

Nominating Conventions, 44 FR 63036, 63037–38 (Nov. 1, 1979).

The Commission has repeatedly endorsed the use of these funds for convention-related activities. Recent testimony on behalf of the 2004 host committees amply supports the Commission's long-held view that "businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes." *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions*, 59 FR 33606, 33615 (June 29, 1994).

Application of BCRA's Non-Federal Funds Provisions to Convention Committees, Host Committees and Municipal Funds

Title I of BCRA includes several provisions potentially applicable to Presidential nominating convention financing. Under BCRA, "[a] national committee of a political party * * * may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of (FECA)." 2 U.S.C. 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and entities that are "directly or indirectly established, financed, maintained, or controlled" by national party committees from soliciting, receiving, directing, or spending such non-Federal funds. 2 U.S.C. 441i(a)(2).

BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising any funds for, or making or directing any donations to, certain tax exempt organizations. 2 U.S.C. 441i(d). This prohibition extends only to organizations that are described in section 501(c) of the Internal Revenue Code of 1986 and that are exempt from taxation under section 501(a) of such Code (or that have submitted an application for determination of tax exempt status under such section) ("501(c) organizations") and that make "expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)." *Id.*

BCRA also prohibits Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or

controlled by or acting on behalf of one or more Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office that do not comply with the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). With respect to fundraising for non-profit organizations, BCRA provides two exceptions. Under the exception relevant here, BCRA permits Federal candidates and officeholders to make "general solicitations" of funds on behalf of organizations described in section 501(c) of the Internal Revenue Code, other than entities whose principal purpose is to conduct certain types of Federal election activity (including voter registration, voter identification, and get-out-the-vote activity), where the solicitations do not specify how the funds will or should be spent. 2 U.S.C. 441i(e)(4)(A).⁶ Convention committees, host committees, and municipal funds are unlikely to engage in these types of Federal election activity.

11 CFR 9008.55(a)—Convention Committees Are Subject to 2 U.S.C. 441i(a)(1)

Convention committees are, as a matter of law, entities directly established, financed, maintained, or controlled by national party committees. The Commission's regulations at 11 CFR 9008.3(a)(2) 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." 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." Typically, convention committees list the national party committees as an affiliated committee on their Statements of Organization.

Convention committees are also "agents" of the national party committees. Under the Commission's definition of "agent," a principal cannot be held liable for the actions of an agent

⁶ BCRA also permits Federal candidates and officeholders to make "specific solicitations" on behalf of organizations described in Section 501(c) of the Internal Revenue Code, where the entities' principal purpose is to conduct certain Federal election activities or where the solicitation is "explicitly to obtain funds" for certain Federal election activities. 2 U.S.C. 441i(e)(4)(B). Such "specific solicitations" may only be made to individuals in amounts not exceeding \$20,000 per calendar year. *Id.*

unless (1) the agent has actual authority, (2) the agent is acting on behalf of the principal, and (3), with respect to national party committees, the agent is soliciting, directing, or receiving any contribution, donation or transfer of funds on behalf of the national party committee. 11 CFR 300.2(b). Given that a convention committee is authorized by law to receive the national party committee's convention funds, this aspect of their relationship is sufficient to make the convention committee an agent of the relevant national party committee under 11 CFR 300.2(b).

The NPRM proposed that BCRA's ban in 2 U.S.C. 441i(a)(1) on national parties soliciting, receiving, directing, and spending funds that do not comply with the source prohibitions and amount limitations should apply to convention committees by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.10(c). One of the national party committees commenting on this proposal agreed that convention committees are required by law to be established by national party committees, which triggers 2 U.S.C. 441i(a)(2). No other commenter addressed this issue.

The Commission concludes that as a matter of law convention committees are subject to 2 U.S.C. 441i(a)(1) and 11 CFR 300.10(a) by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.2(b), (c) and 11 CFR 300.10(c). Accordingly, under new 11 CFR 9008.55(a), all convention committees established pursuant to 11 CFR 9008.2(a)(2) are subject to the national party committee prohibitions in 11 CFR 300.10(a).

11 CFR 9008.55(a)—Donations From Host Committees and Municipal Funds to Convention Committees

The Commission sought comment on whether BCRA bars convention committees from accepting many of the in-kind donations typically provided by host committees and municipal funds. The current rules on permitted expenditures of host committees and convention committees overlap, which reflects the fact that some host committee disbursements are for goods or services related to the conduct of a convention, and not merely the promotion of their cities. *See, e.g.*, revised 11 CFR 9008.52(b)(5), discussed above. There was no consensus among the commenters on this issue.

Several commenters argued that there is no language in BCRA that compels or even anticipates changes to the long-standing regulations regarding convention financing. Some commenters also emphasized the non-political nature of host committee activities and that nothing in BCRA