

# Return of presidential conventions brings legal considerations for corporations supporting them

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As the country's political attention is focused intently on pre-primary intrigue, it may be easy to forget that we are less than a year away from the beginning of the presidential nominating conventions. Come what may in terms of party infighting (not to mention courtroom drama), the two major parties will convene next summer and attempt to coalesce around a nominee.

There will be welcome receptions. There will be parties. There will be pageantry. And, of course, there will be balloon drops. Moreover, with the lifting of COVID restrictions that muted the 2020 conventions, expectations are high in both cities — Chicago where the Democrats will gather, while Milwaukee welcomes the Republicans — for a return to the attendance and excitement levels of prior conventions.

Along with the expectation of a return to the more traditional convention model comes the need for financial support. Conventions are expensive to run, and they have become increasingly dependent on corporate support, especially after 2014 legislation eliminated the public funding that had helped finance them for almost four decades. Public Law 113-94, April 3, 2014.

While federal law generally prohibits corporate support for the convention committees themselves, which are accounts within the national party committees (e.g., the Republican National Committee (RNC) and the Democratic National Committee (DNC)), there remain a number of avenues for corporations to financially support the conventions as outlined below, including certain limited interaction with the convention committees, support for separate nonprofit "host committees" and support for events surrounding the conventions.

However, perhaps more so than with any other type of corporate political activity, there are numerous traps for the unwary when supporting the conventions, in particular when dealing with the parties and other events that take place in conjunction with them. The convergence of federal, state and local candidates, officeholders, party committees, PACs, 527 organizations and other politically active nonprofits in one city can turn a seemingly simple request to sponsor an event into a law school-style issue-spotter exam implicating campaign finance, pay-to-play and gift laws across numerous jurisdictions.

In addition, there tends to be heightened scrutiny on convention activities, due to their profile. For example, the watchdog group

Public Citizen committed to "bird-dogging" convention events in 2008, 2012 and 2016 to identify violations of applicable law — it would not be surprising to see it reprise this role in 2024, given the return of fully in-person events.

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Below we provide a primer of the legal issues a company should keep in mind as the company and its employees explore available options to become involved with the conventions.

## Limited interaction with convention committees

Each convention is supported by a convention committee, established as an account of the respective national party (a "Convention Committee"). Federal law treats Convention Committees in the same manner as other accounts of the national party committees in terms of prohibited sources. Accordingly, contributions by corporations, foreign nationals, federal contractors and nationally chartered organizations to Convention Committees are prohibited. Please note that such prohibited sources are also prohibited from paying for expenses such as travel and accommodations for speakers and delegates to the convention.

There are, however, certain interactions that corporations may have with the Convention Committees under the law, including an allowance for commercial vendors to provide goods and services to the Committees in exchange for promotional consideration. Such goods and services must be provided in the ordinary course of business and in an amount that does not exceed the commercial benefit reasonably expected to be received. Commercial vendors are also allowed to provide certain items of *de minimis* value, such as samples, pens, tote bags or other items to be distributed to convention attendees.

Keep in mind that individuals and PACs are permitted to contribute to Convention Committees subject to limits; however, companies subject to strict liability pay-to-play laws should be mindful that such contributions may be covered by those laws if solicited by or linked to state or local candidates or officeholders.

### Support for host committees

Each convention is also supported by a separate host committee — a nonprofit organization established to encourage commerce in the convention city and project a favorable image to convention attendees (a “Host Committee”). The Host Committee for the Democratic National Convention is Development Now for Chicago, a 501(c)(6) organization, and for the Republican National Convention it is 170 Freedom Milwaukee 2024 Host Committee Inc., organized as a 501(c)(3).

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Corporations are permitted to make unlimited monetary or in-kind contributions to Host Committees, which are permitted to provide various types of logistical support required to host the convention, whereas the more substantive components of producing the convention must be paid for by the Convention Committees themselves.

As a result, if a corporation seeks to provide in-kind contributions to a Host Committee, it should confirm that the in-kind facilities or services will be used exclusively for purposes appropriate and permissible for the Host Committees, such as providing security and construction services, defraying administrative expenses of the host committee, welcoming convention attendees with information booths or tours or providing accommodations for committee members of the hosting party. Furthermore, it is best practice to document this understanding with the Host Committee in advance through a memorandum of understanding or similar agreement.

Please note that, as each Host Committee is required to register and file reports with the Federal Election Commission (FEC), the identity of contributors and the amounts of their contributions are publicly disclosed after the convention.

Finally, to the extent a Host Committee contribution is solicited by a state or local official, it should be determined whether there are any prohibitions, restrictions or reporting requirements under applicable state or local laws regarding contributions solicited by such officials. For example, certain jurisdictions treat donations to a

charity or another third party solicited by an official as a gift to the official themselves and therefore subject to the restrictions of the applicable gift law.

### Private events

Corporations may also seek to hold or support parties or other private events during the conventions. In planning such an event, it is necessary to first consider whether it could result in an in-kind contribution to a political campaign, party committee or other political committee. Such an in-kind contribution may be impermissible or subject to limits under the relevant jurisdiction’s campaign finance law and could also trigger an automatic ban on government contracts if that jurisdiction maintains a strict liability pay-to-play law.

These concerns can arise even in the context of events organized by third parties, such as event planners, to which corporations are asked to contribute. An in-kind contribution may result to the extent the event is coordinated with, or held for the purpose of benefitting, such campaign, party committee or political committee.

Even in the absence of in-kind contribution concerns, it is important to keep in mind that federal, state and local gift laws apply to convention events — and those rules may be more restrictive for lobbyists and lobbyist employers. For example, the Senate Select Committee on Ethics and the House Committee on Ethics historically issue guidance reminding members of their ethical obligations while attending the conventions, including the prohibition on a lobbyist or lobbyist employer paying for an event honoring a member of Congress during the dates of the member’s national party convention.

As always, sponsors and other supporters of events should consider and vet potential gift law implications to the extent that federal, state or local government officials or employees may attend.

### Employees attending conventions

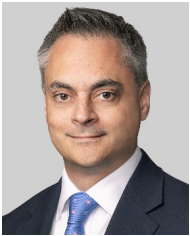
Companies should also keep in mind that their employees’ convention-related activities could create legal implications for the company if an employee uses corporate resources in connection with certain types of activity. Before allowing an employee to attend a convention during working hours or paying for related travel expenses, a company should consider the type of activity in which the employee will engage while there.

For example, as noted above, corporations (and other prohibited sources) may not pay expenses, such as travel and lodging, for convention delegates or allow employees to serve as delegates during compensated working hours. Similarly, to the extent the employee will participate in a political campaign or other political committee event while at the convention, doing so during compensated working hours or payment for travel costs could result in an in-kind contribution to that campaign or committee, thereby implicating campaign finance and pay-to-play laws. These concerns can arise even if the employee supplements their delegate or political activities with nonpolitical business-related activities while at the convention.

As the presidential nominating conventions look to return to form, they will be looking to companies to step up with increasing

levels of support. As is prudent whenever stepping into the highly regulated political process, they should be sure to step carefully.

### About the authors



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