



May 23, 2003

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

Dear Ms. Dinh:

Public Citizen and U.S. Public Interest Research Group are pleased to submit the attached comments on the Notice of Proposed Rulemaking on public financing of the presidential nominating conventions, published at 68 Fed. Reg. 18484 (April 15, 2003).

Respectfully Submitted,

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Federal Election Commission
Notice of Proposed Rulemaking
Notice 2003-08
Financing of Nominating Conventions

Comments of Public Citizen and U.S. PIRG

I. Introduction

The Federal Election Commission (FEC) has requested public comments in its Notice of Proposed Rulemaking, Notice 2003-08, addressing a wide array of regulatory issues regarding the presidential public financing program, affecting 11 CFR Parts 104, 107, 9003, 9004, 9008, 9032-9036, and 9038. Public Citizen and U.S. Public Interest Research Group (U.S. PIRG) respectfully submit comments focusing on one aspect of the regulatory proposal – the public financing program of presidential nominating conventions – the key issue that originated this NPRM.

Public Citizen is a 125,000 member non-partisan, non-profit research and advocacy organization dedicated to fair and open democratic government and an early proponent of the Bipartisan Campaign Reform Act of 2002. U.S. PIRG is a national membership organization committed to political reforms to help make government accountable to the citizenry as a whole. Though not always in agreement, both organizations view the present way in which the presidential nominating conventions are financed as wholly inconsistent with the original purposes of the Federal Election Campaign Act (FECA) of 1971, as subsequently amended, and in violation of the letter of the law of the Bipartisan Campaign Reform Act (BCRA) of 2002.

Public Citizen and U.S. PIRG seek the repeal or revision of a series of FEC regulations – including 11 CFR 114.1(a)(2)(viii), 11 CFR 9008.52(c), 11 CFR 9008.8.(b)(1)-(2), and 11 CFR 9008.53 – that have permitted at first a trickle, and later a flood, of special interest “soft money” into financing the presidential nominating conventions. Today, the presidential conventions, which are supposed to be publicly-financed events with reasonable limits on expenditures, have been turned into mostly privately-financed soirees with no limits on spending. Briefly, we offer the following comments:

- (1) *The flow of special interest money into financing the presidential nominating conventions runs counter to the explicit objectives of FECA.* In the wake of scandalous financing leading up to the presidential conventions in 1972, Congress approved and amended the Federal Election Campaign Act specifically to remove wealthy individuals and corporate and union funding of the conventions, replace the potentially corrupting special interest dollars with public funds, and set reasonable limits on expenditures for the nominating conventions. The current system of soft money financing of party conventions has undermined each of these objectives.

- (2) *The flow of special interest money into financing the presidential nominating conventions violates the Bipartisan Campaign Reform Act of 2002.* BCRA was ratified by Congress, and signed by the President, to salvage many of the original objectives of FECA – specifically in this context, the ban on soft money in national party functions, including the presidential nominating conventions.
- (3) *The amount of public funding, and level of spending ceilings, provided under FECA for the financing of the presidential nominating conventions is adequate.* The parties had little trouble conducting meaningful nominating conventions under the public funding allocation in earlier years, and that allocation has been indexed for inflation. The excessive influx of soft money into today’s conventions has not served to enhance the effectiveness of these events in carrying out their mission, but merely to facilitate a level of extravagance that is alien and offensive to much of the general public. Large supplemental checks may be addicting to party officials, but they are not necessary. The extravagance is certainly not worth the actual or apparent corruption that accompanies it.

II. Analysis

Given the existing state of affairs of campaign financing, it can be easy to lose sight of the original objectives of the nation’s campaign finance laws and the scandals that created these laws. Both the Democratic and Republican parties have come to expect soft money financing of the presidential nominating conventions. Party officials see it as their role to tap into vast resources of private money from wealthy individuals, corporations and labor unions in a partisan competition over which convention can be the most extravagant. The public funding and spending ceilings established by law are viewed as largely irrelevant to convention financing – just another legal obstacle that needs to be sidestepped.

The numbers show just how irrelevant the law has become. FECA established a public financing program for the presidential nominating conventions in which the parties, in exchange for accepting reasonable spending ceilings on their conventions, would receive a bloc grant from the federal government to pay for nearly all expenses of the conventions. Originally, the spending ceiling and bloc grant was set at \$2 million, adjusted for inflation. (FECA was soon amended to increase the spending ceiling and bloc grant to \$4 million, adjusted for inflation.) In 1976, both parties paid for their conventions almost exclusively from public funds, about \$2 million each. In 1980 and 1984, the parties still relied mostly on public funds to pay for their conventions, at slightly more than \$4 million in 1980 and somewhat more than \$7 million in 1984. Soft money had only begun to creep into the picture due to a series of controversial FEC advisory opinions that opened the door to what was intended only as supplemental financing.¹

Suddenly, in 1988, the use of privately-financed “host committees” by the parties overwhelmed the public financing program. The Democratic party especially made use of its host committee, exceeding the bloc grant and spending ceiling by nearly double. The Republican party soon followed suit.

¹ See, for example, AO 1982-27. Also see the dissenting opinion in AO 1982-27A.

Today, public funds make up only a modest share of the total (inflated) cost of the conventions. In 2000, for example, each party was awarded about \$13.5 million to pay for its nominating convention. In reality, private sources chipped in an additional \$52 million for the Democratic convention in Los Angeles, and \$60 million for the Republican convention in Philadelphia. Similar abuses are already being recorded for the upcoming 2004 nominating conventions.²

This is not consistent with the purposes of FECA.

A. Origins of Public Financing of Party Conventions: the ITT Scandal

In May 1971, the giant International Telephone and Telegraph Corporation (ITT) pledged through a San Diego subsidiary up to \$400,000 to attract the 1972 Republican National Convention to San Diego. The company was facing several anti-trust lawsuits under the Nixon Administration. Just eight days after the selection of San Diego for the Republican convention, Deputy Attorney General Richard Kleindienst agreed to an out-of-court settlement with ITT that the company considered very favorable. Democratic National Committee Chair Lawrence O'Brien wrote to Attorney General John Mitchell demanding to know if the out-of-court settlement with ITT was linked to the company's pledge to the Republican convention.

Later testimony in hearings revealed that ITT executives and Nixon Administration officials had met repeatedly in secret in 1970 and 1971 on the anti-trust suits, and while negotiations were in process, ITT made the offer to underwrite the party's convention. Internal memos within the Administration urged the Justice Department to go easy on ITT. A reluctant Justice Department official was promptly fired by Nixon, and a settlement emerged a short time later.³

Despite all the secrecy, the scandal broke publicly with a column by Jack Anderson on February 29, 1972. In an abrupt shift to save face, the Republican party abandoned its plans for San Diego and made a last-minute and costly move of its convention to Miami Beach.

Perhaps the only redeeming feature of this scandal, and others like it, was that the financing of presidential nominating conventions became part and parcel of campaign finance reform. The Federal Election Campaign Act, which arose from the depths of the Watergate (and ITT) corruption scandals, included public financing and spending ceilings of party conventions as a means to eliminate the corrupting influences of special interest money in party politics. One of the key objectives of FECA was to remove the taint of private interests and private money from the presidential nominating conventions by paying for these events with public funds.

B. Pre-BCRA Restrictions on Convention Funding

FECA specifically prohibits corporations, labor unions and banks from making contributions to federal candidates, officeholders and national parties "or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices ..." 2 U.S.C. § 441(b). Section 9008 of the Internal Revenue Code establishes the public financing and spending ceiling program for the nominating conventions.

² Editorial, "Convention Cash Cows," *Hartford Courant* (Mar. 17, 2003), p. A6.

³ Herbert Alexander, *Financing the 1972 Election* (1972), p. 264.

But the tough, new campaign finance law of the early 1970s to end the corruption and appearance of corruption that go with unregulated private financing of the nominating conventions would eventually unravel. The Federal Election Commission promulgated a series of advisory opinions and regulations that, over the years, compounded to work against the objectives of FECA. Most of these regulations no doubt were originally developed to ease financial and accounting burdens on the political parties and to pave the way for smooth operation of the nominating conventions. In the end, however, they have reversed the ethical gains sought by FECA and have largely returned the financing of presidential conventions back to the Watergate-era system.

The FEC determined that the national parties must form a separate presidential convention committee, subject to the contribution and spending restrictions and reporting requirements of FECA. However, the Commission has redefined several types of expenditures as falling outside the category of convention-related expenditures, and thus exempt from the spending ceiling for party convention committees.⁴

Much more significantly, the FEC has determined that wealthy individuals, corporations, unions, and even banks may make unlimited contributions, for certain purposes, to "host committees" unaffiliated with the national party convention committee. A host committee is "any local organization which is not organized for profit whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees."⁵

Host committees may accept money from individuals, businesses, unions and banks that have some tie to the local community. There is no limit on the amount of money that may be contributed to a host committee. A tie to the local community by a business or union may be established simply by the physical presence of a local affiliate or by the ability to demonstrate that the convention will have some financial effect on the business or union. In effect, the "local tie" condition has provided few constraints on which businesses may contribute to host committees and which businesses win contracts associated with the convention. In the 2000 Republican convention in Philadelphia, major corporate contributors to the host committee included Global Crossing, Enron and Tyco. Altogether, some 473 business and governmental entities contributed to the Republican convention. Additionally, the three largest companies that received contracts from the host committee were based in Louisiana, California and Virginia.⁶ The numbers were not much different for the Democratic convention in Los Angeles.

Another source of private funding for the presidential conventions, which was originally envisioned as a government source of funds, is the "municipal fund." As early as 1982, an FEC advisory opinion opened the door for municipal funds to supplement the financing of presidential conventions.⁷ The opinion permitted the creation of the Dallas Convention Fund, which could raise

⁴ See, for example, 11 CFR 9008.9(d).

⁵ 11 CFR 9008.52(a).

⁶ Jane Von Bergen, "Philadelphia Committees Report on GOP Convention Tells a \$66 Million Story," *The Philadelphia Inquirer* (Oct. 22, 2000).

⁷ Advisory Opinion 1982-27.

funds from wealthy individuals, corporations, unions and banks, in addition to public funds, and spend that money for certain convention-related activities. The major condition on municipal funds is that they are supposed to be long-term entities whose principal purpose is to promote any and all conventions in the city, not just presidential conventions.⁸

More often, however, municipal funds seem to rise and disappear with the presidential conventions. The Dallas Convention Fund in 1982 is a prime example. Dallas' municipal fund was in fact chaired by Washington political insider and real estate developer Trammell Crow, with corporate offices at 30th and K Streets.⁹ Following the convention funding scheme, the Dallas Convention Fund no longer exists.

In a dissenting opinion against the FEC action to allow for the creation of the Dallas Convention Fund, Commissioner Thomas Harris wrote: "By permitting corporations and unions to donate unlimited amounts of money to fund political conventions, the Commission is ignoring one of the clear concerns of 2 U.S.C. 441(b) and its predecessor statutes – that is, the fear of the influence of aggregated wealth on the political process. The fact that the donations are to be funneled through a 'Convention Fund' does not alleviate the problem. The proposed Republican National Convention apparently will be the first to be financed by the Dallas Convention Fund ... The Commission has forgotten that when it approved the regulations permitting business and municipal involvement in the financing of political conventions, it was creating a narrow exception to the broad prohibition of 2 U.S.C. 441(b)."¹⁰

C. BCRA: An Effort to Salvage FECA's Restrictions on Convention Funding

When it became obvious that FECA's objectives were being fatally undermined by the unregulated flow of soft money into federal elections including, but not limited to, the financing of presidential nominating conventions, Congress once again acted to stem the influence of soft money and preserve the relevance of FECA. Section 441(i), which BCRA added to the federal campaign finance law, is a sweeping ban on the national parties soliciting or spending soft money. It reads, in part, that 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. The Bipartisan Campaign Reform Act also directed the Federal Election Commission to promulgate a more comprehensive definition of "affiliation" among committees and candidates, specifically for the purpose of closing down the loophole of committees working in tandem but claiming no affiliation with each other.

Congress understood quite clearly that BCRA's ban on raising or spending soft money by the national parties and federal candidates in connection with federal elections meant that soft money would be prohibited in relation to presidential nominating conventions as well. This conclusion comes as no surprise to those involved in the debate. Even this NPRM recognizes Congress' awareness that BCRA would prohibit current soft money fundraising and spending practices on

⁸ 11 CFR 9008.53(b)(1)(i)-(ii).

⁹ Elisabeth Bumiller, "The Sunbelt Sultan," *The Washington Post* (Aug. 22, 1984), p. B1.

¹⁰ Commissioner Thomas Harris, Advisory Opinion 1982-27A.

behalf of presidential conventions. Senator Mitch McConnell is quoted as saying during the floor debate: "All the soft money that you used to put on the convention the last time is now gone."¹¹

In practice, as well as written in the FEC regulations, is the recognition that host committees and municipal funds: (1) raise money in amounts and from sources that are explicitly prohibited for national party committees and federal officeholders; (2) spend that soft money on activities specifically in connection with a "political convention held to select candidates"; and (3) work hand-in-hand as an affiliated entity with the national parties and the parties' candidates and officeholders.

11 CFR 9008.52(c) is not ambiguous as to the extent of coordination and affiliation between host committees and the party convention committees. Under this FEC regulation, host committees not only work in tandem with the convention committees, but also may make assurances to the party that certain costs will be defrayed by the host committee as a means to make the city more attractive as a convention site. That is indeed what host committees and municipal funds do: they pledge to the party committees that they will provide a certain amount of soft money to cover the party's convention expenses – exactly as did ITT in 1971 to attract the Republican convention to San Diego (and buy favors from the Nixon Administration). And the pledges to party officials for covering 2004 convention expenses with soft money are already mounting:

- The Hartford Courant (Mar. 17, 2003) reports: "Already, 64 major donors have stepped up to the plate in Boston, pledging a total of \$21 million to help put on the four-day Democratic bash in 2004."
- The Boston Globe (Dec. 5, 2002) reiterates: "Boston 2004, the host committee charged with bankrolling the Democrats' bash, already boasts 60 major donors who have pledged a total of \$20 million toward the four-day event...."
- Crain's New York Business (Feb. 24, 2003) noted: "Operators of 50 properties agreed to pledge 22,000 rooms – nearly one-third of the city's room supply – at discounted rates for convention attendees" through New York's municipal fund to attract the Republican convention committee.

The pledges not only demonstrate the level of coordination and affiliation among the parties and host committee and municipal funds, but in almost any campaign finance law, including FECA, a pledge of money is treated the same as a contribution.

D. The Changing Character of Conventions: Less Happens, Fewer People Care, but More Is Spent

Throughout most of American political history, the presidential nominating convention served as a decisionmaking entity, playing a key if not decisive role in selecting the party's presidential nominee. Presidential conventions were important events, often pitting feuding factions against each other for days at a time. The 1924 Democratic convention in New York lasted 17 days and required 103 ballots to select John Davis as its nominee. The last Democratic convention to go beyond one ballot occurred in 1952, when Adlai Stevenson won on a contentious third ballot.

¹¹ 148 Cong. Rec. S2122 (Mar. 20, 2002).

Republicans had a close vote in 1976 at their publicly-funded convention in Kansas City when President Ford narrowly prevailed over Ronald Reagan.

All that has changed in recent decades. Every presidential nominee has been nominated on the convention's first ballot since 1956. More recently, with the front-loading of the state primary and caucus schedules, a "presumptive presidential nominee" usually emerges by the end of March in the primary season; even earlier if there are few viable challengers.

The presidential nominating conventions of today bear little decisionmaking relevance. That is not to say, however, that presidential conventions have no significance in politics. Nominating conventions serve as the final and official declaration of a party's nominee. They also give a party an opportunity to voice its issue platform, and provide voters with some political education.

But the societal value of presidential conventions has clearly waned over the last few decades, and voters' interest in the conventions has fallen dramatically. While the parties have spent more and more on their conventions by tapping into the reservoir of soft money, fewer and fewer Americans have bothered to pay attention. In just the years between 1992 and 2000, there has been a significant decline in voter interest in the conventions. In 1992, 53% of those surveyed indicated an interest in the presidential convention, falling to 44% in 1996, and down to 34% in 2000.¹² Accordingly, the television audience has also become small. An Annenberg survey of viewers of the 2000 Republican convention found that only about 21% of people nationwide watched two hours or more of the proceedings.¹³

Leaving statutory requirements aside, the decreasing significance of presidential nominating conventions – both in terms of function and relevance to voters – weighs heavily against justifying the exorbitant convention budgets afforded by soft money. More importantly, the public funding allotments and spending ceilings prescribed in FECA are the product of reasoned congressional deliberations. Congress had no intention of starving presidential conventions in which virtually all of its members participate when it approved FECA; it set the bloc grants and spending ceilings at levels it determined were practical, and provided an upward adjustment of these grants and ceilings for each presidential election cycle according to inflation.

The presidential nominating conventions of the 1970s and early 1980s were grand events generating significant interest among the public; the soft money conventions of today are lavish soirees that appear to be contributing to the public's cynicism with politics. Soft money financing of presidential conventions is not only unnecessary, it is also counter-productive to representative government.

III. Conclusion

Public Citizen and U.S. PIRG encourage the Commission to implement the explicit intent and letter of the Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act, by

¹² Pew Research Center for the People and the Press, "Voters Unmoved by Media Characterizations of Bush and Gore" (July 27, 2000).

¹³ Annenberg Public Policy Center, "Despite Small Audience, Republican Convention Informed the Public" (Aug. 13, 2000).

repealing or revising the regulations that have allowed the resurgence of special interest funds to overwhelm the financing of the presidential nominating conventions. The simple fact that soft money is now the primary source of funds used to pay for the party conventions speaks volumes about the poverty of the FEC's regulatory regime governing convention financing. BCRA's prohibition on soft money in connection with federal election activities by the national parties and federal candidates and officeholders, as well as the evidence of coordination and affiliation between the national parties and host committees and municipal funds, require the Commission once again to close down this potential avenue for actual or apparent corruption of the political process.

FECA, as amended by BCRA, affirms that the financing of presidential nominating conventions is to come from public sources. The federal bloc grant is to pay for the party's convention expenses; city and state governments are expected to provide supplemental funding to help cover the costs of security and infrastructure. Local governments may even want to invest additional public funds to enhance the conduct of convention events. But the massive influx of soft money contributed to host committees and municipal funds, and pledged to the national parties, is antithetical to the nation's campaign finance law.

For these reasons, the Commission should:

- Repeal or revise 11 CFR 114.1(a)(2)(viii) to prohibit non-federal sources from making contributions or otherwise defraying the expenses of presidential nominating conventions.
- Repeal or revise 11 CFR 9008.52(c) to prohibit the national parties from receiving in-kind contributions for their nominating conventions from non-federal sources.
- Repeal or revise 11 CFR 9008.8(b)(1)-(2) to disallow the special exemption from the spending ceiling for expenditures made by committees coordinated with the parties and funded by soft money.
- Repeal or revise 11 CFR 9008.53 to end the practice of wealthy individuals and corporate and union financing of special municipal funds used to pay for presidential nominating conventions.