unconstitutionally vague or overbroad, CDP Compl. ¶ 70. The word "spent" is reasonably understood to refer to the expenditure of funds. And, as explained above, the term "directed" is defined narrowly to exclude "merely providing information or guidance as to the requirement of particular law." 11 C.F.R. 300.2(n); see also 11 C.F.R. 300.2(m) (similarly limiting the term "solicit"). In light of those narrowing definitions, it is clear that discussions that merely "touch on fundraising, campaign strategies, and spending priorities," CDP Compl. ¶ 70, do not trigger FECA's restrictions. For the reasons explained supra, at 99-106, the statute is reasonably designed to "prevent the Levin [A]mendment from becoming a new loophole" in federal campaign finance laws, 148 Cong. Rec. H369-01, H409-10 (Feb. 13, 2002) (Rep. Shays), by ensuring that large sums of money cannot be freely diverted to party committees in circumvention of contribution limits.[85]

2. The restrictions on state-level party committees are fully consistent with the Tenth Amendment and principles of federalism.

Plaintiffs' contention that BCRA's state-level party provisions violate the Tenth Amendment and principles of federalism lacks merit. As the Supreme Court has made clear, Congress has broad authority to regulate federal elections, see Buckley, 424 U.S. at 13-14 & n.16, and BCRA's state-level party provisions regulate conduct that directly affects those elections. As explained above, the limitations on the use of soft money by state-level party committees apply only to "Federal election activity," and that term is defined to encompass only activity with a substantial impact on federal elections. See 2 U.S.C. 431(20)(A), 441i(b)(1). Congress expressly excluded the following state and local election activity from the definition of "Federal election activity": (a) public communications that refer "solely to a clearly identified candidate for State or local office," if the

[85] Plaintiffs also challenge BCRA's prohibition on the transfer of national party hard money to state and local party committees for activity that can be funded with Levin funds. CDP Compl. ¶ 77-79. National party committees, however, are free to transfer hard money in unlimited amounts to their state and local counterparts. All BCRA does is prohibit the use of transferred hard money in federal election activity that is funded pursuant to the Levin Amendment.

communication is not voter registration activity within 120 days of a federal election or get-out-the-vote, voter identification, or generic campaign activity in connection with a federal election; (b) contributions to a candidate for state or local office if the contribution "is not designated to pay for a Federal election activity"; (c) the costs of state, district, and local political conventions; and (d) the costs of "grassroots campaign materials . . . that name or depict only a candidate for State or local office." 2 U.S.C. 431(20)(B). Moreover, FEC's regulations define the activities that constitute federal election activity equally narrowly. 11 C.F.R. 100.24 (67 Fed. Reg. 49,110-11 (July 29, 2002)); see also 67 Fed. Reg. 49,066 (July 29, 2002). Thus, state-level party committees remain free under federal law to raise and spend unlimited sums for use in such nonfederal activity.

As explained above, the conduct that BCRA does regulate is directly linked to Congress's interest in preventing the appearance and reality of corruption in federal elections. Accordingly, the statute falls squarely within Congress's power under Article I to regulate federal elections. Congress's power to regulate elections in which federal candidates are on the ballot, even when state candidates are on the ballot as well, has long been upheld. See, e.g., Ex parte Siebold, 100 U.S. 371, 393 (1879) ("If for its own convenience a State sees fit to elect State and county officers at the same time and in conjunction with the election of representatives, Congress will not be thereby deprived of the right to make regulations in reference to the latter."); United States v. Bowman, 636 F.2d 1003, 1011 (5th Cir. 1981) ("When federal and state candidates are together on the same ballot, Congress may regulate any activity which exposes the federal aspects of the election to the possibility of corruption."). Thus, the Tenth Amendment poses no bar to the valid exercise of Congress's delegated authority under Article I. See supra 96-99. And BCRA's state-level party

provisions do not commandeer the state legislative process or conscript state and local officers. Those provisions simply regulate private conduct that affects federal elections.

3. BCRA's restrictions on state-level party committees do not violate equal protection principles.

Plaintiffs contend that BCRA's state-level party provisions violate the equal protection component of the Fifth Amendment because those provisions treat state-level party committees differently from other organizations. McConnell Second Amend. Compl. ¶¶ 104-11; RNC Compl. ¶¶ 68-82; CDP Compl. ¶¶ 72, 73. As explained supra, at pt. I.C.2, however, Congress has in many important respects treated political parties more favorably than similarly situated entities, allowing the parties to make much greater coordinated expenditures with candidates, and to receive far larger contributions from individuals than nonparty political action committees.

More important, parties perform unique functions: they organize the slate of candidates presented to voters; organize legislative caucuses that assign legislators to committees; and elect legislative leadership. D. Green Expert Rep. at 7-8; see supra at pt. I.C.2. And "whether they like it or not . . . [political parties] act as agents for spending on behalf of those who seek to produce obligated officeholders." Colorado II, 533 U.S. at 452. See D. Green Expert Rep. at 8. In light of those threats, it is entirely proper for Congress to treat party committees differently from other organizations. See Cal Med, 453 U.S. at 183 (Congress can conclude that entities having "differing structures and purposes . . . may require different forms of regulation in order to protect the integrity of the political process").

Congress's decision not to index limits on contributions to state-level party committees for inflation does not violate equal protection principles. Contrary to the contention of the California Democratic Party, CDP Compl. ¶¶ 98-106 (Count VIII), Congress was not required to index limits

on contributions to state and local party committees simply because it indexed limits with respect to other individuals and entities that have a greater impact on federal elections.[86] Congress need not "choose between attacking every aspect of a problem or not attacking the problem at all." Dandridge v. Williams, 397 U.S. 471, 486-487 (1970). The legislative line drawn in this case "has some reasonable basis," Schweiker v. Wilson, 450 U.S. 221, 234 (1981) (citations and internal quotations omitted); Congress could reasonably conclude that contributions to state-level committees would generally have less direct impact on federal elections and, therefore, should be treated differently. Such a distinction does not offend the Constitution even if it is "not made with mathematical nicety or because in practice it results in some inequity." Id. (citations and internal quotations omitted).

As the Supreme Court has repeatedly explained, the determination of a particular contribution limit is a matter of legislative judgment that "need not be 'fine tun[ed].'" Shrink Missouri, 528 U.S. at 388 (quoting Buckley, 424 U.S. at 30). Thus, the Court in Buckley showed substantial deference not only to Congress's determination that unlimited campaign contributions threaten democratic values, but also to Congress's judgment regarding the choice of an appropriate dollar limit. As the Court explained, "[i]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000." 424 U.S. at 30 (citation omitted). Thus, the Constitution specifies no precise mathematical formula

[86] The following provisions provide for indexing: 2 U.S.C. 441a(a)(1)(A) (contributions to federal candidate or his authorized committee); 2 U.S.C. 441a(a)(1)(B) (contributions to political committees maintained by a national political party and that are not candidate committees); 2 U.S.C. 441a(a)(3) (aggregate limit on contributions by individuals); 2 U.S.C. 441a(b) (limits on expenditures by presidential candidates that accept federal matching funds); 2 U.S.C. 441a(d) (expenditures by national committees, state committees, or subordinate committees of a state committee in connection with federal election campaigns); 2 U.S.C. 441a(h) (contributions to senatorial candidates by the NRSC, DSCC, or the national committee of a political party).

for calculating permissible contribution limits; "the dictates of the First Amendment are not mere functions of the Consumer Price Index."[87] Shrink Missouri, 528 U.S. at 397.

Nor have the plaintiffs made any showing that the limit is "so low as to impede the ability of [parties] to 'amas[s] the resources necessary for effective advocacy.'" Shrink Missouri, 528 U.S. at 397 (quoting Buckley, 424 U.S. at 21). BCRA doubles the hard money contribution limits applicable to state party committees, and plaintiffs provide no reliable evidence that, under those subtantially higher contribution limits, state party committees will be unable to participate meaningfully in federal elections. See supra at 103-04. If Congress concludes at some time in the future that the impact of inflation warrants an adjustment in the contribution limits, it can make such an adjustment at that time, as it did in BCRA by doubling the previous limit on contributions to state parties.

4. The restrictions on state-level party committees are not unconstitutionally vague or overbroad.

Plaintiffs allege that 2 U.S.C. 431(20)(A)(iii) is unconstitutionally vague. That provision bars state-level party committees from using soft money for "a public communication that refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)." The provision uses commonly understood terms to further a clear and legitimate congressional purpose: preventing the use of soft money to promote or attack candidates for federal office and thereby influence federal elections.

As Senator Feingold explained, the provision is not intended to prohibit "spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed

[87] These same precedents foreclose the Paul plaintiffs' complaint that the limit on contributions to political committees that are not political parties is not indexed for inflation by BCRA. See Paul Compl. ¶¶ 5, 56.

by a Federal candidate or say that they identify with a position of a named Federal candidate, so long as those advertisements do not support, attack, promote or oppose the Federal candidate, regardless of whether the communication expressly advocates a vote for or against a candidate." 148 Cong. Rec. S2143 (Mar. 20, 2002) (Sen. Feingold). Simply promoting the candidacy of a state candidate does not trigger the prohibition; the communications must "support[] or oppose[]" the federal candidate. See id. All the statute prevents is "the laundering of soft money through State candidate campaigns for advertisements promoting, attacking, supporting or opposing Federal candidates." Id.; see supra at 104-05. And, by limiting the statute to references to "clearly identified" candidates for federal office, Congress employed a term that both it and the FEC have already defined, see 2 U.S.C. 431(18); 11 C.F.R. 100.17, and that the Supreme Court in Buckley endorsed, see 424 U.S. at 43-44. As Senator Feingold explained, the term "refers to" also is not unconstitutionally vague. 148 Cong. Rec. S2144 (Mar. 20, 2002) ("A communication that 'refers to a clearly identified candidate' is one that mentions, identifies, cites, or directs the public to the candidate's name, photograph, drawing, or otherwise makes an 'unambiguous reference' to the candidate's identity."); see also 11 C.F.R. 100.29(b)(2) (67 Fed. Reg. 65,210 (Oct. 23, 2002)).

Moreover, any uncertainty in the particular application of the statute can be clarified by seeking an advisory opinion from the FEC. See 2 U.S.C. 437f(a); Martin Tractor, 627 F.2d at 384-86; see also National Ass'n of Letter Carriers, 413 U.S. at 580. As explained above, the statute requires the FEC to provide prompt responses to requests for advisory opinions, 2 U.S.C. 437f(a), and reliance on those opinions can provide a defense to criminal or civil enforcement proceedings, 2 U.S.C. 437f(c)(2). The availability of prompt clarification from the agency further undermines plaintiffs' facial vagueness challenge.

The California Democratic Party plaintiffs contend that the phrase "generic campaign activity" as used in the definition of "Federal election activity" is vague and overbroad. CDP Compl. ¶ 57. The FEC's regulations define the term "generic campaign activity" as "a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate." 11 C.F.R. 100.25 (67 Fed. Reg. 49,111 (July 29, 2002)). That definition is not overbroad. The legislative record and the record in this case make clear that generic activity promoting a political party benefits federal candidates that are nominated by that party, and that such activity has in fact been employed by the major parties for that purpose. See 147 Cong. Rec. S2940-41 (Mar. 27, 2001) (Sen. Feingold) ("[G]et out the vote activity and generic campaign activity like general party advertising when Federal c andidates are on the ballot . . . assist Federal candidates in their election campaigns. So we believe they must be paid for with Federal money."); supra at 104-06.

Nor is the relevant provision unconstitutionally vague. A reasonable person would understand what constitutes a communication that "promotes or opposes" a political party and not a clearly identified candidate. As clarified in the regulation, the definition is plainly aimed at public communications focusing on the interests of a political party apart from any clearly identified candidate, such as the distribution of literature exhorting voters to "Support Democrats" or "Vote Republican." And any uncertainty regarding the applicability of the statute to particular cases can be clarified by seeking an advisory opinion from the FEC. See supra at 95.

5. The reporting requirements of Title I are constitutional.

BCRA requires that state and local party committees register and file reports with the FEC to the extent they engage in any federal election activity. See 2 U.S.C. 434(e). Those requirements

are "narrowly limited to those situations where the information sought has a substantial connection with the governmental interests sought to be advanced." Buckley, 424 U.S. at 81. The provisions are closely drawn to ensure that state and local party committees are in compliance with the reasonable restrictions that BCRA imposes on those committees and that the public is informed of the extent of federal election activity in which those committees engage. The disclosure "provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office." Id. at 66-67 (footnote omitted). Such disclosure also "deter[s] actual corruption and avoid[s] the appearance of corruption by exposing large contributions and expenditures to the light of publicity." Id. at 67; see also Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 202 (1999).

The Court in Buckley v. Valeo recognized that those governmental interests are substantial and concluded that the federal disclosure requirements at issue in that case were "a reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view." 424 U.S. at 82. For similar reasons, BCRA's disclosure requirements readily withstand scrutiny. Even assuming that compliance with those provisions will require expenditure of funds that could exceed the total revenues of such local party committees, that would not provide a basis for invalidation of the statute, let alone invalidation on its face. Indeed, the Court in Buckley rejected a challenge to political committee recordkeeping requirements that applied to contributions as small as $10 and disclosure requirements for aggregated contributions that totaled as little as $100. 424 U.S. at 82-84; see also id. at 71 (sustaining disclosure requirements notwithstanding its recognition that "the damage done by disclosure to the associational interests of . . . minor parties and their members and to supporters of

independents could be significant"). If independent political committees with limited resources can be required to report their federal financial activity, there is no reason to treat state party committees any differently.

III. BCRA'S SOFT MONEY PROVISIONS CONCERNING TAX-EXEMPT ORGANIZATIONS ARE CONSTITUTIONAL.

BCRA also prohibits all political party committees and entities "directly or indirectly established, financed, maintained, or controlled by" those committees from "solicit[ing] any funds for, or mak[ing] or direct[ing] any donations to" certain tax-exempt organizations described in §§ 501(c) and 527 of the Internal Revenal Code. 2 U.S.C. 441i(d). The provision is intended to "prevent the parties from collecting soft money and laundering it through other organizations engaged in federal electioneering." 148 Cong. Rec. S1992 (Mar. 18, 2002) (Ex. 1 to statement of Sen. Feingold).

The restrictions in § 441i(d) are appropriate "prophylactic measures," see NRWC, 459 U.S. at 210, ensuring that party committees do not funnel funds to tax-exempt organizations as a means of evading BCRA's soft money restrictions and FECA's contribution limitations and disclosure requirements. Congress recognized that tax-exempt organizations have served as virtual arms of party committees, conducting federal electioneering activities to benefit candidates of a particular party without being subject to any of the funding source or contribution limitations or disclosure requirements that are applicable to party committees.[88] For example, the RNC infused Americans for Tax Reform ("ATR"), a 501(c)(4) tax-exempt organization, "with over $4.5 million in the weeks leading up to the 1996 election," and ATR then paid "its bills for a direct mail and phone bank campaign involving four million calls and 19 million pieces of mail explicitly disputing the

[88] See, e.g., 144 Cong. Rec. S1048 (Feb. 26, 1998) (Sen. Glenn); 144 Cong. Rec. S977 (Feb. 25, 1998) (Sen. Levin); 144 Cong. Rec. S898 (Feb. 24, 1998) (Sen. Ford); Thompson Comm. Rep. at 4013; id. at 4568 (Minority Views).

Democrats' position on Medicare as it related to the November 5th election." 144 Cong. Rec. S840 (Feb. 23, 1998) (Sen. Lieberman).[89] The DNC engaged in similar conduct. Id.; see also Kirsch Decl. ¶ 10 (describing solicitations by Democratic party for non-profit groups, e.g., NARAL (see Gallagher Decl. ¶ 1 [RNC]), assisting with 2000 presidential campaign).

In such instances, party committees soliciting funds for and directing funds to tax-exempt organizations circumvent not only FECA's disclosure requirements and funding source and contribution limitations, but also the FEC's allocation regulations, which require all party committees to use a specified proportion of hard money to fund certain types of election-related activity that may affect both state and federal elections. Those allocation rules will continue to govern certain disbursements by state and local party committees. See generally 11 C.F.R. 106.1, 106.7, 300.33; see also 67 Fed. Reg. 49,076-80, 49,098-99 (July 29, 2002). In the absence of BCRA's prohibition against the solicitation or transfer of funds to tax-exempt organizations, state and local party committees would be free to direct soft money to those organizations, which, unlike the party committees, could then use all of those funds for activities that influence federal campaigns.

Moreover, donations solicited or directed by national party committees to benefit tax-exempt organizations that conduct political activities create the same potential problems of corruption that other unregulated fund-raising by the national parties engenders, i.e., the creation of obligated officeholders, and of donors who feel compelled to contribute in order to obtain access to, and consideration from, federal officials.[90] Permitting party committees to provide such assistance to tax-exempt organizations also creates the danger that the party committees may use their ability to

[89] See also Thompson Comm. Rep. at 4566 (Minority Views).

[90] See supra; see also Bumpers Decl. ¶ 27; Pennington Decl. ¶ 8.

provide such assistance to gain control of such organizations. As Professor Green explains, if this loophole were not closed, party committees could "easily circumvent the new regulatory regime by creating satellite party organizations in the guise of tax-exempt organizations, which would be free to collect donations of unlimited size." D. Green Expert Rep. at 18.

The restrictions on party committee solicitations for and donations to tax-exempt organizations are closely drawn to prevent corruption of the political process and circumvention of FECA. Thus, BCRA permits party committees to solicit funds for, and to make and direct donations to, other political committees, including PACs, which, unlike other tax-exempt organizations, are themselves subject to regulation under FECA. See 2 U.S.C. 441i(d)(2); 2 U.S.C. 431(4). This limitation reflects Congress's recognition that the risk of circumvention and corruption is reduced where the organizations to which party committees direct funds are themselves subject to FECA's contribution limitations, source restrictions, and disclosure requirements.

Plaintiffs suggest that the Tenth Amendment and principles of federalism preclude Congress from prohibiting solicitations and donations by party committees for tax-exempt organizations where the funds are to be used in state elections. See McConnell Second Amend. Compl. ¶¶ 101, 110. But BCRA's scope is limited. With respect to § 501(c) organizations, the statute applies only if the organization make expenditures or disbursements in connection with a federal election. Congress plainly has a valid interest in regulating party solicitations and donations to such organizations. Although BCRA apparently has a broader reach with respect to § 527 political organizations, the statute nonetheless raises no Tenth Amendment concerns. Congress can properly regulate solicitations and donations by political parties to tax-exempt political organizations even if the funds are earmarked for activity that affects only state or local elections. In light of the

fungibility of money, such solicitations and donations can aid federal candidates: the receipt of funds for state and local election activity frees a corresponding amount of funds for the tax-exempt organization to use in election activity to benefit federal candidates. ___

The potential for corruption and circumvention of FECA's requirements exists regardless of the ostensible purpose for which the funds in question are to be used.

Plaintiffs contend that Section 441i(d) violates the equal protection guarantee of the Fifth Amendment because party committees are subjected to restrictions on their solicitation and disbursement of funds that are not imposed upon other entities. See McConnell Second Amend. Compl. ¶¶ 102, 111. As explained in detail, supra at 90-93, however, party committees are not similarly situated to other organizations; the close relationship and identity of interests between party committees and federal candidates and officeholders present unique threats of corruption. Congress properly concluded that party committees should not be allowed to serve as conduits for contributions to tax-exempt entities that could then serve as de facto arms of the parties not subject to the same degree of federal regulation and control.

Plaintiffs contend that § 441i(d) is unconstitutionally vague and overbroad because the terms "solicit" and "direct" are not defined and it is unclear which activities are prohibited. CDP Compl. ¶ 89; see also McConnell Second Amend. Compl. ¶ 103. They also contend that the extension of the prohibition to "any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee" is excessively vague and overbroad. McConnell Second Amend. Compl. ¶ 103. Those arguments lack merit for the reasons previously discussed, supra at 93-96. See 11 C.F.R. 300.2(c), (m), (n).

As explained above, see supra at 95, the ability to conceive of hypothetical circumstances under which a particular term may prove ambiguous does not render the statute unconstitutionally vague, especially where, as here, plaintiffs can "resolv[e] [any] doubts with respect to the [regulation's] reach" by requesting an advisory opinion under 2 U.S.C. 437f. Martin Tractor Co., 627 F.2d at 384-85. Moreover, the FEC's regulations contain safe-harbor provisions allowing party committees to "obtain and rely upon a certification from the [tax-exempt] organization" as to whether it makes expenditures or disbursements "in connection with an election for Federal office" if the certification satisfies certain formal requirements. See 11 C.F.R. 300.37(c)-(d), 300.50(c)-(d), 300.51(c)-(d). Those provisions, and the availability of advisory opinions, eliminate any possible vagueness concerns.

IV. BCRA'S SOFT MONEY RESTRICTION ON FEDERAL CANDIDATES AND OFFICEHOLDERS IS CLOSELY DRAWN TO PREVENT THE APPEARANCE AND REALITY OF CORRUPTION.

BCRA provides that federal candidates and officeholders and entities that they establish, finance, maintain, or control shall not "solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(e)(1)(A). The statute permits federal candidates to raise nonfederal funds for state and local elections, but only in amounts that do not exceed federal contribution limits and only from sources that are permitted to donate to federal campaigns. 2 U.S.C. 441i(e)(1)(B).

Those restrictions, however, do not apply to "the solicitation, receipt, or spending of funds" by a person "who is or was also a candidate for a State or local office solely in connection with such election for State or local office," provided that certain conditions are met. 2 U.S.C. 441i(e)(2).

Moreover, federal candidates and officeholders are permitted to "attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party," 2 U.S.C. 441i(e)(3), and are generally permitted to make a "general solicitation of funds on behalf of" tax-exempt "501(c)" organizations if the solicitation "does not specify how the funds will or should be spent," 2 U.S.C. 441i(e)(4)(A).[91] BCRA also permits federal candidates and officeholders to raise money for voter identification and certain other types of federal election activity if the solicitations are directed to individuals and do not exceed $20,000 in any calendar year. Id. § 441i(e)(4)(B).

As Representative Shays explained, BCRA's restrictions on federal candidates are meant to advance the statute's "key purpose" of stopping "the use of soft money as a means of buying influence and access with federal officials." 148 Cong. Rec. H408 (Feb. 13, 2002) (Rep. Shays). Thus, BCRA "take[s] federal officials, including Members of Congress, out of the business of raising soft money for political parties, political committees and candidates. Federal candidates and officeholders, furthermore, cannot establish or control political committees that raise or spend soft money." Id.

The provision permits federal candidates and officeholders to continue to engage in civic fundraising activities for nonprofit organizations, but restricts the solicitations that can be made to support certain types of federal election activity. See 148 Cong. Rec. H408 (Feb. 13, 2002) (Rep. Shays). Thus, "the bill's solicitation restrictions would not apply to a Federal candidate soliciting funds for the Red Cross explicitly to be used for a blood drive as this is not an organization whose principal purpose is to engage in get-out-the-vote or voter registration activities and the solicitation

[91] The organization for which funds are solicited cannot be an entity whose principal purpose is to conduct voter registration within 120 days of a federal election or 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(e)(4)(A).

is not expressly to obtain funds for such activities." 148 Cong. Rec. S2139-40 (Mar. 20, 2002) (Sen. McCain).

Congress recognized that prohibiting federal candidates and officeholders from raising or spending soft money was essential to reduce the appearance and reality of corruption resulting from the growth of soft money. BCRA assures that "[t]he official with power, and the candidate seeking to be in 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." 148 Cong. Rec. S2116 (Mar. 20, 2001) (Sen. Levin).

As described at length above, the solicitation of soft money by federal officeholders and candidates fosters the appearance and reality of corruption because, as with contributions made directly to federal candidates, contributions of soft money to the political parties can benefit federal candidates and officeholders who feel indebted to large donors. See supra at 71-81; Colorado II, 533 U.S. at 452; Buckley, 424 U.S. at 26. The problem is particularly acute when the solicitations are made directly by federal candidates and officeholders themselves, where the link between the federal candidate and the soft money donor is most direct. See supra at 73-76; Greenwald Decl. ¶ 8. The recent prominence of "joint fundraising committees," in which party fundraising committees are sponsored by particular Senators in association with their parties, provides a particularly blatant example of how the candidates and parties understand, and exploit, the fact that party donors often give to the party as a means of benefitting particular campaigns or enhancing relationships with officeholders and candidates. See Magleby Expert Rep. at 37; Buttenwieser Decl. ¶ 8; _____

The potential for corruption is not limited to solicitations made on behalf of national party committees. Federal candidates and officeholders also solicit soft money contributions for state and local party committees and tax-exempt organizations, which can then use those funds for activity that influences federal elections. See Buttenwieser Decl. ¶ 16; Kirsch Decl. ¶¶ 9-10;

Even where federal officeholders and candidates do not solicit soft money for purposes that could directly assist their own campaigns, the appearance and reality of corruption looms large. Federal officeholders and candidates may feel beholden to large donors who make soft money donations at their behest even where the donations are made for purposes that only affect state elections, since such donations can enhance the stature of federal officeholders and candidates with party leadership. See supra at 73 (discussing influence of national parties upon federal candidates and officeholders). Moreover, direct requests for large soft money donations by federal officeholders or candidates for federal office can make potential donors feel they must contribute. Congress recognized, and the record confirms, that donors accede to such funding requests in order to curry favor with the federal candidate who is asking for the solicitation, whether or not the federal candidate will in fact directly benefit from the donation. See supra at 84-86.[92/]

___ ___ As discussed above, large soft money donations are routinely and openly rewarded with access to legislative leaders, party officials, and federal officeholders. See supra at 75-81. In addition, BCRA's restrictions on federal officeholders and candidates directly advance Congress's interest

[92/] See also Randlett Decl. ¶ 9 ("Most soft money donors don't ask and don't care why the money is going to a particular state party . . . [w]hat matters is that the donor has done what the Member asked.");

in reducing the fundraising pressure that has demoralized federal candidates and officeholders, driving many away from public service and diverting incumbent legislators from their public duties. See supra at 85 n.73.

BCRA is closely drawn to promote these important government interests. The statute prohibits federal candidates and officeholders from soliciting soft money in connection with any federal election, while leaving them free to solicit and raise money in compliance with FECA's contribution limits. BCRA permits federal candidates to solicit money in connection with state or local elections, but minimizes the dangers of corruption by restricting these solicitations to the amounts and sources that FECA permits. BCRA also permits federal candidates to attend or speak at fundraising events for state, district, and local committees of a political party. See 11 C.F.R. 300.64 (67 Fed. Reg. 49,131 (July 29, 2002)). In addition, BCRA allows unlimited solicitations on behalf of § 501(c) organizations if the solicitations are general in nature and made on behalf of organizations whose primary purpose is not to engage in federal election activity. 2 U.S.C. 441i(e)(4)(A). Thus, BCRA permits federal candidates and officeholders to make solicitations even for tax-exempt organizations that engage in federal election activity, but imposes reasonable restrictions that reduce the potential for, and appearance of, corruption.[93]

Plaintiffs contend that equal protection principles foreclose Congress from allowing federal candidates and officeholders to make general solicitations for § 501(c) nonprofit organizations without also allowing similar solicitations for political parties and other organizations. McConnell

[93] Plaintiffs suggest that the restrictions on federal candidates and officeholders will prevent them from associating with their state and local party committees. That concern is apparently based on the view that the FEC will construe the terms "solicit" and "direct" so broadly that any discussions between federal candidates and officeholders concerning state and local parties' spending priorities would fall within the prohibition. See CDP Compl. ¶¶ 82-84. As explained above, however, the FEC's regulations narrowly define those terms and eliminate any vagueness concerns. See supra at 93-96; 11 C.F.R. 300.2(m), (n). Plaintiffs also complain that the failure to define "fundraising event" in subsection (e)(3) will chill association between federal candidates and officeholders and the state and local parties. But a reasonable person would understand that the term applies to gatherings where monies are being raised. In fact, BCRA places no restriction on attendance at party events that do not involve the raising of funds. The provision, accordingly, is not void for vagueness.

Second Amend. Compl. ¶ 116. But § 501(c) organizations whose principal purpose is not to conduct federal election activity are quite differently situated from political parties, which regularly engage in such activity. As explained above, voter registration and get-out-the-vote activities influence federal elections and, therefore, are proper subjects of federal regulation. Numerous other activities in which tax-exempt organizations may be involved have no such impact, however. The danger of apparent and actual electoral corruption is obviously greater with respect to solicitations of soft money by organizations that are principally engaged in election activity as opposed to activity that has no impact on elections. Cf. Buckley, 424 U.S. at 79 (political committee definition may be limited to organizations where "major purpose" is electoral). In any event, BCRA allows federal candidates to solicit funds for certain federal election activity, provided the solicitation is made only to individuals and the amount solicited from an individual during the calendar year does not exceed $20,000. 2 U.S.C. 441i(e)(4)(B).

Plaintiffs' contention that the restrictions on federal candidates and officeholders violate the Tenth Amendment and principles of federalism is groundless. As discussed above, the fundraising activities of federal officeholders and candidates affect federal elections and the integrity of the federal government even when the funds solicited are to be used for purposes other than federal election activity. See supra at 124. Moreover, the Tenth Amendment is not implicated because the challenged provision falls squarely within Congress's constitutional authority to regulate federal elections and there has been no commandeering of any state legislative process or state or local officials. See supra at 110.

Plaintiffs Thompson and Hilliard contend that the prohibition against federal candidates and officeholders raising soft money violates equal protection principles and the First Amendment

because it effectively prevents them from competing in the political process. Thompson & Hilliard Compl. ¶¶ 40-41. They allege that they cannot raise sufficient campaign funds by relying on individual contributions in the districts that they represent and that the prohibition against raising soft money therefore violates their equal protection rights and their rights of free speech and free association "because of the disproportionate effect on minority communities of the restrictions on funding available, by reason of BCRA, for voter registration and get out the vote activities." Id.[94/]

That argument is mistaken. BCRA's restrictions on federal officeholders make no distinctions on the basis of race or any other suspect classification. The statute accords exactly the same treatment to all federal candidates, regardless of their race or ethnicity. Indeed, plaintiffs allege no intent by Congress to discriminate on the basis of race; they allege only a "disproportionate effect" on "minority communities." Thompson & Hilliard Compl. ¶ 41. In the absence of intentional discrimination, however, plaintiffs can state no equal protection claim. See, e.g., Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977). And plaintiffs' claim of discrimination on the basis of wealth ignores the fact that equal protection principles do "'not require absolute equality or precisely equal advantages,'" and do not "'require the State to 'equalize economic conditions.'" Ross v. Moffitt, 417 U.S. 600, 612 (1974) (citations omitted). Further, plaintiffs have not shown that the challenged restrictions will prevent them "from amassing the resources necessary for effective advocacy." Buckley, 424 U.S. at 21.

[94/] Plaintiffs Thompson and Hilliard also seek to invoke the First Amendment and equal protection rights of their constituents. Thompson & Hilliard Compl. ¶ 41. But they plainly lack standing to do so. See, e.g., Powers v. Ohio, 499 U.S. 400, 410 (1991) ("In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties."); NAACP, Boston Chapter v. Harris, 607 F.2d 514, 523 (1st Cir. 1979).

V. BCRA'S LIMIT ON STATE-LEVEL CANDIDATES' USE OF SOFT MONEY FOR CERTAIN PUBLIC COMMUNICATIONS IS CONSTITUTIONAL.

BCRA requires that candidates for state or local office use only hard money to fund "a public communication that refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)." 2 U.S.C. 431(20)(A)(iii), 441i(f)(1). That provision is entirely consistent with the First Amendment. The statute allows state and local candidates to use unlimited amounts of hard money to fund such communications; it simply prohibits candidates from raising soft money to be used for such purposes. Because those communications obviously have a direct effect on federal elections (by supporting or attacking a clearly identified candidate for federal office), it is plainly permissible for Congress to require that such communications be funded with hard money, which can be provided to them by a party committee, if state law permits. Just as Congress can limit state and local party committees to the use of hard money for such communications, Congress can impose similar limitations on state and local candidates, who (like their party counterparts) remain free under BCRA to spend soft money on communications that are confined to state and local candidates. See supra at 109-10. Precisely because that provision is a valid exercise of Congress's power under Article I to regulate federal elections, it fully comports with the Tenth Amendment and principles of federalism.