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Party Conventions Are Free-For-All for Influence Peddling

The Soft Money Loophole for Lobbyists

The Democratic and Republican national conventions are supposed to be publicly financed electoral events with reasonable ethics restrictions on influence-peddling by lobbyists. However, the conventions have become mostly privately financed soirees funded by corporations and lobbying firms that seek favors from the federal government. The unlimited soft money donations from special interests to pay for the conventions, and the lavish parties and wining and dining at the conventions, run counter to the federal election law and congressional ethics rules.

Today, the presidential nominating conventions are not very newsworthy because the presumptive nominees are chosen in advance; fewer people care about the conventions, as declining TV viewership shows; and yet more special interest money than ever is raised and spent at the conventions. Under the guise of “civic boosterism” unlimited and unregulated contributions are funneled through a giant loophole to host committees that largely serve the political purpose of providing advertising and access to corporate and other moneyed contributors.

Two separate codes were intended, but largely have failed, to make the nominating conventions more respectable political events. The first is the decades-old ban contained in the Federal Election Campaign Act (FECA) on “soft money” – funds from corporate or union treasuries or large individual contributions in excess of the limits – to pay for the conventions. The second is the new congressional ethics rules that restrict the manner in which lobbyists and lobbying organizations may host parties and offer gifts to members of Congress.



A. FECA and the \$100 Million Soft Money Loophole

The presidential public financing system was created in 1974 to replace potentially corrupting unregulated money (now known commonly as “soft money”) with public funds guaranteed to pay for the conventions first, the presidential general elections second, and the presidential primary elections last.¹

This public financing system came in the wake of a convention fundraising scandal under the Nixon Administration. In May 1971, the giant International Telephone and Telegraph Corporation (IT&T) pledged up to \$400,000 to attract the 1972 Republican National Convention to San Diego. The company was facing several anti-trust lawsuits under the Nixon Administration. Just eight days after the selection of San Diego for the Republican convention, Deputy Attorney General Richard Kleindienst agreed to an out-of-court anti-trust settlement with IT&T that the company considered very favorable. Democratic National Committee Chair Lawrence O’Brien wrote to Attorney General John Mitchell demanding to know whether the settlement with IT&T was linked to the company’s pledge to the Republican convention.

Later testimony in congressional hearings revealed that IT&T executives and Nixon Administration officials had met repeatedly in secret in 1970 and 1971 on the anti-trust suits, and while negotiations were in process, IT&T made the offer to underwrite the party’s convention. Internal memos within the Administration urged the Justice Department to go easy on IT&T. A reluctant Justice Department official was promptly fired by Nixon, and a settlement emerged a short time later.²

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

¹ 26 IRC 9008(a)

² Herbert Alexander, FINANCING THE 1972 ELECTION (1972), p. 264.



1. The Law Regarding Convention Financing

FECA's public financing program for the presidential nominating conventions created a system in which the parties, in exchange for accepting reasonable spending ceilings on their conventions, would receive a grant from the federal government to pay for nearly all expenses of the conventions. Originally, the spending ceiling and grant was set at \$2 million, to be adjusted for inflation. FECA was soon amended to increase the spending ceiling and grant to \$4 million.

The law specifies that the national committee of a major party may not make expenditures for a presidential nominating convention in excess of public funds provided, with one exception. The Federal Election Commission (FEC) may authorize the national committee of a party to exceed the spending ceiling for the conventions "based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee."³

Nevertheless, such additional funds in response to "extraordinary and unforeseen circumstances" must not be in the form of soft money. Even before the 2002 Bipartisan Campaign Reform Act (BCRA), popularly known as McCain-Feingold, affirmed the ban on soft money for federal candidates and party committees, FECA had long prohibited corporations, labor unions and banks from making contributions to federal candidates, officeholders and national parties "or in connection with any primary election or political convention or caucus held to select candidates" for federal office.⁴

But the parties needed a helping hand from the FEC to chip away at the ban against soft money contributions for conventions. The FEC obliged with a series of controversial advisory opinions and regulations. Most of these rulings no doubt were originally intended to ease financial and accounting burdens on the political parties and to pave the way for smooth operation of the nominating conventions. In the end, however, they reversed the

³ 26 IRC 9008(d)(3).

⁴ 2 U.S.C. § 441(b). By the mid-1990s, corporate and union treasury money swarmed into party coffers despite the ban, as parties argued that such "soft money" could be used for non-election purposes and thus sidesteps the prohibition against party use of soft money for electioneering purposes.



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ethical gains sought by FECA and have largely returned the financing of presidential conventions back to the Watergate-era system.

The FEC determined that each national party must form a presidential convention committee subject to the contribution and spending restrictions and reporting requirements of FECA. However, the Commission redefined several types of expenditures as falling outside the category of convention- related expenditures, and thus exempt from the spending ceiling for party convention committees.⁵

Much more significantly, the FEC determined that wealthy individuals, corporations, unions, and even banks may make unlimited contributions, for certain purposes, to “host committees” unaffiliated with the national party convention committee. A host committee is “any local organization which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees.”⁶

Today, these “host committees” claim their nonprofit status – collecting unlimited and unregulated funds – by stating that their purpose is to raise funds for “civic boosterism” in the convention host cities – not for political purposes.

Another source of private funding for the presidential conventions, which was originally envisioned as a government source of funds, is the “municipal fund.” As early as 1982, an FEC advisory opinion opened the door for municipal funds to supplement the financing of presidential conventions.⁷ The opinion permitted the creation of the Dallas Convention Fund, a local entity which could raise funds from wealthy individuals, corporations, unions and banks, in addition to public funds, and spend that money for certain convention-related activities. The major condition on municipal funds is that they are supposed to be long-term entities whose principal purpose is to promote any and all conventions in the city, not just presidential conventions.⁸

⁵ See, for example, 11 CFR 9008.9(d).

⁶ 11 CFR 9008.52(a).

⁷ Advisory Opinion 1982-27.

⁸ 11 CFR 9008.53(b)(1)(i)-(ii).



More often, however, municipal funds seem to rise and disappear with the presidential conventions. The Dallas Convention Fund in 1982 is a prime example. The Dallas municipal fund was in fact chaired by Washington political insider and real estate developer Trammell Crow with corporate offices at 30th and K Street.⁹ Shortly after the 1984 Republican national convention, the Dallas Convention Fund folded.

FEC Commissioner Thomas Harris back in the early 1980s saw the danger of these exemptions getting out of control. He wrote in a dissenting opinion: “By permitting corporations and unions to donate unlimited amounts of money to fund political conventions, the Commission is ignoring one of the clear concerns of 2 U.S.C. 441(b) and its predecessor statutes – that is, the fear of the influence of aggregated wealth on the political process. The fact that the donations are to be funneled through a ‘Convention Fund’ does not alleviate the problem. The proposed Republican National Convention apparently will be the first to be financed by the Dallas Convention Fund ... The Commission has forgotten that when it approved the regulations permitting business and municipal involvement in the financing of political conventions, it was creating a narrow exception to the broad prohibition of 2 U.S.C. 441(b).”¹⁰

Originally, the FEC limited the soft money loophole for host committees and municipal funds to corporations and unions with a “local tie” to the community hosting the convention. The “local tie” restriction was easily evaded. In the 2000 Republican convention in Philadelphia, for example, some 473 business and governmental entities contributed to the Republican convention. The three largest companies that received contracts from the host committee were based in Louisiana, California and Virginia but had local affiliates.¹¹ In 2003, the FEC dismissed the requirement of a local tie for corporate contributions to host committees and municipal funds altogether.¹²

The official convention committee of the political party, which is not allowed to accept soft money, must file regular quarterly and post-convention reports disclosing how it is using the public funds for the conventions and any contracts made by the committee, host

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

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

¹¹ Jane Von Bergen, “Philadelphia Committees Report on GOP Convention Tells a \$66 Million Story,” *The Philadelphia Inquirer* (Oct. 22, 2000).

¹² 11 CFR 9008.52



committee or municipal funds for convention expenditures. Host committees and municipal funds, on the other hand, file their disclosure reports 60 days after the convention with the FEC.¹³

2. The Flood of Soft Money into the Conventions

Commissioner Harris' prediction that the host committee exception could become a gaping soft money loophole has come true with a vengeance. In 1976, both parties paid for their conventions almost exclusively from public funds, about \$2 million each. In 1980 and 1984, the parties still relied mostly on public funds to pay for their conventions, at slightly more than \$4 million in 1980 and somewhat more than \$7 million in 1984. Soft money had only begun to creep into the picture.

By 1996 the use of privately financed "host committees" by the parties had overwhelmed the public financing program. Both conventions received private funds amounting to nearly double the public grant.

Today, public funds make up only a modest share of the total (inflated) cost of the conventions. In 2000, for example, each party was awarded about \$13.5 million to pay for its nominating convention. In reality, private sources chipped in an additional \$52 million for the Democratic convention in Los Angeles, and \$60 million for the Republican convention in Philadelphia. In the 2004 election, the Republicans spent \$101 million on their convention and the Democrats spent \$72 million, all the while the official public funding grant intended to pay for the conventions was \$15 million.¹⁴ In 2008, each party was awarded \$16.4 million in public grants to pay for their conventions, but total expenditures through the host committees amounted to more than \$55 million for the Democratic convention and \$57 million for the Republican convention. This year, each party has been given a public grant of \$18.3 million but private sources are expected to add another \$37 million for the Democratic convention and \$55 million for the Republican convention – the partisan disparity resulting from the Democratic party's policy of not accepting direct corporate funds and capping contributions from others at \$100,000.

¹³ 11 CFR 9008.51(b).

¹⁴ "Presidential Campaign Receipts," Federal Election Commission Web site (July 2012).



3. What Do They Get for Their Money?

Nearly all of the private donors to the convention host committees have business pending before Congress or the White House and have made substantial campaign contributions and lobbying expenditures to press their interests. As of August 2008, 173 organizational donors to the 2008 host committees have been identified, and all but two are corporations. These donors have made more than \$1.5 billion in lobbying expenditures and campaign contributions since 2005.¹⁵ These companies want something from the federal government – and they are willing to pay.

With soft money now banned for federal candidates and party committees, the host committee loophole allows these companies to indirectly funnel six-figure checks to the presidential candidates and party leaders. Host committees can use this money to pay for many of the expenses associated with the conventions, including construction of convention facilities, travel and local transportation, delegate receptions and tours, media facilities, and similar convention-related services.¹⁶ Host committee budgets and planning are largely directed and approved by the official party convention committee – in other words, the party leaders coordinating the presidential and congressional campaigns. The conventions serve as big advertisements for the presidential candidates and congressional leadership, and these lawmakers know which corporations are paying for their ads.

Corporations and their lobbyists also purchase a great deal of one-on-one time with lawmakers at the conventions. In return for their donations to the convention host committees, corporate sponsors to the conventions are promised a variety of benefits, ranging from advertising opportunities to VIP tickets to the convention centers. Each host committee advertises numerous levels of sponsorship – the greater the contribution, the greater the access to advertising opportunities and elected officials. Additionally, the Sponsorship Packet offers corporate contributors the chance to buy access to party luminaries by hosting or sponsoring events such as state delegation receptions.

¹⁵ Campaign Finance Institute and Center for Responsive Politics, Party Conventions' Financiers Have Spent Nearly 1.5 billion on Federal Campaign Contributions and Lobbying Since 2005, (Aug. 20, 2008). <http://cfinst.org/pr/prRelease.aspx?ReleaseID=203>

¹⁶ 11 CFR 9008.52.



In 2008, for example, the RNC Corporate Sponsorship Packet of the Minneapolis/St. Paul (MSP) host committee offered seven levels of sponsorship for the RNC convention. These were:

- Viking sponsor. For \$50,000 or more, the donor receives credentialed tickets to convention sessions, invitations to all 2008 host committee leadership events, and is listed as a sponsor in official guide books and on the 2008 website.¹⁷
- Bronze Sponsor. For \$100,000, donors get the same perks as Viking Sponsors with additional access to “premier” Minneapolis/St. Paul venues for “corporate hospitality” events and to the Xcel Center Hospitality Suite. Companies that attain this level of sponsorship, such as Land O’Lakes and Waste Management, may also opt to sponsor volunteer uniforms and water bottles.¹⁸
- Silver Sponsor. For \$250,000, donors such as Cargill, Eli Lilly, Koch, and Wells Fargo gain “special access” to all host committee parties and events and to the Host Committee Suite at the Convention Center. Their status as a Silver Sponsor also qualifies these companies to be the exclusive official provider of a particular service to the convention.¹⁹
- Gold Sponsor. For \$500,000, donors gain the added perk of participation in tours of the convention spaces and cities during “Get to Know Minneapolis/St. Paul Days.”²⁰
- Platinum Sponsor. For \$1 million, donors such as Xcel, UnitedHealth, Medtronic, St. Jude Medical, and US Bank, win VIP access to the Xcel Center.²¹ Originally, Platinum Sponsors were also promised a private reception with Gov. Tim Pawlenty, Sen. Norm Coleman, and the mayors of St. Paul, Minneapolis, and Bloomington. This perk was removed from the publicized packet after a number of critical articles appeared in both local and national press.

¹⁷ Minneapolis St. Paul Host Committee Corporate Sponsorship Packet, p. 10.

¹⁸ Ibid, p. 9.

¹⁹ Ibid., p. 8.

²⁰ Ibid, p. 7.

²¹ Ibid p. 6.



- Finance Vice-Chair. For \$2.5 million, donors were also promised a golfing outing with Republican leadership, another bonus that was met with public outrage and subsequently dropped from the publicized packet.²²
- Finance Co-Chair. For \$5 million, donors such as Qwest gain exclusive VIP access to the host committee media party and VIP tours of the Twin Cities.²³

The 2008 DNC Corporate Sponsorship Packet enumerated five levels of sponsorship and their respective benefits. These were

- Mile High Plus. For \$52,800, corporate donors of all levels receive invitations to host committee sponsored events such as the Media Welcoming Party and recognition in all host committee publications, as well as on the host committee website. Mile High Plus sponsors may choose to place products with the company's logo in bags for delegates or the media, or they can opt to sponsor five information booths at the convention.²⁴
- Silver Sponsor. For \$100,000, donors receive general tickets for convention sessions.
- Gold Sponsor. For \$250,000, donors such as ConocoPhillips, Eli Lilly, and Staples gain access to the host committee hospitality suite and an invitation to attend a private event with Denver 2008 Executive Committee members. Executive Committee members include Colorado Governor Bill Ritter, Denver Mayor John Hickenlooper, Sen. Ken Salazar, and Rep. Diana DeGette.
- Platinum Sponsor. For \$500,000, donors are granted access to "premier" Denver venues for corporate hospitality events and receptions.

²² Steve Weissman, "Inside Fundraising for the 2008 Conventions: Party Surrogates Gather Soft Money While Federal Regulators Turn a Blind Eye." The Campaign Finance Institute (June 3, 2008). http://www.cfinst.org/books_reports/conventions/2008Conventions_Rpt1.pdf.

²³ Minneapolis St. Paul, p. 4.

²⁴ Denver 2008 Host Committee Corporate Sponsorship Packet, p. 10.



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- Presidential Sponsors. For \$1 million, donors collect VIP tickets to the Convention Center and “first consideration” for popular Denver venues.²⁵ Presidential sponsors of the 2008 DNC convention include Qwest, Xcel, Level 3 Communications, Molson-Coors, and Union Pacific.

These types of access-for-sale programs at the conventions have an eerie resemblance to the soft money programs that used to be offered by the national political parties prior to BCRA, and were cited by the Supreme Court as examples of potentially corrupting behavior. As the court explained in upholding BCRA’s ban on soft money to party committees:

So pervasive is this practice that the six national party committees actually furnish their own menus of opportunity for access to would-be soft-money donors, with increased prices reflecting an increased level of access. For example, the DCCC offers a range of donor options, starting with the

\$10,000-per-year Business Forum program, and going up to the \$100,000- per-year National Finance Board program. The latter entitles the donor to bimonthly conference calls with the Democratic House leadership and chair of the DCCC, complimentary invitations to all DCCC fundraising events, two private dinners with the Democratic House leadership and ranking members, and two retreats with the Democratic House leader and DCCC chair in Telluride, Colorado, and Hyannisport, Massachusetts.²⁶

The same type of influence peddling is going on currently with corporations giving unlimited soft money checks to the convention host committees. There is no small irony in the fact that it was the IT&T scandal in 1971 that helped create a system of publicly financing the national conventions, and today AT&T is one of the principal corporate sponsors of the party conventions. It has purchased the right to plaster its logo all over the conventions. This isn’t just advertising; this is attempting to buy influence with lawmakers.

²⁵ Ibid, p. 7.

²⁶ *McConnell v. Federal Election Commission*, 540 US at 152 (2003).



4. Civic Boosterism or Boondoggle?

Corporate sponsors and other deep-pocketed donors bypass campaign finance laws and funnel millions of dollars in soft-money contributions to national political party conventions. To justify their nonprofit status, host committees claim that their purpose is to raise funds for “civic boosterism” in the convention host cities – not for political purposes.²⁷ This is false, considering the experience in previous conventions.

How did Boston and New York fare as hosts of the 2004 conventions? Not as well as the host committees promised. It is also useful to imagine what civic boosterism in the 2008 and 2012 host cities might look like and compare this to the way these funds will most likely be utilized. If civic boosterism is action on the part of local leaders to bring increased prosperity to their city, what would real civic boosterism in host cities look like?

In news articles from convention week, Boston’s local business owners admitted that the convention might benefit Boston in the long term if the city were successful in showcasing its attractions. However, they noted that the immediate impact of the convention was often harmful to local businesses. On the one hand, because of road and lane closures, many workers opted to take vacations rather than deal with traffic, leading to a significant decrease in overall productivity. The cancellation of other tourist events (Sail Boston, U.S. Gymnastics Qualifying) due to the presence of the convention represented an additional loss in revenue for the city.²⁸ Furthermore, because of the extensive security measures taken to make the convention safe, virtually no tourists visited Boston during the convention, except those attending the convention, and they spent most of their time and money at the convention and convention-related events.²⁹

Local business owners also expressed disappointment and anger at turnout during the convention, which fell far short of the city’s promises. Many were forced to send employees

²⁷ Steve Weissman, “Inside Fundraising for the 2008 Conventions: Party Surrogates Gather Soft Money While Federal Regulators Turn a Blind Eye.” The Campaign Finance Institute (June 3, 2008).

²⁸ “The Economic Impact of the Democratic National Convention on the Boston Economy: The Final Tally.” The Beacon Hill Institute (August 9, 2004). <<http://www.beaconhill.org/BHIFaxSheetDNCFinal08094.pdf>>.

²⁹ Kathie O’Donnell and John Spence, “Boston Hunkers Down for Convention.” Market Watch (July 23, 2004). <<http://www.marketwatch.com/News/Story/Story.aspx?guid=%7BA2091BDF-E7A5-4476-AB9D-13AD67B6E0D6%7D>>.



home early, including restaurants and bakeries that had overstocked to prepare for convention. Among the businesses most heavily affected by the convention, North End restaurants and bakeries saw sales decline 50 percent during convention week.³⁰ In addition to these quantifiable losses, there is no way to accurately calculate the frustration and inconvenience the convention caused for Boston's residents, in particular those business owners who lost almost a quarter of their expected monthly revenue.

According to news articles from convention week, restaurants took the biggest hit from increased security and protests surrounding the convention. On the other hand, a select few caterers servicing private events and corporate parties benefited from the convention's presence in the city.³¹

Many storeowners were upset because the impact of the convention was not at all what the city had promised. Some reported that sales fell so drastically that they could not be recovered quickly enough to cover the month's expenses.³²

In New York during the 2004 Republican convention, numerous Broadway shows had to shut down completely because tourists stayed away and delegates were too busy to attend.³³ According to a CoreNet Global survey, it was not only the entertainment business that suffered – New York area corporate real estate managers expected declines in productivity and a negative impact on the bottom line of city revenues as a result of the convention. As was the case in Boston, many workers chose to take leave or telecommute to avoid traffic and security.³⁴

³⁰ "Merchants Angry Over Absence of Customers." *San Diego Union-Tribune* (July 28, 2004). <http://www.signonsandiego.com/uniontrib/20040728/news_1n28city.html>.

³¹ Paul Frumkin, "Restaurateurs Decry Sales Drought as Republicans Depart Manhattan." *Nation's Restaurant News* (September 13, 2004). <http://findarticles.com/p/articles/mi_m3190/is_37_38/ai_n6198989>.

³² Adam Nichols, "New York City Businesses See Lower-than-Predicted Profits from GOP Convention." *Knight Ridder/Tribune Business News* (September 3, 2004). <http://www.accessmylibrary.com/coms2/summary_0286-8553100_ITM>.

³³ Ian Mohr, "RNC Impact on NY Prod'n Weighed." *Hollywood Reporter* (August 10, 2004). <http://www.hollywoodreporter.com/hr/search/article_display.jsp?vnu_content_id=1000603877>.

³⁴ "New York Businesses Bracing for Republican National Convention; CoreNet Global Survey: Respondents Expect Negative Fallout as Workers Telecommute and Take Liberal Leave to Avoid Traffic, Disruptions." *PR Newswire* (August 23, 2004). <http://www.accessmylibrary.com/coms2/summary_0286-13079242_ITM>.



The evidence from the 2004 conventions suggests that while the conventions may showcase the host city and offer a one-time source of revenue to select businesses, the intended purpose of the host committees' fundraising efforts cannot justifiably be said to be civic boosterism.

Thus, while conventions may benefit the host city in some ways, the host committees' activities cannot be accurately described as civic boosterism because the host cities' ordinary citizens and small businesses are largely shut out of convention activity. All told, if these extravagant corporate contributions were directed toward real civic boosterism, these funds could finance some of the cities' most beneficial programs for years. It is clear that corporate contributions to the host committees are used to buy influence with lawmakers and party leaders. They do not serve the purpose of civic boosterism, nor are they intended to. The real boost from these huge contributions to the host committees is the cozy relations of party officials with corporations.

B. Party Time on the Lobbyists' Dime? Not So Fast

One way of buying influence with lawmakers is to make soft money contributions to the convention host committees. Another is to pay for a lavish reception or party at the convention for lawmakers and party leaders. Many of the corporate donors, like AT&T, make extensive use of both tactics.

One of the most effective ways for a lobbying organization to press its case before White House officials and congressional leaders is to get a little one-on-one time with the officials in a relaxed atmosphere of wining and dining. Wining and dining represents the old school of professional lobbying but, since the Jack Abramoff scandal of 2006, it is supposed to be sharply curtailed on Capitol Hill by new congressional ethics rules.

Many of the new congressional ethics rules also apply to the conventions. Wining and dining at parties and receptions has long been a mainstay for lobbyists who want to schmooze with lawmakers at the conventions. It is going to be difficult to impress upon governmental officials, party leaders and the lobbying community that some of the old-school behavior is no longer acceptable to the public and reflects poorly on the credibility of the party organization.



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After-hours parties at the conventions are numerous and wrought with special interest lobbying. For example, the Consumer Electronics Association, a lobbying organization with business pending before the House Commerce Committee, hosted a luncheon at the 2004 Republican convention to honor members of the House Commerce Committee. Media companies, seeking specific legislation from Congress, hosted a \$300,000 “Caribbean Beach Bash” at the 2004 Democratic convention in honor of then-Sen. John Breaux (D-La.), a leading advocate of broadcasting and cable interests over the years. Individual party-goers could pony up an additional \$20,000 for some one-on-one time with the honoree. Though Breaux was retiring, the media lobbyists sent a clear message to his colleagues who remain: We support our friends.³⁵

“They will use this as a relationship-building vehicle with committee chairs and others who have oversight over their business,” said Harry Clark, a veteran lobbyist, referring generally to corporations hosting parties at the conventions.

New congressional ethics rules adopted in 2007 place several constraints on this type of influence peddling at the conventions by lobbyists and lobbying organizations. The “Honest Leadership and Open Government Act” contains a sweeping set of lobbying laws and ethics rules enhancing disclosure of lobbying activity and regulating the behavior of lobbyists, lobbying organizations, members of Congress and their staff.

In regard to wining and dining at the conventions, members of Congress and their staffs must exercise prudence in determining which parties to attend and in what capacity. Lobbyists and lobbying organizations conceivably could be held liable for deliberately encouraging violations of the congressional ethics rules, but the burden of compliance to the rules remains predominantly on congressional members and staff. Possible penalties vary widely, depending on the nature of the infraction.

Foremost among these new ethical constraints is the ban on a member participating in an event at the convention honoring that member if it is hosted by a lobbyist or lobbying organization.³⁶

³⁵ Bill McConnell, “Party Animals,” *AllBusiness* (June 21, 2004).

³⁶ House Rule XXV(8); Senate Rule XXXV(5).



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This rule expressly prohibits members of Congress from attending any convention party thrown by a lobbyist or lobbying organization where a specific member or members are identified by name and title as the honoree (including as a “special guest”) as well as events honoring a group composed solely of members, such as a congressional committee or congressional caucus. Member participation also is prohibited if the member receives some special benefit or opportunity that would not be available to some or all of the other participants, such as if the sponsor were to offer the member an exclusive speaking role or a very prominent ceremonial role.

The prohibition does not apply to an event where a member is a featured speaker, as long as the speaking engagement is not exclusive to the member or billed as an event designed primarily to recognize the work of the member.

This is precisely how the Senate ethics committee has interpreted the rule, issuing guidelines to that effect. The House ethics committee, however, has issued erroneous guidelines on this matter, which are likely to cause confusion and possibly violations of the rule at the upcoming convention. In describing the nature of the rule, the House ethics committee has interpreted the ban on parties honoring a member as not applying to parties that honor groups of members in which no specific member is identified, such as congressional committees or caucuses.³⁷ The House ethics committee has also limited application of the rule to the formal dates of the convention itself, rather than the heavy party weekends immediately before and after the convention.

Both narrowing constructions by the House ethics committee are inappropriate and fail to honor the letter and spirit of the rule. The clear intent of the rule is to prohibit lobbyists from hosting parties honoring one, two or 100 members, either specifically or by committee or caucus name. The Consumer Electronics Association throwing a bash for the congressional committee that oversees its legislative interests is precisely the type of influence peddling that this rule is intended to curtail. Additionally, host committees publicize in their master lists parties that immediately precede and follow the formal

³⁷ House Ethics Manual, p. 78.



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convention dates, reflecting the fact that the influence-peddling soirees directly related to the conventions are not limited to the formal convention dates.

A convention-related party hosted by a lobbying organization that honors a member or multiple members of Congress is a violation of congressional ethics rules.

Congressional gift rules also prohibit members and staff from accepting gifts from lobbyists or lobbying organizations at the conventions, except under the following circumstances:

- **Reception** – Members and staff may attend a reception hosted by a lobbying organization, and accept food and refreshment of nominal value offered other than as part of a meal. This is known as the “toothpick rule.”
- **Widely attended event** – Members and staff may accept dinner, refreshments and entertainment at a widely attended event. An event is considered widely attended when at least 25 persons from outside Congress are expected to attend and several other conditions are met. The event must be open to members from a given industry or profession, or to a range of persons interested in an issue. The member’s attendance and participation should be related to official duties. Free attendance does not include entertainment collateral to the event, such as tickets to a sporting or some other purely recreational event, such as a concert. The exemption also does not cover food or refreshments that are not taken in a group setting with substantially all of the other attendees.
- **Charity event** – Members and staff may accept free attendance at a charity event, provided the primary purpose of the event is to raise funds for a legitimate charitable organization.
- **Campaign fundraiser** – Members and staff may accept free food, refreshments and entertainment in connection with any fundraising events sponsored by party organizations, campaign committees and other political organizations. Such fundraising events must comply with federal or state campaign finance limits and disclosure requirements.



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- **Convention event** – Members and staff may accept food, refreshments, entertainment or other gifts offered by the convention committees, party organizations and federal, state and local governments.

Because of the new rules, receptions will be the most common type of party hosted by lobbyists and lobbying organizations at the conventions. Many organizations will host events designed to be widely attended, but due to the many qualifications of what constitutes such an event, including that it must be pertinent to the lawmaker's official duties, these will not be nearly as common as receptions. Some lobbying organizations plan to feature purely recreational concerts (other than background entertainment at a reception), in which case members and staff should pay market value to attend. Congressional officials may only attend purely recreational events for free only if they are sponsored by the convention committees or governmental entities.

Enforcement of the new ethics rules is another problem. Neither the House ethics committee nor the Senate ethics committee seems intent on informing members and staff what is permissible at the conventions and what is not. Public Citizen and the Sunlight Foundation originally set up a bird-dogging campaign for the 2008 conventions to crash the soirees and identify which are in violation of the ethics rules. We were able to shut down only one soiree sponsored by a lobbying organization out of the hundreds that took place at both conventions.

Public Citizen and the Sunlight Foundation will be repeating this bird-dogging campaign for the 2012 conventions.

2012: Developments in Convention Financing

The year 2012 saw two major actions regarding funding of national party conventions. First, during the June debate during the reauthorization of the five-year federal agricultural allocation ("Agricultural Reform, Food, and Jobs Act of 2010" or Farm Bill), Sen. Tom Coburn (R-Okla.) proposed an amendment ending federal funding for conventions, beginning in the 2016 campaign season. The amendment passed on a 95-4 vote in the Senate but is pending final approval as the House and Senate work out the differences in the farm bill. If the Coburn amendment is finally approved, it will make the financing of the



party conventions entirely dependent on private special interest money, especially corporate funds.

Second, under Obama’s direction the Democratic party is making an effort to reduce the role of corporate and special interest money funding the Democratic convention. As part of the agreement with the host committee, direct corporate contributions to the convention are banned; lobbyist contributions are prohibited; and all other contributions are capped at \$100,000. At the time of the announcement, U.S. Rep. Debbie Wasserman-Schultz (D-Fla.), chairwoman of the Democratic National Committee, said, “We will make this the first convention in history that does not accept any funds from lobbyists, corporations or political action committee. This will be the first modern political convention funded by the grassroots, funded by the people.”³⁸

The constraints on special interest funding for the Democratic convention is expected to significantly reduce private funding for the Democratic convention – even given some of the loopholes in the policy. For example, while corporations cannot make direct contributions to the Democratic convention, they can provide in-kind products and services to the host committee to help finance the convention, which will be substantial. Furthermore, with the host committee struggling to make its contractual obligation of arranging \$37 million in additional private funds for the convention, the host committee has incorporated New American City Inc., a non-profit entity run by the convention host committee. New American City reportedly received funds from Bank of America, Wells Fargo, and Duke Energy, calling into question the value of the pledge against accepting direct corporate contributions.³⁹

Meanwhile, the Republicans have not imposed any such limits on the sources and amounts of special interest money to finance their convention.

C. Conclusion: Lobbyists Gone Wild

Corporations and their lobbyists see the national nominating conventions as ideal opportunities to buy access and influence with the presidential campaigns, lawmakers and

³⁸ “Democratic Convention Benefits from Corporate Cash,” Associated Press (July 21, 2012)

³⁹ Id.



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party leaders. The conventions constitute a campaign media blitz for the campaigns, and a golden opportunity for lobbyists to extend their lobbying activity off Capitol Hill.

The soft money loophole created by the FEC has derailed part of the original intent of the 1974 presidential public financing program: to remove the potentially corrupting corporate money (IT&T money, in particular) from the convention proceedings. Ironically, AT&T has been one of the leading funders of the party conventions, along with a plethora of other corporate interests with business pending before the federal government.

The FEC should reverse its previous rulings on corporate sponsorship of host committees and municipal funds. If the FEC will not step up to the plate, and there is no indication that it will do so, then Congress must close the loophole when it strengthens and updates the presidential public financing system.

Meanwhile, corporate lobbyists will be running wild, partying, schmoozing and lobbying at the national conventions. Though new ethics rules are forcing significant adjustments in the behavior of lobbyists and lobbying organizations at the conventions, and the Democratic party is making an effort to curtail special interest funding of its convention, private special interest money continues to dominate the financing of the conventions and there is still confusion and some disregard for the new ethics rules.

A few of the parties described on the host committee master lists suggest they may indeed be crossing the line. An AT&T-sponsored party at the Democratic national convention celebrating the Blue Dog Coalition appears to violate the letter of the ethics rules, despite the “green light” given by the House ethics committee in its guidance. The same can be said for an AT&T reception at the Republican national convention honoring the Republican Main Street Partnership, another congressional caucus. The Human Rights Campaign appears to be hosting a party in Denver to honor the Congressional Black Caucus, the Congressional Hispanic Caucus and the Asian Pacific Caucus in violation of the ban on lobbyists honoring members of Congress. And the Minnesota Agri-Growth Council is stepping very near the line in throwing a \$1 million widely attended bash in Minneapolis featuring the band Styx for entertainment.

It is imperative that members of Congress and their staff clearly understand the ethics rules and approach the party scene prudently – better yet, they should steer clear of lobbyist-



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funded events altogether. The House ethics committee needs to revisit its guidance and make it consistent with the new ethics rules. And the public and press must do their best to monitor the convention festivities to ensure compliance with the rules.

Craig Holman, Ph.D., Angela Canterbury and Zoe Bridges-Curry authored this report. Find this report online at www.SayNoToLobbyists.org.