Randlett Decl. ¶ 6.

As Senator Feingold remarked, "[w]hen the business leaders and the CEOs of this country believe they are being shaken down and that they are being intimidated into giving these contributions, at a bare minimum, this is the appearance of corruption that the U.S. Supreme Court has identified as the basis for legislative action in this area." 147 Cong. Rec. S2954-55 (Mar. 27, 2001) (Sen. Feingold).

3. The national party soft money ban is closely drawn to achieve its objectives.

The legislative record makes clear that the national party soft money ban is closely drawn to advance the exceedingly important governmental interests described above. Congress was plainly justified in concluding that the national party soft money ban is necessary because experience had shown that allowing the national political parties to solicit and accept soft money seriously compromised the integrity of federal elections and the political process. Over the years during

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[75](...continued)
leader: to enhance chances for business that its issues will be considered and favorably reviewed by Members of Congress, business should give "to both sides"; merely giving to one side is likely to be noticed by the other side);

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[76] Even when solicitations are made by party officials rather than by federal officeholders, the solicitations can place tremendous pressure on prospective donors. Solicitations from party leaders are potentially coercive because party leaders are so closely connected to federal officeholders. See McCain Decl. ¶ 21. The Thompson Committee, for example, found that Clinton Administration Deputy White House Chief of Staff Harold Ickes "ran the DNC on a day-to-day basis," that he reported its fundraising and expenditures to the President and the Vice President, and that the DNC's national chairman, Don Fowler, was effectively subordinate to Ickes. Thompson Comm. Rep. at 34. The "party's involvement does not sterilize the system," because "[e]lected officials know exactly who the big party contributors are." Rudman Decl. ¶ 12. Accord Bumpers Decl. ¶ 20; McCain Decl. ¶ 6; Simpson Decl. ¶ 5; Greenwald Decl. ¶ 11; Randlett Decl. ¶ 10.

which it considered campaign finance reform, Congress expressly considered, and rejected, alternatives to the wholesale ban on receipt or use of soft money by the national parties.

Most significantly, Congress considered and rejected the notion that it could achieve its objectives by limiting soft money donations to the national parties rather than banning them entirely. Congress concluded that capping soft money contributions rather than eliminating them 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. Hollings) (opposing the "Hagel Amendment," which would have permitted soft money in limited amounts). The House, like the Senate, rejected proposals that would have capped, rather than banned, soft money contributions.[77] At the same time, however, Congress softened any potential adverse consequences to the parties of the soft money ban by increasing the statutory limits on hard money contributions. See 147 Cong. Rec. S3247 (Apr. 2, 2001) (Sen. Levin); see also Magleby Expert Rep. at 56.

C. Plaintiffs' Challenges to the National Party Soft Money Ban Lack Merit.

1. The national party soft money ban does not violate the First Amendment.

Plaintiffs' contention that BCRA's national party soft money ban violates the parties' rights of free speech and association lacks merit. See RNC Compl. ¶¶ 43-51; McConnell Second Amend. Compl. ¶ 99. The ban simply requires national political parties to fund their activities with hard money. To prevail on their claim, plaintiffs must show that restricting the national parties to hard money will prevent them "from amassing the resources necessary for effective advocacy," Buckley,

[77] See, e.g., 148 Cong. Rec. H273 (Feb. 12, 2002) (Rep. Turner); 148 Cong. Rec. H260 (Feb. 12, 2002) (Rep. Meehan); see also H.R. Rep. No. 107-131, at 48-49 (2001) (Minority Views of Steny H. Hoyer, Chaka Fattah, and Jim Davis to accompany H.R. 2356, Bipartisan Campaign Reform Act of 2001).

424 U.S. at 21, or otherwise "render [them] useless." Colorado II, 533 U.S. at 455; see also Shrink Missouri, 528 U.S. at 396. They have made no such showing.

As Senator Feingold explained, "[s]oft money isn't some magic bullet that the parties need to increase voter turnout or voter participation in the democratic process. 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." 147 Cong. Rec. S3106-07 (Mar. 29, 2001) (Sen. Feingold); see also Hickmott Decl. ¶¶ 6-7 (former DSCC official: in 1980s and early 1990s, DSCC functioned effectively without soft money). Moreover, "while the bill eliminates soft money, it also increases the hard money limits to the parties and makes those limits subject to indexing," and permits state and local parties, with restrictions, to use soft money to conduct get-out-the-vote and voter mobilization activities. 147 Cong. Rec. S3247 (Apr. 2, 2001) (Sen. Levin).

The evidence in this case confirms Congress's conclusion that the national party soft money ban will not render the parties at the national and state levels "useless." Colorado II, 533 U.S. at 455; see also Shrink Missouri, 528 U.S. at 396. BCRA substantially increases the caps on contributions of hard money to candidates and parties,[78] providing ample assurance that the national soft money ban will not render the parties unable to function. Even under the existing hard money contribution limits, parties have proven able to raise very large amounts of hard money, even with extremely large sources of soft money at their disposal. D. Green Expert Rep. at 30. As Professor

[78] See 2 U.S.C. 441a(a)(1)(A)-(B) (increasing limit on contributions to candidates and candidates' committees from $1,000 to $2,000 for individuals, and increasing limit on individual contributions to national political party committees from $20,000 to $25,000); 2 U.S.C. 441a(a)(1)(D) (increasing limit on contributions to state political party committees from $5,000 to $10,000); 2 U.S.C. 441a(a)(3) (increasing aggregate limit on individual contributions from $25,000 per year to $95,000 per two-year election cycle, of which $37,500 may be contributed to candidates); 2 U.S.C. 441a(h) (increasing limit on contributions by the Republican or Democratic Senatorial Campaign Committees from $17,500 to $35,000). In addition, many of these contribution limits are to be increased annually to account for inflation as reflected in changes in the consumer price index. 2 U.S.C. 441a(c).

Green explains, the "parties have always managed to find a way to raise larger and larger sums of money under hard money constraints." Id. (noting that while soft money donations rose from $86.1 million to $495.1 million between the 1991-92 election cycle and the 1999-2000 election cycle, hard money contributions also rose markedly, from $445 million in 1991-92 to $741 million in 1999-2000). 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." Donald P. Green, The Impact of the BCRA on Political Parties: A Reply to La Raja, Lott, Keller, and Milkis (Oct. 7, 2002) at 5 [DEV 5-Tab 1, hereinafter D. Green Rebuttal Expert Rep.]; see also McCain Decl. ¶ 20; Buckley, 424 U.S. at 21-22 ("The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons.").

Plaintiffs also contend that the national party soft money ban violates their freedom of association because it prevents them from pooling their resources and conferring about the ways in which state and local parties should spend soft money. See McConnell Second Amend. Compl. ¶ 100. Those contentions lack merit. It is unclear whether organizations even have a First Amendment right to associate with other organizations. See DKT Mem. Fund Ltd. v. Agency for Int'l Dev., 887 F.2d 275, 294 (D.C. Cir. 1989) ("Neither this Court nor the Supreme Court has held that the Constitution protects rights of association between two organizations."). Even assuming that such a right exists, BCRA does not infringe it. The national parties remain free to solicit money for, and transfer money to, state and local party committees. BCRA simply requires that the money be raised in accordance with FECA. Thus, the national soft money ban does not prevent the national parties from pooling their resources with their state and local counterparts "in furtherance of

common political goals," Buckley, 424 U.S. at 22; it merely restricts the national parties to contributions that are raised pursuant to the "hard money," i.e., the contribution, limitations of FECA.

Moreover, BCRA does not prevent the national, state, and local parties from conferring about spending priorities or any other issues. There is nothing in BCRA that purports to restrict the ability of party committees to confer about campaign strategy.

2. The national party soft money ban is fully consistent with the Equal Protection component of the Fifth Amendment.

Plaintiffs contend that BCRA violates the Fifth Amendment's equal protection guarantee by placing restrictions on national parties that do not apply to certain other types of organizations and individuals. See RNC Compl. ¶¶ 72-77; McConnell Second Amend. Compl. ¶ 102. It is important to note at the outset that, in many significant respects, Congress has treated political parties more favorably than other entities. For example, political parties are permitted to receive far more extensive contributions from individuals than are non-party political committees. See 2 U.S.C. 441a(a)(1). In addition, political parties can make much greater contributions to federal candidates in the form of coordinated expenditures than can other entities or individuals. See 2 U.S.C. 441a(d). And, unlike any other entity, a political party may transfer hard money to other political committees within its party without limitation. See 2 U.S.C. 441a(a)(4). Congress also has given party committees a multi-million-dollar federal subsidy for their quadrennial conventions, see 26 U.S.C. 9008, a windfall that is not available to other entities.

The national soft money ban was enacted explicitly to address the special risk of corruption that unregulated donations to political parties present. Professor Green explains that 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." D. Green Expert Rep. at 8. Plaintiffs' expert likewise acknowledged that generally no other organizations in American politics are as closely related to federal candidates as the political parties. See La Raja Cross Tr. (Oct. 15, 2002) at 51-53. Indeed, the fundamental goal of political parties is to gain control of the government. Thus, the national parties are principally interested in electing candidates from their members and winning electoral majorities. See D. Green Expert Rep. at 8-9 & n.10. Among other things, the parties recruit and endorse candidates, organize the slate of candidates presented to voters, organize legislative caucuses that assign legislators to committees, and elect legislative leadership. Id. at 7-8. The national party committees, moreover, "are headed by or enjoy close relationships with their leading officials, individuals who by virtue of their positions, reputations, and control of the legislative party machinery have special influence on their colleagues," and donations to the parties "especially six and seven figure soft money contributions are usually made by the arrangement with or knowledge of these most influential members of the party." Krasno & Sorauf Expert Rep. at 12-13.

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This unique relationship between the parties and federal candidates and officeholders creates a special danger of corruption stemming from the unregulated solicitation and acceptance of contributions by the political parties, which, Professor Green explains, "attack the very foundation

of electoral accountability." D. Green Rebuttal Expert Rep. at 19. As discussed supra, pt. I.B.2.b., Congress recognized the acute dangers of corruption associated with the parties' extremely close relationship to federal officeholders and influential party leaders, which permits parties to offer access to federal officials in exchange for large contributions, and can put significant pressure on federal officeholders and candidates to court large donors and accommodate their interests. See, e.g.,148 Cong. Rec. S2115 (Mar. 20, 2002) (Sen. Levin). As the Supreme Court has recognized, donors give to the political parties "with the tacit understanding that the favored candidate will benefit," contributions to a party have been "used as a funnel from donors to candidates," and substantial soft money donations "turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates." Colorado II, 533 U.S. at 458, 461 & n.25. A vast "'web of relations link[s] major donors, party committees, and elected officials.'" Id. at 463 (quoting Briffault, Political Parties and Campaign Finance Reform, 100 Colum. L. Rev. 620, 652 (2000)). "Free flowing soft money donated to parties and party leaders creates cascades of obligation-driven and favor-currying motives in politicians that are separate from and in tension with electoral outcomes." D. Green Rebuttal Expert Rep. at 19.

In short, the unique problems of perceived and actual corruption posed by soft money donations to the political parties provides a compelling basis for BCRA's focus on the parties. 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. Accordingly, the national party soft money ban is fully consistent with equal protection principles.[79]

3. The national party soft money ban is not unconstitutionally vague or overbroad.

Plaintiffs allege that the terms "solicit" and "direct" in 2 U.S.C. 441i(a)(1) are unconstitutionally vague, as is the reference in 2 U.S.C. 441i(a)(2) to "any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee." See RNC Compl. ¶ 89; McConnell Second Amend. Compl. ¶ 103. The FEC's regulations, however, resolve any possible vagueness problems with respect to those provisions. See 11 C.F.R. 300.2 (67 Fed. Reg. 49,064, 49,121 (July 29, 2002)); see also 67 Fed. Reg. 49,081 (July 29, 2002).

A statute is void for vagueness only if it "'forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'" United States v. Lanier, 520 U.S. 259, 266 (1997). As the D.C. Circuit has repeatedly explained, "the Constitution does not require unattainable feats of statutory clarity." United States v. Barnes, 295 F.3d 1354, 1366 (D.C. Cir. 2002) (citation omitted). "Since words, by their nature, are imprecise instruments, even laws that easily survive vagueness challenges may have gray areas at the margins." Id. (citation omitted). "Condemned to the use of words, we can never expect mathematical certainty from our language." Grayned v. City of Rockford, 408 U.S. 104, 110 (1972).

[79] Moreover, to the extent plaintiffs contend that the national soft money ban puts the parties at a disadvantage with respect to corporations and unions, their claim plainly lacks merit. As the Supreme Court recognized in Cal Med, an equal protection challenge to the federal campaign laws cannot be sustained when the entity claiming unequal treatment is accorded more favorable overall treatment under those laws. 453 U.S. at 200-01. Thus, the Court rejected an equal protection challenge to FECA's contribution limits applicable to multicandidate committees brought by an unincorporated association because FECA as a whole "imposes far fewer restrictions on individuals and unincorporated associations than it does on corporations and unions." Id. Here, political parties are similarly subject to much less restriction than are corporations and unions, which are prohibited from making any contributions to political candidates or campaigns from their general treasury funds. See 2 U.S.C. 441b(a). A political party committee, by contrast, not only may make contributions to political candidates and campaigns, see 2 U.S.C. 441a(a)(2), but (unlike any other entity) also may transfer hard money to other political committees within its party without limitation, see 2 U.S.C. 441a(a)(4), and can make much higher coordinated expenditures on behalf of a federal candidate or campaign committee than any other entity, see 2 U.S.C. 441a(d).

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 no different result is warranted here. Indeed, the FEC's regulations adopt a narrow definition of that term: "solicit" means "to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary. A solicitation does not include merely providing information or guidance as to the requirement of particular law." 11 C.F.R. 300.2(m) (67 Fed. Reg. 49,122 (July 29, 2002)).

The FEC's regulations furnish similar clarity with respect to the phrase "to direct," which is defined as follows: "to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary. Direction does not include merely providing information or guidance as to the requirement of particular law." 11 C.F.R. 300.2(n) (67 Fed. Reg. 49,122 (July 29, 2002)).

Moreover, the FEC has established a detailed test to determine whether a committee of a political party "directly or indirectly established, finances, maintains, or controls an entity." See 11 C.F.R. 300.2(c) (67 Fed. Reg. 49,121 (July 29, 2002)). The test sets forth ten factors that must be "examined in the context of the overall relationship between [the] sponsor and the entity," 11 C.F.R. 300.2(c)(2), including whether the sponsoring committee owns controlling interest in voting stock in the entity; has the authority or the ability to participate in the governance of the entity; has authority over decision-making employees or members of the entity; has common or overlapping membership, officers, or employees with the entity, or provides a significant quantity of funds or

goods to the entity; or, in addition, whether there are other circumstances indicating "a formal or ongoing relationship between the sponsor and the entity." 11 C.F.R. 300.2(c)(2)(i)-(x). Similar factors have been in the FEC's regulations for more than a decade. 11 C.F.R. 100.5(g), 110.3 (1990). The regulations also provide a "safe harbor" for the activities of an entity occurring before November 6, 2002, and they state that an entity may request an advisory opinion from FEC to "determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part." 11 C.F.R. 300.2(c)(3), (4).

There is no basis for finding any of the challenged terms vague on their face. As the Supreme Court has made clear, the fact that "[a] statute may leave room for uncertainty at the periphery" does not render it unconstitutionally vague. NRWC, 459 U.S. at 211; see also United States v. Petrillo, 332 U.S. 1, 7 (1947); Barnes, 295 F.3d at 1366. The existence of a theoretical possibility of confusion in some future application is particularly insignificant where, as here, the regulatory agency has provided a mechanism for regulated entities to obtain prompt advisory opinions if necessary. See 2 U.S.C. 437f(a) (requiring FEC to issue advisory opinions no later than 60 days after submission of a complete written request and no later than 20 days after a request submitted within 60 days of a federal election involving the requesting party). Indeed, "to the extent that it offers a prompt means of resolving doubts with respect to the statute's reach, the advisory opinion . . . mechanism written into the FECA . . . under which the Commission is authorized to give advice concerning the Act's application to specific factual situations, . . . mitigates whatever chill may be induced by the statute and argues against constitutional adjudication on a barren record." Martin Tractor v. FEC, 627 F.2d 375, 384-85 (D.C. Cir.) (footnotes omitted), cert. denied, 449 U.S. 954 (1980); see also United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S.

548, 580 (1973); Blount v. SEC, 61 F.3d 938, 948 (D.C. Cir. 1995). Reliance on an FEC advisory opinion "is a defense to criminal prosecution or civil suit." Martin Tractor, 627 F.2d at 385; see 2 U.S.C. 437f(c)(2); FEC v. National Rifle Association, 254 F.3d 173, 185 (D.C. Cir. 2001). Because plaintiffs "may seek and obtain advice from the [FEC] and thereby remove any doubt there may be as to the meaning of the law," National Ass'n of Letter Carriers, 413 U.S. at 580, their facial vagueness challenge lacks merit.

4. The national party soft money ban is fully consistent with the Tenth Amendment and principles of federalism.

Plaintiffs allege that the national soft money ban violates the Tenth Amendment and principles of federalism by prohibiting the national parties from raising or spending soft money in support of state or local elections. See McConnell Second Amend. Compl. ¶ 101; RNC Compl. ¶¶ 32-41. But Congress properly recognized that fundraising by national party committees presents a serious threat to the integrity of the federal political system, even where the fundraising is not ostensibly aimed at providing direct support for the election of a federal candidate. As Representative Shays explained, "[b]ecause the national parties operate at the national level, and are inextricably intertwined with federal officeholders and candidates, who raise the money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process. The only effective way to address this problem of corruption is to ban entirely all raising and spending of soft money by the national parties." 148 Cong. Rec. H408-09 (Feb. 13, 2002) (Rep. Shays). As discussed in detail above, unregulated donations to the parties, like contributions to candidates, have the potential to create obligated federal officeholders. See supra at pt. I.B.2.b. Similarly, solicitations on behalf of

a party, like solicitations on behalf of a candidate, can coerce potential donors to make contributions in order to avoid possible adverse legislative consequences. See supra at pt. I.B.2.d; see also McCain Decl. ¶ 21. Moreover, money is fungible. Even if a national party agreed to use such funds only for activity that affects only state or local elections, the party and federal candidates nonetheless could benefit from such donations: the availability of those funds for state and local election activity would free a corresponding amount of funds for the party to use in election activity to benefit federal candidates. _____ Thus, the ultimate use made of any given contribution or donation to a national party committee can have little relationship to its potential to corrupt the federal political process.

Because the national parties' fundraising practices present a clear danger of corruption at the federal level, Congress had ample authority to regulate those practices, even where the funds raised are to be used to support non-federal election activity. The Elections Clause grants Congress the power to regulate elections of members of the House of Representatives and the Senate, Buckley, 424 U.S. at 14 n.16. The Supreme Court has also recognized "broad congressional power to legislate in connection with the elections of the President and Vice President," Buckley, 424 U.S. at 14 n.16, and congressional authority to regulate party primaries, United States v. Classic, 313 U.S. 299 (1941). For the reasons explained above, the solicitation, receipt, and transfer of soft money by national parties has a direct effect on federal elections and presents a particularly potent opportunity for corruption of federal candidates and officeholders. The national party soft money ban, accordingly, falls squarely within Congress's authority to regulate federal elections and protect the integrity of the federal government.[80/] The Tenth Amendment poses no bar to the valid exercise

[80/] "If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption . . . , without legal restraint, then, indeed, is the country in danger." Bourroughs, 290 U.S. at 547 (quoting Ex parte Yarbrough, 110 U.S. 651, 667 (1884)).

of Congress's delegated authority under Article I. See New York v. United States, 505 U.S. 144, 156 (1992); see also Burroughs v. United States, 290 U.S. 534, 544-45 (1934) (regulation of national party committees "in no sense invades any exclusive state power").[81]

5. The prohibition against the solicitation of soft money by officers or agents acting on behalf of a national party committee is constitutional.

The chairs of the California Democratic and Republican parties, who also sit on the executive committees of their respective national party committees, CDP Compl. ¶¶ 12, 16, challenge BCRA's prohibition against "any officer or agent" of a national committee "solicit[ing], receiv[ing], or direct[ing] to another person a contribution, donation, or transfer of funds or any other thing of value, or spend[ing] any funds, that are not subject to the limitations, prohibitions, and reporting requirements" of the Act. 2 U.S.C. 441i(a). Those plaintiffs challenge that provision on the ground that it would prevent them, as officers of national party committees, from raising soft money for their state committees. CDP Compl. ¶ 81, 84-86. That challenge rests on a fundamental misreading of the statute.

The 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). The FEC's implementing regulations confirm what the statutory text already makes plain. See 11 C.F.R. 300.2(b) (67 Fed. Reg. 49,121 (July 29, 2002)) (defining "agent" to refer to any person with actual authority to engage in activities "on behalf of" the relevant organization). And the FEC's explanation of its regulations leaves no doubt that "individuals, such as State party chairmen and chairwomen, who also serve as members

[81] In any event, the record in this case makes clear that many national party activities and the majority of funds expended by the national parties are spent to influence federal elections, even when those activities and funds are directed to party organizations at the state and local level. See supra at 28-36; infra at 100-02.

of their national party committees can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties." 67 Fed. Reg. 49,083 (July 29, 2002). Accord McCain Decl. ¶ 21. Thus, to the extent that the plaintiffs merely seek to solicit money as officers of, and on behalf of, the state party, BCRA poses no obstacle.

II. BCRA'S LIMITATIONS ON THE USE OF SOFT MONEY BY STATE-LEVEL PARTY COMMITTEES ARE CONSTITUTIONAL.

A. The Restrictions on State-Level Committees' Use of Soft Money for Federal Election Activity Are Closely Drawn to Prevent the Appearance and Reality of Corruption in Federal Elections.

In addition to imposing a soft money ban on national party committees, BCRA also restricts the use of soft money by party committees at the state, district, and local levels. Unlike national party committees, however, state-level party committees are not subject to a complete ban on the solicitation and disbursement of soft money. BCRA only requires that they generally use hard money to fund "Federal election activity." 2 U.S.C. 441i(b)(1). BCRA leaves state-level party committees entirely free under federal law to use soft money to fund various activities that affect only state or local elections. See 2 U.S.C. 431(20)(B). Moreover, BCRA includes a provision the "Levin Amendment" which authorizes state-level party committees to use soft money in limited quantities to fund certain "Federal election activity" that affects both federal and state elections held on the same day. See 2 U.S.C. 441i(b)(2)(A).[82/]

[82/] See also 148 Cong. Rec. H409-10 (Feb. 13, 2002) (Rep. Shays). The Levin Amendment permits state-level party committees to use soft money to fund voter registration activity within 120 days of a federal election and get-out-the-vote, voter identification, and generic campaign activity in connection with a federal election. See 2 U.S.C. 441i(b)(2)(A), 431(20)(A)(i), (ii). In most instances, this soft money must be allocated with hard money, 2 U.S.C. 441i(b)(2)(A), and must be raised in increments not exceeding $10,000, 2 U.S.C. 441i(b)(2)(B)(iii). Hard and soft money used pursuant to the Levin Amendment must be raised by the party committee that is spending it, not transferred from another committee. 2 U.S.C. 441i(b)(2)(B)(iv).

BCRA's state-level party provisions are supported by the same interests as the ban on soft money by national party committees. Just as national party committees have been used as conduits for corporations, unions, and large individual donors to evade federal contribution and source limitations, so, too, have state-level party committees. Congress recognized that allowing state-level party committees to continue to expend unlimited amounts of unregulated funds on activity that influences federal elections would leave open a gaping loophole in federal law, allowing donors to evade federal contribution and source limitations, and thereby promote the appearance and reality of political corruption. As Senator McCain explained:

> In order to close the existing soft money loophole and prevent massive evasion of Federal campaign finance laws, the soft money ban must operate not just at the national party level but at the State and local level as well. We have authority to extend the soft money reforms to the State and local level where it is necessary, as it is here, to protect the integrity of Federal elections. Closing the loophole is crucial to prevent evasion of the new Federal rules.

148 Cong. Rec. S2138-39 (Mar. 20, 2002); see also D. Green Expert Rep. at 16-17.

The state-level parties have played a central role in the soft money system from its inception and have materially assisted the national parties' efforts to circumvent FECA by using money raised outside FECA's limitations to support federal election campaigns. The national parties have transferred millions of dollars in soft money to the state parties, over $265 million (roughly one-half of their receipts) in the 2000 election cycle alone. Compare Biersack Decl. Tbl. 8 with id. Tbl. 2. The state parties have used those funds in large measure to support federal election activity, and under fewer restrictions than the national parties. As Dr. Mann explains, "since the advent of soft money, national parties have used state parties primarily as vehicles for advancing federal election campaign objectives. The state parties have been willing partners with their national counterparts

in seizing the opportunities presented by the soft money system to boost their federal candidates." Mann Expert Rep. at 30.

Soft money that the national parties solicit for or transfer to state parties is used to promote the campaigns of federal candidates, frequently through media advertising directed or orchestrated by the national parties. _____

See also supra at 30-35. As Senator Thompson explained, in the 2000 election, "Republican and Democratic Senate candidates set up joint fundraising committees, joining with party committees, to raise unlimited soft money donations. The joint committees then transferred the soft money funds to their Senate party committees, which transferred the money to their state parties, which spent the soft money on 'issue ads,' targeted get-out-the-vote and other activities promoting the federal candidates who had raised the money." 147 Cong. Rec. S3251 (Apr. 2, 2001) (Sen. Thompson); see also id. at S3252-55;

The national parties frequently transfer soft money to state parties because they can achieve a "better ratio of hard to soft dollars than if they spent the money themselves." Magleby Expert Rep. at 37; see also supra at 30-35. Under the FEC's regulations, see 11 C.F.R. 106.5, state parties are able to spend a larger proportion of soft money on activities that may benefit both federal and state candidates than the national parties are permitted to use. Thus, the more favorable ratio applicable to state parties encourages national parties to "launder" a portion of their soft money by

transferring it to state parties, where a larger proportion of it can be used on federal campaign activity. See supra at 30-35; The national parties likewise solicit soft money donations to state party committees to provide assistance to federal campaigns in those states. See, e.g., Hassenfeld Decl. ¶ 9; Kirsch Decl. ¶ 9; Wirth Decl. Ex. A ¶¶ 5-6 (congressman raised money for state party);

Tellingly, the national parties transfer most soft money to states where there are highly competitive federal races. See Magleby Expert Rep. at 37-38, 39; supra at 30-35; Fowler Decl. ¶ 15; Professor Magleby has found that state party officials "readily acknowledge they are simply 'pass throughs'" for national soft money funds paid to "the vendors providing the broadcast ads or direct mail." Magleby Expert Rep. at 38-39. The national party committees thus "exercise a great deal of control over how soft money is spent," after it is transferred to state parties. Id. at 38; ___ Indeed, in "a few instances where party committees lack confidence in how state parties will utilize the soft money transferred to them, the national parties have spent the money from Washington and foregone the more favorable soft/hard ratio generally available to the state parties." Magelby Expert Rep. at 38.[83]

[83] Even when national parties provide money to assist state candidates, the funds are often used to influence activities affecting federal elections, such as redistricting. State legislatures determine the boundaries of the districts from which members of the House of Representatives are elected, and "[t]he chances that a House incumbent will be ousted by unfavorable district boundaries are often greater than the chances of defeat at the hands of the typical challenger." D. Green Expert Rep. at 11. House members, and the national parties to which they belong, thus "have a tremendous incentive to be attuned to the state legislature and the state party leadership." Id. National party organizations therefore "have been flooding the states with campaign donations, both soft money and hard, to influence the redistricting process." Id. at 12 (citation omitted); _____

The fact that state parties have facilitated the use of soft money by national parties in federal elections demonstrates the crucial need for § 441i(b). If BCRA only regulated soft money contributed to national party committees, donors would simply funnel soft money in unlimited amounts to state and local party committees to influence federal elections, allowing the same circumvention of FECA's contribution and source limits that the national party soft money ban was enacted to eliminate. See D. Green Expert Rep. at 5, 7, 12-13. As a result, "any successful attempt to limit national party soft money activity must perforce prevent easy evasion through surrogates such as state and local parties." Mann Expert Rep. at 31. Thus, BCRA's state-level soft money provisions prevent circumvention of longstanding limitations on contributions to candidates and political parties and the recently enacted national party soft money ban. Indeed, when the Supreme Court in Colorado II explained the role of political parties in circumventing federal contribution limits, it was a state party whose activities were at issue. See 533 U.S. at 439.

At the same time, BCRA leaves open ample opportunity for state-level party committees to raise funds for federal or state election activity. The statute doubles the amount of hard money that persons can contribute to state party committees, from $5,000 to $10,000 per year. See 2 U.S.C. 441a(a)(1)(D). That is highly significant. Even under the $5,000 annual limit under prior law, state party committees proved their ability to raise ever-increasing amounts of hard money: hard money receipts by seven state parties initially involved in this litigation rose from $111.2 million in 1991-92, to $180.5 million in 1995-96, to $309.6 million in 2000. See Biersack Decl. Tbl. 11.

BCRA not only doubles the limit on contributions of hard money to state parties, it allows state-level party committees to use non-federal funds subject to the Levin Amendment for voter registration activity within 120 days of a federal election and voter identification, get-out-the-vote,

and generic campaign activity in connection with a federal election. See 2 U.S.C. 431(20)(A)(i), (ii), 441i(b)(2)(A). And BCRA leaves state and local party committees entirely free to raise and spend soft money in unlimited amounts for activity that has no impact on federal elections. See 2 U.S.C. 431(20)(B).

In short, BCRA "represents a balanced approach which addresses the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties, which then use those funds for Federal election activity. At the same time, the [statute] does not attempt to regulate State and local party spending where this danger is not present, and where State and local parties engage in purely non-Federal activities." 148 Cong. Rec. S2138-39 (Mar. 20, 2002) (Sen. McCain).

BCRA thus ensures that "when a State party is spending money on Federal elections, it has to be hard money." 147 Cong. Rec. S2941 (Mar. 27, 2001) (Sen. Feingold). It accomplishes that goal by generally requiring state parties to use only hard money to fund "Federal election activity." 2 U.S.C. 441i(b)(1). Congress carefully defined "Federal election activity" to reach only activity that affects federal elections and that Congress therefore has a strong interest in regulating. As Senator Feingold explained:

> We all know that voter registration in States helps Federal candidates. Likewise, get out the vote activity and generic campaign activity like general party advertising when Federal candidates are on the ballot. Those kind of activities, regardless of how laudable they are and how much we want to encourage them, assist Federal candidates in their election campaigns. So we believe they must be paid for with Federal money. Obviously, so should public communications that refer to a clearly identified federal candidate and support or oppose a candidate for that office.

147 Cong. Rec. S2941 (Mar. 27, 2001); _____

To be sure, some of that activity can affect state as well as federal elections. But that does not divest Congress of authority to regulate it. To the contrary, Congress has long recognized that voter registration and get-out-the-vote activities influence federal elections and accordingly has regulated the funds that can be used for such activities. Since 1979, "FECA unambiguously [has] require[d] that state party committee money spent for . . . volunteer materials, voter registration, and 'get-out-the-vote' activities . . . must be paid for solely from funds subject to the limitations and prohibitions of the FECA" to the extent that the expenditures are to influence a federal election. Common Cause v. FEC, 692 F. Supp. 1391, 1396 (D.D.C. 1987) (emphasis in original); see supra at 24-26. The power of Congress or the FEC to impose contribution limits on the raising of funds used for such activities cannot be seriously questioned. See 692 F. Supp. at 1396 ("It is possible that the . . . [FEC] may conclude that no method of allocation will effectuate the Congressional goal that all monies spent by state political committees on those activities . . . be 'hard money' under the FECA.") (emphasis in original).

The impact of such activities on federal elections is manifest. As Professor Green explains, "[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 (discussing study of 1992 California election revealing that those who voted for a state candidate of a particular party were more than 5 times more likely to vote for a federal Senate candidate of the same party than for the candidate from the opposing party, and that of the more than 2.1 million voters casting a ballot for a Democratic or Republican state assembly candidate, "86.4% cast ballots for the same party when voting for U.S. House candidates"); id. at 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 13-14 (so-called voter mobilization activities such as direct mail and commercial phone banks have a persuasive impact on voters);

Requiring state party committees to use hard money and Levin funds for federal election activity does not impermissibly threaten to render state and local political parties "useless." Shrink Missouri, 528 U.S. at 396. Plaintiffs' own expert concedes that they "will certainly adapt and make themselves players in the campaign process" after BCRA takes effect. La Raja Cross Tr. at 148.

In the years leading up to BCRA, soft money proved easy to obtain, and party committees at all levels accordingly became strongly dependent on such funds. See Green Rebuttal Expert Rep. at 20-22; Biersack Decl. Tbl. 2. In the absence of BCRA, party committees could be expected to follow the path of least resistance and continue to raise large amounts of soft money for use in federal election activity. BCRA, however, was enacted to combat the appearance and reality of corruption that results when parties and their large donors can exploit the soft money loophole and thereby evade federal contribution and source

[84] In any event, only a small proportion of national soft money has been used to fund these activities; the vast majority of soft money raised by the national parties has funded "issue ads" and other activities meant to bolster federal candidates' campaigns. See supra at 34-36. As members of Congress noted, "only a small percentage of party soft money is spent for get-out-the-vote and voter mobilization activities. Only 8.5 cents of every dollar goes to GOTV and voter registration activities while 40 cents of every dollar goes to purchase ads to support or defeat candidates for Federal office." 148 Cong. Rec. S1996 (Mar. 18, 2002) (Sen. Dodd); see also 148 Cong. Rec. H372 (Feb. 13, 2002) (Rep. Moran) (same).

limitations. In light of that problem, state and local party committees have no constitutional entitlement to, or dire need for, soft money to spend on federal election activity:

> Soft money doesn't provide some kind of magic bullet that States need to conduct get out the vote activities, or other activities surrounding Federal elections. The States just need adequate funds to conduct those activities, and McCain-Feingold makes sure that they have the money we double the amount of hard money an individual can give to a state party and increase the aggregate annual limit a commensurate amount.
>
> We want to help state parties stay a vibrant part of our politics. And there are plenty of activities where States can spend whatever soft money they might raise through their State party. We don't attempt to exert any control over what a State party spends on election activities that are purely directed at State elections. But we do say a million dollar contribution to the party from Philip Morris, or the AFL-CIO, or Roger Tamraz, or Denise Rich has the appearance of corruption, whether the money is used for phony issue ads attacking candidates, or voter registration.

147 Cong. Rec. S2941 (Mar. 27, 2001) (Sen. Feingold); see also 147 Cong. Rec. S3251 (Apr. 2, 2001) (Sen. Thompson).

B. Plaintiffs' Challenges to the State-Level Party Provisions Lack Merit.

1. The provision barring transfer of nonfederal funds among party committees is constitutional.

Plaintiffs urge that BCRA unconstitutionally prohibits party committees from pooling their resources through the transfer of funds. But BCRA generally does not prohibit transfers of hard money among party committees. Thus, national party committees are free to transfer hard money to state-level committees; state-level committees are free to transfer hard money to national party committees; and state-level committees are free to transfer hard money to each other. BCRA only regulates the transfer of soft or hard money when such funds are raised pursuant to the Levin Amendment for use in federal election activity.

As explained above, notwithstanding the general prohibition on the use of soft money to influence federal elections, the Levin Amendment permits state-level party committees to raise additional funds subject to certain restrictions for use in certain federal election activity. See 2 U.S.C. 441i(b)(2)(A). Thus, the Levin Amendment provides a state-level party committee with an additional means of funding federal election activity: the committee can fund such activity entirely with hard money, which the committee can raise itself or obtain from another party committee; or the committee can invoke the Levin Amendment, and fund such activity in part with soft money.

The Levin Amendment prohibits party committees from aggregating and transferring funds raised pursuant to that provision. See 2 U.S.C. 441i(b)(2)(B)(iv). In the absence of that prohibition, an unlimited number of state-level party committees would be free to work in concert to aggregate substantial sums of soft money from the same contributors. If such aggregation were permitted, the $10,000 limit on donations of funds under the Levin Amendment would be rendered nugatory.

Moreover, the Levin Amendment is "an effort to enhance [plaintiffs'] speech rights," and its restrictions, accordingly, "must be assessed in that light." See Schenck v. Pro-Choice Network, 519 U.S. 357, 383-84 (1997); see also NRWC, 459 U.S. at 210. Congress was not constitutionally required to provide state-level committees with the option of using Levin funds; it could have required those committees to fund federal election activity entirely with hard money. The conditions that Congress placed on the additional funding option that the Levin Amendment provides are entirely reasonable.

Moreover, the limitation on the use of funds that are "directed" or "spent" by or in the name of a national party or a federal candidate or "directed" through fundraising activities conducted jointly by two or more state, local, or district committees, see 2 U.S.C. 441i(b)(2)(C), is not