(voter identification, get-out-the-vote, and generic campaign activities) substantially affect federal elections, regardless of whether the activities are expressly targeted to those elections.[83]

Plaintiffs, however, use misleading examples to suggest the contrary. For example, plaintiffs cite to a 1996 broadcast advertisement paid for by the California Democratic Party with soft money that urged voters not to "let the Republicans get away with it" and to vote against Proposition 209. McConnell Br. at 18 (quoting Feingold Dep. Tr., Ex. 15). Improbably, plaintiffs assert that such an ad could have "*no* practical effect on federal elections." McConnell Br. at 18. But the advertisement twice refers explicitly to the initiative as a "Republican scheme," expressly urges voters not to "let the Republicans get away with it," and contains unambiguous get-out-the-vote messages encouraging voters to go to the polls. *Id.* (quoting Feingold Dep. Tr., Ex. 5). Additionally, newspapers at the time reported that "political partisans promoted [Proposition 209 and similar measures] as a way of getting "their" voters to the polls."[84]

As Professor Green concludes, "[a] campaign need not mention federal candidates to have a direct effect on voting for such a candidate," because campaigns designed to get a party's voters to the polls are intended to, and do, affect federal elections when run in connection with them.[85] The state party soft money provisions of Title I go just as far as is necessary, and no farther. Congress,

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[83] *See* D. Green Expert Report at 14. [REDACTED] See IER Tab 29 for additional examples.

[84] Bill Stall & Dan Morain, *Prop. 209 Wins, Bars Affirmative Action Initiatives,* Los Angeles Times, Nov. 6, 1996, at A1; *see also* Martin Morse Wooster, *The Digest: Summaries of Important News Research*, The American Enterprise, Mar. 1, 2000, at 54 ("the California Republican Party subsumed backing of [Proposition 209] into a get-out-the-vote-drive for Bob Dole.").

[85] *See, e.g.,* D. Green Expert Report at 14; Intervenors' Br. at 61-62; *infra* Section I.B.5. The CDP plaintiffs use the Yolo County "Bean Feed" as another example of BCRA's supposed overreaching. CDP/CRP Br. at 2-3. Under BCRA, however, the Yolo County Democratic Central Committee is free to organize and pay for the Bean Feed exactly as it has in the past, so long as the funds raised at the event are not used for Federal election activities. Moreover, the funds raised could be transferred to, or raised jointly with, other local party committees. It is true that, if the Committee wants to use the funds raised for Federal election activities, federal funds must be used to pay for the event. But one contribution of $10,000 or 10 contributions of $1,000, either from individuals or from corporate or union PACs, could pay for virtually the entire expense of the event. *See* CDP/CRP Br. at 2 n.2. And, if it raises only hard money, the Yolo County Committee could still hold the Bean Feed jointly with other local committees and use that hard money, in conjunction with Levin funds, to pay for Federal election activities. Moreover, contrary to plaintiffs' claim, a federal candidate or officeholder (such as the local Congressman) may attend the event, speak, be a featured guest, and solicit federal funds, regardless of the purpose for which the funds will be used. *See* 2 U.S.C. § 441i(e)(3).

based on substantial real world experience, concluded that a ban on soft money fundraising at the federal level without comparable measures at the state party level would only aggravate the soft money problem at the state level. Congress reasonably tailored Title I to prevent such corruption and the appearance thereof and to avoid circumvention of existing limits.

c) Joint Fundraising and Transfers

Plaintiffs also assert that the provisions of Title I that govern joint fundraising and transfers between parties are not closely drawn, that these provisions "cannot seriously be said to have any connection whatsoever with" preventing actual or apparent corruption, and that they impose substantial burdens on the plaintiff parties.[86]

Plaintiffs' arguments are wrong. Party committees may engage in coordinated hard money fundraising under BCRA. Indeed, state and local parties may use hard money contributed directly to them by the initial contributor as a result of joint party hard money fundraising to finance federal election activity — including as the hard money match for Levin funds. Moreover, parties may transfer hard money to a state party to be used for federal election activity that is paid for with 100 percent hard money. BCRA simply requires that (1) the soft money and hard money used in an allocated mixture under the Levin Amendment for federal election activity "not include any funds provided to" a state or local party by any other party committee;[87] and (2) the soft money used in

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[86] McConnell Br. at 40; *see* CDP/CRP Br. at 36-39. More specifically, plaintiffs complain that the prohibitions on the transfer of Levin funds are not limited to transfers from the national parties, but also include those from state and local parties.

[87] 2 U.S.C. § 441i(b)(2)(B)(iv); *see also* Detailed Comments of BCRA Sponsors Sen. John McCain, Sen. Russell Feingold, Rep. Christopher Shays, and Rep. Martin Meehan at 33-34, *available at* http://www.fec.gov/pdf/nprm/soft_money_nprm/us_cong_mccain_feingold_shays_meehan.pdf ("2 U.S.C. §441i(b)(2)(B)(iv) was not intended to prevent state, district and local parties from using Federal funds raised on behalf of such parties by Federal and state officeholders, candidates, and parties for the Federal component of allocated Levin expenditures, so long as the Federal funds were contributed directly to the state, local and district parties by the initial contributor and were not transferred from another state, local, or national party entity."). Likewise, the FEC's regulations at 11 CFR 300.34 (entitled "Transfers") do not appear to prohibit joint party hard money fundraising, or state or local party use of any hard money proceeds of such fundraising contributed directly to their coffers by the contributor to finance Federal election activity. Moreover, even if the FEC regulations were construed otherwise, plaintiffs' objection would be to the regulations and not the statute.

that allocated mixture not have been solicited, received, directed or transferred by or in the name of a national party or federal candidate, or solicited, received or directed through "fundraising activities conducted jointly" by two or more state or local parties.[88] Of course, state and local parties remain free jointly to raise or transfer as much soft money as they wish for non-federal election activity subject only to state law limits.

The provisions in question governing joint fundraising and transfers are crucial to preventing circumvention of the fundamental prohibition on unlimited soft money contributions to a state party for federal election purposes. Were state and local parties free to transfer $10,000 "Levin" contributions among themselves, a contributor could multiply the amount of his permissible contribution to a particular party committee simply by funneling additional soft money through other party committees.[89] For example, a donor seeking to gain influence with a candidate in one congressional district could make ten $10,000 contributions to ten local parties, on the understanding that the entire $100,000 would be transferred to the one party that was engaged in federal election activities in that candidate's district.[90]

Congress concluded that state parties should be allowed to spend limited soft money on certain federal election activities. In so doing, Congress also took steps to ensure that this would not open the door to continued evasion of the federal campaign finance laws. In particular, Congress adopted a series of limitations to restrict state and local committees from using multiple

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88 2 U.S.C. § 441i(b)(2)(C).

89 The state parties already do launder money between states and there is a "black market" for hard money. *See* CRP 07465 (explaining that Wisconsin Republican Party seeks to trade $30,000 in soft money for $25,000 in hard money and stating that "[t]his is a perfectly legal transaction and we have done this a few times in the past to make a few dollars.") [IER Tab 14]; CRP 07456 ("The CRP is burning valuable federal money each week. In an effort to get some return for that, the [NRCC] has agreed to buy federal money from us each month . . . .") [IER Tab 13].

90 *See Service Employees Int'l Union v. Fair Political Practices Comm'n*, 747 F. Supp. 580, 593 (E.D. Cal. 1990) (noting the "significant weight" of the argument that a "transfer ban is simply a device to prevent those who desire to avoid the contribution limits from doing so by the simple expedient of using another candidate as a conduit for the contribution"), *aff'd,* 955 F.2d 1312 (9th Cir. 1990).

contributions from a single donor to finance federal elections and thereby undermine the federal contribution limits and prohibitions.

Similar logic justifies provisions governing joint fundraising of soft money by multiple state and local parties for federal election activities. Beginning in the 2000 election cycle, joint fundraising committees allowed candidates to raise unlimited funds, including from corporations and unions, for political parties to spend in the candidates' states to benefit their elections.[91] To allow such fundraising activities, even without the participation of federal officials, would substantially facilitate circumvention of the law, putting multiple parties in the same place or at the same time with the same donor, potentially to benefit the same officeholder or candidate. Surely the Supreme Court had just such provisions in mind when it cautioned courts not to second-guess Congress with respect to "the need for prophylactic measures where corruption is the evil feared." *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 210 (1982).

d) Solicitation

Finally, plaintiffs challenge the provisions of Title I governing solicitation by party officials, federal officeholders, and candidates as insufficiently tailored. Once again, however, plaintiffs mischaracterize both the law and the purposes behind it. In particular, plaintiffs miss the point that,

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[91] See INT 012826-28 (Susan Glasser, *Clinton Taps Big Donors for Special N.Y. Account: Soft Money Builds Party's Senate Fund*, Wash. Post, Jan. 4, 2000 at A01 ("Hillary Rodham Clinton's Senate campaign has helped raise more than $ 360,000 in large contributions to a special Democratic Party account designated for the New York race, allowing corporations and wealthy donors to give far more than the legal limit to boost her candidacy.")) [DEV 35-Tab 8]; Buttenwieser Decl. ¶ 8 (explaining that he has donated to numerous joint fundraising committees and these donations "generally occur in connection with requests from the Senate candidates involved for help with their campaigns"). [DEV 6-Tab 11]; such activity "shreds the pretense that [soft] money isn't being used to help the candidate." INT 016633-34 (Jim Drinkard, *Senators Form Soft Money Panels*, USA Today, Feb. 26, 2002 at 1A ("As the Senate returns this week to grapple with a bill that would ban unlimited political contributions, at least a dozen senators have formed special committees to raise just that kind of money for their re-election campaigns this year. . . . That means five of the six most competitive Senate races in the nation this fall, which are likely to determine which party controls the chamber, will be fueled heavily by soft money raised by the candidates.")) [DEV 35-Tab 8]; INT012813-17 (Sharon Theimer, *Parties, Candidates Raise Funds*, Wash. Post, July 19, 2002) [DEV 35-Tab 8].

After the FEC rejected its General Counsel's recommendation that these committees' activities constituted a clear violation of FECA, joint fundraising committees proliferated during the 2002 election cycle. *See* INT 013405-3476 (Memorandum from Lawrence M. Noble to the Federal Election Commission (Sept. 21, 2000)) [IER Tab 30]; *see also* documents relating to *MUR 4994: In the Matter of New York Senate 2000 and Andrew Grossman, as treasurer, et al./Ashcroft Victory Committee et al.* [DEV 53 – Tab 9].

under longstanding jurisprudence, the constitutionally significant fact is whether Congress reasonably concluded that the fundraising creates actual or apparent corruption or opens a loophole that would allow evasion of other limits. There are a number of factors that are potentially relevant in determining whether and how corruption can arise, including the identity of the solicitor, the recipient, the direct and indirect beneficiaries, and the ways in which the money is used. While the identity of the recipient and the uses to which the money is put are certainly relevant, they are not the only factors that can give rise to real or apparent corruption. Here, Congress prohibited national parties and federal candidates and officeholders from soliciting various types of otherwise permissible contributions in order to address the corrosive influence of actual and apparent corruption that arises from such fundraising and to foreclose avenues for potentially massive circumvention of the central purpose of BCRA — preventing influence peddling and its appearance.[92] Similarly, were state parties allowed to solicit funds for tax-exempt organizations engaged in federal election activity, they could readily avoid federal disclosure requirements and allocation rules.

Congress' sound, experience-based conclusion finds support in judicial decisions upholding bans on the solicitation of contributions by candidates for judicial office. In those cases, federal courts have consistently recognized the special dangers inherent in solicitation by those holding the keys to access and influence, even where the contributions themselves would be lawful.[93] In *Stretton v. Disciplinary Bd.*, 944 F.2d 137, 144-46 (3d Cir. 1991), the Third Circuit emphasized the special risks of actual and apparent corruption that arise from personal solicitation by a candidate, regardless of the legality of the contribution itself: "A judge's direct request for campaign

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[92] *See* 148 Cong. Rec. H369, H408 (daily ed. Feb. 13, 2002) (statement of Rep. Shays) (BCRA's restrictions on federal candidates advance the "key purpose" of stopping "the use of soft money as a means of buying influence and access with federal officials").

[93] *See Republican Party of Minnesota v. Kelly*, 247 F.3d 854, 883-85 (8th Cir.), *cert. denied,* 534 U.S. 1054 (2001), *rev'd on other grounds sub nom Republican Party of Minnesota v. White*, __ U.S __, 122 S. Ct. 2528 (2002); *see also Suster v. Marshall*, 951 F. Supp. 693, 704 (N.D. Ohio 1996), *aff'd,* 149 F.3d 523 (6th Cir. 1998).

contributions offers a *quid pro quo* or, at least, can be perceived by the public to do so. . . . [W]e cannot say that the state may not draw a line at the point where the coercive effect, or its appearance, is at its most intense — personal solicitation by the candidate."[94] Moreover, the record is replete with examples of donors buying access by donating to parties in response to solicitations made by federal officials and national party officials.[95]

Money spent by state parties, state candidates, and tax-exempt organizations on campaign activities often directly or indirectly benefits federal candidates. A get-out-the vote campaign run by a state Republican party, a Republican candidate for state office, or a Republican-oriented non-party organization will inevitably garner additional votes for the Republican candidates for *federal* office. *See* D. Green Expert Report at 13-14. If a national party official or federal candidate, prohibited from raising soft money for the national party, instead induces a potential donor to contribute soft money to a state party, a state candidate, or a sympathetic tax-exempt organization, there is every reason to believe the contribution will leave the fundraiser beholden.[96] The result is the same even if the money will *not* directly benefit a federal candidate's immediate electoral prospects. The contribution may, for example, further the advancement of a federal official within the party leadership or assist in ensuring that a state legislature about to redistrict is controlled by the candidate's party.[97] It will make no difference that, when the donor seeks an appointment with a

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[94] *Id.* at 145-146; *see also Republican Party of Minnesota*, 247 F.3d at 884 ("the mere act of solicitation can contribute to the appearance, accurate or not, that 'justice is for sale' and the expectation of impermissible favoritism"); *see also Blount v. SEC*, 61 F.3d 938, 945 (D.C. Cir. 1995) (upholding ban on solicitation by municipal securities professionals of otherwise lawful contributions to political campaigns of certain state officials, in part because "actors in this field are presumably shrewd enough to structure their relations rather indirectly").

[95] *See, e.g.*, Intervenors' Br. at 20-29 (examples of donors receiving access in response to solicitations by federal officials and national party officials); *id.* at 32-33 (detailing access and influence afforded Roger Tamraz, James Riady, and Carl Linder after they made large contributions to various state Democratic parties).

[96] *See* 148 Cong. Rec. S2096, S2116 (daily ed. Mar. 20, 2002) (statement of Sen. Levin) (BCRA assures that "[t]he official with power, and the candidate seeking . . . a position of power [will not] be able to solicit huge sums of money and sell access to themselves for their campaign or for outside groups").

[97] *See supra,* n. 69.

federal official, he says, "I gave money *you asked me to give* to the California Democratic Party," rather than "I gave *you* the money you asked for."[98]

Contrary to CDP plaintiffs' argument, Title I does not effectively deprive state parties of the assistance of some of their most popular representatives.[99] Under BCRA, federal candidates and officeholders *may* solicit money for non-federal purposes so long as the money complies with the source prohibitions and contribution limits of federal law. *See* 2 U.S.C. § 441i(e)(1)(B). Federal officeholders and candidates may also solicit money for state party hard money accounts. Moreover, federal candidates and officeholders are expressly allowed by BCRA to "attend, speak, or be a featured guest" at fundraising events for a state or local party at which soft money is raised. 2 U.S.C. § 441i(e)(3).

3. *Plaintiffs Have Not Proven that BCRA Will Prevent National and State Parties from Amassing the Resources Necessary for Effective Advocacy.*

In the 2000 election cycle, the national parties raised $741 million in *hard money* contributions.[100] The major parties are obviously adept at raising hard money, and BCRA substantially *increases* the hard money limits on individual contributions to parties by 25 percent to $25,000 per year. Moreover, as Professor Green's report details, state political parties have managed to thrive under far more stringent campaign finance regulations.[101] In light of this evidence, it is hard to accept the plaintiffs' speculative argument that BCRA will impose a

[98] *See* Randlett Decl. ¶ 9 [DEV 8 – Tab 32] ("Most soft money donors don't ask and don't care why the money is going to a particular state party . . . . What matters is that the donor has done what the Member asked.").

[99] The Third Circuit addressed a comparable argument and emphasized that it supported, rather than undermined, the prohibition: "The plaintiff's contention that this [solicitation by the candidate] is the most effective means for raising money only underscores the fact that solicitation in person does have an effect — one that lends itself to the appearance of coercion or expectation of impermissible favoritism." *Stretton*, 944 F.2d at 146.

[100] FEC Reports Increase In Party Fundraising For 2000, *at* http://www.fec.gov/press/051501partyfund/051501partyfund.html [IER Tab 2].

[101] *See* D. Green Expert Report at 34 (citing example of Connecticut, which "despite some of the most stringent campaign finance laws in the country," doubled its spending between 1993-94 and 1997-98).

"financial straightjacket"[102] on the political parties and will thus "undermine effective political advocacy."[103]

As the Supreme Court has held, while First Amendment rights include the ancillary right to "amass the resources necessary for effective advocacy," those rights are infringed only where the limits in questions are "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." *Shrink Missouri*, 528 U.S. at 397.[104] The same principle holds for political parties, which — like candidates — have long been subject to limits on the amounts and sources of funds they may solicit or receive.

The plaintiffs — after having ruthlessly exploited the soft money loophole for the past eight years — tell the Court they now cannot survive unless elected officials and party leaders can solicit huge contributions from unions, corporations, and wealthy individuals who have matters pending before the government. None of this suspect money was available to the parties before creation of the soft money loophole; and plaintiffs own witnesses confirm that the parties functioned effectively during that earlier period. The RNC Finance Director and other RNC employees agreed that, in the early 1990s, before the exploitation of the soft money loophole, the RNC was "very effective" at fulfilling its function of "promot[ing] the election of federal, state and local candidates."[105] As

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[102] RNC Br. at 56.

[103] RNC Br. at 51-56; *see also* CDP/CRP Br. at 27-31.

[104] Plaintiffs assertion that lower courts have found in other cases that contribution limits impair effective advocacy is misplaced. RNC Br. at 55 n.13. Plaintiffs rely on *Nat'l Black Police Officers Ass'n v. D.C. Bd. of Elections & Ethics*, 924 F. Supp. 270, 274 (D.D.C. 1996), but in that case, the court found the evidence sufficient only because it included evidence of the *actual effect of the new law* in D.C., *id.* at 281, not merely predictions based on evidence of historical fundraising and spending. In any event, the decision was *vacated as moot.* 108 F.3d 346 (D.C. Cir. 1997). Similarly, plaintiffs cite *California Prolife Council PAC v. Scully*, 989 F. Supp. 1282 (E.D. Cal. 1998) *aff'd* 164 F.3d 1189 (9th Cir. 1999). *California Prolife,* however, arose on a motion for preliminary injunction, and the Ninth Circuit merely affirmed it as being not an abuse of discretion, expressly without reaching the merits of any issue. *California Prolife Council PAC v. Scully*, 164 F.3d 1189 (9th Cir. 1999).

[105] B. Shea Dep. Tr. (Sept. 24, 2002) at 15 ("Q: So when you [worked at the RNC] between 1989 and 1991, would you say one of the functions of the RNC was to promote the election of federal, state and local candidates? A: Yes. Q:

described in the Mann Expert Report, soft money was a relatively small part of national political party budgets until 1996,[106] political parties performed robustly before it, and there is no reason to believe they will be unable to manage without it.[107] The same holds true for state parties, and, in any events, they may still use Levin funds for many "federal election activities."[108]

Even plaintiffs' expert Professor La Raja has concluded that — rather than strengthening state parties — soft money has weakened these organizations in comparison to the national parties. As he points out: "State and local parties, which used to be the traditional power centers, now occupy the unfamiliar role of branch organizations in the party infrastructure. Increasingly, campaign decisions are centralized at the national level . . . ."[109] He explains why this is the case: "[r]ather than use soft money to shore up weak state and local organizations, . . . parties invest primarily in issue ads that help candidates."[110] Professor Green demonstrates the same point when he explains that

> Soft money turned state parties into the equivalent of offshore banks, whose principal activity was to shuttle money back and forth to satisfy allocation formulas and to pay for expensive mass media campaigns orchestrated by the national parties. Notice that this top down integration of what had formerly been a decentralized arrangement of local, state, and national parties has caused them to drift markedly from the idealized notion of a decentralized political party described by Professor Milkis. If decentralized party politics

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And do you think that it was effective in doing this? A: Yes. Q: Very effective? A: I feel so, yes. . . . Q: And you thought the party was functioning well at the time? A: As far as I know yes."); [REDACTED].

106 *See* Mann Expert Report at 18, Table 2 & Chart 1; *see also* La Raja Cross, Ex. 3, at 37-48.

107 [REDACTED].

108 *See* 2 U.S.C. § 441i(e)(2).

109 La Raja Cross Tr., Ex. 3 at 49. La Raja argues that the soft money system "may reduce the opportunities for volunteer and activist participation in day-to-day party affairs, further eroding the influence of local party members;" and may subordinate "the traditional interests of state organizations . . . to the immediate campaign necessities of federal candidates." *Id.* at 80.

110 *Id.* at 15; *see also id.* at 25 (agreeing with the proposition that "soft money is being spent excessively on expensive media technology for political advertising, rather than on grassroots efforts that could generate genuine enthusiasm for party politics"); *id.* at 69 ("The remarkable change in transfers to state parties suggests that soft money is used increasingly to support federal candidates rather than for state party building.").

> and local government are indeed the 'bedrock of American democracy,' soft money has contributed to its erosion.[111]

Plaintiffs' argument also depends on flawed and entirely speculative assumptions about future fundraising practices, assumptions a bipartisan majority of Congress rejected. The RNC has told the court that "Title I will deprive the RNC of $125 million in presidential election years"[112] and that it will be "laying off 40% of its staff and dramatically scaling back its operations in response to BCRA."[113] [REDACTED] [114] [REDACTED][115] [REDACTED][116]

[REDACTED][117] Predictions about the loss of funds by state parties are similarly flawed.

[REDACTED] .[118]

As *Buckley* made clear, however, such self-serving doomsday speculation about the possible effects of a particular campaign reform is inherently suspect and an insufficient basis for invalidating the reform. The Supreme Court declined to engage in precisely the type of speculation that plaintiffs invite here. 424 U.S. at 34 n.40. The Court noted that FECA was being challenged before candidates had an opportunity to operate under its requirements and thus before a record could be built as to its actual effects. The Court declined for that reason to speculate about the

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111 *See* Donald P. Green, *The Impact of the BCRA on Political Parties: A Reply to La Raja, Lott, Keller & Milkis* (Oct. 7, 2002) at 10-11 (citation omitted) [DEV 5-Tab 1, hereinafter D. Green Rebuttal Report]; *see also id.* at 9-10; Krasno & Sorauf Expert Report at 31-32 (discussing negative effect of the soft money system on Colorado and Missouri state parties).

112 RNC Br. at 54, 14.

113 *Id.* at 14.

114 [REDACTED]. [REDACTED].

115 [REDACTED]

116 [REDACTED]

117 [REDACTED]

118 [REDACTED] [REDACTED] .

impact of the contribution limits, explaining "the absence of experience under the Act prevents us from evaluating this assertion. . . . [I]t is difficult to assess the effect of the contribution ceiling on the acquisition of seed money since candidates have not previously had to make a concerted effort to raise start-up funds in small amounts." *Id.*

Plaintiffs' argument further assumes that the political parties can and will do nothing to adapt to the new circumstances.[119] That assumption so defies both logic and the history of campaign finance that even plaintiffs' expert, Professor La Raja, disagrees: "[i]f soft money is banned, there is little doubt that parties will adapt. They have done extraordinarily well raising hard money in recent years, and they will focus more intensively on this supply of money. . . . *[T]he parties will survive and possibly thrive.*"[120]

[REDACTED].[121]

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[119] The First Circuit recognized that parties will adapt to changes in the law when rejecting comparably dire predictions that candidates in Maine would be unable to raise insufficient funds under a proposed $250 contribution limit:

> At present, only "worst-case" scenario statistics, which consider the historical funding pattern and discount any contribution made over the limit, are available. These statistics, however, do not account for adaptations in human behavior and the likelihood that patterns will change to recoup whatever may be lost. Thus, the only picture that we can create by utilizing past statistics is one which likely overpredicts the resultant loss of contributions. Indeed, with such a bellwether, the flock would never go anywhere.

Daggett v. Comm'n on Govt'l Ethics and Election Practices, 205 F.3d 445, 460 (1st Cir. 2000).

[120] La Raja Cross Tr., Ex. 3 at 148 (emphasis added)*; see also id.* at 64 ("parties have adapted quite well to different circumstances and appear to re-invent themselves at different stages in American history, often in response to regulations intended to limit their influence"); Professor Green has testified that, in response to BCRA, (a) state parties are likely to "broaden their financial base of hard money contributors," and (b) "much of the soft money that formerly flowed through the national parties to the states in the form of non-federal transfers will instead go to the states in the form of Levin contributions." Green Rebuttal Report at 5-6. Additionally, he pointed out that BCRA does not restrict contributions to state parties in any way as long as these funds are used to pay for activities that do not affect federal elections. *Id.* at 6; *see also* Krasno & Sorauf Expert Report at 11, 33-34; 148 Cong. Rec. at S2139 (statement of Sen. McCain) ("If anything, the bill will return the State and local parties to the grassroots and encourage them to broaden their bases and reach out to average voters.").

[121] [REDACTED].

In light of the evidence, it is difficult to fathom the argument that Title I of BCRA will drive the sound of party voices "below the level of notice." *Shrink Missouri*, 528 U.S. at 397. BCRA leaves ample room for the parties to engage in effective advocacy.

4. *Plaintiffs Have Not Proven that Title I Violates the Associational Rights of Political Parties by "Splintering" Them.*

Plaintiffs claim that Title I adversely affects the ability of national, state, and local party committees to associate with each other.[122] This claim is not supported by the facts or the law. The RNC's arguments regarding the close relationship between national and state parties[123] serve only to underscore the reasonableness of Congress' expert judgment that only comprehensive regulation will prevent the actual and apparent corruption of federal officeholders and candidates by soft money. As discussed in Section I.B.2 above, state parties play a critical role in federal elections, and the close relationship between national and state parties means that a soft money ban that does close a beckoning state party loophole would prove inadequate.

The RNC's parade of horribles regarding BCRA's effect on the relationship between state and national parties[124] is based on distortion of the law's provisions. At the outset, it bears emphasis that the RNC's arguments reflect precisely the mindset that BCRA addresses: that American politics is narrowly defined as soft money fundraising, transfers and spending. But, even accepting at face value the RNC's implicit view that fundraising and spending are the paramount bonds between national and state parties, BCRA does not splinter the two. BCRA *does not* prohibit coordinated fundraising or spending between national and state or local parties, or transfers from national parties to state or local parties. BCRA simply requires that such activities involve hard money, and that state and local parties not spend funds transferred from other parties along with

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[122] *See* McConnell Br. at 28-31; RNC Br. at 37-44; CDP/CRP Br. at 6-7.

[123] *See* RNC Br. at 6-10.

[124] *See* RNC Br. at 37-44.

Levin funds. BCRA *does not* prohibit national parties from using hard money to make contributions to state or local candidates or to provide other forms of support for such candidates in compliance with state or local law. Moreover, under BCRA, state and local parties may engage not only in joint hard money fundraising and spending but may also conduct joint soft money fundraising for donations to be spent on activities exclusively affecting state or local elections. Federal officeholders or candidates may raise funds for state or local parties or candidates that comply with the hard money source and amount limitations.[125] In so doing, BCRA merely provides that the rules applicable to federal elections cannot be subverted by funneling money through state parties or other organizations.

In light of the actual effect of BCRA, the case law does not support application of strict scrutiny, because the cases on which plaintiffs rely involve severe and direct infringements on associational rights, not mere limitations on how the parties could raise money. Plaintiffs rely on *Healy v. James*, 408 U.S. 169 (1972),[126] *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989),[127] and *California Democratic Party v. Jones*, 530 U.S. 567 (2000).[128] In *Healy*, the Court held that a public college's denial of official recognition to a student organization unconstitutionally violated the students' First Amendment rights.[129] In *Eu*, the Supreme Court struck down provisions of the California Election Code that prohibited state political parties from endorsing candidates in a primary election and specified how parties could structure their organizations.[130] The Court found that these provisions "directly affect[ed] speech which 'is at the core of our electoral process and of the First Amendment freedoms'" and burdened associational

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[125] *See* 2 U.S.C. § 441i(e)(1)(B); 148 Cong. Rec. S2140 (statement of Sen. McCain).

[126] *See* RNC Br. at 38-39.

[127] *See* McConnell Br. at 27-28; RNC Br. at 24, 37-38.

[128] *See* McConnell Br. at 27-28; RNC Br. at 37.

[129] *See Healy*, 408 U.S. at 194.

[130] *Eu*, 489 U.S. at 216.

rights.[131] And, in *California Democratic Party*, the Court considered whether California could force its political parties to adopt a "blanket" primary system.[132] The Court found the provision violated the parties' First Amendment rights of political association.[133] All three are inapposite.

BCRA does nothing like the provisions the Court invalidated in these cases. BCRA does not significantly impair the ability of the parties to associate.[134] All BCRA does is limit the use of tainted money by state parties when they spend it in ways that admittedly affect federal elections, and prevents evasion of federal contribution limits. The wholesale use of soft money by state parties to affect federal elections, moreover, is a phenomenon that blossomed only recently, and there is no evidence to suggest that relations between national and state parties were fractured before the application of this purported balm to their dealings with each other. Under BCRA, national, state and local parties may continue to associate, but may no longer use soft money to evade federal campaign finance laws.

5. *Plaintiffs Have Not Proven Constitutional Infirmity in the Section 323(d) Ban on State and Local Parties' Contributions to and Solicitations for Tax-Exempt Organizations Engaged in Federal Election Activity.*

BCRA's legislative history is replete with examples of parties soliciting funds for or donating to 501(c) tax-exempt organizations that then use the money to support the parties' candidates and election activities.[135] In 1996, to cite but one instance, the RNC funneled $4.6 million in soft money to a 501(c)(4) group called Americans for Tax Reform, an amount more than

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[131] *Id.* at 222-23 (citing *Williams v. Rhodes*, 393 U.S. 23, 32 (1968)).

[132] *Cal. Democratic Party*, 530 U.S. at 570 (quoting from Cal. Elec. Code. Ann. § 2001).

[133] *Id.* at 577.

[134] In fact, it is an open question whether parties possess independent associational rights, apart from those of their members. *See Colorado II*, 533 U.S. at 448 n.10.

[135] According to the Thompson Committee Report, coalitions between political parties and tax-exempt groups "convince voters that 'independent' groups" support the parties' candidate, citing a NRSC "Coalition Building Manual," which asserts that, "what we say about ourselves is suspect, but what others say about us is credible." Thompson Comm. Rep. at 5969. Other advantages include the ability of tax-exempts to run attack ads without the candidate being held responsible, and, of course, the opportunity to evade the source, amount, allocation and disclosure requirements of FECA. *Id.* at 5969-70.

four times the group's budget for the previous year.[136] Americans for Tax Reform then used the RNC money to send 17 million mail pieces into 150 congressional districts — all supporting Republican candidates.[137] Similarly, the Thompson Committee Report recounts the story of Judith Vasquez, who wished to contribute $100,000 to the DNC. The DNC considered the donation "problematic" because Ms. Vasquez was not a United States citizen, so she was "told to direct the donation to Vote Now '96, a tax-exempt [GOTV] organization that focused on traditionally Democratic constituencies."[138]

Section 101 of BCRA, adding section 323(d) to FECA, is intended to prevent the parties from using tax-exempt groups to avoid FECA's source, amount, allocation and disclosure requirements. *See* 2 U.S.C. § 441i(d). The CDP and CRP attack Section 323(d) as an impermissible infringement of their First Amendment associational rights.[139] They express particular concern that, because committees formed to support or oppose state or local ballot measures are "typically" 501(c)(4) organizations, and because these committees "are by their very nature involved in GOTV activities," contributions to and solicitations on behalf of these committees "will be prohibited."[140]

But ballot measure committees are just as susceptible to the parties' campaign finance machinations as any other group. The CDP, in particular, should be aware of this danger; in 1999, a United States District Court found that the CDP had violated FECA by contributing more than

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[136] 144 Cong. Rec. S869, S880 (daily ed. Feb. 24, 1998) (statement of Sen. Dorgan); *see also* MUR 4204 (1996); [REDACTED].

[137] *Id.*; *see also* Thompson Comm. Rep. at 5974-79 (describing multi-million dollar contributions in 1996 by the RNC to tax-exempt groups such as the National Right to Life Committee, the United Seniors Association and the American Defense Institute, "a 501(c)(3) charitable organization that conducts get-out-the-vote drives among retired and serving military people"); *id.* at 5979-81 (describing the RNC's establishment of several 501(c) "front organizations" for the purpose of funneling soft money into the 1996 general election).

[138] Thompson Comm. Rep. at 3663; *see also id.* at 7236-40 (describing that DNC directed contributions to Vote Now '96, Citizen Action and the National Council of Senior Citizens, money that was used by these tax-exempt organizations to support Democratic candidates and GOTV activities in the 1996 general election).

[139] *See* CDP/CPR Br. at 43-46.

[140] CDP/CRP Br. at 44.

$700,000 to Taxpayers Against Deception — No On 165 ("No On 165"), a tax-exempt California political committee that opposed a state spending reduction referendum.[141] According to the district court, these soft money funds were used by "No On 165" for a voter registration drive in connection with the 1996 general elections that was "'targeted' at potential Democratic registrants."[142] In addition, without § 323(d), parties would also be able to contribute hard money to 501(c) organizations that engage in federal election activity to evade FECA's disclosure requirements and to disguise their partisan federal election activities.

The CDP and CRP also complain that they are prohibited from showing their financial support for "organizations that are engaged only in nonpartisan activities" and even groups that "do not . . . participate in federal elections."[143] But Section 323(d) by its terms *only* prohibits political parties from supporting a 501(c) organization "that makes expenditures or disbursements in connection with an election to federal office (including expenditures or disbursements for federal election activity)." 2 U.S.C. § 441i(d)(1). For example, the A. Philip Randolph Institute, a 501(c) organization, makes no bones about its role in "influenc[ing] innumerable elections" through its GOTV and voter registration activities.[144] Congress' constitutional power to regulate those

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[141] *See FEC v. California Democratic Party,* Record (FEC, Washington, D.C.), Dec. 1999, at 4-5, Civ. No. 97-0891 (E.D. Cal. Oct. 13, 1999) (granting FEC's motion for summary judgment and finding that Cal. Dem. Party violated FEC) (reporting entry of consent order and judgment requiring CDP to pay $70,000 civil penalty and transfer $354,500 from federal to nonfederal account) (hereinafter *FEC Record*). Because the entire $709,000 contribution to No On 165 came from the CDP's "nonfederal" account, the district court found that the CDP had violated 11 C.F.R. § 106.5(a)(1), which requires party committees to allocate expenditures made in connection with an election for both federal and nonfederal candidates between the committees' federal and nonfederal accounts according to a prescribed method. *FEC Record* at 4-5; *see also* 13 F. Supp. 2d at 1034.

[142] *FEC Record* at 4. The CDP and CRP go on to contend that *First National Bank of Boston v. Belotti,* 435 U.S. 765 (1978), and *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981), protect their right to launder money through ballot measure committees, despite the past use of these committees by the CDP and others to evade the federal campaign finance laws. CDP/CRP Br. at 45. But neither *Belotti* nor *Citizens Against Rent Control* deal with ballot measures that are part of a *federal* election, and neither case deals with the special status of political parties in our electoral system.

[143] CDP/CRP Br. at 43, 46.

[144] APRI, All About APRI, *available at* http://www.aprihq.org. On its website, the Foundation describes its GOTV activities as follows: "On election day, APRI usually blankets key precincts with canvassers, car sound units and phone calls, while constantly tracking turnout to gauge where more attention is needed. By providing experience and

activities when they are intended to influence federal elections "is well established." *Buckley*, 424 U.S. at 13.

Buckley also is dispositive of the First Amendment challenges raised by the CDP and CRP. In the "No On 165" case, as here, the CDP argued that Congress could not restrict the CDP's financial support of "No On 165" "voter drive activities" without "impermissibly curtail[ing]" the CDP's First Amendment associational rights. *FEC v. California Dem. Party*, 13 F. Supp. 2d 1031, 1036 (E.D. Cal. 1998). The district court rejected that argument in light of *Buckley*:

> While political parties have protected associational rights under the First Amendment, *see Tashjian v. Republican Party of Connecticut,* 479 U.S. 208, 214, (1986), those rights are not absolute, *Buckley*, 424 U.S. at 25. The Supreme Court has made clear that associational rights "may be . . . overborne by the interests Congress has sought to protect in enacting § 441b." *Federal Election Comm'n v. National Right to Work Comm.*, 459 U.S. 197, 207 (1982).

Id. (parallel citations omitted).

BCRA's legislative history demonstrates that political parties have repeatedly used tax-exempt organizations to evade federal campaign finance laws. The Supreme Court has recognized the substantial governmental interest in preventing circumvention of the limits on campaign contributions upheld in *Buckley* and has deferred to Congress with respect to "the need for prophylactic measures where corruption is the evil feared." *FEC v. National Right to Work Comm.*, 459 U.S. 197, 210 (1982). Section 323(d) is "closely drawn" to combat the parties' past abuses of tax-exempt organizations — parties may still contribute to the large number of tax-exempts that do not engage in federal election activity and they are still free to contribute hard money to PACs formed by tax-exempt organizations that do engage in federal election activities. *See* 2 U.S.C. § 441i(d)(1) & (2). Moreover, state parties are not prohibited by BCRA from making direct expenditures in support of favored ballot propositions. *Buckley* requires no more.

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organization, APRI chapters have demonstrated that they can make a difference in turning out the African American vote." *Id.*

C. **Plaintiffs Have Failed to Show that Title I Violates the Constitutional Guarantee of Equal Protection.**

Certain plaintiffs have alleged that Title I violates the Constitution's guarantee of equal protection by imposing restrictions on political parties that are not imposed on other allegedly "similarly situated" entities.[145] Such equal protection challenges add nothing of substance to plaintiffs' First Amendment challenges. Moreover, the Supreme Court has determined that political parties are *not* similar to other entities involved in the political process, and the record before this Court provides overwhelming evidence to support that determination. Finally, Title I's provisions are closely drawn to further the important government interest in preventing actual and apparent corruption of federal candidates and officeholders.

1. This Court Need Not Separately Address Plaintiffs' Equal Protection Challenges.

Plaintiffs' equal protection challenges add nothing of substance to their First Amendment challenges. While the Supreme Court "has occasionally fused the First Amendment into the Equal Protection Clause," it has done so "with the acknowledgement . . . that the First Amendment underlies its analysis." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 384 n.4 (1992). Thus, "[i]t is generally unnecessary to analyze laws which [allegedly] burden the exercise of First Amendment rights by a class of persons under the equal protection guarantee, because the substantive guarantees of the [First] Amendment serve as the strongest protection against the limitation of these rights." *Orin v. Barclay*, 272 F.3d 1207, 1213 n.3 (9th Cir. 2001) (*quoting* John E. Nowak, Ronald D. Rotunda & J. Nelson Young, *Handbook on Constitutional Law* (1978)), *cert. denied*, 122 S. Ct. 2661 (2002). Hence, this Court need not separately consider plaintiffs' equal protection claims.

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[145] *See* RNC Compl. ¶ 81 (alleging that parties are similarly situated to "other persons active in the political process, including individuals, corporations, trade associations, labor organizations, and non-party advocacy groups"); McConnell Compl. ¶ 111; CDP Compl. ¶ 61.

2. *Plaintiffs' Equal Protection Challenges Must Fail Because Political Parties Are Not "Similarly Situated" to Other Entities.*

The Constitution's guarantee of equal protection "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The "similarly situated" requirement is fundamental to an equal protection analysis, because the "Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quotation omitted); *see also Buckley*, 424 U.S. at 97-98.

Plaintiffs' equal protection argument necessarily founders, because political parties are uniquely situated in the national political process. The Supreme Court has recognized this. In *Buckley*, the Court ruled that the activities of organizations "the major purpose of which is the nomination or election of a candidate" were differently situated from other entities that might come within a broad definition of "political committee" because the former "are, by definition, campaign related." *Buckley*, 424 U.S. at 79. To the same effect, the Supreme Court recognized in *Colorado II* that "[t]here is no question about the closeness of candidates to parties." 533 U.S. at 449. The Court also determined that the "parties' capacity to concentrate power to elect is the very capability that apparently opens them to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political players." *Id.* at 455.[146]

[146] Plaintiffs argue that *Colorado II* merely holds that parties are not entitled to favored treatment (*i.e.*, exclusion from FECA's coordinated expenditure provisions) as a result of their uniquely close relationship with candidates. But the Court rejected the party's claim *not* because the Court disagreed with the party's contentions of fact regarding the closeness of the party to its candidates; rather, the Court agreed with those contentions of fact but disagreed that the closeness between the party and its candidates was a basis for overturning FECA's coordinated spending limits. Plaintiffs' reliance on the Court's conclusion in *Colorado I* that restrictions on independent expenditures by political parties could not be justified by the uniquely close relationship between candidates and parties is likewise misplaced. *Colorado I* addressed *expenditures*, which are subject to a higher level of scrutiny than BCRA's *contribution* limits. *See Colorado I*, 518 U.S. at 617. Indeed, the *Colorado I* plurality stated that it "could understand how Congress, *were it to conclude that the potential for evasion of the individual contribution limits was a serious matter, might decide to change the statute's contribution limitations on contributions to political parties*." *Id.* (emphasis added). That is precisely what Congress did in BCRA.

The Supreme Court's determination that political parties are unique entities in the electoral process is borne out in the record. Indeed, the RNC's own expert frankly acknowledges that parties are unique among "the varied set of political actors in American life." La Raja Expert Report at ¶ 11(b).[147] Consider, among other facts, that: only the parties nominate candidates for President and for the Congress; only party affiliations appear on the ballot when citizens vote; party but not other affiliations are relevant in deciding how Congress should be organized, who should lead the Congress, and who should chair congressional committees; only the parties have congressional caucuses that organize the business of Congress. Moreover, as the record indisputably reflects:

- Unlike other entities, the primary function of political parties is to get candidates with their affiliation elected;[148]
- Unlike other entities, political parties have uniquely close relationships with candidates they nominate and support, and who in turn, lead the party;[149]
- Unlike other entities, parties recruit, endorse, and finance candidates in a systematic and comprehensive manner;[150]
- Unlike other entities, parties vet federal candidates in caucuses or primaries the parties organize;[151]
- Unlike other entities, parties structure the lists of candidates that are presented to voters;[152]
- Unlike other entities, parties control mechanisms essential for re-election and legislative power, such as committee assignments and the distribution of power within committees and legislatures generally.[153]

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[147] *See also* [REDACTED] B. Shea Dep. Tr. at 88-90 (RNC finance director agreed that political parties are "very much" "unique," and that "there's a big difference between a political party and a special interest group").

[148] *See, e.g.,* [REDACTED] ; Bumpers Decl. ¶ 4; McCain Decl. ¶ 23; D. Green Expert Report at 17 n.19; La Raja Expert Report at ¶ 11(a) ("American political parties have focused primarily on winning elections. . . ."); Bumpers Decl. ¶ 6 ("[T]he party is not the leader on policy issues . . . [it] is a follower that promotes those policies in order to elect its candidates").

[149] *See, e.g.,* D. Green Expert Report at 7-9; McCain Decl. ¶ 24; [REDACTED].

[150] *See, e.g.,* [REDACTED] ; D. Green Expert Report at 7-9; [REDACTED] ; [REDACTED].

[151] *See, e.g.,* [REDACTED] D. Green Expert Report at 7.

[152] *See* D. Green Expert Report at 7-8.

In sum, Congress had good reason to treat political parties differently. For this reason, plaintiffs' equal protection challenges must fail.

3. Plaintiffs' Underbreadth and Disparate Impact Arguments Are Meritless.

While they complain that BCRA infringes their own First Amendment rights, the political party plaintiffs argue that Title I is also defective on underbreadth grounds because it does not similarly impinge on the activities of others.[154] However, "underinclusiveness [or underbreadth] is not fatal to the validity of a law under the equal protection component of the Fifth Amendment, even if the law disadvantages an individual or identifiable members of a group." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 471 n.33 (1977) (citing cases). "The First Amendment does not require the government to curtail as much speech as may conceivably serve its goals. . . . [T]he primary purpose of underinclusiveness analysis is simply to 'ensure that the proffered state interest actually underlies the law.'" *Blount v. SEC*, 61 F.3d 938, 946 (D.C. Cir. 1995) (quoting *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 677 (1990)).[155] Thus, a law is only underinclusive where the

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[153] *See id.* at 7-9. Were additional confirmation needed, it can be found in the Colorado Republican Party's Supreme Court Brief in *Colorado II*:

> A party and its candidate are *uniquely* and strongly bound to one another because [a] party recruits and nominates its candidate and is his or her first and natural source of support and guidance[;] [a] candidate is identified by party affiliation throughout the election, on the ballot, while in office, and in the history books[;] [a] successful candidate becomes a party leader, and the party continues to rely on the candidate during subsequent campaigns[;] [a] party's public image largely is defined by what its candidates say and do[;] [a] party's candidate is held accountable by voters for what his or her party says and does[;] [a] party succeeds or fails depending on whether its candidates succeed or fail. *No other political actor shares comparable ties with a candidate.*

See Brief of Colorado Republican Party in *Colorado II* at 19-20 (emphasis added); *see also id.* at 23, 25-31.

[154] McConnell Br. at 41; RNC Br. at 57-58, 65.

[155] Plaintiffs' case citations on "underinclusiveness" or "underbreadth" are inapposite. For example, in *Republican Party of Minnesota v. White*, __ U.S. __, 122 S.Ct. 2528 (2002), the Supreme Court considered the constitutionality of a Minnesota statute that prohibited judicial candidates from expressing their views on disputed legal and political issues, but only while they were campaigning for judicial office. The underbreadth argument did not in any way contrast judicial candidates with other speakers but reasoned instead that by failing to include prohibitions on expression of a candidate's views before or after the time period of the candidacy, the statute would be ineffective in achieving the proffered rationale of open-mindedness. *See id.* at 2537. In *City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994), the Court held that a general prohibition on the display of residential signs (subject to minor exceptions) for aesthetic reasons violated the First Amendment not because it was underinclusive but because the rationale was not valid. Although the

rationale for its restrictions applies with equal force to entities that are exempted from such restrictions. Underinclusiveness (or underbreadth) is inapplicable here because, as shown, political parties are not similarly situated to other entities that participate in the political process.

In another variation on the same theme, plaintiffs maintain that BCRA discriminates against parties and will result in a massive shift in funding for political activities from parties to interest groups.[156] This contention, however, is neither factually supported nor legally significant. There is no basis in the record to conclude that most of the soft money that formerly flowed to the parties will suddenly flow to special interest groups, since those groups cannot deliver "the special favors that only a political party can deliver by dint of its ubiquitous role in all levels of government." D. Green Rebuttal Report at 19. Furthermore, the argument ignores other aspects of the federal campaign finance laws that provide unique, beneficial treatment for parties.[157]

Moreover, the Supreme Court has already rejected similar arguments. In *Shrink Missouri*, plaintiffs contended both that contribution limits would rechannel funds available for contributions into independent expenditures and that the contribution limits would require candidates to spend more time attempting to obtain small donations from a larger number of people.[158] The Supreme

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Court noted that, if the rationale had been valid, the law might fail for underinclusiveness, it explained that the underinclusiveness doctrine is grounded in the suspicion of a "governmental 'attempt to give one side of a debatable public question an advantage in expressing its views to the people.'" *Id.* (quoting *Bellotti*, 435 U.S. at 785-86). It is patently absurd to suggest that BCRA represents a veiled attempt by Congress to advantage interest groups at the expense of political parties. There is no evidence in the record to support such a contention (in contrast with, for example, *Bellotti*, where the evidence clearly demonstrated that the regulation in question was an attempt by the Massachusetts Legislature to prevent corporations from running ads to defeat a referendum to permit a graduated income tax). Nor are the distinct restrictions on – and benefits for – parties an indication that "the interest given in justification of the restriction is not compelling." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546-47 (1993).

[156] *See* McConnell Br. at 42-43; RNC Br. at 57-60, 67.

[157] As the Government has already stressed, in many respects FECA treats parties *more favorably* than other entities. *See* Gov't Br. at 90 (pointing out that parties can receive greater contributions from individuals than non-party political committees; parties can make much greater contributions than other entities to candidates; a party can transfer unlimited amounts of hard money between political committees within the party; and parties receive massive subsidies for their conventions). The Supreme Court has recognized these advantages. *See, e.g.*, *Colorado II*, 533 U.S. at 455 ("a party is *better off* [than other entities such as interest groups] for a party has the *special privilege* the others do not enjoy, of making coordinated expenditures up to the limit of the Party Expenditure Provision") (emphasis added).

[158] *See* Br. for Senator McConnell as amici curiae at 7-8, *Shrink Missouri supra*, available at 1999 WL 367218.

Court implicitly rejected both arguments when it upheld the Missouri contribution limits. Likewise, in *Buckley*, the Court recognized that, with the advent of contribution limits, people who would otherwise have contributed amounts in excess of the limits would be forced to "expend such funds on direct political expression," and candidates would have to "raise funds from a greater number of persons." 424 U.S. at 22. The Court nevertheless upheld the contribution limits at issue. This Court should reach that conclusion here.