May 29, 2002

Via Hand Delivery and Facsimile

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Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Comments of Democratic National Committee, Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee on Notice of Proposed Rulemaking: Prohibited and Excessive Contributions Nonfederal Funds or Soft Money

Dear Ms. Smith:

The DNC, DSCC and DCCC ("the national party committees") submit through counsel the following comments on the Notice of Proposed Rulemaking under the Bipartisan Campaign Reform Act of 2002 ("BICRA"). 67 Fed Reg. 35654 (May 20, 2002). The national party committees include the Democratic National Committee, the national committee of the Democratic Party, and the two congressional campaign committees of that party, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee, recognized at law as representing the party at the national level. 2 U.S.C. §431(14); 11 C.F.R. §§100.13, 106.5.

BICRA establishes significant new requirements for the conduct of national party committee activity. These requirements, in turn, directly affect the activities and interests of federal candidates and officeholders who both participate in the governance of these committees and benefit from their successful operation. The national party committees also work closely with their affiliated Democratic state and

local party committees and therefore are also concerned with the effect of BICRA on the financing and operations of those committees.

The national party committees appreciate the care devoted to the NPRM by the Commission and Office of General Counsel, particularly in light of the short time available to prepare it. The NPRM in its particulars, and also in the questions it raises for comment, acknowledges the complexity of BICRA, and also the many unanswered questions about the relationship of BICRA to existing provisions of the law that it does not change. The task of interpretation and implementation is that much more demanding when, as here, the new enactment must be integrated with existing law, and the Congress has provided limited legislative history indicating its views on how that integration is to be accomplished. The NPRM has provided an excellent start, effectively framing many of the key issues and constructive options for resolving them.

Throughout the comments below, the national party committees will support the formulation of rules that:

- Will serve core purposes of BICRA without engendering unnecessary additional complications for the conduct of core party activity;
- Are easy to understand;
- Will facilitate compliance with BICRA;
- Are consistent with the balance of the existing law unchanged by BICRA, and are therefore easily integrated with it; and
- Are as consonant as possible with "real world" political assumptions and practices.

The undersigned hope that these comments will prove useful to the Commission's continuing work in the weeks ahead. We also request at this time an opportunity to testify at the hearings scheduled for June 4 and 5, 2002.

When a Federal Candidate is Deemed "On the Ballot" (Prop. §. 100.24)

The determination of when a party activity is considered "federal election activity" turns under BICRA on the question of whether it is conducted in connection with an election in which a federal candidate appears "on the ballot". The

Commission solicits comments on the possible approaches to making this determination.

Of the alternatives proposed by the Commission, the one that most satisfies the criteria cited for an effective, clear, and practical rule is a specific date—January 1 of the even-numbered or "federal election year". Commission rules already provide that the even-numbered years beginning January 1 are "federal election years", which is consistent with the overall concern of BICRA with establishing a period when the party's activities could be fairly considered in its totality as "federal election activity". 11 CFR § 106.5(b)(2). In odd-numbered years, party activities are more diverse, spread among a number of objectives, including the support of candidates at state and local levels, the development of party positions and issues, and the ongoing building of party infrastructure to support all of its activities. Moreover, the federal election year is the year—in fact—when federal candidates "appear" on the voters' ballots.

The other alternatives raised by the Commission would create vast differences among states and between and among parties. This is true of any rule that looks to the earliest date under which State law provides for ballot qualification, or to the last date by which candidates could file to qualify; and it would certainly be true of a rule that would vary from candidate to candidate, depending only on the date that they qualified as "candidates" under FECA standards. Rules of this nature would create a bewildering array of "federal election years", different from state to state or from candidate to candidate. They would complicate compliance by parties, and also enforcement by the Commission.

As the Commission clearly states, "Congress clearly intended to establish certain periods of time in which a Federal candidate is not deemed to be on the ballot". 67 Fed. Reg. at 35656. That time is more clearly and practically defined to be the year before the federal election year—prior to January 1 of an even-numbered year.

Treatment of Exempt Activities under BICRA (Prop. §. 100.24)

The Commission raises the question of how BICRA affects the conduct of exempt activities, such as the activities under the "volunteer campaign materials" exemption, 11 CFR §100.8(b)(16), the exemption for grassroots Presidential and Vice Presidential get-out-the-vote and registration activity, 11 CFR §100.8(b)(18), and the

exemption for slate cards, 11 C.F.R. §100.8(b)(10). The question specifically is whether under BICRA these activities could be considered "Federal election activities", if they otherwise meet the standards established by the new law for those kinds of activities.

Congress did not leave any suggestion in the legislative history that these important exemptions were somehow overridden in their current application by BICRA. No mention of these exemptions—or of any change in their application—appears in any formal statement prepared and submitted on the floor by the bill sponsors, in any Committee report, or in the course of any of the debates in the House or the Senate. The Commission should not conclude that these exemptions should be narrowed in the absence of any legislative history to that effect.

Moreover, the retention of these exemptions in their current form is consistent with the overall framework and concerns of BICRA. BICRA aims at the reduction in the role of "soft money"—unregulated corporate, union or individual money—to fund activities to support particular federal candidates. Among the activities of particular concern in BICRA is "issue advertising": especially the use of broadcast media to fund "issue ads" deemed by BICRA's sponsors to be a transparent attempt to support the candidacies of particular Federal candidates. The exemptions of existing law have been structured to address these potential problems of party "soft money" activity, and to promote not "big money" influence but instead grassroots individual "volunteer" activity. The exemptions do not allow for their use to fund broadcast activity, and they also do not permit the "earmarking" of monies through the exemptions to support of particular federal candidates. 11 C.F.R §100.8(b)(16)(i),(iii); 11 C.F.R. §100.8(b)(18)(i),(iii).

It is in this light that the allocations between federal and nonfederal accounts authorized by these exemptions must be understood. While these allocations are permitted, to account for the continuing interest of parties in both federal and nonfederal elections, the exemptions are otherwise conditioned to limit the sorts of abuses or concerns addressed by BICRA. For this reason, the retention of these exemptions unaffected by BICRA does not undermine the purposes of that Act. To the contrary, the emphasis of these exemptions on the conduct of individual volunteer activity—rather than multi-million dollar broadcast media campaigns—reinforces core objectives of BICRA's in limiting special interest "soft money".

Therefore, the national party committees believe that exempt activities should not be deemed to be "Federal election activity" and that the costs of exempt activities should continue to be allocated between Federal and non-Federal funds in accordance with the Commission's current regulations, 11 C.F.R. §106.5(e).

National Party, "Leadership PAC" and Federal Candidate/Officeholder Support for State and Local Candidates (Prop. § 106.5(a); 300.10; 300.60-300.62)

The Commission correctly cites to the legislative history in concluding that multicandidate committees associated with federal officeholders—sometimes referred to as "leadership PACs"--may continue to maintain nonfederal accounts for the support of state and local candidates. Following an analysis on the floor of the Senate by Senator McCain, the Commission proposes that such PACs may maintain such accounts for that exclusive purpose—the support of state and local candidates—but may raise only into those accounts funds that meet the source restrictions and contribution limitations of the Act.

Hence, an individual or PAC that contributes $5,000 to the federal account of the PAC, may contribute also another $5,000 to the nonfederal account. The Commission correctly concludes that this rule reflects clear Congressional intention, and also the understanding of Senator McCain and his colleagues that limited monies devoted specifically to state and local candidate support is not "soft money" as that term is used to define a category of campaign finance abuses.

The national party committees support this rule. On the same grounds, the Commission should also consider a rule that would provide for the same option for national party committees. The Commission appears to assume that, under BICRA, national parties may only fund their support of state and local candidates from federal funds. Yet the purpose of BICRA was not to limit the ability of parties to support state and local as well as federal candidates, but instead to prohibit their use of "soft money"—money devoted to the support of federal candidates but without regard to the Act's source restrictions and contribution limitations. Any rule that would limit national parties in supporting state and local candidates, specifically by forcing them to do so from a pool of limited "federal" dollars, severely narrows their political choices without a commensurate gain in meeting the legitimate goals of BICRA.

Moreover, there is no discernible or logical difference in the rule fashioned for leadership PACs and for national party committees. In both cases, the rule is concerned with the activities of federal officeholders and candidates, and with the need to limit their raising of "soft money". As the Commission notes, the soft money restrictions on national parties stem precisely from the role played in their activities by federal candidates and officeholders:

> According to Congressman Shays, the corrupting dangers of funds raised outside the Act's prohibitions, limitations, and reporting requirements is present in the funding of national parties given that they operate at the national level and 'are inextricably intertwined with Federal officeholders and candidates, who raise money for them...67 Fed. Reg. at 35660, citing Statement of Rep. Chris Shays (R-CT), 148 Cong. Rec. H408-409 (daily ed. Feb. 13, 2002).

Nevertheless, the Congress concluded, and the Commission has noted, that where federal candidates and officeholders raise monies exclusively for state and local candidates—and do so within federal limits and source restrictions—the core purposes of BICRA in regulating soft money are not undermined. Indeed BICRA also authorizes federal candidates and officeholders to raise monies directly for state and local candidates, provided that, as with the case of leadership PACs, they do so only within the limits and source restrictions of the Act.

There is no cause, then, to deny to party committees and the federal officeholders and candidates who direct their operations the same authority to raise within federal law limits monies for state and local candidates. National party committees should be able, within the same limits that apply to their federal fundraising, to collect donations into a nonfederal account for the support of state and local candidates. The same principle should apply to authorize federal candidates or officeholders to solicit funds to a 527 political committee that supports state and local candidates. Just as BICRA authorizes federal candidates and officeholders to solicit contributions for state and local candidates directly, so federal candidates and officeholders should be free to solicit, within the limits and source restrictions of the Act, contributions to political committees that support such candidates.

"Agency"(Prop. § 300.2(b))

The concept of agency controls the application of key prohibitions of BICRA to persons other than the parties themselves. BICRA does not offer a definition, and the Commission requests comments on the alternatives. For national parties, the definition must span and integrate two key terms in BICRA's construction of liability on "agency" principles: the term "agent", but also that of "acting on behalf of', since the prohibition on national party soft money fundraising, for example, applies to "agents" who "act on behalf of " the parties.

The national party committees support a rule constructed along the same lines Congress intended, with effect given to both terms—"agency" and "acting on behalf of". As the Commission recognizes, the law already offers a definition of agency, at Part 109, and there is no indication in BICRA or its legislative history that Congress intended to alter it for purposes of the new law. The term "agent" is defined as

> Any person who has actual or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.11 CFR §109.1(b)(5).

This term is well recognized in the regulated community, and the use of this definition, in place of yet another one for a different purpose, serves the purpose of avoiding confusion and enhancing the prospects for effective compliance. The Commission may also adopt this definition with the knowledge that it is a stringent standard, one that the agency chose to guard against sham independent expenditures that escape the statutory limitations on contributions.

To these advantages—that the FEC rule defining "agency" is well recognized and has served to enforce a core prohibition of the Act—may be added another: that the definition has been constructed to provide some concrete, ascertainable meaning to the term, and to avoid a vagueness that will frustrate both compliance and also enforcement efforts. Under the definition, "agency" must consist of substantive decision-making authority within the campaign organization: the authorization of the making, or the making, of expenditures. It is not enough that

there is some relationship or contact between the principal and the agent. Rather the agent must have the authority, based on instructions or a position within the campaign organization, that supplies meaning and reasonable clarity to the notion of "agency".

The term "acting on behalf of" suggests that agency is not enough, and that the agent must also be "acting on behalf of" the principal in engaging in the conduct potentially giving rise to liability. This additional requirement assures that liability will not attach solely to the agency relationship, but to the agent's performance of the prohibited acts *for the principal*.

In this way, BICRA recognizes that the assessment of liability in the political sphere, for the performance of political tasks, requires that distinctions between permissible and impermissible activity be drawn with care and specificity to avoid burdening otherwise appropriate, protected political relationships. Many individuals in politics assume a variety of commitments, acting on behalf of a party in some instances, but on behalf of candidates in others, and typically also discharging other projects on their own. Should BICRA treat all actions of a party agent as the responsibility of the principal, regardless of the intention of the principal that all such actions be undertaken on its behalf, a party's ability to function will be severely damaged. At a minimum, a party will be put to an impossible task in determining who might be recruited to assist with its projects and how they might be supervised—or restricted in the other political commitments they make.

Accordingly, the national party committees support an "agency" definition that includes both the existing terms of the "agency" definition of Part 109 and also the requirement that, in performing the prohibited acts, the agent be "acting on behalf of" the principal. As noted below, this same definition of "agency" should apply also to the determination of who would be deemed the "agent" of federal candidates and officeholders under the provisions restricting their fundraising activities.

Soliciting and Directing (Prop. § 300.2(m))

The national party committees concur with the proposed rule in providing that the terms "solicit" and "direct" are best construed together, in recognition of the difficulties of providing clear, fair meaning to the term "direct" standing alone. The final rule should not, however, include a reference to "suggestion". Both compliance and enforcement of BICRA will not be well served by

a rule that depends on terms as vague as "suggest"—and that seemingly compels an inquiry into whether a communication might have conveyed the sense or created the impression of a solicitation, or might have had that intention regardless of the express words used. BICRA's rules—in this case, affecting political communications—should be concrete. A solicitation should consist of a request or a recommendation in express and clear terms. The question of whether a solicitation has occurred should not depend on the subjective judgment of an observer.

In the same vein, the rule governing "solicitations" should not encompass " a series of conversations which, taken together, constitute a request for contributions or donations, but which do not do so individually". 67 Fed. Reg. 35660 A rule that probed into whether a series of communications created some impression of "solicitation" not clear from any communication alone would invite heavy Government involvement in the deciphering of political speech. The rule should look only to express statements, clear on their face, that funds are being requested.

The rule should also provide for some clear exclusions, so that those engaged in political communications need not worry that their words will entail legal liability. We urge the Commission to make clear that responding to a request for information about issues or positions cannot constitute a "solicitation". Likewise, political speech or commentary to an audience whose members may respond with contributions is not a solicitation, in the absence of a request for funds in clear terms.

"Directly or Indirectly Establish, Finance, Maintain, Or Control"(Prop. § 300.2(c))

The Commission has raised for comment the question of whether the term "directly or indirectly establish, finance, maintain, or control" should be defined as it is today to focus on the affiliation criteria, or should be more broadly cast.

The national party committees support a definition based on the affiliation criteria. These criteria are familiar to the regulated community, which will raise the likelihood of clear understanding of and, therefore, efficient compliance with the new law. The Commission, moreover, has substantial experience with the application of these criteria to a wide range of factual contexts. With BICRA taking effect in only a matter of months, the current rulemaking is served well by rules that will minimize, for both the agency and the regulated community, the time required to master and learn the appropriate application of key definitions.

The alternative proposed by the Commission, which ranges beyond the affiliation criteria to consider a variety of other factors, will bog the agency down in determining the application of exceedingly vague factors. What does it mean that the sponsor might "alone or in combination with other persons", "form", "organize" or even "otherwise create" an entity? In an attempt to make these terms clearer, the proposed rule would resort to still more vague formulations: "'forms, organizes, or otherwise creates' includes the conversion, reorganization, or redirection of a pre-existing entity". But what is the "redirection" of a pre-existing entity? As the Commission elaborates on this secondary definition of "establish, finance, maintain or control", it becomes clearer that the proposed rule merely introduces more vagueness—and administrative complication—into a standard that could be more easily, clearly and efficiently based on the existing standard.

The national committees also believe that this standard should be applied to the factual circumstances existing, with respect to a particular organization, on or after the effective date of BICA.

Public Communications—"Promote or Support or Attack or Oppose"(Prop. § 300.2(f))

The NPRM seeks comment on the breadth of the definition for public communications, which includes both "express advocacy" and also a more flexible definition based on Commission rules (drawn in turn from *FEC v. Furgatch*, 869 F.2d 1256 (9th Cir. 1989). The Commission seeks comments on "what definition is most likely to survive Constitutional scrutiny". 67 Fed. Reg. 35660.

The flexible *Furgatch* test has not drawn widespread endorsement from the courts, and its adoption for BICRA purposes, in the definition of "public communications", is unlikely to avoid the same questions and concerns. There can be no question that a constitutional issue is raised by any test that purports to distinguish between regulated and unregulated political speech—not to mention a test that calls for evaluations of communications "taken as whole and with limited reference to external events" and that uses terms such as "unmistakably and unambiguously".

To raise the likelihood that the BICRA test for public communications will meet constitutional standards, the national party committees refer again to their suggestion that federal election activity refer only to those activities, including public communications, that occur beginning January 1 of a federal election, or even-

numbered, year. Prior to that time, only communications with "express advocacy" as that term has been defined in *Buckley v. Valeo* and applied by courts in the vast majority of jurisdictions would qualify as public communications within the meaning of BICRA.

Definition of "Donation" (Prop. § 300.2(e))

The Commission notes that BICRA "uses but does not define the term 'donation'." 67 Fed. Reg. 35659. Among alternative approaches would be the exemption from the term "donation" of any funds provided for exempt activities, such as funds received for "testing the waters" purposes, for the costs incurred by news organizations for carrying stories or commentaries, for certain costs for food, beverages and invitations, and for other enumerated exempt purposes. 67 Fed. Reg. 35659. The national party committees support all of these exclusions as appropriate and consistent with the absence of any BICRA legislative history to the contrary.

Moreover, the Commission over time has recognized that other activities are wholly exempt from the reach of the FECA, and nothing in BICRA or its legislative history suggests any congressional intent to expand FECA jurisdiction into these areas. These are

- Funds provided exclusively for redistricting purposes;
- Funds provided to a candidate's legal expense fund;
- Funds provided for federal election recounts (which may be funded under existing law with monies from permissible sources, such as individuals and PACs, but without limit per donor); and
- Funds provided for the payment of civil penalties for violations of the Act.

BICRA makes no mention of any of these expenses, though the sponsors and those voting on the new law must be presumed to have understood which parts of the law they intended to change, and which parts were meant to be left where they stood as of the date of passage. In fact, in an early draft of BICRA, specific reference was made to redistricting expenses; but this reference was subsequently deleted.

In all of these instances, there is also a substantial basis for the Congress to have concluded that the retention of these exemptions was not inconsistent with the

core purposes of BICRA. BICRA attacks the use of "soft money" (along with other objectives) in a manner intended to influence the outcome of federal elections. None of the cited exemptions from the definition of "donation" would frustrate this goal. Each one serves an altogether different purpose. For example, the Commission has long held that redistricting activity, recurring every decade, is not activity that Congress intended to include within the term "influencing a federal election" as it appears in the FECA. It is instead an independent activity mandated by the Constitution, for which funding should not be unnecessarily restricted. The same holds true for the resources needed for special circumstances such as recounts (subject to source restrictions), the payment of civil penalties, or the establishment of a legal expense fund.

The Prohibition on National Party Fundraising for Tax-Exempts (Prop. § 300.50)

BICRA prohibits national parties from raising monies for tax-exempt organizations engaged in federal election-related activities. The Congressional intention behind this prohibition should be enforced with attention to clear terms and guidelines necessary to distinguish prohibited fundraising from other contacts with tax-exempts, which are lawful and constitutionally protected.

To accomplish this goal, the national party committees support a rule that would:

> (1) simplify the steps by which a national party would determine that a tax-exempt engaged in the federal election-related activities that trigger the application of the rule. The national party should have the option of requesting and obtaining a certification about the nature of the activities conducted by the tax-exempt, or relying on the organization's application for tax-exempt status or Form 990.
>
> (2) not seek to prevent parties from freely answering questions about the identity or types of charities engaged in election related activities which, in the Commission's words, "share a party's political, social, or philosophical goals". 67 Fed. Reg. 35661. As a constitutional matter, such a rule would raise fatal issues; and as a practical matter, it would be unenforceable.

Levin Amendment and Related State and Local Party Issues (Prop. §§100.24; 300.30; 300.31; 300.33; 300.51)

As noted the national party committees will continue to work closely, as they do today under current law, with their state and local party affiliates. The various provisions of BICRA affecting state and local party activity are of immediate concern and interest to the national party committees. While doubtless state and local parties across the country, affiliated with both major parties, will comment at greater length on these issues, the national party committees would comment on various state and local party issues as follows:

(1) Levin amendment management issues. The Commission should not dictate the account structure or management approach to compliance with the allowances of the Levin amendment. Parties should have the maximum flexibility to address these issues, and in any event, many will have to manage Levin amendment issues within the overall framework of other requirements imposed for their operations by state law.

(2) Allocation of expenses for Levin amendment activities. The allocation methodology proposed by the Commission for Levin amendment activities appears well grounded in ballot composition-based percentages reported by States over time in selected groupings of States. While other approaches could yield reasonable results, the one appearing in the NPRM is well reasoned, and the national party committees support this methodology.

(3) Allocation of expenses for general administrative purposes. The national party committees do not support the same approach for the allocation of expenses between federal and nonfederal accounts for administrative expenses that do not constitute "federal election activity". As the Commission notes, an alternative approach, favored by these committees, is to afford party committees the option to pay for such expenses on an allocated basis between federal and nonfederal accounts, or alternatively 100% nonfederal.

BICRA establishes the extent of the federal concern with the allocation of expenses incurred for various activities by party committees. It speaks specifically to the issue of allocation wherever the Congress has determined that there is an overriding federal interest or impact. Thus, BICRA establishes a 100% federal payment requirement for federal election activities. In imposing this requirement, it

carefully distinguishes between levels of federal election related activity which would be deemed a "Federal election activity" commanding full payment from federal accounts, and other types of activity.

For example, party employees who do not spend more than 25% of their time on activities connected to federal elections are not considered engaged in federal election activity. BICRA does not in this case require the payment of these expenses on an allocated basis. Rather it does not speak at all to allocation, compelling the conclusion that the new law is not asserting a federal interest in this level of activity and is leaving the options for payment to the provisions of State law. BICRA follows this same approach in the building fund exemption preserved for state and local parties, which under the new law will finance the construction and purchase of these facilities with the funds authorized by state law alone. And it should be noted that where BICRA sought to establish the requirement for allocation, it did so explicitly, as demonstrated by the terms of the Levin amendment.

For these reasons, the national party committees would urge the Commission not to require what Congress did not—the allocation of administrative expenses other than those for federal election activity or as specified in provisions such as the Levin amendment. The state and local parties should be able to fund those expenses at their option on an allocated basis, or 100% from nonfederal, state-regulated funds.

(4) "Voter identification" This term is included among the "Federal election activity" payable 100% with federal funds, and the Commission solicits comment on the scope of that term. This issue presents the question of when a party's financing of its administrative infrastructure ends and federally regulated "Federal election activity" begins. The distinction is a critical one, and it is of the utmost importance to the task of state and local parties in acquiring and refining lists of voters. For this reason, the national party committees support the adoption of a definition that would exclude from the term "voter identification", activities to acquire and enhance lists of voters. Voter identification would include those activities that seek, directly from voters, views and preferences on particular federal candidates, including the likelihood that voters expressing those views or preferences would turn out at the polls to vote them.

(5) State and local party contributions to State PACs. State and local parties should be free to make contributions to state PACs organized and operated

pursuant to state law to support state and local candidates. Since state and local parties are able to support state and local candidates, there is no rational basis for attempting to limit their right to support those same candidates through the activities of state-registered and regulated political committees.

(6) Joint Fundraising by parties. The Commission correctly construes the Levin amendment to prohibit national and state parties from jointly raising monies for purposes of that amendment. This prohibition does not extend, however, to joint fundraising by national, state and local parties for other purposes, and the national party committees request that the Commission make this point clear in the final rules.

Federal Candidate Involvement in State and Local Party Fundraising Events (Prop § 300.64)

Another question presented in this NPRM is the breadth of the exception authorizing federal candidates and officeholders, otherwise prohibited from raising "soft money" for party committees, to attend, speak at or appear as the featured guest of a state and local party fundraising event. The Commission seeks views on whether this exception is appropriately qualified or limited, such as, for example, by restricting the manner in which such candidates may appear or otherwise participate in such events. The national party committees strongly support a rule that simply mirrors the statutory allowance and does not in any other way restrict or condition its use. In the words the Commission uses to frame this alternative, the officeholders and candidates should be able to "speak freely at such events without restriction or regulation." 67 Fed. Reg. 35672. Any other approach would present insurmountable constitutional and enforcement difficulties. Nowhere does BICRA suggest, in the wording of the provision itself or legislative history, that more pervasive restrictions were contemplated or necessary. State and local parties should be able to publicize the appearance of such candidates and agents; and no rule fashioned within constitutional limits could conceivably provide to the contrary. Likewise, candidates and officeholders should be able freely to lend their names to host committees established for such events.

Federal Candidate Fundraising for Certain Charities (Prop. § 300.52).

The national party committees support in this instance, as well as in others, clear administrable rules that go no farther than necessary to fulfill BICRA's core purposes in limited federal officeholder and candidate fundraising for charities engaged in certain election-related activities. The national party committees specifically comment as follows:

(1) "Agents" of candidates and officeholders. The prohibition should apply to agents of candidates and officeholders on the same terms as those argued previously for agents of national party committees. The agency concept should be based on the existing Commission rule, 11 CFR §109 (b)(5), and liability should apply only where the agent as so defined is "acting on behalf of" the party committee in performing the prohibited acts.

(2) Range of charitable activities for which funds may be raised. The candidates and officeholders may solicit funds for any activities of these charities, including all Federal election activities, if the solicitations are directed only to individuals and the contributions are solicited in amounts no greater than $20,000 a calendar year.

(3) Other "disclaimers" or representations required of candidates and officeholders. The candidates and officeholders should not be required to add additional disclaimers or representations, such as statements specifying in the relevant cases that only individual, not corporate, funds may be solicited. The Commission should minimize the requirements imposed on candidates and officeholders to make certain statements. By doing so, it will avoid constitutional issues, and also reduce the burdens placed on candidates and officeholders engaging in otherwise lawful efforts to solicit funds for lawful charitable activity.

Conclusion

The national party committees respectfully submit the foregoing comments, and restate their request to testify at the upcoming June 4 and 5 hearings.

Very truly yours,

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and the
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