UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

NORTH CAROLINA RIGHT TO LIFE, INC., *et al.*,	)	
Plaintiffs,	)	
v.	)	No. 5:99-CV-798-BO(3)
LARRY LEAKE, *et al.,*	)	
Defendants.	)	

MEMORANDUM OF THE CAMPAIGN LEGAL CENTER AND DEMOCRACY 21 AS AMICI CURIAE IN SUPPORT OF DEFENDANTS

The Campaign Legal Center and Democracy 21 respectfully submit this brief limited to the issue of whether contribution limits imposed on independent expenditure political committees (hereafter "IEPC's") are constitutional. For the reasons set forth below, we urge this Court to reject plaintiffs' constitutional challenge to those limits.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff, North Carolina Right to Life, Inc., ("NCRL") brought this action in November 1999 challenging the constitutionality under the First Amendment of several North Carolina General Statutes: N.C. GEN. STAT. §§ 163-278.6(14) (defines the term "political committee"), 163-278.13 (limits contributions to candidates and political committees to $4,000 per primary or general election), and 163-278.14A(a)(2) (establishes means of proving that a communication constituted electoral advocacy

triggering disclosure and other requirements). More specifically, NCRL challenged North Carolina's definition of political committee on the ground that it unconstitutionally presumed that an entity has as a major purpose to support or oppose a candidate when an entity contributes or expends more than $3,000.00 during an election cycle. NCRL also challenged the $4,000 contribution limit to independent expenditure political committees on the ground that such contributions do not present the risk of *quid pro quo* corruption or its appearance.

This Court rendered its decision on October 24, 2001, granting summary judgment to Plaintiffs and determining that N.C. GEN. STAT. § 163-278.14A(a)(2) was unconstitutionally overbroad because it impermissibly broadened the scope of express advocacy as defined in *Buckley v. Valeo*, 424 U.S. 1 (1976). Specifically, this Court held that § 163-278.14A(a)(2) was unconstitutional because it "does not limit the scope of 'express advocacy to communications that literally include words that, in an of themselves, advocate the election or defeat of a candidate, as was required in *Buckley*." Order of October 24, 2001. This Court also held, in an amended Order of August 8, 2002, that N.C. GEN.STAT.§ 163-278.14A(a)(2) was severable from the remainder of N.C. GEN. STAT. § 163-278.14 (which had incorporated 163.278.14A(a)(2)). The Court's amended Order then went on to hold that the remainder of 163.278.6(14) was constitutional, including the provision that created a presumption of political committee status based on an entity's expenditures. Thus, this Court's amended decision rejected NCRL's position that Section 163-278.6(14)'s presumption of political committee status based on an entity's expenditures violated the First Amendment.

Both sides appealed. The court of appeals affirmed in part and reversed in part. It first concluded that N.C. GEN. STAT. § 163-278.14A(a)(2) was unconstitutionally vague and overbroad under "a bright-line test for determining whether communications may constitutionally be regulated as electoral advocacy." 344 F.3d at 424 (citing *Buckley v. Valeo,* 424 U.S. 1, 43 (1976)).[1] The court of appeals also reversed this Court's judgment on what it characterized as a "close question," concluding that the statutory rebuttable presumption used in determining whether a major purpose of an entity may be to support or oppose candidates in N.C. GEN. STAT. § 163-278.6(14) was vague and overbroad under the First Amendment. 344 F.3d at 429. It also concluded that the contribution limit of $4,000 per election that may be made to IEPCs was substantially overbroad and could not be constitutionally applied to a political committee, such as the one formed by NCRL, which had the stated intent to make only independent expenditures.344 F.3d at 434.

The defendants herein petitioned the Supreme Court to issue a writ of *certiorari*. On April 26, 2004, the Court granted the petition, vacated the court of appeals' decision and remanded the case to the Fourth Circuit for reconsideration in light of the Court's decision in *McConnell v. FEC*, 540 U.S. 93 (2003). Thereafter, on September 7, 2004, the United States Court of Appeals for the Fourth Circuit remanded the case to this Court for further consideration.

[1] Judge Michael dissented, reasoning that the first sentence of the statute should be upheld as "an explicative definition of express advocacy that passes muster under *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc*., 479 U.S. 238 (1986) (MCFL) and *Buckley v.* Valeo, 424 U.S. 1 (1976), but agreeing that the second sentence of the statute should be stricken. 344 F.3d at 436-37 (Michael, J. dissenting).

FACTS[2]

Plaintiff North Carolina Right to Life**,** Inc., is a non-profit membership corporation incorporated under North Carolina law, and North Carolina Right to Life Political Action Committee (NCRLPAC) is a longstanding political committee registered in North Carolina as a state political committee for which NCRL serves as the parent entity pursuant to N.C. GEN. STAT. § 163-278.19(b) (2003). In 1999, NCRL resolved "to form a separate segregated fund of [NCRL] to be known as North Carolina Right to Life Committee Fund for Independent Political Expenditures (hereafter "NCRLC-FIPE") for the sole purpose of making independent expenditures in North Carolina state elections in order to further the goals and purposes of North Carolina Right to Life, Inc." See Complaint, at Exhibit E. North Carolina law does *not* distinguish among political committees that make only contributions, those that make only independent expenditures, and those that make both. Nevertheless, NCRLC-FIPE has represented that it intends only to make independent expenditures.

In North Carolina Right to Life, lnc. v. Bartlett, 168 F.3d 705, 708-09 (4th Cir.1999), *cert. denied,* 528 U.S. 1153, 120 S. Ct. 1156 (2000) (NCRL *1),* the Fourth Circuit described the activities of NCRL and NCRLPAC. The corporation maintained in that case that it wished to make contributions and independent expenditures in support of political candidates directly from its corporate treasury without going through its political action committee. The Fourth Circuit held that North Carolina's prohibition against corporate contributions and expenditures in political campaigns could not be applied to

[2] Nearly all of the facts set forth in this Memorandum were obtained either from this Court's October 24, 2001 decision, or from the 2003 decision of the United States Court of Appeals for the Fourth Circuit. See *North Carolina Right to Life v. Leake*, 344 F.3rd 418 (4th Cir. 2003).

NCRL under its interpretation of the decision in *MCFL*. Thereafter, North Carolina amended its statutes to conform to the Fourth Circuit's opinion in 1999, and now has an exception that allows NCRL-type entities to make both contributions and expenditures in support of political candidates directly from its corporate treasury. *See* N.C. GEN. STAT. § 163-278.19(0 (2003). North Carolina has taken no action to change its statutes since the Supreme Court ruled that Congress may prohibit NCRL and similar non-profit corporations from making corporate contributions to federal campaigns. *Federal Election Comm 'n v. Beaumont,* 539 U.S. 146 (2003).

Based on the results of the *NCRL v. Bartlett* litigation, and according to its representations in this case, NCRL has made contributions and independent expenditures directly from its corporate funds in political campaigns for state offices and wishes to continue doing so. (Complaint pp. 31-32). NCRL may not make contributions to campaigns for federal offices from its corporate treasury, but may make independent expenditures. *Beaumont,* 539 U.S. at 151, n.2. In the past, it has had both state and federal political committees that can and do make contributions to either state or federal political campaigns. In addition, NCRL has formed a third political committee that it intends will make only independent expenditures. All of NCRL's entities have a history of the same PAC Directors, overlapping treasurers, the same president, and the same membership base.

ARGUMENT

This brief is limited to one issue raised in this case: whether North Carolina may constitutionally limit contributions to political committees which would use those contributions solely for independent expenditures. We submit that the State may do so.

I. *McConnell* Held that Contributions Made for Independent Expenditures May Be Regulated

In its earlier decision in this case addressing the constitutionality of contribution limits imposed on IEPC's, this Court relied on the Supreme Court's decision in *California Medical Ass'n v. FEC*, 453 U.S. 182 (1981)(*CalMed*). In *CalMed*, *supra*, the Supreme Court upheld FECA's $5,000 limit on contributions to multicandidate political committees. Initially this Court, and later the court of appeals, reasoned that the decision in *CalMed* could not be read as authorizing limits on contributions to entities that would use them solely for independent expenditures.

This issue has now been put to rest by the Supreme Court's decision in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003). In *McConnell*, the Supreme Court made clear that in its earlier *CalMed* decision, the Court had actually upheld limits on contributions to independent expenditure political committees:

> [In *CalMed*], we upheld FECA's $ 5,000 limit on contributions to multicandidate political committees. It is no answer to say that such limits were justified as a means of preventing individuals from using parties and political committees as pass-throughs to circumvent FECA's $1,000 limit on individual contributions to candidates. Given FECA's definition of "contribution," the $5,000 … limi[t] restricted not only the source and amount of funds available to parties and political committees to make candidate contributions, *but also the source and amount of funds available to engage in express advocacy and numerous other noncoordinated expenditures*.

540 U.S. at 151-152 n. 48 (emphasis added). As the last sentence makes unmistakably clear, *CalMed* held that Congress could limit contributions to entities that would use them solely for independent expenditures.

Moreover, the decision in *McConnell* continues by noting that *Buckley* and *CalMed* could not have upheld FECA's broad limit on contributions to party and multicandidate committees without necessarily deciding this point. With respect to party committees, the type of committee at issue in this portion of *McConnell* itself, the Court wrote in the very next sentence after the passage quoted above:

> If indeed the First Amendment prohibited Congress from regulating contributions to fund [express advocacy and numerous other noncoordinated expenditures], the otherwise-easy-to-remedy exploitation of parties as pass-throughs (*e.g.*, a strict limit on donations that could be used to fund candidate contributions) would have provided insufficient justification for such overbroad legislation.

Id. at 152 note 48. In other words, if contributions ultimately used to make independent expenditures had no corruptive potential, the overall limit on contributions to multicandidate committees would have been unsustainable. Congress could have justified the limit only insofar as it remedied so-called "pass-through" corruption and much more narrowly tailored remedies, like "a strict limit on donations that could be used to fund candidate contributions," could have addressed such pass-through corruption concerns. Thus, the overall limit on contributions to multicandidate committees would have been unconstitutionally overbroad if contributions to IEPCs were sacrosanct. *McConnell*, then, makes clear that *CalMed* necessarily stands for two propositions previously rejected by the court of appeals: (i) that contributions can corrupt even if they are only used for independent expenditures (*i.e.*, independently of their ultimate use); and (ii) a state may limit contributions to political committees that eventually will be used to make independent expenditures.

McConnell's own treatment of FECA's soft money provisions reinforces both of these *CalMed* holdings. If contributions that were eventually used as independent

expenditures in federal elections posed no corruptive potential—if they were always and necessarily sacrosanct—then the Court would have had to strike down many of the soft money provisions it upheld in *McConnell*, particularly § 323(a), the "core" soft money provision. *Id*., at 142. Section 323(a) subjects all funds raised by the national parties to the same contribution limits ***regardless of their ultimate use*** – whether for independent expenditures or even advertising that does not mention a candidate at all. Section 323(b) analogously imposes contribution limits on state and local party committees where funds are used to help finance "Federal election activity," 2 U.S.C.A. § 441i(b) (Supp. 2003), including voter registration, voter identification, and public communications promoting or opposing a clearly identified federal candidate, even if done independently of a candidate. *See McConnell*, 540 U.S. at 162.

It is true, of course, that independent expenditures have been afforded greater First Amendment protection than coordinated expenditures and direct candidate contributions. *See FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 442, 457-60 (2001)(*Colorado II*); *cf. Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 615 (1996)(*Colorado I*)(opinion of Breyer, J.).[3] Nevertheless, *McConnell* holds that contributions to political parties may be regulated whether ultimately used in coordination with, or independently of, candidates' campaigns. As an initial matter, *McConnell* applies deferential review because limits on contributions – including those ultimately used for independent expenditures – do not substantially infringe First Amendment rights of speech and association. *See McConnell*, 540 U.S. at 138 ("like the contribution limits we upheld in Buckley, § 323's restrictions

[3] In *Colorado I, supra*, it is significant to note that while the Court held that political parties could make unlimited independent expenditures, the Court nevertheless upheld the requirement that political parties use funds subject to contribution limits to make those expenditures. 518 U.S. at 61.

have only a marginal impact on the ability of contributors, candidates, officeholders and parties to engage in effective political speech").

More fundamentally, the contribution's ultimate use was not the basis for identifying its corruptive potential. Rather, the potential for corruption stemmed from the ability of donors to gain access and influence over candidates as a result of their contributions to a political party. See *McConnell, supra*, 540 U.S. at 146-148 (influence), 149-150 (access and influence), and 151 (access). In upholding FECA's central soft money provision, then, *McConnell* necessarily found that contributions to party political committees can corrupt, even when used for independent expenditures.

The same analysis applies to *McConnell*'s treatment of FECA's restriction on the use of soft money contributions by state and local party committees for federal election activities. Section 323(b) restricts the use of nonfederal funds by state and local party committees to help finance "Federal election activity." 2 U.S.C. § 441i(b)(1) (Supp. 2003). As the Court noted in *McConnell*,

> [t]he term "Federal election activity" encompasses four distinct categories of electioneering: (1) voter registration activity during the 120 days preceding a regularly scheduled federal election; (2) voter identification, get-out-the-vote (GOTV), and generic campaign activity that is "conducted in connection with an election in which a candidate for federal office appears on the ballot"; (3) any "public communication" that "refers to a clearly identified candidate for Federal office" and "promotes," "supports," "attacks," or "opposes" a candidate for that office; and (4) the services provided by a state committee employee who dedicates more than 25% of his or her time to "activities in connection with a Federal election." §§ 431(20)(A)(i)-(iv).

540 U.S. at 162. Significantly, none of these four categories necessarily involves contributions to candidates and categories 1, 2, and 3 necessarily do *not* unless there is coordination. Thus, if Congress could restrict the use of only those contributions to state

and local party committees that the committees in turn contribute to candidates, § 323(b), just like § 323(a), would have necessarily been overbroad and unconstitutional. *McConnell* held, however, that Congress could restrict the use of *all* nonfederal contributions by state party committees "for the purpose of influencing federal elections." *Id*. at 167. The reason was clear. Although these activities might not pose a threat of state and local parties themselves corrupting federal candidates, they would allow the contributors to corrupt through these committees. As the Court explained:

> Congress … made a prediction. Having been taught the hard lesson of circumvention by the entire history of campaign finance regulation, Congress knew that soft-money donors would react to §323(a)[, the national party committee ban,] by scrambling to find another way to purchase influence. It was neither novel nor implausible for Congress to conclude that political parties would react to §323(a) by directing soft-money contributions to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties. … Preventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest.

Id. at 165-166 (internal citations and quotation marks omitted). Section 323(b) is premised on the simple "judgment that if a large donation is capable of putting a federal candidate in the debt of the contributor, it poses a threat of corruption or the appearance of corruption." *Id*. at 167.

Contributions to non-party political committees are equally capable of putting a candidate "in the debt of the contributor", and that is true whether the political committee operates at the federal or state level, and whether the political committee actually uses the contributions for direct candidate contributions, coordinated expenditures, or independent expenditures. Contributions to political committees will be used to benefit candidates, and thus can create gratitude and debt to the donors. Moreover, those who make

contributions to a political committee, whose chief aim is to nominate or elect candidates, often do so in an attempt to purchase influence. Candidates know where large contributions come from, particularly those that benefit them or harm their opponent, even those made to so-called independent political committees. For the same reason that *federal* limits on contributions to political committees are constitutional, North Carolina's attempt to impose reasonable limits on such contributions to state political committees in order to safeguard the integrity of the political process is constitutional because its limits are "'closely drawn' to match a 'sufficiently important interest.'" *McConnell*, 540 U.S. at 136 (quoting *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 162 (quoting *Shrink Missouri*, 528 U.S. at 387-88)).

II. ***McConnell* Requires Reconsideration of Evidence Erroneously Rejected by this Court**

McConnell undercuts this Court's earlier holding on IEPCs in yet another way. This Court initially held that North Carolina's limit on contributions to IEPCs was unconstitutional because the State had failed to proffer sufficiently compelling evidence which showed a danger of corruption due to the presence of unchecked contributions to IEPCs. The State, however, had actually proffered such evidence to this Court in its summary judgment papers. See this Court's Order of October 24, 2001 at 25-26. The State, for example, produced evidence that, among other things, an advocacy group "threatened the legislative leadership that it would run advertisements [in] retaliation for votes against the hog industry in North Carolina." *Id.* at 25.

This Court rejected this evidence, however. Specifically, this Court reasoned:

> Defendants claim that this [evidence] supports a finding that allowing unlimited contributions to committees that will run such advertisements will encourage "corruption." However, in *Perry v. Bartlett*, the Fourth

> Circuit determined that the Farmers for Fairness group engaged solely in "issue advocacy," which is speech that is afforded the "broadest protection" under the First Amendment. *Perry v. Bartlett*, 231 F.3d 155, 158-59 (4th Cir. 2000)("While Farmers does make expenditures that may incidentally influence … an election, it does not in explicit words … advocate the election or defeat of a candidate."). Therefore, the Fourth Circuit held that the actions of Farmers for Fairness were not "corruptive," but, rather, constituted protected speech under the First Amendment.

Id. at 25-26. In other words, this Court, following the Fourth Circuit's decision in *Perry*, rejected the proferred evidence because it believed "explicit words … advocat[ing] the election or defeat of a candidate" were necessary to constitute an expenditure and thus implicate the concerns of corruption that are within the reach of campaign finance laws.

McConnell forcefully and unequivocally rejected this view. In upholding the "electioneering communication" provisions of the Bipartisan Campaign Reform Act of 2002, the Supreme Court made clear that no "explicit words" were necessary:

> [T]he unmistakable lesson … is that [the] magic-words requirement is functionally meaningless. Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election. [The] express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found in the existing system."

540 U.S. at 193-194. We respectfully submit that this Court wrongly rejected the State's evidence on the grounds that "magic words" were not present.

III. Independent Expenditure Political Committees Play A Significant and Effective Role in Influencing Elections

The State defendants in this case will offer facts in their summary judgment papers on the impact that IEPCs , such as plaintiff North Carolina Right to Life, play in

elections in North Carolina, and the justification for upholding limits on the amount of money that may be contributed to them by individuals and other groups.

We believe that further support for limiting contributions to state political committees such as NCRL can be gleaned from an examination of the role that 527 organizations have played in federal elections.[4] As this Court is no doubt aware, 527 organizations are organized for the purpose of making independent expenditures, and thus function essentially the same as IEPC's, although they have avoided registering as federal political committees. While 527's organizations purport to be independent of the major political parties, the evidence is strongly to the contrary. Indeed, the major political parties have played a significant role in the formation of a number of 527 groups.

Two major 527's, the Media Fund (aligned with Democrats) and the Progress for America (aligned with Republicans), demonstrate the close ties between these supposedly "independent" 527's and the national parties.

The Media Fund was organized to aid the Democratic presidential nominee through political advertising. It was formed from a BCRA task force that had been established by the then-Chairman of the Democratic National Committee, Terry McAuliffe. This Task Force was comprised of Democratic Party operatives: Harold Ickes, who had served as Deputy Chief of Staff to former President Clinton, and a paid advisor to Chairman McAuliffe, and a Member of the DNC's Executive Committee; Minyon Moore, DNC Chief Operating Officer; Josh Wachs, DNC Chief of Staff, Joseph

[4] The term "527's" or "527 organizations" refers to the provision of the Internal Revenue Tax Code that governs the tax treatment of political organizations. These are defined by the IRS as entities "organized and operated primarily" for the purpose of influencing the selection of candidates to elective or appointive office.

Sandler, DNC's legal counsel, and former White House officials John Podesta and Doug Sosnik. Mann Declaration at 3.[5]

Two years before the 2004 election cycle, DNC Chairman McAuliffe had discussed with Democratic Party donors the plans to establish the Media Fund, which Ickes later was named to head. *Id*. Ickes' leadership of the Media Fund, given his extensive ties to the Democratic Party and national leaders in the Party such as President Clinton, established a reliable connection between the Media Fund and the Democratic Party in the eyes of many donors. Even President Clinton encouraged donors to contribute to the Media Fund. Attachment 2, page 8 to Mann Declaration.

For his part, Ickes' fundraising activities fueled the link between the Media Fund and the national party. During the Democratic National Convention, Ickes served as a DNC delegate and visibly made the rounds at the convention soliciting party donors for the Media Fund and circulating with party officials. He even ran the Media Fund's Convention activities from an office in the Four Seasons Hotel in Boston, just down the hall from the DNC's finance division, which focused on large Democratic donors. Though nominally independent from the DNC, the Media Fund was very much aligned with the DNC, and these ties would have been especially obvious to potential large donors. Mann Declaration at 4.

There was a similar alignment between the Republican Party and Progress for America (PFA), another supposedly independent 527 group. Although Republicans started their 527 effort later than Democrats, they too proved themselves to be adept at using this vehicle. As detailed in the Weissman-Hassan study appended to Dr. Mann's Declaration, PFA was initially formed pursuant to Section 501(c)(4) of the tax code and,

[5] The Declaration of Thomas Mann is attached to the defendants' summary judgment papers.

from its inception, it had close ties with the Republican National Committee, the Bush Administration, and well-known Republican political consultants. Mann Declaration at 4-5.

For example, the founder of PFA was Tony Feather, a partner at Feather, Larson and Synhorst-DCI (FLS-DCI), which had ties to the RNC. Feather picked the former director of the National Republican Senatorial Committee (Chris LaCivita) to be PFA's President. *Id*. While President, LaCivita was paid as a contractor by a consultant group called DCI, which shared a partner (Tom Synhorst) with Feather's group, FLS-DCI. Synhorst too has strong Bush-Cheney campaign ties, having advised the campaign in 2000 and held important roles at the Republican conventions in 1996 and 2000.

When the FEC decided not to regulate 527's in May 2004, PFA reorganized as a pro-Bush 527 organization. Its hub was Synhorst, who played a role with PFA similar to the one Ickes played with the Media Fund and the DNC. Synhorst was a strategic advisor and leading fundraiser for PFA, both before and after its conversion from a 501(c)(4) to a 527 organization. He was also a partner at FLS-DCI, which received $19 million for telemarketing and message phone calling for the RNC and the Bush campaign. Like Ickes, Synhorst's efforts "were certainly visible to his firm's political clients and his political relationships were presumably known to many donors." Ex. 2, page 9 attached to Mann Declaration.

The RNC initially took the position that the Federal Election Commission should regulate 527 groups. But when, in May, 2004, the FEC refused to do so, Republican Party leaders sent an unmistakable message to Republican donors to give to 527 groups like PFA. Both the chairman of the Bush-Cheney '04 campaign (Marc Racicot) and the

RNC Chairman (Ed Gillespie) declared that FEC inaction on the issue "had given a green light to all non-federal 527's to forge full steam ahead in their efforts to affect this year's Federal elections, and in particular, the Presidential race[.]" *Id*., at 8. And that is precisely what PFA did in the 2004 election cycle.

The close connections between the party committees and these 527 groups raise concerns that 527 groups have provided and, unless regulated, will continue to provide a means for circumventing the soft money ban on the national parties. Donors who previously gave large soft money donations to the national parties have now shifted their giving to 527 groups that operate in close alignment with the parties.

For example, a recent study showed that total contributions to 527's rose from $151 million in 2002 to over $400 million—an increase of roughly 168%.[6] Moreover, donations from wealthy individuals to 527's also have sharply risen. Between 2002 and 2004, for example, the number of contributors who gave more than $100,000 to 527's grew from 66 to 265—an increase of over 300 percent. The number of 'superrich donors' grew even more, from no donors of more than $2 million in 2002, to 24 such donors in 2004.

Many of these large individual donors to 527 groups had previously given large amounts of soft money to the political parties before BCRA banned such practices. As noted in the Mann Declaration, of the 113 individuals who contributed at least $250,000 to 527 groups in the 2004 cycle, 73 (over 64 percent) had been active soft money donors to the political parties, giving a total of over $49 million dollars of soft money in the previous two election cycles. Mann Declaration at 2. What appears to have happened is

[6] This Study, "BCRA and the 527 Groups" by Steve Weissman and Ruth Hassan, is appended as Exhibit 2 to the Report of Dr. Thomas E. Mann, which is attached to the defendants' summary judgment papers.

that donors who had previously given soft money to the national political parties have now shifted a significant amount of their giving to 527 groups in the wake of BCRA's ban on party soft money fundraising. These supposedly independent groups are thus being used as vehicles for circumvention of the limits imposed by BCRA.

And because the candidates who are benefited by the spending of the 527 groups are fully aware of who these large donors are, unlimited contributions to 527 groups can be used as a means of buying access and influence to candidates and officeholders, just as similar soft money contributions to parties previously did.

Finally, there is no reason to believe that this potential for the circumvention of meaningful contribution limits on candidates and parties by the use of supposedly independent committees is a problem that is limited to federal elections. We submit that the experience at the federal level has potential to take place at the state level as well. If supposedly independent political committees are allowed to receive unlimited contributions, donors will use those contributions to buy access to and influence with those candidates aided by the committee. Such unlimited contributions, even if given to supposedly independent committees, create the potential for the same kind of corruption that was at the heart of the Supreme Court's analysis in *McConnell* upholding restrictions on donations to party committees. This danger of real or potential corruption arising from unlimited donations to political committees is sufficient to justify the contribution limits imposed on such gifts.

CONCLUSION

For the reasons set forth above, this Court should reject plaintiff's constitutional challenge to North Carolina's contribution limits to independent expenditure political committees.

Respectfully submitted this 28th day of February, 2005.

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CERTIFICATE OF SERVICE

This is to certify that on February 28, 2005, a copy of the foregoing Motion for Leave to Participate as *Amici Curiae*, Memorandum, and proposed Order were served on the following counsel of record, by placing a true copy of the same in the United States mail, first-class, postage prepaid:

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