Contribution Limits and Disclosure Requirements for Individuals, Parties, and PACs: The Federal Election Campaign Act of 1971 ("FECA") and its 1974 Amendments

FECA, enacted by Congress in 1971, strengthened campaign finance disclosure requirements; imposed certain contribution limits; and codified the understanding under pre-existing law that corporations and unions could establish and administer separate, segregated funds for the purpose of making political contributions and expenditures from contributions to the fund collected from stockholders, members, executive and administrative personnel, and their families. See Pipefitters Local Union No. 562 v. United States, 407 U.S. 385, 387, 409-10 (1972). The 1972 election, followed by the Watergate scandal, became a "watershed for public confidence in the electoral system" and led to more changes. See Buckley v. Valeo, 519 F.2d 821, 840 (D.C. Cir. 1975) (en banc) (per curiam), aff'd in part, rev'd in part, 424 U.S. 1 (1976). The congressional investigation of Watergate provided a legislative record that was "replete with specific examples of improper attempts to obtain governmental favor in return for large campaign contributions." Id. at 840 n.37. The investigation revealed: extensive contributions by dairy organizations to Nixon fundraisers, structured so as to avoid FECA disclosure requirements and timed with President Nixon's decision to overrule the Secretary of Agriculture and increase price supports, see id. at 839 n.36; "lavish contributions" by special interest groups to legislators from both parties, including illegal corporate contributions, that were deemed "necessary as a 'calling card,'" id. at 839 n.37; and significant donations made by persons seeking ambassadorships on the understanding that "such contributions were a means of obtaining the recognition needed to be actively considered," id. at 840 n.38. The FECA Amendments of 1974 followed in the wake of this investigation, and, as the Supreme Court has explained, these amendments were designed "to limit the actuality and appear-

ance of corruption resulting from large individual financial contributions." Buckley v. Valeo, 424 U.S. 1, 26 (1976).

The FECA Amendments of 1974 imposed dollar limitations on contributions by individuals and political committees to candidates for federal office, to political party committees, and to independent political committees.[5/] 2 U.S.C. 441a(a). The Act defines "contribution" to include "any gift . . . of . . . anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8). The 1974 Amendments also imposed limits on the amounts that individuals, candidates, political committees, and political parties could spend to help federal candidates win elections. The Amendments also included a variety of recordkeeping and disclosure requirements aimed at informing the electorate, deterring corruption, and detecting violations of the contribution limits. See 2 U.S.C. 432-434. The Amendments further created the Federal Election Commission, which was empowered to monitor and enforce the campaign finance laws. See generally 2 U.S.C. 437c(b)(1), 437d(a), 437g.

Buckley v. Valeo

The constitutionality of the 1974 Amendments to FECA was challenged in short order. In its landmark decision Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court recognized that limitations on campaign contributions and expenditures operate "in an area of the most fundamental First Amendment activities," but concluded that "a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." Id. at 14, 20. The Court reasoned

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[5/] Under 2 U.S.C. 441a(a), an individual could contribute $20,000 to a national political party and $5,000 to any multicandidate political committee in any calendar year, and $1,000 to any single candidate per election, with an overall annual limitation of $25,000 on any contributor. (A multicandidate political committee generally is a political committee, other than a political party, that has made contributions to five or more candidates and has received contributions from more than fifty persons. 2 U.S.C. 441(a)(4).) Prior to BCRA, these limits remained constant.

that although "a contribution serves as a general expression of support for the candidate and his views," it "does not communicate the underlying basis for the support." Id. at 21. The "expression rests solely on the undifferentiated, symbolic act of contributing" and the quantity of the expression does not increase with the size of the contribution. Id. The Court rejected the notion that the contribution limitations would prevent candidates and political committees from "amassing the resources necessary for effective advocacy," noting that the "overall effect" of such limitations is "merely to require candidates and political committees to raise funds from a greater number of persons." Id. at 21-22.

In upholding the challenged contribution limits, the Buckley Court found that the statute's primary purpose to limit "the actuality" and, of "almost equal concern," the "appearance of corruption resulting from large individual financial contributions" provided a "constitutionally sufficient justification for the $1,000 contribution limitation." Id. at 26-27. The Court also determined that the $25,000 aggregate annual limit on contributions by an individual legitimately served to prevent circumvention of the $1,000 contribution limit that might be accomplished through, for example, "huge contributions to . . . [a] candidate's political party." See id. at 38. The Court found that the contribution limitations "focus[] precisely on the problem of large contributions[,] the narrow aspect of political association where the actuality and potential for corruption have been identified[,] while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." Id. at 28.

Buckley also considered 18 U.S.C. 608(e)(1), which provided that no person (other than a political party or candidate) could make any expenditure "relative to a clearly identified candidate . . . which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000." See 424 U.S. at 39-40, 193-94. The Court concluded that the statute's defining phrase, "relative to a clearly identified candidate," did not adequately mark the boundary between permissible and impermissible speech, and it dealt with this problem of vagueness "by reading § 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate." Id. at 41-44. In a footnote, the Court explained that the express advocacy standard would restrict the application of the provision to communications containing such words and phrases as "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject,'" id. at 44 n.52, a description that became known as the "magic words" test. Mann Expert Rep. at 19.[6/]

Buckley also addressed a somewhat related provision, 2 U.S.C. 434(e) (now codified as amended at 2 U.S.C. 434(c)), which required persons, other than political committees or candidates, to file statements with the FEC disclosing their "expenditures" made "for the purpose of influencing" a federal election. 424 U.S. at 74-82; see 2 U.S.C. 431(9). The Court found that the ambiguity of this phrase, when used for a provision regulating independent spending, posed the same constitutional problems of vagueness encountered in 18 U.S.C. 608(e)(1). Id. at 78-79. Thus, the Court also construed "expenditure" for purposes of the independent spending at issue in § 434(e) "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." Id. at 80 (footnote omitted). The Court sustained § 434(e) as a means

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[6/] The Court then held that 18 U.S.C. 608(e) could not be justified as an anti-corruption measure, because "[t]he exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness undermine[d] its effectiveness." Id. at 45-48.

of "shed[ding] the light of publicity on spending that is unambiguously campaign related," and "help[ing] voters to define more of the candidates' constituencies." Id. at 80-81; see id. at 66-68. The Court likewise upheld the recordkeeping, reporting, and disclosure requirements applicable to candidates and political committees, set forth in 2 U.S.C. 431-434. Id. at 64-68, 83 & n.113. While noting that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment," id. at 64, the Court found that the identified interests advanced by the disclosure requirements outweighed the alleged harm, see id. at 72.

Since Buckley, the Supreme Court has repeatedly sustained the constitutionality of limitations on campaign contributions and measures adopted to ensure compliance with the contribution limitations upheld in Buckley. Thus, in California Medical Ass'n v. FEC, 453 U.S. 182, 198 (1981) (plurality) ("Cal Med"), the Court upheld FECA's $5,000 limitation on contributions to multicandidate political committees, noting that without this limitation, the contribution limitations upheld in Buckley "could be easily evaded." See also id. at 203 (Blackmun, J., concurring). In Colorado II, supra, the Court upheld the limits upon party coordinated expenditures on the ground that the evidence supported the "long-recognized rationale of combating circumvention of contribution limits designed to combat the corrupting influence of large contributions to candidates from individuals and nonparty groups." 533 U.S. at 456 n.18. In Nixon v. Shrink Missouri Gov't PAC, 528 U.S. 377, 382, 396-98 (2000) ("Shrink Missouri"), the Court upheld state contribution limits ranging from $250 to $1,000. The Court declined to establish any monetary amount as "a constitutional minimum" below which legislatures may not regulate. Shrink Missouri, 528 U.S. at 397. Rather, the Court explained, a contribution limitation will be upheld

unless it is "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." Id.

The Supreme Court since Buckley has likewise sustained prohibitions on both independent expenditures and contributions made with corporate treasury funds, to prevent the "corrosive and distorting effects [on the electoral process] of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas," Austin, 494 U.S. at 660, and to ensure that "substantial aggregations of wealth" amassed by labor unions and corporations "are not converted into political 'war chests' which could be used to incur political debts from legislators who are aided by the contributions." NRWC, 459 U.S. at 207.

Ten years after Buckley, however, in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) ("MCFL"), the Court, following the same rationale adopted in Buckley to avoid problems of vagueness, concluded that an expenditure must involve express advocacy in order to come within § 441b's prohibition on independent expenditures. Id. at 248-49. At the same time, the Court also reaffirmed at length the government's substantial interests in curbing the undue political influence of corporations and labor unions that exercise control over large aggregations of wealth. Id. at 256-60. But it nevertheless carved out an as-applied exception to § 441b, finding that these interests were not at work in that case, as it involved an ideological organization that could not engage in business activities, had no shareholders or other affiliated persons having an economic disincentive to dissociate from the organization if they disagreed with its political activities, and accepted no funding from labor unions or business corporations that could be converted into the type of political spending that gives rise to a threat of corruption. Id. at 264.

The Origin of "Soft Money"

When the Supreme Court upheld FECA's contribution limitations in Buckley, it assumed that the definition of "contribution" categorically included any "[f]unds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary" (in addition to "dollars given to another person or organization that are earmarked for political purposes"). 424 U.S. at 24 n.24 (emphasis added); see also id. at 78 (similar definition of "contribution" as including, inter alia, "contributions made directly or indirectly to a candidate, political party, or campaign committee"). FECA's definitions of "contribution" and "expenditure" were, and remain, both limited to the donation or use of money or anything of value "for the purpose of influencing an election for Federal office." 2 U.S.C. 431(8)(A)(i), (9)(A)(i). Because the statute did not specify the particulars of how such lines were to be drawn, the issue was left to the FEC.

The FEC first addressed this question in advisory opinions, and then issued formal regulations in 1977. In Advisory Opinion 1975-21 the FEC considered a local party committee that had established separate accounts for funds raised in compliance with FECA's source and amount limitations (known today as "federal funds" or "hard money") and for corporate contributions permitted under state law but prohibited by FECA § 441b for use in connection with federal elections. The FEC concluded that the local party had to pay "an allocable portion of [its] administrative expenses" from its hard money account, and, because a "voter registration drive has a relation to Federal elections as well as State and local," expenditures for that purpose also had to be allocated on the same basis as administrative expenses. Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5135, at 10,068. In Advisory Opinion 1976-72, however, the FEC concluded that FECA § 441b and proposed regulations under that provision would preclude a state party committee from using funds received

from corporations or unions to finance "any portion of"' a voter registration drive. Id. ¶ 6934, at 17,047. But this Advisory Opinion did not address the allocation of a portion of expenses for voter registration activities to an account containing funds not raised in accordance with FECA (known today as "nonfederal funds" or "soft money") that did not include corporate or union money.

In 1977, the FEC promulgated its first general set of regulations to implement FECA. Those regulations provided that "[a]ny political committee" that received contributions or made expenditures to, or on behalf of, any federal candidate, could either establish a separate federal account for its federal election activities, or use a single account containing only funds subject to the federal contribution limits to finance all of its activities with respect to both state and federal elections. 11 C.F.R. 102.6 (1977). To the extent party committees or other political committees established a separate federal account under the regulations, however, the committees were required to "allocate administrative expenses on a reasonable basis between their Federal and non-Federal accounts." 11 C.F.R. 106.1 (1977).

The next year, in Advisory Opinion 1978-10, the FEC modified the advice it had given in Advisory Opinion 1976-72, and concluded that "the costs of [voter] registration and get-out-the-vote drives" by a state party committee "should be allocated between" federal and non-federal accounts "in the same manner as other general party expenditures" under the regulations. Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5340. The FEC, thus, essentially returned to the view it had taken in Advisory Opinion 1975-21. Accordingly, under FECA as implemented by the FEC, state parties could maintain both federal accounts (composed of "hard money") and nonfederal accounts (composed of "soft money"), with administrative expenses and overhead, as well as expenses for voter

registration and get-out-the-vote activities, allocated between the accounts on a reasonable basis, even if the nonfederal accounts contained funds received from corporations and unions.

Up to this point, FEC advisory opinions on these topics had been made in response to requests for guidance from state and local political parties. In Advisory Opinion 1979-17, the FEC was asked for the first time about a proposal involving the acceptance of corporate funds by a national party committee for use in connection with state and local elections. The FEC, noting that its 1977 regulations permitted the establishment of separate accounts by "[a]ny political committee," see 11 C.F.R. 102.6(a)(2) (1977), essentially extended its rulings to national parties, permitting national party committees to create separate, segregated accounts, one of which could be "designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective 'Federal office.'" Fed. Elec. Campaign Fin. Guide (CCH) ¶ 5416.

In sum, by 1979 it was clear that under the FEC's regulations, both national and state party committees were permitted to solicit and accept donations unconstrained by FECA's source and amount limitations, so long as those donations were maintained in separate accounts and were used only for influencing the nomination or election of candidates for nonfederal office. It was also clear that political committees maintaining such accounts were required to allocate between the accounts their overall administrative and operating expenses. Such expenses would include items such as fundraising, candidate recruitment, and research. See 11 C.F.R. 106.5(a)(1), (2). In addition, political committees were required to allocate expenses for general voter registration and get-out-the-vote drives not conducted on behalf of specific federal candidates.

Also in 1979, Congress enacted amendments to FECA that related to the financing of election-related activities by state and local parties. See Mann Expert Rep. at 7-8. Congress acted in response to concerns that traditional state and local party grassroots and volunteer activities arguably were subject to FECA's limitations on coordinated expenditures on behalf of candidates.[7] Congress defined two new sets of activities that were exempt from the statutory definitions of "contribution" and "expenditure" and, thus, from limits on party contributions to and coordinated expenditures on behalf of federal candidates. The first set of exempted activities included state party disbursements for campaign materials such as pins, bumper stickers, and yard signs used in connection with volunteer activities on behalf of the party's nominees. 2 U.S.C. 431(8)(B)(x), (9)(B)(viii). The exemption was conditioned, inter alia, on the use of hard money for the activity. Id. The second exemption applied to a state party's payment for "the costs of voter registration and get-out-the-vote activities" conducted on behalf of the party's presidential ticket. 2 U.S.C. 431(8)(B)(xii), (9)(B)(ix). Again, the exemption was conditioned, inter alia, on the use of hard money for the activity.[8] Despite the condition placed on the exemption, the 1979 Amendments did not displace the FEC's allocation regulations; a state party could allocate its expenses for the exempt activities between federal and nonfederal accounts, but it had to use hard money, in some

[7] FECA treats expenditures made in coordination with, or at the request or suggestion of, a federal candidate or his authorized political committees as a contribution to the candidate. See 2 U.S.C. 441a(7); Colorado II, 533 U.S. at 438; Buckley, 424 U.S. at 46 ("[C]oordinated expenditures are treated as contributions rather than expenditures under the Act."). FECA permits political party committees to spend well beyond the ordinary contribution limit applicable to political committees generally on coordinated expenditures. See 2 U.S.C. 441a(d).

[8] Another exemption from the definitions of "contribution" and "expenditure" for the activities of state and local parties in preparing and distributing printed slate cards and sample ballots had been included in FECA prior to 1979. 2 U.S.C. 431(8)(B)(v), (9)(B)(iv). That exemption was not conditioned on the use of hard money.

appropriate proportion, to reflect the federal election aspects of the activity.[9] See Common Cause v. FEC, 692 F. Supp. 1391, 1394-95 (D.D.C. 1987).

As a result of these developments, soft money became an important part of national party campaign finance beginning around 1980. Mann Expert Rep. at 12. In the 1980 election, the national Republican Party committees spent approximately $15 million in soft money and the national Democratic Party committees spent approximately $4 million, together constituting 9% of the national parties' total spending. Id.[10] In 1984, the national parties collectively spent roughly $21.6 million in soft money, which represented 5% of their total spending. Id. Most of this money was spent on voter registration and get-out-the-vote programs conducted by state party committees, "targeted to focus on key battlegrounds in the presidential race." 147 Cong. Rec. S3253 (April 2, 2001) (Anthony Corrado, The Origins and Growth of Party Soft Money Finance (2001), Ex. 1 to statement of Sen. Levin). By 1988, national party soft money spending increased to $45 million or 11% of national party spending. Mann Expert Rep. at 12. The parties' soft money receipts in 1988 included nearly 400 gifts of $100,000 or more. See id. at 13.

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[9] See H.R. Rep. 96-422, 96th Cong., 1st Sess. 8-9 (1979) ("If a State or local party organization prepares a slate card which includes both Federal and State candidates, the party organization may allocate or apportion the costs attributable to all the Federal candidates and the costs attributable to all the State candidates. . . . Money used to pay the costs attributable to State candidates is subject to the prohibitions and limitations of State Law. Accordingly, if State law allows the use of treasury funds of a corporation, that money could be used for the State portion, but not for any portion allocable to Federal candidates."); id. at 9 ("'[I]f the campaign materials' used for volunteer activities "contain reference to both State and Federal candidates, the party organization may allocate the costs between the State and Federal candidates. The money used to pay the cost attributable to State candidates would be subject to State, not Federal law.").

[10] The two major national political parties comprise, inter alia, six main national party committees: the Republican National Committee ("RNC"); the National Republican Senatorial Committee ("NRSC"), organized to aid the election of Republican candidates for the Senate; the National Republican Congressional Committee ("NRCC"), organized to aid the election of Republican candidates for the House of Representatives; the Democratic National Committee ("DNC"); the Democratic Senatorial Campaign Committee ("DSCC"), organized to aid the election of Democratic candidates for the Senate; and the Democratic Congressional Campaign Committee ("DCCC"), organized to aid the election of Democratic candidates for the House of Representatives.

The parties' growing use of soft money prompted a rulemaking petition by Common Cause, asking FEC to issue new allocation rules pertaining to the use of soft money. Common Cause alleged that party committees were improperly spending soft money to influence federal elections by taking advantage of FEC's regulations, which, as discussed supra, granted party committees considerable leeway to allocate their expenses between federal and nonfederal accounts using any "reasonable basis," 11 C.F.R. 106.1(e)(1978). See Mann Expert Rep. at 13. In Common Cause v. FEC, 692 F. Supp. 1391 (D.D.C. 1987), the district court found that FECA permitted allocation, but directed the Commission to revise its regulations to give party committees more specific guidance on how such activities should be allocated. Id. at 1395.

In 1990, the FEC promulgated such regulations permitting committees that chose to establish nonfederal accounts to allocate to those accounts a portion of their "[a]dministrative expenses," 11 C.F.R. 106.5(a)(2)(i), and expenses for "[g]eneric voter drives," which included "voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. 106.5(a)(2)(iv). National party committees were required to allocate at least 65% of their administrative and generic voter drive expenses to federal accounts during presidential election years, and at least 60% in non-presidential election years. 11 C.F.R. 106.5(b), (c). For state and local parties, the allocation of these expenses was determined by the proportion of federal offices to all offices on the state's general election ballot. 11 C.F.R 106.5(d). While this provision produced a wide range among the states in the percentage of hard money required to be allocated to these "mixed" expenses, the required hard money percentage for state parties was, on average, substantially lower than the 60-65% required

for the national parties. Mann Expert Rep. at 14; ___

. The regulations also required national party committees, but not state party committees, to file public reports disclosing the donations to, and expenditures from, their soft money accounts. 11 C.F.R.104.8(e),(f); 104.9(c), (d). In addition, the regulations required all political committees with nonfederal accounts to file public reports disclosing the expenses allocated between the committee's federal and nonfederal accounts. 11 C.F.R. 104.10.

The Prodigious Growth of Soft Money and Its Use to Support Federal Campaigns

In 1992, the first election cycle for which national party soft money donations and expenditures were reported to FEC, soft money spending by the national parties reached $80 million, 16% of the national parties' total spending. Mann Expert Rep. at 15; see also 147 Cong. Rec. S3253 (April 2, 2001) (Ex. 1 to Statement of Sen. Levin). Both parties received donations of $200,000 or more from their top donors and actively solicited corporate gifts. Mann Expert Rep. at 15; id. at Tbl. 4 (listing top 50 soft money contributors in the 1992 election cycle, with donations as high as $1 million). The national parties exerted "firm control" over how this soft money was spent, with their primary focus the election of federal rather than nonfederal candidates. Mann Expert Rep. at 16. The bulk of the money was transferred to ten presidential election battleground states, where the funds, along with the appropriate proportion of hard money, were used to finance voter registration and get-out-the vote activities, typically under a plan preapproved by the national party, and to fund "generic" party television ads, run in key states to reinforce the message of the presidential candidates without mentioning the names of the candidates. Id.

The use of soft money increased dramatically in the 1996 election cycle, with the national parties' total soft money spending reaching $272 million. Mann Expert Rep. at 21 & Tbl. 2; see Declaration of Raymond J. La Raja at 18 & Fig. 7 (Sep. 23, 2002) [RNC] [hereinafter La Raja Expert Rep.]. The exorbitant increase was due largely to an innovative move by President Bill Clinton and his political consultant, Dick Morris, to use soft money to fund media advertisements that either promoted President Clinton by name, or criticized his opponent by name, while carefully avoiding particular words expressly advocating either candidate's election or defeat. Mann Expert Rep. at 18; see David B. Magleby, Report Concerning Interest Group Electioneering Advocacy and Party Soft Money Activity (Sep. 23, 2002) at 11 [DEV 4-Tab 8, hereinafter Magleby Expert Rep.];[11/] Jonathan S. Krasno & Frank J. Sorauf, Evaluating the Bipartisan Campaign Reform Act (BCRA) (Sep. 23, 2002) at 50-51 [DEV 1-Tab 2, hereinafter Krasno & Sorauf Expert Rep.]. While these advertisements prominently featured the President, none of the costs were charged as coordinated expenditures by the Democratic party committees on behalf of President Clinton's campaign, even though the President was intimately involved in the ad campaign and the ads were designed to promote the President's electoral prospects. Mann Expert Rep. at 18.[12/] Rather, the party argued that the advertisements could be treated like generic party advertising encouraging people to "vote Republican" or "vote Democrat" and could be financed as administrative expenses with a mix of soft and hard money, per the FEC allocation rules. Id. The party argued that this "issue advocacy" implicated neither limitations on party contributions and coordinated expenditures, nor the spending

[11/] During the past two election cycles, Professor Magleby supervised teams of academics who systematically monitored campaigns in many of the most competitive federal races. Data was collected from party and interest group leaders, broadcast stations, and political communications disseminated during the campaigns. Magleby Expert Rep. at 5, 11-12 & Apps. B-F.

[12/] See also Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, S. Rep. 105-167 at 107, 114, 8286 [hereinafter Thompson Comm. Rep.].

limits applicable to presidential candidates,[13] because the advertisements did not "in express terms advocate the election or defeat of a clearly identified candidate for federal office," Buckley, 424 U.S. at 44.[14] The Buckley Court, however, had neither required nor suggested that the financing of candidate and political party advertisements could be subject to federal campaign finance laws only if they used words of "express advocacy." Indeed, the Court stated that spending by candidates and political committees is "by definition, campaign related." Id.

Between July 1995 and June 1996, the Democratic National Committee ("DNC") spent an estimated $34 million on television advertisements in support of President Clinton's reelection under the guise of "issue advocacy," including $12 million in hard money and $22 million in soft money. Mann Expert Rep. at 18; 147 Cong. Rec. S3254 (April 2, 2001) (Ex. 1 to statement of Sen. Levin). The DNC was able to spend such a large proportion of soft money by transferring funds to state party committees, which were subject to more favorable FEC allocation ratios, and having the state committees purchase the ad time. 147 Cong. Rec. S3254 (April 2, 2001) (Ex. 1 to statement of Sen. Levin). The Republican National Committee ("RNC") quickly followed suit, announcing in May 1996 a $20 million "issue advocacy" advertising campaign with the explicit purpose of showing

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[13] The Presidential Election Campaign Fund Act provides certain public funding for a presidential candidate's general election campaign where the candidate, inter alia, agrees to limit campaign spending and the acceptance of certain contributions. See generally 26 U.S.C. 9001 et seq.

[14] The advantage to such an approach was described in a statement to donors by President Clinton himself:

> [W]e even gave up one or two of our fundraisers at the end of the year to try to get more money to the Democratic Party rather than my campaign. My original strategy had been to raise all the money for my campaign this year, so I could spend all my money next year being president, running for president, and raising money for the Senate and House Committee and for the Democratic Party.
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> And then we realized that we could run these ads through the Democratic Party, which meant that we could raise money in twenty and fifty and hundred thousand dollar lots, and we didn't have to do it all in thousand dollars. And run down you know what I can spend which is limited by law. So that's what we've done. But I have to tell you I'm very grateful to you. The contributions you have made in this have made a huge difference.

Thompson Comm. Rep. at 62.

"'the differences between Dole and Clinton and between Republicans and Democrats on the issues facing our country, so we can engage full-time in one of the most consequential elections in our history.'" Mann Expert Rep. at 20; 147 Cong. Rec. S3254 (April 2, 2001) (Ex. 1 to statement of Sen. Levin). The RNC's presidential candidate-specific ads, like the DNC's, were targeted to key battleground states for the presidential election and financed with a mix of hard and soft money.[15] Mann Expert Rep. at 19-20; Thompson Comm. Rep. (Minority Views) at 8299, 8366. The parties also began using the same strategy to support congressional candidates, spending a mix of hard and soft money on "issue advocacy" to support their campaigns. Mann Expert Rep. at 20; Lamson Decl. ¶ 9 [DEV 7-Tab 26] (describing "issue ad" campaign in Montana).

By the end of the 1996 election, the national parties' total soft money spending reached $272 million, more than triple their soft money spending in the 1992 election. Soft money spending now constituted 30% of the national party committees' total spending. Mann Expert Rep. at 21 & Tbl. 2. The national party committees used the state party committees as vehicles for implementing their newly developed issue advocacy strategy and transferred $115 million in soft money to state party committees, where more favorable FEC allocation ratios permitted a larger percentage of soft money to be used. Mann Expert Rep. at 22; Krasno & Sorauf Expert Rep. at 10-11, 34.

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[15] One of the "issue ads" run by the RNC was called "The Story":

> (Audio of Bob Dole:) We have a moral obligation to give our children an America with the opportunity and values of the nation we grew up in. (Voice Over:) Bob Dole grew up in Russell, Kansas. From his parents he learned the value of hard work, honesty and responsibility. So when his country called . . . he answered. He was seriously wounded in combat. Paralyzed, he underwent nine operations. (Audio of Bob Dole:) I went around looking for a miracle that would make me whole again. (Voice Over:) The doctors said he'd never walk again. But after 39 months, he proved them wrong. (Audio of Elizabeth Dole:) He persevered, he never gave up. He fought his way back from total paralysis. (Voice Over:) Like many Americans, his life experience and values serve as a strong moral compass. The principle of work to replace welfare. The principle of accountability to strengthen our criminal justice system. The principle of discipline to end wasteful Washington spending. (Voice of Bob Dole:) It all comes down to values. What you believe in. What you sacrifice for. And what you stand for.

Thompson Comm. Rep. at 4014; see Selected Party Soft Money Ads, App. A to Defs.' Mem., Tab 3, No. 1 (video).

The abuses of the campaign finance system by the political parties in the 1996 elections are well documented in the Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, S. Rep. No. 105-167 (6 vols.), Mar. 10, 1998, commonly referred to as the "Thompson Committee Report." The Thompson Committee investigated and reported its findings concerning the widespread fundraising abuses that occurred during the 1996 Presidential campaign, developing a factual record on which, it anticipated, other legislative committees could rely "in formulating legislative proposals." Thompson Comm. Rep. at 8. The Thompson Committee concluded that "soft money spending by political party committees eviscerates the ability of FECA to limit the funds contributed by individuals, corporations, or unions for the defeat or benefit of specific candidates." Id. at 4468. More specifically, it found that "the DNC deftly utilized state party committees in 1996 as a conduit to further increase their illegal expenditure of soft money on electioneering messages favoring the re-election of President Clinton, all the time claiming such advertisements consisted of pure issue advocacy outside the scope of the FECA." Id. at 4466-67; see also Thompson Comm. Rep. at 4564 (Minority Views) ("Both the Democratic and Republican Parties raised vast amounts of soft money from corporate, union and individual donors, and then used loopholes in the law to spend that money helping specific candidates. The biggest of these loopholes involves so-called issue advocacy, in which communications, paid for in whole or part with soft money, attack a candidate by name while claiming to be an issue discussion outside the reach of federal election laws.").

The Thompson Committee also documented the national parties' prevalent practice of providing access to important officeholders in exchange for large soft money contributions to the political parties. For instance, it found that the DNC provided large party donors with favors

including access to senior decision makers, and noted that this policy resulted in "a number of alarmingly unsavory characters" gaining access to the President. Thompson Comm. Rep. at 41. Examples of access given in exchange for large contributions to the DNC included the infamous White House "coffees," held for donors who made contributions to the Democratic Party averaging over $54,000 per person, id., prompting one contributor, who ultimately pled guilty to criminal violations related to his giving, to acknowledge, "'The White House is like a subway: You have to put in coins to open the gates.'" Id. at 783; see Krasno & Sorauf Expert Rep. at 8; see infra at Title I, pt. I.B.2.b.

The Thompson Committee Minority likewise observed that the practice of providing major contributors with "added access to decisionmakers in the legislative and executive branches of government" is "[o]ne of the most troubling aspects of the campaign finance system." Thompson Comm. Rep. at 4573. The Minority Report found that Republicans also "have openly offered contributors access to congressional and political figures in their party," citing, inter alia, a Republican invitation offering "a smorgasbord of benefits" available in exchange for a $250,000 contribution, including "sharing a table with the Senate or House committee chairman 'of [the donor's] choice.'" Id.; see id. at 7968-78 (describing numerous examples of special access given to large donors to the RNC).[16/]

The exploitation of soft money continued unabated after the 1996 election. During the 1998 midterm election cycle, the national parties spent $221 million in soft money, representing 34% of

[16/] For instance, the Minority reported that the RNC's two principal donor programs, Team 100, which required an initial contribution of $100,000 plus $25,000 over the next three years, and the Republican Eagles, which required members to contribute $15,000 annually, used promotional materials that "promised that participants in the Team 100 and Eagles programs would receive special access to high-ranking Republican elected officials, including governors, senators, and representatives." Id. at 7968. The Minority quoted a memorandum from an RNC aide to the chairman of Team 100, stating that the RNC was working on getting a "'hot'" contributor "'an appointment with [Representative] Dick Armey, so we can get his other $50,000.'" Id. at 7973. The minority also quoted a fundraising letter to a prospective Team 100 member that reported that after Ed Lupberger, the CEO of Entergy, joined Team 100, Haley Barbour escorted him to four legislative meetings "'that turned out to be very significant in the legislation affecting public utility holding companies. In fact, it made Ed a hero in his industry.'" Id.

their total spending. Mann Expert Rep. at 23 & Tbl. 2. By the 2000 election, the national parties' soft money spending nearly doubled once more, reaching $498 million, constituting 42% of the national party committees' total spending. Id. at 24. The national party committees, through their state parties, once again made "issue ads" a central component of the presidential campaigns,[17] as well as congressional races,[18] in competitive states. Id. at 25-26 (citing studies); see Krasno & Sorauf Expert Rep. at 30.

Thus, as concluded in the academic work of one of *plaintiffs'* experts, the huge increase in raising and spending of soft money, from about 9% of total spending in 1980 to 42% in 2000, was neither the result of a sudden interest by party committees in increasing their administrative expenses for purposes of, for example, party building activities, nor was it the result of merely an expanded interest in state and local elections; rather, the spending was undertaken to influence federal elections. See LaRaja Cross Tr. (Oct. 15, 2002) at 68, 72-73, 178 & Ex. 3; Mann Expert Rep. at 26.

The practices employed by the parties in raising soft money demonstrate that donors are well aware that the parties raise the funds in order to influence federal elections. The House and Senate

[17] Mann Expert Rep. at 24; see Biersack Decl. Tbl. 8 [DEV 6-Tab 6];

[18] "Issue ads" in congressional races typically praised or criticized a candidate for his or her actions or character, then asked the audience to "tell" or "ask" the candidate to do something. See, e.g., Selected Party Soft Money Ads, App. A to Defs.' Mem., Tab 3 (video); Chapin Decl. ¶¶ 8-11 [DEV 6-Tab 12] (describing Florida 8th Cong. Dist. "issue ad" campaigns).

[19] Soft money was also transferred to state parties for get-out-the-vote and voter mobilization, but those activities likewise have a significant effect on federal elections. See, e.g., Mann Expert Rep. at 25;

national party committees regularly use Members of Congress, through direct solicitations and fund-raising events,[20] to raise soft and hard money simultaneously from individuals, corporations, and unions, and donors recognize little distinction between the two.[21] Indeed, an innovation that gained prominence in 2000 and only emphasized the intended use of soft money in federal elections, was the creation of "joint fundraising" or "victory" committees, established jointly by particular federal candidates and their party committees. Through such entities a donor can write a single check to the joint fundraising committee and have the funds allocated according to applicable legal limits between the candidate and the party committee's hard and soft money accounts. Mann Expert Rep. at 30; Magleby Expert Rep. at 37; Krasno & Sorauf Expert Rep. at 13; ___

Not surprisingly, in their various, continuing efforts to raise increasing amounts of soft money for use in federal elections, the parties have also continued their practices of enticing donors with opportunities for access to political leaders and decisionmakers in exchange for donations.[22]

The risks of corruption that Congress has found to be inherent in an unregulated, privately-funded campaign finance system are apparent from the abuses related to soft money. The soft money regime has permitted corporations and labor unions to inject millions upon millions of dollars from their general treasuries into the federal election process in direct contravention of

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[20] ___

[21] Randlett Decl. ¶ 7 [DEV 8-Tab 32] (Members of Congress raise soft money to help with federal campaigns, not party-building); Rozen Decl. ¶ 12 [DEV 8-Tab 33] ("Donors . . . understand that if a federal officeholder is raising soft money . . . they are raising it for federal uses, namely to help . . . federal candidates."); Buttenweiser Decl. ¶ 15 [DEV 6-Tab 11] (little difference between hard and soft money); Simon Decl. ¶ 9 [DEV 9-Tab 37] (donors told by candidates that soft money donation is "fairly close" to direct campaign contribution).

[22] _____

congressional intent, and it has permitted both individual and organizational donors effectively to make donations to influence federal elections that vastly exceed the contribution limits the Supreme Court upheld in Buckley. As the record developed herein makes clear, and as we discuss further below, exploitation and abuse of soft money has created a system in which large soft money donors to the political parties are rewarded with access to candidates and officeholders, candidates and officeholders feel obligated to large party donors, and potential donors accede to requests for large donations because they believe it is necessary in order to avoid adverse legislative consequences.[23/]

In short, since 1980, the party committees have increasingly exploited soft money as a means of circumventing the contribution limits and funding source prohibitions set forth in FECA. Although soft money originated as a limited exception to permit the parties to support activities that were not linked directly to electing or defeating a particular federal candidate, the national parties, working primarily through the state parties, have evaded FECA by spending enormous quantities of soft money to influence federal elections money raised in amounts exceeding FECA's contribution limits and obtained from sources prohibited under FECA. Mann Expert Rep. at 26.

[23/] See infra; see also, e.g., Bumpers Decl. ¶¶ 18-23 [DEV 6-Tab 10] (explaining that soft money donations can buy access to officeholders and get phone calls to officeholders returned, and that there is often "an expectation of reciprocation where donations to the party are made"); Simpson Decl. ¶¶ 8-12 [DEV 9-Tab 38] ("[b]ig labor and big business use large soft money donations to corrupt the system to the detriment of the little guy"; "[l]arge donors of both hard and soft money receive special treatment"; recounting instances in which Senators' votes and legislative priorities were affected by the fear of losing future donations); Rudman Decl. ¶ 9 [DEV 8-Tab 34] ("[l]arge soft money contributions in fact distort the legislative process. They affect what gets done and how it gets done"); Kolb Decl. ¶ 9 & Ex. 6 [DEV 7-Tab 24] (poll of senior executives shows that pressure is placed on business leaders to make large contributions, and that the main reasons such contributions are made is fear of adverse legislative consequences and to obtain access to lawmakers); Hassenfeld Decl. ¶¶15-16 [DEV 6-Tab 17] (many corporate donors "view large soft money donations as a cost of doing business, and frankly, a good investment relative to the potential economic benefit to their business");

Hickmott Decl. ¶ 9 [DEV 6-Tab 19]("[C]orporations, labor unions and individuals make soft money contributions to national political parties and federal candidate PACs, including joint fundraising committees, to influence the legislative process for their business purposes.").