

under 2 U.S.C. 441b because they are not made “in connection with” an election. However, BCRA reaches beyond expenditures and requires only “disbursements in connection with an election” to make a 501(c) organization subject to the prohibition in 2 U.S.C. 441i(d)(1). In light of these definitions and the previous treatment of host committees and municipal funds, the Commission sought comment on whether, as a matter of law, host committees and municipal funds make “disbursements” “in connection with an election for Federal office,” even as they adhere to the requirements in current 11 CFR 9008.52.

Two commenters stated that because host committees have not been considered political committees, host committees cannot be considered to make “disbursements in connection with an election.” However, the Commission notes that FECA defines “political committee,” in part, as any committee that receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. 431(4). The definitions of “contribution,” 2 U.S.C. 431(8)(A)(i), and “expenditure,” 2 U.S.C. 431(9)(A)(i), both include the requirement that the transaction be “for the purpose of influencing any election for Federal office.” Thus, the determination that host committees are not political committees does not resolve the question of whether they make “disbursements in connection with a Federal election.”

One commenter also asserted that, in litigation challenging BCRA, the Commission explained that 2 U.S.C. 441i(d) reflected Congressional recognition that some tax-exempt organizations engage in campaign activities to benefit Federal candidates. The commenter suggested that because this purpose is not relevant to host committees, the Commission should not consider solicitations for host committees subject to 2 U.S.C. 441i(d). The Commission disagrees. The passage of the government’s brief quoted by this commenter did not purport to be an exhaustive list of activities prohibited by 2 U.S.C. 441i(d). Indeed, later in the same brief, the wider effect of the provision was made clear: “Moreover, donations solicited or directed by national party committees to benefit tax-exempt organizations that conduct political activities create the same potential problems of corruption that other unregulated fund-raising by the national party engenders. * * *” Brief of Defendants, at 118, *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003);

prob. juris. noted, 123 S.Ct. 2268 (U.S. 2003).

The Commission has determined that host committee and municipal fund disbursements related to convention activities are not “disbursements in connection with an election” sufficient to trigger the prohibition in 2 U.S.C. 441i(d) with respect to those host committee and municipal funds that are 501(c) organizations. Therefore, the Commission is not promulgating a new rule at 11 CFR 9008.55(d) in order to apply 11 CFR part 300 to the solicitation of funds for those host committees or municipal funds that have 26 U.S.C. 501(c) status. Further, host committees and municipal funds therefore will not be required to make any certification pursuant to 11 CFR 300.11(d) or 300.50(d).

The Commission concluded that consistent with the longstanding rationale for not treating host committee and municipal fund activity “in connection with” an election for purposes of 2 U.S.C. 441b, it should similarly apply the “in connection with” language at 2 U.S.C. 441i(d). As noted earlier, the overriding purpose of permissible host committee and municipal fund activity is commercial or civic in nature.

Even though the restrictions of 441i(d) may not apply, national party agents will still be bound by the broad proscription at 2 U.S.C. 441i(a). This will mean that such agents may not solicit any funds not subject to the limits, prohibitions, and reporting requirements of the statute. In effect, such agents will be able to solicit funds that would be subject to the contribution limit for “any other political committee” (*i.e.*, \$5,000 per year pursuant to 2 U.S.C. 441a(a)(1)(C), (2)(C)), but no donations from prohibited sources could be solicited, and the funds would have to be reported by the recipient host committee or municipal fund.

11 CFR 9008.55(e)—Candidate Solicitations for Host Committee and Municipal Funds

BCRA also prohibits Federal candidates and individuals holding Federal office⁷ from soliciting,

receiving, directing, transferring, or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these prohibitions to agents acting on their behalf of either Federal candidates or individuals holding Federal office, as well as to entities directly or indirectly established, financed, maintained, or controlled by such candidates or officeholders. 2 U.S.C. 441i(e)(1).

BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4), only one of which is relevant to Presidential nominating conventions. BCRA allows Federal candidates, individuals holding Federal office, and individuals who are agents acting on behalf of either to make “general solicitations,” without source or amount restrictions, for a 501(c) organization, other than organizations whose “principal purpose” is to conduct certain Federal election activity, so long as the solicitation does not specify how the funds will or should be spent. 2 U.S.C. 441i(e)(4)(A). The “Federal election activity” referenced in this exception is voter registration within 120 days of a Federal election and voter identification, GOTV activities, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot. 2 U.S.C. 441i(e)(4)(A) (*citing* 2 U.S.C. 431(20)(A)(i) and (ii)).

The principal purpose of a host committee or municipal fund is to promote and generate commerce in the host city; its principal purpose is not to conduct the specified types of Federal election activity that would trigger the exception to the rule permitting general solicitations for 501(c) organizations. Therefore, under 2 U.S.C. 441i(e)(4)(A), Federal candidates and officeholders may make general solicitations of funds on behalf of any host committee or municipal fund that is a 501(c) organization where such solicitations do not specify how the funds will or should be spent and where the Federal candidates and officeholders do not establish, finance, maintain, or control these organizations.⁸

The final rule at 11 CFR 9008.55(e) is modified from the proposed rule to state that Federal candidates and officeholders and their agents may make

definition of “Federal officeholder” in 11 CFR 113.2(c).

⁸In AO 2003–12, the Commission determined that the exceptions in 2 U.S.C. 441i(e)(4) do not apply to a section 501(c) organization established, financed, maintained, or controlled by a Federal candidate or officeholder, or agent of either.

⁷An “individual holding Federal office” is defined as “an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.” 11 CFR 300.2(o). It does not include those “who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election.” Non-Federal Funds Final Rules, 67 FR at 49,087. This definition is identical to the