

The legislative debates of BCRA suggest that BCRA would entail significant changes in convention financing. During the Senate's consideration of BCRA, Senator Mitch McConnell said the bill "will end national party conventions as we have known them." 148 CR S2122 (daily ed. Mar. 20, 2002). Senator McConnell went on to state that "[t]he soft money ban covers the committees that are created to host these grand events" and to say that post-BCRA conventions would have to be put on with "80 percent less funding." *Id.* Senator McConnell's conclusion that passage of BCRA would mean: "All the soft money that you used to put on the convention the last time is now gone." *Id.* Senator Fred Thompson earlier that day described "the nature of the problem" addressed by BCRA and noted in regard to what he called the "big outfits" that donate non-Federal funds "the same entities pick up our expenses for the convention." 148 CR S2110 (daily ed. Mar. 20, 2002). During Senate consideration of an earlier version of BCRA, Senator Robert Bennett stated: "One very practical example that we can expect is the scaling down, if not the elimination, of party conventions because party conventions now are financed entirely with soft money which, under this bill, would become illegal. So we may see party conventions disappear altogether, or we may see them become very truncated affairs, which the media may decide is not worth covering." 147 CR S3092 (daily ed. Mar. 29, 2001). Senator McConnell raised the issue during this earlier consideration as well. He stated: "Host committees for national conventions are abolished. Last year it took each party \$80 million to put on their national conventions. They got \$15 million from the Treasury. All the rest of it was this odious soft money which is going to be abolished. In order to continue to put on the national conventions in hard dollars, the two committees will have to come up with about \$60 million each in hard dollars to put on the national conventions." 147 CR S3234 (Apr. 2, 2001). The Commission seeks comment on how these debates or any other legislative history on this issue should be interpreted.

What effect does BCRA's non-Federal funds ban have on the rules relating to convention financing? Can the Commission simply retain the pre-BCRA rules? Is there legal justification for retaining the pre-BCRA rules? Does BCRA have any impact on the convention committee expenditure limit? Would limiting host committees

and municipal funds to Federal funds have as significant an impact on convention financing as eliminating the expenditure limit exemption for host committees and municipal funds? If so, is such a result required by BCRA?

B. Are Host Committees and Municipal Funds Entities "Established, Financed, Maintained, or Controlled" by National Party Committees Under 2 U.S.C. 441i(a) and 11 CFR 300.2(c)?

Another issue that arises under BCRA is whether host committees and municipal funds are "directly or indirectly established, financed, maintained, or controlled" by a national party committee. If host committees and municipal funds are considered entities directly or indirectly established, financed, maintained, or controlled by the national party committees, then they, like the national party committees themselves, are prohibited from soliciting, receiving, directing, or spending non-Federal funds. 2 U.S.C. 441i(a)(2); 11 CFR 300.10(c)(2). In the Non-Federal Funds Final Rules, the Commission provided a non-exhaustive list of factors that may be considered in determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a national party committee. 11 CFR 300.2(c). *See* Non-Federal Funds Final Rules, 67 FR at 49084 ("The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA.") The Commission seeks comment on whether host committees and municipal funds satisfy the factors listed in 11 CFR 300.2(c) and should, therefore, be considered *per se* entities that are directly or indirectly established, financed, maintained, or controlled by the national party committees. Or should this question be resolved on a case-by-case basis by applying section 300.2(c)?

The Commission notes that the regulatory text relating to host committees and municipal funds proposed in this NPRM does not presume that host committees or municipal funds satisfy any of the criteria listed in 11 CFR 300.2(c) for

determining whether entities are directly or indirectly established, financed, maintained, or controlled by national party committees. This approach, if adopted, would not preclude a Commission finding that a particular host committee or municipal fund does, in fact, satisfy one or more of the specified factors in 11 CFR 300.2(c) with respect to a particular national party committee. If the Commission were to conclude that host committees or municipal funds are, as a matter of law, "directly or indirectly established, financed, maintained, or controlled" by national political parties, many of the same questions raised in the context of the discussion of "agency," above, would need to be addressed. Accordingly, the Commission seeks comments on the same issues raised above in connection with the agency discussion.

C. Impact of BCRA on Convention Committees

In contrast to host committees and municipal funds, convention committees are, as a matter of law, entities directly established, financed, maintained, or controlled by national party committees. The Commission's regulations *require* national party committees to "establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention." 11 CFR 9008.3(a)(2). In addition, under 11 CFR 9008.3(a)(2), convention committees are required to receive the national party's entitlement to public funds and are responsible for making "[a]ll expenditures on behalf of the national committee for convention expenses;" as such, they clearly are "agents" of the national party committees as well as "entities directly or indirectly established, financed, maintained, or controlled" by the national party committees, as those terms are defined in 11 CFR 300.2(b) and (c). Therefore, for purposes of this NPRM, the Commission proposes that BCRA's ban in 2 U.S.C. 441i(a)(1) on national parties soliciting, receiving, directing, and using non-Federal funds shall apply to convention committees by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.10(c). *See also* 11 CFR 300.2(b) and (c).

The Commission seeks comment on whether this prohibition extends to bar convention committees from accepting many of the in-kind donations typically provided by host committees and municipal funds. Commission regulations permit certain local businesses and organizations to donate