

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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1 P R O C E E D I N G S

2 CHAIR WEINTRAUB: A special session
3 of the Federal Election Commission for Friday, June
4 6, 2003 will please come to order.

5 I'd like to welcome everybody to the
6 Commission's hearing on the Notice of Proposed
7 Rulemaking relating to public financing of
8 Presidential candidates and nominating conventions.
9 I'd like to offer a special welcome to a visiting
10 journalist from the west coast, Mr. Harvey who came
11 all the way across the country to see this hearing,
12 and coincidentally his daughter works for me.

13 The proposed rules we are discussing
14 today were included in the Notice of Proposed
15 Rulemaking published on April 15, 2003 in the
16 Federal Register. The Commission is considering
17 proposals to revise several portions of
18 the Commission's regulations governing the public
19 financing of Presidential candidates in both
20 primary and general election campaigns and
21 Presidential nominating conventions. Additionally,
22 the proposed rules and accompanying explanation

1 would apply to the Bipartisan Campaign Reform Act
2 of 2002 and the Commission's related implementing
3 regulations to Presidential nominating
4 conventions.

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

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

22 I'd like to briefly describe the format

1 for the testimony today. Each witness will have
2 time to make a five-minute presentation. We do
3 have a light system at the witness table that will
4 give you a yellow light at the end of four and half
5 minutes and a red light at the end of five minutes,
6 and we would ask you at that point to please
7 conclude your opening statements. Then we will
8 have time for at least one round of questions from
9 the Commission, the General Counsel, and Staff
10 Director.

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

20 Our first panel this morning will
21 consist of Robert Bauer of Perkins Coie, Donald
22 McGhan of National Republican Congressional

1 Committee, Paul Sanford of FEC Watch, and Steve
2 Weissman of the Campaign Finance Institute. And
3 before we invite the witnesses up to make opening
4 statements, I'd like to ask if any of the
5 commissioner have, other commissioners have opening
6 statements that they'd like to make.

7 Commissioner Toner.

8 COMMISSIONER TONER: Thank you, Madam
9 Chair.

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

17 As the chair noted, the Commission's main
18 task in this rulemaking is to decide what impact,
19 if any, the new campaign finance law has in
20 convention financing in the Presidential financing
21 system, and the Commission is also considering
22 several potential important rulemaking proposals

1 that are not required by the new law. I'd like to
2 comment briefly on a couple of these issues and
3 also some of the testimony that we received on them
4 that I look forward to expanding upon in the
5 hearing today.

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

18 Several commentators point out in their
19 comments that there's not a single reference in
20 BCRA to the financing of national conventions or to
21 host committees. In addition, numerous
22 commentators note that there was virtually no

1 floor debate on these important questions when BCRA
2 was enacted. I think it defies common sense to
3 conclude that Congress intended to transform the
4 way national conventions are operated when no
5 significant discussion of it took place on the
6 House or Senate floor.

7 More over, prominent members of Congress
8 who voted for BCRA have made clear that they do
9 believe the new law in any way restricts their
10 legal ability to raise soft money for host
11 committees. Most prominently, Senator Kennedy has
12 been involved in highly publicized efforts to raise
13 \$20 million in corporate donations for the Boston
14 host committee. Furthermore, the Boston Globe has
15 reported that Senator Kerry has likewise assisted
16 in raising host committee funds for Boston.

17 I think it's inconceivable that Federal
18 officer holders such as Senator Kennedy and Kerry
19 would raise soft money for the Boston host
20 committee if they believed it was illegal to do so.
21 Based on everything in the record thus far, I
22 strongly agree with them.

1 Second, several of the commentators
2 support a proposal to abolish the Commission's
3 longstanding locality requirement for soft money
4 donations to host committees. Under this rule,
5 corporations and individuals must live or do
6 business in the convention locality to contribute
7 to a host committee. As the comments indicate,
8 it's highly doubtful this rule was ever required by
9 FECA and there appears to be nothing in BCRA that
10 requires it be retained, but equally important, the
11 rules made it more difficult for smaller and
12 mid-sized cities whose corporate and business
13 presence may not be as great as the Nation's
14 largest cities to successfully hold national
15 conventions.

16 For example, for 2004, there's no
17 question that Boston's corporate presence is not as
18 large as New York's. If the Commission retains
19 this locality rule, it may be more difficult for
20 Boston to raise sufficient host committee resources
21 than it is for New York. We certainly have seen
22 that in some years past in smaller market cities

1 such as when San Diego in 1996 struggled to raise
2 sufficient funds for its host committee. Unless
3 the law clearly demands it, at this point I don't
4 believe the Commission through a locality rule
5 should make it more difficult for smaller market
6 cities to successfully hold national conventions.

7 Finally, after the Commission proposed
8 new rules for leadership pacts when they are used
9 by Presidential candidates for campaign purposes, I
10 think the conventional wisdom was that we going to
11 receive a torrent of negative comments here, but
12 surprisingly as far as I can determine, this has
13 not happened. As I read the comments, I don't see
14 a single commentator opposed to the proposed
15 leadership pact rule for Presidential candidates.
16 In fact, both the Center for Responsive Politics
17 and the Republican National Committee indicate that
18 they support the proposal. I can't recall the last
19 time these two organizations agreed on proposed
20 regulations, but I do take it as a good sign, and
21 I'm very pleased they support the Commission's work
22 in this area.

1 As the chair noted, the Commission is
2 scheduled to complete this rulemaking in the next
3 six to seven weeks. That's obviously a very
4 ambitious schedule, but I concur that it's critical
5 that we finish our work on these projects as soon
6 as possible so everyone in the political process
7 can know what the rules are for the 2004 national
8 convention for Presidential candidates.

9 Thank you, Madam Chair.

10 CHAIR WEINTRAUB: Commissioner
11 Thomas.

12 COMMISSIONER THOMAS: Thank you, Madam
13 Chair.

14 Just briefly, I first want to note that
15 Commission Toner and I have been working on a
16 suggestion that Congress or others interested in
17 the area ought to take a close look at the existing
18 public financing system to see if perhaps it could
19 be strengthened or revised or revamped to better
20 reflect some of realities that have emerged in
21 recent election cycles. We now have a public
22 financing system whereby some of the candidates are

1 actually thinking of opting out of getting primary
2 matching funds. We all know that President Bush
3 opted out the last election, did not take matching
4 funds during the primary phase, and so that is an
5 area that I'm hopeful that people focusing on this
6 topic will also address, and there are, I think,
7 some impacts coming out of the BCRA legislation,
8 such as increasing the contribution limit, that
9 exacerbate that problem. Candidates tend to be
10 able to raise money without using public funding
11 more easily because they can now raise twice as
12 much from any particular potential donor.

13 I also, just in pleasant response to
14 what my colleague Commissioner Toner mentioned, would note
15 that we don't have, I think, a totally clean slate
16 in terms of legislative history, first of all. It
17 may have been, as I referred to it earlier,
18 hyperbole, but Senator McConnell in the debates was
19 suggesting that the BCRA legislation as it has been
20 drafted would, in fact, dramatically cut back on
21 the ability of the host committees and so on to
22 raise money. Now, it may have been just in the

1 heat of debate that he was raising that specter,
2 because as we all know, he didn't like this
3 legislation.

4 I would also note that we do have a
5 comment from the sponsors, so-called sponsors, of
6 the legislation in the Commission's earlier
7 rulemaking in the soft money area which, at least
8 as I read it, does suggest that they think that the
9 BCRA provisions do, in fact, mandate some very
10 significant changes. I think we have some folks
11 who are testifying today who are going to be making
12 that pitch much in the same fashion, but I did want
13 to note that there are some indications that
14 Congress thought about this subject during the
15 legislative history, in the legislative debates that
16 is, and there is some indication that even
17 afterwards we've gotten a signal from the sponsors
18 of the legislation that they do think that some
19 very strict restrictions come out with regard to
20 convention financing.

21 So we'll have to add all that into the
22 mix. I think it will be a great discussion and a

1 great hearing today, and I'm anxious to get on with
2 it.

3 Thank you.

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

6 II. PANEL NO. 1

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

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

12 I will let the comments that we filed as
13 Perkins Coie on the other matters that the
14 Commission is considering speak for themselves, and
15 I thought what I would do is actually join the
16 discussion about the nominating convention
17 financing issue. The point of departure, because
18 we have only five minutes, each of us, for me would
19 be to discuss the Campaign Finance Institute study
20 that has been put before the Commission. This
21 study was obviously painstakingly assembled. It
22 has some very interesting information, but it tends

1 to suggest, or at least its authors suggest, that
2 the data presented in associated arguments should
3 lead this Commission to make significant revisions,
4 restrictive revisions, in the current rules that
5 permit a nominating convention private financing
6 through host committees and convention committees
7 and the like.

8 And I would like to challenge that
9 suggestion, because I've read the study over
10 several times, and I believe that it does not, in
11 fact, capture the full picture here, and in many
12 respects, I think it somewhat contradicts itself.

13 First of all, I would like to
14 begin--well, as a matter of fact, the structure for
15 my comment would be simply to go through point by
16 point some what I believe appears there.
17 Obviously, I'll characterize it as I see fit, and I
18 know that will draw an objection from at least one
19 of my co-panelists, but let me begin as follows:

20 First of all, the suggestion is that we
21 have seen an extraordinary increase in private
22 financing through host committees, and a variety of

1 statistics have been provided in the report to
2 support that suggestion. I have not re-run the
3 numbers. I have no reason to believe the numbers
4 are other than generally accurate, although the CFI
5 does note that there are some data collection
6 issues that complicate a full statistical picture.

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

18 So we're talking billions of dollars that
19 corporations have seen fit to deploy in a variety
20 of sponsorship contexts, and it would not be
21 surprising to see similar activity reflected in
22 their investments in convention marketing

1 activities. The study makes no mention of that,
2 and I think that is a significant methodological
3 problem.

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

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

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

14 Some of comments that are capture here
15 go to the alleged purposes of the sponsors which
16 are characterized in this report to be
17 predominantly political don't to my mind seem
18 inconsistent with a broader sponsorship purpose at
19 all. One quote: We want to help the host
20 committees showcase these cities. Another quote:
21 For us, Philadelphia, the last convention site of
22 the Republicans, it's our Super Bowl, our Olympics.

1 We want to showcase our technological prowess. We
2 want to provide grand exposure in business
3 development.

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

16 I'd also like to make that point that we
17 have heard a lot in the course of Congressional
18 debate and the Commission consideration of the
19 various ramifications of the restriction of soft
20 money, about the danger that it presents when it's
21 raised by members for purposes that directly affect
22 their election campaign, soft money, for example,

1 raised by members in the party committees that
2 engage in issue advertising is specifically
3 identified in a positive context before their
4 accurate or identify their opponents in a negative
5 context.

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

15 By the way, I should not for Mr.
16 McGahn's purpose that if you looked at the relative
17 spending of the parties in 2000, in the year 2000,
18 for actual parties, receptions and fun events, the
19 Democrats spent \$300,000 more than Republicans did
20 on just parties, which goes to show they may be
21 satisfied with their political position, but you
22 don't want to hang out with them. If you want to

1 have fun, Boston is the place to be this coming
2 year, certainly not New York.

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

5 MR. BAUER: Pardon me?

6 CHAIR WEINTRAUB: Your red light is
7 one.

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

11 Last point, BCRA, the Congress didn't
12 only just review the statute. It also reviewed
13 regulations that it was uncomfortable with. There
14 is a specific regulatory issue that is raised and
15 addressed in BCRA, which is the Christian Coalition
16 regulations that the Commission was directed to
17 repeal. It had the nominating convention
18 regulations before it as well. It did not choose
19 to do it, and I don't think we can rest this
20 regulation on what Commissioner Thomas referred to
21 as a, quote, signal afterward, unquote, by the
22 Congressional sponsors.

1 CHAIR WEINTRAUB: Thank you, Mr.

2 Bauer.

3 Mr. McGahn, you're up next. I want to
4 particularly thank you for coming so early in the
5 morning. I understand you've got a gig tonight.
6 That will probably keep you up late tonight. I
7 only regret that you didn't bring your guitar and
8 give us a preview this morning.

9 MR. MCGAHN: If I would have known.

10 CHAIRWEINTRAUB: Next time.

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

15 MR. BAUER: With your guitar, please.

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

20 We do have fun at our conventions, but
21 not too much money fun, and that's part of
22 why I'm here today. Just to make clear, I'm not

1 here on behalf of the NRCC itself. I'm here on
2 behalf of Tom Reynold, the Congressman from New
3 York who represents the 26th District of New York.
4 Being from New York, Mr. Reynolds desires to assist
5 the New York convention to the extent he can under
6 the law. Under current law, he can do quite a
7 bit. Under possible proposed rules--actually not
8 possible proposed rules. They are proposed, but
9 possible rules, that may change to a certain
10 extent.

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

16 The first issue is the ability of
17 members of Congress, Federal officials, and
18 candidates to raise money for host committees. Our
19 view is it is clear that they can. BCRA explicitly
20 allows Federal officials and candidates to raise
21 money for 501(c)s and even allows solicitation for
22 funds for 501(c)s that engage in Federal election

1 activity although host committees do not. So it is
2 clear that this civic fund-raising is maintained by
3 BCRA, although I don't think it is a question in
4 BCRA, the larger question. One need look no
5 further in BCRA to realize that members can raise
6 money for the host committee.

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

19 That being said, we also agree with Mr.
20 Toner's observation that dispensing with the local
21 rule would give minor markets more of a fighting
22 chance with conventions and hosting conventions.

1 There has been a trend where certain cities tend to
2 get the conventions time and time again, and
3 mid-sized cities do not. San Diego is the
4 exception to the rule, but as we all know, funding
5 there was not as easy as it would have been in a
6 larger market, shall we say.

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

1 avoid any appearance problems.

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

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

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

13 MR. WEISSMAN: There were only minor
14 changes. There was a figure that was slightly off
15 in the total contributions in Atlanta, the Atlanta
16 1988 Democratic Convention. I guess my mike is on.
17 In addition, there was a first name of someone that
18 was slightly off, and the third one was there was a
19 clause in a quotation that was drawn from a court, Case
20 *McConnolly v. FEC*, where the corporation indicated
21 that had allocated soft money for a convention
22 purposes as part of its overall soft money

1 allocation for political parties. There was a
2 clause left out of that on page 10, I believe, that
3 was put in.

4 So they're minor changes that don't
5 affect any part of thee overall analysis, but I
6 appreciate your asking.

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

17 So what you have here is a staff, CFI
18 staff, background analysis that we felt would be
19 helpful to the Commission. We saw how hard the
20 Commission is wrestling with these issues. We felt
21 that we had collected a lot of information and done
22 further analysis that might be helpful to the

1 Commission, and that's why we decided to present
2 this as a staff analysis.

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

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

1 don't have a solid foundation.

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

15 Some people we've interviewed, such as
16 we interviewed some political professionals who
17 have been involved with conventions for years, such
18 as Rick Davis, a Republican, Don Fowler for the
19 Democrats. Davis thinks it's almost all political
20 soft money. Fowler told us it's at least as much
21 either way, 50-50, 60-40, you can argue. That, it
22 seems to us, is a big change, and we tried to look

1 at statistically what has happened over the years,
2 and the data in front of you show that what we
3 concluded was that there has been an explosion of
4 private financing, \$8 million in 1992 of private
5 financing for the conventions. The amount that's
6 projected for 2004 is 90 million, a ten times
7 increase in three conventions.

8 I don't know if Mr. Bauer has data on
9 corporate sponsorship increasing ten times from
10 1992 to 2004 or not, but it is interesting that
11 that has occurred as the Commission itself has
12 loosened some of its regulations about private
13 financing and as the soft money exposure occurred.

14 I'm not going to go over that material.
15 I would just point to the fact that we go on from
16 there and we look at the evidence about how parties
17 raise this money. This money is raised--even
18 though it is a civic host committees which has some
19 bipartisan representation, there is no question, as
20 our study shows, that most of this money is raised
21 by politicians, candidates, and Terry McCauliff,
22 Clinton, Dole fund-raisers, and large partisan

1 donors, Eli Boyd in California for the Democrats or
2 Gerald Parsley in California for the Republicans.
3 This is how the money is raised.

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

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

15 So with that, we conclude.

16 CHAIR WEINTRAUB: Thank you.

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

22 MR. SANFORD: Well, until Steve decided

1 to join me, I thought I was going to be the lone
2 voice in the wilderness, but I am pleased to be
3 here, Madam Chairman, Mr. Vice Chairman, Members of
4 the Commission, General Counsel, Mr. Staff
5 Director.

6 The Center for Responsive Politics and
7 its campaign finance law project and FEC Watch is
8 pleased to have this opportunity to testify on the
9 Commission's proposed rules on the financing of the
10 Presidential nominating conventions. We have
11 submitted detailed comments, so I have only a few
12 brief opening remarks.

13 I begin with first principles. Section
14 441(b) of the Federal Election Campaign Act
15 prohibits corporations and labor organizations from
16 donating anything of value in connection with the
17 Federal election. Section 441i prohibits
18 national party committees from receiving donations
19 of anything of value that do not comply with the
20 prohibitions an limitation of the Act.

21 Section 431 defines conventions as
22 Federal elections. It is against this statutory

1 backdrop that the Commission's convention rules
2 must be evaluated. Because these are broad
3 prophylactic rules, the Commission bears the burden
4 of justifying the creation of any exceptions that
5 allow corporation and labor organization funds to
6 make their way into the convention funding process.

7 The Commission has created that allows
8 corporations and labor organizations to donate
9 funds to host committees for the nominating
10 conventions. It also allows the recipient host
11 committees to use these receipts to pay for the
12 cost of the convention. The stated rationale for
13 this exception has been that corporations and labor
14 organizations donate money to the host committees
15 to help promote the host city in its commerce. For
16 these reasons, the Commission has viewed these
17 donations as commercially rather than politically
18 motivated.

19 When The Commission created this
20 exception, it included certain safeguards to ensure
21 that the donations made were, in fact, commercially
22 motivated; however, in the classic example of what

1 the military would call mission creed, the
2 exception has been modified over time so that these
3 safeguards no longer exist. As a result, the well
4 intentioned, quote, very narrow exception has
5 almost completely swallowed the rule.

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

21 We do not dispute the host committees
22 and businesses and unions and host city to have a

1 legitimate interest in promoting the host city
2 first as a potential site for the convention and
3 later to convention attendees. With the exception
4 limited to the amounts used for these purposes, it
5 might be justified, but we are well beyond that
6 now. The party committees are using this exception
7 to get corporations and labor organizations to pay
8 for the conventions. The plain language of the
9 statute prohibits this.

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

17 I want to make one comment about the
18 Commission Toner's observation about the
19 legislative history. I think that the Commission
20 needs to start with the statutory language, and
21 that's the primary guide for how the law should
22 be applied. I think that the statutory language is

1 broad and suggests a very different result.

2 I also see what happened during the
3 floor debates a little bit differently. This is a
4 significant change. If the sponsors of legislation
5 or those supporting it did not agree with Senator
6 McConnell's statements on the impact of BCRA, I
7 would have thought they would have said so at the
8 time. They did not. It seems to me that this
9 could be just as legitimately viewed as affirmation
10 of that interpretation in the statute as it is
11 viewed as the opposite.

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

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

16 I'd like to start by asking you all,
17 sort of following along the line that Mr. Sanford
18 started us on, to engage a little bit on the
19 statute, because when I read the statute, I think
20 that it doesn't surprise me that different
21 commentators focused on different sections, because
22 depending on which section of the statute you're

1 looking at, you might come to entirely different
2 conclusions on the key questions that are in front
3 of us.

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

18 On the other hand, the statute also
19 allows covered officials who are otherwise barred
20 from raising or spending soft money to raise and
21 spend--to raise money for 501(C)3s, and it's hard
22 for me to imagine that the drafters of the statute

1 didn't recognize that the host committees are
2 501(C)3s. There are limits on the qualifications
3 on what kind of 501(C)3s, but I don't think that
4 they really apply to--those limits really affect
5 the host committees.

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

16 And I open that to whoever wants to
17 start.

18 Mr. McGahn.

19 MR. MCGAHN: I don't think anyone is
20 sitting here today saying the national party
21 committees can take soft money for conventions,
22 although it's a very eloquent citation to the

1 statute. It's a straw man argument. It ignores
2 distinction between party committee, committee on
3 arrangements, and the host committee, which is the
4 city's operation.

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

13 The second point that was raised was the
14 idea the host committees are political entities and
15 somehow it's really party committees and officials
16 that raise funds. That may be true, but I'm not so
17 sure we need a study to figure out that host
18 committees raise money and that elected officials
19 care if the convention is run in a safe and
20 efficient manner and that the host city has
21 resources that it needs to make sure that the
22 infrastructure is there for the city.

1 That being said, this idea that it's
2 become strictly partisan, I think it doesn't
3 make--although there probably a kernel of truth in
4 that, it's not necessarily true across the board.
5 It's not nearly as true as represented to you. For
6 example, unless I've missed something, the then
7 mayor Ed Rendell was a Democrat in Philadelphia, not a
8 Republican, although he was one of the main
9 champions of thee convention in 2000 to ensure that
10 Philadelphia did a very nice job in having a very
11 successful convention.

12 So to say simply that the host committee
13 becomes some partisan nonprofit oversimplifies to
14 the point of absurdity. Remember, the host
15 committee is a 501(C). The IRS looks at that.
16 It's the IRS's rules that determine whether or not
17 you're a non-profit, and again, I come back to the
18 cite, the portion of BCRA that I cited earlier
19 which allows Federal office holders and candidates
20 to raise money for 501(C)s. That's not a decision
21 that we need to second guess. That was a decision
22 of Congress. Congress knew the conventions were

1 out there. They knew they were 501(c)s, and as Mr.
2 Toner alluded to early on, Senators Kennedy and
3 Kerry certainly don't seem to think that they're
4 prohibited from assisting the Boston host committee
5 with ensuring convention, which I may go to thanks
6 to Mr. Bauer's invite, is very successful.

7 CHAIR WEINTRAUB: Mr. Bauer.

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

19 And the only point I want to stress
20 here--I'm not going to repeat everything that Don
21 said--is the what I think questionable legal
22 analysis that is being brought to bear to suggest that

1 Congress probably did intend for the Commission to
2 do something, and I really have trouble swallowing
3 that. I now understand that if somebody doesn't
4 specifically refute something that Mitch McConnell
5 says, it becomes an expression of Congressional
6 will, and that's an axiom of legislative history
7 that I loathe to adopt.

8 Secondly--pardon me?

9 COMMISSIONER MASON: You have three votes
10 already.

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

13 The other thing is I heard in the
14 comments of Mr. Weissman about the views of Don
15 Fowler and Rich Davis. Well, I have no reason to
16 believe they don't hold those views. What their
17 constitutional legal significant is is completely
18 beyond me. So we have a couple of people who feel
19 this way. A member of Congress' views were not
20 rebutted, and lo and behold, Congress has intended
21 to send a signal to the Federal Election Commission
22 to do what it did not explicitly do when it

1 reviewed the law in this area. As I mentioned at
2 the conclusion of my remarks, Congress knew how to
3 pick out regulations it didn't like in BCRA. It
4 did it explicitly, and did not touch these.

5 CHAIR WEINTRAUB: Mr. Sanford.

6 MR. SANFORD: A couple of things: On
7 the question of whether the host committees are
8 separate from the party committees, it is true that
9 they are separate legal entities, but the rules
10 specifically allow them to pay convention expenses
11 and specifically lists things that the host
12 committees can pay that are also things that are
13 defined to be convention expenses for the party
14 committees that could be paid with public funds.
15 So I think that the distinction between these two
16 entities begins to break down pretty quickly, and
17 when you look at the data in terms of how much
18 money is being spent, and even if we assume that
19 the figures in the CFI study are soft, there seems
20 to be a significant amount of expenses for the
21 convention that are being defrayed by the host
22 committees. So the fact that they're separate IRS

1 entities, I don't think completely responds to the
2 question.

3 With regard to the different statutory
4 provisions, I don't think it's necessarily a
5 conflict situation between 441(I)(E) and 441(B).
6 Even if we assume that Federal office holders can
7 raise money for these separate entities, these
8 501(c) host committees, that doesn't necessarily
9 mean that they can--that that allowance trumps the
10 441(B) prohibitions on the use of corporate legal
11 funds for Federal elections. They could very well
12 raise Federal funds for these entities and have
13 allowed those entities to use Federal funds to pay
14 convention expenses. If they are raising
15 non-Federal funds, the Commission can construct a
16 rule that will allow the host committees to use
17 non-Federal funds to promote the host city, not for
18 convention expenses.

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

1 anybody.

2 MR. SANFORD: Right. That's correct.

3 That's correct.

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

16 CHAIR WEINTRAUB: Let me ask you, Mr.
17 Sanford, and you, Mr. Weissman, a question. When I
18 read your comments as well as some of the other
19 comments from people who didn't have the guts to
20 come here today, but, you know, they seem to follow
21 along the same line that you're pushing, there
22 seems to be this undercurrent of the conventions

1 have become too elaborate, they've become too
2 expensive, there are all these parties. There is
3 this undertone of you guys are just having too much
4 fun out and we don't approve or you guys are just a
5 couple of prudes that don't think people out to
6 have a good time.

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

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

1 to address that.

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

8 CHAIR WEINTRAUB: Mr. Weissman.

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

12 CHAIR WEINTRAUB: Sure.

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

18 One of the things we say about BCRA is
19 that in the aftermath of BCRA, there is only one
20 area where candidates, and parties can benefit from
21 soft money, national candidate and national
22 parties, and that is convention financing, convention

1 financing that has now reached a figure of \$90
2 million in private financing for 2004. We also
3 point out in our analysis that should the status
4 quo be maintained in regard to the conventions and
5 the soft money ban on everything else continues
6 after the Supreme Court rules, then according to
7 veteran politicians we have interviewed, political
8 access and political influence will become even
9 more important in convention donations because the
10 party today prefers a soft money donation that can be
11 used for anything to a contribution to a host
12 committee.

13 As we pointed out, there is access.
14 There are favors granted for contributions to host
15 committees by the parties, but they are considered
16 less than the favors granted by every year regular
17 donations to party committees. That will change
18 after BCRA if BCRA is maintained, and the further
19 reinforcement of political motivations in giving is
20 something at least the Commission can expect if it
21 decides to maintain the existing regime. In terms
22 of whether anyone is being prudish, and I'm

1 agnostic as to this issue, but, I mean, it is
2 notable when you have a tripling of expenses for
3 conventions, conventions that kind of gradually
4 went up in cost from 1980 to 1992, as our table
5 shows, where the convention grant was adjusted for
6 inflation, cities put up a little more money and
7 they funded a significant amount and nobody has any
8 problem with public funds by a city being used or
9 states.

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

1 guess they could lengthen it. I guess--

2 CHAIR WEINTRAUB: No, not that.

3 MR. WEISSMAN: I guess the could
4 lengthen the parties at least.

5 In terms of the--so I think we have a
6 tendency here--and the parties is another thing.
7 It's been constantly focused on in the press and by
8 insiders. One of the people, Don Fowler, said,
9 Look, we used to have beer and peanuts, you know,
10 at these conventions, and now it's shrimp and fine
11 wine; they used to have standard rooms, and now
12 we've got big suites with work space. Some of that
13 is paid for by host committees. They are the ones
14 who are giving the delegated parties that are
15 becoming more and more elaborate with corporate
16 sponsors getting in on them and so forth. We can say
17 yeah, maybe they can have it, but we just to be
18 aware the price currently under the existing regime
19 of having that kind of convention is going to
20 be--has been a huge expansion from eight to
21 eighty-nine million of private financing, largely
22 corporate of these conventions.

1 So I just think that even though we are
2 not interpreting the statute about BCRA, we are not
3 entering the argument about--in fact, our argument
4 is based more on FECA than BCRA, Look, this was the
5 rationale under FECA; everybody has believed this
6 rationale; now it no longer obtains, and if I
7 could have 20 seconds to read you the quote that
8 Mr. Bauer used from the head of Comcast, which is
9 an excellent person to choose in which he was
10 demonstrating that our portrait of motivation was
11 exaggerated. Here is a guy, the head of Comcast,
12 Philadelphia 2000 convention, who is someone who
13 would strong civic motivation and does have some
14 civic motivation for giving to promote civic
15 commerce. After all, it's his center that is being
16 paid for by the host committee to rent for the
17 convention. It's his commerce that's increasing,
18 and his headquarters is in Philadelphia.

19 So Brian Roberts, when he was asked by the
20 newspapers why are you giving all this money and so
21 forth, he blended, but in terms of placement and
22 the way he presented it made a pretty powerful case

1 that the local civic is not the most important
2 element. He said--and the first sentence is a
3 priceless one:

4 "These are people who have to make
5 important decisions, and they're coming to our
6 house. This exposure may enhance our own
7 credibility when we are explaining new
8 technologies."

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

14 "And it's a unique one-time opportunity
15 for elected officials to see Comcast." Not local
16 officials. "Policy makers can meet us first and
17 remember our names, our faces, and our products."
18 Here is the part that Mr. Bauer quoted:

19 "Philadelphia is our Super Bowl, our Olympics."

20 I'm sure he genuinely has all these
21 motivations, but here's a person who is not like
22 most of the contributors to the convention. He had

1 his headquarters there. He had his hall being used
2 for that convention, and even he put in
3 considerable non-local civil commercial motivation.

4 The Commission could maybe come out with
5 the same exact stance on convention financing it
6 has today with a different assumption. Maybe it
7 could revise its assumptions or could change its
8 stance, but we do think that this evidence suggests
9 that it is a very strong non-local commercial
10 motivation, both political and national business,
11 in a lot of the financing.

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

17 I'm really glad that you raised the
18 issue of motivation, because another thread in the
19 comments was the access that donors get and the
20 corruption or appearance of corruption that is
21 presented by that. I think the motivations of the
22 donors is something that we have to bear in mind,

1 but I guess my question is I think about two
2 hypothetical donors. Let's say Donor A gives
3 \$100,000, one big check to the host committee, soft
4 money to support--I don't know--telephones and
5 transportation at the convention. Donor B has a
6 lot of rich friends and collects \$100,000 in \$2,000
7 increments of hard money that go directly to the
8 campaign funds of a Presidential candidate.

9 I don't know people that travel in those
10 circles, but I'm told that this happens, that there
11 are people who are able to go out there and collect
12 that kind of money in real hard dollars. Now, both
13 of those guys, if they show up at the convention
14 are probably going to get invited to the best
15 parties and have--although it's hard for me to
16 imagine that that mass of people and all those
17 people moving that that's really a great
18 opportunity to get your legislative agenda
19 promoted; but my question is, and again I'm
20 directing it this side of the table, is there a
21 difference in the corruption of appearance of
22 corruption between Donor A and Donor B and the kind

1 of access that they? Should we care about one and
2 not the other?

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

17 So I think that that would be your major
18 difference. I wouldn't quarrel with what you're
19 saying about a rich individual versus a whole
20 collection of bundled contributions in some way or
21 another, the rich individual's friends, but I think
22 the key distinction is are you allowing here unlike

1 anywhere in politics corporate, union money into
2 the funding of these very important political
3 events that are really the first campaign ad in a
4 way of the general election where we have
5 no--actually, we have no finance at all without
6 turning to the public grant.

7 But I think that's the key issue.

8 CHAIR WEINTRAUB: Mr. Sanford.

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

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

21 So I think the statute makes a
22 distinction that needs to be respected, and I don't think the

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

10 CHAIR WEINTRAUB: Mr. Bauer.

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

1 completely.

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

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

20 CHAIR WEINTRAUB: Mr. Sanford.

21 MR. SANFORD: I think a lot of the
22 comments on Mr. Bauer's side of the aisle have made

1 fairly conclusory statements about the purposes of
2 these contributions to host committees, and I think
3 that to rely solely on these conclusory statements
4 is no different than relying on this exegesis--I
5 believe the word he used was--laid out in the CFI
6 comments. So I think that there's little bit of
7 that going on on both sides.

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

14 MR. MCGAHN: He's to my left though.

15 CHAIR WEINTRAUB: And that's
16 important to note.

17 I wanted to, since I have you both here,
18 ask you about the leadership PAC provision. I
19 know that you didn't spend a lot of time on it in
20 your written comments, but as you know, we have
21 splintered off a section of our leadership PAC
22 rulemaking and tacked it onto this one to the

1 extent it's relevant to Title 26 concerning the
2 issue of leadership pacts as stalking horses for
3 Presidential campaigns and whether there should be
4 a look-back provision saying, Well, you know, now
5 we can see that these guys are really running for
6 President and they were using their leadership
7 money in an inappropriate way and possibly
8 accepting excess contributions to what should have
9 been termed the Presidential exploratory committee
10 if they were going to be more honest about it.

11 I would be interested in whether you,
12 either of you, have any views on either the
13 substance of that provision or the notion of us
14 just splintering off that section of the leadership
15 pact rulemaking and dealing with it here without
16 dealing with the leadership PACS in a more holistic
17 fashion.

18 Mr. McGAHN, he's looking to you.

19 MR. McGAHN: Well, maybe I will. I
20 would refer the Commission back to my prior
21 comments on leadership PAC issues where I believe
22 I drew the distinction between, let's say rank and

1 file leadership pacts, House and Senate members who
2 are running for President. To me, if someone is
3 using their PAC and it's there just to adopt the
4 shorthand that's been adopted for their own
5 campaign, I think that's a problem. It's a problem
6 when I commented, and it's still a problem whether
7 he's running for President or another office. To
8 the extent that we can bifurcate off the concern
9 into people using leadership pacts to run for
10 President, and can take care of it in this instance,
11 I would support that and leave the other pacts to
12 their own devices.

13 CHAIR WEINTRAUB: Mr. Bauer.

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

21 CHAIR WEINTRAUB: Fair enough.

22 I'm going to finally relinquish the

1 microphone. Commission Mason.

2 COMMISSION MASON: Thank you, Madam
3 Chair.

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

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

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

21 MR. SANFORD: I can't cite the case or
22 specific authority. I think it's--I don't think

1 the response to that is not to not change policy if
2 the policy is wrong just because if the--if you
3 have no flexibility in this area, then I think
4 because abinitio the statute prohibits these sorts
5 of financial transaction, then you need to prohibit
6 them immediately. I think that given how deep we
7 are into this convention cycle, that those who say
8 it is too late to change the rules have a
9 legitimate point. They have relied on the
10 Commission's existing policy, and so whether it is
11 through prosecutorial discretion declining to take
12 enforcement action against entities that have acted
13 in reliance on the existing rules or prospectively
14 making the rules effective, I think that the
15 Commission has some equitable authority to take
16 that into account.

17 COMMISSIONER MASON: Paul, I often find
18 myself in disagreement with you, but I often very
19 much appreciate your approach, and in asking
20 questions to other panelists, I want to say I think
21 you put your finger of the nub of the problem and
22 ask Mr. McGAHN and Mr. Bauer in particular, because

1 you've told us what you think, to address issue in
2 connection with the Federal election. In other
3 words, is convention funding in connection with the
4 Federal election given that normally the cost of
5 holdings elections themselves we don't consider to
6 be a FECA reportable expense and that it strikes me
7 if Mr. Sanford is right, that puts it in one
8 category, but my question is is he right and are
9 convention expenses properly considered in
10 connection with Federal elections in technical
11 terms under the FECA.

12 MR. MCGAHN: I think we're glossing over
13 a lot of the concepts, and what we haven't
14 mentioned is the fact that there are convention
15 expense that are paid for with a grand or hard
16 dollars. So there is a distinction. So to say
17 that somehow host committees are picking up all the
18 convention expenses I think gives the public at
19 large the misimpression that somehow there's
20 corporations buying the entire convention, that
21 simply isn't the case. The Commission knows that
22 and that's a critical distinction.

1 The second thing, which I take as an
2 admission to a certain extent which I heard earlier
3 was the concession that the host committee is a
4 separate entity from the committee on arrangements
5 and party committees. Once you reach that point
6 and you decide that they are separate entities, to
7 me, the analysis becomes much simpler, and all these
8 other issues fall into place, because that really
9 is the issue that puts the point on the pencil so
10 to speak, and even my colleague down the table
11 concedes that they're two separate entities.

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

18 MR. MCGAHN: The host committee expenses
19 are not. The point was to the extent there
20 are--that you do view the convention as a Federal
21 election activity, that would be what the grant and
22 hard money takes care of. The host committee stuff

1 is not on Federal election activity. It's not get
2 out and vote. It's not polling. It's not
3 any of those things you think of as Federal
4 election activity. Certainly, they're not the sort
5 of things that the Commission has historically seen
6 as being in connection with Federal elections.

7 That is the distinction I'm drawing, and
8 I apologize for sounding like I dodged the
9 question, but I sort of skipped back a paragraph
10 and got to the other paragraphs, and I apologize
11 for that.

12 COMMISSIONER MASON: Thank you.

13 Mr. Bauer.

14 MR. BAUER: In connection with the
15 standard is a broad term. It is subject to a
16 variety of exceptions, some of which are
17 longstanding and have not been challenged.
18 Corporations under that provision can produce--it
19 can engage in a variety of communications, all of
20 which are accepted notwithstanding whether they're
21 clearly in convention with a Federal election.
22 Political elections are a beast unto themselves,

1 and there is an awful lot taking place in those
2 conventions, but I agree with Mr. McGahn that the
3 Commission has the complete authority and has,
4 indeed, exercised it constantly over the years to
5 treat it as an activity that is not in connection
6 with an election in the prohibitive sense in which
7 you are raising the standard; and as I mentioned,
8 Congress had a fresh, recent, hot-off-the-presses
9 opportunity to consider this issue, and it was
10 certainly laid out there, and notwithstanding the
11 lassitude of those numbers, it didn't rise any
12 protests and side-bar comments of Senator McConnell,
13 chose not to act.

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

1 for.

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

10 MR. SANFORD: I think in situations, at
11 least ones that I'm familiar with in which the
12 Commission has now made a distinction between
13 election administration expenses, the party
14 committees were essentially acting as agents of the
15 state in conducting the primary elections. I think
16 the AOs specifically said that. And in this case,
17 the conventions are not functions of the host
18 cities. They are, in fact, party functions. So
19 the parties aren't acting as the agent of any
20 government entity in conducting the convention. In
21 that respect, they are their own expenses, and I
22 think also you have to go back to the statutory

1 side of the form-substance divide we're going to
2 fall. It seems to me it depends on the outcome we
3 want to reach.

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

12 But one of the things that disturbs me
13 about the winding-down system as we have it and as
14 you've addressed it is this aspect of treating
15 winding-down expenses against a spending limit and
16 at a point when it seems to make no sense to me,
17 and you seem to encourage us to continue that.
18 We've had this problem in audits occasionally where
19 campaigns have winding-down expenses and
20 campaigns--of course, this mostly comes under the
21 successful nominees--want to move their
22 winding-down expenses one way or the other

1 depending on where their spending limit problem
2 was. And while I can sort of buy your argument
3 that these winding down expenses wouldn't be here
4 if it weren't for a public funding system, that
5 these campaigns would be happy to go out of
6 business, go away, and not spend any more money,
7 and therefore it's sort of a legitimate part of the
8 system, why should we hold that compelled spending
9 against a campaign's spending limits after the
10 fact? As you put it, they have no interest
11 whatsoever in continuing to raise and spend this
12 money.

13 MR. BAUER: I'm not sure my comments
14 specifically addressed that point. I could be
15 wrong. I think generally speaking what we urged
16 was the most flexibility and the most
17 understanding, quite frankly, toward campaigns and
18 the treatment of winding-down expenses and
19 suggested that they be provided the greatest
20 possible flexibility. I don't know that consistent
21 with that I would--I don't know that I've given it
22 a huge amount of thought--worry too much about some

1 additional room under the cap for those activities,
2 because our whole view is you have to understand
3 campaigns don't engage in long, protracted
4 winding-down activities and the associated expenses
5 out of choice or because they wish to.

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

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

22 MR. BAUER: I have not given any thought to

1 the statutory regulatory mechanism by which you
2 reach that result. It doesn't trouble me in
3 principle. You know, one of the things that we
4 mention in our comments was that a lot of
5 candidates wind up having to spend resources
6 defending themselves against, you know, frivolous
7 and baseless complaints, obviously typically filed
8 by the other party, and the difficulty we face is
9 this is clearly not something we take on ourselves.
10 It's not something we accept voluntarily, and yet
11 we're all of a sudden hemmed in responding to
12 that by the various financing strictures that don't
13 take that type of problem, which is a consistent
14 problem, into account.

15 So we suggested maybe there ought to be
16 an allowance for sort of a legal defense GELAC.
17 So, you know, I'd like the most flexibility. In
18 fairness to you, I can't say that I've thought
19 through the regulatory or statutory mechanisms to
20 achieve it.

21 COMMISSIONER MASON: Thank you,
22 Commission Mason.

1 Commissioner Thomas.

2 COMMISSIONER THOMAS: Thank you, Madam
3 Chair.

4 Let me welcome everybody. Thank for
5 coming.

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

11 MR. MCGAHN: Or not so big.

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

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

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

22 COMMISSIONER THOMAS: In their defense,

1 I would note they have some very good lawyers. So
2 I'm guessing that they've gone into tedious detail
3 with their lawyers in terms of whether they are, in
4 fact, legally able to be out there doing it.

5 I want to, I guess, first go to, I
6 guess, the heart of what we're trying to get at
7 here. Mr. Weissman, I guess I'll give you a chance
8 to sort of start the dialogue. It seems to me that
9 the pitch you're trying to make is that this kind
10 of money that's coming into the host committee and
11 the municipal fund is really pretty much getting to
12 be indistinguishable to the kind of money that
13 historically has just gone to the party in these
14 soft money accounts, and you're pitching the
15 argument in terms of it appears to you as if some
16 of these set up donations for host committee
17 purposes are really being designed to influence the
18 political figures who are going to be there.

19 I guess it might be helpful if we sort
20 of appreciate that just influencing elected
21 officials in its own--by itself is not a problem.
22 I mean, we have the opportunity to lobby

1 legislators, and that's good. The idea is you want
2 to be able to influence your legislators. You want
3 to be able to maybe set up an opportunity where you
4 can face to face present your pitch on what piece
5 of legislation would be good for your industry and
6 what would not.

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

15 MR. WEISSMAN: I don't think we're
16 trying to say that this is any different from, say,
17 someone who contributes to a candidate or to a PAC
18 and isn't trying to corrupt the candidate or PAC,
19 but is trying to show support, hope that the
20 candidate perhaps agrees with them and would grant
21 the lobbying meeting and realizes the contribution
22 may, fuel access. There may not be any quid pro

1 quo corruption. I'm saying this type of giving is
2 really anything extraordinarily evil, but we are
3 saying that the law established that there was a
4 Federal grant that paid for convention expenses and
5 that that grant would be reduced to the degree that
6 a party decided to use private contributions, and
7 if the party didn't want to have--the party did
8 want to have its public grant reduced, then it
9 could not accept such private contributions however
10 innocently they may be intending.

11 There was an exemption made by this
12 commission that has endured for over 25 years on
13 the grounds that, look, not that the political
14 contribution is a quid pro quo corruption, but that
15 these are not really to influence elections; these
16 are not in any way designed politically. They're
17 not even national commercial. They're not even
18 designed to get a meeting with someone to see if
19 they'll buy an Apple computer. These contributions
20 to these host committees municipal funds are exempt
21 from any repayment obligation because they are
22 purely done to promote what the mayor of

1 Philadelphia wanted, local civic economy to have
2 the convention there.

3 That's why they're done, and for years,
4 as Paul has pointed out, the Commission said, until
5 1994, that nothing, not even that, not even a
6 contribution that says it's for that purpose will
7 be permitted without reducing the Federal grant
8 unless it's by a local retail firm that can show
9 that it's proportionate to the benefit that it's
10 going to get during the days before and during and
11 after the convention, and that was necessary,
12 according to the Commission, to ensure that the
13 private contribution would be allowed that was not,
14 quote, political, that it was really commercial.

15 So I don't think anyone has argued that
16 the contributions that we have charted here are any
17 more evil or worse than any other contribution.
18 They maybe be purely altruistic. There may be no
19 quid pro quo. There may be no request for access,
20 but they are contributions that come in addition to
21 a Federal grant that was given on the understanding
22 that there be no expenditures beyond that Federal

1 grant, and they are paying for expenditures now
2 that are two to three times the amount the Federal
3 grant on direct convention expenses, as our two
4 tables show from the 2000 election.

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

7 COMMISSIONER THOMAS: Mr. Sanford, I
8 have a question for you. As you were laying it
9 out, it sounds like you're suggesting that the
10 Commission could significantly modify the current
11 structure, but the basic concept would remain,
12 which is that host committees in many respects are
13 carrying out functions that have a city promotion
14 function and that could, in fact, be paid for using
15 unlimited donations from corporations, unions, etc.
16 The promotion function, you seem to find a
17 permissible function for the host committee, and
18 you want us to identify maybe some expenses that
19 historically and traditionally allowed host
20 committees to pay for that we label convention
21 expenses and you would like see it as, say, Well,
22 the host committee can go ahead and raise that kind

1 of money, but it should be treated as part and
2 parcel of what the party committees are raising as
3 direct convention expenses.

4 Now, included in your batch, I guess, of
5 expenses that you would like to see the host
6 committee have to use basically hard money for are
7 things like security, all of the things we list in
8 our list of convention expenses. It's seems like
9 it might be a difficult task. Wouldn't you grant
10 that maybe there's sort of a middle ground with
11 regard to expense like that? Doesn't it seem
12 appropriate when you've got a bunch of wild and
13 crazy Democrats coming to town to build in some
14 security, and isn't that something that the host
15 committee just justify, something that entirely
16 necessary irrespective of whether it's crazy
17 Democrats or wacky Republicans coming to town?

18 MR. SANFORD: Well, I think that a guide
19 that the Commission could use is--and I have to
20 confess I don't have a lot of firsthand knowledge
21 of how this typically works, but, you know, in
22 various contexts the Commission has provided

1 ordinary and necessary type standard to certain
2 business transactions and said that, you know,
3 we'll treat it as a business transaction as long as
4 it's the fair market value. I think the same
5 principle can be implied in this context to try to
6 establish whether there are ancillary expenses that
7 host cities frequently pay for when they deal with
8 conventions of similar size and significance, and
9 typically they offer to the convention sponsors,
10 the organization, like the ophthalmologists or
11 podiatrist, the party committees, in order to give
12 them an incentive to get them to come. Let me put this a little
13 more simply if the
13 cities usually pay for security expenses for
14 conventions. Then the Commission might be
15 justified in allowing them to do so for political
16 conventions. I don't think that that's been
17 clearly established.

18 I think it's also true that the
19 Commission may face some difficulty in
20 generalizing, because in some ways, the political
21 conventions are different. I don't know whether
22 they necessary involve more people, but they

1 probably involve additional security concerns,
2 particularly for the incumbent party. So I think
3 that that concept could be applied, and a cleaner
4 line could be drawn between the types of expenses
5 that typically should fall to the convention host,
6 whether it's a party, a political party, or the
7 ophthalmologist and those which the city inevitably
8 picks up in order to enable entities to come to the
9 city and hold their conventions there.

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

18 COMMISSIONER THOMAS: Thank you.

19 Mr. Bauer, while I've got you here as
20 the most experienced and perhaps the most agile
21 legal mind on these two concepts that we'll ever
22 have here in our presence--that's a compliment. We

1 don't always agree on things, but it's a
2 compliment--let me ask, coming into this
3 rulemaking, I had sort of assumed that we had a
4 statutory construction issue that didn't give us
5 much leeway with regard to what national party
6 committee operatives could do in terms of perhaps
7 maybe raising monies for the host committee as
8 distinguished from maybe what the Federal officers
9 and candidates can do in raising money for the host
10 committee; and specifically what I'm getting at is
11 in the BCRA provision you now have in 441(I)(A) a
12 very broad proscription on national party
13 operatives raiding or spending any money that isn't
14 subject to the limits, prohibitions, and disclosure
15 requirements of FECA, and I had thought that that
16 was a very broad, all encompassing ban.

17 There is another provision that's been
18 alluded to which talks about how national parties
19 as well as state parties and local parties and
20 operatives are not to solicit monies for a 501(C)
21 organization if that is an organization that
22 undertakes activities in connection with Federal

1 elections. And I had assumed that since that
2 second provision doesn't start out with a
3 notwithstanding any other provision clause that we
4 were bound to apply the first provision I talked
5 about, the very broad proscription for national
6 party operatives raising monies that aren't subject
7 to limits, prohibitions, and disclosure
8 requirements, we were bound to apply that provision
9 in a way that wouldn't let national party
10 operatives under any circumstances raise money for
11 something like a host committee that's a 501(C)
12 organization.

13 That second additional provision, it
14 seems to me took on an added meaning when, for
15 example, it would prevent a national party
16 committee from even raising hard dollars for a
17 501(C) organization unless that organization didn't
18 have its--didn't undertake activities in connection
19 with a Federal election. Now, I'm wondering how
20 those two provisions relate together. Do we still
21 have the flexibility to allow national party
22 committee operatives to help raise soft money for

1 the host committee municipal funds?

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

18 But it does seem to me that the type of
19 501(C) that is implicated in the very specific
20 prohibition on national party operatives and one
21 that has as its principal purpose Federal
22 election-related activity is not in my judgment

1 what host committees are, that is to say there are
2 types of election-related activities that BRCA is
3 very concerned with. It identifies voter
4 registration, get out the vote, and the like, and
5 the host committees are engaged in an enterprise, it
6 seems to me, notwithstanding the fact it takes
7 place in relation to the activities of the
8 convention, but it's engaged in activities that
9 have long been viewed as while related to an
10 election, not in connection with or intended to
11 influence an election. It's an unusual animal, I
12 suppose is the best way I could put it, but I
13 certainly don't think it falls within the types of
14 tax exempt organizations that the prohibition refers
15 to as intended to reach.

16 So again, and you raise a fair question,
17 which is how does it all fit together tightly, and
18 the answer is, number one, I think that may be goal
19 that alludes us in terms of the provisions of BCRA
20 in pari materia or however we may wish to do it,
21 but secondly, I'd also be happy to answer your
22 question on paper subsequent to the hearing by

1 taking sort of a closer textual look and encourage
2 you on the path I believe is the right one.

3 COMMISSIONER THOMAS: Thank you. It's
4 just baffled me whether we had any way to read the
5 441(I)(D) provision to somehow trump the 441(I)A
6 provision.

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

17 COMMISSIONER THOMAS: Okay.

18 CHAIR WEINTRAUB: Commission Toner.

19 COMMISSIONER TONER: Thank you, Madam
20 Chair.

21 I want to thank all of the panelists for
22 being here today. It's great to see you. I want

1 to follow up on a couple of items that have been
2 discussed. First, on the leader PAC proposal, I
3 understand, Mr. McGahn, your position is you
4 support the proposal for us in terms of
5 Presidential, but make a clear distinction in terms
6 of use of leadership pacts by Congressional
7 officials who aren't running higher office; is that
8 right?

9 MR. MCGAHN: Yes, sir.

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

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

21 COMMISSIONER TONER: Following up on, I
22 think, a key issue that we have before us today

1 obviously is the raising of soft money for host
2 committees and the role of members of Congress in
3 doing that, and I just want to follow up on a
4 couple of things. We talked about how it's clear
5 that, you know, certain members are raising soft
6 money for host committees for 2004.

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

15 MR. SANFORD: Yes.

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

20 MR. SANFORD: I think that's correct.

21 COMMISSIONER TONER: Okay. Mr. Bauer,
22 do you care to comment on that?

1 MR. BAUER: I couldn't, could not,
2 disagree more, as I'm sure you would anticipate.

3 COMMISSIONER TONER: I figured you
4 might.

5 MR. BAUER: What is it based on? What
6 exactly would that statement be based on? Where is
7 it in current regulations of the FEC that
8 prohibits, or in BCRA, prohibits office holders
9 from continuing to raise money for host committees?
10 The Commission here is asking the question whether
11 the regulations ought to be revised? That's a
12 question that the Commission can ask. That's a
13 question we're here to try to help you in some way
14 answer, but to suggest somehow that notwithstanding
15 all of this, notwithstanding Congress' failure to
16 deal with it, notwithstanding it being an open
17 issue before the agency that members in good faith on
18 reliance of counsel who are raising money for this
19 purpose are breaking the law strikes me as
20 completely without foundation.

21 COMMISSIONER TONER: Following up, Mr.
22 Sanford, I thought the comments that you submitted

1 were interesting in pages 13 and 14, and you
2 alluded to this in your earlier discussions. You
3 seem to suggest that there are some bona fide host
4 committee activities that can be paid for with soft
5 money, and I think in the comments you mention
6 certain activities: Promoting the suitability of
7 the city as a convention site, providing
8 accommodations and hospitality the members of the
9 site selection committee. I'm reading from the
10 second paragraph on page 14. You talk about
11 welcoming convention attendees, security costs,
12 things of that sort.

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

18 MR. SANFORD: Yeah. I tried to base
19 that on the existing regulatory structure the
20 Commission has. I mean, the list of permissible
21 expenses in the current rulings for host committees
22 contain some that don't fall within the definition

1 of convention expenses for the convention committee
2 and others that do, and my approach was to try to
3 use that structure to draw a clearer line between
4 types of expenses that the two entities might pay,
5 and I'll concede that those are not exhaustive
6 lists. There may be other expenses about which
7 judgments will have to be made, but I don't mean to
8 minimize the challenge that presents, but I think
9 that there's a seam in the rules, that can be drawn
10 from the rules, that can be used to make a clearer
11 distinction between the types of expenses that
12 Federal funds can be used for and non-Federal funds
13 can be used for.

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

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

22 COMMISSION TONER: Would you interrupt

1 the statute that way? Do you think that's
2 something that makes sense from a policy
3 perspective?

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

16 COMMISSIONER TONER: Mr. Weissman, I
17 thought the study that you put together was very
18 interesting, and I wanted to follow up on one
19 issue. You noted in the study that it was
20 difficult for your researchers to get a full sense
21 of host committee spending, and part of that was
22 perhaps the reporting processes that we use for host

1 committees don't fit as well. Could you elaborate
2 on that, and do you have any specific
3 recommendations for us on how we could better deal
4 with host committee reporting?

5 MR. WEISSMAN: Yes. The difficulty is
6 that under the--in the form, there are two place
7 that are relevant to revealing what the host
8 committees are actually doing. One is the purpose
9 of expenditure column, but this is an open-ended
10 purpose of expenditure column in which the host
11 committee can simply write down however it wants to
12 categorize its expenditure. It has no relationship
13 to the categories that have been set out by the
14 Commission as permissible host committee
15 expenditures, such as, you know, for, let's say,
16 law enforcement, transportation, for various
17 construction in the convention and that sort of
18 thing, office equipment, and a lot of the--many of
19 the goods that are discussed, such as computers,
20 you don't know was this computer used within the
21 convention or was it just used for the office and
22 so forth. So it's difficult to get a bead on what

1 it is that the host committees are actually doing,
2 because there's an open-ended purpose column, and
3 it is not a column that says chose from these
4 purposes that are permissible for host committees
5 and we have established in regulations.

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

21 If I could make one quick addition on
22 the question raised earlier for Mr. Sanford and

1 that Mr. Thomas raised earlier, the question of
2 whether security can be considered to be an
3 expenditure that you might allow not only cities to
4 pay, but as I understand it, perhaps private funds
5 could be used to help security because security is
6 a typical municipal expenditure, my understanding
7 is that first we have to take a look back at
8 security these days. Boston is applying for \$10
9 million under the Homeland Security Act to protect
10 the Democratic convention, and obviously that is
11 inherent to the convention. It is not a simple
12 municipal sort of expenditure, and the fact that
13 these are political conventions these days means
14 they're different from other conventions and may
15 not fit as easily into the rubric.

16 The other problem is that these kinds of
17 law enforcement expenditures and in the
18 Commission proposal now have been considered
19 convention expenses. They have not been considered
20 expenses that are like welcoming delegates who come
21 into the city. They have not been considered
22 expenditures like paying for the committee to

1 recruit the parties to adopt their city, which are
2 very local civic and commercial in nature. They
3 are promoting the civic economy. Security and
4 transportation are expenditures that have been
5 viewed historically by the Commission as inherent
6 to the convention expenses.

7 Were there to be an exemption at least
8 for our data, the Commission should be aware that
9 Los Angeles claims to have spent \$23 million on
10 security during the 2000 convention; Philadelphia,
11 13 million. And since the private financing of
12 conventions you might say is about a 25 to 35
13 million dollars issue, money could easily be
14 shifted so that private money could be recruited to
15 host committees to pay for things that cities used
16 too pay for, and then cities could pay for things
17 that host committees used to pay for.

18 One of the interesting things in our table
19 are data of how many cities and states continue to
20 do for convention, an issue that is not fraught
21 with any controversy at all insofar as public funds
22 are used, which is predominantly what is used;

1 however, the concept of municipal fund, even though
2 as we can tell it's only been used a couple of
3 times in 1984 and once in 1996, could open up this
4 area more and more private funding as well as if
5 host committees could do it.

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

18 MR. BAUER: Yes.

19 COMMISSIONER TONER: Do you believe we
20 have a statutory basis for doing that I guess in
21 parallel of what we've done in the GELAC, the
22 General Election Fund?

1 MR. BAUER: Yes.

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

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

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

14 MR. BAUER: Right. That's right. The Bradley

15 McCain Opinion I
18 think that we ought to be somewhat more open-fisted
19 about how we handle those kinds of expenses, and
20 again, there are a variety of reasons why
21 candidates go to conventions. The fact that they
22 have suspended or withdrew, not only that they're

1 ineligible doesn't make it less imperative for them
2 for a variety of ways, for a variety of reasons, to
3 be there. And so it just doesn't to me that making
4 that allowance, given the very unique role the
5 conventions and attendance at conventions plays
6 in our process doesn't seem to me that it's necessary
7 to put quite the range of restrictions or
8 certainties on it that we do today.

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

14 MR. BAUER: That was our proposal, that
15 if you were concern about it being sort of the
16 gateway to a large amount of money, you could set
17 it at a hundred thousand or 250,000, and you could
18 put a limit on how much money you could spend in
19 relation to the convention, but that would obviate
20 the necessity to place conceptual restrictions on
21 what they could do. In the Bradley-McCain opinion,
22 there are some very defined activities that were

1 permitted and then it leaves the question about a
2 whole range of other things that are typically done
3 at conventions and raises questions about whether
4 they're still permissible.

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

18 Would you support that approach?

19 MR. BAUER: Yes, absolutely. As a
20 matter of fact, there are other expenses, it seems
21 to me, that are associated with that shortfall that
22 the Commission ought to account for in some way. I

1 think, how things have changed, I think convention
2 spending got some real interest in about 1972. I'm
3 not saying we didn't have it before or after, but I
4 think Dea Beard, if memory serves me right, was
5 very prominent, and we want to thank you her for
6 being here today, because I do think that was kind
7 of one of the first major issues in relationship to
8 convention process and what really emanated from
9 what later became known as the Watergate scandal,
10 if you will.

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

18 Historically, the other thing is that of
19 course in terms of the security 35 years ago, yesterday,
20 Senator Kennedy was murdered in Los Angeles. So
21 there are things that emanate historically in
22 relationship to the kind of discussions that we're

1 having. I've kind of taking the view about
2 conventions that the more flexibility, the better,
3 and I do so not unmindful of the studies, the very
4 outstanding study that was brought to us this
5 morning as well as the history of the process
6 itself. I'm interested--I want Don and Bob to
7 refresh my memory. I think this might be a
8 little bit different viewpoint than they took about
9 the Congress when I last saw them at this table.
10 Suddenly their interest in the Congress seems to be
11 somewhat different than I had recalled in the
12 previous rulemaking. Here, I gather we're saying
13 on the one hand since Congress for the most part
14 didn't address this issue, that we should leave
15 well enough alone.

16 Bob, you had indicated on this proposal
17 about the GELAC fund that you might want to--I'm
18 just trying to be sure I understand. As you know,
19 critics of ours say that we created that to begin
20 with, it had nothing to do with what Congress had
21 done. But you're saying you think we have the
22 authority even though Congress has really not

1 addressed this, and I'm just trying to figure out
2 how we kind of get the authority in this in area to
3 do this where Congress really has not addressed the
4 issue, and, in fact, as I say, I think critics
5 point out to us that some of our handling of these
6 types of arrangements that we created over time,
7 when go to look for it statutorily, it's a little
8 hard to find.

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

14 MR. BAUER: I'd say two things,
15 Commissioner. It's a fair question. I think the
16 first is that by and large, the Commission has not
17 come under, in my judgment, a very significant
18 attack for the way in which the nominating and the
19 general election financing provisions have been
20 implemented. By and large, the statute as a whole,
21 setting aside the controversy over, you know,
22 national party collection of soft money, but the

1 statutory scheme itself and its implementation
2 generally has not been a source of criticism of the
3 Commission. I don't recall seeing an enormous
4 amount of concern that, for example, GELAC activity
5 generates the potential for significant undermining
6 of the statute.

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

18 COMMISSIONER McDONALD: Thank you.

19 Don, let me ask you, you had said in the
20 last round when you and I visited that Congress
21 basically in relationship to passing the law was
22 signing it at two or four o'clock in the morning

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

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

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

18 MR. MCGAHN: That's a broad statements.
19 We can paint on the whole statute what I was really
20 referring to at the time, things like coordinated
21 versus independent expenditures and the choices
22 between the two and the minutia of the 98-pages of

1 the bill. I mean, what they thought they were
2 doing was this concept of banning soft money, which
3 is a term which we use in a variety of different
4 ways and that sort of thing.

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

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

16 MR. MCGAHN: Wait a minute.
17 Commissioner, when did I say that?

18 COMMISSIONER McDONALD: Pardon me?

19 MR. MCGAHN: When did I make that
20 argument?

21 COMMISSIONER McDONALD: You made that
22 this morning?

1 MR. McGAHN: It was Mr. Bauer.

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

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

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

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

16 My second point was the local rule,
17 which is the Commission regulation, which in my
18 view, times have changed. Because the facts have
19 changed, the Commission can change its regulations.
20 And the third is the notion you can reach out and
21 regulate events during the week of the convention
22 or the time around the convention, and there's

1 nothing in the statute itself which indicates that
2 needs to occur because of BCRA, and I don't see any
3 factual change which results in that.

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

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

21 MR. MCGAHN: My advise has certainly
22 been it's legal to raise. Whether there's actually

1 been solicitations, I just don't have personal
2 knowledge of how far along the tracks members on
3 the Republican side--to the extent it's helpful, I
4 can kind find out and provide that information.
5 Just sitting here today, I just can't say for
6 certain where we are.

7 Commissioner McDonald: Thank you.

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

10 In terms of--and I realize your position
11 is that you've done a study and that you're really
12 not taking a position, but it's hard to read the
13 study without concluding that you're taking a
14 position of sorts, which is fine. Aside from your
15 study, your own assessment of the study or the
16 climate in general, what conclusions would you draw
17 outside of what you've put forward, I guess might
18 be the best way to ask it. It's one thing to have
19 the study. I think that you do draw a conclusion
20 about the study, which is perfectly fine, but what
21 would you want us to leave with in terms of your
22 participation today other than the fact of the

1 increased costs, which we concluded is certainly
2 true?

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

18 I think what comes out of this is that
19 whatever the Commission does, the old rationale for
20 doing this doesn't have the power that it used to
21 have, that there was a rationale that had some
22 credibility, although some have argued to us that

1 even in 1984 Trammel Crow was, you know, getting
2 the Republicans to contribute to the Dallas
3 Municipal Fund, and look at the chairpersons of
4 1992: Kenneth Lay for the Republican host
5 committee and Robert Rubin for the Democratic host
6 committee.

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

18 So I think what we most would like to
19 come out of this, and we appreciate the attention
20 that the study has gotten, is for the Commission to
21 reflect upon it and figure out what is--can they
22 develop an independent rationale for whatever they

1 want to do, and if not, is this an issue that has
2 to be dealt with in part by Congress and by the
3 President.

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

9 MR. WEISSMAN: Well, if I could put on
10 one past hat, I was one of the people that before I
11 took this job in Campaign Finance Institute who was
12 involved in the lobbying effort with Congress on
13 the McCain-Feingold bill. This a purely personal
14 impression. My impression was no one focused
15 particularly on this issue, that it was brought up
16 by Senator McConnell to characterize legislation.
17 His interpretation is plausible and so is the
18 opposite, so that my feeling was that nobody
19 among--I was working at the time with Public
20 Citizen. Nobody among those reform groups, nobody
21 among those sponsors of the legislation were really
22 thinking about this issue.

1 COMMISSIONER McDONALD: These poor
2 members, they're just not shaping up well with any
3 of you. I'm starting to feel worse. I feel about
4 the members like I did about the city of San Diego
5 some years ago.

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

21 So I don't think it was totally
22 irresponsible of Congress at that point to say,

1 Look, we'll get to the Presidential thing at
2 another time. That was just simply a personal
3 impression from firsthand involvement over four or
4 five years in that particular issue.

5 COMMISSIONER McDONALD: Very briefly,
6 Paul, going back to 1972 for a moment, one of the
7 problems, of course, was that theory was that a
8 large amount of money underwriting the convention
9 by a particular source or a handful of sources was
10 a serious problem. Over time, what has happened, I
11 think on either side of the aisle, I think you can
12 make a very compelling case that lots of money
13 certainly has been poured into the convention
14 process. But two things: One, it's in the public
15 domain, which is decidedly different than what
16 triggered this to begin with, I think; and two, if
17 you're representing Southwestern or American
18 Airlines or Korean Air, whatever it might be, the
19 one thing in particular in the public arena is that
20 they may have alliances in relationship to an
21 industry, but of course the internal fighting--the
22 most recent, of course, is American and TWA where

1 they can't agree on what vote they made jointly,
2 clearly what has happened is that there are very
3 competing interests, I guess is what I'm saying.

4 The issue when this first began to take
5 center stage was clearly that a few folks would
6 have unlimited access and that a national party
7 would be beholden to those folks. Now, lots of
8 things have changed, first and foremost, the
9 public's ability to know what has transpired. I
10 guess I'm asking you what the problem with that is
11 in view of the fact that even though people may
12 give substantial amounts of money, it is not in the
13 context--I don't think any of us think that the
14 convention per se determines who the Presidential
15 nominee is. Everybody knows when they get to the
16 convention.

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

21 MR. SANFORD: Well, I think that
22 certainly it's true that the outcomes seem to be

1 rarely in doubt, if they are at all, although they
2 could be. They could in any particular cycle be.

3 MR. MCGAHN: Agreed.

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

20 And so I don't think that the way the
21 money is making its way into the convention process
22 is very different than what Congress banned,

1 explicitly banned, you know, and making its way
2 into the hands of the party committees and other
3 processes.

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

6 CHAIRWEINTRAUB: Thank you,
7 Commissioner McDonald.

8 Vice Chairman.

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

16 I'll start, Mr. Weissman, with some
17 things for you and your study, and I guess Mr.
18 Bauer noted that the corporate sponsorship was way
19 up in the last decade or so. In fact, I even look
20 forward to probably 2008--I don't think we'll get
21 there in 2004--where Americans can turn on their
22 television sets to CNN and watch the Nokia

1 Democratic Convention or the AT & T Republican
2 National Convention, but you note the explosion in
3 the corporate contributions to host committees and
4 so on, and yet it strikes me that in addition to
5 the point that Mr. Bauer makes, which we don't have
6 the exact numbers on right now, but you cite in the
7 study another factor that would be very
8 determinative of why there was this growth, which
9 was the Commission's change in 1994 to do away with
10 the local retail rule; and of course then we see a
11 big explosion beginning in 1996, and you note
12 specifically or you cite some examples of companies
13 that, gee, looks really motivate and why are they
14 suddenly contributing so much. You note Motorola,
15 GM, Ameritech, Microsoft.

16 It's not that there are a lot of
17 companies like that that would have been able to
18 contribute prior to 1994 Commission regulations.
19 So isn't that coupled with the fact that Mr. Bauer
20 has raised something that equally explains the
21 sudden rise in corporate funding for the host
22 committees?

1 MR. WEISSMAN: To focus on what we do
2 say in our a statement is, yes, I think in part the
3 change in regulations which one could argue the old
4 regulations were too inflexible. People said,
5 Well, what if we get a benefit to our business in this city that
6 last beyond the life of the convention. What if
7 we're not a retail business but we have a lot of
8 economic stake from the city; we get benefits, but
9 now that there is no particular measure of benefit
10 that is restricting someone from giving donations,
11 you're absolutely correct. I think that has
12 encouraged the process.

13 The thing I don't think we can ignore,
14 though, is that when you take a look at--but that
15 may not involve someone saying, Oh, well, my real
16 commercial interests in the city or the metropolitan area is
17 really \$1 million instead of 30,000, to take what
18 Amway is doing from one year to another. It may
19 mean that they're saying in response to pleadings
20 by the parties which were at this very moment
21 developing the whole soft money boom, Okay, we'll
22 give you a million dollars. The fact is you can

1 see so many of the contributions are exactly the
2 same, a million dollars and often to both parties,
3 that one can look at the data which the Center for
4 Responsive Politics and other organizations have
5 put in compact form, which are available from the
6 Federal Election Commission, and look at the data
7 and say this is just as a much a part of the soft
8 money explosion as of the Commission's rules
9 change.

10 So I think probably both factors are
11 involved in this, and what's notable is that the
12 very same companies that gave a hundred thousand
13 dollars, Coca-Cola Bottling in Atlanta or AT & T in
14 1988, both conventions give a hundred thousand and
15 something. Suddenly, some of these companies are
16 up to the million-plus mark, and then of course if
17 it doesn't have to be local retail, you have all
18 these new companies coming in that have very little
19 special stake in the local economy, the Ameritechs,
20 the Motorolas, and so forth, Microsoft, many of
21 them cited in the statement in the presentation,
22 and they are also giving huge amounts of money.

1 VICE CHAIRMAN SMITH: Now, let me take
2 you up on that. We were looking just at one other
3 host committee, which is the host committee for the
4 2002 Super Bowl in New Orleans, and the host
5 committee does all kinds of things. They finalized
6 locations for all the events being held,
7 including the Annual Commissioner's Party, a Taste
8 of the NFL feature including top chefs from all
9 over the country, the international media reception of
10 the task force party, kinds of events that are
11 directly related to their business. They also
12 note, and this is interesting in terms of thinking
13 about the growing extravaganza of conventions, they
14 note, for example, that for the people who show up
15 for the event, events and attractions leading up to
16 the game that continue to grow in size and
17 complexity, for instance, an event that comprised
18 of little more than a sport car trading show under
19 outdoor tents in the Super Bowl town in 1990 grew
20 into a temporary theme park called NFL experience
21 by 1997.

22 So that what we're witnessing is again

1 not unique to political conventions, and
2 who are the sponsors for the New Orleans's Super
3 Bowl Host Committee? Well, they're also companies
4 that seem to have only an attenuated local interest
5 or whose futures don't seem to hang on the local
6 economy: RCA, Cox Communications, the Home Depot,
7 Coca-Cola, Miller Lite. Most of these companies if
8 they have any presence in the city, have a present
9 that is, you know, there's a Home Depot store in
10 the New Orleans area. I think it's tough to argue
11 that this is just a major--you know, the connection
12 you try to argue should only be what's motivating
13 people who are funding the political conventions.

14 And so I look at it, and I wonder if
15 you're not using a paradigm that's incorrect as to
16 why companies give to these kinds of host
17 committees.

18 MR. WEISSMAN: Well, of course we have
19 the--I don't know exactly what the Super Bowl
20 sponsorship delivers to the company, but we have situation
21 with the political convention, as you know, where
22 the average television viewership is 13 percent of

1 the convention. They're only on for a brief period
2 of time. The exposure is declining very
3 substantially, yet the passion to contribute to
4 these host committees is increasing. We also have
5 the other thing that I don't know who asks for the
6 money for the Atlanta Super Bowl whatever
7 committee, the New Orleans Super Bowl, but the
8 people asking for the money to a predominant extent
9 are partisans asking partisan donors or donors who
10 give to both parties to provide financing for what
11 is really the first major--it's not a primary
12 election or choice of the candidate, but it is the
13 first major event. It's a four-day testimonial to
14 the quality of general election candidate, and
15 they're being asked by partisan fund-raisers and
16 party officials and politicians.

17 Then when they get there, they're
18 greeted by those same politicians. They are
19 privileged to help co-sponsor a delegate receptions
20 which politicians will appear because of the
21 contributions to host committees, and I think
22 there's a whole different syndrome occurring at

1 these conventions.

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

12 But that leads me to a question for Mr.
13 MCGAHN. You have mentioned a couple of times that
14 the statute specifically permits raising funds for
15 501(C) by office holders and candidates and party
16 officials. The statute permits that where such
17 solicitation does not specify how the funds will or
18 should be spent. If you're raising funds for a
19 host committee to spend to put on a convention,
20 doesn't that bring that into play?

21 MR. MCGAHN: No. I don't think so. I
22 think any 501(C) has some sort of mission, but

1 whether it's the Red Cross or a host committee, you
2 do have a broad idea of how the money is going to
3 be spent. I don't think that section applies in
4 that situation. Now, perhaps if it's a specific
5 earmark, but even then it's still not a Federal
6 election activity. I don't think that limitation
7 is applicable.

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

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

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

21 MR. MCGAHN: My own view is no.

22 VICE CHAIRMAN SMITH: Why not?

1 MR. MCGAHN: Pardon?

2 VICE CHAIRMAN SMITH: Why not?

3 MR. MCGAHN: Historically, the host
4 committee is not seen as doing--notwithstanding a
5 slight overlap, it's a separate entity that
6 provides the infrastructure for the convention.
7 Again, I don't want to get too far out on the
8 proverbial limb here, because I'm here just for a
9 handful of issues. I'll defer to others.

10 MR. BAUER: I would only make the
11 comment that I think it's analytically confusing
12 and ultimate a mistake to try to neatly divide up
13 everything we see in the political world into
14 those things that are election related and those
15 things that are not election related and Whatever. This
16 happens to be, and again I'd insist on this point,
17 a it's a unique event, and the Host Committee plays a unique
18 role and a unique set of circumstances and takes
19 place over a short span of days, albeit very
20 expensive. People can debate the wisdom of the
21 investments that are made and the wisdom of
22 certainly expenses like the expense of security and

1 transportation that have to be made; but one way or
2 the other, I don't believe that the host committee
3 engage in anything that anybody would think
4 rationally related to the sorts of concerns we view
5 as at core election related.

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

15 MR. SANFORD: Well, I think that--I
16 guess I view that as a bit of a side issue, because
17 I believe that 441(B) prohibition really constrain
18 the conduct of the host committee, so
19 that--constrain the fund-raising for the host
20 committee. I mean, we talk about the host
21 committee not engaging in Federal election
22 activities, and this is one of the ways in which I

1 think back to an analogy that my boss used in a
2 previous hearing, was we're looking through
3 telescope from opposite directions.

4 I think the host committees are set up
5 to facilitate the convention and we can quibble about how
6 closely related they think their expense are, but
7 that's what these entities are for. So to say that
8 they're not connected in the 441(B) sense to a
9 Federal election, when conventions are by
10 definitions elections under the statute. That
11 seems to me to overlook a pretty apparent
12 relationship.

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

22 VICE CHAIRMAN SMITH: Let me ask you

1 another question. I gather from your earlier
2 comments that you're suggesting that regardless of
3 BCRA, in your view, the law properly interpreted
4 would prevent many of these host committee
5 activities under 441(B).

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

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

11 MR. SANFORD: Right.

12 VICE CHAIRMAN SMITH: Now, here is the
13 issue I have, I, guess with that a bit. It seems
14 that you're kind of hinging your argument, then, on
15 this statute as existed by prior to BCRA. I think
16 it's a pretty strong argument that BCRA doesn't
17 seem to address it, and I wonder if we were on a
18 blank slate it might be a different scenario, but
19 where we've had those rules in place for a lengthy
20 period of time without Congressional action to
21 overturn them, including in repeated introductions
22 of versions of what ultimately became BCRA, and

1 then finally in the bill that passed as BCRA, this
2 issue has never been raised. Isn't there generally
3 a presumption when you have that kind of activity
4 going on that, in fact, the interpretation of the
5 Commission is giving to the statute is correct or
6 at least that which is desired by Congress and what
7 they see?

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

16 On sort of the history question, I
17 ground my arguments, as you correctly state, on the
18 way the Commission has allowed the rules to evolve,
19 and I see those problems as being real, and I think
20 that those are Commission created and that
21 notwithstanding what the Congress did, the basis of
22 this assumption, the assumptions as Mr. Weissman

1 refers to, the basis of the exception that the
2 Commission has created has become shaky and should
3 be re-evaluated.

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

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

21 But I have a couple of quick questions
22 for you, Mr. Sanford. Have you read Mr. Gross's

1 testimony?

2 MR. SANFORD: I have, written comments,
3 yes.

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

13 MR. SANFORD: First of all, I think that
14 the comparisons to other type of transactions,
15 other corporate sponsorships are a little bit
16 beside the point, because corporate sponsorships of
17 political activity are different than corporate
18 sponsorships of other--of the Super Bowl or other
19 events, and to some extent, I think some of those
20 same principle apply to the notion that what we
21 have is this giant arms-length transaction between
22 the party committees, their deliverable being the

1 convention, providing it to the city in exchange
2 for substantial subsidies.

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

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

18 MR. SANFORD: Well, I think it's
19 difficult, and think that the Commission initially
20 tried to get at that when it conditioned on
21 reasonable expectation of commercial return, but
22 it's limited to that requirement.

1 So now there is no standard for whether
2 that's the case, and so I'm not sure where we are.

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

7 MR. SANFORD: I apologize.

8 VICE CHAIRMAN SMITH: No. It's not your
9 fault. I think it's more ours than the panel, and
10 it's good. I think we're getting some good info.

11 But, similarly, have you read the
12 comments submitted by the Democratic National
13 Committee?

14 MR. SANFORD: Yes.

15 VICE CHAIRMAN SMITH: And if so, can you
16 comment if there's anything you think merits
17 comment that's not in the written submission? You
18 argue--and, frankly, I think this is some of the
19 weaker arguments and I think the agency argument is
20 a bit stronger, that there's still a possibility
21 that they shouldn't even be affiliated, in other
22 words, establish, finance, maintained or control,

1 the host committee establish, finance, maintain
2 control by the party. The DNC addresses the
3 affiliation questions, comments, and says host
4 committees don't meet that criteria. Where are
5 they wrong?

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

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

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

22 VICE CHAIRMAN SMITH: Thank you very

1 much.

2 CHAIR WEINTRAUB: Thank you, Mr.

3 Vice Chairman.

4 Mr. Norton.

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

6 realize we're running way over, and I'll try to

7 keep this very brief and maybe just try to clarify

8 a couple of points that have come up in the earlier

9 questioning.

10 And I want to circle back for a moment

11 to Senators Kennedy and Kerry and what inference,

12 if any, can be drawn about whether they think BCRA applies to

13 convention financing. Mr. Sanford, I have to admit

14 that I'm struggling a bit to understand to your

15 statutory argument. There have been a number of

16 arguments made, but a couple central ones made by

17 Mr. McGahn, but the one that I'm focused is

18 441(I)E(4), and it concerns general solicitations;

19 and essentially what it says is that a Federal

20 candidate can make a general solicitation of funds

21 on behalf of an organization that is a 501(c), and

22 that's a host committee, other than an entity whose

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

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

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

19 I have to concede that--and perhaps I
20 should amend my previous comment that if the fund
21 were solicited under these conditions, then they
22 may very well fall within this exception. I think

1 that there's no question about that. It's a fact
2 question.

3 MR. NORTON: What's a fact question?

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

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

15 MR. NORTON: Okay. Let me just raise
16 one other point, and that's with respect to the
17 other side of the table. I want to circle back to
18 this argument again of the legislative history and
19 what Congress was doing, because I think there are
20 serious arguments to made on both sides. Commissioner
21 Toner, I think, kicked off the discussion by noting
22 the dirth of discussion and a very voluminous

1 legislation history about convention financing, and
2 I think Mr. Bauer made a very good point that BRCA
3 itself repealed certain regulations, and so the
4 regulations were very much before Congress and they
5 certainly could have repealed some of these too.

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

15 The concern I have on the other side is
16 that the silence of the legislative history doesn't
17 change the language of the statute. It may mean that
18 there's an unintended consequence, and that, in
19 fact, has been I think a common complaint and
20 concern about BCRA all along, that some of the
21 legislators and members of Congress may not have
22 understood not so much what they were voting for,

1 but the impact of some of these provisions. And so
2 if the plain language of the statute prohibits
3 parties or party operatives from raising soft money
4 in all contexts, and that seems to be the plain
5 language, doesn't the Commission have to apply
6 language in this context if the party operative is
7 raising funds for the host committee?

8 MR. BAUER: That is the reason
9 why--while I fully agree with you that Senator
10 Kennedy and Kerry and the unnamed members of the
11 Republican Congressional Caucus were raising for
12 these conventions, the reason that they're not
13 violating even BCRA, if they were raising money for
14 the host committee as a (C)3. All the same, I'm
15 uneasy about the analysis that seems to assume that
16 Congress to help all convention-related issues like
17 the one we discussed here and somehow these would
18 filtered through the provisions of BCRA, and the trouble
19 I have with that is that this was a piece of
20 legislation that was put together with the
21 understanding that it was going to address some
22 issues and it not going to address other issues,

1 and in response to the question that Commissioner
2 McDonald asked of Don McGahn, which is--I thought
3 you said at some point members of Congress didn't
4 know what they were doing here, which may be his
5 sort of empirical judgment, the law calls upon us
6 to assume that Congress knew what it was doing, and
7 that's a legal doctrine.

8 And if Congress knew what it was doing,
9 it is quite striking to me that with all this talk
10 about soft money, and not only soft money, soft
11 money in connection with Presidential elections,
12 somehow the slip of paper that said let's deal with the
13 convention slipped off somebody's desk or out of
14 their agenda, I don't think that's a credible view.
15 So I think that this Commission with all the rest
16 that it has to do and certainly not in this cycle
17 ought not to assume somehow a mandate to take on
18 something Congress quite deliberately itself did
19 not take on, and I think that the agency has full
20 authority to take the position that this is not a
21 matter it's taking up right now, there's no reflection in
22 legislative history of any intention of Congress to

17 take it up, and the only comment we've heard cited here is of an
18 opponent of the legislation and this sponsor comment is an
2 after-the-fact sponsor comment about which this
3 commission, has heard probably more than it cares to hear.

4 So with that view, I think that is a
5 serious problem.

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

8 MR. MCGAHN: No. I don't disagree with
9 anything Bob said.

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

12 CHAIR WEINTRAUB: Thank you, Mr.
13 Norton, for your brief and very cogent questions.

14 Mr. Pehrkon.

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

19 First of all, I would really like to
20 address my comment to--it's going to be Mr.
21 Sanford, and one of the areas where the Commission sought
22 comment on regulations was whether or not it was

1 believed that we had statutory authority to
2 undertake audits of host committees, and I was
3 wondering if you could elaborate on that for me.

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

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

19 (Pause.)

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

22 CHAIR WEINTRAUB: You win the prize,

1 Mr. Pehrkon.

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

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

10 (Recess.)

11 II. PANEL NO. 2

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

16 COMMISSION McDONALD: Is that today?

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

21 And let me welcome you all and apologize
22 for running late, and we'll try to get through this

1 a little bit more efficiently.

2 MS. CRONIN: Thank you, Madam Chair.

3 Good morning. My name is Cheryl Cronin,
4 and I represent the Boston Host Committee, and with
5 me is Julie Burns. Ms. Burns is the executive
6 director of the Boston Host Committee and recently
7 served as Deputy Chief of Staff to the mayor of
8 Boston and was actually quite instrumental in our
9 successful efforts to lure the Democratic National
10 Committee to Boston for the 2004 convention.

11 Let me begin BY noting that the City of
12 Boston and the region of Massachusetts is
13 absolutely thrilled to be welcoming thousands, as
14 Commissioner Thomas put it, wild and crazy Democrats
15 to Boston next summer, not because they're
16 Democrats, of course, but because they are going to
17 sleep in our hotels and eat in our restaurants and
18 shop in our stores, go to Fenway Park and do all
19 the things that our local economy really wants
20 visitors to do.

21 We've heard serveral assertions made this morning
22 about what the, quote, beat might be, I think one

1 witness put it on what host committees are all
2 about. We're here to tell you all the way from
3 Boston what this host committee is all about, and I
4 think we're quite typical of host committees for
5 national conventions.

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

18 Members of our board as well as our
19 donors are independents, Republicans, Democrats, or
20 simply have very little political interest. Many
21 of our most generous donors would never consider
22 providing funds to an entity designed to support

1 any type of political activity, even indirectly.
2 Rather, the participation of individuals and
3 companies in activities related to hosting the
4 Democratic National Convention in Boston next
5 summer is based solely on our commitment to our
6 city and region and a recognition that such a
7 significant convention in our city is an invaluable
8 flagship event to develop Boston into an even
9 greater convention and tourist destination, which
10 is, frankly, a tremendous and important boom for
11 our local economy.

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

18 The host committee, as I indicated, does
19 not support any candidate for public office or any
20 political party. We do not nor would we ever, of
21 course, make expenditures or disbursements in
22 connection with any election for Federal office.

1 There is nothing in our contract with the DNCC, nor
2 is there anything contained in any budget or
3 planning arrangement that suggests, contemplates,
4 or permits that we expend funds in connection with
5 any election for Federal office.

6 The host committee is not an agent of a
7 national political party. We are not established,
8 financed, maintained, or controlled by any national
9 political party, and any suggestion to the
10 contrary, some of which we heard this morning, is a
11 quite clear misrepresentation of the relationship
12 between us and the DNC, the DNCC, or any other of
13 its affiliates.

14 Contrary to what was stated this
15 morning, I can assure you that Terry McCauliff has
16 not raised one dime for the host committee for the
17 Boston convention next year. No member of the
18 board of the host committee was selected or
19 recruited by any officer, employee, or agent of the
20 DNC. The DNC has no authority to participate in
21 the governance of the host committee and does not.
22 The host committee has not engaged in fund-raising

1 activities on behalf the DNC or DNCC, nor are those
2 entities involved in any fund-raising activities on
3 behalf of the host committee.

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

11 Because the host committee's activities
12 are community and civic based, not political and
19 not an extension in any of the DNC, the
20 Commission should not limit any way fund-raising
16 activities by Federal candidates or office holders.
17 Our political leaders such as Senator Kennedy and
18 Kerry--and I might note that while there has been a
19 fair amount of publicity on the terrific efforts of
20 those two revered gentlemen from Massachusetts in
21 their efforts to obtain the national convention in
22 Boston as well as, of course, the wonderful efforts
23 our Mayor Menino, there has as well been very

1 significant efforts by very prominent members of our
2 corporate community, including many Republicans.
3 So we are very grateful for that.

4 But we would not that there is nothing
5 in BCRA that would suggest the Commission should
6 make any changes to the rules related to the
7 participation by Federal office holders in raising
8 money for 501(C) organizations such as the host
9 committee.

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

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

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

16 In conclusion, the activities of the
17 Boston committee, the host committee are well under
18 way. We have already taken significant planning
19 efforts. We've signed contracts. We've raised
20 money. We are spending money as well. No matter
21 what your views might be on any of these
22 substantive issues, we urge that the Commission not

1 implement any adverse changes at this late date.
2 For all of the discussion about the BCRA, at the
3 end of the day, one this is clear: Under any fair
4 rules of statutory construction and interpretation,
5 Congress being well aware of your host committee
6 regulations, declined to include in BCRA any change
7 to the rules related to host committees, and we
8 would respectfully suggest that you follow the same
9 course.

10 Thank you very much.

11 CHAIR WEINTRAUB: Thank you, Ms.
12 Cronin.

13 Ms. Burns, do you have opening comments?

14 MS. BURNS: No. Thank you.

15 CHAIR WEINTRAUB: Well, then over to
16 you, Mr. Gross.

17 MR. GROSS: Thank you, Madam Chair.
18 Chairman--Chair.

19 CHAIR WEINTRAUB: Chair.

20 MR. GROSS: Ki and I are going to go
21 over comments related to the New York City host
22 committee. The New York City host committee is a

1 501(C)3 organization. It's directors are the mayor
2 of New York, Mayor Bloomberg, the Deputy Mayor for
3 Economic Development, and myself and is really part
4 of a broader effort in New York to host many
5 events. Of course, it's separate because of FEC
6 regulations regarding host committees, but there is
7 broader permanent--we call it a permanent host
8 committee in New York to get Olympics, and, in
9 fact, New York is the U.S. representative for the
10 Olympics for 2012 in the international competition, and the
11 Grammy Awards, the Super Bowl, and is really
12 is part of the continuing recovery effort of
13 September 11th. New York City has sought to
14 feature itself in many capacities in a hosting way
15 in other public events, demonstrating it is as a
16 great city, a safe city to have large gatherings of
17 people. That's why it was so critically important
18 right after September 11th that the World Series,
19 which some New Yorkers consider as an annual event
20 in New York, and the Macy's Day Parade and other
21 prominent activities went on, as always, and it is
22 part of the commitment of Mayor Bloomberg to bring

1 these events to New York City, and that is the
2 reason why we actively and equally bid on both
3 these conventions.

4 This same host committee was the host
5 committee for the bid process for the Democratic
6 and Republican conventions, and we went through the
7 entire formal bid process, and of course was
8 selected by the Republicans, but we were prepared
9 to host both conventions, as a matter of fact, for
10 2004.

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

21 We are not established, certainly
22 financed, maintained or controlled, to coin a

1 phrase, by the Republican National Committee, nor
2 do we act in any kind of agency capacity. Our
3 fund-raising is done on our own by our own
4 fund-raising people and people for the City of New
5 York. No Republican official or member of Congress
6 has raised any money for the Republican host
7 committee, and we do note that to a footnote in our
8 prepared comments. I'm not saying it's
9 impermissible, but we have not used members of
10 Congress or Senators nor any party people to raise
11 money at this juncture that I am aware of. I'm
12 fairly close to the fund-raising process of the New
13 York host committee.

14 So those are the critical points that I
15 wanted to make regarding the structure and the
16 issue of separateness and how we're operating under
17 our own authority. There are other points in our
18 paper that we think are important, and they relate
19 to the delayed effect of the regulations. We
20 believe that it is within the authority of the
21 Commission to delay the effect, because BCRA has no
22 effect on the host committee. It is not an

1 activity in connection with Federal elections;
2 therefore, the 441(E) provisions do not
3 prohibit--the 441(I) provision--prohibit the
4 activities of the host committee, and therefore you
5 can delay its effect.

6 Even if it did have an effect, which we
7 don't think it does, there is case law in that
8 district, the case Sweet v. Sheehan, that did allow
9 the EPA to delay the effective date of a statute
10 that mandated a specific statutory date for
11 implementation, and in that case, they said so to
12 give the regulated community the time and not to
13 bring surprise upon the regulated community with a
14 late rulemaking. Despite the statutory mandate of
15 a specific effective date, the agency, the EPA in
16 that case had the authority to make the provisions
17 effective later.

18 And, finally, as far as my comments go,
19 we support the proposed regulation regarding the
20 local restriction, lifting of the local restriction of
21 donors. We don't really think there's logical
22 basis for restricting the donor base to just this

1 metropolitan area which itself is subject to some
2 reconfiguration depending on when the census
3 bureau--we run across a number of people who, first
4 of all, are interested in New York and certainly
5 part of the recovery of New York; secondly, they
6 have business interests in New York that may not
7 meet the formal definitions as individuals, and we
8 think it draws an unnecessary and illogical line on
9 restricting a base of donors that wish to support
10 the convention.

11 CHAIR WEINTRAUB: Thank you, Mr.
12 Gross.

13 Mr. Hong, do you have an opening
14 statement?

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

16 Ken just spoke about the ability of the
17 host committee to--for the permissibility of the
18 host committee to accept funds. I want to address
19 the expenditure of funds by host committees, in
20 particular the NOPER (phonetic) attempts to limit
21 the funds that are permissible for a host committee
22 to expend.

1 The first thing that the NOPER does is
2 it tries to create a comprehensive list of
3 activities. Given that the Commission has
4 recognized and will recognize, hopefully after
5 these hearings, the ability of host committees to
6 pay for expenses to promote the city and for
7 commercial purposes. The Commission should not at
8 this point create artificial limits on those
9 expenses.

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

19 For example, just off the top of my
20 head, this list does not contain simple things as
21 trash pickup outside of the convention hall.
22 Another thing to whet the appetite is toilet

1 facilities outside the convention hall, which are
2 clearly promotional city commercially-related
3 activity, but would be outside of this list.

4 Which brings me to my second point,
5 which is that the inherent question of asking is
6 this expenditure made for the purpose of promoting
7 the city involves an analysis of the entire
8 totality of the circumstances, and the
9 comprehensive list as proposed, any comprehensive
10 list in my view, would take that necessary analysis
11 out of the process.

12 The second way that the NOPER tries to
13 limit expenditures by host committees is that the
14 list that's already there that are expressly laid
15 out in the FEC rules, those items are limited, are
16 narrow even further, for example, transportation.
17 Now, the permissible transportation expenses under
18 the NOPER rules are limited to widely available
19 transportation for--and by the way, I really don't
20 know what that means. I know what widely attended
21 means under Congressional gift rules. I know what
22 widely attended means under certain other rules,

1 but I have no idea what widely available means for
2 transportation purposes.

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

5 MR. HONG: Now I know what it means.

6 But limiting the items that are already
7 in the rules, the NOPER claims that it was based on
8 the results of the 1996 audits. I contend that
9 result, because to tell you the truth, during an
10 audit phase, the Commission does not opine on every
11 single expense that it's made during the audit, and
12 so many expenses than an auditor would go through
13 and say it's okay never really make it to
14 deliberation by the Commission. For example, in
15 the 1996 audits and in the 1996 conventions and
16 other conventions, office facilities for the COA
17 were allowed. They went through the audit, and it
18 is our understanding from the discussions with the
19 RNC that they made it through the audits, but the
20 list here does not contain those items, and I don't
21 think that this list contains all of the items that
22 were permitted in 1996 audits because many of those

1 issue were never officially decided by the
2 Commission, by the commissioners.

3 Also, the decision that were made in the
4 1996 audits were based on the totality of the
5 circumstances. Again, there's no way to create a
6 rule of thumb or a bright-line test on these
7 issues.

8 The final item I would like to address
9 has to do with the audit authority. We believe
10 that the statute--there is no statutory authority
11 for the Commission to automatically audit host
12 committees. The purpose of the automatic audit
13 provisions is based on accounting for public funds.
14 As we discussed, host committees are purely
15 privately funded, and there's no way--there's no
16 reason to audit host committees on an automatic
17 basis; rather audits should be limited to audits
18 that are done for cause when it comes to host
19 committees.

20 Thank you.

21 CHAIR WEINTRAUB: Thank you, Mr.
22 Hong, and let me say that I think that both of the

1 party committees made really terrific choices, New
2 York and Boston being two of my favorite cities,
3 and just for the benefit of our Bostonian, I want
4 to point out to you in case you didn't know that we
5 recently held one of our FEC conferences in Boston
6 and stayed in your hotels, and I personally went to
7 Fenway Park and had a terrific time. The Red Sox
8 even won for me.

9 Commissioner Thomas.

10 COMMISSIONER THOMAS: Thank you, Madam
11 Chair.

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

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

20 MR. HONG: No.

21 MR. GROSS: Notice of proposed
22 rulemaking.

1 COMMISSION THOMAS: It's more accurate.

2 I'll start with you. We have now
3 started getting this bit about maybe to better
4 distinguish the kind of expenses that the host
5 committee ought to be precluded from paying. I
6 guess, theoretically, are you laying out the
7 argument that there, indeed, are some kinds of
8 expenses which the host committee could and should
9 be precluded from paying, but in essence for the
10 time being you don't want us to tinker with the
11 lines such as they are right now?

12 MR. HONG: Well, I think the test should
13 based on why--based on the foundation of why host
14 committees are permitted to accept and make
15 expenditures, which is is the expenditure that's
16 being done being done for the commercial purpose of
17 promoting the city, and that should be the test,
18 and I think that's laid out in the current rules,
19 and that's what a lot of these items go toward:
20 Transportation, convention hall expenses. Those
21 are all expenses that clearly relate to the
22 commercial purpose of the city.

1 So that should be the test, and the only
2 way to implement that test is to have a flexible
3 list of expenditures, including a catchall that's
4 in the rules currently.

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

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

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

1 but what about this legal wrinkle that I raised?
2 You can look at the broad proscription on the
3 national party in 441i(a)I to suggest that they
4 simply can't be involved in raising any monies
5 except those that are subject to the limits,
6 prohibition, standard and reporting requirements under
7 FECA, and then you have this later provision that
8 talks about national party operatives or state
9 party operatives or local party operatives can get
10 involved with raising for some 150(C) organization
11 under some circumstances as long as those
12 organization in essence aren't undertaking
13 activities in connection with the Federal election.

14 So I guess my question is that latter
15 provision sort of there only to make sure that
16 national party committees, for example, to the
17 extent they have hard money or could raise hard
18 money, they can't get it past--can't undertake that
19 kind of hard money fund-raising for a 501(C)3
20 unless it happens to be for one that doesn't
21 undertake activity in connection with a Federal
22 election, or is there some sort of--are we supposed

1 to be reading the latter provision to say
2 disregard the broader prohibition of 441i(a).

3 MR. GROSS: Well, you're struggling with
4 it, and I think I can understand the struggle that
5 you're having, because you can read 441(I)A and
6 441(I)D, the two provisions that I think we're
7 wrestling with here, to make a distinction between
8 the restrictions on national party operatives as
9 opposed to members of Congress, you know, Mark
10 Rashner returning a call versus Senator Kennedy or
11 Senator McConnell or whatever, and, you know, I
12 think that you could read it that way. The second
13 provision of the 441(I)D provision certainly can
14 support the proposition that the only real
15 restriction on raising money on a 501(C)
16 organization is if the 501(C) organization is, in
17 fact, engaged in Federal election activities, which
18 the host committee is not. It's particularly true
19 in the case of a 501(C)3 which may not.

20 So I think that there is latitude for
21 the Commission to read the restriction on the two,
22 imply the political party operative and the member

1 of Congress being the same, saying that the D
2 provisions, 441(I)D, limits the breadth of the
3 prohibition of 441(A), or, frankly, you probably
4 have the latitude to interpret some distinction and
5 a greater restriction on the national party people
6 because you do have that provision standing alone
7 in its plain way. I would opt--although it really
8 makes no difference to the national--to the New
9 York City host committee since we're not using
10 those people, but I think I'd probably just as well
11 opt for the broader interpretation and allow the
12 national party people to do it and say that the
13 441(I)D is, in fact, the operative of the two to
14 the extent there is some ambiguity.

15 COMMISSIONER THOMAS: Okay. Ms. Cronin,
16 what is your sense of what is actually being
17 planned for letting the big donors schmooze
18 with the pols--I'm trying to get back to the issue that's
19 been brought to our attention that maybe we need to
20 retrench here and go back to a tougher standard
21 when it comes to raising--letting the host
22 committee raise this kind of money. You're here.

1 You know what's going on. Can you give us a candid
2 assessment to what extent that kind of schmoozing
3 is being contemplate and why it's not a problem if
4 it is being contemplated?

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

16 So in terms of any organized effort to
17 provide schmoozing opportunities, I think there
18 will be very little of those, and I think it would
19 be fair to say that there will be some--as folks
20 alluded to this morning, there will some great
21 parties and wonderful opportunities for people who
22 know each other and like each other to socialize.

1 COMMISSIONER THOMAS: And also just from
2 the practical perspective, do you agree with the
3 basic assessment that's being presented to us by
4 folks at the Campaign Finance Institute and Center
5 for Responsive Politics that the basic reason the
6 party committees are so anxious to have a really
7 big successful convention that gets a lot of
8 attention is because it does allow a focus on the
9 putative nominating the person that's basically
10 understood to be party's nominee heading into the
11 general election, and it really is a very important
12 election-related function to try to give a spin,
13 positive spin, into the general election, so that
14 it really is a very crucial component of national
15 party conventions?

16 MS. CRONIN: Well, let me respond in a
17 couple of ways: Number one, I know Mr. Sandler
18 will be testifying this afternoon and can certainly
19 speak much better than I can to the motivations and
20 purposes of the national party, although I could
21 note, as I'm sure we would all have to, that over
22 the past several years, the viewership of national

1 conventions on television has steadily declined,
2 which would suggest that the convention itself in
3 terms of an electoral role is very insignificant,
4 if non-existent, in the process.

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

16 COMMISSIONER THOMAS: Your point about
17 TV viewership makes me--I just have to imagine that
18 right now probably going through the minds of some
19 of the party planner is given the success of
20 reality TV, we've got to find a way to work in
21 having someone wrestle with a snake or something in
22 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,
5 I'm not interested in us having reality TV.

6 CHAIR WEINTRAUB: Thank you,
7 Commissioner Thomas, I think.

8 Commission Toner.

9 COMMISSIONER TONER: That would be one
10 realty program I would watch.

11 Thank you, all of you, for being here.
12 I really appreciate it.

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

21 MS. CRONIN: No. No, we don't. We
22 think that--I mean, the testimony was just simply

1 incorrect, incorrect as a matter of law, number
2 one. There's nothing in--certainly FECA doesn't
3 compel that conclusion. There's nothing in BCRA
4 that compels that conclusion, and I do want to make
5 a point, particularly with respect to Senator
6 Kennedy who has been so active, and the host
7 committee is so grateful for his efforts. As you
8 can well imagine Senator Kennedy, having been our
9 United States Senator for close to 40 years, has
10 been very active in raising money for so many
11 community activities in the Commonwealth, and this
12 is another one of those activities, and he was
13 a--you know, as I recall, several of our Democratic
14 politicians were very committed with the mayor in
15 attempts to recruit the Republicans to come to
16 Boston as well.

17 So it was really viewed as a real
18 effort, as a boost to local economy.

19 COMMISSIONER TONER: And there's been
20 some discussion here about the various statutory
21 provisions, and just following up, would it be fair
22 to say that you don't even view this as a close

1 question about the ability of these officer holders
2 to raise money? It's clear in your view that it's
3 not a problem?

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

8 COMMISSIONER TONER: You're very
9 generous.

10 MS. CRONIN: Thank you. But with all
11 due respect to all of us, both on that issue and on
12 the issue of corporate contributions to host
13 committees, BCRA is unambiguous. It could not be
14 more clear in the language, in the express language
15 of BCRA, that there is no change contemplated by
16 the--should be no change contemplated by the
17 Commission on these issues. Congress engaged in
18 significant debate and legislative consideration of
19 these issues, and for all the talk about intentions
20 of certain individuals within Congress, as we all
21 know as a matter of law, intent is only an issue if
22 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

1 argument that whatever--if the host committee
2 inappropriately uses funds, that that could be an
3 improper expenditure on the public money side, but
4 to tell you the truth, that's true with any
5 corporation that engages--even corporate vendors to
6 Presidential campaign. If they make improper
7 expenditures, that can be viewed as an improper
8 expenditure for public money purposes, but you
9 don't see the FEC auditing these third-party
10 corporations for that.

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

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

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

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

22 MR. HONG: Well, it would have to be

1 from--that's correct--funds that are provided for
2 this purpose. I mean, obviously cities need
3 Federal grants to build highways and the like, but
4 that would not be enough to audit them.

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

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

22 MR. GROSS: I don't think it's entirely

1 true, and some of those liberal interpretations are
2 not readily available. Again, they're is sort of
3 made as part of an audit process, but they're not
4 memorialized or made in part of a rulemaking or
5 advisory opinion, and we have to vet every
6 contribution that comes through the door, corporate
7 or individual. You know, there are presumptions
8 that apply to certain types of contributions, but
9 there are individuals who simply don't work or have
10 business interests in a particular area or live in
11 the particular metropolitan area, whether it's New
12 Haven, Northern Pennsylvania, or whatever it may be
13 that don't live there or have business interest or
14 work there, and they want to participate, and
15 you've got a problem.

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

20 COMMISSIONER TONER: Is your bottom line
21 that you just don't see any rational reason for us
22 to retain this rule?

1 MR. GROSS: That's right. At this
2 point, I just don't see any rational reason. I
3 mean, I understand why people from that area would
4 be the main contributors, and that's what's going
5 to happen as a practical matter. We're raising our
6 money naturally from people who are in New York, in
7 the New York area who have interests in New York,
8 but there are people, and, frankly, since September
9 11th, who have a greater interest in New York from
10 outside of the area and the rebuilding and recovery
11 of what has become a national symbol in many ways
12 to help and participate in the host committee in
13 this effort.

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

16 MS. CRONIN: I do, and I want to pick up
17 on a statement someone made this morning about the
18 enhanced difficulty for a city like Boston that's a
19 bit smaller than New York. In the current age we
20 live in, and we addressed this a little bit in our
21 written comments, this local requirement, which I
22 should note I don't think is really supported in

1 any way by language in the statute. So if we start
2 there--it was obviously compelled by statutory
3 language--the issue would be quite different.
4 Assuming for the moment it's not, which is what we
5 believe, the local requirement is just not
6 realistic in the global economy that we are
7 experiencing today, and we all know that with
8 technology being what it is, it's very conceivable
9 for--this is a great example of a financial company
10 that really has principal offices--that has offices
11 in California, no offices in Boston at all, is
12 servicing a lot of activity in the Boston area, as
13 one example. And given technology being what it
14 is, it is no longer the case that companies have
15 physical offices located in areas that they have
16 business interests.

17 And we would suggest for that reason,
18 that kind of requirement is just not--we would urge
19 the Commission to expand it.

20 COMMISSION TONER: Thank you, Madam
21 Chair.

22 CHAIR WEINTRAUB: Thank you,

1 Commission Toner.

2 Commissioner McDonald.

3 COMMISSIONER McDONALD: Madam Chair,
4 thank you.

5 Welcome. It's good to see you all. Let
6 me ask just a couple of fundamental questions that
7 at the end of the day it appears to we we're going to have to
8 address. I'd like to start, Cheryl, with a notice
9 question, because I thought you cited at the outset
10 that it was very important. It's ironic that the
11 first panel really didn't touch on it much, which
12 kind of surprised me in a way, because it is the
13 most disconcerting aspect of this process. It's
14 very difficult at this juncture, it seems like to
15 me to change much of anything at this stage. It's
16 just too far down the road. I don't know who is
17 responsible for this. I do know who is
18 responsible. It's ours, and we're not there,
19 and so it's a very uncomfortable position for the
20 Commission I think to be in.

21 But I am interested, because you cited
22 at the outset what you were and were not doing in

1 relation to the party itself, and obviously what
2 people are asking, I mean what brings us here, is
3 what that relationship is. Have you participated
4 in other host committee activities for other events
5 in Boston, or is this your first round?

6 MS. CRONIN: You mean for--

7 COMMISSIONER McDONALD: You yourself.

8 MS. CRONIN: I have participated. I
9 actually happen to serve--I am a member of the
10 Massachusetts Convention Center Authority, and as
11 you may know, Boston is building a convention
12 center which is scheduled to open in the summer of
13 2004. So in addition to being counsel to this host
14 committee, I have a very significant interest, as
15 do many other people in creating Boston as more of
16 a niche for national and international tourism. So
17 I'm quite familiar with the notion of hosting
18 entities and luring tourists to Boston.

19 COMMISSIONER McDONALD: And how long
20 have you been doing such a thing?

21 MS. CRONIN: Well, on this particular
22 convention center, I've been serving since

1 December, but have been, you know, an active member
2 of lots of other community activities for many
3 years.

4 COMMISSIONER McDONALD: Have you
5 resolved the big dig yet?

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

8 COMMISSIONER McDONALD: Marvel?

9 MS. CRONIN: An engineering marvel.

10 COMMISSIONER McDONALD: I thought maybe
11 I misunderstood.

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

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

20 MS. CRONIN: That would be our goal.

21 COMMISSIONER McDONALD: And a laudable
22 goal, it is.

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

19 But I'm just wondering in those areas
20 that any of you have advocated that we ought to
21 take another look at, are you of the same opinion
22 that as a practical matter, we can't change those

1 either because that's where we are? It seems like
2 we ought to do it one way or the other.

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

18 On the other hand, it does require us to
19 raise contributions consistent with the law. So
20 the reality is you could change the local
21 requirement, make no change on the expense side or
22 other activities, and it would leave all the

1 parties in the position they should be for the 2004
2 cycle, which is you haven't engaged in any
3 rulemaking effort that undercuts in any way
4 anybody's legal or contractual obligations, which,
5 frankly, is the position I'd expect you would want
6 to be in as well.

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

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

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

21 MR. HONG: No.

22 COMMISSIONER McDONALD: I just wanted to

1 be sure. I thought you said that kind of in
2 conclusion, but obviously I would think there would
3 be scenarios and things, as you indicated, where
4 things were not permissible and the Commission would
5 have the authority to do that.

6 MR. HONG: That's correct.

7 MR. GROSS: And conduct a for cause
8 audit.

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

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

1 have to deal with.

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

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

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

13 COMMISSIONER McDONALD: Just a thought.
14 Thank you all for coming. I appreciate
15 it very much.

16 CHAIR WEINTRAUB: Thank you,
17 Commission McDonald.

18 Mr. Vice Chairman.

19 VICE CHAIRMAN SMITH: Thank you, Madam
20 Chair.

21 Mr. McDonald already asked my question
22 about the big dig. I think it's interesting you

1 call it an engineering marvel. I understand it's
2 actually it's like God. It's eternal, all
3 encompassing, and complex beyond human imagination.

4 But I do have some questions, actually,
5 for Ms. Cronin here. You mention in your testimony
6 without specific examples of companies that many
7 events in the past are supported by companies and
8 individuals from diverse locations who are
9 recognized in participating in such grand events,
10 etc. Okay. You heard Mr. Weissman this morning,
11 and you've talked very generally about this civic
12 motivation, but why would companies without a
13 significant local presence, why do they make these
14 contributions to these host committees?

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

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

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

22 COMMISSIONER McDONALD: That's a

1 criticism of me, by the way.

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

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

21 VICE CHAIRMAN SMITH: What if they don't
12 meet those criteria; they don't have a tie, they didn't go to
13 school in

1 Boston or Cambridge.

2 MS. BURNS: I'm sorry?

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

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

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

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

20 MS. CRONIN: My experience with
21 corporate clients is that corporations look for all
22 kinds of ways to be members of the community in

1 which they want to transact business, and some of
2 it is advertising. As we all know, they have
3 advertising budgets. They have foundation budgets.
4 They have community participation budgets, and I
5 also think--this is a point that was raised this
6 morning: Now more than ever, it is important that
7 host committees can enjoy the support of corporate
8 funds, unlike--and, frankly, this may be somewhat
9 of unique times. As you know, many states are
10 facing very difficult fiscal situations.
11 Massachusetts has a \$3 billion fiscal deficit this
12 year. We know that--the host committee knows that
13 there for the most part will be little, if any,
14 state or city funds available to us to host this
15 great convention, and for that reason, it is all
16 the more important that corporate funds and
17 corporate entities have stepped up to the plate to
18 support things like this convention, support other
19 activities, support after-school programs, all the
20 kinds of things the private sector generously steps
21 up and does at times when fiscally the state of
22 municipalities cannot do so.

1 VICE CHAIRMAN SMITH: Thank you.

2 Let me go direct to you, and then I'll
3 got to Mr. Gross. How do you respond to the
4 argument of the Center of Responsive Politics in
5 its written comments and from Mr. Sanford this
6 morning that host committees are agents of the
7 party from the moment the party selects the city as
8 the convention site? Let me add a wrinkle to that.

9 To some extent, Mr. Gross, you addressed
10 that a bit in your opening comments, but you
11 suggested there was tough negotiations going on.
12 Aren't they tough negotiations over the terms of an
13 agency contract?

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

1 way the city operates.

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

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

22 VICE CHAIRMAN SMITH: Ms. Cronin.

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

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

18 MS. GROSS: Oh, no.

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

22 Let me ask a couple quick questions,

1 then, to Mr. Hong who was talking about audits. So
2 you would agree, though, I take it that--or would
3 you not agree that the Commission could do a for
4 cause audit of host committees?

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

13 VICE CHAIRMA SMITH: Can you--assuming
14 we can do the for cause audits--so you generally
15 agree while hedging your bet, but reserving the
16 right to rescind later, it sounds like. I mean,
17 what would be a situation where there would not be
18 justification for a for cause audit of a host
19 committee? Would there always be justification for
20 a for cause audit, and that being the case, does
21 this issue really matter, or am I wrong on my
22 supposition?

1 MR. HONG: Well, a for cause audit would
2 be triggered if the commission had some information
3 that a violation was going on or that we were
4 accepting contributions outside of the metropolitan
5 area or we were making part impermissible
6 convention expenditures, and without that
7 information, a for cause would not be justified.

8 MR. GROSS: I may have started us down
9 this for cause audit, and I'm starting to regret
10 it, but the way the Commission conducts for cause
11 audits under the statute, the random audits were
12 be eliminated as a possibility. Based on the
13 reports filed and the reason why I thought there
14 might be some intersection even though the host
15 committee is not a political committee, is because
16 we file reports. We're disclosing. And if the
17 reports themselves trigger through some point
18 system, if you will, a basis for a for cause audit,
19 then it would be a basis--then that's how it would
20 get triggered. If there was an issue regarding an
21 isolated contribution, whether it was inside or
22 outside the metropolitan area, if that was the

1 rule, or some other possible violation, that would
2 presumably get handled as part of enforcement if
3 there was an illegal contribution made or something
4 like that.

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

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

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

1 getting that in that respect.

2 VICE CHAIRMAN SMITH: Mr. Hong.

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

9 Now, first of all, these vendors--I'd
10 like to call it a vendor relationship, because
11 these really work like that. You know, there's
12 exchange of consideration. This would survive any
13 contract class, and vendors are not agents, and
14 they're at most independent contractors; and, in
15 fact, if you were to say that we're vendors, I
16 think you would have to say that for any kind of
17 vendor that an RNC--that a party uses, including
18 computer companies, and you would have to regulate
19 and make sure they don't take in soft money, you
20 know. You've have to worry about how they're
21 making their money, and I think we have to narrow
22 this down to what we're looking at.

1 We're looking at do we have the
2 authority, implied or otherwise, to raise funds on
3 behalf of the party committee, and there's nothing
4 here showing that. We're raising money for
5 ourselves. We have divergent interests, as Ken
6 mentioned earlier, and there's just no indication
7 of it.

8 MS. CRONIN: If I could just add to
9 that, both with respect to the narrow question of
10 the agency between--agency issues is between host
11 committees and national political parties, but also
12 as a very general matter, the notion of agency
13 in some ways is an extraordinary one because what
14 it does is serve to hold an entity or individual
15 responsible for the conduct of another entity or
16 individual, and it's a very slippery slope to get
17 on to begin to--you know, without some established
18 facts to begin to suggest that someone is
19 responsible for somebody else's conduct or some
20 entity is responsible for somebody else's conduct.

21 The facts--we would urge you not to go
22 near that slippery slope at all, and in particular,

1 we would say to you that our experience is that
2 host committees are simply not agents of national
3 political parties. They just as a matter of fact
4 do not operate in that way.

5 VICE CHAIRMAN SMITH: Thank you.

6 CHAIR WEINTRAUB: Thank you, Mr. Vice
7 Chairman.

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

11 MS. CRONIN: We do too.

12 CHAIR WEINTRAUB: I'm sure you do.

13 And I also wanted to clarify something that
14 Commissioner Toner said earlier. You had asked
15 about whether they agreed, and they didn't, with
16 Paul Sanford's conclusion that Senators Kerry and
17 Kennedy have already violated the law in soliciting
18 Soft Money for the host committees, and a conclusion
19 that both of you disagreed with, as well as you,
20 but I think that by the end of the testimony this
21 morning, even Mr. Sanford had retracted that
22 conclusion under penetrating questioning by our

1 general counsel. So I didn't want to leave that
2 impression out there, because I also agree that I
3 don't think they violated any law.

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

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

21 CHAIR WEINTRAUB: You don't need to
22 apologize. I just wonder if you're sort of

1 overselling your case a little bit. It sort of
2 reminds me a little bit of Casa Blanca where
3 Captain Renois is saying, I'm shocked to discover
4 politicking going on at a national convention. I
5 mean, don't you think--with all due respect to
6 everything you've said about the separate entities
7 involved, don't you think that a lot of your donors
8 really are motivated by helping out political
9 parties? Maybe not every single one of them, but
10 are you really prepared to sit here and say that
11 none of them are motivated by political interests?

12 MS. CRONIN: Well, let me answer that in
13 a couple of ways. Number one, with respect to our
14 corporate donors, I actually believe that we are
15 not overselling our case, that the truth is that
16 they would have been just as generous if the
17 Republicans were coming to town, that and certainly
18 for most of these corporations, they have senior
19 executive teams. The contribution would not have
20 gotten through that team were this viewed as
21 partisan in any way.

22 Here is what I think is occurring, which

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

15 There are also issues, as you can well
16 imagine--because we do happen to have in
17 Massachusetts a presidential candidate--there are
18 individuals who reside in Massachusetts who are
19 wonderful and have elected instead of dedicating
20 their efforts to the host committee or some other
21 community effort, they're spending their time over
22 the next months supporting a Presidential

1 candidate. So certainly it is the case that there
2 are--and as you well know, Massachusetts is a very
3 politically active state. There's no denying that.
4 There are many individuals there who--who made
5 choices as to how they're going to spend the next
6 year or two in terms of their time. Some folks,
7 some have decided to participate in host committee
8 activity. Some have decided to participate in
9 local party activity. Some have decided to work on
10 Mac world, which is coming to town at some point, and
11 some have decided to support Senator Kerry's
12 efforts, and some have decided, my goodness, to
13 support the efforts of other Presidential
14 candidates.

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

19 CHAIR WEINTRAUB: But surely there's
20 some--and I'll give you a chance in a second.
21 Surely there's some overlap in those categories .

22 MS. CRONIN: Absolutely.

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

7 The fact that some donor may be
8 motivated to give because he's thinking of the
9 convention or the Republican party that happens to
10 be doing its convention is really not the problem.
11 It wouldn't be a violation anyhow, and I don't
12 think it's the issue. I can't speak for the
13 motivation of every donor or who Mr. Weissman may
14 be interviewing in 2004 or '5 for his next study
15 and what they may almost flippantly say about why a
16 particular donation was made, but we are
17 circumscribing the activities of the host committee
18 in a way that do not characterize it as Federal
19 election activity, and I think that does withstand
20 the scrutiny.

21 MR. HONG: Just to add to that, when we
22 use the word "sole", what we're talking about is

1 the purpose that the host committee has, and that
2 we can tell you. The sole purpose for doing this
3 is to promote the city, and I think you raise a
4 great question, because this underlies the
5 local--the metropolitan area question as well. As
6 Ken mentioned, the purpose of the donors is a red
7 herring here, because the purpose of the donor
8 shouldn't matter. What should matter is what the
9 purpose the host committee is, and I can tell you
10 factually when we do deal with donors, a lot of
11 them is truly civic purpose. That's their purpose.

12 MR. GROSS: Our donors have soul,
13 S-O-U-L .

14 MR. HONG: That's right.

15 CHAIR WEINTRAUB: I was waiting for
16 somebody to say something about that, or in the
17 case of Massachusetts, they eat sole. Right?

18 I'm sorry. That was really bad.

19 Let me ask you, all of you, for
20 comment--and I don't know. I'm sure you don't have
21 it in front of you, but the CFI study proposed
22 several ideas that you may want to opine on. They

1 have suggested that local and state governments
2 should report in more detail about their direct
3 expenditures, and those reports should be
4 publically available. This is on page 16 and 17 of
5 the CFI study, the CFI testimony. They suggested
6 that privately sponsored municipal funds file
7 disclosure reports similar to host committees.
8 They suggested that host committees include in
9 their disclosure reports summary information
10 distinguishing between private and local or state
11 government contributions, and that host committees
12 municipal funds and local and state governments
13 disclose their itemized expenditures in terms of
14 categories of municipal spending found in
15 Commission regulations.

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

19 MR. GROSS: I saw those recommendations.
20 I was a little curious about them, because you do,
21 in fact, report. I mean, if the City of New York
22 provides police, transportation, security, that

1 gets disclosed as an in-kind contribution, and it
2 is from the City of New York or from the State of
3 New York if we're putting tags on cars donated or
4 something like that. So it is disclosed, and it
5 is--and you can tell whether the source is private
6 or private by looking at the report.

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

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

19 MS. CRONIN: I agree.

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

22 CHAIR WEINTRAUB: That's right. She

1 did more research on the subject, is this just an
2 outlier case? Are there other cases out there that
3 say we can go around contravening Congressional
4 intent, and under what circumstances should we do
5 that?

6 COMMISSIONER MASON: Where were you last
7 year?

8 MR. GROSS: Ki found that case.

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

11 CHAIR WEINTRAUB: I suspected not.

12 MR. HONG: But there wasn't--there
13 aren't that many cases that says this. There
14 aren't that many cases where this question was
15 addressed, and that's really what we found, that
16 there aren't any real cases that expressly say
17 every agency has the authority to pick whatever
18 effective date you want, but what is important in
19 that case was that this case involved both--a
20 statute that both said--that gave a deadline for
21 issuing rules as well as a deadline for the
22 effective date of the rules.

1 So that in this case, the law in that
2 case involving the EPA was even clearer as to the
3 effective date of the rule; whereas, in our case,
4 the BCRA, although it gives a schedule for issuing
5 rules, it doesn't give a schedule for the effective
6 date of those rules.

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

17 MR. GROSS: They are business leaders,
18 and the honorary chair of our committee is Mayor
19 Guillian, and Lou Eisenberg has joined the
20 committee. He was the Chair of the Port
21 Authority of New York and New Jersey Port
22 Authority, has been involved in fund-raising

1 efforts along with many, many business leaders and
2 investment banking firms and others who are
3 typically involved in this effort, in effort of
4 supporting city activities, large investment
5 banking, insurance companies, and ones that you
6 would imagine.

7 CHAIR WEINTRAUB: Thank you.

8 Commissioner Mason.

9 COMMISSIONER MASON: I wanted to go back
10 a little bit to Commissioner Smith's questions
11 about agency and co-purpose. We covered it quite a
12 bit, but I thought it was actually Paul's strongest
13 argument, and just ask again, for you attorneys, it
14 seemed to me he was describing--you suggested vendor
15 relationship. Another argument might be a joint
16 venture, and we've seen a few of those at the
17 Commission, not really making agency
18 determinations, making other determinations; and I
19 just wondered as a legal matter is that fact that
20 you're engaged in a joint venture make the two
21 co-parties to the venture agents of one or the
22 other?

1 MR. HONG: Well, the Federal Election
2 Commission has addressed this in another context,
3 which are affiliated PACS or joint ventures, and
4 the FEC had made it clear that although the joint
5 venturer may be affiliated in this case, the event,
6 the convention itself, may be affiliated with the
7 host committee and the party committee. As Ken
8 said, it's the same goal with divergent interests.

9 But the FEC has made clear that the two
10 joint venturers would not be affiliated and
11 rightfully so, because they are not agents of each
12 other. They have divergent interests and they are
13 acting on their own behalf.

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

17 MR. HONG: It is. The joint venturers
18 in a business relationship do not become agents of
19 each other, and in the context of a vendor
20 relationship as well, when you enter into these
21 contracts, you--every contract you see involving a
22 vendor has a provision that says we're not agents

1 of each other; we can't obligate each other, and
2 that's the same situation here as well.

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

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

21 So I don't even think these are--this
22 could be fairly characterized as a joint venture.

1 COMMISSIONER MASON: I'll accept your
2 argument. I just thought Paul had a good case
3 there to the extent that, for instance, host
4 committees sometimes pay for things that are
5 integral to the convention, and you couldn't argue
6 that paying for the voting system in the convention
7 call, which is allowed, contributes directly to
8 commerce in the city other than, you know,
9 generally other than putting up the event.
10 But you've given me a sufficient
11 response on that.

12 I want to go also to the audit question,
13 because I agree there's some questions about the
14 audit, starting with Section 437 which requires
15 reports on convention financing for host committees
16 which says you have to report. It doesn't say
17 anything about audits. So there's no audit
18 authority there. 438 addresses political
19 committees, as has been suggested. So I don't
20 see--by analogy, I don't really see audit
21 authority, particularly when the reports are
22 required in a separate section, 437. I don't see
23 how we take 438 authority.

1 We have 9008 audit authority as to the
2 convention committees themselves, and then what I
3 think we may have overlooked is 9009(B), which is
4 the part of the overall section that provides for
5 general election and convention financing, which
6 says the Commission is authorized to conduct such
7 examinations and audits in addition to the
8 examinations and audits required by 9007, to
9 conduct such investigations and require the keeping
10 and submission of such books, records, and
11 information as it deems necessary to carry out the
12 functions and duties imposed on it by this chapter.

13 Fairly broad authority. If we can
14 construe it as related, and I assume, and I'll put
15 this in the context of myself having some questions
16 and doubts about it, that the argument has to have
17 been that there are this close relationships
18 between the host committee and the convention
19 committee. There are overlapping categories of
20 expenditures and that in order to assure ourselves
21 that the convention committee hasn't violated the
22 spending limit for impermissible contributions by

1 the host committee, that we need to conduct this
2 examination and audit under Section 9009.

3 Am I wrong?

4 MR. HONG: We would view this section as
5 providing--as relating back to 9008, the audit on
6 the Presidential campaigns and on the convention
7 committees, because the statute lays out specific
8 requirements for these automatic audits, and what
9 9009 does is essentially says, Well, you can go
10 outside of the stricture regarding Presidential campaigns and
11 the national parties, but we don't believe this
12 gives authority to audit third parties
13 just because there's a relationship to the event in
14 question.

15 COMMISSIONER MASON: I would agree with
16 you except that it specifically says in addition to
17 the examinations and audits required under 9007.
18 It doesn't mention 9008, but this expressly
19 advertises itself as an additional audit authority
20 beyond the audit authority which is specified as to
21 the recipients of public funding. I don't know who
22 else it could have been if it doesn't mean your

1 clients, because we're already auditing all the
2 candidates who receive public funding. We're
3 already auditing by statute the host
4 committee--excuse me--the convention committees who
5 receive public grants, and we have to do that.
6 We're mandated to do that.

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

13 MR. GROSS: Well, we're not contesting
14 the authority of the Commission to conduct an audit
15 of the host committee. What we're saying is that
16 it is not mandated as the audit authority mandates
17 under 9008, and you have a corollary in the primary
18 regs and in, a public
19 funding statute in the general election public
20 funding statute, which I think has probably
21 theoretically been used to audit GELAC along with,
22 you know, the public fund funds; but the

1 Commission's audit authority, I would concede under
2 the circumstance. It's just not a mandate, and the
3 Commission has treated the host committee as part
4 of the public finance mandated audit program; and
5 in every other case where the Commission has the
6 authority to conduct audits in the Title II realm
7 and other non-publically financed campaigns, it's
8 been done on a for cause basis.

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

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

20 COMMISSIONER MASON: Again, I don't see
21 that as necessarily following, because our
22 authority there is restricted by statute.

1 MR. GROSS: Perhaps you're right, but in
2 any event, it would be under some procedure other
3 than mandated procedure, and we don't--again, what
4 we're saying is you do have the authority under the
5 mandate audit provision. It would be under some
6 other construct under this provision.

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

18 MR. GROSS: I don't know why you say it
19 doesn't fit well. What happens is 60 days after
20 the convention, the host committee reports--that's
21 the first disclosure to the Commission--it
22 encompasses all the activity. So instead of having

1 seriatim reports every six months or every quarter,
2 as you would with a normal political committee or a
3 candidates committee, you have, actually, a very
4 comprehensive report, and then the committee would
5 report periodically after that. The big kahuna
6 is that 60-day report, and if it is based on--if
7 that report, through criteria established by the
8 Commission, has an indication of systemic problems
9 through the disclosure process, that to me would a
10 rational basis to proceeding, and beyond that, it
11 seems to me if there's evidence of a violation or a
12 complaint filed, it would be handled in the
13 enforcement process.

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

21 COMMISSIONER MASON: I read it
22 differently.

1 CHAIR WEINTRAUB: Thank you,
2 Commissioner Mason.

3 Mr. General Counsel.

4 MR. NORTON: Thank you, Madam Chair.
5 I'll try to be brief again.

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

15 You have said that, no, what you really
16 ought to be doing is looking at totality of the
17 circumstances, and that's the way you determine
18 whether they've commercially motivated. And I'm
19 struggling as I was listening to you with some of
20 the examples. You argue in your submission that
21 it's appropriate to supply hotel rooms for
22 visitors, but in response, I think, to one of the

1 questions of the Vice Chairman, you said one
2 example of an expenditure that--or maybe
3 Commissioner Thomas--one example of an expenditure
4 that wouldn't commercially motivated is
5 transportation of the Federal candidate, you know,
6 of a Presidential candidate to the convention site.

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

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

18 MR. HONG: First of all, I'd like to
19 separate the intake and the expense part, because I
20 don't want to confuse the two. When we're talking
21 about--what I'm talking about, that the expense
22 issue be allowed if they are for a commercial to

1 promote the city. We're talking about expenses, and
2 I don't think it really relates to the purpose of
3 the donors in giving to us, the whole locality
4 issue.

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

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

21 MR. HONG: Yeah, the TV, subsidizing the
22 actual production of the convention, you know,

1 paying for the script writers and the like, that's
2 part of the political message, and I don't think we
3 can--

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

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

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

1 permitted as host committee activities.

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

4 MR. GROSS: Where to draw the line.

5 MR. NORTON: Where to draw the line.

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

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

17 MR. HONG: Well, to the same extent, any
18 violation of the Federal election laws--you're
19 essentially arguing that we should--that the
20 Commission should audit every possible violator of
21 the election law, and I know we are in a unique
22 situation, but not legally. That's the point we're

1 trying to make. Legally, we are a third party from
2 the national party and from the Presidential
3 campaign, and I know it's tempting to say, Well, how
4 come we can't audit you, how are we sure you're
5 going to be in compliance with the law. That's a
6 good question, because that's the same question you
7 can ask of the IBMs of the world or the GMs of the
8 world. How are we sure they're in compliance with
9 the law? Well, the answer is in the enforcement
10 process. You have to bring it through an
11 enforcement procedure.

12 MR. NORTON: Thank you.

13 Thank you, Madam Chair.

14 CHAIR WEINTRAUB: Thank you, Mr.
15 General Counsel.

16 And Mr. Staff Director.

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

22 CHAIRWEINTRAUB: Well, excellent.

1 I want to add my thanks to the panel,
2 both for waiting around all morning, and I believe
3 that you can still make your 2:30 flight.

4 I'm going to ask those of us who are
5 coming back to take a quick lunch and come back at
6 2:15.

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

13 MS. BURNS: Yes.

14 CHAIR WEINTRAUB: The hearing is
15 recessed.

16 (Whereupon, at 1:24 p.m., a lunch recess
17 was taken, to reconvene at 2:15 p.m. this same
18 day.)

19

20

21

22

1 A F T E R N O O N S E S S I O N

2 (2:20 p.m.)

3 CHAIR WEINTRAUB: Okay. We're back
4 in session.

5 III. PANEL NO. 3

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

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

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

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

16 Madam Chair and Members of the
17 Commission, we very much appreciate the opportunity
18 to appear before the Commission this afternoon with
19 respect to the notice of proposed rulemaking on
20 national convention financing. Rather than repeat
21 our written comments, I did want to address some of
22 the points that have been raised in the comments of

1 others and in the discussion earlier today.

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

16 The Campaign Finance Institute in its
17 so-called study suggests that the reason is a
18 change in the factual circumstances, that the
19 Commission's--the assumptions underlying the
20 original rules that donors were politically
21 motivated, rather than--that the donors were not
22 politically motivated; rather, the donations were

1 civically and commercially motivated to promote the
2 image and commerce of the city, that that
3 assumption is no longer valid.

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

13 And I have a chart relating to the
14 discussion this morning. If we take a look at the
15 contributions overall in connection with the last
16 three Olympic games held in the United States since
17 1980, roughly the same period that the convention
18 regulations have been in effect, but not--excluding
19 Salt Lake because of their unusual circumstance of
20 9-11, increasing the Federal grant, we see as, in
21 fact, whereas the--according to this CFI chart, the
22 private contributions as a percent of the Federal

1 grant went from 13 percent to 297 percent in 1980
2 to 2000. If I use the comparable numbers, I guess
3 it should be 13 percent to 155 percent. It went
4 from 67 percent in Lake Placid in 1980 to 1,036
5 percent for the 1996 summer games in Atlanta.

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

21 Now, the second point that they make in
22 terms of the alleged change in factual

1 circumstances is to suggest that--and, again,
2 turning to page 7, 6 and 7 of their study, that
3 most host committee fund-raising is conduct by
4 partisans associated with the convention party.
5 Mr. Weissman went over and over this, talked about
6 let's look at who raises it, let's look at who
7 raises it. Well, let's look at who raises it.

8 In their report, they suggest that, for
9 example, in Philadelphia in 2000, they talk about
10 David Gerard Dicarlo, former advisor to
11 Pennsylvanian Republican Governor Tom Ridge,
12 co-chair of the Philadelphia host committee. What
13 they conveniently leave out is the fact that the
14 host committee was chaired and all of the heavy
15 fund raising lifting was done for the Republican
16 convention by David L. Cohen, chief aide to now
17 Governor, then Mayor Rendell, one of the top
18 Democratic fund-raisers and activists in
19 Pennsylvania, if not in America, former Chair of
20 the Ballard, Farr law firm, and as a matter of
21 fact, he's the one who actually is the Chair of
22 Comcast now.

1 COMMISSIONER McDONALD: Wait a minute,
2 Joe. No wonder we lost that election.

3 MR. SANDLER: Yeah.

4 CHAIR WEINTRAUB: The red light is
5 on.

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

19 The conclusions in the CFI study are
20 baseless, baseless, and I urge the Commission to
21 reach that the only logical conclusion is there's
22 no change in the factual circumstances and no basis

1 for revisiting its regulations.

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

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

10 COMMISSIONER McDONALD: Oh. Did he have
11 a chart?

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

14 MR. SANDLER: Yes.

15 CHAIRWEINTRAUB: Hopefully in a
16 smaller format.

17 Mr. Josefiak.

18 MR. JOSEFIK: Thank you, Madam
19 Chairman. Again, thank you for allowing me to be
20 here with Joe to hear his remarks, and for the
21 record, I would happy to yield some of my time to
22 Joe.

1 First of all, I think I should say for
2 the record that I'm here representing the
3 Republican National Committee and not any candidate
4 or office holder. So the remarks I have and the
5 questions that I answer today are from the
6 Republican National Committee and no one else.

7 As Joe alluded to, we're here today
8 based on some notion that BCRA somehow affected the
9 Commission's convention regulations, and I also
10 agree with my counterpart that it does not, that we
11 are dealing with a situation that is not regulated
12 under BCRA. It's regulated under the current
13 Federal Election Commission regulations, and then
14 the question becomes what sorts of regulation are
15 even authorized under the current statute as
16 amended by the BCRA, and if BCRA should fall, as we
17 are challenging in the courts today, what would be the
18 impact on the convention regulations.

19 And so even though I do not feel that
20 BCRA applies currently, even if it didn't apply, I
21 strongly believe that the Commission should leave
22 the regulations that are currently in place in

1 place.

2 And how does this affect the host
3 committee's status both pre-BCRA and post-BRCA?
4 Well, first of all, under this whole scheme in the
5 Commission's regulations, the host committees have
6 been some sort of a 501(C) entity. Some of them
7 started off as 501(C)4s. For example, the 1996 San
8 Diego Republican host committee was a 501(C)4. In
9 Chicago and also in Philadelphia, the Republicans
10 were a 501(C)3. Currently, the New York host
11 committee, as I'm sure they testified this morning,
12 you understand they're a 501(C)3, a charity under
13 IRS terms.

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

21 So I don't think any of this is
22 affected, because the IRS has already given, for

1 example, the New York host committee its status as
2 a 501(C) charity. So then the question is if it is
3 a charity, are any of its funds restricted; can the
4 Commission restrict the funding of a 501(C)3 that
5 that is not involved electioneering activity, and I
6 strongly suggest the answer to that question is no and
7 that the current rules should be in place that they
8 can get unlimited corporate and individual monies
9 from the appropriate sources.

10 Now, the question before the Commission
11 is what is the appropriate source. Under the
12 current regulations, you have for businesses an MSA
13 qualification that you have to be in a the MSA in
14 order to be presumed to be benefitting or promoting
15 the city as opposed to promoting a party, and that
16 has been the rule for a long time; but quite
17 honestly, since 1996, 2000, those conventions, if
18 you were a corporation, there is going to be some
19 sort of a nexus within that city to allow most
20 corporations to be able to contribute, even though
21 there is not a natural presence in that city. Over
22 the years, that has been the case.

1 What really is, I guess, my gripe in
2 this area is how the individual are treated,
3 because prior to the 1996 convention, individuals
4 from wherever could contribute to the host
5 committee. It is going to be a 501(C) organization
6 of some sort. They always have been, and so there
7 had never been a restriction on what individuals
8 could do; however, post the 1996 convention in San
9 Diego, the Commission changed its policy and said
10 an individual had to be a resident within that MSA
11 to contribute. And so right now the Commission has
12 under consideration whether that MSA should be
13 eliminated, and I think from in practical terms, it
14 should be.

15 So the raising of the money should be
16 left alone. Who can solicit, again, can Federal
17 office holders solicit? The answer to that
18 question is yes. It's a charity. It doesn't
19 involve an election activity. I don't think BCRA
20 implicates that. Should national committee members
21 be able to solicit for a host committee? I don't
22 know where I got this notion, but ever since I have

1 been around, and in goes back quite a while, that
2 we have not from a Republican National Committee
3 standpoint as a practical matter been involved in
4 fund-raising for host committees, because it was
5 the Commission position, whether formally or
6 informally, that you couldn't do that.

7 Having said that and having no intention
8 for national committee officers to raise money for
9 a host committee, I would like to say for the
10 record on principle that when an organization is a
11 501(C)3 charity organization, whether it's the
12 American Red Cross or a host committee that doesn't
13 get involved in election activity, that there
14 should be no restriction on an officer of the
15 Republican National Committee or the Democratic
16 National Committee from raising money from those
17 organizations, and hopefully the Commission will
18 take that into consideration.

19 On the spending side, however, it's
20 always been a qualified campaign
21 expense. The Commission has gone into deep detail,
22 and I just want to say for the record that this

1 notion that somehow the '96 audits changed the lay
2 of the land is not true. The Commission had a
3 wonderful debate at that time that lasted for days
4 and months and years as to what would be considered
5 a convention expenditure. Whether it was something
6 the host committee could pay for or whether it's
7 something that the COA had to pay for, the bottom
8 line and the message I'd like to leave you with
9 this afternoon, if it's the message, it's the COA;
10 if it's the ability to deliver the message, it the
11 host committee. In other words, the message is the
12 political side of the equation. How that message
13 gets across should be allowed to be paid for by the
14 host committee, providing the screen, the
15 convention hall, the podium, the sound, the lights,
16 but not the script, not the show, so we won't get
17 into this nuance of coming up with a list that's
18 restricted. The list that's there now is a list to
19 be considered, but there's a catchall provision
20 right now that allows other kinds of similar
21 activities by the host committee to be paid for by
22 the host committee if it's convention related.

1 I would strongly urge the Commission to
2 take that position and have a clean line that if
3 it's the message, is a COA; if it's the structure
4 or the ability to put out that message to the
5 American people, it should be an expense that can
6 be absorbed, if desired, by the host committee.

7 Thank you, Madam Chair.

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

13 Mr. Reiff, do you have an opening
14 statement?

15 MR. REIFF: No.

16 CHAIR WEINTRAUB: We going to just
17 rocket through here.

18 Commission McDonald.

19 COMMISSIONER McDONALD: Am I first?
20 This says Commissioner Toner. I'm ready to go. I
21 can go.

22 COMMISSIONER TONER: I impersonate you.

1 You can do the same.

2 CHAIR WEINTRAUB: I may have misread
3 my list.

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

6 Who is up? Is it me?

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

10 COMMISSIONER TONER: Thank you, Madam
11 Chairman.

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

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

1 spending, the resources they're bringing to bear.
2 Is it your view and your experience that states and
3 municipalities are, for whatever reason, not
4 providing as much resources for convention
5 infrastructure, convention security, other
6 activities, and therefore one reason the host
7 committees may be spending more is sort of they're
8 filling the void there? Is that basically your
9 point?

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

1 events.

2 COMMISSIONER TONER: Mr. Josefiak.

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

22 They had a boat parade that was there

1 for not only the delegates, but for people who
2 lived in the area to come out and be part of the
3 whole process of a political event. It was
4 non-partisan event. They had a Mummers Day Parade.
5 It was an attempt to show what the city has to
6 offer. That happens in all of the cities, and
7 Philadelphia under David Cohen, were really pushing
8 this as something they wanted to do to promote the
9 City of Philadelphia as a major convention city.
10 And so they did things that were not part of
11 anything that we required from a convention
12 standpoint, but what they wanted to do to promote
13 their city to show what kind of a city Philadelphia
14 was for other conventions as well.

15 And so it's a combination of things, and
16 those decisions are going to be made on a
17 city-by-city basis, based on the uniqueness of the
18 city and based also on the financial structure of
19 those cities. There are some cities where it would
20 be an issue legally for a city to pay for certain
21 things, so the host committee has to come up to the
22 plate and reimburse the city for typical city

1 services.

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

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

20 MR. JOSEFIK: I think it would
21 seriously undermine the ability of both parties,
22 major parties, to have the kinds of conventions

1 that they had in the past. When you look at the
2 public funding and you look at the cost of a
3 convention based on Joe's chart, it would be
4 virtually impossible to do that same kind of
5 convention in my mind. And, you know, the
6 philosophical question of whether or not there
7 should be those types of conventions is another
8 issue, but from the party perspective of how they
9 nominate and the party's right to associate and to
10 deal with their own processes, I think is a
11 fundamental right of the parties that the courts
12 have been very accommodating on, and hopefully they
13 will continue to be accommodating on in the future.

14 COMMISSION TONER: Mr. Sandler? Mr.
15 Reiff?

16 MR. SANDLER: I think that, if anything,
17 it's characteristically understated in Tom's usual
18 very dignified and calm way. The fact of the
19 matter is what we are talking about is shutting
20 down the national conventions after, you know, 150
21 or 180 years. That's all there is to it. There's
22 no possibility, none, that a national convention

1 could be put on in the amount of a Federal grant.
2 The Boston budget, which Ms. Cronin alluded, the
3 grant is, what, \$15 million give or take, \$10
4 million just for security this time, and that's
5 just the city's share. I mean the committee's
6 share. It's not even--there's not a remote possibility
7 that the conventions could be given if the
8 Commission changes its rules, period, end of story
9 from my perspective.

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

1 events.

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

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

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

21 MR. REIFF: We do believe it was a sound
22 assessment by the Commission to permit such items

1 to be provided, and we believe that they should
2 still be, continue to be provided.

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

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

18 COMMISSIONER TONER: Is sort of the
19 dividing line those kinds of events versus events
20 that have a fund-raising element for a political
21 committee? Is that sort of how you would demarcate
22 our jurisdiction?

1 MR. REIFF: Well, that's one way of
2 demarcating it, but there's even more elements to
3 that advisory thing in terms of the control events,
4 way persons are invited to those events, that
5 provide even further safeguards, not just the
6 fund-raising concept.

7 COMMISSIONER TONER: Thank you.

8 Thank you, Madam Chair.

9 CHAIR WEINTRAUB: Thank you,
10 Commission Toner. I'm sorry that I mistook

11 you for Commissioner McDonald

12 Commissioner McDonald, now it really is
13 your turn.

14 COMMISSIONER McDONALD: Madam Chair,
15 thank you. I bet you're not nearly as sorry as
16 Michael is.

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

22 The issues are actually pretty straight forward,
23 I think. In Joe's case, it appears to me if he just

1 had more enthusiasm. Mr. Josefiak, I think it's
2 far to say he's always both extremely well prepared
3 and understated. In Neil's terms, not only--first
4 of all, I didn't recognize him. He had on a tie.
5 Secondly, he may be the greatest sign holder that
6 I've seen.

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

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

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

19 What has happened in some of these
20 conventions, whether they're political conventions
21 or maybe they're sporting events? I think the City
22 of Montreal can explain to you just how much it

1 really did cost them to succeed. You know, they
2 basically just went broke in terms of landing the
3 Olympics. I think Atlanta's experience wasn't
4 decidedly better, although I think it was better than
5 maybe Montreal's was.

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

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

1 matters, it's going to have an unbelievable impact
2 in the process.

3 But my question is so why have
4 conventions at this point? Somebody tell me.
5 We've heard why the--and I ask because I think it
6 will ultimately come back to what Congress thinks
7 or doesn't think, but if you're getting 13 percent,
8 I mean, is the rest of America right that those of
9 us that are in the political arena are out of touch
10 with reality? I don't think we are, by the way.
11 Let's just say you get 13 percent of the American
12 public watching the convention at one time or another.

13 It's just a general philosophical
14 question, Joe. I'm just trying to get--if we're
15 sitting around saying to the people, you know, we
16 need to get to Boston or to New York or wherever,
17 and I said to you so why; we're going to spend all
18 this time raising money; we may run afoul of the
19 law; the American public is not going to watch the
20 process anyhow; what would be the best answer for
21 that? I mean, how could we have better experts
22 than you guys, for gosh sakes. What would you say?

1 MR. SANDLER: It's basically the
2 in-gathering of party activists from all levels
3 from all over the country to, first of all,
4 deal with governing business of the national party
5 since the convention is the ultimate governing
6 authority of the party, adopt the party's platform,
7 to basically energize the party as a whole for the
8 general election, as well as obviously do the
9 business of formally nominating and showcasing to
10 not necessarily the elected, but to the party
11 itself, of course also the elector to the extent
12 that they choose.

13 And 13 percent, I don't know where that
14 13 percent comes from.

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

17 MR. SANDLER: It's a lot more
18 complicated than that, but even assuming that the
19 coverage is down, it just serves as an absolutely
20 critical function for the party. There are young
21 people who are 18 and 19 years old that work their
22 hearts out to go to the convention. They work for

1 the delegate or work for the state party or maybe
2 go and volunteer, and it is a hugely important
3 central defining event for our party activists, workers,
4 volunteers, and elected officials.

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

17 That is from the party side of it.
18 While a city would bid for it, in my experience has
19 been not at all a political decision. It has
20 always been, whether it's San Diego, whether it's
21 New York this time, whether it's Philadelphia, it
22 was attempt by San Diego and Philadelphia in

1 particular to show that they now could be a Class A
2 convention city that could host an event this
3 large, and they reaped the economic benefits, or
4 they tell you that at least publically, to persuade
5 others over a period of time to, in fact, come to
6 that city for conventions.

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

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

1 world.

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

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

20 The Dea Beard matter is really--I'm not
21 saying the conventions weren't criticized before,
22 and certainly there are some stories throughout

1 history about conventions and back room politics,
2 and so on, but the issue there was the ability of
3 particular a group to have a great deal of
4 influence because of the large amount of money that
5 was given. In the generic sense about the
6 criticism and why we're here having the discussion
7 at all, quite frankly, is that, is whether or
8 not--I mean, you know, we can cite all the
9 regulations and if we find somebody said something,
10 we'll prove that. That's great too, but why we are here
11 and what it all kind of emanated from was that.

12 MS. SANDLER: I think that is it reaches
13 part of the heart of the matter here. What
14 evidence of abuse in the 25 years of the
15 Commission's current convention regulations for the
16 host committees take place, what evidence of abuse
17 like in 1972 and so forth or anything relating to
18 all the other evidence that's come out in that
19 supposed justifies the enactment of BCRA? What of
20 that relates to contributions to host committees?
21 Where is any reference to that in the record of
22 McConnell, in the Thompson report? It's not there.

1 If it's not broke, don't fix it, as we
2 said in our written comments. That's precisely the
3 point.

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

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

20 Does anybody else have anything?

21 Neil, it's your turn. I should have
22 called on you first.

1 MR. REIFF: Thanks. Well, it's hard to
2 add to such incredibly scholarly comments of the
3 two gentleman to my right, but I guess I would just
4 close out by saying that national conventions are a
5 great part of American politics and American
6 political history, and as everyone here has said,
7 if we do re-interpret these rules, we'd be stuck
8 with a small enough pot of money that the conventions
9 would go away and it would be a real shame that
10 conventions would go away only because there is a
11 reinterpretation of the way they've been financed.
12 That would be a real sad comment in history.

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

21 Thank you all.

22 CHAIR WEINTRAUB: Thank you,

1 Commissioner McDonald.

2 Mr. Vice Chairman.

3 VICE CHAIRMAN SMITH: I have a few
4 comments, I guess first. I appreciated, Mr.
5 Sandler, your comments on the CFI study. I was thinking
6 about it at the lunch break a bit, and it struck me
7 that it's a classic sort of situation. Looking at
8 how much spending has grown is sort of an
9 interesting thing, and there's just a sort of leap
10 to a conclusion, Well, what other reason could
11 there be for this than corruption. This is sort of
12 the standard guilt by innuendo that we hear far too
13 much, why else could they do it, and I think the
14 kind of information you point out or that my staff
15 brought up earlier on the New Orleans host
16 committee, the comments of that host committee
17 relating back to, gee, how things were a few years
18 before when they were much smaller are indicative,
19 I think, of the failure and that sort of guilt by
20 innuendo, and then you quote one guy or two
21 guys, and he thinks that's the case, and there you
22 go. That's your proof.

1 It's an interesting hypothesis. I think
2 they've laid out the data that would give us a
3 working hypothesis that maybe the assumptions no
4 longer apply, but it's no more than that, and we
5 just kind of from there jump to a conclusion.

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

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

22 MR. SANDLER: I'm not saying that there

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

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

22 MR. SANDLER: That's true.

1 VICE CHAIRMAN SMITH: That would be the
2 way to look at it. So it would be a question of
3 simply looking at it as a violation of the
4 act rather than saying the host committee is
5 affiliated so it's simply not actually a host
6 committee.

7 MR. SANDLER: Exactly.

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

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

21 MR. JOSEFIAK: When you have GELAC
22 funds--again, I'm speaking on behalf of the

1 Republican National Committee, not any candidate or
2 candidate's committee or office holder. With
3 regard to GELAC funds, our position is that if they
4 were raised in accordance with the rules of the
5 Commission, that once they were excess GELAC funds,
6 they should be treated like any other excess
7 campaign fund that can be used for any other lawful
8 purpose under the statute, whether that be for
9 another campaign, whether that be to pay for debts from a
10 primary, whether that would be to give to a
11 charity; but I think that that was the position
12 that we were talking about.

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

19 MR. JOSEFIAK: It goes back, I think to
20 a number of issues. It's tough to answer to that
21 question, Commissioner, without knowing what the
22 scheme of the Commission will be. Right now, for

1 example, you cannot raise money for GELAC until
2 June 1st of the election year, and by that time,
3 the historical process the way it is in the
4 primaries, you already know who it is. What you're
5 talking about, however, is the ability for under
6 current regs to take--to have a GELAC fund in a
7 primary, and if you get excess campaign funds for
8 the primary--well, under either scheme, you can
9 either get it redesignated under the current regs,
10 or under the proposal, you could make the same
11 presumption that you can with a normal contribution
12 in excess and attribute that to the GELAC fund.

13 Under those circumstances, I think that
14 that becomes the fundamental issue, and then the
15 question there becomes, I think, just like if
16 you're in a primary in general, you can raise
17 general funds. I would take the position that in
18 that situation, you should be able--you should have
19 to return those funds, because you are accepting money
20 for a process that is not going to occur, and you
21 don't have the ability to take additional funds because
22 you're not in the general election.

1 VICE CHAIRMAN SMITH: You anticipated my
2 next question. That's great. It saves us bit of
3 time, but you said something that raised in my mind
4 another thought, and bear with me on this.

5 You mentioned that now the nominations
6 are usually sewed up long before June 1st. So if as
7 the Commission we said we think Paul Sanford is
8 right; for the past 25 years, we've been violating
9 the law, and Congress really wanted to change that;
10 they just were a little too busy during 2002, but
11 we should go ahead and do it on our own and dried
12 up host committees funding. Is there anything in
13 the law that would prevent the parties, for
14 example, from having a very small little
15 convention. The platform committee might show up
16 on Monday, have a quick meeting. The delegates come
17 in Tuesday morning, nominate the candidate then
18 Tuesday afternoon or something like that, or
19 actually do it at the end of the week, and then you
20 could attach either before or after this small
21 little gathering another group that would come in

1 that would be unaffiliated with the party but as soon as
2 the party had made its arrangements in a particular
3 city, say New York or Boston. They would
4 immediately go to the convention bureau there and
5 say we want to have a big gathering for the
6 Republic Majority Committee or the Democratic
7 Majority. In other words--and say we're going to
8 have all kinds of people invited to speak, and
9 we're going to have lots of parties surrounding it
10 and receptions and big affairs and stuff like that.
11 Nothing in the act would prohibit that, would it?

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

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

18 MR. JOSEFIAK: Well, I think--

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

21 MR. JOSEFIAK: For one thing, you're
22 trying to assume the role of making that

1 determination, which in my mind is the right of a
2 political party to decide if they're going to have
3 a convention. You're talking about the gather of
4 at least 5,000 delegates and alternates. You're
5 talking about the ability to have subcommittee
6 meetings that you're talking about beforehand where
7 then the subcommittee reports are given to the full
8 committee and a full convention. The convention
9 has an opportunity to deal with those issues.

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

1 and the Republicans, for the next four years.

2 You can take the position maybe they
3 should have more of these. Maybe we shouldn't wait
4 every years for these kinds of events to bring
5 everybody together and deal with these issues.
6 And, you know, when I made the presumption that
7 everything was done by June 1st, that's under the
8 current scheme. If Joe and I and our principals
9 can get together and come up with a different
10 system that doesn't so much front-load the process,
11 we may have it much later, but, you know, that is
12 something that's always in the back of everyone's
13 mind, are we doing this too early; should we do it
14 much later.

15 VICE CHAIRMAN SMITH: I think those are
16 helpful comments. I guess my sort of thought was
17 there are certain people now who are just livid
18 that people who are prominent Republicans or
19 prominent Democrats are saying parties no longer
20 can do the get-out-to vote stuff they used to do in
21 quite the same way because they don't have soft
22 money; I really want Republicans to win or I want

1 Democrats to win; I think I'll start a committee
2 that will do that stuff. And, of course, they're
3 prominent people who have been active in their
4 party in the past, but now they're operating
5 independently of the party. They don't ask for the
6 party's okay or clearance. They go out. They know
7 who the big donors are. They start contacting
8 them. They know who the activists are from their
9 prior experience, and they do that, and then, of
10 course, that has some people livid, but I don't see
11 anything in the law that prohibits that.

12 I just wonder if we wouldn't end up in
13 the same situation on the convention side of
14 things. In other words, I'm kind suggesting that
15 maybe, you know, the sort of effort that was
16 suggested by some of the people this morning that
17 we should try to limit this activity is just kind
18 of chasing a tail here, you know, that if it's a
19 valuable activity, someone will do it, and it may,
20 then, not be done under party auspices, but people
21 who have been active and who want to bring party
22 activists together, as Mr. Sandler said, that hear

1 party speakers and get to see one another and get
2 fired up to start the campaign will do that anyway.

3 There might be certain logistical problems
4 that kind of raise the transaction costs, perhaps,
5 but something just tells me that that would be the
6 likely end result.

7 Well, I thank all you for coming. It's
8 always a pleasure to have a former Chair of the
9 Commission here with us, and I appreciate all your
10 time. Thank you.

11 CHAIR WEINTRAUB: Thank you, Mr. Vice
12 Chairman.

13 Commissioner Thomas.

14 COMMISSIONER THOMAS: Thank you, Madam
15 Chair.

16 Welcome. Could I try the same question
17 I have worked the other panelists with? As a
18 matter of legal interpretation, I'm trying to
19 figure out whether the Commission has any wiggle
20 room, if you will, to interpret the statute in a
21 way that would allow national party operatives to
22 be involved in soliciting funds for a 501(C)

1 organization, say a host committee, because this
2 goes back to my concern that the very broad
3 language in 441(I)A seems to contemplate that national
4 party operatives are only to be involved in
5 soliciting money up to the limits, prohibitions,
6 and reporting requirements of the law. Later you
7 get to 441(I)D, and it seems to contemplate that the
8 national party operatives are not to raise money
9 for the 501(C) organization unless it's an
10 organization that does not undertake activity in
11 connection with the Federal election.

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

22 MR. SANDLER: I think, Commissioner--I

1 do not think it is a permissible interpretation to
2 read 441(I)A to mean that national party officers,
3 employees, agents cannot raise funds outside the
4 limits and prohibitions in the act on behalf of
5 their parties for entities that do not engage in
6 Federal election activities, for two reasons. Well,
7 the principal reason is that it would read 441(I)D
8 out of the act. I have heard this argument made
9 that 441(I)A is so broad, it just prohibits
10 national party operatives from raising money
11 outside of the limits of the act regardless of the
12 nature of the entity that they're raising it for.

13 That is not the position that this
14 Commission took before the three-judge court. In
15 the--if I may cite from the reply brief of the
16 defendant submitted on behalf of the United States
17 and the FEC and the intervening defendants, the
18 government, meaning you, said that--

19 CHAIRWEINTRAUB: Thanks for the
20 clarification.

21 COMMISSIONER McDONALD: You mean Scott
22 Thomas.

1 COMMISSIONER THOMAS: We take that as a
2 compliment.

3 MR. SANDLER: On page 26 of the redacted
4 reply brief, contrary to Plaintiff's
5 characterization, BCRA's restriction on
6 solicitation are narrowly targeted, and I'll go
7 down later in the page: "BCRA does not apply to all
8 Section 501(C) organizations", talking about the
9 restrictions specifically on party, national party
10 soliciting funds. "BCRA does not apply to all
11 501(C) organizations. It applies only if the
12 organizations make expenditures or disbursements in
13 connection with a Federal election."

14 So, and again, with respect to Federal
15 office holders, and we talk a lot about Senator
16 Kerry, Kennedy, and so forth as if there's some
17 doubt about their ability to do this, but with
18 respect to Federal officer holders, the Government
19 in its opening brief for the defendants stated
20 specifically that--let me just--that 441(I)E was
21 specifically intended to permit, quote, Federal
22 candidates and office holders to continue to

1 engage in civic fund-raising activities for
2 non-profit organizations, but restricts the
3 solicitations that can be made support certain
4 types of Federal election activities.

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

8 COMMISSIONER THOMAS: Thank you. That's
9 helpful. You could still take the construction
10 that what we said there was consistent with some
11 stricter constructions as I've sort of hypothesized
12 in that even to the extent we're talking just about
13 441(I)D and the ability to in essence solicit or
14 send money to a 501(C)3, organization, for example,
15 it would have to be hard money, but it would only
16 be permissible if it's a certain kind of 501(C)
17 organization. You could sort take that
18 construction. All you're talking about in 441(I)D
19 is all that's left for the national party
20 operatives, which is the ability to solicit
21 hard money.

22 I'm trying to explore with you in terms

1 of the construction of this statute if you think we
2 had the leeway to go the way you were suggesting,
3 and obviously.

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

8 COMMISSIONER THOMAS: The next area
9 concerns the items for promotional consideration.
10 This have been a very controversial issue at the agency over the
11 years, but the proposed rulemaking was heading down
12 the road of suggesting that we were going to, in
13 essence, take away the ability of the convention
14 committees to be the ones, in essence, receiving
15 items of promotional consideration, but we would
16 leave the host committees free to get themselves
17 involved in receiving items of promotional
18 consideration.

19 I thought maybe you could help us with
20 the background on the concept of organizations
21 offering up items or services for promotional
22 consideration. It's my vague understanding that

1 this is something that the party committee itself
2 pretty much has to control. That is what these
3 folks are trying to gain, if you will, is the
4 promotional consideration benefit derived from
5 being labeled as the official provider for the
6 Democratic National Convention as opposed to being
7 the official provider of the host committee.

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

10 MR. SANDLER: You are, Commissioner.
11 That's exactly why I strongly, strongly proposed
12 precluding, changing the ability of the convention
13 committees themselves to accept items, goods and
14 services in exchange for promotional consideration,
15 usually official provider status, and again, for 25
16 years this has been considered not to be
17 in--properly considered not be an in-kind to these
18 Federal political committees, and nothing has
19 changed in our view, that should lead to any
20 other conclusion. That would greatly complicate,
21 again, the ability and disrupt the ability to put
22 on conventions.

1 MR. JOSEFIAK: It basically boils down,
2 as the Commissioner knows, as the genesis of all
3 this when there were some very difficult debates on
4 this, you know, whether it was golf tournament
5 where GM provides the cars. It's the same kind of
6 concept, or whether it's the airline--one airline
7 wanted to get both just to be able to show that
8 they had both conventions and plus everyone else in
9 the western world that year.

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

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

21 COMMISSIONER THOMAS: Last question--oh.
22 You have pointed out, I guess, Joe, in your

1 comments the somewhat confused state of affairs
2 regarding office equipment, slash, office expenses.
3 Do you want to give us some sense as to where you
4 think the lines actually ought to be if they are not
5 clear right now?

6 MR. SANDLER: We thought that the--and
7 again coming under the category of if it's not
8 broke, don't fix it, the issue was thoroughly
9 addressed and analyzed by the Commission in
10 connection with the audits of 1996 conventions, or
11 at least our convention in Chicago where the issue
12 of telephone charges had come up. It was the
13 conclusion of the Commission that it was proper for
14 host committees to pay for that as part of the
15 infrastructure and the office space and so forth
16 for the convention, and we believe that's where it
17 should be left. The NPRM indeed indicates that it
18 the was intent of the NPRM to codify the results of
19 those audits, but the language of the rules at the end
20 of notice in one part, not another, that's actually
21 contradicted, and that's what we are pointing out in our comments.

22 The audit which we

1 assume were codified in the
2 Commission's current regulation. It should simply
3 be left in place in our view.

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

1 of nuances.

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

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

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

22 COMMISSIONER THOMAS: Thanks. Maybe

1 some day you can explain the message versus
2 delivery system.

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

8 COMMISSIONER THOMAS: Help me with the
9 balloons.

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

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

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

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

22 CHAIR WEINTRAUB: I'm glad somebody

1 understands that.

2 COMMISSIONER McDONALD: No hot air jokes

3 CHAIR WEINTRAUB: Commission Mason.

4 COMMISSIONER MASON: I wanted to explore
5 a little bit the issue of what we say about the
6 affiliation issue of the host committees and
7 convention committees and/or national parties,
8 because it seems to me if we are agreeing, and I
9 think that the Commission may be there or get
10 there, that no, they're not affiliated per se, that
11 BCRA doesn't really change that, but under one
12 construct, or another we all agree yes, an
13 ill-advised host committee along with an
14 ill-advised national committee could conduct their
15 business in such a way that they did become
16 affiliated. In other words, that's not impossible
17 as a structure. It would be a mistake, but so I'm
18 just sort of wondering how we express that.

19 One of the things I would like to come
20 out of this is not leaving things in a confused
21 state. If the Commission concludes that the way
22 arrangements have been in the past is not

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

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

18 So I'm just wondering if you have
19 thoughts about how we express that as a regulatory
20 conclusion, that arrangements that we've seen in
21 prior audits in '92, '96, 2000, haven't constituted
22 affiliation, and so while we might find affiliation

1 in the future if someone conducts themselves
2 differently, those past arrangements don't raise
3 concerns. How do we say that?

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

1 very complex.

2 There are rules cities where if the city
3 is going to be involved in anything similar to this
4 or establish a host committee, there are rules
5 there. There may be even requirements for
6 disclosure, and there are rules and ethics rules a
7 mayor, for example, has to go through before they
8 can get involved in something like this, and they
9 get approval by city councils. The host committee
10 itself, the way they've been established as
11 501(C)3s have to meet a certain standard. They
12 have boards.

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

15 COMMISSIONER MASON: I understand all
16 that, and I don't disagree, and I don't think the
17 Commission collectively is likely to come to a
18 different judgment, but let me express the reason
19 that I think it may be important for us to express
20 that in some fashion, because the specter has now
21 been raised, rightly or wrongly, with the passage
22 of BCRA and a lot of attention that, gee, these may

1 be affiliated, and we have all acknowledged that as
2 a theoretical prospect yes, that it may be
3 difficult to get there with city procurement
4 rules and ethics rules and a lot of other reasons,
5 but yes, it could happen.

6 And so for that very reason, to
7 avoid--you know, we've seen too many examples of people
8 running off with what BCRA means and creating a lot
9 of smoke and problems that I just think we don't
10 need. And so if we're pretty sure that prior
11 arrangements don't amount to affiliation, I think
12 we need to say that, and I think it might help in
13 this environment, not for your understanding, but
14 for the understanding of people who might be contemplating filing
15 litigation or complaints or petitions. We have not
16 only our own rulemaking, but a petition for
17 rulemaking, you know, that we have to respond to
18 here, and presumably we need to announce a
19 reason, and if one of our conclusions is, Well, we
20 don't see a reason for a new rule here because in the
21 past, we've never seen affiliation, then we have
22 now 20 years of experience or whatever.

1 For those reasons, I think we need to
2 say something about it that gives people some
3 assurance that nothing has changed, if, in fact,
4 that's what we believe.

5 MR. REIFF: I would just point out to
6 the Commission that in our written comments on page
7 5 and 6, we attempted to apply the Commission's
8 definition of affiliation at 300.2, and it wasn't
9 even a close call in terms of Joe's and my
10 experience in the last two conventions.

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

20 MR. JOSEFIAK: Simply a statement that
21 the host committees as they're constituted, if
22 they're legitimate organizations, established as

1 501(C) anythings, because there are multiple
2 versions of that, that they are not considered to
3 be under this rule unless they meet the standards of
4 affiliation under the regs or something if you have
5 to go that way, but I don't--my concern is that
6 you're raising the specter and that there is that
7 potential--you know, I know Joe and I have had just
8 the opposite experience. It's just contrary to
9 that.

10 COMMISSIONER MASON: Thank you.

11 CHAIR WEINTRAUB: Thank you,
12 Commission Mason.

13 Well, I just have a couple questions.

14 Mr. Josefiak, you've alluded a couple of
15 times to the right of the local parties to run
16 their conventions and to choose how they're going
17 to run their conventions, and you've suggested that
18 you can't do it the way you want to do it unless
19 you can have host committees help you out by
20 raising gobs of soft money. Aren't you sort of
21 undercutting the argument that the host committees
22 were making earlier that they're not acting as your

1 agents; their doing it for their own reasons. I
2 mean, you're sort of suggesting that they are
3 acting as your agents.

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

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

1 for that.

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

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

19 MR. SANDLER: Just I'm very troubled in
20 this whole discussion throughout the day in the use
21 of the term "soft money" in this context. If I--if
22 a corporation, you, the individual gives a hundred

1 thousand dollar check to a church, synagogue,
2 American Red Cross, Amnesty International, it's not
3 subject to the limitations and reporting
4 requirements of the act. Is everything in the
5 world now soft money? These are contributions to a
6 501(C)3 or 501(C)6 organization, which is in the
7 case of a C(3) has to win recognition of the
8 exemption, as you know, from the IRS and is subject
9 to scrutiny not only from the service, but also
10 from the city authorities because of use of public
11 and funds and sometimes state funds as well; and
12 the idea that contributions to a 501(C) that
13 engages in legitimate 501(C) functions is soft
14 money because it has something to do--we're really
15 not sure what and how or how we're going to
16 characterize it--with a political convention is not
17 really logical to us. It is not the question. We
18 are not talking about soft money.

19 We're talking about donations to host
20 committees that are set up for certain purposes
21 entirely apart from the Commission's regulations,
22 although, you know, were the Commission to change

1 its regulation, of course all of this would be
2 implicated and have to be fought out in the courts,
3 but the fact of matter is these are 501(C)
4 organizations that as far as the FECA is concerned
5 and BCRA, are no different than Amnesty
6 International or the American Red Cross, or the
7 United Jewish Federation. I don't think the use of
8 the term "soft money" to describe these
9 contributions is appropriate.

10 MR. JOSEFIAK: Madam Chair, and only in
11 the context that they are non-Federally regulated
12 monies.

13 CHAIR WEINTRAUB: You guys are good.
14 We'll have to come up new words.

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

20 MR. JOSEFIAK: Which is true.

21 CHAIRWEINTRAUB: Well, maybe it is,
22 but let me sort of ask the flip side of that

1 question, because there are people like them out
2 there who think that the conventions have become
3 much too elaborate and much too expensive and much
4 too much fun, and it;s not just the two folks that
5 showed up here this morning. We got 1100 identical
6 E-mails.

7 MR. JOSEFIAK: I wonder where they came
8 from.

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

14 COMMISSIONER McDONALD: Oh, yes, they
15 could.

16 MR. SANDLER: We'll make this a bit of
17 an occasion to span the Federal Election
18 Commission. We'll be happy to beat that part of
19 1100.

20 CHAIR WEINTRAUB: That's right. I'll
21 have to look into that with the FCC. No. Maybe
22 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,

1 because you're going to get some help for the
2 Homeland Defense--I forget what we call this new
3 agency.

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

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

16 MR. SANDLER: First of all, it is not
17 the question of running a cheaper convention. The
18 idea that host committees could exist and raise
19 hard monies subject to the two-year aggregate
20 57,500 cycle, i frankly just makes no sense. Host
21 committees would disappear and conventions would
22 disappear. There's no possibility of putting on a

1 convention with the amount of the Federal grant
2 anyway and get 5,000 delegates in a facility with
3 every, you know, office holder, Federal, state, and
4 local from every party gathered in one place and
5 move them around and so forth with in the amount
6 of this Federal grant.

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

19 MR. JOSEFIAK: Joe is exactly right. It
20 doesn't fit into the scheme of any sort of,
21 quote-unquote, Federally-regulated money, because of
22 the aggregate because of the individual limits because

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

10 And so under that kind of theory, you
11 only have two options, I think. One is that the
12 Federal Government is going to give the 50 million
13 or R60 million to do this, or you take the taxpayer
14 dollar out of it altogether, and you say, Okay,
15 this is an entire host committee operation because
16 it's not Federal election activity. You only have
17 those two choices, I think, if you go under that
18 scheme, because under that scheme, a hard dollar
19 host committee doesn't exist. What you're saying
20 there is if the committees aren't going to do it at
21 all, it's the Republican National Committee and
22 Democratic National Committee taking its share of

1 the \$25,000 per person per year under the 57
2 aggregate and spending that money to put on a
3 convention versus giving it to the Presidential
4 candidate and coordinate it versus giving it to
5 state and Federal candidate versus having an
6 institution at all, because under BCRA, everything
7 is Federal money, whether it's rent, utilities, or
8 building.

9 So you're basically forcing, I think,
10 under that scheme the elimination of the national
11 party structure and organization, because you can't
12 do it all with 25,000 per year.

13 CHAIR WEINTRAUB: So just to push
14 this devil's advocate argument one step further,
15 why shouldn't we do that? Why shouldn't we then
16 just submit a legislation recommendation to
17 Congress saying we think you ought to either give a
18 whole lot more money to the convention committees
19 so that they can run it all on public funds and
20 eliminate this unseemingly chase for dollar of
21 whatever hardness or softness, or just, you know,
22 keep your money and let them do it all privately?

1 MR. SANDLER: The question, either of
2 those options have a lot to recommend, and the real
3 question is whether the Congress continues to take
4 out of the system the private contributions, the
5 funds that go directly to communicate, as Tom says,
6 the political message, the actual costs of
7 showcasing the nominee, putting on the program
8 and so forth, that they are directly related to a
9 Federal election and that, therefore, the
10 disbursements for which have to be made at least
11 under the Commission's current rules a Federal
12 political committee, namely the committee on
13 arrangements or in our case, the Democratic
14 National Convention Committee, and whether they
15 want to replace that with private contributions, we
16 can visit the judgment made in the post-Watergate
17 legislation.

18 MR. JOSEFIAK: And to be honest, Madam
19 Chairman, I would have a real philosophical problem
20 with taking 100 percent of taxpayer dollars, \$50
21 million to put on a convention like this. I think
22 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 CHAIR WEINTRAUB: I thank you
15 engaging with me on this. I actually agree with
16 you that there are, gee, a whole lot of things I
17 would rather see \$50 million in taxpayer dollars
18 going to support rather than giving more money for
19 the balloons.

20 COMMISSIONER McDONALD: The FEC budget?

21 CHAIR WEINTRAUB: Yeah.

22 MR. JOSEFIK: Especially if they're one

1 that are falling down.

2 CHAIR WEINTRAUB: That's right.

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

7 Mr. General Counsel, do you have any
8 questions?

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

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

16 Mr. Staff Director.

17 MR. PEHRKON: Madam Chair, I have
18 nothing.

19 CHAIR WEINTRAUB: I think that's just
20 wonderful. Let me thank you, yet again, for
21 coming, and--it's Friday afternoon and the weather is
22 nice--and for waiting around while this morning's

1 ran late and for submitting both your written
2 comments and testimony, and you will be hearing
3 what we do with this.

4 Thanks very much. This meeting is
5 adjourned.

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

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