

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
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**JOINT STIPULATION OF FACTS**

Anh "Joseph" Cao, Republican National Committee ("RNC"), and Republican Party of Louisiana ("LA-GOP") (collectively "Plaintiffs") and Defendant Federal Election Commission ("FEC") provide the following facts upon which both sides agree, in response to this Court's order on November 23, 2009. Dkt. 87. All facts are relevant and accurate as of the time this lawsuit was filed.

**Stipulated Facts about Plaintiff Anh "Joseph" Cao:**

1. Anh "Joseph" Cao is "eligible to vote in any election for the office of President," 2 U.S.C. § 437h. Second Amended Verified Complaint for Declaratory and Injunctive Relief (AVC) ¶ 10 (Doc. 35).
  
2. Cao is the Republican candidate for U.S. Representative for the Second Congressional District of Louisiana, which includes New Orleans. Joseph Cao will compete 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. AVC ¶ 10.

3. Candidate Cao wants to participate with RNC and LA-GOP to the maximum extent constitutionally permissible in the activities outlined in the Complaint. AVC ¶ 10; Deposition of Anh “Joseph” Cao (Cao Dep.) at 13-15, Defendant Federal Election Commission’s Proposed Findings of Fact and Statement of Material Facts as to Which There is No Genuine Dispute (FEC Facts) Exh. 4 (Doc. 66).

**Stipulated Facts about Plaintiff RNC:**

4. RNC is the national political party committee of the Republican Party. Its headquarters are in Washington, District of Columbia. AVC ¶ 11. It is an unincorporated association made up of 168 members representing all of the states and territories of the United States. Federal Rule of Civil Procedure 30(b)(6) Deposition of Republican National Committee witness Thomas J. Josefiak (Josefiak Dep.) at 12, FEC Facts Exh. 5.
5. As a national party, RNC has historically participated, and participates today, in electoral and political activities at the federal, state, and local levels. AVC ¶ 35.
6. The RNC has “constant contact” with candidates at the height of an election. Josefiak Dep. at 37, FEC Facts Exh. 5.
7. “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 v. FEC*, 251 F. Supp. 2d 176, 697 (D.D.C. 2003) (Kollar-Kotelly, J.).

8. 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.
9. The RNC does not accept earmarked contributions, as defined in 11 C.F.R. § 110.6, for any particular candidate. Josefiak Dep. at 48, FEC Facts Exh. 5.

**Stipulated Facts about Plaintiff LA-GOP:**

10. 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, which offices are staffed by paid employees. AVC ¶ 12. LA-GOP is governed by the executive committee, consisting of individuals serving on a voluntary basis. Fed. R. Civ. P. 30(b)(6) Deposition of Republican Party of Louisiana witness Charles Lee Buckels (Buckels Dep.) at 13-14, FEC Facts Exh. 6.
11. As a state party, LA-GOP has historically participated, and participates today, in electoral political activities at the state and local levels. AVC ¶ 38.
12. The LA-GOP has ongoing and continuous contact with the RNC as well as federal candidates in Louisiana. Buckels Dep. at 19-21, FEC Facts Exh. 6.
13. One of the purposes of state party committees like LA-GOP is to assist in the election of candidates for federal office. Buckels Dep. at 19-20, FEC Facts Exh. 6. In constructing a “victory plan,” Republican federal candidates have meetings with both the national parties and the state party. Josefiak Dep. at 27, FEC Facts 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],<sup>1</sup> FEC Facts Exh. 41; Krasno and Sorauf *McConnell* Report at 44-50 [DEV 1-Tab 2], FEC Facts Exh. 39; Expert Report of Thomas E. Mann from *McConnell* (Mann *McConnell* Report) at 30 [DEV I-Tab 1], FEC Facts Exh. 53).

**Stipulated Facts about Defendant FEC:**

14. 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)(I); “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)(I).
15. The Commission’s sole office is located in Washington, DC. AVC ¶ 13.

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<sup>1</sup> “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 was mailed by overnight delivery to the court, with additional courtesy copies delivered to Chambers, at the same time as the FEC Facts were filed.

**Stipulated Facts about FECA and BCRA:**

16. 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).
17. 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).
18. 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).
19. 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).

20. Party coordinated communications are, by definition, “paid for by a political party committee or its agent.” 11 C.F.R. § 109.37(a)(1).
21. The party coordinated expenditure provisions are adjusted for inflation each year. 2 U.S.C. § 441a(c)(1)(B).
22. 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).
23. 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).
24. 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).
25. 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 Facts Exh. 13 (authorizing RNC to make LA-GOP's coordinated expenditures in 2008 Cao campaign); RNC Spreadsheet for 2008 Cao Campaign (RNC 0000001), FEC Facts 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).

26. Due to the restrictions on coordinated expenditures, LA-GOP typically assigns its coordinated expenditure amounts to the RNC in order to increase the efficiency and effectiveness of the limited funds. Buckels Dep. at 35-36, FEC Facts Exh. 6.
27. 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).
28. In 2002, Congress passed the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, which included a provision prohibiting the national parties from receiving or spending any “soft money” —money that was not subject to the limitation or prohibitions of FECA. 2 U.S.C. § 441i(a).
29. Prior to the passage of BCRA, RNC made only limited independent expenditures as compared to the substantial independent expenditures that it has made since the passage of BCRA. Josefiak Dep. at 70-72, FEC Facts Exh. 5 (recalling only one instance of pre-BCRA independent expenditures).

**Stipulated Facts About Plaintiffs' Claims:**

30. RNC and LA-GOP each have spent or committed to spend their \$42,100 expenditure limits under the Party Expenditure Provision in connection with the campaign of candidate Joseph Cao, and RNC has already reached its \$5,000 contribution limit. RNC and LA-GOP each wants to make more expenditures that would be subject to the \$5,000 contribution limit and the \$42,100 expenditure limit and would do so if it were legal to do so. AVC ¶ 39.

31. In addition, a specific express-advocacy communication that RNC intends to make in the very near future, if legally permitted by the judicial relief sought in this case, is a radio ad (*RNC Cao Ad*) with the following script:

Why We Support Cao

The Republican National Committee has long stood for certain core principles, which we believe are the fundamentals of good government. When it comes to the issues of lower taxes, individual freedoms and a strong national defense, we need leaders who will stand with the American people and defend those issues.

We need leaders who understand that our economy is in a recession, our individual freedoms are constantly under attack and we continue to fight the global war on terrorism to keep our families safe.

Joseph Cao understands and fights for those issues. And, that is why we ask you to join us in supporting him on December 6. It's important for Louisiana and important for the country.

AVC ¶ 43.

32. RNC intends to coordinate the *RNC Cao Ad* with Joseph Cao as to the best timing for the *Ad*, but otherwise the *Ad* would not be coordinated with Cao. AVC ¶ 44.

33. A specific express-advocacy communication that LA-GOP intends to make in the very near future, if legally permitted by the judicial relief sought in this case, is a radio ad (*LA-GOP Cao Ad*) with the following script:



### Why We Support Cao

The Republican Party of Louisiana has long stood for certain core principles, which we believe are the fundamentals of good government. When it comes to the issues of lower taxes, individual freedoms and a strong national defense, we need leaders who will stand with the American people and defend those issues.

We need leaders who understand that our economy is in a recession, our individual freedoms are constantly under attack and we continue to fight the global war on terrorism to keep our families safe.

Joseph Cao understands and fights for those issues. And, that is why we ask you to join us in supporting him on December 6. It's important for Louisiana and important for the country.

AVC ¶ 46.

34. LA-GOP intends to coordinate the *LA-GOP Cao Ad* with Joseph Cao as to the best timing for the *Ad*, but otherwise the *Ad* would not be coordinated with Cao. AVC ¶ 47.

35. RNC and LA-GOP want to make similar express-advocacy communications in the future, and there is a strong likelihood that the circumstances leading to this lawsuit will be repeated, given the recurring nature of elections, the ongoing existence and intended activities of RNC and LA-GOP, and the regular recurrence of a broad range of issues in public and congressional debate. AVC ¶ 50.

36. As a candidate, Cao found some of the independent expenditures conducted by Republican party groups to be counterproductive and harmful. His constituents held him accountable for the content, even though he was not consulted about the content and it was contrary to the goals of his campaign. Cao Dep. at 34- 35, 42-43, FEC Facts Exh. 4.

37. Plaintiffs have challenged the application of coordinated expenditure limits to party activities that plaintiffs assert are not "unambiguously campaign related." AVC ¶¶ 52-60, 76-81.

38. 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. AVC ¶¶ 40, 59, 80.
39. Plaintiffs have challenged the constitutionality of limits on party coordinated communications that represent a party's “own speech.” AVC ¶¶ 61-64,82-85.
40. 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*, FEC Facts Exh. 1.

Respectfully submitted,

/s/ James Bopp, Jr.

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