United States District Court
Eastern District of Louisiana
New Orleans Division

Anh "Joseph" Cao, **Republican National Committee**, and **Republican Party of Louisiana,** ***Plaintiffs***, ***v.*** **Federal Election Commission**, ***Defendant***	**Civil Action No. 2:08-cv-4887-HGB-ALC** **Section C, Mag. 5**

Amended Verified Complaint for Declaratory and Injunctive Relief

Anh "Joseph" Cao, Republican National Committee ("RNC"), and Republican Party of Louisiana ("LA-GOP") complain against the Federal Election Commission ("FEC") as follows:

INTRODUCTION

1. This case is a successor to *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) ("*Colorado I*"), and *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("*Colorado II*"), and deals, inter alia, with the "unresolved" question of "the constitutionality of the Party Expenditure Provision [limits, 2 U.S.C. § 441a(d)(2)-(3),] as applied to" "coordinated expenditures . . . that would not be functionally identical to direct contributions." *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and

Kennedy, JJ.). The majority agreed with the dissenters that the constitutionality of the limits in "an as applied challenge" involving "more of the party's own speech," as opposed to "no more than payment of the candidate's bills," was "not reach[ed] in th[at] facial challenge." *Id.* at 456 n.17.

2. *Colorado I* "held that spending limits set by the Federal Election Campaign Act were unconstitutional as applied to the Colorado Republican Party's independent expenditures in connection with a senatorial campaign." *Colorado II*, 533 U.S. at 437. The case was "remanded for consideration of the party's claim that all limits on expenditures by a political party in connection with congressional campaigns are facially unconstitutional and thus unenforceable even as to spending coordinated with a candidate," and *Colorado II* "reject[ed] that facial challenge to the limits on parties' coordinated expenditures." *Id.*

3. This case challenges the constitutionality of the **Party Expenditure Provision limits**, 2 U.S.C. § 441a(d)(2)-(3), as-applied to coordinated expenditures that (**Count 1**) are not "unambiguously campaign related," *Buckley v. Valeo*, 424 U.S. 1, 81 (1976), or (**Count 2**) are "not functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.), because it is "not a mere 'general expression of support for the candidate and his views,' but a communication of 'the underlying basis for the support,'" not just "symbolic expression,' . . . but a clear manifestation of the party's most fundamental political views," *id.* at 468 (*quoting Buckley*, 424 U.S. at 21).

4. This case also (**Count 3**) challenges the Party Expenditure Provision limits that apply to expenditures in connection with the campaigns of candidates for Senator and Representative because (i) they employ multiple limits for the same office (eliminating the government's anti-corruption interest), (ii) the base amounts are too low to allow parties to fulfill their historic and im-

portant role in our democratic republic, *see Randall v. Sorrell*, 548 U.S. 230, 126 S. Ct. 2479 (2006), and (iii) severability problems.

5. This case also challenges the **$5,000 contribution limit** at 2 U.S.C. § 441a(a)(2)(A) as applied to "in-kind" contributions (i.e., spending considered coordinated with candidates under 2 U.S.C. § 441a(7)(B)(i) (the "Coordination-Contribution Provision") that are not (**Count 4**) "unambiguously campaign related," *Buckley*, 424 U.S. at 81, or (**Count 5**) "functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.).

6. This case also (**Count 6**) challenges the $5,000 contribution limit—both as to in-kind and direct contributions—as being unconstitutional because the same limits apply to political parties as apply to political action committees ("PACs"), which fails to provide political parties their specially-favored role required in our system of government. *Randall*, 548 U.S. 230.

7. Finally, this case also (**Count 7**) challenges the $5,000 contribution limit facially for being too low because it is not indexed for inflation, and consequently is far below what Congress originally said was a sufficient limit to further its anti-corruption interest, and because it fails to provide political parties the means to meaningfully engage in their First Amendment free expression and association and to have their specially-favored role required in our system of government. *See Randall*, 548 U.S. 230.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 as a case arising under the First and Fifth Amendments, the Federal Election Campaign Act ("FECA"), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(3), because the FEC is an

entity of the United States and Plaintiffs reside in this district.

PARTIES

10. Anh "Joseph" **Cao** is "eligible to vote in any election for the office of President," 2 U.S.C. § 437h, and he is the Republican candidate for U.S. Representative for the Second Congressional District of Louisiana, which includes New Orleans. Joseph Cao will compete for election in the December 6, 2008 general election against the winner of the Democratic party runoff between the incumbent U.S. Representative, William Jefferson, and former TV anchor Helena Moreno as well as against candidates from the Libertarian, Reform, and Green parties and an independent. Candidate Cao wants to participate with RNC and LA-GOP to the maximum extent constitutionally permissible in the activities outlined below.

11. **RNC** is the national committee of the Republican Party. Its headquarters are in Washington, District of Columbia.

12. **LA-GOP** is the State committee of the Republican Party for Louisiana. LA-GOP maintains offices in, among other places, New Orleans and Metairie, Louisiana, which offices are staffed by paid employees.

13. **FEC** is the federal government agency with enforcement authority over FECA. Its headquarters are in Washington, District of Columbia.

LEGAL CONTEXT

14. Political party "independent expenditures," 2 U.S.C. § 431(17), may not be limited. *Colorado I*, 518 U.S. 604.

15. Under the Coordination-Contribution Provision, 2 U.S.C. § 441a(a)(7)(B)(i), all of a political party's expenditures that are "coordinated" with a candidate are deemed in-kind contributions: "expenditures made by any person in cooperation, consultation, or concert with, or at the

request or suggestion of a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate . . . ."

16. In-kind contributions by a "multicandidate political committee" are (like direct contributions) subject to a $5,000 limit. 2 U.S.C. § 441a(a)(2)(A).

17. For purposes of the Coordination-Contribution Provision, the FEC defines "coordination" at 11 C.F.R. § 109.20, merely tracking the language of the statutory Coordination-Contribution Provision at 2 U.S.C. § 441a(a)(7)(B)(i). So as to coordinated expenditures that are not communications, this definition governs.

18. For purposes of the Coordination-Contribution Provision, the FEC defines "coordinated communication" at 11 C.F. R. § 109.21. This definition contains both "content standards" and "conduct standards." *Id.*

19. The $5,000 limit on direct and in-kind contributions is not periodically adjusted for inflation.

20. In addition to this $5,000 limit, political parties may make additional expenditures "in connection with" candidates' campaigns under the Party Expenditure Provision: "Notwithstanding any other . . . limitations on expenditures . . . or . . . contributions, the national committee of a political party, or a State committee of a political party, . . . may make expenditures *in connection with the general election campaign of candidates* for Federal office, subject to . . . limitations . . . ." 2 U.S.C. § 441a(d)(1) (emphasis added).

21. Although the statutory phrase "in connection with" does not by its terms necessarily require, and is not limited to, "coordinated" expenditures, the FEC calls expenditures under the Party Expenditure Provision "**coordinated party expenditures**." *See* 11 C.F.R. §§ 109.30 to 109.37. While the FEC declined to define "coordinated party expenditures," 68 Fed. Reg. 443-44

(Explanation and Justification ("E&J") on "Coordinated and Independent Expenditures"), it has "clarifi[e] . . . that the term 'coordinated party expenditure' refers to an expenditure made by a political party pursuant to 2 U.S.C. 441a(d)." *Id.* at 444. "Political party committees . . . need not demonstrate actual coordination with their candidates to avail themselves of this additional spending authority." *Id.* at 443. And parties are not "restricted as to the nature of the expenditures" under this authority. *Id.*

22. As to candidates for President, "the national committee of a political party" (but not a state political party) may spend "in connection with" its candidate up to 2¢ times the voting age population ("VAP"). 2 U.S.C. § 441a(d)(2).

23. The second limitation paragraph applies to both "[t]he national committee of a political party" and "a State committee of a political party" and provides limits for expenditures "in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party . . . ." 2 U.S.C. § 441a(d)(3).

24. As to candidates for Senator, both national and state political parties may spend the greater of 2¢ per VAP or $20,000. 2 U.S.C. § 441a(d)(3)(A).

25. As to candidates for Representative in states with one congressional district, the limit is the same as for Senators. 2 U.S.C. § 441a(d)(3)(A).

26. As to candidates for Representative in multi-district states, the limit is $10,000. 2 U.S.C. § 441a(d)(3)(B).

27. All of the Party Expenditure Provision limits are periodically adjusted for inflation using the consumer price index ("CPI"), 2 U.S.C. § 441a(c), and the FEC publishes the current limits in the Federal Register.

28. The current limit as to candidates for Senator ranges from $84,100 ($20,000 adjusted for

inflation) to $2,284,900 (2¢ per VAP adjusted for inflation), with Louisiana being at $270,300. 73 Fed. Reg. at 8697.

29. The current limit as to candidates for Representative in single-district states is $84,100 ($20,000 adjusted for inflation). *Id.* Currently the states with only one congressional district are Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming. *Id.* at 8697 n.3. The 2¢-per-VAP formula does not yield a greater number than the $84,100 limit in any state as the FEC lists no variation from the base limit.

30. The current limit for candidates for Representative in multi-district states is $42,100 ($10,000 adjusted for inflation). *Id.* at 8696.

31. The FEC regulations implementing the Party Expenditure Provision limit begin at 11 C.F.R. § 109.32, titled "What are the coordinated party expenditure limits?". The operative phrase of the Party Expenditure Provision, i.e., "*in connection with the general election campaign of a candidate* for Federal office," is interpreted in the regulation as a "[c]oordinated party expenditure." *Id.* This "coordination" is undefined, except as follows with respect to a "communication."

32. In 11 C.F.R. § 109.37, the FEC has created a regulation dealing with what it calls a "**party coordinated communication**," which must be reported either as an "in-kind contribution" under the Coordination-Contribution Provision (subject to the $5,000 contribution limit) or as a "coordinated party expenditure" under the Party Expenditure Provision (subject to the limits of that provision). 11 C.F.R. § 109.37(b).

33. A party coordinated communication is one that is paid for by a political party committee and meets one of three content standards, which are essentially: (1) distributing a candidate's campaign material; (2) expressly advocating; or (3) making public communications that refer-

ence a candidate in the candidate's jurisdiction within ninety days before an election. *Id.*

34. In the case of candidates for Senator, an additional $35,000 "may be contributed to a candidate for nomination for election, or election, . . . during the year in which an election is held . . . , by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees." 2 U.S.C. § 441a(h). Adjusted for inflation, this limit is currently $39,900. 73 Fed. Reg. 8698.

ADDITIONAL FACTS

35. As a national party, RNC has historically participated, and participates today, in electoral and political activities at the federal, state, and local levels. RNC's national focus should not be misunderstood as a federal focus. RNC supports both federal and state candidates. RNC seeks to advance its core principles—a smaller federal government, lower taxes at all levels of government, individual freedom, and a strong national defense—by promoting an issue agenda advocating Republican positions, electing Republican candidates, and encouraging governance in accord with these Republican views.

36. RNC's core principles are more fully set out in its party platform, the *2008 Republican Platform*, available at http://www.gop.com/2008Platform/.

37. The following facts about political parties were true in *Colorado II*, 533 U.S. 431, and remain true in this successor case, as set out in briefing pointing to the record evidence:

a. Political parties are voluntary associations formed to support candidates and promote policies. (JA 31-33, at ¶¶ 5-6). Parties are unique in their close relationship with and dependence on their candidates. (JA 32-33, 48, at ¶¶ 8, 28). Parties recruit and promote their candidates, work with their candidates to define party messages for the voters, and through their candidates seek to win elections in order to govern. (JA 34-39, at ¶¶ 11-12, 14, 16). Voters know parties by their candidates, and know candidates by their party affiliations. (JA 32-36, 58-59, at ¶¶ 8, 12, 44-45). Without their candidates, parties would be just another political interest group. (JA 54-55, 58-61, at ¶¶ 38, 44-45, 48).

Brief of Respondent at *7, *Colorado II*, 533 U.S. 431 (2001) (No. 00-191).

b. The unique role of the modern political party in our democracy is widely recognized. (JA 30-36, at ¶¶ 4-13). Election laws accommodate party needs for primaries or other devices to nominate the party candidates. (JA 33-35, at ¶¶ 9-11). Typically name and party affiliation are the only ways a candidate is identified on the ballot. (JA 59, ¶ 45). Consistent with all of this, FECA identifies political parties by their unique role in nominating candidates who appear on the ballot as the candidate of the nominating group. § 431(16). Moreover, subpart (1) of the Party Expenditure Provision confirms the unique character of parties, exempting their expenditures from FECA's general limits. *Colorado I*, Pet. App. 96a.

Brief of Respondent at *7, *Colorado II*, 533 U.S. 431 (2001) (No. 00-191).

38. As a state party, LA-GOP has historically participated, and participates today, in electoral political activities at the state and local levels. LA-GOP's supports both federal and state candidates. LA-GOP seeks to advance its core principles—a smaller federal government, lower taxes at all levels of government, individual freedom, and a strong national defense—by promoting an issue agenda advocating Republican positions, electing Republican candidates, and encouraging governance in accord with these Republican views.

39. RNC and LA-GOP each have already reached their $5,000 contribution limit and have spent or committed to spend their $42,100 expenditure limits under the Party Expenditure Provision in connection with the campaign of candidate Joseph Cao. RNC and LA-GOP each wants to make more expenditures that would be subject to the $5,000 contribution limit and the $42,100 expenditure limit and would do so if it were legal to do so.

40. RNC and the LA-GOP intend, if legally permitted, to coordinate, both in the near future and in the months and years ahead, their expenditures for the following activities with their federal candidates without being limited by the $5,000 contribution limit and the Party Expenditure Provision limits the following activities, which they believe they are constitutionally entitled to

do:

- issue advocacy, including ads that mention candidates
- grassroots and direct lobbying on pending executive or legislative matters
- grassroots lobbying or other public communications concerning state ballot initiatives
- public communications of any kind involving support or opposition to state candidates, support or opposition to political parties, or support or opposition to candidates generally of a political party
- non-targeted voter registration
- non-targeted voter identification
- non-targeted get-out-the-vote activity
- non-targeted generic campaign activity.

"Non-targeted" means not targeted at any race in particular or targeted at a specific state race.

41. RNC and LA-GOP presently intend, if legally permitted, to do direct and grassroots lobbying responding to the legislative issues that will arise in Congress immediately by lobbying the incumbent U.S. Representative, presently William Jefferson, on those issues, but they are chilled from doing so by fear of an investigation and possible penalties because (**a**) merely referencing Rep. Jefferson within 90 days of the general election on December 6 (in which Jefferson and Cao are federal candidates) satisfies a content standard under 11 C.F.R. §§ 109.21(c)(4) and 109.37(a)(2)(iii)(A); (**b**) they have already met their $5,000 contribution limit and Party Expenditure Provision limit, *supra*; (**c**) and they have already worked with and had substantial discussions with candidate Cao concerning his campaign plans and needs so that if they were to make their intended public communications they would put him and themselves at risk for at least a burdensome and intrusive investigation as to whether they have met conduct standards

under 11 C.F.R. §§ 109.21(d) and 109.37(a)(3) and so violated the challenged limits.

42. Moreover, RNC and LA-GOP would like, if legally permitted, to have the material involvement and substantial discussion concerning these intended issue-advocacy public communications with candidate Cao that would constitute coordination conduct standards under 11 C.F.R. §§ 109.21(d) and 109.37(a)(3) because they believe that they are constitutionally entitled to do so as to this sort of issue-advocacy, lobbying (direct and grassroots) communication, but they are chilled from doing so for fear of an investigation and penalties.

43. In addition, a specific express-advocacy communication that RNC intends to make in the very near future, if legally permitted by the judicial relief sought in this case, is a radio ad ("*RNC Cao Ad*") with the following script:

> Why We Support Cao
>
> The Republican National Committee has long stood for certain core principles, which we believe are the fundamentals of good government. When it comes to the issues of lower taxes, individual freedoms and a strong national defense, we need leaders who will stand with the American people and defend those issues.
>
> We need leaders who understand that our economy is in a recession, our individual freedoms are constantly under attack and we continue to fight the global war on terrorism to keep our families safe.
>
> Joseph Cao understands and fights for those issues. And, that is why we ask you to join us in supporting him on December 6. It's important for Louisiana and important for the country.

44. RNC intends to coordinate the *RNC Cao Ad* with Joseph Cao as to the best timing for the *Ad*, but otherwise the *Ad* would not be coordinated with Cao. It would be RNC's own speech, not the speech of Joseph Cao, so it is "not functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.), because it is "not a mere 'general expression of support for the candidate and his views,' but a communication of 'the underlying basis for the support,'" not just "symbolic expression,' . . . but a clear manifes-

tation of the party's most fundamental political views," *id.* at 468 (*quoting Buckley*, 424 U.S. at 21).

45. Some other specific activities that RNC intends to do and to coordinate with Joseph Cao, if legally permitted to do so without contribution or expenditure limits by the judicial relief sought in this case, are the following:

-issue advocacy concerning U.S. Representative William Jefferson, including his:

· Position on the pending auto industry bailout;

· Position on serious ethics reform in Congress;

· Opposition to off-shore oil-drilling;

· Failure to support tax assistance for hurricane victims on the Gulf Coast;

· Support for taxpayer funding for Planned Parenthood;

· Support for increases in the federal income tax, the marriage tax penalty, the child tax credit, investment tax, and the death tax.

46. A specific express-advocacy communication that LA-GOP intends to make in the very near future, if legally permitted by the judicial relief sought in this case, is a radio ad ("*LA-GOP Cao Ad*") with the following script:

> Why We Support Cao
>
> The Republican Party of Louisiana has long stood for certain core principles, which we believe are the fundamentals of good government. When it comes to the issues of lower taxes, individual freedoms and a strong national defense, we need leaders who will stand with the American people and defend those issues.
>
> We need leaders who understand that our economy is in a recession, our individual freedoms are constantly under attack and we continue to fight the global war on terrorism to keep our families safe.
>
> Joseph Cao understands and fights for those issues. And, that is why we ask you to join us in supporting him on December 6. It's important for Louisiana and important for the country.

47. LA-GOP intends to coordinate the *LA-GOP Cao Ad* with Joseph Cao as to the best timing for the *Ad*, but otherwise the *Ad* would not be coordinated with Cao. It would be LA-GOP's own speech, not the speech of Joseph Cao, so it is "not functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.), because it is "not a mere 'general expression of support for the candidate and his views,' but a communication of 'the underlying basis for the support,'" not just "symbolic expression,' . . . but a clear manifestation of the party's most fundamental political views," *id.* at 468 (*quoting Buckley*, 424 U.S. at 21).

48. Some other specific activities that LA-GOP intends to do and to coordinate with Joseph Cao, if legally permitted to do so without contribution or expenditure limits by the judicial relief sought in this case, are the following:

- issue-advocacy concerning U.S. Representative William Jefferson, including his: (a) pending trial and alleged corruption; (b) his repeated votes against off-shore oil-drilling; (c) vote to earmarks funds for a personal library and private office for Rep. Charles B. Rangel (Charlie Rangel has made campaign contributions to Jefferson); (d) vote against the financial bail-out plan that included tax assistance for hurricane victims on the Gulf Coast; (e) vote to allow taxpayer funding for Planned Parenthood; (f) repeated votes to block consideration of the 2001 and 2003 cuts on income tax, the tax marriage penalty, the child tax credit, investment tax, and the death tax.
- issue advocacy and lobbying (direct and grassroots) on pending legislative matters, such as the auto industry bailout to be considered when Congress reconvenes December 2nd, encouraging Louisiana Second Congressional District voters to contact Representative Jefferson and insure that any measure has taxpayer protections and demands a 21st century busi-

ness model that includes renegotiated labor contracts.

49. RNC and LA-GOP will not do the intended activities described above, absent the judicial relief requested herein, because they are chilled from doing the activity for fear of a burdensome investigation, enforcement action, and potential penalties, all in violation of their First Amendment rights.

50. RNC and LA-GOP want to do materially similar activity to that described above in the future, and there is a strong likelihood that the current situation will repeat itself, given the recurring nature of elections, the ongoing existence and intended activities of RNC and LA-GOP, and the regular recurrence of a broad range of issues in public and congressional debate.

51. The loss of First Amendment rights, even for a moment, is irreparable harm, and there is no adequate remedy at law.

Count 1
2 U.S.C. § 441a(d)(2)-(3)
Vagueness, Overbreadth, "Unambiguously Campaign Related"

52. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

53. The first paragraph of the Party Expenditure Provision, stating that a "national committee of a political party" as well as "a State committee of a political party" may *make* certain candidate-campaign-related expenditures, 2 U.S.C. § 441a(d)(1), is consistent both with the First Amendment's dictate that "Congress shall make no law . . . abridging the freedom of speech," U.S. Const. amend. I, and the First Amendment right to associate to amplify speech, *Buckley*, 424 U.S. at 22, and is not challenged.

54. The second and third paragraphs of the Party Expenditure Provision, *limiting* political

parties' ability to speak, 2 U.S.C. § 441a(d)(2)-(3), describe the regulated activity as party spending "*in connection with*" candidate's general election campaigns, *id.* (emphasis added). Where government limits speech, it must do with narrow specificity to avoid vagueness and overbreadth. *Buckley*, 424 U.S. at 40-44, 76-81.

55. *Buckley* established that all campaign finance regulation is subject to the threshold requirement that it regulate only activity that is "unambiguously related to the campaign of a particular federal candidate," *id.* at 80. *Buckley* applied this "unambiguously campaign related" principle, *id.* at 81, to vague and overbroad language in several contexts, including an expenditure limitation, *id.* at 44, and an expenditure disclosure provision, *id.* at 80, that it construed to require that regulated communications contain explicit words expressly advocating the election or defeat of a clearly identified candidate for federal office.

56. In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"), the Court, applying the unambiguously-campaign-related principle, construed the prohibition on corporate expenditures at 2 U.S.C. § 441b (barring "a contribution or expenditure in connection with any election") to require the same express-advocacy construction employed in *Buckley* for the same reasons: "*Buckley* adopted the 'express advocacy' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons." *Id.* at 249 (citation omitted).

57. In *MCFL*, the specific language construed to require express advocacy was "*in connection with*," *id.* at 248 (emphasis added), which is the same language employed in the Party Expenditure Provision's limits. The Provision's requirement that the "connection" be with the actual "*campaign*" echoes the "unambiguously *campaign* related" requirement of *Buckley*. 424 U.S. at 81 (emphasis added).

58. The phrase "*in connection with* the general election campaign of a candidate," when used to limit political party expenditures in 2 U.S.C. § 441a(d)(2)-(3) (emphasis added), is unconstitutionally vague, overbroad, and beyond congressional authority to regulate federal elections, unless it is limited to activity that is unambiguously campaign related.

59. The only political party activities that are "unambiguously-campaign-related" in this context are: (a) communications containing express advocacy (explicit words expressly advocating the election or defeat of a clearly identified federal candidate); (b) targeted federal election activity (voter registration, voter identification, get-out-the vote, and generic campaign activities that are targeted to help elect the federal candidate involved); (c) paying a candidate's bills; and (d) distributing a candidate's campaign literature. The activities identified in ¶ 40, *supra*, are not unambiguously campaign related and may not be regulated or restricted.

60. To the extent that the Party Expenditure Provision limits, 2 U.S.C. § 441a(d)(2)-(3), are not limited in their application, as described above, they are vague, overbroad, beyond the authority of Congress to regulate elections, and fail strict scrutiny, all in violation of the First and Fifth Amendments.

Count 2
2 U.S.C. § 441a(d)(2)-(3)
"Not Functionally Identical to Contributions"

61. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

62. Plaintiffs challenge the Party Expenditure Provision limits, 2 U.S.C. § 441a(d)(2)-(3), as applied to activity that is "not functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.), because it is "not a

mere 'general expression of support for the candidate and his views,' but a communication of 'the underlying basis for the support,'" not just "symbolic expression,' . . . but a clear manifestation of the party's most fundamental political views," *id.* at 468 (*quoting Buckley*, 424 U.S. at 21).

63. While a political party's expenditures for express-advocacy communications and targeted federal election activities "in connection with" a candidate may pass the threshold unambiguously-campaign-related requirement, *see supra*, they may not be treated as coordinated party expenditures under the Party Expenditure Provision limits because they constitute the party's own speech, as opposed to "no more than payment of the candidate's bills," *Colorado II*, 533 U.S. at 456 n.17. If an expenditure limit is for the party's own speech, then the limit restricts an expenditure, not a contribution, and strict scrutiny applies. Expenditure limits are unconstitutional. *See Randall*, 548 U.S. 230.

64. The Party Expenditure Provision limits are unconstitutional as applied to restrict a party's own speech because they violate the First Amendment mandate that "Congress shall make no law . . . abridging the freedom of speech," and its guarantee of free association. U.S. Const. amend. I.

Count 3
2 U.S.C. § 441a(d)(3)
Unjustified Limits

65. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

66. Plaintiffs challenge the Party Expenditure Provision limits at 2 U.S.C. § 441a(d)(3) (applicable to candidates for Senator and Representative) as lacking constitutional justification.

67. First, there are multiple expenditure limits for candidates for the same office. As to candidates for Senator, the limit is the greater of a base limit or a variable limit based on the 2¢-per-VAP formula that can range much higher. As to candidates for Representative, there are two different base limits and another based on the 2¢-per-VAP formula (the latter not currently operative but potentially so).

68. Where the government employs multiple limits, the government's acknowledgment that the higher limits are sufficient to accommodate any interest in preventing corruption means that any lower limits are unnecessary to advance that interest, so that the lower limits are unconstitutional for lack of a justifying governmental interest. *See California Prolife Council Political Action Committee v. Scully*, 989 F. Supp. 1282, 1296 (9th Cir. 1998).

69. For candidates for Senator, the Party Expenditure Provision limit is based on a variable formula that currently yields a limit ranging from $84,100 (base limit of $20,000 adjusted for inflation) to $2,284,900 (2¢-per-VAP formula adjusted for inflation), with Louisiana being at $270,300. 73 Fed. Reg. 8697.

70. For candidates for Representative, the limit also varies, being either $42,100 (base limit of $10,000 adjusted for inflation) in states with multiple congressional districts or $84,100 (base limit of $20,000 adjusted for inflation) in states with one congressional district. *Id.* at 8696-87. While the Party Expenditure Provision limit permits use of the 2¢-per-VAP formula for representatives from states with only one Representative, 2 U.S.C. 441(d)(3)(A), the $84,100 is currently "the greater" in all states with only one congressional district. *See* 73 Fed. Reg. 8696-97.

71. As to the Party Expenditure Provision limit for candidates for Senator, the government, by permitting a limit of $2,284,900, has acknowledged that candidates for Senator are not subject to corruption at lesser amounts. So lesser amounts are unconstitutional because they are not sup-

ported by an anti-corruption interest.

72. As to the Party Expenditure Provision limit for candidates for Representative, the government by permitting a limit of $84,100 has acknowledged that candidates for Representative are not subject to a risk of corruption at lesser amounts. So lesser amounts are unconstitutional because they are not supported by an anti-corruption interest.

73. The Party Expenditure Provision limit for candidates for Senator is facially unconstitutional because it is based on a formula that is itself unconstitutional because it lacks an anti-corruption justification in 49 out of 50 cases (i.e., anything below the highest limit in California), so it is substantially overbroad. Viewed another way, if Congress had, instead of using the formula, simply listed the multiple limits resulting from the formula, all of those below the highest would be unconstitutional (for the same failure of justification), but all of the limits would be unconstitutional because the 49 limits below California's would not be severable as Congress clearly intended something else.

74. The Party Expenditure Provision limits for candidates for Representative are also facially unconstitutional because (a) the formula is unconstitutional for the reasons noted above, (b) the higher base limit makes the lower base limit unconstitutional, and (c) the higher base limit is unconstitutional for being too low to allow parties to fulfill their historic and important role in our democratic republic, *see Randall*, 548 U.S. 230, and (d) because the formula and lower limit may not be severed because, by its adoption of multi-limit scheme, Congress indicated its intent not to have a single limit.

75. The Party Expenditure Provision limits at 2 U.S.C. § 441a(d)(3) are unconstitutional for limiting political party expenditures without justification, in violation of the First Amendment guarantees of free speech and association. If Congress wants limits on the Party Expenditure Pro-

vision, it needs to create constitutionally-justified limits.

Count 4
2 U.S.C. § 441a(a)(2)(A) and (7)(B)(i)
"Unambiguously Campaign Related"

76. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

77. Contributions from a "multicandidate political committee" to "any candidate" are limited to $5,000. 2 U.S.C. § 441a(a)(2)(A).

78. Under the Coordination-Contribution Provision, 2 U.S.C. § 441a(a)(7)(B)(i), coordinated expenditures are deemed contributions: "expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate . . . ."

79. The Coordination-Contribution Provision, when used to limit political party expenditures in 2 U.S.C. § 441a(a)(2)(A), is unconstitutionally vague and overbroad, and beyond congressional authority to regulate federal elections, unless it is limited to activity that is unambiguously campaign related. *See* Count 1.

80. The only political party activities that are "unambiguously-campaign-related" in this context are: (a) communications containing express advocacy (explicit words expressly advocating the election or defeat of a clearly identified federal candidate); (b) targeted federal election activity (voter registration, voter identification, get-out-the vote, and generic campaign activities that are targeted to help elect the federal candidate involved); (c) paying a candidate's bills; and (d) distributing a candidate's campaign literature. The activities identified in ¶ 40, *supra*, are not unambiguously campaign related and may not be regulated or restricted.

81. To the extent that the Coordination-Contribution Provision and the contribution limit are not restricted to expenditures that are unambiguously campaign related, and specifically the four activities described in the preceding paragraph, they are unconstitutionally vague and overbroad, beyond the authority of Congress to regulate elections, and unjustified under strict scrutiny, all in violation of the free speech and association guarantees of the First Amendment and the due process guarantee of the Fifth Amendment.

Count 5
2 U.S.C. § 441a(a)(2)(A) and (7)(B)(i)
"Not Functionally Identical to Contributions"

82. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

83. Plaintiffs challenge 2 U.S.C. § 441a(a)(2)(A) (contribution limit) and 2 U.S.C. § 441a(a)(7)(B)(i) (Coordination-Contribution Provision) as applied to activity that is "not functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.), because it is "not a mere 'general expression of support for the candidate and his views,' but a communication of 'the underlying basis for the support,'" not just "symbolic expression,' . . . but a clear manifestation of the party's most fundamental political views," *id.* at 468 (*quoting Buckley*, 424 U.S. at 21).

84. While a political party's expenditures for express-advocacy communications and targeted federal election activities "in connection with" a candidate may pass the threshold unambiguously-campaign-related requirement, *see supra*, they may not be treated as coordinated party expenditures under the Party Expenditure Provision limits because they constitute the party's own speech, as opposed to "no more than payment of the candidate's bills," *Colorado II*,

533 U.S. at 456 n.17. If an expenditure limit is for the party's own speech, then the limit restricts an expenditure, not a contribution, and strict scrutiny applies. Expenditure limits are unconstitutional. *See Randall*, 548 U.S. 230.

85. These provisions are unconstitutional as applied to restrict a party's own speech because they violate the First Amendment mandate that "Congress shall make no law . . . abridging the freedom of speech," and its guarantee of free association. U.S. Const. amend. I.

Count 6
2 U.S.C. § 441a(a)(2)(A)
Parties May Not Be Limited the Same as PACs

86. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

87. Plaintiffs challenge the $5,000 contribution limit at 2 U.S.C. § 441a(a)(2)(A) as applied to a political party's in-kind (which after the other challenges, *supra*, amounts to paying a candidates bills and distributing a candidate's campaign literature) and direct contributions because the limit is per se unconstitutional for imposing the same limit on parties as on political action committees ("PACs"). PACs and political parties must be treated differently to allow political parties to fulfill their historic and important role in our democratic republic. *See Randall*, 548 U.S. 230.

88. This contribution limit, as applied, is unconstitutional for violating political parties' and their candidates' rights to free expression and association under the First Amendment.

Count 7
2 U.S.C. § 441a(a)(2)(A)
Unjustified Limit

89. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

90. Plaintiffs challenge the $5,000 contribution limit at 2 U.S.C. § 441a(a)(2)(A) as applied to a political party's in-kind and direct contributions because the limit is per se unconstitutional because it is not adjusted for inflation. When Congress enacted the limit it recognized that the value of the limit was sufficient to eliminate corruption. Every year in which inflation lowers the value of the dollar amount of the limit amounts to another lower contribution limit. As noted above, higher contribution limits vitiate any claimed anti-corruption interest in lower limits. So failure to index a contribution limit for inflation makes it per se unconstitutional if inflation effectively creates lower contribution limits in subsequent years.

91. In addition, Plaintiffs challenge the $5,000 limit on a party's in-kind and direct contributions as applied both to candidates for Representative and Senator because the additional $35,000 that may be contributed to candidates for Senator, 2 U.S.C. § 441a(h) (adjusted for inflation to $39,900, 73 Fed. Reg. 8698), creates disparate limits so that (a) the higher limit as to candidates for Senator vitiates the anti-corruption interest as to any lower amount for candidates for Senator and (b) the higher limit as to candidates for Senator also vitiates the anti-corruption interest as to any lower amount for candidates for Representative.

92. In addition, Plaintiffs challenge the $5,000 limit on a party's in-kind and direct contributions as simply being to low to allow political parties to fulfill their historic and important role in our democratic republic. *See Randall*, 548 U.S. 230.

93. This contribution limit is facially unconstitutional for violating political parties' and their candidates' rights to free expression and association under the First Amendment.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

1. a declaratory judgment as to all challenged provisions;

2. a permanent injunction enjoining the FEC from enforcing the challenged provision as applied to Plaintiffs, their intended activities, and all other entities similarly situated;

3. costs and attorneys fees pursuant to any applicable statute or authority; and

4. any other relief this Court in its discretion deems just and appropriate.

VERIFICATION

I, Robert M. ("Mike") Duncan, declare as follows:

1. I am the Chairman of the Republican National Committee ("RNC").

2. I have personal knowledge of RNC, its activities, and its intentions, including those set out in the foregoing *Amended Verified Complaint for Declaratory and Injunctive Relief*, and if called upon to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Amended Verified Complaint* concerning RNC, its activities, and its intentions are true and correct. 28 U.S.C. § 1746.

Executed on December 2, 2008.

Mike Duncan

Robert M. Duncan

VERIFICATION

I, Roger Villere, declare as follows:

1. I am the Chairman of the Republican Party of Louisiana ("RPL").

2. I have personal knowledge of RPL, its activities, and its intentions, including those set out in the foregoing *Amended Verified Complaint for Declaratory and Injunctive Relief*, and if called upon to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Amended Verified Complaint* concerning RPL, its activities, and its intentions are true and correct. 28 U.S.C. § 1746.

Executed on 25th November, 2008.

Roger Villere

VERIFICATION

I, Anh "Joseph" Cao, declare as follows:

1. I am a resident of Louisiana.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Amended Verified Complaint for Declaratory and Injunctive Relief*, and if called upon to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Amended Verified Complaint* concerning myself, my activities, and my intentions are true and correct. 28 U.S.C. § 1746.

Executed on 11/25/, 2008.

Anh "Joseph" Cao

Respectfully submitted,

/s/ Thomas P. Hubert

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiffs' Amended Verified Complaint for Declaratory and Injunctive Relief was served upon the following by U.S. Mail on the 4th day of December 2008:

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/s/ Thomas P. Hubert

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