

Funding the Presidential Nominating Conventions

How a Trickle of Money Turned into a Flood

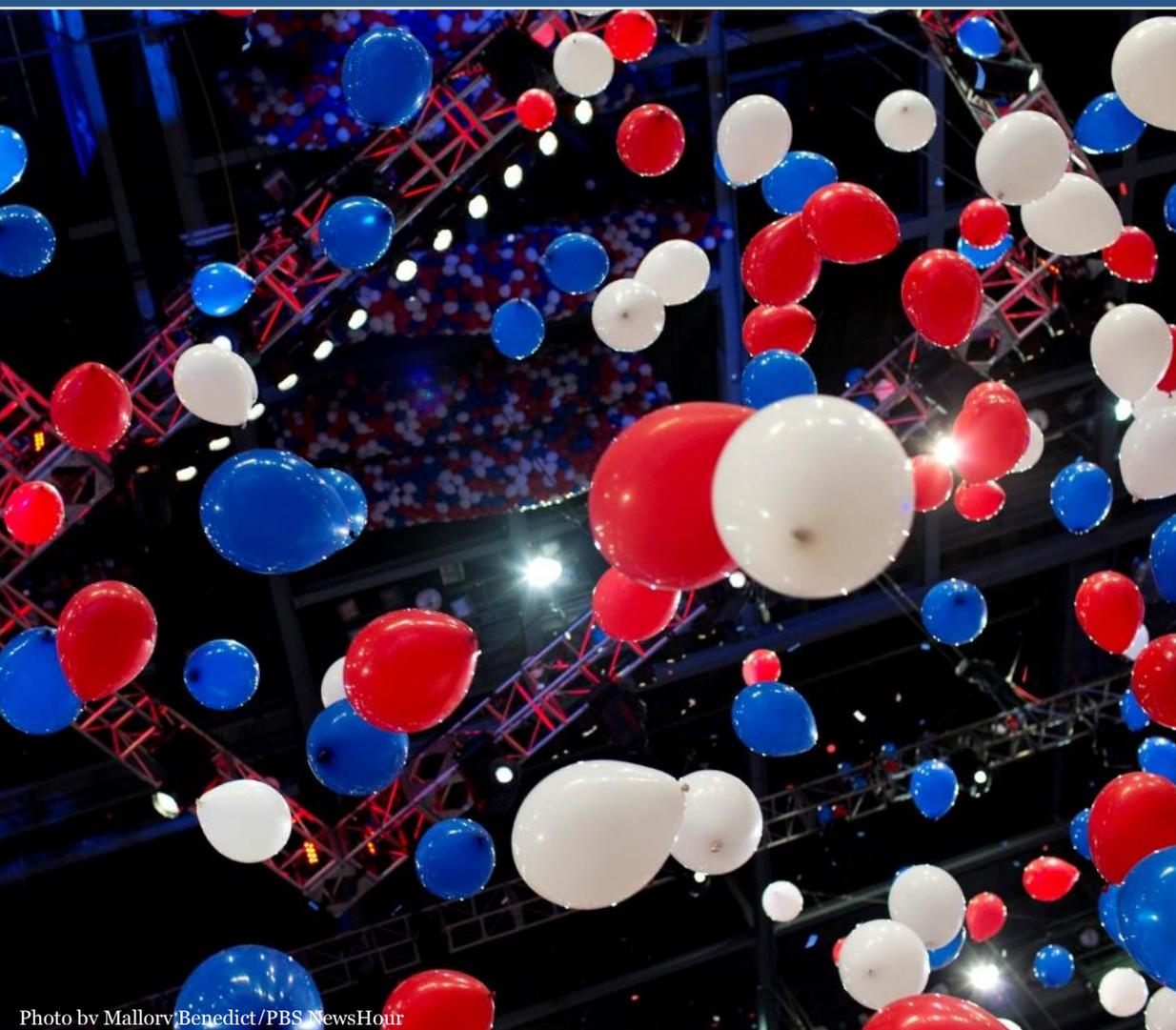


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Executive Summary

This presidential election, corporations have threatened to pull financial support for the national conventions due to controversy around the presumptive Republican nominee, Donald J. Trump.

But given the longstanding federal ban on corporate support for nominating conventions, how are corporations in the business of paying for our political conventions at all?

As happens every four years, the Democratic and Republican parties will hold their national political conventions this month to select their nominees for president and vice president and adopt a platform that reflects the principles and positions upon which the party is running. In 2016, the Republican Party will hold its nominating convention from July 18 to 21 in Cleveland, Ohio, and the Democratic Party will hold its convention in Philadelphia, Pennsylvania from July 25 to 28.

The 2016 primary process has already been inundated with accounts of wholesale evasion of the campaign finance laws, which were enacted to limit both the reality and appearance of corruption that stems from the power of wealthy interests in a democracy. Media reports have covered how candidates, political parties and deep-pocketed interests have evaded the contribution limits, the prohibition on corporate and labor contributions, and the disclosure requirements through a variety of schemes, such as candidates claiming they were not running for office as they campaigned around the country, and candidates working closely with supposedly “independent” super PACs whose only purpose was to support their campaigns.

What gets far less publicity is how corporate interests and wealthy individuals have been allowed to gain political access and influence by spending tens of millions of dollars to fund nominating conventions. This year, both parties expect to raise at least \$60 million each for their “host committees,” largely from

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corporate sources. In fact, corporate funding of the conventions has become so routine that the news this election cycle is that some corporations are withholding their support. A corporation *not* financially supporting political conventions is apparently a case of “man bites dog.”

According to press reports, some companies are refusing or limiting their financial support for the Republican convention because of Trump. On June 16, 2016, [Bloomberg Politics](#) reported,

A growing number of prominent U.S. corporations are opting to drop or scale back their sponsorship of the Republican national convention next month in Cleveland, as the nomination of Donald Trump promises a level of controversy rarely seen in such gatherings.

Among those to signal in recent days that they won't sponsor the convention this year are Wells Fargo & Co., United Parcel Service Inc., Motorola Solutions Inc., JPMorgan Chase & Co., Ford Motor Co., and Walgreens Boots Alliance Inc. All of those companies sponsored the previous Republican conclave, in Tampa, Florida, in 2012. ¹

Likewise, *Politico* has reported,

Apple has told Republican leaders it will not provide funding or other support for the party's 2016 presidential convention, as it's done in the past, citing Donald Trump's controversial comments about women, immigrants and minorities.

Unlike Facebook, Google and Microsoft, which have all said they will provide some support to the GOP event in Cleveland next month, Apple decided against donating technology or cash to the effort, according to two sources familiar with the iPhone maker's plans. ²

What is so remarkable about this is that a presidential nominating convention is a federal election under the Federal Election Campaign Act of 1971, as amended (FECA), ³ which prohibits corporate and labor union contributions to federal candidates, political parties and the nominating conventions.⁴ In light of this, it seems only fair to ask a couple of questions:

- If corporations are prohibited from making contributions to support the nominating conventions, why were they making contributions that they are now in a position to withhold?
- How is a corporation's decision to withhold support of a convention because of the perceived controversial positions taken by a candidate consistent with the customary assertion that support for the conventions is based on the desire to help the hosting city, support the democratic process and promote the company, and not as part of an effort to influence a political party?

This white paper will explain how and why the laws on convention funding depart so radically from the reality of convention funding. It will further examine how the ban on corporate support for the conventions has been eroded to the point that the national conventions have become a major avenue for corporations to provide financial support to the political parties, allowing corporations to decide when to give and withhold their support based on whether they find the candidates acceptable.

I. Fishing for Influence in a Stocked Pond

When a popular incumbent is seeking reelection, or the primaries and caucuses produce a clear winner who faces no real opposition, a convention often seems like a theatrical production used to introduce the candidate to the nation, rather than an election. But nominating conventions can also be the forum for a hotly contested battle over who will be the party's nominee. Regardless of whether the convention is a coronation or a contest, at the end of the day, the goal is for delegates to officially vote on who will be the party's nominee, formally introduce the candidate, give him or her the opportunity to present a vision and agenda for the nation, and then kick off the general election campaign with pomp and circumstance and at least the appearance of a unified party's support.

While the specific rules and practices governing nomination differ by party, both parties nominate their presidential candidate based on a vote of delegates selected through state caucuses or primaries or, in some cases, designated by virtue of being a member of the House or Senate, a governor, or holding some other specified current or former position within the party. For example, the at-large Republican delegates from Wisconsin for 2016 are also the most powerful elected officials in the state, including Governor Scott Walker, Attorney General Brad Schimel and Assembly Speaker Robin Vos.⁵

What all of this means is that, as a practical matter, the conventions are likely a political party's single largest public gathering of local, state and federal elected officials and party leaders. This makes the conventions not only the place for party business to be conducted and a nominee for president to be selected, but also the place to be for corporations, lobbyists, special interests and others wanting to make friends with, and influence, present and future elected leaders at all levels of government. And making friends and influencing elected leaders is always easier when a corporation has demonstrated a willingness to bankroll what is, in effect, a political party's party.

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This potential for "one-stop shopping" for a corporation looking to build a relationship with and influence federal, state and local political leaders, as well as the opportunity to show loyalty to the party, have long made the conventions a prime place for companies to spread their wealth. The conventions are stocked ponds for anyone fishing for influence.

II. Funding of the National Nominating Conventions

A. Limitations, Prohibitions and Public Funding

In order to understand the significance of how the presidential nominating conventions are funded, it is important to put the laws regulating that funding in historical context.

The concentrations of wealth that followed post-Civil War industrial expansion gave rise to a “popular feeling that aggregated capital unduly influenced politics, an influence not stopping short of corruption.”⁶ Responding to these growing concerns, the first item of congressional business President Theodore Roosevelt listed in his 1906 annual message was a law prohibiting political contributions by corporations.⁷ The following year, the first federal prohibition on corporate contributions to influence federal elections was enacted.⁸ That law, however, was limited in scope and it wasn’t until after World War II that the prohibition was broadened to, among other things, cover presidential nominating conventions. Specifically, the Taft-Hartley Act of 1947 added a provision expressly providing that it was unlawful for “any corporation whatever, or any labor organization to make a contribution or expenditure ... in connection with any primary election or political convention or caucus.”⁹

Ten years later, in *United States v. International Union UAW*,¹⁰ Supreme Court Justice Felix Frankfurter described the concerns that gave rise to the prohibition on corporate and labor union spending to influence elections. “Speaking broadly, what is involved here is the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process. This case thus raises issues not less than basic to a democratic society.”¹¹

Today, the Federal Election Campaign Act of 1971, as amended (FECA),¹² which incorporates the later enacted Bipartisan Campaign Reform Act of 2002 (BCRA), defines an “election” as including “a convention or caucus of a political party which has authority to nominate a candidate.”¹³ In addition, the prohibition on corporations and labor unions making contributions or expenditures “in connection with” any federal election expressly includes a political convention held to select candidates for any federal office¹⁴ or a party nominating convention.¹⁵

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years because there continues to be evidence that these donations are made to buy access and favor, and therefore present a danger of real and apparent corruption. This was made exceptionally clear during the 1972 Republican National Convention.

President Nixon wanted the Republican convention that year held in San Diego, since the GOP-friendly locale was less likely to result in the demonstrations that disrupted the Democratic convention four years earlier.¹⁶ In order to convince a reluctant San Diego city government to host the convention, press reports later revealed, White House and GOP officials secretly arranged a \$400,000 pledge (roughly \$2 million today) from International Telephone and Telegraph (ITT) to fund the event.¹⁷

At the time, the company was facing an antitrust suit by Nixon's Department of Justice, and also needed DOJ approval for its proposed merger with Hartford Fire Insurance. Eight days after the RNC announced it was holding the convention in San Diego, the DOJ dropped its antitrust suit against ITT.¹⁸ While that raised some eyebrows at the time, there was no "smoking gun" to prove a link between the convention donations and the DOJ dropping the suit. A few months later, however, columnist Jack Anderson found the smoking gun: an interoffice memo written by ITT lobbyist Dita Beard connecting ITT's \$400,000 convention donation to the antitrust settlement.¹⁹ The memo ended with "please destroy this" – a request that obviously was not fulfilled.²⁰

Amidst public controversy over the memo, ITT announced it was scaling back its donation to \$25,000 and Nixon asked the RNC to move the convention from San Diego to Miami to avoid further scandal.²¹

In June 1974, the Senate Select Committee on Presidential Campaign Activities (the Watergate Committee) issued its final report on the campaign activities related to the 1972 presidential election, including the Republican convention.²² Among the report's recommendations was that legislation be enacted to strengthen the regulation of the financing of political campaign activities and contributions.²³ In 1974, Congress amended FECA to impose limitations on expenses and contributions, require regular reporting by election committees and establish a means for public financing of presidential nominating conventions, as well as the primary and general elections.²⁴ Under this system, a major party was "entitled to payments ... with respect to any presidential nominating convention."²⁵

Originally set at \$4 million for each convention, the amount was subject to an automatic cost of living adjustment so that in 2012 – the last year convention public funding was available – each national party committee received \$18.2 million in federal funds for its convention.²⁶ In return, the party committee had to agree to not spend more than it received in federal funds, which meant that *it could not raise or spend private funds for the convention.*²⁷

Keeping private money out of the conventions was literally the presidential public funding program's top priority: the public financing system was structured to guarantee that, in case of a shortfall in funds, the

conventions would be funded first, the presidential general elections second, and the presidential primaries last.²⁸ In addition, since 2004, Congress has appropriated \$100 million for the Democratic and Republican presidential nominating conventions' security, which is administered through the Department of Justice.

In 1976, in *Buckley v. Valeo*, the Supreme Court upheld the constitutionality of the presidential public funding system, including the public funding of the conventions.²⁹ “It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest.”³⁰ And when specifically addressing the funding of the nominating conventions, the Court said, “Funding of party conventions has increasingly been derived from large private contributions, and the governmental interest in eliminating this reliance is as vital as in the case of private contributions to individual candidates.”³¹

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B. The Private Funding of the Conventions

The congressional effort to allow for complete public funding of the conventions worked, at least at first. However, private money quickly began to seep into the funding of the conventions, and eventually swamped the system.

How did this happen? As with many of the campaign finance problems we face, the FEC — at the political parties' request — began to exempt certain forms of convention support from the definitions of “contribution” and “expenditure,” allowing the parties to use money raised outside of FECA's contribution limits and prohibitions (such as the prohibition on corporate money). This was done through the three entities used to support the nominating conventions: the political party's convention committee, a host committee and a municipal fund.

1. Convention Committees

The “convention committee” is the “official” entity, controlled by a political party, that is supposed to be responsible for the party convention's actual costs. Corporations have been prohibited from financially supporting the conventions since 1947. To further insulate elections from the influence of corporate and wealthy individuals, starting in 1976, congress provided the political parties with public funds in return for their agreement to not use *any* private money to pay for the conventions.³² In 2002, BCRA added suspenders to the belt and prohibited the national party committees from accepting “soft money” —

money outside the contribution limits and prohibitions of FECA — for virtually any purpose.³³ So, even after the public funding was eliminated in 2014, the broad prohibition on the political parties soliciting or accepting corporate funds remained intact.

However, starting in 1979, the FEC’s regulations recognized certain exceptions to the ban on private funding and support for “publicly funded conventions.” For example, the FEC permitted retail businesses to give “normal discounts to a national committee with respect to the convention.”³⁴ Such discounts had to be in the “ordinary course of business” and “in accordance with standard practice based on the quantity of similar goods or services sold or provided in similar transactions.”³⁵ The rationale made a certain amount of sense. If a business gives its non-political customers a discount when they purchase a certain amount of goods or services, it is not really providing a contribution to give the convention committee the same discount. However, as will be seen, the FEC’s concept of “ordinary course of business” began to incorporate a lot of flexibility, and eventually encompassed the idea of corporations giving free support in return for the amorphous “promotional” benefit the business would receive from being associated with the convention.

2. Municipal Funds and Host Committees

While a convention committee is part of the political party and has as its purpose the financing of the nomination of the party’s presidential candidate, the two other accounts that support the conventions, municipal funds and host committees, were originally supposed to be controlled by local elected officials or business leaders and, at least in theory, are supposed to serve totally different purposes.

A municipal fund is “any fund or account of a government agency, municipality, or municipal corporation *whose principal purpose is the encouragement of commerce in the municipality* and whose receipt and use of funds is subject to the control of officials of the State or local government,”³⁶ while a “host committee” is defined as a non-profit “local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau” that has as its “*principal purpose...the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees.*”³⁷

In other words, the purpose of municipal funds and host committees was for cities to entice a party to hold the convention in the city and promote local commerce — not for parties to raise corporate funds for their conventions. Because host committees and municipal funds had such a narrow purpose, there were no limits on contributions to these funds, including any prohibition on corporate and union contributions.

When the FEC enacted rules in 1979 to implement the new convention public financing law, it allowed municipal funds to contract with the convention committee to provide conventions “certain facilities and services as part of an overall package to attract the convention to that city.”³⁸ The idea was that a city

hosting (or hoping to attract) a convention could pay the costs for such things as upgrading the arena or convention center where the event would be held, and ensuring that the city's transportation infrastructure could handle the influx of convention visitors. The FEC reasoned that Congress had failed to take these costs into account when establishing expenditure limitations, so it wouldn't be fair to count those expenses against the convention committee's expenditure limit. However, "in order to prevent the government agency from acting as a conduit for prohibited contributions," municipal funds had to obtain the goods or services it provided the conventions at fair market value or subject to discounts made in the ordinary course of business.³⁹

Likewise, the FEC's original regulations allowing the use of host committees identified just two types of expenditures that the host committees could lawfully make in connection with the conventions: 1) "those aimed at promoting the city and its commerce," and 2) "those for the purpose of defraying convention expenses."⁴⁰ The funds used by the host committee to promote "the city and its commerce" were not limited in size and could come from individuals, local businesses, local government agencies and union locals.⁴¹

However, a host committee was more limited when it came to raising funds to defray convention expenses. Only local retail businesses⁴² could donate, and only to the extent that "these donations [were] limited to an amount proportionate to the commercial return reasonably expected during the life of the convention by the particular business."⁴³ In the 1979 Explanation & Justification for its host committee regulations, the FEC assured the public:

The restrictions concerning who may donate funds to defray convention expenses and the amounts which may be donated are necessary to ensure that such donations are commercially, rather than politically motivated Defrayal of convention expenses by a host committee is *intended to be a very narrow exception* to the statutory limitation on convention expenses.⁴⁴

Thus, it is clear that this "very narrow exception" allowing host committees and municipal funds to use money not subject to the contribution limits and corporate prohibitions was only intended for the purposes of promoting the city as the site for the presidential nominating convention and boosting local businesses. Arguably, this was no different than what local leaders routinely have done to entice any other convention to the city, whether it is the annual meeting of a trade association like the American Association of Orthodontists, or a trade show like the World Agriculture Expo. The exception rested on the assumption that local businesses were spending funds for their own commercial purposes – just as they would for any other convention – rather than to curry political favor with elected officials.

Under these rules and assumptions, in 1980 the FEC said that local businesses could provide free samples and promotional items for attendees, such as canvas tote bags with the business logo printed on the inside

of the bag, concluding that “the bags are being provided solely for bona fide advertising purposes of a local business.”⁴⁵ That same year, the FEC allowed the New York Yankees to donate baseball tickets to the host committee because the tickets would “assist the host committee in welcoming convention delegates to New York.”⁴⁶

But, as with many “limited exemptions” created by the FEC, the exemption soon began to swallow the rule.

C. A Trickle of Private Money Turns into a Flood

Not surprisingly, since the political parties could not use private funds for the conventions, it was in their interest to offload as many of the convention expenses as possible to the host committees and municipal funds. In turn, how much help the host committees and municipal funds could provide was directly related to how much money they could collect. And the FEC was willing to help increase the money flow.

In 1982, a majority of FEC commissioners decided there was no requirement that municipal fund expenditures for the convention be made from a city’s tax revenues, and authorized the City of Dallas to raise private and corporate dollars to offset the costs of preparing the city’s convention center and providing security for the GOP convention.⁴⁷

Writing in dissent, Commissioner Thomas Harris quoted a March 27, 1982 *Dallas Times Herald* story warning that “[t]he 1984 Republican National Convention may be brought to you courtesy of folks like Neiman-Marcus, Dr. Pepper, and Texas Instruments, if city officials get their wish.”⁴⁸

Commissioner Harris went on to explain:

By permitting corporations or unions to donate unlimited amounts of money to fund political conventions, the Commission is ignoring one of the clear concerns of [the longstanding corporate contribution ban] - that is, the fear of the influence of aggregated wealth on the political process. The fact that the donations in this case are to be funneled through a ‘Convention Fund’ does not alleviate the problem.⁴⁹

In retrospect, Harris’ dissent was prophetic. With each nominating convention, the “very narrow exception” was incrementally widened.

For example, even though banks are prohibited from spending on conventions, in 1995 the FEC allowed the San Diego host committee to accept unlimited funds from a bank’s holding company, based on the justification that “the funds would be used to promote the city of San Diego” and offset the city’s costs of hosting the GOP convention.⁵⁰ Relying on that opinion, a few months later the FEC gave permission to the Chicago host committee to accept financial contributions and in-kind computer donations from an array

of entities — a holding company that owns a bank, a subsidiary company that is owned by a bank, and a company owned by a company that owns a bank — for the Democratic convention, again with the dubious assumption that “the funds would be used to promote the city of Chicago.”⁵¹

Both parties and corporate interests also created loopholes for corporations to donate free or discounted equipment and services to the conventions. Figuring out ways to collect such in-kind contributions became an integral part of convention planning. Since, as noted, corporate support of the convention committees was supposed to be for the purpose of promoting local businesses, any exemption allowing corporate support of the convention through the provision of products or services was supposed to be limited to local businesses. However, in 1988 the FEC allowed General Motors to loan fleets of vehicles to both party’s conventions, letting the company get around the “local business” requirement by selling the cars to local dealers and declaring that the donations were more akin to advertising than political contributions.⁵² The FEC predicated its decision in part on the “obvious commercial benefit” from making the donation, and “the assumption that such commercial benefit is not outweighed by the value provided.” Interestingly, the FEC based its assumption on “the unique promotional versus political opportunities that a national nominating convention presents.”⁵³ This suggests that the FEC had determined that it would no longer need to protect the public from the possible political influences arising from corporate support for the conventions because it had determined that the very political nature of the conventions ensured that the businesses would receive “unique” promotional opportunities.

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As it turned out, some corporations donating to the conventions were more honest than the FEC, and admitted that their largesse had more to do with promoting their interests with elected officials than promoting their products to the public. For example, a few years after the FEC gave GM the greenlight to lend cars to both parties, the company admitted to the *Boston Globe* that the convention’s “promotional opportunities” involved their political priorities, not their products:

“GM is the largest company in the world and, frankly, we’re involved in almost every environmental and energy and safety issue you can think of,” said William Noack, a spokesman for General Motors, about the company’s spending on the conventions. “We have relationships in both parties, and that’s why we’re completely bipartisan. But we have to represent our interests, and this gives us an opportunity for relationship building.”⁵⁴

What was good for GM may not have been good for the rest of the country – but the precedent it convinced the FEC to set in 1988 was good for many other businesses. In the years to come, the FEC continued to accept as dogma the fiction that corporate donations “to host committees and municipal funds are motivated by legitimate commercial considerations or by civic pride, not by political considerations.”

D. FEC Fails to Stem the Flow of Private Money

The FEC’s steady erosion of the prohibition on corporate funding of the national nominating conventions took place through two avenues.

One was the FEC’s advisory opinion process, where party committees sought (and often received) prior approval between conventions for new sources of funding. The other was the audit process, where the FEC reviewed convention spending after the event was held.

Because the conventions were publicly financed through the 2012 election, the FEC was required to audit the convention activities to ensure that the convention committees abided by the expenditure limits, did not use impermissible funds, and only used public funds for permissible purposes.⁵⁵ These audits frequently resulted in the FEC approving increased outside funding of the conventions after the fact, which meant that a new baseline was set for the next convention, where the expansion of the exemptions would continue.

Public documents relating to the convention audits show that each election cycle, without fail, the party committees push the legal envelope and have more and more convention activity paid for by the host committees and municipal funds, and seek ever more direct donations of services and equipment from corporations.⁵⁶ And the commissioners, in many cases, allow them to get away with it – paving the way for the

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parties to stretch the loopholes even wider in the next convention cycle. What follows are a few examples of the ways in which the FEC has allowed corporate support of the conventions to increase:

- The Democratic National Convention Committee received over \$12 million dollars in federal funds to pay for the 1996 Democratic Convention in Chicago. The Chicago Host Committee, funded by corporations and unions, spent an additional \$21 million. During the audit of the Convention Committee, the FEC rejected its staff recommendation and found that it was permissible for the Chicago Host Committee and the City of Chicago to use corporate and other funds to pay \$726,000 of the convention committee’s telephone charges.⁵⁷ Among the other expenditures the FEC allowed the Host Committee and City to pay were almost \$1.5

million to vendors “for services such as providing a public address system, constructing camera platforms and lighting, providing stagehands, riggers, projectionists, electricians, teamsters, etc.”⁵⁸ The FEC also approved AT&T providing an “electronic voting system” valued at \$150,000, and a “credentials management system” contributed by the Polaroid Corporation valued at \$15,000.⁵⁹

- The Republican National Committee and its 1996 Committee on Arrangements for the Republican National Committee (“convention committee”) also received over \$12 million in public funds to pay for the 1996 Republican convention in San Diego, California. The San Diego Host Committee spent an additional \$23 million it had received from corporate and other sources. After the mandated audit, FEC staff determined that the San Diego host committee made impermissible in-kind contributions of almost \$900,000 by paying a vendor for a portion of the services the vendor was providing the convention committee related to such things as television production, computer generated graphics projected onto television screens, still photographs, lighting, rigging, staging and crew. In other words, the FEC staff said that the host committee was using impermissible corporate funds to offset the costs of the convention – rather than to promote the city or its commerce. But upon review, the FEC commissioners determined that almost \$400,000 of that amount was for permissible host committee expenditures.⁶⁰
- The Los Angeles host committee for the 2000 Democratic convention accepted a \$15,000 contribution from the pharmaceutical company GlaxoWellcome. The check was imprinted with a North Carolina address. The FEC’s audit staff could not find any listing for the company within the Los Angeles metropolitan area. Nevertheless, based on the company’s representation that a district sales manager worked out of his home office in Pasadena, California, the FEC determined that GlaxoWellcome was a local business.⁶¹

III. Congress Bans Corporate and Labor Contributions to the National Party Committees; The FEC Responds by Removing Restrictions on Corporate and Labor Convention Funding

The FEC’s creation of loopholes for convention spending throughout the 1980s and 1990s was part of the agency’s larger problem of allowing the national political parties to raise and spend “soft money” (i.e., money not subject to FECA’s contribution limits and the law’s prohibitions on corporate and labor union contributions) for all federal elections.

Prior to 2002, the national political parties were only supposed to use soft money for state and local elections and certain party-building activities. Soft money was not supposed to be used for federal elections, which includes conventions.

In 2002, after years of FEC acquiescence allowed soft money to seep into federal elections and following major scandals in the 2000 election, Congress enacted BCRA, which was intended, in large part, to

prohibit the national party committees from soliciting, accepting or using soft-money contributions.⁶² While the national party committee conventions were publicly funded and were not supposed to be utilizing any private funds even before BCRA, that law plugged most of the soft-money loopholes the parties had been using for most federal election activity. So when the FEC enacted rules to implement BCRA, it had to incorporate the law's new ban on corporate and labor contributions into its rules on the funding of conventions.

One might have thought that the FEC would respond to this clear congressional effort to put an end to soft money by closing the soft money loopholes it had created for the conventions – such as the loopholes allowing corporate and labor money to flow into the conventions through host committees and municipal funds. At a minimum, one might have thought the FEC would dial back the precedent established in the GM opinion that stretched the limits of what defines a “local business” that can donate. One would be wrong.

When the FEC conducted its 2003 rulemaking to implement BCRA, it went in the other direction and repealed the locality requirement altogether, declaring that “businesses, labor organizations, other organizations, and individuals are permitted to donate funds or make in-kind donations to host committees and municipal funds, regardless of their geographic locations.”⁶³ A corporation no longer needed to pretend to have local connections in order to bankroll the convention. To justify this, the FEC had to rewrite its own history and ignore reality, something the agency has become adept at doing.

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As noted earlier, when the FEC first created the “very narrow exception” allowing corporations to defray convention expenses in 1979, the agency insisted that the *local business* requirement would “ensure that such donations are commercially, rather than politically motivated.”⁶⁴

However, in 2003, despite years of evidence showing that corporate donations to the host committees were used to buy influence and “build relationships” with our elected officials – if not outright buy favorable treatment – the FEC claimed that it “has consistently maintained that donations of funds to host committees are, as a matter of law, distinct from other donations by prohibited sources in that they are motivated by a desire to promote the convention city and hence are not subject to the absolute ban on corporate contributions...”⁶⁵

Because of this, the FEC said, it was “persuaded that [the local business] restriction no longer serves a meaningful purpose because the disbursements that host committees and municipal funds are permitted

to make are consistent with the narrow purpose of promoting commerce in, and the suitability of, the convention city.”⁶⁶

The twisted logic of the rationale for eliminating the local business rule was perversely impressive. The FEC found that the local business limitation was no longer needed because it had previously decided “as a matter of law” that donations to host committees were intended to promote the convention city. But what the FEC omitted was that it had “consistently maintained that donations of funds to host committees” could be presumed to be “motivated by a desire to promote the convention city” *because they were from local businesses*.

IV. How Congress Made it Easier for the Average American Billionaire to Support a Political Convention

Between 1980 and 2012, the FEC’s increasingly laissez-faire attitude towards the corporate funding of the conventions, and Congress’ refusal to adequately fund the public financing program, eventually allowed private funds to overwhelm the public funding. According to a Congressional Research Service report published in 2014,

The Campaign Finance Institute has estimated that more than 75 [percent] of money related to the 2004 Democratic and Republican conventions came from private sources. The 2008 conventions also appear to have been heavily subsidized, albeit indirectly, by nonfederal funds. In August 2008, CFI and the Center for Responsive Politics estimated that 80 [percent] of funds for the 2008 Democratic and Republican conventions would come from private (nonfederal) sources. Similar estimates for 2012 appear to be unavailable, but it is clear that substantial private fundraising surrounding conventions – albeit not for the convention committees themselves – remains steady. For 2012, the Charlotte “host committee” for the Democratic National Convention reported raising a total of \$37.5 million, compared with \$57.1 million for the Tampa Republican host committee.⁶⁷

The record made clear that what had been intended as full public funding had become a mere subsidy for privately-funded nominating conventions.

In light of the longstanding concern over the potential for corruption arising from the private financing of conventions – not to mention the absurdity of giving corporations a tax break for their convention spending – the logical reaction from Congress would have been to require the FEC to close the numerous loopholes it had opened over the years that allowed corporations, unions and wealthy individuals to pour almost unlimited funds into the conventions.

Instead, on April 3, 2014, President Obama signed into law legislation that eliminated public funding of presidential nominating conventions altogether.⁶⁸ This meant that the national party committees could officially use the money they raised from individuals and PACs to fund the conventions. At that time, the limit on what an individual could contribute to a national party committee was \$32,400 per year (\$33,400 per year for 2015 and 2016), while PACs could contribute \$15,000 per year.⁶⁹ Then, in October 2014, the FEC by a 4-2 vote granted a request by the Democratic and Republican National Party Committees that they be allowed to establish a new account, subject to its own contribution limits, to raise funds for the nominating convention.⁷⁰ This allowed individuals to give an additional \$33,400 (and a PAC to give an additional \$15,000) per year to each national party committee's convention account.⁷¹

About a month later, Republicans and Democrats in Congress quietly slipped a provision into the massive spending bill that funded the whole government (commonly referred to as "Cromnibus") allowing a donor to write \$100,200 checks annually to each of three new party committee accounts to support conventions, buildings, and recounts or other legal matters.⁷²

Applied to the conventions, if the FEC's creation of a new \$33,400 annual limit for a convention account is in addition to the new \$100,200 annual limit for the "Cromnibus" convention account, an individual will be able to contribute over a half a million dollars directly to a party for its convention over the four years between each convention.⁷³ (However, BCRA still prohibits the national party committees from accepting corporate or labor contributions.)⁷⁴

Yet even as Congress and the FEC increased the amounts that wealthy individuals could contribute to parties for their conventions, it did nothing to limit or restrain the amounts that corporations and unions could spend on the conventions through "charitable contributions" to host committees and municipal funds and by supplying services and resources. So, the reality is that corporate funding of the conventions can continue, while wealthy individuals will also be able to greatly increase their own support.

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Notably, even after the elimination of the public financing program, the conventions still receive a large volume of taxpayer dollars. Taxpayers are continuing to subsidize corporate contributions by allowing companies to take a charitable deduction for donating to host committees. And, even though one of the original purposes of host committees was to allow cities to cover the potentially significant costs of convention security, Congress began appropriating federal funds for convention security following the 2001 terrorist attacks. Since the 2004 conventions, Congress has appropriated \$100 million each cycle to

cover both conventions' security costs – obviating one of the reasons that the FEC allowed host committees to raise corporate funds in the first place.⁷⁵

V. Funding the 2016 Nominating Conventions: Corporate Funding of Elections is Not Good for Democracy or Business

It is not difficult to see that corporations fund party nominating conventions for reasons other than supporting democratic institutions or for the supposedly “unique promotional opportunities” the conventions provide. Indeed, the corporations providing financial support for the party conventions usually prefer to do it quietly. Although companies might boast about how they are an “official sponsor of the Olympic games,” how often do you see commercials that proudly announce a company is an “official sponsor of the Democratic and Republican conventions?”

What's more, host committees and municipal funds are not required to disclose the names of donors until 60 days after the end of the convention, long after press and public interest has waned.⁷⁶ This year, neither party is releasing its donor list before the deadline.⁷⁷ The Host Committee for the Democratic convention in Philadelphia has refused demands by the city's mayor and civic groups to say who is paying for the event, with one top fundraiser declaring “I don't see the public interest in knowing who the donors are.”⁷⁸ The fact that host committee funding is shrouded in secrecy further undermines the notion that corporations donate for “promotional” or “commercial” purposes.

When the lists of corporate convention donors are released, the political purposes for their donations often become clear. In many instances, some of the biggest convention sponsors are those companies with pressing issues before the federal government. For example:

- In 2004, while the pharmaceutical industry was fighting to defeat proposals to give U.S. patients access to cheaper drugs from Canada, it spent large amounts of money on that year's Republican and Democratic conventions.⁷⁹ “For the pharmaceutical industry, the convention offers a chance to build good will with a relatively modest investment compared with the cost of lobbying in Washington,” the *Associated Press* reported in 2004.⁸⁰ Pharmaceutical companies were among the top donors to the Democratic convention, as the Canadian drug importation proposal was pending in Congress.⁸¹ Sen. Ted Kennedy was one of the top fundraisers for the Democratic convention in 2004, and at the time also was the ranking member of the senate committee that oversees healthcare – and he personally solicited the pharmaceutical companies for their donations.⁸² “It is important that we decisively convey our side of the story,” a spokesperson for the industry's trade association, the Pharmaceutical Research & Manufacturers of America (PhRMA), said of its spending on the conventions.⁸³ “We need to emphasize that there are real safety risks associated with importation.”⁸⁴

- Four years later, in 2008, the Republican and Democratic conventions gathered as the global financial crisis was beginning to snowball, threatening to take down several U.S. banks and the auto industry. And the biggest funders for both conventions would go on to receive billions in federal bailouts. Financial institutions that received bailout money gave around \$6 million to the party conventions in 2008, according to a Center for Public Integrity analysis, donating \$3.4 million to Republicans and \$2.6 million to Democrats.⁸⁵ American International Group (AIG) gave \$1.5 million, split evenly between the Democratic and Republican conventions — and as AIG teetered on collapse a few months later, it eventually received a \$71 billion taxpayer bailout.⁸⁶ Mortgage buyer Freddie Mac gave \$500,000, half to each party, and three days after the Republican convention concluded, the government took it over and ultimately spent \$70 billion bailing out the institution.⁸⁷
- In 2008, a foundation controlled by billionaire investor Kirk Kerkorian gave \$2 million to the Republican convention (making it the fourth biggest donor) and \$1.5 million to the Democratic convention (making it the second-highest donor).⁸⁸ At the time, Kerkorian’s holding company was the largest private shareholder in Ford Motor Company, and his stock had lost half its value following the global economic crisis — and he stood to profit if the government bailed out the company (which ultimately didn’t happen, and he sold his stock at a loss).⁸⁹ Also in 2008, questions were raised about million-dollar-plus donations to the Democratic convention from telecom companies like AT&T, Comcast, and Motorola just weeks after Democrats in Congress granted those companies immunity for their involvement in the Bush Administration’s domestic spying program.⁹⁰ AT&T, for example, was the official wireless sponsor of the convention and had its logo featured on the tote bags given to convention attendees.⁹¹

Even when there isn’t an obvious connection between a single convention donation and specific pending legislative activity, many corporations are still donating for political reasons. The purpose of convention funding is access and influence, which is a game played over the long term – the job of corporate lobbyists, after all, is to develop and maintain relationships with officials, and then translate that access into influence when the time is right. As GM’s William Noack was quoted as saying, “We have relationships in both parties, and that’s why we’re completely bipartisan. But we have to represent our interests, and [the convention] gives us an opportunity for relationship building.”

The opportunity for corporate “relationship building” at the conventions is sometimes made explicit. The host committee for the Democratic convention offers tiered VIP packages to big donors giving between \$25,000 and \$1 million, with those contributions buying admission to exclusive events, parties, and “policy forums,” where elected officials will presumably be present.⁹² The Texas Republican Party offers donors who give \$50,000 the “[e]xclusive

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opportunity to host the Texas delegation and elected officials for a welcome reception,” as well as guest passes to “morning breakfast receptions with members of Texas’s Congressional district, Statewide elected officials and legislators.”⁹³

And, because host committees are 501(c)(3) “charities,” corporations are getting a charitable tax deduction for this “relationship building.” Convention donations should be treated as political contributions -- notwithstanding the FEC’s arbitrary exemption for convention funding funneled through host committees. This means that taxpayers are effectively subsidizing corporate political contributions.

Given that corporate host committee donations are designed to buy access and influence, it is little surprise that the host committees themselves are often stacked with lobbyists.

For example, the 2016 Democratic National Convention Host Committee’s finance chair, Daniel Hilferty, is also on the board of America’s Health Insurance Plan’s (AHIP), the insurance lobbying group that led the campaign against the Affordable Care Act, which many believe is the top legislative achievement of the current Democratic president.⁹⁴ The Host Committee’s co-chair, Allyson Schwartz, is head of a health insurance lobby group pushing to expand the Medicare Advantage plans that were curtailed by the ACA.⁹⁵ Host Committee special advisor David Cohen is a top lobbyist for Comcast and helped lead the fight against the Democratic administration’s net neutrality policies last year.⁹⁶

These facts demonstrate why it was a mistake to end the *public funding* of the conventions, while leaving alone the *corporate funding*. No one has shown or even suggested any change in the motives and practices of corporations that would undermine the seventy-year-old rationale for banning corporate funding of conventions. In fact, recent events show how political motives and business purposes are intertwined and why the “business promotion” rationale for allowing corporations to fund the conventions was never a protection against corporations using their support for political influence.

As already noted, corporations, including Apple, have announced that they will not be supporting the Republican convention this year – presumably because of the candidacy of Donald Trump. Regardless of what one thinks of Mr. Trump as the Republican nominee for president, there is no question that he is a controversial candidate who has made statements and proposed policies that have offended many people and drawn serious opposition, even within his own party. Therefore, companies who are pulling out of the funding of the Republican convention can argue that they are doing so to avoid becoming publicly associated with Mr. Trump’s positions and hurting their business. If so, the argument could be made that this is proof that corporations fund the conventions to promote the company’s brand and increase business, and not for political purposes.

But, it’s not that simple. It is the company that is deciding which position on an issue is controversial or objectionable. Apple, along with many of the other companies who are pulling out of the convention, has a

financial interest in this country's immigration, trade, corporate tax, and high-tech security policies, all of which may be impacted by Mr. Trump's proposals.

Exactly which of Mr. Trump's statements and policies have triggered this withdrawal of support? Will these companies change their minds if Mr. Trump retracts some of his "offensive" statements and modifies some of his "objectionable" policies?

For example, would proposals to dramatically raise tariffs on electronic devices made in China and to prohibit skilled foreign software engineers from getting work visas in the U.S., offered without explicit references to race or religion, be enough to justify a company declining to financially support the convention?

Most importantly, doesn't this withdrawal of financial support send a message to candidates and parties to stay away from positions and statements that a company defines as objectionable?

Isn't that the definition of a company using its financial support to influence elections?

As the FEC said in 1979, "[t]he restrictions concerning who may donate funds to defray convention expenses and the amounts which may be donated are necessary to ensure that such donations are commercially, rather than politically motivated."⁹⁷ Once a company decides to withhold funding of the party's convention because the candidate's policies or statements offend its corporate sensibilities, or the sensibilities of its customers, it is making an inherently political decision.

It is impossible for the company, FEC, Congress or, most importantly, the public to distinguish between financial support of a convention, political party or even a candidate based on "political" versus "business" motives, as those distinctions don't exist at the intersection of the real world of politics and business.

What the public sees is the party conventions being paid for by corporations seeking every avenue to advance their particular public policy interests. Federal law has reflected the dangers that corporate political spending poses to people's faith in their democracy for well over 100 years. Creating transparent cover stories regarding the purpose for these corporate contributions does nothing to correct the problem and only increases the public's perception that the system is rigged.

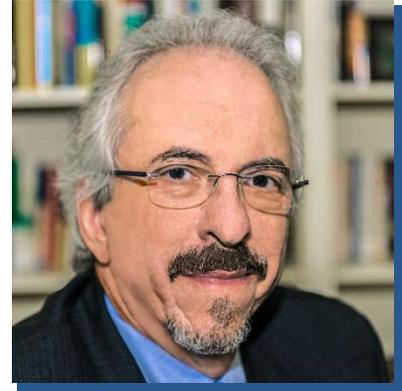
In order to restore the public's confidence in our democracy and political process, the FEC should close the loopholes that have allowed corporate money to dominate both parties' conventions and Congress should reestablish a robust public financing system.

About the Authors

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Lawrence M. Noble is general counsel of the Campaign Legal Center. Noble has argued before the Supreme Court of the United States, testified before Congress and state legislatures, served as an official observer and political law consultant with respect to foreign elections, been a member of the Editorial Advisory Committee for the Transparency International Global Corruption Report and has spoken before a wide variety of national and international business, press and civic groups.



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- ⁴ In fact, section 304 of the Labor Management Relations Act (Taft-Hartley Act) of 1947, which amended section 313 of the Federal Corrupt Practices Act of 1925, expressly provided that it was unlawful for “any corporation whatever, or any labor organization to make a contribution or expenditure ... in connection with any primary election or political convention or caucus.” Labor Management Relations Act of 1947, Pub.Law No. 80-101, 61 Stat. 159; see also *United States v. Congress of Industrial Organizations*, 335 U.S. 106 (1948).
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- ⁷ 41 Cong. Rec. 22 (1906).
- ⁸ Tillman Act of 1907, Pub. Law No. 59-36, 34 Stat. 864.
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- ¹⁰ 352 U.S. 567 (1957).
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(describing a series of March 1972 newspaper articles suggesting that Congress investigate whether the Justice Department settled an ITT case in return for a promise by ITT of financial support for the 1972 Republican National Convention).

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²² “Senate Select Committee on Presidential Campaign Activities (The Watergate Committee), U.S. Senate Historical Office, Washington, D.C.,” available at http://www.senate.gov/artandhistory/history/common/investigations/pdf/Watergate_investigation_citations.pdf (last accessed July 2016).

²³ *Id.*

²⁴ *Id.*

²⁵ 26 U.S.C § 9008.

²⁶ *Id.*; Alex Knott, “Convention Funding Eliminated,” April 4, 2014, *FEC Record*, available at <http://www.fec.gov/pages/fecrecord/2014/may/hr2019.shtml#search=convention%20funding>.

²⁷ The presidential funding system allowed the national committees of the major parties to raise private contributions if the Commission determined, “that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention” or to the extent necessary to make up for any short-fall in the public funding. 26 U.S.C. § 9008(d).

²⁸ 26 U.S.C. § 9008.

²⁹ 424 U.S. 1, 104-105 (1976).

³⁰ *Id.* at 96.

³¹ *Id.* at 104.

³² *See* 11 C.F.R. § 9008.3.

³³ After Congress eliminated the public funding of conventions in 2014, both the FEC and Congress increased the limits of what individuals and PACs could contribute to a political party for the purpose of funding the convention.

³⁴ Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 Fed. Reg. 63,036, 63,067 (Nov. 1, 1979) (codified at 11 C.F.R. pt. 107, 114, and 9008).

³⁵ *Id.* This meant that if Hilton hotels normally gave ten free rooms to any group or convention that guaranteed the booking of 500 rooms, they could give the same deal to the convention committee.

³⁶ 11 C.F.R. § 9008.50(c).

³⁷ 11 C.F.R. § 9008.50(b) (emphasis added).

³⁸ Presidential Election Campaign Fund, 44 Fed. Reg. at 63,067.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

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- ⁴² A “local business” was defined as a business within the Standard Metropolitan Statistical Area (“SMSA”). 11 C.F.R. § 9008.7(d)(2)(iv)(1982). The SMSA became the Metropolitan Statistical Area (“MSA”) in 1983. The term “core based statistical area” (CBSA) became effective in 2000 and refers collectively to metropolitan and micropolitan statistical areas. <http://www.census.gov/population/metro/about/>.
- ⁴³ Presidential Election Campaign Fund, 44 Fed. Reg. at 63,067.
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- ⁴⁵ FEC Advisory Opinion 1980-53 (June 17, 1980).
- ⁴⁶ FEC Advisory Opinion 1980-21 (Apr. 20, 1980).
- ⁴⁷ FEC Advisory Opinion 1982-27 (May 3, 1982).
- ⁴⁸ Dissenting Opinion of Comm’r Thomas E. Harris, FEC Advisory Opinion 1982-27.
- ⁴⁹ *Id.*
- ⁵⁰ FEC Advisory Opinion 1995-31 (Sept. 22, 1995).
- ⁶⁴ FEC Advisory Opinion 1995-32 (Sept. 22, 1995).
- ⁵² FEC Advisory Opinion 1988-25 (June 29, 1988).
- ⁵³ *Id.*
- ⁵⁴ Glen Johnson, “Corporations Will Pick Up Democratic Tabs at LA Galas,” *Boston Globe*, August 12, 2000.
- ⁵⁵ 26 U.S.C. § 9008(g).
- ⁵⁶ In many instances, the FEC would reject the staff’s recommendation that the commission find there had been an improper use of funds. Unfortunately, as time went by, the FEC modified the procedures under which these audits were conducted so that much of the debate between the FEC staff and the commissioners as to what is permissible and impermissible takes place out of the public spotlight. The result is that the more recent audits contain less public documentation showing which staff recommendations were rejected by the FEC commissioners.
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- ⁶² *McConnell v. FEC*, 540 U.S. 93 (2003).
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- ⁶⁴ Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 Fed. Reg. 63,036, 63,038 (Nov. 1, 1979).
- ⁶⁵ Public Financing of Presidential Candidates and Nominating Conventions, 68 Fed. Reg. at 47,401.
- ⁶⁶ *Id.* at 47,399.
- ⁶⁷ *Federal Funding of Presidential Nominating Conventions: Overview and Policy Options*, Congressional Research Service, January 27, 2014. RL34630 (footnotes and citations omitted).
- ⁶⁸ Gabriella Miller Kids First Research Act, Pub. Law No. 113-94, 128 Stat. 1085 (2014); *see also* Alex Knott, “Convention Funding Eliminated,” April 4, 2014, *FEC Record*, available at <http://www.fec.gov/pages/fecrecord/2014/may/hr2019.shtml#search=convention%2ofunding>.
- ⁷⁰ FEC Advisory Opinion 2014-12 (Oct. 9, 2014).
- ⁷¹ This individual contribution limit is subject to a Cost of Living Adjustment (COLA) every two years. “Contribution Limits 2013-2014,” available at <http://www.fec.gov/pages/brochures/contriblimits.shtml> (last accessed July 2016); “Contributions,” available at http://www.fec.gov/pages/brochures/contrib.shtml#Contribution_Limits (last accessed July 2016). The PAC limit is not subject to a COLA adjustment.
- ⁷² This means that an individual can give a political party more than \$734,000 in a two-year election cycle and a couple could contribute more than \$5.9 million over a four-year election cycle.
- ⁷³ These limits are adjusted for inflation, so the numbers will grow larger every convention. Those amounts would have been illegal before the Supreme Court struck down the \$123,200 limit on a person’s total aggregate federal contributions in its decision in *McCutcheon v. FEC*, 572 U.S. ____ (2014).
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- ⁷⁵ *See, e.g.*, FEC Advisory Opinion 1982-27 (May 3, 1982) (allowing the City of Dallas to raise private and corporate dollars to offset the costs of preparing the city’s convention center and providing security for the GOP convention).
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⁸⁷ *Id.*

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⁸⁹ *Id.*; see also Matthew DeBord, “Kirk Kerkorian Lost a Huge Bet on Ford in ‘08,” *Business Insider*, June 17, 2015, available at <http://www.businessinsider.com/kirk-kerkorian-once-lost-900-million-on-a-bad-ford-bet-during-the-financial-crisis-2015-6>.

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⁹¹ Glenn Greenwald, “The AT&T Convention in Denver,” *Salon*, July 20, 2008, available at http://www.salon.com/2008/07/20/dnc_3/.

⁹² See “Philadelphia 2016 Sponsorship Opportunities,” Democratic National Convention, available at <http://www.phildnc.com/files/Philadelphia-2016-Host-Committee-Sponsorship-Opportunities.pdf>.

⁹³ See “Republican National Convention Sponsorship Opportunities for the Texas Delegation,” available at <https://www.texasgop.org/wp-content/uploads/2016/04/2016-sponsorship-correct-beth.pdf>.

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⁹⁶ *Id.*

⁹⁷ Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 Fed. Reg. 63,036, 63,067 (Nov. 1, 1979) (codified at 11 C.F.R. pt. 107, 114, and 9008).