United States District Court
Eastern District of Louisiana
New Orleans Division

Anh "Joseph" Cao, **Republican National Committee**, and **Republican Party of Louisiana**, *Plaintiffs*, *v.* **Federal Election Commission**, *Defendant*	**Civil Action No. 2:08-cv-4887-HGB-ALC** **Section C, Mag. 5**

Plaintiffs' Response to FEC's Proposed Findings of Fact, Statement of Genuine Issues, and Objections to FEC's Statement of Material Facts As to Which There is No Genuine Dispute

Anh "Joseph" Cao, Republican National Committee ("RNC"), and Republican Party of Louisiana ("LA-GOP") (*collectively*, "Plaintiffs") submit the following responses to defendant Federal Election Commission's ("FEC") proposed findings of fact and objections to the FEC's statement of material fact as to which there is no genuine dispute. Dkt. 69-3.[1]

[1] Although Plaintiffs contend that the FEC's Motion for Summary Judgment should be construed as a motion for summary judgment on the issue of certification, *see Plaintiffs' Summary Judgment Opposition and Supplemental Certification Reply* at 4-6, Plaintiffs herein respond to the FEC's statement of material facts completely, and provide a statement of genuine issue as required under Local Rule 56.2.

1. **Response:** No response.

2. **Response:** Plaintiff Anh "Joseph" Cao is the Republican candidate for U.S. Representative for the Second Congressional District of Louisiana, which includes New Orleans. Joseph Cao will compete[2] for election in the December 6, 2008 general election against the winner of the Democratic party runoff between the incumbent U.S. Representative, William Jefferson, and former TV anchor Helena Moreno as well as against candidates from the Libertarian, Reform, and Green parties and an independent candidate. AVC ¶ 10.

3. **Response:** No response.

4. **Response:** No response.

5. **Response:** Plaintiffs object to Professor Krasno's report in this case in so far as he is testifying as to facts and not expressing an opinion as to facts already properly in the record. Plaintiffs object to all factual evidence introduced by Professor Krasno. As an expert, he may only provide an opinion as to facts already in the record and cannot be a vehicle for the introduction of additional facts.

6. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts). National parties play an important role in the political process. Because of this, the Federal Election Campaign Act ("FECA") distinguishes political parties from other political committees at times. However, such treatment is not symbolic of favoritism but is an acknowledgment of how Congress and the courts view national parties as unique entities. The following facts about political parties were true in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2002) ("*Col-*

---

[2] The proposed findings are based on the facts as they existed at the time of the complaint. This pre-election snapshot is capable of repetition yet evading review and thus not moot. The Court may take judicial notice of some changed facts, such as the fact that Plaintiff Cao is now U.S. Representative Cao.

orado II"), and remain true in this successor case, as set out in briefing pointing to the record evidence.

> The unique role of the modern political party in our democracy is widely recognized. (JA 30-36, at ¶¶ 4-13). Election laws accommodate party needs for primaries or other devices to nominate the party candidates. (JA 33-35, at ¶¶ 9-11). Typically name and party affiliation are the only ways a candidate is identified on the ballot. (JA 59, ¶ 45). Consistent with all of this, FECA identifies political parties by their unique role in nominating candidates who appear on the ballot as the candidate of the nominating group. § 431(16). Moreover, subpart (1) of the Party Expenditure Provision confirms the unique character of parties, exempting their expenditures from FECA's general limits." *Colorado I*, Pet. App. 96a.

Brief of Respondent at *7, *Colorado II*, 533 U.S. 431 (2001) (No. 00-191). AVC ¶ 37.

7. **Response:** *See supra* Response ¶ 6 (national parties play an important role).

8. **Response:** Plaintiffs object to the inclusion of facts as they relate to entities not a party to this case. Plaintiffs also object to Robert W. Biersack's declaration generally. The FEC improperly introduces his testimony for the first time in its proposed findings of fact when the discovery cut-off date was July 30, 2009. Dkt. 59. Furthermore, Mr. Biersack was not timely identified as an expert or factual witness. Plaintiffs were not given the opportunity to depose Mr. Biersack or otherwise respond to his testimony. Plaintiffs contemporaneously file a motion to strike this declaration and all other improper exhibits. *See* Plaintiffs' Motion to Strike.

9. **Response:** *See supra* Response ¶ 8 (objection to the inclusion of outside entities). Furthermore, this statement is irrelevant as it pertains to limits on contributions. Here, Plaintiffs are challenging limits on *expenditures*.

10. **Response:** *See supra* Response ¶ 9 (objection to statement regarding contributions).

11. **Response:** *See supra* Response ¶¶ 8 (objection to the inclusion of outside entities) and 9 (objection to statement regarding contributions).

12. **Response:** *See supra* Response ¶¶ 8 (objection to the inclusion of outside entities) and 9

(objection to statement regarding contributions).

13. **Response:** *See supra* Response ¶¶ 8 (objection to the inclusion of outside entities) and 9 (objection to statement regarding contributions).

14. **Response:** *See supra* Response ¶¶ 8 (objection to the inclusion of outside entities) and 9 (objection to statement regarding contributions).

15. **Response:** This statement is irrelevant as Plaintiffs are challenging whether the government may regulate (1) coordinated expenditures that are not "unambiguously campaign related," *Buckley v. Valeo*, 424 U.S. 1, 81 (1976), and (2) communications that are the party's "own speech" since they are "not functionally identical to contributions," *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.), 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 468 (*quoting Buckley v. Valeo*, 424 U.S. 1 at 21 (1976)). Plaintiffs are also challenging whether the $5,000 in-kind contribution limit is constitutional. AVC ¶¶ 1-7.

16. **Response:** This statement is irrelevant as the fact that national party committees receive government funds does not affect the constitutional questions involved in this case. *See supra* Response ¶ 15 (stating Plaintiffs' claims).

17. **Response:** *See supra* Response ¶ 6 (national parties play an important role). Furthermore, this statement is irrelevant as such "benefits" have no bearing on whether the government may regulate coordinated expenditures that are not unambiguously-campaign-related or those that are the party's "own speech."

18. **Response:** *See supra* Response ¶¶ 6 (national parties play an important role) and 17 (any

so-called "benefits" have no bearing on Plaintiffs' claims).

19. **Response:** *See supra* Response ¶¶ 6 (national parties play an important role) and 17 (any so-called "benefits" have no bearing on Plaintiffs' claims).

20. **Response:** *See supra* Response ¶¶ 6 (national parties play an important role) and 17 (any so-called "benefits" have no bearing on Plaintiffs' claims).

21. **Response:** This statement is irrelevant as the origins of political parties are not at issue. If the statement is intended to exemplify the corrupting influence of political parties, it provides no empirical evidence. Instead, it relies upon political musings of a 20th Century historian, who is not an expert in this case, regarding 18th Century politics. Moreover, the Supreme Court has openly discussed the importance of modern political parties. In fact, the ability to associate with a political party is "a particularly important political right" under the Constitution. See *Randall v. Sorrell*, 548 U.S. 230, 256 (2006); see also *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) ("Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views.").

22. **Response:** *See supra* Response ¶ 21 (importance of ability to associate with a political party is preserved by Supreme Court).

23. **Response:** *See supra* Response ¶ 21 (importance of ability to associate with a political party is preserved by Supreme Court). Furthermore, this statement is irrelevant as Washington was fearful of the power of strong factions. This solitary quote, with no ties to the modern system, is not relevant to the case at hand. What is relevant, however, is what the Founding Fathers chose to put in the Constitution itself. Namely that "Congress shall make no law. . .abridging the freedom of speech." U.S. CONST. amend. I.

24. **Response:** *See supra* Response ¶¶ 21 (importance of ability to associate with a political party is preserved by Supreme Court) and 23 (noting what is actually in the Constitution).

25. **Response:** *See supra* Response ¶¶ 21 (importance of ability to associate with a political party is preserved by Supreme Court) and 23 (noting what is actually in the Constitution).

26. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts) and 6 (national parties play an important role).

27. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 6 (national parties play an important role) and 21 (importance of ability to associate with a political party is preserved by Supreme Court).

28. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts). This statement is irrelevant as the origins of political parties are not at issue. If this statement is intended to prove the goals of political parties, it provides no empirical evidence. Plaintiffs cannot speak as to the goals of the Democratic National Committee, as it is not a party to this case. However, regarding the goals of the RNC, it seeks to advance its core principles—a smaller federal government, lower taxes at all levels of government, individual freedom, and a strong national defense—by promoting an issue agenda advocating Republican positions, electing Republican candidates, and encouraging governance in accord with these Republican views. AVC ¶ 35. The RNC's core principles are more fully set out in its party platform, the *2008 Republican Platform*, available at http://www.gop.com/2008Platform/. AVC ¶ 36.

29. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 6 (national parties play an important role), 21 (importance of ability to associate with a political party is preserved by Supreme Court), and 28 (stating the goals of the RNC).

30. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 6 (national parties

play an important role), 21 (importance of ability to associate with a political party is preserved by Supreme Court), and 28 (stating the goals of the RNC).

31. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts). Plaintiffs object to the quantitative characterizations in this statement as vague, ambiguous, misleading, and irrelevant. The statement fails to provide any context for the vague assertion of increased fundraising and spending. Without providing empirical evidence of the increased cost of technology, adjusting for inflation, or noting how much of this money was spent on non-election activities, this statement is ambiguous, misleading, and irrelevant. Furthermore, the total amount of political party spending is not at issue since Plaintiffs are challenging whether the *government* may constitutionally regulate unambiguously-campaign-related activity. *See also supra* Response ¶ 15 (stating Plaintiffs' claims).

32. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration) and 31 (objection to vague statements regarding party spending).

33. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration) and 31 (objection to vague statements regarding party spending).

34. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending).

35. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending).

36. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration) and 31 (objection to vague statements regarding party spending).

37. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration) and 31 (objection to vague statements regarding party spending).

38. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending).

39. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending).

40. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending).

41. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending). Independent expenditures are not a viable mechanism for the RNC to express it's "own speech." Because the RNC has a continuous and ongoing relationship with its candidates, extraordinary measures must be taken to do any independent expenditures regarding its candidates. The RNC has extensive discussions with its candidates about their needs, activities and strategy. As a result, any activities by the RNC about its candidates would be perceived as coordinated with its candidates, subjecting these activities to the FECA's coordinated expenditure and contribution limits. In order to engage in any independent expenditure supporting one of its candidates, the RNC must hire an outside consulting group to do the independent expenditures and neither the RNC nor any of its officers, employees or agents may have any involvement in the independent expenditure in order for it to be truly independent. Plaintiffs' Supplemental Certification Exhibit 1, *Deposition of Thomas J. Josefiak*, 58:6-60:12, 70:13-17, 72:19-73:6, 153:22-155:4, 160:14-161:7 ("Josefiak Dep."). In fact, neither the chairman of the RNC nor any of the RNC's officers, employees or agents has control over the message of an independent expenditure, yet the RNC bears full responsibility for that message. As a result, the RNC is reluctant to conduct independent expenditures. Josefiak Dep. 74:16-76:11, 157:9-158:20. Since the RNC cannot control the message of an

independent expenditures, any independent expenditures funded by the RNC are not the RNC's own speech. Josefiak Dep. 160:14-161:7.

42. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties), 31 (objection to vague statements regarding party spending), and 41 (objection to independent expenditures as a viable alternative).

43. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties), 31 (objection to vague statements regarding party spending), and 41 (objection to independent expenditures as a viable alternative).

44. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 31 (objection to vague statements regarding party spending). This statement is irrelevant as it merely states Plaintiff Cao's fundraising progress. Plaintiff Cao's legal raising of funds is not relevant to whether the government may constitutionally limit the RNC's "own speech" or whether the $5,000 in-kind contribution limit is improper.

45. **Response:** No response.

46. **Response:** No response.

47. **Response:** No response.

48. **Response:** *See supra* Response ¶ 8 (objection to Biersack's declaration and inclusion of non-parties). Plaintiffs object to the quantitative characterization that "the total party contributions to a candidate in an election can be substantial." Such a sweeping statement is not supported by the record, is vague, and is ambiguous. Defendant fails to provide any empirical evidence or provide a context for such a statement.

49. **Response:** *See supra* Response ¶ 8 (objection to Biersack's declaration and inclusion of non-parties). This statement is irrelevant as the methods by which political parties choose to allo-

cate resources is not at issue in this case. Furthermore, this statement is vague and ambiguous as the amount of resources allocated to incumbents has no clear bearing on this case.

50. **Response:** *See supra* Response ¶ 6 (national parties play an important role).

51. **Response:** No response.

52. **Response:** Plaintiffs object to the use of the term "benefit" in this statement as ambiguous and misleading. Under current regulations, certain expenditures fall under the coordinated expenditure limit just because of the nature of the relationship between the RNC and the candidate. At times, the candidate may not even be involved in that specific expenditure, but it will still be considered coordinated. *See* Josefiak Dep. 89:4-16. Characterizing all coordinated expenditures as "benefits" implies that the sole purpose of such an expenditure is to further the interests of the candidate. Often, the RNC's "own speech" is categorized as coordinated when its purpose is to further the goals of the party. *See supra* Response ¶ 28 (stating the goals of the RNC).

53. **Response:** *See supra* Response ¶ 52 (objection to the FEC's use of the term "benefit").

54. **Response:** *See supra* Response ¶ 52 (objection to the FEC's use of the term "benefit").

55. **Response:** *See supra* Response ¶ 52 (objection to the FEC's use of the term "benefit").

56. **Response:** No response.

57. **Response:** Plaintiffs are challenging the application of coordinated expenditure limitations, questions specifically left open by *Colorado I* and *II*. Plaintiffs' claims revolve around the "unresolved" question of "the constitutionality of the Party Expenditure Provision [limits, 2 U.S.C. § 441a(d)(2)-(3),] as applied to" "coordinated expenditures . . . that would not be functionally identical to direct contributions." *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.). The majority agreed with the dissenters that the constitutionality of the limits in "an as applied challenge" involving "more of the party's own

speech," as opposed to "no more than payment of the candidate's bills," was "not reach[ed] in th[at] facial challenge." *Id.* at 456 n.17. AVC ¶ 1. When the government may not *constitutionally* regulate certain activities, the amount of the limitations is irrelevant.

58. **Response:** *See supra* Response ¶ 41 (objection to independent expenditures as a viable alternative). Because of the special nature of the relationship between a party and its candidates, independent expenditures are not an adequate way to convey a party's "own speech." Furthermore, the close relationship between the party and the candidate effectively ensures that all communications will be perceived as coordinated. Josefiak Dep. 58:6-60:12, 70:13-17, 72:19-73:6, 153:22-155:4, 160:14-161:7.

59. **Response:** *See supra* Response ¶¶ 41 (objection to independent expenditures as a viable alternative) and 58 (independent expenditures are not the party's "own speech").

60. **Response:** *See supra* Response ¶¶ 41 (objection to independent expenditures as a viable alternative and the relationship between the party and the candidate gives the appearance of coordination) and 58 (independent expenditures are not the party's "own speech").

61. **Response:** *See supra* Response ¶¶ 41 (the relationship between the party and the candidate gives the appearance of coordination) and 58 (independent expenditures are not the party's "own speech").

62. **Response:** *See supra* Response ¶¶ 41 (the relationship between the party and the candidate gives the appearance of coordination) and 58 (independent expenditures are not the party's "own speech").

63. **Response:** *See supra* Response ¶¶ 41 (the relationship between the party and the candidate gives the appearance of coordination) and 58 (independent expenditures are not the party's "own speech").

64. **Response:** *See supra* Response ¶¶ 41 (objection to independent expenditures as a viable alternative and the relationship between the party and the candidate gives the appearance of coordination) and 58 (independent expenditures are not the party's "own speech"). Since the RNC cannot control the message of an independent expenditure, any independent expenditure funded by the RNC is not the RNC's "own speech" under the relevant analysis. Josefiak Dep. 160:14-161:7. Furthermore, as the RNC's 30(b)(6) witness explained, it would not be possible practically to firewall RNC staff in order to do independent expenditures because that "would have had to have started at the beginning of an election cycle." *Id.* at 159:1-12. "And that person would have no communications whatsoever and you sit around there for a year and a half doing nothing and waiting to do independent expenditures and eating resources up for other employees," so "that, as a practical matter, it just doesn't work that way." *Id*. at 159:13-18.

65. **Response:** *See supra* Response ¶¶ 58 (independent expenditures are not the party's "own speech") and 64 (objection to the statement that a "firewall" will allow for independent expenditures to be the party's "own speech"). Furthermore, the FEC mischaracterizes the testimony of the RNC's 30(b)(6) witness by implying that the RNC chooses to conduct independent expenditures in a certain way when there are other available options. In fact, the 30(b)(6) witness explained that, in practice, there is no way to have a true "firewall policy." Josefiak Dep. 159:13-18.

66. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 58 (independent expenditures are not the party's "own speech"), 64 (objection to the statement that a "firewall" will allow for independent expenditures to be the party's "own speech"), and 65 (impossibility of a "firewall policy").

67. **Response:** *See supra* Response ¶¶ 41 (objection to independent expenditures as a viable

alternative and the relationship between the party and the candidate gives the appearance of coordination), 58 (independent expenditures are not the party's "own speech"), 64 (objection to the statement that a "firewall" will allow for independent expenditures to be the party's "own speech"), and 65 (impossibility of a "firewall policy").

68. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts) and 28 (stating the goals of the RNC).

69. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 28 (stating the goals of the RNC), and 49 (objection to statement regarding allocation of resources as vague and ambiguous). This statement is not supported by evidence in the record. Furthermore, this statement is irrelevant as how the parties choose to allocate their resources is not at issue in this case.

70. **Response:** *See supra* Response ¶¶ 28 (stating the goals of the RNC) and 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous).

71. **Response:** *See supra* Response ¶¶ 28 (stating the goals of the RNC) and 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous).

72. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties) and 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous). This statement is irrelevant as Plaintiffs are challenging whether the government may even regulate communications that are its "own speech" *at all*. Whether Plaintiffs reach the current coordinated expenditure limitations in every case is not relevant. Any unconstitutional regulation is harmful. Further, the statement is not supported by the record. Regarding Plaintiff Cao's election, Plaintiffs RNC and LA-GOP *did* reach the limits placed on coordinated expenditures in the 2008 cycle and wished to speak further. AVC ¶ 39-48; FEC Summary Judgment Exhibit 6, *Deposition of Charles Lee Buckels*, 91:2-8, 96:19-98:9, 99:22-100:16, 100:21-

102:10 (“Buckels Dep.”).

73. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack’s declaration and inclusion of non-parties), 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous), and 72 (whether the current limits are reached in every case is irrelevant).

74. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack’s declaration and inclusion of non-parties), 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous), and 72 (whether the current limits are reached in every case is irrelevant). Plaintiffs also object to the introduction of the Cook Report as evidence. By order of this Court, the time for discovery has ended. Dkt. 59. Furthermore, the Court ordered *supplemental* briefing in order to allow the parties to address facts that came to light during the discovery process. This is not a proper time to introduce new facts.

75. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack’s declaration and inclusion of non-parties), 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous), 72 (whether the current limits are reached in every case is irrelevant), and 74 (improper introduction of Cook Report). Plaintiffs also object in so far as the facts relate to an entity not a party to this case. Plaintiffs lack personal knowledge to attest to facts related to the DNC’s activities.

76. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack’s declaration and inclusion of non-parties), 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous), and 72 (whether the current limits are reached in every case is irrelevant). This statement is irrelevant as the results of the 2008 elections and the allocation of the party’s resources is not at issue in this case. Furthermore, this statement is misleading as it implies that, since the parties did not reach the limits on coordinated expenditures in certain districts, the regu-

lations are harmless. This is a misleading statement as whether the parties reach the limits has no bearing on the *constitutional* question of whether such limits are proper.

77. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration and inclusion of non-parties), 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous), 72 (whether the current limits are reached in every case is irrelevant), and 75 (Plaintiffs lack personal knowledge of DNC activities)

78. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous), and 72 (whether the current limits are reached in every case is irrelevant).

79. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts). This statement is ambiguous as it implies that the party is subservient to the candidate. National parties are ongoing entities with their own set of core values and beliefs. *See also* Response ¶ 28 (stating the goals of the RNC).

80. **Response:** *See supra* Response ¶¶ 28 (stating the goals of the RNC) and 79 (national parties are not subservient to candidates).

81. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts).

82. **Response:** No response.

83. **Response:** *See supra* Response ¶¶ 8 (objection to facts regarding entities not party to this case) and 79 (national parties are not subservient to candidates).

84. **Response:** *See supra* Response ¶¶ 41 (the relationship between the party and the candidate gives the appearance of coordination) and 79 (national parties are not subservient to candidates). Plaintiffs object to this statement as vague and ambiguous as the FEC is implying that the special relationship between the party and candidates can lead to nefarious consequences.

85. **Response:** *See supra* Response ¶ 6 (national parties play an important role) and 28 (stating the goals of the RNC).

86. **Response:** *See supra* Response ¶¶ 6 (national parties play an important role), 8 (objection to inclusion of non-parties), and 28 (stating the goals of the RNC).

87. **Response:** *See supra* Response ¶¶ 6 (national parties play an important role), 8 (objection to inclusion of non-parties), and 28 (stating the goals of the RNC).

88. **Response:** *See supra* Response ¶¶ 6 (national parties play an important role), 8 (objection to inclusion of non-parties), and 28 (stating the goals of the RNC).

89. **Response:** *See supra* Response ¶¶ 8 (objection to Biersack's declaration), 31 (objection to quantitative characterizations as ambiguous and vague), and 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous). Plaintiffs also object that this statement is irrelevant as Plaintiff Cao's ability to raise funds is not at issue in this case. Plaintiffs are challenging whether the government may constitutionally regulate certain communications.

90. **Response:** *See supra* Response ¶¶ 8 (objection to inclusion of non-parties) and 49 (objection to statement regarding allocation of resources as irrelevant, vague, and ambiguous). This statement is irrelevant as it involves entities that are not a party to this case.

91. **Response:** Plaintiffs object to Martin Meehan's declaration generally. The FEC improperly introduces his testimony for the first time in its proposed findings of fact when the discovery cut-off date was July 30, 2009. Dkt. 59. Furthermore, Congressman Meehan was not timely identified as an expert or factual witness. Plaintiffs were not given the opportunity to depose Congressman Meehan or otherwise respond to his testimony. Plaintiffs contemporaneously file a motion to strike this declaration and all other improper exhibits. *See* Plaintiffs' Motion to Strike.

92. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 8 (objection to inclu-

sion of non-parties), and 91 (objection to Meehan's declaration).

93. **Response:** This statement is irrelevant as it relies upon pre-BCRA and *McConnell* evidence that has no bearing on Plaintiffs' present claims. Furthermore, the statement relies on evidence relating to non-federal dollars. Here, Plaintiffs are challenging how the government may regulate certain contributions that are not unambiguously campaign related or that are the party's "own speech." Furthermore, the FEC's assertions that the RNC provides access to donors is not supported by the record. The RNC's 30(b)(6) witness explained how the interaction between donors and candidates, if it happens at all, is very minimal. Josefiak Dep. 45:13-46:3 ("It's not like they sit around and have one-on-one [conversations].")

94. **Response:** *See supra* Response ¶ 93 (no evidence of "access").

95. **Response:** *See supra* Response ¶ 93 (no evidence of "access").

96. **Response:** *See supra* Response ¶ 93 (no evidence of "access").

97. **Response:** *See supra* Response ¶ 93 (no evidence of "access"). Furthermore, the FEC's statements regarding "influence" are not supported by the record.

98. **Response:** This statement is irrelevant, vague, and ambiguous since it pertains to limits on contributions. Here, Plaintiffs are challenging limits on *expenditures*.

99. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 91 (objection to Meehan's declaration), and 93 (no evidence of "access").

100. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts) and 93 (no evidence of "access"). Furthermore, this statement is irrelevant as joint fundraising committees are not at issue in this case.

101. **Response:** So far as "tallying" is the same as "earmarking," it is not permitted nor done. Furthermore, the FEC has not produced any evidence that the *RNC* engages in tallying, or

even that it engaged in tallying prior to *Colorado II*. The FEC points to evidence of the DNC engaging in such behavior prior to *Colorado II*. Most importantly, the RNC has stated that it does not engage in tallying. Josefiak Dep. 42:11-43:1; 48:9-10. There is nothing in the record that even suggests that the RNC engages in tallying. This statement relies upon irrelevant and outdated evidence regarding the DNC's activities. While Plaintiffs cannot speak on behalf of the DNC, the FEC fails to present any evidence of current tallying techniques.

102. **Response:** *See supra* Response ¶ 101 (no evidence of "tallying" or earmarking in the record).

103. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts). The FEC references the *McConnell* Court's determination that contributions solicited by candidates and actually made to the parties may lead to the appearance of corruption. However, the FEC provides no empirical evidence that an appearance of corruption actually arises. Despite consistently arguing that there is a link between the appearance of corruption and campaign finance regulation, the FEC is unable to prove such a connection. Yet the FEC continues to argue that these limitations are necessary to prevent the appearance of corruption in government. According to studies conducted by prominent political scientists "the net effects of campaign finance regulations on political efficacy appear muted or even contrary to expectations." David M. Primo and Jeffrey Milyo, "Campaign Finance Laws and Political Efficacy: Evidence from the States," *Election Law Journal* 5(1): 23-39, 34 (2006) ("Primo and Milyo") (as these are legislative facts, the Court may take judicial notice of this article). Primo and Milyo found that "the effect of campaign finance laws is sometimes perverse, rarely positive, and never more than modest. Given the importance placed on public opinion for the development of campaign finance law, it is remarkable that we have found so little evidence that citizens are influenced by the campaign finance laws of their state."

Id. at 36. Interestingly, there is evidence that "campaign advertising (and, therefore, campaign spending) increases interest levels, knowledge, and turnout, suggesting that spending may in fact be a net positive for democracy." Primo and Milyo at 23 (citing John J. Coleman and Paul F. Manna, "Congressional Campaign Spending and the Quality of Democracy," *Journal of Politics* 62(3): 757-789 (2000); and Paul Freedman, Michael Franz, and Kenneth Goldstein, "Campaign Advertising and Democratic Citizenship," *American Journal of Political Science* 48(4): 723-741 (2004). As these are legislative facts, the Court may take judicial notice of these sources as well.

104. **Response:** *See supra* Response ¶ 103 (no evidence of corruption or its appearance in the record).

105. **Response:** *See supra* Response ¶ 103 (no evidence of corruption or its appearance in the record). Plaintiffs object to Robert Rozen's declaration generally. The FEC improperly introduces his testimony for the first time in its proposed findings of fact when the discovery cut-off date was July 30, 2009. Dkt. 59. Furthermore, Mr. Rozen was not timely identified as an expert or factual witness. In fact, this declaration is taken directly from another pending case involving Plaintiffs in the District Court of D.C. Plaintiffs did not agree to allow testimony from any cases other than *McConnell* and *Colorado I* and *Colorado II* to be allowed as evidence in this case. Plaintiffs were not given the opportunity to depose Mr. Rozen or otherwise respond to his testimony as it relates to this case. Plaintiffs contemporaneously file a motion to strike this declaration and all other improper exhibits. *See* Plaintiffs' Motion to Strike.

106. **Response:** *See supra* Response ¶ 103 (no evidence of corruption or its appearance in the record). Plaintiffs object to this statement as irrelevant as it primarily focuses on evidence relating to non-federal dollars. *See* Response ¶ 93 (objection to FEC's reliance on evidence relating to non-federal dollars). Furthermore, there is something unseemly about the FEC requiring

certain reports and then declaring a corruption interest based on the fact that individuals may read those reports.

107. **Response:** *See supra* Response ¶¶ 8 (objection to inclusion of non-parties), 91 (objection to Meehan's declaration), and 103 (no evidence of corruption or its appearance in the record). Furthermore, Plaintiffs object as this statement is not supported by the record. "Though campaign finance laws are often heralded as the cure for what ails elections in the United States, such optimism must be tempered by statistical reality." David Primo, Jeffrey Milyo and Tim Grosclose, "State Campaign Finance Reform, Competitiveness, and Party Advantage in Gubernatorial Elections," THE MARKETPLACE OF DEMOCRACY, 268-285 (Michael P. McDonald, John Samples eds., Cato Institute and Brookings Institution Press) (2006) (as these are legislative facts, the Court may take judicial notice of this article).

108. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record) and 107 (no evidence of parties serving as "conduits for corruption"). Just as the FEC cannot provide any empirical evidence showing a connection between political parties and the public's perception of corruption, there is no evidence that the public perceives a state party as a corrupting force.

109. **Response:** *See supra* Response ¶¶ 21 (importance of ability to associate with a political party is preserved by Supreme Court), 28 (stating the goals of the RNC), 103 (no evidence of corruption or its appearance in the record), and 107 (no evidence of parties serving as "conduits for corruption").

110. **Response:** No response.

111. **Response:** *See supra* Response ¶¶ 21 (importance of ability to associate with a political party is preserved by Supreme Court) and 28 (stating the goals of the RNC). As a state party, the

LA-GOP has regular contact with the RNC.

112. **Response:** *See supra* Response ¶ 111 (stating nature of the relationship between LA-GOP and the RNC). This statement is not supported by the record and is irrelevant as joint fund-raising activities are not at issue here. Furthermore, the FEC incorrectly states that the LA-GOP shares information with "the national parties." While there is no evidence that the LA-GOP formally shares information with any party, it only has a relationship with the RNC and no other national party.

113. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 111 (stating nature of the relationship between LA-GOP and the RNC).

114. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record) and 111 (stating nature of the relationship between LA-GOP and the RNC). This statement is irrelevant and not supported by the record. The Rule 30(b)(6) witness for LA-GOP testified that the party does not have a formal process of sharing donor information. Buckels Dep. 26:4-7.

115. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record) and 111 (stating nature of the relationship between LA-GOP and the RNC). Furthermore, the FEC has taken certain portions of the depositions out of context. The Rule 30(b)(6) witness for LA-GOP stated that the LA-GOP has no formal process for soliciting such contributions. Buckels Dep. 148:7-11. Similarly, the FEC selectively quotes Plaintiff Cao's deposition. His full testimony states that he is unsure of whether the money he raised was for coordinated expenditures, but it may have been. FEC Summary Judgment Exhibit 4, *Deposition of Anh "Joseph" Cao*, 16:7-11 ("Cao Dep."). Therefore, the FEC's assertion that Plaintiff Cao was required

to raise money to give to the LA-GOP is not supported by the record.

116. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record), 108 (no evidence that the public perceives a state party as a corrupting force), and 111 (stating nature of the relationship between LA-GOP and the RNC). Plaintiffs object to this statement as ambiguous and misleading. The FEC acknowledges that the LA-GOP has no formal process of introducing candidates to donors. Nevertheless, and without any empirical evidence, the FEC states that such informal encounters do occur. This statement is not supported by the record. In fact, LA-GOP stated that it does not facilitate interaction between candidates and donors. Buckels Dep. 146:9-12.

117. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 103 (no evidence of corruption or its appearance in the record), and 107 (no evidence of parties serving as "conduits for corruption"). This statement is not supported by the record.

118. **Response:** *See supra* Response ¶ 91 (objection to Meehan's declaration). In addition to being an improper witness, Congressman Meehan is not a party to this case. Therefore, his statements regarding how coordinated expenditures affected *his* campaign have no bearing on this as-applied challenge. The FEC provides no evidence from the record to support this statement.

119. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 103 (no evidence of corruption or its appearance in the record), and 107 (no evidence of parties serving as "conduits for corruption"). This statement is irrelevant as any illegal activity, such as circumvention by earmarking, is already prohibited and will continue to be prohibited if Plaintiffs' receive the requested relief in this case. Furthermore, there is no evidence in the record to support the notion that the parties have or will engaged in any illegal activity, such as laundering. *See supra* Response ¶ 101 (no evidence of "tallying" or earmarking in the record).

120. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern).

121. **Response:** *See supra* Response ¶¶ 91 (objection to Meehan's declaration), 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern). The FEC is wrong in saying that Plaintiffs' desired activities may "promote circumvention." If the First Amendment mandates that parties' own speech must be treated as expenditures—required under *Buckley*'s analysis and expressly left open in *Colorado I* and *II*—then the circumvention argument fails, because only contributions may be limited, not expenditures. The mandates of the First Amendment are neither loopholes nor circumvention. Moreover, the "own speech" issue was expressly left open *despite Colorado II*'s holding "that a party's coordinated expenditures . . . may be restricted to minimize circumvention," 533 U.S. at 465.

122. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern). A candidate cannot be assured that funds will pass to him, since he cannot earmark. While this statement would be true if a candidate *could* be assured, he cannot.

123. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern). A candidate cannot arrange "for a party committee to foot his bills," since he cannot earmark. While this statement would be true if a candidate *could* arrange, he cannot.

124. **Response:** *See supra* Response ¶¶ 91 (objection to Meehan's declaration), 103 (no evi-

dence of corruption or its appearance in the record), 101 (no evidence of "tallying" or earmarking in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern).

125. **Response:** *See supra* Response ¶¶ 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern).

126. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 103 (no evidence of corruption or its appearance in the record), 107 (no evidence of parties serving as "conduits for corruption"), and 119 (no evidence of laundering concern). Plaintiffs are not proposing that coordinated spending be wide-open. In fact, it remains closed to the extent it is constitutionally permissible.

127. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 28 (stating the goals of the RNC), and 91 (objection to Meehan's declaration).

128. **Response:** *See supra* Response ¶¶ 28 (stating the goals of the RNC) and 91 (objection to Meehan's declaration).

129. **Response:** *See supra* Response ¶111 (stating nature of the relationship between LA-GOP and the RNC). As a state party, LA-GOP has historically participated, and participates today, in electoral political activities at the state and local levels. LA-GOP's supports both federal and state candidates. LA-GOP seeks to advance its core principles—a smaller federal government, lower taxes at all levels of government, individual freedom, and a strong national defense—by promoting an issue agenda advocating Republican positions, electing Republican candidates, and encouraging governance in accord with these Republican views. AVC ¶ 38. The purpose of the LA-GOP is to promote the Republican message throughout the state and elect Re-

publican candidates. Buckels Dep. 18:1-19:1.

130. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 8 (objection to the inclusion of non-parties), 28 (stating the goals of the RNC), and 49 (objection to statement regarding allocation of resources as vague and ambiguous).

131. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 28 (stating the goals of the RNC), and 49 (objection to statement regarding allocation of resources as vague and ambiguous).

132. **Response:** Plaintiffs stress that the government may only regulate those activities that are unambiguously campaign related. Courts have held that campaign finance laws may constitutionally regulate only those actions that are "unambiguously related to the campaign of a particular . . . candidate. *Plaintiffs' Certification Memorandum* at 7 (*quoting North Carolina Right to Life v. Leake*, 525 F.3d 274, 281 (4th Cir. 2008) (*quoting Buckley v. Valeo*, 424 U.S. 1, 80 (1976)). *Leake* held that the appeal-to-vote test in *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 470 (2007) ("*WRTL-II*"), implemented the unambiguously-campaign-related principle. *Id.* at 7 n.8 (*quoting Leake*, 525 F.3d at 282-83). This principle is the foundation for the implementing tests in *Buckley*, *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"), and (as noted *supra*) *WRTL-II*.

133. **Response:** *See supra* Response ¶ 132 (only unambiguously-campaign-related activities may be regulated).

134. **Response:** *See supra* Response ¶ 132 (only unambiguously-campaign-related activities may be regulated).

135. **Response:** *See supra* Response ¶ 41 (the relationship between the party and the candidate gives the appearance of coordination)

136. **Response:** *See supra* Response ¶ 132 (only unambiguously-campaign-related activities may be regulated).

137. **Response:** *See supra* Response ¶ 132 (only unambiguously-campaign-related activities may be regulated). The FEC has already lost this intent-and-effect argument in both *Buckley* and *WRTL-II*. *Buckley* said that the First Amendment prohibits any intent-and-effect test for determining regulable political speech. 424 U.S. at 43-44. *WRTL-II* said the same thing *four times*. 551 U.S. at 467, 469, 472, 474 n.7. Whether an electioneering communication is unambiguously campaign related must be determined by "focus[ing] on the substance of the communication rather than amorphous considerations of intent and effect," *id.* at 469, *Buckley* expressly rejected any intent-and-effect test, 424 U.S. at 42-43, which *WRTL-II* expressly confirmed, 551 U.S. at 467. Therefore, issue advocacy cannot be regulated based on the fact that it would influence an election.

138. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts) and 137 (intent and effect considerations are irrelevant). The United States Supreme Court said that "issue advocacy conveys information and educates. An issue ad's impact on an election, if it exists at all, will come only after the voters hear the information and choose-uninvited by the ad-to factor it into their voting decisions." *WRTL-II*, 551 U.S. 449, 470. This statement does not recognize this controlling principle.

139. **Response:** *See supra* Response ¶¶ 91 (objection to Meehan's declaration), 137 (intent and effect considerations are irrelevant), and 138 (issue ads are not intended to influence elections).

140. **Response:** *See supra* Response ¶¶ 137 (intent and effect considerations are irrelevant) and 138 (issue ads are not intended to influence elections). *WRTL-II* expressly rejected the no-

tion that ads run within 60 days of an election were necessarily campaign speech, *id.* at 472 ("intent" irrelevant and mere proximity does not prove functional equivalence to express advocacy).

141. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 8 (objection to Biersack's declaration and inclusion of non-parties), 93 (objection to FEC's reliance on evidence relating to non-federal dollars), 138 (issue ads are not intended to influence elections), and 140 (timing of issue ads is immaterial).

142. **Response:** *See supra* Response ¶¶ 137 (intent and effect considerations are irrelevant) and 138 (issue ads are not intended to influence elections).

143. **Response:** "Grassroots lobbying" is a term of art defined in the Internal Revenue Code as "any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof." *See* 26 C.F.R. § 56.4911-2(b)(2)(i)-(ii). By definition, a grassroots lobbying communication must have "the principal purpose" of influencing legislation. *Id*. Therefore, this activity is not unambiguously campaign related.

144. **Response:** *See supra* Response ¶¶ 143 (definition of grassroots lobbying). The FEC impermissibly sought legal conclusions from the RNC's Rule 30(b)(6) witness. While Mr. Josefiak is an attorney, he was representing the RNC as a factual witness in the deposition.

145. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 137 (intent and effect considerations are irrelevant), 138 (issue ads are not intended to influence elections), and 143 (definition of grassroots lobbying). Furthermore, this statement is irrelevant as Plaintiffs' claim is that only unambiguously-campaign-related communications may be regulated.

146. **Response:** *See supra* Response ¶¶ 91 (objection to Meehan's declaration), 137 (intent and effect considerations are irrelevant), 138 (issue ads are not intended to influence elections), and 143 (definition of grassroots lobbying).

147. **Response:** *See supra* Response ¶¶ 137 (intent and effect considerations are irrelevant), 138 (issue ads are not intended to influence elections), and 143 (definition of grassroots lobbying).

148. **Response:** *See supra* Response ¶¶ 137 (intent and effect considerations are irrelevant), 138 (issue ads are not intended to influence elections), and 143 (definition of grassroots lobbying).

149. **Response:** *See supra* Response ¶¶ 31 (objection to vague statements regarding party spending), 41 (the relationship between the party and the candidate gives the appearance of coordination), and 132 (only unambiguously-campaign-related activities may be regulated).

150. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts) and 41 (objection to independent expenditures as a viable alternative and the relationship between the party and the candidate gives the appearance of coordination).

151. **Response:** *See supra* Response ¶¶ 5 (objection to Krasno's facts), 57 (stating Plaintiffs' claims), 91 (objection to Meehan's declaration), and 132 (only unambiguously-campaign-related activities may be regulated). Plaintiffs' claim is not that "media" is constitutionally exempt from campaign finance regulation. Rather, Plaintiffs' claim is that the government may only regulate communications that are unambiguously campaign related and not the party's "own speech."

152. **Response:** *See supra* Response ¶ 5 (objection to Krasno's facts). Furthermore, Plaintiffs object that Krasno is opining on a legal conclusion, a task left for the Court. As stated previously, the Supreme Court has upheld the unambiguously-campaign-related analysis when determining the constitutionality of campaign finance regulations. *See supra* Response ¶ 132 (only unambiguously-campaign-related activities may be regulated). Notably, many lower courts have also upheld the unambiguously-campaign-related analysis recently. *See New Mexico Youth Orga-*

nized v Herrera, No. 08-1156 (D. N.M. Aug. 3, 2009) (mem.and order granting summ. j.) (recognizing and applying unambiguously-campaign-related analysis); *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations v. Browning*, No. 4:08-cv-445, 2009 WL 1457972 (N.D. Fla. 2009) (same); and *National Right to Work Legal Defense and Education Foundation v. Herbert*, 581 F. Supp. 2d 1132, 1149 (D. Utah 2008) (same).

153. **Response:** No response.

154. **Response:** *See supra* Response ¶¶ 91 (objection to Meehan's declaration), 103 (no evidence of corruption or its appearance in the record), and 107 (no evidence of parties serving as "conduits for corruption").

155. **Response:** *See supra* Response ¶ 49 (objection to statement regarding allocation of resources as vague and ambiguous). This statement is also irrelevant since the RNC's fundraising techniques are not at issue in this case. What is at issue is whether the government may constitutionally regulate certain activities.

156. **Response:** *See supra* Response ¶¶ 28 (stating the goals of the RNC) and 137 (intent and effect considerations are irrelevant).

157. **Response:** "Targeted" is a legal construct necessary to distinguish "federal election activity" that complies with the unambiguously-campaign-related principle from such activity that does not. The FEC's quibble with this legal construct is merely its quibble with the unambiguously-campaign-related principle itself. Once the principle is recognized, as it must be, it is necessary to ask in each application what is the constitutionally-permissible scope of regulation of otherwise-protected First Amendment activity. But what constitutes targeting is a legal question, not a factual question, so the statements of fact witnesses do not control the meaning of the legal concept. What "targeted" means was set out in RNC's response to an FEC interrogatory

asking that question:

> The party has already provided the meaning of "non-targeted" in the *Complaint*: "'Non-targeted' means not targeted at any race in particular or targeted at a specific state race." 2d Am. Comp. ¶ 40. As to whether targeted federal election activity must clearly identify a federal candidate, the activity must first meet the federal-election-activity definition. *See* 2 U.S.C. § 431(20); 11 C.F.R. § 100.24. The only part of that definition requiring such identification involves public communications that PASO an identified federal candidate. So such a targeted PASO communication would clearly identify the federal candidate. Otherwise, targeted federal election activity would not have to clearly identify a candidate. If 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.

FEC Exhibit 7, RNC Discovery Responses, Interrogatory 8.

158. **Response:** *See supra* Response ¶ 157 (definition of targeting).

159. **Response:** *See supra* Response ¶ 157 (definition of targeting).

160. **Response:** *See supra* Response ¶ 157 (definition of targeting).

161. **Response:** *See supra* Response ¶ 157 (definition of targeting).

162. **Response:** *See supra* Response ¶ 157 (definition of targeting).

163. **Response:** *See supra* Response ¶ 91 (objection to Meehan's declaration). Plaintiffs object as this statement is not supported by the record.

164. **Response:** *See supra* Response ¶ 157 (definition of targeting). Plaintiffs' description of "targeted" and "non-targeted" has remained consistent throughout the case. Plaintiffs have provided more comprehensive explanations in response to various discovery requests from the FEC, which may be the source of the FEC's confusion on this point.

165. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' ex-

planation has been consistent).

166. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' explanation has been consistent).

167. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' explanation has been consistent).

168. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' explanation has been consistent). This is another example of how the FEC's selective quoting of Plaintiffs' position creates confusion.

169. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' explanation has been consistent). Furthermore, the definition of these words is a legal issue and not a factual issue. The LA-GOP 30(b)(6) witness was a *factual* witness and was improperly questioned about legal issues. Mr. Buckels' opinion on "targeted" is not probative.

170. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' explanation has been consistent). Furthermore, while Plaintiff Cao is an attorney, he was deposed as a factual witness for this case. The definition of these words is a legal issue and not a factual issue. The FEC improperly attempted to solicit legal conclusions from the Plaintiffs Cao. Plaintiff Cao's opinion on "targeted" is not probative.

171. **Response:** *See supra* Response ¶¶ 157 (definition of targeting) and 164 (Plaintiffs' explanation has been consistent). The FEC also impermissibly sought legal conclusions from Mr. Josefiak. While he is an attorney, he was representing the RNC as a factual witness in the 30(b)(6) deposition. The definition of these words is a legal issue and not a factual issue. Mr. Josefiak's opinion on "targeted" is not probative.

172. **Response:** No response.

173. **Response:** No response.

174. **Response:** As Plaintiffs explained in deposition testimony, it is the party's own speech when the party adopts the content of the speech and pays for it, which is often indicated by its disclaimer. *See* Josefiak Dep. 85:15-86:21, 103:11-15, 107:11-108:11, 112:7-113:2, 123:7-124:9; 168:18-169:20; Cao Dep. 48:4-13, 51:16-53:10, 54:10-18; Buckels Dep. 124:12-128:14, 134:15-137:10. Since such a communication would be either the national or state party's own speech, not the speech of the candidate, it is "not functionally identical to contributions." *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.). 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 468 (*quoting Buckley*, 424 U.S. at 21). AVC ¶ 47.

175. **Response:** *See supra* Response ¶ 174 (description of "own speech").

176. **Response:** *See supra* Response ¶ 174 (description of "own speech").

177. **Response:** *See supra* Response ¶ 174 (description of "own speech").

178. **Response:** *See supra* Response ¶ 174 (description of "own speech").

179. **Response:** *See supra* Response ¶ 174 (description of "own speech").

180. **Response:** *See supra* Response ¶ 174 (description of "own speech"). When the party merely pays the candidate's bills, it is functionally equivalent to a contribution and may constitutionally be limited. *Colorado II*, 533 U.S. at 468 n.2 (Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.).

181. **Response:** *See supra* Response ¶¶ 91 (objection to Meehan's declaration) and 174 (description of "own speech"). The proper analysis is not who is *benefiting* from the communication

but, rather, who is *speaking*. When it is the party's "own speech," as evidenced by a proper disclosure and adoption of the content as its own, it cannot constitutionally be limited. *Colorado II*, 533 U.S. at 456 n.17.

182. **Response:** *See supra* Response ¶ 174 (description of "own speech"). What constitutes one's "own speech" is a legal question and not a factual question. The FEC improperly questioned Plaintiffs' factual witnesses about several legal questions, including what is one's "own speech." Nevertheless, once the question was framed properly, the factual witness provided a clear explanation of the "own speech" analysis. *See* Josefiak Dep. 85:15-86:21, 103:11-15, 107:11-108:11, 112:7-113:2, 123:7-124:9; 168:18-169:20; Cao Dep. 48:4-13, 51:16-53:10, 54:10-18; Buckels Dep. 124:12-128:14, 134:15-137:10.

183. **Response:** *See supra* Response ¶¶ 174 (description of "own speech") and 182 ("own speech" is a legal question). Over the course of the litigation, Plaintiffs were able to clarify their position on the legal question of "own speech." Notably, Plaintiffs' descriptions have been consistent throughout this case. Plaintiffs have merely elaborated on the initial descriptions in response to the FEC's lack of understanding of the Court's statements in *Colorado II*. Furthermore, the FEC improperly questioned Plaintiffs' factual witnesses about this legal question.

184. **Response:** *See supra* Response ¶¶ 174 (description of "own speech") and 182 ("own speech" is a legal question). Furthermore, as whether a communication is a party's "own speech" is a legal issue, extensive factual support is unnecessary.

185. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 171 (the RNC's 30(b)(6) witness served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

186. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 171 (the

RNC's 30(b)(6) witness served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

187. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

188. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

189. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

190. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

191. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

192. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

193. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

194. **Response:** *See supra* Response ¶¶ 170 (Cao served as a factual witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

195. **Response:** *See supra* Response ¶¶ 174 (description of "own speech"), and 182 ("own speech" is a legal question). Furthermore, LA-GOP's 30(b)(6) witness was deposed as a factual witness for this case. The FEC improperly attempted to solicit legal conclusions from the witness.

196. **Response:** *See supra* Response ¶¶ 171 (the RNC's 30(b)(6) witness served as a factual

witness), 174 (description of "own speech"), and 182 ("own speech" is a legal question).

Respectfully submitted,

/s/ Joseph F. Lavigne
Joseph F. Lavigne, jlavigne@joneswalker.com
Bar No. 28119
JONES WALKER
201 St. Charles Ave.
New Orleans, LA 70170
504/582-8610; 504/589-8610 (facsimile)
Local Counsel for Plaintiffs

Thomas P. Hubert, thubert@joneswalker.com
Bar No. 19625
JONES WALKER
201 St. Charles Ave.
New Orleans, LA 70170
504/582-8384; 504/582-8015 (facsimile)
Local Counsel for Plaintiffs

James Bopp, Jr., jboppjr@aol.com
Trial Attorney
Richard E. Coleson, rcoleson@bopplaw.com
Kaylan L. Phillips, kphillips@bopplaw.com
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807-3510
812/232-2434; 812/234-3685 (facsimile)
Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be delivered through the ECF electronic filing system on the 30th day of September 2009 to the following CM/ECF participants:

Harry J. Summers, hsummers@fec.gov
Seth Nesin, snesin@fec.gov
FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20436

I hereby certify that I caused the foregoing to be delivered through U.S. Mail on the 30th day of September 2009 to the following non-CM/ECF participants:

Thomasenia P. Duncan
Federal Election Commission
Office of General Counsel
999 E St., N. W.
Washington, DC 20463

/s/ Joseph F. Lavigne
Joseph F. Lavigne
Local Counsel for Plaintiffs