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*NOT ADMITTED IN D.C.

May 23, 2003

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Comments on NPRM 2003-8: Public Financing of Presidential Candidates and Nominating Conventions

Dear Ms. Dinh:

I am writing on behalf of Common Cause and Democracy 21 to provide comments on Notice of Proposed Rulemaking 2003-8, Public Financing of Presidential Candidates and Nominating Conventions, published at 68 Fed. Reg. 18484 *et seq.*

Our comments will address those portions of the NPRM that propose new rules for major party nominating conventions.[1] Both Common Cause and Democracy 21 have

[1] The only additional matter we wish to comment on is the proposal offered by Commissioner Toner regarding presidential candidate leadership PACs. *See* 68 Fed. Reg. 18498-99. In the context of the Commission's separate rulemaking on leadership PACs, *see* 67 Fed. Reg. 78753 *et seq.* (Dec. 26, 2002), we advocated for a global solution to the abuse of leadership PACs. In our comments filed there, we called for stronger affiliation rules and the requirement that "the officeholder's leadership PAC and his or her authorized committee should be under a single, common contribution limit." Notice 2002-28, Comments of Common Cause and Democracy 21 at 4 (Jan. 30, 2003). Adoption of this more comprehensive approach by strengthening the affiliation rules

long advocated reform of the campaign finance system, and both groups were strong supporters of congressional enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA). Both groups have also long supported the public financing provisions of the federal election laws for presidential campaigns.

The Commission's implementation of the laws governing the public financing of the party nominating conventions has been so deficient as to fundamentally vitiate the vitality of those laws. A law enacted by Congress for the principal purpose of diminishing the role of large aggregations of special interest wealth in the funding of the nominating conventions has instead been interpreted by the Commission to allow the unfettered flow of corporate and union money to convention financing. Under the Commission's administration of the law, the public financing provided to the parties has become no more than an adjunct to the unlimited flow of special interest money raised by the parties to pay for their conventions.

In short, the funding of party nominating conventions has become its own soft money system, which developed alongside the principal soft money loophole that the Commission allowed generally to open in the federal election laws.

That general soft money loophole has now been closed by the enactment of BCRA.[2] And so has the convention soft money loophole. The principles and prohibitions of BCRA apply as much to the national parties, and federal officeholders and candidates, in the specific context of convention funding as they do in the broader context of other federal election activities.

The new provisions of BCRA, and its ban on soft money, should be given full force in writing new rules to govern the funding of conventions. For that reason, Common Cause and Democracy 21 joined with the Center for Responsive Politics to file a Petition for Rulemaking last December calling for a revision of the Commission rules

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would perforce resolve as well the specific problem of leadership PACs paying for "qualified campaign expenses" in the presidential primary campaign.

[2] We are aware that certain provisions of BCRA have been declared unconstitutional by the federal district court in Washington, DC. *McConnell v. FEC*, Civ. No. 02-582 (CKK, KLH, RJL)(Order of May 2, 2003)(three judge court). That decision has been stayed, *id.* (Order of May 19, 2003), so BCRA remains fully in effect, and the lower court decision in any event is being appealed to the U.S. Supreme Court, which will make the final determination on the constitutional validity of the soft money provisions well prior to the 2004 conventions. As it has in its other rulemakings under BCRA, the Commission should continue to assume, for purposes of this rulemaking, the constitutionality of BCRA until there is a Supreme Court ruling to the contrary.

on convention funding in order to implement the soft money provisions of BCRA. We urge the Commission to use this rulemaking as the opportunity to conform its convention financing rules to the soft money ban in Title I of BCRA.

1. The problem of convention funding

As a news story last year noted, "The Democratic and Republican presidential nominating conventions are unabashed festivals of corporate cash." J. Keen, "In capital, business and politics firmly entwined," *USA Today* (July 31, 2002).

The conventions have become vehicles for the infusion of massive amounts of soft money into both political parties, and to their candidates and officeholders.

In part, this stems from the fact that House and Senate ethics rules have allowed Members of Congress to be feted during the nominating conventions at lavish parties sponsored by special interest donors, a problem that should be addressed through revision of the congressional ethics rules. *E.g.* S. Verhovek, "Corporate Receptions Provide Lawmakers with Loophole in Ethics Rule, *The New York Times* (Aug. 16, 1996); J. Hendren, "Big Tobacco crashes Dems' party by funding fetes," *The Seattle Times* (Aug. 16, 2000).

In part, this stems from the fact that the national party committees have used their nominating conventions as opportunities both to solicit soft money and to reward soft money donors, *e.g.*, G. Miller and E. Shogren, "Fat Cat Donors Are Cashing in This Week With A-List Party Invitations and Privileges Galore," *Los Angeles Times* (Aug. 16, 2000), a problem that has now been addressed in BCRA by banning all soft money fundraising by national party committees. 2 U.S.C. 441i(a)(1).

And in part, this stems from the fact that the Commission has created a massive loophole in the laws governing the public financing of the nominating conventions, and has condoned the use of "host committees" as a vehicle through which the national party committees raise or receive unlimited amounts of soft money in order to finance their nominating conventions. It is this last problem that should be addressed here.

In providing for the public financing of the national party conventions, Congress was responding specifically to the documented abuses revealed by the Watergate investigation in the private financing of the conventions. The abuses centered around a 1971 settlement by the Nixon Administration of an antitrust lawsuit against the ITT Corporation that allowed ITT to avoid the divestiture of a subsidiary that had been sought by the government. Around the time of the settlement, ITT agreed to contribute $400,000 to the Republican National Committee to help finance its 1972 nominating convention in San Diego. A memo from an ITT lobbyist that subsequently became public indicated a link between the donation to the RNC from ITT and the settlement of the antitrust case favorable to ITT.

The resulting public outcry led to the enactment in 1974 of those provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, that establish a system of public financing of the party nominating conventions. 26 U.S.C. 9008. The point of those provisions was to provide public funds to the parties for their conventions, in order to obviate the need for them to raise private funds, and thus to eliminate the corrupting influence on federal officials that flows from raising corporate and union donations and large individual contributions in the process of financing the presidential nominating conventions. If the parties agree to accept the public financing, they are required by law to forego raising and spending any additional private funds.[3]

During the 1974 Senate debate on the conference report on this provision, Senator Hugh Scott (R-PA) said of the convention funding law, "I think it is a wise provision. It eliminates the necessity of these convention programs and $25,000 contributions from corporations and so forth." Cong.Rec. S18526 (Oct. 8, 1974)(daily ed.). Senator Howard Canon (D-NV), a principal sponsor of the bill, agreed, specifically noting that the public financing provision "came out of the abuses in the past, where many charges have been made with respect to the raising of funds and the holding of conventions." *Id.*

However, a series of decisions by the Commission have fundamentally undermined the 1974 reform and have, for all practical purposes, permitted the very contributions to come back into the system that were meant to be prohibited.

Under the Commission's policies, convention city "host committees" accept huge donations from corporations, labor unions and wealthy individuals, and use these funds to supplement the federal funds provided to political parties for convention expenses. The raising and spending of non-federal funds by host committees has become an integral part of the financing of the conventions, with party officials working in close conjunction with the host committee to plan and pay for the convention. There are no contribution limits or source prohibitions that apply to donations made to convention host committees.

The Commission has also permitted corporations to make unlimited in-kind donations of goods and services to the national conventions in exchange for "promotional consideration." *E.g.* A.O. 1988-25 (permitting General Motors to provide free use of cars to the party conventions); *see* 11 C.F.R. 9008.9(b). This has opened the door to corporate sponsorships of the party conventions, and the flow of millions of dollars of value in goods and services that corporate donors provide for free to the parties.

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[3] "[T]he national committee of a major party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under subsection (b)." 26 U.S.C. 9008(d)(1).

The amounts of soft money that now flow through these convention funding loopholes have become huge, as have the problems that inevitably attend the raising and spending of such funds by the parties. Congress enacted Title I of BCRA to end the soft money system. The Commission should implement the provisions of Title I by ending the flow of soft money into convention financing as well.

The private money now raised by the parties for their conventions dwarfs the public financing they receive. In addition to the $13 million which each party received in 2000, the Democrats raised an additional $48 million in private funds through their host committee, and the Republicans an additional $50 million. J. Hendren, "Big corporations pay big chunk of the bill for party conventions," *Seattle Times* (Aug. 14, 2000).

In 2000, the Philadelphia host committee for the Republican Convention had 12 "platinum benefactors" – or donors of $1 million or more—including AT&T, General Motors, Microsoft and Motorola. There were an additional 8 "gold benefactors" who gave $500,000 or more, 15 "silver benefactors" at the level of $250,000 or more (including both Enron and Global Crossing), and 27 'bronze benefactors" of $100,000 or more.

The Los Angeles host committee for the 2000 Democratic convention had ten "primary partners" who gave $1 million or more – again including AT&T, General Motors and Microsoft -- three at the $500,000 level, ten at the $250,000 level and 25 "trustees" who gave $100,000 or more.

In return for these donations, the donors "get access to political decision makers, from whom they hope to extract favors: tax breaks, subsidies, a sweetheart program to sell more of their products, or a special regulatory break. It's a moment when the seaminess of the nation's campaign finance system is put on public display." *USA Today,* "Favor-seeking donors score with convention 'hosts'" (July 25, 2000). Ironically, this article notes that Microsoft, which contributed $2 million to the party conventions in 2000, had been "hit by two costly antitrust cases in recent years for its unfair business tactics, [and] would dearly love to get Washington to call off the dogs," *id.*, precisely the same kind of consideration that ITT sought by its donation of convention funding in 1972 – a donation that ignited the scandal that led to the enactment of the convention public financing law.

Commenting on this irony, the *St. Louis Post-Dispatch* noted in an editorial:

> The business of conventions today is money. How soon we have forgotten that one of the first events in the Watergate scandal was the $400,000 campaign contribution that [ITT] pledged to the 1972 Republican Convention around the time that the government dropped an antitrust case against the company.

> That's chump change today. Republicans and Democrats are using their conventions to collect millions in soft money that is not restricted by contribution limits. For example, Microsoft Corp., which has its own antitrust problems, has given bipartisanly, donating $1 million for each party's convention and another $2.2 million in soft money to each party.
>
> Those who forget the lessons that Watergate taught about campaign money are condemned to repeat them. And that's exactly what we're mindlessly doing during our idea-free national conventions.
>
> "Dollars Trump Ideas," *St. Louis Post-Dispatch* (Aug. 15, 2000).

More broadly, as another article on the 2000 convention financing noted:

> Perhaps all the corporate sponsors have something to gain.
>
> General Motors, which gave $1 million to each convention, hopes to block Congress from passing higher fuel-efficiency standards on sport-utility vehicles. AT&T, also giving $1 million to each convention, seeks to avoid antitrust worries in its pending merger with MediaOne. It is also aggressively lobbying over cable Internet access.
>
> Some givers face rival donations from industry competitors. Lockheed Martin, for example, is giving $100,000 to each convention and is competing with Boeing in a winner-take-all bid for a missile-defense system.
>
> J. Hendren, *Seattle Times, supra.*

The soft money abuses of the past are, not surprisingly, being reprised in the preparations for the upcoming 2004 nominating conventions. "Despite the restrictions of the new campaign finance law, funding for the major party conventions is expected to operate largely as it has in the past, with millions of dollars coming in from corporations and other private sources. The money will be funneled to 'host committees' set up in each convention city." K. Doyle, "Conventions: New York City Picked by Republicans as Site for National Convention in 2004," *BNA Election Law Report* (Jan. 7, 2003).

The city of Boston, for instance, the site of the 2004 Democratic convention, has already obtained more than $20 million in pledges from 60 corporate donors to help defray the costs of the Democratic convention. S. Ebbert, "Many Convention Donors Have Interests Before City," *Boston Globe*

(December 11, 2002). The host committee in New York, where the Republican convention is to be held, is expected to do the same.

2. The impact of BCRA on the convention funding rules

The overriding intent of BCRA was to end the soft money practices of the national political parties, and to prevent federal candidates and officeholders from raising and spending soft money. These goals apply equally in the case of convention funding as they do in other areas of party activity. In applying the provisions of BCRA to the convention funding rules, the Commission has the responsibility to end the flow of soft money into the financing of the party conventions.

A. The national party committees, and their officers and agents, cannot solicit non-federal funds for host committees or any other entity associated with the party conventions. Section 441i(a)(1) provides:

> 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 this Act.

This prohibition applies as well to "any officer or agent acting on behalf of such a national committee." 2 U.S.C. 441i(a)(2).

The ban on soft money fundraising by the national party, its officers and agents is comprehensive – it applies to *all* fundraising for *all* purposes. Clearly, fundraising for party conventions is within the scope of this ban. Thus, the national party committees cannot raise soft money for their party conventions or for a host committee. *And any officer or agent of a national party committee cannot raise soft money for a party convention or host committee.* This prohibition means that officers and agents of national parties cannot be involved in the solicitation of non-federal funds for host committees.

B. Federal officeholders and candidates, and their agents, cannot solicit non-federal funds for host committees or any other entity associated with party conventions. Section 441i(e)(1)(A) provides:

> A candidate, individual holding Federal office, [or] agent of a candidate or individual holding Federal office...shall not solicit, receive, direct, transfer or spend funds in connection with an election for Federal office...unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

This provision prohibits Federal officeholders and candidates from soliciting soft money "in connection with an election for Federal office." Self evidently, money raised for presidential nominating conventions is "in connection with" a federal election. The nominating conventions are the signature quadrennial events of American politics. To argue that such events are not "connected" to an election is foreclosed by law itself: the FECA defines the term "election" to include "a *convention* or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(1)(B)(emphasis added).[4]

As described in the NPRM, the Commission has historically treated host committee funding as outside the contribution limits and source prohibitions because it lacked "an election-influencing purpose." 68 Fed. Reg. 18504. Thus, the Commission's rationale for allowing unlimited soft money donations to convention host committees in the past has been that such contributions are "presumably not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city." 68 Fed. Reg. 18501 *quoting Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971*, H.R. Doc. No. 95-44, 136 (1977).

In light of what host committee fundraising has become since the Commission made this quaint observation 25 years ago – corporations of national scope giving hundreds of thousands, or millions, of dollars, at times to both parties, and in return receiving favored access to party officials and Federal officeholders – the Commission should recognize that its earlier underlying premise – that donations to host committees are commercially or civically, but not politically, motivated – no longer has any public credibility or validity. The Commission's creation of the "host committee" construct, a concept not found in the statute, is therefore premised on a set of assumptions that is demonstrably wrong.[5]

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[4] As the NPRM correctly notes, "host committees...arguably make disbursements in connection with the national nominating convention, which is an election under FECA." 68 Fed. Reg. 18505-06.

[5] The NPRM on this topic engages in bootstrap reasoning. It poses the question of whether the Commission's determination that host committee expenses are not "contributions or "expenditures" because they are not "for the purpose of influencing" an election thus also requires that the Commission determine that host committee expenses are not "in connection with" an election for purposes of section 441i(e)(1)(A). 68 Fed. Reg. 18504.

The Commission's starting premise is wrong, and it should not compound the problem by reaching an erroneous conclusion on section 441i(e)(1)(A) simply because it had already reached an erroneous conclusion on the role of host committees.

It is also argued that Federal candidates and officeholders can raise non-federal money for host committees under the special provisions governing solicitations for section 501(c) organizations. 2 U.S.C. 441i(e)(4). Yet solicitations under this provision are limited to $20,000, and only from individuals, for any non-profit whose "principal purpose" is to conduct activities in connection with an election, 11 C.F.R. 300.65(a), a description which encompasses host committees, whose activities are principally in connection with the nominating convention.

C. National party committees may not accept in-kind contributions from host committees in the form of goods and services provided to subsidize the party's convention expenses. A host committee is a corporation that is prohibited by law from making an in-kind contribution to a national party committee. 2 U.S.C. 441i(a); 441b(a).[6] When host committees provide goods and services to a party committee to pay for convention expenses of the party, it is making an in-kind contribution to the party.[7]

That the host committees are providing goods and services to the party committees relating to the conventions is illustrated by the Commission's regulations. Section 9008.7(a) defines the "permissible uses" of the public funds received by the parties through their convention committees "with respect to and for the purpose of conducting" their conventions. Those uses include, *inter alia,* expenses for preparing, maintaining and dismantling the site of the convention, 11 C.F.R. 9008.7(a)(4)(i), and expenses incurred in providing a transportation system for convention delegates and others, *id.* at (4)(vii). The fact that these two expenses are *also* listed as permissible expenses for convention host committees, *see* 11 C.F.R. 9008.52(c)(v)(site and hall preparation); 9008.52(c)(vi) (transportation services), amply demonstrates the overlap between the activities of the party committees spending public funds and the host committees spending soft money.[8]

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[6] Even if not organized as a corporation, the host committee would then be subject to a contribution limit on any gift to the national party. 2 U.S.C. 441i(a); 441a(a)(1)(B).

[7] Technically, the contribution may be made to the "convention committee" of the national party, 11 C.F.R. 9008.3(a), but the Commission correctly acknowledges in the NPRM that the convention committee is "established, financed, maintained or controlled" by the national party committee and thus stands in the shoes of the national party for the purpose of the donations it receives. 68 Fed. Reg. 18504.

[8] The NPRM acknowledges that although "the intent of the existing rules" is for the convention committee "to pay expenses incurred in connection with nominating its party's candidates," and the host committee to "pay expenses incurred to make the

This point is strongly reinforced in the Commission's proposed regulations. In its Alternative B to section 9008.7(a)(4) of the proposed convention funding regulations, the Commission lists not two, but *six* categories of expenses that could be paid for *either* by the convention committee or by the host committee.[9]

The fact that such substantial overlap exists in the permissible spending of the two committees demonstrates the extent to which host committees subsidize convention committees by paying for expenses relating directly to the nominating conventions themselves, and thus, the degree to which host committee disbursements are "with respect to and for the purpose of conducting" the convention, 11 C.F.R. 9008.7(a), and therefore, "in connection with" an election. This overlap in permissible spending by both convention committees and host committees shows that both entities are, to a substantial degree, engaged in the business of paying for the convention – funding that cannot be done with soft money.

We do not dispute that there are certain purely municipal functions which a host city performs to accommodate a party convention, such as providing enhanced police protection. 11 C.F.R. 9008.52(c)(vii). To the extent the city establishes a host committee (or a municipal fund) to raise funds to defray the city's cost for such municipal expenses, we do not view that as a subsidy of the party convention, and therefore as an impermissible in-kind contribution to the party (provided, however, as discussed above, that the funds raised by the host committee are not solicited by the national party or its agents).

But the reach of this activity should be no greater than the provision of *essential and distinctively municipal services* to accommodate a convention, such as police or fire protection. The costs incurred for the convention itself – such as for the entertainment and housing of delegates, 11 C.F.R. 9008.52(c)(ii),(iii),(ix), or for the building and outfitting of the convention hall, *id.* at (v) – are costs of the convention and are properly borne by the party. To the extent that these costs are shifted to the host committee, the committee is providing a subsidy to the

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convention city attractive to potential visitors," it is true that "some expenditures fit into both categories, which has caused confusion." 68 Fed. Reg. 18508.

[9] These are expenses for the purpose of evaluating the suitability of the host city, expenses relating to the use of an auditorium or convention center, expenses to defray the cost of local transportation, expenses to defray the costs of law enforcement, expenses to defray the costs of using convention bureau personnel to provide central housing and expenses to provide hotel rooms to attendees. *See* 11 C.F.R. 9008.17(b)(1)-(6)(proposed).

convention in the form of an impermissible in-kind corporate contribution to the party. The BCRA prohibits this and the Commission should implement this prohibition.

Alternatively, the NPRM raises two other approaches for reforming the treatment of host committees in light of BCRA – that they are "agents" of the national party committee or "entities directly or indirectly established, financed, maintained or controlled" by the national party committees. 68 Fed. Reg. 18502-03.

Under section 441i(a), either formulation compels the same result – that, like the national party committee itself, the host committee would not be able to raise or spend non-federal funds.

We agree with either the "agent" approach or the "entity established" approach, although host committees are most accurately described as the latter. Even if a particular host committee is not in fact "established" by the national party for the purposes of a particular convention, the negotiation, cooperation and coordination between the party and the host committee that inevitably follows does essentially make the two entities merge into one operation. In all meaningful respects, the party controls or coordinates with the host committee so closely as to make the host committee an affiliated entity of the national party committee within the meaning of BCRA. We think it is proper for the Commission to treat it as such.

D. The Commission should close the "promotional consideration" and "*de minimis* value" loopholes that have allowed massive corporate gifts to the parties. For similar reasons, we urge the Commission to close the loopholes it opened up in its convention rules by allowing corporate donors to provide free goods and services to host committees in exchange for "promotional consideration," or to receive donations of goods of supposedly *de minimis* value. The NPRM proposes to continue both of these practices. *See* 11 C.F.R. 9008.52(a)(3)(promotional consideration), and (4)(*de minimis* value).

These loopholes should no longer be tolerated under BCRA, which in unequivocal terms prohibits the national parties and entities they establish from "receiving" anything of value that is not subject to the contribution limits and source prohibitions of the Act, including the ban on corporate donations. 2 U.S.C. 441i(a)(1).

The practices that have grown through these loopholes have now resulted in corporate gifts to the parties in the millions of dollars. The reality of these gifts has become unhinged from the regulatory underpinnings as items of "*de minims*" value, or simply "promotional" corporate activity. Instead, these loopholes have

become a major means for corporations to provide gifts of extraordinary, seven-figure value to the national parties, and to be rewarded for such gifts – not by "promotional" corporate advertising – but by favored political access to elected officials and party leaders. In short, the benefits that flow by virtue of these regulatory loopholes result in precisely the kinds of corrupting relationships, and in the precise appearance of corruption, that FECA and now BCRA are intended to prevent.

E. The Commission should not open a new "CLAF" loophole. The NPRM proposes to allow convention committees to establish a new legal and accounting fund to pay compliance expenses relating to convention activities. 68 Fed. Reg. 18512.

This fund would undermine the convention public financing rules just as the analogous GELAC fund, 11 C.F.R. 9003.3, undermines the general election public financing rules. In both cases, the receipt of public money is conditioned upon agreement to abide by a spending limit in the amount of the public funds. In both cases, the compliance fund operates as an evasion of the spending limit, and permits the infusion of private money into a system where Congress intended the party spending to be fully financed by public funds.

The Commission proposes to compound this problem by allowing a donor to make a contribution to the CLAF up to the national party contribution limit, *in addition to* the same donor's separate contribution to the national party. Effectively, by administrative fiat, the Commission thus proposes to *double* the national party contribution limit in 2 U.S.C. 441a(a)(1)(B). This, in effect, is to authorize the national committees to raise soft money. The Commission has no power to do this, and accordingly, this regulation would be plainly contrary to the law.

F. The Commission should make its rules applicable to the 2004 conventions. The NPRM raises the question of whether the Commission should defer the effective date of its new regulations until the 2008 conventions. Clearly, it should not do so, and in any event, it lacks the authority to do so. The BCRA took effect on November 6, 2002, and the Commission cannot simply waive, or defer, the application of the new law.

Undoubtedly, the political parties will claim it is too late for the Commission to now materially change its rules for convention funding, given the fact that the parties have already entered arrangements with host cities for the 2004 conventions. This timing dilemma is a problem of the Commission's own making, because the Commission could have – and should have – addressed the application of the BCRA to convention funding in the context of the Title I rulemaking in the summer of 2002, which was completed well *before* the parties finalized their plans for the 2004 conventions. Instead, the

Commission chose to defer its consideration of the convention financing rules for almost a full year. *See* 67 Fed. Reg. 49088 (July 29, 2002)(Final Title I rules)("The NPRM noted that the Commission would address in a subsequent rulemaking whether BCRA bans national party committees, and their officers and agents, from directing non-federal funds to a host committee for a national party convention in light of the statutory language that they are not permitted to direct non-Federal funds to other persons.").

But this discretionary deferral of the rulemaking provides no justification now for delaying the implementation of the rules to 2008. The timing constraint now faced by the Commission reprises the situation the Commission found itself in before the *last* convention season. In March, 1999 – six weeks *earlier* than the comparable point in the current presidential cycle – a BNA report recounted host committee abuses found by the Commission in the improper payment of 1996 convention expenses. The report notes, "Despite these past problems, both major parties recently asked the FEC not to change any of its rules regarding convention costs for 2000. In comments regarding the FEC's pending rulemaking for public financing of the 2000 presidential campaign, the parties said any rules changes might upset the arrangements they have already made with their host cities for next year's activities." K. Doyle, "Los Angeles Site of 2000 Convention, Democrats Announce After Long Talks," *BNA Election Law Daily* (March 17, 1999).

The Commission's rulemaking activities over the past year have been intense and demanding. But, knowing that the 2004 conventions would require new rules under BCRA, the Commission should not have postponed this rulemaking to provide them. Having done so, however, it should not now compound the problem by sacrificing the effective date of the law, thereby frustrating the congressional purpose in enacting BCRA by delaying *for another five years* its application to the party conventions. Congress, not the Commission, establishes the effective date of the law.

We appreciate the opportunity to submit these comments.

Respectfully,

/s/ Donald J. Simon

Donald J. Simon