

National Republican Senatorial Committee

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General Counsel

May 23, 2003

Ms. Mai Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E. Street NW
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VIA ELECTRONIC MAIL

Re: Public Financing of Presidential Candidates and Nominating Conventions

Dear Ms. Dinh:

By and through the undersigned counsel, Senator George F. Allen (R-Va.) submits comments on just two of the many provisions the Commission is considering in its latest rulemaking. Senator Allen serves both as Senator to the Commonwealth of Virginia and as Chairman of the National Republican Senatorial Committee. He plans to attend and participate in his party's 2004 Convention in both capacities. (The National Republican Senatorial Committee ("NRSC") is an unincorporated association formed in 1916 dedicated to electing qualified Republicans to the nation's foremost deliberative body.)

Senator Allen respects the efforts of the Commission in this area and appreciates the opportunity to comment.

Federal Candidates and Officeholders May Solicit Funds for Host Committees under BCRA.

At the outset, it is important to remember that donations to host committees are "not politically-motivated but are undertaken chiefly to promote economic activity and good will of the host city." *Explanation and Justification for 1977 Amendments to Federal Election Campaign Act of 1971*, H.R. Doc. No. 95-44, 136 (1977). In the same vein, solicitations for host committees should not be viewed in any context as

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solicitations "in connection with" federal and non-federal elections, despite the past actions of the Commission in this area.

The Senator's focus, however, is upon federal officeholders soliciting funds for host committees. It is true that BCRA prohibits federal candidates and officeholders from soliciting or directing non-Federal funds in connection with federal and non-federal elections. 2 U.S.C. § 441i(e). But "notwithstanding" the general ban, federal officeholders are specifically permitted to solicit unlimited funds for "any organization" described in section 501(c) of the Internal Revenue Code whose principal purpose is not federal election activity. 2 U.S.C. § 441i(e)(4)(A). Host committees are generally organized as nonprofit tax-exempt organizations under 501(c) of the Internal Revenue Code, and they do not engage in "federal election activity." See 2 U.S.C. 431(20); 11 CFR 100.24.

Congress could not have intended that officeholder solicitations benefiting host committees are permitted, because they are for 501(c) organizations, but at the same time prohibited, because they are "in connection with" federal or non-federal elections. Because the exception in section 441i(e)(4)(A) applies notwithstanding the general solicitation ban, the *in pari materia* doctrine of statutory construction makes plain that BCRA does not prohibit federal candidates and officeholders from soliciting non-Federal funds for host committees.

BCRA Does Not Prohibit Candidates and Officeholders from Attending Private Events in the Convention City.

The Commission seeks comment on whether BCRA subjects to regulation private hospitality events held by corporations, labor unions, and other organizations in the convention city. The Commission also asks whether it makes a difference whether federal candidates, officeholders or party officials are invited to appear, speak, or be recognized at such events. 68 *Fed. Reg.* at 18507. The short answer is that BCRA (as well as FECA) does not apply so long as the private events are neither contributions nor campaign-related fundraisers.

The Commission has never held that a candidate's mere attendance at a private event is a contribution from the event host to the candidate. And members of the United States Senate attend outside functions subject to Senate Ethics rules. If a private event held within the host city were a fundraiser, the Act, Commission regulations and recent advisory opinions would apply. Where no fundraising takes place, however, the Act does not place any meaningful restrictions on officeholder speech, recognition or appearance.

Conclusion

While Senator Allen appreciates the opportunity to comment on this rulemaking, and believes a public hearing on these issues is warranted, he has no interest in submitting additional testimony.

Respectfully submitted,

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