IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Republican National Committee, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civ. No. 08-1953 (BMK, RJL, RMC)**
	)	
Federal Election Commission, *et al.*,	)	**THREE-JUDGE COURT**
	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Roger M. Witten (D.C. Bar No. 163261)
Shane T. Stansbury
Lauren E. Baer
WILMER CUTLER PICKERING HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
Tel.: (212) 230-8800
Fax: (212) 230-8888
E-mail: roger.witten@wilmerhale.com

Seth P. Waxman (D.C. Bar No. 257337)
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Tel.: (202) 663-6000
Fax: (202) 663-6363
E-mail: seth.waxman@wilmerhale.com

Donald J. Simon (D.C. Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY LLP
1425 K Street. N.W., Suite 600
Washington, D.C. 20005
Tel.: (202) 682-0240
Fax: (202) 682-0249
Email: dsimon@sonosky.com

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W., Suite 500
Washington, D.C. 20006
Tel.: (202) 429-2008
Fax: (202) 293-2660
E-mail: FWertheimer@democracy21.org

Scott L. Nelson (D.C. Bar No. 413548)
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
Tel.: (202) 588-1000
Fax: (202) 588-7795
Email: snelson@citizen.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

*Asterisk denotes authorities on which counsel chiefly relies.

STATUTORY PROVISIONS

REGULATIONS

LEGISLATIVE MATERIALS

INTRODUCTION

This case does not arise against a blank slate. To the contrary, over a period of decades, Congress and the Courts have considered and addressed precisely the issues posed. Congress has sought for over a century to curb the potentially corrupting influence of large political contributions, and, recognizing that contribution limits "entail[] only a marginal restriction upon the contributor's ability to engage in free communications," *Buckley v. Valeo*, 424 U.S. 1, 20 (1976), the Courts have repeatedly affirmed Congress's authority to do so.

Following the Supreme Court's affirmation of contribution limits in *Buckley*, the political parties created and exploited the "soft money" loophole by taking advantage of Federal Election Commission ("FEC") regulations that purported to distinguish between contributions for federal and state election activity (much in the manner that Plaintiffs now propose). As was extensively chronicled in the late 1990s, *see, e.g.*, S. Rep. No. 105-167 (1998), that loophole dramatically undermined the then-existing contribution limits. Congress recognized that permitting the national political parties to continue to raise and spend funds not subject to federal source and amount limitations would simply invite further evasion and would leave open the door to the actual and apparent corrupting influence of large political contributions. Congress also recognized that additional, but more limited, regulation of the state political parties was necessary to avoid circumvention of the federal limits. Congress responded by enacting the Bipartisan Campaign Reform Act of 2002 ("BCRA"), the core purpose of which was to close the soft money loophole.

In *McConnell v. Federal Election Commission*, one of the most comprehensive lawsuits in recent history, the Supreme Court thoroughly considered the constitutionality of the new soft

money provisions and rejected an array of facial challenges to the law. 540 U.S. 93 (2003). Most significantly for present purposes, the *McConnell* plaintiffs—which included the Republican National Committee (RNC") and the California Republican Party ("CRP")—raised the same concerns that the Plaintiffs in this case raise, and the Supreme Court rejected each of those challenges. *Id.* at 134-74. The *McConnell* plaintiffs argued, for example, that BCRA's soft money provisions are "impermissibly overbroad" because they apply to "*all* funds raised and spent by national parties . . . , including . . . funds spent on purely state and local elections in which no federal office is at stake." *Id.* at 154 (emphasis in original). The Supreme Court rejected that argument, and others related to the use of soft money, stressing that the soft money provisions "regulate[ ] *contributions*, not activities," *id.* (emphasis in original). Emphasizing the "close connection and alignment of interests" between the national parties and federal officeholders and candidates, the Court held that "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part federal officeholders, *regardless of how those funds are ultimately used*." *Id.* at 155 (emphasis added).

Accepting Plaintiffs' invitation in this case to alter BCRA's soft money provisions would once again open the door to systemic evasion of federal contribution limits and the risk of actual or apparent corruption. That door was firmly closed by Congress, in BCRA, and the Supreme Court, in *McConnell*. Accordingly, this Court should deny Plaintiffs' Motion for Summary Judgment.

BACKGROUND

In 1974, Congress amended the Federal Election Campaign Act of 1971 ("FECA"). Among other things, the 1974 amendments limited individual political contributions to any single candidate to $1,000 per election, imposed an overall annual limitation of $25,000 by any

contributor, and required reporting and public disclosure of contributions and expenditures exceeding certain limits. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263. Under FECA, however, the term "contribution" only reached the gift or advance of anything of value "made by any person for the purpose of influencing any election for *Federal* office." 2 U.S.C. § 431(8)(A)(i) (emphasis added). Accordingly, FECA left open the possibility for "corporations and unions, as well as individuals who had already made the maximum permissible contributions to federal candidates, to contribute 'nonfederal money'—also known as 'soft money'—to political parties for activities intended to influence state or local elections." *McConnell v. FEC*, 540 U.S. 93, 123 (2003).

Shortly after FECA was enacted, the FEC sowed the seeds of the "soft money" loophole by adopting allocation rules that purported to distinguish between campaign contributions used to fund federal election activity—which were subject to FECA's source and amount limitations—and contributions used to fund state election activity—which were not subject to FECA's restrictions. *See* 11 C.F.R. § 102.6(a)(2) (1977); 11 C.F.R. § 106.5 (1991). Over time, the political parties learned to use these allocation rules to evade FECA and to inject massive amounts of unregulated soft money into the federal election system. *See McConnell v. FEC*, 251 F. Supp. 2d 176, 197-201 (D.D.C. 2003) (per curiam); Expert Report of Thomas E. Mann, *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C 2003) (No. 02-0582) ("Mann Report") Tbl. 2 [Exhibit 1]. This pattern of evasion grew exponentially after the FEC concluded in 1995 that the parties could also use soft money to fund the costs of "legislative advocacy media advertisements," including ads that mentioned the name of a federal candidate, so long as they did not expressly advocate the candidate's election or defeat. FEC Advisory Op. 1995-25, 1995 WL 571489 (Aug. 24, 1995) [Exhibit 2]. Moreover, to take even further advantage of the soft

money loophole, "[t]he national parties transferred large amounts of their soft money to the state parties, which were allowed to use a larger percentage of soft money to finance mixed-purpose activities under FEC rules." *McConnell*, 540 U.S. at 124 (citing Mann Report 26 [Exhibit 1]). In addition to "legislative advocacy advertisements," these "mixed-purpose" activities included, among other things, get-out-the-vote drives and generic party advertising.

The debilitating effect of soft money was not mitigated by the fact that its uses were, at least on paper, limited to certain activities, some of which were less than directly related to federal campaigns. As political scientists and the Courts have recognized, there is a fundamental unity of interest linking the national parties to their candidates and officeholders. *See McConnell v. FEC*, 540 U.S. at 145 ("[F]ederal candidates and officeholders enjoy a special relationship and unity of interest [with the national parties]."). "The party national committees do not exist to lose elections, or to be neutral in elections or court cases relating to them; they exist to capture public offices for their candidates and deny those offices to candidates from the other party." (Declaration of Norman J. Ornstein ("Ornstein Decl.") ¶ 7 [Exhibit 3]). As a consequence, "[r]aising money to win those elections is critical for the candidates, and the parties have long been vehicles and conduits for that purpose." (*Id.* at ¶ 12.)[1] "Presidents and congressional leaders," accordingly, "are favorite guests at fundraising affairs. . . . [T]hey fully recognize that their fundraising role both augments their power within the party-as organization . . . and indirectly strengthens their power within the party-as-government . . . ." (Green Report at 9 [Exhibit 4].) In short, "as political scientists have observed since the earliest studies of political

[1] In *McConnell*, expert witness Donald Green also illustrated additional ways in which this symbiotic relationship manifests itself. Expert Report of Donald Green, *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C 2003) (No. 02-0582) ("Green Report") 7-8 [Exhibit 4]. These include, but are not limited to, the parties' crucial role in the organization of the legislative caucuses, the assignment of committee posts, and the distribution of power within committees. *Id.*

party machines, there is often a disquieting closeness between the party-in-government and the party-as-organization." Green Report at 9. Thus, although nominally routed through the parties, soft money effectively became part of the indissoluble party-officeholder partnership.

Promises, moreover, to segregate "federal" and "state" campaign contributions are, in practice, meaningless. As Dr. Ornstein explains, "[w]e know that much political money is fungible. Money raised by parties for one purpose frees up resources that might otherwise be tied up to use for other purposes, including federal campaigns and elections." (Ornstein Decl. ¶ 20 [Exhibit 3].) Likewise, as discussed below in subsection III.A.3.b, funds used for purposes of what Plaintiffs characterize as "state" election activity—like "get-out-the-vote" drives and "issue advocacy"—have a substantial (and often intended) effect on federal elections. As former Representative Shays stated in 2002, "[t]he 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." 148th Cong. Rec. H409 (Feb. 13, 2002) (statement of Rep. Shays) (emphasis added).

In culmination of a nearly decade-long legislative effort to close FECA's soft money loophole, Congress enacted the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 91. In relevant part, Title I of BCRA amended FECA by prohibiting national parties and their officers from soliciting, receiving, or routing through third parties funds that are not subject to federal regulation. BCRA § 101(a), FECA § 323(a) (codified at 2 U.S.C. § 441i(a)). BCRA reinforced section 323(a)'s restriction on national party involvement with soft money by also limiting the manner in which state and local party committees could use such funds for federal election activities.[2] BCRA § 101(b)(1), FECA § 323(b)(1) (codified at 2 U.S.C. § 441i(b)(1)).[3]

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[2] Under BCRA, the state and local parties remain free to use a combination of federal

Shortly after the President signed BCRA into law, various political parties (including the RNC and CRP), interest groups, and Members of Congress brought a series of lawsuits challenging the constitutionality of virtually every provision of BCRA, including the soft money provisions. *McConnell*, 251 F. Supp. 2d at 206. After those actions were consolidated before a three-judge panel of this Court, the parties developed a massive record, "which, by a conservative estimation, comprised the testimony and declarations of over 200 fact and expert witnesses and over 100,000 pages of material." *Id.* at 209 (footnote omitted). The record developed in *McConnell*, which is meticulously reflected in Judge Kollar-Kotelly's and Judge Leon's separate opinions in that case, provides the core factual background for this action. *Id.* at 432-756 (Kollar-Kotelly, J.); *id.* at 756-919 (Leon, J.).

On direct appeal, the Supreme Court upheld section 323 in its entirety against plaintiffs' facial challenge. With respect to section 323(a), the Supreme Court concluded that "[t]he Government's strong interests in preventing corruption, and in particular the appearance of corruption, are . . . sufficient to justify subjecting *all* donations to national parties to the source, amount, and disclosure limitations of FECA." *McConnell*, 540 U.S. at 156 (emphasis added). Likewise, the Supreme Court concluded that "§ 323(b), on its face, is closely drawn to match the important governmental interests of preventing corruption and the appearance of corruption." *Id.* at 173.

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funds and so-called Levin Funds for certain voter identification, voter registration, and get-out-the-vote activities pursuant to a allocation ratio set by the FEC. *See* FECA § 323(b)(2) (codified at 2 U.S.C. § 441i(b)(2)).

[3] The provisions at issue in this case are identified pursuant to the section numbers assigned to those provisions in FECA.

Plaintiffs now seek an exemption from section 323's soft money restrictions as applied to a series of activities in which, they allege, they intend to engage. In the Complaint for Declaratory and Injunctive Relief ("Complaint"), Plaintiff RNC alleges that it intends to solicit and use soft money funds for the following accounts: (1) an RNC New Jersey account, financing campaign activities in support of state Republican candidates in the November 10, 2009 election; (2) an RNC Virginia account, financing campaign activities in support of state Republican candidates in the November 10, 2009 election; (3) an RNC redistricting account, financing the redistricting efforts of various state Republican parties following the 2010 census; (4) an RNC "grassroots lobbying" account, financing "grassroots lobbying" efforts for federal legislation and issues important to the Republican Party's platform; (5) an RNC state elections account, financing campaign activities in support of state candidates in connection with elections where both federal and state candidates appear on the ballot, and (6) an RNC litigation account, financing litigation challenging BCRA and other litigation efforts. (Compl. ¶¶ 16-21.) Former RNC Chairman Robert M. Duncan ("Duncan") intends to solicit funds into these accounts. (Compl. ¶ 22.)

In addition, the CRP and Republican Party of San Diego ("SDRP") challenge the constitutionality of BCRA's restrictions on their use of soft money to: (1) support or oppose the passage of California ballot initiatives through public communications that promote, attack, support, or oppose candidates for federal office; and (2) engage in voter identification, voter registration, get-out-the-vote activities, and generic campaign activity, in connection with elections where both state and federal candidates appear on the ballot. (Compl. ¶¶ 23, 25.)

ARGUMENT

Plaintiffs' "as applied" challenge to section 323 fails to raise legal issues that were not considered and rejected in *McConnell*.[4] Plaintiffs do not attempt to undercut *McConnell*'s core conclusion that soft money donations to political parties can foster actual or apparent corruption and that this risk is a sufficient justification for BCRA's closely drawn limits on campaign contributions. Nor do they argue that the political landscape has fundamentally changed in a way that renders the record in *McConnell* no longer accurate or relevant. Rather, Plaintiffs' principal contention is that the First Amendment precludes application of section 323 to contributions that they seek to collect and use for a series of purposes that, in their view, are not "unambiguously related" to a federal election. That argument, however, ignores a fundamental holding of McConnell: How soft money may be used is irrelevant to the constitutional analysis of limits on soft money contributions. Indeed, Congress concluded, and the Court affirmed, that sufficient risks of actual and apparent corruption arise in connection with parties accepting and soliciting soft money that restrictions on soft money contributions can withstand constitutional scrutiny "regardless of how those funds are ultimately used." 540 U.S. at 155. Furthermore, Plaintiffs' "unambiguously related" test fails to find any support in *McConnell* or other cases addressing contribution, as opposed to expenditure, limits. And Plaintiffs' attempt to inject a higher level of scrutiny than the courts have historically applied in considering the constitutionality of contribution limits finds no support in the controlling precedent; the courts

[4] On January 26, 2009, the FEC moved this Court to dismiss this action on the ground that the Supreme Court's decision in *McConnell* precludes Plaintiffs' claims as a matter of res judicata and collateral estoppel. Because the arguments that Plaintiffs now assert were raised and considered in *McConnell*, Representative Van Hollen agrees that Plaintiffs' claims are precluded under principles of res judicata and collateral estoppel. Although Plaintiff label their current lawsuit an "as-applied" challenge, the substance of their arguments does not differ from those addressed in *McConnell*.

have consistently recognized that contribution limits do not demand the level of scrutiny applicable to expenditure limits, since they impose only a "marginal restriction upon a contributor's ability to engage in free speech." *Buckley*, 424 U.S. at 20. Plaintiffs claims, quite simply, are foreclosed by *McConnell.*

I. THE SUPREME COURT REJECTED IN *MCCONNELL* THE PRECISE CHALLENGES RAISED BY PLAINTIFFS IN THIS ACTION

A. The Supreme Court's Anti-Corruption Rationale for Upholding Section 323(a) Forecloses Challenges That Are Predicated on the Ultimate Use of Soft Money Contributions

1. Soft Money Contributions to National Parties Can Corrupt Federal Candidates and Officeholders, or Create the Appearance of Corruption, Regardless of How the Contributions Are Ultimately Used

In *McConnell*, the Supreme Court considered and rejected the central argument on which Plaintiffs' claims depend—that the constitutionality of section 323(a)'s restrictions on soft money contributions to national parties depends on the nature of the *activities* for which those contributions are ultimately used. The Court held that "Section 323(a), like the remainder of § 323, regulates contributions, not activities" and that "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." *McConnell*, 540 U.S. at 154-55 (emphasis added).[5] In light of the "close connection and alignment of interests" between parties and candidates, whether any given *use* of soft money by itself poses a threat to corrupt a federal candidate or office holder is "beside the point." *Id*. at 154, 155 (emphasis added). This was no mere aside in the *McConnell* opinion; it was central to the Court's holding, the issue having been put forcefully to the Court by plaintiffs there in terms

[5] *See also id.* at 156 ("[O]fficeholders place substantial value on soft-money contribution themselves, without regard to their end use" and, in turn, "national committees are able to exert considerable control over federal officeholders.").

that Plaintiffs here simply echo. *See id.* (rejecting "Plaintiffs[']and The Chief Justice['s]" argument that section 323 is impermissibly overbroad because it subjects to regulation funds spent on activities that pose "'little or no potential to corrupt . . . federal candidates and officeholders.'").

The Supreme Court characterized its conclusions regarding the threat of real and apparent corruption as "neither novel nor implausible." *McConnell*, 540 U.S. at 144. The Court recognized, as it has since *Buckley*, that contributions to a candidate's party could create a sense of obligation no less than a direct contribution to the candidate himself, *id*. at 144-45 (citing *Buckley*, 424 U.S. at 38), and that "[t]his is particularly true of contributions to national parties, with which federal candidates and officeholders enjoy a special relationship and unity of interest." *Id*. at 145. Because of this "close affiliation," the national parties are placed "in a unique position, 'whether they like it or not,' to serve 'as agents for spending on behalf of those who seek to produce obligated officeholders,'" and the record showed that "rather than resist that role, the national parties . . . actively embraced it." *Id*.

The exhaustive record in *McConnell* contained strong evidence of this unity of interest between the parties and the candidates. In her findings of fact, which were echoed in relevant part by the Supreme Court,[6] Judge Kollar-Kotelly concluded that "[u]nlike other entities, political parties have uniquely close relationships with candidates they nominate and support, and who, in turn, lead the party." *McConnell*, 251 F. Supp. 2d at 468 (citing Green Report at 7-9 [Exhibit 4]; Declaration of Sen. John McCain, J.A., *McConnell v. FEC*, 540 U.S. 93 (2003) (No.

[6] *See McConnell*, 540 U.S. at 124 nn.9-10, 124 n.12, 125 nn.14-15, 126 n.16, 127 nn.17-20, 128 nn.21, 23, 129 nn.24-25, 133 n.38, 146, 147 n.46, 148 n.47, 149, 150, 151, 154 n.50, 155, 164 nn.59-60, 167, 173.

02-1674 *et al.*) ("McCain Decl.") ¶¶ 22-23 [Exhibit 5]).[7] Even elected federal officials and party officials concurred.[8]

Having rejected the distinction between national parties and federal candidates and officeholders, the Supreme Court identified the many ways, evidenced by the record, that soft money contributions to the national parties could create corruption or the appearance of corruption. The Court noted that "[t]he evidence in the record shows 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. At the donor end of the bargain,

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[7] *See also McConnell*, 251 F. Supp. 2d at 468-69 (Kollar-Kotelly, J.) (quoting Krasno & Sorauf Expert Report at 12-13) ("Party committees are headed by or enjoy close relationships with their leading officials, individuals who by virtue of their positions, reputations, and control of the legislative machinery have special influence on their colleagues.").

[8] Former Representative Meehan, for example, explained that "'[i]n [his] experience, political parties do not have economic interests apart from their ultimate goal of electing their candidates to office.'" *McConnell*, 251 F. Supp. 2d at 468 (Kollar-Kotelly, J.) (quoting Meehan Decl. in *RNC* ¶¶ 3-4). And the Colorado Republican Party recognized, in a prior legal brief quoted by Judge Kollar-Kotelly in *McConnell*, just how closely intertwined the interests of the national parties and candidates are:

> 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 468 (Kollar-Kotelly, J.) (quoting Brief of Colorado Republican Party in *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 457 (2001), at 19-20 [Exhibit 6]).

"lobbyists, CEOs, and wealthy individuals alike all . . . 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." *Id.* at 147. At the other end of the bargain, "national parties . . . actively exploited the belief that contributions purchase influence or protection to pressure donors into making contributions." *Id.* at 148 n.47.

The *McConnell* record showed just how pervasive the corrupting effect of soft money donations had become. As one CEO put it, "'[m]any members of the business community recognize[d] that [, prior to BCRA,] if they want[ed] to influence what happens in Washington, they [would] have to play the soft money game.'" *McConnell*, 251 F. Supp. 2d at 497 (Kollar-Kotelly, J.) (quoting Randlett Decl. ¶ 14).[9] Unsurprisingly, then, "'labor and business leaders [we]re regularly advised that—and their experience directly confirm[ed] that—organizations that make large soft money donations to political parties in fact [did] get preferred access to government officials.'" *Id.* at 497-98 (quoting Greenwald Decl. ¶ 10). This opportunity to obtain preferred access to federal candidates and officeholders constituted a key component of

[9] Testimony from lobbyists in *McConnell* further supports this conclusion. *See, e.g.*, *McConnell*, 251 F. Supp. 2d at 492 (Kollar-Kotelly, J.) ("Testimony from lobbyists demonstrates that large donations, particularly in nonfederal form, are a necessary ingredient for a successful lobbying campaign because they provide their clients with access to federal lawmakers, which allows them to influence legislation."). For example, lobbyist Robert Rozen testified,

> I know of organizations who believe that to be treated seriously in Washington, and by that I mean to be a player and to have access, you need to give soft money. As a result, many organizations do give soft money. . . . They give soft money because they believe that's what helps establish better contacts with Members of Congress and gets doors opened when they want to meet with Members. There is no question that money creates the relationships.

Id. at 492-93 (quoting Rozen Decl. ¶ 10).

management's overall corporate strategy, just like any other investment. *See id.* at 498 (quoting Eli Lilly and Company Memorandum (Jan. 15, 1997)).[10]

Perhaps more alarmingly, "[t]he evidence from the federal officeholders' perspective [wa]s similar." *McConnell*, 540 U.S. at 149. As former Senator Rudman explained,

> Special interests who give large amounts of soft money to political parties do in fact achieve their objectives. They do get special access. Sitting Senators and House Members have limited amounts of time, but they make time available in their schedules to meet with representatives of business and unions and wealthy individuals who gave large sums to their parties. These are not idle chit-chats about the philosophy of democracy. . . . Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way. No one says: "We gave money so you should do this to help us." No one needs to say it—it is perfectly understood by all participants in every such meeting.

McConnell, 251 F. Supp. 2d at 496 (quoting Rudman Decl. ¶¶ 7, 9). Submissions by numerous other current and former Members of Congress reflected the same observation: that soft money creates a reciprocal understanding between donors and federal officials whereby large donations are more or less tacitly traded for access to the federal officeholders.[11]

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[10] *See McConnell*, 251 F. Supp. 2d at 498 (quoting Hassenfeld Decl. ¶¶ 23-24) ("I think companies in some industries have reason to believe that because their activities are so closely linked with federal government actions, they must participate in the soft money system in order to succeed."); *id.* at 493 (quoting Rozen Decl. ¶ 10) ("Companies with interests before particular committees need to have access to the chairman of that committee, make donations, and go to events where the chairman will be.").

[11] *See McConnell*, 251 F. Supp. 2d at 496 (Kollar-Kotelly, J.) (quoting Simpson Dep. 11-12 ("It's giving so you can get access.") (former Sen. Simpson)); *id.* (quoting former Rep. Mazzoli as saying, "People who contribute get the ear of the member and the ear of the staff. They have the access—and access is it. Access is power. Access is clout. That's how this thing works. . . ."); *id.* (quoting Simon Decl. ¶ 16) ("Giving to party committees also helps you gain access to Members. While I realize some argue donors don't buy favors, they buy access. That access is the abuse and it affects all of us. If I got to a Chicago hotel at midnight, when I was in the Senate, and there were 20 phone calls waiting for me, 19 of them names I didn't recognize and the 20th someone I recognized as a $1,000 donor to my campaign, that is the one person I would

The corrupting influence of soft money is not limited to the provision of preferential access opportunities to federal candidates and officeholders. The *McConnell* record shows that the injection of soft money in the financing of the national parties has also altered the officeholders' actual decision-making on specific pending legislation. *McConnell*, 540 U.S. at 149. As the Supreme Court observed, "[t]he evidence connects soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation." *Id.* at 150. The record contained a host of explicit instances of legislative manipulation, including first-hand accounts of closed-door meetings in which Members of Congress informed their colleagues of large corporations' commitment to support future campaigns in exchange for a certain legislative outcome on pending legislation. (McCain Decl. ¶ 8 [Exhibit 5].)[12] The Supreme Court, confronted with this

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call. You feel a sense of gratitude for their support."); *id.* at 496-97 (quoting McCain Decl. ¶ 6 [Exhibit 5]) ("At a minimum, large soft money donations purchase an opportunity for the donors to make their case to elected officials, including the President and Congressional leaders, in a way average citizens cannot. Many legislators have been in situations where they would rather fit in an appointment with a soft money contributor than risk losing his or her donation to the party."); *id.* at 497 (quoting Shays Decl. ¶ 9) ("Soft money donations, particularly corporate and union donations, buy access and thereby make it easier for large donors to get their points across to influential Members of Congress. The donors of large amounts of soft money to the national parties are well-known to the leadership and to many other Members of Congress. The access to elected officials that large donors receive goes far beyond an average citizen's opportunity to be heard.").

[12] *See also* McCain Decl. ¶¶ 8-11 [Exhibit 5]; Declaration of Alan K. Simpson, J.A., *McConnell v. FEC*, 540 U.S. 93 (2003) (No. 02-1674 *et al.*) ("Simpson Decl.") ¶ 10 [Exhibit 7] ("Donations from the tobacco industry to Republicans scuttled tobacco legislation, just as contributions from the trial lawyers to Democrats stopped tort reform"); Declaration of Paul Simon, J.A., *McConnell v. FEC*, 540 U.S. 93 (2003) (No. 02-1674 *et al.*) ("Simon Decl.") ¶¶ 13-14 [Exhibit 8] (describing an instance in which a colleague explicitly referred to "special interests" as a ground of decision on pending legislation.).

evidence, concluded that "[t]o claim that such actions do not change legislative outcomes surely misunderstands the legislative process." *McConnell*, 540 U.S. at 150.

It was against this landscape of fundraising and legislative abuse that the Supreme Court held that "there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption," regardless of how they are ultimately used. *Id.* at 154. In so doing, the Court gave appropriate deference to a congressional determination, made upon consideration of an extensive factual record, and in an area in which Congress possesses institutional expertise, that a blanket prohibition on soft money contributions to national parties was necessary to protect the integrity of the federal system.[13]

2. Plaintiffs' Section 323(a)'s Claims Are Foreclosed by McConnell

In the face of all this, Plaintiffs contend that this Court should disregard *McConnell*'s unequivocal and blanket holding, because this challenge involves the application of BCRA to contributions to accounts funding what Plaintiffs describe as "state" and "non-federal" activities or, at least, activities that are not "unambiguously related" to federal elections. (*See* Mem. in Supp. of Pls.' Mot. for Summ. J. 3-6, 30-40.) According to Plaintiffs, the anti-corruption rationale is "too remote" to apply to such activities—for example, because they are not "unambiguously" designed to influence or benefit federal candidates or officeholders, or because some of the activities will take place in the context of elections where no federal candidate is on the ballot.

The *McConnell* Court squarely rejected the argument Plaintiffs now recycle. In *McConnell*, the Court considered the same types of RNC activities for which the party now,

[13] *See infra* Section III.A.

again, seeks an exemption. The Court specifically noted, for example, that "in 2001, the RNC spent $15.6 million of nonfederal funds (30% of the nonfederal amount raised that year) on purely state and local election activity, including contributions to state and local candidates, transfers to state parties, and direct spending." 540 U.S. at 154 n.50. Presented with this "purely state and local election activity" taking place where "no federal office is at stake," *id.*, the Court not only upheld section 323(a), but explicitly dismissed this evidence as simply "beside the point," *id.* at 154. It is therefore irrelevant that Plaintiffs intend to spend soft money on elections in which no federal candidates appear on the ballot. (*See* Mem. in Supp. of Pls.' Mot. for Summ. J. 30-33; Compl. ¶ 16 (New Jersey Account will be used to support state Republican candidates in an election in which no federal candidates are on the ballot); *id.* ¶ 17 (same with respect to the Virginia Account); *id.* ¶ 20 (State Elections Account will "use . . . funds exclusively to support state candidates in various states").

Plaintiffs' argument flouts the fundamental point of the Supreme Court's analysis of section 323(a) in *McConnell*. As discussed above, soft money contributions to national political parties foster actual and apparent corruption, whether they are directed to "redistricting efforts," "grassroots lobbying efforts," or "costs associated with litigation." (*See* Mem. in Supp. of Pls.' Mot. for Summ. J. 2-7; Compl. ¶¶ 18, 19, 21.) What makes them inherently suspect is not their ultimate use, but "the close relationship between federal officeholders and the national parties . . . that ha[s] made all large soft-money contributions to national parties suspect." *See McConnell*, 540 U.S. at 154-55. It is therefore fundamentally incompatible with the Supreme Court's holding and reasoning in *McConnell* to challenge—as Plaintiffs attempt to do here—section 323(a)'s restriction on soft money contributions on the basis of the end use to which the contributions are put. Plaintiffs offer no reason to disturb a controlling decision of the Supreme

Court upholding a sound congressional judgment, formulated on an extensive record, in an area in which Congress possesses expertise.

B. The Supreme Court's Anti-Corruption Rationale Also Forecloses Plaintiffs' Challenges to Section 323(b)

1. Section 323(b) Serves Congress's Interest in Combating Actual or Apparent Corruption by Closing the State and Local Party Loophole

McConnell also conclusively forecloses the claims made by CRP and SDRP, namely, that certain activities in connection with state and local elections and ballot initiatives in which federal candidates appear on the ballot cannot be constitutionally regulated. The Supreme Court recognized that "the corrupting influence of soft money does not insinuate itself into the political process solely through national party committees" and held that soft money contributions to state and local political parties can themselves corrupt federal candidates and officeholders. *McConnell*, 540 U.S. at 164.

As the *McConnell* record showed, prior to the enactment of BCRA, the state committees "function[ed] as an alternative avenue for precisely the same corrupting forces" that manifested themselves in connection with soft money contributions to the national parties. *Id.* Accordingly, soft money had long been routed through state and local parties whenever donors "ha[d] reached the limit on their direct contributions." *Id.* The Supreme Court also recognized that permitting unlimited amounts of soft money to flow into the coffers of state and local parties, only to be used for federal election purposes, would open a giant loophole in BCRA's carefully crafted soft money regulation. Regulating contributions to the national parties while leaving contributions to state parties unregulated raises the risk that "corrupting activity [will] shift[] wholesale to state committees . . . thereby eviscerating FECA."[14] *Id.* at 165-66. Therefore, the Supreme Court held

[14] *See also McConnell*, 251 F. Supp. 2d at 467 (Kollar-Kotelly, J.) (quoting Rudman Decl. ¶ 19) ("'The fact is that much of what state and local parties do helps to elect federal candidates.

that, in addition to the fundamental government interest in avoiding actual and apparent corruption of federal officials, section 323(b) serves a critical function in preventing circumvention of section 323(a)'s restrictions on soft money contributions to, and spending by, the national parties. *See id.* at 165-66 ("Preventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest.").

2. Plaintiffs' Section 323(b) Claims Are Foreclosed by McConnell

The Court's decision in *McConnell* leaves no room for an exemption permitting CRP or SDRP to spend soft money on federal election activities.[15] CRP and SDRP argue that they "intend to use state funds for public communications" in connection with California's ballot initiatives. (Mem. in Supp. of Pls.' Mot. for Summ. J. 6.) Plaintiffs claim that these communications will "refer[] to a clearly identified candidate for Federal office [and] . . . promote[] or support[] a candidate for that office, or attack[] or oppose[] a candidate for that office" within the meaning of 2 U.S.C. § 431(20)(A)(iii). (*Id.*)

Specifically, Plaintiffs claim that CRP and SDRP seek to use soft money to fund the distribution of a letter targeting Senator Barbara Boxer and House Speaker Nancy Pelosi—both

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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.'").

[15] It bears emphasizing that this is not one of the narrow circumstances in which *McConnell* expressly left open the possibility that state or local parties could bring as-applied challenges to section 323(b). *McConnell* reserved judgment on section 323(b)'s constitutionality where a state or local party could show that the provision's effect is "so radical as to . . . drive the sound of [the recipient's] voice below the level of notice." *McConnell*, 540 U.S. at 173. However, neither CRP nor SDRP contend that section 323(b) has or will have such an effect on their ability to engage in effective advocacy. Accordingly, nothing in *McConnell* suggests that an as-applied challenge is available to them.

of whom are scheduled to face re-election in 2010—purportedly in connection with a potential California congressional-redistricting ballot initiative. (Pls'. Stat. Undisp. Facts ¶¶ 63-64.) Plaintiffs claim they would accuse Nancy Pelosi and Barbara Boxer of "want[ing] to keep California voters from effectively choosing their Congressional representatives" and "do everything they can to stop a change from happening." (Christiansen Decl. Mem. & Letter (Jan. 15, 2009); Tetlow Decl. ¶ 6.)

As the Supreme Court recognized in *McConnell*, the type of communications that Plaintiffs describe—public communications that promote or attack a clearly identified federal candidate—"undoubtedly have a dramatic effect on federal elections." 540 U.S. at 169. The Court noted that "[s]uch ads were a prime motivating force behind BCRA's passage" and that section 323(b) was a closely drawn response to Congress's anti-corruption interest because "any public communication that . . . attacks a clearly identified federal candidate directly affects the election in which [s]he is participating. The record on this score could scarcely be more abundant." *Id.*[16] *McConnell* held that section 323(b)'s contribution caps were constitutional as applied to precisely the kind of communications Plaintiffs have put at issue in this case.[17]

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[16] *See also McConnell*, 251 F. Supp. 2d at 781-82 (Leon, J.) ("[I]t is natural for [a] candidate to feel indebted towards those whose donations funded the [§ 431(20)(A)(iii)] communication, even if he does not know exactly which soft money donors' funds actually made it possible. Concomitantly, it is natural for the public to perceive that those whose large soft money donations funded the national and state parties' communications are not only known by the parties' staffs, but by the federal candidates who directly benefitted from the donations.").

[17] Plaintiffs argue that their proposed letter should be subject to strict scrutiny as an *expenditure* because "the state political party already has state funds it wishes to use for the proposed spending." (Mem. in Supp. of Pls.' Mot. for Summ. J. 41.) However, nothing in BCRA prevents the state parties from spending resources on their proposed letter; BCRA only requires that they use federal funds to do so. The fact that the state parties may already have soft money available is irrelevant. As the Supreme Court explained in *McConnell*, "for purposes of determining the level of scrutiny, it is irrelevant that Congress chose in § 323 to regulate contributions on the demand rather than the supply side. The relevant inquiry is whether the

CRP and SDRP contend that they also seek "to use state funds for voter registration, voter identification, GOTV [get-out-the-vote], and 'generic campaign activity' in future elections where both state and federal candidates are on the ballot." (Mem. in Supp. of Pls.' Mot. for Summ. J. 6.) Although Plaintiffs argue that "none of these activities will be targeted to any federal race or federal candidate," (Mem. in Supp. of Pls.' Mot. for Summ. J. 6-7), the holding in *McConnell*, as well as the records from both *McConnell* and this case, tell a different story. "Common sense dictates, and it was 'undisputed' [in *McConnell*], that a party's efforts to register voters sympathetic to that party directly assist the party's candidates for federal office." *McConnell*, 540 U.S. at 167. Moreover, both the CRP and the SDRP have candidly recognized in this action that their voter registration, voter identification, and get-out-the-vote activities not only inevitably affect state and federal elections alike, but are actually *intended* to affect both state and federal elections. (Christiansen Dep. Feb. 24, 2009, 123:1-13, 128:24-130:5 [Exhibit 9 (excerpted)]; Buettner Dep. Feb. 24, 2009, 63:2-18; 69:7-10 [Exhibit 10 (excerpted)].) It follows

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mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct restriction on the contribution itself would not. That is not the case here." *McConnell*, 540 U.S. at 138-39 (citation omitted).

Plaintiffs also argue that, notwithstanding the findings of *McConnell*, their purported letter poses no risk of corruption because it is "genuine issue advocacy" like the ads upheld in *Wisconsin Right to Life v. FEC ("WRTL II")*,127 S. Ct. 2652 (2007), and is not "electioneering" or "campaign speech." (Mem. in Supp. of Pls.' Mot. for Summ. J. 42-44.) But that argument fundamentally confuses the difference between a political committee, whose actions are "presumed to be in connection with election campaigns," *McConnell*, 540 U.S. at 170 n.64, and an independent corporate entity. *WRTL II* applied to expenditures by the latter, not contributions to the former. 127 S. Ct. at 2659. *See also Buckley*, 424 U.S. at 79 (noting that political committees are "under the control of a candidate or the major purpose of which is the nomination or election of a candidate" and thus their expenditures "are, by definition, campaign related"); *Shays v. FEC*, 511 F. Supp. 2d 19, 27 (D.D.C. 2007) (citing *Buckley*, 424 U.S. at 80) ("[T]he Court imposed the narrowing gloss of express advocacy on the term 'expenditure' only with regard to groups other than 'major purpose' groups."). Plaintiffs candidly admit that CRP and SDRP are properly qualified as "political committees," (Compl. ¶¶ 12-13), leaving no doubt that this argument should be rejected.

that CRP's and SDRP's intended activities "all confer substantial benefits on federal candidates" and "the funding of such activities creates a significant risk of actual and apparent corruption." *McConnell*, 540 U.S. at 168.

More fundamentally, in *McConnell*, the Supreme Court expressly rejected challenges to the application of section 323(b) to precisely the same types of federal election activities proposed by Plaintiffs in this case. Here, CRP and SDRP allege no unique facts that would make their participation in federal election activity any different from analogous activities performed by their counterparts in other states or counties. Accordingly, the as-applied challenges Plaintiffs advance here would leave *nothing* of *McConnell*'s facial holding that Congress may limit state and local parties to hard money (or Levin funds) for the same types of activities at issue in this case.

II. PLAINTIFFS' ARGUMENT THAT SECTION 323 CAN ONLY REGULATE ACTIVITIES THAT ARE "UNAMBIGUOUSLY RELATED TO THE CAMPAIGN OF A PARTICULAR FEDERAL CANDIDATE" HAS NO BASIS IN *BUCKLEY* OR ITS PROGENY

Plaintiffs' contention that the soft money provisions in *McConnell* can be sustained only where a political party uses the funds to support an activity that is "'unambiguously related to the campaign of a particular federal candidate,'" (Mem. in Supp. of Pls.' Mot. for Summ. J. 9 (quoting *Buckley*, 424 U.S at 80)), finds no support in Supreme Court precedent and should be rejected for several reasons.

The constitutionality of section 323 turns on one—and only one—inquiry: whether its restriction on the use and solicitation of soft money is "'closely drawn' to match 'a sufficiently important [government] interest.'" *McConnell*, 540 U.S. at 136. "Closely drawn" scrutiny is "less rigorous" than strict scrutiny, *id.* at 141, and while the Supreme Court has not hesitated to apply strict scrutiny to laws regulating campaign expenditures, it has refused to apply strict

scrutiny to the type of laws at issue here: those regulating political *contributions*. *Id.* at 134. Indeed, the Court has explicitly stated that "when reviewing Congress' decision to enact contribution limits, 'there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words strict scrutiny.'" *Id*. at 137.

The Supreme Court has held, moreover, that sections 323(a) and (b) govern contributions and not expenditures. Neither "in any way limits the total amount of money parties can spend. Rather, the[se] [restrictions] simply limit the source and individual amount of donations." *McConnell*, 540 U.S. at 139 (citation omitted). As the *McConnell* Court held, it is inconsequential that section 323 also restricts the spending and solicitation of soft money contributions; the reference to particular uses of contributions merely reflects a "Congress[ional] cho[ice] . . . to regulate contributions on the demand rather than the supply side" and does not "render [section 323] [an] expenditure limitation[]." *Id*. at 138.

The Supreme Court's analysis in *Wisconsin Right to Life v. FEC ("WRTL II")*, which applied strict scrutiny in the context of an expenditure limitation, does not, as Plaintiffs contend, alter *sub silentio* the level of scrutiny applicable in what, since *Buckley*, has for constitutional purposes been seen as the entirely different context of campaign contributions. 127 S. Ct. 2652, 2664 (2007). In *WRTL II*, the Supreme Court addressed only the constitutionality of BCRA § 203—which regulates certain *independent expenditures* made by corporations and unions for "electioneering communications." *See* 2 U.S.C § 441b(b)(2), § 434(f)(3)(A). Neither *WRTL II* nor the cases cited therein address the regulation of political contributions or reverse the constitutional distinction between contributions and expenditures that has existed since *Buckley*.[18]

[18] *See McConnell*, 540 U.S. at 205 (applying, in relevant part, strict scrutiny to section

The Plaintiffs' contention that *Buckley* announced a generally applicable constitutional principle that federal campaign finance laws may regulate only activities that are "unambiguously related to the campaign of a particular federal candidate," (Mem. in Supp. of Pls.' Mot. for Summ. J. 9-10, 15), is equally misplaced. The *Buckley* Court wrote:

> [W]hen the maker of the *expenditure* . . . is an individual other than a candidate or a group *other than a "political committee"* . . . we construe "expenditure" . . . to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.

424 U.S. at 79-80 (emphasis added). As the Supreme Court held in *McConnell*, "the express advocacy restriction is a product of statutory interpretation, not a constitutional command." 540 U.S. at 103. Yet, even if (contrary to the Court's holding in *McConnell*) the *Buckley* Court's test was constitutionally-derived—and not merely adopted as a matter of statutory construction to eliminate any potential vagueness and overbreadth issues that FECA's provision regulating *independent expenditures* may have caused[19]—it would have no relevance here.

203's ban on *independent expenditures* made from general corporate and union treasury funds to finance electioneering communications); *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 658 (1990) (applying strict scrutiny to a Michigan statute requiring corporate entities wishing to make *independent campaign expenditures* to do so through regulated PAC funds); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252 (1986) (plurality opinion) (applying strict scrutiny in reviewing constitutionality of § 441b as applied to nonprofit organization making *independent expenditures* directly from corporate funds); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 774, 787 n.26 (1978) (applying strict scrutiny to a state law prohibiting corporate expenditures and contributions for the purpose of influencing the vote on a ballot question submitted to the voters, but noting that "[a]ppellants do not challenge the constitutionality of laws prohibiting or limiting corporate contributions to political candidates or committees, or other means of influencing candidate elections."); *Buckley*, 424 U.S. at 39, 96 (applying, in relevant part, strict scrutiny to federal limitation on *expenditures* relative to a clearly identified candidate).

[19] *See Buckley*, 424 U.S. at 80 ("To ensure the reach of [the mandatory reporting requirements] is not impermissibly broad, we construe 'expenditure' for purposes of that section

Despite Plaintiffs' suggestions to the contrary, the language from *Buckley* says nothing about the regulation of *contributions* collected by *political parties*.[20] The "unambiguously related" phrase was confined to the domain of independent expenditures by outside spenders; it did not speak to political parties. *Buckley* adopted the construction cited by Plaintiffs only with respect to "an individual other than a candidate or a group *other than* a 'political committee' [of a party]." *Buckley*, 424 U.S. at 79-80 (emphasis added). And *Buckley* also recognized that, in contrast with outside spenders, political committees, which are "by definition, campaign related," never present "line-drawing problems" of the sort that caused the Court to endorse the "express advocacy" construction; there is never any doubt that soft money contributions to the committees of the political parties are intended to support "advocacy of a political result." 424 U.S. at 78-79. *See also Shays v. FEC*, 511 F. Supp. 2d 19, 27 (D.D.C. 2007) (quoting *Buckley*, 424 U.S. at 80) ("[T]he Court imposed the narrowing gloss of express advocacy on the term

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in the same way we construed the terms of section 608(e) to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is *unambiguously related to the campaign of a particular federal candidate*.") (emphasis added; footnotes omitted).

[20] In attempting to prove that the *Buckley* Court applied the "unambiguously campaign related" test to contribution limits, Plaintiffs cite to language in *Buckley* construing the Act's definition of contributions. (Mem. in Supp. of Pls.' Mot. for Summ. J. 10.) In the passage cited, the Court concluded that the term "contribution" had been narrowly enough construed because activities considered to be contributions would be "connected with a candidate or his campaign" and would therefore "have a sufficiently close relationship to the goals of the Act." *Buckley*, 424 U.S. at 78. Here, what rendered the definition constitutional was that it related to the goals of the Act: limiting the actuality and appearance of corruption resulting from large individual financial contributions. *Id.* at 26. That it was so related in virtue of being connected to candidates and their campaigns in no way limited constitutional contribution limits to *only* those restrictions related to candidates and campaigns.

'expenditure' only with regard to groups *other than 'major purpose' groups*.") (emphasis added).[21]

Nor does the Supreme Court's post-*Buckley* jurisprudence support the principle advocated by Plaintiffs. Plaintiffs rely on what they call the "major-purpose" test, the "express advocacy" test, and the "appeal-to-vote" test as evidence of a universal requirement that campaign finance laws be "unambiguously campaign-related." (Mem. in Supp. of Pls.' Mot. for Summ. J. 10-13.) But the cases cited—*FEC v. Massachusetts Citizens for Life, Inc.*,[22] *McConnell*, and *WRTL II*—do not support Plaintiffs' broad contention, and, indeed, do not even mention any version of Plaintiffs' proposed test outside the context of independent expenditures. Nor has a single lower court case referred to the "unambiguously-related" language outside the context of independent expenditures by outside spenders.[23] And, perhaps more importantly, Plaintiffs' proposed standard is completely at odds with the holding of *McConnell*, which expressly affirmed the constitutionality of restrictions on the use of soft money contributions by state and local parties for activities that, on their face, are not unambiguously related to the

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[21] In this case, Plaintiffs themselves admit that they are properly qualified as "political committees," (Compl. ¶¶ 11-13), and therefore "major purpose" groups. *See McConnell*, 251 F. Supp. 2d at 470 (Kollar-Kotelly, J.) ("In practice, electing [federal] candidates is the RNC's primary focus.").

[22] 479 U.S. 238 (1986).

[23] *See N.C.. Right to Life v. Leake*, 525 F.3d 274, 281 (4th Cir. 2008) (quoting the *Buckley* language in assessing the constitutionality of a state law provision regulating expenditures on issue advocacy); *Nat'l Right to Work Legal Def. and Educ. Found., Inc. v. Herbert*, 581 F. Supp. 2d 1132, 1140-41 (D. Utah 2008) (same); *Ctr. for Individual Freedom v. Ireland*, Nos. 1:08-cv-00190, 1:08-cv-01133, 2008 WL 4642268, *5 (S.D. W. Va. Oct. 17, 2008) (same); *Broward Coalition of Condos., Homeowners Ass'ns and Cmty. Orgs. v. Browning*, No. 08-445, 2008 WL 4791004, *7 (N.D. Fla. Oct. 29, 2008) (same).

campaigns of particular federal candidates—that is, the very activities that Plaintiffs here assert they are free to raise soft money to finance. *See* 540 U.S. at 166-69.

III. PLAINTIFFS' PROMISE TO INSULATE FEDERAL CANDIDATES AND OFFICEHOLDERS FROM PLAINTIFFS' PROPOSED FUNDRAISING ACTIVITIES DOES NOT SAVE PLAINTIFFS' CLAIMS

Plaintiffs offer several explanations as to why their proposed activities do not pose a threat of actual or apparent corruption. They contend that federal candidates and officeholders will neither directly benefit from their intended activities nor be involved in those activities. Plaintiffs also maintain that they will not provide soft money donors any more access to federal officeholders or candidates than is already provided to hard money donors. (Mem. in Supp. of Pls.' Mot. for Summ. J. 22.)

Plaintiffs' proposal, however, remains fundamentally at odds with the history that gave rise to BCRA and with the purposes for which Title I of the statute was enacted. Based on years of experience, Congress understood that the political parties are inseparable from their elected officials and candidates. Regardless of how large political contributions are actually used, large financial contributions to the parties risks creating an appearance that those contributors will receive special treatment by the elected officials whom the parties represent and serve. Moreover, given the fungibility of money, if the national political parties were allowed to accept unlimited contributions for purposes unrelated to federal elections, Congress understood that these funds could be used to free up other funds to promote candidates in federal elections. And, in any event, the activities that Plaintiffs propose funding with contributions not subject to FECA's source and amount limitations are, in fact, precisely the type of activities that the political parties typically pursue to help elect federal candidates.

A. This Court Should Defer to Congressional Judgments Underlying Restrictions on Soft Money

"Where a legislature has significantly greater institutional expertise, as, for example, in the field of election regulation, the Court in practice defers to empirical legislative judgments . . ." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 402 (2000) (Breyer, J., concurring). BCRA Title I reflects Congress's determination that FECA's regulatory structure had been undermined to the point of collapse by the parties' burrowing at its vulnerable points, specifically the soft money loophole. Members of Congress understood from personal and institutional experience, and an extensive factual record, how the soft money system functioned and what was needed to close this loophole. Title I's contribution restrictions were a carefully calibrated response to that system's failures and deserve this Court's deference.

1. McConnell Held That It Was in Congress's Discretion to Limit Campaign Contributions When Those Contributions Might Foster Corruption or the Appearance Thereof

Since *Buckley*, the Supreme Court has consistently held that "the prevention of corruption *or its appearance* constitutes a sufficiently important interest to justify political contribution limits." *McConnell*, 540 U.S. at 143 (emphasis added). And in *McConnell*, the Court explicitly rejected limiting Congress's regulatory power to preventing the actuality or appearance of corruption caused by *quid pro quo* transactions—i.e., contributions made directly to, at the express behest of, or in coordination with a federal officeholder or candidate, in exchange for action taken by that federal officeholder or candidate. The Court recognized that "[j]ust as troubling to a functioning democracy as classic *quid pro quo* corruption is 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 (emphasis added). The Court also recognized that officeholders and candidates greatly value contributions made to their political parties. *Id.* at 146, 155-56.

Furthermore, the Court noted that, "[e]ven if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize." *Id.* at 153. Accordingly, and contrary to Plaintiffs' contentions, (Mem. in Supp. of Pls.' Mot. for Summ. J. 24-25), the Court refused to render Congress "powerless to address more subtle but equally dispiriting forms of corruption" than "the classic *quid pro quo*." *McConnell*, 540 U.S. at 153. Nor did the Court render Congress powerless to undertake prophylactic measures. (Mem. in Supp. of Pls.' Mot. for Summ. J. 25.) Rather, the Court recognized that "the First Amendment does not require Congress to ignore the fact that candidates, donors, and parties test the limits of the current law," and that "these interests have been sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits." *McConnell*, 540 U.S. at 144.

2. BCRA Reflects a Congressional Determination That Soft Money Contributions Can Foster Corruption, or the Appearance Thereof, Regardless of Whether Federal Candidates and Officeholders Are Involved in Fundraising, and Even if the RNC Provides Soft Money Donors No More Benefits Than Are Provided to Current Hard Money Donors

A "political party is an autonomous group of citizens having the purpose of making nominations and contesting elections in hope of gaining control over governmental power through the capture of public offices and the organization of the government." (Ornstein Decl. ¶ 6 [Exhibit 3].) Political parties "are intimately and directly connected, through their central goal of capturing public offices, with their candidates for office and their officeholders." *Id.* "[F]ederal candidates and officeholders enjoy a special relationship and unity of interest" with national parties. *McConnell*, 540 U.S. at 145. And "[t]here is no meaningful separation between

the national party committees and the public officials who control them." *Id.* at 155 (internal quotation marks omitted). This close affiliation has placed national parties in a unique position, "whether they like it or not, to serve as agents for spending on behalf of those who seek to produce obligated officeholders." *Id.* at 145 (internal citations and quotation marks omitted). In light of this tight nexus, the ability of "corporate, union, and wealthy individual donors . . . to contribute substantial sums of soft money to the national parties" makes it "not only plausible, but likely, that candidates [and officeholders] would feel grateful for such donations and that donors would seek to exploit that gratitude." *Id.* Under *McConnell*, this risk of corruption—both actual and apparent—is sufficient to justify congressional regulation of soft money contributions, "[e]ven when [federal officeholders do] not participat[e] directly in the fundraising,"[24] and regardless of whether soft money donors are afforded greater benefits than donors of hard money. *Id.* at 146-47.

The risk of actual and apparent corruption stems, first and foremost, from the fact that federal officeholders and candidates are "well aware of the identities of the donors." *Id.* at 147. In the past, "[n]ational party committees would distribute lists of potential or actual donors" and there is nothing to prevent them from doing so in the future. *See id.* Moreover, even if parties don't distribute donors lists, "donors themselves [are prone to] report their generosity to officeholders [and candidates]." *Id.* And those same officeholders and candidates can seek out this information themselves through publicly available records. These types of disclosure arm

[24] Indeed, some of the more disquieting evidence quoted by Judge Kollar-Kotelly in *McConnell* involved instances in which the federal candidates and officeholders had *not* been involved in soliciting the funds. For instance, Judge Kollar-Kotelly quoted the following testimony by former Senator Wirth: "The Democratic national campaign committees sometimes asked me to meet with large donors to the party whom I had not met before. At the party's request, I met with the donors. . . . On these occasions, sometimes all I knew about the donor would be the issue in which he was interested." *McConnell*, 251 F. Supp. 2d at 501 (Kollar-Kotelly, J.) (quoting Wirth Decl. Ex. A ¶ 15).

officeholders and candidates with ample knowledge to form the type of appreciation or "gratitude" that concerned the *McConnell* Court. *Id.*

As Congress and the Supreme Court have common-sensically found, federal officeholders and candidates will predictably listen harder to donors who have made large soft money contributions to their parties, a phenomenon that does not attenuate based on how the party has spent the soft money donation. Accordingly, it does not matter that the RNC promises to confer on soft money donors no greater benefits than hard money donors are currently afforded. The critical point is that candidates and officeholders will know the identity of the large, soft money contributors, and that knowledge will give rise to the same risk of actual and apparent corruption that Congress responded to when it enacted BCRA.[25]

Of course, the point at which donations become corrupting, or create the appearance of corruption, is a matter of judgment. But "in the context of this complex legislation," this "judgmental decision [is] best left . . . to congressional discretion." *Buckley*, 424 U.S. at 83.

3. BCRA Reflects a Congressional Determination That Soft Money Contributions Can Foster Corruption, or the Appearance Thereof, Regardless of Whether Federal Candidates and Officeholders Directly Benefit From Soft Money Expenditures

Plaintiffs argue that, under *McConnell*, only activities that "*directly* benefit federal candidates" can create the appearance of corruption, and therefore be subject to regulation. (Mem. in Supp. of Pls.' Mot. for Summ. J. 24.) But *McConnell* created no such limit on the

[25] It is likewise irrelevant that the RNC promises not to respond to donor requests for one-on-one meetings with officeholders and candidates. (Josefiak Dep. 128:11-15; 129:18-21 [Exhibit 11].) In *McConnell*, the RNC's Finance Director had stated that the RNC had an "an informal, unwritten policy" against facilitating access to its federal officeholders upon request by donors. 251 F. Supp. 2d at 502 (Kollar-Kotelly, J.) (citing B. Shea Dep. 80). In upholding section 323, the Court evidently found that policy insufficient to override Congress's reasoned judgment that soft money contributions fostered corruption and the appearance thereof.

scope of congressional regulation, and neither common sense nor historical experience support a limitation of this nature.

a) There is no legal basis for a "direct benefit" restriction on congressional regulation

Throughout its analysis of section 323(a), the *McConnell* Court did not give any analytical relevance to an activity's tendency directly to benefit a federal candidate or officeholder. To the contrary, as noted above, the Court held that, because of the "close connection and alignment of interests" between the national parties and federal candidates and officeholders, "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).

With respect to section 323(b), which restricts soft money contributions to state and local parties, the Supreme Court concluded that Congress had crafted a "narrowly focused" provision that "regulat[ed] contributions that pose the greatest risk of th[e] [appearance of] corruption: those contributions to state and local parties that can be used to benefit federal candidates directly."[26] *Id.* at 167. From these statements, Plaintiffs infer a "direct benefit" requirement that limits the scope of activities able to be regulated by Congress. (Mem. in Supp. of Pls.' Mot. for Summ. J. 24.) But a finding that the activities Congress chose to regulate do, in fact, benefit federal candidates does not establish a requirement that the appearance of corruption exists *only* when party activity directly benefits federal candidates, or that the scope of congressional power should be limited to regulating activities that directly benefit federal candidates.

[26] As an empirical matter, the Court found that "voter identification, GOTV, and generic campaign activities conducted in connection with a federal election, § 301(20)(A)(ii), clearly capture activity that benefits federal candidates," *McConnell*, 540 U.S. at 167, and that "public communications, as carefully defined in § 301(20)(A)(iii)," have an "overwhelming tendency . . . to benefit directly federal candidates," *id.* at 170.

b) Even if a "direct benefit" restriction on congressional regulation did apply, Plaintiffs' intended activities would fall within the scope of permissible congressional regulation

i) If Plaintiffs are permitted to raise soft money, they will divert hard money now spent elsewhere to federal elections and candidates

As a general matter, Plaintiffs' contention that Congress may only regulate soft money contributions that will directly benefit federal candidates and officeholders ignores the fact that campaign contributions are fungible; any financial contribution to the national political parties will benefit federal candidates and officeholders by either funding particular campaign activity or freeing up other funds that can then be used to do so. As Dr. Ornstein explains: there is no "meaningful distinction between money raised for non-federal purposes and money raised for federal purposes[.] We know that much political money is fungible. Money raised by parties for one purpose frees up resources that might otherwise be tied up to use for other purposes, including federal campaigns and elections." (Ornstein Decl. ¶ 20 [Exhibit 3].) Indeed, Plaintiffs themselves acknowledge, they could presently devote more hard money to the activities they propose to pursue, but choose not to, because this would divert hard dollars from federal candidates. The RNC acknowledges that the only thing preventing it from using hard money to undertake the activities it proposes to fund through soft money accounts is "the budget," specifically "choosing to spend hard money on what it was raised to [be spent on], namely, federal candidates." (Josefiak Dep. 141:10-21, Mar. 3, 2009 [Exhibit 11 (excerpted)].) If Plaintiffs were permitted to raise soft money, they would divert the hard money currently spent on these activities to federal candidates, thereby conferring a direct benefit on those candidates and meeting the terms of their own test for when congressional regulation is permissible.

ii) The activities Plaintiffs propose to fund with soft money will directly benefit federal officeholders and candidates

Even if money were not fungible, Plaintiffs intended activities would, in their own right, directly benefit federal officeholders and candidates.[27]

The RNC proposes to creates the following accounts to be funded with soft money: a redistricting account, Compl. ¶ 18, a grassroots lobbying account, (Compl. ¶ 19), a litigation account, Compl. ¶ 21, a general state elections account, Compl. ¶ 20, and state specific accounts for New Jersey, Compl. ¶ 16, and Virginia, Compl. ¶ 17. The activities to be undertaken in connection with each of these accounts will directly benefit federal officeholders and candidates.

As for redistricting, *McConnell* expert witness Dr. Green explained that "[t]he 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." *McConnell*, 251 F. Supp. 2d at 462 (Kollar-Kotelly, J.) (quoting Green Expert Report at 11-12 [Exhibit 4]). Indeed, "[t]he chances that a House incumbent will be ousted by unfavorable district boundaries are often greater than the chances of defeat at the hands of the typical challenger." *Id.* And the RNC itself acknowledged that "[t]he intended end goal" of redistricting efforts is "to divide a number of legislative and *Congressional* districts into a . . . format that hopefully would be . . . more of a benefit to us than the opposition party." (Josefiak Dep. 155:14-21 (emphasis added) [Exhibit 11].)

Similarly, with respect to so-called "grassroots lobbying," former RNC operatives and experts alike have testified that, pre-BCRA, its key component—so-called "issue advocacy"—

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[27] In fact, one of the RNC's own declarants in this case has stated that the intent behind reintroducing soft money into the financing of the political parties is to affect federal elections: "Republicans 'need to be on an equal footing, and we think that law [BCRA] keeps us from doing that,' Beeson said. 'The enormous amount of money that was raised in this campaign [by Obama] has changed the game moving forward, and we're going to be prepared.'" *BCRA: GOP Official Says Soft-Money Lawsuits Prompted by Need to Compete With Obama*, Money & Politics Report (Bureau of Nat'l Aff., Arlington, V.A.), Dec. 16, 2008 [Exhibit 12].

was a means of funneling soft money to federal electoral activities. "'[I]ssue advertisements' are intended to and do support the campaigns of federal candidates." *McConnell*, 251 F. Supp. 2d at 449 (quoting La Raja Cross Exam. Ex. 3 at 14-15). The RNC's former political operations director, Terry Nelson, testified in *McConnell* that the RNC engaged in "issue advocacy in order to achieve one of [its] primary objectives, which is to get more Republicans elected." *Id.* at 450 (quoting Nelson Dep. 191).[28] Likewise, expert witness Magleby explained that "[t]he content, tactics and strategy [of the political parties' advertisements] [we]re generally indistinguishable from the candidate[s'] campaigns." *Id.* (quoting Magleby Expert Report at 45). The importance of such "grassroots lobbying" to the national parties' goal of electing federal officeholders is evidenced by the fact that, pre-BCRA, the vast majority of the soft money expenditures by political parties were directed towards issue advocacy advertising campaigns. Prior to BCRA,

> [t]he national political parties spen[t] a large proportion of their budgets on "issue advertisements" that [we]re designed to help elect federal officeholders and candidates. In 2000, for example, the RNC spent an estimated $70-75 million dollars on the production and broadcasting of television and radio advertisements, including both issue advocacy and coordinated expenditures. "During the 2000 presidential election year, the largest single portion of the DNC budget was used for issue advertising."

Id. at 453 (internal citations omitted).[29] In light of this abundant evidence, the RNC's present desire to spend soft money on issue advertising, through the guise "grassroots lobbying," reveals

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[28] A popular tactic of the national parties was to "engage in 'issue advocacy' to help their candidates whose campaigns [we]re low on funds. For example, the RNC spent $20 million on issue advertisements from March 18, 1996, through the Republican National Convention in August, designed to boost Senator Dole's image at a time when he had virtually run out of federal matching primary funds." *McConnell*, 251 F. Supp. 2d at 451 (Kollar-Kotelly, J.).

[29] Prior to BCRA, "'over half, and sometimes as much as three-quarters, of soft money expenditures [by political parties went] to broadcast advertising,'" and most of that was spent on issue advertisements. *McConnell*, 251 F. Supp. 2d at 453 (Kollar-Kotelly, J.) (quoting Magleby Expert Report at 49). For example, "[o]ut of the estimated $25.6 million spent by political

itself as no more than a thinly veiled attempt to use soft money to influence federal elections. In *McConnell*, the Court held that Congress acted well within constitutional bounds in closing the issue advertising loophole; Plaintiffs offer no reason to reopen it now.

With respect to its proposed litigation account, the RNC has candidly admitted that it intends to use soft money to fund lawsuits that will, in substance, affect federal elections. These include, but are not limited to, suits contesting vote counts in House and Senate races. (Josefiak Dep. 173:4-8 [Exhibit 11].) The RNC denies that such litigation directly benefits candidates for federal office; but experts have noted that "[a]ny claim that the Republican National Committee does not engage in litigation to win federal elections, but simply wants to make sure votes are counted, defies both common sense and the practical definition of parties . . . ." (Ornstein Decl. ¶ 7 [Exhibit 3].)

RNC's proposed New Jersey and Virginia accounts, and its general state elections account, will directly benefit federal officeholders and candidates. The RNC intends to use soft money in these accounts to fund voter identification and registration, both of which benefit federal officeholders and candidates. During its voter identification efforts the RNC collects information about donors and stores that information in its "voter vault." (Josefiak Dep. 246:17-21 [Exhibit 11].) The information is used—after being appropriately updated—as the building block for get-out-the-vote efforts in future election cycles. (*Id.* at 246:17-22.) Thus, even if it is collected in a contest in which only state candidates are on the ballot, it stands to benefit federal candidates in the same geographic area in future election cycles. Likewise, voters registered in

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parties on advertisements in the 1998 election cycle, $24.6 million went to fund advertisements that referred to a federal candidate. Out of 44,485 commercials, 42,599 referred to a federal candidate. Viewers perceived 94 percent of these advertisements as electioneering in nature." *Id.* at 449 (quoting Krasno & Sorauf Expert Report at Table 1 & 7).

connection with a state election remain registered to vote for future election cycles, absent an intervening disqualifying event. (*Id.* at 248:21-249:4.) A Republican registered in a contest in which only state candidates are on the ballot is free to vote in all future federal elections.

Plaintiffs' "direct benefit" argument fares no better with respect to section 323(b), because this section only purports to regulate activities that, as was made abundantly clear from the record in *McConnell*, *always* benefit federal candidates appearing on the ballot.[30] *See supra* subsection III.A.2.a; *McConnell*, 540 U.S. at 167 ("Common sense dictates, and it was 'undisputed' [in *McConnell*], that a party's efforts to register voters sympathetic to that party directly assist the party's candidates for federal office."); *id.* at 170 (holding that "any public communication that . . . attacks a clearly identified federal candidate directly affects the election in which he is participating. The record on this score could scarcely be more abundant.").

B. Apart From the Legal Irrelevancy of Plaintiffs' Promise to Insulate Federal Candidates and Officeholders From Their Proposed Fundraising Activities, Plaintiffs Have Put Forth No Evidence to Support the Factual Credibility of This Promise

In the instant case, the RNC has submitted affidavits by former Chairman Robert M. Duncan and former Political Director Richard Clinton Beeson ("Beeson"). (Mem. in Supp. of Pls.' Mot. for Summ. J. Ex. 1-2.) Neither Duncan nor Beeson is currently an officer of the party. (Josefiak Dep. 29:4-30:20; 38:8-18 [Exhibit 11].)[31] The RNC's Rule 30(b)(6) designee, Thomas

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[30] In any event, Plaintiffs themselves have candidly acknowledged such a direct benefit in this litigation. The CRP's and SDRP's designees stated that the goal and effect of their voter registration and get-out-the-vote activities is to maximize the number of Republicans elected to both state and federal office. (Christiansen Dep. 121:23-122:3; 128:1-4; 129:25-130:5 [Exhibit 9]; Buettner Dep. 63:2-18; 67:3-9 [Exhibit 10].) The SDRP stated that, even if it tried to avoid affecting federal elections, its GOTV activities "would affect both elections if [they] are able to generate more Republicans getting out to vote." (*Id.* at 68:7-9 [Exhibit 10].)

[31] On January 29, 2009, the RNC elected Michael Steele to serve as its Chairman. Duncan ceased serving as Chairman upon Steele's election. (Josefiak Dep. 29:4-6 [Exhibit 11].) As former Chairman, Duncan has no responsibilities under the RNC's bylaws and does not have any

J. Josefiak, is similarly no longer an officer or employee of the RNC. (*Id.* at 11:22-13:1.) At the time of this filing, many of the RNC's leadership posts, including Political Director, Finance Director, Budget Committee Chairman and General Counsel, are vacant. (*Id.* at 38:9; 22:10-11; 21:3-5; 36:9). And the RNC's new Chairman has publicly stated that he is currently reviewing all of the RNC's operations.[32] Plaintiffs CRP and SDRP also submitted affidavits in support of their allegations. The CRP's only declarant, former Chief Operating Officer Bill Christiansen, is no longer an officer of the CRP.[33] (Christiansen Dep. 7:25-8:22 [Exhibit 9].) Likewise, Jonathan Buettner, the SDRP's Rule 30(b)(6) designee and one of its two declarants, is no longer an officer of the SDRP. (Buettner Dep. 8:4-5 [Exhibit 10].)

For the reasons given above, these representations are legally irrelevant. But, even if they were in anyway material, the evidence that Plaintiffs have submitted is deficient. Plaintiffs' claims depend not merely on factual assertions about what the parties have done, but on representations about how the parties will behave in the future; former officers of a political party have no authority to bind current officers of the party or to execute any plans that current officers may have.[34] (Josefiak Dep. 29:4-29:20; 38:8-18 [Exhibit 11]; Christiansen Dep. 6:25-7:21[Exhibit 9]; Buettner Dep. 8:4-5 [Exhibit 10].)

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authority over activities in which his successor may decide, or decline, to engage. (*Id.* at 29:18-30:5.) Beeson stepped down as Political Director at the beginning of February 2009. (*Id.* at 38:18.)

[32] Press Release, Republican National Committee, *Steele Announces RNC Transition Team: Team Will Implement Sweeping Changes; Prepare Party for Upcoming Elections* (Feb. 3, 2009), *available at* http://www.gop.com/Print/?Guid=47948a5d-1121-46dd-81a5-67ebd7ff2737&pg=news (last visited Mar. 2, 2009) [Exhibit 13].

[33] Christiansen was also CRP's Rule 30(b)(6) designee in this case.

[34] In addition, as of the date of this submission, Plaintiffs have not responded to

IV. FAR FROM WEAKENING THE PARTIES' ABILITY TO PERFORM THEIR FUNCTION, BCRA'S SOFT MONEY RESTRICTIONS HAVE CAUSED THE PARTIES TO THRIVE

Plaintiffs also appear to contend that section 323 unconstitutionally restricts the political parties' ability to perform their traditional functions. Their argument fails as a matter of law and is belied by the overwhelming evidence that the parties have thrived since BCRA was enacted. The RNC appears to challenge the constitutionality of BCRA on the ground that corporations and unions are permitted to solicit and spend non-federal funds on "grassroots lobbying" and contributions to state candidates, whereas, under BCRA, the RNC may only use federal funds to finance similar activities. Plaintiffs' argument conflates, once again, section 323's restriction on *contributions* with the regulation of *independent expenditures*. *See McConnell*, 540 U.S. at 154 ("Section 323(a), like the remainder of § 323, regulates contributions, not activities"). And, more fundamentally, Plaintiffs' argument runs contrary to the core principle established in *Buckley* that "'political committees' . . . can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related." 424 U.S. at 79. There is accordingly nothing surprising, let alone problematic, about Congress's exercise of its institutional judgment in limiting contributions to the political parties through regulations that, like section 323, are "closely drawn to match a sufficiently important [government] interest." *McConnell*, 540 U.S. at 136 (internal quotation marks omitted).

Nor do Plaintiffs come even close to showing that section 323 prevents them from engaging in effective advocacy. Under this category of analysis, the relevant question is "not whether § 323[] reduces the amount of funds available over previous election cycles, but whether

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Representative Van Hollen's First Set of Discovery Requests, which were served on Plaintiffs on February 23, 2009. Representative Van Hollen reserves the right to supplement his submission to the court upon Plaintiffs' response.

it is 'so radical in effect as to . . . drive the sound of [the recipient's] voice below the level of notice.'" *McConnell*, 540 U.S. at 173. In fact, the evidence shows that the RNC would fail even the former standard. As Dr. Ornstein observes:

> The first election after the passage of BCRA was in 2004; as Anthony Corrado and Katie Varney note, comparing presidential election cycles, "[T]he parties demonstrated a remarkable capacity to adapt to the new law, raising as much in hard money alone as they had raised in hard and soft money combined four years earlier."
>
> The 2006 midterm contest posed a different challenge when compared to the previous, pre-BCRA midterm: "The parties typically collect less hard money in midterm cycles than in presidential years . . . Moreover, 2002 would be a tough standard to meet. That year, the parties emphasized soft money fundraising in advance of the anticipated BCRA ban and collected almost $500 million of soft money, which represented almost half of all national party receipts." Corrado and Varney conclude, "By the end of the [2006] election cycle, the parties had once again demonstrated their ability to meet the challenges posed by BCRA. Overall, the parties raised 75 percent more hard money than in 2002, thereby replacing most (but not all) of the soft money they had raised in the prior midterm. More importantly, they spent more money in 2006 directly supporting congressional candidates than they had in any previous election."

(Ornstein Decl. ¶¶ 21-22 [Exhibit 3] (quoting Anthony Corrado and Katie Varney, Party Money in the 2006 Elections: The Role of National Party Committees in Financing Congressional Campaigns (2007)) (internal citations omitted).) The evidence from the most recent two-year election cycle shows that the national parties are continuing to do well. In the 2007-2008, the RNC alone received contributions for $427,558,768 and the Democratic National Committee ("DNC") received contributions for $260,111,657. (Ornstein Decl. ¶ 24 [Exhibit 3].) When the RNC and DNC are viewed in combination with their respective congressional campaign committees, the Republican National Party committee received contributions of $640,308,267,

and the Democratic National Party committees received contributions of $599,113,650. (Ornstein Decl. ¶ 25 [Exhibit 3].)

Indeed, for both parties, the 2008 contribution figures are substantially higher than the total amount of hard *and* soft money they were able to raise *in the aggregate* in either the 2002 midterm-election cycle or the 2000 election cycle—the two relevant pre-BCRA observation points. In 2002, the RNC raised a total of approximately $284 million in hard and soft money combined, while the DNC raised a total of approximately $162 million; when viewed in combination with their respective campaign committees, the aggregate 2002 figures show total contributions of $603 million for the Republican National Party committees and $408 million for their Democratic National Party counterparts. (Ornstein Decl. attachment at 3 Tbl. 1 [Exhibit 3].) In 2000, the last pre-BCRA election cycle involving a presidential election, the RNC had raised a total of $379 million in hard and soft money, while the DNC had raised approximately $261 million; in combination with their respective campaign committees, the Republican Party had raised $611 million and the Democratic Party had raised $458 million. (*Id.*) Far from weakening the parties' ability to raise contributions and make their voice heard, the developments in campaign finance since BCRA have confirmed what the Supreme Court had predicted in upholding BCRA: "If the history of campaign finance regulation . . . proves anything, it is that political parties are extraordinarily flexible in adapting to new restrictions on their fundraising abilities." *McConnell*, 540 U.S. at 173.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment should be denied.

Dated this 9th day of March 2009. Respectfully submitted,

/*s*/ Seth P. Waxman

Roger M. Witten (D.C. Bar No. 163261)
Shane T. Stansbury
Lauren E. Baer
WILMER CUTLER PICKERING HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
Tel.: (212) 230-8800
Fax: (212) 230-8888
E-mail: roger.witten@wilmerhale.com

Seth P. Waxman (D.C. Bar No. 257337)
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Tel.: (202) 663-6000
Fax: (202) 663-6363
E-mail: seth.waxman@wilmerhale.com

Donald J. Simon (D.C. Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY LLP
1425 K Street. N.W., Suite 600
Washington, D.C. 20005
Tel.: (202) 682-0240
Fax: (202) 682-0249
Email: dsimon@sonosky.com

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W., Suite 500
Washington, D.C. 20006
Tel.: (202) 429-2008
Fax: (202) 293-2660
E-mail: FWertheimer@democracy21.org

Scott L. Nelson (D.C. Bar No. 413548)
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
Tel.: (202) 588-1000
Fax: (202) 588-7795
Email: snelson@citizen.org

Counsel for Intervenor-Defendant Representative Christopher Van Hollen, Jr.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Republican National Committee, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civ. No. 08-1953 (BMK, RJL, RMC)**
	)	
Federal Election Commission, *et al.*,	)	**THREE-JUDGE COURT**
	)	
Defendants.	)	
	)	

INTERVENOR-DEFENDANT REPRESENTATIVE CHRISTOPHER VAN HOLLEN'S STATEMENT OF GENUINE ISSUES AND OBJECTIONS TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rules ("LCvR") 7(h) and 56.1, Intervenor-Defendant Representative Christopher Van Hollen, Jr., submits the following Statement of Genuine Issues and Objections to Plaintiffs' Statement of Material Facts, filed January 26, 2009 ("Plaintiffs' Statement"). This statement contains Representative Van Hollen's responses and objections to the evidence adduced by Plaintiffs in support of their January 26, 2009 Motion for Summary Judgment. These responses and objections are presented below in numbered paragraphs tracking the numbering scheme in Plaintiffs' Statement.

1. No response.

2. No response.

3. No response.

4. Representative Van Hollen objects to the statement that "Plaintiff Robert M. (Mike) Duncan is . . . the RNC Chairman, in which capacity he is RNC's chief executive officer." The statement is false and controverted in the record. Mr. Duncan is no longer

Chairman of the Republican National Committee ("RNC"), nor is he the RNC's chief executive officer. (Josefiak Dep. 29:15-30:16, Mar. 3, 2009.)

5. No response.

6. Representative Van Hollen objects to the first sentence of this paragraph because the statement contained therein does not include "references to the parts of the record relied on to support the statement," LCvR 7(h), and is unsupported in the record. Representative Van Hollen has no response to all other statements in this paragraph.

7. Representative Van Hollen objects to this paragraph, because the statements contained therein are controverted in the record. "What is clear from the evidence . . . is that *regardless of whether or not it is done to advocate the party's principles*, the Republican Party's primary goal is the election of its candidates who will be advocates for *their* core principles." *McConnell v. FEC*, 251 F. Supp. 2d 176, 470 (D.D.C. 2003) (Kollar-Kotelly, J.) (emphasis added).

8. Representative Van Hollen objects to the first sentence of this paragraph on the ground that it is speculative and lacks foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen objects to the second sentence in this paragraph on the ground that it is speculative and lacks foundation because the declarant cited does not, and cannot, have personal knowledge as to whether a special federal election will be held in New Jersey in November 2009.

9. Representative Van Hollen has no response to the second sentence of this paragraph. Representative Van Hollen objects to all other statements in this paragraph on the ground

that they are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.)

10. Representative Van Hollen objects to the first sentence of this paragraph on the ground that it is speculative and lacks foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen has no response to the second sentence. Representative Van Hollen objects to the third sentence of this paragraph on the ground that it is speculative and that the statement contained therein lacks foundation because the declarant cited does not, and cannot, have personal knowledge as to whether a special federal election will be held in Virginia in November 2009.

11. Representative Van Hollen objects to the first, third, and fourth sentences in this paragraph on the ground that the statements contained therein lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen objects to second sentence in this paragraph on the ground the statement contained therein does not include "references to the parts of the record relied on to support the statement," LCvR 7(h), and is unsupported in the record.

12. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and therefore cannot speak

to the basis for the RNC's current "political strategy." (Josefiak Dep. 38:8-18.) Representative Van Hollen also objects that the phrases "stronghold for Republicans," "recapturing this 'red state,'" "extremely high name recognition," and "national focus" on the ground that they are vague, ambiguous, and undefined. To the extent that subsections (1), (2), (3), and (4) purport to contain facts serving as the basis for the RNC's "political strategy," Representative Van Hollen objects to them on the ground that plaintiffs do not include "references to the parts of the record relied on to support the statement[s]," LCvR 7(h), and the statements are unsupported in the record.

13. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.)

14. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.)

15. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen objects that the phrase "grassroots lobbying" is vague, ambiguous, and undefined.

16. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen also specifically objects to the first sentence on the ground that the phrases "grassroots lobbying" and "relevant public-policy issues" are vague, ambiguous, and undefined.

17. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.)

18. Representative Van Hollen has no response to the second sentence of this paragraph. Representative Van Hollen objects to the remainder of this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen also objects that the phrase "compete on an equal playing field" is vague, ambiguous, and undefined.

19. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.)

20. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) To the extent this paragraph suggests that "challenging BCRA" is not "related to federal elections," Representative Van Hollen objects that the paragraph contains a purported legal conclusion that is not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse v. District of Columbia*, 124 F. Supp. 2d 1, 4 n.3 (D.D.C. 2000) (legal argument is not proper in a statement of material facts).

21. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.)

22. Representative Van Hollen objects to the first sentence of this paragraph on the ground that the term "critical," as used by Plaintiffs, is vague and ambiguous. Representative Van Hollen has no response to the second and third sentences.

23. Representative Van Hollen objects to all of the sentences in this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen separately objects to the statement in the first sentence of this paragraph that the RNC "cannot" engage in its proposed activities "because it is permitted to solicit and use only federal funds;" this statement is

controverted in the record by evidence that the RNC can spend hard money on its proposed activities, but elects not to on the basis of discretionary budgetary decisions. (Josefiak Dep. 141:10-21.) Representative Van Hollen also objects to the third sentence on the ground that the phrase "materially similar," as used in this paragraph, is vague, ambiguous, and undefined.

24. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer of the RNC, lacks authority to bind current officers of the RNC, and lacks authority to execute any future plans the RNC may have. (Josefiak Dep. 38:8-18.) Representative Van Hollen also objects on the ground that the following phrases, as used by Plaintiffs in this paragraph, are vague and ambiguous: "preferential access," "in any manner different than or beyond that currently afforded to contributors of federal funds," "encourage officeholders or candidates to meet with or have other contact with contributors to these accounts," "arrange for contributors to participate in conference calls with federal candidates or officeholders," "offer access to federal officeholders or candidates in exchange for contributions," and "use any federal candidates or officeholders to solicit funds."

25. Representative Van Hollen objects to the first sentence of this paragraph on the ground that the phrase "changed due to leadership and staff turnover" is vague, ambiguous, and undefined. Representative Van Hollen has no response to the second and third sentences.

26. Representative Van Hollen has no response to the first sentence. Representative Van Hollen objects to the second sentence on the ground that the phrase "[t]he potential problems the RNC identified in its briefs before the *McConnell* Court" is vague,

ambiguous, and undefined. To the extent the statement is intelligible, it is controverted in the record. "The opponents of BCRA claimed that parties would wither on the vine if deprived of soft money, and that their ability to support their candidates and to flourish at grass roots activities would be dramatically compromised. The research done on parties and their funding and spending suggests that these predictions were wrong. . . . Parties have thrived, expanding significantly their grass roots and get-out-the-vote activities and energizing small donor bases, which also become fertile recruiting grounds for party volunteers and precinct workers. (Ornstein Decl. ¶¶ 21-26.) Representative Van Hollen objects to the third sentence on the ground that the phrase "fundraising disadvantage for a host of its activities" is vague, ambiguous, and undefined. Representative Van Hollen objects to the fourth sentence on the ground that the phrase "barriers to collaborative relationships between national party and state parties" is vague, ambiguous, and undefined, and the phrase "inequality of restrictions on a party's ability to raise and spend funds" is unintelligible.

27. Representative Van Hollen objects to this paragraph because the statement that Mike Duncan is "the current Chairman of the RNC" is false and controverted in the record. (Josefiak Dep. 29:15-30:16.) Representative Van Hollen further objects that the statements contained in this paragraph lack foundation because the declarant cited is not the current Chairman of the RNC and does not have the authority to act in an official capacity as the Chairman of the RNC. (*Id.*)

28. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein lack foundation because the declarant cited is not the current Chairman of the RNC and does not have the authority to act in an official capacity as the Chairman

of the RNC. (Josefiak Dep. 29:15-30:16.) Representative Van Hollen further objects to the paragraph on the ground it contains a legal conclusion that is not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3.

29. To the extent Plaintiffs propose to establish that Mike Duncan will engage in the activities described in this paragraph in his individual capacity, no objection is interposed. To the extent Plaintiffs propose to establish that Mike Duncan will in engage in the activities described in this paragraph in an official capacity, Representative Van Hollen objects on the ground that Mike Duncan is not the current Chairman of the RNC and does not have the authority to act in an official capacity as the Chairman of the RNC. (Josefiak Dep. 29:15-30:16.)

30. To the extent that this paragraph speaks to Mike Duncan's actions as an individual, no objection is interposed. To the extent that this paragraph proposes to establish the intended actions of the RNC Chairman, Representative Van Hollen objects on the ground that Mike Duncan is not the current Chairman of the RNC and does not have the authority to bind the current Chairman of the RNC. (Josefiak Dep. 29:15-30:16.) Representative Van Hollen also objects to this paragraph on the ground that the phrase "preferential access" is vague, ambiguous, and undefined.

31. Representative Van Hollen objects to the first sentence of this paragraph on the ground that it contains a legal conclusion that is not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3. Representative Van Hollen has no response to the second sentence of this paragraph. Representative Van Hollen objects to the third sentence of this paragraph on the ground that the phrase

"materially similar situations" is vague, ambiguous, and undefined. Further, to the extent that this paragraph proposes to establish the intended actions of the RNC Chairman, Representative Van Hollen objects on the ground that Mike Duncan is not the current Chairman of the RNC and does not have the authority to bind the current Chairman of the RNC. (Josefiak Dep. 29:15-30:16.)

32. No response.

33. No response.

34. No response.

35. Representative Van Hollen objects to the first sentence in this paragraph on the ground that the term "substantial support" is vague, ambiguous, and undefined. Representative Van Hollen has no response to the second sentence.

36. Representative Van Hollen objects to the first sentence of this paragraph on the ground that the phrases "little money" and "competitive Congressional districts" are vague, ambiguous, and undefined. To the extent the phrases "little money" and "competitive Congressional districts" are at all intelligible as used in this paragraph, the statement is controverted by the record. In addition to direct contributions to, and coordinated expenditures in connection with, federal candidates, (Christiansen Decl. ¶ 9), since 2003, CRP has spent large sums on activities that directly support federal candidates that appear on the ballot, including voter registration activities ($7,768,683) and voter identification/GOTV activities ($619,372). (Christiansen Decl. ¶¶ 13-14.)

37. Representative Van Hollen objects to this paragraph on the ground that the phrases "little funds" and "significant coordinated expenditures" are vague, ambiguous, and undefined. To the extent the phrase "little funds" is at all intelligible as used in this paragraph, the

first sentence is controverted in the record. Since 2003, CRP has spent large sums on activities that directly support federal candidates that appear on the ballot, including voter registration activities ($7,768,683) and voter identification/GOTV activities ($619,372). (Christiansen Decl. ¶¶ 13-14.)

38. Representative Van Hollen objects to the first sentence of this paragraph on the ground that the phrases "virtually eliminate" and "substantial contribution" are vague, ambiguous, and undefined. Representative Van Hollen further objects to this sentence on the ground that the characterization of an activity as falling within the definition of 2 U.S.C. § 441a(d) is a legal conclusion that is not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3. Representative Van Hollen objects to the second, third, fourth, fifth, and sixth sentences of this paragraph on the ground that the phrases "contested," "highly-contested," "not seriously contested," and "non-contested" are not adequately differentiated, thereby rendering the conclusion drawn in the seventh sentence unintelligible. Representative Van Hollen objects to the last sentence of this paragraph on the ground that the statement contained therein is false and controverted in the record. CRP has expressly mentioned federal candidates in door hangers that CRP has admitted distributing to the public. (Christiansen Dep. 136:23-139:3, Feb. 24, 2009.) To the extent that door hangers purportedly do not come under Plaintiffs' understanding of "absentee ballot application, chase mailings, and similar voter communications," (Pls' Stat. Undisp. Facts ¶ 38), Representative Van Hollen also objects to the last sentence of this paragraph on the ground that the phrase "similar voter communications" is vague, ambiguous, and undefined.

39. No response.

40. Representative Van Hollen objects to this paragraph on the ground that the phrase "on all candidates for federal candidate support" is vague, ambiguous, and undefined.

41. Representative Van Hollen has no response to the first sentence. Representative Van Hollen objects to the last sentence of this paragraph on the ground that the statement contained therein is controverted in the record. CRP has been able to engage in state and local candidate communications that promote and support federal candidates, despite presumably funding such communications through federal funds, as required by BCRA. (Christiansen Dep. 136:23-139:3)

42. No response.

43. No response.

44. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are misleading and are controverted in the record. For the period between 2003 and 2008, CRP was unable to account for the spending of nearly $50,000,000 in non-federal funds and $11,000,000 in transferred federal funds. (Christiansen Dep. 149:16-154:10.)

45. Representative Van Hollen objects to the first, second, and fourth sentences of this paragraph on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer or employee of the CRP, lacks authority to bind current officers of the CRP, and lacks authority to execute any future plans the CRP may have. (Christiansen Dep. 6:25-7:21.) Representative Van Hollen objects to the third sentence of this paragraph on the ground that the statement contained therein is a legal conclusion that is not properly included in a statement of

material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3. Representative Van Hollen also specifically objects to the fourth sentence of this paragraph on the ground that the statement contained therein is false and controverted in the record. CRP has spent well over $8,000,000 since 2003 on voter registration, voter identification, and get-out-the-vote activities, and nothing suggests that it will not continue to engage in these activities in the future. (Christiansen Decl. ¶¶ 13-14.)

46. No response.

47. No response.

48. Representative Van Hollen has no response to the first sentence. Representative Van Hollen objects to the second clause of the second sentence on the ground that the statements contained therein are speculative and lack foundation because the declarant cited is not a current officer or employee of the CRP, lacks authority to bind current officers of the CRP, and lacks authority to execute the any future plans the CRP may have. (Christiansen Dep. 6:25-7:21.)

49. No response.

50. No response.

51. No response.

52. No response.

53. Representative Van Hollen objects to this paragraph on the ground that the phrases "substantial support," "activity," and "a smaller amount" are vague, ambiguous, and undefined.

54. Representative Van Hollen objects to this paragraph on the ground that the statement contained therein is controverted by the record. The Republican Party of San Diego

County ("SDRP") has engaged in voter registration and get-out-the-vote activities in elections in which both state and federal candidates appeared on the ballot. (Buettner Dep. 61:19-63:18, 66:7-67:9, Feb. 24, 2009.) These activities directly support federal candidates that appear on the ballot, including candidates for the United States Senate.

55. Representative Van Hollen objects to this paragraph on the ground that the phrases "virtually eliminate" and "substantial contribution" are vague, ambiguous, and undefined. Representative Van Hollen further objects that the characterization of an activity as falling within the definition of 2 U.S.C. § 441a(d) is a legal conclusion that is not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3.

56. Representative Van Hollen has no response to the first two sentences of this paragraph. Representative Van Hollen objects to the third sentence in this paragraph on the ground that the statements contained therein are misleading and controverted in the record. SDRP has admitted distributing by email voter guides that clearly identify federal candidates, and using activists to physically distribute the same. (Buettner Dep. 77:11-79:11.)

57. Representative Van Hollen objects to this paragraph because the statements contained therein are misleading. SDRP has admitted that the amounts spent on activities other than "state and local candidate support" included the production and distribution of door hangers that clearly identified federal candidates and other get-out-the-vote activities that inevitably benefited federal candidates. (Buettner Dep. 79:22-81:17.)

58. Representative Van Hollen objects to this paragraph on the ground that the statement contained therein is unintelligible. Representative Van Hollen further objects that this

paragraph contains legal conclusions that are not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3.

59. No response.

60. Representative Van Hollen objects to this paragraph on the ground that the statements contained therein are speculative.

61. No response.

62. Representative Van Hollen objects to the first, second, fourth, and fifth sentences of this paragraph on the ground that they are speculative. Representative Van Hollen also objects to the third sentence of this paragraph on the ground that the statement contained therein is a legal conclusion that is not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3. Representative Van Hollen furthermore objects to the fourth sentence on the ground that the statement contained therein is controverted by the record. The Republican Party of San Diego County ("SDRP") has engaged in voter registration and get-out-the-vote activities in elections in which both state and federal candidates appeared on the ballot. (Buettner Dep. 61:19-63:18, 66:7-67:9.) Representative Van Hollen additionally objects to the fifth sentence on the ground that the phrase "materially similar situations" is vague, ambiguous, and undefined.

63. Representative Van Hollen objects to the first, second, fourth, and fifth sentences of this paragraph on the ground that they are speculative. Representative Van Hollen objects to the third sentence on the ground that it contains legal conclusions that are not properly included in a statement of material facts under Local Rule 7(h). *See Waterhouse*, 124 F. Supp. 2d at 4 n.3. Representative Van Hollen specifically objects to the fifth sentence on

the ground that the phrase "materially similar situations" is vague, ambiguous, and undefined.

64. No response.

Dated this 9th day of March 2009.

Respectfully submitted,

/*s*/ Seth P. Waxman

Roger M. Witten (D.C. Bar No. 163261)
Shane T. Stansbury
Lauren E. Baer
WILMER CUTLER PICKERING HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
Tel.: (212) 230-8800
Fax: (212) 230-8888
E-mail: roger.witten@wilmerhale.com

Seth P. Waxman (D.C. Bar No. 257337)
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Tel.: (202) 663-6000
Fax: (202) 663-6363
E-mail: seth.waxman@wilmerhale.com

Donald J. Simon (D.C. Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY LLP
1425 K Street. N.W., Suite 600
Washington, D.C. 20005
Tel.: (202) 682-0240
Fax: (202) 682-0249
Email: dsimon@sonosky.com

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W., Suite 500
Washington, D.C. 20006
Tel.: (202) 429-2008
Fax: (202) 293-2660
E-mail: FWertheimer@democracy21.org

Scott L. Nelson (D.C. Bar No. 413548)
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
Tel.: (202) 588-1000
Fax: (202) 588-7795
Email: snelson@citizen.org

Counsel for Intervenor-Defendant Representative Christopher Van Hollen, Jr.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Republican National Committee, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civ. No. 08-1953 (BMK, RJL, RMC)**
	)	
Federal Election Commission, *et al.*,	)	**THREE-JUDGE COURT**
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, Seth P. Waxman, a member of the bar of this Court, certify that on March 9, 2009, a copy of the foregoing Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Summary Judgment, with accompanying Exhibits, Statement of Genuine Issues, and Proposed Order, was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system:

Counsel for Plaintiffs

James Bopp, Jr.
Clayton J. Callen (*pro hac vice*)
Kaylan L. Phillips (*pro hac vice*)
Richard E. Coleson (*pro hac vice*)
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807
Tel.: (812) 232-2434
Fax: (812) 234-3685
Email: jboppjr@aol.com

Counsel for Defendants

Adav Noti (Bar No. 490714)
David Kolker (Bar No. 394558)
Kevin Deeley
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
Tel.: (202) 694-1650
Fax: (202) 219-0260
Email: dkolker@fec.gov
Attorneys for Federal Election Commission

Charles H. Bell, Jr. (*pro hac vice*)
BELL, MCANDREWS & HILTACHK, L.L.P.
455 Capitol Mall
Suite 801
Sacramento, CA 95815
Tel.: (916) 442-7757
Fax: (812) 234-3685

Robert F. Bauer (D.C. Bar No. 938902)
Kate Andrias (D.C. Bar No. 983674)
607 Fourteenth Street N.W.
Washington, D.C. 20005
Tel: (202) 628-6600
Fax: (202) 434-1690
Email: RBauer@perkinscoie.com
Attorneys for Democratic National Committee

Joseph E. Sandler (D.C. Bar No. 255919)
SANDLER REIFF & YOUNG PC
300 M Street, S.E. Suite 1102
Washington, D.C. 20003
Tel.: (202) 479-1111
Fax: (202) 479-1115
Email: sandler@sandlerreiff.com
Of Counsel to the Democratic National Committee

Dated this 9th day of March, 2009.

Respectfully submitted,

/s/ Seth P. Waxman

_____
Seth P. Waxman

Roger M. Witten (D.C. Bar No. 163261)
Shane T. Stansbury
Lauren E. Baer
WILMER CUTLER PICKERING HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
Tel.: (212) 230-8800
Fax: (212) 230-8888
E-mail: roger.witten@wilmerhale.com

Seth P. Waxman (D.C. Bar No. 257337)
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Tel.: (202) 663-6000
Fax: (202) 663-6363
E-mail: seth.waxman@wilmerhale.com

Donald J. Simon (D.C. Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY LLP
1425 K Street. N.W., Suite 600
Washington, D.C. 20005
Tel.: (202) 682-0240
Fax: (202) 682-0249
Email: dsimon@sonosky.com

Scott L. Nelson (D.C. Bar No. 413548)
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
Tel.: (202) 588-1000
Fax: (202) 588-7795
Email: snelson@citizen.org

Counsel for Intervenor-Defendant
Representative Christopher Van Hollen, Jr.

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W., Suite 500
Washington, D.C. 20006
Tel.: (202) 429-2008
Fax: (202) 293-2660
E-mail: FWertheimer@democracy21.org