

be Senator McCain's justification for the BCRA's coordinated spending provisions, this assertion is both unsupported and untrue. Senator McCain also fails to acknowledge the virtually unworkable situation created by the BCRA's requirement that political party committees choose between coordinating their political activities with their federal candidates and engaging in independent expenditures in support of their federal candidates.

3. As a practical matter, the BCRA requires all political party committees to make a collective choice between independent expenditures and coordinated expenditures, a choice to which all of the committees of a party will be irrevocably bound. In addition to being impractical, I also believe this requirement is an attempt by the supporters of the BCRA to take away the political parties' right to engage in unlimited independent expenditures.

4. Based on my experience, I believe that it will be extraordinarily difficult, if not impossible, for a national party to police every party entity -- including "all political committees established and maintained by" a national or state political party -- to make sure that none of them have made or are about to make a coordinated or independent expenditure. For example, if the RNC decides to make a coordinated expenditure with respect to a candidate, the RNC must somehow first confirm that no other political committee has or is about to make an independent expenditure with respect to the same candidate. Also, by expanding the definition of "coordination" so as to require something less than agreement or formal collaboration, the BCRA may even make it so that the very act of policing by the national parties could itself preclude independent expenditures.

5. Such a result places the political parties in an untenable position: the BCRA essentially requires the political parties to forego future coordinated expenditures as the "price" for engaging in independent expenditures. Accordingly, the BCRA may have the result

of effectively precluding the RNC from engaging in this form of constitutionally-protected political activity. At a minimum, the expanded definition of coordination will further hinder the ability of the RNC to work closely with the subordinate parties and candidates.

6. Although I do not believe it is possible for the RNC to know of every example of other Republican Party committees making independent expenditures when the RNC has made or is making coordinated expenditures, two examples come to mind. First, in 1996, following the Supreme Court's ruling in Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996), that political parties have a constitutionally protected right to make unlimited independent expenditures, the National Republican Senatorial Committee ("NRSC") made independent expenditures on behalf of several candidates for the United States Senate, while the RNC was simultaneously making coordinated expenditures on behalf of those same candidates. In total, the NRSC made approximately \$10.5 million in independent expenditures in 17 states where the RNC was making coordinated expenditures: Alabama, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Rhode Island, South Dakota, and Wyoming. The RNC made more than \$4.3 million of coordinated expenditures in these states. As part of its efforts, the NRSC took extraordinary measures to assure no coordination, including moving the staff working on the independent expenditures out of the NRSC's office building.

7. Second, it is my understanding that the Republican Party of Michigan has made independent expenditures on behalf of federal candidates with some regularity, including during periods when other Republican party committees were making coordinated expenditures. For example, during 2000, the Republican Party of Michigan made approximately \$191,000 in

independent expenditures and the RNC made approximately \$998,000 in coordinated expenditures in Michigan.

The BCRA's Millionaire's Provision

8. Similarly, the Defendants' witnesses also fail to address the difficulty imposed upon the political parties by the so-called "Millionaire's Provision," which increases contribution limits, and eliminates any limits on party coordinated expenditures, for the campaigns of candidates for the Senate or House whenever they confront opponents who devote specified amounts of personal wealth to their own campaigns.

9. Under the Millionaire's Provision, the RNC will be put in the position of providing different levels of funding for Republican candidates depending on whether or not the Republican candidates or their opponents decide to commit \$150,000 of their personal funds to the campaign. In some situations, the RNC will be unable to make unlimited coordinated expenditures on behalf of candidates who legally use their own resources to support their campaigns, while their opponents can receive unlimited coordinated spending by their political parties. In other situations, the RNC will be able to spend unlimited amounts in coordination with some of its candidates who are running against wealthy opponents who devote more than \$150,000 of their personal resources to their campaigns, but will be prohibited from spending unlimited amounts in coordination with other candidates are not running against wealthy opponents. Therefore, the RNC's ability to provide funding to a Republican candidate will, in some cases, be dictated more by the decisions of the Republican candidate's opponent than by the RNC.

10. I believe that the Millionaire's Provision also serves to demonstrate that the true congressional interest in imposing the coordinated expenditure limit is to limit spending,

not to prevent corruption. After all, at least with regards to the Millionaire's Provision, Congress appears to not be concerned that allowing larger contributions and greater funding from the political parties to candidates will corrupt those candidates.

Viability of State Parties

11. Several of the Defendants' witnesses suggest that parties will be strengthened by the BCRA. These witnesses fail to recognize, however, that the BCRA's various restrictions on national party transfers of nonfederal money to state parties, fundraising assistance by national parties and federal officeholders to state parties, and limitations by way of the Levin Amendment on the amount of state-regulated money state parties may accept from contributors will severely harm the state parties, and jeopardize the viability of several. For example, in the 2000 election cycle, the Republican Party of Wisconsin received 64% of its funding by way of transfers from the RNC; the Republican Party of Oregon received 77% of its funding by way of transfers from the RNC.

RNC Financial Support of Members Who Voted For the BCRA

12. In Senator McCain's affidavit, he states: "At times, when Members seek to support legislation their congressional leaders oppose, they are threatened with the prospect that their leaders will withhold soft money being spent on their behalf." Declaration of Senator John McCain ¶ 7. As previously indicated, I am aware of no instance in which a Member has been so threatened. Moreover, the objective facts demonstrate that campaign funding is not withheld from Members of Congress or Senators, even in situations, like the BCRA, when Members vote contrary to the suggestions of the party. In fact, the RNC has or will soon spend the maximum amount of coordinated expenditures on behalf of Congresspersons Bass, Capito, Johnson, Leach, Morella, and Simmons, and also on behalf of Congressmen Thune, Ganske, and

Graham, who are running for the Senate. Each of these Members voted in favor of the BCRA. It is my understanding that the NRCC has already made substantial direct contributions to many of these candidates as well. Senator Collins, who voted for the BCRA, is also receiving coordinated expenditures.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'T. Josefiak', written over a horizontal line.

Thomas Josefiak

Executed on October 7, 2002