

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

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| ANH "JOSEPH" CAO, |) | |
| REPUBLICAN NATIONAL COMMITTEE, AND |) | |
| REPUBLICAN PARTY OF LOUISIANA, |) | |
| |) | CIVIL ACTION No. 2:08CV4887 |
| PLAINTIFFS, |) | |
| |) | SECTION C, DIVISION 5 |
| v. |) | |
| |) | JUDGE HELEN G. BERRIGAN |
| FEDERAL ELECTION COMMISSION, |) | |
| |) | CHIEF MAGISTRATE JUDGE |
| DEFENDANT. |) | ALMA L. CHASEZ |

**DEFENDANT FEDERAL ELECTION COMMISSION'S
PROPOSED FINDINGS OF FACT AND
STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

Thomasenia P. Duncan
General Counsel

David Kolker
Associate General Counsel

Harry J. Summers
Assistant General Counsel

Claire N. Rajan
Attorney

Seth Nesin (T.A.)
Attorney

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
Telephone: (202) 694-1650

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I. The Parties

A. Defendant Federal Election Commission

1. The defendant Federal Election Commission (Commission or FEC) is the independent agency of the United States with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act of 1971, as amended (Act or FECA), 2 U.S.C. §§ 431-55, and other statutes. The Commission is empowered to “formulate policy” with respect to the Act (2 U.S.C. § 437c(b)(1)); “to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [the] Act” (2 U.S.C. §§ 437d(a)(8), 438(a)(8), 438(d)); and to issue written advisory opinions concerning the application of the Act and Commission regulations to any specific proposed transaction or activity (2 U.S.C. §§ 437d(a)(7), 437f). The Commission has exclusive jurisdiction with respect to civil enforcement of the Act. (2 U.S.C. § 437c(b)(1)).

B. Plaintiffs

2. Plaintiff Anh “Joseph” Cao is the United States Representative for the Second Congressional District of Louisiana. (Deposition of Anh "Joseph" Cao (Cao Dep.) at 8, FEC Exh. 4). Cao, a Republican, defeated incumbent Democrat William Jefferson in a general election on December 6, 2008. (Second Amended Verified Complaint for Declaratory and Injunctive Relief (Complaint) ¶ 10 (Doc. 35)). The election was held in December because primaries had been postponed due to damage from Hurricane Gustav. (Official 2008 Election Results at 113 n.*, <http://www.fec.gov/pubrec/fe2008/2008congrresults.pdf>).

3. Plaintiff Republican National Committee (RNC) is the national political party committee of the Republican Party. Its headquarters are in the District of Columbia. (Complaint ¶ 11 (Doc. 35)).

4. Plaintiff Republican Party of Louisiana (LA-GOP) is the State Committee of the Republican Party for Louisiana. LA-GOP maintains offices in, among other places, New Orleans and Metairie, Louisiana. (Complaint ¶ 12 (Doc. 35)).

II. Political Parties Receive Unique And Favorable Treatment Under the Federal Election Campaign Act, and the Coordinated Expenditure Limits Have Not Impaired Their Activities

A. Political Parties Enjoy Significant Advantages in Raising and Spending Money in Connection With Federal Elections, Including Higher Contribution Limits

5. Jonathan Krasno is an Associate Professor at Binghamton University who has authored an expert report in this litigation. (Jonathan Krasno, Political Party Committees and Coordinated Expenditures in *Cao v. FEC* (Krasno Rept.), FEC Exh. 1). Professor Krasno has published numerous works in the field of political science, many of which involve the role of campaign finance regulation and political parties in United States politics. (*Id.* at *Curriculum Vitae* 1-4). Professor Krasno also co-wrote an expert report that was explicitly relied upon by the Supreme Court in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 470 (2001) (*Colorado II*) (citing Frank J. Sorauf & Jonathan S. Krasno, Political Parties and Coordinated Spending (Sorauf & Krasno *Colorado II* Rept.), FEC Exh. 33).

6. According to Professor Krasno, political parties “have been strongly advantaged by the system of financing campaigns.” Krasno Rept. at 1, FEC Exh. 1.

7. Political parties are able to raise more money, from more sources, than other entities regulated by the Act, including candidates and other political committees, such as separate segregated funds of corporations and labor organizations, commonly known as political action committees (PACs). (2 U.S.C. § 441a(a)).

8. The national party committees for the Republican Party are the RNC, the National Republican Congressional Committee (NRCC), and the National Republican Senatorial

Committee (NRSC). (Declaration of Robert W. Biersack (Biersack Decl.) at ¶ 2, FEC Exh. 3).

The national party committees for the Democratic Party are the Democratic National Committee (DNC), the Democratic Congressional Campaign Committee (DCCC), and the Democratic Senatorial Campaign Committee (DSCC). (*Id.*)

9. Under the Act, the committees established by each national party can together receive up to \$30,400 per year from each individual donor in federal contributions (money raised in accord with the restrictions of the Act, also known as “hard money”). In each state, the state, district and local committees of a party can receive up to a combined \$10,000 per year from each individual donor. By contrast, other political committees can receive only \$5,000 per year from an individual donor in hard money. Candidates are limited to \$2,400 in contributions from each individual per election (\$2,400 for a primary election and an additional \$2,400 for the general election). (2 U.S.C. § 441a(a)(1); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)).

10. The Act’s contribution limits apply both to direct contributions of money and in-kind contributions of goods or services. (2 U.S.C. § 431(8)(A)). Expenditures made in coordination with a candidate or her campaign are considered in-kind contributions to the candidate. (2 U.S.C. § 441a(a)(7)(B)).

11. Under the Act, the committees established by each national party can together receive up to \$15,000 per year from other multicandidate political committees. Multicandidate political committees can themselves receive only \$5,000 per year from individuals or other multicandidate political committees. Candidates can receive only \$10,000 from a multicandidate political committee per election cycle (\$5,000 for a primary election and \$5,000 for the general

election). (2 U.S.C. §§ 441a(a)(1)(C), 441a(a)(2); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)).

12. State, district and local committees of a party can also receive what are known as “Levin Funds.” (2 U.S.C. 441i(b); 11 C.F.R. §§ 300.30-32). These are donations of up to \$10,000 per year per donor, and they may come from sources ordinarily impermissible under the Act, such as corporations or labor unions. (11 C.F.R. § 300.31(c)). These funds can be used in conjunction with hard money for certain activities that benefit federal candidates, such as generic party voter registration drives, voter identification programs, and get-out-the-vote efforts. (11 C.F.R. § 300.32). No other entity is permitted to receive Levin Funds under FECA. (11 C.F.R. §§ 300.10; 300.32).

13. A national party committee can receive unlimited amounts as transfers from other national party committees (*e.g.*, the RNC can transfer unlimited amounts to the NRCC and vice versa). (2 U.S.C. § 441a(a)(4)). A National Party committee can also receive unlimited amounts of hard money as transfers from state, district, and local party committees, and vice versa. (2 U.S.C. § 441a(a)(4)). State, district, and local party committees can transfer hard money to one another without limit under the Act. (2 U.S.C. § 441a(a)(4)). And candidate campaigns can transfer funds to national, state, or local committees of political parties “without limitation.” (2 U.S.C. § 439a(a)(4)). This ability to freely transfer money between, among, and to political committees is available only to party committees and committees affiliated with the same corporation, union or other entity. (2 U.S.C. §§ 441a(a)(1); 441a(a)(2); 441a(a)(5)).

14. In 2007 and 2008, the Republican national party committees (RNC, NRSC, and NRCC) transferred a total of \$46,176,897 to Republican state committees. In 2007 and 2008, the

Democratic national party committees (DNC, DSCC, and DCCC) transferred a total of \$116,020,742 to Democratic state committees. (Biersack Decl. ¶ 18, Table 26, FEC Exh. 3).

15. The Act provides special exemptions to the definitions of contributions and expenditures for parties, which means some party activities are not subject to any contribution limit. Payment of compensation for legal or accounting services by full-time staff on behalf of any political party committee or candidate is excluded from these definitions. (2 U.S.C. §§ 431(8)(B)(viii)(I); 431(9)(B)(vii)(I)&(II)). The Act also excludes, for parties and candidates, the use of real or personal property, such as a community room, and the costs of invitations, food, and beverages voluntarily provided by an individual to any political committee, provided that the value of an individual's activity does not exceed \$2,000 in any calendar year. (2 U.S.C. § 431(8)(B)(ii)). The Act excludes from the definition of contribution for parties and candidates the payment of travel expenses incurred by any individual on behalf of the candidate or party, as long as the cumulative value of the expenses incurred by an individual does not exceed \$1,000 for a candidate and \$2,000 for a political party for any calendar year. (2 U.S.C. § 431(8)(B)(iv)). State and local parties may pay for the costs of some communications, such as slate cards, sample ballots, or other materials distributed by volunteers, without regard to the contribution and expenditure limits, even if those activities are coordinated with candidates. (2 U.S.C. §§ 431(8)(B)(v); 431(9)(B)(iv); *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 449 (Jan. 3, 2003)). The Act also excludes, for state and local parties, expenditures for certain campaign materials, as well as certain voter registration and get-out-the-vote activities. (2 U.S.C. §§ 431(9)(B)(viii)-(ix)). Certain transfers of payments received by political party committees as a condition of ballot access are also excluded from the definition of "expenditure." (2 U.S.C. § 431(9)(B)(x)).

16. National party committees also receive funding from the federal government for their presidential nominating conventions. (26 U.S.C. § 9008(b)). For the 2008 conventions, the convention committees for the Democratic and Republican parties each received payments of \$16,356,000 from the United States Treasury. (Both Major Parties to Receive Public Funding for 2008 Convention, <http://www.fec.gov/press/press2007/20070626conventions.shtml>, FEC Exh. 17).

17. Political parties also receive special non-monetary benefits in connection with federal elections. Unlike interest groups, parties have their names next to those of their candidates on ballots in most states. Major-party nominees are automatically included on the general election ballot, and the names or symbols of their parties are printed near their names. States also often run parties' primary elections. (Expert Report of Jonathan S. Krasno and Frank J. Sorauf in *McConnell v. FEC*, Evaluating the Bipartisan Campaign Reform Act (BCRA) (Krasno and Sorauf *McConnell* Report) at 25 [DEV 1-Tab 2], FEC Exh. 39;¹ Rebuttal Expert Report of Donald P. Green in *McConnell v. FEC*, The Impact of BCRA on Political Parties: A Reply to LaRaja, Lott, Keller, and Milkis (D. Green *McConnell* Rebuttal Report) at 7-9 [DEV 5-Tab 1], FEC Exh. 41; Responses and Objections of the Republican National Committee to Defendant Federal Election Commission's First Requests for Admissions in *McConnell v. FEC* (Resps. RNC to FEC's First *McConnell* RFA's), Nos. 2, 4, 6 [DEV 12-Tab 10], FEC Exh. 42; Plaintiff Republican National Committee's Responses and Objections to Defendant Federal

¹ "DEV" and "Tab" citations refer to Defendants' Exhibit Volumes from *McConnell v. FEC*, Civ. No 02-582 (D.D.C.). These documents, which include evidence from the *McConnell* case and other cases, are part of the record in this litigation pursuant to a Stipulation and Protective Order entered into by the parties and approved by the Magistrate Judge. (Doc. 49) A DVD copy of the non-confidential DEVs and a CD containing the confidential DEVs have been mailed by overnight delivery to the court, with additional courtesy copies delivered to Chambers.

Election Commission's Second Set of Discovery Requests in *RNC v. FEC*, 98-cv-1207 (D.D.C.) (RNC Resps. to FEC RFA's in *RNC*), Nos. 26, 34, 35 [DEV 68-Tab 35], FEC Exh. 59).

18. Unlike political parties, “[o]ther entities are not entitled to organize the slate of candidates presented to voters. Other entities do not organize legislative caucuses, assign committee chairs and members, or elect legislative leadership.... Even the largest political action committees cannot begin to approach the political scope, influence, or depth of electoral support characteristic of the Republican or Democratic Parties.” (Expert Report of Donald P. Green in *McConnell v. FEC*, Report on the Bipartisan Campaign Reform Act (D. Green *McConnell* Report) at 8 [DEV 1-Tab 3], FEC Exh. 40).

19. Political parties also receive favorable treatment in the amounts that they can contribute to federal campaigns, including the amounts that they can spend in coordination with their candidates. (2 U.S.C. §§ 441a(d)(2)-(3); 441a(h)).

20. The Act currently allows a national and state committee of a political party each to coordinate spending with a candidate up to \$43,700 or \$87,300 in races for the House of Representatives, and up to a range of \$87,300 to \$2,392,400 in races for Senate, and the Act also permitted the national parties to coordinate up to \$19,151,200 in the most recent Presidential race. (2 U.S.C. §§ 441a(d)(2)-(3); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009); Price Index Increases for Expenditure Limitations, 73 Fed. Reg. 8698 (Feb. 14, 2008)). No other entity is permitted to make these coordinated expenditures under the Act, which are in addition to the \$5,000 in contributions that all multicandidate political committees can make pursuant to 2 U.S.C. § 441a(a)(2)(A).

B. Political Parties Have Thrived Financially Under the Current Campaign Finance Framework

1. Under the Current Statutory and Regulatory Framework, Parties Are Capable of Fulfilling Their Historic Role Consistent with the Public Interest

21. Serious concerns about the potentially corrupting influence of political parties are older than the Nation. The Founding Fathers consciously created a constitutional framework designed to restrain the power of political parties because they viewed parties as a potential threat to representative governance. Commenting on the political beliefs of men like Washington, Adams, Madison, Hamilton, and Jefferson, the historian Richard Hofstadter has written:

If there was one point of political philosophy upon which these men, who differed on so many things, agreed quite readily, it was their common conviction about the baneful effects of the spirit of party.

(Richard Hofstadter, *The Idea of a Party System* (1970), at 3).

22. Alexander Hamilton was among those who agreed that the elimination of parties was a possible goal in a well-designed and well-run state. “We are attempting by this Constitution,” he said to the New York ratifying convention in 1788, “to abolish factions, and to unite all parties for the general welfare.” (Richard Hofstadter, *The Idea of a Party System* (1970), at 17; *The Federalist*, No. 85 (Hamilton) (Rossiter ed., 1961), at 521; D. Green *McConnell* Rebuttal Report at 7 [DEV 5-Tab 1], FEC Exh. 41).

23. George Washington warned that although political parties can play a useful role, if their power is not checked they can destroy the government through corruption: “I have already intimated to you the danger of parties in the State.... It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the

channels of party passion.” (G. Washington, Farewell Address, reprinted in Documents of American History (H. Commager ed. 1946), at 169, 172).

24. Concerns about parties led the Framers to structure the Constitution to try to minimize their influence:

[T]he authors of the Constitution set up an elaborate division and balance of powers within an intricate governmental structure designed to make parties ineffective. It was hoped that the parties would lose and exhaust themselves in futile attempts to fight their way through the labyrinthine framework of the government.... This is the antiparty part of the constitutional scheme. To quote Madison, the “great object” of the Constitution was “to preserve the public good and private rights against the danger of such a faction [party] and at the same time to preserve the spirit and form of popular government.”

(E. E. Schattschneider, Party Government (1942), at 7 (citing The Federalist, No. 10 (Madison); alteration by Schattschneider)).

25. One of the reasons parties were “conventionally condemned by political writers” in the 18th century was that they were viewed as potential agents of outside corrupt special interests:

[A] party or faction was very likely to become the instrument with which some small and narrow special interest could impose its will upon the whole of society, and hence to become the agent of tyranny.

(Richard Hofstadter, The Idea of a Party System (1970), at 12; Schattschneider at 12 (“[t]he parties are able to compel public officers to behave in ways that the law does not contemplate”). Thus, “the Fathers hoped to create not a system of party government under a constitution but rather a constitutional government that would check and control parties.” (Hofstadter at 53).

26. One historic role that parties have played is to continue to operate between elections so that each new candidate campaign need not start from scratch. Parties have

historically been considered “socializing institutions that help bring citizens into the political system, serve as an outlet for their political energy by recruiting them to work in campaigns, and help mobilize voters.” (Krasno Rept. at 7, FEC Exh. 1).

27. Throughout their history, parties have had the primary goal of winning elections. (Krasno Rept. at 15-16, FEC Exh. 1). They have not generally engaged in policy advocacy, except to the extent that such advocacy has some electoral purpose. (*Id.*). The ability of a political party to influence elections can be judged not only by its finances, but also by its “organizational presence in a locale fueled by a combination of paid employees and, more likely, activists and other party members” and the “attention and energy of party members.” (Krasno Rept. at 8, FEC Exh. 1).

28. The Democratic National Committee was first formed in 1848 for the purpose of planning the party’s next nominating convention. The Republicans formed their national committee a decade later. The goal of the RNC then was “survival” and to “provide[] a vehicle for continuity and for funding experience to ensure that it will not be necessary to start from the beginning in every presidential election.” For most of its history, the RNC struggled just to perform that “singular mission.” (Krasno Rept. at 14, FEC Exh. 1 (quoting Cotter & Hennessy, *Politics Without Power: The National Party Committees* (1964))).

29. Today’s national party committees no longer need to be concerned solely about “survival.” “[I]t is clear both that political parties enjoy an enormously advantageous position, and that they have become much bigger players in federal elections as a result.” (Krasno Rept. at 22, FEC Exh. 1).

30. National parties such as the RNC play a much bigger role in our political system today than they did in 1976, when the current campaign finance system was created, and national

parties are more significant today than they have been for much of their history. Political parties have prospered under the current laws that govern their behavior. (Krasno Rept. at 1, FEC Exh. 1).

2. Parties Continue to Raise and Spend Hundreds of Millions of Dollars Each Election Cycle For the Purpose of Electing Their Favored Candidates

31. From 1992 to 2006, political party spending “increased tenfold.” (Krasno Rept. at 20-21, FEC Exh. 1).

32. Data shows that the Democratic and Republican parties together raised more than \$1.4 billion in the two-year 2004 election cycle, more than \$1 billion in the 2006 cycle, and more than \$1.5 billion in the 2008 cycle. (Biersack Decl. ¶ 6, Table 5, FEC Exh. 3).

33. In the 2007-2008 election cycle, the national parties raised more money than in the election cycles prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, when they were also able to raise “soft” money—money that was not subject to the limitation or prohibitions of FECA. (Biersack Decl. ¶ 3, Tables 1 & 2, FEC Exh. 3).

34. In each of the last five two-year election cycles, the Republican national party committees (the RNC, NRSC and NRCC) have raised hundreds of millions of dollars of hard money. (Biersack Decl. ¶ 3, Table 1, FEC Exh. 3). In the 2000 election cycle, the Republican national party committees raised \$361,588,430 of hard money. (*Id.*) In the 2002 election cycle, the Republican national party committees raised \$352,876,067 of hard money. (*Id.*) In the 2004 election cycle, the Republican national party committees raised \$657,113,369 of hard money. (*Id.*) In the 2006 election cycle, the Republican national party committees raised \$508,120,158

of hard money. (*Id.*) In the 2008 election cycle, the Republican national party committees raised \$640,308,267 of hard money. (*Id.*)

35. In each of the last five two-year election cycles, the Democratic national party committees (the DNC, DSCC and DCCC) have raised hundreds of millions of dollars of hard money. (Biersack Decl. ¶ 3, Table 2, FEC Exh. 3). In the 2000 election cycle, the Democratic national party committees raised \$212,880,651 of hard money. (*Id.*) In the 2002 election cycle, the Democratic national party committees raised \$162,325,003 of hard money. (*Id.*) In the 2004 election cycle, the Democratic national party committees raised \$586,244,028 of hard money. (*Id.*) In the 2006 election cycle, the Democratic national party committees raised \$392,089,836 of hard money. (*Id.*) In the 2008 election cycle, the Democratic national party committees raised \$599,113,650 of hard money. (*Id.*)

36. In each of the last five two-year election cycles, Republican state and local party committees, in the aggregate, have raised well over \$100 million of hard money. (Biersack Decl. ¶ 5, Table 4, FEC Exh. 3). In each of the last five election cycles, Democratic state and local party committees, in the aggregate, have also raised well over \$100 million of hard money. (*Id.*)

37. In the 2008 election cycle, Republican party committees (including national, state, and local committees) supported their federal candidates with \$31,952,985 in coordinated expenditures, and Democratic party committees (including national, state, and local committees) supported their federal candidates with \$37,988,558 in coordinated expenditures. In the 2006 election cycle, six candidates for U.S. Senate each received the benefit of \$1 million or more in coordinated expenditures from their parties. (Biersack Decl. ¶ 11, 14, Tables 14, 21, 22, FEC Exh. 3).

38. In the 2008 cycle, the six national party committees provided significant support to their candidates in contributions. The Republican national committees contributed \$1,286,809 to their federal candidates. The Democratic national committees contributed \$571,365 to their federal candidates. (Biersack Decl. ¶ 12, Table 16, FEC Exh. 3).

39. During each of the last five two-year election cycles, the Republican national party committees have made millions of dollars of expenditures in coordination with federal candidates, from a low of \$13,310,534 in the 2006 cycle to a high of \$29,807,792 in the 2008 cycle. (Biersack Decl. ¶ 8, Table 6, FEC Exh. 3).

40. Over each of the last five two-year election cycles, the Democratic national party committees have made millions of dollars of expenditures in coordination with federal candidates, from a low of \$2,333,942 in the 2002 cycle to a high of \$22,914,903 in the 2004 cycle. (Biersack Decl. ¶ 8, Table 8, FEC Exh. 3).

41. In addition, in the 2008 cycle, parties made \$280,873,688 in independent expenditures. The Democratic party committees spent \$156,191,039 and the Republican party committees spent \$124,682,649 in independent expenditures. (Biersack Decl. ¶ 11, Table 15, FEC Exh. 3).

42. During the last three two-year election cycles, both major parties' national committees have averaged well over \$100 million in independent campaign expenditures. Republican national party committees made \$84,906,626 of independent expenditures in 2004, \$115,241,737 of independent expenditures in 2006, and \$123,416,207 of independent expenditures in 2008. (Biersack Decl. ¶ 8, Table 7, FEC Exh. 3). Democratic national party committees made \$175,982,712 of independent expenditures in 2004, \$106,745,614 of independent expenditures in 2006, and \$155,773,969 of independent expenditures in 2008.

(Biersack Decl. ¶ 8, Table 9, FEC Exh. 3). During those same cycles, both major parties' state and local committees also spent millions of dollars on independent expenditures. The Republican state and local parties spent \$1,266,442 in 2008, \$404,650 in 2006, and \$3,125,756 in 2004. The Democratic state and local party committees spent \$417,070 in 2008, \$1,354,651 in 2006, and \$508,984 in 2004. (Biersack Decl. ¶ 10, Table 12-13, FEC Exh. 3).

43. In the 2008 election cycle, the major national party committees (RNC and DNC) supported their federal candidates with a total of \$529,262 in contributions, \$31,256,379 in coordinated expenditures, and \$54,563,499 in independent expenditures. During this same period, the national Senatorial committees (NRSC and DSCC) supported their federal candidates with a total of \$648,095 in contributions, \$5,353,546 in coordinated expenditures, and \$112,013,708 in independent expenditures. During this same period, the national Congressional committees (NRCC and DCCC) supported their federal candidates with a total of \$680,817 in contributions, \$5,074,523 in coordinated expenditures, and \$112,612,969 in independent expenditures. During this same period, candidates for the U.S. House of Representatives spent a total of \$949.7 million on their candidacies, and candidates for the U.S. Senate spent a total of \$444.7 million on their candidacies. (Biersack Decl. ¶¶ 8, 12, 15, Tables 6-9, 16, FEC Exh. 3).

44. During the 2008 cycle, then-candidate Cao's congressional campaign had receipts of \$242,531, including \$5,000 in contributions from the RNC and \$500 from the South Carolina Republican Party, and also had the benefit of \$83,971 in coordinated expenditures from the RNC (using its own and the LA-GOP's Section 441a(d) authority). (Biersack Decl. ¶ 16, Table 23, FEC Exh. 3). As of June 30, 2009, Mr. Cao reported receiving more funds for the upcoming 2010 election cycle than he received during the entire 2008 election cycle. In the current cycle, he has reported \$516,957 in total receipts, including \$4,560 from LA-GOP, and he has also had

the benefit of \$2,822 in coordinated expenditures. (*Id.*) As of June 30, 2009, Mr. Cao had already disbursed \$185,668 in funds for the 2010 election. (*Id.*)

C. *Only Political Parties Are Permitted to Make Coordinated Expenditures Significantly in Excess of Their Contribution Limits, and the Party Coordinated Expenditure Limits Have Not Impaired the Parties' Activities*

1. Political Parties Can and Do Make Substantial Contributions To Federal Candidates Other Than Coordinated Expenditures

45. Under the Act, individuals, political parties, and other political committees are all limited in the amounts that they can contribute to one candidate in a given election cycle. (2 U.S.C. § 441a(a)(1)).

46. Under the current limits, a federal candidate is limited to \$2,400 in contributions from each individual per election (\$2,400 in a primary election and an additional \$2,400 in the general election). (2 U.S.C. § 441a(a)(1)(A); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)).

47. National, state, local and district Parties are considered multicandidate political committees under the Act, and therefore each is limited to \$10,000 in contributions to one candidate in a given election cycle (\$5,000 in the primary and \$5,000 in the general election). (2 U.S.C. §§ 441a(a)(2)(A); 2 U.S.C. §§ 431(4), 431(16), 441a(a)(4)). National parties and their Senatorial campaign committees may together contribute up to \$42,600 to each Senate candidate in the 2010 election cycle. (2 U.S.C. § 441a(h); 11 C.F.R. §§ 110.2(e)(1), 110.3(b)(2); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)).

48. Candidates can receive contributions from each of the major parties' three national committees, as well as state and local committees (including state committees outside

the state in which the candidate is running), so the total party contributions to a candidate in an election can be substantial. For example, in the 2008 election cycle, one U.S. Senate candidate received \$51,563 in party contributions, and one U.S. House candidate received \$98,051, due to the variety of national, state, and local party committees permitted to contribute \$5,000 under 2 U.S.C. § 441a(a)(2)(A). In 2008, other Senate candidates reported receiving party contributions of \$46,897, \$46,802, and \$42,900. Other 2008 U.S. House candidates reported receiving \$57,250, \$38,979, and \$24,640 in party contributions. (Biersack Decl. ¶ 17, Tables 24-25, FEC Exh. 3).

49. In 2008 elections where the incumbent either lost the general election or received less than 60% of the vote, the incumbents generally received more party contributions than their challengers. In 30% of these elections, the challenger did not receive any party contributions at all. In these types of competitive elections, where the challenger receives any party contributions, the incumbent is typically able to receive a similar or greater amount of party contributions. (Biersack Decl. ¶ 17, Table 25, FEC Exh. 3).

2. Political Parties Can Spend Considerable Amounts on Coordinated Expenditures Above Their Contribution Limit to Support Candidates

50. Political parties benefit from a special provision in the Act that permits them to make coordinated expenditures with their federal candidates far in excess of the contribution limits that apply to all multicandidate political committees. (2 U.S.C. §§ 441a(d)(2)-(3)). Neither other political committees nor individuals can engage in such coordinated expenditures in excess of their contribution limits.

51. The party coordinated expenditure provisions are adjusted for inflation each year. (2 U.S.C. § 441a(c)(1)(B)).

52. The Act currently allows a national or state committee of a political party to make coordinated expenditures of up to \$43,700 for most candidates for the U.S. House of Representatives, in addition to the contributions the party committees may make under 2 U.S.C. § 441a(a)(2)(A). (2 U.S.C. § 441a(d)(3); 11 C.F.R. § 109.33; Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)). Each candidate may receive the benefit of coordinated expenditures up to this limit from a national committee, and also receive the benefit of coordinated expenditures up to this limit from the relevant state party committee. (11 C.F.R. § 109.33(b)). Thus, each candidate may receive party coordinated expenditures of up to \$87,400.

53. If a candidate for the U.S. House of Representatives is running from a state with only one Congressional district, a national or state committee of a political party can make coordinated expenditures of up to \$87,300, in addition to the contributions the party committees may make under 2 U.S.C. § 441a(a)(2)(A). (2 U.S.C. § 441a(d)(3); 11 C.F.R. § 109.33; Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)). Each candidate may receive the benefit of coordinated expenditures up to this limit from a national committee, and also receive the benefit of coordinated expenditures up to this limit from the relevant state party committee. (11 C.F.R. § 109.33(b)). Thus, each candidate may receive party coordinated expenditures of up to \$174,600.

54. For U.S. Senate campaigns, the Act currently allows national or state committees of political parties to make coordinated expenditures in amounts ranging from \$87,300 to \$2,392,400, depending upon the voting age population of the state, in addition to the contributions the party committees may make under 2 U.S.C. § 441a(a)(2)(A). (2 U.S.C. § 441a(d)(3); 11 C.F.R. § 109.33; Price Index Increases for Contribution and Expenditure

Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435-37 (Feb. 17, 2009)). Each candidate may receive the benefit of coordinated expenditures up to this limit from a national committee, and also receive the benefit of coordinated expenditures up to this limit from the relevant state party committee. (11 C.F.R. § 109.32(b)). Thus, Senate candidates may receive party coordinated expenditures in amounts ranging from \$174,600 to \$4,784,800.

55. National committees and state committees of political parties can assign their authority to make coordinated party expenditures to other political party committees under 2 U.S.C. § 441a(d)(3). (11 C.F.R. § 109.33(a)); *see also* Nov. 12, 2008 Letter from Roger Villere, Jr., Chairman of LA-GOP to Mike Duncan, Chairman of RNC (LA-GOP0001), FEC Exh. 13 (authorizing RNC to make LA-GOP's coordinated expenditures in 2008 Cao campaign); RNC Spreadsheet for 2008 Cao Campaign (RNC 0000001), FEC Exh. 14 (indicating that coordinated expenditure limit for 2008 Cao campaign increased from \$42,100 to \$84,200 following receipt of authorization from LA-GOP)). This allows a candidate to receive the benefit of the maximum coordinated expenditures that the state and national parties are permitted to make even though "the state parties do not have sufficient federal resources in a lot of the smaller states to be able to fully fund a coordinated expenditure program." (Federal Rule of Civil Procedure 30(b)(6) Deposition of Republican National Committee witness Thomas J. Josefiak (RNC 30(b)(6) Dep.) at 63, FEC Exh. 5).

56. In the 2008 Presidential campaign, national committees of political parties were permitted to make coordinated expenditures with their candidates of up to \$19,151,200, in addition to the contributions the party committees may make under 2 U.S.C. § 441a(a)(2)(A). (2 U.S.C. § 441a(d)(2); 11 C.F.R. § 109.33; Price Index Increases for Expenditure Limitations, 73 Fed. Reg. 8698 (Feb. 14, 2008)).

57. Plaintiffs are challenging certain applications of the Act's limits on party coordinated expenditures that were upheld on their face by the Supreme Court in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*). (Complaint ¶¶ 60, 64, 71-75 (Doc. 35)). Most of plaintiffs' claims are unrelated to the specific amounts that the parties are permitted to coordinate, and LA-GOP alleges that there would still be a constitutional problem even if the limits were "a billion dollars." (Fed. R. Civ. P. 30(b)(6) Deposition of Republican Party of Louisiana witness Charles Lee Buckels (LA-GOP 30(b)(6) Dep.) at 44, FEC Exh. 6).

3. Political Parties Can Legally Engage in Numerous Activities That Benefit Candidates and Promote Issues Without Limitation, Including Independent Expenditures and Coordinated Communications Made Prior to the Few Months Before an Election

58. Coordinated expenditures are those that are made in "cooperation, consultation or concert with, or at the request or suggestion of" the candidate or candidate's authorized committee. (11 C.F.R. §§ 109.20, 109.37; *see also* 2 U.S.C. § 431(17)). In contrast with party coordinated expenditures, expenditures made by parties that are not coordinated with a candidate are considered independent and parties may generally engage in them without limit. (*Colorado II*, 533 U.S. at 465; *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 618 (1996) (*Colorado I*)). Party independent expenditures are limited only where the national committee of a political party has been designated as the authorized committee of a Presidential candidate and the campaign is subject to public financing restrictions. (11 C.F.R. §§ 109.36, 9002.1).

59. Party coordinated communications are one category of coordinated expenditures that are limited under the Act. (11 C.F.R. § 109.37). Just like other expenditures, party communications that are not coordinated with federal candidates or their campaigns are

considered independent and parties may generally engage in them without limit. (*Colorado II*, 533 U.S. at 465; *Colorado I*, 518 U.S. at 618).

60. Not every communication is considered a coordinated communication even if it is made in “cooperation, consultation or concert with, or at the request or suggestion of” the candidate or candidate’s authorized committee. Under the Commission’s regulations, whether a particular communication is considered to be a party coordinated communication is based upon both the conduct of those involved and the content of the communication. (11 C.F.R. § 109.37).

61. Prior to 90 days before a Congressional or Senate election, or 120 days before a Presidential election, a party communication is not deemed coordinated with a candidate unless it “disseminates, distributes, or republishes . . . campaign materials prepared by a candidate, . . .” or “expressly advocates the election or defeat of a clearly identified candidate.” (11 C.F.R. §§ 109.37(a)(2)(i)-(ii)). No other party communications made prior to the 90/120 day windows count against the Act’s limits on party contributions or party coordinated expenditures.

62. Even within the 90 or 120 days immediately before an election, a party communication is not considered a party coordinated communication subject to the Act’s limits unless it refers to a clearly identified federal candidate and is disseminated within that candidate’s jurisdiction. (11 C.F.R. § 109.37(a)(3)).

63. A party communication also is not considered coordinated unless the party and candidate have engaged in specific conduct indicating coordination, even if the communication is disseminated within 90 or 120 days before an election and refers to a clearly identified federal candidate in the appropriate jurisdiction. (11 C.F.R. §§ 109.37(a)(3), 109.21(d)(1)-(6)). The conduct standard is met if, *e.g.*, “[t]he communication is created, produced, or distributed at the request or suggestion of a candidate,” “[t]he communication is created, produced, or distributed

after one or more substantial discussions about the communication between the person paying for the communication . . . and the candidate who is clearly identified in the communication,” or the person paying for the communication hires a candidate’s vendor or former employee “to create, produce, or distribute” it and in doing so that vendor/employee uses “material” information about “campaign plans, projects, activities, or needs” or shares such information with the payer. (11 C.F.R. §§ 109.21(d)(1)(i); 109.21(d)(3); 109.21(d)(4)-(5)).

64. A party can avoid having a communication deemed a coordinated communication by setting up and distributing a written “firewall” policy that prohibits the flow of information between the individuals “providing services for the [party] paying for the communication” and the individuals who are “currently or [were] previously providing services to the candidate who is clearly identified in the communication [or his or his opponent’s committee].” (11 C.F.R. §§ 109.37(a)(3), § 109.21(h)).

65. In practice, the RNC has decided to create its “firewall” by approving a budget for independent expenditures, and then supplying that budget to individual consulting groups that “have no connection, no ability to deal with campaigns.” (RNC 30(b)(6) Dep. at 59, FEC Exh. 5). The consultant then creates and runs advertising, without any input or control from the RNC or its officers. (*Id.*) The RNC makes its independent expenditures in this way out of a belief that setting up internal firewalls would be inefficient and might lead to the filing of administrative complaints with the FEC. (*Id.* at 74-75, 159-60).

66. Although parties can engage in unlimited independent expenditures, some party committee officials and candidates have expressed dissatisfaction with party independent expenditures due to their lack of control over the content. (RNC 30(b)(6) Dep. at 72-73, FEC Exh. 5 (describing independent expenditure in Tennessee Senate race that “caused the chairman

angst” due to media scrutiny); Cao Dep. at 34-35, FEC Exh. 4 (describing campaign’s frustration because NRCC independent expenditure robocalls were “hurting us more than [they] helped us”); Krasno Rept. at 5-6 & n.4, FEC Exh. 1 (describing NRCC chairman’s dismay at an inability to do anything about a misleading NRCC independent expenditure alleging an opponent called a phone sex line while traveling on business)).

67. Due to the perceived administrative and content advantages of coordinated expenditures, plaintiffs generally prefer to coordinate activities between candidates and parties. (RNC 30(b)(6) Dep. at 57, FEC Exh. 5 (“no chairman feels that independent expenditures is a preferable way to spend money.”); LA-GOP 30(b)(6) Dep. at 79, FEC Exh. 6 (“Any coordination with our candidates is something we would like to do more of.”); Cao Dep. at 42, FEC Exh. 4 (“I would like for them to do more radio ads, do more mailing of products on my behalf. But before they do it, I would like to know the contents of those ads”)).

4. Political Parties Reach the Maximum Permitted Coordinated Expenditures Only in a Small Minority of Federal Races, Which Tend to Be Highly Contested Races

68. “[P]arty committees are engaged in elections first and foremost, not in policy advocacy.” (Krasno Rept. at 14, FEC Exh. 1). “Parties want winners – to solidify their grip on power, to expand their presence across the nation, to satisfy their supporters, etc. – so they look for races where their involvement could mean the difference between victory and defeat.” (*Id.* at 19).

69. Political parties “try to maximize their impact by working hardest in – or targeting – the races they deem closest.” (Krasno Rept. at 19, FEC Exh. 1). As a result, candidates that are viewed as “safe incumbents” or “hopeless” are typically ignored by party committees

choosing to allocate finite resources. (*Id.*) Parties “try to spend less on uncompetitive races in order to spend more on competitive ones.” (*Id.*)

70. Political parties “allocate[] money based on a number of factors, including ‘the financial strength of the campaign,’ ‘what [the candidate's] poll numbers looked like,’ and ‘who had the best chance of winning or who needed the money most.’ (*Colorado II*, 533 U.S. at 478 (quoting, *inter alia*, declaration of Robert Hickmott, former Democratic fundraiser and National Finance Director for Timothy Wirth's Senate campaign, in *Colorado II* (Hickmott *Colorado II* Decl.), [DEV 76-Tab 121], FEC Exh. 34). “[T]he primary consideration in allocating funds is which races are marginal — that is, which races are ones where party money could be the difference between winning and losing” (*FEC v. Colorado Republican Fed. Campaign Comm.*, 41 F. Supp. 2d 1197, 1203 (1999) (Nottingham, J.)).

71. The RNC decides to spend money in particular races primarily based upon “how competitive the race is and the commitment that the National Committee wants to make to making its position known in that race.” (RNC 30(b)(6) Dep. at 55-56, FEC Exh. 5). The RNC does not spend money on states that are considered uncompetitive, for example if “there is no chance that the RNC is going to be able to win any of the races, and it's just taking away money from one competitive state and giving it to a state that won't have any impact on.” (*Id.* at 27-28). The RNC also does not spend money in races unless it is convinced that the Republican running is “a legitimate candidate.” (*Id.* at 78).

72. As a result of their focus on close races, party committees like the RNC rarely reach their legal limit for coordinated expenditures in a particular House or Senate race. There are 435 seats in the U.S. House of Representatives, each of which is filled by an election during every two-year election cycle. U.S. Const. art. I, § 2; 2 U.S.C. § 2. There are 100 seats in the

U.S. Senate, and one third of the total Senate membership is elected every two-year election cycle. U.S. Const. art. I, § 3. Although there are at least 468 federal elections each cycle, Republican committees reached the maximum amount of coordinated expenditures in only seven congressional races in 2008, and in two races in 2006. (Biersack Decl. at ¶ 13, Tables 17 & 18, FEC Exh. 3). Democratic committees only reached the legal limit in ten congressional races in 2008 and twelve races in 2006. (*Id.*)

73. In only a small fraction of races do party committees spend 95% or more of the coordinated expenditures available to them under the Act. Republican committees only reached the 95% threshold in coordinated expenditures in 61 congressional races in 2008, and in 54 races in 2006. (Biersack Decl. at ¶ 13, Tables 17 & 18, FEC Exh. 3). Democratic committees only reached the 95% standard in 30 congressional races for each of the last two election cycles. (*Id.*)

74. Party committees typically reach the 95% threshold only in the most competitive races. The Cook Political Report is a newsletter that assesses the competitiveness of various elections. (About the Cook Report, <http://www.cookpolitical.com/node/1774>, FEC Exh. 19 (“The Cook Political Report is an independent, non-partisan newsletter that analyzes elections and campaigns for the US House of Representatives, US Senate, Governors and President as well as American political trends.”)). Cross-referencing Republican party spending to the 95% threshold with the Cook Report analysis of 2008 House and Senate races (October 23, 2008) shows that:

a. Republican committees reached the threshold in 29 of 36 “Toss up” races (81%). (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; 2008 Competitive House Race Chart (Oct. 23, 2008) (Cook House Chart), FEC Exh. 20, http://www.cookpolitical.com/charts/house/competitive_2008-10-23_11-33-46.php; 2008 Senate

Race Ratings (Oct. 23, 2008) (Cook Senate Chart), FEC Exh. 21,

http://www.cookpolitical.com/charts/senate/raceratings_2008-10-23_11-37-46.php).

b. Republican committees reached the threshold in 9 of 15 “Lean Democratic” races (60%). (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

c. Republican Committees reached the threshold in 9 of 16 “Lean Republican” races (56%). (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

d. Republican Committees reached the threshold in 4 of 18 “Likely Democratic” races (22%). (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

e. Republican Committees reached the threshold in 3 of 21 “Likely Republican” races (14%). (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

f. Republican Committees reached the threshold in 7 of 364 of races judged as not competitive nor likely to become competitive (2%). (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

75. Cross-referencing Democratic spending to the 95% threshold with the Cook Report analysis of 2008 House and Senate races (October 23, 2008) shows that:

a. Democratic committees reached the threshold in 10 of 36 “Toss up” races (28%). (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

b. Democratic committees reached the threshold in 1 of 15 “Lean Democratic” races (13%). (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

c. Democratic committees reached the threshold in 6 of 16 “Lean Republican” races (38%). (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

d. Democratic committees reached the threshold in 2 of 18 “Likely Democratic” races (11%). (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

e. Democratic Committees reached the threshold in 4 of 21 “Likely Republican” races (14%). (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

f. Democratic Committees reached the threshold in 6 of 364 of races judged as not competitive nor likely to become competitive (2%). (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Cook House Chart, FEC Exh. 20; Cook Senate Chart, FEC Exh. 21).

76. The majority of 2008 House and Senate general elections were not close, and in those races, party coordinated expenditures were rare. In 322 of the 470 general elections (69%), a candidate received over 60% of the vote. (Official Election Results for U.S. Senate/Official Election Results for U.S. House of Representatives (Official 2008 Election Results), <http://www.fec.gov/pubrec/fe2008/2008congresults.pdf>). Despite the fact that the majority of races involved a candidate receiving over 60% of the vote, such races only made up a tiny minority of races in which the Republican or Democratic parties spent 95% or more of the coordinated expenditures available to them under the Act. Of the 61 races in which Republican

party committees reached the 95% threshold, only two races (3%) featured a candidate who received over 60% of the vote. (Biersack Decl. at ¶ 14, Table 19, FEC Exh. 3; Official 2008 Election Results). Of the 30 races in which Democratic party committees reached the 95% threshold, only three races (10%) featured a candidate who received over 60% of the vote. (Biersack Decl. at ¶ 14, Table 20, FEC Exh. 3; Official 2008 Election Results).

77. Parties make no coordinated expenditures at all in many federal elections. In 2008, only 99 Republican candidates for Congress received coordinated expenditures from political parties, and in 2006 only 88 did. (Biersack Decl. at ¶ 13, Tables 17-18, FEC Exh. 3). Democratic party committees only made coordinated expenditures for 168 of their congressional candidates in 2008 and 201 of them in 2006. (*Id.*)

78. With respect to party spending on races for the U.S. House of Representatives (direct contributions, coordinated expenditures and independent expenditures), national parties “spent half of their money in just 11 districts in 2004 and 15 districts in 2006.” (Krasno Rept. at 21, FEC Exh. 1 (emphasis omitted)).

III. Unlimited or Virtually Unlimited Coordinated Expenditures By Political Parties Pose a Danger of Corruption or Its Appearance

A. National Political Parties Are Closely Linked With Federal Candidates and Officeholders

79. National political parties are “inextricably intertwined with federal officeholders and candidates.” (*McConnell v. FEC*, 540 U.S. 93, 155 (2003) (quoting 148 Cong. Rec. H409 (Feb. 13, 2002))). “Candidates are the rallying points for the party.” (Krasno Rept. at 5, FEC Exh. 1).

80. “[T]here is no meaningful separation between the national party committees and the public officials who control them.” (*McConnell*, 540 U.S. at 155 (quoting *McConnell v. FEC*, 251 F. Supp. 2d 176, 468-69 (D.D.C. 2003) (Kollar-Kotelly, J.))).

81. The RNC has “constant contact” with candidates at the height of an election. (RNC 30(b)(6) Dep. at 37, FEC Exh. 5). “[P]arty leaders and candidates are closely involved with each other in coordinating expenditures ... [which] brings the parties and candidates in very close contact with each other.” (Krasno Rept. at 6, FEC Exh. 1).

82. “The President typically controls his party’s national committee, and once a favorite has emerged for the presidential nomination of the other party, that candidate and his party’s national committee typically work closely together.” (*McConnell*, 251 F. Supp. 2d at 697 (Kollar-Kotelly, J.)).

83. The RNC works with federal candidates each election cycle to develop “victory plans,” which are joint, comprehensive, election-specific strategies. (RNC 30(b)(6) Dep. at 27-30, FEC Exh. 5; *McConnell*, 540 U.S. at 159-60). Officeholders are “part of meetings to discuss a victory plan with the state party, with all of the campaigns from that area, and the two other sister committees, the NRCC and the Senatorial Committee.” (RNC 30(b)(6) Dep. at 27, FEC Exh. 5).

84. Party organizations, particularly those at the national level, directly assist federal candidates by providing them with campaign contributions, coordinated expenditures, and assistance in areas of campaigning that require expertise and in-depth research. They also help candidates raise funds and campaign support from other groups. The parties’ close involvement in political campaigns gives them a special relationship with candidates. (RNC Resps. to FEC’s First *McConnell* RFA’s, Nos. 17 – 19, 55 [DEV 12-Tab 10], FEC Exh. 42).

85. Party organizations recruit candidates and write the rules that govern nomination campaigns. Party organizations also assist general election candidates with their campaigns, providing many with money, political expertise, media and other election services, volunteers, and some of the other resources that are needed to wage an election campaign. Parties also help candidates collect money and other campaign resources from interest groups and individuals who are active in politics. In addition, party organizations communicate messages designed to benefit a party's entire ticket or intended to help individual candidates win their races. (D. Green *McConnell* Rebuttal Report at 7-9 [DEV 5-Tab 1], FEC Exh. 41; Declaration of Rocky Pennington in *McConnell v. FEC* ¶ 5 [DEV 8-Tab 31], FEC Exh. 43; Declaration of Linda W. Chapin in *McConnell v. FEC* ¶ 5 [DEV 6-Tab 12], FEC Exh. 44; Declaration of Terry S. Beckett in *McConnell v. FEC* ¶ 5 [DEV 6-Tab 3], FEC Exh. 45).

86. Ensuring that officeholders remain in office is a vital goal of political parties, and parties devote significant resources to that goal. For example, in 2009, the NRCC created the "Patriot Program," which provides some incumbents with particular benefits. The NRCC explained the Program's purpose: "In order to expand our numbers in the House and reclaim the majority, it is imperative that every single incumbent House Republican seeking re-election is victorious." (*Patriot Program*, available at <http://www.nrcc.org/races/patriots.aspx>, FEC Exh.

22). The NRCC stated:

The NRCC "Patriot Program" is the formalized mechanism by which potentially targeted incumbents commit themselves to meet rigorous goals that will strengthen their campaigns to ensure victory. These 'Patriots' who work tirelessly to build winning campaigns do so with the full support and participation of the NRCC and the entire House Leadership.

Working with the NRCC, Patriots develop aggressive goals (and detailed plans to meet those goals) for fundraising, coalitions outreach, grassroots development, eCampaign operations,

volunteer recruitment, and a number of additional aspects of their re-election campaigns.

(*Id.*).

87. The incumbents in the Patriot Program are given fundraising support by the NRCC. The NRCC stated:

The NRCC unveiled ten incumbent Members who, because of their outstanding efforts as "Patriots," will be rewarded with participation in "Patriot Day" on June 25th. Patriot Day is a fundraising event hosted by House Leadership that includes the entire House Republican Conference and benefits the most deserving and eligible Patriot Program Members.

These ten Patriots have shown a quantifiable commitment to taking their Patriot Program responsibilities seriously. These responsibilities include the measurable fundraising, communications, online development, outreach, and organizational groundwork necessary for their re-election in 2010.

(*Patriot Program*, available at <http://www.nrcc.org/races/patriots.aspx>, FEC Exh.

22).

88. The Patriot Program began with "a single-day fundraising blitz that brought in almost \$100,000 in contributions for each of the 10 original Patriot program members when it debuted in June." (Shira Toeplitz, *NRCC Taps 15 More For 'Patriot' Program*, ROLL CALL, Jul. 22, 2009, <http://www.rollcall.com/news/37116-1.html>, FEC Exh. 23).

89. Congressman Cao is a member of the Patriot Program and participated in the "Patriot Day" fundraising event. (Judy Biggert, Chris Lee, *An All-Day Marathon For Patriots Day, Just Like In Boston*, HOTLINE, Jun. 25, 2009, 2009 WLNR 14846110, FEC Exh. 24). Reports filed with the Commission through June 30, 2009 indicate that Mr. Cao has received \$516,955 for the 2010 congressional election. He has already disbursed \$185,668. (Biersack Decl. ¶ 16, Table 23, FEC Exh. 3).

90. In 2004, the DCCC created its “Frontline Program,” which aids the party’s most vulnerable incumbents. (Shira Toeplitz, *NRCC Taps 15 More For ‘Patriot’ Program*, ROLL CALL, Jul. 22, 2009, <http://www.rollcall.com/news/37116-1.html>, FEC Exh. 23).

B. National Party Committees Facilitate Their Largest Donors’ Access to and Influence Over Federal Candidates and Officeholders

91. Martin Meehan was a Democratic Congressman from Massachusetts between 1993 and 2007, and he has provided a declaration in this case. (Declaration of Martin Meehan (Meehan Decl.) at ¶ 1, FEC Exh. 2). Congressman Meehan states that “[p]arty fundraising serves as a mechanism for major donors to get special access to lawmakers.” (*Id.* at ¶ 8).

92. “At the request of the party, Members of Congress call prospective donors from lists provided by the party to ask them to participate in party events, such as [DCCC or DNC] dinners.” (Meehan Decl. at ¶ 9, FEC Exh. 2). National parties’ “fundraising events often [] feature members of Congress as draws, and they explicitly offer donors the opportunity to meet and get to know various officials.” (Krasno Rept. at 5, FEC Exh. 1 (footnote omitted)).

93. The trading of large donations for access to federal officeholders was rampant prior to the passage of BCRA in 2002. (*McConnell*, 540 U.S. at 150-52 (“The record in the present case[] is replete with . . . examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. . . . [T]he RNC holds out the prospect of access to officeholders to attract soft-money donations and encourages officeholders to meet with large soft-money donors.”) (citing *McConnell*, 251 F. Supp. 2d at 500-03 (Kollar-Kotelly, J.), 860-61 (Leon, J.)).

94. In 2002, Congress passed BCRA, which prohibited the national parties from receiving or spending any “soft money.” (2 U.S.C. § 441i(a)). Even after the passage of the soft

money restrictions in BCRA, large donors to political parties are able to receive access to federal officeholders unavailable to the public. To facilitate its donors' access to federal candidates and officeholders, the RNC organizes "fulfillment" events to which individuals who have made a large contribution to the RNC of a specified amount are invited, and which officeholders such as the President, Vice-President or other prominent Republicans also attend. (RNC 30(b)(6) Dep. at 27-30, FEC Exh. 5; *Id.* at 39-40 ("they will have, you know, basically fulfillment requirements where they will be at some resort, they play a little golf, hear speakers on various issues, and so that will be an ongoing process.")).

95. These opportunities are only offered to individuals who are "fully contributing" the amount to the RNC that is required to attend the event. (RNC 30(b)(6) Dep. at 44-45, FEC Exh. 5). The RNC has created tiers of donors with specified benefits based on levels of annual giving: For example, donors who give \$15,000 receive "intimate luncheons, dinners, and meetings with key policymakers"; donors who give \$30,400 "enjoy exclusive private functions with elected Republican leaders"; and donors who commit to raising \$60,800 receive "at least one . . . exclusive event during the year," as well as other "intimate events with key GOP policymakers." (Republican National Committee Major Donor Groups 2009, FEC Exh. 25).

96. Many party events are quite intimate: For example, at one Republican party event on November 1, 2007, the President of the United States, six U.S. Senators, and one U.S. Representative attended a dinner with just forty-nine donors — a ratio of only six donors to each officeholder. (New Republican Regents Dinner Invitation (Nov. 1, 2007, FEC Exh. 26). The RNC has organized even smaller Presidential appearances in private homes — events at which the President has been joined by as few as thirty-nine donors. (RNC Luncheon Invitation (Sept. 26, 2007), FEC Exh. 27) (thirty-nine attendees); (RNC Presidential Trust Dinner Invitation

(March 18, 2008), FEC Exh. 28) (forty-one attendees); (RNC Presidential Trust Luncheon Invitation (March 18, 2008), FEC Exh. 29) (fifty-two attendees). And the RNC has arranged similar interactions with executive branch officials: Senior White House official Karl Rove had breakfast with twenty-eight donors (RNC Breakfast with Karl Rove Invitation (Oct. 10, 2006), FEC Exh. 30) and White House Chief of Staff Joshua Bolten had lunch with thirty-seven donors (RNC Luncheon with Josh Bolten Invitation (Oct. 19, 2006), FEC Exh. 31).

97. Through lobbyists and others, “national parties have actively exploited the belief that contributions purchase influence or protection to pressure donors into making contributions.” (*McConnell*, 540 U.S. at 148 n.47). As the CEO of a major corporate donor explained, if a corporation had given a lot of money to one party, “the other side,” i.e., the opposing national party committee, might have “a friendly lobbyist call and indicate that someone with interests before a certain committee has had their contributions to the other side noticed.” (*Id.* (internal quotation marks omitted)).

C. Federal Candidates and Officeholders Know the Identity of Their Parties’ Large Donors, Regardless of Who Solicits the Donations

98. Despite the soft money restrictions in BCRA, individual donors can still contribute up to \$30,400 to a national party committee each year and multicandidate PACs can still contribute up to \$15,000 to a national party committee each year. (2 U.S.C. §§ 441a(a)(1)-(2); Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435, 7436-37 (Feb. 17, 2009)).

99. There are numerous ways in which federal candidates and officeholders can, and do, learn the identity of individuals who have made large donations to their party. Parties “go to pains to insure that candidates know exactly who donates to them.” (Krasno Rept. at 5, FEC

Exh. 1; Meehan Decl. at ¶ 8, FEC Exh. 2 (“ Office holders and candidates know who the major donors to their parties are.”).

100. One method by which parties and candidates learn the identity of one another’s contributors is through the use of joint fundraising committees. (Krasno Rept. at 5, FEC Exh. 1). These committees hold joint fundraising events where donors contribute both to candidates and parties. (*Id.*). Such joint fundraising events are a “trend” that has “becom[e] more and more prevalent.” (RNC 30(b)(6) Dep. at 52, FEC Exh. 5).

101. The Democratic Party has engaged in a technique known as “tallying” that “helps to connect donors to candidates through the accommodation of a party.” (*Colorado II*, 533 U.S. at 459 (citing Declaration of Robert Hickmott in *Colorado II* at ¶ 8 (Hickmott *Colorado II* Decl.), FEC Exh. 34 (“[The tally system] is an informal agreement between the DSCC and the candidates' campaigns that if you help the DSCC raise contributions, we will turn around and help your campaign”); Declaration of the Hon. Paul Simon in *Colorado II* ¶ 6, FEC Exh. 35 (“Donors would be told the money they contributed could be credited to any Senate candidate. The callers would make clear that this was not a direct contribution, but it was fairly close to direct”); Declaration of Leon G. Billings in *Colorado II* at ¶ 10 (Billings *Colorado II* Decl.), FEC Exh. 36) (“There appeared to be an understanding between the DSCC and the Senators that the amount of money they received from the DSCC was related to how much they raised for the Committee”)).

102. “Although the understanding between donor and party may involve no definite commitment and may be tacit on the donor's part, the frequency of the practice and the volume of money involved has required some manner of informal bookkeeping by the recipient.” (*Colorado II*, 533 U.S. at 459).

103. It is not only “contributions made at the express behest of” a candidate that raise corruption concerns (*McConnell*, 540 U.S. at 152), but also other contributions, because “[e]lected officials know exactly who the big party contributors are.” (Declaration of Senator Warren Rudman in *McConnell* ¶ 12 [DEV 8-Tab 34], FEC Exh. 46; *accord* Declaration of Alan K. Simpson in *McConnell* (Simpson *McConnell* Decl.) ¶ 5 [DEV 9-Tab 38], FEC Exh. 47; Declaration of Gerald Greenwald in *McConnell* ¶ 11 [DEV 6-Tab 16], FEC Exh. 48). “Parties, for their part, make certain that candidates know which donors are going beyond the existing contribution limits to help out, knowledge which is an essential element in any discussion of potential influence.” (Krasno Rept. at 5, FEC Exh. 1).

104. Federal officeholders are “well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, or donors themselves would report their generosity to officeholders.” (*McConnell*, 540 U.S. at 147). “[F]or a member not to know the identities of these donors, he or she must actively avoid such knowledge as it is provided by the national political parties and the donors themselves.” (*Id.* (quoting *McConnell*, 251 F. Supp. 2d at 487-88) (Kollar-Kotelly, J.) (emphasis added); *see also id.* (citing *McConnell*, 251 F. Supp. 2d at 853-55) (Leon, J.)).

105. As a lobbyist and former congressional aide explains, “Members will find out who made large contributions from their staffs, other Members, or through ‘thank you’ type events run by the party.” (Declaration of Robert Rozen from *RNC v. FEC*, No. 08-1953 (D.D.C. 2008) at ¶ 4, FEC Exh. 32). Indeed, “fundraising does not always involve a solicitation directly from a Member. . . . Sophisticated donors would understand that elected officials of the party would be aware and appreciative of the amounts contributed even if an officeholder had not personally solicited the funds contributed.” (*Id.*).

106. Federal candidates do not need to ask the party about whether an individual has contributed to the party because “it's so easy to find out by reading an FEC report. And so if they're involved in a campaign, they would do that.” (RNC 30(b)(6) Dep. at 49, FEC Exh. 5). Donation patterns are well-known or easily ascertainable by party officials, officeholders, staff, and opposing lobbyists, through FEC reports or other means. (*McConnell*, 540 U.S. at 148 n.47; *McConnell*, 251 F. Supp. 2d at 488 (Kollar-Kotelly, J) (“[T]here is communication among Members about who has made soft money donations and at what level they have given, and this is widely known and understood by the Members and their staff.”) (quoting CEO Wade Randlett [DEV 8-Tab 32], FEC Exh. 49).; *id.* at 487 (Kollar-Kotelly, J.), 853-54 (Leon, J.) (“[Y]ou cannot be a good Democratic or a good Republican Member and not be aware of who gave money to the party.”) (quoting Declaration of Senator Dale Bumpers from *McConnell* (Bumpers *McConnell* Decl.) ¶ 20 [DEV 6-Tab 10], FEC Exh. 50); *id.* at 487-88 (Kollar-Kotelly, J), 854 (Leon, J.) (“Legislators of both parties often know who the large soft money contributors to their party are.”) (quoting Declaration of Senator John McCain from *McConnell* (McCain *McConnell* Decl.) ¶ 6 [DEV 8-Tab 29], FEC Exh. 51); *id.* at 487 (Kollar-Kotelly, J), 854 (Leon, J.) (donor’s “lobbyist informs the Senator that a large donation was just made”) (quoting Declaration of Senator David Boren from *McConnell* ¶ 6 [DEV 6-Tab 8], FEC Exh. 52)). Congressional staffers also know the identities of the big soft-money donors. (*See id.* at 482 (“Staffers who work for Members know who the big donors are, and those people always get their phone calls returned first and are allowed to see the Member when others are not.”) (quoting Simpson *McConnell* Decl. ¶ 9 [DEV 9-Tab 38], FEC Exh. 47)).

D. State and Local Political Parties Are Inextricably Intertwined with National Parties, Federal Candidates, and Federal Officeholders, and Facilitate Their Largest Donors' Access to and Influence Over Federal Candidates and Officeholders

107. State and local parties — such as plaintiff LA-GOP — are “entities uniquely positioned to serve as conduits for corruption” because of their close connection to the national parties and to federal officeholders and candidates. (*McConnell*, 540 U.S. at 156 n.51; *see also id.* at 161). Federal candidates and officeholders raise funds for national and state parties. Congressman Meehan “helped the DCCC, the DNC and the Massachusetts Democratic Party raise more than \$300,000 in the two elections cycles prior to [his] resignation from office.” (Meehan Decl. at ¶ 12, FEC Exh. 2). In fundraising for the Massachusetts Democratic Party, Congressman Meehan “signed onto invitations to political fundraisers” and “made fundraising phone calls to active Democrats to ask them to participate in a given event or coordinated campaign.” (*Id.* at ¶ 13).

108. “Congress recognized that” there were also “close ties between federal candidates and state party committees,” and concluded — “based on the evidence before it” — that “state committees function as an alternative avenue for precisely the same corrupting forces” as the national party committees. (*McConnell*, 540 U.S. at 161, 164).

109. The very structure of the state and national parties assures that each will be closely linked to the other. For example, the 168 members of the RNC include the chairperson of each state and territorial Republican party, as well as a “National Committeeman” and a “National Committeewoman” from each state and territorial party. (RNC 30(b)(6) Dep. at 12, FEC Exh. 5; LA-GOP 30(b)(6) Dep. at 15, FEC Exh. 6; *Bylaws of the State Central Committee of the Republican Party of Louisiana* (June 7, 2008) (LA-GOP Bylaws), Art. V § 5, FEC Exh. 16 (“The National Committeeman and National Committeewoman shall serve as the representatives

of the Party to the Republican National Committee, shall prepare a joint written report annually summarizing the activities of the Republican National Committee, shall submit said report to the State Central Committee at the first quarterly meeting each year and shall perform such other duties as are assigned by the State Central Committee or by the Executive Committee.”)). The Bylaws Committee of LA-GOP considers and reports to the State Central Committee regarding such federal issues as “proposed reapportionment plans” “the endorsement of candidates,” “the selection of delegates to the Republican National Convention” and “the conduct of Presidential caucuses or primaries.” (LA-GOP Bylaws, Art VII § 1, FEC Exh. 16).

110. One of the purposes of state party committees like LA-GOP is to assist in the election of candidates for federal office. (LA-GOP 30(b)(6) Dep. at 19-20, FEC Exh. 6). In constructing a “victory plan,” Republican federal candidates have meetings with both the national parties and the state party. (RNC 30(b)(6) Dep. at 27, FEC Exh. 5). State and local party organizations assist federal candidates with voter mobilization and grassroots activities. (D. Green *McConnell* Rebuttal Report at 10-15 [DEV 5-Tab 1], FEC Exh. 41; Krasno and Sorauf *McConnell* Report at 44-50 [DEV 1-Tab 2], FEC Exh. 39; Expert Report of Thomas E. Mann from *McConnell* (Mann *McConnell* Report) at 30 [DEV 1-Tab 1], FEC Exh. 53).

111. During an election cycle, LA-GOP has “ongoing and continuous contact” with the RNC, NRCC and NRSC. (LA-GOP 30(b)(6) Dep. at 20-21, FEC Exh. 6).

112. LA-GOP and the national parties share information with one another about contributors. (LA-GOP 30(b)(6) Dep. at 31-33, FEC Exh. 6). The “trend over the last couple of cycles is to have the so-called joint fund-raising activities with candidates and ... state party committees.” (RNC 30(b)(6) Dep. at 52, FEC Exh. 5). LA-GOP conducts joint fundraisers with federal candidates. (LA-GOP 30(b)(6) Dep. at 29, FEC Exh. 6).

113. During an election cycle, LA-GOP also has “constant contact” with the party’s federal candidates. (LA-GOP 30(b)(6) Dep. at 19-20, FEC Exh. 6). Republican federal officeholders from Louisiana, by virtue of their office, automatically hold the position of an “ex-officio, non-voting Member” of the State Central Committee of LA-GOP during their time in office. LA-GOP Bylaws, Art III § 2, FEC Exh. 16. Congressman Cao serves as a member of the State Central Committee for the LA-GOP and the Parish Executive Committee for the Republican party. (Cao Dep. at 10, FEC Exh. 4).

114. When federal candidates and officeholders have asked about donors to LA-GOP, the party has “shared that donor list.” (LA-GOP 30(b)(6) Dep. at 25-26, FEC Exh. 6). The sharing of information also happens in the other direction—LA-GOP receives information from federal candidates about who has contributed to their campaigns. (*Id.* at 26).

115. LA-GOP encourages federal candidates to tell their donors to also contribute to LA-GOP. (LA-GOP 30(b)(6) Dep. at 148, FEC Exh. 6). Donors who have contributed the maximum allowable contribution to an individual candidate are encouraged to contribute more to LA-GOP. (*Id.* at 147; *see also* Meehan Decl. at ¶ 10, FEC Exh. 2). Then-candidate Cao’s 2008 campaign was expected not only to raise money for his campaign, but also to raise money for LA-GOP. (Cao Dep. at 16, FEC Exh. 4 (“we had to raise some money for the state party.”)). Volunteers for the Cao campaign solicited contributions to LA-GOP. (*Id.* at 16-17).

116. LA-GOP organizes events at which both donors to LA-GOP and Republican federal candidates are in attendance. Although there is no formal process by which donors are introduced to candidates, informal encounters between donors and candidates do occur at these events. (LA-GOP 30(b)(6) Dep. at 146-47, FEC Exh. 6).

E. Coordinated Expenditures Can Be Used By Political Parties to Circumvent the Limits for Contributions to Individual Candidates

117. The higher statutory limit for contributions to parties compared to the limits for contributions to candidates creates a “fairly obvious” route for circumvention of individual contribution limits through coordinated expenditures. (Krasno Rept. at 4, FEC Exh. 1). “Coordinated expenditures of money donated to a party are tailor-made to undermine contribution limits.” *Colorado II*, 533 U.S. at 464.

118. Because money is fungible, coordinated expenditures made on behalf of a campaign “free[] other campaign funds to be spent in other ways.” (Meehan Decl. at ¶ 17, FEC Exh. 2). Congressman Meehan stated that coordinated expenditures made on his behalf “functioned as contributions to [his] campaign.” (*Id.*)

119. In the absence of limits on coordinated expenditures, an affluent donor wishing to contribute more than the statutory limit to a candidate could “use a party committee to ‘launder’ the money.” (Krasno Rept. at 4, FEC Exh. 1). Candidates already help to “route ‘excess’ donations to organizations supporting them.” (*Id.* at 5). The RNC encourages its candidates to tell their maxed out donors to contribute to the RNC. (RNC 30(b)(6) Dep. at 56-57, FEC Exh. 5). Congressman Cao has personally suggested to donors who had given the maximum amount to his campaign that they could also contribute to the party. (Cao Dep. at 17, FEC Exh. 4).

120. “Donors give to the party with the tacit understanding that the favored candidate will benefit.” (*Colorado II*, 533 U.S. at 458 (citing Hickmott *Colorado II* Decl., FEC Exh. 34 (“We ... told contributors who had made the maximum allowable contribution to the Wirth campaign but who wanted to do more that they could raise money for the DSCC so that we could get our maximum [Party Expenditure Provision] allocation from the DSCC”)); Declaration of Former Senator Timothy E. Wirth from *Colorado II* at ¶ 8, FEC Exh. 37 (“I understood that

when I raised funds for the DSCC, the donors expected that I would receive the amount of their donations multiplied by a certain number that the DSCC had determined in advance, assuming the DSCC has raised other funds.”); Billings *Colorado II* Decl. at ¶ 12, FEC Exh. 36 (“People often contribute to party committees because they have given the maximum amount to a candidate, and want to help the candidate indirectly by contributing to the party”).

121. “To remove or weaken the current [coordinated expenditure] limits would provide a strong incentive for parties to expand the use of coordinated expenditures to help candidates. That would encourage at least the appearance of corruption by providing a way for influence-seeking contributors to effectively give favored candidates far more financial support than they can today.” (Meehan Decl. at ¶ 19, FEC Exh. 2).

122. “[I]f a candidate could be assured that donations through a party could result in funds passed through to him for spending on virtually identical items as his own campaign funds, a candidate enjoying the patronage of affluent contributors would have a strong incentive not merely to direct donors to his party, but to promote circumvention as a step toward reducing the number of donors requiring time-consuming cultivation.” (*Colorado II*, 533 U.S. at 460).

123. “If a candidate could arrange for a party committee to foot his bills, to be paid with \$20,000 contributions to the party by his supporters, the number of donors necessary to raise \$1,000,000 could be reduced from 500 (at \$2,000 per cycle) to 46 (at \$2,000 to the candidate and \$20,000 to the party, without regard to donations outside the election year).” (*Colorado II*, 433 U.S. at 460 (footnote omitted) (discussing candidate incentives using the contribution limits applicable at the time of that case)).

124. Candidates recognize that getting donors to contribute to the party will result in additional support in the form of coordinated expenditures. (Meehan Decl. at ¶ 14, FEC Exh. 2

(“Although candidates want to help their party, I believe candidates also expect that their fundraising efforts for the party will be reciprocated if they ever need help through contributions, party coordinated expenditures, and/or independent expenditures.”); Declaration of R. William Johnstone from *Colorado I* ¶ 9 [DEV 67-Tab 25], FEC Exh. 38 (“In raising money for the DSCC, we mostly went back to contributors who had already given the maximum allowable contribution to Mr. Fowler’s campaign. ... [W]e knew that this was part of the effort to demonstrate our viability to the DSCC, to show that we were worthy of their help.”)).

125. “The same enhanced value of coordinated spending that could be expected to promote greater circumvention of contribution limits for the benefit of the candidate-fundraiser would probably enhance the power of the fundraiser to use circumvention as a tactic to increase personal power and a claim to party leadership.” (*Colorado II*, 533 U.S. at 460 n. 23). “If the effectiveness of party spending could be enhanced by limitless coordination, the ties of straitened candidates to prosperous ones and, vicariously, to large donors would be reinforced as well. Party officials who control distribution of coordinated expenditures would obviously form an additional link in this chain.” (*Id.* (“[The DSCC’s three-member Executive Committee] basically made the decisions as to how to distribute the money. ... Taking away the limits on coordinated expenditures would result in a fundamental transfer of power to certain individual Senators” (citing Billings *Colorado II* Decl. ¶¶ 3, 19, FEC Exh. 36))).

126. The limits on coordinated expenditures “serve to instill confidence in the system by minimizing, if not completely preventing, this type of corruption. The success of this prophylaxis is evident in the dearth of campaign-finance scandals involving coordinated expenditures over the past few decades.” (Krasno Rept. at 3, FEC Exh. 1). “Despite years of enforcement of the challenged limits, substantial evidence demonstrates how candidates, donors,

and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties' coordinated spending wide open." (*Colorado II*, 533 U.S. at 457(footnote omitted)). Without limits on coordinated expenditures, circumvention of the contribution limits would become even simpler because candidates "could draw a relatively straight line from their own 'maxed-out' donors' contributions to a party and, then, to the benefit of their campaign." (Krasno Rept. at 4, FEC Exh. 1). "[H]istory is clear that parties and candidates will try to exploit weaknesses in the regulatory structure to evade other restrictions." (*Id.* at 18).

IV. Campaign Finance Regulation Would Be Undermined if Party Coordinated Expenditures Were Limited Only For Express Advocacy, "Targeted" Federal Election Activity, Paying Candidate Bills and Distributing Candidate Literature

A. Virtually All Activities Conducted by Political Parties, Including Coordinated Expenditures, Have The Purpose of Influencing Election Outcomes

127. The primary goal of all the major political parties is to win elections. "[P]arty committees are engaged in elections first and foremost, not in policy advocacy." (Krasno Rept. at 14, FEC Exh. 1). "The ultimate goal of a political party is to get as many party members as possible into elective office, and in doing so to increase voting and party activity by average party members." (Meehan Decl. at ¶ 5, FEC Exh. 2). Although some minor parties exist primarily to express their supporters' views, the Republican and Democratic parties "are not like those parties." (Krasno Rept. at 13, FEC Exh. 1). Political scientists from a wide range of perspectives all agree that such political parties exist for the purpose of winning elections. (*Id.*) "In practice, electing ... candidates is the RNC's primary focus." (*McConnell*, 251 F. Supp. 2d at 470 (Kollar-Kotelly, J.)).

128. Many political insiders provided evidence in the *McConnell* litigation indicating that political parties exist primarily for the purpose of winning elections. Senator McCain

testified that “[t]he entire function and history of political parties in our system is to get their candidates elected, and that is particularly true after the primary campaign has ended and the party’s candidate has been selected.” (McCain *McConnell* Decl. ¶ 23 [DEV 8-Tab 29], FEC Exh. 51). Then-RNC Chairman Haley Barbour stated: “The purpose of a political party is to elect its candidates to public office, and our first goal is to elect Bob Dole president.... Electing Dole is our highest priority, but it is not our only priority. Our goal is to increase our majorities in both houses of Congress and among governors and state legislatures.”). (Chairman’s Update to the Members of the Republican National Committee (Aug. 7, 1996) ODP0021-02003 [DEV 70-Tab 48], FEC Exh. 54). Senator Bumpers testified that he was “not aware that the party has any interest in the outcome of public policy debates that is separate from its interest in supporting and electing its candidates.” (Bumpers *McConnell* Decl. ¶ 6 [DEV 6-Tab 10], FEC Exh. 50). Congressman Meehan stated that “political parties do not have economic interests apart from their ultimate goal of electing their candidates to office.” (Declaration of Hon. Martin Meehan in *RNC v. FEC*, 98-cv-1207 (D.D.C.) ¶ 4 [DEV 68-Tab 30], FEC Exh. 58).

129. State parties also have the primary purpose of winning elections. The “basic role” of the LA-GOP is “to elect Republican candidates to office.” (LA-GOP 30(b)(6) Dep. at 18-19, FEC Exh. 6). LA-GOP is in constant contact with the federal candidates in Louisiana during an election cycle for the purpose of “[g]etting them elected.” (*Id* at 20; *Id* at 70 (“[C]ertainly we’re concerned about issues, but our main emphasis is to run communication in support of electing our candidates.”)).

130. The goal of winning elections is the reason that political parties tend to spend lots of money in races they deem competitive, and no money at all in races that are deemed non-competitive. (*Supra* Part II.C.4; Krasno Rept. at 16, FEC Exh. 1 (“Parties generally try very hard

to avoid wasting money on races where the outcome is a foregone conclusion.”); Biersack Decl. at ¶ 13, Table 17, FEC Exh. 3 (showing that in 2008, only 99 Republican candidates and 168 Democratic candidates for Congress received coordinated expenditures from political parties); RNC 30(b)(6) Dep. at 27-28, FEC Exh. 5 (characterizing spending on races the RNC will lose as “just taking away money from one competitive state and giving it to a state that won’t have any impact on.”)).

131. The concept that parties would devote their resources in a way other than to maximize election results is “entirely contrary to their pattern of behavior, as well as their central goal of winning elections (ideally more elections).” (Krasno Rept. at 16, FEC Exh. 1). The RNC has not been engaged in any sorts of activities that do not reference federal candidates “in a long time.” (RNC 30(b)(6) Dep. at 143-45, FEC Exh. 5).

B. Allowing Political Parties To Coordinate With Candidates Without Limit On The Specific Activities That Plaintiffs State They Intend To Engage In Would Effectively Eliminate All Party Coordination Limits

1. Parties Can Influence Federal Elections By Using What Plaintiffs Call Coordinated “Issue Advocacy,” “Grassroots and Direct Lobbying,” and “Public Communications Involving Support or Opposition to State Candidates, Political Parties, or Candidates of a Political Party”

132. Plaintiffs have challenged the application of coordinated expenditure limits to party activities that plaintiffs assert are not “unambiguously campaign related.” (Complaint ¶¶ 52-60, 76-81 (Doc. 35)). Plaintiffs explain what they mean by “unambiguously campaign related” both by listing the few activities that purportedly fall within this category, and by listing many other activities that plaintiffs believe do not fall within the category. (*Id.* at ¶¶ 40, 59, 80).

133. Plaintiffs state that the only activities that political parties engage in that are “unambiguously campaign related” are “(a) communications containing express advocacy (explicit words expressly advocating the election or defeat of a clearly identified federal

candidate); (b) targeted federal election activity (voter registration, voter identification, get-out-the vote, and generic campaign activities that are targeted to help elect the federal candidate involved); (c) paying a candidate's bills; and (d) distributing a candidate's campaign literature." Plaintiffs claim that no activities by political parties other than the four activities described above are "unambiguously campaign related" and therefore no others can be regulated or restricted under the Constitution. (Complaint ¶¶ 59, 80 (Doc. 35)).

134. Plaintiffs also identify a number of types of party communications that they claim they would like to coordinate that are purportedly not "unambiguously campaign related." (Complaint ¶¶ 40, 59, 80 (Doc. 35)). These communications include: 1) "issue advocacy, including ads that mention candidates"; 2) "grassroots and direct lobbying on pending executive or legislative matters"; 3) "grassroots lobbying or other public communications concerning state ballot initiatives"; and 4) "public communications of any kind involving support or opposition to state candidates, support or opposition to political parties, or support or opposition to candidates generally of a political party." (*Id.* at 40; *see also* Representative Cao's Discovery Responses at Objection and Response to Inter. 1, FEC Exh. 9 (stating that he wanted to coordinate these activities with the RNC or LA-GOP but did not do so because he "knew that he was unable to lawfully do [them] under FECA."))

135. None of the coordinated communications within the apparent scope of plaintiffs' claims are currently restricted by the limits on party coordinated communications until 90 days before a Congressional or Senate election, or 120 days before a Presidential election. A party communication prior to these 90-day or 120-day windows before an election is not deemed coordinated with a candidate unless it "disseminates, distributes, or republishes . . . campaign

materials prepared by a candidate,” or “expressly advocates the election or defeat of a clearly identified candidate.” (11 C.F.R. §§ 109.21(c)(2)-(3); 109.37).

136. Plaintiffs state that “issue advocacy, including ads that mention candidates” is not an “unambiguously campaign related” activity and therefore cannot be regulated or restricted, even within the 90-day or 120-day periods before an election. (Complaint ¶¶ 40, 59, 80 (Doc. 35)). According to plaintiffs, such ads can never constitutionally be regulated unless they contain “explicit words expressly advocating the election or defeat of a clearly identified federal candidate.” (*Id.* at ¶¶ 59, 80).

137. Plaintiffs’ claim, if successful, would enable parties to run unlimited amounts of “issue advocacy” ads designed to influence federal elections, in coordination with candidates. LA-GOP acknowledges that it would like to “involve Candidate Cao in [issue advocacy] communication[s], because not only [would] it bring up these issues, it [would give] a specific person for them to vote for.” (LA-GOP 30(b)(6) Dep. at 98, FEC Exh. 6).

138. “Issue advocacy” has been used extensively, if not primarily, for the purpose of influencing federal elections. Prior to 2002, political party communications that did not contain “magic words” such as “Elect John Smith” or “Vote Against Jane Doe” were considered “issue advocacy” and could be financed in part with soft money even if they focused on specific candidates, allowing parties to use money that was not subject to the Act’s source and amount limitations. (*McConnell*, 540 U.S. at 126; Krasno and Sorauf *McConnell* Report at 50-66 [DEV 1-Tab 2], FEC Exh. 39). From 1996 to 2002, parties spent “several hundred million dollars on issue advocacy” for the purpose of influencing federal elections. (Krasno Rept. at 10 & n.14, FEC Exh. 1). These “issue ads” typically avoided using “magic words” by “condemn[ing] Jane Doe’s record on a particular issue before exhorting viewers to call Jane Doe and tell her what

you think.” (*McConnell*, 540 U.S. at 127 (internal quotation marks and footnote omitted)). In fact, campaigns would rarely use such “magic words” anyway. (*McConnell*, 251 F. Supp. 2d at 529 (Kollar-Kotelly, J.) (“The uncontroverted testimony of political consultants demonstrates that it is neither common nor effective to use the ‘magic words’ of express advocacy in campaign advertisements.”). “[T]he overwhelming majority of modern campaign advertisements do not use words of express advocacy, whether they are financed by candidates, political parties, or other organizations.” (*Id.*))

139. Congressman Meehan testified that “‘issue ads’ by party committees are designed to and do affect the outcomes of elections, [and] they are designed to elect or defeat candidates” (Meehan Decl. at ¶ 27, FEC Exh. 2). Prior to BCRA — when national parties were permitted to receive soft money — “genuine issue advocacy on the part of political parties [was] a rare occurrence.” (*McConnell*, 251 F. Supp. 2d at 451 (Kollar-Kotelly, J.)). Similarly, the RNC spent only “a minuscule percentage” of its soft money budget on state and local governmental affairs. (*Id.* at 463). “What is clear from the evidence [in *McConnell*], however, 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.” (*Id.* at 470).

140. The “conclusion that [issue] ads were specifically intended to affect election results was confirmed by the fact that almost all of them aired in the 60 days immediately preceding a federal election.” (*McConnell*, 540 U.S. at 127 (footnote omitted)). These issue ads were problematic because they “provided a means for evading FECA’s candidate contribution limits.” (*Id.* at 131).

141. BCRA prevented national parties from spending millions of dollars of soft money running candidate-focused “issue ads” in the days before an election, because national parties could now only receive and spend hard money and because BCRA treats coordinated electioneering communications as coordinated communications subject to contribution limits. (2 U.S.C. §§ 441a(a)(7)(C); 441i(a); 11 C.F.R. §§ 109.37(a)(3); 109.21(c)(4) (public communication in the 90-day or 120-day windows is coordinated if it, *inter alia*, “refers to a clearly identified ... candidate”)). Prior to BCRA, independent expenditures, which can contain express advocacy, had “remained limited” because national parties could use so-called issue advocacy for “unlimited commercials (mostly) criticizing or (less often) praising a congressional candidate in the days before an election.” (Krasno Rept. at 10, FEC Exh. 1; *Colorado II*, 533 U.S. at 455 (independent expenditures may contain express advocacy because “[a] party may spend independently every cent it can raise wherever it thinks its candidate will shine, on every subject and any viewpoint.”)). For example, in the 2000 and 2002 election cycles, the national party committees spent less than \$2 million per election cycle on independent expenditures while spending “several hundred million dollars on issue advocacy.” (Biersack Decl. at ¶ 11, Table 15, FEC Exh. 3; Krasno Rept. at 10 and n.14, FEC Exh. 1). But after BCRA limited parties’ ability to engage in unlimited coordinated so-called issue advocacy, “the parties turned immediately back to independent expenditures.” (Krasno Rept. at 10 FEC Exh. 1; RNC 30(b)(6) Dep. at 96, FEC Exh. 5 (“Q. Does the RNC usually make independent expenditures to support or oppose Congressional candidates? A. It has been doing so post BCRA.”)). Parties began to spend hundreds of millions of dollars per election cycle on independent expenditures. (Biersack Decl. at ¶ 11, Table 15, FEC Exh. 3; Krasno Rept. at 10, FEC Exh. 1 (“Spending on independent expenditures skyrocketed to \$73 million in 2004 and \$154 million in 2006 on House elections.”)).

142. Plaintiffs' claim, if successful, would enable parties to run unlimited amounts of "issue ads" designed to influence federal elections, in coordination with candidates. Among the "issue ads" that plaintiffs have indicated they would have liked to have coordinated with then-candidate Cao and run just before the 2008 general election in Louisiana was one addressing former Congressman William Jefferson's "pending trial and alleged corruption." (Complaint ¶ 48 (Doc. 35)).

143. Plaintiffs state that "grassroots and direct lobbying on pending executive or legislative matters" and "grassroots lobbying or other public communications concerning state ballot initiatives" are not "unambiguously campaign related" and therefore cannot be regulated or restricted. (Complaint ¶¶ 40, 59, 80 (Doc. 35)). According to plaintiffs, such ads can never constitutionally be regulated unless they contain "explicit words expressly advocating the election or defeat of a clearly identified federal candidate." (*Id.* at ¶¶ 59, 80).

144. The RNC 30(b)(6) witness described "grassroots lobbying" generally as communications in which "you're actually asking people to call the Congressman and tell them to vote for or against [legislation]." (RNC 30(b)(6) Dep. at 134, FEC Exh. 5). The RNC witness testified that an ad stating as follows was an example of "grassroots lobbying": "In the Illinois Senate, Barack Obama was the only member that voted to allow early release for convict[ed] sexual abusers. Call Senator Obama. Tell him to support the Prevention and Deterrence of Crimes Against Children Act." (*Id.* at 133).

145. Plaintiffs admit that "grass roots lobbying" is similar to "issue advocacy" and in fact they "overlap a little bit." (RNC 30(b)(6) Dep. at 134, FEC Exh. 5). Many advertisements that were known as "issue advocacy" in the 1990s "could just as easily have been labeled 'grassroots lobbying.'" (Krasno Rept. at 16, FEC Exh. 1). Plaintiffs claim that neither type of

communication can be constitutionally limited unless it contains “explicit words expressly advocating the election or defeat of a clearly identified federal candidate.” (Complaint ¶¶ 59, 80 (Doc. 35)).

146. Plaintiffs do not currently coordinate with candidates in conducting grassroots lobbying or direct lobbying at any time of the year. (LA-GOP 30(b)(6) Dep. at 71-72, 79, FEC Exh. 6 (stating that grass roots lobbying has not been conducted in conjunction with candidates); *id.* at 78 (“I can’t imagine why we would do [direct lobbying] in conjunction with a campaign.”); RNC 30(b)(6) Dep. at 139, FEC Exh. 5 (stating that candidate involvement in grass roots lobbying is “not happening now, unless it’s coordinated expenditure and then we’re in a total different set of scenarios.”); *see also* Meehan Decl. at ¶ 6, FEC Exh. 2 (“I am not aware of any occasions on which the Democratic Party, at the federal or state level, has sought to lobby an opposing party’s Members of Congress through the use of expenditures coordinated with a candidate.”)).

147. Plaintiffs’ claim, if successful, would enable parties to run unlimited amounts of “grassroots lobbying” ads designed to influence federal elections, in coordination with candidates. LA-GOP acknowledges that the reason it would like to coordinate its grassroots lobbying with candidates is that “it brings the candidate into the message and gives us a greater chance of electing a candidate.” (LA-GOP 30(b)(6) Dep. at 72, FEC Exh. 6).

148. The RNC does not currently engage in any independent “grass roots lobbying.” (RNC 30(b)(6) Dep. at 139, FEC Exh. 5). The RNC also does not currently engage in any “direct lobbying” independently of campaigns. (*Id.* at 141). The RNC has not been engaged in any sorts of activities that do not reference federal candidates “in a long time.” (*Id.* at 143-45).

149. Plaintiffs state that “public communications of any kind involving support or opposition to state candidates, support or opposition to political parties, or support or opposition to candidates generally of a political party” are not “unambiguously campaign related” and therefore cannot be regulated or restricted. (Complaint ¶¶ 40, 59, 80 (Doc. 35)). However, public communications that do not clearly identify any specific federal candidate are not considered party coordinated communications under Commission regulations. (11 C.F.R. § 109.37(a)).

150. Political parties can currently use independent expenditures for any type of campaign activity, but parties use them overwhelmingly for media advertising, primarily consisting of television advertisements. (Krasno Rept. at 11 & n.15, FEC Exh. 1). Prior to the passage of BCRA, “[e]stimates from party officials of the amount of money going to television went as high as 75 percent at the DCCC.” (Expert Report of David B. Magleby, Report Concerning Interest Group Election Advocacy and Party Soft Money Activity at 42 [DEV 4-Tab 8], FEC Exh. 55 (footnote omitted)).

151. Because media expenses represent such a large portion of campaign expenditures, any “exception [to coordinated expenditure limits] that allowed parties and candidates to coordinate on media” would “effectively destroy any remaining limits on coordinated expenditures.” (Krasno Rept. at 11, FEC Exh. 1). Congressman Cao testified that if the RNC could have engaged in more coordinated expenditures with his campaign, his preference would be that “the bulk of the money would go into -- into TV, mailings, radio advertising.” (Cao Dep. at 14-15, FEC Exh. 4). “When a party can run coordinated expenditures to ensure the candidate’s name and image are on television during [the last week or so before a general

election], this benefits the candidate’s campaign and may even make the difference between election or defeat.” (Meehan Decl. at ¶ 24, FEC Exh. 2).

152. Permitting parties to coordinate with candidates without limit in conducting the activities plaintiffs allege are not “unambiguously campaign related” “creates huge loopholes that would effectively remove any limits on coordinated expenditures and threaten the system of contribution limits upheld repeatedly by the [Supreme] Court.” (Krasno Rept. at 17-18, FEC Exh. 1).

2. Parties Can Influence Federal Elections By Using the Broad Range of Activities that Plaintiffs Consider Coordinated “Non-targeted” Voter Registration, Voter Identification, Get-Out-The-Vote Activity, and Generic Campaign Activity

153. Plaintiffs state that coordinated “non-targeted voter registration; non-targeted voter identification; non-targeted get-out-the-vote activity and non-targeted generic campaign activity” are not “unambiguously campaign related” and therefore cannot be regulated or restricted. (Complaint ¶¶ 40, 59, 80 (Doc. 35)).

154. “[P]arties do not generally engage in ... GOTV activity, voter identification, or voter registration, for any purpose other than to assist in their efforts to elect party members to public office.” (Meehan Decl. at ¶ 7, FEC Exh. 2). Voter registration, voter identification, get-out-the-vote (GOTV) activity, and generic campaign activity as defined by BCRA “clearly capture activity that benefits federal candidates,” and “funding of such activities creates a significant risk of actual and apparent corruption.” *McConnell*, 540 U.S. at 167-68.

Common sense dictates, and it was “undisputed” below, that a party’s efforts to register voters sympathetic to that party directly assist the party’s candidates for federal office. 251 F. Supp. 2d, at 460 (Kollar-Kotelly, J.). It is equally clear that federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who actually go to the polls. *See*,

e.g., id., at 459 (“[The evidence] shows quite clearly that a campaign that mobilizes residents of a highly Republican precinct will produce a harvest of votes for Republican candidates for both state and federal offices. A campaign need not mention federal candidates to have a direct effect on voting for such a candidate [G]eneric campaign activity has a direct effect on federal elections”) (quoting Green Expert Report 14)).

Id. (footnote omitted); RNC Memorandum, *Non-Allocable Party Building Programs*, RNC 0084450-64 at 0084455 [DEV 101], FEC Exh. 56 (“There are certain election related party expenditures that make no reference to any specific candidates but do benefit the entire Republican ticket These generic programs include voter registration[] and GOTV programs These programs and projects benefit the Republican Party and all of its candidates, federal and state.”); Excerpt of Deposition of Alan Philp from *McConnell* at 49, FEC Exh. 57 (Chairman of Colorado Republican Party testifying that state party’s “Get-out-the-vote program is designed to benefit all candidates. That could include voter registration and so on and so forth. Q. And is the same true of generic party advertising, in other words, Vote Republican, that’s designed to benefit all the candidates? A. Yes.”).

155. In 2008, then-RNC Chairman Duncan stated publicly that the RNC’s “prodigious fundraising” has allowed it to “buil[d] up over a long period of time” a GOTV program and other “organizational efforts [that] make the difference . . . generally, there’s probably a 2 to 5 percent difference in additional turnout for a candidate that you make.” (*Victory Dream Team*, CONGRESS DAILY, July 29, 2008, 2008 WLNR 14131041, FEC Exh. 18). This “difference” applies to federal, state, and local candidates. (*Id.*)

156. The RNC acknowledges it would like to coordinate with candidates the “non-targeted” activities within the scope of its claims at least in part “in an effort to help candidates win elections” (RNC 30(b)(6) Dep. at 153-54, FEC Exh. 5).

157. “Targeted” and “non-targeted” are not legal terms of art, and they are not used in federal campaign finance statutes, regulations, or caselaw in the manner that plaintiffs use them here. (*See, e.g.*, Complaint ¶ 40 (Doc. 35) (defining “non-targeted” without reference to any legal authority); RNC’s Discovery Resps., Interrog. 8, FEC Exh. 7 (same) RNC’s 2nd Discovery Resps., Interrog. 5, FEC Exh. 10 (same)).

158. Plaintiffs currently claim that virtually all voter registration, voter identification, get-out-the-vote activity and generic campaign activity is “non-targeted.” (RNC 30(b)(6) Dep. at 150-53, FEC Exh. 5).

159. If voter registration, voter identification, get-out-the-vote activity or generic campaign activity takes place in more than one congressional district, plaintiffs consider it “non-targeted.” (RNC 30(b)(6) Dep. at 151, FEC Exh. 5 (“[if] you were having a voter registration drive in multiple districts outside of any election, then I don't think that's [] targeted.”)).

160. If voter registration, voter identification, get-out-the-vote activity or generic campaign activity takes place in only part of a congressional district, Plaintiffs consider it “non-targeted.” (RNC 30(b)(6) Dep. at 151, FEC Exh. 5 (“If you had a voter registration drive in just one county, I would say that was a non-targeted voter registration drive, because you're not affecting the entire district of that candidate.”); *Id.* at 152 (“Q. So it's only targeted if it's exactly every district, every part of a district and not anything more, does that make sense? A. Right.”)).

161. If voter registration is done in a district in a manner that references multiple candidates, plaintiffs consider it “non-targeted.” (RNC 30(b)(6) Dep. at 153, FEC Exh. 5 (“in the example of the two, two or more candidates being mentioned, the answer is yes, that would not be targeted”).

162. What plaintiffs consider “targeted” voter registration rarely happens “because voter registration is usually done statewide, or even if it’s done within a district, there are multiple candidates on a ballot within the district.” (RNC 30(b)(6) Dep. at 150, FEC Exh. 5).

163. Voter identification, registration, or GOTV efforts that are conducted in a geographic area greater than or smaller than a single congressional district still benefit the campaign of a candidate running in a district in which the activity is undertaken. (Meehan Decl. at ¶ 25-26, FEC Exh. 2).

C. Plaintiffs’ Characterizations of What Constitutes “Targeted” Activities Are Inconsistent, Confusing And Unworkable

164. Plaintiffs’ descriptions of what constitutes a “targeted” or “non-targeted” activity have shifted over the course of this litigation. (*Compare* RNC’s Discovery Resps., Interrog. 8, FEC Exh. 7 *with* RNC’s 2nd Discovery Resps., Interrog. 5, FEC Exh. 10 *with* RNC 30(b)(6) Dep. at 9-11, FEC Exh. 5).

165. Plaintiffs’ Complaint defines “non-targeted” as “not targeted at any race in particular or targeted at a specific state race.” (Complaint ¶ 40 (Doc. 35)).

166. Plaintiffs’ first discovery responses objected to an interrogatory asking to clarify what was meant by “targeted” by stating that “there are activities at one end of a spectrum that are clearly targeted and activities at the other end that are not,” but that there “is no need in this case to identify the precise locus of the line between targeted and non-targeted.” (RNC’s Discovery Resps., Obj. to Interrog. 8, FEC Exh. 7; LA-GOP’s Discovery Resps., Obj. to Interrog. 8, FEC Exh. 8).

167. Plaintiffs’ first discovery responses further stated:

“[i]f voter registration, voter identification, or get out-the-vote activities identified only one federal candidate in a partisan fashion

among the relevant voters, that would indicate targeting, but if all federal candidates were identified in some neutral manner, that would not indicate targeting. Generic campaign activity by definition could not promote any candidate, federal or non-federal. As to a candidate for U.S. Representative, targeted federal election activity would be activity targeted at his or her district. However, as to a candidate for U.S. Senate, the fact that the relevant electorate is the whole state means that Federal Election Activity addressing the state would be too general to be considered targeted.

(RNC's Discovery Resps., Interrog. 8, FEC Exh. 7; LA-GOP's Discovery Resps., Interrog. 8, FEC Exh. 8).

168. Plaintiffs attempted to provide further guidance on what constitutes "targeted" activity in their responses to a second set of discovery requests. Plaintiffs stated that

where a state party does a voter registration drive state-wide, or a county political party does a voter registration drive county-wide, without attention to federal congressional district lines, that activity is non-targeted, even though it might be paid for by a national or state political party. Such activity happens thousands of time [sic] across the nation on a regular basis. By contrast, targeting would occur if voter identification and get-out-the-vote activity were done targeting the boundaries of three federal congressional districts in which a political party wished to affect the outcome of the federal election campaign. On the other hand, if a state party were trying to take over the state senate and engaged in such targeted activities, that would not be targeted for federal campaign law purposes, even if a national political party paid for it, because it would have nothing to do with a federal race.

(RNC's 2nd Discovery Resps., Interrog. 5, FEC Exh. 10; LA-GOP's 2nd Discovery Resps., Interrog. 5, FEC Exh. 11).

169. The Rule 30(b)(6) witness for LA-GOP provided seemingly inconsistent testimony regarding the definition of "targeted." He testified that "[n]on-targeted would mean expenditures that weren't ... aimed at, okay, specific activities such as paying for a specific staffer or doing a specific activity." (LA-GOP 30(b)(6) Dep. at 83, FEC Exh. 6). He stated that "what targeting refers to is that we are targeting a specific candidate, in this case we are talking

about a federal candidate ... in a particular race.” (*Id.* at 104). The LA-GOP 30(b)(6) witness also stated that any voter registration, voter identification, get-out-the-vote activity, and generic campaign activity that did not involve a particular federal candidate was “non-targeted.” (*Id.* at 88, 90). He testified that voter registration done outside some window of time when a federal election is going on would be considered non-targeted. (*Id.* at 107). And he testified that voter registration can be targeted to a Senate or Presidential race, but he did not know how a person would know whether it was targeted or not. (*Id.* at 122).

170. When Congressman Cao was asked at deposition what “targeted” meant as the term is used in the Complaint, he initially indicated that radio ads were “non-targeted activity because it goes out to the general -- to every part of my district, even beyond my district.” (Cao Dep. at 56, FEC Exh. 4). He testified that, by contrast, targeted activity would be mailers that were only sent “to a certain portion of the population.” (*Id.*). After plaintiffs’ counsel made numerous objections to the line of questioning, Congressman Cao testified that he could not answer whether a particular ad was “targeted” to a race or not. (*Id.* at 70). Congressman Cao was a practicing attorney prior to his election to Congress. (*Id.* at 9).

171. The 30(b)(6) witness for the RNC was Thomas J. Josefiak, who is also an attorney. Over the course of more than 30 years practicing election and campaign law, Mr. Josefiak has been the chief counsel of the RNC, the general counsel of the NRCC, and a commissioner of the FEC. (RNC 30(b)(6) Dep. at 9-11, FEC Exh. 5). This is how he described the meaning of “targeted” in plaintiffs’ complaint:

It's something that is, you know, a noncommunication, for example, or, you know, not a nonpublic communication, but like a voter drive type thing or voter registration drive. It's not a communication that says vote for somebody -- or it could be that. But, I'm just, in this term, when you're using this as a voter regist -- a non-targeted voter registration drive versus a, you know,

something that would be viewed as targeted, in my mind that would be something that wasn't specifically addressing to that particular campaign.

(*Id.* at 149).

V. Campaign Finance Regulation Would Be Undermined if Party Coordinated Communications Were Unlimited In All Instances Other Than Where the Party Merely Paid a Candidate's Bills, As Plaintiffs Now Appear to Claim

A. *Plaintiffs Characterize Virtually All Communication Coordinated Between Political Parties and Candidates as the Party's "Own Speech"*

172. Party coordinated communications are, by definition, "paid for by a political party committee or its agent." 11 C.F.R. § 109.37(a)(1).

173. Plaintiffs have challenged the constitutionality of limits on party coordinated communications that represent a party's "own speech." (Complaint ¶¶ 61-64, 82-85 (Doc. 35))

174. Plaintiffs currently allege that any time a political party pays for a communication and discloses publicly that it has done so, it is the party's "own speech" and therefore limits on such speech are unconstitutional. (Cao Dep. at 52, FEC Exh. 4 (stating that if a particular communication is paid for by the party, it is the party's "own speech."); LA-GOP 30(b)(6) Dep. at 124, FEC Exh. 6 (LA-GOP's "own speech" is "any communication that the LAGOP states through one form or another, that we have issued it, it is paid for by us"); *id.* at 133 (it is the party's own speech "if we have taken responsibility, quote, ownership, of it by stating that we have paid for it"); RNC 30(b)(6) Dep. at 124, FEC Exh. 5 (communication becomes a party's "own speech" if the party "[a]pprove[s] it and pay[s] for it."); RNC's 2nd Discovery Resps., Interrog. 1, FEC Exh. 10 (communication is a party's "own speech" whenever it is indicated as such by "a disclaimer, where one is required, or by the speech being otherwise identified as the party's speech."); LA-GOP's 2nd Discovery Resps., Interrog. 1, FEC Exh. 11 (same)).

175. Plaintiffs claim that a party coordinated communication disclosed as having been paid for by the party is the party's "own speech" even if a candidate or her campaign is materially involved in determining when the communication will be broadcast. (Complaint (Doc. 35) ¶¶ 46-47; LA-GOP 30(b)(6) Dep. at 126, FEC Exh. 6).

176. Plaintiffs claim that a party coordinated communication disclosed as having been paid for by the party is the party's "own speech" even if a candidate or her campaign edits the content of the communication. (LA-GOP 30(b)(6) Dep. at 126-27, FEC Exh. 6; RNC 30(b)(6) Dep. at 167, FEC Exh. 5 ("the fact that the RNC decided to run it with those edits, it would be the RNC's speech.")).

177. Plaintiffs claim that a party coordinated communication disclosed as having been paid for by the party is the party's "own speech" even if a candidate or her campaign decides which out of a group of proposed party communications should be broadcast. (LA-GOP 30(b)(6) Dep. at 128, FEC Exh. 6; RNC 30(b)(6) Dep. at 166-67, FEC Exh. 5).

178. Plaintiffs claim that a party coordinated communication disclosed as having been paid for by the party is the party's "own speech" even if the candidate or her campaign actually creates the communication and passes it along to the party. (LA-GOP 30(b)(6) Dep. at 127-28, FEC Exh. 6; RNC 30(b)(6) Dep. at 85-86, FEC Exh. 5 ("initially it would have been the campaign speech, but, then if the RNC approached to ask if they would buy the time, I think then it becomes the RNC's speech."); *id.* at 123-24 ("I don't believe, from a speech perspective, who prepares the actual script matters. It's whether or not the entity would accept that as its speech and pay for it.")).

179. Plaintiffs claim that a party coordinated communication disclosed as paid for by the party is the party's "own speech" even if a candidate indicates in the communication that he

has approved the message. (LA-GOP 30(b)(6) Dep. at 128-29, FEC Exh. 6; RNC 30(b)(6) Dep. at 86, 107-108, FEC Exh. 5).

180. The only type of party-coordinated communication that plaintiffs believe is not a party's "own speech" and therefore may be constitutionally limited is one that a campaign airs and for which the party merely pays the bill. (LA-GOP 30(b)(6) Dep. at 129-30, FEC Exh. 6 ("If we are merely paying the bill, that is not our speech."); *id* at 145-46 ("Q. Can you think of any other example of a situation [other than paying a candidate's bill] where LAGOP would spend money on a public communication but it would not be LAGOP's own speech? A. No."); RNC's 2nd Discovery Resps., Interrog. 1, FEC Exh. 10 ("merely paying a candidate's bills is always subject to coordinated expenditure limits."); LA-GOP's 2nd Discovery Resps., Interrog. 1, FEC Exh. 11 (same)).

181. "If a candidate or her staff drafts or collaborates on the script of an ad that the party pays for, it benefits the candidate's campaign, regardless of whether the resulting ad reflects the party's own views. Indeed, if a party financed a \$1 million ad campaign of that kind, it would be the equivalent of a \$1 million contribution to the candidate." (Meehan Decl. at ¶ 20, FEC Exh. 2). If a party runs an ad at the suggestion of a candidate or campaign, or in a time or place suggested by the candidate or campaign, that similarly benefits the candidate. (*Id.* at ¶¶ 21-23).

B. Plaintiffs' Characterizations of What Constitutes a Political Party's "Own Speech" Are Inconsistent and Unworkable

182. Plaintiffs have offered several different explanations as to what should constitute a party's "own speech." These explanations appear to have shifted over time and, in some

instances, are in conflict. (*Compare* RNC’s Discovery Resps., Interrog. 5, FEC Exh. 7 with Cao Dep. at 52, FEC Exh. 4 with RNC 30(b)(6) Dep. at 115-16, FEC Exh. 5).

183. When Plaintiffs described the concept of “own speech” in the Complaint, they did not allege that party coordinated communications were the party’s “own speech” so long as they were disclosed to have been paid for by the party. (Complaint ¶¶ 62-63, 83 (Doc. 35)). Rather, Plaintiffs stated that a communication is a party’s “own speech” if it is “‘not functionally identical to contributions’ because it is ‘not a mere general expression of support for the candidate and his views, but a communication of the underlying basis for the support,’ not just ‘symbolic expression, . . . but a clear manifestation of the party’s most fundamental political views.’” (*Id.* at ¶¶ 62, 83 (quoting *Colorado II*, 533 U.S. at 468 & 468 n.2 (Thomas, J., dissenting) (internal quotations omitted)). Similarly, Plaintiffs stated in their first written discovery responses that a communication is a party’s “own speech” if the communication contains the party’s “underlying basis for support” because such speech would be “more than symbolic expression of support, even if coordinated.” (RNC’s Discovery Resps., Interrog. 5, FEC Exh. 7; LA-GOP’s Discovery Resps., Interrog. 5, FEC Exh. 8).

184. Plaintiffs’ Complaint identifies only a single example of what plaintiffs believe would constitute a communication that falls within the “own speech” category — an advertisement allegedly written without Congressman Cao’s involvement, but for which the party would consult with the Congressman as to “the best timing” to run the ad. (Complaint at ¶¶ 43-44, 46-47 (Doc. 35)).

185. Plaintiffs gave inconsistent deposition testimony about what constituted a party’s “own speech.” (*Compare* Cao Dep. at 24-33, FEC Exh. 4 with *id.* at 52 with RNC 30(b)(6) Dep. at 115-16, FEC Exh. 5).

186. In depositions, plaintiffs have taken the position either that a communication need not express a party's "most fundamental political views" to be characterized as that party's "own speech" (LA-GOP 30(b)(6) Dep. at 131, FEC Exh. 6), or that any time the party pays for a communication, a viewer of that communication can assume it represents the fundamental views of the party. (RNC 30(b)(6) Dep. at 169-70, FEC Exh. 5).

187. Plaintiff Cao initially testified at length about why the coordinated expenditures the RNC made on his behalf in his 2008 campaign were his own speech. (Cao Dep. at 24-33, FEC Exh. 4; Coordinated Spending Tracker (Cao0009), FEC Exh. 15).

188. Cao initially testified that a mailer that was coordinated with the RNC and paid for by the RNC "was my speech because it is my statement conveying to my supporters of who I am, where I have been, what I have done." (Cao Dep. at 24, FEC Exh. 4).

189. Cao initially testified that get-out-the-vote calls that were coordinated with the RNC and paid for by the RNC were Cao's "own speech" because "it was my begging them to come out and vote for me in this past election." (Cao Dep. at 30, FEC Exh. 4).

190. Cao initially testified that a radio ad that was coordinated with the RNC and paid for by the RNC was Cao's own speech. (Cao Dep. at 26, FEC Exh. 4)

191. Cao initially testified that door hangers and other activities that were coordinated with the RNC and paid for by the RNC were Cao's own speech. (Cao Dep. at 33, FEC Exh. 4).

192. Cao initially testified that the proposed coordinated communication in plaintiff's Complaint ¶¶ 43, 46 would be the *party's* "own speech" because "these are the statements that they come up with concerning why they support me." (Cao Dep. at 39, FEC Exh. 4).

193. Following a recess in the deposition, Congressman Cao changed his position, without being prompted by a question about what constitutes a party's "own speech." He stated

that the relevant inquiry was who paid for a particular communication, so all of the activities in his 2008 campaign that were coordinated and paid for by the RNC were in fact the RNC's "own speech." (Cao Dep. at 52, FEC Exh. 4). Cao included the "door hangers" as an example of a coordinated expenditure that was the party's "own speech." (*Id.*)

194. By contrast, the 30(b)(6) deponent for the RNC testified that the door hangers that Cao coordinated with the RNC in 2008 were not the party's "own speech." (RNC 30(b)(6) Dep. at 115-16, FEC Exh. 5). The RNC deponent stated that the door hangers were "the campaign's speech and the RNC would be paying the bill." (*Id.* at 116). He testified that the door hangers were "not a public communication." (*Id.* at 117). He acknowledged that the disclaimer on the door hangers was identical to the disclaimer on the communications that were the party's "own speech." (*Id.* at 120). In making the determination as to whether the door hangers were the speech of the RNC or the Cao campaign, he testified that one would "have to have all of the facts," including, for example, whether the RNC was merely "paying for individuals to walk around a door hanger on behalf of the campaign" and who the invoice indicated the services were performed for. (*Id.* at 116-17, 119, 122).

195. The 30(b)(6) deponent for LA-GOP testified that an ad stating "approved by Joseph Cao, paid for by LA-GOP" might not be the LA-GOP's speech if the party had merely paid the campaign's bill. (LA-GOP 30(b)(6) Dep. at 129-30, FEC Exh. 6).

196. The 30(b)(6) deponent for the RNC stated that, if the campaign is the one that decides whether a coordinated communication will run or not, then "it's more like paying the bill rather than the RNC's speech, unless the RNC says: 'Well, we see what you're saying, we acknowledge that and it's now something that we're embracing and, therefore, not only are we paying for it, we approve it.'" (RNC 30(b)(6) Dep. at 167-68, FEC Exh. 5). But the 30(b)(6)

deponent for the LA-GOP testified that a party coordinated communication is the party's "own speech" even if a candidate or her campaign decides which out of a group of proposed party communications should be broadcast. (LA-GOP 30(b)(6) Dep. at 128, FEC Exh. 6).

Respectfully submitted,

Thomasenia P. Duncan
General Counsel

David Kolker
Associate General Counsel

Harry J. Summers
Assistant General Counsel

Claire N. Rajan
Attorney

/s/ Seth Nesin
Seth Nesin (T.A.)
Attorney

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
Telephone: (202) 694-1650
Fax: (202) 219-0260

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