FEDERAL ELECTION COMMISSION
PUBLIC HEARING
PUBLIC FINANCING OF PRESIDENTIAL CANDIDATES AND
NOMINATING CONVENTIONS

Washington, D.C.
Friday, June 6, 2003

The meeting convened, at 999 E Street,
N.W., pursuant to notice, at 9:08 a.m.

COMMISSION MEMBERS PRESENT:

ELLEN L. WEINTRAUB, Chair
BRADLEY A. SMITH, Vice Chairman
DAVID M. MASON, Commissioner
DANNY LEE McDONALD, Commissioner
SCOTT E. THOMAS, Commissioner
MICHAEL E. TONER, Commissioner
LAWRENCE H. NORTON, General Counsel
ROSEMARY SMITH, Acting Associate General Counsel
JAMES A. PEHRKON, Staff Director
JOSEPH F. STOLTZ, Assistant Staff Director
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PROCEEDINGS

CHAIR WEINTRAUB: A special session
of the Federal Election Commission for Friday, June
6, 2003 will please come to order.
I'd like to welcome everybody to the
Commission's hearing on the Notice of Proposed
Rulemaking relating to public financing of
Presidential candidates and nominating conventions.
I'd like to offer a special welcome to a visiting
journalist from the west coast, Mr. Harvey who came
all the way across the country to see this hearing,
and coincidentally his daughter works for me.
The proposed rules we are discussing
today were included in the Notice of Proposed
Rulemaking published on April 15, 2003 in the
Federal Register. The Commission is considering
proposals to revise several portions of
the Commission's regulations governing the public
financing of Presidential candidates in both
primary and general election campaigns and
Presidential nominating conventions. Additionally,
the proposed rules and accompanying explanation
would apply to the Bipartisan Campaign Reform Act of 2002 and the Commission's related implementing regulations to Presidential nominating conventions.

I think it's no secret the $64,000 question for us to consider today is whether soft money can be used in any way, shape, or form by the municipal committees, the host committees in any way close to the conventions. We're going to look at lot of questions in the course of this rulemaking. That to me is the most important question and the question that I think we have an obligation to answer and to answer expeditiously. I'm particularly looking forward to all the witnesses' comments on that question.

We appreciate the willingness of the commentors to assist us in this effort by giving us their views on these proposals, and we want to thank particularly the witnesses who have taken the time today to give us the benefits of their experience and expertise in this area.

I'd like to briefly describe the format
for the testimony today. Each witness will have
time to make a five-minute presentation. We do
have a light system at the witness table that will
give you a yellow light at the end of four and half
minutes and a red light at the end of five minutes,
and we would ask you at that point to please
conclude your opening statements. Then we will
have time for at least one round of questions from
the Commission, the General Counsel, and Staff
Director.

Three panels of four witnesses each will
testify today, the first panel from 9:15 to 11; the
second panel from 11:15 to 12:45; and the third
panel will testify from 2 to 3:30 this afternoon.
Consequently, we have a full day and we will
appreciate the cooperation of all witnesses in
helping us to stay on schedule. This will ensure
that everyone has a fair chance to state his or her
views.

Our first panel this morning will
consist of Robert Bauer of Perkins Coie, Donald
McGhan of National Republican Congressional
Committee, Paul Sanford of FEC Watch, and Steve Weissman of the Campaign Finance Institute. And before we invite the witnesses up to make opening statements, I'd like to ask if any of the commissioners have, other commissioners have opening statements that they'd like to make.

Commissioner Toner.

COMMISSIONER TONER: Thank you, Madam Chair.

I want to thank everyone who provided comments in this rulemaking, particularly in light of the extraordinary time pressures everyone is facing with the McConnell v. FEC Supreme Court litigation. I think all the comments were very informative and were helpful to guide the Commission in issuing final rules.

As the chair noted, the Commission's main task in this rulemaking is to decide what impact, if any, the new campaign finance law has in convention financing in the Presidential financing system, and the Commission is also considering several potential important rulemaking proposals.
that are not required by the new law. I'd like to
comment briefly on a couple of these issues and
also some of the testimony that we received on them
that I look forward to expanding upon in the
hearing today.

First, the question of whether after
BRCA convention city host committees can continue
to raise and spend soft money as they have in the
past to help underwrite important aspects of
hosting a successful national convention. A
related issue is whether Federal office holders and
national party officials under BCRA can legally
help host committees to raise soft money. I
continue to believe there's no evidence thus far
that Congress when it passed BCRA intended in any
way to change how national conventions are financed
or how host committees operate.

Several commentators point out in their
comments that there's not a single reference in
BCRA to the financing of national conventions or to
host committees. In addition, numerous
commentators not that there was virtually no
floor debate on these important questions when BCRA was enacted. I think it defies common sense to conclude that Congress intended to transform the way national conventions are operated when no significant discussion of it took place on the House or Senate floor.

Moreover, prominent members of Congress who voted for BCRA have made clear that they do believe the new law in any way restricts their legal ability to raise soft money for host committees. Most prominently, Senator Kennedy has been involved in highly publicized efforts to raise $20 million in corporate donations for the Boston host committee. Furthermore, the Boston Globe has reported that Senator Kerry has likewise assisted in raising host committee funds for Boston.

I think it's inconceivable that Federal officer holders such as Senator Kennedy and Kerry would raise soft money for the Boston host committee if they believed it was illegal to do so. Based on everything in the record thus far, I strongly agree with them.
Second, several of the commentors support a proposal to abolish the Commission's longstanding locality requirement for soft money donations to host committees. Under this rule, corporations and individuals must live or do business in the convention locality to contribute to a host committee. As the comments indicate, it's highly doubtful this rule was ever required by FECA and there appears to be nothing in BCRA that requires it be retained, but equally important, the rules made it more difficult for smaller and mid-sized cities whose corporate and business presence may not be as great as the Nation's largest cities to successfully hold national conventions.

For example, for 2004, there's no question that Boston's corporate presence is not as large as New York's. If the Commission retains this locality rule, it may be more difficult for Boston to raise sufficient host committee resources than it is for New York. We certainly have seen that in some years past in smaller market cities
such as when San Diego in 1996 struggled to raise sufficient funds for its host committee. Unless the law clearly demands it, at this point I don't believe the Commission through a locality rule should make it more difficult for smaller market cities to successfully hold national conventions.

Finally, after the Commission proposed new rules for leadership pacts when they are used by Presidential candidates for campaign purposes, I think the conventional wisdom was that we going to receive a torrent of negative comments here, but surprisingly as far as I can determine, this has not happened. As I read the comments, I don't see a single commentator opposed to the proposed leadership pact rule for Presidential candidates. In fact, both the Center for Responsive Politics and the Republican National Committee indicate that they support the proposal. I can't recall the last time these two organizations agreed on proposed regulations, but I do take it as a good sign, and I'm very pleased they support the Commission's work in this area.
As the chair noted, the Commission is scheduled to complete this rulemaking in the next six to seven weeks. That's obviously a very ambitious schedule, but I concur that it's critical that we finish our work on these projects as soon as possible so everyone in the political process can know what the rules are for the 2004 national convention for Presidential candidates.

Thank you, Madam Chair.

Chair.

Just briefly, I first want to note that Commission Toner and I have been working on a suggestion that Congress or others interested in the area ought to take a close look at the existing public financing system to see if perhaps it could be strengthened or revised or revamped to better reflect some of realities that have emerged in recent election cycles. We now have a public financing system whereby some of the candidates are
actually thinking of opting out of getting primary
matching funds. We all know that President Bush
opted out the last election, did not take matching
defunds during the primary phase, and so that is an
area that I'm hopeful that people focusing on this
topic will also address, and there are, I think,
some impacts coming out of the BCRA legislation,
such as increasing the contribution limit, that
exacerbate that problem. Candidates tend to be
able to raise money without using public funding
more easily because they can now raise twice as
much from any particular potential donor.

I also, just in pleasant response to
what my colleague Commissioner Toner mentioned, would note
that we don't have, I think, a totally clean slate
in terms of legislative history, first of all. It
may have been, as I referred to it earlier,
hyperbole, but Senator McConnell in the debates was
suggesting that the BCRA legislation as it has been
drafted would, in fact, dramatically cut back on
the ability of the host committees and so on to
raise money. Now, it may have been just in the
heat of debate that he was raising that specter,
because as we all know, he didn't like this legislation.
I would also note that we do have a comment from the sponsors, so-called sponsors, of the legislation in the Commission's earlier rulemaking in the soft money area which, at least as I read it, does suggest that they think that the BCRA provisions do, in fact, mandate some very significant changes. I think we have some folks who are testifying today who are going to be making that pitch much in the same fashion, but I did want to note that there are some indications that Congress thought about this subject during the legislative history, in the legislative debates that is, and there is some indication that even afterwards we've gotten a signal from the sponsors of the legislation that they do think that some very strict restrictions come out with regard to convention financing.
So we'll have to add all that into the mix. I think it will be a great discussion and a
great hearing today, and I'm anxious to get on with it.

Thank you.

CHAIR WEINTRAUB: Let me invite the first panel to come on up.

II. PANEL NO. 1

CHAIR WEINTRAUB: I don't much care in what order you start. Mr. Bauer, do you want to lead us off?

MR. BAUER: I'd be pleased to without objection from my co-panelists.

I will let the comments that we filed as Perkins Coie on the other matters that the Commission is considering speak for themselves, and I thought what I would do is actually join the discussion about the nominating convention financing issue. The point of departure, because we have only five minutes, each of us, for me would be to discuss the Campaign Finance Institute study that has been put before the Commission. This study was obviously painstakingly assembled. It has some very interesting information, but it tends
to suggest, or at least its authors suggest, that
the data presented in associated arguments should
lead this Commission to make significant revisions,
restrictive revisions, in the current rules that
permit a nominating convention private financing
through host committees and convention committees
and the like.

And I would like to challenge that
suggestion, because I've read the study over
several times, and I believe that it does not, in
fact, capture the full picture here, and in many
respects, I think it somewhat contradicts itself.
First of all, I would like to
begin--well, as a matter of fact, the structure for
my comment would be simply to go through point by
point some what I believe appears there.
Obviously, I'll characterize it as I see fit, and I
know that will draw an objection from at least one
of my co-panelists, but let me begin as follows:
First of all, the suggestion is that we
have seen an extraordinary increase in private
financing through host committees, and a variety of
statistics have been provided in the report to support that suggestion. I have not re-run the numbers. I have no reason to believe the numbers are other than generally accurate, although the CFI does note that there are some data collection issues that complicate a full statistical picture.

It does not, however, take into account or control in any for the simple fact that in the last ten years, corporate sponsorship dollars generally across the board and even in non-political areas have jumped dramatically. As a matter of fact, corporate sponsorship activity in this country right now exceeds a level of $9 billion. In the last couple of years, it has continued to increase. Albeit not of the entirely fulsome level of the previous ten years, it has continued to increase even as spending for advertising per se has shrunk.

So we're talking billions of dollars that corporations have seen fit to deploy in a variety of sponsorship contexts, and it would not be surprising to see similar activity reflected in their investments in convention marketing.
activities. The study makes no mention of that, and I think that is a significant methodological problem.

Secondly, when looking at some of the comments that they capture by means of measuring the intention of the people engaged in this activity, that is to say on the part of the sponsors, some of the quotes seem perfectly compatible--Commissioner Toner, you seem puzzled.

COMMISSIONER TONER: Not yet. I'll be very soon.

MR. BAUER: Okay. You gave me a very quizzical and therefore disturbing look.

Some of comments that are capture here go to the alleged purposes of the sponsors which are characterized in this report to be predominantly political don't to my mind seem inconsistent with a broader sponsorship purpose at all. One quote: We want to help the host committees showcase these cities. Another quote: For us, Philadelphia, the last convention site of the Republicans, it's our Super Bowl, our Olympics.
We want to showcase our technological prowess. We want to provide grand exposure in business development.

I don't find those dramatic evidence of increased desire to use the convention for corruptive political conduct. Now, it is true that there be some suggestions in some of these quotes by reference to words like "political process", that there might be some element or some type of political motivation, but as one of their witnesses states, "I can't say it is 50-50 or 60-40, but it's probably both." Again, it seems to me not a terribly substantial basis on which this Commission would change convention financing rules at this stage.

I'd also like to make that point that we have heard a lot in the course of Congressional debate and the Commission consideration of the various ramifications of the restriction of soft money, about the danger that it presents when it's raised by members for purposes that directly affect their election campaign, soft money, for example,
raised by members in the party committees that engage in issue advertising is specifically identified in a positive context before their accurate or identify their opponents in a negative context.

That interest seems to me to be dramatically attenuated. Here, you have a lot of people raising a lot of money for a four- or five-day event, and I have a difficulty hypothesizing that someone will cash in dramatically by telling a member, By the way, I helped provide some of the money that was needed for electricity in the convention and all also for some of the transportation vans.

By the way, I should not for Mr. McGahn's purpose that if you looked at the relative spending of the parties in 2000, in the year 2000, for actual parties, receptions and fun events, the Democrats spent $300,000 more that Republicans did on just parties, which goes to show they may be satisfied with their political position, but you don't want to hang out with them. If you want to
have fun, Boston is the place to be this coming
year, certainly not New York.

CHAIR WEINTRAUB: The red light is
on, Mr. Bauer.

MR. BAUER: Pardon me?

CHAIR WEINTRAUB: Your red light is
one.

MR. BAUER: A final comment, and
then--you've been waiting to do this for years--you
can shut me off.

Last point, BCRA, the Congress didn't
only just review the statute. It also reviewed
regulations that it was uncomfortable with. There
is a specific regulatory issue that is raised and
addressed in BCRA, which is the Christian Coalition
regulations that the Commission was directed to
repeal. It had the nominating convention
regulations before it as well. It did not choose
to do it, and I don't think we can rest this
regulation on what Commissioner Thomas referred to
as a, quote, signal afterward, unquote, by the
Congressional sponsors.
Mr. McGahn, you're up next. I want to particularly thank you for coming so early in the morning. I understand you've got a gig tonight. That will probably keep you up late tonight. I only regret that you didn't bring your guitar and give us a preview this morning.

MR. McGahn: If I would have known.

CHAIRWEINTRAUB: Next time.

MR. McGahn: First, I'd like to say good morning. I'd like to thank Mr. Bauer for the invitation to the convention in Boston. I'll be there.

MR. Bauer: With your guitar, please.

MR. McGahn: Absolutely. I'll show you how it's done, unless Raging Machine shows up and starts a riot. They're no longer together. You can come and listen to country music at ours.

We do have fun at our conventions, but not too much money fun, and that's part of why I'm here today. Just to make clear, I'm not
here on behalf of the NRCC itself. I'm here on behalf of Tom Reynolds, the Congressman from New York who represents the 26th District of New York. Being from New York, Mr. Reynolds desires to assist the New York convention to the extent he can under the law. Under current law, he can do quite a bit. Under possible proposed rules--actually not possible proposed rules. They are proposed, but possible rules, that may change to a certain extent.

I'm going to limit my comments here, thus, to specific issues that affect my client and not delve into, unless asked, the broader scope of the national party host committees on arrangements and the like.

The first issue is the ability of members of Congress, Federal officials, and candidates to raise money for host committees. Our view is it is clear that they can. BCRA explicitly allows Federal officials and candidates to raise money for 501(c)s and even allows solicitation for funds for 501(c)s that engage in Federal election
activity although host committees do not. So it is clear that this civic fund-raising is maintained by BCRA, although I don't think it is a question in BCRA, the larger question. One need look no further in BCRA to realize that members can raise money for the host committee.

The second rule that I'd like to talk about is the locality rule. Although our view isn't necessarily to make it national--that's an obvious consequence of one of the proposals--at least statewide. Mr. Reynolds is not from New York City, but there are business interests throughout the State of New York, he would like to have a presence in our convention. Mr. Reynolds would like to assist those companies as he can without running afoul of any Commission regulations. Therefore, from his point of view, it makes sense to expand and not have a strict locality rule.

That being said, we also agree with Mr. Toner's observation that dispensing with the local rule would give minor markets more of a fighting chance with conventions and hosting conventions.
There has been a trend where certain cities tend to get the conventions time and time again, and mid-sized cities do not. San Diego is the exception to the rule, but as we all know, funding there was not as easy as it would have been in a larger market, shall we say.

The third point I'd like to make is the very brief mention in the notice regarding events being held around the time of the convention, corporate events, union events, and the like and whether they ought to be regulated. The answer is no. There is nothing in BCRA, its history, FECA, or the like that would require events that happen to go because the convention is there that somehow come under the FEC's jurisdiction, let alone anyone else's jurisdiction. If people want to have events, they ought to be able to have events. To the extent that there is a need to regulate Federal officials attending events and the like, I would suggest the House Ethics Committee and the Senate Ethics Committee has done a remarkable job of publishing memos and giving guidance to members as to what they can and can't do to
avoid any appearance problems.

That being said, I'm going to conclude my comments, and hopefully I can assist you with question and answers. Thank you.

CHAIR WEINTRAUB: Thank you, Mr. McGhan for your pithy comments.

Mr. Weissman, let me ask you in particular, since we just got the revised draft of your comments, if you could highlight for us what the changes are, because I don't think any of us can read fast enough to read through it before you finish your comments.

MR. WEISSMAN: There were only minor changes. There was a figure that was slightly off in the total contributions in Atlanta, the Atlanta 1988 Democratic Convention. I guess my mike is on. In addition, there was a first name of someone that was slightly off, and the third one was there was a clause in a quotation that was drawn from a court, Case McConnolly v. FEC, where the corporation indicated that had allocated soft money for a convention purposes as part of its overall soft money
allocation for political parties. There was a clause left out of that on page 10, I believe, that was put in. So they're minor changes that don't affect any part of the overall analysis, but I appreciate your asking.

Well, thank you, Commissioners, Chairperson, first of all, for the opportunity to present our study here. This was a study that was requested by the task force on financing of presidential nominations that the campaign finance has convoked that will issue a report, concluding report, on conventions; and unlike our analysis, will also have specific recommendations regarding convention financing. That report will not be issued, however, until July.

So what you have here is a staff, CFI staff, background analysis that we felt would be helpful to the Commission. We saw how hard the Commission is wrestling with these issues. We felt that we had collected a lot of information and done further analysis that might be helpful to the
Commission, and that's why we decided to present this as a staff analysis.

Our Board of Trustees doesn't approve or disapprove of any of our specific research projects, and, in fact, one member of the board I know doesn't approve at all of this analysis and others have a very different view. So please keep that in mind.

Most of the comments you have before you are discussing, as you have here, in part BCRA, does it apply, the regulations, you know, how should they be formulated, how should they be adjusted. Our focus is different. We're trying to bring a new element here. Our focus is how have the regulations currently been affecting political behavior of those who are regulated. We think the Commission should have some information about the actual political reality out and how it has been shaped by the regulatory effort, not under BCRA simply, but mainly under FECA; and basically we've concluded that the major assumptions behind both existing and many of the proposed new regulations
don't have a solid foundation.

And as Mr. Bauer, who so magnanimously gave some much attention to our analysis has indicated, we don't take an either/or position here saying it's a hundred percent political motivation here instead of local commercial, but we do say that the presumption in the regulations, explicit since 1977, that the purpose of contributions to host committees, not the purpose of the host committee, the purpose of the contributions can be viewed as chiefly commercial or non-political. Those are the words that are used, and they're used in the proposal regulation as well. It does not hold water any longer. Maybe a mixture.

Some people we've interviewed, such as we interviewed some political professionals who have been involved with conventions for years, such as Rick Davis, a Republican, Don Fowler for the Democrats. Davis thinks it's almost all political soft money. Fowler told us it's at least as much either way, 50-50, 60-40, you can argue. That, it seems to us, is a big change, and we tried to look
at statistically what has happened over the years, and the data in front of you show that what we concluded was that there has been an explosion of private financing, $8 million in 1992 of private financing for the conventions. The amount that's projected for 2004 is 90 million, a ten times increase in three conventions.

I don't know if Mr. Bauer has data on corporate sponsorship increasing ten times from 1992 to 2004 or not, but it is interesting that that has occurred as the Commission itself has loosened some of its regulations about private financing and as the soft money exposure occurred.

I'm not going to go over that material. I would just point to the fact that we go on from there and we look at the evidence about how parties raise this money. This money is raised—even though it is a civic host committees which has some bipartisan representation, there is no question, as our study shows, that most of this money is raised by politicians, candidates, and Terry McCauliff, Clinton, Dole fund-raisers, and large partisan
donors, Eli Boyd in California for the Democrats or Gerald Parsley in California for the Republicans. This is how the money is raised.

CHAIR WEINTRAUB: Mr. Weissman, your time is up.

MR. WEISSMAN: Just to conclude, and we can get into this later, we've also mentioned that the assumption that all of this is a narrow exception, the host committee expenditures, to the normal rule that the convention expenses are met by the party committee is also no longer true. In fact, the host committee is paying for most of the convention expenses, and we have attempted to document that.

So with that, we conclude.

CHAIR WEINTRAUB: Thank you.

Mr. Sanford, I particularly appreciate your presence here on the panel because you were only volunteer from the Clasic Reform community to show up today, and the panel really wouldn't be complete without you.

MR. SANFORD: Well, until Steve decided
to join me, I thought I was going to be the lone
voice in the wilderness, but I am pleased to be
here, Madam Chairman, Mr. Vice Chairman, Members of
the Commission, General Counsel, Mr. Staff
Director.
The Center for Responsive Politics and
its campaign finance law project and FEC Watch is
pleased to have this opportunity to testify on the
Commission's proposed rules on the financing of the
Presidential nominating conventions. We have
submitted detailed comments, so I have only a few
brief opening remarks.
I begin with first principles. Section
441(b) of the Federal Election Campaign Act
prohibits corporations and labor organizations from
donating anything of value in connection with the
Federal election. Section 441i prohibits
national party committees from receiving donations
of anything of value that do not comply with the
prohibitions an limitation of the Act.
Section 431 defines conventions as
Federal elections. It is against this statutory
backdrop that the Commission's convention rules must be evaluated. Because these are broad prophylactic rules, the Commission bears the burden of justifying the creation of any exceptions that allow corporation and labor organization funds to make their way into the convention funding process. The Commission has created that allows corporations and labor organizations to donate funds to host committees for the nominating conventions. It also allows the recipient host committees to use these receipts to pay for the cost of the convention. The stated rationale for this exception has been that corporations and labor organizations donate money to the host committees to help promote the host city in its commerce. For these reasons, the Commission has viewed these donations as commercially rather than politically motivated.

When The Commission created this exception, it included certain safeguards to ensure that the donations made were, in fact, commercially motivated; however, in the classic example of what
the military would call mission creed, the exception has been modified over time so that these safeguards no longer exist. As a result, the well intentioned, quote, very narrow exception has almost completely swallowed the rule.

This is particularly remarkable when you'll recall that the conventions are supposed to be publically financed. The legislative history for the convention funding provision, Section 9008, succinctly states: "A major party electing to receive its $2 million entitlement could not use any additional private funds." The parties have been receiving public funds, but these funds now represent a minority of what is spent on the conventions. Much of the funding comes from corporation and labor organizations that are generally prohibited from making contributions to Federal elections. They're able to give big money to the conventions because the funds pass through the hands of the host committees.

We do not dispute the host committees and businesses and unions and host city to have a
legitimate interest in promoting the host city first as a potential site for the convention and later to convention attendees. With the exception limited to the amounts used for these purposes, it might be justified, but we are well beyond that now. The party committees are using this exception to get corporations and labor organizations to pay for the conventions. The plain language of the statute prohibits this.

We urge the Commission to turn back the clock and either eliminate this exception or restore it to its original narrow form. If necessary, delay the effect of it until after next year's conventions. But Take action now so that the rules will be in place when the work on the 2008 convention begins.

I want to make one comment about the Commission Toner's observation about the legislative history. I think that the Commission needs to start with the statutory language, and that's the primary guide for how to the law should be applied. I think that the statutory language is
broad and suggests a very different result. I also see what happened during the
floor debates a little bit differently. This is a significant change. If the sponsors of legislation
or those supporting it did not agree with Senator McConnell's statements on the impact of BCRA, I
would have thought they would have said so at the time. They did not. It seems to me that this
could be just as legitimately viewed as affirmation of that interpretation in the statute as it is
viewed as the opposite.

With that, I will conclude and be happy to answer any questions.

CHAIR WEINTRAUB: Thank you, Mr. Sanford, and thank you, all of you.

I'd like to start by asking you all, sort of following along the line that Mr. Sanford started us on, to engage a little bit on the statute, because when I read the statute, I think that it doesn't surprise me that different
commentors focused on different sections, because depending on which section of the statute you're
looking at, you might come to entirely different
conclusions on the key questions that are in front
of us.

I think Mr. Sanford makes a persuasive
case under 441(B) and other provisions that you
mentioned that there's a strong argument that soft
money shouldn't be allowed anywhere near the
conventions. On the other hand, there are
provisions in the statute--there's also the implied
authority argument that was raised by--I can't
recall whether it was you or one of the other
commentors that in choosing the city, the
convention committee and the party conveys implied
authority to the host committee to raise funds in
connection with the convention and on its behalf
somehow. And I don't think that those are all
frivolous arguments.

On the other hand, the statute also
allows covered officials who are otherwise barred
from raising or spending soft money to raise and
spend--to raise money for 501(C)3s, and it's hard
for me to imagine that the drafters of the statute
didn't recognize that the host committees are 501(C)3s. There are limits on the qualifications on what kind of 501(C)3s, but I don't think that they really apply to--those limits really affect the host committees.

So what I would ask is for, you know, this side of the table to address the arguments that Mr. Sanford raised about the statute and for Mr. Sanford and Mr. Weissman, if you feel so inclined, to comment on the other statutory arguments that have been raised on the other side. Rather than just promoting--you know, just picking out your statutes, your section of the statute, just tell me why I shouldn't look at the other guy's section.

And I open that to whoever wants to start.

Mr. McGahn.

MR. McGAHN: I don't think anyone is sitting here today saying the national party committees can take soft money for conventions, although it's a very eloquent citation to the
statute. It's a straw man argument. It ignores
distinction between party committee, committee on
arrangements, and the host committee, which is the
city's operation.

So although we're citing separate
sections, at the end of the day, the facts are what
matter, I think, 501(c) is separate and distinct
from the party committee, and unless the Commission
undoes and changes the rules, so to speak, on what
becomes part of the national party committee,
again, although the citations are impressive, they
really are beside the point.

The second point that was raised was the
idea the host committees are political entities and
somehow it's really party committees and officials
that raise funds. That may be true, but I'm not so
sure we need a study to figure out that host
committees raise money and that elected officials
care if the convention is run in a safe and
efficient manner and that the host city has
resources that it needs to make sure that the
infrastructure is there for the city.
That being said, this idea that it's become strictly partisan, I think it doesn't make--although there probably a kernel of truth in that, it's not necessarily true across the board. It's not nearly as true as represented to you. For example, unless I've missed something, the then mayor Ed Rendell was a Democrat in Philadelphia, not a Republican, although he was one of the main champions of the convention in 2000 to ensure that Philadelphia did a very nice job in having a very successful convention.

So to say simply that the host committee becomes some partisan nonprofit oversimplifies to the point of absurdity. Remember, the host committee is a 501(C). The IRS looks at that. It's the IRS's rules that determine whether or not you're a non-profit, and again, I come back to the cite, the portion of BCRA that I cited earlier which allows Federal office holders and candidates to raise money for 501(C)s. That's not a decision that we need to second guess. That was a decision of Congress. Congress knew the conventions were
out there. They knew they were 501(c)s, and as Mr. Toner alluded to early on, Senators Kennedy and Kerry certainly don't seem to think that they're prohibited from assisting the Boston host committee with ensuring convention, which I may go to thanks to Mr. Bauer's invite, is very successful.

CHAIR WEINTRAUB: Mr. Bauer.

MR. BAUER: Yes. I will be very brief, because I don't disagree with anything that Don has said. When Mr. Sanford talks about first principles, it's fair enough to say yes, it's a statute that says such and such. Well, we all know that the statute on this subject as well as others has been subject to exceptions crafted both by the Congress and also by this agency. So then the question becomes why would this agency now after a thorough review of the soft money issue turn around and do what Congress elected not to do.

And the only point I want to stress here--I'm not going to repeat everything that Don said--is the what I think questionable legal analysis that is being brought to bear to suggest that
Congress probably did intend for the Commission to do something, and I really have trouble swallowing that. I now understand that if somebody doesn't specifically refute something that Mitch McConnell says, it becomes an expression of Congressional will, and that's an axiom of legislative history that I loathe to adopt.

Secondly--pardon me?

COMMISSIONER MASON: You have three votes already.

MR. BAUER: We'll certainly elongate floor debate.

The other thing is I heard in the comments of Mr. Weissman about the views of Don Fowler and Rich Davis. Well, I have no reason to believe they don't hold those views. What their constitutional legal significant is is completely beyond me. So we have a couple of people who feel this way. A member of Congress' views were not rebutted, and lo and behold, Congress has intended to send a signal to the Federal Election Commission to do what it did not explicitly do when it
reviewed the law in this area. As I mentioned at the conclusion of my remarks, Congress knew how to pick out regulations it didn't like in BCRA. It did it explicitly, and did not touch these.

CHAIR WEINTRAUB: Mr. Sanford.

MR. SANFORD: A couple of things: On the question of whether the host committees are separate from the party committees, it is true that they are separate legal entities, but the rules specifically allow them to pay convention expenses and specifically lists things that the host committees can pay that are also things that are defined to be convention expenses for the party committees that could be paid with public funds. So I think that the distinction between these two entities begins to break down pretty quickly, and when you look at the data in terms of how much money is being spent, and even if we assume that the figures in the CFI study are soft, there seems to be a significant amount of expenses for the convention that are being defrayed by the host committees. So the fact that they're separate IRS
entities, I don't think completely responds to the question.

With regard to the different statutory provisions, I don't think it's necessarily a conflict situation between 441(I)(E) and 441(B).

Even if we assume that Federal office holders can raise money for these separate entities, these 501(c) host committees, that doesn't necessarily mean that they can—that that allowance trumps the 441(B) prohibitions on the use of corporate legal funds for Federal elections. They could very well raise Federal funds for these entities and have allowed those entities to use Federal funds to pay convention expenses. If they are raising non-Federal funds, the Commission can construct a rule that will allow the host committees to use non-Federal funds to promote the host city, not for convention expenses.

CHAIR WEINTRAUB: If they were only going to raise Federal funds, you wouldn't need to have specific permission for them to raise Federal funds, because they can raise Federal funds for
anybody.

MR. SANFORD: Right. That's correct.

That's correct.

As for the actions of the members who have been raiding money on behalf of the Boston committee, I guess is the indication in particular, with due respect to the Commission, I think that it may very well be that they do not anticipate the Commission aggressively enforcing the 441(B) prohibition in this context, and I think the past history of the Commission gives them good reason to have that expectation, and I think that there's an opportunity the Commission to decide that it's past policy has not worked and that it needs to go in a different direction.

CHAIR WEINTRAUB: Let me ask you, Mr. Sanford, and you, Mr. Weissman, a question. When I read your comments as well as some of the other comments from people who didn't have the guts to come here today, but, you know, they seem to follow along the same line that you're pushing, there seems to be this undercurrent of the conventions
have become too elaborate, they've become too
expensive, there are all these parties. There is
this undertone of you guys are just having too much
fun out and we don't approve or you guys are just a
couple of prudes that don't think people out to
have a good time.

Is there a problem with the degree of
elaborateness and expense in the conventions
separate and apart from where the money is coming
from?

MR. SANFORD: Well, I think that that is
relevant to certain considerations, but as we state
in our comments, we don't think the Commission
needs to address what I think of as third-party
events, parties that are hosted by--they could be
hosted by corporations or labor organizations near
the venue of the convention and allow office
holders even, party officials, delegates to attend
these events. Where the beneficiaries of those
events are third-parties as opposed to party
committees, even if that means attendees, then no,
I don't think that the Commission necessarily has
to address that.

But when the funds are being used by the host committees to pay what are, in fact, the costs of conducting the convention itself, not necessarily ancillary events, then we think the statute requires a more direct attention and more attention by the Commission.

CHAIR WEINTRAUB: Mr. Weissman.

MR. WEISSMAN: If I could just comment briefly on what you asked me and also on the previous question.

CHAIR WEINTRAUB: Sure.

MR. WEISSMAN: We don't take a particular, as I mentioned, specific policy stance. We're not telling the Commission do this or do that. We're trying to give you information that is useful in your deliberations.

One of the things we say about BCRA is that in the aftermath of BCRA, there is only one area where candidates, and parties can benefit from soft money, national candidate and national parties, and that is convention financing, convention
financing that has now reached a figure of $90 million in private financing for 2004. We also point out in our analysis that should the status quo be maintained in regard to the conventions and the soft money ban on everything else continues after the Supreme Court rules, then according to veteran politicians we have interviewed, political access and political influence will become even more important in convention donations because the party today prefers a soft money donation that can be used for anything to a contribution to a host committee.

As we pointed out, there is access. There are favors granted for contributions to host committees by the parties, but they are considered less than the favors granted by every year regular donations to party committees. That will change after BCRA if BCRA is maintained, and the further reinforcement of political motivations in giving is something at least the Commission can expect if it decides to maintain the existing regime. In terms of whether anyone is being prudish, and I'm
agnostic as to this issue, but, I mean, it is notable when you have a tripling of expenses for conventions, conventions that kind of gradually went up in cost from 1980 to 1992, as our table shows, where the convention grant was adjusted for inflation, cities put up a little more money and they funded a significant amount and nobody has any problem with public funds by a city being used or states.

But suddenly you have this huge jump after 1992, and according to--this is at the very moment when conventions are getting less and less attention from the American people, regrettably, and all the spending doesn't seem to have been able so far to reverse that. And what we have heard and what we have documented in our portrait of conventions activities is that this is extra money is being used to produce a more and more telegenic event to get more and more getting into webcasting. One of the people we interviewed said, you know, if you can get more soft money, we can even start to promote the convention through advertising. I
guess they could lengthen it. I guess--

CHAIR WEINTRAUB: No, not that.

MR. WEISSMAN: I guess the could

lengthen the parties at least.

In terms of the--so I think we have a
tendency here--and the parties is another thing.

It's been constantly focused on in the press and by
insiders. One of the people, Don Fowler, said,
Look, we used to have beer and peanuts, you know,
at these conventions, and now it's shrimp and fine
wine; they used to have standard rooms, and now
we've got big suites with work space. Some of that
is paid for by host committees. They are the ones
who are giving the delegated parties that are
becoming more and more elaborate with corporate
sponsors getting in on them and so forth. We can say
yeah, maybe they can have it, but we just to be
aware the price currently under the existing regime
of having that kind of convention is going to
be--has been a huge expansion from eight to
eighty-nine million of private financing, largely
corporate of these conventions.
So I just think that even though we are not interpreting the statute about BCRA, we are not entering the argument about--in fact, our argument is based more on FECA than BCRA. Look, this was the rationale under FECA; everybody has believed this rationale; now it no longer obtains, and if I could have 20 seconds to read you the quote that Mr. Bauer used from the head of Comcast, which is an excellent person to choose in which he was demonstrating that our portrait of motivation was exaggerated. Here is a guy, the head of Comcast, Philadelphia 2000 convention, who is someone who would strong civic motivation and does have some civic motivation for giving to promote civic commerce. After all, it's his center that is being paid for by the host committee to rent for the convention. It's his commerce that's increasing, and his headquarters is in Philadelphia.

So Brian Roberts, when he was asked by the newspapers why are you giving all this money and so forth, he blended, but in terms of placement and the way he presented it made a pretty powerful case
that the local civic is not the most important
element. He said--and the first sentence is a
priceless one:
"These are people who have to make
important decisions, and they're coming to our
house. This exposure may enhance our own
credibility when we are explaining new
technologies."

Well, you can say maybe that's partly
political, partly commercial, but it isn't local
commercial, and that's what the rational of the
Commission has been historically. It's national
commercial.

"And it's a unique one-time opportunity
for elected officials to see Comcast." Not local
officials. "Policy makers can meet us first and
remember our names, our faces, and our products."

Here is the part that Mr. Bauer quoted:
"Philadelphia is our Super Bowl, our Olympics."

I'm sure he genuinely has all these
motivations, but here's a person who is not like
most of the contributors to the convention. He had
his headquarters there. He had his hall being used for that convention, and even he put in considerable non-local civil commercial motivation. The Commission could maybe come out with the same exact stance on convention financing it has today with a different assumption. Maybe it could revise its assumptions or could change its stance, but we do think that this evidence suggests that it is a very strong non-local commercial motivation, both political and national business, in a lot of the financing.

CHAIR WEINTRAUB: I'm glad that you raise that. I'm begging everybody's indulgence here because I should put the red light on myself at this point, but I can't resist following up a little bit on this.

I'm really glad that you raised the issue of motivation, because another thread in the comments was the access that donors get and the corruption or appearance of corruption that is presented by that. I think the motivations of the donors is something that we have to bear in mind,
but I guess my question is I think about two hypothetical donors. Let's say Donor A gives $100,000, one big check to the host committee, soft money to support--I don't know--telephones and transportation at the convention. Donor B has a lot of rich friends and collects $100,000 in $2,000 increments of hard money that go directly to the campaign funds of a Presidential candidate. I don't know people that travel in those circles, but I'm told that this happens, that there are people who are able to go out there and collect that kind of money in real hard dollars. Now, both of those guys, if they show up at the convention are probably going to get invited to the best parties and have--although it's hard for me to imagine that that mass of people and all those people moving that that's really a great opportunity to get your legislative agenda promoted; but my question is, and again I'm directing it this side of the table, is there a difference in the corruption of appearance of corruption between Donor A and Donor B and the kind
of access that they? Should we care about one and not the other?

MR. WEISSMAN: Let me just mention one thing here, and let others maybe comment, the key difference, it seems to me is that currently organizations such as corporations and labor unions can be Donor A, and they are providing—we did an analysis which is not presented in this paper of the 2000 private contributions to each party committees, host committee, the party's host committee, and it was clear that the overwhelming majority of corporations are not rich individuals who might give a hundred thousand and then get two and get all their friend to go two. This is corporations and a to a much lesser extent unions and foundation and PACS like that.

So I think that that would be your major difference. I wouldn't quarrel with what you're saying about a rich individual versus a whole collection of bundled contributions in some way or another, the rich individual's friends, but I think the key distinction is are you allowing here unlike
anywhere in politics corporate, union money into
the funding of these very important political
events that are really the first campaign ad in a
way of the general election where we have
no--actually, we have no finance at all without
turning to the public grant.

But I think that's the key issue.

CHAIR WEINTRAUB: Mr. Sanford.

MR. SANFORD: I'll be brief, try to be
brief.

I think that in terms of the corruption
or appearance of corruption in those two
situations, perhaps there isn't much of a
difference, but the difference is statutory. The
statute allows individuals to bundle large numbers
of individual contributions. It doesn't allow
corporations and labor organizations to write big
checks to the host committees that the host
committees turn around and use for convention
expenses.

So I think the statute makes a
distinction that needs to be respected, and I don't think the
Commission can say that the Donor A situation you referred to, the large corporate and labor organizations contributions to the host committee, the party organizing committee, isn't any worse than something that's allowed and therefore we should allow that too. I really don't think the Commission has the authority to do that. I think the statute makes a distinction and the distinction needs to be respected.

CHAIR WEINTRAUB: Mr. Bauer.

MR. BAUER: Very briefly, I just want to say one thing. First of all, I just want to keep the hammer on my principle concern, which is the way laws are made, particular laws that affect political activity. Factual point: I do not know which conventions over the years Don Fowler has attended. I attended my first in 1968, and I assure you not then, no under Truman, not under Roosevelt, were the delegates treated only to peanuts and beer. I'm willing to stake a great deal on that. This pastoral vision of what conventions were once all about escapes me
completely.

But secondly, listen carefully the Mr. Weissman--and again, I did myself a service in looking at the numbers. I find the numbers very useful. I simply draw a different conclusion than he and his colleague do, and that is he says, Well, Mr. Roberts of Comcast may not be saying precisely that his motivation is political as well as commercial in whatever proportion it is, but look at the placement. Look at the way he presents it, the emphasis. I don't see how that's record evidence for this agency. I don't understand what possible validity that sort of metaphysical exegesis has for formulating Commission rules.

This rule is not only based on a Northrup Pry-level interpretation of someone name Roberts said backed up by Rich Davis and Donald Fowler, and I think it's a bit more complicated than that.

CHAIR WEINTRAUB: Mr. Sanford.

MR. SANFORD: I think a lot of the comments on Mr. Bauer's side of the aisle have made
fairly conclusory statements about the purposes of these contributions to host committees, and I think that to rely solely on these conclusory statements is no different than relying on this exegesis--I believe the word he used was--laid out in the CFI comments. So I think that there's little bit of that going on on both sides.

CHAIR WEINTRAUB: All right. I'm going to shift gears. There's one more question, and then I will let somebody else ask questions. This one is for the right side of the table. Mr. Bauer on the right. Now, that's something that doesn't sound right.

MR. McGAHN: He's to my left though.

CHAIR WEINTRAUB: And that's important to note.

I wanted to, since I have you both here, ask you about the leadership PAC provision. I know that you didn't spend a lot of time on it in your written comments, but as you know, we have splintered off a section of our leadership PAC rulemaking and tacked it onto this one to the
extent it's relevant to Title 26 concerning the issue of leadership pacts as stalking horses for Presidential campaigns and whether there should be a look-back provision saying, Well, you know, now we can see that these guys are really running for President and they were using their leadership money in an inappropriate way and possibly accepting excess contributions to what should have been termed the Presidential exploratory committee if they were going to be more honest about it. I would be interested in whether you, either of you, have any views on either the substance of that provision or the notion of us just splintering off that section of the leadership pact rulemaking and dealing with it here without dealing with the leadership PACS in a more holistic fashion.

Mr. McGAHN, he's looking to you.

MR. McGAHN: Well, maybe I will. I would refer the Commission back to my prior comments on leadership PAC issues where I believe I drew the distinction between, let's say rank and
file leadership pacts, House and Senate members who
are running for President. To me, if someone is
using their PAC and it's there just to adopt the
shorthand that's been adopted for their own
campaign, I think that's a problem. It's a problem
when I commented, and it's still a problem whether
he's running for President or another office. To
the extent that we can bifurcate off the concern
into people using leadership pacts to run for
President, and can take care of it in this instance,
I would support that and leave the other pacts to
their own devices.

CHAIR WEINTRAUB: Mr. Bauer.

MR. BAUER: I am speaking only--I have
not submitted comments on this. I do not represent
the client on this. I'm speaking only for myself.
I will say just in summary terms I'm not keen on
this initiative. I don't think the basis for it is
well laid, and I would rather not see it addressed
either here or, quite frankly, elsewhere.

CHAIR WEINTRAUB: Fair enough.

I'm going to finally relinquish the
microphone. Commission Mason.

COMMISSION MASON: Thank you, Madam Chair.

Paul, let me start with you. First of all, let me try to characterize your position, and I think it's fair to say that most of the problems that you see in the convention financing current regulations relate to the FECA pre-BCRA. There are some BCRA facts, but basically this is a FECA problem, not a BCRA problem.

MR. SANFORD: I think it's additionally there.

COMMISSIONER MASON: Yes. You did bring in some points, but that was my understanding, and I think that's important. You, however, toward the end said, well, maybe you want to delay the effective date. Now, if your case is that the existing regulations are contrary to law, what authority do we have to not force the law for another four years?

MR. SANFORD: I can't cite the case or specific authority. I think it's--I don't think
the response to that is not to not change policy if
the policy is wrong just because if the--if you
have no flexibility in this area, then I think
because abinination the statute prohibits these sorts
of financial transaction, then you need to prohibit
them immediately. I think that given how deep we
are into this convention cycle, that those who say
it is too late to change the rules have a
legitimate point. They have relied on the
Commission's existing policy, and so whether it is
through prosecutorial discretion declining to take
enforcement action against entities that have acted
in reliance on the existing rules or prospectively
making the rules effective, I think that the
Commission has some equitable authority to take
that into account.

COMMISSIONER MASON: Paul, I often find
myself in disagreement with you, but I often very
much appreciate your approach, and in asking
questions to other panelists, I want to say I think
you put your finger of the nub of the problem and
ask Mr. McGAHN and Mr. Bauer in particular, because
you've told us what you think, to address issue in connection with the Federal election. In other words, is convention funding in connection with the Federal election given that normally the cost of holdings elections themselves we don't consider to be a FECA reportable expense and that it strikes me if Mr. Sanford is right, that puts it in one category, but my question is is he right and are convention expenses properly considered in connection with Federal elections in technical terms under the FECA.

MR. McGAHN: I think we're glossing over a lot of the concepts, and what we haven't mentioned is the fact that there are convention expense that are paid for with a grand or hard dollars. So there is a distinction. So to say that somehow host committees are picking up all the convention expenses I think gives the public at large the misimpression that somehow there's corporations buying the entire convention, that simply isn't the case. The Commission knows that and that's a critical distinction.
The second thing, which I take as an admission to a certain extent which I heard earlier was the concession that the host committee is a separate entity from the committee on arrangements and party committees. Once you reach that point and you decide that they are separate entities, to me, the analysis becomes much simpler, and all these other issues fall into place, because that really is the issue that puts the point on the pencil so to speak, and even my colleague down the table concedes that they're two separate entities.

COMMISSIONER MASON: I apologize, but I didn't hear you answer my question. I understand they're separate entities legally. I understand your point about who pays what expenses. Are these expenses in connection with the Federal election within the meaning of, let's say, Section 441(B)?

MR. McGAHN: The host committee expenses are not. The point was to the extent there are--that you do view the convention as a Federal election activity, that would be what the grant and hard money takes care of. The host committee stuff
is not on Federal election activity. It's not get
out and vote. It's not polling. It's not
any of those things you think of as Federal
election activity. Certainly, they're not the sort
of things that the Commission has historically seen
as being in connection with Federal elections.
That is the distinction I'm drawing, and
I apologize for sounding like I dodged the
question, but I sort of skipped back a paragraph
and got to the other paragraphs, and I apologize
for that.

COMMISSIONER MASON: Thank you.

Mr. Bauer.

MR. BAUER: In connection with the
standard is a broad term. It is subject to a
variety of exceptions, some of which are
longstanding and have not been challenged.
Corporations under that provision can produce--it
can engage in a variety of communications, all of
which are accepted notwithstanding whether they're
clearly in convention with a Federal election.
Political elections are a beast unto themselves,
and there is an awful lot taking place in those
cconventions, but I agree with Mr. McGahn that the
Commission has the complete authority and has,
indeed, exercised it constantly over the years to
treat it as an activity that is not in connection
with an election in the prohibitive sense in which
you are raising the standard; and as I mentioned,
Congress had a fresh, recent, hot-off-the-presses
opportunity to consider this issue, and it was
certainly laid out there, and notwithstanding the
lassitude of those numbers, it didn't rise any
protests and side-bar comments of Senator McConnell,
chose not to act.

MR. SANFORD: If I could chime in a
couple of points, I might be willing to--might be
willing to go along with the assertion that host
committees disbursements are not for items that are
in connection with an election if the rules did not
specifically say they can pay convention expenses
and list expenses that are also listed as
permissible convention expenses for the host
committee to use the public grant funds to pay
for.

COMMISSIONER MASON: I guess my question
would be why the convention committee spending
would be in connection with a Federal election.
Where there was only states where the parties pay
for their primary, we don't say, Gee, there's a
Federal primary going on here; it's being paid for
by the party committee and that has to be paid for
with Federal money.

MR. SANFORD: I think in situations, at
least ones that I'm familiar with in which the
Commission has now made a distinction between
election administration expenses, the party
committees were essentially acting as agents of the
state in conducting the primary elections. I think
the AOs specifically said that. And in this case,
the conventions are not functions of the host
cities. They are, in fact, party functions. So
the parties aren't acting as the agent of any
government entity in conducting the convention. In
that respect, they are their own expenses, and I
think also you have to go back to the statutory
definition of election. It encompasses conventions
generally, and it doesn't talk in terms of payments
for the purpose of influencing delegates. It talks
about conventions generally and they're elections,
and so the most logical interpretation of that to me
is that those expenses are included.

COMMISSION MASON: I had--Mr. Bauer, go
ahead. I had one final question of you from your
testimony.

MR. BAUER: I was going to say that I'm
struck by that argument. For all this period of
time before BCRA, we've been told we need to make
sure that we look past form to substance, what are
candidates really doing with soft money. Now in
conventions, we're being told let's ignore the
substance and concentrate on the form. Everybody
knows perfectly well that conventions are not and
have not been in recent American history decisive
electoral events. In fact, they're typically divided
for being wasteful party-going exercises which we obviously, as
an expenditure level our party shows treasure deeply.

So, you know, we have to decide on which
side of the form-substance divide we're going to fall. It seems to me it depends on the outcome we want to reach.

COMMISSIONER MASON: I wanted to ask you, Mr. Bauer, about your comments on the winding down, and take responsibility on behalf of my colleagues and staff for having suggested that we ought to abolish winding-down expenses entirely. The concern should be directed at me, and I still think that would be better, although I don't know that I can persuade any of my colleagues.

But one of the things that disturbs me about the winding-down system as we have it and as you've addressed it is this aspect of treating winding-down expenses against a spending limit and at a point when it seems to make no sense to me, and you seem to encourage us to continue that. We've had this problem in audits occasionally where campaigns have winding-down expenses and campaigns--of course, this mostly comes under the successful nominees--want to move their winding-down expenses one way or the other.
depending on where their spending limit problem was. And while I can sort of buy your argument that these winding down expenses wouldn't be here if it weren't for a public funding system, that these campaigns would be happy to go out of business, go away, and not spend any more money, and therefore it's sort of a legitimate part of the system, why should we hold that compelled spending against a campaign's spending limits after the fact? As you put it, they have no interest whatsoever in continuing to raise and spend this money.

MR. BAUER: I'm not sure my comments specifically addressed that point. I could be wrong. I think generally speaking what we urged was the most flexibility and the most understanding, quite frankly, toward campaigns and the treatment of winding-down expenses and suggested that they be provided the greatest possible flexibility. I don't know that consistent with that I would--I don't know that I've given it a huge amount of thought--worry too much about some
additional room under the cap for those activities, because our whole view is you have to understand campaigns don't engage in long, protracted winding-down activities and the associated expenses out of choice or because they wish to.

So anything this commission can do to display compassion, particularly, you know, as we all know--I'm reminded of the old saying, you know, at least half of every class has to finish in the bottom half. Most of the candidates running for President don't win, and they're the ones who least like the idea of spending a huge amount of time in dealing with these issues, including the Commission's post-election audit. So to the extent that we try to find a way to make that process as painless as possible, approach it constructively and not with suspicion, I'd support that.

COMMISSIONER MASON: Conceptually can you reach a way to allow matching funds for these expenses if we don't count them as qualified campaign expense and thus subject to the limit?

MR. BAUER: I have not given any thought to
the statutory regulatory mechanism by which you reach that result. It doesn't trouble me in principle. You know, one of the things that we mention in our comments was that a lot of candidates wind up having to spend resources defending themselves against, you know, frivolous and baseless complaints, obviously typically filed by the other party, and the difficulty we face is this is clearly not something we take on ourselves. It's not something we accept voluntarily, and yet we're all of a sudden hemmed in responding to that by the various financing strictures that don't take that type of problem, which is a consistent problem, into account.

So we suggested maybe there ought to be an allowance for sort of a legal defense GELAC.

So, you know, I'd like the most flexibility. In fairness to you, I can't say that I've thought through the regulatory or statutory mechanisms to achieve it.

COMMISSIONER MASON: Thank you,

Commission Mason.
Commissioner Thomas.

COMMISSIONER THOMAS: Thank you, Madam Chair.

Let me welcome everybody. Thank for coming.

I guess I'll ask some fairly short questions first. First, since it's the shortest question, Mr. McGahn, poor Senator Kennedy and Senator Kerry have been alluded to as being out there raising the big bucks for the host committee.

MR. McGAHN: Or not so big.

COMMISSIONER THOMAS: Are there any Republican member on the House side that are out there raising money for the host committee yet, or is it just--do you know?

MR. McGAHN: I don't know one way or another, and there has been chatter, but nothing like this with public statements about Senator Kennedy and Kerry.

CHAIR WEINTRAUB: Mr. McGahn, can you get a little closer to your mike, please?

COMMISSIONER THOMAS: In their defense,
I would note they have some very good lawyers. So I'm guessing that they've gone into tedious detail with their lawyers in terms of whether they are, in fact, legally able to be out there doing it. I want to, I guess, first go to, I guess, the heart of what we're trying to get at here. Mr. Weissman, I guess I'll give you a chance to sort of start the dialogue. It seems to me that the pitch you're trying to make is that this kind of money that's coming into the host committee and the municipal fund is really pretty much getting to be indistinguishable to the kind of money that historically has just gone to the party in these soft money accounts, and you're pitching the argument in terms of it appears to you as if some of these set up donations for host committee purposes are really being designed to influence the political figures who are going to be there. I guess it might be helpful if we sort of appreciate that just influencing elected officials in its own--by itself is not a problem. I mean, we have the opportunity to lobby
legislators, and that's good. The idea is you want to be able to influence your legislators. You want to be able to maybe set up an opportunity where you can face to face present your pitch on what piece of legislation would be good for your industry and what would not.

What is the difference here? What is it that takes this beyond in your view to the point where I gather you're asserting it's becoming sort of more of a quid pro quo, as more of an opportunity to actually I guess help these elected officials and so on who will be there and to in some fashion draw out a favor in return? What sort of evidence are bringing to us along those lines?

MR. WEISSMAN: I don't think we're trying to say that this is any different from, say, someone who contributes to a candidate or to a PAC and isn't trying to corrupt the candidate or PAC, but is trying to show support, hope that the candidate perhaps agrees with them and would grant the lobbying meeting and realizes the contribution may, fuel access. There may not be any quid pro
quor corruption. I'm saying this type of giving is really anything extraordinarily evil, but we are saying that the law established that there was a Federal grant that paid for convention expenses and that that grant would be reduced to the degree that a party decided to use private contributions, and if the party didn't want to have--the party did want to have its public grant reduced, then it could not accept such private contributions however innocently they may be intending.

There was an exemption made by this commission that has endured for over 25 years on the grounds that, look, not that the political contribution is a quid pro quo corruption, but that these are not really to influence elections; these are not in any way designed politically. They're not even national commercial. They're not even designed to get a meeting with someone to see if they'll buy an Apple computer. These contributions to these host committees municipal funds are exempt from any repayment obligation because they are purely done to promote what the mayor of
Philadelphia wanted, local civic economy to have the convention there.

That's why they're done, and for years, as Paul has pointed out, the Commission said, until 1994, that nothing, not even that, not even a contribution that says it's for that purpose will be permitted without reducing the Federal grant unless it's by a local retail firm that can show that it's proportionate to the benefit that it's going to get during the days before and during and after the convention, and that was necessary, according to the Commission, to ensure that the private contribution would be allowed that was not, quote, political, that it was really commercial.

So I don't think anyone has argued that the contributions that we have charted here are any more evil or worse than any other contribution. They maybe be purely altruistic. There may be no quid pro quo. There may be no request for access, but they are contributions that come in addition to a Federal grant that was given on the understanding that there be no expenditures beyond that Federal
grant, and they are paying for expenditures now that are two to three times the amount the Federal grant on direct convention expenses, as our two tables show from the 2000 election.

So I hope I'm getting at what you were saying.

COMMISSIONER THOMAS: Mr. Sanford, I have a question for you. As you were laying it out, it sounds like you're suggesting that the Commission could significantly modify the current structure, but the basic concept would remain, which is that host committees in many respects are carrying out functions that have a city promotion function and that could, in fact, be paid for using unlimited donations from corporations, unions, etc. The promotion function, you seem to find a permissible function for the host committee, and you want us to identify maybe some expenses that historically and traditionally allowed host committees to pay for that we label convention expenses and you would like see it as, say, Well, the host committee can go ahead and raise that kind
of money, but it should be treated as part and parcel of what the party committees are raising as direct convention expenses. Now, included in your batch, I guess, of expenses that you would like to see the host committee have to use basically hard money for are things like security, all of the things we list in our list of convention expenses. It's seems like it might be a difficult task. Wouldn't you grant that maybe there's sort of a middle ground with regard to expense like that? Doesn't it seem appropriate when you've got a bunch of wild and crazy Democrats coming to town to build in some security, and isn't that something that the host committee just justify, something that entirely necessary irrespective of whether it's crazy Democrats or wacky Republicans coming to town? MR. SANFORD: Well, I think that a guide that the Commission could use is--and I have to confess I don't have a lot of firsthand knowledge of how this typically works, but, you know, in various contexts the Commission has provided
ordinary and necessary type standard to certain business transactions and said that, you know, we'll treat it as a business transaction as long as it's the fair market value. I think the same principle can be implied in this context to try to establish whether there are ancillary expenses that host cities frequently pay for when they deal with conventions of similar size and significance, and typically they offer to the convention sponsors, the organization, like the ophthalmologists or podiatrist, the party committees, in order to give them an incentive to get them to come. Let me put this a little more simply if the cities usually pay for security expenses for conventions. Then the Commission might be justified in allowing them to do so for political conventions. I don't think that that's been clearly established.

I think it's also true that the Commission may face some difficulty in generalizing, because in some ways, the political conventions are different. I don't know whether they necessary involve more people, but they
probably involve additional security concerns,
particularly for the incumbent party. So I think
that that concept could be applied, and a cleaner
line could be drawn between the types of expenses
that typically should fall to the convention host,
whether it's a party, a political party, or the
ophthalmologist and those which the city inevitably
picks up in order to enable entities to come to the
city and hold their conventions there.

And, you know, we've tried to
acknowledge in the recommendations we made as to
how the Commission could structure the rules, that
the cities have a legitimate interest in trying to stimulate
commerce and they could--they should be able to use
sources from--funding sources that have a business
interest in the success of the convention to
promote those functions.

COMMISSIONER THOMAS: Thank you.

Mr. Bauer, while I've got you here as
the most experienced and perhaps the most agile
legal mind on these two concepts that we'll ever
have here in our presence--that's a compliment. We
don't always agree on things, but it's a
compliment--let me ask, coming into this
rulemaking, I had sort of assumed that we had a
statutory construction issue that didn't give as
much leeway with regard to what national party
committee operatives could do in terms of perhaps
maybe raising monies for the host committee as
distinguished from maybe what the Federal officers
and candidates can do in raising money for the host
committee; and specifically what I'm getting at is
in the BCRA provision you now have in 441(I)(A) a
very broad proscription on national party
operatives raiding or spending any money that isn't
subject to the limits, prohibitions, and disclosure
requirements of FECA, and I had thought that that
was a very broad, all encompassing ban.

There is another provision that's been
alluded to which talks about how national parties
as well as state parties and local parties and
operatives are not to solicit monies for a 501(C)
organization if that is an organization that
undertakes activities in connection with Federal
elections. And I had assumed that since that second provision doesn't start out with a
notwithstanding any other provision clause that we were bound to apply the first provision I talked about, the very broad proscription for national party operatives raising monies that aren't subject to limits, prohibitions, and disclosure requirements, we were bound to apply that provision in a way that wouldn't let national party operatives under any circumstances raise money for something like a host committee that's a 501(C) organization.

That second additional provision, it seems to me took on an added meaning when, for example, it would prevent a national party committee from even raising hard dollars for a 501(C) organization unless that organization didn't have its--didn't undertake activities in connection with a Federal election. Now, I'm wondering how those two provisions relate together. Do we still have the flexibility to allow national party committee operatives to help raise soft money for
the host committee municipal funds?

MR. BAUER: I believe the Commission does. I may not be able to put a fine polish on this argument at the moment simply because I don't have the provisions in front of me, and I'd probably want to think it through. I mean, one of the reasons I'm a little bit taken aback by the debate that has developed on this is, again, the belief I may have mistakenly taken away from the BCRA debate that Congress chose to set aside convention financing and leave the Commission rules as they are currently in place, and maybe it's because our attention is so focused on the concept agreed to that we didn't foresee or anticipate there would be a subsequent regulatory debate, and so in that sense, I would probably can't put a fine polish on the argument.

But it does seem to me that the type of 501(C) that is implicated in the very specific prohibition on national party operatives and one that has as its principal purpose Federal election-related activity is not in my judgment
what host committees are, that is to say there are
types of election-related activities that BRCA is
very concerned with. It identifies voter
registration, get out the vote, and the like, and
the host committees are engaged in an enterprise, it
seems to me, notwithstanding the fact it takes
place in relation to the activities of the
convention, but it's engaged in activities that
have long been viewed as while related to an
election, not in connection with or intended to
influence an election. It's an unusual animal, I
suppose is the best way I could put it, but I
certainly don't think it falls within the types of
tax exempt organizations that the prohibition refers
to as intended to reach.

So again, and you raise a fair question,
which is how does it all fit together tightly, and
the answer is, number one, I think that may be goal
that alludes us in terms of the provisions of BCRA
in pari materia or however we may wish to do it,
but secondly, I'd also be happy to answer your
question on paper subsequent to the hearing by
taking sort of a closer textual look and encourage
you on the path I believe is the right one.

COMMISSIONER THOMAS: Thank you. It's
just baffled me whether we had any way to read the
441(I)(D) provision to somehow trump the 441(I)A
 provision.

MR. BAUER: I should mention also, if I
could Commission, that also is this additional
strange development that would occur if one read it
another say. The Federal elected officials, who
are the ones whose access you're most concerned
with, would be free to raising the soft money, but
we would be chasing Terry McCauliff and his
counterparty into a dark end corner, and there's
something about that that just strikes me as sort
of surpassingly peculiar.

COMMISSIONER THOMAS: Okay.

CHAIR WEINTRAUB: Commission Toner.

COMMISSIONER TONER: Thank you, Madam
Chair.

I want to thank all of the panelists for
being here today. It's great to see you. I want
to follow up on a couple of items that have been
discussed. First, on the leader PAC proposal, I
understand, Mr. McGahn, your position is you
support the proposal for us in terms of
Presidential, but make a clear distinction in terms
of use of leadership pacts by Congressional
officials who aren't running higher office; is that
right?

MR. McGAHN: Yes, sir.

COMMISSION TONER: Mr. Sanford, I
noticed in the Center for Responsive Politic
comments there appear to be support for the
leadership PAC proposal before us. Do you care to
elaborate on that?

MR. SANFORD: No, just to restate that I
think it's incomplete and that we urge the
Commission to follow through the other way and read
our comments in that context, but no. We think
that within this limited context, this proposal is
okay.

COMMISSIONER TONER: Following up on, I
think, a key issue that we have before us today
obviously is the raising of soft money for host committees and the role of members of Congress in doing that, and I just want to follow up on a couple of things. We talked about how it's clear that, you know, certain members are raising soft money for host committees for 2004.

And, Mr. Sanford, I'll start with you. I mean, clearly, if BCRA makes that conduct illegal, that's the case regardless of what this agency does here through regulations. I just want to confirm two things with you and get your sense. First of all, do you think that any members of Congress who are raiding soft money for host committees are breaking the laws?

MR. SANFORD: Yes.

COMMISSIONER TONER: You do? Do you think that's the case regardless of what this agency does through rulemaking because a statute is a statute?

MR. SANFORD: I think that's correct.

COMMISSIONER TONER: Okay. Mr. Bauer, do you care to comment on that?
MR. BAUER: I couldn't, could not, disagree more, as I'm sure you would anticipate.

COMMISSIONER TONER: I figured you might.

MR. BAUER: What is it based on? What exactly would that statement be based on? Where is it in current regulations of the FEC that prohibits, or in BCRA, prohibits office holders from continuing to raise money for host committees?

The Commission here is asking the question whether the regulations ought to be revised? That's a question that the Commission can ask. That's a question we're here to try to help you in some way answer, but to suggest somehow that notwithstanding all of this, notwithstanding Congress' failure to deal with it, notwithstanding it being an open issue before the agency that members in good faith on reliance of counsel who are raising money for this purpose are breaking the law strikes me as completely without foundation.

COMMISSIONER TONER: Following up, Mr. Sanford, I thought the comments that you submitted
were interesting in pages 13 and 14, and you
alluded to this in your earlier discussions. You
seem to suggest that there are some bona fide host
commitee activities that can be paid for with soft
money, and I think in the comments you mention
certain activities: Promoting the suitability of
the city as a convention site, providing
accommodations and hospitality the members of the
site selection committee. I'm reading from the
second paragraph on page 14. You talk about
welcoming convention attendees, security costs,
things of that sort.

Is that a fair reading? Are you
basically making the that point that there are
definitely certain activities that host committees
can pay for with soft money and that's permissible
under BCRA and under FECA; is that right?

MR. SANFORD: Yeah. I tried to base
that on the existing regulatory structure the
Commission has. I mean, the list of permissible
costs in the current rulings for host committees
contain some that don't fall within the definition
of convention expenses for the convention committee and others that do, and my approach was to try to use that structure to draw a clearer line between types of expenses that the two entities might pay, and I'll concede that those are not exhaustive lists. There may be other expenses about which judgments will have to be made, but I don't mean to minimize the challenge that presents, but I think that there's a seam in the rules, that can be drawn from the rules, that can be used to make a clearer distinction between the types of expenses that Federal funds can be used for and non-Federal funds can be used for.

COMMISSION TONER: And just to follow up, and then after BCRA, you do believe that at least that in these areas that you outline in the comments, these types of activities, it should be permissible for host committees to spend soft money on those activities?

MR. SANFORD: I think the Commission can interpret the statute that way.

COMMISSION TONER: Would you interrupt
the statute that way? Do you think that's something that makes sense from a policy perspective?

MR. SANFORD: I start from the view that what makes all of this a problem is that the rules allow the host committee to pay for convention expenses, and that's, in fact, what is happening. If the rules didn't allow that, then I think the role of the host committee as essentially a pass-through for non-Federal would not be nearly so acute and that we'd be looking at a very different landscape here, and then Commission's determination that donations to the host committees are commercially motivated would be standing on much firmer ground.

COMMISSIONER TONER: Mr. Weissman, I thought the study that you put together was very interesting, and I wanted to follow up on one issue. You noted in the study that it was difficult for your researchers to get a full sense of host committee spending, and part of that was perhaps the reporting processes that we use for host
committees don't fit as well. Could you elaborate on that, and do you have any specific recommendations for us on how we could better deal with host committee reporting?

MR. WEISSMAN: Yes. The difficulty is that under the--in the form, there are two places that are relevant to revealing what the host committees are actually doing. One is the purpose of expenditure column, but this is an open-ended purpose of expenditure column in which the host committee can simply write down however it wants to categorize its expenditure. It has no relationship to the categories that have been set out by the Commission as permissible host committee expenditures, such as, you know, for, let's say, law enforcement, transportation, for various construction in the convention and that sort of thing, office equipment, and a lot of the--many of the goods that are discussed, such as computers, you don't know was this computer used within the convention or was it just used for the office and so forth. So it's difficult to get a bead on what
it is that the host committees are actually doing, because there's an open-ended purpose column, and it is not a column that says chose from these purposes that are permissible for host committees and we have established in regulations.

The second problem is that there's a new addition to the form this year, which has a categorization of expenditure, but the illustrations and categories are all from candidate and PAC like polling, how much did you spend on and sort of categorize this expenditure as polling and media or something. Of course, the entire convention is a media message. So the categorization things also not relevant. So our recommendation, which is found toward the end of this statement is to adopt the categories and regulations that the Commission establishes or has for the host committee expenditures and to require the host committees to fit into that particular category.

If I could make one quick addition on the question raised earlier for Mr. Sanford and
that Mr. Thomas raised earlier, the question of whether security can be considered to be an expenditure that you might allow not only cities to pay, but as I understand it, perhaps private funds could be used to help security because security is a typical municipal expenditure, my understanding is that first we have to take a look back at security these days. Boston is applying for $10 million under the Homeland Security Act to protect the Democratic convention, and obviously that is inherent to the convention. It is not a simple municipal sort of expenditure, and the fact that these are political conventions these days means they're different from other conventions and may not fit as easily into the rubric. The other problem is that these kinds of law enforcement expenditures and in the Commission proposal now have been considered convention expenses. They have not been considered expenses that are like welcoming delegates who come into the city. They have not been considered expenditures like paying for the committee to
recruit the parties to adopt their city, which are very local civic and commercial in nature. They are promoting the civic economy. Security and transportation are expenditures that have been viewed historically by the Commission as inherent to the convention expenses.

Were there to be an exemption at least for our data, the Commission should be aware that Los Angeles claims to have spent $23 million on security during the 2000 convention; Philadelphia, 13 million. And since the private financing of conventions you might say is about a 25 to 35 million dollars issue, money could easily be shifted so that private money could be recruited to host committees to pay for things that cities used to pay for, and then cities could pay for things that host committees used to pay for.

One of the interesting things in our table are data of how many cities and states continue to do for convention, an issue that is not fraught with any controversy at all insofar as public funds are used, which is predominantly what is used;
however, the concept of municipal fund, even though as we can tell it's only been used a couple of times in 1984 and once in 1996, could open up this area more and more private funding as well as if host committees could do it.

COMMISSIONER TONER: Mr. Bauer, I want to briefly discuss a couple of interest policy ideas that you had in your comments, and you alluded to the first one earlier. One, as I understand it, would be creating a primary GELAC for Presidential campaigns, and I just want to try to understand it. That would be a fund of money that would be raised through private contributions where the spending of that money wouldn't count towards the primary spending ceiling and contributors would have a separate $2,000 per person limit for that fund; is that the concept?

MR. BAUER: Yes.

COMMISSIONER TONER: Do you believe we have a statutory basis for doing that I guess in parallel of what we've done in the GELAC, the General Election Fund?
MR. BAUER: Yes.

COMMISSIONER TONER: And do you think that that would reduce some of the pressures that candidates face where political dollars versus compliance dollars, eliminate that pressure?

MR. BAUER: I think it would help alleviate that pressure. I think that's something the Commission should look at very closely.

COMMISSIONER TONER: You also outline in your comments, as I understand it, you support basically allowing candidates who are unsuccessful for the nomination in the primary to go to the national conventions and have those treated as a qualified campaign expense. I understand that that would be building upon the advisory opinion that we issued in 2000; is that right?

MR. BAUER: Right. That's right. The Bradley McCaine Opinion I think that we ought to be somewhat more open-fisted about how we handle those kinds of expenses, and again, there are a variety of reasons why candidates go to conventions. The fact that they have suspended or withdrew, not only that they're
ineligible doesn't make it less imperative for them for a variety of ways, for a variety of reasons, to be there. And so it just doesn't to me that making that allowance, given the very unique role the conventions and attendance at conventions plays in our process doesn't seem to me that it's necessary to put quite the range of restrictions or certainties on it that we do today.

COMMISSION TONER: And we allowed in that advisory opinion for certain activities to take place. Is it your view that we should basically allow the spending to occur, but subject it to a certain cap?

MR. BAUER: That was our proposal, that if you were concern about it being sort of the gateway to a large amount of money, you could set it at a hundred thousand or 250,000, and you could put a limit on how much money you could spend in relation to the convention, but that would obviate the necessity to place conceptual restrictions on what they could do. In the Bradley-McCain opinion, there are some very defined activities that were
permitted and then it leaves the question about a whole range of other things that are typically done at conventions and raises questions about whether they're still permissible.

COMMISSIONER TONER: One final question: In the NPRM, we talk about some of the difficulties, obviously, with the shortfall in the matching fund account and candidates that don't have the money that they're entitled to because there isn't sufficient resources in the account, and proposed perhaps a five-percent exemption, and we also asked sort of more narrowly that we would be treating any bridge loan expenses, these expenses that candidates incur to get private money because they don't have the matching funds, could be exempt from the spending ceiling similar to this fund-raising exemption we've had for some time. Would you support that approach?

MR. BAUER: Yes, absolutely. As a matter of fact, there are other expenses, it seems to me, that are associated with that shortfall that the Commission ought to account for in some way. I
think the objective here would be to try to find ways to help candidates get through the process without bogging them down in difficult choices between money they want to spend on politics and money they want to spend on compliance or subjecting them to clear-cut unfairness, which is to say they wind up spending money because of the shortfall that they really don't have, and it's still allocable to the limit.

So yes, I would support it that instance, and there may be some other examples like other categories of expenses like that that could be included in such an effort.

COMMISSIONER TONER: Thank you.

Thank you, Madam Chairman.

CHAIR WEINTRAUB: Thank you.

Commissioner McDonald.

COMMISSIONER MCDONALD: Madam Chair, thank you.

Good morning. It's good to see you, Don, Bob, Paul, Steve. I'm delighted you're here. Just a little history of the process, I
think, how things have changed, I think convention spending got some real interest in about 1972. I'm not saying we didn't have it before or after, but I think Dea Beard, if memory serves me right, was very prominent, and we want to thank you her for being here today, because I do think that was kind of one of the first major issues in relationship to convention process and what really emanated from what later became known as the Watergate scandal, if you will.

Let me refresh Don's memory. That's where the Republican broke into the Democratic headquarters to see if he could find out what our plans. If you lose 49 out of 50 states, you couldn't have had many plans. We would probably given them to you if you would have just called, if we could have found them, that is.

Historically, the other thing is that of course in terms of the security 35 years ago, yesterday, Senator Kennedy was murdered in Los Angeles. So there are things that emanate historically in relationship to the kind of discussions that we're
having. I've kind of taking the view about

conventions that the more flexibility, the better, and I do so not unmindful of the studies, the very

outstanding study that was brought to us this morning as well as the history of the process itself. I'm interested--I want Don and Bob to

refresh my memory. I think this might be a little bit different viewpoint than they took about the Congress when I last saw them at this table. Suddenly their interest in the Congress seems to be somewhat different than I had recalled in the previous rulemaking. Here, I gather we're saying on the one hand since Congress for the most part didn't address this issue, that we should leave well enough alone.

Bob, you had indicated on this proposal about the GELAC fund that you might want to--I'm just trying to be sure I understand. As you know, critics of ours say that we created that to begin with, it had nothing to do with what Congress had done. But you're saying you think we have the authority even though Congress has really not
addressed this, and I'm just trying to figure out how we kind of get the authority in this area to do this where Congress really has not addressed the issue, and, in fact, as I say, I think critics point out to us that some of our handling of these types of arrangements that we created over time, when go to look for it statutorily, it's a little hard to find.

So if you don't mind amplifying on that just a minute, because it might really help us, particularly if there's some way in the overall scheme of things it would be injurious to the process.

MR. BAUER: I'd say two things, Commissioner. It's a fair question. I think the first is that by and large, the Commission has not come under, in my judgment, a very significant attack for the way in which the nominating and the general election financing provisions have been implemented. By and large, the statute as a whole, setting aside the controversy over, you know, national party collection of soft money, but the
statutory scheme itself and its implementation generally has not been a source of criticism of the Commission. I don't recall seeing an enormous amount of concern that, for example, GELAC activity generates the potential for significant undermining of the statute.

There has been from time to time some partisan cross-fire. I recall a little bit of that in 2000, but it's really quite incidental. So I don't think we see a concern that somehow the Commission cannot handle the complexities of administering the Presidential campaign financing process, and a belief that over the years, particularly with its regular reviews each cycle, that it hasn't made the appropriate adjustments necessary to make it work better in the light of experience.

COMMISSIONER McDonald: Thank you.

Don, let me ask you, you had said in the last round when you and I visited that Congress basically in relationship to passing the law was signing it at two or four o'clock in the morning
and really didn't much know what they were doing.

I'm sure you didn't apply that to all members, but some members, I gather. That being the case, the reliance this morning or what they did not do in your estimation in terms of this particular focus on the convention process, I'm just trying figure out how we kind of get to where you think we ought to be vis-a-vis your previous theory about the Congress and their activities or lack of.

MR. McGAHN: You alluded to inconsistency in your initial question, and Mr. Bauer included me in that, and I don't see any inconsistency in what I've said before and what I say now.

COMMISSIONER McDONALD: You don't think the fact that they didn't know what they were doing is something somebody can rely on now?

MR. McGAHN: That's a broad statements. We can paint on the whole statute what I was really referring to at the time, things like coordinated versus independent expenditures and the choices between the two and the minutia of the 98-pages of
the bill. I mean, what they thought they were
doing was this concept of banning soft money, which
is a term which we use in a variety of different
ways and that sort of thing.

So to the extent I was overly simplistic
or rhetorical, in fact, overstated that they didn't
know what they were doing. I don't think it's fair
to say that somehow now I'm inconsistent. I've
been very consistent in my argument here today.

COMMISSIONER McDONALD: I'm not trying
to attack you. I'm just trying to figure it out,
because you're saying that the absence of Congress
alluding to specifics in this area means that in
essence they have kind of signed off on the status
quo.

MR. McGAHN: Wait a minute.

Commissioner, when did I say that?

COMMISSIONER McDONALD: Pardon me?

MR. McGAHN: When did I make that
argument?

COMMISSIONER McDONALD: You made that
this morning?
MR. McGAHN: It was Mr. Bauer.

COMMISSIONER McDONALD: So you don't agree with that?

MR. McGAHN: I didn't say I didn't agree with it, but I don't want you to put words in my mouth.

COMMISSIONER McDONALD: I don't want to. What do you think?

MR. McGAHN: Well, my comments here are limited to three areas that I outlined: Members being able to raise money for the host committees, which are 501(c) and the statute is clear. I didn't make reference to the intent or anything of the sort, and my argument there lies in the statute.

My second point was the local rule, which is the Commission regulation, which in my view, times have changed. Because the facts have changed, the Commission can change its regulations. And the third is the notion you can reach out and regulate events during the week of the convention or the time around the convention, and there's
nothing in the statute itself which indicates that
needs to occur because of BCRA, and I don't see any
factual change which results in that.

So I don't see the inconsistency, and I
want to again say I'm here on behalf of a single
member of Congress. I'm not speaking for the
national party, and although I've gone off those topics
here to help the Commission and offer what pithy
comments I can, but I'm not going to sit here and
certainly try to compete with the institutional
knowledge of Mr. Bauer and others on conventions.

COMMISSIONER McDONALD: Let me say
you're right. That certainly isn't in the three.
I didn't realize that you were precluding yourself.
You do appear to have a rather substantial amount
of knowledge in your current position. I was
surprised, I guess, that you didn't know whether
House members on your side of the aisle might be
pursuing a goal somehow like Senator Kennedy and
Senator Kerry.

MR. McGAHN: My advise has certainly
been it's legal to raise. Whether there's actually
been solicitations, I just don't have personal knowledge of how far along the tracks members on the Republican side--to the extent it's helpful, I can kind find out and provide that information. Just sitting here today, I just can't say for certain where we are.

Commissioner McDonald: Thank you.

Steve, let me go to you just real quick, if I may, Ms. Chairman.

In terms of--and I realize your position is that you've done a study and that you're really not taking a position, but it's hard to read the study without concluding that you're taking a position of sorts, which is fine. Aside from your study, your own assessment of the study or the climate in general, what conclusions would you draw outside of what you've put forward, I guess might be the best way to ask it. It's one thing to have the study. I think that you do draw a conclusion about the study, which is perfectly fine, but what would you want us to leave with in terms of your participation today other than the fact of the
increased costs, which we concluded is certainly true?

MR. WEISSMAN: Well, again, I don't think--we can't really--I'm not taking a policy stance, because the institute has a task force that has read this study and will issue its findings and it specific recommendations in July. I think that what I would like to come out of this study other than the increased cost that people take out of it is--and I think, you know, to the extent that people read it, they can assess whether Mr. Bauer's portrait or my portrait of what's in here is correct and make your own assessment of the degree to which and we have not argued a hundred percent that political motivation has become important and that convention expenses are being paid for by host committees predominantly rather than convention committees.

I think what comes out of this is that whatever the Commission does, the old rationale for doing this doesn't have the power that it used to have, that there was a rationale that had some credibility, although some have argued to us that
even in 1984 Trammel Crow was, you know, getting  
the Republicans to contribute to the Dallas Municipal Fund, and look at the chairpersons of  
1992: Kenneth Lay for the Republican host  
committee and Robert Rubin for the Democratic host  
committee.

But we've argued that that rationale for  
the exemption doesn't have the power that it did  
before, and that if the Commissioned for legal  
reasons and others decides it has to temporarily or  
permanently provide some exemption, then perhaps it  
has to rethink this rationale and find another  
rationale, or if it can't and it wants to provide  
the exemption, I suppose there are options the  
Commission has such as asking Congress what it  
thinks, seeing if it replies or not in any time  
timely way.

So I think what we most would like to  
come out of this, and we appreciate the attention  
that the study has gotten, is for the Commission to  
reflect upon it and figure out what is--can they  
develop an independent rationale for whatever they
want to do, and if not, is this an issue that has
to be dealt with in part by Congress and by the
President.

Commissioner McDonald: And what about the argument
made by your distinguished colleagues there that
the Congress has reflected on this and their
position is things are fine. What's wrong with
that?

MR. WEISSMAN: Well, if I could put on
one past hat, I was one of the people that before I
took this job in Campaign Finance Institute who was
involved in the lobbying effort with Congress on
the McCain-Feingold bill. This a purely personal
impression. My impression was no one focused
particularly on this issue, that it was brought up
by Senator McConnell to characterize legislation.
His interpretation is plausible and so is the
opposite, so that my feeling was that nobody
among--I was working at the time with Public
Citizen. Nobody among those reform groups, nobody
among those sponsors of the legislation were really
thinking about this issue.
COMMISSIONER MCDONALD: These poor members, they're just not shaping up well with any of you. I'm starting to feel worse. I feel about the members like I did about the city of San Diego some years ago.

MR. WEISSMAN: But this is complex—as everyone has pointed out here, this is a complicated issue because there is a sort of mixture of local civic thing in here, in the motivation, but there's these other motivations, and it was a level of complexity that Congress felt, look—in fact, it was a kind of decision not to get into the Presidential thing at all. They didn't want to get into Presidential issues. There were some concerns that what would happen in the public financing system if soft money is gone and those kinds of things. There was a kind of tendency to shy away from the Presidential system and say, Look, it's hard enough to deal with this particular legislative issue generally.

So I don't think it was totally irresponsible of Congress at that point to say,
Look, we'll get to the Presidential thing at another time. That was just simply a personal impression from firsthand involvement over four or five years in that particular issue.

COMMISSIONER McDONALD: Very briefly, Paul, going back to 1972 for a moment, one of the problems, of course, was that theory was that a large amount of money underwriting the convention by a particular source or a handful of sources was a serious problem. Over time, what has happened, I think on either side of the aisle, I think you can make a very compelling case that lots of money certainly has been poured into the convention process. But two things: One, it's in the public domain, which is decidedly different than what triggered this to begin with, I think; and two, if you're representing Southwestern or American Airlines or Korean Air, whatever it might be, the one thing in particular in the public arena is that they may have alliances in relationship to an industry, but of course the internal fighting—the most recent, of course, is American and TWA where
they can't agree on what vote they made jointly,
clearly what has happened is that there are very competing interests, I guess is what I'm saying.
The issue when this first began to take center stage was clearly that a few folks would have unlimited access and that a national party would be beholden to those folks. Now, lots of things have changed, first and foremost, the publics ability to know what has transpired. I guess I'm asking you what the problem with that is in view of the fact that even though people may give substantial amounts of money, it is not in the context--I don't think any of us think that the convention per se determines who the Presidential nominee is. Everybody knows when they get to the convention.

So where does that leave us in terms of a practical aspect? What really started out in terms of the law? Don't you think we have come a long way in relationship to how things used to be?

MR. SANFORD: Well, I think that certainly it's true that the outcomes seem to be
rarely in doubt, if they are at all, although they could be. They could in any particular cycle be.

MR. McGAHN: Agreed.

MR. SANFORD: So, you know, it can be said that the money that's--making it's way the soft money--let's just use that model for a moment--that's making its way to the benefit of the parties committees. I mean, this isn't really influencing the outcome of the election. But I guess I interpret Congress' decision to prohibit soft money for the national party committees to sort of transcend that--I mean, they said that these entities aren't supposed to collect these funds, and, you know, part of the reason that it was allowed before was because the money was being used for generic purposes that was necessarily tied to a particular election, and Congress decided even though that wasn't the case, new limits were needed.

And so I don't think that the way the money is making its way into the convention process is very different than what Congress banned,
explicitly banned, you know, and making its way into the hands of the party committees and other processes.

COMMISSIONER McDONALD: I thank all of you, and I appreciate it very much.

CHAIRWEINTRAUB: Thank you, Commissioner McDonald.

Vice Chairman.

VICE CHAIRSMITH: Thank you, Madam Chair. I'm going to direct most of my questions to Mr. Sanford and Mr. Weissman, primarily because most of our commentators and the other panelists today share views that would be more similar to those expressed by Mr. McGahn and Mr. Bauer. So I want to give you a chance to be heard.

I'll start, Mr. Weissman, with some things for you and your study, and I guess Mr. Bauer noted that the corporate sponsorship was way up in the last decade or so. In fact, I even look forward to probably 2008--I don't think we'll get there in 2004--where Americans can turn on their television sets to CNN and watch the Nokia
Democratic Convention or the AT & T Republican National Convention, but you note the explosion in the corporate contributions to host committees and so on, and yet it strikes me that in addition to the point that Mr. Bauer makes, which we don't have the exact numbers on right now, but you cite in the study another factor that would be very determinative of why there was this growth, which was the Commission's change in 1994 to do away with the local retail rule; and of course then we see a big explosion beginning in 1996, and you note specifically or you cite some examples of companies that, gee, looks really motivate and why are they suddenly contributing so much. You note Motorola, GM, Ameritech, Microsoft.

It's not that there are a lot of companies like that that would have been able to contribute prior to 1994 Commission regulations. So isn't that coupled with the fact that Mr. Bauer has raised something that equally explains the sudden rise in corporate funding for the host committees?
MR. WEISSMAN: To focus on what we do say in our a statement is, yes, I think in part the change in regulations which one could argue the old regulations were too inflexible. People said, Well, what if we get a benefit to our business in this city that last beyond the life of the convention. What if we're not a retail business but we have a lot of economic stake from the city; we get benefits, but now that there is no particular measure of benefit that is restricting someone from giving donations, you're absolutely correct. I think that has encouraged the process.

The thing I don't think we can ignore, though, is that when you take a look at--but that may not involve someone saying, Oh, well, my real commercial interests in the city or the metropolitan area is really $1 million instead of 30,000, to take what Amway is doing from one year to another. It may mean that they're saying in response to pleadings by the parties which were at this very moment developing the whole soft money boom, Okay, we'll give you a million dollars. The fact is you can
see so many of the contributions are exactly the
same, a million dollars and often to both parties,
that one can look at the data which the Center for
Responsive Politics and other organizations have
put in compact form, which are available from the
Federal Election Commission, and look at the data
and say this is just as much a part of the soft
money explosion as of the Commission's rules
change.

So I think probably both factors are
involved in this, and what's notable is that the
very same companies that gave a hundred thousand
dollars, Coca-Cola Bottling in Atlanta or AT & T in
1988, both conventions give a hundred thousand and
something. Suddenly, some of these companies are
up to the million-plus mark, and then of course if
it doesn't have to be local retail, you have all
these new companies coming in that have very little
special stake in the local economy, the Ameritechs,
the Motorolas, and so forth, Microsoft, many of
them cited in the statement in the presentation,
and they are also giving huge amounts of money.
VICE CHAIRMAN SMITH: Now, let me take you up on that. We were looking just at one other host committee, which is the host committee for the 2002 Super Bowl in New Orleans, and the host committee does all kinds of things. They finalized locations for all the events being held, including the Annual Commissioner's Party, a Taste of the NFL feature including top chefs from all over the country, the international media reception of the task force party, kinds of events that are directly related to their business. They also note, and this is interesting in terms of thinking about the growing extravaganza of conventions, they note, for example, that for the people who show up for the event, events and attractions leading up to the game that continue to grow in size and complexity, for instance, an event that comprised of little more than a sport car trading show under outdoor tents in the Super Bowl town in 1990 grew into a temporary theme park called NFL experience by 1997.

So that what we're witnessing is again
not unique to political conventions, and
who are the sponsors for the New Orleans's Super
Bowl Host Committee? Well, they're also companies
that seem to have only an attenuated local interest
or whose futures don't seem to hang on the local
economy: RCA, Cox Communications, the Home Depot,
Coca-Cola, Miller Lite. Most of these companies if
they have any presence in the city, have a present
that is, you know, there's a Home Depot store in
the New Orleans area. I think it's tough to argue
that this is just a major--you know, the connection
you try to argue should only be what's motivating
people who are funding the political conventions.
And so I look at it, and I wonder if
you're not using a paradigm that's incorrect as to
why companies give to these kinds of host
committees.

MR. WEISSMAN: Well, of course we have
the--I don't know exactly what the Super Bowl
sponsorship delivers to the company, but we have situation
with the political convention, as you know, where
the average television viewership is 13 percent of
the convention. They're only on for a brief period of time. The exposure is declining very substantially, yet the passion to contribute to these host committees is increasing. We also have the other thing that I don't know who asks for the money for the Atlanta Super Bowl whatever committee, the New Orleans Super Bowl, but the people asking for the money to a predominant extent are partisans asking partisan donors or donors who give to both parties to provide financing for what is really the first major--it's not a primary election or choice of the candidate, but it is the first major event. It's a four-day testimonial to the quality of general election candidate, and they're being asked by partisan fund-raisers and party officials and politicians. Then when they get there, they're greeted by those same politicians. They are privileged to help co-sponsor a delegate receptions which politicians will appear because of the contributions to host committees, and I think there's a whole different syndrome occurring at
these conventions.

VICE CHAIRMAN SMITH: Well, I'm going to venture a guess that the same types of people who raise money for the political conventions to a large extent raise them for these other kinds of host committees, and I don't know, but I wouldn't be surprised if you don't actually have politicians I think there are certain types of wealthy individuals who are maybe prominent in communities generally in political fund-raising and other events.

But that leads me to a question for Mr. McGAHN. You have mentioned a couple of times that the statute specifically permits raising funds for 501(C) by office holders and candidates and party officials. The statute permits that where such solicitation does not specify how the funds will or should be spent. If you're raising funds for a host committee to spend to put on a convention, doesn't that bring that into play?

MR. McGAHN: No. I don't think so. I think any 501(C) has some sort of mission, but
whether it's the Red Cross or a host committee, you
do have a broad idea of how the money is going to
be spent. I don't think that section applies in
that situation. Now, perhaps if it's a specific
earmark, but even then it's still not a Federal
election activity. I don't think that limitation
is applicable.

VICE CHAIRMAN SMITH: And Mr. Bauer, do
you want to comment on that?

MR. BAUER: I don't disagree with
what Don has said.

VICE CHAIRMAN SMITH: The other aspect
Commissioner Toner touched on a little bit, but
let's go back to it again. Of course, those
entities also cannot have its principal purpose to
conduct Federal election activity, and Federal
election activity includes generic campaign
activity conducted in connection with the election
in which a candidate for office appears on the
ballot. You don't think that comes into play?

MR. McGAHN: My own view is no.

VICE CHAIRMAN SMITH: Why not?
MR. McGAHN: Pardon?

VICE CHAIRMAN SMITH: Why not?

MR. McGAHN: Historically, the host committee is not seen as doing--notwithstanding a slight overlap, it's a separate entity that provides the infrastructure for the convention.

Again, I don't want to get too far out on the proverbial limb here, because I'm here just for a handful of issues. I'll defer to others.

MR. BAUER: I would only make the comment that I think it's analytically confusing and ultimate a mistake to try to neatly divide up everything we see in the political world into those things that are election related and those things that are not election related and Whatever. This happens to be, and again I'd insist on this point, a it's a unique event, and the Host Committee plays a unique role and a unique set of circumstances and takes place over a short span of days, albeit very expensive. People can debate the wisdom of the investments that are made and the wisdom of certainly expenses like the expense of security and
transportation that have to be made; but one way or
the other, I don't believe that the host committee
engage in anything that anybody would think
rationally related to the sorts of concerns we view
as at core election related.

VICE CHAIRMAN SMITH: Mr. Sanford, one
ting thing I appreciated about the Center on this
rulemaking is that they were—in an effort to
firmly ground the position in the statutory
language of the agency and establish finance,
maintain or control. You did not address the two
clauses I just mentioned, the 441(I) and (E)1. Do
you want to address it at all? Do you think those
come into play, or do you think that is not proper?

MR. SANFORD: Well, I think that—I
guess I view that as a bit of a side issue, because
I believe that 441(B) prohibition really constrain
the conduct of the host committee, so
that—constrain the fund-raising for the host
committee. I mean, we talk about the host
committee not engaging in Federal election
activities, and this is one of the ways in which I
I think back to an analogy that my boss used in a previous hearing, was we're looking through telescope from opposite directions. I think the host committees are set up to facilitate the convention and we can quibble about how closely related they think their expense are, but that's what these entities are for. So to say that they're not connected in the 441(B) sense to a Federal election, when conventions are by definitions elections under the statute. That seems to me to overlook a pretty apparent relationship.

Now, and so the direct response to your question about the impact of the solicitation prohibitions is I think that even as those provisions are interpreted in such a way that they would allow Federal office holders to raise soft money for the host committee, that would not mean that the 441(B) prohibition are therefore lifted for the host committee and they can use these funds for convention expenses.

VICE CHAIRMAN SMITH: Let me ask you
another question. I gather from your earlier comments that you're suggesting that regardless of BCRA, in your view, the law properly interpreted would prevent many of these host committee activities under 441(B).

MR. SANFORD: It wouldn't prevent them. They should be used--they should be paid for with Federal dollars.

VICE CHAIRMAN SMITH: Okay. Right. The means used to pay for them.

MR. SANFORD: Right.

VICE CHAIRMAN SMITH: Now, here is the issue I have, I, guess with that a bit. It seems that you're kind of hinging your argument, then, on this statute as existed by prior to BCRA. I think it's a pretty strong argument that BCRA doesn't seem to address it, and I wonder if we were on a blank slate it might be a different scenario, but where we've had those rules in place for a lengthy period of time without Congressional action to overturn them, including in repeated introductions of versions of what ultimately became BCRA, and
then finally in the bill that passed as BCRA, this
issue has never been raised. Isn't there generally
a presumption when you have that kind of activity
going on that, in fact, the interpretation of the
Commission is giving to the statute is correct or
at least that which is desired by Congress and what
they see?

MR. SANFORD: Well, I go back to the
language of--I guess in this case, I would say the
language of BCRA, and I think the 441(I)A
prohibitions are pretty broadly written and that,
you know, it's a little bit speculative to guess
either way what the Congress meant, and in that
context, the courts would typically go to the
specific language in the statute.

On sort of the history question, I
ground my arguments, as you correctly state, on the
way the Commission has allowed the rules to evolve,
and I see those problems as being real, and I think
that those are Commission created and that
notwithstanding what the Congress did, the basis of
this assumption, the assumptions as Mr. Weissman
refers to, the basis of the exception that the
Commission has created has become shaky and should
be re-evaluated.

So I will concede that Congress'
inaction could be interpreted as assent. I think
that the Commission has an ongoing responsibility
to re-evaluate the assumptions it's made in the
past and decide whether those are still valid.

VICE CHAIRMAN SMITH: I think, and I
said this throughout the hearings on BCRA last
year, that I think that sort of intent is less
important than what Congress actually did or did
not do. I want to make one comment that you
mentioned about Senator McConnell's comments on
conventions earlier. I would just note, whether
they were correct or not or refuted, that there's
really no opportunity to refute them. If I
remember correctly, he made those comments on the
very last floor statement that was made before it
was voted.

But I have a couple of quick questions
for you, Mr. Sanford. Have you read Mr. Gross's
MR. SANFORD: I have, written comments, yes.

VICE CHAIRMAN SMITH: Yes, his written comments. I wonder if you would be able to respond--I know you don't have it right in front of you, but since he's going to go on later and you're not, he makes comments suggesting that the agreements between the host committees and the parties are arms length and between very distinct entities. I wonder if you have any response to the arguments that he makes there.

MR. SANFORD: First of all, I think that the comparisons to other type of transactions, other corporate sponsorships are a little bit beside the point, because corporate sponsorships of political activity are different than corporate sponsorships of other--of the Super Bowl or other events, and to some extent, I think some of those same principle apply to the notion that what we have is this giant arms-length transaction between the party committees, their deliverable being the
convention, providing it to the city in exchange for substantial subsidies.

The statute says that, at least initially, that that transaction, because this is an election within the statute, has to be treated differently. I think that the Commission has sort of dealt with a smaller version of this issue recently in the Libertarian Party Advisory Opinion where it recognized that a party could essentially sell an asset in certain contexts under certain conditions, and it was not willing to accede to the Libertarian party's decision to sell advertising space in its newsletter because it didn't believe there was an objectively-ascertainable fair market value.

VICE CHAIRMAN SMITH: This is akin to that; there was just no objectively--

MR. SANFORD: Well, I think it's difficult, and think that the Commission initially tried to get at that when it conditioned on reasonable expectation of commercial return, but it's limited to that requirement.
So now there is no standard for whether that's the case, and so I'm not sure where we are.

VICE CHAIRMAN SMITH: I want to ask one final question, and I'd ask you to be brief because we're way over and the general counsel hasn't had a shot yet.

MR. SANFORD: I apologize.

VICE CHAIRMAN SMITH: No. It's not your fault. I think it's more ours than the panel, and it's good. I think we're getting some good info. But, similarly, have you read the comments submitted by the Democratic National Committee?

MR. SANFORD: Yes.

VICE CHAIRMAN SMITH: And if so, can you comment if there's anything you think merits comment that's not in the written submission? You argue--and, frankly, I think this is some of the weaker arguments and I think the agency argument is a bit stronger, that there's still a possibility that they shouldn't even be affiliated, in other words, establish, finance, maintained or control,
the host committee establish, finance, maintain control by the party. The DNC addresses the affiliation questions, comments, and says host committees don't meet that criteria. Where are they wrong?

MR. SANFORD: Well, I think that our comments don't absolutely say that they do meet those criteria. I think that there are a couple of the ten criteria which will often exist. At least one element will almost always exist, and that the Commission shouldn't promulgate rules that say one way or another that they are or they aren't. It should leave open the issue.

VICE CHAIRMAN SMITH: By at least in some cases, the host committee will meet them?

MR. SANFORD: Yeah. I think it's possible. I mean, it may be that as a practical matter, they would never structure themselves in such a way that that would happen. I don't really know the dynamics of that, but I think that the rule should be leave open that possibility.

VICE CHAIRMAN SMITH: Thank you very
CHAIR WEINTRAUB: Thank you, Mr. Vice Chairman.

Mr. Norton.

MR. NORTON: Thank you, Madam Chair. I realize we're running way over, and I'll try to keep this very brief and maybe just try to clarify a couple of points that have come up in the earlier questioning.

And I want to circle back for a moment to Senators Kennedy and Kerry and what inference, if any, can be drawn about whether they think BCRA applies to convention financing. Mr. Sanford, I have to admit that I'm struggling a bit to understand to your statutory argument. There have been a number of arguments made, but a couple central ones made by Mr. McGahn, but the one that I'm focused is 441(I)(E)(4), and it concerns general solicitations; and essentially what it says is that a Federal candidate can make a general solicitation of funds on behalf of an organization that is a 501(c), and that's a host committee, other than an entity whose
principal purpose is to conduct activities

principal purpose is to conduct activities described as certain kinds of Federal election activity—it seems pretty clear to me that that's not what host committees do as those terms are defined by the Commission—so long as the solicitation does not specify how the funds will or should be spent.

So why is it if Senators Kennedy and Kerry are raising funds and not making a specification about how the funds are being used, what sort or expenses the host committee uses the funds for, why doesn't that fall squarely in that exception?

MR. SANFORD: I have one additional—let me start with a threshold thought. Some of those funds may very well have been solicited before the effective date of the statute. That, of course, would be the additional reason.

I have to concede that—and perhaps I should amend my previous comment that if the fund were solicited under these conditions, then they may very well fall within this exception. I think
that there's no question about that. It's a fact question.

MR. NORTON: What's a fact question?

MR. SANFORD: Well, the question whether they were solicited for a particular--whether they were given with an earmarked solicitation. That's potentially a fact question.

I also think that these cases should be analyzed with the recognition that the rules specifically allow the host committees to pay convention expenses. So, you know, the Commission has set up rules that say that they can pay these type--pay convention expenses using funds they solicited. So that's always in play.

MR. NORTON: Okay. Let me just raise one other point, and that's with respect to the other side of the table. I want to circle back to this argument again of the legislative history and what Congress was doing, because I think there are serious arguments to made on both sides. Commissioner Toner, I think, kicked off the discussion by noting the dirth of discussion and a very voluminous
legislation history about convention financing, and I think Mr. Bauer made a very good point that BCRA itself repealed certain regulations, and so the regulations were very much before Congress and they certainly could have repealed some of these too.

On the other hand, we have 441(I)A of BRCA which very flatly and categorically prohibits national parties from receiving contributions, donations, and transfer of funds or anything of value, and unlike the provisions for Federal candidates and state committees where Congress created another exception. We were just talking about one. There's no such exception created with respect to the parties.

The concern I have on the other side is that the silence of the legislative history doesn't change the language of the statute. It may mean that there's an unintended consequence, and that, in fact, has been I think a common complaint and concern about BCRA all along, that some of the legislators and members of Congress may not have understood not so much what they were voting for,
but the impact of some of these provisions. And so
if the plain language of the statute prohibits
parties or party operatives from raising soft money
in all contexts, and that seems to be the plain
language, doesn't the Commission have to apply
language in this context if the party operative is
raising funds for the host committee?

MR. BAUER: That is the reason
why--while I fully agree with you that Senator
Kennedy and Kerry and the unnamed members of the
Republican Congressional Caucus were raising for
these conventions, the reason that they're not
violating even BCRA, if they were raising money for
the host committee as a (C)3. All the same, I'm
uneasy about the analysis that seems to assume that
Congress to help all convention-related issues like
the one we discussed here and somehow these would
filtered through the provisions of BCRA, and the trouble
I have with that is that this was a piece of
legislation that was put together with the
understanding that it was going to address some
issues and it not going to address other issues,
and in response to the question that Commissioner McDonald asked of Don McGahn, which is--I thought you said at some point members of Congress didn't know what they were doing here, which may be his sort of empirical judgment, the law calls upon us to assume that Congress knew what it was doing, and that's a legal doctrine. And if Congress knew what it was doing, it is quite striking to me that with all this talk about soft money, and not only soft money, soft money in connection with Presidential elections, somehow the slip of paper that said let's deal with the convention slipped off somebody's desk or out of their agenda, I don't think that's a credible view. So I think that this Commission with all the rest that it has to do and certainly not in this cycle ought not to assume somehow a mandate to take on something Congress quite deliberately itself did not take on, and I think that the agency has full authority to take the position that this is not a matter it's taking up right now, there's no reflection in legislative history of any intention of Congress to
take it up, and the only comment we’ve heard cited here is of an opponent of the legislation and this sponsor comment is an after-the-fact sponsor comment about which this commission, has heard probably more than it cares to hear. So with that view, I think that is a serious problem.

MR. NORTON: Mr. McGahn, did you want to add anything?

MR. McGAHCN: No. I don't disagree with anything Bob said.

MR. NORTON: Thanks very much, and thank you, Madam Chair.

CHAIR WEINTRAUB: Thank you, Mr. Norton, for your brief and very cognent questions. Mr. Pehrkon.

MR. PEHRKON: Madam Chair, thank you very much, and welcome to the panel. I too will attempt to make comments and questioning very brief.

First of all, I would really like to address my comment to--it's going to be Mr. Sanford, and one of the areas where the Commission sought comment on regulations was whether or not it was
believed that we had statutory authority to
undertake audits of host committees, and I was
wondering if you could elaborate on that for me.

MR. SANFORD: Well, I think that given
the system, at least as a statutory matter, was
really designed to be closed system where the money
was coming from the public grant. It has been
opened up to disbursements by host committees for
convention expenses, that the Commission has the
authority to undertake audits of these entities and
particularly since the Commission essentially
decided that it wasn't going to count host
committee--wasn't going to allow host committees to
get involved in the process that was originally
designed as a closed one, that it should be able to
take a look at the way they spend their money.

MR. PEHRKON: Is there anyone else who
would like to either add to or disagree with that?

(Pause.)

MR. PEHRKON: Madam Chair, thank you
very much.

CHAIR WEINTRAUB: You win the prize,
Mr. Pehrkon.

I want to again thank very much everyone on the panel. We kept you for a long time, and I thought it was extremely helpful and an informative discussion. I thank you very much and I appreciate your indulgence in answering all your questions.

Let's take a ten-minute recess and then come back and attempt to get back a little on track here. Ten of twelve, we'll be back.

(Recess.)

II. PANEL NO. 2

CHAIR WEINTRAUB: Let's try to get a little bit close on the schedule. I understand our visitors from Boston were hoping to catch a 2:30 flight.

COMMISSION McDonald: Is that today?

CHAIR WEINTRAUB: So I was going to do age before beauty and start with Mr. Gross, but given that you have a plane to catch, maybe I'll go to Ms. Cronin first.

And let me welcome you all and apologize for running late, and we'll try to get through this
Boston and the region of Massachusetts is absolutely thrilled to be welcoming thousands, as Commissioner Thomas put it, wild and crazy Democrats to Boston next summer, not because they're Democrats, of course, but because they are going to sleep in our hotels and eat in our restaurants and shop in our stores, go to Fenway Park and do all the things that our local economy really wants visitors to do.

We've heard several assertions made this morning about what the, quote, beat might be, I think one
witness put it on what host committees are all about. We're here to tell you all the way from Boston what this host committee is all about, and I think we're quite typical of host committees for national conventions.

There was and is tremendous community support in Boston for our efforts in hosting its first national political convention. We would have been happy to host the Democrats or Republicans, and indeed last summer, many of us were quite active in courting the Republican site selection committee as well, and we are doing this because we have been organized and our purposes is not to enhance or support any branch or any entity affiliated with partisan politics or any candidate, but to support our great city in reaching commercial and civic growth.

Members or our board as well as our donors are independents, Republicans, Democrats, or simply have very little political interest. Many of our most generous donors would never consider providing funds to an entity designed to support
any type of political activity, even indirectly. Rather, the participation of individuals and companies in activities related to hosting the Democratic National Convention in Boston next summer is based solely on our commitment to our city and region and a recognition that such a significant convention in our city is an invaluable flagship event to develop Boston into an even greater convention and tourist destination, which is, frankly, a tremendous and important boom for our local economy.

And as you can see, in short, these purposes of a host committee are contrary to the assertions made by the Campaign Finance Institute in its report, and it only underscores the fact that the conclusions reached in that report are not based on any rational facts.

The host committee, as I indicated, does not support any candidate for public office or any political party. We do not nor would we ever, of course, make expenditures or disbursements in connection with any election for Federal office.
There is nothing in our contract with the DNCC, nor is there anything contained in any budget or planning arrangement that suggests, contemplates, or permits that we expend funds in connection with any election for Federal office.

Contrary to what was stated this morning, I can assure you that Terry McCauliff has not raised one dime for the host committee for the Boston convention next year. No member of the board of the host committee was selected or recruited by any officer, employee, or agent of the DNC. The DNC has no authority to participate in the governance of the host committee and does not. The host committee has not engaged in fund-raising
activities on behalf the DNC or DNCC, nor are those
entities involved in any fund-raising activities on
behalf of the host committee.

The host committee takes its own votes, hires its own staff, and engages in its own
commercial activities. The contract between the
DNCC, the host committee, and other entities
clearly expresses that they are separate and
distinct parties with no agency relationship, and
that one does control the other in any way.

Because the host committee's activities
are community and civic based, not political and
not an extension in any of the DNC, the
Commission should not limit any way fund-raising
activities by Federal candidates or office holders.
Our political leaders such as Senator Kennedy and
Kerry—and I might note that while there has been a
fair amount of publicity on the terrific efforts of
those two revered gentlemen from Massachusetts in
their efforts to obtain the national convention in
Boston as well as, of course, the wonderful efforts
our Mayor Menino, there has as well been very
significant efforts by very prominent members of our corporate community, including many Republicans. So we are very grateful for that. But we would not that there is nothing in BCRA that would suggest the Commission should make any changes to the rules related to the participation by Federal office holders in raising money for 501(C) organizations such as the host committee.

One other point to address before I close is that the current--

CHAIR WEINTRAUB: I hope you're right, because your red light is on.

MS. CRONIN: Oh, it is. Okay. Thank you.

In conclusion, the activities of the Boston committee, the host committee are well under way. We have already taken significant planning efforts. We've signed contracts. We've raised money. We are spending money as well. No matter what your views might be on any of these substantive issues, we urge that the Commission not
implement any adverse changes at this late date.
For all of the discussion about the BCRA, at the end of the day, one this is clear: Under any fair rules of statutory construction and interpretation, Congress being well aware of your host committee regulations, declined to include in BCRA any change to the rules related to host committees, and we would respectfully suggest that you follow the same course.
Thank you very much.
CHAIR WEINTRAUB: Thank you, Ms. Cronin.
Ms. Burns, do you have opening comments?
MS. BURNS: No. Thank you.
CHAIR WEINTRAUB: Well, then over to you, Mr. Gross.
MR. GROSS: Thank you, Madam Chair.
Chairman--Chair.
CHAIR WEINTRAUB: Chair.
MR. GROSS: Ki and I are going to go over comments related to the New York City host committee. The New York City host committee is a
501(C)3 organization. It's directors are the mayor of New York, Mayor Bloomberg, the Deputy Mayor for Economic Development, and myself and is really part of a broader effort in New York to host many events. Of course, it's separate because of FEC regulations regarding host committees, but there is broader permanent—we call it a permanent host committee in New York to get Olympics, and, in fact, New York is the U.S. representative for the Olympics for 2012 in the international competition, and the Grammy Awards, the Super Bowl, and is really is part of the continuing recovery effort of September 11th. New York City has sought to feature itself in many capacities in a hosting way in other public events, demonstrating it is as a great city, a safe city to have large gatherings of people. That's why it was so critically important right after September 11th that the World Series, which some New Yorkers consider as an annual event in New York, and the Macy's Day Parade and other prominent activities went on, as always, and it is part of the commitment of Mayor Bloomberg to bring
these events to New York City, and that is the
reason why we actively and equally bid on both
these conventions.

This same host committee was the host
committee for the bid process for the Democratic
and Republican conventions, and we went through the
entire formal bid process, and of course was
selected by the Republicans, but we were prepared
to host both conventions, as a matter of fact, for
2004.

Once we were selected, we did enter into
an arms-length agreement with the Republican
National Committee, and if anybody has any doubts
about that, they could have sat in on these
negotiations. They were not always friendly as we
were working our way through what they wanted and
what we felt like we were able to provide to the
city. So it was definitely an arms-length
arrangement, a vendor relationship. You could
characterize it in a number of different ways.

We are not established, certainly
financed, maintained or controlled, to coin a
phrase, by the Republican National Committee, nor
do we act in any kind of agency capacity. Our
fund-raising is done on our own by our own
fund-raising people and people for the City of New
York. No Republican official or member of Congress
has raised any money for the Republican host
committee, and we do note that to a footnote in our
prepared comments. I'm not saying it's
impermissible, but we have not used members of
Congress or Senators nor any party people to raise
money at this juncture that I am aware of. I'm
fairly close to the fund-raising process of the New
York host committee.

So those are the critical points that I
wanted to make regarding the structure and the
issue of separateness and how we're operating under
our own authority. There are other points in our
paper that we think are important, and they relate
to the delayed effect of the regulations. We
believe that it is within the authority of the
Commission to delay the effect, because BCRA has no
effect on the host committee. It is not an
activity in connection with Federal elections;
therefore, the 441(E) provisions do not prohibit--the 441(I) provision--prohibit the activities of the host committee, and therefore you can delay its effect.
Even if it did have an effect, which we don't think it does, there is case law in that district, the case Sweet v. Sheehan, that did allow the EPA to delay the effective date of a statute that mandated a specific statutory date for implementation, and in that case, they said so to give the regulated community the time and not to bring surprise upon the regulated community with a late rulemaking. Despite the statutory mandate of a specific effective date, the agency, the EPA in that case had the authority to make the provisions effective later.

And, finally, as far as my comments go, we support the proposed regulation regarding the local restriction, lifting of the local restriction of donors. We don't really think there's logical basis for restricting the donor base to just this
metropolitan area which itself is subject to some
reconfiguration depending on when the census
bureau--we run across a number of people who, first
of all, are interested in New York and certainly
part of the recovery of New York; secondly, they
have business interests in New York that may not
meet the formal definitions as individuals, and we
think it draws an unnecessary and illogical line on
restricting a base of donors that wish to support
the convention.

CHAIR WEINTRAUB: Thank you, Mr. Gross.

Mr. Hong, do you have an opening
statement?

MR. HONG: Yes. Thank you, Madam Chair.

Ken just spoke about the ability of the
host committee to--for the permissibility of the
host committee to accept funds. I want to address
the expenditure of funds by host committees, in
particular the NOPER (phonetic) attempts to limit
the funds that are permissible for a host committee
to expend.
The first thing that the NOPER does is it tries to create a comprehensive list of activities. Given that the Commission has recognized and will recognize, hopefully after these hearings, the ability of host committees to pay for expenses to promote the city and for commercial purposes. The Commission should not at this point create artificial limits on those expenses.

So if the Commission recognizes the ability of the host committee to make its expenses, no artificial limit should be imposed. The biggest artificial limit in the NOPER, as I mentioned is the creating of the comprehensive list. It would be unreasonable for the Commission to think that it could anticipate all of the variety of permissible promotional activity that a host committee could do.

For example, just off the top of my head, this list does not contain simple things as trash pickup outside of the convention hall.

Another thing to whet the appetite is toilet
facilities outside the convention hall, which are clearly promotional city commercially-related activity, but would be outside of this list. Which brings me to my second point, which is that the inherent question of asking is this expenditure made for the purpose of promoting the city involves an analysis of the entire totality of the circumstances, and the comprehensive list as proposed, any comprehensive list in my view, would take that necessary analysis out of the process.

The second way that the NOPER tries to limit expenditures by host committees is that the list that's already there that are expressly laid out in the FEC rules, those items are limited, are narrow even further, for example, transportation. Now, the permissible transportation expenses under the NOPER rules are limited to widely available transportation for--and by the way, I really don't know what that means. I know what widely attended means under Congressional gift rules. I know what widely attended means under certain other rules,
but I have no idea what widely available means for transportation purposes.

VICE CHAIRMAN SMITH: How people get to the widely attended event.

MR. HONG: Now I know what it means.

But limiting the items that are already in the rules, the NOPER claims that it was based on the results of the 1996 audits. I contend that result, because to tell you the truth, during an audit phase, the Commission does not opine on every single expense that it's made during the audit, and so many expenses than an auditor would go through and say it's okay never really make it to deliberation by the Commission. For example, in the 1996 audits and in the 1996 conventions and other conventions, office facilities for the COA were allowed. They went through the audit, and it is our understanding from the discussions with the RNC that they made it through the audits, but the list here does not contain those items, and I don't think that this list contains all of the items that were permitted in 1996 audits because many of those
issue were never officially decided by the Commission, by the commissioners. Also, the decision that were made in the 1996 audits were based on the totality of the circumstances. Again, there's no way to create a rule of thumb or a bright-line test on these issues. The final item I would like to address has to do with the audit authority. We believe that the statute--there is no statutory authority for the Commission to automatically audit host committees. The purpose of the automatic audit provisions is based on accounting for public funds. As we discussed, host committees are purely privately funded, and there's no way--there's no reason to audit host committees on an automatic basis; rather audits should be limited to audits that are done for cause when it comes to host committees. Thank you.

CHAIR WEINTRAUB: Thank you, Mr. Hong, and let me say that I think that both of the
party committees made really terrific choices, New York and Boston being two of my favorite cities, and just for the benefit of our Bostonian, I want to point out to you in case you didn't know that we recently held one of our FEC conferences in Boston and stayed in your hotels, and I personally went to Fenway Park and had a terrific time. The Red Sox even won for me.

Commissioner Thomas.

COMMISSIONER THOMAS: Thank you, Madam Chair.

Thank you all for coming, and it's always very good when we can get people who really know what's going on to come in and talk to us.

Now, first of all--well, I guess before I get into the substance, Mr. Hong, you're calling it a NOPER, whereas most of us for years refer to these things as NPRMs. You've got to help me. Should I be switching over to NOPER?

MR. HONG: No.

MR. GROSS: Notice of proposed rulemaking.
COMMISSION THOMAS: It's more accurate.
I'll start with you. We have now started getting this bit about maybe to better distinguish the kind of expenses that the host committee ought to be precluded from paying. I guess, theoretically, are you laying out the argument that there, indeed, are some kinds of expenses which the host committee could and should be precluded from paying, but in essence for the time being you don't want us to tinker with the lines such as they are right now?

MR. HONG: Well, I think the test should based on why--based on the foundation of why host committees are permitted to accept and make expenditures, which is is the expenditure that's being done being done for the commercial purpose of promoting the city, and that should be the test, and I think that's laid out in the current rules, and that's what a lot of these items go toward: Transportation, convention hall expenses. Those are all expenses that clearly relate to the commercial purpose of the city.
So that should be the test, and the only way to implement that test is to have a flexible list of expenditures, including a catchall that's in the rules currently.

COMMISSIONER THOMAS: But you do concede, again, that there are some expenses we should not allow the host committee to pay for; is that correct?

MR. HONG: Yes. I think there are some expenses that would not be properly characterized as commercial promotional expenses for the city, you know, such as transporting the Presidential candidate, things like that.

COMMISSIONER THOMAS: Mr. Gross, can you help me with an issue I raised with the last panel? You've noted that you're not involving Federal office holders and candidates, in raising money for the host committee, but you've characterized it as a matter of choice, if you will. You're saying that legally you think there's a way to get there and let them do that kind of thing, and there are some people who would love to hear you say that;
but what about this legal wrinkle that I raised?

You can look at the broad proscription on the national party in 441i(a)I to suggest that they simply can't be involved in raising any monies except those that are subject to the limits, prohibition, standard and reporting requirements under FECA, and then you have this later provision that talks about national party operatives or state party operatives or local party operatives can get involved with raising for some 150(C) organization under some circumstances as long as those organization in essence aren't undertaking activities in connection with the Federal election.

So I guess my question is that latter provision sort of there only to make sure that national party committees, for example, to the extent they have hard money or could raise hard money, they can't get it past--can't undertake that kind of hard money fund-raising for a 501(C)3 unless it happens to be for one that doesn't undertake activity in connection with a Federal election, or is there some sort of--are we supposed
to be reading the latter provision to say
disregard the broader prohibition of 441i(a).

MR. GROSS: Well, you're struggling with
it, and I think I can understand the struggle that
you're having, because you can read 441(I)A and
441(I)D, the two provisions that I think we're
wrestling with here, to make a distinction between
the restrictions on national party operatives as
opposed to members of Congress, you know, Mark
Rashner returning a call versus Senator Kennedy or
Senator McConnell or whatever, and, you know, I
think that you could read it that way. The second
provision of the 441(I)D provision certainly can
support the proposition that the only real
restriction on raising money on a 501(C)
organization is if the 501(C) organization is, in
fact, engaged in Federal election activities, which
the host committee is not. It's particularly true
in the case of a 501(C)3 which may not.

So I think that there is latitude for
the Commission to read the restriction on the two,
imply the political party operative and the member
of Congress being the same, saying that the D
provisions, 441(I)D, limits the breadth of the
prohibition of 441(A), or, frankly, you probably
have the latitude to interpret some distinction and
a greater restriction on the national party people
because you do have that provision standing alone
in its plain way. I would opt—although it really
makes no difference to the national—to the New
York City host committee since we're not using
those people, but I think I'd probably just as well
opt for the broader interpretation and allow the
national party people to do it and say that the
441(I)D is, in fact, the operative of the two to
the extent there is some ambiguity.

COMMISSIONER THOMAS: Okay. Ms. Cronin,
what is your sense of what is actually being
planned for letting the big donors schmooze
with the pols—I'm trying to get back to the issue that's
been brought to our attention that maybe we need to
retrench here and go back to a tougher standard
when it comes to raising—letting the host
committee raise this kind of money. You're here.
You know what's going on. Can you give us a candid assessment to what extent that kind of schmoozing is being contemplated and why it's not a problem if it is being contemplated?

MS. CRONIN: Well, I can tell you, frankly, that at the present time, there has been virtually discussion about schmoozing opportunities. My expectation is that some big donors that have relationships on their own with politicians or other corporate CEOs who might be visiting Boston at that time will do some schmoozing, and there are many of our corporate donor who will have little if no interest in schmoozing with some of the politicians that will be visiting Boston.

So in terms of any organized effort to provide schmoozing opportunities, I think there will be very little of those, and I think it would be fair to say that there will be some--as folks alluded to this morning, there will some great parties and wonderful opportunities for people who know each other and like each other to socialize.
COMMISSIONER THOMAS: And also just from the practical perspective, do you agree with the basic assessment that's being presented to us by folks at the Campaign Finance Institute and Center for Responsive Politics that the basic reason the party committees are so anxious to have a really big successful convention that gets a lot of attention is because it does allow a focus on the putative nominating the person that's basically understood to be party's nominee heading into the general election, and it really is a very important election-related function to try to give a spin, positive spin, into the general election, so that it really is a very crucial component of national party conventions?

MS. CRONIN: Well, let me respond in a couple of ways: Number one, I know Mr. Sandler will be testifying this afternoon and can certainly speak much better that I can to the motivations and purposes of the national party, although I could note, as I'm sure we would all have to, that over the past several years, the viewership of national
conventions on television has steadily declined,
which would suggest that the convention itself in
terms of an electoral role is very insignificant,
if non-existent, in the process.

With respect to the host committee, I'll
come back to the points I made in our written
submission and in my earlier statement, which is
that we do not view this activity as partisan in
any way or supporting any kind of political party,
and, indeed, as you might expect, given
demographics, many of our most generous corporate
donors are not Democrats and would not be choosing
to participate in this event, financially or
otherwise, if they viewed it as a partisan activity
that might support the Democratic candidate.

COMMISSIONER THOMAS: Your point about
TV viewership makes me--I just have to imagine that
right now probably going through the minds of some
of the party planner is given the success of
reality TV, we've got to find a way to work in
having someone wrestle with a snake or something in
or a bug at the convention in order to draw the
1 audience.

2 MR. CRONIN: We're writing that down.

3 COMMISSIONER THOMAS: Thank you.

4 COMMISSIONER MCDONALD: As a Democrat, I'm not interested in us having reality TV.

5 CHAIR WEINTRAUB: Thank you,

6 Commissioner Thomas, I think.

7 Commissioner Toner.

8 COMMISSIONER TONER: That would be one reality program I would watch.

9 Thank you, all of you, for being here.

10 I really appreciate it.

11 I wanted to start, Ms. Cronin, with you.

12 There was a panelist earlier today who basically said that for Federal office holders like Senators Kennedy and Kerry who raised soft money for the Boston host committee, that that is breaking the law. I have to say that based on what I've heard thus far, I don't agree with that analysis, but I take it you don't either.

13 MS. CRONIN: No. No, we don't. We think that--I mean, the testimony was just simply
incorrect, incorrect as a matter of law, number
one. There's nothing in--certainly FECA doesn't
compel that conclusion. There's nothing in BCRA
that compels that conclusion, and I do want to make
a point, particularly with respect to Senator
Kennedy who has been so active, and the host
commitee is so grateful for his efforts. As you
can well imagine Senator Kennedy, having been our
United States Senator for close to 40 years, has
been very active in raising money for so many
community activities in the Commonwealth, and this
is another one of those activities, and he was
a--you know, as I recall, several of our Democratic
politicians were very committed with the mayor in
attempts to recruit the Republicans to come to
Boston as well.
So it was really viewed as a real
effort, as a boost to local economy.
COMMISSIONER TONER: And there's been
some discussion here about the various statutory
provisions, and just following up, would it be fair
to say that you don't even view this as a close
question about the ability of these officer holders to raise money? It's clear in your view that it's not a problem?

MS. CRONIN: It's absolutely clear, and I might add much of this discussion is, of course, very interesting and valuable from an academic perspective.

COMMISSIONER TONER: You're very generous.

MS. CRONIN: Thank you. But with all due respect to all of us, both on that issue and on the issue of corporate contributions to host committees, BCRA is unambiguous. It could not be more clear in the language, in the express language of BCRA, that there is no change contemplated by the--should be no change contemplated by the Commission on these issues. Congress engaged in significant debate and legislative consideration of these issues, and for all the talk about intentions of certain individuals within Congress, as we all know as a matter of law, intent is only an issue if the statute is ambiguous, and of course the statute
1 is not ambiguous in any way. It couldn't be more
2 clear.
3            COMMISSIONER TONER: Mr. Gross, do you
4 concur on that analysis.
5            MR. GROSS: Yes, I concur. In fact, I
6 think that really what the proponents of that
7 interpretation or the proponent of that
8 interpretation almost concedes that BCRA has no
9 effect on this. They really are retreating to
10 441(B) and the in-connection prohibition of 441(B)
11 and trying to basically re-interpret what has been
12 the law since 1976, because there's just nothing in
13 BCRA to now support that prohibition on officer
14 holders raising money.
15            COMMISSIONER TONER: Mr. Hong, you
16 indicated in your opening statement that you oppose
17 mandatory audits of the host committee, and I just
18 wanted to explore that with you. Is that because,
19 in your view, the Commission's statutory authority
20 to do mandatory audits is limited to entities that
21 use public funds?
22            MR. HONG: Yes, it is. I know there is an
argument that whatever—if the host committee
inappropriately uses funds, that that could be an
improper expenditure on the public money side, but
to tell you the truth, that's true with any
corporation that engages—even corporate vendors to
Presidential campaign. If they make improper
expenditures, that can be viewed as an improper
expenditure for public money purposes, but you
don't see the FEC auditing these third-party
corporations for that.

So the audit should be limited to the entity
that actually accepts the public money.

COMMISSION TONER: Is it then, likewise,
your view that we wouldn't have a statutory basis
to be doing automatic audits of municipal funds?

MR. HONG: That's correct, because it
does not have public monies.

COMMISSION TONER: Public money from the
Federal Treasury, and given that that is not—they
don't spend that money, we wouldn't have statutory
authority to audit them automatically?

MR. HONG: Well, it would have to be
from--that's correct--funds that are provided for
this purpose. I mean, obviously cities need
Federal grants to build highways and the like, but
that would not be enough to audit them.

COMMISSIONER TONER: Mr. Gross, in terms
of the locality requirement that's been on the
books for a long time here for contributions to
host committees, as I understand your argument,
your view is that it no longer has a rational
basis, and one of the arguments on the other side
in the debate is saying, Well, basically the
Commission has relaxed this over the last 10 or 15
years; there's been a lot of exceptions to this
general rule, and then basically you get to the
same point, basically people can freely contribute
even if they don't live or do business right in the
convention city.

First of all, I wanted to get your
thoughts on whether that's true in your viewpoint
or whether actually there are still meaningful
restrictions in this locality requirement.

MR. GROSS: I don't think it's entirely
true, and some of those liberal interpretations are
not readily available. Again, they're is sort of
made as part of an audit process, but they're not
memorialized or made in part of a rulemaking or
advisory opinion, and we have to vet every
contribution that comes through the door, corporate
or individual. You know, there are presumptions
that apply to certain types of contributions, but
there are individuals who simply don't work or have
business interests in a particular area or live in
the particular metropolitan area, whether it's New
Haven, Northern Pennsylvania, or whatever it may be
that don't live there or have business interest or
work there, and they want to participate, and
you've got a problem.

So I don't--I mean, I wish I could say
that the rule has fallen apart and there's nothing
there, but as far as we're concerned, we're dealing
with restrictions.

COMMISSIONER TONER: Is your bottom line
that you just don't see any rational reason for us
to retain this rule?
MR. GROSS: That's right. At this point, I just don't see any rational reason. I mean, I understand why people from that area would be the main contributors, and that's what's going to happen as a practical matter. We're raising our money naturally from people who are in New York, in the New York area who have interests in New York, but there are people, and, frankly, since September 11th, who have a greater interest in New York from outside of the area and the rebuilding and recovery of what has become a national symbol in many ways to help and participate in the host committee in this effort.

COMMISSIONER TONER: Ms. Cronin, do you agree with that?

MS. CRONIN: I do, and I want to pick up on a statement someone made this morning about the enhanced difficulty for a city like Boston that's a bit smaller than New York. In the current age we live in, and we addressed this a little bit in our written comments, this local requirement, which I should note I don't think is really supported in
any way by language in the statute. So if we start
there--it was obviously compelled by statutory
language--the issue would be quite different.
Assuming for the moment it's not, which is what we
believe, the local requirement is just not
realistic in the global economy that we are
experiencing today, and we all know that with
technology being what it is, it's very conceivable
for--this is a great example of a financial company
that really has principal offices--that has offices
in California, no offices in Boston at all, is
servicing a lot of activity in the Boston area, as
one example. And given technology being what it
is, it is no longer the case that companies have
physical offices located in areas that they have
business interests.
And we would suggest for that reason,
that kind of requirement is just not--we would urge
the Commission to expand it.

COMMISSION TONER: Thank you, Madam
Chair.

CHAIR WEINTRAUB: Thank you,
Commission Toner.

Commissioner McDonald.

COMMISSIONER McDonald:  Madam Chair,

thank you.

Welcome. It's good to see you all. Let

me ask just a couple of fundamental questions that

at the end of the day it appears to we we're going to have to

address. I'd like to start, Cheryl, with a notice

question, because I thought you cited at the outset

that it was very important. It's ironic that the

first panel really didn't touch on it much, which

kind of surprised me in a way, because it is the

most disconcerting aspect of this process. It's

very difficult at this juncture, it seems like to

me to change much of anything at this stage. It's

just too far down the road. I don't know who is

responsible for this. I do know who is

responsible. It's ours, and we're not there,

and so it's a very uncomfortable position for the

Commission I think to be in.

But I am interested, because you cited

at the outset what you were and were not doing in
relation to the party itself, and obviously what
people are asking, I mean what brings us here, is
what that relationship is. Have you participated
in other host committee activities for other events
in Boston, or is this your first round?
MS. CRONIN: You mean for--
COMMISSIONER McDONALD: You yourself.
MS. CRONIN: I have participated. I
actually happen to serve--I am a member of the
Massachusetts Convention Center Authority, and as
you may know, Boston is building a convention
center which is scheduled to open in the summer of
2004. So in addition to being counsel to this host
committee, I have a very significant interest, as
do many other people in creating Boston as more of
a niche for national and international tourism. So
I'm quite familiar with the notion of hosting
entities and luring tourists to Boston.
COMMISSIONER McDONALD: And how long
have you been doing such a thing?
MS. CRONIN: Well, on this particular
convention center, I've been serving since
December, but have been, you know, an active member of lots of other community activities for many years.

COMMISSIONER McDONALD: Have you resolved the big dig yet?

MS. CRONIN: The big dig is an engineering marvel.

COMMISSIONER McDONALD: Marvel?

MS. CRONIN: An engineering marvel.

COMMISSIONER McDONALD: I thought maybe I misunderstood.

MR. CRONIN: No. An engineering marvel, and I think that the delegates who come to Boston next summer will just be fascinated by it, and it will not obstruct any activity whatsoever.

COMMISSIONER McDONALD: Well, in relationship to public funding, you would have to admit it cost a lot less to run the convention.

MS. CRONIN: That would be our goal.

COMMISSIONER McDONALD: And a laudable goal, it is.
It does bring up the question, though, in relationship to kind of what we're confronted with. Let's go to the locality issue for just a second, and any of you are free to participate as you see fit. If we're saying on the one hand that notice is a problem, and I happen to think it's a monumental problem that we just cannot get over, then in relationship to other matters, locality being one of them, whether it's practical or not practical, it seems like it would be odd for us to say, Well, we're not really changing the rules this time because it's too late to process, but, Oh, yeah, locality is something that we ought to go ahead and change. And I happen to think at this juncture, quite frankly, after having been here a while, that it probably is time to change that, because it is a, quote, national convention, and the world is changing pretty dramatically.

But I'm just wondering in those areas that any of you have advocated that we ought to take another look at, are you of the same opinion that as a practical matter, we can't change those
either because that's where we are? It seems like we ought to do it one way or the other.

MS. CRONIN: Well, actually, here's the difference. Here's why we argue to you that changing the local rule now would be appropriate, and again, getting back to the fact that there's no statutory language which compels the limitation, and I think if you look straight at the facts related to us, we have a hundred-plus page contract with the DNCC and the Fleet Center as well is included in the contract because that's where the convention is being hosted. That contract has attached to it a budget, and the budget, which is a part of our contractual obligations, requires us to pay for certain expenses. The expense changes that are included in the notice undercuts our contractual obligations.

On the other hand, it does require us to raise contributions consistent with the law. So the reality is you could change the local requirement, make no change on the expense side or other activities, and it would leave all the
parties in the position they should be for the 2004 cycle, which is you haven't engaged in any rulemaking effort that undercuts in any way anybody's legal or contractual obligations, which, frankly, is the position I'd expect you would want to be in as well.

MR. GROSS: Well, a relaxation of the rule doesn't present the notice problems that a tightening of the rule does. So for that reason, I think you have the leeway to do that.

COMMISSIONER McDONALD: I see one or both of you have been hired. And I do think that's a good point too.

Let me just ask Ki real quickly, and I know he did kind of wrap up with what I think is the answer myself. In relationship to the ability of this commission to proceed against a host committee for something it might have done in terms of enforcement matters, you're not of the opinion that we couldn't proceed, are you?

MR. HONG: No.

COMMISSIONER McDONALD: I just wanted to
be sure. I thought you said that kind of in conclusion, but obviously I would think there would be scenarios and things, as you indicated, where things were not permissible and the Commission would have the authority to do that.

MR. HONG: That's correct.

MR. GROSS: And conduct a for cause audit.

COMMISSIONER McDONALD: Ken, for you just a second, because I'm just interested in it, why is it, do you think, or you'll know, and what is the thought in relationship not asking office holders to participate in the New York project?

MR. GROSS: Why hasn't the New York--we haven't really seen the need to do it in terms of how we structured our financing and request for money. That does not mean that the mayor is not involved, although actually his involvement has been somewhat limited because we recently had to get an opinion from the conflict of interest board in New York City regarding the ability of the mayor to raise money, a rule that Mayor Menino doesn't
have to deal with.

So we have been pretty circumspect about the involvement of public officials, and I think it's just been a dynamic of our structure for fund-raising.

COMMISSIONER McDONALD: In these sensitive times in terms of money and the difficulties everyone is having, couldn't Mayor Bloomberg just underwrite the convention?

MR. GROSS: People have suggested that for the deficit. So I don't think he's inclined to do that.

COMMISSIONER McDONALD: Just a thought.

Thank you all for coming. I appreciate it very much.

CHAIR WEINTRAUB: Thank you, Commission McDonald.

Mr. Vice Chairman.

VICE CHAIRMAN SMITH: Thank you, Madam Chair.

Mr. McDonald already asked my question about the big dig. I think it's interesting you
call it an engineering marvel. I understand it's actually it's like God. It's eternal, all encompassing, and complex beyond human imagination. But I do have some questions, actually, for Ms. Cronin here. You mention in your testimony without specific examples of companies that many events in the past are supported by companies and individuals from diverse locations who are recognized in participating in such grand events, etc. Okay. You heard Mr. Weissman this morning, and you’ve talked very generally about this civic motivation, but why would companies without a significant local presence, why do they make these contributions to these host committees?

MS. BURNS: If I could go ahead and answer that.

VICE CHAIRMAN SMITH: I was thinking about suggesting that you should get in here.

MS. BURNS: I beg the Commission's indulgence. I am neither a lawyer nor an FEC expert, so you'll have to bear with me.

COMMISSIONER McDonald: That's a
criticism of me, by the way.

MS. BURNS: In terms of the fund-raising we've done, a lot of companies have come to us, approached us about getting involved with the host committee. We've had to either hold off or say no because of their geographic location.

As Ms. Cronin mentioned, a lot of companies who might not have a physical presence in Massachusetts do a lot of business in Massachusetts and would like to participate. Certainly, a lot of CEO attended our great colleges and universities. They might have a hometown tie to the state. There are several CEOs of companies that are located in other parts of the country who grew up in Massachusetts who are interested in supporting our convention because it's going to take Boston to sort of a different level on the playing field in terms of becoming a bigger, better city, a world class city, and enabling us to compete with the Atlantas, the Chicagos, the DCS for future events.

VICE CHAIRMAN SMITH: What if they don't meet those criteria; they don't have a tie, they didn't go to school in
Boston or Cambridge.

MS. BURNS: I'm sorry?

VICE CHAIRMAN SMITH: What if the donor doesn't meet those criteria, doesn't have a personal tie to Boston?

MS. BURNS: Well, again, it's with the physical location of an office, and just because, as you mentioned, they don't have a physical office there doesn't mean a large portion of their clients, their customer base might be in Massachusetts.

MS. CRONIN: Frankly, we think that there are very few companies that don't have some tie or some interest in developing business activities in the Boston area. And I also want to make one observation.

VICE CHAIRMAN SMITH: Does the convention help more than just taking out a million dollars in advertising?

MS. CRONIN: My experience with corporate clients is that corporations look for all kinds of ways to be members of the community in
which they want to transact business, and some of it is advertising. As we all know, they have advertising budgets. They have foundation budgets. They have community participation budgets, and I also think--this is a point that was raised this morning: Now more than ever, it is important that host committees can enjoy the support of corporate funds, unlike--and, frankly, this may be somewhat of unique times. As you know, many states are facing very difficult fiscal situations. Massachusetts has a $3 billion fiscal deficit this year. We know that--the host committee knows that there for the most part will be little, if any, state or city funds available to us to host this great convention, and for that reason, it is all the more important that corporate funds and corporate entities have stepped up to the plate to support things like this convention, support other activities, support after-school programs, all the kinds of things the private sector generously steps up and does at times when fiscally the state of municipalities cannot do so.
VICE CHAIRMAN SMITH: Thank you.

Let me go direct to you, and then I'll got to Mr. Gross. How do you respond to the argument of the Center of Responsive Politics in its written comments and from Mr. Sanford this morning that host committees are agents of the party from the moment the party selects the city as the convention site? Let me add a wrinkle to that. To some extent, Mr. Gross, you addressed that a bit in your opening comments, but you suggested there was tough negotiations going on.

Aren't they tough negotiations over the terms of an agency contract?

MR. GROSS: Well, we are operating as our own entity with our own director, our own officers. We are raising money in our own capacity, and these provisions were bargained for, certainly, over a contract, and I think--I don't think that does create an agency relationship necessarily unless there is an actual agency authority that's being conferred in contractual terms or implied; and here, there really is no indicia of it in the way it operates, the
way the city operates.

I think it's fair--the host--and one of things we're struggling with here is that the host committee and the Republican National Committee have divergent interest in this convention, but more or less common goals. We both want a great convention because it will serve New York City well to have a great convention, whether it was the ophthalmologist or whether it was the Democrats, the Republicans or anybody else, and we very much want that.

Our divergent interests are that we have a commercial interest in this convention and attracting business and a certain amount of revenue that it brings in displaying the city in a way that we want it to be displayed where their interests are political. And I think all those facts supported by the way the committees operate, the way they're structured, the way they're governed, support factually that we are not acting in an agency capacity.

VICE CHAIRMAN SMITH: Ms. Cronin.
MS. CRONIN: I would just echo that, that there's nothing factually. For all the suppositions this morning about what host committees really are about, our host committee is not an agent in any of the DNC, and, you know, I think if you participated in some of our discussions, it would be abundantly clear to you that we see things differently sometimes; we have some different interests; and this is--it's by no means an adverse relationship, although in certain small issues, it could be. You can imagine some areas of disagreement, but it is not in any way an agent relationship.

VICE CHAIRMAN SMITH: When you aid that, Mr. Gross kind of started to say what the heck are you talking about, when you said it's no way an adverse relationship.

MS. GROSS: Oh, no.

VICE CHAIRMAN SMITH: That made me forget the follow-up I wanted to ask on that. I'll take that.

Let me ask a couple quick questions,
then, to Mr. Hong who was talking about audits. So you would agree, though, I take it that--or would you not agree that the Commission could do a for cause audit of host committees?

MR. HONG: Yes, I would agree. Even there, it's not quite clear, because if you look at FECA, even for cause audits, it's to political committees, and we're not a political committee, but we would concede that for cause audits would at least come close to that section, and we would accept the for cause audit. It's these automatic audit which we really can't find a basis for.

VICE CHAIRMA SMITH: Can you--assuming we can do the for cause audits--so you generally agree while hedging your bet, but reserving the right to rescind later, it sounds like. I mean, what would be a situation where there would not be justification for a for cause audit of a host committee? Would there always be justification for a for cause audit, and that being the case, does this issue really matter, or am I wrong on my supposition?
MR. HONG: Well, a for cause audit would be triggered if the commission had some information that a violation was going on or that we were accepting contributions outside of the metropolitan area or we were making part impermissible convention expenditures, and without that information, a for cause would not be justified.

MR. GROSS: I may have started us down this for cause audit, and I'm starting to regret it, but the way the Commission conducts for cause audits under the statute, the random audits were be eliminated as a possibility. Based on the reports filed and the reason why I thought there might be some intersection even though the host committee is not a political committee, is because we file reports. We're disclosing. And if the reports themselves trigger through some point system, if you will, a basis for a for cause audit, then it would be a basis--then that's how it would get triggered. If there was an issue regarding an isolated contribution, whether it was inside or outside the metropolitan area, if that was the
rule, or some other possible violation, that would
presumably get handled as part of enforcement if
there was an illegal contribution made or something
like that.

But I think as an audit matter, it would
be based on the reports filed with the FEC.

VICE CHAIRMAN SMITH: Okay. And the
last question if either you want to respond to a comment Mr.
Sanford made this morning when I asked him about the
agency relationship. In fact, he responded to your
testimony, Mr. Gross, which he said, Well, this is
a totally unique relationship that can't be
analyzed like a sort of contract or agency
relationship. I just wondered if you had any
response to that, if you caught that part of his
testimony.

MR. GROSS: I may want to at some
point--I mean, I don't know. I mean, agency is
an established area of law. Some of us took it in
law school, and you create an agency through either
an implied or apparent authority or actual
authority. So I don't know really where he's
getting that in that respect.

VICE CHAIRMAN SMITH: Mr. Hong.

MR. HONG: And if I can add to that, the agency has—we're throwing around this word "agency" like we were in law school, but the Commission has already decided that agency means anyone who is acting with the authority to solicit funds on behalf of the RNC or a party committee.

Now, first of all, these vendors—I'd like to call it a vendor relationship, because these really work like that. You know, there's exchange of consideration. This would survive any contract class, and vendors are not agents, and they're at most independent contractors; and, in fact, if you were to say that we're vendors, I think you would have to say that for any kind of vendor that an RNC—that a party uses, including computer companies, and you would have to regulate and make sure they don't take in soft money, you know. You've have to worry about how they're making their money, and I think we have to narrow this down to what we're looking at.
We're looking at do we have the authority, implied or otherwise, to raise funds on behalf of the party committee, and there's nothing here showing that. We're raising money for ourselves. We have divergent interests, as Ken mentioned earlier, and there's just no indication of it.

MS. CRONIN: If I could just add to that, both with respect to the narrow question of the agency between--agency issues is between host committees and national political parties, but also as a very general matter, the notion of agency in some ways is an extraordinary one because what it does is serve to hold an entity or individual responsible for the conduct of another entity or individual, and it's a very slippery slope to get on to begin to--you know, without some established facts to begin to suggest that someone is responsible for somebody else's conduct or some entity is responsible for somebody else's conduct. The facts--we would urge you not to go near that slippery slope at all, and in particular,
we would say to you that our experience is that host committees are simply not agents of national political parties. They just as a matter of fact do not operate in that way.

VICE CHAIRMA SMITH: Thank you.

CHAIR WEINTRAUB: Thank you, Mr. Vice Chairman.

I just have a couple questions. Let me state at the outset that I think Boston is already a world class city.

MS. CRONIN: We do too.

CHAIR WEINTRAUB: I'm sure you do.

And I also wanted to clarify something that Commissioner Toner said earlier. You had asked about whether they agreed, and they didn't, with Paul Sanford's conclusion that Senators Kerry and Kennedy have already violated the law in soliciting Soft Money for the host committees, and a conclusion that both of you disagreed with, as well as you, but I think that by the end of the testimony this morning, even Mr. Sanford had retracted that conclusion under penetrating questioning by our
general counsel. So I didn't want to leave that impression out there, because I also agree that I don't think they violated any law.

I was struck when I was reading your comments, your testimony, your written testimony, all of you, with the repeated use of the word sole, S-O-L-E. "The host committee's sole purpose is the well-being of the city." And, Mr. Gross, you talked about the divergent interests which, while I'm always reluctant to get into mathematical terms as a humanities major, I think perhaps congruent interest might be a more accurate description or parallel interests. Perhaps the motivations aren't entirety the same for the host committee as they are for the party committees or for the donors, but do all sort of lead in the same direction.

MR. GROSS: That's what I meant by divergent interest, but common goals, and I think that's where that--you know, where that overlap comes in.

CHAIR WEINTRAUB: You don't need to apologize. I just wonder if you're sort of
overselling your case a little bit. It sort of
reminds me a little bit of Casa Blanca where
Captain Renois is saying, I'm shocked to discover
politicking going on at a national convention. I
mean, don't you think--with all due respect to
everything you've said about the separate entities
involved, don't you think that a lot of your donors
really are motivated by helping out political
parties? Maybe not every single one of them, but
are you really prepared to sit here and say that
none of them are motivated by political interests?
MS. CRONIN: Well, let me answer that in
a couple of ways. Number one, with respect to our
corporate donors, I actually believe that we are
not overselling our case, that the truth is that
they would have been just as generous if the
Republicans were coming to town, that and certainly
for most of these corporations, they have senior
executive teams. The contribution would not have
gotten through that team were this viewed as
partisan in any way.

Here is what I think is occurring, which
may satisfy you. I hope it might. It is certainly
the case that in Massachusetts, as in most other
places, there are individuals and companies who are
working closely with the host committee whose
activities we would say are not partisan. There
are also other individuals who are not so active,
who are not active with the host committee, who
have long been active with the national political
party committee on the Republican side or the
Democratic side, and I anticipate that they will be
focusing their activities over the next few years
on national political party activity, and they are
not--they don't work with the host committee, which
is a separate entity.

There are also issues, as you can well
imagine--because we do happen to have in
Massachusetts a presidential candidate--there are
individuals who reside in Massachusetts who are
wonderful and have elected instead of dedicating
their efforts to the host committee or some other
community effort, they're spending their time over
the next months supporting a Presidential
candidate. So certainly it is the case that there are--and as you well know, Massachusetts is a very politically active state. There's no denying that. There are many individuals there who--who made choices as to how they're going to spend the next year or two in terms of their time. Some folks, some have decided to participate in host committee activity. Some have decided to participate in local party activity. Some have decided to work on Mac world, which is coming to town at some point, and some have decided to support Senator Kerry's efforts, and some have decided, my goodness, to support the efforts of other Presidential candidates.

So despite living in Massachusetts, we have a range of activities going on, but the host committee activity, I believe is truly non-partisan and not dedicated to any particular candidate.

CHAIR WEINTRAUB: But surely there's some--and I'll give you a chance in a second.

Surely there's some overlap in those categories.

MS. CRONIN: Absolutely.
MR. GROSS: I think trying to dissect a motivation of every donor is a little bit of a red herring. I think the point that I wouldn't concede is that the activities of the host committee are activities in connection with Federal elections. They are not.

The fact that some donor may be motivated to give because he's thinking of the convention or the Republican party that happens to be doing its convention is really not the problem. It wouldn't be a violation anyhow, and I don't think it's the issue. I can't speak for the motivation of every donor or who Mr. Weissman may be interviewing in 2004 or '05 for his next study and what they may almost flippantly say about why a particular donation was made, but we are circumscribing the activities of the host committee in a way that do not characterize it as Federal election activity, and I think that does withstand the scrutiny.

MR. HONG: Just to add to that, when we use the word "sole", what we're talking about is
the purpose that the host committee has, and that
we can tell you. The sole purpose for doing this
is to promote the city, and I think you raise a
great question, because this underlies the
local--the metropolitan area question as well. As
Ken mentioned, the purpose of the donors is a red
herring here, because the purpose of the donor
shouldn't matter. What should matter is what the
purpose the host committee is, and I can tell you
factually when we do deal with donors, a lot of
them is truly civic purpose. That's their purpose.
MR. GROSS: Our donors have soul,
S-O-U-L.
MR. HONG: That's right.
CHAIR WEINTRAUB: I was waiting for
somebody to say something about that, or in the
case of Massachusetts, they eat sole. Right?
I'm sorry. That was really bad.
Let me ask you, all of you, for
comment--and I don't know. I'm sure you don't have
it in front of you, but the CFI study proposed
several ideas that you may want to opine on. They
have suggested that local and state governments
should report in more detail about their direct
expenditures, and those reports should be
publically available. This is on page 16 and 17 of
the CFI study, the CFI testimony. They suggested
that privately sponsored municipal funds file
disclosure reports similar to host committees.
They suggested that host committees include in
their disclosure reports summary information
distinguishing between private and local or state
government contributions, and that host committees
municipal funds and local and state governments
disclose their itemized expenditures in terms of
categories of municipal spending found in
Commission regulations.

And I was wondering if any of you would
like to comment on the advisability of any of those
suggestions.

MR. GROSS: I saw those recommendations.
I was a little curious about them, because you do,
in fact, report. I mean, if the City of New York
provides police, transportation, security, that
gets disclosed as an in-kind contribution, and it
is from the City of New York or from the State of
New York if we're putting tags on cars donated or
something like that. So it is disclosed, and it
is--and you can tell whether the source is private
or private by looking at the report.

I mean, if you look at the Philadelphia
reports, for example, they had all the in-kind
donations between the City of Philadelphia and the
State of Pennsylvania. Then they had the direct.
In that case, they were direct payments which I
think both of our cities are, you know, not dealing
with right now.

And so I'm not really sure what is not
in the FEC report currently that is concerning
them. It seems to me almost all of the points that
they raise, if not all of them, are in some fashion
addressed under the current law.

MS. CRONIN: I agree.

MR. GROSS: That's the advantage of
going second.

CHAIR WEINTRAUB: That's right. She
I'd like to ask you, Mr. Gross and Mr. Hong, about sort of a fine legal point. The issue of the timing, probably the strongest argument for our delaying implementation of any regulations that we might issue is that they're not mandated by BCRA, but put that aside for a moment and assume that we come to the conclusion that they are mandated by BCRA or by FECA or by something that we are operating under a statutory constraint.

Confirming what I would have assumed from the outset, that if you put the resources of Skadden Arps to work, you can probably find a precedent for almost any proposition out there.

I was fascinated by this case that you came up with, Sweet v. Sheehan, which, you know, came out and said that the failure to promulgate final regulations before the date specified by Congress did contravene the Congressional intent, but basically said, you know, But we're okay with that in this case.

I'm wondering, because I'm sure that you
did more research on the subject, is this just an outlier case? Are there other cases out there that say we can go around contravening Congressional intent, and under what circumstances should we do that?

COMMISSIONER MASON: Where were you last year?

MR. GROSS: Ki found that case.

MR. HONG: Well, there aren't that many cases.

CHAIR WEINTRAUB: I suspected not.

MR. HONG: But there wasn't--there aren't that many cases that says this. There aren't that many cases where this question was addressed, and that's really what we found, that there aren't any real cases that expressly say every agency has the authority to pick whatever effective date you want, but what is important in that case was that this case involved both--a statute that both said--that gave a deadline for issuing rules as well as a deadline for the effective date of the rules.
So that in this case, the law in that case involving the EPA was even clearer as to the effective date of the rule; whereas, in our case, the BCRA, although it gives a schedule for issuing rules, it doesn't give a schedule for the effective date of those rules.

CHAIR WEINTRAUB: I have one more question. I was surprised to read--again, this is for the New York team: I was surprised to read in your testimony and to hear you say today that you actually haven't been using Federal officer holders or party officials to solicit for the host committee; and while I'm not asking you to name any names, I was wondering what sort of people are raising money for you, and are they state and local politicians? Are they business leaders?

MR. GROSS: They are business leaders, and the honorary chair of our committee is Mayor Guilliani, and Lou Eisenberg has joined the committee. He was the Chair of the Port Authority of New York and New Jersey Port Authority, has been involved in fund-raising
efforts along with many, many business leaders and
investment banking firms and others who are
typically involved in this effort, in effort of
supporting city activities, large investment
banking, insurance companies, and ones that you
would imagine.

CHAIR WEINTRAUB: Thank you.

Commissioner Mason.

COMMISSIONER MASON: I wanted to go back
a little bit to Commissioner Smith's questions
about agency and co-purpose. We covered it quite a
bit, but I thought it was actually Paul's strongest
argument, and just ask again, for you attorneys, it
seemed to me he was describing--you suggested vendor
relationship. Another argument might be a joint
venture, and we've seen a few of those at the
Commission, not really making agency
determinations, making other determinations; and I
just wondered as a legal matter is that fact that
you're engaged in a joint venture make the two
cooparties to the venture agents of one or the
other?
MR. HONG: Well, the Federal Election Commission has addressed this in another context, which are affiliated PACS or joint ventures, and the FEC had made it clear that although the joint venturer may be affiliated in this case, the event, the convention itself, may be affiliated with the host committee and the party committee. As Ken said, it's the same goal with divergent interests. But the FEC has made clear that the two joint venturers would not be affiliated and rightfully so, because they are not agents of each other. They have divergent interests and they are acting on their own behalf.

COMMISSIONER MASON: Is that consistent with the general principles of agency in a legal term, this joint ventureship?

MR. HONG: It is. The joint venturers in a business relationship do not become agents of each other, and in the context of a vendor relationship as well, when you enter into these contracts, you--every contract you see involving a vendor has a provision that says we're not agents
of each other; we can't obligate each other, and
that's the same situation here as well.

            MR. GROSS: The fact that they're
competitors, none of that creates issues for this
specific purposes.

            MR. CRONIN: I'd like to add one thing
to that. The reason why I actually don't believe
that this is a joint venture, normally in a joint
venture, two separate parties come together, really
driving towards the exact same goal. In this case,
while it is true that the host committee's
activities are driven in some way by the fact that
there's a national convention coming, of course the
focus of the convention committee is very much
those activities directly related to the
convention, and the focus of host committee is very
much all those he external activities that are much
more related to marketing the City of Boston and
the kinds of issues we've been talking about this
morning.

            So I don't even think these are--this
could be fairly characterized as a joint venture.
COMMISSIONER MASON: I'll accept your argument. I just thought Paul had a good case there to the extent that, for instance, host committees sometimes pay for things that are integral to the convention, and you couldn't argue that paying for the voting system in the convention call, which is allowed, contributes directly to commerce in the city other than, you know, generally other than putting up the event. But you've given me a sufficient response on that.

I want to go also to the audit question, because I agree there's some questions about the audit, starting with Section 437 which requires reports on convention financing for host committees which says you have to report. It doesn't say anything about audits. So there's no audit authority there. 438 addresses political committees, as has been suggested. So I don't see--by analogy, I don't really see audit authority, particularly when the reports are required in a separate section, 437. I don't see how we take 438 authority.
We have 9008 audit authority as to the
convention committees themselves, and then what I
think we may have overlooked is 9009(B), which is
the part of the overall section that provides for
general election and convention financing, which
says the Commission is authorized to conduct such
examinations and audits in addition to the
examinations and audits required by 9007, to
conduct such investigations and require the keeping
and submission of such books, records, and
information as it deems necessary to carry out the
functions and duties imposed on it by this chapter.
Fairly broad authority. If we can
construe it as related, and I assume, and I'll put
this in the context of myself having some questions
and doubts about it, that the argument has to have
been that there are this close relationships
between the host committee and the convention
committee. There are overlapping categories of
expenditures and that in order to assure ourselves
that the convention committee hasn't violated the
spending limit for impermissible contributions by
the host committee, that we need to conduct this examination and audit under Section 9009.

Am I wrong?

MR. HONG: We would view this section as providing—as relating back to 9008, the audit on the Presidential campaigns and on the convention committees, because the statute lays out specific requirements for these automatic audits, and what 9009 does is essentially says, Well, you can go outside of the stricture regarding Presidential campaigns and the national parties, but we don't believe this gives authority to audit third parties just because there's a relationship to the event in question.

COMMISSIONER MASON: I would agree with you except that it specifically says in addition to the examinations and audits required under 9007. It doesn't mention 9008, but this expressly advertises itself as an additional audit authority beyond the audit authority which is specified as to the recipients of public funding. I don't know who else it could have been if it doesn't mean your
clients, because we're already auditing all the
candidates who receive public funding. We're
already auditing by statute the host
committee--excuse me--the convention committees who
receive public grants, and we have to do that.
We're mandated to do that.

Then, all of a sudden, here's this other
authority out there that say you can go out and do
whatever else you need to do--it's a pretty broad
grant--in order to assure compliance, and one of
the fundamental issues there is compliance with the
spending limits.

MR. GROSS: Well, we're not contesting
the authority of the Commission to conduct an audit
of the host committee. What we're saying is that
it is not mandated as the audit authority mandates
under 9008, and you have a corollary in the primary
regs and in, a public
funding statute in the general election public
funding statute, which I think has probably
theoretically been used to audit GELAC along with,
you know, the public fund funds; but the
Commission's audit authority, I would concede under the circumstance. It's just not a mandate, and the Commission has treated the host committee as part of the public finance mandated audit program; and in every other case where the Commission has the authority to conduct audits in the Title II realm and other non-publicly financed campaigns, it's been done on a for cause basis.

COMMISSIONER MASON: Well, it's done on a for cause basis in Title II because we're required to it on a for cause.

MR. GROSS: Well, this gives you the authority--this is under the subheading regulations, etc., which will also give you--if you find a violation in the context of an enforcement action or other such authority, it is your broad authority to operate under that, but it's seems to me it would be done in the fashion that you would trigger other non-mandated audits.

COMMISSIONER MASON: Again, I don't see that as necessarily following, because our authority there is restricted by statute.
MR. GROSS: Perhaps you're right, but in any event, it would be under some procedure other than mandated procedure, and we don't--again, what we're saying is you do have the authority under the mandate audit provision. It would be under some other construct under this provision.

COMMISSIONER MASON: If we conclude either that we don't authority to do audits of every host committee or that we don't need to and shouldn't, how would we determine cause audits? Because we have, as you know, well, this fairly elaborate structure under Title II which doesn't fit very well for the single reporting concept that you have with the host committees, and I agree with you that we have to distinguish this from, let's say a particularly reported transactions or a particular accusation that says this is an enforcement matter.

MR. GROSS: I don't know why you say it doesn't fit well. What happens is 60 days after the convention, the host committee reports--that's the first disclosure to the Commission--it encompasses all the activity. So instead of having
seriatim reports every six months or every quarter, as you would with a normal political committee or a candidates committee, you have, actually, a very comprehensive report, and then the committee would report periodically after that. The big kahuna is that 60-day report, and if it is based on--if that report, through criteria established by the Commission, has an indication of systemic problems through the disclosure process, that to me would a rational basis to proceeding, and beyond that, it seems to me if there's evidence of a violation or a complaint filed, it would be handled in the enforcement process.

MR. HONG: Also, 9009 is in--the provision you cite from 9009 is in the context of reporting to Congress the use of public moneys, whether they were--the audit of the Presidential campaigns, and so again, it ties back to those committees in my view. It does not broaden it up to the third parties.

COMMISSIONER MASON: I read it differently.
CHAIR WEINTRAUB: Thank you, Commissioner Mason.

MR. NORTON: Thank you, Madam Chair.

I'll try to be brief again.

Mr. Hong, I wanted to follow up with you on your opening remarks about expenditures the host committees can make, and I think, as you know, in the notice of proposed rulemaking, one of the suggestions is, Well, let's do away with the locality requirement, but the way we'll ensure that the expenses are commercially motivated is we'll tighten up the list and be a little bit more specific about the dos and don'ts.

You have said that, no, what you really ought to be doing is looking at totality of the circumstances, and that's the way you determine whether they've commercially motivated. And I'm struggling as I was listening to you with some of the examples. You argue in your submission that it's appropriate to supply hotel rooms for visitors, but in response, I think, to one of the
questions of the Vice Chairman, you said one
example of an expenditure that--or maybe
Commissioner Thomas--one example of an expenditure
that wouldn't commercially motivated is
transportation of the Federal candidate, you know,
of a Presidential candidate to the convention site.

And I'm wondering how we frame this test
in a way that makes it clear in terms of notice and
workable. If the test is is it going to make for a
successful convention, hotel rooms as much as the
transportation of the Presidential candidate would
help with that. If the test is offering to do what will
assist in attracting the convention to the city, it
seems to meet that test too.

So what is it in practice that
distinguishes the ability of the host committee pay
for one and not the other?

MR. HONG: First of all, I'd like to
separate the intake and the expense part, because I
don't want to confuse the two. When we're talking
about--what I'm talking about, that the expense
issue be allowed if they are for a commercial to
promote the city. We're talking about expenses, and
I don't think it really relates to the purpose of
the donors in giving to us, the whole locality
issue.

But setting that aside, the test is
whether the activity that is being paid for in any
way promotes the city, has a direct affect on
promoting the city. I think providing good hotels
is promoting the city, because as you all know,
it's not the convention. It's where you stay. You
know, if you have lousy hotels, you'll have an
awful experience and everybody, all the delegates
throughout the country goes back and says New York
is an awful place to go, which it is not; whereas,
if you're transporting the Presidential to the
convention itself, I just--there is no direct
promotional purpose that could be tied to that.

MR. NORTON: You talk about TV and
internet production would not be appropriate for
the host committee.

MR. HONG: Yeah, the TV, subsidizing the
actual production of the convention, you know,
paying for the script writers and the like, that's part of the political message, and I don't think we can--

MR. NORTON: I'm not talking about the script writers, but the production, the internet production, the television production, those kinds of expenses. Is that appropriate?

MR. HONG: I think that's a close call. I think that's close call. I think an argument could be made that it does promote the city, but I think the traditional, the historical view has been that that's not a proper expense of the host committee.

MR. GROSS: The truth is that there's been almost complete permissibility on the expenditure side, other than the actual show itself, if you will, you know, the production of show itself during the convention itself; but as far as office space for the convention, employees, local transportation for convention people in preparation for the convention in the city, in the host committee, all that activity has been
permitted as host committee activities.

MR. NORTON: Well, I know. I'm asking you whether analytically if it passes the test.

MR. GROSS: Where to draw the line.

MR. NORTON: Where to draw the line.

MR. HONG: And, again, it's not a bright line. I think that's why you're asking the question. You have to look at what the purpose of that expenditure was.

MR. NORTON: Given that it's not a bright line, if we have kind of an open-ended list of permissible host committee expenses, and we're not permitted to audit host committees as a matter of course, how is it that the Commission is to have any confidence that the expenditures of the host committee are commercially motivated or not politically motivated?

MR. HONG: Well, to the same extent, any violation of the Federal election laws--you're essentially arguing that we should--that the Commission should audit every possible violator of the election law, and I know we are in a unique situation, but not legally. That's the point we're
trying to make. Legally, we are a third party from
the national party and from the Presidential
campaign, and I know it's tempting to say, Well, how
come we can't audit you, how are we sure you're
going to be in compliance with the law. That's a
good question, because that's the same question you
can ask of the IBMs of the world or the GMs of the
world. How are we sure they're in compliance with
the law? Well, the answer is in the enforcement
process. You have to bring it through an
enforcement procedure.

MR. NORTON: Thank you.
Thank you, Madam Chair.

CHAIR WEINTRAUB: Thank you, Mr.
General Counsel.

And Mr. Staff Director.

MR. PEHRKON: Madam Chair, thank you
very much. The beauty of going last is that my
area of concern, which was the audit authority, has
been thoroughly explored, and I want to thank
everyone for attending.

CHAIR WEINTRAUB: Well, excellent.
I want to add my thanks to the panel, both for waiting around all morning, and I believe that you can still make your 2:30 flight. I'm going to ask those of us who are coming back to take a quick lunch and come back at 2:15.

COMMISSIONER THOMAS: Madam Chair, the only question I didn't get in, I should ask Ms. Burns in light of the fact that you sat here and listened to all these lawyers, are you pretty comfortable that you made the right decision not to become a lawyer?

MS. BURNS: Yes.

CHAIR WEINTRAUB: The hearing is recessed.

(Whereupon, at 1:24 p.m., a lunch recess was taken, to reconvene at 2:15 p.m. this same day.)
III. PANEL NO. 3

CHAIR WEINTRAUB: I am especially appreciative and somewhat amazed that having walked outside on this beautiful day, anybody decided to come back, but we're glad to have you here.

We have the National--the main event, the RNC and the Democrat National Convention Committee.

Who would like to start, Mr. Sandler or Mr. Josefiak?

MR. SANDLER: I'll be happy to start.

Madam Chair and Members of the Commission, we very much appreciate the opportunity to appear been the Commission this afternoon with respect to the notice of proposed rulemaking on national convention financing. Rather than repeat our written comments, I did want to address some of the points that have been raised in the comments of
others and in the discussion earlier today.

It appeared that even representatives of the reform community here this morning conceded that BCRA really does not apply to this situation and it doesn't mandate or require the Commission to revisit its rules in any way. In Mr. Weissman's words, reflecting his experience lobbying on behalf of McCain-Feingold, Congress made a decision to get into it. I think that's a very well-put accurate statement of the fact that BCRA has absolutely nothing to with do with convention financing, which raises the question, in Admiral Stockton's words, why are we here; what is the occasion for the Commission to revisit these regulations after 25 years?

The Campaign Finance Institute in its so-called study suggests that the reason is a change in the factual circumstances, that the Commission's--the assumptions underlying the original rules that donors were politically motivated, rather than--that the donors were not politically motivated; rather, the donations were
civically and commercially motivated to promote the image and commerce of the city, that that assumption is no longer valid.

There's two separate points that the institute made on behalf of that. First of all, they point to the--on page 3 and I guess also on page 2 of their report, the great increase in the amount of private funding, private contributions to the host committee as a proportion of the overall funding, and in particular, as a percentage, their chart on page 3, by comparison to the Federal grant.

And I have a chart relating to the discussion this morning. If we take a look at the contributions overall in connection with the last three Olympic games held in the United States since 1980, roughly the same period that the convention regulations have been in effect, but not--excluding Salt Lake because of their unusual circumstance of 9-11, increasing the Federal grant, we see as, in fact, whereas the--according to this CFI chart, the private contributions as a percent of the Federal
grant went from 13 percent to 297 percent in 1980 to 2000. If I use the comparable numbers, I guess it should be 13 percent to 155 percent. It went from 67 percent in Lake Placid in 1980 to 1,036 percent for the 1996 summer games in Atlanta.

So the institute draws from its conclusions that these increases were not based on the company's change in calculations and benefits, but on the evaluation of what would appeal to or satisfy national and other political parties and elected officials. Well, if these were politically motivated, why wouldn't we draw exactly the same inference from this data? The fact of the matter is that the reason behind the CFI data is that the costs of putting on these events have gone up dramatically and the willingness in the age of privatization and tight public funding and so forth of government entities to pay for it has gone down. That's the most logical hypothesis that they didn't even consider in this so-called study.

Now, the second point that they make in terms of the alleged change in factual
circumstances is to suggest that--and, again, turning to page 7, 6 and 7 of their study, that most host committee fund-raising is conduct by partisans associated with the convention party. Mr. Weissman went over and over this, talked about let's look at who raises it, let's look at who raises it. Well, let's look at who raises it. In their report, they suggest that, for example, in Philadelphia in 2000, they talk about David Gerard Dicarlo, former advisor to Pennsylvanian Republican Governor Tom Ridge, co-chair of the Philadelphia host committee. What they conveniently leave out is the fact that the host committee was chaired and all of the heavy fund raising lifting was done for the Republican convention by David L. Cohen, chief aide to now Governor, then Mayor Rendell, one of the top Democratic fund-raisers and activists in Pennsylvania, if not in America, former Chairof the Ballard, Farr law firm, and as a matter of fact, he's the one who actually is the Chairof Comcast now.
COMMISSIONER Mcdonald: Wait a minute, Joe. No wonder we lost that election.

Mr. Sandler: Yeah.

Chair Weintraub: The red light is on.

Mr. Sandler: And I'm not just talking about co-chairing the host committee. This is someone who actually raised a substantial amount of money. Let me just finish by talking about Los Angeles. You know, they talk about Eli Grove. CFI talks about Eli Grove. Fails, conveniently fails to mention the fact that the fund-raising effort was largely led by Mayor Riordan, put a million dollars of his own money into the host committee. Because he liked Democrats? I mean, he runs the next year for Governor of California and raised money, of course, for many of his Republican friends. It makes no sense.

The conclusions in the CFI study are baseless, baseless, and I urge the Commission to reach that the only logical conclusion is there's no change in the factual circumstances and no basis
for revisiting its regulations.

Thank you, Madam Chairman, and I apologize for going over.

CHAIR WEINTRAUB: I appreciate your enthusiasm. The next time you bring a chart, you're going to have to make the numbers a little bit bigger. Maybe my younger colleague to my left can read it, but I don't think I can even with my glasses on.

COMMISSIONER McDONALD: Oh. Did he have a chart?

CHAIR WEINTRAUB: Do you want to submit your chart for the record in smaller form?

MR. SANDLER: Yes.

CHAIR WEINTRAUB: Hopefully in a smaller format.

Mr. Josefiak.

MR. JOSEFIAK: Thank you, Madam Chairman. Again, thank you for allowing me to be here with Joe to hear his remarks, and for the record, I would happy to yield some of my time to Joe.
First of all, I think I should say for
the record that I'm here representing the
Republican National Committee and not any candidate
or office holder. So the remarks I have and the
questions that I answer today are from the
Republican National Committee and no one else.
As Joe alluded to, we're here today
based on some notion that BCRA somehow affected the
Commission's convention regulations, and I also
agree with my counterpart that it does not, that we
are dealing with a situation that is not regulated
under BCRA. It's regulated under the current
Federal Election Commission regulations, and then
the question becomes what sorts of regulation are
even authorized under the current statute as
amended by the BCRA, and if BCRA should fall, as we
are challenging in the courts today, what would be the
impact on the convention regulations.
And so even though I do not feel that
BCRA applies currently, even if it didn't apply, I
strongly believe that the Commission should leave
the regulations that are currently in place in
And how does this affect the host committee's status both pre-BCRA and post-BCRA?

Well, first of all, under this whole scheme in the Commission's regulations, the host committees have been some sort of a 501(C) entity. Some of them started off as 501(C)4s. For example, the 1996 San Diego Republican host committee was a 501(C)4. In Chicago and also in Philadelphia, the Republicans were a 501(C)3. Currently, the New York host committee, as I'm sure they testified this morning, you understand they're a 501(C)3, a charity under IRS terms.

BCRA does not regulate 501(C)3 charities. It regulates only 501(C) only to the point of whether Federal office holders contribute or can solicit monies from those organizations subject to a specific activity, Federal election activity, basically get-out-the-vote activity by these groups.

So I don't think any of this is affected, because the IRS has already given, for
example, the New York host committee its status as a 501(C) charity. So then the question is if it is a charity, are any of its funds restricted; can the Commission restrict the funding of a 501(C)3 that that is not involved electioneering activity, and I strongly suggest the answer to that question is no and that the current rules should be in place that they can get unlimited corporate and individual monies from the appropriate sources.

Now, the question before the Commission is what is the appropriate source. Under the current regulations, you have for businesses an MSA qualification that you have to be in a the MSA in order to be presumed to be benefitting or promoting the city as opposed to promoting a party, and that has been the rule for a long time; but quite honestly, since 1996, 2000, those conventions, if you were a corporation, there is going to be some sort of a nexus within that city to allow most corporations to be able to contribute, even though there is not a natural presence in that city. Over the years, that has been the case.
What really is, I guess, my gripe in this area is how the individual are treated, because prior to the 1996 convention, individuals from wherever could contribute to the host committee. It is going to be a 501(C) organization of some sort. They always have been, and so there had never been a restriction on what individuals could do; however, post the 1996 convention in San Diego, the Commission changed its policy and said an individual had to be a resident within that MSA to contribute. And so right now the Commission has under consideration whether that MSA should be eliminated, and I think from in practical terms, it should be.

So the raising of the money should be left alone. Who can solicit, again, can Federal office holders solicit? The answer to that question is yes. It's a charity. It doesn't involve an election activity. I don't think BCRA implicates that. Should national committee members be able to solicit for a host committee? I don't know where I got this notion, but ever since I have
been around, and in goes back quite a while, that we have not from a Republican National Committee standpoint as a practical matter been involved in fund-raising for host committees, because it was the Commission position, whether formally or informally, that you couldn't do that.

Having said that and having no intention for national committee officers to raise money for a host committee, I would like to say for the record on principle that when an organization is a 501(C)3 charity organization, whether it's the American Red Cross or a host committee that doesn't get involved in election activity, that there should be no restriction on an officer of the Republican National Committee or the Democratic National Committee from raising money from those organizations, and hopefully the Commission will take that into consideration.

On the spending side, however, it's always been a qualified campaign expense. The Commission has gone into deep detail, and I just want to say for the record that this
notion that somehow the '96 audits changed the lay
of the land is not true. The Commission had a
wonderful debate at that time that lasted for days
and months and years as to what would be considered
a convention expenditure. Whether it was something
the host committee could pay for or whether it's
something that the COA had to pay for, the bottom
line and the message I'd like to leave you with
this afternoon, if it's the message, it's the COA;
if it's the ability to deliver the message, it the
host committee. In other words, the message is the
political side of the equation. How that message
gets across should be allowed to be paid for by the
host committee, providing the screen, the
convention hall, the podium, the sound, the lights,
but not the script, not the show, so we won't get
into this nuance of coming up with a list that's
restricted. The list that's there now is a list to
be considered, but there's a catchall provision
right now that allows other kinds of similar
activities by the host committee to be paid for by
the host committee if it's convention related.
I would strongly urge the Commission to take that position and have a clean line that if it's the message, is a COA; if it's the structure or the ability to put out that message to the American people, it should be an expense that can be absorbed, if desired, by the host committee.

Thank you, Madam Chair.

CHAIR WEINTRAUB: Thank you, Mr. Josefiak. I guess we'll assume that Mr. Spies gave you some of his minutes since he's not even sitting at the table, and we expected him there. We were looking forward to it.

Mr. Reiff, do you have an opening statement?

MR. REIFF: No.

CHAIR WEINTRAUB: We going to just rocket through here.

Commission McDonald.

COMMISSIONER MCDONALD: Am I first?

This says Commissioner Toner. I'm ready to go. I can go.

COMMISSIONER TONER: I impersonate you.
You can do the same.

CHAIR WEINTRAUB: I may have misread my list.

COMMISSIONER McDONALD: I don't want to hurt your career.

Who is up? Is it me?

CHAIR WEINTRAUB: No. Actually, I'm wrong. Toner was first on the list. I apologize. I misread.

COMMISSIONER TONER: Thank you, Madam Chairman.

I first want to thank all of the panelists for being here today. I appreciate your comments very much, and I want to begin, Mr. Sandler, with you.

In the CFI study, it sort of laid out this argument that there's been an explosion of host committee spending, and I guess they really viewed it as beginning in 1988 and in each of the successive years. As I understand your testimony, you're basically making the point that we have to look at what states and municipalities are
spending, the resources they're bringing to bear.

Is it your view and your experience that states and municipalities are, for whatever reason, not providing as much resources for convention infrastructure, convention security, other activities, and therefore one reason the host committees may be spending more is sort of they're filling the void there? Is that basically your point?

MR. Sandler: Yes. It's a combination of the fact that the expenses they're putting on these events have increased and, of course, they're now going to increase dramatically because of security considerations even more, and the willingness and ability of state and local governments to put resources into these events has effectively decreased, and it is not that dissimilar, I think as Mr. Bauer pointed out and I think Commissioner Smith mentioned, to other events, the trend that we've see with the Super Bowl host committees, with the Olympics, of course, as I think is demonstrated by this chart and similar
events.

COMMISSIONER TONER: Mr. Josefiak.

MR. JOSEFIAK: I agree with that, but also when I looked at the study and the breakdown of the Philadelphia convention and the big chunk of money of that money, $24 million, and what was lumped into that category, some of that was a decision made by the City of Philadelphia and the host committee to promote the city for its citizens. There was a big chunk of money for something called Political Fest, which was basically an attempt to bring into a convention center, not where we were holding our convention, but the Philadelphia Convention Center downtown, a massive display of Presidential memorabilia from all of the Presidents, including a mock-up of the fuselage of Air Force One where people could go in and walk through this, and it was a selling point for the city, and they would charge people to go to that event, and it was a big thing they were promoting in the city.

They had a boat parade that was there
for not only the delegates, but for people who lived in the area to come out and be part of the whole process of a political event. It was non-partisan event. They had a Mummers Day Parade. It was an attempt to show what the city has to offer. That happens in all of the cities, and Philadelphia under David Cohen, were really pushing this as something they wanted to do to promote the City of Philadelphia as a major convention city. And so they did things that were not part of anything that we required from a convention standpoint, but what they wanted to do to promote their city to show what kind of a city Philadelphia was for other conventions as well. And so it's a combination of things, and those decisions are going to be made on a city-by-city basis, based on the uniqueness of the city and based also on the financial structure of those cities. There are some cities where it would be an issue legally for a city to pay for certain things, so the host committee has to come up to the plate and reimburse the city for typical city
services.

So every city and every state is going to be unique, and I think the biggest concern I have, there are only right now a very limited number of cities that can really host a convention, and anything that the Commission does to lessen the ability of other kinds of cities to be participants, I think would be detrimental to the political process in the country. It would be nice, for example, to get an up and coming city to be able to compete with some of these other cities, and I think that's one of the reasons an MSA concept of elimination would be helpful to some of those cities as well.

COMMISSIONER TONER: In your judgment, if the Commission were to interpret BCRA to bar host committees from raising and spending soft money, what impact would that have, in your view, on the convention process?

MR. JOSEFIAK: I think it would seriously undermine the ability of both parties, major parties, to have the kinds of conventions
that they had in the past. When you look at the public funding and you look at the cost of a convention based on Joe's chart, it would be virtually impossible to do that same kind of convention in my mind. And, you know, the philosophical question of whether or not there should be those types of conventions is another issue, but from the party perspective of how they nominate and the party's right to associate and to deal with their own processes, I think is a fundamental right of the parties that the courts have been very accommodating on, and hopefully they will continue to be accommodating on in the future.

COMMISSION TONER: Mr. Sandler? Mr. Reiff?

MR. SANDLER: I think that, if anything, it's characteristically understated in Tom's usual very dignified and calm way. The fact of the matter is what we are talking about is shutting down the national conventions after, you know, 150 or 180 years. That's all there is to it. There's no possibility, none, that a national convention
could be put on in the amount of a Federal grant.
The Boston budget, which Ms. Cronin alluded, the
grant is, what, $15 million give or take, $10
million just for security this time, and that's
just the city's share. I mean the committee's
share. It's not even--there's not a remote possibility
that the conventions could be given if the
Commission changes its rules, period, end of story
from my perspective.

MR. JOSEPIAK: And you look at, again,
the city perspective. Would the RNC even consider
a city like New York if it couldn't be assured that
a host committee was available to be able to absorb
the cost like the Democrats had when there were
there in 1992, for a lot of cost, because New York
City is an expensive city. Other cities are
different. Everybody has got their uniqueness, and
so you look at a host committee to give you that
comfort level that you can bring people there, have
your convention, because they are willing from a
city perspective to promote their city and to be
good hosts and good sponsors of those kinds of
events.

COMMISSIONER TONER: Mr. Reiff, there's been, as you know, for a long time the ability of corporations to provide items for promotional consideration, and as I understand it, the theory in the regulations has been that there's no in-kind contribution flowing to the convention committee because the corporations are getting promotional value out of that sort of bargain for exchange. The issue, obviously, is whether BCRA changes the equation in the that regard. I just wanted to get our thought on that.

MR. REIFF: We don't believe it does at all. We believe that these items were provided for promotional consideration and they will continue to be.

COMMISSIONER TONER: Do you think that it's a fair reading of FECA of even setting aside BCRA, that the rationale the Commission used for permitting promotional items, do you think it's a sound one?

MR. REIFF: We do believe it was a sound assessment by the Commission to permit such items
to be provided, and we believe that they should
still be, continue to be provided.

COMMISSIONER TONER: There's another
item mentioned in the NPRM, and that's--it was
discussed a little bit this morning. I just wanted
to get your thoughts. Corporate hospitality events
and events put on by labor organizations and
corporation that are in the convention city and
clearly members of Congress have historically gone
to them. Do you see any issue under BCRA in terms
of those kinds of events?

MR. REIFF: We don't believe so. The
FEC has an advisory opinion that has regulated
these types of events for 20 years, not just for
conventions, but all types of corporate events, and
believe that the advisory committee has a lot of
safeguards built into it.

COMMISSIONER TONER: Is sort of the
dividing line those kinds of events versus events
that have a fund-raising element for a political
committee? Is that sort of how you would demarcate
our jurisdiction?
MR. REIFF: Well, that's one way of
demarcating it, but there's even more elements to
that advisory thing in terms of the control events,
way persons are invited to those events, that
provide even further safeguards, not just the
fund-raising concept.

COMMISSIONER TONER: Thank you.
Thank you, Madam Chair.

CHAIR WEINTRAUB: Thank you,
Commission Toner. I'm sorry that I mistook
you for Commissioner McDonald
Commissioner McDonald, now it really is
your turn.

COMMISSIONER MCDONALD: Madam Chair,
thank you. I bet you're not nearly as sorry as
Michael is.

Well, first of all, let me just say it's
great to see three long-time friends. I won't say
old friends, because I've reached that point in
life that I'm a little sensitive to that term
"old", as you might imagine.

The issues are actually pretty straight forward,
I think. In Joe's case, it appears to me if he just
had more enthusiasm. Mr. Josefiak, I think it's far to say he's always both extremely well prepared and understated. In Neil's terms, not only--first of all, I didn't recognize him. He had on a tie. Secondly, he may be the greatest sign holder that I've seen.

MR. REIFF: I've been practicing that for a week now.

COMMISSIONER McDONALD: In recent memory or as good as anybody I've seen here today.

I think, really, that we've kind of covered a great deal of the ground in terms of the debates, and I suppose, going back to Joe's opening remarks for just a minute, I couldn't help but think--I thought, and I apologize for coming in a couple minutes late, but I was fully briefed. It is interesting. I was thinking about this lady from Boston this morning in terms of her experience.

What has happened in some of these conventions, whether they're political conventions or maybe they're sporting events? I think the City of Montreal can explain to you just how much it
really did cost them to succeed. You know, they
basically just went broke in terms of landing the
Olympics. I think Atlanta's experience wasn't
decidedly better, although I think it was better than
maybe Montreal's was.

What I really want to ask is not the
argument about, you know, which position people
ought to take. The one thing that's irrefutable is
that it costs more. Everything costs more, and the
real issue, I gather, before us is what sort of
impact does it really have on the decision-making
and the ability to be elected process.

This morning, we were told that--and I
have no reason to doubt it--that about 13 percent
of the American public watches the conventions,
which is both an interesting and alarming figure to
me. Maybe that's good news. I don't know. It
depends on one's perspective, but any of
the three of you, because you've been through it
all, you know how it works--I think Joe's
assessment is right if we, as a practical matter,
shut off the ability to raise soft money in these
matters, it's going to have an unbelievable impact in the process.

But my question is so why have conventions at this point? Somebody tell me. We've heard why the--and I ask because I think it will ultimately come back to what Congress thinks or doesn't think, but if you're getting 13 percent, I mean, is the rest of America right that those of us that are in the political arena are out of touch with reality? I don't think we are, by the way. Let's just say you get 13 percent of the American public watching the convention at one time or another. It's just a general philosophical question, Joe. I'm just trying to get--if we're sitting around saying to the people, you know, we need to got to Boston or to New York or wherever, and I said to you so why; we're going to spend all this time raising money; we may run afoul of the law; the American public is not going to watch the process anyhow; what would be the best answer for that? I mean, how could we have better experts than you guys, for gosh sakes. What would you say?
MR. SANDLER: It's basically the
in-gathering of party activists from all levels
from all over the country to, first of all,
deal with governing business of the national party
since the convention is the ultimate governing
authority of the party, adopt the party's platform,
to basically energize the party as a whole for the
general election, as well as obviously do the
business of formally nominating and showcasing to
not necessarily the elected, but to the party
itself, of course also the elector to the extent
that they choose.

And 13 percent, I don't know where that
13 percent comes from.

COMMISSIONER McDonald: I don't know
either, but they alluded to that this morning.

MR. SANDLER: It's a lot more
complicated than that, but even assuming that the
coverage is down, it just serves as an absolutely
critical function for the party. There are young
people who are 18 and 19 years old that work their
hearts out to go to the convention. They work for
the delegate or work for the state party or maybe
go and volunteer, and it is a hugely important
central defining event for our party activists, workers,
volunteers, and elected officials.

MR. JOSEPIAK: I think, Mr. Commissioner, I think Joe has laid what actually
goes on there, but the reason for having it, the
reason that we have it is that the collective
wisdom of the delegates from the last convention
adopt rules that create the convening of the
convention in four years as the best mechanism to
deal with party issues and to select their nominees
after the primary and convention system to be in one
place at one time, to have that kind of grass roots
enthusiasm, and that's a decision that the
delegates make at the convention.

That is from the party side of it.

While a city would bid for it, in my experience has
been not at all a political decision. It has
always been, whether it's San Diego, whether it's
New York this time, whether it's Philadelphia, it
was attempt by San Diego and Philadelphia in
particular to show that they now could be a Class A
convention city that could host an event this
large, and they reaped the economic benefits, or
tell you that at least publically, to persuade
others over a period of time to, in fact, come to
that city for conventions.

There are a lot of conventions that are
bigger than these national conventions, but they're
much shorter. They don't take the same kind of
drama and enthusiasm, and quite frankly, resources
of a city like a national nominating convention
does. This is much more like an Olympics rather
than a major convention with a hundred thousand
people that are representing some association.

So that is the first thing I think most
of these cities recognize. They think in those
terms, but realize it's a lot more complicated than
that. And so there's always that kind of city
motivation. New York want to prove it's back. It
really was for this. It really was pushing for
this from a city perspective because this is
another step for them towards perhaps the Olympic
world.

So it is an attempt and it's totally motivated by a business economic community standpoint, and so when you couple those things together, I think the Commission should be sensitive to the fact that really this does not in the sense of other kinds of election influencing activities do the same kinds of things that other kinds of organization and meetings do with regard to campaigns. This is a very different animal and a very small part of what goes on in these cities during convention week.

COMMISSIONER McDonald: Let me just ask one more question, and that's--Mr. Josefiak knows that's the thing about being able to ask questions off the wall like this if you want to. When I got here, I was the youngest commission at the time, as Tom knows and now as he also knows, I'm the oldest, I'm sorry to report.

The Dea Beard matter is really--I'm not saying the conventions weren't criticized before, and certainly there are some stories throughout
history about conventions and back room politics, and so on, but the issue there was the ability of particular a group to have a great deal of influence because of the large amount of money that was given. In the generic sense about the criticism and why we're here having the discussion at all, quite frankly, is that, is whether or not--I mean, you know, we can cite all the regulations and if we find somebody said something, we'll prove that. That's great too, but why we are here and what it all kind of emanated from was that.

MS. SANDLER: I think that is it reaches part of the heart of the matter here. What evidence of abuse in the 25 years of the Commission's current convention regulations for the host committees take place, what evidence of abuse like in 1972 and so forth or anything relating to all the other evidence that's come out in that supposed justifies the enactment of BCRA? What of that relates to contributions to host committees? Where is any reference to that in the record of McConnell, in the Thompson report? It's not there.
If it's not broke, don't fix it, as we said in our written comments. That's precisely the point.

COMMISSIONER McDONALD: Well, I think it is a good point, and that's why I asked it this morning, and I asked the gentleman this, or I guess I asked Paul, another gentleman I should say, the same thing. I mean, the question is since it's, you know, on the one side, not on the host side, but on the other side. Matters have been fully disclosed. We have to accept at some level that these matters are an arms-length transaction; if not, we can obviously pursue it.

I wanted just wanted to get your sense of it. That's what the issue really is. The issue is about whether or not somebody is going to be able to give enough money to have a policy impact, if you will, on government, and I think that's front and center.

Does anybody else have anything?

Neil, it's your turn. I should have called on you first.
MR. REIFF: Thanks. Well, it's hard to add to such incredibly scholarly comments of the two gentleman to my right, but I guess I would just close out by saying that national conventions are a great part of American politics and American political history, and as everyone here has said, if we do re-interpret these rules, we'd be stuck with a small enough pot of money that the conventions would go away and it would be a real shame that conventions would go away only because there is a reinterpretation of the way they've been financed. That would be a real sad comment in history.

COMMISSIONER McDONALD: Well, I thank, the there of you, it's great to see you. I think we have said, not only me, but a number of my colleagues have said or implied otherwise, but I think first and foremost, of course, we have a staggering notice problem. I mean, it is June, I think. It's a bit of stretch to reach out and get into these matters in 2003. Thank you all.

CHAIR WEINTRAUB: Thank you,
Commissioner McDonald.

Mr. Vice Chairman.

VICE CHAIRMAN SMITH: I have a few comments, I guess first. I appreciated, Mr. Sandler, your comments on the CFI study. I was thinking about it at the lunch break a bit, and it struck me that it's a classic sort of situation. Looking at how much spending has grown is sort of an interesting thing, and there's just a sort of leap to a conclusion, Well, what other reason could there be for this than corruption. This is sort of the standard guilt by innuendo that we hear far too much, why else could they do it, and I think the kind of information you point out or that my staff brought up earlier on the New Orleans host committee, the comments of that host committee relating back to, gee, how things were a few years before when they were much smaller are indicative, I think, of the failure and that sort of guilt by innuendo, and then you quote one guy or two guys, and he thinks that's the case, and there you go. That's your proof.
It's an interesting hypothesis. I think they've laid out the data that would give us a working hypothesis that maybe the assumptions no longer apply, but it's no more than that, and we just kind of from there jump to a conclusion.

In defense of the study, so far as we know, they were not standing on a cell phone in the airport in Miami changing data in order to make it fit their conclusions so they would have it to present to us today. So in that respect, it's better than some of the studies that we've seen from that side.

So I appreciate your comments. I did, though, have a question about one thing in your testimony, Mr. Sandler. You suggest that a host committee should be declared to be per se, not affiliates of the party committees. I wonder if that's no a bit strong. Are you suggesting that in your experience, there's no case where a host committee could be deemed affiliated with a national party?

MR. SANDLER: I'm not saying that there
can't be a situation where there's a violation of law to be investigated in an Commission enforcement proceeding, you know, that would implicate those kinds of issues, but the idea that there is some kind of--I mean, I don't think that in order to apply the regulation to know whether the host committee can exist and function, there has to be some kind of factual analysis or advisory opinion or pre-investigation by OGC or something to determine whether all these factors are met, I think that there should be a--maybe per se isn't right. Presumption. There's no need to--in general, they're not remotely affiliated, that is host committees are not remotely affiliated with the national party committee. Clearly if there was some kind of abusive situation in a particular case, an enforcement proceeding would be in order.

VICE CHAIRMAN SMITH: I guess you're saying that, yes, per se, the host committee is not affiliated; if it is affiliated, then it's not a legally operating host committee.

MR. SANDLER: That's true.
VICE CHAIRMAN SMITH: That would be the way to look at it. So it would be a question of simply looking at it as a violation of the act rather than saying the host committee is affiliated so it's simply not actually a host committee.

MR. SANDLER: Exactly.

VICE CHAIRMAN SMITH: Okay. It gets us to about where I think it does clarify how far we go, what we mean.

A couple other questions, I guess. Mr. Josefiak, I don't know if you wanted to speak a little bit about something I don't think we touched on today that was in your testimony regarding funds that remain in a GELAC, in particular a primary candidate with funds in a GELAC stored away for the general election but is then unsuccessful, and what would your preferred course of action with primary GELAC funds, whether one wins or whether one doesn't win?

MR. JOSEFIAK: When you have GELAC funds--again, I'm speaking on behalf of the
Republican National Committee, not any candidate or candidate's committee or office holder. With regard to GELAC funds, our position is that if they were raised in accordance with the rules of the Commission, that once they were excess GELAC funds, they should be treated like any other excess campaign fund that can be used for any other lawful purpose under the statute, whether that be for another campaign, whether that be to pay for debts from a primary, whether that would be to give to a charity; but I think that that was the position that we were talking about.

VICE CHAIRMAN SMITH: If you're a primary candidate and you have GELAC funds sitting out and you're out in primaries, would you allow those to be used to for winding-costs or administrative costs, or would you say those should be otherwise disposed of?

MR. JOSEFIAK: It goes back, I think to a number of issues. It's tough to answer to that question, Commissioner, without knowing what the scheme of the Commission will be. Right now, for
example, you cannot raise money for GELAC until June 1st of the election year, and by that time, the historical process the way it is in the primaries, you already know who it is. What you're talking about, however, is the ability for under current regs to take--to have a GELAC fund in a primary, and if you get excess campaign funds for the primary--well, under either scheme, you can either get it redesignated under the current regs, or under the proposal, you could make the same presumption that you can with a normal contribution in excess and attribute that to the GELAC fund. Under those circumstances, I think that that becomes the fundamental issue, and then the question there becomes, I think, just like if you're in a primary in general, you can raise general funds. I would take the position that in that situation, you should be able--you should have to return those funds, because you are accepting money for a process that is not going to occur, and you don't have the ability to take additional funds because you're not in the general election.
VICE CHAIRMAN SMITH: You anticipated my next question. That's great. It saves us bit of time, but you said something that raised in my mind another thought, and bear with me on this.

You mentioned that now the nominations are usually sewed up long before June 1st. So if as the Commission we said we think Paul Sanford is right; for the past 25 years, we've been violating the law, and Congress really wanted to change that; they just were a little too busy during 2002, but we should go ahead and do it on our own and dried up host committees funding. Is there anything in the law that would prevent the parties, for example, from having a very small little convention. The platform committee might show up on Monday, have a quick meeting. The delegates come in Tuesday morning, nominate the candidate then Tuesday afternoon or something like that, or actually do it at the end of the week, and then you could attach either before or after this small little gathering another group that would come in
that would be unaffiliated with the party but as soon as
the party had made its arrangements in a particular
city, say New York or Boston. They would
immediately go to the convention bureau there and
say we want to have a big gathering for the
Republic Majority Committee or the Democratic
Majority. In other words—and say we're going to
have all kinds of people invited to speak, and
we're going to have lots of parties surrounding it
and receptions and big affairs and stuff like that.
Nothing in the act would prohibit that, would it?

MR. JOSEPIAK: I think that you probably
would that an affiliated with a national committee
would say we're raising soft monies for that
purpose and we're committing a felony.

VICE CHAIRMAN SMITH: Would we be
correct in making that determination?

MR. JOSEPIAK: Well, I think--

CHAIR WEINTRAUB: I hear at least one
vote against that.

MR. JOSEPIAK: For one thing, you're
trying to assume the role of making that
determination, which in my mind is the right of a political party to decide if they're going to have a convention. You're talking about the gather of at least 5,000 delegates and alternates. You're talking about the ability to have subcommittee meetings that you're talking about beforehand where then the subcommittee reports are given to the full committee and a full convention. The convention has an opportunity to deal with those issues.

But your raising points that there's a lot of the activities that occur at a convention where you certainly wouldn't want the taxpayers to pay for, and that is another way I think the Commission has reached where it is today with all these other events, because it is really not involving the process, but it is something that is part and parcel of political scheme of things where the parties have these events and people come, and there is an activism going on. There's a nomination that goes on. There is a process that goes on for a rulemaking to somehow control and to administer a political party, both the Democrats
and the Republicans, for the next four years.

You can take the position maybe they should have more of these. Maybe we shouldn't wait every years for these kinds of events to bring everybody together and deal with these issues.

And, you know, when I made the presumption that everything was done by June 1st, that's under the current scheme. If Joe and I and our principals can get together and come up with a different system that doesn't so much front-load the process, we may have it much later, but, you know, that is something that's always in the back of everyone's mind, are we doing this too early; should we do it much later.

VICE CHAIRMAN SMITH: I think those are helpful comments. I guess my sort of thought was there are certain people now who are just livid that people who are prominent Republicans or prominent Democrats are saying parties no longer can do the get-out-to vote stuff they used to do in quite the same way because they don't have soft money; I really want Republicans to win or I want
Democrats to win; I think I'll start a committee that will do that stuff. And, of course, they're prominent people who have been active in their party in the past, but now they're operating independently of the party. They don't ask for the party's okay or clearance. They go out. They know who the big donors are. They start contacting them. They now who the activist are from their prior experience, and they do that, and then, of course, that has some people livid, but I don't see anything in the law that prohibits that. I just wonder if we wouldn't end up in the same situation on the convention side of things. In other words, I'm kind suggesting that maybe, you know, the sort of effort that was suggested by some of the people this morning that we should try to limit this activity is just kind of chasing a tail here, you know, that if it's a valuable activity, someone will do it, and it may, then, not be done under party auspices, but people who have been active and who want to bring party activists together, as Mr. Sandler said, that hear
party speakers and get to see one another and get
fired up to start the campaign will do that anyway.
There might be certain logistical problems
that kind of raise the transaction costs, perhaps,
but something just tells me that that would be the
likely end result.
Well, I thank all you for coming. It's
always a pleasure to have a former Chair of the
Commission here with us, and I appreciate all your
time. Thank you.
CHAIR WEINTRAUB: Thank you, Mr. Vice
Chairman.
Commissioner Thomas.
COMMISSIONER THOMAS: Thank you, Madam
Chair.
Welcome. Could I try the same question
I have worked the other panelists with? As a
matter of legal interpretation, I'm trying to
figure out whether the Commission has any wiggle
room, if you will, to interpret the statute in a
way that would allow national party operatives to
be involved in soliciting funds for a 501(C)
organization, say a host committee, because this
goes back to my concern that the very broad
language in 441(I)A seems to contemplate that national
party operatives are only to be involved in
soliciting money up to the limits, prohibitions,
and reporting requirements of the law. Later you
get to 441(I)D, and it seems to contemplate that the
national party operatives are not to raise money
for the 501(C) organization unless it's an
organization that does not undertake activity in
connection with the Federal election.

I wonder if the only plausible
interpretation is that not only can the national
party operatives not be involved in raising any
soft money for such an entity, but they perhaps
can't even raise--make donations of hard money to
those kinds of entities, or are we to read the
statute, that latter provisions to simply say as if
read notwithstanding the broad prohibition in 441(I)A,
national party operatives can go into some
fund-raising for 501(C) organizations.

MR. SANDLER: I think, Commissioner--I
do not think it is a permissible interpretation to read 441(I)A to mean that national party officers, employees, agents cannot raise funds outside the limits and prohibitions in the act on behalf of their parties for entities that do not engage in Federal election activities, for two reasons. Well, the principal reason is that it would read 441(I)D out of the act. I have heard this argument made that 441(I)A is so broad, it just prohibits national party operatives from raising money outside of the limits of the act regardless of the nature of the entity that they're raising it for. That is not the position that this Commission took before the three-judge court. In the--if I may cite from the reply brief of the defendant submitted on behalf of the United States and the FEC and the intervening defendants, the government, meaning you, said that--

CHAIRWEINTRAUB: Thanks for the clarification.

COMMISSIONER McDONALD: You mean Scott Thomas.
COMMISSIONER THOMAS: We take that as a compliment.

MR. SANDLER: On page 26 of the redacted reply brief, contrary to Plaintiff's characterization, BCRA's restriction on solicitation are narrowly targeted, and I'll go down later in the page: "BCRA does not apply to all Section 501(C) organizations", talking about the restrictions specifically on party, national party soliciting funds. "BCRA does not apply to all 501(C) organizations. It applies only if the organizations make expenditures or disbursements in connection with a Federal election."

So, and again, with respect to Federal office holders, and we talk a lot about Senator Kerry, Kennedy, and so forth as if there's some doubt about their ability to do this, but with respect to Federal officer holders, the Government in its opening brief for the defendants stated specifically that--let me just--that 441(I)E was specifically intended to permit, quote, Federal candidates and office holders to continue to
engage in civic fund-raising activities for
non-profit organizations, but restricts the
solicitations that can be made support certain
types of Federal election activities.

I do not believe that the Commission,
with all due respect, can take a position
inconsistent with its representations to the court.

COMMISSIONER THOMAS: Thank you. That's
helpful. You could still take the construction
that what we said there was consistent with some
stricter constructions as I've sort of hypothesized
in that even to the extent we're talking just about
441(I)D and the ability to in essence solicit or
send money to a 501(C)3, organization, for example,
it would have to be hard money, but it would only
be permissible if it's a certain kind of 501(C)
organization. You could sort take that
construction. All you're talking about in 441(I)D
is all that's left for the national party
operatives, which is the ability to solicit
hard money.

I'm trying to explore with you in terms
of the construction of this statute if you think we
had the leeway to go the way you were suggesting,
and obviously.

MR. SANDLER: No. I don't think the
statute provision can be interpreted that way, and
I think it's apparent that the United States and
the FEC have not, in fact, interpreted it that way.

COMMISSIONER THOMAS: The next area
cconcerns the items for promotional consideration.

This have been a very controversial issue at the agency over the
years, but the proposed rulemaking was heading down
the road of suggesting that we were going to, in
nuence, take away the ability of the convention
committees to be the ones, in essence, receiving
items of promotional consideration, but we would
leave the host committees free to get themselves
involved in receiving items of promotional
consideration.

I thought maybe you could help us with
the background on the concept of organizations
offering up items or services for promotional
consideration. It's my vague understanding that
this is something that the party committee itself pretty much has to control. That is what these folks are trying to gain, if you will, is the promotional consideration benefit derived from being labeled as the official provider for the Democratic National Convention as opposed to being the official provider of the host committee.

Is there some logic? Am I on the right track there?

MR. SANDLER: You are, Commissioner.

That's exactly why I strongly, strongly proposed precluding, changing the ability of the convention committees themselves to accept items, goods and services in exchange for promotional consideration, usually official provider status, and again, for 25 years this has been considered not to be in--properly considered not be an in-kind to these Federal political committees, and nothing has changed in our view, that should lead to any other conclusion. That would greatly complicate, again, the ability and disrupt the ability to put on conventions.
MR. JOSEPIAK: It basically boils down, as the Commissioner knows, as the genesis of all this when there were some very difficult debates on this, you know, whether it was golf tournament where GM provides the cars. It's the same kind of concept, or whether it's the airline--one airline wanted to get both just to be able to show that they had both conventions and plus everyone else in the western world that year.

So it is really, for some reason, a benefit that they want to have, and it is customary in their business to do so. That was the key in all of this, that they do provide these kinds of things to other types of organizations, whether they're political, especially non political.

MR. REIFF: Exactly. The existing FEC regulations already have sufficient safeguards to ensure that these types of deals are in the ordinary course of business and they are provided to their non-political clients.

COMMISSIONER THOMAS: Last question--oh.

You have pointed out, I guess, Joe, in your
comments the somewhat confused state of affairs regarding office equipment, slash, office expenses. Do you want to give us some sense as to where you think the lines actually ought to be if they are not clear right now?

MR. SANDLER: We thought that the--and again coming under the category of if it's not broke, don't fix it, the issue was thoroughly addressed and analyzed by the Commission in connection with the audits of 1996 conventions, or at least our convention in Chicago where the issue of telephone charges had come up. It was the conclusion of the Commission that it was proper for host committees to pay for that as part of the infrastructure and the office space and so forth for the convention, and we believe that's where it should be left. The NPRM indeed indicates that it the was intent of the NPRM to codify the results of those audits, but the language of the rules at the end of notice in one part, not another, that's actually contradicted, and that's what we are pointing out in our comments. The audit which we
assume were codified in the Commission's current regulation. It should simply be left in place in our view.

MR. JOSEFIAK: You're looking at the people who have to interpret that, and unfortunately I can probably regurgitate to you verbatim the discussion that took place between paper clips and office equipment and paper that came with the Xerox machine and paper that didn't come with the Xerox machine. I think we have a pretty good idea of what the rules of the game are, and to codify something, I think would be dangerous because of the exceptions that you're going find to the general rules as you go through these audits, but so you don't get into the nuances of, yes, if the balloons are on the walls, they're decorations, but if they're coming from the ceiling, they're part of the show and it's COA versus a host committee expenditure. I think you want to avoid codifying that, for all due respect, in regulations and actually have maybe a session where no one is paying attention to it and you get into those kinds
of nuances.

But you're looking at the people who have gone through that process and who will probably be going through that process again, and I would support Joe's position that you don't codify those kinds of nitty-gritty things in regulations.

MR. REIFF: I can speak for the DNC and Tom can speak for the RNC, but the 2000 convention process, and the audits of the 2000 convention went rather smoothly. We took the lessons from '96 and we applied them, and I think they went very well.

MR. JOSEFIAK: By the way, they did, but the host committees had no idea what we were talking about when you say yes, you can do this, but you can't do this, and they just were baffled by this sort of line of demarcation whether it's balloons or paper clips or whatever; but, you know, we do stand by these host committees to try to walk them through because it is such an arcane process that a host committee has no clue of what we're talking about.

COMMISSIONER THOMAS: Thanks. Maybe
some day you can explain the message versus
delivery system.

MR. JOSEFIAK: Maybe the best word is
message versus the means. The host committee can
provide the microphone, but what comes out of the
microphone, the speaker, the show has to be paid
for by the COA.

COMMISSIONER THOMAS: Help me with the
balloons.

MR. JOSEFIAK: Well, the balloons is
something that you came up with, Commissioner.
I'll be happy to go through it and get the
transcript.

COMMISSIONER THOMAS: I can safely say
I've forgotten that.

MR. JOSEFIAK: Balloons on the wall are
decorations and the host committee can pay, but
balloons hanging from the ceiling are part of the show
and, therefore, the host committee has to pay.

COMMISSIONER THOMAS: If I came up with
it, I think it's brilliant

CHAIR WEINTRAUB: I'm glad somebody
understands that.

COMMISSIONER Mcdonald: No hot air jokes

CHAIR WEINTRAUB: Commission Mason.

COMMISSIONER MASON: I wanted to explore

a little bit the issue of what we say about the

affiliation issue of the host committees and

convention committees and/or national parties,

because it seems to me if we are agreeing, and I

think that the Commission may be there or get

there, that no, they're not affiliated per se, that

BCRA doesn't really change that, but under one

construct, or another we all agree yes, an

ill-advised host committee along with an

ill-advised national committee could conduct their

business in such a way that they did become

affiliated. In other words, that's not impossible

as a structure. It would be a mistake, but so I'm

just sort of wondering how we express that.

One of the things I would like to come

out of this is not leaving things in a confused

state. If the Commission concludes that the way

arrangements have been in the past is not
affiliation, and so if host committees and
convention committees in 2004 and on in the future
conduct their business pretty much as they have in
the past, relationships are set in the way they
have been in the past, those committees are not at
risk that the Commission is going to come in
and find that they're affiliated.

Do you understand what I'm reaching for?

Because now that the issue has been raised, I'm
afraid if we just drop it and don't change our
affiliation rules and don't say anything about the
status, that we would still have some people
running around out there saying, Oh, the Commission
didn't say they per se weren't and so, you know,
they're left in this possibility, and then we get a
complaint filed or something and at least have some
people unsure about how to proceed.

So I'm just wondering if you have
thoughts about how we express that as a regulatory
conclusion, that arrangements that we've seen in
prior audits in '92, '96, 2000, haven't constituted
affiliation, and so while we might find affiliation
in the future if someone conducts themselves differently, those past arrangements don't raise concerns. How do we say that?

MR. JOSEFIAK: I guess I am sort of baffled why you would say anything, because I think the facts would speak for themselves. You have a definition that says when you are affiliated with a political organization, established, financed, maintained, or controlled, and that is the criteria you would put into place if you were going to be examining the relationship between a host committee and a national party committee, and from my experiences in trying to negotiate with host committees and cities, and I am sure Joe would feel the same way, it is virtually impossible in the scheme of things with legitimate host committees and cities to be able to do this, because even in a city--I mean, to be a part of the negotiating process, it is the city and host committee versus the national committee. It is a real negotiating. This isn't some sort of a light-hearted thing. This a real negotiation that goes on and is very difficult,
very complex.

There are rules cities where if the city is going to be involved in anything similar to this or establish a host committee, there are rules there. There may be even requirements for disclosure, and there are rules and ethics rules a mayor, for example, has to go through before they can get involved in something like this, and they get approval by city councils. The host committee itself, the way they've been established as 501(C)3s have to meet a certain standard. They have boards.

It is almost impossible, and they have a view and a very strong view.

COMMISSIONER MASON: I understand all that, and I don't disagree, and I don't think the Commission collectively is likely to come to a different judgment, but let me express the reason that I think it may be important for us to express that in some fashion, because the specter has now been raised, rightly or wrongly, with the passage of BCRA and a lot of attention that, gee, these may
be affiliated, and we have all acknowledged that as
a theoretical prospect yes, that it may be
difficult to get there with city procurement
rules and ethics rules and a lot of other reasons,
but yes, it could happen.

And so for that very reason, to
avoid--you know, we've seen too many examples of people
running off with what BCRA means and creating a lot
of smoke and problems that I just think we don't
need. And so if we're pretty sure that prior
arrangements don't amount to affiliation, I think
we need to say that, and I think it might help in
this environment, not for your understanding, but
for the understanding of people who might be contemplating filing
litigation or complaints or petitions. We have not
only our own rulemaking, but a petition for
rulemaking, you know, that we have to respond to
here, and presumably we need to annunciate a
reason, and if one of our conclusions is, Well, we
don't see a reason for a new rule here because in the
past, we've never seen affiliation, then we have
now 20 years of experience or whatever.
For those reasons, I think we need to say something about it that gives people some assurance that nothing has changed, if, in fact, that's what we believe.

MR. REIFF: I would just point out to the Commission that in our written comments on page 5 and 6, we attempted to apply the Commission's definition of affiliation at 300.2, and it wasn't even a close call in terms of Joe's and my experience in the last two conventions.

MR. SANDLER: I do think--I mean, our position is that just that there's no misunderstanding that this rulemaking should be terminated, and the petition for rulemaking should be denied outright, and if in a preamble to a notice denying the petition for rulemaking there were obviously reasons given and one of the reasons are as you articulated, that certainly would be useful and constructive to the regulated community.

MR. JOSEFIAK: Simply a statement that the host committees as they're constituted, if they're legitimate organizations, established as
501(C) anythings, because there are multiple
versions of that, that they are not considered to
be under this rule unless they meet the standards of
affiliation under the regs or something if you have
to go that way, but I don't--my concern is that
you're raising the specter and that there is that
potential--you know, I know Joe and I have had just
the opposite experience. It's just contrary to
that.

COMMISSIONER MASON: Thank you.

CHAIR WEINTRAUB: Thank you,

Commission Mason.

Well, I just have a couple questions.

Mr. Josefiak, you've alluded a couple of
times to the right of the local parties to run
their conventions and to choose how they're going
to run their conventions, and you've suggested that
you can't do it the way you want to do it unless
you can have host committees help you out by
raising gobs of soft money. Aren't you sort of
undercutting the argument that the host committees
were making earlier that they're not acting as your
agents; their doing it for their own reasons. I mean, you're sort of suggesting that they are acting as your agents.

MR. JOSEPIAK: No. What we're saying is that we're going to the city because the city is interested in promoting their city. That is the primary purpose under the regulations. The host committee is allowed to, obviously, use that money to promote the city and then to provide certain kinds of services for the convention like the hall, like the podium, and that sort of thing to entice the convention to come there in the first place in order to have this.

I don't think I'm undercutting the argument. I think I'm just indicating the practical realities of the cost of the convention, and the host committees now are the main sponsor of being able to host a convention in the city that they negotiate with. Having an event, whether it's one day or four days, in Madison Square Garden, to rent Madison Square Garden, the public fund just wouldn't be able to come close just to pay the rent
for that.

So if that's what we're talking about, the ability to even function, not the message--the message still has to be the party message--the ability to even have a venue where you get 5,000 people for four days to come in an atmosphere that--and, quite frankly, the 15,000 media representatives that come it and their requirements that have nothing to do with the stuff that you like to spend the money on, but what you need to do to make them comfortable and be able to do whatever they're going do is very awesome process that unless you go through it, most people have no idea what goes into this kind of an operation to be able to pull this off in this short period of time with the kinds of infrastructure that goes into place.

CHAIR WEINTRAUB: Did you want to comment on that, Mr. Sandler.

MR. SANDLER: Just I'm very troubled in this whole discussion throughout the day in the use of the term "soft money" in this context. If I--if a corporation, you, the individual gives a hundred
thousand dollar check to a church, synagogue,
American Red Cross, Amnesty International, it's not
subject to the limitations and reporting
requirements of the act. Is everything in the
world now soft money? These are contributions to a
501(C)3 or 501(C)6 organization, which is in the
case of a C(3) has to win recognition of the
exemption, as you know, from the IRS and is subject
to scrutiny not only from the service, but also
from the city authorities because of use of public
and funds and sometimes state funds as well; and
the idea that contributions to a 501(C) that
engages in legitimate 501(C) functions is soft
money because it has something to do--we're really
not sure what and how or how we're going to
characterize it--with a political convention is not
really logical to us. It is not the question. We
are not talking about soft money.
We're talking about donations to host
committees that are set up for certain purposes
entirely apart from the Commission's regulations,
although, you know, were the Commission to change
its regulation, of course all of this would be
implicated and have to be fought out in the courts,
but the fact of matter is these are 501(C)
organizations that as far as the FECA is concerned
and BCRA, are no different than Amnesty
International or the American Red Cross, or the
United Jewish Federation. I don't think the use of
the term "soft money" to describe these
contributions is appropriate.

MR. JOSEFIACK: Madam Chair, and only in
the context that they are non-Federally regulated
monies.

CHAIR WEINTRAUB: You guys are good.

We'll have to come up new words.

Let me ask another devil's
advocates-type question, because I asked the guys
this. I gave them a hard time and suggested they
were prudes because they just didn't want people to
have a good time.

MR. JOSEFIACK: Which is true.

CHAIRWEINTRAUB: Well, maybe it is,
but let me sort of ask the flip side of that
question, because there are people like them out there who think that the conventions have become much too elaborate and much too expensive and much too much fun, and it's not just the two folks that showed up here this morning. We got 1100 identical E-mails.

MR. JOSEFIAK: I wonder where they came from.

CHAIR WEINTRAUB: I can't imagine, but, you know, there are 1100 people out there who cared enough. I mean, you couldn't muster up 1100 E-mails on your side of the issue. They mustered up 1100 E-mails on their side of the issue.

COMMISSIONER McDONALD: Oh, yes, they could.

MR. SANDLER: We'll make this a bit of an occasion to span the Federal Election Commission. We'll be happy to beat that part of 1100.

CHAIR WEINTRAUB: That's right. I'll have to look into that with the FCC. No. Maybe not. We've got enough problems with the FCC these
1 days.
2 In any event, there is some sentiment
3 out there, perhaps a majority view, perhaps a
4 minority view, but there are people who care about this
5 who think that for us to allow the host committees
6 and the municipal funds to continue to raise
7 non-Federally regulated funds that may be used in
8 some way in connection with or in or around
9 convention is a huge loophole in the new soft money
10 regulations--I'm quoting here from the E-mail--that
11 were explicitly intended to break the link between
12 office holders and large contributions. And this
13 person as well as the other 1099 says: "I support
14 the use of my tax dollars to fund party conventions
15 precisely so that parties may turn away other
16 sources of inappropriate funds."
17 That's sort of conclusory, but suppose
18 we were to say no more--host committees--I'm trying
19 to avoid using "soft money"--host committees and
20 municipal funds can only use hard dollars in
21 connection with anything that's remotely close to
22 these conventions, putting aside the security issues,
because you're going to get some help for the Homeland Defense--I forget what we call this new agency.

What would happen is you would have to run a much simpler, much less elaborate convention. There would fewer balloons and fewer parties, and I guess--and some would say it would be cleaner and it look better and it would eliminate the appearance of corruption and impropriety, and even if there isn't any actual corruption, just eliminating the appearance of impropriety would be a step in the right direction.

I guess my question is tell me why we should care if you have to run a cheaper convention?

MR. SANDLER: First of all, it is not the question of running a cheaper convention. The idea that host committees could exist and raise hard monies subject to the two-year aggregate 57,500 cycle, i frankly just makes no sense. Host committees would disappear and conventions would disappear. There's no possibility of putting on a
convention with the amount of the Federal grant anyway and get 5,000 delegates in a facility with every, you know, office holder, Federal, state, and local from every party gathered in one place and move them around and so forth with in the amount of this Federal grant.

Now, what puzzles me about the analysis you just put forth, if the host committee is to be limited to Federal money on the theory that it's a Federal political committee and everything it does is an in-kind, then why shouldn't its net expenses be limited to $5,000, the back to back limit? I mean, after all, an in-kind contribution is an in-kind of contribution. The fact that it's all hard money makes no difference. It would exceed the limitation of the act to hold a convention for more than $5,000 above the amount of the Federal grant under that analysis.

MR. JOSEFIAK: Joe is exactly right. It doesn't fit into the scheme of any sort of, quote-unquote, Federally-regulated money, because of the aggregate because of the individual limits because
of if you're not affiliated PAC-to-PAC limits.

If you are affiliated, then you're still subject to one limit anyway, and again, because this whole thing is based on a concept of businesses in the MSA, at least at this point in time, to be able to promote their city within that, it makes all of the business money go away. You'd have individual money which is not necessarily a large part of the whole operation to begin with.

And so under that kind of theory, you only have two options, I think. One is that the Federal Government is going to give the 50 million or R60 million to do this, or you take the taxpayer dollar out of it altogether, and you say, Okay, this is an entire host committee operation because it's not Federal election activity. You only have those two choices, I think, if you go under that scheme, because under that scheme, a hard dollar host committee doesn't exist. What you're saying there is if the committees aren't going to do it at all, it's the Republican National Committee and Democratic National Committee taking its share of
the $25,000 per person per year under the 57
aggregate and spending that money to put on a
congress versus giving it to the Presidential
candidate and coordinate it versus giving it to
state and Federal candidate versus having an
institution at all, because under BCRA, everything
is Federal money, whether it's rent, utilities, or
building.
So you're basically forcing, I think,
under that scheme the elimination of the national
party structure and organization, because you can't
do it all with 25,000 per year.
CHAIR WEINTRAUB: So just to push
this devil's advocate argument one step further,
why shouldn't we do that? Why shouldn't we then
just submit a legislation recommendation to
Congress saying we think you ought to either give a
whole lot more money to the convention committees
so that they can run it all on public funds and
eliminate this unseemingly chase for dollar of
whatever hardness or softness, or just, you know,
keep your money and let them do it all privately?
MR. SANDLER: The question, either of those options have a lot to recommend, and the real question is whether the Congress continues to take out of the system the private contributions, the funds that go directly to communicate, as Tom says, the political message, the actual costs of showcasing the nominee, putting on the program and so forth, that they are directly related to a Federal election and that, therefore, the disbursements for which have to be made at least under the Commission's current rules a Federal political committee, namely the committee on arrangements or in our case, the Democratic National Convention Committee, and whether they want to replace that with private contributions, we can visit the judgment made in the post-Watergate legislation.

MR. JOSEPIAK: And to be honest, Madam Chairman, I would have a real philosophical problem with taking 100 percent of taxpayer dollars, $50 million to put on a convention like this. I think that is a benefit of the host committee where there
1 is a motivation by a city, not for political
2 reasons, but to promote their city to want this
3 kind of event taking place because of it's historic
4 value and the economic impact on that particular
5 city and state. So I think that's the incentive
6 that these cities have to do it, and why should the
7 taxpayer have to be burdened with that? I would
8 rather go the other way and say this really does
9 not have that--it's in connection. If it's a
10 501(C)3, it's a charity, and if they raise the
11 money and it's motivated by what these cities have
12 been motivated by in my experience, then that's the
13 way I would go rather than the other.
14
15 CHAIR WEINTRAUB: I thank you
16 engaging with me on this. I actually agree with
17 you that there are, gee, a whole lot of things I
18 would rather see $50 million in taxpayer dollars
19 going to support rather than giving more money for
20 the balloons.
21
22 COMMISSIONER MCDONALD: The FEC budget?
23
24 CHAIR WEINTRAUB: Yeah.
25
26 MR. JOSEFIAK: Especially if they're one
that are falling down.

CHAIR WEINTRAUB: That's right.

Well, maybe we could ask the Congress to send some of the money over here. We could do a roof deck so that we could have our next hearing outside in this gorgeous nice weather.

Mr. General Counsel, do you have any questions?

MR. NORTON: Thank you, Madam Chair. I think the testimony has been very helpful. The subject has been thoroughly addressed. So, no, I don't have any questions.

CHAIR WEINTRAUB: You just get pithier and pithier, and I like that about you, Mr. General Counsel.

Mr. Staff Director.

MR. PEHRKON: Madam Chair, I have nothing.

CHAIR WEINTRAUB: I think that's just wonderful. Let me thank you, yet again, for coming, and--it's Friday afternoon and the weather is nice--and for waiting around while this morning's
ran late and for submitting both your written
comments and testimony, and you will be hearing
what we do with this.

Thanks very much. This meeting is
adjourned.

(Whereupon, at 3:42 p.m., the hearing
was adjourned.)