IV. THE MILLIONAIRE'S AMENDMENTS ARE CONSTITUTIONAL.

In their opposition, the RNC Plaintiffs make two principal arguments: first, that the Millionaire's Provisions are an "impermissibl[e]" attempt to forcibly level the playing field in contravention of *Buckley*, RNC Opp. Br. at 49; and, second, that the government interests justifying BCRA as a whole are undermined by Congress' adoption of the Millionaire's Provisions.[271] RNC Opp. Br. at 49-50, 28, n.21. Both arguments are meritless.

First, contrary to Plaintiffs' assertions, the Millionaire's Provisions in no way "restrict the speech of some . . . in order to enhance the relative voice of others." *Buckley*, 424 U.S. at 48-49. At issue in *Buckley* were true independent expenditure limits that barred any expenditure "relative to a clearly identified candidate" in an attempt forcibly to equalize the relative abilities of individuals and groups to influence the outcome of elections. *Id.* at 19. Nothing the Millionaire's Provisions does is remotely analogous to the spending limits at issue in *Buckley*. Nothing in them imposes *any* limit on the amount of money self-funded candidates may spend or burdens in *any* constitutionally cognizable way their right or ability to speak. All the provisions do is relax otherwise applicable (and valid) restrictions on campaign funding for the self-funded candidates' opponents in a carefully calibrated manner, thereby alleviating any advantage that may, in some circumstances, inadvertently be created for self-funded candidates by contribution limits.[272] This does not offend the First Amendment because, contrary to plaintiffs' implicit assumption and fatal

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271 The RNC plaintiffs also assert in passing that the Millionaire's Provisions "impermissibly prescribe different treatment of similarly situated candidates." RNC Opp. Br. at 49. But, for all the reasons set out in the Intervenors' Opening Brief, these provisions impose no unjustifiably differential burden upon self-funded candidates, their political parties, or their potential contributors. *See* Intervenors' Br. at 155-157.

272 The provisions at issue in *Buckley* involved an attempt to restrict some candidates' ability to spend money in order to equalize naturally occurring imbalances in resources. Here, by contrast, the Millionaire's Provisions attempt to alleviate the artificial exacerbation of such imbalances that may sometimes result from government-imposed contribution limits; and they do so, not by restricting anyone's right to raise or spend money, but by relaxing restrictions on fundraising. Nothing in *Buckley* suggests that either Congress' goal or the means chosen to achieve it is impermissible.

to their explicit argument, there is no "First Amendment right to outraise and outspend an opponent." *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 464 (1st Cir. 2000).[273]

Second, the RNC plaintiffs argue that BCRA's lifting, in specified circumstances, of the party coordinated-expenditure limits "cast[s] serious doubt on the genuineness of the Government's interest in coordinated-expenditure limits" and "call[s] into question whether BCRA was truly intended to fight corruption at all." RNC Opp. Br. at 50. Plaintiffs' argument, however, is based on a fundamental mistake in reading the statute. Contrary to plaintiffs' assertions, the Millionaire's Provisions do not allow for unlimited coordinated expenditures. Rather, the amount of money that may be raised or spent under the increased limits is always closely tied to — and capped by — the amounts spent by the self-funded candidate. Thus, the opponent of such a candidate may not accept any contribution, including any coordinated expenditure, if, when added to the aggregate amount of contributions and coordinated expenditures previously made under the increased limits for the election cycle, that contribution or expenditure would exceed a set percentage of the "opposition personal funds amount" spent by his or her opponent. *See* 2 U.S.C. §§ 441a(i), 441a-1.[274]

Plaintiffs' argument also suffers from a more general analytical flaw. Although, as plaintiffs implicitly acknowledge, multiple interests were at stake when BCRA was crafted, under plaintiffs' approach, *any* attempt to balance those competing interests would necessarily be proof that none of those interests is constitutionally sufficient, because none was pursued single-mindedly, to the exclusion of all others. But just as Congress is *permitted* – but not required – to regulate campaign

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[273] *See id.* (there is "no right to speak free from response — the purpose of the First Amendment is to 'secure the widest possible dissemination of information from diverse and antagonistic sources'") (citation omitted).

[274] 110 percent if running for the Senate, 100 percent if running for the House. *See* 2 U.S.C. § 441a(i).

contributions in the first place, so too may it determine that it is willing to tolerate somewhat more risk of corruption or its appearance in circumstances where competing interests exist. Nothing in the Constitution prohibits Congress from making such policy judgments or suggests that statutory accommodation of competing interests undermines the sufficiency of otherwise legitimate governmental interests that justify the statute as a whole.[275]

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275 *See, e.g., Vote Choice, Inc. v. DiStefano*, 4 F.3d 36, 42 (1st Cir. 1993) (upholding variable contribution limits as serving a "multifaceted network of interests," including preventing corruption); *see also Buckley*, 424 U.S. at 28 (Congress was "surely entitled" to enact provisions of FECA as "a partial measure" to achieve its goals).