**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| REPUBLICAN NATIONAL COMMITTEE *et al.*<br><br>Plaintiffs,<br><br>v.<br><br>FEDERAL ELECTION COMMISSION,<br><br>Defendant<br>and<br><br>REPRESENTATIVE CHRISTOPHER VAN HOLLEN, JR.<br><br>Defendant-Intervenor. | Civ. No. 08–1953 (BMK, RJL, RMC)<br><br>THREE-JUDGE COURT |

**MEMORANDUM OF POINTS AND AUTHORITIES OF SENATORS JOHN S. MCCAIN AND RUSSELL D. FEINGOLD AND FORMER REPRESENTATIVES CHRISTOPHER H. SHAYS AND MARTIN T. MEEHAN AS *AMICI CURIAE* IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION AND SUMMARY OF ARGUMENT

Seven years ago Congress enacted and the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107–155, 116 Stat. 81 (2002), which was principally sponsored by *amici* Senators McCain and Feingold and former Representatives Shays and Meehan. Title I of BCRA prohibits national political party committees from raising and spending "soft money"[1] for any purpose. *See* 2 U.S.C. § 441i(a). Title I of BCRA also prohibits state and local political party committees from spending soft money to pay for federal election activity. *See* 2 U.S.C. §§ 431(20) and 441i(b).

Plaintiffs Republican National Committee, California Republican Party and Robert M. Duncan, brought and lost constitutional challenges to these soft money restrictions of BCRA in *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003)—constitutional challenges that encompass those asserted here.[2] The Supreme Court in *McConnell* upheld the soft money provisions of Title I of BCRA in their entirety. The Court recognized that "Title I is Congress' effort to plug the soft-money loophole. The cornerstone of Title I is new FECA § 323(a), which prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money. In short, § 323(a) takes national parties out of the soft-money business."[3] *Id.* at 133 (internal citation omitted) (footnote omitted). The *McConnell* Court continued: "The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a). New FECA § 323(b) prevents the wholesale shift of soft-money influence from national to state party committees by prohibiting state and local party committees from using such funds

[1] The term "soft money" is used throughout this brief to refer to funds not raised in conformity with federal law contribution amount limitations and source prohibitions.
[2] Plaintiff Republican Party of San Diego County was not a party to *McConnell*, but premises its claims here on legal grounds rejected by the Supreme Court in *McConnell*.
[3] Federal Election Campaign Act (FECA), codified at 2 U.S.C. §§ 431 *et seq*.

for activities that affect federal elections." *Id.* at 133-34. In rejecting Plaintiffs' challenges in 2003, the *McConnell* Court reasoned:

> Like the contribution limits we upheld in *Buckley*, § 323's restrictions have only a marginal impact on the ability of contributors, candidates, officeholders, and parties to engage in effective political speech. Complex as its provisions may be, § 323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders.

*Id.* at 138 (internal citation omitted).

Now these *McConnell* Plaintiffs are back with the same claims repackaged and an alleged constitutional standard in the form of the phrase "unambiguously campaign related," which they pluck out of context, elevate to the status of newly minted "first principle" of constitutional law and wrongly claim controls the constitutional analysis in this case. Plaintiffs' argument for the application of an "unambiguously campaign related" standard is without merit for two reasons. First, far from being a "first principle" of constitutional law, this humble phrase was used in an entirely different context by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), merely to describe the Court's narrowing construction of a federal law disclosure requirement. Second, even to the limited extent the *Buckley* Court did employ the phrase "unambiguously campaign related," it did so only with respect to individuals and groups that do not have a major purpose of influencing elections—not with respect to political committees, which are in the business of influencing elections, much less to the national, state and local political party committees, such as Plaintiffs here.

The *McConnell* Court made clear that BCRA's soft money restrictions are a type of contribution limit and it evaluated the restrictions on that basis. This Court should do the same and reject Plaintiffs' made-up "unambiguously campaign related" standard and, instead, "apply the less rigorous scrutiny applicable to contribution limits to evaluate the constitutionality of new

FECA § 323," as the Supreme Court did when it upheld these challenged provisions in *McConnell*. *Id.* at 141-42.

With regard to the claims made by the California and San Diego Republican Party committees, the *McConnell* Court held that the BCRA soft money restrictions applicable to state and local party committees are a constitutionally permissible means of "[p]reventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA." *McConnell*, 540 U.S. at 165-66. So too should this Court.

The Supreme Court's reasoning in *McConnell*, as well as the district court record that supported the Supreme Court's decision, lead to one conclusion. Plaintiffs' proposed activities pose precisely the threat of real and apparent corruption that BCRA's soft money restrictions guard against. The challenged soft money restrictions are "closely drawn to match [the] sufficiently important interest" in preventing actual and apparent corruption as well as preventing corrupting activity from shifting wholesale to state committees. For all the reasons the Supreme Court in *McConnell* concluded that these laws are constitutional, they remain constitutional as applied to Plaintiffs' activities here. *See id.* at 136, 165-66. On this basis, *amici* respectfully urge this Court to deny Plaintiffs' motion for summary judgment.

## ARGUMENT

### I. The Phrase "Unambiguously Campaign Related" Is Not a Constitutional Standard Used by the Supreme Court and It Has No Relevance to the Regulation of Political Committee Activities.

Plaintiffs assert that the threshold requirement for the regulation of any campaign finance activity is whether the activity is "'*unambiguously related* to the campaign of a particular federal candidate,' . . . in short, 'unambiguously campaign related[.]'" *See* Memorandum in Support of Plaintiffs' Motion for Summary Judgment ("Pl. S.J. Memo.") at 9 (emphasis in original) (quoting *Buckley*, 424 U.S. at 80-81). According to Plaintiffs, the challenged soft money provisions of

BCRA fail this "unambiguously campaign related" test and therefore violate the First Amendment. *See, e.g.*, Pl. S.J. Memo at 30 ("Plaintiffs' planned activities are not 'unambiguously related to the campaign of a particular federal candidate' . . . [a]nd so there is no sufficient interest relating to Congress's authority to regulate federal elections . . . to apply the Federal Funds Restriction to these activities and the Restriction is in no way tailored to that authority." (internal citations omitted)).

The problem with Plaintiffs' argument is that it is based on a fiction. The Supreme Court has never employed the phrase "unambiguously campaign related" as a constitutional standard, much less the overarching standard that Plaintiffs here claim it to be. To the extent the Court did twice use the phrase in *Buckley*, it did so only with reference to the regulation of the campaign finance activities of individuals and groups that do not have a major purpose of influencing elections—not in the entirely different context here of laws regulating political committees such as the RNC and its state and local committees, which are in the full-time business of influencing election campaigns.

### A. Plaintiffs' Attempt to Create an "Unambiguously Campaign Related" Constitutional Standard Lacks Any Legal Basis and Should Be Rejected.

Plaintiffs' claim that the *Buckley* Court applied an "unambiguously campaign related" standard to evaluate the constitutionality of four different provisions of federal campaign finance law. *See* Pl. S.J. Memo at 9-10. However, the "unambiguously campaign related" language actually appeared in <u>only one</u> section of the *Buckley* decision and the Court's reference was incidental to the Court's scrutiny of a disclosure provision applicable to expenditures by individuals and groups that do not have a major purpose of influencing elections (*i.e.*, groups that are <u>not</u> political committees). *Buckley*, 424 U.S. at 79-80. The *Buckley* Court wrote:

> [W]hen the maker of the expenditure . . . is an individual other than a candidate or a group other than a "political committee" . . . we construe "expenditure" . . . to

> reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.

*Id.* at 79-80.

The plain language of this passage from *Buckley*—which gave birth to Plaintiffs' "unambiguously campaign related" legal theory—makes clear that the Court used the "unambiguously related" phrase only to explain its decision to narrowly construe the statutory term "expenditure" to include only "express advocacy." And the Court made clear that this construction applied only "when the maker of the expenditure . . . is an individual other than a candidate or a group other than a 'political committee.'" *Id.* at 79. The Court used the same language only once more in *Buckley*, two paragraphs later, when it described the challenged expenditure disclosure requirements as provisions that "shed the light of publicity on spending that is unambiguously campaign related." *Id.* at 81. The only constitutional "test" created by the *Buckley* Court in these passages was the "express advocacy" test. The "unambiguously campaign related" language was simply a description of the "express advocacy" standard, not a stand-alone constitutional command. The phrase certainly was not adopted as an independent constitutional test and has never been applied as such in any subsequent Supreme Court case.

Furthermore, the Supreme Court did not "again recognize[] the unambiguously-campaign-related requirement" in *Fed. Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"). *See* Pl. S.J. Memo at 10-11. Indeed, the phrase "unambiguously campaign related" does not appear a single time in the Supreme Court's *MCFL* opinion. And, importantly for the purposes of this case, *MCFL* has no bearing on the regulation of campaign finance activities of political committees such as Plaintiffs. *MCFL* entailed the regulation of an organization that was not a political committee—and the types of campaign finance regulations

that may constitutionally be applied to political committees differ significantly from those that may be applied to other organizations. *See infra* Section I(B).

Similarly, the Supreme Court in *McConnell* did not "expressly recognize[]" the "unambiguously-campaign-related requirement" as a "first principle of constitutional law." *See* Pl. S.J. Memo at 11. The majority opinion in *McConnell* makes not a single mention of the phrase. In fact, only one Justice in *McConnell* mentions the phrase. Justice Thomas, writing only for himself,[4] makes plain why the Plaintiffs here are trying to elevate the phrase "unambiguously campaign related" to a first principal of constitutional law as the Supreme Court never has done. Justice Thomas wrote: "[T]he presence of the 'magic words' *does* differentiate in a meaningful way between categories of speech. Speech containing the 'magic words' is 'unambiguously campaign related,' while speech without these words is not." *McConnell*, 540 U.S. at 281 (Thomas, J., dissenting in part, concurring in part) (emphasis in original). Justice Thomas' *McConnell* opinion makes clear that the phrase "unambiguously campaign related" is a synonym for "express advocacy." This being the case, it is no wonder that Plaintiffs would have this Court adopt it as the gatekeeper standard for all campaign finance regulation. But the *McConnell* Court majority concluded that "the unmistakable lesson from the record in this litigation, as all three judges on the District Court agreed, is that *Buckley's* ["express advocacy"] magic-words requirement is functionally meaningless[,]" and "has not aided the legislative effort to combat real or apparent corruption." *Id.* at 193-94 (emphasis added). Thus, Plaintiffs' attempt to employ a standard that is synonymous with "express advocacy" is directly contrary to *McConnell*. Of course, from Plaintiffs' perspective, it would be difficult to imagine a better standard to regulate their activities than a "functionally meaningless" one.

[4] Justice Scalia joined Parts I, II-A and II-B of Justice Thomas' *McConnell* opinion, but not Part II-C, the portion cited here.

Finally, the Supreme Court in *Fed. Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007) ("*WRTL II*"), did not so much as mention, let alone apply as a constitutional standard, Plaintiffs' made-up "unambiguously campaign related" test. *See* Pl. S.J. Memo at 12-13. And as was the case in *MCFL*, *WRTL II* entailed the regulation of an organization that was not a political committee and that, accordingly, is subject to a much narrower set of campaign finance regulations that can be applied to political committees such as Plaintiffs. *See infra* Section I(B).

The "unambiguously campaign related" test is simply Plaintiffs' attempt to replace the Supreme Court's actual jurisprudence for reviewing speech-related regulation with a test more to its liking. But the Supreme Court applies varying standards of scrutiny to review campaign finance regulations, depending on the nature of the regulation and the weight of the First Amendment burdens imposed by such regulation. For instance, expenditure limits, as the most burdensome campaign finance regulations, are subject to strict scrutiny and reviewed for whether they are "narrowly tailored" to "further[] a compelling interest." *WRTL II*, 127 S. Ct. at 2664; *see also Buckley*, 424 U.S. at 44-45. Contribution restrictions such as those challenged in this case, by contrast, are deemed less burdensome of speech, and are constitutionally "valid" if they "satisfy the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 136, *quoting Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 162 (2003) (internal quotations omitted). Disclosure requirements, the "least restrictive" requirements, *Buckley*, 424 U.S at 68, are subject to only an intermediate standard of review, namely that there exist a "'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." *Id*. at 64 (internal footnotes

omitted). In no instance is the test simply whether the activity is "unambiguously campaign related."

The Supreme Court's analysis of laws regulating speech generally, and of laws regulating political contributions such as those challenged in this case, specifically, thus bears little resemblance to Plaintiffs' "unambiguously campaign related" standard. This Court should reject the Plaintiffs' invented test and adhere to the test established by the Supreme Court for judicial review of BCRA's soft money restrictions. As the Court made clear in *McConnell*, the soft money restrictions, since they operate as limits on contributions to political parties, are constitutionally "valid" because they "satisfy the lesser demand of being closely drawn to match [the] sufficiently important interest" in preventing actual or apparent corruption as well as "[p]reventing corrupting activity from shifting wholesale to state committees." *McConnell*, 540 U.S. at 136, 165-66 (internal quotations omitted).

### B. Neither *Buckley*'s "Unambiguously Campaign Related" Language, Nor the "Express Advocacy" Test From Which It Was Derived, Have Any Application To the Plaintiff Political Committees.

Plaintiffs' elevation of the phrase "unambiguously campaign related" to the status of "first principle" of constitutional law is not the only fatal flaw in the legal theory underlying Plaintiffs' case. To be certain, the *Buckley* Court did not employ the phrase "unambiguously campaign related" as a constitutional standard as Plaintiffs contend. But equally flawed is Plaintiffs' argument that *Buckley*'s "express advocacy" test—and the phrase "unambiguously campaign related" used by the Court to describe it—should be applied to Plaintiffs' activities at all, given that *Buckley* made clear that the "express advocacy" test was to be used only with respect to regulation of campaign finance activities by individuals other than candidates and groups other than political committees. Neither the "unambiguously campaign related" language nor the "express advocacy" test are relevant to the regulation of the RNC and its state and local

party committees in the present case because these Plaintiffs are political committees and agents thereof.

In *Buckley*, the Court considered separate constitutional challenges to disclosure requirements for expenditures by "political committees" and disclosure requirements for expenditures by individuals and groups other than "political committees."

The Court first considered the disclosure requirements for "political committees." In order to cure potential vagueness problems with the statutory term "political committee," the Court construed the term to "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley*, 424 U.S. at 79 (emphasis added).[5] Thus, under FECA as interpreted by the *Buckley* Court, two types of organizations can be regulated as "political committees"—candidate-controlled organizations and so-called "major purpose" groups (*i.e.*, groups that have a "major purpose" of influencing the nomination or election of a candidate).

Plaintiffs in this case are three self-identified "political committees" and an agent thereof. *See* Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint") at ¶¶ 11-14.

The *Buckley* Court proceeded from its analysis of the constitutionality of the FECA definition of "political committee" to consider the constitutionality of the FECA requirement that political committees disclose their "expenditures." In doing so, the *Buckley* Court made a distinction that critically undermines Plaintiffs entire theory in this case—*i.e.*, that *Buckley*'s

[5] In *MCFL*, 479 U.S. 238 (1986), the Court again invoked the "major purpose" test and noted that if a group's independent spending activities "become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." *MCFL*, 479 U.S. at 262 (emphasis added). In that instance, the Court said the group would become subject to the "obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." *Id*. (emphasis added). The Court in *McConnell* restated the "major purpose" test for political committee status as iterated in *Buckley*. *McConnell*, 540 U.S. at 170 n.64.

"unambiguously campaign related" language, which is derived from and equivalent to the "express advocacy" test, renders the challenged BCRA provisions unconstitutional.

With respect to candidates and political committees (*i.e.*, "major purpose" groups) such as the Plaintiffs in the present case, the *Buckley* Court held that the definition of "expenditure" in federal campaign finance laws—*i.e.*, spending "for the purpose of influencing" a federal election—raises no constitutional vagueness concerns and is in no need of a narrowing "express advocacy" construction because money spent by candidates and political committees is, "by definition, campaign related." *Buckley*, 424 U.S. at 79.

By contrast, the Court developed and applied the "express advocacy" test, and employed the "unambiguously campaign related" language to describe the test, only as to spenders other than candidates and political committees, reasoning:

> But when the maker of the expenditure is not within these categories—when it is an individual other than a candidate or a group other than a "political committee"—the relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of [the disclosure provision] is not impermissibly broad, we construe "expenditure" for purposes of that section in the same way we construed the terms of [the spending limit]—to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.

*Id.* at 79–80 (emphasis added).

Thus, the Court in *Buckley* made a crucial distinction: when the spender is a candidate or political committee (*i.e.*, a "major purpose" organization), the statutory definition of "expenditure" as spending "for the purpose of influencing" a federal election is sufficiently clear to be facially constitutional, because such organizations "are, by definition, campaign related" and their spending "can be assumed" to fall within the area properly regulated by Congress. Therefore, there is no need for an "express advocacy" limitation on the definition of "expenditure" in order to save the term from vagueness. By contrast, when the spender is any

other kind of organization—any organization which does not have a "major purpose" of influencing elections—then a narrowing construction of "expenditure" (to encompass only "express advocacy") is required in order to avoid constitutional problems of vagueness.

The "express advocacy" standard is thus irrelevant to the regulation of activities by any group "the major purpose of which is the nomination or election of a candidate," *Buckley*, 424 U.S. at 79, such as political party committees. Since the BCRA provisions challenged here are regulations of party committees, the "express advocacy" standard (and the "unambiguously campaign related" description) are irrelevant to the determination of whether the challenged BCRA soft money restrictions are constitutional.

The Supreme Court affirmed this analysis in *McConnell*, where it cited and quoted the same language from *Buckley* in rejecting a vagueness challenge to the BCRA provision restricting state party committees from spending soft money on public communications that "promote, support, attack or oppose" federal candidates. *McConnell*, 540 U.S. at 170 n.64. Instead of narrowly construing these BCRA provisions to apply only to "express advocacy"—and with absolutely no mention of Plaintiffs' made-up "unambiguously campaign related" standard—the Court upheld BCRA's "promote, support, attack or oppose" test "since actions taken by political parties are presumed to be in connection with election campaigns." *Id.* at 170 n.64 (citing *Buckley*, 424 U.S. at 79); *see also Shays v. Fed. Election Comm'n*, 511 F. Supp. 2d 19, 27 (D.D.C. 2007) (the "narrowing gloss of express advocacy" applies only to groups other than "major purpose" groups).

The Supreme Court's *Buckley* and *McConnell* decisions, together with this Court's decision in *Shays*, make clear that neither *Buckley*'s "unambiguously campaign related" language, nor the "express advocacy" test from which it was derived, have any application to

political committees or their agents, such as Plaintiffs in this case. Plaintiffs' citations to *MCFL* and *WRTL II* are inapposite—neither case involved a political committee. This Court should reject Plaintiffs' attempt to replace the actual test used by the Supreme Court's to review the soft money provisions at issue here—the "less rigorous scrutiny applicable to contribution limits," *McConnell*, 540 U.S. at 141—with an invented "unambiguously campaign related" test more to their liking.

## II. The Record and Supreme Court Decision in *McConnell* Make Clear that BCRA's Soft Money Restrictions Are Constitutional Both Facially and As Applied to Plaintiffs' Proposed Activities.

Plaintiffs argue that the challenged soft money restrictions are unconstitutional because they regulate activities that are not unambiguously campaign related. *See, e.g.*, Pl. S.J. Memo at 18. Yet Plaintiffs fail to rebut a central tenet of the *Buckley* and *McConnell* decisions on which they claim to rely. The *Buckley* Court held that all expenditures by an organization with the major purpose of nominating and electing candidates can constitutionally be regulated because "[t]hey are, by definition, campaign related." *Buckley*, 424 U.S. at 79 (emphasis added). The Supreme Court affirmed this analysis in *McConnell*, where it cited and quoted the same language from *Buckley* in upholding the very soft money restrictions challenged here. *McConnell*, 540 U.S. at 170 n.64. Whereas the Plaintiff political committees claim that "Plaintiffs' activities are not unambiguously campaign related," *see* Pl. S.J. Memo at 22, the Supreme Court in both *Buckley* and *McConnell* held to the contrary that expenditures by political committees—and, certainly, political party committees—are, "by definition, campaign related." *Buckley*, 424 U.S. at 79.

Despite the fact that the Supreme Court in *McConnell* upheld BCRA's soft money provisions that "take[] national parties out of the soft-money business," 540 U.S. at 133, the RNC and its former chairman seek permission to get back into the soft money business and once

again raise and spend soft money. *See* Pl. S.J. Memo. at 30-40 (Counts 1-7). Similarly, despite the fact that the Supreme Court in *McConnell* upheld as constitutional BCRA's soft money restrictions that "prevent[] the wholesale shift of soft-money influence from national to state party committees by prohibiting state and local party committees from using such funds for activities that affect federal elections," 540 U.S. at 133-34, Plaintiffs California Republican Party and Republican Party of San Diego seek permission to raise and spend soft money for "federal election activities." *See* Pl. S.J. Memo. at 40-45 (Counts 8-9).

Plaintiffs' desire to raise and spend soft money is nothing new; Plaintiffs proposed activities are nothing new. The record in *McConnell* is replete with evidence that soft money contributions to national party committees were corruptive, regardless of how the party committees spent such contributions, and that absent BCRA's restrictions on state party committee soft money fundraising and spending for federal election activity, this corrupting activity would shift wholesale to those state committees. The Supreme Court's reasoning in *McConnell*, as well as the district court record that informed the Supreme Court's decision, are barely six years old and remain fully relevant today. Section II(A) of this Memorandum details the *McConnell* Court's determination that soft money contributions to national party committees are corrupting regardless of how the soft money is used, with subsections II(A)(1) and (2) further detailing the Court's consideration of two specific types of national party committee activity that the RNC argues in this case should be exempt from BCRA's soft money restrictions—(1) candidate-specific advertising and (2) redistricting activities. Finally, Section II(B) details the *McConnell* Court's consideration of claims, advanced here by the California and San Diego Republican Party committees, challenging BCRA's restrictions of state party soft money spending on federal election activity.

Plaintiffs' proposed activities pose precisely the threat of real and apparent corruption that BCRA's soft money restrictions guard against. As the Supreme Court concluded, the challenged soft money restrictions are constitutionally "valid" because they are "closely drawn to match [the] sufficiently important interest" in preventing actual or apparent corruption as well as preventing corrupting activity from shifting wholesale to state committees. *See McConnell*, 540 U.S. at 136, 165-66.

### A. BCRA Provision Prohibiting RNC From Raising and Spending Soft Money For Any Purpose Is Constitutional.

The Supreme Court in *McConnell* explicitly rejected the claim made here that the BCRA provision prohibiting national party committees from raising or spending any soft money is unconstitutional "because it subjects *all* funds raised and spent by national parties to FECA's hard-money source and amount limits, including, for example, funds spent on purely state and local elections in which no federal office is at stake." *McConnell*, 540 U.S. at 154 (emphasis in original). The Court explained: "The question for present purposes is whether large *soft-money* contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. Both common sense and the ample record in these cases confirm Congress' belief that they do." *Id.* at 145 (emphasis in original). The Court reasoned that BCRA "Section 323(a), like the remainder of § 323, regulates contributions, not activities." *Id.* The Court continued: "As the record demonstrates, it is the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, that have made all large soft-money contributions to national parties suspect." *Id.* at 154-55.

The district court record in *McConnell*, cited extensively by the Supreme Court, established that "[u]nlike other entities, political parties have uniquely close relationships with

candidates they nominate and support, and who, in turn, lead the party." *McConnell v. Fed. Election Comm'n*, 251 F. Supp. 2d 176, 468 (D.D.C. 2003) (Kollar-Kotelly, J., concurring in part, dissenting in part) (citing D. Green Expert Report at 7-9; McCain Decl. ¶¶ 22-23). Judge Kollar-Kotelly quoted the brief of the Colorado Republican Party filed in *Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 457 (2001), for the party's description of this uniquely close relationship.

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

*McConnell*, 251 F. Supp. 2d at 468. Federal elected officials run the RNC and other national committees of the two major parties. *Id.* An expert in *McConnell* described the relationship as follows:

> The national party committees are dominated by elected public officials—the president or presidential candidate in the case of the Republican and Democratic National Committees, the top House and Senate party leaders for the congressional campaign committees . . . . There is no meaningful separation between the national party committees and the public officials who control them.

*Id*. at 468-69 (quoting Mann Expert Report at 29). Other experts explained: "Party committees are headed by or enjoy close relationships with their leading officials, individuals who by virtue of their positions, reputations, and control of the legislative machinery have special influence on their colleagues." *Id*. at 469 (quoting Krasno & Sorauf Expert Report at 12-13).

*Amicus* former Representative Meehan explained in the *McConnell* record:

> The ultimate goal of a political party such as the Democratic Party is to get as many Party members as possible into elective office, and in doing so to increase

> voting and Party activity by average Party members. The Party does this by developing principles on public policy matters the Party stands for, and then by finding candidates to run for the various political offices who represent those principles for the Party. When the Party finds its candidates, it tries to raise money to help get like-minded people to participate in the elections, and to try to get the Party's candidates the resources they need to get their message out to voters. In my experience, political parties do not have economic interests apart from their ultimate goal of electing their candidates to office.

*Id.* at 469-70 (quoting Meehan Decl. in *Republican National Comm. v. Fed. Election Comm'n*, 98-CV-1207 (D.D.C) ¶¶ 3-4) (emphasis added). *Amicus* Senator McCain similarly explained: "[t]he entire function and history of political parties in our system is to get their candidates elected, and that is particularly true after the primary campaign has ended and the party's candidate has been selected." *Id.* at 470 (quoting McCain Decl. ¶ 23).

Federal officeholders and donors alike testified in *McConnell* that in the pre-BCRA era, soft money was often given to national party committees with the intent that it would be used to assist the campaigns of particular candidates. Senator Simpson testified, for example, that "[d]onors do not really differentiate between hard and soft money; they often contribute to assist or gain favor with an individual politician. When donors give soft money to the parties, there is sometimes at least an implicit understanding that the money will be used to benefit a certain candidate." *Id.* at 476 (quoting Simpson Decl. ¶ 6). Senator Simpson further explained: "Although soft money cannot be given directly to federal candidates, everyone knows that it is fairly easy to push the money through our tortured system to benefit specific candidates." *Id.* (quoting Simpson Decl. ¶ 7).

The fact that soft money donors received special access to legislators was well-documented in the *McConnell* record. *See id.* at 481-511. For example, Senator Simpson stated:

> Large donors of both hard and soft money receive special treatment. No matter how busy a politician may be during the day, he or she will always make time to see donors who gave large amounts of money. Staffers who work for Members

> know who the big donors are, and those people always get their phone calls returned first and are allowed to see the Member when others are not.

*Id.* at 481-82 (quoting Simpson Decl. ¶ 9). Another described in detail an incident where a large soft money donor sought favors from Senators.

> It is not unusual for large contributors to seek legislative favors in exchange for their contributions. A good example of that which stands out in my mind because it was so stark and recent occurred on the next to last day of the 1995-96 legislative session. Federal Express wanted to amend a bill being considered by a Conference Committee, to shift coverage of their truck drivers from the National Labor Relations Act to the Railway Act, which includes airlines, pilots and railroads. This was clearly of benefit to Federal Express, which according to published reports had contributed $1.4 million in the last 2-year cycle to incumbent Members of Congress and almost $1 million in soft money to the political parties. I opposed this in the Democratic Caucus, arguing that even if it was good legislation, it should not be approved without holding a hearing, we should not cave in to special interests. One of my senior colleagues got up and said, 'I'm tired of Paul always talking about special interests; we've got to pay attention to who is buttering our bread.' I will never forget that. This was a clear example of donors getting their way, not on the merits of the legislation, but just because they had been big contributors. I do not think there is any question that this is the reason it passed.

*Id*. at 482 (quoting Simon Decl. ¶¶ 13-14). Another Senator testified:

> Donations, including soft money donations to political parties, do affect how Congress operates. It's only natural, and happens all too often, that a busy Senator with 10 minutes to spare will spend those minutes returning the call of a large soft money donor rather than the call of any other constituent . . . .

*Id*. (quoting Senator Boren Decl. ¶¶ 7-8).

The *McConnell* record contains evidence that "Members of Congress are made aware of who makes large donations to their party." *Id*. at 488. "[S]ometimes large donors make their identities know to Members of Congress." *Id*. "In fact the record suggests that for a Member not to know the identities of these donors, he or she must actively avoid such knowledge as it is provided by the national political parties and the donors themselves." *Id.*

Further, the *McConnell* record contains a "substantial amount of evidence showing that large donations to the political parties, particularly nonfederal contributions, provide donors with special access to federal lawmakers." *Id.* at 488-89.

> This access is valued by contributors because access to lawmakers is a necessary ingredient for influencing the legislative process. Contributors find that nonfederal funds are most effective at obtaining special access, and to ensure that they maintain this access donors contribute to both political parties. The political parties take advantage of contributors' desire for access by structuring their donor programs so that as donations increase, so do the number and intimacy of special opportunities to meet with Members of Congress.

*Id*. at 489. Judge Kollar-Kotelly described the *McConnell* record as a:

> treasure trove of testimony from Members of Congress, individual and corporate donors, and lobbyists, as well as documentary evidence, establishing that contributions, especially large nonfederal donations, are given with the expectation they will provide the donor with access to influence federal officials, that this expectation is fostered by the national parties, and that this expectation is often realized.

*Id.* at 492.

> One lobbyist testified:
>
> I know of organizations who believe that to be treated seriously in Washington, and by that I mean to be a player and to have access, you need to give soft money. . . . There is no question that money creates the relationships. . . . The large contributions enable them to establish relationships, and that increases the chances they'll be successful with their public policy agenda. Compared to the amounts that companies spend as a whole, large political contributions are worthwhile because of the potential benefit to the company's bottom line.

*Id.* at 492-93 (quoting Rozen Decl. ¶ 10). According to another lobbyist:

> [C]ontribut[ing] soft money . . . has proven to provide excellent access to federal officials and to candidates for federal elective office. Since the amount of soft money that an individual, corporation or other entity may contribute has no limit, soft money has become the favored method of supplying political support . . . . [S]oft money begets both access to law-makers and membership in groups which provide ever greater access and opportunity to influence.

*Id.* at 493 (quoting Murray Aff. in *Mariani v. United States*, 3-CV-1701 (M.D. Pa.) ¶ 14).

The mere fact that Plaintiffs intend not to include federal officeholders in their soft money fundraising—and instead intend to rely on the efforts of party leaders—does not eliminate the threat of real and apparent corruption posed by soft money. Regardless of whether federal officeholders are doing the fundraising, the *McConnell* record demonstrates that "[p]arty leaders facilitate direct communications on matters of policy between nonfederal money donors and officeholders." *Id.* at 500. The *McConnell* record contains, for example, a handwritten note dated February 21, 1995 from RNC Chairman Haley Barbour to [a major donor] that stated, in part: "Dear [_____]: Thank you for your very thoughtful memo on the estate and gift tax law. I've read it and will pass it along to appropriate Senators, Representatives and staff folks when I'm on the Hill tomorrow." *Id*.

Indeed, the *McConnell* record is replete with evidence that national party committee staff do the bidding of soft money donors—providing such donors with access to officeholders irrespective of the involvement of officeholders in soft money fundraising. *Id.* at 500-07.

Judge Kollar-Kotelly summarized the *McConnell* record as follows:

> The immense quantity of testimonial and documentary evidence in the record demonstrates that large nonfederal contributions provide donors special access to influence federal lawmakers. . . . Testimony from lobbyists, major donors, federal lawmakers and political party officials, as well as internal political party and corporate documents, shows that donors expect to receive this access, that this expectation is fostered by the political parties and federal lawmakers, and that special access is in fact provided to major donors. Corroborating this evidence is the fact that nonfederal money donors often give to both political parties, which demonstrates that in many cases, large nonfederal donations have less to do with political philosophy than with obtaining access to power. The record also makes clear that the best method of obtaining special access to federal lawmakers is through large nonfederal donations, rather than smaller donations under the federal campaign finance regime.
>
> The political parties have taken advantage of the desire of donors for special access by structuring their entire fundraising programs to entice larger donations with the promise of increased and more intimate access to federal officials. The political parties have also pressured donors to give donations, playing off donors' fears of denial of access or political retribution. From this record it is clear that

> large donations, particularly unlimited nonfederal contributions, have corrupted the political system. This fact has not been lost on the general public . . . .

*Id.* at 511-12.

The robust district court record of real and apparent corruption in *McConnell* led the Supreme Court to conclude: "Given this close connection and alignment of interests, large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used." *McConnell*, 540 U.S. at 155. The Supreme Court continued:

> This close affiliation has also placed national parties in a position to sell access to federal officeholders in exchange for soft-money contributions that the party can then use for its own purposes. Access to federal officeholders is the most valuable favor the national party committees are able to give in exchange for large donations.

*Id.* The Court concluded that "large soft-money donations to national party committees are likely to buy donors preferential access to federal officeholders no matter the ends to which their contributions are eventually put." *Id.* at 156. For this reason, the Court held: "Congress had sufficient grounds to regulate the appearance of undue influence associated with this practice. The Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting all donations to national parties to the source, amount, and disclosure limitations of FECA." *Id*. (emphasis added).

The Supreme Court's decision in *McConnell* upholding the application of contribution limits to all funds raised by national party committees makes clear that Plaintiffs' claims here are without merit. In Counts 1 through 7 of Plaintiffs' Complaint, the RNC argues that various uses of funds can not constitutionally be regulated by BCRA. The *McConnell* Court's holding that all contributions to national party committees can be limited, "regardless of how those funds are ultimately used," disposes of Plaintiffs' claims in Counts 1 through 7. *See McConnell*, 540 U.S.

at 155. In addition to this general holding that disposes of Plaintiffs' claims, the district court record and Supreme Court decision in *McConnell* specifically address and dispose of claims asserted by Plaintiffs regarding so-called "grassroots lobbying" (*i.e.*, "issue ads") and redistricting.

**1. BCRA Provision Prohibiting RNC's Use of Soft Money for So-Called "Grassroots Lobbying" Is Constitutional.**

The Supreme Court in *McConnell* specifically rejected the claim that party expenditures for so-called "issue advocacy" were not sufficiently related to federal elections to be regulated by Title I. From the 1992 election cycle to the 2002 election cycle—the last election cycle in which political party committees were permitted to raise and spend soft money in connection with federal elections—soft money fundraising by the Democratic and Republican parties together increased from $86.1 million to $495.8 million. *See McConnell*, 251 F. Supp. 2d at 440. In 2000, soft money spending by the national parties had reached $498 million, which amounted to 42% of their total spending. *Id*. The top 50 soft money donors "each contributed between $955,695 and $5,949,000." *Id*. It was this eruption of soft money fundraising and spending that prompted Congress to enact BCRA.

The record in *McConnell* demonstrates that, "although nonfederal receipts and spending began to grow in the 1980s, this trend accelerated beginning in 1996" when both major parties began airing so-called "issue ads" in connection with the 1996 presidential election. *See id.* at 441.

> By the end of the 2000 election cycle, it was clear that although "[s]cholars might differ about how best to change the campaign finance system, . . . they could not avoid the conclusion that party soft money and electioneering in the guise of issue advocacy had rendered the FECA regime largely ineffectual."

*Id.* at 443 (quoting Mann Expert Report at 26).

At the time soft money fundraising and spending was exploding, the Republican and Democratic parties were openly flouting the laws on the books. One expert in *McConnell* testified that "the political parties 'exploit[ed] federal campaign finance laws by using soft money for candidate support even though federal laws require them to use it for generic party building.'" *Id.* at 443 (quoting La Raja Cross Exam. Ex. 3 at 74-75). Former Senator and Chairman of the RNC, William Brock, attested in *McConnell*:

> [N]onfederal money by and large [was] not used for "party building." To the contrary, the parties by and large use the money to help elect federal candidates—in the Presidential campaigns and in close Senate and House elections. Far from reinvigorating the parties, soft money has simply strengthened certain candidates and a few large donors, while distracting parties from traditional and important grassroots work.

*Id*. (quoting Brock Decl. ¶ 6). Similarly, then-political operations director of the RNC, Terry Nelson, testified in *McConnell* that the RNC engaged in "issue advocacy in order to achieve one of our primary objectives, which is to get more Republicans elected." *Id.* at 450 (quoting Nelson Dep. at 191).

Plaintiffs now want to reopen the floodgates of national party committee soft money "issue ads" by requesting that this Court exempt soft money raised for "grassroots lobbying" communications from the Title I restrictions. *See* Pl. S.J. Memo at 34-37 (Count 4, so-called "grassroots lobbying"). Just as the parties' ads in the pre-BCRA era were allegedly for the purpose of "party building" but were obviously for the purposes of supporting and opposing candidates, so too will the so-called "grassroots lobbying" communications proposed by Plaintiffs here likely be used to support and oppose candidates. The Supreme Court in *McConnell* upheld BCRA's regulation of party funds used to disseminate such communications. *McConnell*, 540 U.S. at 156 (emphasis added). This Court should do the same.

**2. BCRA Provision Prohibiting RNC's Use of Soft Money for Redistricting Is Constitutional.**

Judge Kollar-Kotelly found in *McConnell* that, in the pre-BCRA era, "[t]he national parties use[d] nonfederal funds, as well as federal funds, toward their redistricting efforts, and these efforts [were] of value to Members of Congress because the changes in the composition of a Member's district can mean the difference between reelection and defeat." *McConnell*, 251 F. Supp. 2d at 462. An expert in *McConnell* confirmed:

> The most important legislative activity in the electoral lives of U.S. House members takes place during redistricting, a process that is placed in the hands of state legislatures. The 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. Thus, federal legislators who belong to the state majority party have a tremendous incentive to be attuned to the state legislature and the state party leadership.

*Id.* at 462 (quoting Green Expert Report at 11-12) (emphasis added). The Colorado Republican Party's Mr. Alan Philp testified in *McConnell* that his party and the Colorado Democratic Party played a significant role in the state's legislative redistricting process. Philp stated that the results of the redistricting process "[c]an have a significant impact" on candidates for federal office and that the Colorado Congressional delegation discussed redistricting with the Colorado Republican Party. *Id.* (quoting Philp Dep. at 65-66).

Despite the fact that redistricting is the "most important legislative activity in the electoral lives of U.S. House members" because "the changes in the composition of a Member's district can mean the difference between reelection and defeat," *McConnell*, 251 F. Supp. 2d at 462, Plaintiffs argue that "any effect [of redistricting] on federal candidates or officeholders is far too attenuated to be deemed *unambiguously*-campaign-related." Pl. S.J. Memo. at 33 (emphasis in original). For this reason, Plaintiffs argue in Count 3 ("Redistricting Account"), this Court should disregard the judgment of the Supreme Court, which held that the

"Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting all donations to national party committees to the source, amount, and disclosure limitations of FECA." *McConnell*, 540 U.S. at 156 (emphasis added). *Amici* respectfully urge this Court not to do so and, instead, to reaffirm that BCRA's application of contribution limits to all funds raised by Plaintiff RNC, including those used for redistricting, is constitutional.

*Amici* note these specific examples of "issue ad" and redistricting expenditures not because the nature of the expenditure matters but, instead, to make clear that these same claims were made and rejected in *McConnell*. This Court should reject Plaintiffs' motion for summary judgment on Counts 1 through 7 on the basis of the Supreme Court's clear holding in *McConnell* that all contributions to national party committees can be limited, "regardless of how those funds are ultimately used." *Id.* at 155.

### B. BCRA Provisions Prohibiting California Republican Party and Republican Party of San Diego From Raising and Spending Soft Money for Federal Election Activity Are Constitutional.

Plaintiffs California Republican Party and Republican Party of San Diego challenge the BCRA provision prohibiting state party committees from raising and spending soft money for "federal election activities." *See* Complaint at ¶¶ 49-54 (Counts 8-9); *see also* Pl. S.J. Memo. at 40-45. Judge Kollar-Kotelly observed in *McConnell* that:

> It is clear that state political party electoral activities affect federal elections, especially when state and federal elections are held on the same date. The record establishes that federal officeholders value these services and that they solicit nonfederal donations for the state political parties in order to assist their own campaigns. National political parties also solicit nonfederal donations for their state counterparts and transfer nonfederal funds as part of their efforts to affect federal elections. The workings of this campaign finance system demand that if one wants to address the impact of nonfederal money, one cannot ignore the state role in the system.

*McConnell*, 251 F. Supp. 2d at 466-67. Former Members of Congress concur with Judge Kollar-

Kotelly's view. Former Senator Rudman stated on the *McConnell* record:

> To curtail soft-money fundraising and giving, it is necessary to have a comprehensive approach that addresses the use of soft money at the state and local party levels as well as at the national party level. The fact is that much of what state and local parties do helps to elect federal candidates. The national parties know it; the candidates know it; the state and local parties know it. If state and local parties can use soft money for activities that affect federal elections, then the problem will not be solved at all. The same enormous incentives to raise the money will exist; the same large contributions by corporations, unions, and wealthy individuals will be made; the federal candidates who benefit from state party use of these funds will know exactly whom their benefactors are; the same degree of beholdenness and obligation will arise; the same distortions on the legislative process will occur; and the same public cynicism will erode the foundations of our democracy—except it will all be worse in the public's mind because a perceived reform was undercut once again by a loophole that allows big money into the system.

*Id.* at 467 (quoting Rudman Decl. ¶ 19). Similarly, former Senator Brock commented:

> It does no good to close the soft money loophole at the national level, but then allow state and local parties to use money from corporations, unions, and wealthy individuals in ways that affect federal elections. State and local parties use soft money to help elect federal candidates both by organizing voter registration and get-out-the-vote drives that help candidates at all levels of the ticket, and by using soft and hard money to run 'issue ads' that affect federal elections. Therefore, for soft money reforms to be truly effective, it is vitally important to require the use of hard money at the state level to pay for activities that affect federal elections.

*Id.* (quoting Brock Decl. ¶ 8).

The Supreme Court in *McConnell* began its analysis of the constitutionality of BCRA's soft money restrictions on state political party committees by echoing these sentiments. The Court's reasoning is worth quoting at length:

> We begin by noting that, in addressing the problem of soft-money contributions to state committees, Congress both drew a conclusion and made a prediction. Its conclusion, based on the evidence before it, was that the corrupting influence of soft money does not insinuate itself into the political process solely through national party committees. Rather, state committees function as an alternate avenue for precisely the same corrupting forces. Indeed, both candidates and parties already ask donors who have reached the limit on their direct contributions to donate to state committees. There is at least as much evidence as there was in *Buckley* that such donations have been made with the intent—and in at least some cases the effect—of gaining influence over federal officeholders. Section 323(b)

> thus promotes an important governmental interest by confronting the corrupting influence that soft-money donations to political parties already have.
>
> Congress also made a prediction. Having been taught the hard lesson of circumvention by the entire history of campaign finance regulation, Congress knew that soft-money donors would react to § 323(a) by scrambling to find another way to purchase influence. It was "neither novel nor implausible," for Congress to conclude that political parties would react to § 323(a) by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties. We "must accord substantial deference to the predictive judgments of Congress," particularly when, as here, those predictions are so firmly rooted in relevant history and common sense. Preventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest.

*McConnell*, 540 U.S. at 164-66 (footnotes omitted) (internal citations omitted) (emphasis added) (citing *Nixon v. Shrink Missouri Gov't PAC,* 528 U.S. 377, 391 (2000) and *Turner Broadcasting System, Inc. v. Fed. Communications Comm'n,* 512 U.S. 622, 665 (1994) (plurality opinion)).

In light of this political reality, BCRA not only prohibits national party committees from raising and spending soft money, *see* 2 U.S.C. § 441i(a), but also prohibits state party committees from raising and spending soft money for "federal election activity," defined to include voter registration activity within 120 days of a federal election, voter identification and get-out-the-vote (GOTV) activity in connection with an election in which a federal candidate is on the ballot, and public communications that promote, support, attack or oppose a federal candidate. *See* 2 U.S.C. §§ 431(20) and 441i(b).

Despite the *McConnell* Court's reasoned judgment, the California and San Diego Republican Party committees urge this Court to strike down BCRA's soft money restrictions applicable to its proposed federal election activities. *See* Pl. S.J. Memo at 40-44 (Count 8, public communications that promote, support, attack or oppose a federal candidate) and 45 (Count 9, federal election activity).

Political party committees in the pre-BCRA era also used soft money for get-out-the-vote (GOTV), voter registration and other federal election activities. Judge Kollar-Kotelly observed in *McConnell*:

> It is undisputed that GOTV efforts, paid for with nonfederal funds by national party committees and targeted at federal elections, *directly* assist federal candidates, as well as state and local candidates of the same party whose elections are held on the same day. Declarations from representatives of the four major congressional campaign committees attest to the fact that these committees "transfer[] federal and nonfederal funds to state and/or local party committees for . . . *get-out-the-vote efforts*. These efforts have a significant effect on the election of federal candidates."

*McConnell*, 251 F. Supp. 2d at 458-59 (internal citations omitted). The *McConnell* record contains specific evidence establishing that state party GOTV efforts intentionally and admittedly benefit federal candidates. Judge Kollar-Kotelly cited a letter from the California Democratic Party to a donor "noting that CDP's '*get-out-the-vote efforts*' would help 'increase the number of Californian Democrats in the United States Congress, continue Democratic leadership in the State Senate, take back the State Assembly—and deliver California's 54 electoral votes for President Bill Clinton's and Vice President Al Gore's re-election.'" *Id.* at 459.

An expert in *McConnell* elaborated:

> [T]he evidence from California, as well as from numerous opinion surveys and exit polls that demonstrate the powerful correlation between voting at the state and federal levels, shows quite clearly that 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. A campaign need not mention federal candidates to have a direct effect on voting for such a candidate. That parties recognize this fact is apparent, for example, from the emphasis that the Democrats place on mobilizing and preventing ballot roll-off among African-Americans, whose solidly Democratic voting proclivities make them reliable supporters for office-holders at all levels. As a practical matter, generic campaign activity has a direct effect on federal elections.

*Id.* at 459 (quoting Green Expert Report at 14) (emphasis added).

Representatives of the four major congressional campaign committees confirmed to the district court in *McConnell* that the four committees "transfer[] federal and nonfederal funds to state and/or local party committees for . . . *voter registration* . . . efforts. These efforts have a significant effect on the election of federal candidates." *Id.* at 461 (quoting Jordan Decl. ¶ 69; Wolfson Decl. ¶ 64; Vogel Decl. ¶ 64; McGahn Decl. ¶ 56).

The Supreme Court in *McConnell* cited and relied upon Judge Kollar-Kotelly's findings of fact regarding GOTV, voter registration and other forms of "federal election activity" regulated by BCRA, stating: "Common sense dictates, and it was 'undisputed' below, that a party's efforts to register voters sympathetic to that party directly assist the party's candidates for federal office." *McConnell*, 540 U.S. at 167 (citing 251 F. Supp. 2d at 460). The Court continued: "It is equally clear that federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who actually go to the polls. *McConnell*, 540 U.S. at 167-68 (citing 251 F. Supp. 2d at 459). The Supreme Court further found that the district court record made "quite clear that federal officeholders are grateful for contributions to state and local parties that can be converted into GOTV-type efforts." *McConnell*, 540 U.S. at 167-68 (citing 251 F. Supp. 2d at 459).

The Supreme Court in *McConnell* found that "[b]ecause voter registration, voter identification, GOTV, and generic campaign activity all confer substantial benefits on federal candidates, the funding of such activities creates a significant risk of actual and apparent corruption." *McConnell*, 540 U.S. at 168. Consequently, the Court upheld BCRA's limit on contributions to state party committees for federal election activities as "closely drawn to meet the sufficiently important governmental interests of avoiding corruption and its appearance." *Id.* at 169.

The *McConnell* Court further found that "'[p]ublic communications' that promote or attack a candidate for federal office . . . undoubtedly have a dramatic effect on federal elections. Such ads were a prime motivating force behind BCRA's passage." *Id*. at 169. Consequently, the *McConnell* Court held that, "[g]iven the overwhelming tendency of public communications, as carefully defined in [BCRA], to benefit directly federal candidates," BCRA's application of contribution limits to state political party committee funds used for such communications is "closely drawn to the anticorruption interest" and constitutional. *Id*. at 170.

Nevertheless, Plaintiffs' again invoke their made-up "unambiguously campaign related" standard to argue that they should not be subject to BCRA's soft money restrictions on state party federal election activity. *See* Complaint at ¶¶ 50 and 53; *see also* Pl. S.J. Memo at 40-45. Neither the *McConnell* record nor the Supreme Court's interpretation of this issue could be more clear—the activities encompassed within BCRA's definition of "federal election activity" "confer substantial benefits on federal candidates" and "undoubtedly have a dramatic effect on federal elections. *McConnell*, 540 U.S. at 168-69. BCRA's limitations on Plaintiffs' fundraising and spending for such activities are closely drawn to the government interest of preventing actual and apparent corruption and are constitutional.

## CONCLUSION

The Court should deny Plaintiffs' motion for summary judgment.

Respectfully submitted,

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