SUPREME COURT OF THE UNITED STATES

Nos. 02–1674, 02–1675, 02–1676, 02–1702, 02–1727, 02–1733, 02–1734; 02–1740, 02–1747, 02–1753, 02–1755, AND 02–1756

MITCH MCCONNELL, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1674 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS
02–1675 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS
02–1676 *v.*
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

JOHN MCCAIN, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1702 *v.*
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPELLANTS
02–1727 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIGHT TO LIFE COMMITTEE, INC., ET AL., APPELLANTS
02–1733 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

AMERICAN CIVIL LIBERTIES UNION, APPELLANTS
02–1734 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

VICTORIA JACKSON GRAY ADAMS, ET AL., APPELLANTS
02–1740 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

RON PAUL, UNITED STATES CONGRESSMAN, ET AL., APPELLANTS
02–1747 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CALIFORNIA DEMOCRATIC PARTY, ET AL., APPELLANTS
02–1753 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL., APPELLANTS
02–1755 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., APPELLANTS
02–1756 *v.*
FEDERAL ELECTION COMMISSION, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December 10, 2003]

JUSTICE STEVENS and JUSTICE O'CONNOR delivered the opinion of the Court with respect to BCRA Titles I and II.*

The Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81, contains a series of amendments to the Federal Election Campaign Act of 1971 (FECA), 86 Stat. 11, as amended, 2 U. S. C. A. §431 *et seq.* (main ed. and Supp. 2003), the Communications Act of 1934, 48 Stat. 1088, as

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*JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join this opinion in its entirety.

amended, 47 U. S. C. A. §315, and other portions of the United States Code, 18 U. S. C. A. §607 (Supp. 2003), 36 U. S. C. A. §§510–511, that are challenged in these cases.[1] In this opinion we discuss Titles I and II of BCRA. The opinion of the Court delivered by THE CHIEF JUSTICE, *post,* p. ___, discusses Titles III and IV, and the opinion of the Court delivered by JUSTICE BREYER, *post*, p. ___, discusses Title V.

I

More than a century ago the "sober-minded Elihu Root" advocated legislation that would prohibit political contributions by corporations in order to prevent "'the great aggregations of wealth, from using their corporate funds, directly or indirectly,'" to elect legislators who would "'vote for their protection and the advancement of their interests as against those of the public.'" *United States* v. *Automobile Workers,* 352 U. S. 567, 571 (1957) (quoting E. Root, Addresses on Government and Citizenship 143 (R. Bacon & J. Scott eds. 1916)). In Root's opinion, such legislation would "'strik[e] at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government.'" 352 U. S., at 571. The Congress of the United States has repeatedly enacted legislation endorsing Root's judgment.

BCRA is the most recent federal enactment designed "to purge national politics of what was conceived to be the

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[1] The parties to the litigation are described in the findings of the District Court. 251 F. Supp. 2d 176, 221–226 (DC 2003) *(per curiam).* For the sake of clarity, we refer to the parties who challenged the law in the District Court as the "plaintiffs," referring to specific plaintiffs by name where necessary. We refer to the parties who intervened in defense of the law as the "intervenor-defendants."

pernicious influence of 'big money' campaign contributions." *Id.,* at 572. As Justice Frankfurter explained in his opinion for the Court in *Automobile Workers*, the first such enactment responded to President Theodore Roosevelt's call for legislation forbidding all contributions by corporations "'to any political committee or for any political purpose.'" *Ibid.* (quoting 40 Cong. Rec. 96 (1906)). In his annual message to Congress in December 1905, President Roosevelt stated that "'directors should not be permitted to use stockholders' money'" for political purposes, and he recommended that "'a prohibition'" on corporate political contributions "'would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.'" 352 U. S., at 352. The resulting 1907 statute completely banned corporate contributions of "money . . . in connection with" any federal election. Tillman Act, ch. 420, 34 Stat. 864. Congress soon amended the statute to require the public disclosure of certain contributions and expenditures and to place "maximum limits on the amounts that congressional candidates could spend in seeking nomination and election." *Automobile Workers, supra*, at 575–576.

In 1925 Congress extended the prohibition of "contributions" "to include 'anything of value,' and made acceptance of a corporate contribution as well as the giving of such a contribution a crime." *Federal Election Comm'n* v. *National Right to Work Comm.,* 459 U. S. 197, 209 (1982) (citing Federal Corrupt Practices Act, 1925, §§301, 313, 43 Stat. 1070, 1074). During the debates preceding that amendment, a leading Senator characterized "'the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions'" as "'one of the great political evils of the time.'" *Automobile Workers, supra*, at 576 (quoting 65 Cong. Rec. 9507–9508 (1924)). We upheld the amended statute against a constitutional challenge, observing that "[t]he power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." *Burroughs* v. *United States,* 290 U. S. 534, 547 (1934).

Congress' historical concern with the "political potentialities of wealth" and their "untoward consequences for the democratic process," *Automobile Workers*, *supra*, at 577–578, has long reached beyond corporate money. During and shortly after World War II, Congress reacted to the "enormous financial outlays" made by some unions in connection with national elections. 352 U. S., at 579. Congress first restricted union contributions in the Hatch Act, 18 U. S. C. §610,[2] and it later prohibited "union contributions in connection with federal elections . . . altogether." *National Right to Work, supra*, at 209 (citing War Labor Disputes Act (Smith-Connally Anti-Strike Act), ch. 144, §9, 57 Stat. 167). Congress subsequently extended that prohibition to cover unions' election-related expenditures as well as contributions, and it broadened the coverage of federal campaigns to include both primary and general elections. Labor Management Relations Act, 1947

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[2] The Hatch Act also limited both the amount political committees could expend and the amount they could receive in contributions. Act of July 19, 1940, ch. 640, 54 Stat. 767. Senator Bankhead, in offering the amendment from the Senate floor, said:

"'We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue.'" *United States* v. *Automobile Workers,* 352 U. S. 567, 577–578 (1957) (quoting 86 Cong. Rec. 2720 (1940)).

(Taft-Hartley Act), 61 Stat. 136. See *Automobile Workers, supra*, at 578–584. During the consideration of those measures, legislators repeatedly voiced their concerns regarding the pernicious influence of large campaign contributions. See 93 Cong. Rec. 3428, 3522 (1947); H. R. Rep. No. 245, 80th Cong., 1st Sess. (1947); S. Rep. No. 1, 80th Cong., 1st Sess., pt. 2 (1947); H. R. Rep. No. 2093, 78th Cong., 2d Sess. (1945). As we noted in a unanimous opinion recalling this history, Congress' "careful legislative adjustment of the federal election laws, in a 'cautious advance, step by step,' to account for the particular legal and economic attributes of corporations and labor organizations warrants considerable deference." *National Right to Work,* 352 U. S., at 209 (citations omitted).

In early 1972 Congress continued its steady improvement of the national election laws by enacting FECA, 86 Stat. 3. As first enacted, that statute required disclosure of all contributions exceeding $100 and of expenditures by candidates and political committees that spent more than $1,000 per year. *Id.*, at 11–19. It also prohibited contributions made in the name of another person, *id.,* at 19, and by Government contractors, *id.,* at 10. The law ratified the earlier prohibition on the use of corporate and union general treasury funds for political contributions and expenditures, but it expressly permitted corporations and unions to establish and administer separate segregated funds (commonly known as political action committees, or PACs) for election-related contributions and expenditures. *Id.*, at 12–13.[3] See *Pipefitters* v. *United States,* 407 U. S. 385, 409–410 (1972).

[3] As a general rule, FECA permits corporations and unions to solicit contributions to their PACs from their shareholders or members, but not from outsiders. 2 U. S. C. §§441b(b)(4)(A), (C); see *Federal Election Comm'n* v. *National Right to Work Comm.,* 459 U. S. 197, 198–199, and n. 1 (1982).

As the 1972 presidential elections made clear, however, FECA's passage did not deter unseemly fundraising and campaign practices. Evidence of those practices persuaded Congress to enact the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263. Reviewing a constitutional challenge to the amendments, the Court of Appeals for the District of Columbia Circuit described them as "by far the most comprehensive . . . reform legislation [ever] passed by Congress concerning the election of the President, Vice-President and members of Congress." *Buckley* v. *Valeo*, 519 F. 2d 821, 831 (1975) (en banc) *(per curiam)*.

The 1974 amendments closed the loophole that had allowed candidates to use an unlimited number of political committees for fundraising purposes and thereby to circumvent the limits on individual committees' receipts and disbursements. They also limited individual political contributions to any single candidate to $1,000 per election, with an overall annual limitation of $25,000 by any contributor; imposed ceilings on spending by candidates and political parties for national conventions; required reporting and public disclosure of contributions and expenditures exceeding certain limits; and established the Federal Election Commission (FEC) to administer and enforce the legislation. *Id.*, at 831–834.

The Court of Appeals upheld the 1974 amendments almost in their entirety.[4] It concluded that the clear and compelling interest in preserving the integrity of the electoral process provided a sufficient basis for sustaining the substantive provisions of the Act. *Id.*, at 841. The

[4] The court held that one disclosure provision was unconstitutionally vague and overbroad. *Buckley* v. *Valeo*, 519 F. 2d 821, 832 (CADC 1975) (en banc) *(per curiam)* (invalidating 2 U. S. C. §437a (1970 ed., Supp. V)). No appeal was taken from that holding. *Buckley* v. *Valeo*, 424 U. S. 1, 10, n. 7 (1976) *(per curiam)*.

court's opinion relied heavily on findings that large contributions facilitated access to public officials[5] and described methods of evading the contribution limits that had enabled contributors of massive sums to avoid disclosure. *Id.*, at 837–841.[6]

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[5] The Court of Appeals found:

"Large contributions are intended to, and do, gain access to the elected official after the campaign for consideration of the contributor's particular concerns. Senator Mathias not only describes this but also the corollary, that the feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process." *Buckley*, 519 F. 2d, at 838 (footnotes omitted).

The court also noted:

"Congress found and the District Court confirmed that such contributions were often made for the purpose of furthering business or private interests by facilitating access to government officials or influencing governmental decisions, and that, conversely, elected officials have tended to afford special treatment to large contributors. *See* S. Rep. No. 93–689, 93d Cong., 2d Sess. 4–5; Findings I, ¶¶108, 110, 118, 170." *Id.*, at 838, n. 32.

Citing further evidence of corruption, the court explained:

"The disclosures of illegal corporate contributions in 1972 included the testimony of executives that they were motivated by the perception that this was necessary as a 'calling card, something that would get us in the door and make our point of view heard,' *Hearings before the Senate Select Comm. on Presidential Campaign Activities*, 93d Cong., 1st Sess. 5442 (1973) (Ashland Oil Co.—Orin Atkins, Chairman) or 'in response to pressure for fear of a competitive disadvantage that might result,' *id.* at 5495, 5514 (American Airlines—George Spater, former chairman); *see* Findings I, ¶105. The record before Congress was replete with specific examples of improper attempts to obtain governmental favor in return for large campaign contributions. *See* Findings I, ¶¶159–64." *Id.*, at 839, n. 37.

[6] The court cited the intricate scheme of the American Milk Producers, Inc., as an example of the lengths to which contributors went to avoid their duty to disclose:

"Since the milk producers, on legal advice, worked on a $2500 limit per committee, they evolved a procedure, after consultation in November 1970 with Nixon fund raisers, to break down [their $2 million

The Court of Appeals upheld the provisions establishing contribution and expenditure limitations on the theory that they should be viewed as regulations of conduct rather than speech. *Id.*, at 840–841 (citing *United States* v. *O'Brien,* 391 U. S. 367, 376–377 (1968)). This Court, however, concluded that each set of limitations raised serious—though different—concerns under the First Amendment. *Buckley* v. *Valeo*, 424 U. S. 1, 14–23 (1976) *(per curiam)*. We treated the limitations on candidate and individual expenditures as direct restraints on speech, but we observed that the contribution limitations, in contrast, imposed only "a marginal restriction upon the contributor's ability to engage in free communication." *Id.*, at 20–21. Considering the "deeply disturbing examples" of corruption related to candidate contributions discussed in the Court of Appeals' opinion, we determined that limiting contributions served an interest in protecting "the integrity of our system of representative democracy." *Id.*, at 26–27. In the end, the Act's primary purpose—"to limit the actuality and appearance of corruption resulting from large individual financial contributions"—provided "a constitutionally sufficient justification for the $1,000 contribution limitation." *Id.,* at 26.

We prefaced our analysis of the $1,000 limitation on expenditures by observing that it broadly encompassed every expenditure "'relative to a clearly identified candidate.'" *Id.*, at 39 (quoting 18 U. S. C. §608(e)(1) (1970 ed.,

donation] into numerous smaller contributions to hundreds of committees in various states which could then hold the money for the President's reelection campaign, so as to permit the producers to meet independent reporting requirements without disclosure." *Id.,* at 839, n. 36.

The milk producers contributed large sums to the Nixon campaign "in order to gain a meeting with White House officials on price supports." *Ibid.*

Supp. IV)). To avoid vagueness concerns we construed that phrase to apply only to "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." 424 U. S., at 42–44. We concluded, however, that as so narrowed, the provision would not provide effective protection against the dangers of *quid pro quo* arrangements, because persons and groups could eschew expenditures that expressly advocated the election or defeat of a clearly identified candidate while remaining "free to spend as much as they want to promote the candidate and his views." *Id.*, at 45. We also rejected the argument that the expenditure limits were necessary to prevent attempts to circumvent the Act's contribution limits, because FECA already treated expenditures controlled by or coordinated with the candidate as contributions, and we were not persuaded that independent expenditures posed the same risk of real or apparent corruption as coordinated expenditures. *Id.*, at 46–47. We therefore held that Congress' interest in preventing real or apparent corruption was inadequate to justify the heavy burdens on the freedoms of expression and association that the expenditure limits imposed.

We upheld all of the disclosure and reporting requirements in the Act that were challenged on appeal to this Court after finding that they vindicated three important interests: providing the electorate with relevant information about the candidates and their supporters; deterring actual corruption and discouraging the use of money for improper purposes; and facilitating enforcement of the prohibitions in the Act. *Id.*, at 66–68. In order to avoid an overbreadth problem, however, we placed the same narrowing construction on the term "expenditure" in the disclosure context that we had adopted in the context of the expenditure limitations. Thus, we construed the reporting requirement for persons making expenditures of more than $100 in a year "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80 (footnote omitted).

Our opinion in *Buckley* addressed issues that primarily related to contributions and expenditures by individuals, since none of the parties challenged the prohibition on contributions by corporations and labor unions. We noted, however, that the statute authorized the use of corporate and union resources to form and administer segregated funds that could be used for political purposes. *Id.*, at 28–29, n. 31; see also n. 3, *supra*.

Three important developments in the years after our decision in *Buckley* persuaded Congress that further legislation was necessary to regulate the role that corporations, unions, and wealthy contributors play in the electoral process. As a preface to our discussion of the specific provisions of BCRA, we comment briefly on the increased importance of "soft money," the proliferation of "issue ads," and the disturbing findings of a Senate investigation into campaign practices related to the 1996 federal elections.

Soft Money

Under FECA, "contributions" must be made with funds that are subject to the Act's disclosure requirements and source and amount limitations. Such funds are known as "federal" or "hard" money. FECA defines the term "contribution," however, to include only the gift or advance of anything of value "made by any person for the purpose of influencing any election for *Federal* office." 2 U. S. C. §431(8)(A)(i) (emphasis added). Donations made solely for the purpose of influencing state or local elections are therefore unaffected by FECA's requirements and prohibitions. As a result, prior to the enactment of BCRA, federal law permitted corporations and unions, as well as individuals who had already made the maximum permissible contributions to federal candidates, to contribute "nonfederal money"—also known as "soft money"—to political parties for activities intended to influence state or local elections.

Shortly after *Buckley* was decided, questions arose concerning the treatment of contributions intended to influence both federal and state elections. Although a literal reading of FECA's definition of "contribution" would have required such activities to be funded with hard money, the FEC ruled that political parties could fund mixed-purpose activities—including get-out-the-vote drives and generic party advertising—in part with soft money.[7] In 1995 the FEC concluded that the parties could also use soft money to defray the costs of "legislative advocacy media advertisements," even if the ads mentioned the name of a federal candidate, so long as they did not expressly advocate the candidate's election or defeat. FEC Advisory Op. 1995–25.

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[7] In 1977 the FEC promulgated a rule allowing parties to allocate their administrative expenses "on a reasonable basis" between accounts containing funds raised in compliance with FECA and accounts containing nonfederal funds, including corporate and union donations. 11 CFR §102.6(a)(2). In advisory opinions issued in 1978 and 1979, the FEC allowed parties similarly to allocate the costs of voter registration and get-out-the-vote drives between federal and nonfederal accounts. FEC Advisory Op. 1978–10; FEC Advisory Op. 1979–17. See 251 F. Supp. 2d, at 195–197 *(per curiam)*.

In 1990 the FEC clarified the phrase "on a reasonable basis" by promulgating fixed allocation rates. 11 CFR §106.5 (1991). The regulations required the Republican National Committee (RNC) and Democratic National Committee (DNC) to pay for at least 60% of mixed-purpose activities (65% in presidential election years) with funds from their federal accounts. §106.5(b)(2). By contrast, the regulations required state and local committees to allocate similar expenditures based on the ratio of federal to nonfederal offices on the State's ballot, §106.5(d)(1), which in practice meant that they could expend a substantially greater proportion of soft money than national parties to fund mixed-purpose activities affecting both federal and state elections. See 251 F. Supp. 2d, at 198–199 *(per curiam)*.

As the permissible uses of soft money expanded, the amount of soft money raised and spent by the national political parties increased exponentially. Of the two major parties' total spending, soft money accounted for 5% ($21.6 million) in 1984, 11% ($45 million) in 1988, 16% ($80 million) in 1992, 30% ($272 million) in 1996, and 42% ($498 million) in 2000.[8] The national parties transferred large amounts of their soft money to the state parties, which were allowed to use a larger percentage of soft money to finance mixed-purpose activities under FEC rules.[9] In the year 2000, for example, the national parties diverted $280 million—more than half of their soft money—to state parties.

Many contributions of soft money were dramatically larger than the contributions of hard money permitted by FECA. For example, in 1996 the top five corporate soft-money donors gave, in total, more than $9 million in non-federal funds to the two national party committees.[10] In the most recent election cycle the political parties raised almost $300 million—60% of their total soft-money fund-raising—from just 800 donors, each of which contributed a minimum of $120,000.[11] Moreover, the largest corporate donors often made substantial contributions to both parties.[12] Such practices corroborate evidence indicating that many corporate contributions were motivated by a desire for access to candidates and a fear of being placed at a

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[8] 1 Defs. Exhs., Tab 1, Tbl. 2 (report of Thomas E. Mann, Chair & Sr. Fellow, Brookings Institution (hereinafter Mann Expert Report)); 251 F. Supp. 2d, at 197–201 *(per curiam).*

[9] Mann Expert Report 26; 251 F. Supp. 2d, at 441 (Kollar-Kotelly, J.).

[10] *Id.,* at 494 (Kollar-Kotelly, J.).

[11] Mann Expert Report 24.

[12] In the 2000 election cycle, 35 of the 50 largest soft-money donors gave to both parties; 28 of the 50 gave more than $100,000 to both parties. Mann Expert Report Tbl. 6; see also 251 F. Supp. 2d, at 509 (Kollar-Kotelly, J.); *id.*, at 785, n. 77 (Leon, J.).

disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties.[13]

Not only were such soft-money contributions often designed to gain access to federal candidates, but they were in many cases solicited by the candidates themselves. Candidates often directed potential donors to party committees and tax-exempt organizations that could legally accept soft money. For example, a federal legislator running for reelection solicited soft money from a supporter by advising him that even though he had already "contributed the legal maximum" to the campaign committee, he could still make an additional contribution to a joint program supporting federal, state, and local candidates of his party.[14] Such solicitations were not uncommon.[15]

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[13] A former chief executive officer of a large corporation explained:

"Business and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute (enough), competing interests who do contribute generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union." App. 283, ¶9 (declaration of Gerald Greenwald, United Airlines (hereinafter Greenwald Decl.)).

Amici Curiae Committee for Economic Development and various business leaders attest that corporate soft-money contributions are "coerced and, at bottom, wholly commercial" in nature, and that "[b]usiness leaders increasingly wish to be freed from the grip of a system in which they fear the adverse consequences of refusing to fill the coffers of the major parties." Brief for Committee for Economic Development et al. as *Amici Curiae* 28.

[14] See 251 F. Supp. 2d, at 480 (Kollar-Kotelly, J.); *id.*, at 842 (Leon, J.).

[15] See *id.*, at 479–480 (Kollar-Kotelly, J.); *id.*, at 842–843 (Leon, J.). One former party official explained to the District Court:

"'Once you've helped a federal candidate by contributing hard money to his or her campaign, you are sometimes asked to do more for the candidate by making donations of hard and/or soft money to the na-

The solicitation, transfer, and use of soft money thus enabled parties and candidates to circumvent FECA's limitations on the source and amount of contributions in connection with federal elections.

Issue Advertising

In *Buckley* we construed FECA's disclosure and reporting requirements, as well as its expenditure limitations, "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." 424 U. S., at 80 (footnote omitted). As a result of that strict reading of the statute, the use or omission of "magic words" such as "Elect John Smith" or "Vote Against Jane Doe" marked a bright statutory line separating "express advocacy" from "issue advocacy." See *id.*, at 44, n. 52. Express advocacy was subject to FECA's limitations and could be financed only using hard money. The political parties, in other words, could not use soft money to sponsor ads that used any magic words, and corporations and unions could not fund such ads out of their general treasuries. So-called issue ads, on the other hand, not only could be financed with soft money, but could be aired without disclosing the identity of, or any other information about, their sponsors.

While the distinction between "issue" and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects. Both were used to advocate the election or defeat of clearly identified federal candidates, even though the so-called issue ads eschewed the use of magic words.[16]

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tional party committees, the relevant state party (assuming it can accept corporate contributions), or an outside group that is planning on doing an independent expenditure or issue advertisement to help the candidate's campaign.'" *Id.*, at 479 (Kollar-Kotelly, J.).

[16] *Id.*, at 532–537 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.). As

Little difference existed, for example, between an ad that urged viewers to "vote against Jane Doe" and one that condemned Jane Doe's record on a particular issue before exhorting viewers to "call Jane Doe and tell her what you think."[17] Indeed, campaign professionals testified that the most effective campaign ads, like the most effective commercials for products such as Coca-Cola, should, and did, avoid the use of the magic words.[18] Moreover, the conclusion that such ads were specifically intended to affect election results was confirmed by the fact that almost all of them aired in the 60 days immediately preceding a federal election.[19] Corporations and unions spent hundreds of millions of dollars of their general funds to pay for these ads,[20] and those expenditures, like soft-money dona-

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the former chair of one major advocacy organization's PAC put it, "'[i]t is foolish to believe there is any practical difference between issue advocacy and advocacy of a political candidate. What separates issue advocacy and political advocacy is a line in the sand drawn on a windy day.'" *Id.,* at 536–537 (Kollar-Kotelly, J.) (quoting Tanya K. Metaksa, Opening Remarks at the American Assn. of Political Consultants Fifth General Session on "Issue Advocacy," Jan. 17, 1997, p. 2); 251 F. Supp. 2d, at 878–879 (Leon, J.) (same).

[17] *Id.,* at 304 (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 534 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.).

[18] It is undisputed that very few ads—whether run by candidates, parties, or interest groups—used words of express advocacy. *Id.,* at 303 (Henderson, J.); *id.*, at 529 (Kollar-Kotelly, J.); *id.*, at 874 (Leon, J.). In the 1998 election cycle, just 4% of candidate advertisements used magic words; in 2000, that number was a mere 5%. App. 1334 (report of Jonathan S. Krasno, Yale University, & Frank J. Sorauf, University of Minnesota, pp. 53–54 (hereinafter Krasno & Sorauf Expert Report); see 1 Defs. Exhs., Tab 2, pp. 53–54).

[19] 251 F. Supp. 2d, at 564, and n. 6 (Kollar-Kotelly, J.) (citing report of Kenneth M. Goldstein, University of Wisconsin-Madison, App. A, Tbl. 16; see 3–R Defs. Exhs., Tab 7); Tr. of Oral Arg. 202–203; see also 251 F. Supp. 2d, at 305 (Henderson, J.).

[20] The spending on electioneering communications climbed dramati-

tions to the political parties, were unregulated under FECA. Indeed, the ads were attractive to organizations and candidates precisely because they were beyond FECA's reach, enabling candidates and their parties to work closely with friendly interest groups to sponsor so-called issue ads when the candidates themselves were running out of money.[21]

Because FECA's disclosure requirements did not apply to so-called issue ads, sponsors of such ads often used misleading names to conceal their identity. "Citizens for Better Medicare," for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers.[22] And "Republicans for Clean Air," which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals—brothers who together spent $25 million on ads supporting their favored candidate.[23]

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cally during the last decade. In the 1996 election cycle, $135 to $150 million was spent on multiple broadcasts of about 100 ads. In the next cycle (1997-1998), 77 organizations aired 423 ads at a total cost between $270 and $340 million. By the 2000 election, 130 groups spent over an estimated $500 million on more than 1,100 different ads. Two out of every three dollars spent on issue ads in the 2000 cycle were attributable to the two major parties and six major interest groups. *Id.,* at 303–304 (Henderson, J.) (citing Annenberg Public Policy Center, Issue Advertising in the 1999–2000 Election Cycle 1–15 (2001) (hereinafter Annenberg Report); see 38 Defs. Exhs., Tab 22); 251 F. Supp. 2d, at 527 (Kollar-Kotelly, J.) (same); *id.*, at 879 (Leon, J.) (same).

[21] *Id.,* at 540 (Kollar-Kotelly, J.) (quoting internal AFL-CIO Memorandum from Brian Weeks to Mike Klein, "Electronic Buy for Illinois Senator," (Oct. 9, 1996), AFL-CIO 005244); 251 F. Supp. 2d, at 886 (Leon, J.) (same).

[22] The association was known as the Pharmaceutical Research and Manufacturers of America (PhRMA). *Id.*, at 232 *(per curiam).*

[23] *Id.*, at 232–233. Other examples of mysterious groups included "Voters for Campaign Truth," "Aretino Industries," "Montanans for Common Sense Mining Laws," "American Seniors, Inc.," "American

While the public may not have been fully informed about the sponsorship of so-called issue ads, the record indicates that candidates and officeholders often were. A former Senator confirmed that candidates and officials knew who their friends were and "sometimes suggest[ed] that corporations or individuals make donations to interest groups that run 'issue ads.'"[24] As with soft-money contributions, political parties and candidates used the availability of so-called issue ads to circumvent FECA's limitations, asking donors who contributed their permitted quota of hard money to give money to nonprofit corporations to spend on "issue" advocacy.[25]

Senate Committee Investigation

In 1998 the Senate Committee on Governmental Affairs issued a six-volume report summarizing the results of an extensive investigation into the campaign practices in the 1996 federal elections. The report gave particular attention to the effect of soft money on the American political system, including elected officials' practice of granting special access in return for political contributions.

The committee's principal findings relating to Democratic Party fundraising were set forth in the majority's report, while the minority report primarily described

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Family Voices," App. 1355 (Krasno & Sorauf Expert Report 71–77), and the "Coalition to Make our Voices Heard," 251 F. Supp. 2d, at 538 (Kollar-Kotelly, J.). Some of the actors behind these groups frankly acknowledged that "'in some places it's much more effective to run an ad by the 'Coalition to Make Our Voices Heard' than it is to say paid for by 'the men and women of the AFL–CIO.'" *Ibid.* (Kollar-Kotelly, J.) (quoting report of David B. Magleby, Brigham Young University 18–19 (hereinafter Magleby Expert Report), App. 1484–1485).

[24] 251 F. Supp. 2d, at 518–519 (Kollar-Kotelly, J.).

[25] *Id.,* at 478–479 (Kollar-Kotelly, J.) (citing declaration of Robert Hickmott, Senior V. P., Smith-Free Group, ¶8 (hereinafter Hickmott Decl.); see 6–R Defs. Exhs., Tab 19, ¶8).

Republican practices. The two reports reached consensus, however, on certain central propositions. They agreed that the "soft money loophole" had led to a "meltdown" of the campaign finance system that had been intended "to keep corporate, union and large individual contributions from influencing the electoral process."[26] One Senator stated that "the hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble."[27]

The report was critical of both parties' methods of raising soft money, as well as their use of those funds. It concluded that both parties promised and provided special access to candidates and senior Government officials in exchange for large soft-money contributions. The Committee majority described the White House coffees that rewarded major donors with access to President Clinton,[28] and the courtesies extended to an international businessman named Roger Tamraz, who candidly acknowledged that his donations of about $300,000 to the DNC and to state parties were motivated by his interest in gaining the Federal Government's support for an oil-line project in the Caucasus.[29] The minority described the promotional

[26] S. Rep. No. 105–167, vol. 4, p. 4611 (1998) (hereinafter 1998 Senate Report); 5 *id.,* at 7515.

[27] 3 *id.,* at 4535 (additional views of Sen. Collins).

[28] 1 *id.,* at 41–42, 195–200. The report included a memorandum written by the DNC finance chairman suggesting the use of White House coffees and "overnights" to give major donors "quality time" with the President, and noted that the guests accounted for $26.4 million in contributions. *Id.*, at 194, 196.

[29] 2 *id.,* at 2913–2914, 2921. Despite concerns about Tamraz's background and a possible conflict with United States foreign policy interests, he was invited to six events attended by the President. *Id.*, at 2920–2921. Similarly, the minority noted that in exchange for Michael

materials used by the RNC's two principal donor programs, "Team 100" and the "Republican Eagles," which promised "special access to high-ranking Republican elected officials, including governors, senators, and representatives."[30] One fundraising letter recited that the chairman of the RNC had personally escorted a donor on appointments that "'turned out to be very significant in legislation affecting public utility holding companies'" and made the donor "'a hero in his industry.'"[31]

In 1996 both parties began to use large amounts of soft money to pay for issue advertising designed to influence federal elections. The Committee found such ads highly problematic for two reasons. Since they accomplished the same purposes as express advocacy (which could lawfully be funded only with hard money), the ads enabled unions, corporations, and wealthy contributors to circumvent protections that FECA was intended to provide. Moreover, though ostensibly independent of the candidates, the ads were often actually coordinated with, and controlled by, the campaigns.[32] The ads thus provided a means for evading FECA's candidate contribution limits.

The report also emphasized the role of state and local parties. While the FEC's allocation regime permitted national parties to use soft money to pay for up to 40% of the costs of both generic voter activities and issue advertising, they allowed state and local parties to use larger

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Kojima's contribution of $500,000 to the 1992 President's Dinner, he and his wife had been placed at the head table with President and Mrs. Bush. Moreover, Kojima received several additional meetings with the President, other administration officials, and United States embassy officials. 4 *id.,* at 5418, 5422, 5428.

[30] The former requires an initial contribution of $100,000, and $25,000 for each of the next three years; the latter requires annual contributions of $15,000. 5 *id.,* at 7968.

[31] *Id.*, at 7971.

[32] 1 *id.,* at 49; 3 *id.,* at 3997–4006.

percentages of soft money for those purposes.[33] For that reason, national parties often made substantial transfers of soft money to "state and local political parties for 'generic voter activities' that in fact ultimately benefit[ed] federal candidates because the funds for all practical purposes remain[ed] under the control of the national committees." The report concluded that "[t]he use of such soft money thus allow[ed] more corporate, union treasury, and large contributions from wealthy individuals into the system."[34]

The report discussed potential reforms, including a ban on soft money at the national and state party levels and restrictions on sham issue advocacy by nonparty groups.[35] The majority expressed the view that a ban on the raising of soft money by national party committees would effectively address the use of union and corporate general treasury funds in the federal political process only if it required that candidate-specific ads be funded with hard money.[36] The minority similarly recommended the elimination of soft-money contributions to political parties from individuals, corporations, and unions, as well as "reforms addressing candidate advertisements masquerading as issue ads."[37]

II

In BCRA, Congress enacted many of the committee's proposed reforms. BCRA's central provisions are designed to address Congress' concerns about the increasing use of soft money and issue advertising to influence federal elections. Title I regulates the use of soft money by politi-

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[33] *Id.*, at 4466.
[34] *Ibid.*
[35] *Id.*, at 4468–4470, 4480–4481, 4491–4494.
[36] *Id.*, at 4492.
[37] 6 *id.,* at 9394.

cal parties, officeholders, and candidates. Title II primarily prohibits corporations and labor unions from using general treasury funds for communications that are intended to, or have the effect of, influencing the outcome of federal elections.

Section 403 of BCRA provides special rules for actions challenging the constitutionality of any of the Act's provisions. 2 U. S. C. A. §437h note (Supp. 2003). Eleven such actions were filed promptly after the statute went into effect in March 2002. As required by §403, those actions were filed in the District Court for the District of Columbia and heard by a three-judge court. Section 403 directed the District Court to advance the cases on the docket and to expedite their disposition "to the greatest possible extent." The court received a voluminous record compiled by the parties and ultimately delivered a decision embodied in a two-judge *per curiam* opinion and three separate, lengthy opinions, each of which contained extensive commentary on the facts and a careful analysis of the legal issues. 251 F. Supp. 2d 176 (2003). The three judges reached unanimity on certain issues but differed on many. Their judgment, entered on May 1, 2003, held some parts of BCRA unconstitutional and upheld others. 251 F. Supp. 2d 948.

As authorized by §403, all of the losing parties filed direct appeals to this Court within 10 days. 2 U. S. C. A. §437h note. On June 5, 2003, we noted probable jurisdiction and ordered the parties to comply with an expedited briefing schedule and present their oral arguments at a special hearing on September 8, 2003. 539 U. S. ___. To simplify the presentation, we directed the parties challenging provisions of BCRA to proceed first on all issues, whether or not they prevailed on any issue in the District Court. *Ibid.* Mindful of §403's instruction that we expedite our disposition of these appeals to the greatest extent possible, we also consider each of the issues in order.

Accordingly, we first turn our attention to Title I of BCRA.

III

Title I is Congress' effort to plug the soft-money loophole. The cornerstone of Title I is new FECA §323(a), which prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money. 2 U. S. C. A. §441i(a) (Supp. 2003).[38] In short, §323(a) takes national parties out of the soft-money business.

The remaining provisions of new FECA §323 largely reinforce the restrictions in §323(a). New FECA §323(b) prevents the wholesale shift of soft-money influence from national to state party committees by prohibiting state and local party committees from using such funds for activities that affect federal elections. 2 U. S. C. A. §441i(b). These "Federal election activit[ies]," defined in new FECA §301(20)(A), are almost identical to the mixed-purpose activities that have long been regulated under the FEC's pre-BCRA allocation regime. 2 U. S. C. A. §431(20)(A). New FECA §323(d) reinforces these soft-money restrictions by prohibiting political parties from soliciting and donating funds to tax-exempt organizations that engage in electioneering activities. 2 U. S. C. A. §441i(d). New FECA §323(e) restricts federal candidates and officeholders from receiving, spending, or soliciting soft money in connection with federal elections and limits their ability to do so in connection with state and local elections. 2 U. S. C. A. §441i(e). Finally, new FECA

[38] The national party committees of the two major political parties are: the Republican National Committee (RNC); the Democratic National Committee (DNC); the National Republican Senatorial Committee (NRSC); the National Republican Congressional Committee (NRCC); the Democratic Senatorial Campaign Committee (DSCC); and the Democratic Congressional Campaign Committee (DCCC). 251 F. Supp. 2d, at 468 (Kollar-Kotelly, J.).

§323(f) prevents circumvention of the restrictions on national, state, and local party committees by prohibiting state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack federal candidates. 2 U. S. C. A. §441i(f).

Plaintiffs mount a facial First Amendment challenge to new FECA §323, as well as challenges based on the Elections Clause, U. S. Const., Art. I, §4, principles of federalism, and the equal protection component of the Due Process Clause. We address these challenges in turn.

A

In *Buckley* and subsequent cases, we have subjected restrictions on campaign expenditures to closer scrutiny than limits on campaign contributions. See, *e.g., Federal Election Comm'n* v. *Beaumont,* 539 U. S. ___, ___ (2003) (slip op., at 14); see also *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377, 387–388 (2000); *Buckley*, 424 U. S., at 19. In these cases we have recognized that contribution limits, unlike limits on expenditures, "entai[l] only a marginal restriction upon the contributor's ability to engage in free communication." *Id.,* at 20; see also, *e.g., Beaumont*, *supra,* at ___ (slip op., at 14); *Shrink Missouri*, *supra,* at 386–388. In *Buckley* we said that:

> "A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of the contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organiza-

> tion thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor." 424 U. S., at 21 (footnote omitted).

Because the communicative value of large contributions inheres mainly in their ability to facilitate the speech of their recipients, we have said that contribution limits impose serious burdens on free speech only if they are so low as to "preven[t] candidates and political committees from amassing the resources necessary for effective advocacy." *Ibid.*

We have recognized that contribution limits may bear "more heavily on the associational right than on freedom to speak," *Shrink Missouri*, *supra*, at 388, since contributions serve "to affiliate a person with a candidate" and "enabl[e] like-minded persons to pool their resources," *Buckley*, 424 U. S., at 22. Unlike expenditure limits, however, which "preclud[e] most associations from effectively amplifying the voice of their adherents," contribution limits both "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates," and allow associations "to aggregate large sums of money to promote effective advocacy." *Ibid.* The "overall effect" of dollar limits on contributions is "merely to require candidates and political committees to raise funds from a greater number of persons." *Id.,* at 21–22. Thus, a contribution limit involving even "'significant interference'" with associational rights is nevertheless valid if it satisfies the "lesser demand" of being "'closely drawn'" to match a "'sufficiently important interest.'" *Beaumont*, *supra*, at ___ (slip op., at 15) (quoting *Shrink Missouri*, *supra*, at 387–388).[39]

Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." *National Right to Work,* 459 U. S., at 208; see also *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.,* 533 U. S. 431, 440–441 (2001) *(Colorado II).* We have said that these interests directly implicate "'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.'" *National Right to Work, supra*, at 208 (quoting *Automobile Workers,* 352 U. S., at 570). Because the electoral process is the very "means through which a free society democratically translates political speech into concrete governmental action," *Shrink Missouri*, 528 U. S., at 401 (BREYER, J., concurring), contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate. For that

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[39] JUSTICE KENNEDY accuses us of engaging in a sleight of hand by conflating "unseemly corporate speech" with the speech of political parties and candidates, and then adverting to the "corporate speech rationale as if it were the linchpin of the litigation." *Post*, at 7 (opinion concurring in part and dissenting in part). This is incorrect. The principles set forth here and relied upon in assessing Title I are the same principles articulated in *Buckley* and its progeny that regulations of contributions to candidates, parties, and political committees are subject to less rigorous scrutiny than direct restraints on speech—including "unseemly corporate speech."

reason, when reviewing Congress' decision to enact contribution limits, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words 'strict scrutiny.'" *Id.*, at 400 (BREYER, J., concurring). The less rigorous standard of review we have applied to contribution limits (*Buckley*'s "closely drawn" scrutiny) shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise. It also provides Congress with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process.

Our application of this less rigorous degree of scrutiny has given rise to significant criticism in the past from our dissenting colleagues. See, *e.g.*, *Shrink Missouri*, 528 U. S., at 405–410 (KENNEDY, J., dissenting); *id.*, at 410–420 (THOMAS, J., dissenting); *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n,* 518 U. S. 604, 635–644 (1996) *(Colorado I)* (THOMAS, J., dissenting). We have rejected such criticism in previous cases for the reasons identified above. We are also mindful of the fact that in its lengthy deliberations leading to the enactment of BCRA, Congress properly relied on the recognition of its authority contained in *Buckley* and its progeny. Considerations of *stare decisis*, buttressed by the respect that the Legislative and Judicial Branches owe to one another, provide additional powerful reasons for adhering to the analysis of contribution limits that the Court has consistently followed since *Buckley* was decided. See *Hilton* v. *South Carolina Public Railways Comm'n,* 502 U. S. 197, 202 (1991).[40]

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[40] Since our decision in *Buckley*, we have consistently applied less rigorous scrutiny to contribution restrictions aimed at the prevention of corruption and the appearance of corruption. See, *e.g.*, 424 U. S., at 23–36 (applying less rigorous scrutiny to FECA's $1,000 limit on individual

Like the contribution limits we upheld in *Buckley*, §323's restrictions have only a marginal impact on the ability of contributors, candidates, officeholders, and parties to engage in effective political speech. *Beaumont*, 539 U. S., at ___ (slip op., at 14). Complex as its provisions may be, §323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders.

Plaintiffs contend that we must apply strict scrutiny to §323 because many of its provisions restrict not only contributions but also the spending and solicitation of funds raised outside of FECA's contribution limits. But for purposes of determining the level of scrutiny, it is irrelevant that Congress chose in §323 to regulate contributions on the demand rather than the supply side. See, *e.g.*, *National Right to Work, supra,* at 206–211 (upholding a provision restricting PACs' ability to solicit funds). The relevant inquiry is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct

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contributions to a candidate and FECA's $5,000 limit on PAC contributions to a candidate); *id.*, at 38 (applying less rigorous scrutiny to FECA's $25,000 aggregate yearly limit on contributions to candidates, political party committees, and political committees); *California Medical Assn.* v. *Federal Election Comm'n,* 453 U. S. 182, 195–196 (1981) (plurality opinion) (applying less rigorous scrutiny to FECA's $5,000 limit on contributions to multicandidate political committees); *National Right to Work*, 459 U. S., at 208–211 (applying less rigorous scrutiny to antisolicitation provision buttressing an otherwise valid contribution limit); *Colorado II*, 533 U. S. 431, 456 (2001) (applying less rigorous scrutiny to expenditures coordinated with a candidate); *Federal Election Comm'n* v. *Beaumont,* 539 U. S.___, ___ (2003) (slip op., at 14–15) (applying less rigorous scrutiny to provisions intended to prevent circumvention of otherwise valid contribution limits).

restriction on the contribution itself would not. That is not the case here.

For example, while §323(a) prohibits national parties from receiving or spending nonfederal money, and §323(b) prohibits state party committees from spending nonfederal money on federal election activities, neither provision in any way limits the total amount of money parties can spend. 2 U. S. C. A. §§441i(a), (b) (Supp. 2003). Rather, they simply limit the source and individual amount of donations. That they do so by prohibiting the spending of soft money does not render them expenditure limitations.[41]

Similarly, the solicitation provisions of §323(a) and §323(e), which restrict the ability of national party committees, federal candidates, and federal officeholders to solicit nonfederal funds, leave open ample opportunities for soliciting federal funds on behalf of entities subject to FECA's source and amount restrictions. Even §323(d), which on its face enacts a blanket ban on party solicitations of funds to certain tax-exempt organizations, nevertheless allows parties to solicit funds to the organizations' federal PACs. 2 U. S. C. A. §441i(d). As for those organizations that cannot or do not administer PACs, parties remain free to donate federal funds directly to such organizations, and may solicit funds expressly for that purpose. See *infra*, at 72–73 (construing §323(d)'s restriction on donations by parties to apply only to donations from a party committee's nonfederal or soft-money account). And as with §323(a), §323(d) places no limits on other means of endorsing tax-exempt organizations or any restrictions on solicitations by party officers acting in their individual

[41] Indeed, Congress structured §323(b) in such a way as to free individual, corporate, and union donations to state committees for *nonfederal* elections from federal source and amount restrictions.

capacities. 2 U. S. C. A. §§441i(a), (d).

Section 323 thus shows "due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views." *Schaumburg* v. *Citizens for a Better Environment,* 444 U. S. 620, 632 (1980). The fact that party committees and federal candidates and officeholders must now ask only for limited dollar amounts or request that a corporation or union contribute money through its PAC in no way alters or impairs the political message "intertwined" with the solicitation. Cf. *Riley* v. *National Federation of Blind of N. C., Inc.,* 487 U. S. 781, 795 (1988) (treating solicitation restriction that required fundraisers to disclose particular information as a content-based regulation subject to strict scrutiny because it "necessarily alter[ed] the content of the speech"). And rather than chill such solicitations, as was the case in *Schaumburg*, the restriction here tends to increase the dissemination of information by forcing parties, candidates, and officeholders to solicit from a wider array of potential donors. As with direct limits on contributions, therefore, §323's spending and solicitation restrictions have only a marginal impact on political speech.[42]

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[42] JUSTICE KENNEDY's contention that less rigorous scrutiny applies only to regulations burdening political association, rather than political speech, misreads *Buckley*. In *Buckley*, we recognized that contribution limits burden both protected speech and association, though they generally have more significant impacts on the latter. 424 U. S., at 20–22. We nevertheless applied less rigorous scrutiny to FECA's contribution limits because neither burden was sufficiently weighty to overcome Congress' countervailing interest in protecting the integrity of the political process. See *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 388 (2000) ("While we did not [in *Buckley*] attempt to parse [the] distinctions between the speech and association standards of scrutiny for contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on [the] freedom

Finally, plaintiffs contend that the type of associational burdens that §323 imposes are fundamentally different from the burdens that accompanied *Buckley*'s contribution limits, and merit the type of strict scrutiny we have applied to attempts to regulate the internal processes of political parties. *E.g.*, *California Democratic Party* v. *Jones,* 530 U. S. 567, 573–574 (2000). In making this argument, plaintiffs greatly exaggerate the effect of §323, contending that it precludes *any* collaboration among national, state, and local committees of the same party in fundraising and electioneering activities. We do not read the provisions in that way. See *infra*, at 51–52. Section 323 merely subjects a greater percentage of contributions to parties and candidates to FECA's source and amount limitations. *Buckley* has already acknowledged that such limitations "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." 424 U. S., at 22. The modest impact that §323 has on the ability of committees within a party to associate with each other does not independently occasion strict scrutiny. None of this is to suggest that the alleged associational burdens imposed on parties by §323 have no place in the First Amendment analysis; it is only that we account for them in the application, rather than the choice, of the appropriate level of scrutiny.[43]

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to speak. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits under review." (citation omitted)). It is thus simply untrue in the campaign finance context that all "burdens on speech necessitate strict scrutiny review." *Post*, at 29.

[43] JUSTICE KENNEDY is no doubt correct that the associational burdens imposed by a particular piece of campaign-finance regulation may at times be so severe as to warrant strict scrutiny. *Ibid.* In light of our interpretation of §323(a), however, see *infra,* at 46–47, §323 does not

With these principles in mind, we apply the less rigorous scrutiny applicable to contribution limits to evaluate the constitutionality of new FECA §323. Because the five challenged provisions of §323 implicate different First Amendment concerns, we discuss them separately. We are mindful, however, that Congress enacted §323 as an integrated whole to vindicate the Government's important interest in preventing corruption and the appearance of corruption.

New FECA §323(a)'s Restrictions on National Party Committees

The core of Title I is new FECA §323(a), which provides that "national committee[s] of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U. S. C. A. §441i(a)(1) (Supp. 2003). The prohibition extends to "any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, or maintained, or controlled by such a national committee." §441(a)(2).

The main goal of §323(a) is modest. In large part, it simply effects a return to the scheme that was approved in *Buckley* and that was subverted by the creation of the FEC's allocation regime, which permitted the political parties to fund federal electioneering efforts with a combination of hard and soft money. See *supra*, at 11–13, and

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present such a case. As JUSTICE KENNEDY himself acknowledges, even "*significant* interference" with "protected rights of association" are subject to less rigorous scrutiny. *Beaumont*, 539 U. S., at _____ (slip op., at 15); see *post*, at 28. There is thus nothing inconsistent in our decision to account for the particular associational burdens imposed by §323(a) when applying the appropriate level of scrutiny.

n. 7. Under that allocation regime, national parties were able to use vast amounts of soft money in their efforts to elect federal candidates. Consequently, as long as they directed the money to the political parties, donors could contribute large amounts of soft money for use in activities designed to influence federal elections.[44] New §323(a) is designed to put a stop to that practice.

1. *Governmental Interests Underlying New FECA §323(a)*

The Government defends §323(a)'s ban on national parties' involvement with soft money as necessary to prevent the actual and apparent corruption of federal candidates and officeholders. Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits. We have not limited that interest to the elimination of cash-for-votes exchanges. In *Buckley*, we expressly rejected the argument that antibribery laws provided a less restrictive alternative to FECA's contribution limits, noting that such laws "deal[t] with only the most blatant and specific attempts of those with money to influ-

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[44] The fact that the post-1990 explosion in soft-money spending on federal electioneering was accompanied by a series of efforts in Congress to clamp down on such uses of soft money (culminating, of course, in BCRA) underscores the fact that the FEC regulations permitted more than Congress, in enacting FECA, had ever intended. See J. Cantor, Congressional Research Service Report for Congress: Campaign Finance Legislation in the 101st Congress (1990) (9 bills seeking to limit the influence of soft money introduced); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 102nd Congress (1991) (10 such bills introduced); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 103rd Congress (1993) (16 bills); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 104th Congress (1996) (18 bills); see also 251 F. Supp. 2d, at 201–206 *(per curiam)* (discussing legislative efforts to curb soft money in 105th and subsequent Congresses).

ence government action." 424 U. S., at 28. Thus, "[i]n speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' we [have] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors." *Shrink Missouri*, 528 U. S., at 389; see also *Colorado II*, 533 U. S., at 441 (acknowledging that corruption extends beyond explicit cash-for-votes agreements to "undue influence on an officeholder's judgment").

Of "almost equal" importance has been the Government's interest in combating the appearance or perception of corruption engendered by large campaign contributions. *Buckley*, *supra*, at 27; see also *Shrink Missouri, supra,* at 390; *Federal Election Comm'n* v. *National Conservative Political Action Comm.,* 470 U. S. 480, 496–497 (1985). Take away Congress' authority to regulate the appearance of undue influence and "the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." *Shrink Missouri*, 528 U. S., at 390; see also *id.*, at 401 (BREYER, J., concurring). And because the First Amendment does not require Congress to ignore the fact that "candidates, donors, and parties test the limits of the current law," *Colorado II*, 533 U. S., at 457, these interests have been sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits, *id.*, at 456 ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption").

"The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty or the plausibility of the justification raised." *Shrink Missouri, supra,* at 391. The idea that large contributions to a national party can corrupt or, at the very least, create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible. For nearly 30 years, FECA has placed strict dollar limits and source restrictions on contributions that individuals and other entities can give to national, state, and local party committees for the purpose of influencing a federal election. The premise behind these restrictions has been, and continues to be, that contributions to a federal candidate's party in aid of that candidate's campaign threaten to create—no less than would a direct contribution to the candidate—a sense of obligation. See *Buckley*, *supra,* at 38 (upholding FECA's $25,000 limit on aggregate yearly contributions to a candidate, political committee, and political party committee as a "quite modest restraint . . . to prevent evasion of the $1,000 contribution limitation" by, among other things, "huge contributions to the candidate's political party"). This is particularly true of contributions to national parties, with which federal candidates and officeholders enjoy a special relationship and unity of interest. This close affiliation has placed national parties in a unique position, "whether they like it or not," to serve as "agents for spending on behalf of those who seek to produce obligated officeholders." *Colorado II*, *supra,* at 452; see also *Shrink Missouri*, *supra,* at 406 (KENNEDY, J., dissenting) ("[Respondent] asks us to evaluate his speech claim in the context of a system which favors candidates and officeholders whose campaigns are supported by *soft money, usually funneled through political parties*" (emphasis added)). As discussed below, rather than resist that role, the national parties have actively embraced it.

The question for present purposes is whether large *soft-money* contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. Both common sense and the ample record in these cases confirm Congress' belief that they do. As set forth above, *supra*, at 11–13, and n. 7, the FEC's allocation regime has invited widespread circumvention of FECA's limits on contributions to parties for the purpose of influencing federal elections. Under this system, corporate, union, and wealthy individual donors have been free to contribute substantial sums of soft money to the national parties, which the parties can spend for the specific purpose of influencing a particular candidate's federal election. It is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.[45]

The evidence in the record shows that candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries. Thus, despite FECA's hard-money limits on direct contributions to candidates, federal officeholders have commonly asked donors to make soft-money donations to national and state committees "solely in order to assist federal campaigns," including the officeholder's own. 251 F. Supp. 2d, at 472 (Kollar-Kotelly, J.) (quoting declaration of Wade Randlett, CEO, Dashboard Technology ¶¶6–9 (hereinafter Randlett Decl.), App. 713–714); see also 251 F. Supp. 2d, at 471–473, 478–479 (Kollar-Kotelly, J.); *id.*, at 842–843 (Leon, J.). Parties kept tallies of the amounts of soft money raised by each officeholder, and "the amount of

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[45] JUSTICE KENNEDY contends that the plurality's observation in *Colorado I* that large soft-money donations to a political party pose little threat of corruption "establish[es] that" such contributions are not corrupting. *Post*, at 17–18 (citing *Colorado I*, 518 U. S. 604, 616, 617–618 (1996)). The cited dictum has no bearing on the present case. *Colorado I* addressed an entirely different question—namely, whether Congress could permissibly limit a party's independent expenditures—and did so on an entirely different set of facts. It also had before it an evidentiary record frozen in 1990—well before the soft-money explosion of the 1990's. See *Federal Election Comm'n* v. *Colorado Republican Fed. Campaign Comm.*, 839 F. Supp. 1448, 1451 (Colo. 1993).

money a Member of Congress raise[d] for the national political committees often affect[ed] the amount the committees g[a]ve to assist the Member's campaign." *Id.*, at 474–475 (Kollar-Kotelly, J.). Donors often asked that their contributions be credited to particular candidates, and the parties obliged, irrespective of whether the funds were hard or soft. *Id.*, at 477–478 (Kollar-Kotelly, J.); *id.*, at 824, 847 (Leon, J.). National party committees often teamed with individual candidates' campaign committees to create joint fundraising committees, which enabled the candidates to take advantage of the party's higher contribution limits while still allowing donors to give to their preferred candidate. *Id.*, at 478 (Kollar-Kotelly, J.); *id.*, at 847–848 (Leon, J.); see also App. 1286 (Krasno & Sorauf Expert Report (characterizing the joint fundraising committee as one "in which Senate candidates in effect rais[e] soft money for use in their own races")). Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, or donors themselves would report their generosity to officeholders. 251 F. Supp. 2d, at 487–488 (Kollar-Kotelly, J.) ("[F]or a Member not to know the identities of these donors, he or she must actively avoid such knowledge, as it is provided by the national political parties and the donors themselves"); *id.*, at 853–855 (Leon, J.).

For their part, lobbyists, CEOs, and wealthy individuals alike all have candidly admitted donating substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials. For example, a former lobbyist and partner at a lobbying firm in Washington, D. C., stated in his declaration:

"'You are doing a favor for somebody by making a

> large [soft-money] donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone—that is, write a larger check—and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings.'" *Id.,* at 493 (Kollar-Kotelly, J.) (quoting declaration of Robert Rozen, partner, Ernst & Young ¶14; see 8–R Defs. Exhs., Tab 33).[46]

Particularly telling is the fact that, in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to *both* major national parties, leaving room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology. See, *e.g.,* 251 F. Supp. 2d, at 508–510 (Kollar-Kotelly, J.) (citing Mann Expert Report Tbls.

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[46] Other business leaders agreed. For example, the chairman of the board and CEO of a major toy company explained:

"'Many in the corporate world view large soft money donations as a cost of doing business. . . . I remain convinced that in some of the more publicized cases, federal officeholders actually appear to have sold themselves and the party cheaply. They could have gotten even more money, because of the potential importance of their decisions to the affected business.'" 251 F. Supp. 2d, at 491 (Kollar-Kotelly, J.) (quoting declaration of Alan G. Hassenfeld, CEO, Hasbro, Inc., ¶16; see 6–R Defs. Exhs., Tab 17).

Similarly the chairman emeritus of a major airline opined:

"'Though a soft money check might be made out to a political party, labor and business leaders know that those checks open the doors of the offices of individual and important Members of Congress and the Administration. . . . Labor and business leaders believe—based on experience and with good reason—that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties.'" 251 F. Supp. 2d, at 498 (Kollar-Kotelly, J.) (quoting Greenwald Decl. ¶12, App. 283–284, ¶10); 251 F. Supp. 2d, at 858–859 (Leon, J.) (same).

5–6); 251 F. Supp. 2d, at 509 ("'Giving soft money to both parties, the Republicans and the Democrats, makes no sense at all unless the donor feels that he or she is buying access.'" (quoting declaration of former Sen. Dale Bumpers ¶15, App. 175)).[47]

The evidence from the federal officeholders' perspective is similar. For example, one former Senator described the influence purchased by nonfederal donations as follows:

> "'Too often, Members' first thought is not what is right or what they believe, but how it will affect fundraising. Who, after all, can seriously contend that a $100,000 donation does not alter the way one thinks about—and quite possibly votes on—an issue? . . . When you don't pay the piper that finances your campaigns, you will never get any more money from that piper. Since money is the mother's milk of politics, you never want to be in that situation.'" 251 F. Supp. 2d, at 481 (Kollar-Kotelly, J.) (quoting declaration of former Sen. Alan Simpson ¶10 (hereinafter Simpson

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[47] Even more troubling is evidence in the record showing that national parties have actively exploited the belief that contributions purchase influence or protection to pressure donors into making contributions. As one CEO explained:

"'[I]f you're giving a lot of soft money to one side, the other side knows. For many economically-oriented donors, there is a risk in giving to only one side, because the other side may read through FEC reports and have staff or a friendly lobbyist call and indicate that someone with interests before a certain committee has had their contributions to the other side noticed. They'll get a message that basically asks: 'Are you sure you want to be giving only to one side? Don't you want to have friends on both sides of the aisle?' If your interests are subject to anger from the other side of the aisle, you need to fear that you may suffer a penalty if you don't give. . . . [D]uring the 1990's, it became more and more acceptable to call someone, saying you saw he gave to this person, so he should also give to you or the person's opponent.'" *Id.*, at 510 (Kollar-Kotelly, J.) (quoting Randlett Decl. ¶12, App. 715); 251 F. Supp. 2d, at 868 (Leon, J.) (same).

Decl.), App. 811); 251 F. Supp. 2d, at 851 (Leon, J.) (same).

See also *id.*, at 489 (Kollar-Kotelly, J.) ("'The majority of those who contribute to political parties do so for business reasons, to gain access to influential Members of Congress and to get to know new Members." (quoting Hickmott Decl., Exh. A, ¶46)). By bringing soft-money donors and federal candidates and officeholders together, "[p]arties are thus necessarily the instruments of some contributors whose object is not to support the party's message or to elect party candidates across the board, but rather to support a specific candidate for the sake of a position on one narrow issue, or even to support any candidate who will be obliged to the contributors." *Colorado II*, 533 U. S., at 451–452.

Plaintiffs argue that without concrete evidence of an instance in which a federal officeholder has actually switched a vote (or, presumably, evidence of a specific instance where the public believes a vote was switched), Congress has not shown that there exists real or apparent corruption. But the record is to the contrary. The evidence connects soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation. See, *e.g.*, 251 F. Supp. 2d, at 482 (Kollar-Kotelly, J.); *id.*, at 852 (Leon, J.); App. 390–394 (declaration of Sen. John McCain ¶¶5, 8–11 (hereinafter McCain Decl.)); App. 811 (Simpson Decl. ¶10) ("Donations from the tobacco industry to Republicans scuttled tobacco legislation, just as contributions from the trial lawyers to Democrats stopped tort reform"); App. 805 (declaration of former Sen. Paul Simon ¶¶13–14). To claim that such actions do not change legislative outcomes surely misunderstands the legislative process.

More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing "undue influence on an officeholder's judgment, and the appearance of such influence." *Colorado II*, *supra*, at 441. Many of the "deeply disturbing examples" of corruption cited by this Court in *Buckley,* 424 U. S., at 27, to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. See *Buckley*, 519 F. 2d, at 821, 839–840, n. 36; nn. 5–6, *supra.* Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." *Colorado II*, *supra*, at 441; see also 519 F. 2d*,* at 838.

The record in the present case is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. See 251 F. Supp. 2d, at 492–506 (Kollar-Kotelly, J.). As one former Senator put it:

> "'Special interests who give large amounts of soft money to political parties do in fact achieve their objectives. They do get special access. Sitting Senators and House Members have limited amounts of time, but they make time available in their schedules to meet with representatives of business and unions and wealthy individuals who gave large sums to their parties. These are not idle chit-chats about the philosophy of democracy. . . . Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way.'" *Id.*, at 496 (Kollar-Kotelly, J.) (quoting declaration of former Sen. Warren Rudman ¶7 (hereinafter Rudman Decl.), App. 742); 251 F. Supp. 2d, at 858 (Leon, J.) (same).

So pervasive is this practice that the six national party committees actually furnish their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access. For example, the DCCC offers a range of donor options, starting with the $10,000-per-year Business Forum program, and going up to the $100,000-per-year National Finance Board program. The latter entitles the donor to bimonthly conference calls with the Democratic House leadership and chair of the DCCC, complimentary invitations to all DCCC fundraising events, two private dinners with the Democratic House leadership and ranking members, and two retreats with the Democratic House leader and DCCC chair in Telluride, Colorado, and Hyannisport, Massachusetts. *Id.*, at 504–505 (Kollar-Kotelly, J.); see also *id.*, at 506 (describing records indicating that DNC offered meetings with President in return for large donations); *id.*, at 502–503 (describing RNC's various donor programs); *id.*, at 503–504 (same for NRSC); *id.*, at 500–503 (same for DSCC); *id.*, at 504 (same for NRCC). Similarly, "the RNC's donor programs offer greater access to federal office holders as the donations grow larger, with the highest level and most personal access offered to the largest soft money donors." *Id.*, at 500–503 (finding, further, that the RNC holds out the prospect of access to officeholders to attract soft-money donations and encourages officeholders to meet with large soft-money donors); accord, *id.*, at 860–861 (Leon, J.).

Despite this evidence and the close ties that candidates and officeholders have with their parties, JUSTICE KENNEDY would limit Congress' regulatory interest *only* to the prevention of the actual or apparent *quid pro quo* corruption "inherent in" contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, a federal officeholder or candidate. *Post*, at 8–10, 15. Regulation of any other donation or expenditure—regardless of its size, the recipient's relationship to the candidate or officeholder, its potential impact on a candidate's election, its value to the candidate, or its unabashed and explicit intent to purchase influence—would, according to JUSTICE KENNEDY, simply be out of bounds. This crabbed view of corruption, and particularly of the appearance of corruption, ignores precedent, common sense, and the realities of political fundraising exposed by the record in this litigation.[48]

JUSTICE KENNEDY'S interpretation of the First Amendment would render Congress powerless to address more subtle but equally dispiriting forms of corruption. Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide

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[48] In addition to finding no support in our recent cases, see, *e.g.*, *Colorado II*, 533 U. S., at 441 (defining corruption more broadly than *quid pro quo* arrangements); *Shrink Missouri*, 528 U. S., at 389 (same), JUSTICE KENNEDY's contention that *Buckley* limits Congress to regulating contributions to a candidate ignores *Buckley* itself. There, we upheld FECA's $25,000 limit on aggregate yearly contributions to candidates, *political committees*, and *party committees* out of recognition that FECA's $1,000 limit on candidate contributions would be meaningless if individuals could instead make "huge contributions to the candidate's political party." 424 U. S., at 38. Likewise, in *California Medical Assn.* v. *Federal Election Comm'n,* 453 U. S. 182 (1981), we upheld FECA's $5,000 limit on contributions to multicandidate political committees. It is no answer to say that such limits were justified as a means of preventing individuals from using parties and political committees as pass-throughs to circumvent FECA's $1,000 limit on individual contributions to candidates. Given FECA's definition of "contribution," the $5,000 and $25,000 limits restricted not only the source and amount of funds available to parties and political committees to make candidate contributions, but also the source and amount of funds available to engage in express advocacy and numerous other noncoordinated expenditures. If indeed the First Amendment prohibited Congress from regulating contributions to fund the latter, the otherwise-easy-to-remedy exploitation of parties as pass-throughs (*e.g.*, a strict limit on donations that could be used to fund candidate contributions) would have provided insufficient justification for such overbroad legislation.

issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize. The best means of prevention is to identify and to remove the temptation. The evidence set forth above, which is but a sampling of the reams of disquieting evidence contained in the record, convincingly demonstrates that soft-money contributions to political parties carry with them just such temptation.

JUSTICE KENNEDY likewise takes too narrow a view of the appearance of corruption. He asserts that only those transactions with "inherent corruption potential," which he again limits to contributions directly to candidates, justify the inference "that regulating the conduct will stem the appearance of real corruption." *Post*, at 14.[49] In our view, however, Congress is not required to ignore historical evidence regarding a particular practice or to view conduct in isolation from its context. To be sure, mere political favoritism or opportunity for influence alone is insufficient to justify regulation. *Post*, at 12–14. As the record demonstrates, it is the manner in which parties have *sold* access to federal candidates and officeholders that has given rise to the appearance of undue influence. Implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influ-

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[49] At another point, describing our "flawed reasoning," JUSTICE KENNEDY seems to suggest that Congress' interest in regulating the appearance of corruption extends only to those contributions that actually "create . . . corrupt donor favoritism among . . . officeholders." *Post*, at 16. This latter formulation would render Congress' interest in stemming the appearance of corruption indistinguishable from its interest in preventing actual corruption.

ence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption.

In sum, there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.

2. *New FECA §323(a)'s Restriction on Spending and Receiving Soft Money*

Plaintiffs and THE CHIEF JUSTICE contend that §323(a) is impermissibly overbroad because it subjects *all* funds raised and spent by national parties to FECA's hard-money source and amount limits, including, for example, funds spent on purely state and local elections in which no federal office is at stake.[50] *Post*, 2–5 (REHNQUIST, C. J., dissenting). Such activities, THE CHIEF JUSTICE asserts, pose "little or no potential to corrupt . . . federal candidates or officeholders." *Post,* at 5 (dissenting opinion). This observation is beside the point. Section 323(a), like the remainder of §323, regulates *contributions,* not activities. As the record demonstrates, it is the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, that have made all large soft-money contributions to national parties suspect.

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[50] In support of this claim, the political party plaintiffs assert that, in 2001, the RNC spent $15.6 million of nonfederal funds (30% of the nonfederal amount raised that year) on purely state and local election activity, including contributions to state and local candidates, transfers to state parties, and direct spending. See Tr. of Oral Arg. 102–103 (statement of counsel Bobby R. Burchfield); 251 F. Supp. 2d, at 336–337 (Henderson, J.); *id.*, at 464–465 (Kollar-Kotelly, J.); *id.*, at 830 (Leon, J.).

As one expert noted, "'[t]here is no meaningful distinction between the national party committees and the public officials who control them.'" 251 F. Supp. 2d, at 468–469 (Kollar-Kotelly, J.) (quoting Mann Expert Report 29). The national committees of the two major parties are both run by, and largely composed of, federal officeholders and candidates. Indeed, of the six national committees of the two major parties, four are composed entirely of federal officeholders. *Ibid.* The nexus between national parties and federal officeholders prompted one of Title I's framers to conclude:

> "Because the national parties operate at the national level, and are inextricably intertwined with federal officeholders and candidates, who raise the money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process. The only effective way to address this [soft-money] problem of corruption is to ban entirely all raising and spending of soft money by the national parties." 148 Cong. Rec. H409 (Feb. 13, 2002) (statement of Rep. Shays).

Given this close connection and alignment of interests, large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used.

This close affiliation has also placed national parties in a position to sell access to federal officeholders in exchange for soft-money contributions that the party can then use for its own purposes. Access to federal officeholders is the most valuable favor the national party committees are able to give in exchange for large donations. The fact that officeholders comply by donating their valuable time indicates either that officeholders place substantial value on the soft-money contribution themselves, without regard to their end use, or that national committees are able to exert considerable control over federal officeholders. See, *e.g.*, App. 1196–1198 (Expert Report of Donald P. Green, Yale University) ("Once elected to legislative office, public officials enter an environment in which political parties-in-government control the resources crucial to subsequent electoral success and legislative power. Political parties organize the legislative caucuses that make committee assignments"); App. 1298 (Krasno & Sorauf Expert Report) (indicating that officeholders' re-election prospects are significantly influenced by attitudes of party leadership). Either way, large soft-money donations to national party committees are likely to buy donors preferential access to federal officeholders no matter the ends to which their contributions are eventually put. As discussed above, Congress had sufficient grounds to regulate the appearance of undue influence associated with this practice. The Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting all donations to national parties to the source, amount, and disclosure limitations of FECA.[51]

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[51] The close relationship of federal officeholders and candidates to their parties answers not only THE CHIEF JUSTICE's concerns about §323(a), but also his fear that our analysis of §323's remaining provisions bespeaks no limiting principle. *Post*, at 6–7 (dissenting opinion). As set forth in our discussion of those provisions, the record demonstrates close ties between federal officeholders and the state and local committees of their parties. That close relationship makes state and local parties effective conduits for donors desiring to corrupt federal candidates and officeholders. Thus, in upholding §§323(b), (d), and (f), we rely not only on the fact that they regulate contributions used to fund activities influencing federal elections, but also that they regulate contributions to or at the behest of entities uniquely positioned to serve as conduits for corruption. We agree with THE CHIEF JUSTICE that

3. *New FECA §323(a)'s Restriction on Soliciting or Directing Soft Money*

Plaintiffs also contend that §323(a)'s prohibition on national parties' soliciting or directing soft-money contributions is substantially overbroad. The reach of the solicitation prohibition, however, is limited. It bars only solicitations of soft money by national party committees and by party officers in their official capacities. The committees remain free to solicit hard money on their own behalf, as well as to solicit hard money on behalf of state committees and state and local candidates.[52] They also can contribute hard money to state committees and to candidates. In accordance with FEC regulations, furthermore, officers of national parties are free to solicit soft money in their individual capacities, or, if they are also officials of state parties, in that capacity. See 67 Fed. Reg. 49083 (2002).

This limited restriction on solicitation follows sensibly from the prohibition on national committees' receiving soft money. The same observations that led us to approve the latter compel us to reach the same conclusion regarding

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Congress could not regulate financial contributions to political talk show hosts or newspaper editors on the sole basis that their activities conferred a *benefit* on the candidate. *Post*, at 7 (dissenting opinion).

[52] Plaintiffs claim that the option of soliciting hard money for state and local candidates is an illusory one, since several States prohibit state and local candidates from establishing multiple campaign accounts, which would preclude them from establishing separate accounts for federal funds. See Cal. Fair Pol. Practs. Comm'n Advisory Op. A–91–448 (Dec. 16, 1991), 1991 WL 772902; Colo. Const., Art. XXVIII, §2(3); Iowa Code §56.5A (Supp. 2003); and Ohio Rev. Code Ann. §3517.10(J) (Anderson Supp. 2002). Plaintiffs maintain that §323(a) combines with these state laws to make it impossible for state and local candidates to receive hard-money donations. But the challenge we are considering is a facial one, and on its face §323(a) permits solicitations. The fact that a handful of States might interfere with the mechanism Congress has chosen for such solicitations is an argument that may be addressed in an as-applied challenge.

the former. A national committee is likely to respond favorably to a donation made at its request regardless of whether the recipient is the committee itself or another entity. This principle accords with common sense and appears elsewhere in federal laws. *E.g.*, 18 U. S. C. §201(b)(2) (prohibition on public officials "demand[ing] [or] seek[ing] . . . anything of value personally *or for any other person or entity* . . ." (emphasis added)); 5 CFR §2635.203(f)(2) (2003) (restriction on gifts to federal employees encompasses gifts "[g]iven to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee").

Plaintiffs argue that BCRA itself demonstrates the overbreadth of §323(a)'s solicitation ban. They point in particular to §323(e), which allows federal candidates and officeholders to solicit limited amounts of soft money from individual donors under certain circumstances. Compare 2 U. S. C. A §441i(a) with §441i(e) (Supp. 2003). The differences between §§323(a) and 323(e), however, are without constitutional significance. We have recognized that "the 'differing structures and purposes' of different entities 'may require different forms of regulation in order to protect the integrity of the electoral process,'" *National Right to Work*, 459 U. S., at 210, and we respect Congress' decision to proceed in incremental steps in the area of campaign finance regulation, see *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.,* 479 U. S. 238, 258, n. 11 (1986) *(MCFL); Buckley*, 424 U. S., at 105. The differences between the two provisions reflect Congress' reasonable judgments about the function played by national committees and the interactions between committees and officeholders, subjects about which Members of Congress have vastly superior knowledge.

4. *New FECA §323(a)'s Application to Minor Parties*

The McConnell and political party plaintiffs contend that §323(a) is substantially overbroad and must be stricken on its face because it impermissibly infringes the speech and associational rights of minor parties such as the Libertarian National Committee, which, owing to their slim prospects for electoral success and the fact that they receive few large soft-money contributions from corporate sources, pose no threat of corruption comparable to that posed by the RNC and DNC. In *Buckley*, we rejected a similar argument concerning limits on contributions to minor-party candidates, noting that "any attempt to exclude minor parties and independents en masse from the Act's contribution limitations overlooks the fact that minor-party candidates may win elective office or have a substantial impact on the outcome of an election." 424 U. S., at 34–35. We have thus recognized that the relevance of the interest in avoiding actual or apparent corruption is not a function of the number of legislators a given party manages to elect. It applies as much to a minor party that manages to elect only one of its members to federal office as it does to a major party whose members make up a majority of Congress. It is therefore reasonable to require that all parties and all candidates follow the same set of rules designed to protect the integrity of the electoral process.

We add that nothing in §323(a) prevents individuals from pooling resources to start a new national party. *Post*, at 5 (KENNEDY, J., dissenting). Only when an organization has gained official status, which carries with it significant benefits for its members, will the proscriptions of §323(a) apply. Even then, a nascent or struggling minor party can bring an as-applied challenge if §323(a) prevents it from "amassing the resources necessary for effective advocacy." *Buckley*, *supra*, at 21.

5. *New FECA §323(a)'s Associational Burdens*

Finally, plaintiffs assert that §323(a) is unconstitutional because it impermissibly interferes with the ability of national committees to associate with state and local committees. By way of example, plaintiffs point to the Republican Victory Plans, whereby the RNC acts in concert with the state and local committees of a given State to plan and implement joint, full-ticket fundraising and electioneering programs. See App. 693, 694–697 (declaration of John Peschong, RNC Western Reg. Political Dir. (describing the Republican Victory Plans)). The political parties assert that §323(a) outlaws *any* participation in Victory Plans by RNC officers, including merely sitting down at a table and engaging in collective decisionmaking about how soft money will be solicited, received, and spent. Such associational burdens, they argue, are too great for the First Amendment to bear.

We are not persuaded by this argument because it hinges on an unnaturally broad reading of the terms "spend," "receive," "direct," and "solicit." 2 U. S. C. A. §441i(a) (Supp. 2003). Nothing on the face of §323(a) prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money. As long as the national party officer does not personally spend, receive, direct, or solicit soft money, §323(a) permits a wide range of joint planning and electioneering activity. Intervenor-defendants, the principal drafters and proponents of the legislation, concede as much. Brief for Intervenor-Defendants Sen. John McCain et al. in No. 02–1674 et al., p. 22 ("BCRA leaves parties and candidates free to coordinate campaign plans and activities, political messages, and fundraising goals with one another"). The FEC's current definitions of §323(a)'s terms are consistent with that view. See, *e.g.*, 11 CFR §300.2(m) (2002) (defining "solicit" as "to *ask* . . . another person" (emphasis added)); §300.2(n) (defining "direct" as "to *ask* a person who has expressed an intent to make a contribution . . . to make that contribution . . . including through a conduit or intermediary" (emphasis added)); §300.2(c) (laying out the factors that determine whether an entity will be considered to be controlled by a national committee).

Given the straightforward meaning of this provision, JUSTICE KENNEDY is incorrect that "[a] national party's mere involvement in the strategic planning of fundraising for a state ballot initiative" or its assistance in developing a state party's Levin-money fundraising efforts risks a finding that the officers are in "'indirect control'" of the state party and subject to criminal penalties. *Post*, at 5–6. Moreover, §323(a) leaves national party committee officers entirely free to participate, in their official capacities, with state and local parties and candidates in soliciting and spending hard money; party officials may also solicit soft money in their unofficial capacities.

Accordingly, we reject the plaintiffs' First Amendment challenge to new FECA §323(a).

New FECA §323(b)'s Restrictions on State and Local Party Committees

In constructing a coherent scheme of campaign finance regulation, Congress recognized that, given the close ties between federal candidates and state party committees, BCRA's restrictions on national committee activity would rapidly become ineffective if state and local committees remained available as a conduit for soft-money donations.[53] Section 323(b) is designed to foreclose wholesale

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[53] Even opponents of campaign finance reform acknowledged that "a prohibition of soft money donations to national party committees alone would be wholly ineffective." The Constitution and Campaign Reform: Hearings on S. 522 before the Senate Committee on Rules and Admini-

evasion of §323(a)'s anticorruption measures by sharply curbing state committees' ability to use large soft-money contributions to influence federal elections. The core of §323(b) is a straightforward contribution regulation: It prevents donors from contributing nonfederal funds to state and local party committees to help finance "Federal election activity." 2 U. S. C A. §441i(b)(1) (Supp. 2003). The term "Federal election activity" encompasses four distinct categories of electioneering: (1) voter registration activity during the 120 days preceding a regularly scheduled federal election; (2) voter identification, get-out-the-vote (GOTV), and generic campaign activity[54] that is "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (3) any "public communication"[55] that "refers to a clearly identified candidate for Federal office" and "promotes," "supports," "attacks," or "opposes" a candidate for that office; and (4) the services provided by a state committee employee who dedicates more than 25% of his or her time to "activities in connection with a Federal election." §§431(20)(A)(i)–(iv). The Act explicitly excludes several categories of activity from this definition: public communications that refer solely to nonfederal candidates;[56] contri-

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stration, 106th Cong., 2d Sess., 301 (2000) (statement of Bobby R. Burchfield, Partner, Covington & Burling).

[54] Generic campaign activity promotes a political party rather than a specific candidate. 2 U. S. C. A. §431(21).

[55] A public communication is "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." §431(22).

[56] So long as the communication does not constitute voter registration, voter identification, GOTV, or generic campaign activity. §431(20)(B)(i).

butions to nonfederal candidates;[57] state and local political conventions; and the cost of grassroots campaign materials like bumper stickers that refer only to state candidates. §431(20)(B). All activities that fall within the statutory definition must be funded with hard money. §441i(b)(1).

Section 323(b)(2), the so-called Levin Amendment, carves out an exception to this general rule. A refinement on the pre-BCRA regime that permitted parties to pay for certain activities with a mix of federal and nonfederal funds, the Levin Amendment allows state and local party committees to pay for certain types of federal election activity with an allocated ratio of hard money and "Levin funds"—that is, funds raised within an annual limit of $10,000 per person. 2 U. S. C. A. §441i(b)(2). Except for the $10,000 cap and certain related restrictions to prevent circumvention of that limit, §323(b)(2) leaves regulation of such contributions to the States.[58]

The scope of the Levin Amendment is limited in two ways. First, state and local parties can use Levin money to fund only activities that fall within categories (1) and (2) of the statute's definition of federal election activity—namely, voter registration activity, voter identification drives, GOTV drives, and generic campaign activities. 2 U. S. C. A. §441i(b)(2)(A). And not all of these activities qualify: Levin funds cannot be used to pay for any activities that refer to "a clearly identified candidate for Federal office"; they likewise cannot be used to fund broadcast communications unless they refer "solely to a clearly identified candidate for State or local office."

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[57] Unless the contribution is earmarked for federal election activity. §431(20)(B)(ii).

[58] The statute gives the FEC responsibility for setting the allocation ratio. §441i(b)(2)(A); see also 11 CFR §300.33(b) (2003) (defining allocation ratios).

§§441i(b)(2)(B)(i)–(ii).

Second, both the Levin funds and the allocated portion of hard money used to pay for such activities must be raised entirely by the state or local committee that spends them. §441i(b)(2)(B)(iv). This means that a state party committee cannot use Levin funds transferred from other party committees to cover the Levin funds portion of a Levin Amendment expenditure. It also means that a state party committee cannot use hard money transferred from other party committees to cover the hard-money portion of a Levin Amendment expenditure. Furthermore, national committees, federal candidates, and federal officeholders generally may not solicit Levin funds on behalf of state committees, and state committees may not team up to raise Levin funds. §441i(b)(2)(C). They can, however, jointly raise the hard money used to make Levin expenditures.

1. *Governmental Interests Underlying New FECA §323(b)*

We begin by noting that, in addressing the problem of soft-money contributions to state committees, Congress both drew a conclusion and made a prediction. Its conclusion, based on the evidence before it, was that the corrupting influence of soft money does not insinuate itself into the political process solely through national party committees. Rather, state committees function as an alternate avenue for precisely the same corrupting forces.[59] Indeed, both candidates and parties already ask

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[59] One former Senator noted:

"'The fact is that much of what state and local parties do helps to elect federal candidates. The national parties know it; the candidates know it; the state and local parties know it. If state and local parties can use soft money for activities that affect federal elections, then the problem will not be solved at all. The same enormous incentives to raise the money will exist; the same large contributions by corporations, donors who have reached the limit on their direct contributions to donate to state committees.[60] There is at least as much evidence as there was in *Buckley* that such donations have been made with the intent—and in at least some cases the effect—of gaining influence over federal officeholders.[61] Section 323(b) thus promotes an important

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unions, and wealthy individuals will be made; the federal candidates who benefit from state party use of these funds will know exactly whom their benefactors are; the same degree of beholdenness and obligation will arise; the same distortions on the legislative process will occur; and the same public cynicism will erode the foundations of our democracy—except it will all be worse in the public's mind because a perceived reform was undercut once again by a loophole that allows big money into the system.'" 251 F. Supp. 2d, at 467 (Kollar-Kotelly, J.) (quoting Rudman Decl. ¶19, App. 746).

[60] *E.g.*, 251 F. Supp. 2d, at 479 (Kollar-Kotelly, J.) ("'It is . . . not uncommon for the RNC to put interested donors in touch with various state parties. This often occurs when a donor has reached his or her federal dollar limits to the RNC, but wishes to make additional contributions to the state party'" (quoting declaration of Thomas Josefiak, RNC Chief Counsel ¶68, App 308)); see also *Colorado II*, 533 U. S., at 458 (quoting Congressman Wayne Allard's Aug. 27, 1996, fundraising letter informing the recipient that "'you are at the limit of what you can directly contribute to my campaign,'" but "'you can further help my campaign by assisting the Colorado Republican Party'"); 251 F. Supp 2d, at 454 (Kollar-Kotelly, J.) ("'Both political parties have found spending soft money with its accompanying hard money match through their state parties to work smoothly, for the most part, and state officials readily acknowledge they are simply 'pass throughs' to the vendors providing the broadcast ads or direct mail'" (quoting Magleby Expert Report 37, App. 1510–1511.)).

[61] The 1998 Senate Report found that, in exchange for a substantial donation to *state* Democratic committees and candidates, the DNC arranged meetings for the donor with the President and other federal officials. 1 1998 Senate Report 43–44; 2 *id.*, at 2907–2931; 5 *id.*, at 7519. That same Report also detailed how Native American tribes that operated casinos made sizable soft-money contributions to state Democratic committees in apparent exchange for access and influence. 1 *id.*, at 44–46; 2 *id.,* at 3167–3194; see also McCain Decl., Exh. I (Weisskopf, The Busy Back-Door Men, Time, Mar. 31, 1997, p. 40)).

governmental interest by confronting the corrupting influence that soft-money donations to political parties already have.

Congress also made a prediction. Having been taught the hard lesson of circumvention by the entire history of campaign finance regulation, Congress knew that soft-money donors would react to §323(a) by scrambling to find another way to purchase influence. It was "neither novel nor implausible," *Shrink Missouri*, 528 U. S., at 391, for Congress to conclude that political parties would react to §323(a) by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties. We "must accord substantial deference to the predictive judgments of Congress," *Turner Broadcasting System, Inc.* v. *FCC,* 512 U. S. 622, 665 (1994), particularly when, as here, those predictions are so firmly rooted in relevant history and common sense. Preventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest.

2. *New FECA §323(b)'s Tailoring*

Plaintiffs argue that even if some legitimate interest might be served by §323(b), the provision's restrictions are unjustifiably burdensome and therefore cannot be considered "closely drawn" to match the Government's objectives. They advance three main contentions in support of this proposition. First, they argue that the provision is substantially overbroad because it federalizes activities that pose no conceivable risk of corrupting or appearing to corrupt federal officeholders. Second, they argue that the Levin Amendment imposes an unconstitutional burden on the associational rights of political parties. Finally, they argue that the provision prevents them from amassing the resources they need to engage in effective advocacy. We address these points in turn.

a. *§323(b)'s Application to Federal Election Activity*

Plaintiffs assert that §323(b) represents a new brand of pervasive federal regulation of state-focused electioneering activities that cannot possibly corrupt or appear to corrupt federal officeholders and thus goes well beyond Congress' concerns about the corruption of the federal electoral process. We disagree.

It is true that §323(b) captures some activities that affect state campaigns for nonfederal offices. But these are the same sorts of activities that already were covered by the FEC's pre-BCRA allocation rules, and thus had to be funded in part by hard money, because they affect federal as well as state elections. See 11 CFR §106.5 (2002). As a practical matter, BCRA merely codifies the principles of the FEC's allocation regime while at the same time justifiably adjusting the formulas applicable to these activities in order to restore the efficacy of FECA's longtime statutory restriction—approved by the Court and eroded by the FEC's allocation regime—on contributions to state and local party committees for the purpose of influencing federal elections. See 2 U. S. C. §§431(8)(A), 441a(a)(1)(C); see also *Buckley*, 424 U. S., at 38 (upholding FECA's $25,000 limit on aggregate contributions to candidates and political committees); cf. *California Medical Assn.* v. *Federal Election Comm'n,* 453 U. S. 182 (1981) (upholding FECA's $5,000 limit on contributions to multicandidate political committees).

Like the rest of Title I, §323(b) is premised on Congress' judgment that if a large donation is capable of putting a federal candidate in the debt of the contributor, it poses a threat of corruption or the appearance of corruption. As we explain below, §323(b) is narrowly focused on regulating contributions that pose the greatest risk of this kind of corruption: those contributions to state and local parties that can be used to benefit federal candidates directly. Further, these regulations all are reasonably tailored, with various temporal and substantive limitations designed to focus the regulations on the important anti-corruption interests to be served. We conclude that §323(b) is a closely-drawn means of countering both corruption and the appearance of corruption.

The first two categories of "Federal election activity," voter registration efforts, §301(20)(A)(i), and voter identification, GOTV, and generic campaign activities conducted in connection with a federal election, §301(20)(A)(ii), clearly capture activity that benefits federal candidates. Common sense dictates, and it was "undisputed" below, that a party's efforts to register voters sympathetic to that party directly assist the party's candidates for federal office. 251 F. Supp. 2d, at 460 (Kollar-Kotelly, J.). It is equally clear that federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who actually go to the polls.[62] See, *e.g.*, *id.*, at 459 ("'[The evidence] shows quite clearly that a campaign that mobilizes residents of a highly Republican precinct will produce a harvest of votes for Republican candidates for both state and federal offices. A campaign need not mention federal candidates to have a direct effect on voting for such a candidate. . . . [G]eneric campaign activity has a direct effect on federal elections'" (quoting Green Expert Report 14)). Representatives of the four major congressional campaign committees confirmed that they "'transfe[r] federal and nonfederal money to state and/or local party committees for'" both voter regis-

[62] Since voter identification is a necessary precondition of any GOTV program, the findings regarding GOTV funding obviously apply with equal force to the funding of voter identification efforts.

tration and get-out-the-vote activities, and that "'[t]hese efforts have a significant effect on the election of federal candidates.'" 251 F. Supp. 2d, at 459, 461 (citations omitted).

The record also makes quite clear that federal officeholders are grateful for contributions to state and local parties that can be converted into GOTV-type efforts. See *id.*, at 459 (quoting a letter thanking a California Democratic Party donor and noting that CDP's voter registration and GOTV efforts would help "'increase the number of Californian Democrats in the United States Congress'" and "'deliver California's 54 electoral votes'" to the Democratic presidential candidate).

Because voter registration, voter identification, GOTV, and generic campaign activity all confer substantial benefits on federal candidates, the funding of such activities creates a significant risk of actual and apparent corruption. Section 323(b) is a reasonable response to that risk. Its contribution limitations are focused on the subset of voter registration activity that is most likely to affect the election prospects of federal candidates: activity that occurs within 120 days before a federal election. And if the voter registration drive does not specifically mention a federal candidate, state committees can take advantage of the Levin Amendment's higher contribution limits and relaxed source restrictions. 2 U. S. C. A. §§441i(b)(2)(B)(i)–(ii) (Supp. 2003). Similarly, the contribution limits applicable to §301(20)(A)(ii) activities target only those voter identification, GOTV, and generic campaign efforts that occur "in connection with an election in which a candidate for a Federal office appears on the ballot." 2 U. S. C. A. §431(20)(A)(ii). Appropriately, in implementing this subsection, the FEC has categorically excluded all activity that takes place during the run-up to elections when no federal office is at stake.[63] Furthermore, state committees can take advantage of the Levin Amendment's higher contribution limits to fund any §301(A)(20)(i) and §301(A)(20)(ii) activities that do not specifically mention a federal candidate. 2 U. S. C. A. §§441i(b)(2)(B)(i)–(ii). The prohibition on the use of soft money in connection with these activities is therefore closely drawn to meet the sufficiently important governmental interests of avoiding corruption and its appearance.

"Public communications" that promote or attack a candidate for federal office—the third category of "Federal election activity," §301(20)(A)(iii)—also undoubtedly have a dramatic effect on federal elections. Such ads were a prime motivating force behind BCRA's passage. See 3 1998 Senate Report 4535 (additional views of Sen. Collins) ("[T]he hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble"). As explained below, any public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating. The record on this score could scarcely be more abundant.

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[63] With respect to GOTV, voter identification, and other generic campaign activity, the FEC has interpreted §323(b) to apply only to those activities conducted after the earliest filing deadline for access to the federal election ballot or, in States that do not conduct primaries, after January 1 of even-numbered years. 11 CFR §100.24(a)(1) (2002). Any activities conducted outside of those periods are completely exempt from regulation under §323(b). Of course, this facial challenge does not present the question of the FEC regulations' constitutionality. But the fact that the statute provides this basis for the FEC reasonably to narrow §301(20)(A)(ii) further calls into question plaintiffs' claims of facial overbreadth. See *Broadrick* v. *Oklahoma,* 413 U. S. 601, 613 (1973).

Given the overwhelming tendency of public communications, as carefully defined in §301(20)(A)(iii), to benefit directly federal candidates, we hold that application of §323(b)'s contribution caps to such communications is also closely drawn to the anticorruption interest it is intended to address.[64]

As for the final category of "Federal election activity," §301(20)(A)(iv), we find that Congress' interest in preventing circumvention of §323(b)'s other restrictions justifies the requirement that state and local parties spend federal funds to pay the salary of any employee spending more than 25% of his or her compensated time on activities in connection with a federal election. In the absence of this provision, a party might use soft money to pay for the equivalent of a full-time employee engaged in federal electioneering, by the simple expedient of dividing the federal workload among multiple employees. Plaintiffs have suggested no reason for us to strike down this provi-

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[64] We likewise reject the argument that §301(20)(A)(iii) is unconstitutionally vague. The words "promote," "oppose," "attack," and "support" clearly set forth the confines within which potential party speakers must act in order to avoid triggering the provision. These words "provide explicit standards for those who apply them" and "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned* v. *City of Rockford,* 408 U. S. 104, 108–109 (1972). This is particularly the case here, since actions taken by political parties are presumed to be in connection with election campaigns. See *Buckley*, 424 U. S., at 79 (noting that a general requirement that political committees disclose their expenditures raised no vagueness problems because the term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate" and thus a political committee's expenditures "are, by definition, campaign related"). Furthermore, should plaintiffs feel that they need further guidance, they are able to seek advisory opinions for clarification, see 2 U. S. C. §437f(a)(1), and thereby "remove any doubt there may be as to the meaning of the law," *Civil Service Comm'n* v. *Letter Carriers,* 413 U. S. 548, 580 (1973).

sion. Accordingly, we give "deference to [the] congressional determination of the need for [this] prophylactic rule." *National Conservative Political Action Comm.*, 470 U. S., at 500.

b. *Associational Burdens Imposed by the Levin Amendment*

Plaintiffs also contend that §323(b) is unconstitutional because the Levin Amendment unjustifiably burdens association among party committees by forbidding transfers of Levin funds among state parties, transfers of hard money to fund the allocable federal portion of Levin expenditures, and joint fundraising of Levin funds by state parties. We recognize, as we have in the past, the importance of preserving the associational freedom of parties. See, *e.g.*, *California Democratic Party* v. *Jones*, 530 U. S. 567 (2000); *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214 (1989). But not every minor restriction on parties' otherwise unrestrained ability to associate is of constitutional dimension. See *Colorado II*, 533 U. S., at 450, n. 11.

As an initial matter, we note that state and local parties can avoid these associational burdens altogether by forgoing the Levin Amendment option and electing to pay for federal election activities entirely with hard money. But in any event, the restrictions on the use, transfer, and raising of Levin funds are justifiable anticircumvention measures. Without the ban on transfers of Levin funds among state committees, donors could readily circumvent the $10,000 limit on contributions to a committee's Levin account by making multiple $10,000 donations to various committees that could then transfer the donations to the committee of choice.[65] The same anticircumvention goal

[65] Any doubts that donors would engage in such a seemingly complex scheme are put to rest by the record evidence in *Buckley* itself. See

undergirds the ban on joint solicitation of Levin funds. Without this restriction, state and local committees could organize "all hands" fundraisers at which individual, corporate, or union donors could make large soft-money donations to be divided between the committees. In that case, the purpose, if not the letter, of §323(b)(2)'s $10,000 limit would be thwarted: Donors could make large, visible contributions at fundraisers, which would provide ready means for corrupting federal officeholders. Given the delicate and interconnected regulatory scheme at issue here, any associational burdens imposed by the Levin Amendment restrictions are far outweighed by the need to prevent circumvention of the entire scheme.

Section 323(b)(2)(B)(iv)'s apparent prohibition on the transfer of hard money by a national, state, or local committee to help fund the allocable hard-money portion of a separate state or local committee's Levin expenditures presents a closer question. 2 U. S. C. A. §441i(b)(2)(B)(iv) (Supp. 2003). The Government defends the restriction as necessary to prevent the donor committee, particularly a national committee, from leveraging the transfer of federal money to wrest control over the spending of the recipient committee's Levin funds. This purported interest is weak, particularly given the fact that §323(a) already polices attempts by national parties to engage in such behavior. See 2 U. S. C. A. §441i(a)(2) (extending §323(a)'s restrictions to entities *controlled* by national party committees). However, the associational burdens posed by the hard-money transfer restriction are so insubstantial as to be *de minimis*. Party committees, including national party committees, remain free to transfer unlimited hard money

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n. 6, *supra* (setting forth the Court of Appeals' findings regarding the efforts of milk producers to obtain a meeting with White House officials).

so long as it is not used to fund Levin expenditures. State and local party committees can thus dedicate all "homegrown" hard money to their Levin activities while relying on outside transfers to defray the costs of other hard-money expenditures. Given the strong anticircumvention interest vindicated by §323(b)(2)(B)(iv)'s restriction on the transfer of Levin funds, we will not strike down the entire provision based upon such an attenuated claim of associational infringement.

c. *New FECA §323(b)'s Impact on Parties' Ability to Engage in Effective Advocacy*

Finally, plaintiffs contend that §323(b) is unconstitutional because its restrictions on soft-money contributions to state and local party committees will prevent them from engaging in effective advocacy. As Judge Kollar-Kotelly noted, the political parties' evidence regarding the impact of BCRA on their revenues is "speculative and not based on any analysis." 251 F. Supp. 2d, at 524. If the history of campaign finance regulation discussed above proves anything, it is that political parties are extraordinarily flexible in adapting to new restrictions on their fundraising abilities. Moreover, the mere fact that §323(b) may reduce the relative amount of money available to state and local parties to fund federal election activities is largely inconsequential. The question is not whether §323(b) reduces the amount of funds available over previous election cycles, but whether it is "so radical in effect as to . . . drive the sound of [the recipient's] voice below the level of notice." *Shrink Missouri*, 528 U. S., at 397. If indeed state or local parties can make such a showing, as-applied challenges remain available.

We accordingly conclude that §323(b), on its face, is closely drawn to match the important governmental interests of preventing corruption and the appearance of corruption.

New FECA §323(d)'s Restrictions on Parties' Solicitations for, and Donations to, Tax-Exempt Organizations

Section 323(d) prohibits national, state, and local party committees, and their agents or subsidiaries, from "solicit[ing] any funds for, or mak[ing] or direct[ing] any donations" to, any organization established under §501(c) of the Internal Revenue Code[66] that makes expenditures in connection with an election for federal office, and any political organizations established under §527 "other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office."[67] 2 U. S. C. A. §441i(d) (Supp. 2003). The District Court struck down the provision on its face. We reverse and uphold §323(d), narrowly construing the section's ban on donations to apply only to the donation of funds not raised in compliance with FECA.

1. *New FECA §323(d)'s Regulation of Solicitations*

The Government defends §323(d)'s ban on solicitations to tax-exempt organizations engaged in political activity as preventing circumvention of Title I's limits on contributions of soft money to national, state, and local party

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[66] Section 501(c) organizations are groups generally exempted from taxation under the Internal Revenue Code. 26 U. S. C. §501(a). These include §501(c)(3) charitable and educational organizations, as well as §501(c)(4) social welfare groups.

[67] Section 527 "political organizations" are, unlike §501(c) groups, organized for the express purpose of engaging in partisan political activity. They include any "party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures" for the purpose of "influencing or attempting to influence the selection, nomination, or appointment of any individual for Federal, State, or local public office." 26 U. S. C. §527(e).

committees. That justification is entirely reasonable. The history of Congress' efforts at campaign finance reform well demonstrates that "candidates, donors, and parties test the limits of the current law." *Colorado II*, 533 U. S., at 457. Absent the solicitation provision, national, state, and local party committees would have significant incentives to mobilize their formidable fundraising apparatuses, including the peddling of access to federal officeholders, into the service of like-minded tax-exempt organizations that conduct activities benefiting their candidates.[68] All of the corruption and appearance of corruption attendant on the operation of those fundraising apparatuses would follow. Donations made at the behest of party committees would almost certainly be regarded by party officials, donors, and federal officeholders alike as benefiting the party as well as its candidates. Yet, by soliciting the

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[68] The record shows that many of the targeted tax-exempt organizations engage in sophisticated and effective electioneering activities for the purpose of influencing federal elections, including waging broadcast campaigns promoting or attacking particular candidates and conducting large-scale voter registration and GOTV drives. For instance, during the final weeks of the 2000 presidential campaign, the NAACP's National Voter Fund registered more than 200,000 people, promoted a GOTV hotline, ran three newspaper print ads, and made several direct mailings. 251 F. Supp. 2d, at 348–349 (Henderson, J.). The NAACP reports that the program turned out one million additional African-American voters and increased turnout over 1996 among targeted groups by 22% in New York, 50% in Florida, and 140% in Missouri. *Ibid.* The effort, which cost $10 million, was funded primarily by a $7 million contribution from an anonymous donor. *Id.,* at 349 (citing cross-examination of Donald P. Green, Yale University 15–20, Exh. 3; see I Defs. Refiling Trs. on Pub. Record); 251 F. Supp. 2d, at 522 (Kollar-Kotelly, J.) (same); *id.*, at 851 (Leon, J.) (same); see also *id.,* at 349 (Henderson, J.) (stating that in 2000 the National Abortion and Reproductive Rights Action League (NARAL) spent $7.5 million and mobilized 2.1 million pro-choice voters (citing declaration of Mary Jane Gallagher, Exec. V. P., NARAL, 8, App. 271–272, ¶24)); 251 F. Supp. 2d, at 522 (Kollar-Kotelly, J.) (same).

donations to third-party organizations, the parties would avoid FECA's source-and-amount limitations, as well as its disclosure restrictions. See 251 F. Supp. 2d, at 348 (Henderson, J.) (citing various declarations demonstrating that, prior to BCRA, most tax-exempt organizations did not disclose the source or amount of contributions); *id.*, at 521 (Kollar-Kotelly, J.) (same).

Experience under the current law demonstrates that Congress' concerns about circumvention are not merely hypothetical. Even without the added incentives created by Title I, national, state, and local parties already solicit unregulated soft-money donations to tax-exempt organizations for the purpose of supporting federal electioneering activity. See*, e.g.,* 3 1998 Senate Report 4013 ("In addition to direct contributions from the RNC to nonprofit groups, the senior leadership of the RNC helped to raise funds for many of the coalition's nonprofit organizations"); *id.*, at 5983 (minority views) ("Tax-exempt 'issue advocacy' groups and other conduits were systematically used to circumvent federal campaign finance laws"); 251 F. Supp. 2d, at 517 (Kollar-Kotelly, J.); *id.*, at 848 (Leon, J.). Parties and candidates have also begun to take advantage of so-called "politician 527s," which are little more than soft-money fronts for the promotion of particular federal officeholders and their interests. See *id.,* at 519 (Kollar-Kotelly, J.) ("'Virtually every member of Congress in a formal leadership position has his or her own 527 group. . . . In all, Public Citizen found 63 current members of Congress who have their own 527s'" (quoting Public Citizen Congress Watch, Congressional Leaders' Soft Money Accounts Show Need for Campaign Finance Reform Bills, Feb. 26, 2002, p. 6)); 251 F. Supp. 2d, at 849–850 (Leon, J.). These 527s have been quite successful at raising substantial sums of soft money from corporate interests, as well as from the national parties themselves. See *id.*, at 519–520 (Kollar-Kotelly, J.) (finding that 27 industries had each donated over $100,000 in a single year to the top 25 politician 527 groups and that the DNC was the single largest contributor to politician 527 groups (citing Public Citizen Congress Watch, *supra,* at 10–11)); 251 F. Supp. 2d, at 850 (Leon, J.) (same). Given BCRA's tighter restrictions on the raising and spending of soft money, the incentives for parties to exploit such organizations will only increase.

Section 323(d)'s solicitation restriction is closely drawn to prevent political parties from using tax-exempt organizations as soft-money surrogates. Though phrased as an absolute prohibition, the restriction does nothing more than subject contributions solicited by parties to FECA's regulatory regime, leaving open substantial opportunities for solicitation and other expressive activity in support of these organizations. First, and most obviously, §323(d) restricts solicitations only to those §501(c) groups "mak[ing] expenditures or disbursements in connection with an election for Federal office," 2 U. S. C. A. §441i(d)(1) (Supp. 2003), and to §527 organizations, which by definition engage in partisan political activity, §441i(d)(2); 26 U. S. C. §527(e). Second, parties remain free to solicit hard-money contributions to a §501(c)'s federal PAC, as well as to §527 organizations that already qualify as federal PACs.[69] Third, §323(d) allows parties to endorse qualifying organizations in ways other than direct

[69] Notably, the FEC has interpreted §323(d)(2) to permit state, district, and local party committees to solicit donations to §527 organizations that are state-registered PACs, that support only state or local candidates, and that do not make expenditures or disbursements in connection with federal elections. 11 CFR §300.37(a)(3)(iv) (2003). The agency determined that this interpretation of "political committee"—at least with respect to state, district, and local committees—was consistent with BCRA's fundamental purpose of prohibiting soft money from being used in connection with federal elections. 67 Fed. Reg. 49106 (2002).

solicitations of unregulated donations. For example, with respect to §501(c) organizations that are prohibited from administering PACs, parties can solicit hard-money donations to themselves for the express purpose of donating to these organizations. See *supra*, at 72–73. Finally, as with §323(a), §323(d) in no way restricts solicitations by party officers acting in their individual capacities. 2 U. S. C. A. §441i(d) (extending restrictions to solicitations and donations made by "an officer or agent acting *on behalf of* any such party committee" (emphasis added)).

In challenging §323(d)'s ban on solicitations, plaintiffs renew the argument they made with respect to §323(a)'s solicitation restrictions: that it cannot be squared with §323(e), which allows federal candidates and officeholders to solicit limited donations of soft money to tax-exempt organizations that engage in federal election activities. Compare 2 U. S. C. A. §441i(d) with §441i(e)(4). But if §323(d)'s restrictions on solicitations are otherwise valid, they are not rendered unconstitutional by the mere fact that Congress chose not to regulate the activities of another group as stringently as it might have. See *National Right to Work*, 459 U. S., at 210; see also *Katzenbach* v. *Morgan,* 384 U. S. 641, 656–657 (1966). In any event, the difference between the two provisions is fully explained by the fact that national party officers, unlike federal candidates and officeholders, are able to solicit soft money on behalf of nonprofit organizations in their individual capacities. Section 323(e), which is designed to accommodate the individual associational and speech interests of candidates and officeholders in lending personal support to nonprofit organizations, also places tight content, source, and amount restrictions on solicitations of soft money by federal candidates and officeholders. Given those limits, as well as the less rigorous standard of review, the greater allowances of §323(e) do not render §323(d)'s solicitation restriction facially invalid.

2. *New FECA §323(d)'s Regulation of Donations*

Section 323(d) also prohibits national, state, and local party committees from making or directing "any donatio[n]" to qualifying §501(c) or §527 organizations. 2 U. S. C. A. §441i(d) (Supp. 2003). The Government again defends the restriction as an anticircumvention measure. We agree insofar as it prohibits the donation of soft money. Absent such a restriction, state and local party committees could accomplish directly what the antisolicitation restrictions prevent them from doing indirectly—namely, raising large sums of soft money to launder through tax-exempt organizations engaging in federal election activities. Because the party itself would be raising and collecting the funds, the potential for corruption would be that much greater. We will not disturb Congress' reasonable decision to close that loophole, particularly given a record demonstrating an already robust practice of parties' making such donations. See 251 F. Supp. 2d, at 517–518 (Kollar-Kotelly); *id.*, at 848–849 (Leon, J.).

The prohibition does raise overbreadth concerns if read to restrict donations from a party's federal account—*i.e.*, funds that have already been raised in compliance with FECA's source, amount, and disclosure limitations. Parties have many valid reasons for giving to tax-exempt organizations, not the least of which is to associate themselves with certain causes and, in so doing, to demonstrate the values espoused by the party. A complete ban on donations prevents parties from making even the "general expression of support" that a contribution represents. *Buckley*, 424 U. S., at 21. At the same time, prohibiting parties from donating funds already raised in compliance with FECA does little to further Congress' goal of preventing corruption or the appearance of corruption of federal candidates and officeholders.

The Government asserts that the restriction is necessary to prevent parties from leveraging their hard money to gain control over a tax-exempt group's soft money. Even if we accepted that rationale, it would at most justify a dollar limit, not a flat ban. Moreover, any legitimate concerns over capture are diminished by the fact that the restrictions set forth in §§323(a) and (b) apply not only to party committees, but to entities under their control. See 2 U. S. C. A. §441i(a)(2) (extending prohibitions on national party committees to "any entity that is directly or indirectly established, financed, maintained, *or controlled* by such a national committee" (emphasis added)); §441i(b)(1) (same for state and local party committees).

These observations do not, however, require us to sustain plaintiffs' facial challenge to §323(d)'s donation restriction. "When the validity of an act of the Congress is drawn in question, and . . . a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell* v. *Benson*, 285 U. S. 22, 62 (1932); see also *Boos* v. *Barry*, 485 U. S. 312, 331 (1988); *New York* v. *Ferber*, 458 U. S. 747, 769, n. 24 (1982). Given our obligation to avoid constitutional problems, we narrowly construe §323(d)'s ban to apply only to donations of funds not raised in compliance with FECA. This construction is consistent with the concerns animating Title I, whose purpose is to plug the soft-money loophole. Though there is little legislative history regarding BCRA generally, and almost nothing on §323(d) specifically, the abuses identified in the 1998 Senate report regarding campaign finance practices involve the use of nonprofit organizations as conduits for large *soft-money* donations. See, *e.g.*, 3 1998 Senate Report 4565 ("The evidence indicates that the soft-money loophole is fueling many of the campaign abuses investigated by the Committee. . . . Soft money also supplied the funds parties used to make contributions to tax-exempt groups, which in turn used the funds to pay for election-related activities"); *id.*, at 4568–4569 (describing as an "egregious exampl[e]" of misuse a $4.6 million donation of nonfederal funds by the RNC to Americans for Tax Reform, which the organization spent on "direct mail and phone bank operations to counter anti-Republican advertising"). We have found no evidence that Congress was concerned about, much less that it intended to prohibit, donations of money already fully regulated by FECA. Given Title I's exclusive focus on abuses related to soft money, we would expect that if Congress meant §323(d)'s restriction to have this dramatic and constitutionally questionable effect, it would say so explicitly. Because there is nothing that compels us to conclude that Congress intended "donations" to include transfers of federal money, and because of the constitutional infirmities such an interpretation would raise, we decline to read §323(d) in that way. Thus, political parties remain free to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA.

New FECA §323(e)'s Restrictions on Federal Candidates and Officeholders

New FECA §323(e) regulates the raising and soliciting of soft money by federal candidates and officeholders. 2 U. S. C. A. §441i(e) (Supp. 2003). It prohibits federal candidates and officeholders from "solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing]" any soft money in connection with federal elections. §441i(e)(1)(A). It also limits the ability of federal candidates and officeholders to solicit, receive, direct, transfer, or spend soft money in connection with state and local elections. §441i(e)(1)(B).[70]

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[70] Section 323(e)(1)(B) tightly constrains the ability of federal candidates and officeholders to solicit or spend nonfederal money in connection with state or local elections. Contributions cannot exceed FECA's

Section 323(e)'s general prohibition on solicitations admits of a number of exceptions. For instance, federal candidates and officeholders are permitted to "attend, speak, or be a featured guest" at a state or local party fundraising event. 2 U. S. C. A. §441i(e)(3). Section 323(e) specifically provides that federal candidates and officeholders may make solicitations of soft money to §501(c) organizations whose primary purpose is not to engage in "Federal election activit[ies]" as long as the solicitation does not specify how the funds will be spent, 2 U. S. C. A. §441i(e)(4)(A); to §501(c) organizations whose primary purpose *is* to engage in "Federal election activit[ies]" as long as the solicitations are limited to individuals and the amount solicited does not exceed $20,000 per year per individual, 2 U. S. C. A. §441i(e)(4)(B); and to §501(c) organizations for the express purpose of carrying out such activities, again so long as the amount solicited does not exceed $20,000 per year per individual, 2 U. S. C. A. §441(e)(4)(B).

No party seriously questions the constitutionality of §323(e)'s general ban on donations of soft money made directly to federal candidates and officeholders, their agents, or entities established or controlled by them. Even on the narrowest reading of *Buckley*, a regulation restricting donations to a federal candidate, regardless of the ends to which those funds are ultimately put, qualifies

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analogous hard-money contribution limits or come from prohibited sources. In effect, §323(e)(1)(B) doubles the limits on what individuals can contribute to or at the behest of federal candidates and officeholders, while restricting the use of the additional funds to activities not related to federal elections. If the federal candidate or officeholder is also a candidate for state or local office, he or she may solicit, receive, and spend an unlimited amount of nonfederal money in connection with that election, subject only to state regulation and the requirement that such solicitation or expenditures refer only to the relevant state or local office. 2 U. S. C. A. §441i(e)(2).

as a contribution limit subject to less rigorous scrutiny. Such donations have only marginal speech and associational value, but at the same time pose a substantial threat of corruption. By severing the most direct link between the soft-money donor and the federal candidate, §323(e)'s ban on donations of soft money is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders.

Section 323(e)'s restrictions on solicitations are justified as valid anticircumvention measures. Large soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself. Without some restriction on solicitations, federal candidates and officeholders could easily avoid FECA's contribution limits by soliciting funds from large donors and restricted sources to like-minded organizations engaging in federal election activities. As the record demonstrates, even before the passage of BCRA, federal candidates and officeholders had already begun soliciting donations to state and local parties, as well as tax-exempt organizations, in order to help their own, as well as their party's, electoral cause. See *Colorado II*, 533 U. S., at 458 (quoting fundraising letter from a Congressman explaining to contributor that "'you are at the limit of what you can directly contribute to my campaign,' but 'you can further help my campaign by assisting the Colorado Republican Party'"); 251 F. Supp. 2d, at 479–480 (Kollar-Kotelly, J.) (surveying evidence of federal officeholders' soliciting funds to state and local parties); *id*., at 848 (Leon, J.) (same); *id*., at 518 (Kollar-Kotelly, J.) (surveying evidence of federal officeholders' soliciting funds for non-profits for electioneering purposes); *id*., at 849 (Leon, J.)

(same). The incentives to do so, at least with respect to solicitations to tax-exempt organizations, will only increase with Title I's restrictions on the raising and spending of soft money by national, state, and local parties.

Section 323(e) addresses these concerns while accommodating the individual speech and associational rights of federal candidates and officeholders. Rather than place an outright ban on solicitations to tax-exempt organizations, §323(e)(4) permits limited solicitations of soft money. 2 U. S. C. A. §441i(e)(4). This allowance accommodates individuals who have long served as active members of nonprofit organizations in both their official and individual capacities. Similarly, §§323(e)(1)(B) and 323(e)(3) preserve the traditional fundraising role of federal officeholders by providing limited opportunities for federal candidates and officeholders to associate with their state and local colleagues through joint fundraising activities. 2 U. S. C. A. §§441i(e)(1)(B), 441i(e)(3). Given these many exceptions, as well as the substantial threat of corruption or its appearance posed by donations to or at the behest of federal candidates and officeholders, §323(e) is clearly constitutional. We accordingly uphold §323(e) against plaintiffs' First Amendment challenge.

New FECA §323(f)'s Restrictions on State Candidates and Officeholders

The final provision of Title I is new FECA §323(f). 2 U. S. C. A. §441i(f) (Supp. 2003). Section 323(f) generally prohibits candidates for state or local office, or state or local officeholders, from spending soft money to fund "public communications" as defined in §301(20)(A)(iii)—*i.e.*, a communication that "refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." 2 U. S. C. A. §441i(f)(1);

§431(20)(A)(iii). Exempted from this restriction are communications made in connection with an election for state or local office which refer only to the state or local candidate or officeholder making the expenditure or to any other candidate for the same state or local office. §441i(f)(2).

Section 323(f) places no cap on the amount of money that state or local candidates can spend on any activity. Rather, like §§323(a) and 323(b), it limits only the source and amount of contributions that state and local candidates can draw on to fund expenditures that directly impact federal elections. And, by regulating only contributions used to fund "public communications," §323(f) focuses narrowly on those soft-money donations with the greatest potential to corrupt or give rise to the appearance of corruption of federal candidates and officeholders.

Plaintiffs advance two principal arguments against §323(f). We have already rejected the first argument, that the definition of "public communications" in new FECA §301(20)(A)(iii) is unconstitutionally vague and overbroad. See *supra*, 62, n. 64. We add only that, plaintiffs' and JUSTICE KENNEDY's contrary reading notwithstanding, *post*, at 34, this provision does not prohibit a state or local candidate from advertising that he has received a federal officeholder's endorsement.[71]

The second argument, that soft-money contributions to state and local candidates for "public communications" do not corrupt or appear to corrupt federal candidates, ignores both the record in this litigation and Congress'

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[71] See 148 Cong. Rec. S2143 (Mar. 20, 2002) (statement of Sen. Feingold) (Section 323(f) does not prohibit "spending non-federal money to run advertisements that mention that [state or local candidates] have been endorsed by a Federal candidate or say that they identify with a position of a named Federal candidate, so long as those advertisements do not support, attack, promote or oppose the Federal candidate").

strong interest in preventing circumvention of otherwise valid contribution limits. The proliferation of sham issue ads has driven the soft-money explosion. Parties have sought out every possible way to fund and produce these ads with soft money: They have labored to bring them under the FEC's allocation regime; they have raised and transferred soft money from national to state party committees to take advantage of favorable allocation ratios; and they have transferred and solicited funds to tax-exempt organizations for production of such ads. We will not upset Congress' eminently reasonable prediction that, with these other avenues no longer available, state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising. We therefore uphold §323(f) against plaintiffs' First Amendment challenge.[72]

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[72] JUSTICE KENNEDY faults our "unwillingness" to confront that "Title I's entirety . . . look[s] very much like an incumbency protection plan," citing §323(e), which provides officeholders and candidates with greater opportunities to solicit soft money than §§323(a) and (d) permit party officers. *Post*, at 23–24. But, §323(e) applies to both officeholders *and candidates* and allows only *minimally* greater opportunities for solicitation out of regard for the fact that candidates and officeholders, unlike party officers, can never step out of their official roles. *Supra*, at 70–71; 42 U. S. C. A. §441i(e). Any concern that Congress might opportunistically pass campaign-finance regulation for self-serving ends is taken into account by the applicable level of scrutiny. Congress must show concrete evidence that a particular type of financial transaction is corrupting or gives rise to the appearance of corruption and that the chosen means of regulation are closely drawn to address that real or apparent corruption. It has done so here. At bottom, JUSTICE KENNEDY has long disagreed with the basic holding of *Buckley* and its progeny that less rigorous scrutiny—which shows a measure of deference to Congress in an area where it enjoys particular expertise—applies to assess limits on campaign contributions. *Colorado II*, 533 U. S., at 465 (THOMAS, J., dissenting) (joining JUSTICE THOMAS for the proposition that "*Buckley* should be overruled" (citation omitted)); *Shrink Missouri*, 528 U. S., at 405–410 (KENNEDY, J., dissenting).

B

Several plaintiffs contend that Title I exceeds Congress' Election Clause authority to "make or alter" rules governing federal elections, U. S. Const., Art. I, §4, and, by impairing the authority of the States to regulate their own elections, violates constitutional principles of federalism. In examining congressional enactments for infirmity under the Tenth Amendment, this Court has focused its attention on laws that commandeer the States and state officials in carrying out federal regulatory schemes. See *Printz* v. *United States*, 521 U. S. 898 (1997); *New York* v. *United States*, 505 U. S. 144 (1992). By contrast, Title I of BCRA only regulates the conduct of private parties. It imposes no requirements whatsoever upon States or state officials, and, because it does not expressly pre-empt state legislation, it leaves the States free to enforce their own restrictions on the financing of state electoral campaigns. It is true that Title I, as amended, prohibits some fundraising tactics that would otherwise be permitted under the laws of various States, and that it may therefore have an indirect effect on the financing of state electoral campaigns. But these indirect effects do not render BCRA unconstitutional. It is not uncommon for federal law to prohibit private conduct that is legal in some States. See, *e.g.*, *United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U. S. 483 (2001). Indeed, such conflict is inevitable in areas of law that involve both state and federal concerns. It is not in and of itself a marker of constitutional infirmity. See *Ex parte Siebold*, 100 U. S. 371, 392 (1879).

Of course, in maintaining the federal system envisioned by the Founders, this Court has done more than just prevent Congress from commandeering the States. We have also policed the absolute boundaries of congressional power under Article I. See *United States* v. *Morrison,* 529 U. S. 598 (2000); *United States* v. *Lopez,* 514 U. S. 549 (1995). But plaintiffs offer no reason to believe that Congress has overstepped its Elections Clause power in enacting BCRA. Congress has a fully legitimate interest in maintaining the integrity of federal officeholders and preventing corruption of federal electoral processes through the means it has chosen. Indeed, our above analysis turns on our finding that those interests are sufficient to satisfy First Amendment scrutiny. Given that finding, we cannot conclude that those interests are insufficient to ground Congress' exercise of its Elections Clause power. See *Morrison*, *supra,* at 607 (respect owed to coordinate branches "demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

C

Finally, plaintiffs argue that Title I violates the equal protection component of the Due Process Clause of the Fifth Amendment because it discriminates against political parties in favor of special interest groups such as the National Rifle Association (NRA), American Civil Liberties Union (ACLU), and Sierra Club. As explained earlier, BCRA imposes numerous restrictions on the fundraising abilities of political parties, of which the soft-money ban is only the most prominent. Interest groups, however, remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications). We conclude that this disparate treatment does not offend the Constitution.

As an initial matter, we note that BCRA actually favors political parties in many ways. Most obviously, party committees are entitled to receive individual contributions that substantially exceed FECA's limits on contributions to nonparty political committees; individuals can give $25,000 to political party committees whereas they can give a maximum of $5,000 to nonparty political committees. In addition, party committees are entitled in effect to contribute to candidates by making coordinated expenditures, and those expenditures may greatly exceed the contribution limits that apply to other donors. See 2 U. S. C. A. §441a(d) (Supp. 2003).

More importantly, however, Congress is fully entitled to consider the real-world differences between political parties and interest groups when crafting a system of campaign finance regulation. See *National Right to Work*, 459 U. S., at 210. Interest groups do not select slates of candidates for elections. Interest groups do not determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses. Political parties have influence and power in the legislature that vastly exceeds that of any interest group. As a result, it is hardly surprising that party affiliation is the primary way by which voters identify candidates, or that parties in turn have special access to and relationships with federal officeholders. Congress' efforts at campaign finance regulation may account for these salient differences. Taken seriously, appellants' equal protection arguments would call into question not just Title I of BCRA, but much of the pre-existing structure of FECA as well. We therefore reject those arguments.

Accordingly, we affirm the judgment of the District Court insofar as it upheld §§323(e) and 323(f). We reverse the judgment of the District Court insofar as it invalidated §§323(a), 323(b), and 323(d).

IV

Title II of BCRA, entitled "Noncandidate Campaign Expenditures," is divided into two subtitles: "Electioneering Communications" and "Independent and Coordinated Expenditures." We consider each challenged section of these subtitles in turn.

BCRA §201's Definition of "Electioneering Communication"

The first section of Title II, §201, comprehensively amends FECA §304, which requires political committees to file detailed periodic financial reports with the FEC. The amendment coins a new term, "electioneering communication," to replace the narrowing construction of FECA's disclosure provisions adopted by this Court in *Buckley*. As discussed further below, that construction limited the coverage of FECA's disclosure requirement to communications expressly advocating the election or defeat of particular candidates. By contrast, the term "electioneering communication" is not so limited, but is defined to encompass any "broadcast, cable, or satellite communication" that

> "(I) refers to a clearly identified candidate for Federal office;
>
> "(II) is made within—
>
> "(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
>
> "(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
>
> "(III) in the case of a communication which refers to a candidate other than President or Vice President, is targeted to the relevant electorate." 2 U. S. C. A. §434(f)(3)(A)(i) (Supp. 2003).[73]

New FECA §304(f)(3)(C) further provides that a communi-

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[73] BCRA also provides a "backup" definition of "electioneering communication," which would become effective if the primary definition were "held to be constitutionally insufficient by final judicial decision to support the regulation provided herein." 2 U. S. C. A. §434(f)(3)(A)(ii). We uphold all applications of the primary definition and accordingly have no occasion to discuss the backup definition.

cation is "'targeted to the relevant electorate'" if it "can be received by 50,000 or more persons" in the district or State the candidate seeks to represent. 2 U. S. C. A. §434(f)(3)(C).

In addition to setting forth this definition, BCRA's amendments to FECA §304 specify significant disclosure requirements for persons who fund electioneering communications. BCRA's use of this new term is not, however, limited to the disclosure context: A later section of the Act (BCRA §203, which amends FECA §316(b)(2)) restricts corporations' and labor unions' funding of electioneering communications. Plaintiffs challenge the constitutionality of the new term as it applies in both the disclosure and the expenditure contexts.

The major premise of plaintiffs' challenge to BCRA's use of the term "electioneering communication" is that *Buckley* drew a constitutionally mandated line between express advocacy and so-called issue advocacy, and that speakers possess an inviolable First Amendment right to engage in the latter category of speech. Thus, plaintiffs maintain, Congress cannot constitutionally require disclosure of, or regulate expenditures for, "electioneering communications" without making an exception for those "communications" that do not meet *Buckley*'s definition of express advocacy.

That position misapprehends our prior decisions, for the express advocacy restriction was an endpoint of statutory interpretation, not a first principle of constitutional law. In *Buckley* we began by examining then-18 U. S. C. §608(e)(1) (1970 ed., Supp. IV), which restricted expenditures "'relative to a clearly identified candidate,'" and we found that the phrase "'relative to'" was impermissibly vague. 424 U. S., at 40–42. We concluded that the vagueness deficiencies could "be avoided only by reading §608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate."[74] *Id.*, at 43. We provided examples of words of express advocacy, such as "'vote for,' 'elect,' 'support,' . . . 'defeat,' [and] 'reject,'" *id.*, at 44, n. 52, and those examples eventually gave rise to what is now known as the "magic words" requirement.

We then considered FECA's disclosure provisions, including 2 U. S. C. §431(f) (1970 ed., Supp. IV), which defined "'expenditur[e]'" to include the use of money or other assets "'for the purpose of . . . influencing'" a federal election. *Buckley,* 424 U. S., at 77. Finding that the "ambiguity of this phrase" posed "constitutional problems," *ibid.,* we noted our "obligation to construe the statute, if that can be done consistent with the legislature's purpose, to avoid the shoals of vagueness," *id.*, at 77–78 (citations omitted). "To insure that the reach" of the disclosure requirement was "not impermissibly broad, we construe[d] 'expenditure' for purposes of that section in the same way we construed the terms of §608(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).

Thus, a plain reading of *Buckley* makes clear that the express advocacy limitation, in both the expenditure and the disclosure contexts, was the product of statutory interpretation rather than a constitutional command.[75] In narrowly reading the FECA provisions in *Buckley* to avoid

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[74] We then held that, so construed, the expenditure restriction did not advance a substantial government interest, because independent express advocacy did not pose a danger of real or apparent corruption, and the line between express advocacy and other electioneering activities was easily circumvented. Concluding that §608(e)(1)'s heavy First Amendment burden was not justified, we invalidated the provision. *Buckley,* 424 U. S., at 45–48.

[75] Our adoption of a narrowing construction was consistent with our vagueness and overbreadth doctrines. See *Broadrick,* 413 U. S., at 613; *Grayned,* 408 U. S., at 108–114.

problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line. Nor did we suggest as much in *MCFL,* 479 U. S. 238 (1986), in which we addressed the scope of another FECA expenditure limitation and confirmed the understanding that *Buckley*'s express advocacy category was a product of statutory construction.[76]

In short, the concept of express advocacy and the concomitant class of magic words were born of an effort to avoid constitutional infirmities. See *NLRB* v. *Catholic Bishop of Chicago,* 440 U. S. 490, 500 (1979) (citing *Murray* v. *Schooner Charming Betsy*, 2 Cranch 64, 118 (1804)). We have long "rigidly adhered" to the tenet "'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied,'" *United States* v. *Raines,* 362 U. S. 17, 21 (1960) (citation omitted), for "[t]he nature of judicial review constrains us to consider the case that is actually before us," *James B. Beam Distilling Co.* v. *Georgia,* 501 U. S. 529, 547 (1991) (Blackmun, J., dissenting). Consistent with that principle, our decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.

Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between

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[76] The provision at issue in *MCFL*—2 U. S. C. §441b (1982 ed.)—required corporations and unions to use separate segregated funds, rather than general treasury moneys, on expenditures made "'in connection with'" a federal election. *MCFL,* 479 U. S., at 241. We noted that *Buckley* had limited the statutory term "'expenditure'" to words of express advocacy "in order to avoid problems of overbreadth." 479 U. S., at 248. We held that "a similar *construction*" must apply to the expenditure limitation before us in *MCFL* and that the reach of 2 U. S. C. §441b was therefore constrained to express advocacy. 479 U. S., at 249 (emphasis added).

express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad. See *Buckley, supra*, at 45. Indeed, the unmistakable lesson from the record in this litigation, as all three judges on the District Court agreed, is that *Buckley*'s magic-words requirement is functionally meaningless. 251 F. Supp. 2d, at 303–304 (Henderson, J.); *id.*, at 534 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.). Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted.[77] And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.[78] *Buckley*'s

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[77] As one major-party political consultant testified, "'it is rarely advisable to use such clumsy words as "vote for" or "vote against."'" 251 F. Supp. 2d, at 305 (Henderson, J.) (quoting declaration of Douglas L. Bailey, founder, Bailey, Deardourff & Assoc., 1–2, App. 24, ¶3). He explained: "'All advertising professionals understand that the most effective advertising leads the viewer to his or her own conclusion without forcing it down their throat.'" 251 F. Supp. 2d, at 305 (Henderson, J.). Other political professionals and academics confirm that the use of magic words has become an anachronism. See *id.*, at 531 (Kollar-Kotelly, J.) (quoting declaration of Raymond D. Strother, Pres., Strother/Duffy/Strother ¶4, 9 Defs. Exhs., Tab 40); see Unsealed Pp. Vol., Tab 7); App. 1334–1335 (Krasno & Sorauf Expert Report)); see also 251 F. Supp. 2d, at 305 (Henderson, J.); *id.*, at 532 (Kollar-Kotelly, J.); *id.*, at 875–76 (Leon, J.).

[78] One striking example is an ad that a group called "Citizens for Reform" sponsored during the 1996 Montana congressional race, in which Bill Yellowtail was a candidate. The ad stated:

"Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But 'her nose was not broken.' He talks law and order . . . but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments—then voted against express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found in the existing system.

Finally we observe that new FECA §304(f)(3)'s definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in *Buckley*. The term "electioneering communication" applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. These components are both easily understood and objectively determinable. See *Grayned* v. *City of Rockford,* 408 U. S. 104, 108–114 (1972). Thus, the constitutional objection that persuaded the Court in *Buckley* to limit FECA's reach to express advocacy is simply inapposite here.

BCRA §201's Disclosure Requirements

Having rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy, we turn to plaintiffs' other concerns about the use of the term "electioneering communication" in amended FECA §304's disclosure provisions. Under those provisions, whenever any person makes disbursements totaling more than $10,000 during any calendar year for the direct costs of producing and airing electioneering communications, he must file a statement with the FEC identifying the pertinent elections and all persons sharing the costs of the disbursements. 2 U. S. C. A. §§434(f)(2)(A), (B), and (D) (Supp.

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child support enforcement. Call Bill Yellowtail. Tell him to support family values." 5 1998 Senate Report 6305 (minority views).

The notion that this advertisement was designed purely to discuss the issue of family values strains credulity.

2003). If the disbursements are made from a corporation's or labor union's segregated account,[79] or by a single individual who has collected contributions from others, the statement must identify all persons who contributed $1,000 or more to the account or the individual during the calendar year. §§434(f)(2)(E), (F). The statement must be filed within 24 hours of each "disclosure date"—a term defined to include the first date and all subsequent dates on which a person's aggregate undisclosed expenses for electioneering communications exceed $10,000 for that calendar year. §§434(f)(1), (2) and (4). Another subsection further provides that the execution of a contract to make a disbursement is itself treated as a disbursement for purposes of FECA's disclosure requirements. §434(f)(5).

In addition to the failed argument that BCRA's amendments to FECA §304 improperly extend to both express and issue advocacy, plaintiffs challenge amended FECA §304's disclosure requirements as unnecessarily (1) requiring disclosure of the names of persons who contributed $1,000 or more to the individual or group that paid for a communication, and (2) mandating disclosure of executory contracts for communications that have not yet aired. The District Court rejected the former submission but accepted the latter, finding invalid new FECA §304(f)(5), which governs executory contracts. Relying on BCRA's severability provision,[80] the court held that invalidation of the

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[79] As discussed below, *infra*, at 97–103, BCRA §203 bars corporations and labor unions from funding electioneering communications with money from their general treasuries, instead requiring them to establish a "separate segregated fund" for such expenditures. 2 U. S. C. A. §441b(b)(2).

[80] Section 401 of BCRA provides:

"If any provision of this Act or amendment made by this Act . . ., or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions executory contracts subsection did not render the balance of BCRA's amendments to FECA §304 unconstitutional. 251 F. Supp. 2d, at 242 *(per curiam)*.

We agree with the District Court that the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements—providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions—apply in full to BCRA.[81] Accordingly, *Buckley* amply supports application of FECA §304's disclosure requirements to the entire range of "electioneering communications." As the authors of the District Court's *per curiam* opinion concluded after reviewing evidence concerning the use of purported "issue ads" to influence federal elections:

> "The factual record demonstrates that the abuse of the present law not only permits corporations and labor unions to fund broadcast advertisements designed to influence federal elections, but permits them to do so while concealing their identities from the public. BCRA's disclosure provisions require these organizations to reveal their identities so that the public is able to identify the source of the funding behind broadcast advertisements influencing certain elections. Plaintiffs' disdain for BCRA's disclosure pro-

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and amendment to any person or circumstance, shall not be affected by the holding." 2 U. S. C. A. §454 note.

[81] The disclosure requirements that BCRA §201 added to FECA §304 are actually somewhat less intrusive than the comparable requirements that have long applied to persons making independent expenditures. For example, the previous version of §304 required groups making independent expenditures to identify donors who contributed more than $200. 2 U. S. C. §434(c)(2)(C) (2000 ed.). The comparable requirement in the amendments applies only to donors of $1,000 or more. 2 U. S. C. A. §§434(f)(2)(E), (F) (Supp. 2003).

visions is nothing short of surprising. Plaintiffs challenge BCRA's restrictions on electioneering communications on the premise that they should be permitted to spend corporate and labor union general treasury funds in the sixty days before the federal elections on broadcast advertisements, which refer to federal candidates, because speech needs to be 'uninhibited, robust, and wide-open.' McConnell Br. at 44 (quoting *New York Times Co.* v. *Sullivan,* 376 U. S. 254, 270 (1964)). Curiously, Plaintiffs want to preserve the ability to run these advertisements while hiding behind dubious and misleading names like: 'The Coalition-Americans Working for Real Change' (funded by business organizations opposed to organized labor), 'Citizens for Better Medicare' (funded by the pharmaceutical industry), 'Republicans for Clean Air' (funded by brothers Charles and Sam Wyly). Findings ¶¶44, 51, 52. Given these tactics, Plaintiffs never satisfactorily answer the question of how 'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from the scrutiny of the voting public. McConnell Br. at 44. Plaintiffs' argument for striking down BCRA's disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA, but ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace." 251 F. Supp. 2d, at 237.

The District Court was also correct that *Buckley* forecloses a facial attack on the new provision in §304 that requires disclosure of the names of persons contributing $1,000 or more to segregated funds or individuals that spend more than $10,000 in a calendar year on electioneering communications. Like our earlier decision in *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449 (1958),[82] *Buckley* recognized that compelled disclosures may impose an unconstitutional burden on the freedom to associate in support of a particular cause. Nevertheless, *Buckley* rejected the contention that FECA's disclosure requirements could not constitutionally be applied to minor parties and independent candidates because the Government's interest in obtaining information from such parties was minimal and the danger of infringing their rights substantial. In *Buckley*, unlike *NAACP*, we found no evidence that any party had been exposed to economic reprisals or physical threats as a result of the compelled disclosures. *Buckley*, 424 U. S., at 69–70. We acknowledged that such a case might arise in the future, however, and addressed the standard of proof that would then apply:

> "We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show

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[82] *NAACP* v. *Alabama* arose out of a judgment holding the NAACP in contempt for refusing to produce the names and addresses of its members and agents in Alabama. The NAACP "made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members ha[d] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." 357 U. S., at 462. We thought it apparent that the compelled disclosure would "affect adversely" the NAACP and its members' ability "to pursue their collective effort to foster beliefs which they admittedly have the right to advocate." *Id.*, at 462–463. Under these circumstances, we concluded that Alabama's interest in determining whether the NAACP was doing business in the State was plainly insufficient to justify its production order. *Id.*, at 464–466.

> only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.*, at 74.

A few years later we used that standard to resolve a minor party's challenge to the constitutionality of the State of Ohio's disclosure requirements. We held that the First Amendment prohibits States from compelling disclosures that would subject identified persons to "threats, harassment, and reprisals," and that the District Court's findings had established a "reasonable probability" of such a result.[83] *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio),* 459 U. S. 87, 100 (1982).

In this litigation the District Court applied *Buckley*'s evidentiary standard and found—consistent with our conclusion in *Buckley*, and in contrast to that in *Brown*—that the evidence did not establish the requisite "reason-

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[83] We stated:

"The District Court properly applied the *Buckley* test to the facts of this case. The District Court found 'substantial evidence of both governmental and private hostility toward and harassment of [Socialist Workers Party (SWP)] members and supporters.' Appellees introduced proof of specific incidents of private and government hostility toward the SWP and its members within the four years preceding the trial. These incidents, many of which occurred in Ohio and neighboring States, included threatening phone calls and hate mail, the burning of SWP literature, the destruction of SWP members' property, police harassment of a party candidate, and the firing of shots at an SWP office. There was also evidence that in the 12-month period before trial 22 SWP members, including 4 in Ohio, were fired because of their party membership. Although appellants contend that two of the Ohio firings were not politically motivated, the evidence amply supports the District Court's conclusion that 'private hostility and harassment toward SWP members make it difficult for them to maintain employment.' The District Court also found a past history of Government harassment of the SWP." *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio),* 459 U. S. 87, 98–99 (1982) (paragraph break omitted).

able probability" of harm to any plaintiff group or its members. The District Court noted that some parties had expressed such concerns, but it found a "lack of specific evidence about the basis for these concerns." 251 F. Supp. 2d, at 247 *(per curiam)*. We agree, but we note that, like our refusal to recognize a blanket exception for minor parties in *Buckley,* our rejection of plaintiffs' facial challenge to the requirement to disclose individual donors does not foreclose possible future challenges to particular applications of that requirement.

We also are unpersuaded by plaintiffs' challenge to new FECA §304(f)(5), which requires disclosure of executory contracts for electioneering communications:

> "Contracts to disburse
>
> "For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement." 2 U. S. C. A. §434(f)(5) (Supp. 2003).

In our view, this provision serves an important purpose the District Court did not advance. BCRA's amendments to FECA §304 mandate disclosure only if and when a person makes disbursements totaling more than $10,000 in any calendar year to pay for electioneering communications. Plaintiffs do not take issue with the use of a dollar amount, rather than the number or dates of the ads, to identify the time when a person paying for electioneering communications must make disclosures to the FEC. Nor do they question the need to make the contents of parties' disclosure statements available to curious voters in advance of elections. Given the relatively short time frames in which electioneering communications are made, the interest in assuring that disclosures are made promptly and in time to provide relevant information to voters is unquestionably significant. Yet fixing the deadline for filing disclosure statements based on the date when aggregate disbursements exceed $10,000 would open a significant loophole if advertisers were not required to disclose executory contracts. In the absence of that requirement, political supporters could avoid preelection disclosures concerning ads slated to run during the final week of a campaign simply by making a preelection downpayment of less than $10,000, with the balance payable after the election. Indeed, if the advertiser waited to pay that balance until the next calendar year then, as long as the balance did not itself exceed $10,000, the advertiser might avoid the disclosure requirements completely.

The record contains little evidence identifying any harm that might flow from the enforcement of §304(f)(5)'s "advance" disclosure requirement. The District Court speculated that disclosing information about contracts "that have not been performed, and may never be performed, may lead to confusion and an unclear record upon which the public will evaluate the forces operating in the political marketplace." 251 F. Supp. 2d, at 241 *(per curiam)*. Without evidence relating to the frequency of nonperformance of executed contracts, such speculation cannot outweigh the public interest in ensuring full disclosure before an election actually takes place. It is no doubt true that §304(f)(5) will sometimes require the filing of disclosure statements in advance of the actual broadcast of an advertisement.[84] But the same would be true in the absence of an advance disclosure requirement, if a television station insisted on advance payment for all of the ads covered by a contract. Thus, the possibility that amended §304 may

[84] We cannot judge the likelihood that this will occur, as the record contains little if any description of the contractual provisions that commonly govern payments for electioneering communications. Nor does the record contain any evidence relating to JUSTICE KENNEDY's speculation, *post*, at 39–40, that advance disclosure may disadvantage an advertiser.

sometimes require disclosures prior to the airing of an ad is as much a function of the use of disbursements (rather than the date of an ad) to trigger the disclosure requirement as it is a function of §304(f)(5)'s treatment of executory contracts.

As the District Court observed, amended FECA §304's disclosure requirements are constitutional because they "'d[o] not prevent anyone from speaking.'" *Ibid.* (quoting Brief for FEC in Opposition in No. 02–582 et al. (DC), p. 112). Moreover, the required disclosures "'would not have to reveal the specific content of the advertisements, yet they would perform an important function in informing the public about various candidates' supporters *before* election day.'" 251 F. Supp. 2d, at 241 (quoting Brief for FEC in Opposition, *supra*, at 112) (emphasis in original). Accordingly, we affirm the judgment of the District Court insofar as it upheld the disclosure requirements in amended FECA §304 and rejected the facial attack on the provisions relating to donors of $1,000 or more, and reverse that judgment insofar as it invalidated FECA §304(f)(5).

BCRA §202's Treatment of "Coordinated Communications" as Contributions

Section 202 of BCRA amends FECA §315(a)(7)(C) to provide that disbursements for "electioneering communication[s]" that are coordinated with a candidate or party will be treated as contributions to, and expenditures by, that candidate or party. 2 U. S. C. A. §441a(a)(7)(C) (Supp. 2003).[85] The amendment clarifies the scope of the

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[85] New FECA §315(a)(7)(C) reads as follows:

"if —

"(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 434(f)(3) of this title); and preceding subsection, §315(a)(7)(B), which states more generally that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate or party will constitute contributions. 2 U. S. C. §§441a(a)(7)(B)(i)–(ii). In *Buckley* we construed the statutory term "expenditure" to reach only spending for express advocacy. 424 U. S., at 40–43, and n. 52 (addressing 18 U. S. C. §608(e)(1) (1970 ed., Supp. IV), which placed a $1,000 cap on expenditures "'relative to a clearly identified candidate'"). BCRA §202 pre-empts a possible claim that §315(a)(7)(B) is similarly limited, such that coordinated expenditures for communications that avoid express advocacy cannot be counted as contributions. As we explained above, see *supra*, at 83–86, *Buckley*'s narrow interpretation of the term "expenditure" was not a constitutional limitation on Congress' power to regulate federal elections. Accordingly, there is no reason why Congress may not treat coordinated disbursements for electioneering communications in the same way it treats all other coordinated expenditures. We affirm the judgment of the District Court insofar as it held that plaintiffs had advanced "no basis for finding Section 202 unconstitutional." 251 F. Supp. 2d, at 250.

BCRA §203's Prohibition of Corporate and Labor Disbursements for Electioneering Communications

Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their

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"(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party. . . ." 2 U. S. C. A. §441a(a)(7)(C).

treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law. The ability to form and administer separate segregated funds authorized by FECA §316, 2 U. S. C. A. §441b (main ed. and Supp. 2003), has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court's unanimous view,[86] and it is not challenged in this litigation.

Section 203 of BCRA amends FECA §316(b)(2) to extend this rule, which previously applied only to express advocacy, to all "electioneering communications" covered by the definition of that term in amended FECA §304(f)(3), discussed above. 2 U. S. C. A. §441b(b)(2) (Supp. 2003).[87] Thus, under BCRA, corporations and unions may not use their general treasury funds to finance electioneering communications, but they remain free to organize and

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[86] We have explained:

"The statutory purpose of §441b . . . is to prohibit contributions or expenditures by corporations or labor organizations in connection with federal elections. 2 U. S. C. §441b(a). The section, however, permits some participation of unions and corporations in the federal electoral process by allowing them to establish and pay the administrative expenses of 'separate segregated fund[s],' which may be 'utilized for political purposes.' 2 U. S. C. §441b(b)(2)(C). The Act restricts the operations of such segregated funds, however, by making it unlawful for a corporation to solicit contributions to a fund established by it from persons other than its 'stockholders and their families and its executive or administrative personnel and their families.' 2 U. S. C. §441b(b)(4)(A)." *National Right to Work,* 459 U. S., at 201–202.

[87] The amendment is straightforward. Prior to BCRA, FECA §316(a) made it "unlawful . . . for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with" certain federal elections. 2 U. S. C. §441b(a) (2000 ed.). BCRA amends FECA §316(b)(2)'s definition of the term "contribution or expenditure" to include "any applicable electioneering communication." 2 U. S. C. A. §441b(b)(2) (Supp. 2003).

administer segregated funds, or PACs, for that purpose. Because corporations can still fund electioneering communications with PAC money, it is "simply wrong" to view the provision as a "complete ban" on expression rather than a regulation. *Beaumont*, 539 U. S., at ___, ___ (slip op., at 15). As we explained in *Beaumont:*

> "The PAC option allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members, and it lets the government regulate campaign activity through registration and disclosure, see [2 U. S. C.] §§432–434, without jeopardizing the associational rights of advocacy organizations' members." *Id.*, at ___ (slip op., at 16) (citation omitted).

See also *Austin* v. *Michigan Chamber of Commerce,* 494 U. S. 652, 658 (1990).

Rather than arguing that the prohibition on the use of general treasury funds is a complete ban that operates as a prior restraint, plaintiffs instead challenge the expanded regulation on the grounds that it is both overbroad and underinclusive. Our consideration of plaintiffs' challenge is informed by our earlier conclusion that the distinction between express advocacy and so-called issue advocacy is not constitutionally compelled. In that light, we must examine the degree to which BCRA burdens First Amendment expression and evaluate whether a compelling governmental interest justifies that burden. *Id.,* at 657. The latter question—whether the state interest is compelling—is easily answered by our prior decisions regarding campaign finance regulation, which "represent respect for the 'legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.'" *Beaumont*, *supra*, at ___ (slip op., at 8) (quoting *National Right to Work,* 459 U. S., at 209–210).

We have repeatedly sustained legislation aimed at "the corrosive and distorting effects 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, supra*, at 660; see *Beaumont, supra*, at ___ (slip op., at 7–8); *National Right to Work, supra*, at 209–210. Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against "'circumvention of [valid] contribution limits.'" *Beaumont, supra*, at ___ (slip op., at 7) (quoting *Colorado II,* 533 U. S., at 456, and n. 18.)

In light of our precedents, plaintiffs do not contest that the Government has a compelling interest in regulating advertisements that expressly advocate the election or defeat of a candidate for federal office. Nor do they contend that the speech involved in so-called issue advocacy is any more core political speech than are words of express advocacy. After all, "the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office," *Monitor Patriot Co.* v. *Roy,* 401 U. S. 265, 272 (1971), and "[a]dvocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." *Buckley,* 424 U. S., at 48. Rather, plaintiffs argue that the justifications that adequately support the regulation of express advocacy do not apply to significant quantities of speech encompassed by the definition of electioneering communications.

This argument fails to the extent that the issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy. The justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence the voters' decisions and have that effect. The precise percentage of issue ads that clearly identified a candidate and were aired during those relatively brief preelection time spans but had no electioneering purpose is a matter of dispute between the parties and among the judges on the District Court. See 251 F. Supp. 2d, at 307–312 (Henderson, J.); *id.*, at 583–587 (Kollar-Kotelly, J.); *id.*, at 796–798 (Leon, J.). Nevertheless, the vast majority of ads clearly had such a purpose. Annenberg Report 13–14; App. 1330–1348 (Krasno & Sorauf Expert Report); 251 F. Supp. 2d, at 573–578 (Kollar-Kotelly, J.); *id.*, at 826–827 (Leon, J.). Moreover, whatever the precise percentage may have been in the past, in the future corporations and unions may finance genuine issue ads during those time frames by simply avoiding any specific reference to federal candidates, or in doubtful cases by paying for the ad from a segregated fund.[88]

We are therefore not persuaded that plaintiffs have

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[88] As JUSTICE KENNEDY emphasizes in dissent, *post*, at 44–45, we assume that the interests that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads. The premise that apparently underlies JUSTICE KENNEDY's principal submission is a conclusion that the two categories of speech are nevertheless entitled to the same constitutional protection. If that is correct, JUSTICE KENNEDY must take issue with the basic holding in *Buckley* and, indeed, with our recognition in *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765 (1978), that unusually important interests underlie the regulation of corporations' campaign-related speech. In *Bellotti* we cited *Buckley*, among other cases, for the proposition that "[p]reserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government' are interests of the highest importance." 435 U. S., at 788–789 (citations and footnote omitted). "Preservation of the individual citizen's confidence in government," we added, "is equally important." *Id.*, at 789. BCRA's fidelity to those imperatives sets it apart from the statute in *Bellotti*—and, for that matter, from the Ohio statute banning the distribution of anonymous campaign literature, struck down in *McIntyre* v. *Ohio Elections Comm'n,* 514 U. S. 334 (1995).

carried their heavy burden of proving that amended FECA §316(b)(2) is overbroad. See *Broadrick* v. *Oklahoma,* 413 U. S. 601, 613 (1973). Even if we assumed that BCRA will inhibit some constitutionally protected corporate and union speech, that assumption would not "justify prohibiting all enforcement" of the law unless its application to protected speech is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications." *Virginia* v. *Hicks,* 539 U. S. ___, ___ (2003) (slip op., at 5–6). Far from establishing that BCRA's application to pure issue ads is substantial, either in an absolute sense or relative to its application to election-related advertising, the record strongly supports the contrary conclusion.

Plaintiffs also argue that FECA §316(b)(2)'s segregated-fund requirement for electioneering communications is underinclusive because it does not apply to advertising in the print media or on the Internet. 2 U. S. C. A. §434(f)(3)(A) (Supp. 2003). The records developed in this litigation and by the Senate Committee adequately explain the reasons for this legislative choice. Congress found that corporations and unions used soft money to finance a virtual torrent of televised election-related ads during the periods immediately preceding federal elections, and that remedial legislation was needed to stanch that flow of money. 251 F. Supp. 2d, at 569–573 (Kollar-Kotelly, J.); *id.*, at 799 (Leon, J.); 3 1998 Senate Report 4465, 4474–4481; 5 *id.,* at 7521–7525. As we held in *Buckley,* "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." 424 U. S., at 105 (internal quotation marks and citations omitted). One might just as well argue that the electioneering communication definition is underinclusive because it leaves advertising 61 days in advance of an election entirely unregulated. The record amply justifies Congress' line drawing.

In addition to arguing that §316(b)(2)'s segregated-fund requirement is underinclusive, some plaintiffs contend that it unconstitutionally discriminates in favor of media companies. FECA §304(f)(3)(B)(i) excludes from the definition of electioneering communications any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U. S. C. A. §434(f)(3)(B)(i) (Supp. 2003). Plaintiffs argue this provision gives free rein to media companies to engage in speech without resort to PAC money. Section 304(f)(3)(B)(i)'s effect, however, is much narrower than plaintiffs suggest. The provision excepts news items and commentary only; it does not afford *carte blanche* to media companies generally to ignore FECA's provisions. The statute's narrow exception is wholly consistent with First Amendment principles. "A valid distinction . . . exists between corporations that are part of the media industry and other corporations that are not involved in the regular business of imparting news to the public." *Austin,* 494 U. S., at 668. Numerous federal statutes have drawn this distinction to ensure that the law "does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events." *Ibid.* (citations omitted); see, *e.g.*, 2 U. S. C. §431(9)(B)(i) (exempting news stories, commentaries, and editorials from FECA's definition of "expenditure"); 15 U. S. C. §§1801–1804 (providing a limited antitrust exemption for newspapers); 47 U. S. C. §315(a) (excepting newscasts, news interviews, and news documentaries from the requirement that broadcasters provide equal time to candidates for public office).[89]

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[89] In a different but somewhat related argument, one set of plaintiffs

We affirm the District Court's judgment to the extent that it upheld the constitutionality of FECA §316(b)(2); to the extent that it invalidated any part of §316(b)(2), we reverse the judgment.

BCRA §204's Application to Nonprofit Corporations

Section 204 of BCRA, which adds FECA §316(c)(6), applies the prohibition on the use of general treasury funds to pay for electioneering communications to not-for-profit corporations.[90] Prior to the enactment of BCRA,

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contends that political campaigns and issue advocacy involve press activities, and that BCRA therefore interferes with speakers' rights under the Freedom of the Press Clause. U. S. Const., Amdt. 1. We affirm the District Court's conclusion that this contention lacks merit.

[90] The statutory scheme is somewhat complex. In its provision dealing with "Rules Relating to Electioneering Communications," BCRA §203(c)(2) (adding FECA §316(c)(2)) makes a blanket exception for designated nonprofit organizations, which reads as follows:

"Exception

"Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of Title 26) made under section 434(f)(2)(E) or (F) of this title if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section." 2 U. S. C. A. §441b(c)(2) (Supp. 2003).

BCRA §204, however, amends FECA §316(c) to exclude "targeted communications" from that exception. New FECA §316(c)(6) states that the §316(c)(2) exception "shall not apply in the case of a targeted communication that is made by an organization described" in §316(b)(2). 2 U. S. C. A. ¶441b(c)(6)(A). Subparagraph (B) then defines the term "targeted communication" for the purpose of the provision as including all electioneering communications. The parties and the judges on the District Court have assumed that amended FECA §316(c)(6) completely canceled the exemption for nonprofit corporations

FECA required such corporations, like business corporations, to pay for their express advocacy from segregated funds rather than from their general treasuries. Our recent decision in *Federal Election Comm'n* v. *Beaumont*, 539 U. S. ___ (2003), confirmed that the requirement was valid except insofar as it applied to a sub-category of corporations described as "*MCFL* organizations," as defined by our decision in *MCFL,* 479 U. S. 238 (1986).[91] The constitutional objection to applying FECA's segregated-fund requirement to so-called *MCFL* organizations necessarily applies with equal force to FECA §316(c)(6).

Our decision in *MCFL* related to a carefully defined category of entities. We identified three features of the organization at issue in that case that were central to our holding:

> "*First*, it was formed for the express purpose of promoting political ideas, and cannot engage in business activities. If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including direct expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. *Second*, it has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected

set forth in §316(c)(2). 251 F. Supp. 2d, at 804 (Leon, J.) ("Section 204 completely cancels out the exemption for all nonprofit corporations provided by Section 203").

[91] "[A] unanimous Court in *National Right to Work* did not think the regulatory burdens on PACs, including restrictions on their ability to solicit funds, rendered a PAC unconstitutional as an advocacy corporation's sole avenue for making political contributions. See 459 U. S., at 201–202. There is no reason to think the burden on advocacy corporations is any greater today, or to reach a different conclusion here." *Beaumont*, 539 U. S., at ___ (slip op., at 16).

with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. *Third*, MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *Id.*, at 264.

That FECA §316(c)(6) does not, on its face, exempt *MCFL* organizations from its prohibition is not a sufficient reason to invalidate the entire section. If a reasonable limiting construction "has been or could be placed on the challenged statute" to avoid constitutional concerns, we should embrace it. *Broadrick,* 413 U. S., at 613; *Buckley,* 424 U. S., at 44. Because our decision in the *MCFL* case was on the books for many years before BCRA was enacted, we presume that the legislators who drafted §316(c)(6) were fully aware that the provision could not validly apply to *MCFL*-type entities. See *Bowen* v. *Massachusetts,* 487 U. S. 879, 896 (1988); *Cannon* v. *University of Chicago,* 441 U. S. 677, 696–697 (1979). Indeed, the Government itself concedes that §316(c)(6) does not apply to *MCFL* organizations. As so construed, the provision is plainly valid. See *Austin,* 494 U. S., at 661–665 (holding that a segregated-fund requirement that did not explicitly carve out an *MCFL* exception could apply to a nonprofit corporation that did not qualify for *MCFL* status).

Accordingly, the judgment of the District Court upholding §316(c)(6) as so limited is affirmed.

BCRA §212's Reporting Requirement for $1,000 Expenditures

Section 212 of BCRA amends FECA §304 to add a new disclosure requirement, FECA §304(g), which applies to persons making independent expenditures of $1,000 or more during the 20-day period immediately preceding an election. Like FECA §304(f)(5), discussed above, new

§304(g) treats the execution of a contract to make a disbursement as the functional equivalent of a payment for the goods or services covered by the contract.[92] In challenging this provision, plaintiffs renew the argument we rejected in the context of §304(f)(5): that they have a constitutional right to postpone any disclosure until after the performance of the services purchased by their expenditure.

The District Court held that the challenge to FECA §304(g) was not ripe because the FEC has issued regulations "provid[ing] Plaintiffs with the exact remedy they seek"—that is, specifically declining to "require disclosure of independent express advocacy expenditures prior to their 'publi[c] disseminat[ion].'" 251 F. Supp. 2d, at 251, and n. 85 *(per curiam)* (citing 68 Fed. Reg. 404, 452 (2003) (codified at 11 CFR §§109.10(c), (d) (2003))). We are not certain that a regulation purporting to limit the range of circumstances in which a speech-burdening statute will be enforced can render nonjusticiable a facial challenge to the (concededly broader) underlying statute. Nevertheless, we need not separately address the constitutionality of §304(g), for our ruling as to BCRA §201, see *supra*, at 82–

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[92] New FECA §304(g) provides:

"Time for reporting certain expenditures

"(1) Expenditures aggregating $1,000

"(A) Initial report

"A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

"(B) Additional reports

"After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates." 2 U. S. C. A. §434 (Supp. 2003).

89, renders the issue essentially moot.

BCRA §213's Requirement that Political Parties Choose Between Coordinated and Independent Expenditures After Nominating a Candidate

Section 213 of BCRA amends FECA §315(d)(4) to impose certain limits on party spending during the postnomination, preelection period.[93] At first blush, the text of §315(d)(4)(A) appears to require political parties to make a straightforward choice between using limited coordinated expenditures or unlimited independent expenditures to

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[93] New FECA §315(d)(4) reads as follows:

"Independent versus coordinated expenditures by party

"(A) In general

"On or after the date on which a political party nominates a candidate, no committee of the political party may make—

"(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 431(17) of this title) with respect to the candidate during the election cycle; or

"(ii) any independent expenditure (as defined in section 431(17) of this title) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

"(B) Application

"For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

"(C) Transfers

"A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate." 2 U. S. C. A. §441a(d)(4) (Supp. 2003).

support their nominees. All three judges on the District Court concluded that the provision placed an unconstitutional burden on the parties' right to make unlimited independent expenditures. 251 F. Supp. 2d, at 388 (Henderson, J.); *id.*, at 650–651 (Kollar-Kotelly, J.), *id.*, at 805–808 (Leon, J.). In the end, we agree with that conclusion but believe it important to identify certain complexities in the text of §315(d)(4) that affect our analysis of the issue.

Section 315 of FECA sets forth various limitations on contributions and expenditures by individuals, political parties, and other groups. Section 315(a)(2) restricts "contributions" by parties to $5,000 per candidate. 2 U. S. C. A. §441a(a)(2). Because §315(a)(7) treats expenditures that are coordinated with a candidate as contributions to that candidate, 2 U. S. C. A. §441(a)(7) (Supp. 2003), the $5,000 limit also operates as a cap on parties' coordinated expenditures. Section 315(d), however, provides that, "[n]otwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions," political parties may make "expenditures" in support of their candidates under a formula keyed to the voting-age population of the candidate's home State or, in the case of a candidate for President, the voting-age population of the United States. 2 U. S. C. A. §§441a(d)(1)–(3) (main ed. and Supp. 2003).[94] In the year

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[94] After exempting political parties from the general contribution and expenditure limitations of the statute, 2 U. S. C. A. §441a(d)(1), FECA §315(d) imposes the following substitute limitations on party spending:

"(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political

2000, that formula permitted expenditures ranging from \$33,780 to \$67,650 for House of Representatives races, and from \$67,650 to \$1.6 million for Senate races. *Colorado II,* 533 U. S., at 439, n. 3. We held in *Colorado I* that parties have a constitutional right to make unlimited independent expenditures, and we invalidated §315(d) to the extent that it restricted such expenditures. As a result of that decision, §315(d) applies only to coordinated expenditures, replacing the \$5,000 cap on contributions set out in §315(a)(2) with the more generous limitations prescribed by §§315(d)(1)–(3). We sustained that limited application in *Colorado II, supra*.

Section 213 of BCRA amends §315(d) by adding a new paragraph (4). New §315(d)(4)(A) provides that, after a party nominates a candidate for federal office, it must choose between two spending options. Under the first option, a party that "makes any independent expenditure (as defined in section [301(17)])" is thereby barred from making "any coordinated expenditure under this subsection." 2 U. S. C. A. §441a(d)(4)(A)(i) (Supp. 2003). The phrase "this subsection" is a reference to subsection (d) of

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party serving as the principal campaign committee of a candidate for office of President of the United States.

"(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

"(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

"(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

"(ii) \$20,000; and

"(B) in the case of a candidate for election to the officer of Representative, Delegate, or Resident Commissioner in any other State, \$10,000." 2 U. S. C. §§441a(d)(2)–(3).

§315. Thus, the consequence of making an independent expenditure is not a complete prohibition of any coordinated expenditure: Although the party cannot take advantage of the increased spending limits under §§315(d)(1)–(3), it still may make up to $5,000 in coordinated expenditures under §315(a)(2). As the difference between $5,000 and $1.6 million demonstrates, however, that is a significant cost to impose on the exercise of a constitutional right.

The second option is the converse of the first. It provides that a party that makes any coordinated expenditure "under this subsection" (*i.e.*, one that exceeds the ordinary $5,000 limit) cannot make "any independent expenditure (as defined in section [301(17)]) with respect to the candidate." 2 U. S. C. A. §441a(d)(4)(A)(ii). Section 301(17) defines "'independent expenditure'" to mean a non-coordinated expenditure "expressly advocating the election or defeat of a clearly identified candidate." 2 U. S. C. A. §431(17)(A).[95] Therefore, as was true of the first option, the party's choice is not as stark as it initially appears: The consequence of the larger coordinated expenditure is

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[95] As amended by BCRA, §301(17) provides:

"Independent expenditure

"The term 'independent expenditure' means an expenditure by a person—

"(A) expressly advocating the election or defeat of a clearly identified candidate; and

"(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 2 U. S. C. A. §431(17) (Supp. 2003).

The version of the definition prior to its amendment by BCRA also included the phrase "expressly advocating the election or defeat of a clearly identified candidate." 2 U. S. C. §431(17) (2000 ed.). That definition had been adopted in 1976, presumably to reflect the narrowing construction that the Court adopted in *Buckley*. Federal Election Campaign Act Amendments of 1976, 90 Stat. 475.

not a complete prohibition of any independent expenditure, but the forfeiture of the right to make independent expenditures *for express advocacy*. As we explained in our discussion of the provisions relating to electioneering communications, *supra*, at 83–87, express advocacy represents only a tiny fraction of the political communications made for the purpose of electing or defeating candidates during a campaign. Regardless of which option parties choose, they remain free to make independent expenditures for the vast majority of campaign ads that avoid the use of a few magic words.

In sum, the coverage of new FECA §315(d)(4) is much more limited than it initially appears. A party that wishes to spend more than $5,000 in coordination with its nominee is forced to forgo only the narrow category of independent expenditures that make use of magic words. But while the category of burdened speech is relatively small, it plainly is entitled to First Amendment protection. See *Buckley*, 424 U. S., at 44–45, 48. Under §315(d)(4), a political party's exercise of its constitutionally protected right to engage in "core First Amendment expression," *id.,* at 48, results in the loss of a valuable statutory benefit that has been available to parties for many years. To survive constitutional scrutiny, a provision that has such consequences must be supported by a meaningful governmental interest.

The interest in requiring political parties to avoid the use of magic words is not such an interest. We held in *Buckley* that a $1,000 cap on expenditures that applied only to express advocacy could not be justified as a means of avoiding circumvention of contribution limits or preventing corruption and the appearance of corruption because its restrictions could easily be evaded: "So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." *Id.*, at 45. The same is true in this litigation. Any claim that a restriction on independent express advocacy serves a strong Government interest is belied by the overwhelming evidence that the line between express advocacy and other types of election-influencing expression is, for Congress' purposes, functionally meaningless. Indeed, Congress enacted the new "electioneering communication[s]" provisions precisely because it recognized that the express advocacy test was woefully inadequate at capturing communications designed to influence candidate elections. In light of that recognition, we are hard pressed to conclude that any meaningful purpose is served by §315(d)(4)'s burden on a party's right to engage independently in express advocacy.

The Government argues that §315(d)(4) nevertheless is constitutional because it is not an outright ban (or cap) on independent expenditures, but rather offers parties a voluntary choice between a constitutional right and a statutory benefit. Whatever merit that argument might have in the abstract, it fails to account for new §315(d)(4)(B), which provides:

> "For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee." 2 U. S. C. A. §441a(d)(4)(B) (Supp. 2003).

Given that provision, it simply is not the case that each party committee can make a voluntary and independent choice between exercising its right to engage in independent advocacy and taking advantage of the increased limits on coordinated spending under §§315(d)(1)–(3). Instead, the decision resides solely in the hands of the first mover, such that a local party committee can bind both the state and national parties to its chosen spending option.[96] It is one thing to say that Congress may require a party committee to give up its right to make independent expenditures if it believes that it can accomplish more with coordinated expenditures. It is quite another thing, however, to say that the RNC must limit itself to $5,000 in coordinated expenditures in support of its presidential nominee if any state or local committee first makes an independent expenditure for an ad that uses magic words. That odd result undermines any claim that new §315(d)(4) can withstand constitutional scrutiny simply because it is cast as a voluntary choice rather than an outright prohibition on independent expenditures.

The portion of the judgment of the District Court invalidating BCRA §213 is affirmed.

BCRA §214's Changes in FECA's Provisions Covering Coordinated Expenditures

Ever since our decision in *Buckley*, it has been settled that expenditures by a noncandidate that are "controlled by or coordinated with the candidate and his campaign" may be treated as indirect contributions subject to FECA's source and amount limitations. 424 U. S., at 46. Thus,

[96] Although the District Court and all the parties to this litigation endorse the interpretation set forth in the text, it is not clear that subparagraph (B) should be read so broadly: The reference to "a State" instead of "the States" suggests that Congress meant to distinguish between committees associated with the party for each State (which would be grouped together by State, with each grouping treated as a single committee for purposes of the choice) and committees associated with a national party (which would likewise be grouped together and treated as a separate political committee). We need not resolve the interpretive puzzle, however, because even under the more limited reading a local party committee would be able to tie the hands of a state committee or other local committees in the same State.

FECA §315(a)(7)(B)(i) long has provided that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." 2 U. S. C. A. §441a(a)(7)(B)(i) (Supp. 2003). Section 214(a) of BCRA creates a new FECA §315(a)(7)(B)(ii) that applies the same rule to expenditures coordinated with "a national, State, or local committee of a political party." 2 U. S. C. A. §441a(a)(7)(B)(ii).[97] Sections 214(b) and (c) direct the FEC to repeal its current regulations[98] and to promulgate new regulations dealing with "coordinated communications" paid for by persons other than candidates or their parties. Subsection (c) provides that the

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[97] The italicized portion of the following partial quotation of FECA §315(a)(7) was added by §214 of BCRA:

"For purposes of this subsection—

"(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

"(B)(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

"(ii) *expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee* . . . ." 2 U. S. C. A. §441a(a)(7) (Supp. 2003).

[98] Pre-BCRA FEC regulations defined coordinated expenditures to include expenditures made "[a]t the request or suggestion of" a candidate or party; communications in which a candidate or party "exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement"; and communications produced "[a]fter substantial discussion or negotiation" with a party or candidate, "the result of which is collaboration or agreement." 11 CFR §100.23(c)(2) (2001).

new "regulations shall not require agreement or formal collaboration to establish coordination." 2 U. S. C. A. §441a(a) note.

Plaintiffs do not dispute that Congress may apply the same coordination rules to parties as to candidates. They argue instead that new FECA §315(a)(7)(B)(ii) and its implementing regulations are overbroad and unconstitutionally vague because they permit a finding of coordination even in the absence of an agreement. Plaintiffs point out that political supporters may be subjected to criminal liability if they exceed the contribution limits with expenditures that ultimately are deemed coordinated. Thus, they stress the importance of a clear definition of "coordination" and argue any definition that does not hinge on the presence of an agreement cannot provide the "precise guidance" that the First Amendment demands. Brief for Chamber of Commerce of the United States et al., Appellant in No. 02–1756, p. 48. As plaintiffs readily admit, that argument reaches beyond BCRA, calling into question FECA's pre-existing provisions governing expenditures coordinated with candidates.

We are not persuaded that the presence of an agreement marks the dividing line between expenditures that are coordinated—and therefore may be regulated as indirect contributions—and expenditures that truly are independent. We repeatedly have struck down limitations on expenditures "made totally independently of the candidate and his campaign," *Buckley*, 424 U. S., at 47, on the ground that such limitations "impose far greater restraints on the freedom of speech and association" than do limits on contributions and coordinated expenditures, *id.*, at 44, while "fail[ing] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," *id.*, at 47–48. See also *Colorado I,* 518 U. S., at 613–614 (striking down limit on expenditure made by party officials prior to nomination of candidates and without any consultation with potential nominees). We explained in *Buckley:*

> "Unlike contributions, . . . independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." 424 U. S., at 47.

Thus, the rationale for affording special protection to wholly independent expenditures has nothing to do with the absence of an agreement and everything to do with the functional consequences of different types of expenditures. Independent expenditures "are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate's point of view." *Colorado II,* 533 U. S., at 446. By contrast, expenditures made after a "wink or nod" often will be "as useful to the candidate as cash." *Id.*, at 442, 446. For that reason, Congress has always treated expenditures made "at the request or suggestion of" a candidate as coordinated.[99] 2 U. S. C. A. §441a(a)(7)(B)(i) (Supp. 2003). A supporter easily could comply with a candidate's request or suggestion without

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[99] Contrary to plaintiffs' contention, the statutory framework was not significantly different at the time of our decision in *Buckley*. The relevant provision, 18 U. S. C. §608(e)(1), treated as coordinated any expenditures "authorized *or requested* by the candidate." (Emphasis added.) And the legislative history, on which we relied for "guidance in differentiating individual expenditures that are contributions . . . from those treated as independent expenditures," described as "independent" an expenditure made by a supporter "'completely on his own, and not at the request or suggestion of the candidate or his agen[t].'" 424 U. S., at 46–47, n. 53 (quoting S. Rep. No. 93–689, p. 18 (1974)).

first agreeing to do so, and the resulting expenditure would be "'virtually indistinguishable from [a] simple contributio[n],'" *Colorado II*, *supra*, at 444–445. Therefore, we cannot agree with the submission that new FECA §315(a)(7)(B)(ii) is overbroad because it permits a finding of coordination or cooperation notwithstanding the absence of a pre-existing agreement.

Nor are we persuaded that the absence of an agreement requirement renders §315(a)(7)(B)(ii) unconstitutionally vague. An agreement has never been required to support a finding of coordination with a candidate under §315(a)(7)(B)(i), which refers to expenditures made "in cooperation, consultation, or concer[t] with, or at the request or suggestion of" a candidate. Congress used precisely the same language in new §315(a)(7)(B)(ii) to address expenditures coordinated with parties. FECA's longstanding definition of coordination "delineates its reach in words of common understanding." *Cameron* v. *Johnson,* 390 U. S. 611, 616 (1968). Not surprisingly, therefore, the relevant statutory language has survived without constitutional challenge for almost three decades. Although that fact does not insulate the definition from constitutional scrutiny, it does undermine plaintiffs' claim that the language of §315(a)(7)(B)(ii) is intolerably vague. Plaintiffs do not present any evidence that the definition has chilled political speech, whether between candidates and their supporters or by the supporters to the general public. See *Reno* v. *American Civil Liberties Union,* 521 U. S. 844, 874 (1997) (noting risk that vague statutes may chill protected expression). And, although plaintiffs speculate that the FEC could engage in intrusive and politically motivated investigations into alleged coordination, they do not even attempt to explain why an agreement requirement would solve that problem. Moreover, the only evidence plaintiffs have adduced regarding the enforcement of the coordination provision during its 27-year history concerns three investigations in the late 1990's into groups on different sides of the political aisle. Such meager evidence does not support the claim that §315(a)(7)(B)(ii) will "foster 'arbitrary and discriminatory application.'" *Buckley, supra,* at 41, n. 48 (quoting *Grayned* v. *City of Rockford*, 408 U. S., at 108–109). We conclude that FECA's definition of coordination gives "fair notice to those to whom [it] is directed," *American Communications Assn.* v. *Douds,* 339 U. S. 382, 412 (1950), and is not unconstitutionally vague.

Finally, portions of plaintiffs' challenge to BCRA §214 focus on the regulations the FEC has promulgated under §214(c). 11 CFR §109.21 (2003). As the District Court explained, issues concerning the regulations are not appropriately raised in this facial challenge to BCRA, but must be pursued in a separate proceeding. Thus, we agree with the District Court that plaintiffs' challenge to §§214(b) and (c) is not ripe to the extent that the alleged constitutional infirmities are found in the implementing regulations rather than the statute itself.

The portions of the District Court judgment rejecting plaintiffs' challenges to BCRA §214 are affirmed.

V

Many years ago we observed that "[t]o say that Congress is without power to pass appropriate legislation to safeguard . . . an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection." *Burroughs* v. *United States,* 290 U. S., at 545. We abide by that conviction in considering Congress' most recent effort to confine the ill effects of aggregated wealth on our political system. We are under no illusion that BCRA will be the last congressional statement on the matter. Money, like water, will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day. In the main we uphold BCRA's two principal, complementary features: the control of soft money and the regulation of electioneering communications. Accordingly, we affirm in part and reverse in part the District Court's judgment with respect to Titles I and II.

It is so ordered.