ability of party committees (and their individual members) to meet and confer about campaign strategy. Thus, BCRA in no way restricts the participation of members of state and local Republican Party committees in the RNC's Victory Plan meetings or any other planning and strategy sessions. But see RNC Br. at 9, 39.

Contrary to plaintiffs' suggestion, see McConnell Br. at 30; CDP Br 30, the FEC's regulations make clear that state or local party officers who also serve on their party's national committees are free to raise money on behalf of their state or local committees. As explained in our opening brief, Gov't Br. at 98-99, BCRA's prohibition against officers and agents of the national party committees raising or spending soft money applies only to the extent that the officer or agent is "acting on behalf of such a national committee." 2 U.S.C. 441i(a)(2) (emphasis added).[29]

Plaintiffs' description of BCRA's impact on associational rights is exaggerated in other respects as well. For example, contrary to plaintiffs' contention, see McConnell Br. at 24, nothing in BCRA prevents state and local candidates from establishing hard money accounts under FECA to make expenditures that promote or attack federal candidates. See 11 C.F.R. 102.5(a)(1) (authorizing political committee to set up single account consisting exclusively of hard money to be used for both state and federal election expenditures). Also, national party committees and their agents remain free to raise hard money for state and local candidates; a national party committee, like any federal political committee, is free to contribute its funds to state and local candidates, even though under BCRA all of its funds will have been raised subject to federal limits. Id. Indeed, when Congress has sought to restrict the uses made of funds in hard money accounts, it has done so expressly. See 2 U.S.C. 439a (prohibiting personal use of campaign funds

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[29] Similarly, Speaker Hastert's suggestion that BCRA's national party soft money ban will preclude him from participating in state-level party activity by virtue of his status as an officer of the NRCC, Hastert Amicus Br. at 11-14, lacks merit. To the extent that the Speaker participates in such activity on his own behalf, he would not be acting as an agent of the NRCC, and the national party soft money ban, therefore, would not be implicated. See 2 U.S.C. 441i(a)(2).

by a federal candidate). There are no such restrictions on contributions of hard money by national parties to state and local candidates.

Moreover, contrary to plaintiffs' suggestion, see McConnell Br. at 30, the FEC's regulations expressly permit joint fundraising of hard money by state and national party committees in specified circumstances. See 11 C.F.R. 102.17, 300.31(e)(1), (f). State and local party committees are free to engage in joint fundraising with each other of hard money and soft money. See 11 C.F.R. 102.17. While a committee can only use money it raises itself for any federal election activities it chooses to conduct under the Levin Amendment option, there is no restriction in Title I on raising money jointly, or on transferring hard or soft money between state-level party committees.

State parties also have broad latitude to associate with federal candidates in connection with their fundraising activities. The statute explicitly permits federal candidates and officeholders to raise soft money that is not from corporate or union treasuries for state parties in amounts up to the equivalent federal limits. See 2 U.S.C. 441i(e)(1)(B). Thus, with that limitation, Senator McConnell is free to continue to send letters soliciting funds for state and local party committees. See McConnell Br. at 23. Moreover, federal candidates and officeholders are free to participate in fundraising events of state parties, and to speak "without regulation or restriction" during such events. 67 Fed. Reg. 49,108 (July 29, 2002); see 2 U.S.C. 441i(e)(3); 11 C.F.R. 300.64.[30]

The right to associate is not, however, a freedom to make or receive unlimited contributions of money. "[I]t is clear that 'neither the right to associate nor the right to participate in political activities is absolute.'" Buckley, 424 U.S. at 25 (citation omitted). Indeed, the Court in Buckley recognized that

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[30] Thus, if the Yolo County Bean Feed is a fundraising event, see CDP/CRP Br. at 3-4, the statute would permit the local congressman to attend, speak, and be a featured guest, 2 U.S.C. 441i(e)(4), and under the FEC's regulations he or she could speak at the event "without restriction," 11 C.F.R. 300.64(b). The party could also announce his or her attendance in its invitations. Id. 300.64(a).

reasonable limits on campaign contributions violate no associational rights. See Buckley, 424 U.S. at 22-23; NRWC, 459 U.S. at 207 ("[W]e conclude that the associational rights asserted by respondent may be and are overborne by the interests Congress has sought to protect in enacting §441b."). Contrary to plaintiffs' erroneous characterization, BCRA leaves party committees free to engage in a wide range of associational activities, including a significant amount of fundraising. Plaintiffs' associational claims, therefore, lack merit.

2. BCRA's definition of "Federal election activity" is not overbroad or void for vagueness.

Although some "Federal election activity" can affect state as well as federal elections, the impact on federal elections is manifest. As Professor Green explained, "[b]ecause the partisan proclivities of the electorate express themselves toward both state and federal candidates, state parties influence federal elections directly even when they mobilize their supporters on behalf of a candidate for state office." D. Green Expert Rep. at 13 (emphasis in original); see also id. at 13-14 ("[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."); see also D. Green Rebuttal Expert Rep. at 14 (so-called voter mobilization activities such as direct mail and commercial phone banks have a persuasive impact on voters).

Plaintiffs exaggerate the breadth of the definition of "Federal election activity" in a number of important respects. For example, throughout their briefs, plaintiffs contend that the inclusion as Federal election activity of GOTV activity keeps them from advertising support for ballot initiatives and state

candidates if a federal candidate is on the ballot, even if the federal candidate is not mentioned in the advertisement. The FEC's regulations, however, define GOTV to mean "contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting," which includes "[p]roviding to individual voters, within 72 hours of an election, information such as the date of the election, the times when polling places are open, and the location of particular polling places" and "[o]ffering to transport or actually transporting voters to the polls." 11 C.F.R. 100.24(a)(3) (emphasis added). This excludes from regulation as GOTV all of a party committee's television or radio advertising for state candidates or ballot initiatives and, apparently, even mass mailings and Internet appeals. Only "individualized" assistance must be paid with federal funds (or Levin funds).

The FEC explained its intent to "define GOTV in a manner that distinguishes the activity from ordinary or usual campaigning that a party committee may conduct on behalf of its candidates. Stated another way, if GOTV is defined too broadly, the effect of the regulations would be to federalize a vast percentage of ordinary campaign activity." 67 Fed. Reg. 49,067 (July 29, 2002). The FEC also explained that "GOTV has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law. The FEC understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate." Id. The regulation also specifically excludes communications of any kind by a group of state or local candidates or of state or local officeholders, as long as it only refers to state candidates and not federal ones. Id.; 11 C.F.R. 100.24(a)(3). Thus, the regulation was designed to avoid precisely what plaintiffs contend the statute should not do.

Another regulation explicitly excludes from the definition of "Federal election activity" any "public communication" (which includes all broadcasts and mass mailings) that only refers to state or local candi-

dates and does not promote, oppose, support, or attack any clearly identified candidate for federal office, so long as the broadcast is not voter registration, GOTV, generic party advertising, or voter identification activity. 11 C.F.R. 100.24(c). Thus, state-level party committees are free to use soft money to promote their state and local candidates on television, since such advertising is excluded from Federal election activity.

Plaintiffs also suggest, without elaboration, that the term "get-out-the-vote activity" is unconstitutionally vague. CDP Br. at 32-33. As explained above, however, the FEC has made clear that the regulatory definition "is focused on activity that is ultimately directed to registered voters, even if the efforts also incidentally reach the general public." 67 Fed. Reg. 49,067. Thus, GOTV activity "has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law." Id. As the FEC has explained, it "understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate." Id. This controlling interpretation by the agency charged with enforcing BCRA eliminates any vagueness concerns.

Like its definition of GOTV, the FEC has defined "voter registration activity" to exclude all mass media communications urging registration and voting. The agency's definition is limited to "contacting individuals by telephone, in person, or by other individualized means, to assist them in registering to vote." 11 C.F.R. 100.24(a)(2). As the FEC explained: "The FEC has expressly rejected an approach whereby merely encouraging voter registration would constitute Federal election activity. The regulation requires concrete actions to assist voters, rather than mere exhortation." 67 Fed. Reg. 49,067. And it bears emphasizing that the definition of "Federal election activity" only encompasses voter registration that occurs within 120 days of a regularly scheduled federal election. See 2 U.S.C. 431(20)(A)(i). Thus, voter registration in connection with a special election is explicitly excluded. 11 C.F.R. 100.24(b)(1).

The FEC's regulations also define "generic campaign activity" to include only a "public communication" that "promotes or opposes a political party and does not promote or oppose" a clearly identified federal candidate or nonfederal candidate. 11 C.F.R. 100.25 Accordingly, advertising that promotes state and local candidates is not included, and the FEC stated that its intent in limiting generic campaign activity to public communications was "to ensure that the definition encompasses only the external activities of a political party committee, that is, activities targeted to the public." 67 Fed. Reg. 49,071. Along the same lines, the FEC explicitly excluded from "Federal election activity" the costs of any "State, district, or local political conventions, meetings, or conferences." Id. at 49,070. It also excluded the costs of grassroots campaign materials that name or depict only state or local candidates. Id .

Contrary to plaintiffs' suggestion, see RNC Br. at 15, not all activity that affects both state and federal elections must be funded entirely with hard money. Even after BCRA's enactment, there remains a great deal of mixed federal/state activity that is to be allocated between real soft money and hard money: anything that benefits both state and federal candidates but does not fall within the definition of "Federal election activity." And, for the most part, off-year activities in support of state candidates can be funded fully with soft money. Moreover, plaintiffs' assertion, RNC Br. at 15, that state parties will be deprived of national party transfers is not true. It is just that the national parties will only have hard money to transfer from now on.

Plaintiffs repeatedly err in analyzing whether particular conduct constitutes "Federal election activity." For example, plaintiffs' suggestion that a 1996 radio advertisement encouraging listeners to vote against a state ballot initiative would be GOTV activity, see McConnell Br. at 18-19, is belied by the FEC's regulations, which confirm that it would not. See 11 C.F.R. 100.24(a)(3) (GOTV limited to "contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting") (emphases added). It is a closer question whether the latter part of the

advertisement, which labeled the ballot initiative a "Republican scheme" and admonished listeners not to "let the Republicans get away with it," would make it "generic" campaign activity. In light of the obvious impact that such general partisan appeals can have on the selection of candidates running in an imminent federal election, however, there is nothing improper about Congress regulating the financing of expenditures for such matters.

Similarly, plaintiffs' contention that a state party committee could not use soft money to pay for the printing and mailing of a flyer that reads "Vote Republican; John Smith for Dogcatcher on November 6," RNC Br. at 27, is entirely incorrect. The printing and mailing of the flyer would not be GOTV activity because it is not "individualized," 11 C.F.R. 100.24(a)(3), particularly if it is a "mass mailing" of over 500 pieces, see 11 C.F.R. 100.27. It is also not "generic campaign activity" because it mentions a specific state candidate. See 11 C.F.R. 100.25. And because it only mentions a state candidate, it is not the type of communication that constitutes "Federal election activity" under 2 U.S.C. 431(20)(A)(iii).

Plaintiffs also contend that BCRA's definition of "Federal election activity" is unconstitutionally vague, see CDP Br. at 32-33, focusing on the inclusion in the definition of a "public 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. 431(20)(A)(iii) (emphasis added). As explained in our opening brief, however, the underlined language is not vague; the statute uses ordinary terms to further a clear and legitimate congressional purpose: preventing the use of soft money to promote or attack candidates for federal office and thereby influence federal elections. Gov't Br. at 113-14; see 148 Cong. Rec. S2143 (Mar. 20, 2002) (Sen. Feingold).

Moreover, the fact that this provision applies exclusively to political parties – sophisticated participants in a highly regulated area[31] – diminishes any potential vagueness concerns. See NLRB v. Gissel Packing Co., 395 U.S. 575, 620 (1969) (rejecting vagueness challenge to National Labor Relations Act prohibition against employer offers of benefit and threats of reprisals for engaging in union activities, since "an employer, who has control over that relationship and therefore knows it best, cannot be heard to complain that he is without guidance for his behavior"); see also Grayned v. City of Rockford, 408 U.S. 104, 112 (1972) (context of statute can eliminate vagueness). Moreover, political parties can eliminate any uncertainty by requesting an advisory opinion from the FEC. As explained in our opening brief, see Gov't Br. at 95-96, the FEC is required by statute to provide a prompt response to a request for an advisory opinion, see 2 U.S.C. 437f(a), and reliance on such an opinion "is a defense to criminal prosecution or civil suit." Martin Tractor v. FEC, 627 F.2d 375, 385 (D.C. Cir. 1980). Political parties also can easily prevent any uncertainty simply by using hard money to fund any questionable communication that references a clearly identified candidate for federal office.[32]

A political party that forgoes those options, however, and instead elects to test the outer limits of the definition by "engaging in 'brinkmanship,'" cannot be heard to complain if it thereby "'overstep[s] and tumble[s] (over) the brink.'" See Gissel Packing, 395 U.S. at 575 (quoting Wausau Steel Corp. v. NLRB, 377 F.2d 369, 372 (7th Cir. 1967)); see also United States v. Wurzbach, 280 U.S. 396, 399 (1930) (Holmes, J.) ("Wherever the law draws a line there will be cases very near each other on opposite sides.

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[31] See Colorado II, 533 U.S. at 453 ("[T]he party marshals [the power to speak] with greater sophistication than individuals generally could."); Richard Briffault, Issue Advocacy: Redrawing the Elections/Politics Line, 77 TEX. L. REV. 1751, 1792 (1999) ("Briffault I") ("[A]s skilled campaign professionals, the major political parties are in the best position to conform their activities to legal requirements.").

[32] Section 431(20)(A)(iii) does not determine whether the party committees can make such communications, but only how the communications must be financed. Thus, the statutory language at issue is relevant only to determine whether public communications by state or local party committees that "refer to a clearly identified candidate for Federal office" constitute "Federal election activity" and, therefore, must be financed with hard money (or a combination of hard money and Levin funds).

The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so, it is familiar to the criminal law to make him take the risk."); NRWC, 459 U.S. at 211 (rejecting vagueness challenge although "the statute may leave room for uncertainty at the periphery"); United States v. Barnes, 295 F.3d 1354, 1366 (D.C. Cir. 2002) ("Since words, by their nature, are imprecise instruments, even laws that easily survive vagueness challenges may have gray areas at the margins.") (citation and internal quotation marks omitted).

Plaintiffs' characterization of the advisory opinion process as a system of prior restraint, CDP Br. at 34, is at odds with Supreme Court and D.C. Circuit precedent squarely recognizing that such procedures provide a valuable means of ameliorating vagueness concerns in the context of political activities. See, e.g., United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548, 580 (1973); Martin Tractor, 627 F.2d at 384-85 (footnotes omitted).[33]

3. Title I's limitations on solicitations are constitutional.

Plaintiffs contend that Title I violates their free speech rights by impermissibly restricting the ability of party committees and candidates to solicit money. See McConnell Br. at 26-27; RNC Br. at 46-51. But the restrictions on solicitation are carefully limited to prevent the reality and appearance of corruption and are entirely consistent with Supreme Court precedent.

The restriction on solicitations of soft money by national party committees is a direct byproduct of BCRA's ban on the receipt, transfer, and use of soft money. Such solicitations, if permitted, would enable national parties to ask for soft money that BCRA prohibits them from receiving. Congress recognized that

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[33] The Buckley court noted that "a comprehensive series of advisory opinions or a rule . . . might alleviate the [statute's] vagueness problems." 424 U.S. at 40 n.47. It decided not to rely on future advisory opinions to reduce vagueness problems because at that time "the vast majority of individuals and groups subject to" the Act did "not have a right to obtain an advisory opinion from the Commission." Id. Congress, however, amended the advisory opinion provision to make it available to "any person," 2 U.S.C 437f(a)(1), and "[w]hen a means like this one is available to reduce uncertainty or narrow the statute's reach . . . the chill induced by facial vagueness or overbreadth is pro tanto reduced." Martin Tractor, 627 F.2d at 386.

national party soft money solicitations, which frequently offer access to officeholders in exchange for large donations, present a grave threat of actual or apparent corruption. See Gov't Br. at 71-81, 123-25. Even if the national parties make solicitations on behalf of state-level committees or other entities rather than on their own behalf, the solicitation process presents a significant danger of corruption, because both federal candidates and donors have reason to believe that such money can be used to benefit candidates.[34] There is, accordingly, a serious risk that the solicitation of soft money by the national parties – whether for themselves or for other party committees – will create "obligated officeholders." Colorado II, 533 U.S. at 452. BCRA's restriction on solicitation thus forms a crucial part of Congress's effort to "put the national parties entirely out of the soft money business." 148 Cong. Rec. H408-09 (Feb. 13, 2002) (Rep. Shays).

Plaintiffs suggest that BCRA's prohibition against federal candidates and officeholders "solicit[ing]" non-federal funds on behalf of state parties is unconstitutionally vague. CDP Br. at 42. As explained in our opening brief, however, Gov't Br. at 94, the Supreme Court has rejected vagueness challenges to the term "solicit" in other political contexts, see Broadrick v. Oklahoma, 413 U.S. 601, 605-08 (1973), and the FEC's regulations adopt a narrow definition of that term here. 11 C.F.R. 300.2(m) (67 Fed. Reg. 49,122 (July 29, 2002)).

Plaintiffs invoke a series of Supreme Court decisions analyzing various restrictions upon solicitations for charitable organizations. See RNC Br. at 47-48 (citing Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 622 (1980); Sec'y of State v. Joseph H. Munson Co., 467 U.S. 947, 967-68 (1984); Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc., 487 U.S. 781 (1988)). But none of those cases impli-

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[34] See, e.g., Gov't Br. at 100-03; id. at 102 n.83 (explaining that soft money can be used to influence state-law matters such as redistricting that can have impact on federal candidates and national parties); see also Hassenfeld Decl. ¶ 9 [DEV 6-Tab 17] (at DNC's request, donor made soft money donations to state Democratic committees outside of his home state to further Bill Clinton's 1992 presidential campaign); Kirsch Decl. ¶ 9 [DEV 7-Tab 23] (during 2000 election cycle, national Democratic party solicited donations to state parties to benefit Gore presidential campaign);

cated the government's interest in preventing the reality and appearance of corruption the political process. The provisions in each of those cases were purportedly aimed at preventing fraud by imposing certain solicitation restrictions where fundraisers failed to limit their fees or expenses in accordance with specified limits. In each case, however, "there [was] no nexus between the percentage of funds retained by the fundraiser and the likelihood that the solicitation [was] fraudulent." Riley, 487 U.S. at 793.

Here, by contrast, BCRA's solicitation restrictions directly advance the government's interest in preventing opportunities for actual and apparent corruption,[35] and courts have repeatedly sustained restrictions aimed at promoting that interest. Indeed, the Supreme Court has accorded great deference to legislative judgments when the integrity of candidate elections is at issue, notwithstanding the First Amendment interests at stake. See, e.g., NRWC, 459 U.S. at 210 n.7 (noting that First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978), "struck down a prohibition against corporate expenditures and contributions in connection with state referenda," but "pointed out that in elections of candidates to public office, unlike in referenda on issues of general public interest, there may well be a threat of real or apparent corruption"); McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 352 n.15 (1995) ("'The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue.'") (citation omitted); id. at 356 ("The [FECA], at issue in Buckley, regulates only candidate elections, not referenda or other issue-based ballot measures" and in "candidate elections, the Government can identify a compelling state interest in avoiding the corruption that might result from campaign expenditures.").

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[35] BCRA prohibits only those forms of solicitation that Congress believed to present a serious risk of corruption. Thus, national party committees are free to solicit hard money for themselves and state-level party committees as they see fit. State-level committees are free to solicit both hard and soft money for themselves and (with the exception of the Levin Amendment) for other committees as well.

Thus, it is no surprise that courts have repeatedly sustained restrictions on the solicitation of contributions to be used to influence elections. In NRWC, the Supreme Court held that a nonprofit corporation had violated FECA § 441b by soliciting contributions to its federal PAC from individuals who were not its actual "members."[36] The Court rejected the view of the court of appeals, which had cited Schaumburg and had concluded that unless given "an elastic definition" the solicitation restriction might be unconstitutional because solicitations to contribute to the group's PAC "would neither corrupt officials nor coerce members of the corporation holding minority views." 459 U.S. at 206. The Court held that NRWC could constitutionally be prohibited from soliciting contributions from anyone other than actual members of the organization because § 441b was designed to avert corruption. See id. ("In this case, we conclude that the associational rights asserted by respondent may be and are overborne by the interests Congress has sought to protect in enacting [this provision]."). Moreover, in sharp contrast to the charitable organization solicitation cases, where the Court explicitly declined to uphold broad restrictions on solicitation as prophylactic measures, see, e.g., Schaumburg, 444 U.S. at 637; Riley, 487 U.S. at 800-01, the Court in NRWC declined to "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." 459 U.S. at 210; see also Broadrick, 413 U.S. at 605-06 (upholding prohibition on public employees "directly or indirectly, solicit[ing], receiv[ing], or in any manner be[ing] concerned in soliciting or receiving any . . . contribution for any political organization, candidacy or other political purpose").

Similarly, in Blount, the D.C. Circuit upheld federal restrictions on the solicitation of contributions to local candidates, explaining that "[a]lthough the record contains only allegations [of quid pro quos], no

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[36] See 2 U.S.C. 441b (prohibiting corporations and labor unions from making contributions or expenditures in connection with federal elections from their general treasuries, but permitting them to establish separate segregated funds (sometimes referred to as "PACs") to be used for such purposes, with contributions to those funds to be solicited only from stockholders and certain personnel and their families).

smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic." 61 F.3d at 945. The D.C. Circuit recognized that "without the prohibitions of sections (c) and (d) on soliciting contributions, directly or indirectly, underwriters could easily circumvent the prohibition against direct contributions." Id. at 61.

The record demonstrates that Congress correctly concluded that solicitation of soft money for state parties by national party committees and federal candidates presents an opportunity to circumvent the federal contribution limits, and thus implicates the danger of corruption. See Gov't Br. at 100-02, 124-25. Moreover, and, contrary to plaintiffs' characterizations, BCRA's restrictions on solicitation are narrowly targeted to prevent that danger. The statute only restricts the solicitation of soft money, which, by definition, does not comply with the federal limits. It leaves national party committees and candidates generally free to solicit contributions that comply with those limits.[37]

The only restriction on the general freedom to solicit hard money appears in 2 U.S.C. 441i(d), which prohibits national and state-level party committees from soliciting any funds for certain tax-exempt organizations that engage in federal election activity. As explained in our opening brief, the restrictions in § 441i(d) are appropriate "prophylactic measures," see NRWC, 459 U.S. at 210, ensuring that party committees do not funnel funds to tax-exempt organizations as a means of evading BCRA's soft money restrictions and FECA's contribution limitations and disclosure requirements.[38] The record makes abun-

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[37] Plaintiffs contend, McConnell Br. at 24, that the statute prevents national party committees and national party officials from soliciting any funds for state candidates because state candidates cannot receive hard money. That assertion is incorrect. See supra at 25-26. Moreover, individuals who serve as officers of national party committees are free to solicit soft money for state candidates and party committees in their individual capacities, so long as they are not acting "on behalf of" the national party committee. 2 U.S.C. 441i(a)(2); 67 Fed. Reg. 49,083 (July 29, 2002). Thus, contrary to plaintiffs' suggestion, see RNC Br. at 45-46, the limitation on solicitations by national party committees and officials on behalf of state-level candidates is not greater than the limitation on such solicitations by federal candidates.

[38] Plaintiffs contend that "a party official could violate the law (and be subject to criminal penalties) simply for contributing to his or her church, if the church has engaged in non-partisan activities encouraging (or assisting) its members to vote." CDP Br. at 46. But the statute only prohibits actions by party officials "on behalf of" a party committee. 2 U.S.C. 441i(d). A party official's personal donation of his or her own money to a church, like other

dantly clear that, as Congress recognized, allowing party committees to raise funds for tax-exempt political organizations opens up an easy way to circumvent the restrictions on contributions to party committees.[39]

In addition, the fact that § 441i(e)(4) permits federal candidates and officeholders to make certain solicitations for tax-exempt organizations does not undermine § 441i(d)'s restrictions on parties. Rather, § 441i(e)(4) permits general solicitations by candidates and officeholders for non-political tax-exempt organizations, such as the Red Cross, and only very limited solicitations (only to individuals in an amount up to $20,000 per year) for certain federal election activity. See 2 U.S.C. 441i(e)(4). Unlike party officials, candidates are subject to limits on solicitation whether or not they are acting on behalf of the party. Compare 2 U.S.C. 441i(a)(2) with id. 441i(e)(1). Thus, it was reasonable for Congress to allow candidates to make solicitations under limited circumstances that accommodate the legitimate interests of candidates in providing personal support for certain organizations, while retaining the monetary limits that help minimize the risk of corruption. See generally 148 Cong. Rec. H408 (Feb. 13, 2002) (Rep. Shays).

4. Plaintiffs have not shown that Title I will prevent political parties from amassing resources necessary for effective advocacy.

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donations or solicitations made by party officials individually on their own behalf, plainly would not be covered.

[39] See, e.g., 144 Cong. Rec. S1048 (Feb. 26, 1998) (Sen. Glenn) (explaining that in 1996 soft money "supplied the funds parties used to make contributions to tax-exempt groups, which in turn used the funds to pay for election-related activities"); 144 Cong. Rec. S977 (Feb. 25, 1998) (Sen. Levin) ("These soft money and issue ad loopholes are used to transfer millions of dollars to outside organizations to conduct allegedly independent election-related activities that are, in fact, benefiting parties and candidates."); 144 Cong. Rec. S898 (Feb. 24, 1998) (Sen. Ford) ("[W]e now know that many of these so-called independent organizations, many claiming tax-exempt status, are established, operated, and financed by parties and candidates themselves – and their finances are totally unregulated."); see also Thompson Comm. Rep. at 4013; id. at 4568, 5975-79 (Minority Views) (noting that "the RNC funneled money through several theoretically 'independent' groups and thereby effectively evaded the federal legal limits on the spending of soft money contributions"); cf. FEC v. Cal. Dem. Party, 13 F. Supp. 2d 1031, 1033 (E.D. Cal. 1998) (detailing the FEC allegation that, in 1992, the CDP improperly contributed $719,000 in solely nonfederal funds to ballot initiative group for essentially a partisan voter registration drive); "FEC v. California Democratic Party," Selected Court Case Abstracts at 86-87 (www.fec.gov/pdf/cca.pdf) (describing October 1999 summary judgment order against CDP finding that the ballot initiative group's voter registration drive was "targeted effort to register Democrats to vote in a general election.").

Plaintiffs also contend that the soft money provisions violate the First Amendment by threatening the ability of the political parties to operate effectively because they will have a difficult time raising sufficient hard money to replace all the soft money they will be unable to raise under BCRA. See RNC Br. at 13-16, 53-56; CDP/CRP Br. at 29-31. This is not the test for constitutionality of a contribution limit, however. Indeed, it is an inherent effect of any contribution limit to make it more difficult to raise as much money. "The overall effect of the Act's contribution ceiling is merely to require candidates and political committees to raise funds from a greater number of persons," but this does not "reduce the total amount of money potentially available to promote political expression." Buckley, 424 U.S. at 21-22. Rather, "the test," according to the Supreme Court, is "whether the contribution limit [is] so radical in effect as to render political association ineffective, drive the sound of [the recipient's] voice below the level of notice, and render contributions pointless." Shrink Missouri, 528 U.S. at 397.

Plainly, if the $1,000 individual contribution limit upheld in Buckley and the $1,075 limit upheld in Shrink Missouri satisfied this test, BCRA's $25,000 limit on contributions to national party committees and $10,000 limit on contributions to state party committees satisfies it a fortiori. As noted in Colorado II, even under the lower contribution limits before BCRA, "'political parties [were] dominant players, second only to candidates themselves, in federal elections.'" 533 U.S. at 450 (quoting amicus brief of political scientists). Indeed, it is idle to suggest that the $212 million in hard money that RNC raised in the 2000 election cycle, before BCRA raised the contribution limit, is so low as "to render political association ineffective" or "drive the sound of [its] voice below the level of notice." Shrink Missouri, 528 U.S. at 397.

We show below that the plaintiff parties' self-serving speculation about the likely results of their future fundraising efforts is dubious at best. But even if RNC is correct in its assertion that no additional individuals will be willing to contribute to it, or to contribute the additional amount permitted by the increase in the contribution limits, that would reflect no disability imposed by BCRA, but instead the inability of the

RNC to persuade people to donate money. As the Court in Buckley recognized, any indirect burden on speech caused by contribution limits is not unconstitutional merely because it requires political committees to raise funds from a greater number of sources. See 424 U.S. at 21-22; see also Buckley, 424 at 94 n.128 (the inability of a party "to get private financial support ... presumably reflects a general lack of public support for the party").[40] The same is true of the California state parties: if they are unable to raise as much as they would like under the doubled $10,000 contribution limit in BCRA, this would be because they lack sufficient political supporters willing to give them that much money. Buckley and Shrink Missouri clearly establish that Congress can impose reasonable contribution limits, even if the parties subject to that limit lack sufficient political support or fundraising prowess to accumulate as much money as they would like in contributions under the limit.[41]

The parties' asserted inability to raise more funds under BCRA's increased contribution limits than under FECA's lower contribution limits is difficult to understand, since individual donors who previously made soft money contributions to the parties after reaching FECA's contribution limits will now be able to make substantially larger hard money donations. Indeed, the RNC in a prior case made the very same claim that it had maximized its hard money fundraising with respect to the hard dollars it raised in the 1997-98 election cycle (citing at least one of the same witnesses it relies upon here). See Mem. in Support of Plaintiffs' Mot. for Summary Judgment at 14-16, 22, RNC v. FEC, No. 98-CV-1207 (D.D.C., filed June 15, 1999); Plaintiffs' Opp. to Def.'s Mot. for Summary Judgment at 19, RNC v. FEC, No. 98-CV-1207

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[40] Taxes similarly reduce the amounts available for spending by persons on advocacy, but that does not render them unconstitutional. Cf. Jimmy Swaggart Ministries v. Bd. of Equalization, 493 U.S. 378, 390 (1990) (tax provision "merely decreases the amount of money appellant has to spend on its religious activities [but] any such burden is not constitutionally significant").

[41] In any event, as discussed in our opening brief, Gov't Br. at 87-89, Congress concluded that the soft money ban would not deprive parties of the resources they need to operate and would ultimately strengthen the parties by increasing their base of support. 147 Cong. Rec. S3106-07 (Mar. 29, 2001) (Sen. Feingold) ("Throughout much of the 1970s and 1980s, soft money was mostly absent from party fundraising. The parties raised hard money, and ran their parties on hard money. . . . We didn't need soft money then, and we don't need it now.").

(D.D.C., filed July 15, 1999).[42] But despite its contention, the RNC more than doubled its hard money receipts in the very next election cycle. See Biersack Decl. Tbl. 1 [DEV 6-Tab 6] (RNC hard money receipts in 1997-98 were $104,048,689; in 1999-2000, they were $212,798,761).[43]

Plaintiffs contend that the state parties, in particular, will suffer from the loss of soft money transferred to them by the national parties. See RNC Br. at 15-16, 54; CDP/CRP Br. at 30-31.[44] But if the state parties lack supporters of their own willing to contribute soft money under California law, that is not the fault of BCRA. To the extent the state parties assert they can attract more contributions using the "star power" of federal officeholders, see CDP/CRP Br. at 42, BCRA permits federal officeholders to attend, and speak without restriction, at state party fundraisers, 2 U.S.C. 441i(e)(4); 11 C.F.R. 300.64, and also to solicit soft money donations to a state party up to the comparable federal contribution restriction, 2 U.S.C. 441i(e)(1). Moreover, the proven adaptability of party committees, see supra at n.43, belies plaintiffs' assumption that state-level parties cannot enhance their fundraising. Indeed, the California Democratic Party has already demonstrated its capacity to raise significant amounts of soft money, consistent with state law, for use in state and local elections, Bowler Decl. ¶¶ 13-14 [3 PCS/CDP/CRP at

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[42] ITT Rayonier, Inc. v. United States, 651 F.2d 343, 345 n.2 (5th Cir. 1981) (a court may take judicial notice of its own records).

[43] Under BCRA, "state and national parties will be encouraged to broaden their financial base of hard money contributors," and the "dramatic increase in hard money fundraising over the past decade leaves little doubt that this can be achieved." D. Green Rebuttal Expert Rep. at 5; McCain Decl. ¶ 20 [DEV 8-Tab 29] (noting that in the "2000 election cycle, the two major parties nationally raised almost $750 million in hard money. To date, in the 2002 election cycle, the parties have already raised 12% more hard money than they had at the same point in 2000"); see also D. Green Expert Rep. at 29-30 (parties "constantly explore new . . . fundraising strategies" in their effort to gain competitive advantage over rivals); La Raja Cross Tr. at 154-55 (plaintiffs' own expert concedes that parties "will certainly adapt and make themselves players in the campaign process" under BCRA).

[44] Plaintiffs' speculation concerning the extent of any loss is, at best, exaggerated because, for example, it fails to take into account the fact that a portion of the national party transfers that the state parties expect to "lose" is attributable to transfers made to state parties specifically for the purpose of running issue ads orchestrated by the national parties. See Gov't Br. at 34, 69, 101;

. To the extent state parties were merely "vehicles" of the national parties for purposes of running ads orchestrated by the national parties, see Gov't Br. at 31, 100-02, those amounts, under a BCRA regime, would not be lost to the state parties; the ads would merely be paid for directly by the national party.

00001]; Bowler Rebuttal Decl. ¶¶ 3-4 [3 PCS/CDP/CRP at 00085], and the California Republican Party has demonstrated its ability to broaden significantly its hard money fundraising base when circumstances warrant, see D. Green Expert Rep. at 34.[45]

Moreover, the plaintiffs' dire predictions fail to account for the fact that "much of the soft money that formerly flowed through the national parties to the states in the form of nonfederal transfers will instead go to the states in the form of Levin contributions." D. Green Rebuttal Expert Rep. at 6. As Professor LaRaja reports, "[m]ost groups that made non-federal donations" to the political parties gave small amounts (median $375), La Raja Expert Rep. at 44, funds that under the new regime could be donated to state and local party committees as Levin funds, see D. Green Rebuttal Expert Rep. at 6. In addition, BCRA doubles the hard money contribution limits applicable to contributions to state party committees, and imposes no restrictions whatsoever upon the state parties' ability to raise and spend soft money for uses other than federal election activity. And the national party committees remain free to transfer funds to assist the state and local parties; the only restriction is that the national party committees' funds will have been raised in accordance with the reporting requirements, funding source restrictions, and increased contribution limitations of FECA, as modified by BCRA.[46]

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[45] Professor Green discusses the testimony of Ryan M. Erwin, chief operating officer of the California Republican Party, and notes that "the number of California Republican Party donors giving the maximum allowable hard money contribution of $5000 rose dramatically between the 1997-98 and 1999-2000 election cycles. Whereas the amount raised in $5000 amounts was $290,000 in 1995-1996 and $140,000 in 1997-1998, by 1999-2000 this figure had skyrocketed to $3,030,000. This surge in maximum federal contributions was due, according to Mr. Erwin, to the increased effort that the party expended in garnering this type of donation." See D. Green Expert Rep. at 34 (citations omitted) (quoting Erwin Dep. Tr. (Sept. 10, 2002) at 129-30); see Erwin Decl. Attachment A, Ex. 7, Chart 4 [3 PCS(CDP/CRP) at 00382] (chart showing growth in number of $5,000 donors to CRP).

[46] The lower court cases cited by the RNC in support of its contention that it will be unable to amass resources for effective advocacy are inapposite. Both cases were decided before the Supreme Court clarified in Shrink Missouri, 528 U.S. at 396-97, that there is no particular amount that is "a constitutional minimum" for contribution limits. Both cases also concerned limits on direct contributions to local candidates much lower than those in BCRA, and cited specific evidence concerning the costs of effective local campaigns. See Cal. Prolife Council PAC v. Scully, 989 F. Supp. 1282, 1297 (E.D. Cal. 1998), aff'd, 164 F.3d 1189 (9th Cir. 1999); Nat'l Black Police Ass'n v. D.C. Bd. of Elections & Ethics, 924 F. Supp. 270, 274 (D.D.C. 1996), vacated as moot, 108 F.3d 346 (D.C. Cir. 1997). Such issues and evidence are not presented here. BCRA doubles the federal individual contribution limits. While the statute also bans soft money

5. Congress properly determined that anything less than a ban on national party soft money would not adequately reduce the appearance and reality of corruption.

Plaintiffs contend that the national party soft money ban should have been more narrowly drawn to permit the national party committees to raise soft money in limited amounts, or from particular sources, or for specific purposes. See McConnell Br. at 38-39; RNC Br. at 45. Since soft money is simply money contributed in excess of the statutory contribution limits or in contravention of the requirement that unions and corporations make contributions from separate segregated funds, this argument amounts to nothing more than an assertion that the statutory contribution restrictions are themselves too strict. This argument is plainly foreclosed by Buckley, 424 U.S. at 30; Shrink Missouri, 528 U.S. at 397; and NRWC, 459 U.S. at 210.

Congress had good reason to conclude that narrower measures would not solve the appearance of corruption presented by soft money donations to national parties. The statute "covers all activities of the national parties, even those that might appear to affect only non-federal elections," 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." 148 Cong. Rec. H409 (Feb. 13, 2002) (Rep. Shays). Because of this "close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process," Congress concluded that "[t]he only effective way to address this problem of corruption is to ban entirely all raising and spending of soft money by the national parties." Id.; see Briffault II, 100 COLUM. L. REV. at 651 ("[C]ontributions to [national] party campaign committees place donors in direct contact with the legislators who dominate the legislative process.") (footnote omitted).

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donations to national parties, such monies were not, at least theoretically, supposed to be used in federal campaigns.

Plaintiffs suggest that a $60,000 or $100,000 cap on soft money donations to the political parties would be a more tailored solution to the problem of soft money. McConnell Br. at 38 n.14. But Congress expressly considered, and rejected, the notion that it could achieve its objectives by permitting a limited amount of soft money donations, above the statutory contribution restrictions, to the national parties, rather than banning them entirely. The Senate, for instance, debated the "Hagel Amendment," which would have permitted the national parties to raise soft money in amounts up to $60,000 per donor in excess of the hard money limits. See 147 Cong. Rec. S2908 (Mar. 26, 2001) (proposed amendment to S. 27). The House, like the Senate, rejected proposals that would have capped, rather than banned, soft money contributions to national parties, noting that they would not reduce the potential for and appearance of corruption.[47] Congress concluded that capping soft money donations rather than eliminating them would represent legislative approval of direct donations by corporations and unions to national political parties that would "send[] the campaign finance laws back in time to the very beginning of the 20th century before the Tillman Act banned direct corporate donations to the parties and before Taft-Hartley banned direct labor contributions to the parties." 147 Cong. Rec. S2887-88 (Mar. 26, 2001) (Sen. Feingold) (opposing the Hagel Amendment).[48]

Finally, plaintiffs suggest that Congress should have permitted the national party committees to continue to raise soft money, while imposing restrictions only on the uses of soft money that are most

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[47] See, e.g., 148 Cong. Rec. H273 (Feb. 12, 2002) (Rep. Turner) ("[T]he so-called Ney-Wynn substitute, does not clean up the current system. It does not ban soft money from the political process. In fact, Enron could have given 80 percent of the money they gave if the Ney-Wynn substitute becomes law tomorrow."); 148 Cong. Rec. H260 (Feb. 12, 2002) (Rep. Meehan) ("[T]he Ney bill allows $900,000 in soft money per donor to be given to national parties in just one election cycle."); see also H.R. Rep. 107-131, Bipartisan Campaign Reform Act of 2001, Minority Views of Steny H. Hoyer, Chaka Fattah, and Jim Davis to accompany H.R. 2356 (July 10, 2001), at 48-49 (a "$75,000 annual cap on soft money to the national parties . . . is [in effect] not a cap at all").

[48] Plaintiffs' assertion that Congress should only have banned soft money from corporations and unions, McConnell Br. at 30, ignores Congress's equally important interest in avoiding circumvention of the individual contribution limits. See Cong. Rec. S2931 (Mar. 27, 2001) (Sen. Kerry).

corrupting. See RNC Br. at 45. But that would not address the appearance of corruption arising from the raising of large contributions from soft money donors. Indeed, that would return, in essence, to the regime that existed prior to BCRA, with FEC regulations defining which activities could be funded with soft money. See Gov't Br. at 22-28 (explaining FEC soft money regulations). As explained in our opening brief, Gov't Br. at 29-36, 68-86, and as the record makes abundantly clear, that system proved to be ineffective in curbing the dangers of actual and apparent corruption that the national parties' soft money fundraising practices have engendered. The record demonstrates that permitting the national parties to raise funds in excess of FECA's contribution limits and funding source restrictions contributes to the reality and perception of corruption in the political process, regardless of the use that is ultimately made of those funds. See Gov't Br. at 74-86.

IV. BCRA'S SOFT MONEY PROVISIONS ARE FULLY CONSISTENT WITH THE EQUAL PROTECTION COMPONENT OF THE FIFTH AMENDMENT AND ARE NOT IMPERMISSIBLY UNDERINCLUSIVE.

Plaintiffs contend that the soft money ban in BCRA violates the Fifth Amendment by restricting their activities without imposing similar restrictions on corporations, unions, or special interest groups. See, e.g., McConnell Br. at 57; RNC Br. at 59. But the equal protection component of the Fifth Amendment is "'essentially a direction that all persons similarly situated should be treated alike.'" Nguyen v. INS, 533 U.S. 53, 63 (2001) (quoting Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985)). The political parties are not similarly situated to corporations, unions, or special interest groups. The significant differences between political parties and other organizations provide strong support for Congress's decision to treat those entities differently.

At the outset, it bears emphasizing, see Gov't Br. at 90, that political parties receive substantially more favorable treatment under FECA than corporations, unions, or interest groups. Among other things, political parties are permitted to receive greater contributions from individuals, see 2 U.S.C. 441a(a)(1);

make greater coordinated expenditures in support of federal candidates, see 2 U.S.C. 441a(d); make greater contributions to Senate candidates (up to $35,000 in the election year), see 2 U.S.C. 441a(h); and transfer hard money to other party committees without being subject to the contribution limits that apply to such transfers by nonparty committees, see 2 U.S.C. 441a(a)(4).[49]

Moreover, the differential treatment of political parties under BCRA rests on the fact that unregulated donations to political parties pose unique threats of corruption. See Gov't Br. at 90-93. The defining feature of a political party under FECA is that it "nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of" the party. 2 U.S.C. 431(16). Thus, unlike other organizations, the ultimate goal of political parties is not just to persuade officeholders to favor their views, but "to obtain control of the levers of government by winning elections." Nader v. Schaffer, 417 F. Supp. 837, 844 (D. Conn.), aff'd mem., 429 U.S. 989 (1976); see also Colorado II, 533 U.S. at 449 ("There is no question about the closeness of candidates to parties."); id. at 450 ("[P]arties are organized for the purpose of electing candidates.").[50]

Thus, the parties alone "stand as deliberate associations of individuals drawn together to advance common aims by nominating and electing candidates who will pursue those aims once in office." Rosario v. Rockefeller, 458 F.2d 649, 652 (2d Cir. 1972), aff'd, 410 U.S. 752 (1973). While interest groups or corporations typically seek the support of candidates on a limited number of discrete issues, political parties

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[49] Plaintiffs summarily dismiss the favorable treatment they receive as insignificant. But a limit on contributions to a national committee that is five times as large as the limit for other political committees, and an advantage that exceeded $1.5 million in coordinated expenditures for a single Senatorial candidate, see Colorado II, 533 U.S. at 439 n.3, can hardly be characterized as "minimal," RNC Br. at 60 n.14.

[50] "When it comes to elections, parties know only one ideology, the capital 'D' or 'R' after the candidates' names. That practicality is reflected in funding decisions made by party committees that reflect virtually every political consideration save the candidates' views on the issues; mavericks are more than welcome if they can win." Krasno & Sorauf Expert Rep. at 24; see also D. Green Expert Rep. at 8-9 & n.10; Rudman Dep. Tr. at 49 (distinguishing national political parties from interest groups, stating that the "Republican National Committee, the Democratic National Committee, have one purpose in life, to elect people"); Briffault II, 100 COLUM. L. REV. at 656 ("Parties are quite different. Winning elections, and thereby political power, is their preeminent concern.").

seek to control the legislative and executive branches of government. As even the Chief Counsel to the RNC has testified, political parties and interest groups are "fundamentally different":

> [T]he difference between what I consider a party committee especially at the national level and other kinds of third-party interest groups [is] that, by their very nature, the political parties have to build coalitions to govern and to get elected .... And the way you govern is with the majority of the members of one House or the other. So it is a bigger tent process where a special interest group, if someone votes against your interest, you can do everything you can either to make sure that person doesn't get reelected or fund their opposition. Party committees in my mind do not do that.

Josefiak Cross Tr. (Oct. 15, 2002) at 53-55.

Party committees also have significantly greater influence over Members of Congress than do other entities. See D. Green Expert Rep. at 8 (political parties "play a distinctive and in many ways privileged role" in the political process and "[e]ven the largest political action committees cannot begin to approach the political scope, influence, or depth of electoral support characteristic of the Republican or Democratic Parties"). Indeed, the chairs of the Senate and House campaign committees – organizations that raised $212 million in soft money during the 1999-2000 election cycle alone – are themselves Members of Congress. See Krasno & Sorauf Expert Rep. at 9-10; Biersack Decl. Tbl. 2 [DEV 6-Tab 6]. As the Second Circuit has noted, "it is the rare candidate who can succeed in a general election without the support of the party." Rosario, 458 F.2d at 652. More generally, as we previously explained, Gov't Br. at 71-75, through both fundraising and their power to organize the legislative branch of government, parties have a unique and powerful influence in the careers of federal officeholders.

Congress's judgment that political parties warrant unique treatment finds strong support in both the evidentiary record and Supreme Court precedent. No other entities are as closely identified, or share as many interests, with federal candidates and officeholders. No other entities can offer the same access to a large and diverse group of powerful lawmakers, and no other entities have the same level of influence over federal candidates and officeholders. See Gov't Br. at 71-81; Krasno & Sorauf Expert Rep. at 12-

14; D. Green Expert Rep. at 8-10. Donors make contributions to the political parties "with the tacit understanding that the favored candidate will benefit." Colorado II, 533 U.S. at 458. The parties are "matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates." Id. at 461. And a party's special "efficiency in channeling benefits to candidates threatens to undermine the contribution limits to which . . . [other interests] are unquestionably subject." Id. at 454.

As the Supreme Court has recognized, Congress may accord different treatment to entities that "have differing structures and purposes, and that . . . therefore may require different forms of regulation in order to protect the integrity of the electoral process." Cal Med, 453 U.S. at 201; see also Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 665-66 (1990). In light of the substantial differences between political parties and other organizations, and the unique role parties play in the electoral system, Congress was justified in treating parties differently.

Plaintiffs contend that Title I is impermissibly underinclusive because it does not subject interest groups and PACs to the same soft money restrictions applicable to party committees. See McConnell Br. at 41-43; RNC Br. at 58. This argument appears to be largely the same as the claim of discrimination discussed above. In any event, as the D.C. Circuit has made clear, "a regulation is not fatally underinclusive simply because an alternative regulation, which would restrict more speech or the speech of more people, could be more effective." Blount, 61 F.3d at 946. Rather, a rule will be "struck for underinclusiveness only if it cannot 'fairly be said to advance any genuinely substantial governmental interest,' because it provides only 'ineffective or remote support for the asserted goals,' or 'limited incremental' support." Id. (citations omitted). Because a "primary purpose" of underinclusiveness analysis is to "'ensure that the proffered state interest actually underlies the law,'" it requires "neither a perfect nor even the best available fit between means and ends." Id. (quoting Austin, 494 U.S. at 677 (Brennan, J., concurring)); see also Fraternal Order

of Police v. United States, 173 F.3d 898, 904 (D.C. Cir. 1999). Here, there can be no question that Congress enacted Title I to prevent the appearance and reality of corruption presented by unregulated contributions to political party committees. See Gov't Br. at 71-86; see also supra at 14-22.[51]

Plaintiffs contend that special interest groups present the same dangers of corruption as political parties, citing evidence that interest groups have attempted to strike quid pro quo arrangements and curry favor with federal candidates and officeholders and that federal candidates and officeholders make appearances at fundraising events for interest groups. RNC Br. at 17, 20, 64.[52] But unlike an interest group, which may have some influence with a few particular candidates, a political party exerts tremendous power and influence over all candidates and officeholders who belong to that party. Unlike interest groups, political parties control the processes through which candidates are nominated and placed on the ballot. They also control "the resources crucial to subsequent electoral success and legislative power" once a candidate is elected. D. Green Expert Rep. at 7; see Gov't Br. at 71-75 (explaining the various incentives that federal candidates and officeholders have to provide special access and consideration to large party donors); see also Briffault II, 100 COLUM. L. REV. at 651-52 (describing "potential for large donors to

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[51] The underinclusiveness of a statute may trigger concern where the exemptions from the challenged statute "represent[s] a governmental 'attempt to give one side of a debatable public question an advantage in expressing its views to the people,'" or where the statute, "through the combined operation of a general speech restriction and its exemptions" constitutes an attempt "to select the 'permissible subjects for public debate' and thereby to 'control . . . the search for political truth.'" City of Ladue v. Gilleo, 512 U.S. 43, 51 (1994) (citations omitted). But no such concerns are present here. The statutory provisions at issue are entirely neutral as to content and viewpoint. Title I's regulation of political parties simply reflects the special dangers of corruption posed by the unique relationship political parties have with federal candidates and officeholders, and the special dangers of corruption that party fundraising presents.

[52] Plaintiffs reference the fact that federal candidates or officeholders have made occasional appearances at fundraising events for interest groups. RNC Br. at 64. But those occasional appearances simply do not compare to the opportunities that party committees have provided to large donors, as a regular component of their fundraising operations, to discuss substantive issues with officeholders in small settings. See Mann Expert Rep. at 29 [DEV 1-Tab 1]; Gov't Br. at 34-35, 75-78;

'corrupt' not just individual candidates but the parties and, thus, to 'corrupt' the government itself since the party leaders for election fundraising purposes are increasingly the same as the leaders of the party in government"). Congress, thus, had a strong basis for limiting contributions to political party committees and federal candidates without imposing similar restrictions on interest groups.

Plaintiffs further contend that the statute is fatally underinclusive because the hard money donations to political parties that are permitted under FECA also present a danger of corruption. RNC Br. at 63. Of course, all contribution limits are designed to restrict (not eliminate) the potential for corruption or undue influence from political contributions, based on the common sense view that, the more money contributed, the more likely it is that the recipient will feel beholden. Soft money is simply a contribution that exceeds the federal contribution restrictions. Thus, plaintiffs' argument boils down to the bizarre position that all contribution limits are underinclusive because they do not entirely ban contributions. This argument is foreclosed by the Supreme Court's decisions that such contribution limits are constitutional in Buckley and Shrink Missouri.

Plaintiffs' gloomy predictions that Title I's soft money restrictions will make the system worse instead of better, see RNC Br. at 67-70, represent nothing more than a policy disagreement with Congress, not a basis for a finding of facial unconstitutionality. See Colorado II, 533 U.S. at 454 n.5 ("[W]e do not mean to take a position on the wisdom of policies that promote one source of campaign funding or another."). Although plaintiffs predict that the political system will suffer because interest groups will gain prominence, see RNC Br. at 67-68, Congress reached a contrary conclusion, and that legislative policy choice warrants deference.

In any event, it is not a foregone conclusion that soft money that might have been contributed to the national political parties in the absence of BCRA will instead be contributed to anyone else, much less to interest groups rather than state and local parties. As Professor Green explained, "[t]he money donated

to political parties is given with an eye toward the special favors that only a political party can deliver by dint of its ubiquitous role in all levels of government. No interest group can approximate the scope or influence of a political party; no interest group has the same presence in the lives or careers of politicians." D. Green Rebuttal Expert Rep. at 19.

Even if some interest groups do rise in prominence as a result of changes in the regulatory environment, it does not follow that such prominence will come at the expense of the parties. Political parties as a class are not categorically in competition with interest groups. Parties compete with each other, and parties and interest groups are as likely to be allied with each other as to be in competition. See supra at n.39 (discussing alliances between party committees and particular interest groups); see also D. Green Rebuttal Expert Rep. at 18 (noting role of interest groups in pluralistic system). Moreover, as shown above, BCRA permits political parties to raise ample funds to engage in effective advocacy, and parties have no constitutional right to outspend their political adversaries.

In addition, BCRA regulates interest groups in several respects that minimize the concerns that plaintiffs express. Under Title I, interest groups, like all other entities, are precluded from making any soft money donations to the national parties or to federal candidates, minimizing the risk that interest groups will attempt to secure influence over federal officeholders through large, soft money donations to candidates or their parties. The statute also precludes party committees and federal candidates (with some limited exceptions) from soliciting funds for, or transferring funds to, certain tax-exempt organizations that engage in federal election activity. See 2 U.S.C. 441i(d), (e). Those restrictions minimize the danger that party committees and federal candidates will use such groups as satellite organizations that can conduct activities on their behalf without complying with FECA's disclosure requirements and contribution restrictions. See Gov't Br. at 117-19; supra at 38. Moreover, Title II of BCRA prohibits labor unions and corporations from using money from their general treasuries to pay for campaign-related advertisements broadcast

shortly before an election, and requires disclosure of the donors who fund such campaign-related advertisements. See infra at 55-58, 108-112; Gov't Br. at 129-48, 172-77 (discussing provisions).[53] Section 214 of the statute also requires FEC to enact new regulations to provide better guidance as to when an interest group's expenditures (including expenditures for electioneering communications, see BCRA § 202) will be deemed to have been "coordinated" with a candidate or party and thereby subject to the statutory contribution limits and source prohibitions.[54]

Finally, plaintiffs' prediction that the provisions of Title I "will stifle electoral competition," RNC Br. at 69, is without foundation. As Professor Green explains, the reliable evidence statistically demonstrates that "all forms of campaign finance regulation, including those that limit contributions to the parties, improve the electoral prospects of challengers." D. Green Rebuttal Expert Rep. at 15 (discussing Stratmann and Aparicio-Castillo (2002)).[55] Indeed, "[t]he massive influx of soft money into state and federal elections beginning in the early 1990s has had no effect on the electoral performance of challengers in U.S. House elections." Id. at 17.

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[53] The disclosure requirements in Section 201 of BCRA substantially redress the lack of accountability that plaintiffs cite, see RNC Br. at 68-69, as a problem with electoral activities conducted by interest groups. See 147 Cong. Rec. S3034 (Mar. 28, 2001) (Sen. Jeffords) ("We deter the appearance of corruption by shining sunlight on the undisclosed expenditures for sham issue advertisements. Corruption will be deterred when the public and the media are able to see clearly who is trying to influence the election.").

[54] Plaintiffs' suggestion that Title I should be invalidated in the event that Title II is struck down, McConnell Br. at 42 n.15, is flatly at odds with the severability provision that Congress included in BCRA § 401, as is the suggestion that the remainder of Title I should be invalidated in the event that any one of its provisions is struck down, RNC Br. at 71. The severability provision "creates a presumption that Congress did not intend the validity of the statute in question to depend on the validity of the constitutionally offensive provision." Alaska Airlines, Inc. v. Brock, 480 U.S. 678, 686 (1987); see also Buckley, 424 U.S. at 108-09. Moreover, before adopting BCRA's severability provision, Congress rejected a proposal for a nonseverability provision that would have provided for the very result plaintiffs seek. See 147 Cong. Rec. S3087-S3105 (March 29, 2001) (Amendment No. 156 tabled).

[55] Professor Green further explained that the analysis relied upon by plaintiff's expert, Professor La Raja, is methodologically inferior to that conducted by Stratmann and Aparicio-Castillo, and that the data presented by plaintiffs' expert Lott do not in fact support the contention that campaign finance laws worsen the electoral prospects of challengers. See D. Green Rebuttal Expert Rep. at 15-17 & nn.10-11.

In short, political parties are not similarly situated to interest groups and other entities. In light of the unique threats of corruption that parties present, neither First Amendment, nor equal protection principles preclude Congress from treating political parties differently from other organizations.