributions.⁸ Not only did that motion fail, but a subsequent motion to include in the Final Audit Report a mere reference to the failed motion also failed.⁹

\$732,429 is a lot of excessive contributions to ignore. There has never been any adequate explanation for the failure to include the finding on \$732,429 in excessive contributions. The fact that our auditors identified almost three-quarters of a million dollars in excessive contributions

⁴ March 10, 2022 Open Meeting at 26:28-27:10, <https://www.fec.gov/updates/march-10-2022-open-meeting/>.

⁵ Certification ¶ 1, A19-02 (Mar. 10, 2022) (Commissioners Broussard, Walther, and Weintraub voting in favor; Commissioners Cooksey, Dickerson, and Trainor opposed). This was the only controversial proposed finding, and the other five findings were unanimously approved. Certification ¶ 3, A19-02 (Mar. 10, 2022) (Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voting in favor).

⁶ Certification ¶ 5, A19-02 (Mar. 10, 2022) (Commissioners Broussard, Walther, and Weintraub voting in favor; Commissioners Cooksey, Dickerson, and Trainor opposed).

⁷ Meeting Document 22-23-A, <https://www.fec.gov/resources/cms-content/documents/mtgdoc-22-23-A.pdf>.

⁸ Certification ¶ 1, A19-02 (June 8, 2022) (Commissioners Broussard, Walther, and Weintraub voting in favor; Commissioners Cooksey, Dickerson, and Trainor opposed).

⁹ Certification ¶ 2, A19-02 (June 8, 2022) (Commissioners Broussard, Walther, and Weintraub voting in favor; Commissioners Cooksey, Dickerson, and Trainor opposed).

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Statement of Vice Chair Ellen L. Weintraub
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and the Commission's failure to address them are part of the history of the audit and the subsequent enforcement action. That part of the story should not be erased.

March 27, 2024

Date



Ellen L. Weintraub
Ellen L. Weintraub
Vice Chair

RECEIVED

By Office of the Commission Secretary at 4:54 pm, Jun 02, 2022



COMMISSIONER ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AGENDA ITEM**For the meeting of****June 8, 2022****AGENDA DOCUMENT NO. 22-23-A****SUBMITTED LATE****MEMORANDUM**

TO: Commission

FROM: Commissioner Ellen L. Weintraub *ELW*

SUBJECT: Audit Division document regarding Excessive Contributions remaining
After the *Cruz* decision in Mike Braun for Indiana audit (A19-02)

DATE: June 2, 2022

Attached for the Commission's consideration at its June 8 open meeting is a document prepared by the Audit Division that explains its analysis of excessive contributions accepted by Mike Braun for Indiana and the effect on that analysis of the Supreme Court's decision in *FEC v. Cruz*. As shown in the document, even after the Supreme Court's decision is fully taken into account, \$732,429 in excessive contributions remain.

The original document was prepared by Audit and distributed to the Commission after the Commission's March 10, 2022 vote on the ADRM in this matter. It was prepared in anticipation of the *Cruz* decision, but before the decision was handed down. (This version also includes a subsequent clarifying edit from the Audit Division.) The Commission did not have the benefit of this detailed analysis at the time it voted on the ADRM.

At the meeting, I plan to make a motion to include a finding on these \$732,429 in excessive contributions in the Commission's Report of this audit.

Attachment

**Mike Braun for Indiana (MBFI)
Excessive Contributions from Individuals**

Remaining Excessive Contributions (if Candidate Repayment Limits are Eliminated)

Excessive Contributions - Testing Method	
Sample Projection Amount ¹	\$351,529
High Dollar Review Contribution Error Amount	\$380,900
Total Amount of Excessive Contributions	\$732,429
Reason for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$551,029
Contributions not resolved via signed reattribution letter or refund	\$87,500
Contributions refunded untimely or untimely presumptive letter/signed reattribution letter	\$93,900 ²
Total Amount of Excessive Contributions	\$732,429

Reasons for Excessive Contributions (if Candidate Repayment Limits are Eliminated)

If the Supreme Court decision eliminates the \$250,000 limit on candidate loan repayments, MBFI will then have primary and general election debt, in the form of outstanding candidate loans. This debt, in turn, will make some contributions received after the primary and general elections, no longer excessive. A review of MBFI's contributions, taking this likely Supreme Court decision into consideration, would result in excessive contributions totaling \$732,429, reduced from the \$898,166 that previously remained, after MBFI's Draft Final Audit Report response (see chart on pg 2).

The Audit staff reviewed the documents provided by MBFI (solicitation forms, contributor forms, check copies, credit card documentation) and determined contributions were excessive for the following reasons:

¹ The sample error amount (\$351,529) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$283,428 or as high as \$634,957.

² If the Supreme Court decides the \$250,000 limit is unconstitutional in the Cruz matter, then MBFI provided untimely presumptive letters and refunds totaling \$44,400 and signed reattribution letters totaling \$49,500.

- Joint Account checks with only one signature that are reattributed to another contributor; MBFI did not have the presumptive notification
- Joint Account checks presumptively redesignated to another election; MBFI did not have the presumptive notification
- Single Account checks presumptively redesignated to another election; MBFI did not have the presumptive notification
- Single Account checks presumptively reattributed to another contributor; MBFI did not have the signed letter to reattribute the contribution
- Credit card contributions presumptively redesignated to another election; MBFI did not have the presumptive notification
- Contributors reached the limit for the elections, so refunds were required
- MBFI untimely resolved the excessive portions of contributions

Remaining Excessive Contribution - After MBFI Response to the Draft Final Audit Report

Excessive Contributions - Testing Method	
Sample Projection Amount ³	\$494,066
High Dollar Review Contribution Error Amount	\$404,100
Total Amount of Excessive Contributions	\$898,166
Reason for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$268,310
Contributions not resolved via signed reattribution letter or refund	\$566,556
Contributions refunded untimely or untimely presumptive letter /signed reattribution letter	\$63,300 ⁴
Total Amount of Excessive Contributions	\$898,166

³ The sample error amount (\$494,066) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$364,179 or as high as \$858,246.

⁴ MBFI provided untimely presumptive letters and refunds totaling \$49,800 and signed reattribution letters totaling \$13,500.