UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN NATIONAL COMMITTEE *et al.* Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 08–1953 (MBK, RJL, RMC) THREE-JUDGE COURT

MEMORANDUM OF POINTS AND AUTHORITIES OF THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, COMMON CAUSE, DEMOS, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES AND THE US PUBLIC INTEREST RESEARCH GROUP AS *AMICI CURIAE* OPPOSING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Statement of Interest

The Brennan Center for Justice at NYU School of Law ("Brennan Center"), Common Cause, Dēmos: A Network for Ideas and Action ("Dēmos"), The League of Women Voters of the United States ("the League"), and U. S. Public Interest Research Group ("U.S. PIRG") (collectively "the Reform Organizations") submit the following Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment, dated January 26, 2009.

The Brennan Center for Justice at NYU School of Law ("Brennan Center") is a non-partisan institute dedicated to a vision of effective and inclusive democracy. The Brennan Center's Campaign Finance Project promotes reforms to ensure that our elections embody the fundamental principle of political equality underlying the Constitution. Through legislative efforts and litigation, the Brennan Center actively supports strong federal campaign finance laws that meet constitutional standards and encourage broad candidate participation in federal elections. The Brennan Center served as counsel to Intervenor-Defendants Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords in *McConnell v. FEC*, 540 U.S. 93 (2003), which upheld the provisions of the Bipartisan Campaign Reform Act ("BCRA") that Plaintiffs now challenge.

Common Cause is a non-profit, non-partisan citizens' organization with approximately 300,000 members and supporters nationwide. Founded in 1970, Common Cause has long supported efforts to improve this nation's campaign finance laws at the nation, state and local levels. In particular, Common Cause was a key proponent of the

BCRA and has filed amicus curiae briefs supporting the constitutionality of BCRA in previous cases, including *McConnell*.

Dēmos: A Network for Ideas and Action is a non-profit, non-partisan organization whose purpose is to help build a society in which America can achieve its highest ideals. Dēmos works to build a democracy that is robust and inclusive, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a revitalized public sector that works for the common good. Dēmos' advocacy in furtherance of these goals includes legal defense of meaningful campaign finance regulations that limit the corrosive effect of private fundraising and promote public confidence in the integrity of government, such as BCRA's ban on unlimited soft-money contributions to political parties. Dēmos has participated as counsel or in an *amicus* capacity in key campaign finance cases including *Randall v. Sorrell*, 548 U.S. 230 (2006); *Duke v. Leake*, 524 F.3d 427 (4th Cir. 2008); and *North Carolina Right to Life v. Leake*, 525 F.3d 274 (4th Cir. 2008).

The League of Women Voters of the United States (the "League") is a nonpartisan, community-based organization that encourages informed and active participation of citizens in government and seeks to influence public policy through education and advocacy. The League is organized in more than 850 communities in every state and has more than 150,000 members and supporters nationwide. One of the League's primary goals is to promote an open governmental system that is representative, accountable and responsive, and that assures opportunities for citizen participation in

government decision making. To further this goal, the League has been a leader in seeing campaign finance reform at the state, local and federal levels for more than two decades.

The U. S. Public Interest Research Group (U.S. PIRG), a federation of the state PIRGs, was founded in 1984 to conduct research and public education on a host of public interest issues including good government, public health, and consumer protection. Through its good government work, U.S. PIRG has been an outspoken advocate for democratizing campaign financing, engaging in efforts to promote small donor incentive programs, low contribution limits, and campaign spending limits. Moreover, the State PIRGs have pioneered campaign finance reform at the state level in the past decade, supporting lower contribution limits in Alaska, Arkansas, Colorado, Massachusetts, Missouri, Montana, Oregon, and Vermont. The long-term goals of the U.S. PIRG Democracy Program are to revitalize representative democracy and afford ordinary citizens greater political influence. Toward that end, U.S. PIRG has produced more than a dozen reports highlighting the role of money in elections, the problems created by the dominance of large contributors in campaigns, and the potential impact of policy solutions to enhance the influence of small donors and average Americans, and was also *amicus curiae* in *McConnell.*

Preliminary Statement

Just in the few elections since BCRA, went into effect, the statute appears to have achieved its intended goals – stemming the flood of "soft money"[1] that had swamped the federal campaign finance system and had allowed the purchase of influence through

[1] We use the term "soft money" to refer to those contributions from corporations and unions that are not subject to the Federal Election Campaign Act's ("FECA") source-and-amount limitations.

multimillion-dollar donations, while not depressing the ability of candidates or political parties to express and disseminate their political positions. In the two elections prior to BCRA, the national parties raised over $2 billion, with unregulated soft money representing almost half of that figure. In the 2004 and 2006 elections – the first two after BCRA went into effect – the parties raised the same total amount in hard money subject to BCRA's limits on federal contribution limits. Norman Ornstein & Anthony Corrado, Jr., *McCain-Feingold: Reform That Has Really Paid Off*, Wash. Post, March 31, 2007; *see also* David V. Magleby, *Rolling in the Dough: The Continued Surge in Individual Contributions to Presidential Candidates and Party Committees*, 6 The Forum 1, 1 (2008) ("[T]he Republican National Committee and the Democratic National Committee raised more hard money alone in 2004 than they had in both soft and hard money contributions combined in 2002."). Although contribution totals for the 2008 general election are not yet available, Thomas E. Mann, a Senior Fellow in Governance Studies at the Brookings Institution who was one of Defendants' experts in *McConnell*, stated with regard to the presidential primaries in July 2008:

> Large soft-money contributions to parties from corporations, unions, and wealthy individuals (often arranged through intense pressure from elected and party officials) are no longer a part of the picture. Presidential candidates have focused on hard-money contributors, which are limited to $2,300 per donor.

Thomas E. Mann, *Money in the 2008 Elections: Bad News or Good?,* The Chautauquan Daily, July 1, 2008. This is exactly the result Congress sought in enacting federal contribution limits: a regime in which candidates and parties have ample resources to express their political views, but in which no contributor may purchase undue influence over federal elected officials by writing a multimillion-dollar check. Parties are

flourishing under this new regime. Magleby, *supra*, at 10 ("Contrary to the speculation of some prior to the implementation of BCRA, the soft-money ban did not 'short circuit the efforts…to revitalize political parties.'"). Now that BCRA has "plug [ged] the soft-money loophole," *McConnell v. FEC,* 540 U.S. 93, 133 (2003), large soft-money donations no longer distort our democratic system through creating the appearance and reality of corruption.

Plaintiffs now ask this Court to permit corporations and unions to, once again, write six- or seven-figure checks to the national parties, in an end-run around federal contribution limits. Plaintiffs the Republican National Committee and its chairman, Duncan (collectively "RNC"), request the ability to raise and spend soft money for the following uses: (1) to fund state election activities in races both in which federal and state candidates appear on the ballot (hereinafter, "mixed races") as well as races in which only state candidates appear on the ballot (hereinafter, "state-only races"); (2) to support Republican redistricting efforts in various states; (3) to support "grassroots lobbying efforts" for federal legislation and other issues; (4) to pay for litigation "not involving federal elections," and (5) to pay for costs associated with RNC headquarters. Plaintiffs the California Republican Party and the Republican Party of San Diego County (collectively "CRP") request the ability to use soft money: (1) for public communications that associate state ballot measures with Republican federal candidates and officeholders, or that attack or oppose federal Democratic candidates and officeholders, and (2) to fund election activities in mixed races and state-only races without making reference to federal candidates.

Although the Supreme Court's holding in *McConnell* plainly prohibits these activities, Plaintiffs attempt to escape *McConnell*'s holding by promising to refrain from a subset of certain specified abuses that the *McConnell* Court noted. Plaintiffs promise:

> For example, the RNC will not, in any manner different than or beyond that currently afforded to contributors of federal funds, (1) encourage officeholders or candidates to meet with or have other contact with contributors to these accounts, (2) arrange for contributors to participate in conference calls with federal candidates or officeholders, or (3) offer access to federal officeholders or candidates in exchange for contributions. Furthermore, the RNC will not use any federal candidates or officeholders to solicit funds for any of the Accounts.

(Pls.' Mem. Supp. Sum. J. 5-6). Although the loophole Plaintiffs propose to open may differ slightly in its dimensions from the loophole that existed pre-BCRA, there is no doubt that Plaintiffs' proposal, once again, would create the same regime of undue influence that Congress sought to combat in enacting federal campaign finance reforms over the past century. *See McConnell*, 540 U.S. at 115-116 ("More than a century ago the 'sober-minded Elihu Root' advocated legislation that would prohibit political contributions by corporations in order to prevent 'the great aggregations of wealth, from using their corporate funds, directly or indirectly' to elect legislators who would 'vote for their protection and the advancement of their interests as against those of the public.'" (quoting *United States v. UAW-CIO*, 352 U.S. 567, 571 (1957)). The as-applied loophole that Plaintiffs seek to create would lead "to a 'meltdown' of the campaign finance system that had been intended 'to keep corporate, union and large individual contributions from influencing the electoral process'. . . 'leaving us with little more than a pile of legal rubble.'" *McConnell*, 540 U.S. at 129 (quoting S. Rep. No. 105-167, vol. 4, at 4611 (1998); *id.*, vol. 5, at 7515; *id.*, vol. 3, at 4535 (additional views of Sen. Collins)).

I. Plaintiffs Fail To Give Adequate Regard For The States' Interests In Enacting Campaign Finance Reform Regulations To Combat Corruption Or The Appearance Thereof.

A. Plaintiffs' "Crabbed" View Of Corruption Disregards Applicable Supreme Court Case Law As Well As The Factual Record In *McConnell*.

Although Plaintiffs admit, as they must, that Congress's interest in combating corruption and its appearance in enacting campaign finance reform legislation encompasses more than *quid pro quo* exchanges, the theory of corruption that Plaintiffs advance is radically narrow. It directly contravenes the holding of *McConnell* as well as the entire body of Supreme Court authority on this issue. Plaintiffs urge this Court to rule that Congress has the power to regulate only those contributions that "directly benefit" federal candidates in seeking elected office, *i.e.*, those that are "unambiguously related to the campaign of a particular federal candidate." (Pls.' Mem. Supp. Sum. J. 24.)[2] This definition of corruption is nothing more than *quid pro quo* by another name, and has been expressly and repeatedly rejected by the Supreme Court.

The *McConnell* majority specifically considered and rejected a nearly indistinguishable theory of corruption: the argument that the corruption rationale justifies only regulation of "contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, a federal officeholder or candidate." *McConnell*, 540 U.S. at 152. As the Court reasoned, "this crabbed view of corruption, and particularly of the appearance of corruption, ignores precedent, common

[2] Plaintiffs' misreading of this isolated phrase from *Buckley v. Valeo*, 424 U.S. 1, 28 (1976) as creating an "unambiguously-campaign-related requirement" is addressed at length in the Memorandum of Points and Authorities of Senators John S. McCain and Russell D. Feingold and Former Representatives Christopher Shays and Martin T. Meehan as *Amici Curiae* Opposing Plaintiffs' Motion for Summary Judgment, to which we respectfully refer the Court.

sense, and the realities of political fundraising exposed by the record in this litigation." *Id.* Instead, the Court explained that the anti-corruption interest extended to "more subtle but equally dispiriting forms of corruption…the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder." *Id.* at 153. The Court held that "Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.'" *Id.* at 150 (quoting *FEC v. Colo. Republican Fed. Campaign Comm.* ("*Colorado II*"), 533 U.S. 431, 441 (2001)).

Thus, the *McConnell* holding extended an unbroken line of Supreme Court precedents that define corruption as the "undue influence" over a federal candidate's judgment that results when a candidate is indebted to a large contributor. *Colorado II*, 533 U.S. at 441 ("corruption [was] understood not only as *quid pro quo* agreements, but also as undue influence on an officeholder's judgment, and the appearance of such influence."(internal citation omitted)); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 389 (2000) ("In speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors."); *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652, 660 (1990) (describing corruption in terms of "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas"); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S.

238, 259 (1986) (corruption encompasses the "unfair deployment of wealth for political purposes"); *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 208 (1982) (citing *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 768 (1978)); *Bellotti*, 435 U.S. at 788 n.26 ("The overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act was the problem of corruption of elected representatives through the creation of political debts. The importance of the governmental interest in preventing this occurrence has never been doubted.") (internal citation omitted); *Buckley,* 424 U.S. at 28 ("[C]ontribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption interest in a system permitting unlimited financial contributions…."); *see also* Zephyr Teachout, *The Anti-Corruption Principle*, 94 Cornell L. Rev. 341, 387-397 (2009) (describing various formulations of anti-corruption rationale in Supreme Court jurisprudence). Plaintiffs offer no justification for overturning this settled weight of authority.

Plaintiffs attempt to minimize the Supreme Court's broad conception of corruption by referring to it as the "gratitude theory of corruption" and argue that, at some point, any benefit to a federal candidate's campaign becomes "too attenuated" to justify congressional regulation of soft-money contributions. (Pls. Mem. 25.) This nomenclature unfairly trivializes the potential of large soft-money contributions to a national party to create "undue influence" that can make a federal officeholder beholden to a major contributor. If someone opens a door for a Member of Congress, one could say that the officeholder feels mere "gratitude" for the courtesy; this bears little resemblance to the possible changes in legislative and policy priorities that can occur when a corporation or union writes a six-figure check to the Member's party to benefit

his or her reelection campaign. *McConnell*, 540 U.S. at 149 ("Who, after all, can seriously contend that a $100,000 donation does not alter the way one thinks about–and quite possibly votes on–an issue?"(quoting Simpson Decl. ¶ 10)). Plaintiffs' slippery-slope "attenuation" argument goes nowhere: Plaintiffs offer no evidence that could justify overturning Congress's particular expertise[3] in determining that FECA's current threshold of $28,500 is the point at which a federal officeholder would feel beholden rather than merely grateful for a contribution to his or her national party, thus creating undue influence over that officeholder's judgment.

After reviewing the massive evidentiary record in *McConnell*, the Court determined that large soft-money contributions inherently give rise to corruption or its appearance, regardless of the eventual use for which those funds are channeled. *See, e.g.*, Declaration of Senator Warren Rudman, September 13, 2002, ¶ 10 ("[The influence accorded large donors] is inherently, endemically, and hopelessly corrupting. You can't swim in the ocean without getting wet; you can't be part of this system without getting dirty."). The evidence established that donors intended large soft-money contributions to

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[3] As this Court noted, the subject of campaign fundraising and its potential for undue influence is one on which Congress deserves especial deference:

> As Senator Fritz Hollings wryly observed during the Senate debate on BCRA: "… The reason we have a debate is because this is the first subject we know anything about. All the rest of it is canned speeches that the staff gives you, and you come out and you talk about Kosovo, you talk about the defense budget, or you talk about the environment, and you read scientific statements and everything – but we know about money. Oh boy, do we know."

McConnell v. FEC, 251 F. Supp. 2d 176, 434 n.2 (D.D.C. 2003) (quoting 147 Cong. Rec. S2852-53 (daily ed. March 26, 2001) (statement of Sen. Hollings), *rev'd in part*, 540 U.S. 93 (2003).

purchase influence with federal officeholders and that donors believed that influence had, in fact, been purchased. *McConnell*, 540 U.S. at 147 ("For their part, lobbyists, CEOs, and wealthy individuals alike all have candidly admitted donating substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials."); *see also* Declaration of Wade Randlett, October 1, 2002, ¶ 5 ("For most institutional donors, if you're going to put that much money in, you need to see a return, just as though you were investing in a corporation or some other economic venture."). A system that allows large donors to bid for influence makes it inevitable that such influence will, in certain instances, in fact be bought.

B. Plaintiffs' Arguments Fail to Account for the State's Compelling Interest in Combatting the Appearance of Corruption.

Plaintiffs also almost completely ignore a state interest "[o]f almost equal concern as the danger of actual *quid pro quo* arrangements" – namely, "the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley*, 424 U.S. at 27; *see also McConnell*, 540 U.S. at 143-145; *Shrink Missouri*, 528 U.S. at 390; *FEC v. Nat'l Conservative Political Action Comm.,* 470 U.S. 480, 496-97 (1985). In *McConnell*, this Court specifically credited testimony from multiple sources that when a corporation or union is able to write a multimillion dollar check to a political party, and members of that political party subsequently achieve a legislative or policy outcome that advances the interests of that corporation, it is impossible to combat the public perception that influence-peddling has occurred. This Court highlighted two examples that demonstrate that allowing large soft-money contributions to the national parties puts federal officeholders under a cloud of undue influence:

> For example, Senator McCain testifies: [T]here's an appearance [of corruption] when there's a million dollar contribution from Merck and millions of dollars to your last fundraiser that you held, and then there is no progress on a prescription drug program. There's a terrible appearance there. There's a terrible appearance when the Generic Drug Bill, which passes by 78 votes through the Senate, is not allowed to be brought up in the House shortly after a huge fundraiser with multimillion dollar contributions from the pharmaceutical drug companies who are opposed to the legislation.
>
> …Senator Feingold has remarked that "a $200,000 contribution [was] given 2 days after the House marked up a bankruptcy bill by MBNA. OK, it is not illegal. Conceded. Maybe it is not even corrupt, but it certainly has the appearance of corruption to me and I think to many people."

McConnell, 251 F. Supp. 2d at 684 (internal citation omitted); *see also Shrink Missouri*, 528 U.S. at 390 ("Democracy works 'only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.'" (quoting *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 562 (1961)); *see also* Report of Thomas E. Mann, September 20, 2002, at 32 ("[S]ince most of the largest soft-money donors had high stakes in decisions made by Washington policymakers, the public has a substantial basis for its concerns about conflicts of interest and corruption of the policy process.").

This Court in *McConnell* also credited polling data demonstrating that the presence of large contributions leads ordinary citizens to believe that their elected representatives may give short shrift to their constituencies' interests in favor of large monied interests.

> Mellman and Wirthlin's survey found that 71 percent of those polled believe that Members of Congress make decisions based on what the big contributors to their party want, even if it is not what their constituents want or what the Member thinks is in the best interests of the country. An even greater percentage, 84 percent, believe that Members are more likely to listen to large party contributors because of their contributions, and 68 percent think that big contributors to political parties have blocked decisions by the federal government that could

> improve people's everyday lives. The poll also reflects that the public perceives that their views are given less attention than those of large contributors. Eighty-one percent of those polled believe that the views of those corporations, unions, interest groups or individuals who donate $50,000 or more to a political party would likely receive special consideration from Members of Congress, while only 24 percent believe a Member is "likely to give the opinion from someone like them special consideration."

McConnell, 251 F. Supp. 2d at 683 (internal citations omitted). Based on this evidence, this Court concluded that "[t]he polling surveys entered into the record provide powerful proof that the presence of large donations create the appearance of corruption in the eyes of the majority of Americans." *Id.* at 517.

The available polling data from the years since BCRA's enactment bolster this conclusion. Despite the complexities of campaign finance regulation, the American public appears to appreciate the benefits of BCRA. In a poll of 800 subjects taken after BCRA passed Congress, 50% of respondents agreed with the proposition, "I have more optimism about government since campaign finance reform passed Congress and will be implemented in November." Only 31% of respondents disagreed with the statement. Jonathan S. Krasno & Frank J. Sorauf, *Evaluating the Bipartisan Campaign Reform Act (BCRA)*, 28 NYU Rev. L. & Soc. Change 121, 135 (2003) (citing Institute for GlobalPolitics/Pew, June 6-11, 2002). Additionally, a Zogby poll of 301 business executives found that 73% agreed "that BCRA's prohibition on soft money was good for both them personally and for the country." Megan King, *Business Likes Soft-Money Ban, But Wants More*, Rollcall, April 6, 2005. The Committee for Economic Development, who were *amicus curiae* in *McConnell*, announced the results of this poll by stating, "corporate executives are no longer being 'shaken down' by elected officials and party leaders for soft-money contributions." *Id.* Indeed, one of the very articles cited by Plaintiffs found that limits on campaign contributions by organizations have a statistically

significant positive effect on public opinion, as does public disclosure of campaign contributions. David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy*, 5 Election L.J. 23, 33 (2006).

The polling data upon which Plaintiffs rely do nothing to disturb the *McConnell* Court's conclusion that the presence of large soft-money contributions inevitably generates the appearance of corruption. Plaintiffs cite a September 2007 Gallup Poll indicating that public trust in the federal government had declined below levels measured during the Watergate Era, as well as two articles regarding the effect of campaign finance regulation as a whole on "citizen perceptions of democratic rule" and "confidence in the system of representative government." (Pls.' Mem. Supp. Sum. J. 26 n.16.)[4] Plaintiffs

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[4] One of the *McConnell* plaintiffs' experts, Q. Whitfield Ayres, attempted to make an identical argument, offering the lack of statistical correlation between campaign finance and trust in government as evidence for the lack of a causal effect of campaign reform on trust and satisfaction with government. However, as Defendants' expert Robert Shapiro explained:

> [T]rust and satisfaction with government, as Ayres acknowledges, have been affected by other factors like the economy and other indicators of the government's effective performance. To make statistical inferences about causation requires taking into account multiple factors simultaneously – through multivariate statistical analysis. Mr. Ayres would have to control for, and thereby exclude the effects of these substantial other factors, such as foreign military engagements, and peaks and troughs in the economy, before reaching his conclusions. Mr. Ayres makes no such attempt.

Report of Robert Y. Shapiro, October 7, 2002, at 11. As another of the articles cited by Plaintiffs on this point candidly admit,s "available long-term survey data, which measures perceptions of 'crookedness' and whether 'government is run by a few big interests,' do not precisely answer the more relevant constitutional questions concerning the perception of corruption arising from large campaign contributions." Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. Rev. 119, 123 (2004). For an example of such confounding factors, we note that in 2007, the year in which Plaintiffs' Gallup Poll was taken, Gallup polls indicated that President George W. Bush's job approval ratings declined to below 30% – levels not seen since Watergate. *See Gallup Poll Results*, USA Today, July 9, 2007, *available at* http://www.usatoday.com/news/washington/2007-07-

imply that this Court should infer, from these data, that BCRA's restrictions on soft money would not advance the state's interest in preventing the appearance of corruption. However, these broad measures of "trust" are not at all probative of the specific question that was emphatically answered in the affirmative by the polling data in *McConnell:* i.e., whether the public perceives inherent corruption in large contributions to political parties. Both the evidence before the Court in *McConnell* as well as more recent evidence confirms the link between large campaign contributions and the appearance of corruption.

C. Plaintiffs Also Fail to Recognize that the State's Interests in Enacting Campaign Finance Regulations Extend to Regulating Conduct That Could Result From the Circumvention of Such Regulations.

Plaintiffs' argument that the state's anticorruption interest extends no further than those activities that directly benefit a federal candidate or that are "unambiguously related" to a federal election ignores the unanimous view of the *McConnell* Court "that circumvention is a valid theory of corruption." *McConnell*, 540 U.S. at 144 (quoting *Colorado II*, 533 U.S. at 456). As the Court explained, because the First Amendment does not require Congress to ignore the fact that 'candidates, donors, and parties test the limits of the current law,' these interests have been sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits." *Id.* (quoting *Colorado II*, 533 U.S. at 457).

09-bush-poll-results_N.htm (last visited March 7, 2009); *see also How the Presidents Stack Up*, Wall Street Journal Online, May 31, 2006, *available at* http://online.wsj.com/public/resources/documents/info-presapp0605-31.html (last visited March 7, 2009). That "public trust in the federal government" had also declined at this time is hardly surprising and says nothing whatsoever about public perceptions regarding the efficacy of campaign finance reform in general, much less about the specific restrictions on large soft-money contributions enacted in BCRA and upheld by the *McConnell* Court.

In *McConnell*, the Court considered an "overwhelming" evidentiary record that led it to an inescapable conclusion: "From 1996 until the enactment of BCRA, the parties used nonfederal funds for the exact purpose that the Supreme Court stated those funds cannot be used for: 'to influence a federal campaign.'" *McConnell*, 251 F. Supp. 2d at 767 n.29 (quoting *Colo. Republican Fed. Campaign Comm. v. FEC* ("*Colorado I*"), 518 U.S. 604, 616 (1996)). Despite the pre-BCRA restrictions on the uses of soft money, the Court found that "candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries." *McConnell*, 540 U.S. at 146. Extensive testimony in the record demonstrated that anything less than a complete ban on large soft-money contributions for the national parties would fail to achieve the anti-corruption goals of FECA and BCRA. As former Senator Alan Simpson testified:

> Although soft money cannot be given directly to federal candidates, everyone knows that it is fairly easy to push the money through our tortured system to benefit specific candidates. I always knew that both the national and state parties would find ways to assist my candidacy with soft money, whether it be staff assistance, polling, get-out-the-vote activities, or buying television advertisements.

Declaration of Alan K. Simpson, October 4, 2002, ¶ 7; *see also* Report of Donald P. Green (Green I), September 23, 2002, 16 ("Under the pre-BCRA provisions, the parties demonstrated great ingenuity in moving money around so as to minimize the amount of hard money needed to fund federal election activity."). As Professor Green testified in *McConnell*, soft-money contributions to the political parties carry an inherent risk of corruption since soft-money fundraising practices feature "the conditions that give rise to corruption:"

> Scholars who study corruption have emphasized three such conditions: (1) large payoffs to those involved, (2) small probabilities of detection and punishment, and (3) enduring relationships between donors and politicians so that informal deals can be monitored and enforced. Unlimited soft money donations satisfy all of these conditions.

Green I at 28 (citing *Handbook of Criminology* 1062 (Daniel Glaser ed., 1974).

Thus, the Court found that "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, *regardless of how those funds are ultimately used*." *McConnell*, 540 U.S. at 155 (emphasis added).

> Section 323(a), like the remainder of § 323, regulates contributions, not activities. As the record demonstrates, it is the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, that have made all large soft-money contributions to national parties suspect.

Id. at 154-55. Accordingly, the Court held that the only solution tailored to Congress's anticorruption goals was a complete ban on soft money for the national parties: "The best means of prevention is to identify and to remove the temptation." *McConnell*, 540 U.S. at 153.

The RNC now promises not to facilitate "access" to federal candidates and officeholders if this Court allows the RNC to raise and spend large soft-money contributions. Even if such a premise were enforceable, Plaintiffs erroneously assume that the Court's concerns regarding corruption in *McConnell* were limited to the parties' provision of access to federal candidates and officeholders. Such an assumption confuses ends with means. Although the evidentiary record in *McConnell* discusses direct access as the most common means by which undue influence was facilitated pre-BCRA, nothing

in the Court's opinion suggests that the state's interest in combating corruption or its appearance was limited to preventing direct access.

To the contrary, the record demonstrated that large contributions created undue influence, whether or not the parties offered specific opportunities for access. As this Court found in *McConnell*, "the record suggests that for a Member not to know the identities of these donors, he or she must actively avoid such knowledge as it is provided by the national political parties and the donors themselves." *McConnell,* 251 F. Supp. 2d at 488; *see also id.* ("Donors or their lobbyists often inform a particular Senator that they have made a large donation.") (quoting Declaration of Senator John McCain, October 4, 2002). As Professor Green explained, "When donors make soft-money donations to parties on behalf of candidates, neither the donors nor the parties have any incentive to hide this fact from the candidates…." Green I at 28. The RNC's promises would do nothing to prevent influence peddling since they would not constrain potential buyer of undue influence (a large soft-money contributor) from attempting to purchase such influence, nor would such a pledge on the part of the RNC prevent a federal candidate or officeholder from being overly compliant with the wishes of large soft-money contributors.

Moreover, such promises have proven ineffectual in the past. In *McConnell*, the RNC Finance Director submitted sworn testimony that "the RNC does not arrange meetings with government officials for any of its donors-federal or nonfederal." *McConnell*, 251 F. Supp. 2d at 502 (citing Declaration of Beverly Ann Shea, October 4, 2002, ¶ 44). Despite this policy, the record in *McConnell* contained a multitude of instances in which the national parties had, in fact, requested federal officeholders to meet with large soft-

money contributors and to take notice of the wishes of such contributors in setting legislative and policy priorities. *See, e.g.*, *McConnell*, 251 F. Supp. 2d at 498 ("RNC Finance Division…may pass along requests to a Member's scheduler and say 'this is a Team 100 member, could you see if you could fit them in.'") (citing Deposition of Beverly Ann Shea, September 24, 2002, 82); *see also id.* at 452-53, 500, 501 (citing other instances of RNC officials setting up meetings for major donors with Members of Congress including RNC Chair asking Senate Majority Leader Dole to meet with the "loyal and generous" CEO of Pfizer as well as an RNC employee asking to establish a contact in Senator Dole's office for a "generous" RNC contributor). The RNC's proposal would create a regime of winks and nods that would lend itself to ready circumvention of federal hard-money limits and which would do nothing to constrain influence peddling on the part of parties and candidates.

D. The Evidence In *McConnell* Demonstrates That Federal Candidates And Officeholders Derive Direct Benefit From Campaign Contributions to National, State and Local Parties, Regardless Of The Uses Of Those Contributions.

1. Plaintiffs' Proposed Use of RNC Specific Accounts for Soft Money Would Facilitate the Very Corruption that FECA and BCRA Were Enacted to Combat.

The Court's conclusion in *McConnell* that only a total ban on large soft-money contributions to the national parties could achieve the anti-corruption goals of FECA and BCRA was predicated on its finding of a unity of interest between the national parties and federal candidates and officeholders.

> Because the national parties operate at the national level, and are inextricably intertwined with federal officeholders and candidates, who raise the money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process. The only effective way to address this [soft-money] problem of

> corruption is to ban entirely all raising and spending of soft money by the national parties.

McConnell, 540 U.S. at 155 (quoting 148 Cong. Rec. H409 (2002) (statement of Rep. Shays)); *McConnell*, 251 F. Supp. 2d at 471 ("The evidence makes clear that the national party committees are creatures of their elected federal politician members, who run them and set their priorities."). Plaintiffs now attempt to dispute this finding, arguing that "political parties are organizations that promote principles through a variety of means, only *one* of which is electing candidates…." (Pls.' Mem. Supp. Sum. J. 28.) However, as this Court noted, even the Colorado Republican Party has admitted;

> A party and its candidate are uniquely and strongly bound to one another because: [a] party recruits and nominates its candidate and is his or her first and natural source of support and guidance[;][a] candidate is identified by party affiliation throughout the election, on the ballot, while in office, and in the history books[;][a] successful candidate becomes a party leader, and the party continues to rely on the candidate during subsequent campaigns[;][a] party's public image largely is defined by what its candidates say and do[;][a] party's candidate is held accountable by voters for what his or her party says and does[;][a] party succeeds or fails depending on whether its candidates succeed or fail. No other political actor shares comparable ties with a candidate.

McConnell, 251 F. Supp. 2d at 469 (quoting Brief of Colorado Republican Party, *Colorado II,* at 19-20). Plaintiffs offer this Court no reason to disregard the holding and factual record of *McConnell* as well as simple common sense.

Plaintiffs' proposal to allow the RNC to raise and spend soft money for particular uses in dedicated accounts would do nothing but facilitate the regime of undue influence that existed pre-BCRA because Plaintiffs' proposed segregation of funds fails to recognize the common-sense observation that, when corruption is at issue, "[m]oney is fungible." *Sabri v. United States*, 541 U.S. 600, 606 (2004). In *Sabri*, eight members of the Court rejected petitioner's argument that a statute prohibiting the bribery of entities receiving federal funds exceeded Congress's regulatory authority because it lacked a

specific nexus between the illegal activity and the federal funds at issue. Although Justice Souter's opinion noted "that not every bribe or kickback …will be traceably skimmed from specific federal payments," the Court ruled that "corruption does not have to be that limited to affect the federal interest." *Id.* at 605-06. The Court engaged in a common-sense, functional analysis, reasoning, that in the corruption context, "Liquidity is not a financial term for nothing; money can be drained off here because a federal grant is pouring in there." *Id.* Similarly, here, if this Court accepted Plaintiffs' proposition, a donor's $1 million soft-money check, if used for activities that were not "unambiguously related" to a federal election, would free up $1 million in hard money funds that would otherwise be needed for those purposes but that could now be dedicated to direct support of a federal candidate's election. Plaintiffs' proposed establishment of specific "Accounts" does nothing to change the fact that large soft-money contributions to the national parties would enable Plaintiffs to reallocate funding priorities for hard money funds to benefit specific federal candidates, to the same net effect as a direct hard-money contribution in excess of FECA limits.

Furthermore, Plaintiffs can offer neither evidence nor argument establishing that the appearance of corruption inherent in large soft-money contributions to the RNC would be ameliorated if the RNC channeled such contributions into particular internal accounts. As extensively demonstrated in the *McConnell* record, the public deems large contributions to the political parties to inherently corrupting. *See supra* Section I(B). If the public perceives that the RNC has created a loophole in BCRA so that it can once again accept six-and seven-figure checks from corporations and unions, the widespread public perception that elected officials are for sale will rise again, "except it will all be

worse in the public's mind because a perceived reform was undercut once again by a loophole that allows big money into the system." *McConnell*, 251 F. Supp. 2d at 467 (citing Rudman Decl. ¶ 19).

More specifically, each of the particular uses of soft money which the RNC asks this Court to permit would themselves create a substantial risk of corruption and the appearance thereof. First, although the RNC proposes to create Virginia and New Jersey Accounts and other future accounts dedicated to state-only races, this limitation for "state-only" races is meaningless, since the RNC simultaneously proposes to set up a "State Elections Account" that would support both state-only and mixed races elections activities. Thus, the Virginia and New Jersey Accounts create no net restrictions on use of funds. More fundamentally, even if the RNC's Virginia and New Jersey Accounts existed in isolation, they would still pose a substantial threat of corruption. Plaintiffs fail to give due weight to the extensive factual record demonstrating that

> federal officeholders and candidates control the national political party committees and are so deeply involved in raising non-federal funds for the national party committees that there is no meaningful separation between the national committees and the federal candidates and officeholders that control them.

McConnell, 251 F. Supp. 2d at 668. Given this Court's finding that "the national party committees are creatures of their elected federal politician members, who run them and set their priorities," *id.* at 471, every incentive exists for the RNC to steer supposedly "state-only" funds in a way that benefits particular federal candidates, and every incentive exists for corporate donors and federal officeholders to go along with this arrangement. For example, a corporate donor wishing to secure influence over a federal officeholder from Virginia seeking reelection in 2010 ("Candidate A") could make a $1 million donation to the Virginia Account in 2009 and inform the RNC that the funds

are intended to identify, register and mobilize Republican voters in Virginia. The donor could then inform Candidate A that this donation was intended to benefit her upcoming election. There is nothing "indirect" or "attenuated" about the benefit that Candidate A would derive from such a donation or the undue influence that would result. *McConnell*, 540 U.S. at 167 ("Common sense dictates . . . that a party's efforts to register voters sympathetic to that party *directly assist* the party's candidates for federal office.") (emphasis added). The factual record in *McConnell*, which demonstrated that individual nonfederal money donors have made specific requests that the national political party apply their nonfederal money gifts to particular federal campaigns, makes such a scenario not only plausible but highly likely. *McConnell*, 251 F. Supp. 2d at 476. Pre-BCRA, the national parties, donors, and officeholders collaborated in arrangements that would allow soft money to be used for a prohibited purpose: to influence federal elections. *See id.* at 768 n.29 (citing *Colorado I*, 518 U.S. at 616); *id*. at 476 (citing fundraising letters requesting that nonfederal money donations be used for particular federal elections); Green I at 28 ("The reality of soft-money donations is that donors are often instructed to direct their funds to political parties, which use them in ways that benefit specific candidates…"). There is no reason for this Court to open a conduit for such circumvention of federal hard-money restrictions.

The other Accounts the RNC proposes to establish would similarly lend themselves to ready circumvention in a manner that would defeat the aims of FECA and BCRA. For example, the RNC proposes to raise and spend soft money in a Redistricting Account, which would support Republican redistricting efforts in various states. Although it is true, as Plaintiffs point out, that specific redistricting decisions are in the

hands of state officeholders, Plaintiffs' suggestion that the effects of redistricting are "far removed" from federal elected officials bears no relationship to the realities of the U.S. political system. This Court has recognized that "redistricting efforts affect federal elections no matter when they are held." *McConnell*, 251 F. Supp. 2d at 468. As Professor Green explains:

> The American political system ties the fortunes of state legislators and U.S. House members through the institutional mechanism of redistricting. The most important legislative activity in the electoral lives of U.S. House members takes place during redistricting, a process that is placed in the hands of state legislatures. The chances that a House incumbent will be ousted by unfavorable district boundaries are often greater than the chances of defeat the hands of the typical challenger. Thus, federal legislators who belong to the state majority party have a tremendous incentive to be attuned to the state legislature and the state party leadership.

Green I at 11. The political survival of federal officeholders depends in large part upon redistricting decisions, and to allow large soft-money donations to affect the redistricting process would guarantee that undue influence would be brought to bear on Members of Congress.

Similarly, allowing the RNC to raise and spend soft money for a Grassroots Lobbying Account would recreate an RNC soft-money slush fund that would invite corruption and abuse. Although Plaintiffs point out that, since *McConnell*, the Court has provided further guidance regarding the distinction between issue ads and electioneering communications for non-party entities, *FEC v. Wisconsin Right to Life, Inc.* ("*WRTL II*"), 127 S. Ct. 2652, 2659 (2007), this development is simply not relevant to the issue at hand. Congress's power to ban the national parties from raising and spending soft money does not turn on the distinction between issue advocacy and electioneering communications – instead, the prophylactic nature of this ban is grounded in Congress's finding that any use of soft money by the national parties would open a loophole for

undue influence. *See supra*, Section I(C). Given the close relationship between federal candidates and officeholders and the national parties, and given that, pre-BCRA, "political advertisements… constitute[d] the largest category of nonfederal spending of the national and state political parties," *McConnell*, 251 F. Supp. 2d at 468, soft-money donations intended to fund issue advertising campaigns and other "grassroots lobbying activity" would undoubtedly influence federal elections. As the Supreme Court recognized, a soft-money issue advertising campaign "need not mention federal candidates to have a direct effect on voting for such candidates." *McConnell*, 540 U.S. at 168 (quoting *McConnell*, 251 F. Supp. 2d at 459). Nothing in *WRTL II* disturbs this Court's findings that national party soft-money issue advertisements and other "grassroots lobbying activities" "are engineered to still have an impact on federal elections" and thus fall within Congress's power to enact campaign finance regulations that combat corruption and its appearance. *McConnell*, 251 F. Supp. 2d at 467; *see also McConnell*, 540 U.S. at 167. ("Title I… is premised on Congress' judgment that if a large donation is capable of putting a federal candidate in the debt of the contributor, it poses a threat of corruption or the appearance of corruption.").

Plaintiffs try to conflate the treatment of interest groups and political parties; a position the Supreme Court has roundly rejected. That non-party entities such as Wisconsin Right to Life can run issue advertisements that potentially create a benefit to federal candidates is irrelevant to BCRA's restrictions on political parties because such non-party organizations lack the unity of interest with federal candidates that makes political party expenditures more akin to coordinated expenditures than truly independent expenditures. *See also Buckley*, 424 U.S. at 47 (upholding restrictions on coordinated

expenditures to "prevent attempts to circumvent [FECA] through prearranged or coordinated expenditures amounting to disguised contributions."). The Supreme Court considered and rejected this identical argument in *McConnell:* "We agree … that Congress could not regulate financial contributions to political talk show hosts or newspaper editors on the sole basis that their activities conferred a *benefit* on the candidate." *McConnell*, 540 U.S. at 156 n.51. Despite this freedom of non-party organizations to expend funds that influenced federal elections without triggering soft-money restrictions applicable to national parties, the Court upheld the prophylactic ban on soft-money contributions for national parties based on two interrelated rationales: that such contributions influenced federal elections and that they were directed to organizations inextricably linked to federal candidates and officeholders. *McConnell*, 540 U.S. at 156 n. 51 ("Thus, in upholding §§ 323(b), (d), and (f), we rely not only on the fact that they regulate contributions used to fund activities influencing federal elections, but also that they regulate contributions to, or at the behest of, entities uniquely positioned to serve as conduits for corruption."); *Id.* at 188. ("Congress is fully entitled to consider the real-world differences between political parties and interest groups when crafting a system of campaign finance regulations."). It is the combination of those two conditions which create the risk of undue influence and which provide a rationale for Congressional regulation for political parties' uses of soft money.

2. Plaintiffs' Proposal to Allow CRP to Use Soft Money to Fund Election Activities in Mixed Races and State-Only Races Would Allow the State and local Parties to Serve as Conduits for Corruption.

In *McConnell*, the Supreme Court found that, just as with the national parties, state and local political parties' use of soft money featured the conditions that gave rise to

an unacceptable risk of corruption: (1) a unity of interest between the state and local parties and federal officeholders and candidates; and (2) benefit to a federal candidate that was substantial enough to create undue influence. Specifically, the Court found that "the record demonstrates close ties between federal officeholders and the state and local committees of their parties. That close relationship makes state and local parties effective conduits for donors desiring to corrupt federal candidates and officeholders." *McConnell*, 540 U.S. at 156 n. 51. The Court credited Congress's prediction that, absent BCRA's restrictions on the uses of soft money by state and local parties, "political parties would react to § 323(a) by directing soft-money contributors to the state committees…, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties." *McConnell,* 540 U.S. at 98; *McConnell*, 251 F. Supp. 2d at 480 ("The testimony and documentary evidence makes clear that candidates value such donations [to state parties] almost as much as donations made directly to their campaigns and that these donations assist federal candidates' campaigns."). As the Court explained, "Having been taught the hard lesson of circumvention by the entire history of campaign finance regulation, Congress knew that soft-money donors would react to s 323(a) by scrambling to find another way to purchase influence." *McConnell*, 540 U.S. at 166. The evidence further demonstrated that prior to BCRA, the national parties and federal officeholders funneled soft-money contributions to the state parties in order to influence federal elections. *See, e.g.*, *McConnell*, 251 F. Supp. 2d at 442 ("The national Democratic party managed to finance two-thirds of its pro-Clinton 'issue ad' television blitz by taking advantage of the more favorable allocation methods available to state parties. They simply transferred the

requisite mix of hard and soft dollars to party committees in the states they targeted and had the state committees place the ads.") (citing Mann Expert Report at 22). As Professor Green explained:

> To create a system in which the national parties are banned from raising soft money, except for soft money raised on behalf of their state party allies, inevitably puts pressure on party operatives to construe national party expenditures as transfers to the states. Under the pre-BCRA provisions, the parties demonstrated great ingenuity in moving money around so as to minimize the amount of hard money needed to fund federal election activity. If the BCRA provisions regarding state and local parties were overturned, clever accountants will doubtless figure out ways to place a maximal share of the national parties' overhead and fundraising costs on the state parties' budget ledgers. This incentive system also puts pressure on the state parties to engage in as much federal election activity as possible so that the national parties can recoup their soft money investment.

Green I at 16-17. Accordingly, the Supreme Court concluded, "state committees function as an alternative avenue for precisely the same corrupting forces" as soft-money contributions to the national parties. *McConnell*, 540 U.S. 164.

Thus, this Court found that FECA and BCRA would be self-defeating if they did not account for state and local parties' uses of soft money where those uses had the potential to affect federal elections. As former Senator Rudman testified:

> To curtail soft-money fundraising and giving, it is necessary to have a comprehensive approach that addresses the use of soft money at the state and local party levels as well as at the national party level. The fact is that much of what state and local parties do helps to elect federal candidates. The national parties know it; the candidates know it; the state and local parties know it. If state and local parties can use soft money for activities that affect federal elections, then the problem will not be solved at all. The same enormous incentives to raise the money will exist; the same large contributions by corporations, unions, and wealthy individuals will be made; the federal candidates who benefit from state party use of these funds will know exactly whom their benefactors are; the same degree of beholdenness and obligation will arise; the same distortions on the legislative process will occur; and the same public cynicism will erode the foundations of our democracy….

McConnell, 251 F. Supp. 2d at 467 (quoting Rudman Decl. ¶ 19). The CRP's proposal does nothing to ameliorate this concern.

First, CRP seeks to raise and spend soft money to create public communications regarding ballot initiatives where such communications make specific reference to federal candidates and officeholders. The ease with which such a "ballot initiative" exception to BCRA's state soft-money allocation requirements would allow circumvention of BCRA's hard-money contribution limits is readily apparent. In essence, CRP's proposal would enable a proliferation of "sham ballot initiative advertisements" with the same corrupting effect as the flood of "sham issue advertisements" that was one of the primary motivating factors behind the passage of BCRA. *McConnell*, 540 U.S. at 169 (citing 3 1998 Senate Report 4535 (additional views of Sen. Collins)). To take just one possible example, CRP's proposal would enable a donor to write a $1 million check to CRP to fund a barrage of advertisements attacking Speaker Pelosi, as long as those advertisements contained some sort of ballot initiative "hook." Such a campaign would clearly place Speaker Pelosi's opponent in the debt of this contributor, and the close ties between the CRP and California Republican federal candidates would easily enable the donor to communicate both the fact of the donation and the policy outcome which the donor hoped to achieve. The same is true for ballot initiative advertisements that promote Republican candidates under the guise of supporting ballot initiatives. (Undoubtedly, state Democratic parties would engage in similar activities to similar effect.) As this Court recently found, "common sense" suggests that "encouraging sympathetic voters to vote for the ballot measure gets them to the polls, where the

endorsing federal candidate is on the ballot." *EMILY's List v. FEC*, 569 F.Supp.2d 18, 50 n.14 (D.D.C. 2008) (citation omitted).

The CRP also asks this Court to allow it to use soft money for "voter registration, voter identification, GOTV and 'generic campaign activity' in future elections where both state and federal candidates are on the ballot." (Pls. Mem. 6-7.) Although Plaintiffs claim that "[n]one of these activities will identify, reference, or otherwise depict any federal candidates," *id.* at 7, Plaintiffs' unsupported assertion that "[a]ctivities so indirectly benefitting federal candidates, if at all, cannot be said to create 'obligated' or 'grateful' officeholders" is belied by specific evidence in the *McConnell* record demonstrating that federal candidates are, in fact, beholden to contributors who fund such "generic campaign" activity. *See, e.g., McConnell*, 540 U.S. at 164 ("both candidates and parties already ask donors who have reached the limit on their direct contributions to donate to state committees"); *id.* at 168 (quoting a letter thanking a California Democratic Party donor and noting that CDP's voter registration and GOTV efforts would help "'increase the number of Californian Democrats in the United States Congress'" and "'deliver California's 54 electoral votes'" to the Democratic Presidential candidate). For example, the record contains a flyer from CRP titled "The California Golden Circle" noting that,:

> 'Through Golden Circle contributions, California Republicans have been able to elect leaders from the White House to the State House,' that Golden Circle members will assist the CRP 'goal ... to deliver fifty-five electoral votes for our Republican Presidential nominee in 2004, maintain a Republican majority in Congress, and elect a Republican Legislature'

McConnell, 251 F. Supp. 2d at 505. In fact, the record demonstrated that, pre-BCRA, federal officeholders often requested that "maxed-out" contributors fund such state party

activities on their behalf. *See, e.g., McConnell*, 540 U.S. at 165 (quoting Congressman Wayne Allard's Aug. 27, 1996, fundraising letter informing the recipient that "'you are at the limit of what you can directly contribute to my campaign,'" but "'you can further help my campaign by assisting the Colorado Republican Party'").

Professor Green provided an explanation of the benefits of state party "generic" campaign activity to federal candidates:

> Voter mobilization activities are an integral part of electoral campaigns; national parties spend millions on voter mobilization. National parties would be quite grateful to any other entity that engaged in this activity on their behalf, freeing up the national parties to spend their money on other things. From an accounting standpoint, this arrangement would be tantamount to a massive transfer of funds to the national parties. If a donor were intent upon currying favor with federal officeholders and the national parties they inhabit, there would be no better opportunity than making lavish donations to this type of generic campaign activity, were such donations outside the purview of the BCRA. The many informal connections between slate and federal politicians and between national and subnational parties make this type of exchange easy to orchestrate.

Green I at 18-19. Given the state and local parties' past willingness to act as conduits for soft-money contributions intended to influence federal elections prior to BCRA, their organizations are in not position to complain if Congress enacts a scheme intended to thwart such circumvention. Plaintiffs provide neither evidence nor argument that would cast doubt on the *McConnell* Court's conclusion that BCRA's restrictions on state and local party committee's use of soft money was necessary to avoid circumvention of FECA and BCRA's anticorruption goals.

CONCLUSION

The court should deny Plaintiffs' motion for summary judgment.

Respectfully submitted,

_/s/ Monica Youn_____
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