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- (d) BCRA provides political parties with advantages not granted to any other political organizations (*id.* at 24-26);
- (e) Plaintiffs' claims regarding how they would go about soliciting soft money in the future are contrary to the massive factual record developed in *McConnell v. FEC*, 540 U.S. 93 (2003), and these claims lack any constitutional significance under the plain terms of *McConnell's* holding (*id.* at 26-32);
- (f) The phrase "unambiguously campaign related" is not a constitutional test and has no bearing on this case (*id.* at 32-36); and
- (g) Even if their proposed spending were relevant, most of the activities that Plaintiffs wish to fund with soft money affect federal elections (*id.* at 36-44).

In addition to the foregoing, summary judgment should be granted to the Commission for the reasons set forth below.¹

I. SINCE BCRA'S ENACTMENT, NATIONAL POLITICAL PARTY COMMITTEES HAVE RAISED BILLIONS OF DOLLARS, AMOUNTS THAT ARE SUFFICIENT FOR EFFECTIVE ADVOCACY

National party fundraising has flourished in the wake of BCRA, as the six national party committees have dramatically expanded their pool of contributors and raised more hard money

¹ This memorandum and statement of material facts incorporate the "discovery and disclosure materials" obtained from Plaintiffs' responses to the Commission's first set of discovery requests. Fed. R. Civ. P. 56(c). Additional discovery requests were served on Plaintiff on February 23, 2009, but, on March 30, Plaintiffs stated that they would not respond to those requests — or any others — until the Court rules on the Commission's pending motion to dismiss the complaint and on Plaintiffs' pending motion for summary judgment. Defendant-Intervenor Van Hollen has filed a motion to compel Plaintiffs' responses to Defendants' outstanding discovery requests (Docket No. 54). Although that motion has not yet been resolved, the Commission is filing its motion for summary judgment at this time so as to not disrupt the Court's scheduled hearing date of April 29, 2009. The Commission respectfully requests, however, that the Court permit the filing of supplemental memoranda and statements of fact should the Court grant the motion to compel.

than they raised in hard and soft money *combined* before BCRA.² The limit on contributions to national parties — presently set at \$30,400 per year and indexed for inflation (*see* FEC S.J. Opp. at 4 n.1) — is “closely drawn” because it is not “so low as to ‘preven[t] candidates and political committees from amassing the resources necessary for effective advocacy.’” *McConnell*, 540 U.S. at 135 (quoting *Buckley v. Valeo*, 424 U.S. 1, 21 (1976)); *see also* *Randall v. Sorrell*, 548 U.S. 230, 247 (2006) (same) (Breyer, J., joined by Roberts, C.J. and Alito, J.). The hundreds of millions of dollars that the parties have been able to raise after BCRA are plainly sufficient for “effective advocacy.”

Each election cycle since BCRA, the national party committees have raised amounts of hard money that are comparable to or greater than the amounts raised in hard and soft money combined before BCRA. The national parties collectively raised approximately \$1.24 billion in hard money in each of the 2003-04 and 2007-08 election cycles, roughly 15% more than the \$1.09 billion these committees raised in the last pre-BCRA presidential election cycle. (Def. FEC’s Statement of Material Facts Not in Genuine Dispute (“FEC SMF”) ¶ 40.) In the 2005-2006 non-presidential election cycle, the parties raised approximately \$900 million in hard money alone, representing approximately 90% of the amount they had raised in hard and soft money combined in 2001-2002. (*Id.* ¶ 41.)

This trend holds true for the RNC, which raises comparable or greater amounts of hard money now in relation to how much it raised in hard and soft money combined before BCRA. In the final presidential election cycle pre-BCRA (1999-2000), the RNC raised approximately \$379 million in hard and soft money combined. (FEC SMF ¶ 42(a).) In the two presidential election

² The national party committees are the RNC, the National Republican Congressional Committee (NRCC), the National Republican Senatorial Committee (NRSC), the Democratic National Committee (DNC), the Democratic Congressional Campaign Committee (DCCC), and the Democratic Senatorial Campaign Committee (DSCC).

cycles since BCRA was enacted, the RNC has raised — in hard money alone — approximately \$392 million (2003-2004) and \$427 million (2007-2008). (*Id.* ¶ 42(b)-(c).) Similarly, in the last non-presidential election cycle (2005-2006), the RNC raised in hard money alone approximately 85% of the amount it had previously raised in hard and soft money combined. (*Id.* ¶ 43.)

In *McConnell*, the RNC predicted that “[t]he net effects of BCRA will be massive layoffs and severe reduction of . . . speech at the RNC, and reduction of many state parties to a ‘nominal’ existence.” *McConnell v. FEC*, 251 F. Supp. 2d 176, 698 (D.D.C. 2003) (Kollar-Kotelly, J.) (quoting RNC brief). Despite BCRA’s raising and indexing for inflation the limits on contributions to political parties, BCRA § 307(a)(2),(d), the RNC “calculate[d] that that the BCRA will cause the RNC to lose revenues of approximately \$48.5 million per nonpresidential election year, and \$125 million per presidential election year.” (FEC SMF ¶ 48 (quoting Shea Decl. ¶ 19).) The RNC further asserted that it would “*not* be able to recoup these lost non-federal revenues” because, the RNC projected, “it is unlikely that the RNC will be able to raise more federal money from lower-dollar contributors than it currently does.” (*Id.* (emphasis in original).)

The Court in *McConnell* found that the “political parties’ evidence regarding the impact of BCRA on their revenues” was “speculative and not based on any analysis.” *McConnell*, 540 U.S. at 173 (quoting *McConnell*, 251 F. Supp. 2d at 524 (Kollar-Kotelly, J.)). “If the history of campaign finance regulation . . . proves anything, it is that political parties are extraordinarily flexible in adapting to new restrictions on their fundraising abilities.” *McConnell*, 540 U.S. at 173. The Court was prescient. Directly contrary to the RNC’s predictions, the undisputed fundraising data shows that the national party committees — including the RNC — have, in fact, massively expanded their low-dollar contributor base in precisely the way that the RNC alleged

in *McConnell* was unlikely. (FEC SMF ¶ 49.) The RNC's dire predictions about the "severe reduction" of the RNC's "speech," *McConnell*, 251 F. Supp. 2d at 698 (Kollar-Kotelly, J.), have been proven unfounded. Consistent with *McConnell*, this Court should thus give short shrift to Plaintiffs' conclusory and unsupported statements that they "cannot" or "will not" engage in any of the activities in their complaint because they cannot afford such activities absent the ability to receive contributions in unlimited amounts and from corporate and union sources. (*E.g.*, Pls.' Statement of Undisputed Material Facts ("Pls.' SMF") ¶¶ 23, 45, 62.)

Furthermore, the funds that the RNC has raised since BCRA's enactment have been sufficient for the RNC to engage in all of the activities it now claims it wishes to pursue: supporting state candidates, including in elections where no federal candidates are on the ballot; redistricting; grassroots lobbying; and litigation. (FEC SMF ¶ 52.) Similarly, the CRP has "spent . . . money supporting" federal candidates through direct and coordinated expenditures (*id.* ¶ 54 (quoting Pls.' SMF ¶ 38)), and through substantial sums spent on federal election activity, including voter registration, voter identification, GOTV, and generic campaign activity. (*Id.*) The RPSD has distributed material promoting federal and state candidates together in every election cycle (*id.* ¶ 55), and, regardless of the outcome of this case, the RPSD will continue to conduct all of its voter registration, GOTV, and generic campaign activities in the same manner that it has conducted them since BCRA was enacted. (*Id.* ¶ 56.)

To the extent that Plaintiffs are now claiming to suffer some form of *competitive* disadvantage (Pls.' SMF ¶ 26), such a claim has no basis in law or fact. BCRA's soft-money provisions apply equally to all political parties and impose no unconstitutional competitive burden on Plaintiffs. Even if Plaintiffs' Democratic counterparts were able to raise more hard money under BCRA's neutral rules, such a fundraising advantage would be due to an ability to

obtain funds from a greater number of supporters, which is merely “an indication of popular support” for those party committees’ “political ideas.” *Cf. FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 258 (1986) (“Relative availability of funds is after all a rough barometer of public support.”). In any event, if a fundraising disparity between the parties were relevant, Plaintiffs have significantly outraised their Democratic counterparts since BCRA’s enactment. After a rough parity in the 2003-2004 election cycle, the RNC had fundraising advantages of 64% and 85% in the two most recent election cycles. (FEC SMF ¶ 45(a).) Similarly, the CRP’s hard-money fundraising has dwarfed that of the California Democratic Party, with the former nearly quadrupling the latter’s income in the most recent election cycle. (*Id.* ¶ 45(b).) The RPSD has outraised its Democratic Party equivalent in hard money by a total of approximately \$800,000 in the six years since BCRA became effective. (*See id.* ¶ 45(c).)

To the extent that Plaintiffs claim a competitive disadvantage relative to outside special interest groups (Pls.’ SMF ¶ 26), *McConnell* definitively rejected such a claim as the basis for a constitutional challenge. 540 U.S. at 187-88. BCRA actually favors political parties in a number of ways, and political parties have considerably greater legislative power than do interest groups. (FEC S.J. Opp. at 25.) The Court thus found that the political parties’ Equal Protection claims lacked merit. *McConnell*, 540 U.S. at 187-88.³

³ Even if the fundraising of outside interest groups were relevant, Plaintiffs’ allegation of a fundraising disparity once again has no basis in fact. In comparison to the outside groups — i.e., the “527” organizations not registered with the Commission as political committees — with which Plaintiffs claim to be disadvantaged (*see* Pls.’ SMF ¶ 26), the national Republican Party committees have demonstrated a significant fundraising advantage. Not once since BCRA was passed have the Democratic-leaning 527s raised even half of what the Republican party committees raised in hard money; indeed, in the most recent cycle, the three national Republican committees outraised Democratic-leaning 527s by over \$400 million — a ratio of more than four-to-one. (FEC SMF ¶ 46.) Furthermore, if each national party’s fundraising totals are aggregated with the 527s supporting that party, the totals for each side were roughly equal in the

In sum, the record amassed since *McConnell* belies any assertion that Plaintiffs lack the ability to raise sufficient hard-money funds for effective advocacy. Plaintiffs' prediction in that case that BCRA Title I would strip Plaintiffs of their funding, and that their huge, unregulated receipts could not be replaced by smaller, regulated contributions has proved to be inaccurate. "The overall effect of the Act's contribution ceilings is merely to require . . . political committees to raise funds from a greater number of persons," *Buckley*, 424 U.S. at 21-22, and such an expansion of the donor pool — as well as increased contributions up to the revised hard-money limits — has occurred. The Court should reject Plaintiffs' unsupported claims that they cannot fund all of their proposed activities with hard money and that BCRA unconstitutionally limits their ability to raise funds.

II. PLAINTIFFS' RECEIPT OF CONTRIBUTIONS UNRESTRAINED BY THE ACT'S SOURCE AND AMOUNT LIMITATIONS WOULD CREATE AN APPEARANCE OF CORRUPTION AND CREATE A DANGER OF ACTUAL CORRUPTION

Much of Plaintiffs' case is premised on their claim that they must, as a constitutional matter, be permitted to solicit and spend soft money because they allegedly will not (a) provide soft-money donors with additional preferential access to candidates or officeholders above and beyond the preferential access those donors would receive through substantial hard-money contributions, or (b) involve federal candidates or officeholders in the solicitation of soft money. (*See* FEC S.J. Opp. at 26-32.) The record in the instant case disproves these claims, and the same promises were raised and rejected in *McConnell*.

If the political parties were again permitted to accept million-dollar donations, soft-money donors "know that elected officials would become aware of who has given significant

2003-2004 and 2007-2008 cycles, and the Republican groups had a significant advantage in the 2005-2006 cycle. (*See id.* ¶ 46; Biersack Decl. ¶ 13 (FEC Exh. 33).)

amounts” (FEC SMF ¶ 16 (quoting Greenwald Decl. ¶ 11)), even if Plaintiffs were to exclude federal officeholders from the soft-money solicitation process:

Members will find out who made large contributions from their staffs, other Members, or through ‘thank you’ type events run by the party. . . . Sophisticated donors would understand that elected officials of the party would be aware and appreciative of the amounts contributed even if an officeholder had not personally solicited the funds contributed.

(*Id.* (quoting Rozen Decl. ¶ 4).) Once the federal officials know who the big donors are, “those checks open the doors to the offices of individual and important Members of Congress and the Administration,” which “gives [soft-money donors] an opportunity to shape and affect governmental decisions.” (*Id.* ¶ 18 (quoting Greenwald Decl. ¶¶ 11-12).)

The RNC has a robust operation providing preferred access to officeholders at assorted events for its largest hard-money donors. (*See* FEC S.J. Opp. at 22-23.) “Even if entrance to [donor] events were tied to hard money contributions rather than soft money, such events would provide opportunities for people who had also given additional soft money amounts to interact with elected officials.” (FEC SMF ¶ 17 (quoting Rozen Decl. ¶ 3).) Specifically, “the officeholders would often know which of the attendees had made the large soft money donations, [and] they would naturally feel gratitude towards those donors commensurate with the amount of the donation.” (*Id.*; *see also id.* (quoting Rozen Decl. ¶ 4: “Members will find out who made large contributions . . . , and they will naturally be more responsive to those donors due to the amount of help the donors have provided to the Member’s party.”).)

Because this system turns on the officeholders’ knowledge of donations — not solely on direct involvement in the solicitations — and because such knowledge will undoubtedly be obtained, a system in which the parties accept unlimited donations will inherently and inevitably create actual and/or apparent corruption of federal candidates and officeholders. Thus, “the

pernicious effects of the soft money system . . . will result whether or not Members of Congress themselves directly solicit the contributions.” (FEC SMF ¶ 17 (quoting Rozen Decl. ¶ 3); *see also id.* ¶ 18 (“[T]he system would be perpetuated whether a Member or some other person representing the party is calling to ask.”) (quoting Greenwald Decl. ¶ 11).)

The RNC’s allegation that it will be only a limited conduit for access is not new. The RNC claimed in *McConnell* that its policy was to “not offer to arrange personal meetings between donors — no matter how large — and federal officeholders or candidates for office.” (FEC SMF ¶ 11 (quoting, *inter alia*, Shea Decl. ¶ 44).) When a donor would request such access as a condition of making a donation, the RNC asserted, the party “rejected the donation and denied the request.” (*Id.*) When an existing donor would request a meeting with an officeholder, the RNC’s stated policy was to “pass the request along to the officeholder’s staff without inquiring into the purpose of the proposed meeting, but neither to advocate a meeting nor ascertain whether a meeting has been arranged.” (*Id.* (quoting Shea Decl. ¶ 46).) These assertions are similar to the RNC’s claims about the policy it has followed and would follow in the future if it were permitted to solicit soft money again. (*Id.* (citing Josefiak Dep. 129:18-21); *see also* Pls.’ SMF ¶ 24.)

In spite of this alleged “policy,” trading of soft money for access to federal officeholders — by the RNC and other party committees — was rampant before BCRA. *See McConnell*, 540 U.S. at 150-52 (“The record in the present case[] is replete with . . . examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. . . . [T]he RNC holds out the prospect of access to officeholders to attract soft-money donations and encourages officeholders to meet with large soft-money donors.”) (citing *McConnell*, 251 F. Supp. 2d at 500-03 (Kollar-Kotelly, J.), 860-61 (Leon, J.)). Party officials

regularly arranged preferential access for soft-money donors: The *McConnell* record contained an enormous number of examples of explicit exchanges of soft money for access. (See FEC S.J. Opp. at 16-24.) All of these occurred under a policy — which the RNC would like to re-establish — of allegedly not encouraging meetings between soft-money donors and officeholders.

The RNC also claims that it will not directly involve federal candidates and officeholders in soft-money fundraising. This is similar to the RNC's position in *McConnell*, in which the party claimed that it was “exceedingly rare for [Members of Congress] to solicit funds through telephone calls or personal meetings.” (FEC SMF ¶ 14 (quoting, *inter alia*, Shea Decl. ¶ 17); see also *id.* (quoting RNC General Counsel's testimony in *McConnell* that “it's certainly not a program that we have in place to ask Members of Congress to solicit soft money”).) Such arrangements, however, neither removed federal officials from the soft-money solicitation process (*see id.* (noting solicitations by federal candidates and officeholders)), nor had any effect on the Members' *knowledge* of who the biggest donors were: “Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, *or donors themselves would report their generosity to officeholders.*” *McConnell*, 540 U.S. at 147 (emphasis added). “[F]or 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.* (quoting *McConnell*, 251 F. Supp. 2d at 487-88) (Kollar-Kotelly, J.) (emphasis added); see also *id.* (citing *McConnell*, 251 F. Supp. 2d at 853-55 (Leon, J.)). The record in *McConnell* established in great detail the myriad ways in which federal officials sought out

information regarding the largest donors, obtained that information, and factored it into their decision- and law-making activities. (*See* FEC S.J. Opp. at 16-24.)

Given the RNC's extensive (and thoroughly adjudicated) history of encouraging access and fundraising by officeholders in spite of the policies and practices the RNC has put forward in litigation, the most logical inference in the instant case is that, if the RNC were again permitted to raise soft money, the same exchanges of money for access would occur. For example, the RNC would undoubtedly take into account the amounts of soft-money donations when it determines who would sit with which officeholders at its various functions. (*See* FEC SMF ¶ 8.) The RNC might also raise its tiers of donation thresholds — as it does each time the contribution limits increase — to account for the permissibility of unlimited donations. (*See id.* ¶ 9 (noting that RNC's donation tiers correspond to maximum legal contribution).) Prior to BCRA, when there was no legal limit on soft-money contributions, the RNC's donor tiers were substantially higher than they are now: The "Team 100" threshold (currently \$30,400) was \$100,000, and the "Regents" threshold (currently \$60,800 divided between the donor and his/her spouse) was \$250,000 from one person during a single election cycle. (*Id.*) Because these tiers are the primary way in which the RNC (like the CRP and RPSD) determines which of its donors will receive the most preferential access to federal candidates and officeholders (*see id.* ¶¶ 7-8), the parties' ability to directly or indirectly incorporate soft money into the thresholds would inherently provide the donors of unregulated funds with the most access to federal officials. On the level of individual donors, as well, the strong inference to be drawn from the RNC's pre-BCRA conduct discussed above is that its "policies" and alleged practices regarding access would not prevent the party from openly or secretly helping its donors gain influence.

III. PLAINTIFFS' ACTIVITIES AFFECT FEDERAL ELECTIONS

As discussed in the Commission's prior memorandum, *McConnell* held that BCRA Title I is constitutional as a contribution limit, and so the parties' ultimate intended spending of their soft money is "beside the point" for purposes of assessing Title I's constitutionality. (FEC S.J. Opp. at 7-13.) This holding is binding in the instant matter, and Plaintiffs are precluded from challenging it here. (FEC Mem. in Support of Mot. to Dismiss (Docket No. 20) at 24-28.) In any event, even if the Court were to address the specific activities that Plaintiffs claim to wish to fund with soft money, those activities would not be entitled to any form of constitutional exemption from BCRA.⁴ In addition to the reasons discussed at FEC S.J. Opp. 36-44, Plaintiffs' arguments regarding their activities fail for the reasons set forth below.⁵

A. The RNC's "Grassroots Lobbying" Is Sham Issue Advertising

Prior to BCRA, when the RNC was permitted to receive nonfederal funds ostensibly to conduct "issue advertising," "genuine issue advocacy on the part of political parties [was] a rare occurrence." 251 F. Supp. 2d at 451 (Kollar-Kotelly, J.). Similarly, the RNC spent only "a minuscule percentage" of its nonfederal budget on state and local governmental affairs. *Id.* at 463. Instead, the parties funded hundreds of millions of dollars of "sham" issue advertising, i.e., "so-called 'issue ads'" that "were actually electioneering advertisements," *id.* at 826 (Leon, J.).

⁴ Plaintiffs' artificial segregation of their activities into "federal" and "not-unambiguously-federal" is particularly untenable because, as *amici* note, "[m]oney is fungible." (Mem. of P. & A. of Brennan Ctr., *et al.*, Opp. Pls.' Mot. for S.J. at 20-21 (quoting *Sabri v. United States*, 541 U.S. 600, 606 (2004)).) Thus, any soft money spent on a putatively nonfederal activity simply allows the party to spend more hard money on other activities. (See FEC S.J. Opp. 34-35, 44 (citing *California Med. Ass'n v. FEC*, 453 U.S. 182 (1981)).)

⁵ As to Plaintiffs' activities involving redistricting, voter registration, and ballot-initiative advertising, the Commission presents no further arguments at this time but supplements its prior discussions (FEC S.J. Opp. 12, 38-42) with additional factual support developed during discovery. (See FEC SMF ¶¶ 68-69 (redistricting), ¶¶ 60, 77-78 (voter registration), ¶¶ 79-80 (ballot-initiative advertising).)

These ads, many of which overtly attacked the character, qualifications, and fitness for office of federal candidates, were one of the prime motivating factors for BCRA. *See McConnell*, 129-32 (noting Senate Committee’s findings that “the ads enabled unions, corporations, and wealthy contributors to circumvent protections that FECA was intended to provide”), 169-170. They were also one of the main considerations in the Supreme Court’s upholding of the Act. *See id.*

While *McConnell* unquestionably upheld BCRA’s prohibition on using soft money to fund the type of purported issue advocacy that the national political parties abused in the 1990s, the precise contours of what the RNC *now* considers to be “grassroots lobbying” — and therefore constitutionally exempt from Title I — are unclear. For example, when asked during the course of discovery to respond to interrogatories and to produce certain documents relating to “grassroots lobbying” as that term was defined in Plaintiffs’ own filings in this case, the RNC objected that the term was “extremely vague, overbroad and ambiguous.” (FEC SMF ¶ 63.) Indeed, the RNC’s definition is so vague that the party cannot even determine how much money, if any, it has spent on advertisements that it considers “grassroots lobbying” during the last three election cycles. (*Id.* ¶ 64.) Apparently, therefore, the RNC is asking this Court to hold that the First Amendment prohibits Congress from restricting the financing of a category of communications whose boundaries are so hazy that the RNC itself does not know what is or is not within them.⁶ Because *McConnell* upheld Title I as to all advertising by national political parties, in large part as a reaction to the previously underinclusive regulatory scheme that had allowed sham issue ads, *see McConnell*, 540 U.S. at 129-32, 169-70, Plaintiffs’ request to re-blur this line must fail.

⁶ BCRA, of course, does not prohibit the parties from engaging in any speech, including grassroots lobbying, regardless of how it is defined; in fact, the Democratic National Committee (which has far less cash-on-hand than does the RNC) recently used hard money to produce and distribute a genuine grassroots lobbying advertisement. (FEC SMF ¶ 67.)

In any event, it is undisputed that the RNC's current definition of grassroots lobbying includes the very same sham issue advertising as to which the soft-money restriction was upheld in *McConnell*. Although the RNC has been unable to articulate any coherent description of the boundaries of its desired advertising, the party has specifically testified that several communications that this Court found in *McConnell* to be sham issue ads would constitute "grassroots lobbying" under the RNC's definition of that term. (FEC SMF ¶ 65.)⁷ Thus, regardless of how the RNC would ultimately define grassroots lobbying, the definition would, at a minimum, permit unlimited corporate donations to be used to fund some sham issue ads. That result cannot possibly be squared with *McConnell*.

Plaintiffs have claimed that, in light of *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL*"), this Court is free to disregard *McConnell*'s holdings regarding sham issue advertising. (See Pls.' Reply Mem. in Support of S.J. at 16 (Docket No. 50) ("Pls.' S.J. Reply").) Such an argument has no basis in the text of *WRTL* itself, which (a) applied strict scrutiny (b) to a restriction on spending (c) by an outside advocacy group. (See FEC S.J. Opp. at 42.) In contrast, the instant case involves (a) the application of intermediate scrutiny (b) to a contribution limit (c) for a national political party. Because "actions taken by political parties are presumed to be in connection with election campaigns," *McConnell*, 540 U.S. at 170 n.64 (citing *Buckley*, 424 U.S. at 79), the *WRTL* holding that *non-political committees* are permitted to finance certain limited advertising with corporate funds has no application to the RNC's request for a constitutional exemption for whatever it ultimately deems to be grassroots lobbying.

⁷ Similarly, the CRP has acknowledged that its "non-advocacy issue oriented mailings" are part of the CRP's activities "supporting" candidates. (FEC SMF ¶ 66 (quoting Pls.' SMF ¶ 39).)

B. The RNC's Support for State and Local Candidates, Even in Elections Where No Federal Candidates Are on the Ballot, Affects Federal Elections

As the Commission noted in its prior brief, most of the putatively state and local activities that the RNC wishes to finance with soft money affect federal elections — by Plaintiffs' own admission. (FEC S.J. Opp. at 38-39; *see also infra* Part III.D-E.) In any event, the RNC is free to spend as much of its money on these, or any other state and local activities, as it would like. Since 2003, the RNC has spent a total of approximately \$2.2 million on elections in which there is no federal candidate on the ballot, although that only constitutes approximately 0.2% of the RNC's disbursements during this period.⁸ (FEC SMF ¶ 57.) If the RNC were interested in committing more of its resources to state and local activity, it could have spent more of the nearly \$1.1 billion it raised during that time period (*see id.* ¶¶ 42-43) on such activity. As the history of soft money demonstrates, however, it is more likely that if the RNC is permitted to funnel soft money to them, "state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising," just as state parties served as that conduit prior to BCRA. *See McConnell*, 540 U.S. at 185.

The RNC has asserted that supporting state and local candidates specifically in elections in which no federal candidates are on the ballot is insufficiently connected to federal elections for constitutional purposes. (*See* Pls.' S.J. Reply at 12-13.) However, the RNC's off-year voter registration efforts increase the number of registered Republicans in subsequent years and facilitate the RNC's compilation of voter information that the party uses to drive its GOTV and

⁸ Even when soft money was permitted, the RNC and DNC spent relatively little on state and local candidates: Combined, the two national parties spent "less than 4% of their soft money spending and 1.6% of their total financial activity in 2000" on state candidates. (FEC SMF ¶ 59 (quoting *McConnell*, 251 F. Supp. 2d at 464 (Kollar-Kotelly, J.)).) Activities such as training of state and local candidates or direct donations to them "constituted a very small portion of the political parties' nonfederal expenditures during the 2000 election cycle." (*Id.*)

other programs assisting federal candidates in later elections. (FEC SMF ¶ 60.) In addition, by the RNC's own admission, the party uses its state and local activities to "give the RNC the opportunity to test new and improved targeting and tactics." (*Id.* (quoting memorandum from RNC Chairman).) For example, to "improve [its] grassroots effort, the RNC . . . deployed trained staff and resources into 2005 legislative and local special elections." (*Id.*) These same efforts, refined in state and local races, "helped the GOP expand [its] majorities in the U.S. Congress . . . , in addition to re-electing President Bush." (*Id.*; *see also id.* (quoting RNC press release stating that RNC's "investment in [its] state parties and . . . grassroots organizations . . . will help ensure victory in the special election in New York's 20th Congressional district.")) The CRP likewise uses its state and local campaign activities to "further refine the strategies and tactics for [its] target congressional candidates." (*Id.* (quoting CRP Chairman's website post).) It is, therefore, undisputed that the RNC's state and local activities help the party increase its electoral success in federal elections.

C. The RNC's Litigation Affects Who Obtains Federal Office

The purpose of the RNC's "litigation account" is unclear: Plaintiffs' complaint alleged that the account would "be used *solely* for paying the fees and expenses attributable to this case" (Compl. ¶ 21 (emphasis added)), while Plaintiffs' briefs appear to take a more expansive view. (*E.g.*, Pls.' SMF ¶ 20.) To the extent the litigation account is limited to the instant case, it affects federal elections for the same reasons discussed previously regarding soft money in general and Plaintiffs' activities in particular. To the extent the account also would be used to fund litigation regarding voter registration and similar issues (*see* Josefiak Dep. 172:13-176:3 (FEC Exh. 1)), such litigation affects federal elections for the same reasons that voter registration affects federal elections. (*See* FEC S.J. Opp. at 38-39; FEC SMF ¶¶ 77-78.) Finally, to the extent the account would be used to fund recount litigation and related activity for federal elections, such litigation

is, in the language of FECA, 2 U.S.C. § 441b(a), “in connection with” the underlying federal election, such that it must be financed with federal funds. *See* FEC Advisory Op. 2006-24, <http://saos.nictusa.com/aodocs/2006-24.pdf> (Oct. 5, 2006) (“[E]lection recount activities are in connection with a Federal election . . .”).

D. Get-Out-The-Vote Activity Affects All Elections on the Ballot

All three organizational Plaintiffs have explicitly acknowledged that the purpose of their GOTV activities is to support all Republican candidates — state and federal — on any given ballot, and that these activities do, in fact, help all such candidates. (FEC SMF ¶¶ 72-73; *see also* FEC S.J. Opp. at 38-39.) Indeed, Plaintiff Duncan has stated publicly that the RNC’s “prodigious fundraising” has allowed it to build up, “over a long period of time,” a GOTV program and other “organizational efforts [that] make the difference . . . generally, there’s probably a 2 to 5 percent difference in additional turnout for a candidate that you can make.” (FEC SMF ¶ 74 (quoting *Victory Dream Team*, CONGRESS DAILY, July 29, 2008).) This “difference” applies to both federal and “down-ballot” candidates (*see id.*), and it is effective regardless of whether any federal candidates are specifically mentioned in the course of the GOTV activity (*id.* ¶¶ 82-83). Thus, any argument that Plaintiffs’ GOTV activity does not influence federal elections is contrary to Plaintiffs’ own admissions and the record in this case.

Furthermore, the CRP and RPSD already engage in the activity that they claim they require soft money to finance: Although they allegedly conduct GOTV only for purposes of helping state and local candidates, the RPSD uses federal funds to make GOTV phone calls and to distribute GOTV doorhangers “that include[] all Republican candidates” (FEC SMF ¶ 76 (quoting Pls.’ Supplemental Discovery Resps. at 10)), and the CRP includes federal candidates in

some of its GOTV slate listings. (*Id.* ¶ 75.) Nothing in BCRA prohibits Plaintiffs from devoting more of their federal funds to GOTV activities in mixed federal-and-state elections.⁹

E. Plaintiffs' Other Federal Election Activity Affects Federal Elections

To the extent that any of the state or local parties' intended activities constitute "generic campaign activity" 2 U.S.C. § 431(20)(A)(ii) — which is "campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate," 2 U.S.C. § 431(21) — such activities influence federal elections. (*See* FEC S.J. Opp. 37-38 (quoting *McConnell's* discussion of "generic campaign activity").) As the CRP's Chairman has stated: "Building organizational and communications capability — and expanding the ranks of congressional, state and local officials from our party — makes it more likely a state will be competitive in a presidential election down the road." (FEC SMF ¶ 81; *see also id.* (quoting CRP Chairman's website post noting that Congressional candidate was "benefitting from the organization our volunteer groups have built in the region"); *id.* ¶ 60 (noting use of party-building operations to refine strategies and tactics for federal campaigns).) This effect occurs (indeed, it is intended) regardless of whether the generic activity takes the form of GOTV, voter registration, or general party-building:

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. 251 F. Supp. 2d, at 460 (Kollar-Kotelly, J.). 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. *See, e.g., id.*, at 459 ("[The evidence] shows quite clearly that a campaign that mobilizes residents of a highly Republican precinct

⁹ Furthermore, in BCRA § 101, 2 U.S.C. § 441i(b)(2)(A)-(B), Congress permitted state and local parties to fund certain GOTV, voter registration, and other programs that constitute "federal election activity" under 2 U.S.C. § 431(20)(A)(i)-(ii) in part with nonfederal funds raised in amounts up to \$10,000 per donor per year and in accordance with state law. (*See* FEC S.J. Opp. at 4 n.2, 41.)

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 [G]eneric campaign activity has a direct effect on federal elections” (quoting Green Expert Report 14)).

McConnell, 540 U.S. at 167-68; *see also* FEC SMF ¶ 82 (quoting RNC Memorandum stating that “[t]here are certain election related party expenditures that make no reference to any specific candidates but do benefit the entire Republican ticket These generic programs include voter registration[] and GOTV programs These programs and projects benefit the Republican Party and all of its candidates, federal and state.”); *id.* (quoting state party chair’s testimony that state party’s “Get-out-the-vote program is designed to benefit all candidates. That could include voter registration and so on and so forth. Q. And is the same true of generic party advertising, in other words, Vote Republican, that’s designed to benefit all the candidates? A. Yes.”). To finance such “generic” activity with unlimited and corporate contributions would create the same actual and/or apparent corruption as would each of Plaintiffs’ other proposed uses for their soft money.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant summary judgment to the Commission.

Respectfully submitted,

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Dated: April 10, 2009

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

| | | |
|--------------------------------|---|----------------------------------|
| REPUBLICAN NATIONAL COMMITTEE, |) | |
| <i>et al.</i> , |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civ. No. 08-1953 (BMK, RJL, RMC) |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | |
| <i>et al.</i> , |) | STATEMENT OF MATERIAL FACTS |
| |) | |
| Defendants. |) | |

**DEFENDANT FEDERAL ELECTION COMMISSION'S
STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

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Pursuant to LCvR 7(h) and 56.1, Defendant Federal Election Commission (“Commission”) submits in support of its motion for summary judgment the following statement of material facts not in genuine dispute.

I. UNLIMITED CONTRIBUTIONS TO PLAINTIFFS WOULD CREATE AN APPEARANCE OF CORRUPTION AND POSE A DANGER OF ACTUAL CORRUPTION

A. The Republican National Committee Is in a Unique Position Between Donors and Federal Candidates and Officeholders

1. Plaintiff Republican National Committee (“RNC”) is a “political arm of Republicans either seeking office or in office,” and representatives of the RNC are in communication with candidates and officeholders on a frequent, ongoing basis. (Josefiak Dep. 197:1-18 (FEC Exh. 1).)¹

2. National political parties are “inextricably intertwined with federal officeholders and candidates.” *McConnell v. FEC*, 540 U.S. 93, 155 (2003) (quoting 148 Cong. Rec. H409 (Feb. 13, 2002)).²

3. “[T]here is no meaningful separation between the national party committees and the public officials who control them.” *Id.* (quoting *McConnell v. FEC*, 251 F. Supp. 2d 176, 468-69 (D.D.C. 2003) (Kollar-Kotelly, J.)).

4. The “national parties” are in a “unique position” to serve as “agents for spending on behalf of those who seek to produce obligated officeholders.” *Id.* at 145 (quoting *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 452 (2001)).

¹ FEC Exhibits 1-25 were appended to the Commission’s memorandum in opposition to Plaintiffs’ motion for summary judgment (Docket No. 39); FEC Exhibits 26-41 are appended to the instant memorandum.

² Once resolved by an appellate court, issues of legislative fact need not be relitigated in lower courts each time they arise. *See A Woman’s Choice—E. Side Women’s Clinic v. Newman*, 305 F.3d 684, 689 (7th Cir. 2002). Thus, as to any fact that the Supreme Court resolved in *McConnell*, this Court may simply adopt the relevant finding from that case.

5. “The President typically controls his party’s national committee, and once a favorite has emerged for the presidential nomination of the other party, that candidate and his party’s national committee typically work closely together.” *McConnell*, 251 F. Supp. 2d at 697 (Kollar-Kotelly, J.). When the President of the United States is a Republican, the President nominates the chairperson of the RNC, and there is regular strategic coordination between the party and the White House. (*See* Josefiak Dep. 193:2-194:20 (FEC Exh. 1).)

6. The RNC works with federal candidates each election cycle to develop “victory plans,” which are joint, comprehensive, election-specific strategies. (*See* Josefiak Dep. 198:13-199:8 (FEC Exh. 1); *see also* *McConnell*, 540 U.S. at 159-60 (rejecting RNC’s Title I challenge in relation to victory plans); *Victory Dream Team*, CONGRESS DAILY, July 29, 2008, 2008 WLNR 14131041 (FEC Exh. 26) (noting victory plans’ use in federal and “down-ballot” elections); [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The RNC also sells voter preference

data to campaigns (*see* Josefiak Dep. 200:10-12 (FEC Exh. 1)) and, on occasion, exchanges

donor lists with them (*see id.* 98:8-14).

B. The Republican National Committee Facilitates Its Largest Donors’ Access to and Influence Over Federal Candidates and Officeholders

7. To facilitate its donors’ access to federal candidates and officeholders, the RNC organizes private receptions, dinners, and other events at which individuals who have made large

contributions (i.e., \$15,000 or more) to the RNC have an opportunity to meet, dine, and speak with federal candidates and officeholders. (*See* Josefiak Dep. 58:18-61:5 (FEC Exh. 1).) These opportunities are “not offered to the public at large.” (Pl. RNC’s Discovery Resps. at 7 (FEC Exh. 4).)

8. The RNC has created tiers of donors with specified benefits: For example, donors who give \$15,000 receive “intimate luncheons, dinners, and meetings with key policymakers”; donors who give \$30,400 “enjoy exclusive private functions with elected Republican leaders”; and donors who commit to raising \$60,800 receive “at least one . . . exclusive event during the year,” as well as other “intimate events with key GOP policymakers.” (RNC 000130 (FEC Exh. 7).) All of these benefits involve the privilege of attending events with federal candidates and officeholders, from candidates for the U.S. House to the sitting President of the United States. (*See generally* RNC 000058-000371 (FEC Exh. 8) (invitations to donor events with federal candidates and officeholders).) At these events, an attending donor has an opportunity to inform the federal candidate or officeholder about the donor’s opinion on legislation or other issues, and the candidate or officeholder is aware that the person expressing that opinion is a major donor. (*See* Josefiak Dep. 76:14-77:11 (FEC Exh. 1); *see also* Draft letter from Jim Nicholson to Deimer True, RNC 0302806 [DEV 102]³ (explaining that donor who buys only one ticket to event is unlikely to sit with U.S. Senator because “sponsors, major donors, and table buyers are given first choice” of “VIP” assigned to their table).)

³ “DEV” and “Tab” citations refer to the *McConnell* Defendants’ Exhibit Volumes. A DVD copy of the non-confidential DEVs and a CD containing the confidential DEVs were filed in the instant action (*see* Docket No. 39-23), and courtesy copies were delivered to Chambers contemporaneously with the filing of the Commission’s opposition to Plaintiffs’ motion for summary judgment.

9. The RNC sets its highest donation tier to correspond to the legal contribution limit; when the contribution limits rise, the RNC increases the size of the donation required to reach the top tier. (Josefiak Dep. 102:19-103:6 (FEC Exh. 1).) Prior to BCRA, when there was no legal limit on soft-money contributions, the RNC's donor tiers were substantially higher than they are now: The "Team 100" threshold (currently \$30,400) was \$100,000, and the "Regents" threshold (currently \$60,800 divided between the donor and his/her spouse) was \$250,000 from one person during a single election cycle. (See Shea Decl. ¶¶ 10, 14(f)-(g), *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.) (Oct. 4, 2002) (FEC Exh. 27).)

10. In *McConnell*, the plaintiffs' own expert testified that, assuming money does buy access to or influence over federal officeholders, soft money is more likely to buy access or influence "simply by virtue of the numbers." Primo Cross Tr. (Oct. 23, 2002) at 162, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.), Docket No. 344 (May 16, 2003); accord Krasno & Sorauf Expert Rep. at 15 [DEV 1-Tab 2] ("[T]he much greater size of the [soft money] individual donations at issue here pose a proportionately larger risk of influencing their beneficiaries than do contributions of hard money."); Andrews Decl. ¶ 18 [DEV 6-Tab 1]; Wirthlin Cross Tr. (Oct. 21, 2002) at 57, *McConnell*, Docket No. 344 (May 16, 2003).

11. The RNC has no written policy — and gives no written guidance to its employees — against providing donors with preferential access to federal candidates and officeholders. (Josefiak Dep. 128:2-5, 184:10-21 (FEC Exh. 1).) To the extent the RNC has an unwritten policy on this issue, it is the same policy that was in effect prior to BCRA. (*Id.* 129:18-21.) That policy, according to the RNC in *McConnell*, was to "not offer to arrange personal meetings between donors — no matter how large — and federal officeholders or candidates for office." (Shea Decl. ¶ 44 (FEC Exh. 27); see also Shea Dep. 79:22-81:11, *McConnell v. FEC*, Civ. No.

02-582 (D.D.C.) (FEC Exh. 28) (discussing policy).) When a donor requested such access as a condition of making a donation, the RNC asserted that it “rejected the donation and denied the request.” (Shea Decl. ¶ 44 (FEC Exh. 27).) When an existing donor requested a meeting with an officeholder, the RNC’s stated policy was to “pass the request along to the officeholder’s staff without inquiring into the purpose of the proposed meeting, but neither to advocate a meeting nor ascertain whether a meeting has been arranged.” (*Id.* ¶ 46.) In spite of this policy, trading of soft money for access to federal officeholders was rampant. *See McConnell*, 540 U.S. at 150-52 (“The record in the present case[] is replete with . . . examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. . . . [T]he RNC holds out the prospect of access to officeholders to attract soft-money donations and encourages officeholders to meet with large soft-money donors.”) (citing *McConnell*, 251 F. Supp. 2d at 500-03 (Kollar-Kotelly, J.), 860-61 (Leon, J.)).

12. Many donors make large contributions at the suggestion of professional lobbyists as part of a broader plan to obtain influence. As one lobbyist explained,

I advise my clients as to which federal office-holders (or candidates) they should contribute and in what amounts, in order to best use the resources they are able to allocate to such efforts to advance their legislative agenda. *Such plans also would include soft money contributions to political parties and interest groups associated with political issues.*

McConnell, 251 F. Supp. 2d at 495 (Kollar-Kotelly, J.) (citation omitted, emphasis added); *see also id.* (“To have true political clout, the giving and raising of campaign money for candidates and political parties is often critically important.”) (quoting different lobbyist). Through lobbyists and others, “national parties have actively exploited the belief that contributions purchase influence or protection to pressure donors into making contributions.” *McConnell*, 540 U.S. at 148 n.47. As the CEO of a major corporate donor explained, if a corporation had given a

lot of money to one party, “the other side,” i.e., the opposing national party committee, might have “a friendly lobbyist call and indicate that someone with interests before a certain committee has had their contributions to the other side noticed.” *Id.* (internal quotation marks omitted).

C. Federal Candidates and Officeholders Know the Identity of Their Parties’ Large Donors, Regardless of Who Solicits the Donations

13. It is not only “contributions made at the express behest of” a candidate that raise corruption concerns, *McConnell*, 540 U.S. at 152, but also other contributions, because “[e]lected officials know exactly who the big party contributors are.” Rudman Decl. ¶ 12 [DEV 8-Tab 34]; *accord* Simpson Decl. ¶ 5 [DEV 9-Tab 38]; Greenwald Decl. ¶ 11 [DEV 6-Tab 16]. Donation patterns are well-known or easily ascertainable by party officials, officeholders, staff, and opposing lobbyists, through FEC reports or other means. *See McConnell*, 540 U.S. at 148 n.47; *McConnell*, 251 F. Supp. 2d at 488 (Kollar-Kotelly, J) (“[T]here is communication among Members about who has made soft money donations and at what level they have given, and this is widely known and understood by the Members and their staff.”) (quoting CEO Wade Randlett); *id.* at 487 (Kollar-Kotelly, J.), 853-54 (Leon, J.) (“[Y]ou cannot be a good Democratic or a good Republican Member and not be aware of who gave money to the party.”) (quoting Senator Bumpers); *id.* at 487-88 (Kollar-Kotelly, J), 854 (Leon, J.) (“Legislators of both parties often know who the large soft money contributors to their party are.”) (quoting Senator McCain); *id.* at 487 (Kollar-Kotelly, J), 854 (Leon, J.) (donor’s “lobbyist informs the Senator that a large donation was just made”) (quoting Senator Boren). Congressional staffers also know the identities of the big soft-money donors. *See id.* at 482 (“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.”) (quoting Senator Simpson).

14. In *McConnell*, the RNC asserted that it was “exceedingly rare for [Members of Congress] to solicit funds through telephone calls or personal meetings.” (Shea Decl. ¶ 17 (FEC Exh. 27); Josefiak Dep. 105:6-7, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.) (Sept. 28, 2002) (FEC Exh. 29) (“I am not aware of Members of Congress being asked to solicit soft money on behalf of the RNC.”); *id.* at 119:15-121-3 (testifying that RNC staff and existing donors conducted most major-donor solicitations for RNC, and “it’s certainly not a program that we have in place to ask Members of Congress to solicit soft money. I’m not aware of that at all.”);

[REDACTED]

[REDACTED] In fact, however, before the passage of BCRA, some soft-money solicitations were made by employees or officers of the national parties, and some were made by officeholders. *McConnell*, 540 U.S. at 125 (“[S]oft-money contributions . . . were in many cases solicited by the candidates themselves.”); *id.* at 147 (discussing fundraising in which federal candidates were not involved).

15. “Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, *or donors themselves would report their generosity to*

officeholders.” *McConnell*, 540 U.S. at 147 (emphasis added). “[F]or 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.* (quoting *McConnell*, 251 F. Supp. 2d at 487-88) (Kollar-Kotelly, J.) (emphasis added); *see also id.* (citing *McConnell*, 251 F. Supp. 2d at 853-55 (Leon, J.)).

16. In light of the foregoing, even if Plaintiffs were to exclude federal officeholders from the soft-money solicitation process, soft-money donors “know that elected officials would become aware of who has given significant amounts” (Greenwald Decl. ¶ 11 (FEC Exh. 30) (former CEO of soft-money donor)): As a lobbyist and former congressional aide explains, “Members will find out who made large contributions from their staffs, other Members, or through ‘thank you’ type events run by the party.” (Rozen Decl. ¶ 4 (FEC Exh. 31).) Indeed, “fundraising does not always involve a solicitation directly from a Member. . . . Sophisticated donors would understand that elected officials of the party would be aware and appreciative of the amounts contributed even if an officeholder had not personally solicited the funds contributed.” (*Id.*)

17. Thus, “the pernicious effects of the soft money system . . . will result whether or not Members of Congress themselves directly solicit the contributions.” (Rozen Decl. ¶ 3 (FEC Exh. 31).) “Even if entrance to [donor] events were tied to hard money contributions rather than soft money, such events would provide opportunities for people who had also given additional soft money amounts to interact with elected officials.” (*Id.*) For example, fundraising events for hard-money donors would inevitably include donors who had also made soft-money donations. At such events, “the officeholders would often know which of the attendees had made the large soft money donations, [and] they would naturally feel gratitude towards those donors

commensurate with the amount of the donation.” (*Id.*; *see also* Ornstein Decl. ¶ 16 (Exh 3 to Van Hollen S. J. Opp. (Docket No. 41)) (“If the parties could now return to creating and managing events to solicit unlimited soft money contributions . . . with officeholders present, where they would interact with large donors and could be told by the parties who the large donors are, and would likely be told by the donors themselves, . . . it would require a huge suspension of disbelief to imagine that the officeholders would not pay close attention to who they are, and would lavish attention on them.”).) “The same willful suspension of disbelief is required to imagine that a busy lawmaker with a long list of phone calls to return or limited time to see people would ignore the call or appointment from a soft money donor who may have given six- or seven-figure contributions to his or her party.” (Ornstein Decl. ¶ 16; *see also* Rozen Decl. ¶ 4 (FEC Exh. 31) (“The dangers of the soft money system . . . will still be present. Members will find out who made large contributions . . . , and they will naturally be more responsive to those donors due to the amount of help the donors have provided to the Member’s party.”).)

18. “Though a soft money check might be made out to a political party, . . . those checks open the doors to the offices of individual and important Members of Congress and the Administration” (Greenwald Decl. ¶ 12 (FEC Exh. 30).) This access to federal candidates and officeholders, even if it were “not explicitly promised” by the party, “gives [soft-money donors] an opportunity to shape and affect governmental decisions.” (*Id.* ¶¶ 11-12.) Such influence provides the impetus for “the vast majority of soft money” (*id.* ¶ 11), and “the system would be perpetuated whether a Member or some other person representing the party is calling to ask.” (*Id.*)

D. State and Local Political Parties Are Inextricably Intertwined with National Parties, Federal Candidates, and Federal Officeholders

19. State and local parties — such as Plaintiffs California Republican Party (“CRP”) and Republican Party of San Diego County (“RPSD”) — are “entities uniquely positioned to serve as conduits for corruption” because of their close connection to the national parties and to federal officeholders and candidates. *See McConnell*, 540 U.S. at 156 n.51; *see also id.* at 161.

20. “Congress recognized that” there were “close ties between federal candidates and state party committees,” *id.* at 161, and concluded — “based on the evidence before it” — that “state committees function as an alternative avenue for precisely the same corrupting forces” of soft money as the national party committees, *id.* at 164.

21. The chairperson of each state Republican party sits on the RNC. (Josefiak Dep. 14:18-15:13 (FEC Exh. 1).) This arrangement facilitates near-constant strategic communication between state parties and the RNC. (*See id.* 200:13-201:1.)

22. The CRP’s chairperson serves on the RNC, and all three of the CRP’s RNC members regularly convey strategic information among and between the CRP and the RNC. (*See* Christiansen Dep. 14:16-18, 15:2-5, 17:14-18 (FEC Exh. 2).) Communication between the RNC and CRP is particularly frequent during election years, when the parties discuss strategic topics such as voter registration and voter contact goals. (*See id.* 173:19-174:15.) In addition, the CRP’s Board of Directors always includes a United States Representative, who serves on behalf of the entire California Republican congressional delegation. (*Id.* 170:6-11.) The CRP, therefore, is inextricably intertwined with both the RNC and California’s federal officeholders and candidates.

23. Each Republican nominee for the United States Senate and House of Representatives sits on the CRP’s State Central Committee. *Standing Rules & Bylaws of the*

Cal. Republican Party § 2.01.01(A)(1)-(2) (Feb. 22, 2009), available at http://www.cagop.org/index.cfm/about_party_bylaws.htm. If elected, each of these federal officeholders appoints a minimum of eight to twelve additional delegates to the Committee. *See id.* § 2.01.01(B)(1)-(2),(6). Even if not elected, each nominee appoints a minimum of one to five additional delegates. *See id.* § 2.01.01(B)(7). All of California’s RNC members also sit on the CRP’s State Central Committee. *See id.* § 2.01.01(A)(3)-(4). Each of these members appoints four to twelve additional delegates to the Committee. *See id.* § 2.01.01(B)(3)-(4).

24. The CRP engages in strategic coordination with local Republican committees, including the RPSD, as to key party activities, such as voter registration and voter contact. (*See* Christiansen Dep. 175:8-176:4 (FEC Exh. 2).)

25. The CRP’s Board of Directors — which always includes at least one federal officeholder, *see supra* ¶ 22 — is informed of individual “generous donations.” (*Id.* 82:14-83:25.)

26. Each Republican United States Representative from San Diego County is an officer of the RPSD (Buettner Dep. 11:14-23, 99:14-24 (FEC Exh. 3)), and so the leadership of the RPSD is inextricably intertwined with that area’s federal officeholders and candidates.

27. The RPSD’s committee members — including federal officeholders, *see supra* ¶ 26 — have access to the RPSD’s internal donor records. (Buettner Dep. 33:20-34:4 (FEC Exh. 3).)

28. The RPSD also makes available to some candidates for the House or Representatives the RPSD’s file containing voter information. (*Id.* at 89:9-90:2.)

E. State and Local Political Parties Facilitate Their Largest Donors' Access to and Influence Over Federal Candidates and Officeholders

29. The CRP invites its donors to meet and speak with federal candidates and officeholders, including the President and Vice President (Christiansen Dep. 62:5-25 (FEC Exh. 2)), candidates for President and Vice President (*id.* 54:2-58:16), and many other federal candidates and officeholders (*see id.* 94:24-99:2 (describing state party conventions); *see also id.* 109:22-110:7 (acknowledging that “at a fundraising event, . . . [donors] can have access through that”); Pls.’ Supplemental Discovery Resps. at 5-6 (Response ¶ 4) (FEC Exh. 32) (“Federal candidates or officeholders who have spoken at such events include: Former Mayor Rudy Giuliani and former Governor Mitt Romney (2007); Senate candidate Bill Jones (2004); Congressman Ed Royce, Congresswoman Mary Bono Mack, Congressman Dana Rohrabacher, and Congressman Kevin McCarthy.”).)

30. Some of these events have tiered ticket structures, with donors who pay larger amounts receiving more intimate access to the officeholders and candidates, such as at seated dinners, where the officeholders and candidates know that the people with whom they are eating are the largest donors. (*See* Christiansen Dep. 54:2-58:16, 94:24-99:2 (FEC Exh. 2).)

31. The CRP has a menu of defined benefits for its major donors, promising them that they will “work closely with California’s Republican candidates and officials” and that donors “are well recognized for their important support of the Republican campaign.” California Republican Party, *Golden State Leadership Team*, http://www.cagop.org/index.cfm/golden_state_leadership_team.htm (last visited Mar. 8, 2009) (FEC Exh. 9); *see also* California Republican Party, *Join the California Republican Party Golden State Leadership Team*, http://www.cagop.org/pdf/Golden_State_Leadership_Application.pdf (last visited Mar. 8, 2009)

(FEC Exh. 10). The CRP believes that providing these benefits helps the party raise funds. (Christiansen Dep. 88:10-89:4 (FEC Exh. 2).)

32. The CRP also “strong arms” federal candidates and officeholders into participating in conference calls with major donors. (Christiansen Dep. 85:25-86:16 (FEC Exh. 2).) For example, Senator McCain’s presidential campaign manager held a conference call for the CRP’s major donors (*id.* 91:17-20, 92:23-94:6), and then held a second call for an even more exclusive set of the CRP’s very biggest donors — those who gave over \$25,000 (*id.* 106:19-107:15).

33. The CRP does not intend to change its practice of giving its donors access to federal candidates and officeholders, even if the CRP is permitted to raise and spend soft money on federal election activity. (*See id.* 177:19-178:6.)

34. The RPSD provides its donors with access to federal candidates and officeholders, including at events attended by such candidates and officeholders where donors giving larger amounts receive greater recognition. (Buettner Dep. 20:15-22:2 (FEC Exh. 3); *see also id.* 37:10-38:3, 39:7-9.) Each month, the RPSD holds a meeting that is open to the public but that is followed by a reception to which only major donors and important guests (including federal candidates and officeholders) are invited. (*Id.* 49:2-51:3.) The RPSD also arranges “VIP junkets” to Washington, where major donors meet with members of Congress. (*Id.* 43:23-45:2, 45:24-46:7.) This preferential access is set out in menus of defined benefits, including, “for [the RPSD’s] most generous supporters . . . private, complimentary VIP meetings and events with major Republican leaders and candidates.” RPSD, *Join a Republican Supporter Club or Renew Your Membership*, <https://secure.repweb.net/sandiegorepublicans/donor/> (last visited Mar. 8, 2009) (FEC Exh. 11); *see also* RPSD, *Tony Krvaric, Chairman’s Circle Chair*,

http://www.sandiegorepublicans.org/donor/chairmans_circle/ (last visited Mar. 8, 2009) (FEC Exh. 12) (listing benefits for RPSD's highest donor group).

35. The RPSD does not intend to change its practice of giving access to donors, even if the RPSD is permitted to raise and spend soft money on federal election activity. (*See* Buettner Dep. 56:18-23 (FEC Exh. 3).)

36. “[T]he federal candidates who benefit from state party use of [soft money] 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.” *McConnell*, 251 F. Supp. 2d at 467 (Kollar-Kotelly, J.) (quoting Senator Rudman).

F. A National Party Official Acting as an Agent of His Party Raises the Same Actual and Apparent Corruption Concerns as the National Party Itself

37. Plaintiff Duncan was Chairman of the RNC until January 30, 2009. (Josefiak Dep. 29:4-20 (FEC Exh. 1).)

38. To the extent Duncan wishes to solicit soft-money donations in his capacity as an RNC member, each of the foregoing facts regarding the RNC, *see supra* ¶¶ 1-18, applies to Duncan with equal force. To the extent Duncan wishes to solicit soft money for state and local candidates in his individual capacity, or in his capacity as a state party official, BCRA does not prevent him from doing so. *McConnell*, 540 U.S. at 157.

39. Duncan remains a member of the RNC, but he has no official leadership role within that organization. (Josefiak Dep. 29:21-30:13 (FEC Exh. 1).) He has no authority, beyond that of any other RNC member, over the actions or decisions of the current RNC Chairman. (*See id.*)

II. PLAINTIFFS AND OTHER POLITICAL PARTY COMMITTEES HAVE RAISED SUFFICIENT FUNDS FOR EFFECTIVE ADVOCACY WITHIN THE FEDERAL CONTRIBUTION LIMITS

40. Since BCRA's enactment, which raised the limit on contributions to national political parties and indexed it to inflation, BCRA § 307(a)(2),(d), the national party committees⁴ have raised more hard money during each presidential election cycle than they raised in hard and soft money combined prior to BCRA:

a. In the 1999-2000 election cycle, the national party committees raised a total of approximately \$1.09 billion — approximately \$574.5 million in hard money and approximately \$515.1 million in soft money. (Biersack Decl. ¶¶ 3-4 (FEC Exh. 33).)

b. In the 2003-2004 election cycle, the national party committees raised approximately \$1.24 billion in hard money. (*Id.*)

c. In the 2007-2008 election cycle, the national party committees raised approximately \$1.24 billion in hard money. (*Id.*)

41. In the 2005-2006 non-presidential election cycle, the national party committees raised approximately \$900.2 million in hard money alone, representing approximately 90 percent of the \$1.011 billion (\$515.2 million in hard money and \$496.1 million in soft money) they raised in 2001-2002. (Biersack Decl. ¶¶ 3, 5 (FEC Exh. 33).)

42. Since BCRA's enactment, the amounts of hard money raised by the RNC each presidential election cycle have been greater than the amounts the RNC raised in hard and soft money combined prior to BCRA:

⁴ The national party committees are the RNC, the National Republican Congressional Committee (NRCC), the National Republican Senatorial Committee (NRSC), the Democratic National Committee (DNC), the Democratic Congressional Campaign Committee (DCCC), and the Democratic Senatorial Campaign Committee (DSCC).

a. In the 1999-2000 election cycle, the RNC raised a combined total of approximately \$379 million — nearly \$212.8 million in hard money and approximately \$166.2 million in soft money. (Biersack Decl. ¶¶ 3, 6 (FEC Exh. 33).)

b. In the 2003-2004 election cycle, the RNC raised approximately \$392.4 million in hard money. (*Id.*)

c. In the 2007-2008 election cycle, the RNC raised approximately \$427.6 million in hard money. (*Id.*)

43. In the 2005-2006 non-presidential election cycle, the RNC raised approximately \$243 million in hard money, representing approximately 85 percent of the \$284 million (\$170 million in hard money and \$113.9 million in soft money) the RNC raised in 2001-2002. (Biersack Decl. ¶¶ 3, 7 (FEC Exh. 33).)

44. The RNC, CRP, and RPSD are subject to the same contribution limits as their Democratic Party equivalents. *See* 2 U.S.C. § 441a(a)(1).

45. Since BCRA's enactment, the RNC, CRP, and RPSD have in most election cycles each raised considerably more hard money than their Democratic counterparts:

a. In the 2007-2008 cycle, the RNC raised approximately \$427.5 million, roughly 64% more than the DNC's \$260.1 million. In the 2005-2006 election cycle, the RNC raised approximately \$243 million, approximately 85% more than the DNC's \$130.8 million. In the 2003-2004 election cycle, the RNC and DNC each raised almost \$400 million. (Biersack Decl. ¶¶ 3, 8 (FEC Exh. 33).)

b. In the three post-BCRA election cycles, the CRP has raised significantly more hard money than the California Democratic Party ("CDP"). In the 2007-2008 election cycle, the CRP raised approximately \$14 million, over 3.5 times more hard money than the

CDP's \$3.8 million. In the 2005-2006 election cycle, the CRP raised approximately \$10.8 million, almost double CDP's \$5.6 million. And in the 2003-2004 election cycle, the CRP raised approximately \$13.3 million, or 25% more than the CDP's \$10.7 million. (Biersack Decl. ¶¶ 9-10 (FEC Exh. 33).)

c. In the six years since BCRA became effective, the RPSD has raised considerably more hard money than the San Diego Democratic Party ("SDDP"). Although the SDDP raised about \$90,000 more hard dollars than the RPSD in the 2007-2008 election cycle, the RPSD raised twice as much hard money as the SDDP in the 2005-2006 cycle: \$648,137 for the RPSD, versus \$297,827 for the SDDP. In the 2003-2004 election cycle, the RPSD raised \$703,478, more than 5.5 times the \$121,803 raised by the SDDP. (Biersack Decl. ¶¶ 11-12 (FEC Exh. 33).)

46. In the three election cycles since BCRA's enactment, the amount of money raised by the national committees of the Republican Party is considerably greater than the combined total raised by all of the Democratic-leaning 527 groups that have a national presence and affect federal elections. In the 2007-2008 election cycle, the three national committees of the Republican Party cumulatively raised approximately \$640.3 million, while the national Democratic 527 groups raised less than one-quarter of that amount, about \$154 million. (Biersack Decl. ¶¶ 3, 13 (FEC Exh. 33); Hajjar Decl. ¶ 4 (FEC Exh. 34).) Similarly, in the 2005-2006 election cycle, the national committees of the Republican Party raised approximately \$508.1 million, more than quadrupling the Democratic 527 groups' \$112.5 million. (Biersack Decl. ¶¶ 3, 13 (FEC Exh. 33); Hajjar Decl. ¶ 5 (FEC Exh. 34).) The national Republican committees raised almost 2.5 times as much as all national Democratic 527 groups in the 2003-2004 election cycle: \$657 million for the Republican committees versus \$264.5 million for the

key Democratic 527 groups. (Biersack Decl. ¶¶ 3, 13 (FEC Exh. 33); Hajjar Decl. ¶ 6 (FEC Exh. 34).) The corresponding fundraising totals for national Republican-leaning 527 groups were \$138 million in the 2008 election cycle, \$106.2 million in the 2006 cycle, and \$164.7 million in the 2004 cycle. (Hajjar Decl. ¶¶ 7-9 (FEC Exh. 34).)

47. The RNC raises substantial funds via joint fundraising committees (“JFCs”), through which the RNC, state parties, and candidate campaign committees solicit donors collectively and share the proceeds received from those solicitations. (*See, e.g.*, RNC 000106-000110 at 000108, 000110 (FEC Exh. 13) (explaining breakdown of donations to JFC shared by RNC, McCain presidential campaign, and state Republican parties of Colorado, Minnesota, New Mexico, and Wisconsin).)

48. The RNC predicted in *McConnell* that “[t]he net effects of BCRA will be massive layoffs and severe reduction of . . . speech at the RNC, and reduction of many state parties to a ‘nominal’ existence.” *McConnell*, 251 F. Supp. 2d at 698 (Kollar-Kotelly, J.) (quoting RNC brief). The RNC “calculate[d] that the BCRA will cause the RNC to lose revenues of approximately \$48.5 million per non-presidential election year, and \$125 million per presidential election year.” (Shea Decl. ¶ 19 (FEC Exh. 27).) The RNC further asserted that it would “*not* be able to recoup these lost non-federal revenues” because, the RNC projected, “it is unlikely that the RNC will be able to raise more federal money from lower-dollar contributors than it currently does.” (*Id.* (emphasis in original).)

49. Directly contrary to the RNC’s foregoing predictions in *McConnell*: (a) the RNC generally raises more hard money now than it raised in hard and soft money combined before BCRA, *see supra* ¶¶ 40-43; and (b) the RNC also has massively expanded its low-dollar

contributor base. (See Ornstein Decl. ¶¶ 21-26 (Exh 3 to Van Hollen S. J. Opp. (Docket No. 41)).)

50. The RNC acknowledges that it has not yet “been able to compete effectively in [the] area” of fundraising via the internet. (Josefiak Dep. 185:22-186:12 (FEC Exh. 1); see also *id.* 188:17-189:1 (Q: . . . [T]here’s no reason that the RNC can’t raise hard dollars over the Internet in the same way and with the same effect as any other hard money group, is there? A. Correct. We attempt to raise it. It’s not productive, so the competition is there because others can, and we can’t.”), 83:18-84:5 (“[E]ven though we constantly try to increase . . . the solicitations by e-mail, which is very cost effective, we have not been as successful as the opposition party in generating interest by our donor base to contribute that way.”).)

III. PLAINTIFFS’ ACTIVITIES

A. Plaintiffs Are Demonstrably Willing and Able to Finance Their Activities with Federal Funds

51. BCRA does not “in any way limit[] the total amount of money parties can spend. Rather, [it] simply limit[s] the source and individual amount of donations.” *McConnell*, 540 U.S. at 139 (citation omitted).

52. Since BCRA’s enactment, the RNC has engaged in all of the activities it now claims to wish to pursue: supporting state candidates, including in elections where no federal candidates were on the ballot (Plaintiff RNC’s Discovery Resps. at 4-5 (FEC Exh. 4)); redistricting (*id.* at 5); grassroots lobbying (Josefiak Dep. 156:22-157:10 (FEC Exh. 1)); and litigation (*id.* 171:20-172:9).

53. To the extent that the RNC has chosen to forego certain activities, that is the result of the RNC’s strategic decision to spend its plentiful federal funds on other elections. (See *id.* 141:10-143:16, 160:12-20.)

54. Since BCRA's enactment, the CRP has "spent . . . money supporting" federal candidates through direct and coordinated expenditures (*see* Pls.' Statement of Material Facts ¶ 38), and through substantial sums spent on federal election activity, including voter registration, voter identification, GOTV, and generic campaign activity, *see infra* ¶¶ 72-83.

55. Since BCRA's enactment, the RPSD has distributed material promoting federal and state candidates together in every election cycle. (*See* FEC Exh. 20 (RPSD materials); *see also* Buettner Dep. 77:2-79:21 (FEC Exh. 3) (acknowledging that RPSD has distributed materials endorsing federal candidates).)

56. The purpose of the RPSD's alleged activities is "to get Republicans elected" at the federal, state, and local levels. (Buettner Dep. 62:5-63:18, 66:3-67:9 (FEC Exh. 3).) Regardless of the result of this case, the RPSD will continue to conduct all of its voter registration, GOTV, and generic campaign activities in the same manner that it has conducted them since BCRA was enacted. (*See id.* 76:2-12.)

B. The RNC's Ability to Support State and Local Candidates Is Unlimited, and Such Activity Has the Potential to Affect Federal Elections

57. The RNC contributed approximately \$900,000 to a candidate for governor of Virginia in 2005, \$300,000 to New Jersey county parties that year, \$540,000 to the Louisiana Republican Party in 2007, and \$450,000 to the Kentucky Republican Party in 2007. (*See* Pl. RNC's Discovery Resps. at 4-5 (FEC Exh. 4).) Thus, as to elections "in which there is no federal candidate on the ballot," the RNC has spent a total of approximately \$2.2 million on such elections since 2003, although that only constitutes approximately 0.2% of the RNC's disbursements during this period. (*See id.*; disbursements per election cycle available at <http://www.fec.gov/finance/disclosure/srssea.shtml>.)

58. If the RNC were interested in committing more of its resources to state and local activity, it was free to spend more of the nearly \$1.1 billion it raised in that time period on such activity. *See supra* ¶¶ 42-43.

59. Prior to BCRA — when the RNC was permitted to receive nonfederal funds ostensibly for the same type of activities at issue in this case — the RNC donated only a “small fraction” of its federal funds to state and local candidates. *McConnell*, 251 F. Supp. 2d at 464 (Kollar-Kotelly, J.). Combined, the two national parties donated “less than 4% of their soft money spending and 1.6% of their total financial activity in 2000” to state candidates. *Id.* (internal quotation marks omitted). Activities such as training of state and local candidates or direct donations to them “constituted a very small portion of the political parties’ nonfederal expenditures during the 2000 election cycle.” *Id.* at 465.

60. The RNC’s off-year voter registration efforts increase the number of registered Republicans in subsequent years and facilitate the RNC’s compilation of voter information that the party uses to drive its GOTV and other programs assisting federal candidates in later elections. (*See* Josefiak Dep. 245:17-248:20.) More generally, the RNC’s state and local activities “give the RNC the opportunity to test new and improved targeting and tactics.” *See* RNC, “Memo From Chairman Mehlman Regarding GOTV Efforts in Special Elections,” at 1 (May 23, 2005) (FEC Exh. 35). This is true regardless of whether federal elections are also on the ballot: For example, to “improve [its] grassroots effort, the RNC . . . deployed trained staff and resources into 2005 legislative and local special elections.” (*Id.* at 2.) These same efforts, refined in state and local races, “helped the GOP expand [its] majorities in the U.S. Congress . . . , in addition to re-electing President George W. Bush.” (*See id.* at 1; *see also* Press Release, “RNC Makes Additional Investment in Northeast Republican Leadership” (Mar. 17, 2009) (FEC

Exh. 36) (stating that RNC’s “investment in [its] state parties and . . . grassroots organizations . . . will help ensure victory in the special election in New York’s 20th Congressional district.”).)

The CRP, too, uses its state and local campaign activities to “further refine the strategies and tactics for [its] target congressional candidates.” Ron Nehring, *California GOP Chair: Go Local*, http://www.cagop.org/index.cfm/in-case-you-missed-it_599.htm (Dec. 7, 2008) (FEC Exh. 15).

61. In light of the foregoing, if the RNC is permitted to funnel soft money to them, “state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising,” just as state parties served as that conduit prior to BCRA. *See McConnell*, 540 U.S. at 185.

C. The RNC’s “Grassroots Lobbying” Is Sham Issue Advertising

62. Prior to BCRA — when the RNC was permitted to receive nonfederal funds ostensibly to, *inter alia*, conduct “issue advertising” — “genuine issue advocacy on the part of political parties [was] a rare occurrence.” *McConnell*, 251 F. Supp. 2d at 451 (Kollar-Kotelly, J.). Similarly, the RNC spent only “a minuscule percentage” of its nonfederal budget on state and local governmental affairs. *Id.* at 463. “What is clear from the evidence [in *McConnell*], however, is that regardless of whether or not it is done to advocate the party’s principles, the Republican Party’s primary goal is the election of its candidates who will be advocates for their core principles.” *Id.* at 470.

63. The precise contours of what the RNC now considers to be “grassroots lobbying” are unclear: When asked during discovery to respond to interrogatories and to produce certain documents relating to “grassroots lobbying,” as that term was defined in Plaintiffs’ Statement of

Material Facts, the RNC objected that the term was “extremely vague, overbroad and ambiguous.” (*See* Pls.’ Supplemental Discovery Resps. at 3 (Objection ¶ 8) (FEC Exh. 32).)

64. The RNC cannot determine how much money — if any — it has spent on advertisements that it considers “grassroots lobbying” during the last three election cycles. (Pl. RNC’s Discovery Responses at 6 (FEC Exh. 4); Pls.’ Supplemental Discovery Resps. at 4 (Response ¶ 1 (FEC Exh. 32).)

65. The RNC has testified that several communications that this Court found in *McConnell* to be sham issue ads — i.e., “so-called ‘issue ads’” that “were actually electioneering advertisements,” *McConnell*, 251 F. Supp. 2d at 826-27 (Leon, J.) — would constitute “grassroots lobbying” under the RNC’s definition of that term. (*Compare* Josefiak Dep. 164:8-22 (FEC Exh. 1) (testifying that RNC’s “Taxed Too Much” ad is grassroots lobbying), 170:14-171:19 (same for RNC’s “More” ad), *with McConnell*, 251 F. Supp. 2d at 446 (Kollar-Kotelly, J.) (including both ads in list of sham issue ads), 826 (Leon, J.) (same); *see also* ODP0029-00041 (FEC Exh. 5) (text of ad); ODP 0023-02326 (FEC Exh. 6) (same).)

66. Plaintiffs’ Statement of Material Facts (¶ 39) includes disbursements for “non-advocacy issue oriented mailings” in the CRP’s lists of disbursements “supporting” candidates, thereby further confirming the evidence that so-called “grassroots lobbying” affects candidate elections.

67. Using hard money, the Democratic National Committee (which has far less cash-on-hand than does the RNC) has recently produced and distributed a genuine grassroots lobbying advertisement. *See* “Door to Door,” http://www.youtube.com/watch?v=KtE4YX7_GVk (last visited Apr. 3, 2009).

D. Redistricting Affects Federal Elections

68. “Redistricting efforts affect federal elections no matter when they are held,” and national party redistricting efforts “are 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, 468 (Kollar-Kotelly, J.).

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 Defendants’ expert Donald Green). The importance of redistricting to federal officeholders was not lost on large soft-money donors: As one memorandum to a high-level Fortune 100 company executive from the company’s own governmental affairs staff explained,

because both [national] parties will be working to influence redistricting efforts during the next two years, we anticipate that we will be asked to make soft money contributions to these efforts. Redistricting is a key once-a-decade effort that both parties have very high on their priority list. Given the priority of the redistricting efforts, relatively small soft money contributions in this area could result in disproportionate benefit.

Id. at 508.

69. In this case, the RNC has conceded that the purpose of its redistricting activities is to divide *federal* and state legislative districts “into a proper format that hopefully would be . . . more of a benefit to [the RNC] than the opposition party.” (Josefiak Dep. 155:18-21 (FEC Exh. 1); *see also* Remarks of Chairman Jim Nicholson, RNC 0293683-85 [DEV 102].) Indeed, the CRP has repeatedly noted in this case the effect that redistricting can have on campaigns for the United States House of Representatives. (*See* Pls.’ Statement of Material Facts ¶¶ 36, 38 (“California’s Congressional seats were redistricted in 2001 to virtually eliminate partisan

competition at general elections”); *see also* Erwin Dep. 47:3-11, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.) (FEC Exh. 37) (“Q. . . . [T]he prospects for election of a candidate for the [H]ouse of [R]epresentatives would depend on redistricting; correct? A. Yes. Q. And to your knowledge do actual members of Congress and candidates for the [H]ouse of [R]epresentatives communicate with the state party and with state legislative officials about redistricting? A. Certainly members of Congress did.”).) The RPSD has noted the same effect. (Pls.’ Statement of Material Facts ¶ 55.)

E. Plaintiffs’ Litigation Affects Who Obtains Federal Office

70. Plaintiffs’ complaint alleged that the “litigation account” would “be used *solely* for paying the fees and expenses attributable to this case.” (Compl. ¶ 21 (emphasis added).)

71. To the extent the litigation account would be used to fund litigation regarding voter registration and similar issues (*see* Josefiak Dep. 172:13-176:3 (FEC Exh. 1)), such litigation affects federal elections. *See infra* ¶¶ 77-78.

F. Get-Out-The-Vote Activity Affects All Elections on the Ballot

72. The purpose of the CRP’s voter identification and GOTV activities is to “get . . . to the polls” all Republicans and Republican-leaning voters (Christiansen Dep. 127:14-25 (FEC Exh. 2)), so that Republican candidates “win on election day” in federal and state races (*id.* at 128:1-4). Accordingly, the CRP acknowledges that its GOTV activities affect federal elections. (*Id.* at 128:24-129:1.)

73. The RNC, too, has acknowledged the affect of GOTV on federal elections:

A. . . . Your get-out-the-vote program is to get Republicans and independents and maybe disgruntle[d] democrats to vote for your candidate. So it’s more than just the Republican base. It’s getting the base plus in order to win.

Q. So it’s designed to get people to the polls who you believe will vote Republican?

A. Correct.

Q. And, again, doesn't that also help Republican candidates for federal office?

A. It helps the ticket and Republican candidates, all Republican candidates for office, federal and non-federal.

(Josefiak Dep. 27:18-28:19, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.) (Oct. 15, 2002) (FEC Exh. 17).)

74. In 2008, Plaintiff Duncan stated publicly that the RNC's "prodigious fundraising" has allowed it to "buil[d] up over a long period of time" a GOTV program and other "organizational efforts [that] make the difference . . . generally, there's probably a 2 to 5 percent difference in additional turnout for a candidate that you make." *Victory Dream Team*, CONGRESS DAILY, July 29, 2008, 2008 WLNR 14131041 (FEC Exh. 26). This "difference" applies to both federal and "down-ballot" candidates. *See id.*

75. The CRP includes federal candidates in some of its GOTV slate listings. (*See* Door Hanger, "Elect Our Republican Team" (FEC Exh. 14); *see also* Christiansen Dep. 137:24-139:11 (FEC Exh. 2) (noting that door hanger was distributed).)

76. The RPSD uses federal funds to make GOTV phone calls and to distribute GOTV doorhangers "that include[] all Republican candidates." (Pls.' Supplemental Discovery Resps. at 10 (Response ¶ 16) (FEC Exh. 32).)

G. Voter Registration Affects Federal Elections

77. The purpose of the CRP's voter registration activities is to register "as many Republicans as possible" and help elect Republican candidates in federal and state elections. (Christiansen Dep. 121:12-14, 121:23-122:3 (FEC Exh. 2).) The CRP acknowledges that its voter registration activity is intended to — and actually does — affect federal elections. (*Id.* 123:1-17 ("Q: Does the CRP's voter registration activity affect federal elections? A: Yes.");

see also Phillip J. LaVelle, *For GOP, California Dreamin'?*, 2004 WLNR 17013682, San Diego Union Tribune, Sept. 1, 2004 (FEC Exh. 16) (“[C]hairman of the California Republican Party . . . said Republican registration gains are creating a Bush-friendly environment.”); Erwin Dep. 31:15-32:25, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.) (FEC Exh. 37) (stating that voter registration is an “ongoing project[]” to “build our party base” that “helps with elections”).)

78. The RNC, too, has acknowledged the affect of voter registration on federal elections:

Q. When a state party . . . conduct[s] voter registration drives, are they designed to register likely Republican voters?

A. Yes.

Q. Doesn't that help Republican candidates for federal office?

A. The hope is, as a lot of these plans refer to it, helps the entire ticket in that state. And whether it's for the legislature or whether it's for governor, whether it's for Congress or the U.S. Senate, if they have any of those races in that particular year, that's the whole purpose behind it and that was really the purpose behind the Federal Election Commission's allocation regulations in the states recognizing based on who was on a ballot in any particular election federal election year. That's how you would allocate resources. There was an acknowledgment that it benefited the entire ticket and how it benefited and what kind of funds were used were based on the categories on those candidates on the ballot.

Q. So it does help federal candidates?

A. It does.

(Josefiak Dep. 26:5-27:8, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.) (Oct. 15, 2002) (FEC Exh. 17).)

H. Advertising that Mentions State Ballot Measures and Promotes, Attacks, Supports, or Opposes Federal Candidates Affects Federal Elections

79. As to the direct effect on federal elections of advertising that promotes, attacks, supports, or opposes a federal candidate, “[t]he record on this score could scarcely be more abundant.” *McConnell*, 540 U.S. at 170. “Such ads were a prime motivating force behind BCRA’s passage,” and “any public communication that promotes or attacks a clearly identified

candidate directly affects the election in which he is participating.” *Id.* at 169-70 (emphasis added).

80. Using federal funds, the CRP has distributed communications that endorse or oppose state ballot initiatives and identify federal candidates — thus associating the officeholder with the initiative — without promoting or attacking the candidate. (*See California Republican Party, Your Official Orange County Republican Party Endorsements* at 5 (FEC Exh. 21) (listing members of Congress endorsing ballot proposition); Pls.’ Supplemental Discovery Resps. at 9 (Response ¶ 13) (FEC Exh. 32) (acknowledging that Exhibit 21 “was distributed to Republican voters in Orange County” and was paid for with “federal funds only”).) The CRP’s assertions that it “has not made any public communication that supported or opposed a ballot initiative that mentioned a federal candidate since BCRA became effective,” and that “[n]o federal funds were used for ballot measures” (*id.* at 9-10 (Response ¶¶ 14-15)) are therefore contradicted by the undisputed existence of occurrence of such a communication.

I. Plaintiffs’ Other Federal Election Activity Affects Federal Elections

81. To the extent that any of the CRP’s intended activities constitute “generic campaign activity” 2 U.S.C. § 431(20)(A)(ii) — which is “campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate” 2 U.S.C. § 431(21) — such activity also influences federal elections. *See Ron Nehring, A Republican 50-State Strategy?*, http://www.cagop.org/index.cfm/in-case-you-missed-it_617.htm (Jan. 27, 2009) (FEC Exh. 18) (CRP Chairman’s statement: “Building organizational and communications capability — and expanding the ranks of congressional, state and local officials from our party — makes it more likely a state will be competitive in a presidential election down the road.”); *San Joaquin Republicans Organizing for Dean Andal*, <http://www.cagop.org/blog/2008/09/san-joaquin->

republicans-organizing-for.html (Sept. 12, 2008) (FEC Exh. 19) (CRP Chairman's blog post noting that Congressional candidate was "benefitting from the organization our volunteer groups have built in the region"); *see also supra* ¶ 60 (noting use of party-building operations to refine strategies and tactics for federal campaigns).

82. The "generic" activities the CRP plans to conduct with soft money directly helps federal candidates and influences their election. Voter registration, voter identification, GOTV, and generic campaign activity as defined by BCRA "clearly capture activity that benefits federal candidates," and "funding of such activities creates a significant risk of actual and apparent corruption." *McConnell*, 540 U.S. at 167-68.

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. 251 F. Supp. 2d, at 460 (Kollar-Kotelly, J.). 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. *See, e.g., id.*, at 459 ("[The evidence] 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 [G]eneric campaign activity has a direct effect on federal elections" (quoting Green Expert Report 14)).

Id.; *see also supra* ¶¶ 60, 72-78 (discussing purpose and effect of voter registration, voter identification, and GOTV activities); RNC Memorandum, *Non-Allocable Party Building Programs*, RNC 0084450-64 at 0084455 [DEV 101] ("There are certain election related party expenditures that make no reference to any specific candidates but do benefit the entire Republican ticket These generic programs include voter registration[] and GOTV programs These programs and projects benefit the Republican Party and all of its candidates, federal and state."); Philp Dep. 49:8-16, *McConnell v. FEC*, Civ. No. 02-874 (D.D.C.) (Sept. 19, 2002)

(FEC Exh. 38) (Chairman of Colorado Republican Party testifying that state party's "Get-out-the-vote program is designed to benefit all candidates. That could include voter registration and so on and so forth. Q. And is the same true of generic party advertising, in other words, Vote Republican, that's designed to benefit all the candidates? A. Yes.").

83. Each of the organizational Plaintiffs has conceded that, in an election where both state and federal candidates are on the ballot, *any* GOTV activity inherently affects the federal elections, even if such activity does not specifically mention any of the federal candidates. (Josefiak Dep. 45:7-16 (FEC Exh. 1); Christiansen Dep. 129:25-130:5 (FEC Exh. 2); Buettner Dep. 68:16-21 (FEC Exh. 3).)

Respectfully submitted,

Thomasenia P. Duncan (D.C. Bar No. 424222)
General Counsel

David Kolker (D.C. Bar No. 394558)
Associate General Counsel

Kevin Deeley
Assistant General Counsel

/s/ Adav Noti

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999 E Street NW
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(202) 694-1650

Dated: April 10, 2009

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

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| REPUBLICAN NATIONAL COMMITTEE, | |) | |
| <i>et al.</i> , | |) | |
| Plaintiffs, | |) | |
| | |) | |
| v. | |) | Civ. No. 08-1953 (BMK, RJL, RMC) |
| | |) | |
| FEDERAL ELECTION COMMISSION, | |) | |
| <i>et al.</i> , | |) | |
| | |) | |
| Defendants. | |) | |
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[PROPOSED] ORDER

This matter having come before the Court upon Defendant Federal Election Commission’s Motion for Summary Judgment, it is hereby

ORDERED that Defendant’s motion is GRANTED, and it is further

ORDERED that final judgment in this action is GRANTED to the Commission.

BRETT M. KAVANAUGH
United States Circuit Judge

RICHARD J. LEON
United States District Judge

ROSEMARY M. COLLYER
United States District Judge

Dated: _____, 2009

FEC Exhibit 26

7/29/08 Congress Daily (Pg. Unavail. Online)
2008 WLNR 14131041

Congress Daily
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July 29, 2008

Victory Dream Team

In an interview with PolitickerOH.com, RNC Chair Mike Duncan said his party is "using technology investments, early-vote goals and prodigious fundraising" to turnout voters for John McCain as well as down-ballot candidates. Duncan and RNC staffers came to OH 7/26 to personally meet with members of McCain's regional camp and the state GOP.

Duncan said the Victory program is "leaner and smarter" than previous versions that helped carry OH for Pres. George Bush in '00 and '04. First, the RNC invested \$375K in handsets and voice-over-Internet protocol telephone systems. Duncan: "The big savings on this handset is that now we can do the data-entry from the handset, as opposed to having scanners, bubble sheets, human error and all of that. We'll save, it was estimated, as much as \$2 million just on what we would spend on scanning things into the system."

Fueling the Victory program is the RNC's fundraising, which has out-paced the DNC in the '08 cycle by about \$65M. Duncan: "It's a great system that we've built up over a long period of time. We have a good direct-mail program; we have a good phone program. Interestingly, you'll see next year when we release some of our strategy in the campaign, we substantially increased the amount of money we're raising over the internet now. That's a new thing for us."

For all of the RNC's "fine-tuned and well-funded GOTV effort," McCain or any other candidate must generally be "within 5 points of their opponents" for the Victory program to close the gap. Duncan: "We believe that our organizational efforts make the difference... generally, there's probably a 2 to 5 percent difference in additional turnout for a candidate that you make."

But the GOP faces a "practically unprecedented ground effort" from Barack Obama and OH Dems. The Obama-headed camp plans to hire 300 paid organizers for field work and have 14K volunteers -- more than one for each of OH's 11.5K precincts -- "on top of" more than 500 training sessions for current activists, operatives and elected officials. So far, the OH Dem party has spent \$250K on polling, modeling and microtargeting, "with more in the works" (Miller, PolitickerOH.com, 7/28).

----- INDEX REFERENCES -----

COMPANY: MILLER AND LOUGHRY INSURANCE; RCN CORP; MILLER; MILLER AND SCHROEDER FINANCIAL INC; MILLER AND MILLER INSURANCE AGENCY INC

Language: EN

OTHER INDEXING: (DNC; GOP; GOTV; JOHN MCCAIN; MCCAIN; MILLER; POLITICKEROH; POLITICKEROH COM; RNC) (Duncan; George Bush; Interestingly; Mike Duncan; Victory; Victory Dream Team)

Word Count: 435

7/29/08 CONGDLY (No Page)

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FEC Exhibit 27

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| <hr/> | |) |
| SENATOR MITCH McCONNELL, <i>et al.</i> , | |) |
| | |) |
| Plaintiffs, | |) |
| | |) |
| v. | |) |
| | |) |
| FEDERAL ELECTION COMMISSION, | |) |
| <i>et al.</i> , | |) |
| Defendants. | |) |
| <hr/> | |) |

Civ. No. 02-582 (CKK, KLH, RJL)

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| REPUBLICAN NATIONAL COMMITTEE, | |) |
| <i>et al.</i> , | |) |
| Plaintiffs, | |) |
| | |) |
| v. | |) |
| | |) |
| FEDERAL ELECTION COMMISSION, | |) |
| <i>et al.</i> , | |) |
| Defendants. | |) |
| <hr/> | |) |

Civ. No. 02-874 (CKK, KLH, RJL)

All consolidated cases.

DECLARATION OF BEVERLY ANN SHEA

I, Beverly Ann Shea, hereby swear and depose as follows, based on my own personal knowledge:

1. I am the Finance Director for the Republican National Committee ("RNC"). I submit this Declaration to discuss: (a) the RNC's federal and non-federal fundraising programs and donors; (b) the RNC's fundraising and direct financial assistance to state parties; (c) the financial impact of the Bipartisan Campaign Reform Act ("BCRA") on state parties and the RNC; and (d) the faulty supposition that the RNC provides its major donors with improper access to federal officeholders.

Education and Background in Political Fundraising

2. I have 21 years of experience in professional political fundraising and finance, through positions with the RNC, state political parties, and campaigns for elected office. This experience is summarized in my biographical statement. See RNC Exhibit 2263, attached as Attachment 1 hereto. From February 2001 to the present, I have served as Finance Director for the RNC. Previously, from March 1997 to December 2000, I was Deputy Finance Director for the RNC. In the two month interim period between these positions, I was Chief Deputy and Director of Special Services for the 54th Presidential Inaugural for President George W. Bush.

3. Before March 1997, I had a variety of political fundraising positions. From April 1993 until March 1997, I was President of Shea Consulting. In that position, I served as a fundraising consultant to the campaigns of many candidates for federal and state elected office. For various time periods between June 1981 and April 1993, among other positions, I was: (a) Regional Field Finance Director for the RNC; (b) Finance Director to the Republican Parties of New Mexico and Wisconsin; (c) Campaign Manager for congressional candidate Michael Brown; and (d) National Finance Director to the Bush-Quayle '92 Primary Committee.

4. I received a Bachelor of Science degree in Journalism from West Virginia University in 1980.

General Description of the RNC's Finance Division

5. The Finance Division is responsible for all fundraising activities of the RNC. The Division is led by the Finance Director, who is chosen by the RNC's Finance Chairman, the Chairman of the RNC, or both. An organizational chart for the Finance Division is RNC Exhibit 2424, and is attached as Attachment 2 hereto.

6. The Finance Division is organized into two marketing disciplines: (a) major donor programs, which are those involving contributions of \$1,000 and up; and (b) direct marketing, which mostly involves small donations but also can include the RNC's \$1,000 and \$5,000 donor programs. From 1997 to 2001, the Finance Division had a full-time staff of 40 to 45 employees, not including the RNC's in-house telephone solicitation center.

7. In 2000, the Finance Division raised a total of \$252,790,600. See RNC Exhibit 2429, attached as Attachment 3 hereto. Of this amount, \$146,929,900 was raised through the RNC's "major donor" programs as described below, and \$105,860,700 was raised through direct marketing, which consists of direct mail, telemarketing, and electronic commerce solicitations through email and the internet. Id. This overweighting of major donations is unique to presidential election years. In all other years, direct marketing typically accounts for 60-65% of the RNC's gross income. This return to the norm was borne out in 2001. In that year, the Finance Division raised a total of \$82,027,300. Of this amount, \$25,909,700 was raised through major donor programs, and \$56,117,600 was raised through direct marketing. See id.

8. In 2000, federal money accounted for 60% of the total raised by the RNC, and the remaining 40% was non-federal money. See RNC Exhibit 535, attached as Attachment 4 hereto. In 2001, the RNC's total funds raised consisted of 78% federal money and 22% non-federal money.

9. The RNC's active donor base in calendar year 2000 was 1,030,666 donors, of whom 435,908 were new first-time contributors. See RNC Exhibit 2430, attached as Attachment 5 hereto. The RNC's donors in 2000 gave 2,470,093 separate donations during the year. Id. The average contribution to the RNC in 2000 was \$102.34. Id. The RNC's active donor base in calendar year 2001 was 794,682 donors, of whom 219,135 were new first-time

contributors. Id. The RNC's donors in 2001 gave 1,437,370 separate donations during the year. Id. In 2001, the average contribution to the RNC was \$57.07. Id.

The RNC's Donor Programs

10. The Federal Election Campaign Act of 1971, as amended, allows individuals to contribute up to \$20,000 per year to the RNC, and limits to \$25,000 an individual's total annual federal contributions to all recipients. Federal law allows multi-candidate political committees ("PACs") to contribute up to \$15,000 annually to the RNC. These federal contributions are deposited into the RNC's federal accounts.

11. I understand that the BCRA will increase to \$25,000 the annual limit on an individual's federal contributions to political parties such as the RNC, and will increase to \$57,500 the aggregate limit on an individual's total federal contributions. The new federal limit regarding political party contributions will not produce much additional fundraising revenue for the RNC because it will affect, at most, only those 145 donors who presently contribute the current \$20,000 federal limit, and perhaps other donors who contribute the \$25,000 annual aggregate limit for federal money. Moreover, it is unclear how many, if any, of these donors will increase their contributions to the RNC as a result of the increased political party and aggregate limits.

12. The RNC also receives donations from sources that may not contribute to federal campaign activity, and also receives donations in amounts above the federal contribution limits. Donations from individuals above the federal limits, as well as donations from corporations, labor unions, and other sources that may not make federal contributions, are deposited into non-federal accounts. Of the non-federal funds donated to the RNC in calendar year 2000, for example, 58% were from individuals and 42% were from corporations and PACs.

The RNC's non-federal accounts are maintained within the Republican National State Elections Committee ("RNSEC"). The BCRA will prohibit the RNC from raising, spending, transferring, or directing any non-federal money.

13. In 2000, the RNC voluntarily instituted a limit on the amount of non-federal money it would accept from a single individual or corporate donor during a given year. That limit was \$250,000. On a handful of occasions in 2000, a donor offered a donation in excess of this voluntary limit and the RNC refunded the excess money. An internal RNC memorandum about one such refund is RNC Exhibit 636, attached as Attachment 6 hereto. Additional refunds of sums contributed above \$250,000 in calendar year 2000 were made to The Kohler Company, Philip Morris Company, Mr. Sam Fox, and Mr. Michael Armstrong. Incidental fees paid by \$250,000 donors for attendance at the Republican National Convention or similar events were not refunded.

14. The RNC raises federal and non-federal money through a variety of donor programs, as follows:

a. The "Sustaining Member" program seeks individual contributions of at least \$25 per year to the RNC. Sustaining Members receive a subscription to the RNC magazine Rising Tide, access to a toll-free Members' Hotline and a members-only internet website, membership commemorative materials, access to the RNC "Museum," and members-only events hosted by the RNC's internet website, www.RNC.org. See RNC Exhibit 35a, attached as Attachment 7 hereto. In 2000, the RNC had 1,002,309 Sustaining Members and other donors who contributed less than \$1,000 apiece, for a total of \$ 95.65 million to the RNC, \$94 million of which was federal money and \$1.65 million of which was non-federal.

b. The “President’s Club” is a fundraising program designed for contributions of \$1,000 per person or \$2,000 per couple, per year, to the RNC. Members of the President’s Club are invited to an annual National Meeting featuring federal officeholders, and receive a special members-only newsletter and membership commemorative materials. See RNC Exhibit 35b, attached as Attachment 8 hereto. In 2000, the RNC had an active base of 5,232 President’s Club members who contributed a total of \$10.1 million to the RNC, \$8 million of which was federal and \$2.1 million of which was non-federal. See Attachment 4 hereto.

c. The “Chairman’s Advisory Board” program requires an annual contribution of \$5,000 per year in federal or non-federal money to the RNC or RNSEC. Members of the Chairman’s Advisory Board are invited to two meetings held annually that are attended by party leaders. See RNC Exhibit 35c, attached as Attachment 9 hereto. In 2000, the RNC had an active base of 1,440 Chairman’s Advisory Board members who contributed a total of \$10.8 million to the RNC, \$8.1 million of which was federal and \$2.7 million of which was non-federal. See Attachment 4 hereto.

d. The “Eagles” program is the RNC’s oldest “major donor” program. It requires members to contribute either \$15,000 in federal money or \$20,000 in non-federal money to the RNC or RNSEC each year. Again, Eagles are invited to many RNC events, including some that feature party leaders. See RNC Exhibit 35d, attached as Attachment 10 hereto. In 2000, the RNC had 1,449 members of the Eagles program who contributed a total of \$30.7 million to the RNC, \$20.3 million of which was federal and \$10.4 million of which was non-federal. See Attachment 4 hereto.

e. The “Majority Fund” is directed at PACs that donate \$15,000 per year in federal or non-federal money to the RNC or RNSEC. Members of the Majority Fund are

invited to numerous RNC events, including some events specially designed for members of that group, and some of which feature party leaders. The RNC raises relatively little federal money from PACs, however, because PACs typically use their federal dollars to contribute to candidates. See RNC Exhibit 35e, attached as Attachment 11 hereto. In 2000, the RNC had 120 Majority Fund members that contributed a total of \$2.4 million to the RNC, \$400,000 of which was federal and \$2 million of which was non-federal. See Attachment 4 hereto.

f. “Team 100” members donate \$100,000 upon joining, and \$25,000 in each of the three subsequent years, to the RNC or RNSEC. These donations typically include a mix of federal and non-federal money. Team 100 members are invited to many RNC events, some of which feature party leaders. See RNC Exhibit 35f, attached as Attachment 12 hereto. In 2000, the RNC had 614 active Team 100 members who contributed a total of \$49.6 million to the RNC, \$5.4 million of which was federal and \$44.2 million of which was non-federal. See Attachment 4 hereto.

g. The “Regents” program asks the donor to give an aggregate amount of \$250,000 to the RNC or RNSEC per each two-year election cycle. Regents members are invited to all events sponsored by the RNC. In 2000, the RNC had 180 active Regents who contributed a total of \$34 million to the RNC, \$1.5 million of which was federal and \$32.5 million of which was non-federal. See Attachment 4 hereto.

15. In addition, the RNC establishes a special “Presidential Trust” program every four years to help raise the funds the RNC is permitted to spend directly on behalf of the Republican nominee for President of the United States, with certain amounts spent on behalf of other candidates for federal office as well. The programs asks the donor to contribute \$20,000 in solely federal money, and no portion of the contribution is shared with state parties.

Participation entitles the donor to a one-year membership in the Eagles or Majority Fund program.

16. To ensure strict compliance with federal laws regulating contributions to political party committees, the RNC provides current and prospective major donors with a set of Contribution Guidelines. The Guidelines explain the federal and non-federal RNC accounts and the extent to which contributions may be directed to one, or a combination, of these accounts. RNC Guidelines for the Regents, Team 100, and Majority Fund programs are RNC Exhibits 2155, 2071, and 2097, respectively, and are attached as Attachments 13-15 hereto.

17. I understand that some persons who are unfamiliar with the RNC's fundraising methods believe that Members of Congress regularly solicit donations to RNC major donor programs through telephone calls or personal meetings. Although it is true that Members of Congress occasionally sign fundraising letters for the RNC, it is exceedingly rare for them to solicit funds through telephone calls or personal meetings. As a matter of RNC policy, telephone and personal fundraising contacts for major donor programs are initiated by RNC Chairman Marc Racicot, Co-Chairman Ann Wagner, Deputy Chairman Jack Oliver, National Finance Chair Lew Eisenberg, and myself, not Members of Congress.

18. Contributions toward the Sustaining Member, President's Club, and Chairman's Advisory Board programs consist of federal dollars. So do many of the contributions to the Majority Fund and Eagles programs. Further, many (if not most) members of the Team 100 and Regents programs fulfill their obligations with a combination of federal and non-federal dollars. Indeed, contrary to popular misimpression, the RNC's major donor programs (\$1,000 and up) are a significant source of federal money. In 2000, for example, the funds raised through these programs were 32% federal money and 68% non-federal money.

Financial Impact of the BCRA on the RNC

19. Based on my personal experience in the RNC Finance Division, I calculate that the BCRA will cause the RNC to lose revenues of approximately \$48.5 million per non-presidential election year, and \$125 million per presidential election year. These losses will be caused almost entirely by the BCRA's prohibitions on the solicitation or raising of non-federal funds by national political parties. My experience demonstrates to me, contrary to the supposition of uninformed observers, that the RNC will not be able to recoup these lost non-federal revenues merely because the BCRA has increased the limits on contributions of federal money. As noted above, the new federal limit regarding political party contributions will affect only those 145 donors who presently contribute the current \$20,000 federal limit, and those who have made aggregate federal contributions of \$25,000. Moreover, it is unlikely that the RNC will be able to raise more federal money from lower-dollar contributors than it currently does, for the following reasons.

20. The RNC solicits participation in its donor programs through several methods: (a) soliciting donors to become first-time members in a major donor program; (b) soliciting existing major donors to renew their commitments; and (c) soliciting existing major donors to "upgrade" from lower dollar level programs to higher dollar level programs.

21. The amount of federal money the RNC is able to raise through its major donor programs, in particular, is limited by demographic, economic, and political constraints. For example, most individuals, corporations, and PACs participate in the RNC's major donor programs because the individuals or individual decisionmakers at corporations and PACs are philosophically compatible with the positions of the Republican Party. The number of such individuals who possess the financial resources to participate personally in the RNC's major

donor programs -- or who are in a position to direct corporate or PAC participation in those programs -- is a very small fraction of the roughly 4.5 million individuals that comprise the RNC's base of potential donors at all levels. As noted above, although the RNC had a total of 1,030,666 donors in calendar year 2000, only 180 were Regents, 614 were Team 100 members, and 120 were Majority Fund participants. Also, the RNC's perceived political successes and failures affect the quantity and intensity of participation in the major donor programs. Finally, economic factors constrain the number of individuals, corporations, and PACs that participate in the RNC's major donor programs and the degree to which they participate.

22. There is a limit to the number of solicitations of new major donors that the RNC can profitably make. The farther from the RNC's base of likely donors that the RNC prospects for new participants in its major donor programs, the lower its yield. Also, there is a limit to the number of attempts that the RNC can reasonably make to renew or upgrade existing major donors to higher dollar level programs. Most major donors decide whether to renew their participations or upgrade to a higher level on an annual basis. Thus, there is usually only one time during the year for each major donor that the RNC can profitably solicit an existing major donor to renew or upgrade his or her participation. Repeated solicitations to the same major donor risk alienating that donor and limiting the amount of money that the RNC may receive from the donor in the future.

The Motivation of Non-Federal Donors to the RNC

23. In my experience, donors of non-federal money are motivated by the same desires as donors of federal money. I believe there are three basic reasons why individuals and entities donate money to a political party, and the RNC appeals to these motivations in its fundraising activities.

24. First, both federal and non-federal donors tend to be strong and loyal supporters of the party. From my discussions and observations over the years, I can safely state that donors to the RNC believe in the Republican Party philosophy of low taxes, limited federal government, strong defense, and high ethical standards for public officials. From the lowest level donors to the highest level, they share a common interest in politics and good government. Donor belief in the philosophy of the Republican Party is confirmed by their loyalty; for the most part, non-federal donors give money to the RNC regardless of the issues then pending before Congress or the Executive Branch.

25. The second reason that individuals join the RNC's major gift programs is that they enjoy being involved in RNC events, which often include speeches and presentations by prominent policymakers and commentators. The RNC expends much effort and money planning and holding receptions, dinners, retreats, and seminars for both federal contributors and non-federal donors. During the 1998 election cycle, the RNC spent \$10.2 million planning, organizing, and staging major donor events. During the 2000 cycle, the RNC spent \$18.5 million, and thus far for the 2002 cycle the RNC has spent \$7.5 million. If the RNC did not believe donors were motivated by the opportunity to attend events, it would not expend so much money on them.

26. Although RNC events often "feature" party leaders, these leaders are not exclusively current federal officeholders. For example, this category very frequently includes the RNC Finance Chairman and Political Director, who provide insights on the current political climate. Party leaders also include former Cabinet officials from prior Republican Administrations. At one well-attended Team 100 event in 1998, for example, former Cabinet Secretaries Brent Scowcroft and Elizabeth Dole were featured. Other events have featured

National Review writer Kate O'Beirne, author P.J. O'Rourke, and other nationally-known political celebrities.

27. Sitting Members of Congress and Executive Branch officials also are often featured at events for donors, but their roles at these events are commonly misstated by the pro-reform commentators. These officeholders (and candidates for federal office) do not appear at RNC events to solicit either federal or non-federal donations. Rather, they appear to speak on political or policy topics, and the substance of these comments does not differ from comments they frequently make on television or on the House or Senate floor. Nor does the content of their comments differ from events attended primarily by federal contributors to events attended primarily by non-federal donors. Question-and-answer sessions at RNC donor events focus on general policy issues and do not provide an opportunity for any individual to advocate a particular position on pending legislation. Attendees at some events sometimes have the opportunity to socialize, or play golf or tennis, with the speakers, but efforts to lobby during these events are frowned upon as exceedingly rude and are quite rare.

28. Relatedly, participation in the RNC's major donor programs increases during presidential election years, when the RNC typically has more events, especially those centered around the quadrennial Republican National Convention. Major donors receive special invitations to each Convention, and are also invited to participate in special meetings and social occasions during the Convention proceedings. An example of such an invitation for Team 100 members to attend the 2000 Convention, which was held in Philadelphia from July 31-August 3, 2000, is RNC Exhibit 723 and is attached as Attachment 16 hereto. The Conventions also permit the RNC to host special *Gala celebrations in honor of the Republican nominees for President and Vice-President*. Attendance at such events is available for donations of \$1,000 per person, and

thus many attendees contribute only federal money to the RNC. A sample Gala invitation from the 2000 Convention is RNC Exhibit 847, and is attached as Attachment 17 hereto. Based on my personal experience, I conclude that participation in major donor programs increases during presidential election years for two basic reasons: (a) donors enjoy attending the unique events that can be made available only in presidential election years; and (b) donors are excited by the fact that so much more is at stake during presidential election years than in any other years.

29. Similarly, involvement in major donor programs also allows donors to meet and become friends with like-minded people in business and politics. Members of Team 100 and the Eagles, for example, tend to be successful entrepreneurs who have much in common. They enjoy the camaraderie of these social occasions and the non-political business opportunities that these associations with other major donors provide.

30. The third reason that individuals participate in the RNC's major donor programs is that they have a sense of philanthropy that often begins with similar commitments to charitable organizations. Many members of Team 100, for example, are well known for their generosity to charitable causes. *Members of RNC major donor programs are comfortable with the notion of giving to causes they support with no expectation of receiving tangible benefits in return.*

31. Based upon these and other personal observations, I strongly believe that participants in the RNC's major donor programs do not expect, and do not receive, political favors in exchange for their donations.

**Fundraising Assistance Provided by the RNC
To State and Local Parties and Candidates**

32. A core function of the RNC is to assist state Republican parties in their activities, including fundraising. The RNC provides this assistance in five major ways, all of which appear to be criminalized by the BCRA to the extent they involve non-federal money.

33. First, the RNC transfers and otherwise provides federal and non-federal funds to state parties (and candidates for state office). I understand that the Declaration of Jay Banning addresses this in more detail.

34. State parties quite obviously benefit from RNC transfers, which represent funds that the state parties might not have otherwise obtained through their own efforts. Further, certain state parties rely heavily on RNC non-federal funds for their very existence.

35. Second, the RNC shares its lists of fundraising prospects with state parties. A sample list-sharing agreement with the Massachusetts Republican State Committee for 2002 is RNC Exhibit 1801, attached as Attachment 18 hereto. As this document states in one of its initial clauses, because it is the “principal responsibility of the RNC to promote Republican candidates,” and because “a component part of its party-building activities is to develop and identify contributors who share common goals and ideals,” the list exchange program is “to the mutual advantage and benefit of the parties” thereto. Id. Indeed, state parties benefit greatly from list-sharing because the RNC’s fundraising lists are very comprehensive and detailed, and provide solid prospects for donations that state parties might otherwise be unable to obtain on their own. Additional list-sharing agreements with the Republican Party of Ohio, Wisconsin, Tennessee, Iowa, and Indiana are RNC Exhibits 1195, 933, 1001, 911, and 956, respectively, and are attached as Attachments 19-23 hereto.

36. Third, the RNC co-hosts “tiered” fundraising events with state parties. “Tiered” fundraising events typically involve two or three separate events occurring on a single date at locations in the same vicinity. Typical tiered events will consist of a large low-dollar event for federal donors to candidates in the first tier, a middle-tier “photo op” event with larger donors, and often a separate top-tier dinner for the event Host Committee. Typically, the proceeds of the large first-tier event go to a candidate for state office, the proceeds of the middle-tier “photo op” go to the state party, and the proceeds of the top-tier dinner go to the RNC. So-called “tiered” fundraising events such as these serve to benefit state parties because they are able to increase their fundraising success through direct association with the RNC. In fact, without the RNC holding an event in the same city and on the same date as the state party event, it would likely be logistically and financially impossible for the state party to convince major-drawing surrogates to be the featured guest at their own event. Further, the RNC has a highly professional and experienced fundraising staff, which many state parties do not. Indeed, some state parties have no fundraising employees at all. Therefore, state parties necessarily benefit from the involvement of RNC personnel in tiered fundraising activities, both because RNC fundraising staffers are highly competent and because their involvement supplements the efforts of state party personnel.

37. The RNC also promotes state party events to its donors, in an effort to increase the fundraising ability of state parties. For example, since 1992 the Washington State Republican Party has hosted an annual GOP Picnic, often with the support of the King County Republican Party. Attendance at the Picnic has reached as high as 10,000 participants, and the event attracts elected officials from all levels of government, including members of Washington State’s congressional delegation, candidates for Governor in gubernatorial election years, and

state and local representatives. The RNC promotes the GOP Picnic to its major donors from Washington State, as demonstrated by the Team 100 letter that is RNC Exhibits 942 and 1126, attached as Attachment 24 hereto.

38. Fourth, the RNC has a program called "Finance PLUS," which provides financial incentives for state parties develop and improve their fundraising capacity. Through Finance PLUS, the RNC reimburses state parties for the costs they incur in organizing and hosting their own fundraising events. *In my experience, Finance PLUS is an effective means for the RNC to encourage and strengthen state party fundraising.*

39. Finally, the RNC permits its Regents and Team 100 members to designate (or "return") portions of their non-federal donations to state parties, and sometimes requests that its major donors make additional contributions to state parties that are in urgent need of funds. For example, in 2000, RNC Regents and Team 100 members designated \$10.8 million in non-federal donations to state parties. By way of example, a spreadsheet describing state-by-state Regents transfers in 2000 is RNC Exhibit 663, attached as Attachment 25 hereto. Several letters from Team 100 members, requesting the designation of contributions to state parties in 2000, are RNC Exhibits 881, 1522, and 1524, attached as Attachments 26-28 hereto.

40. Related to direct fundraising for state parties, the RNC also engages in fundraising on behalf of candidates for state and local office. For example, the RNC has sent direct-mail fundraising letters on behalf of Virginia gubernatorial candidate George Allen, New Jersey gubernatorial candidate Bret Schundler, and St. Paul, Minnesota mayoral candidate Norm Coleman. See RNC Exhibits 1162, 292, and 232, respectively, attached as Attachments 29-31 hereto. Donations made in response to these letters were made directly to the candidates themselves, not to the RNC, and the RNC did not track or otherwise record who among the

recipients of the letters actually made contributions. Because contributions to state and local candidates are not federally regulated, the BCRA will prohibit this type of fundraising assistance.

Impact of the BCRA on State Parties

41. Major contributors often donate non-federal funds to the RNC in lieu of state parties. This can be explained by a variety of factors, all of which demonstrate that the RNC has a greater fundraising capacity than state parties do.

a. First, as the official national Republican Party committee, the RNC has a “brand name” and prestige that the state parties, by definition, do not. Prospective donors are much more likely to have heard of the RNC, to consider it accountable and credible, to understand its role in the political process, and to trust that its activities are aligned with the national Republican Party agenda. Further, several state Republican Party organizations are largely inactive, and thus are unable to present compelling reasons for donors to support them.

b. Second, the RNC has a large direct marketing and fundraising staff, consisting, in recent years, of between 40 and 45 employees. All of these personnel are full-time professionals with substantial experience in the field. State parties, in contrast, *generally lack professional fundraising staff*. The RNC, because it is a well-known national party committee, also tends to attract the most talented and dedicated marketing and fundraising employees. It is more difficult for state parties to do so.

c. Third, the size and scope of the RNC’s direct marketing and fundraising operations enable it to achieve economies of scale that state parties simply cannot match. For example, the RNC’s cost per mail piece in a nationwide fundraising campaign is substantially lower than the cost per mail piece of a statewide campaign conducted by a state

party, because the volume of mailings is so different. The RNC, therefore, can conduct direct market fundraising more cost-effectively than state parties can.

d. Fourth, as a national organization, the RNC is able to “go where the money is” with much greater ease and ability than a state party. For example, under current law, the RNC can hold a fundraiser in New York, then re-distribute that money internally to support a candidate running for state office in Mississippi. The Republican Party of Mississippi, in contrast, is much less likely to have fundraising success in New York. The ability of the RNC to raise funds nationwide is demonstrated by the attached charts that sort the RNC’s federal and non-federal contributions by state for 2000 and year-to-date for 2002 (as of June 28). See RNC Exhibits 2259 and 65, respectively, attached as Attachments 32-33 hereto. Both charts show that the RNC raised federal and non-federal money from all 50 states in 2000 and year-to-date in 2002.

e. Finally, as noted above, my experience has demonstrated to me that donors have fairly firm limits on the amount of money they are willing and able to contribute to political parties. *This is a fact of the marketplace that will not change merely because of the BCRA.* Because the RNC is so much more prominent than state parties are, my experience suggests that donors are -- and will continue to be -- inclined to allocate more of their contributions to the RNC than to state parties.

42. As described above, the BCRA threatens to outlaw the RNC’s fundraising assistance to state parties in the form of joint and tiered fundraising for non-federal money, transfers of non-federal funds, and designation and direction of non-federal funds. Because the state parties have less fundraising capacity than does the RNC, the elimination of RNC assistance with respect to non-federal money would have a significant detrimental effect on state

parties. Indeed, it is no exaggeration to observe that the BCRA threatens the very survival of the Republican Party committees in several particularly vulnerable states. I understand that the Declaration of Jay Banning sets forth information about the five most financially vulnerable state Republican Parties, namely those in Arkansas, Maine, North Carolina, Wisconsin, and Oregon.

**The RNC Does Not Give Donors Improper
Access to Candidates or Officeholders**

43. I understand that persons unfamiliar with political fundraising often contend that individuals and entities that donate non-federal money to political parties do so to “buy access” to candidates and officeholders, so that the donor can attempt to achieve improper influence over the legislative process. Based upon my 21 years of experience as a political fundraiser and finance consultant, I categorically reject this contention with respect to the RNC.

44. As a matter of policy, the RNC Finance Division does not offer to arrange personal meetings between donors -- no matter how large -- and federal officeholders or candidates for office. During my tenure at the RNC, there have been a handful of occasions when individuals have attempted to condition donations on the arrangement of such meetings, and each time the RNC has rejected the donation and denied the request. In one related instance, the RNC rejected a contribution from a prospective Regents member because of public controversy involving his prior illegal contributions to Democratic candidates for federal office and his overnight stays in the Clinton White House as a major Democratic donor. See RNC Exhibit 552, attached as Attachment 34 hereto. The individuals who have sought to condition donations to the RNC on its arrangement of meetings with officeholders, more often than not, have proposed to contribute federal dollars to the RNC. One such recent instance involved a gentleman who proposed to condition his membership in the RNC Eagles program on a meeting

with an officeholder. The RNC rejected the contribution. A ban on non-federal contributions to the RNC, therefore, would not stop most of these incidents from occurring.

45. It is obvious why major donors to the RNC do not regularly use their donations as a means to obtain "access." All or virtually all who have personal or organizational business with the federal government retain or employ professional lobbyists. Each election cycle, however, there are a very few instances in which federal or non-federal donors ask the RNC Finance staff or other RNC personnel to arrange meetings with federal officeholders. To confirm my recollection that such requests are very infrequent, I instructed my staff to review the RNC Finance Division's files about all contacts from major donors between 1997 and the end of 2001. These files record all contacts, in the form of letters, telephone calls, or personal meetings, between the RNC Finance Division and each major donor. There are literally thousands of such files, each of which contains multiple entries for each separate donor, with each entry showing the date and the substance of the contact. Some files contain dozens of entries. This review demonstrated, consistent with my recollection, that on average in recent years the RNC has received fewer than fifteen requests per election cycle in which donors -- of both federal and non-federal money -- ask RNC personnel to arrange meetings with federal officeholders.

46. Such requests come from donors at all levels, and are more prevalent among federal contributors than among non-federal donors. In the relatively infrequent instances in which the RNC Finance staff receives such a request, our policy is to pass the request along to the officeholder's staff without inquiring into the purpose of the proposed meeting, but neither to advocate a meeting nor ascertain whether a meeting has been arranged. In passing along the request, we do not indicate the amount of money donated by the person requesting the meeting. I received one such request, for example, on February 22, 2001, and as a matter of course the

request was passed along to the officeholders' staff. See Attachment 35 hereto (defendant-intervenors' exhibit). At no time did I or anyone on my staff advocate that the meeting occur, or follow up on whether it did occur.

47. I understand that the defendants in this case have contended that an employee in the RNC Finance Division's external affairs office, Stephanie Strategos, is employed for the purpose of arranging donor meetings with Members of Congress. The defendants are mistaken. In fact, it is the job of Ms. Strategos to arrange for Members of Congress, Cabinet officials, and other special guests and speakers to attend RNC events, which are attended by scores or even thousands of people.

48. Relatedly, I understand that the defendants have referenced several RNC documents in an effort to support their claim that the RNC provides improper "access" to its non-federal donors. In fact, none of these documents supports the defendants' claims.

a. First, the defendants point to an internal RNC memorandum dated October 23, 2001, which tracks Presidential appointments of Team 100 members. See Attachment 36 hereto (defendant-intervenors' exhibit). The purpose of the memorandum was to ensure that the RNC would refrain from future solicitations to these Team 100 members, because the RNC as a matter of policy does not solicit funds from Executive Branch officials or nominees.

b. Second, the defendants refer to an RNC memorandum dated May 15, 1995, from Tim Barnes, Director of Team 100, to former U.S. Senator Alphonse D'Amato, informing Senator D'Amato that a particular Team 100 member had designated \$25,000 of his membership dues to the New York State Republican Party. See Attachment 37 hereto (defendant-intervenors' exhibit). This memorandum was sent in response to a specific request

from Senator D'Amato, in his capacity as Chairman of the National Republican Senatorial Committee and as a leader of the New York State Republican Party, for information about the extent to which RNC members contributed funds to the state party. The RNC did not facilitate any "access" to Senator D'Amato for the individual referenced in the memorandum. Moreover, it is rare for a federal officeholder to inquire about donations or donors, even though this information is publicly available through the FEC.

c. Third, the defendants have identified an RNC memorandum dated October 8, 1999, from Dulce Zahniser to myself and my predecessor Margaret Alexander Parker, which in part references the possibility of fundraising telephone calls to Mississippi residents to be made by Congressman Charles ("Chip") Pickering and U.S. Senate Majority Leader Trent Lott. See Attachment 38 hereto (defendant-intervenors' exhibit). The memorandum makes clear that neither Congressman Pickering nor Majority Leader Lott had placed any such phone calls and, in fact, to my knowledge they never did. As noted above, it is exceedingly rare for Members of Congress or Senators to place RNC fundraising phone calls, and this memorandum is not to the contrary.

49. The overwhelming majority of fundraising events sponsored by the RNC include both federal and non-federal donors. In other words, a person does not need to contribute non-federal money to attend an RNC event and meet Republican officeholders and candidates. Even after the BCRA prohibits the RNC from raising non-federal money, I am confident that the RNC will still encourage candidates and officeholders to attend its events. Even today, for example, the RNC invites federal officeholders to attend the twice-yearly meetings of the Chairman's Advisory Board, which consists solely of federal money donors to the RNC.

50. In my personal experience and observation, RNC fundraising events do not provide a forum conducive to or appropriate for lobbying. Virtually all of the RNC's events include at least several dozen donors of diverse business and economic interests, and many events are attended by hundreds or thousands of donors. For the most part, donors who attend RNC events receive no more opportunity to interact with officeholders than a brief "photo opportunity." Further, efforts to discuss business, much less to lobby an officeholder, at these events are considered rude and inappropriate. Attendees know that officeholders are uninterested in conducting business during RNC events.

51. Finally, it is a well-known fact that individuals and entities with important business before Congress virtually always hire lobbyists. These lobbyists meet directly with Congressmen, Senators, and their staffs to make presentations and discuss issues. These activities are perfectly appropriate and usually occur during normal business hours. A business need not donate non-federal money (or contribute any money) to retain an effective lobbyist, and many companies with important business before Congress do not donate non-federal money to either party.

52. The various RNC exhibits attached to this declaration, with the exception of the private letter attached as Attachment 35 hereto, are to the best of my knowledge true and correct copies of records prepared and kept by the RNC in the course of its regularly conducted business activities.

I declare under penalty of perjury that the foregoing is true and correct.

October 4, 2002


Beverly Ann Shea

FEC Exhibit 28

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DEPOSITION OF BEVERLY SHEA

Washington, D. C.

Friday, October 18, 2002

REPORTED BY:

KAREN HINNENKAMP

Deposition of BEVERLY SHEA, called for examination pursuant to notice of deposition, on Friday, October 18, 2002, in Washington, D.C., at the offices of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C., at 10:00 a.m., before KAREN HINNENKAMP, a Notary Public within and for the District of Columbia, when were present on behalf of the respective parties:

1 Q When you say a couple of candidates this
2 year, do you have any idea of the number this year?

3 A No.

4 Q Five?

5 A I haven't kept track of it. Maybe five
6 or six.

7 Q Maybe five or six this year?

8 A Yeah. Maybe even more than that. I
9 don't know the answer to that offhand. I would have
10 to -- it is back in our records, but I don't know.

11 Q In an election year like 2000, would you
12 send also about five or six letters on behalf of
13 state candidates or local candidates?

14 A I don't know that there is a specific
15 number.

16 Q Okay. But would you say -- I don't need
17 a specific number from you. Is that in the
18 ballpark?

19 A Probably yes.

20 Q Less than 10?

21 A Probably yes.

22 Q Okay. In paragraph 44, all the way back

1 on page 19, I think you said, this is a quote, "As a
2 matter of policy, the RNC Finance Division does not
3 offer to arrange personal meetings between donors --
4 no matter how large -- and federal officeholders or
5 candidates for office." Is that right?

6 A Right. Correct.

7 Q It says it is a matter of policy. Is
8 this a written policy?

9 A No. It's just a known policy.

10 Q A known policy.

11 A Right.

12 Q What would happen if someone violated the
13 policy?

14 A Well, if I found out, they would be
15 fired.

16 Q They would be fired if they violated this
17 policy.

18 A Yes.

19 Q Okay. Last time we talked I think we
20 discussed a particular occasion on which this
21 happened --

22 A Right.

1 Q -- where you were actually asked to help
2 set up the meeting.

3 A Right.

4 Q You weren't fired, were you?

5 A No. But I did -- I mean it's -- wait, I
6 need to go back a second because I think I need to
7 clarify. In other words, I have no problem with if
8 a donor wants a meeting and we set them up with a
9 scheduler. That's perfectly fine. But what we
10 don't do is solicit a meeting on behalf of a
11 contributor to candidates, I mean or to officials.
12 That's heavyhandedness. It is more or less we will
13 call the scheduler, we will set you up with the
14 scheduler, you deal with it, and we get out of it.

15 Q That makes sense.

16 A Right. And if I would ever find out
17 somebody was doing some heavyhanding, in other words
18 calling a Member of Congress and saying you have to
19 meet with this Regent, they would be fired. So
20 there is a big difference there.

21 Q Okay. So the policy is more you try not
22 to force the federal officeholder or be very --

1 A No.

2 Q You try not to force federal
3 officeholders to meet with donors.

4 A We do not, right. Correct.

5 Q However, if a donor called and asked you
6 if you would pass it on to the scheduler, as you
7 just said, you would pass that on to the scheduler.

8 A Sure. Definitely.

9 Q And you would say, I think you said this
10 last time as well, but you would say this is a Team
11 100 member, could you see if you could fit them in,
12 that kind of thing?

13 A Correct.

14 Q Okay, thanks. Could I now turn your
15 attention to paragraph 48a, where you reference a
16 memorandum that I think we may have talked about
17 last time that talks about Team 100 members that had
18 been nominated for presidential appointments?

19 A Correct. Actually, we did not talk about
20 that last time. But I have seen it.

21 Q Okay, we did not. Now the people that
22 are mentioned in the memorandum, were those -- I'm

FEC Exhibit 29

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL MATERIAL

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

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5 SENATOR MITCH McCONNELL, :

6 et al. :

7 Plaintiffs, :

8 v. : Case No. 02-582

9 FEDERAL ELECTION COMMISSION, :

10 et al. :

11 Defendants. :

12 - - - - -x

13

14 DEPOSITION OF THOMAS J. JOSEFIAK

15

16 Washington, DC

17 Saturday September 28, 2002

18

19

20

21 REPORTED BY:

22 FRANK A. SMONSKEY, CM

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL MATERIAL

104

[REDACTED]

20 Q I'm going to ask you a few questions about
21 fund raising for the Republican National Committee
22 and specifically what role Members of Congress play

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL MATERIAL

105

1 in soliciting and raising soft money contributions to
2 the RNC.

3 Are you aware of Members of Congress being
4 asked to help raise soft money for the Republican
5 National Committee?

6 A I am not aware of Members of Congress being
7 asked to solicit soft money on behalf of the RNC.

8 Q Are they just asked raise money for the
9 RNC?

10 A What do you mean by raise money?

11 Q Are they asked to participate in
12 fund-raising efforts of the RNC?

13 A They participate in activities of the RNC,
14 and they participate in our annual gala, which is a
15 fund raiser.

16 Q Is that the extent of the participation by
17 Members of Congress?

18 A They may also participate in other events
19 of the RNC, most of which would not be fund raisers.

20 Occasionally there are regional fund
21 raisers where Members of Congress may attend, but
22 they are not involved in soliciting. It is a draw

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL MATERIAL

106

1 rather than a solicitation.

2 Q So is it to fair to say that there are a
3 number of events that -- let me strike that and
4 rephrase here:

5 Are they asked to participate in different
6 programs or events that are put on by the RNC for the
7 benefit of certain donor groups to the RNC?

8 A Yes.

9 Q So they may go to a dinner, for example,
10 that's put on for the Regents, for example; is that
11 fair to say?

12 A That's correct.

13 Q Do they also sometimes participate in
14 periodic conference calls designed to update
15 different donor groups on key legislation?

16 A I believe so. I believe they have
17 participated in conference calls, yes.

[REDACTED]

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL MATERIAL

120

1 the cochairman of the RNC, the finance chairman of
2 the RNC, Jack Oliver as deputy chairman of the RNC.

3 Also I would think that as you saw in that
4 one exhibit the chairman of each individual club
5 would try to solicit either additional funds for an
6 RNC program or project over and above their
7 membership or attempt to have these individuals
8 renew.

9 I think it is more of a one-on-one basis
10 with the major donor clubs when you are talking about
11 TEAM 100, the Regents. When you get down to some of
12 the other clubs there is also a direct mail component
13 to them.

14 Q Are you aware of Members of Congress ever
15 participating in the direct solicitation of asking
16 someone to become a member of TEAM 100 or the
17 Regents?

18 A It's certainly not our policy to raise the
19 money that way.

20 I can't say that has a member ever
21 suggested is someone or had a friend? I wouldn't
22 rule that out.

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL MATERIAL

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1 But it's certainly not a program that we
2 have in place to ask Members of Congress to solicit
3 soft money. I'm not aware of that at all.

4 MR. LEFFEL: Let's take another short break
5 and try to figure out what I've got left.

6 MR. BURCHFIELD: Sure. That's fine.

7 (Discussion off the record.)

8 MR. LEFFEL: Back on the record.

9 Bobby, for right now we are treating this
10 entire transcript highly confidential for this 10-day
11 period and then we will come back and designate which
12 portions you believe are highly confidential.

13 MR. BURCHFIELD: Correct.

[REDACTED]

FEC Exhibit 30

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

| | | |
|--------------------------------|---|----------------------------------|
| REPUBLICAN NATIONAL COMMITTEE, |) | |
| <i>et al.</i> , |) | |
| Plaintiffs, |) | |
| v. |) | Civ. No. 08-1953 (BMK, RJL, RMC) |
| FEDERAL ELECTION COMMISSION, |) | |
| <i>et al.</i> , |) | DECLARATION |
| Defendants. |) | |

**DECLARATION OF
GERALD GREENWALD**

1. My name is Gerald Greenwald.
2. I am a founding managing director of Greenbriar Equity Group, LLC, a private equity firm focused on investments in the global transportation industry. From 1994 through my retirement in 2000, I served as the Chairman and CEO of United Airlines, the largest employee majority-owned company in the United States. Prior to that, I was vice chairman at Chrysler Corporation and worked at Ford Motor Company.
3. In 2002, I provided testimony in the *McConnell v. FEC* litigation. As I explained at that time, I had direct experience with campaign fundraising over the previous fifteen years and served on the Board of Trustees of the Committee for Economic Development (CED), a nonpartisan organization of business and education leaders dedicated to policy research on major economic and social issues. These business leaders and their companies had been solicited by elected officials and party leaders for ever-increasing amounts of soft money corporate contributions to political parties (as well as for hard money contributions from corporate

employees and the corporation's PAC if it had one). These business leaders accordingly had occasion to consider the pros and cons of contributing or declining to contribute.

4. My clear conclusion, which I know was shared by CED Trustees generally, was that soft money fundraising by elected officials and party-officials and large soft money contributions by corporations corrupt the solicitors and the givers alike and certainly create an appearance among the electorate generally that American business buys influence and legislation. In the vast majority of instances large political contributions by corporations and unions are not given for ideological reasons, but rather to secure access and influence on legislation.

5. When I talked with leaders of large labor unions, I found that they shared the concerns of the CED Trustees about the corrosive effect of large soft money contributions on the system.

6. The fact is that the people who raised large soft money contributions from business corporations and labor unions were often sitting Members of Congress who had to consider matters that would affect the financial health or operations of the organizations being solicited.

7. Often the Members who solicited large corporate contributions sat on committees that directly affect the corporation's business. Similarly, these Members' actions affect issues of interest to labor unions. Congress as a body and through these Congressional committees regularly considers matters that importantly affect both business and labor in regulated and unregulated industries, from tax legislation to trade legislation to industry deregulation to environmental legislation, to list just a few examples.

8. I explained in testimony in *McConnell* that when sitting Members solicited large corporate and union contributions, the leaders of these organizations felt intense pressure to contribute, because experience had taught that the consequences of failing to contribute (or failing to contribute enough) may be very negative.

9. Business and labor leaders believed, based on their experience, that disappointed Members and their party colleagues may shun or disfavor them if they have not contributed. Equally, these leaders feared that if they refused to contribute enough, competing interests who do contribute generously would have had an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union.

10. The other side of the coin is that labor and business leaders were regularly advised that — and their experience directly confirmed that — organizations that made large soft money donations to political parties in fact did get preferred access to government officials. That access ran the gamut from attendance at events where they had opportunities to present points of view informally to lawmakers to direct, private meetings in an official's office to discuss pending legislation or a government regulation that affects the company or union.

11. A similar effect would occur whether an organization was solicited by an elected official or some other representative of the party. In either situation, companies and unions know that elected officials would become aware of who has given significant amounts. Historically, party officials often promised access to elected officials to those who agreed to contribute large amounts of corporate or union money. Even if that access were not explicitly promised, during the solicitation process, major donors would still have access to Members and their staffs because of their contributions and the donors can and do contact Members directly. When I was in industry and I wanted to contact a Member regarding a legislative issue, I would

often contact him or her directly and would not necessarily rely on the parties to facilitate such access. The vast majority of soft money was given for such access and influence, and the system would be perpetuated whether a Member or some other person representing the party is calling to ask.

12. In sum, most unions and corporations gave large soft money contributions to political parties — sometimes to both political parties — because they were afraid to unilaterally disarm. They did not want their competitors alone to enjoy the benefits that come with large soft money donations, namely, access and influence in Washington. Though a soft money check might be made out to a political party, labor and business leaders would know that those checks open the doors to the offices of individual and important Members of Congress and the Administration, giving donors the opportunity to argue for their corporation's or union's position on a particular statute, regulation, or other governmental action. Labor and business leaders believe — based on experience and with good reason — that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties.


13. In these ways, the soft money loophole over two decades created a deeply cynical environment of real and perceived corruption that trapped American government, business, and labor unions.

14. This debilitating and demoralizing environment damages government and business alike. It goes without saying that maintaining governmental integrity is critically important to our democracy and our citizens' faith in their government. It is also important for Americans to have faith in the integrity of their business institutions and labor unions as well. It is not good for America when American citizens believe their business leaders are corrupt, and

one element of that regrettably widespread perception was the appearance that business buys government decisions by making large political contributions.

15. Public policy decisions should be made and should appear to all to be made on the basis of the public interest — not on which corporation or labor union can give the most money to the political party in power. Even the appearance of this type of corruption weakens public confidence in governmental as well as business and labor institutions.

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Gerald Greenwald

Executed this 6th day of April, 2009

FEC Exhibit 31

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

| | | |
|--------------------------------|---|------------------------|
| _____ |) | |
| REPUBLICAN NATIONAL COMMITTEE, |) | |
| <i>et al.</i> , |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civ. No. 08-1953 (RJL) |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | DECLARATION |
| |) | |
| Defendant. |) | |
| _____ |) | |

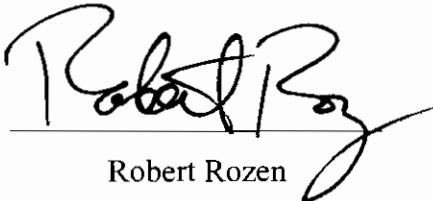
DECLARATION OF ROBERT ROZEN

1. My name is Robert Rozen.
2. I provided a sworn declaration in *McConnell v. FEC*. A copy is attached as Exhibit A.
3. If large soft money contributions are permitted, the pernicious effects of the soft money system that I described there will result whether or not Members of Congress themselves directly solicit the contributions. Even if party officials and staff make all of the initial solicitations, officeholders will often become aware of the identity of the large contributors. National party committees hold private events featuring presidents and Members — often at exclusive locations — for the donors who have given the largest amounts of hard money. Even if entrance to such events were tied to hard money contributions rather than soft money, such events would provide opportunities for people who had also given additional soft money amounts to interact with elected officials. Because the officeholders would often know which of the attendees had made the large soft money donations, they would naturally feel gratitude

towards those donors commensurate with the amount of the donation. The access afforded to the donor would thus provide an opportunity to influence public policy. Members attending “thank you” events for donors become aware of contribution amounts from major donors.

4. Political fundraising does not always involve a solicitation directly from a Member. Officeholders often have their staff do the fundraising, essentially acting as agents of the Members. So even if party officials and staff make all of the soft money solicitations, this would not be unique since they often act as agents of the party’s officeholders. Sophisticated donors would understand that elected officials of the party would be aware and appreciative of the amounts contributed even if an officeholder had not personally solicited the funds contributed. The dangers of the soft money system that I have described will still be present. Members will find out who made large contributions from their staffs, other Members, or through “thank you” type events run by the party, and they will naturally be more responsive to those donors due to the amount of help the donors have provided to the Member’s party.

5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.


Robert Rozen

Executed on this 6th day of April, 2009

Exhibit A

also lobby on financial services, health care, and other issues. Our work includes preparing strategic plans, writing lobbying papers, explaining difficult and complex issues to legislative staff, and drafting proposed legislation. We also organize fundraisers for federal candidates and from time-to-time advise clients on their political contributions. Our firm includes both Democrats and Republicans. On the Democratic side, we host approximately six fundraisers per year where we raise hard money for federal candidates.

5. I sometimes advise Washington Council clients with respect to their political contributions. Most of our clients have PACs, and they occasionally ask for advice on who to make contributions to.

6. Clients sometimes ask me for advice on whether to give non-federal money to political party and other committees. I have been approached by elected officials or their staff seeking assistance with raising soft money.

7. Some clients don't want to be major players in the political money system so they only contribute hard money to candidates. They are not interested in playing a bigger role, usually because they know it is difficult to draw the line and once they participate at any level expectations are raised for increasingly larger contributions. Those companies and associations that do give soft money typically contribute to both parties in Congress because they want access to Members on both sides of the aisle.

8. In some cases corporations and trade associations do not want to give in amounts over the hard money limits, but they feel pressured to give in greater amounts and end up making soft money donations as well. They are under pressure, sometimes subtle and sometimes direct, from Members to give at levels higher than the hard money limits. For example, some Members

in a position to influence legislation important to an industry naturally wonder why a company in that industry is not participating in fundraising events.

9. There is a spectrum of reasons people and organizations contribute soft money. Some obviously give for ideological purposes. Others feel the need to give at a level above the hard money limits as part of their public policy strategy. Finally, some feel pressured to give above the hard money levels as a result of direct or indirect pressure from Members.

10. 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. As a result, many organizations do give soft money. While some soft money is given for ideological purposes, companies and trade associations working on public policy for the most part give to pursue their economic interests. In some cases, that might limit their contributions to one political party. More often, they give to both. They give soft money because they believe that's what helps establish better contacts with Members of Congress and gets doors opened when they want to meet with Members. There is no question that money creates the relationships. Companies with interests before particular committees need to have access to the chairman of that committee, make donations, and go to events where the chairman will be. Even if that chairman is not the type of Member who will tie the contribution and the legislative goals together, donors can't be sure so they want to play it safe and make soft money contributions. 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.

11. When organizations give greater amounts of money through soft money contributions, they get better access to Members. While hard money contributions also provide some access, larger soft money contributions get you significantly greater access, and of course soft money contributions built around sporting events such as the Super Bowl or the Kentucky Derby, where you might spend a week with the Member, are even more useful. At the events that contributors are entitled to attend as a result of their contributions, some contributors will subtly or not-so-subtly discuss a legislative issue that they have an interest in. Contributors also use the events to establish relationships and then take advantage of the access by later calling the Member about a legislative issue or coming back and seeing the Member in his or her office. Obviously from the Member's perspective, it is hard to turn down a request for a meeting after you just spent a weekend with a contributor whose company just gave a large contribution to your political party.

12. From the perspective of the donor, the difference between hard and soft money is just the amount of money that you are allowed to give. Once an organization's PAC has given up to the hard money limit, then it's simply a matter of how much more the organization wants to give. From their perspective, what account the money goes into or how it's used is not important. When it actually comes time to make out the check, you just make it out to whatever account they indicate. A Member or their agent will raise the money and someone will eventually tell you whether the money should go to a soft money leadership PAC, a national party committee, or a state party, but that's generally not a thought for the giver. Corporations and trade associations, including the ones I am familiar with, are not usually giving to help the Republican Party or the Democratic Party. Even though the original purpose of allowing the national parties to have soft money was to let them raise money to be used on state elections and

general party-building, it would be the height of naïveté to think that donors have motives consistent with that purpose. Donors to the national parties understand that if a federal officeholder is raising soft money--supposedly "non-federal" money--they are raising it for federal uses, namely to help that Member or other federal candidates in their elections. Many donors giving \$100,000, \$200,000, even \$1 million, are doing that because it is a bigger favor than a smaller hard money contribution would be. That donation helps you get close to the person who is making decisions that affect your company or your industry. That is the reason most economic interests give soft money, certainly not because they want to help state candidates and rarely because they want the party to succeed.

13. Members understand and appreciate the difference between smaller hard money contributions and larger soft money contributions. Members are raising both hard and soft money. A PAC can give \$5000 per election to a candidate and that is appreciated. But the organization sponsoring the PAC can also give an unlimited amount of soft money; for example a \$100,000 or \$250,000 contribution to the political party at the request of a candidate. That is a contribution of an entirely different dimension, and it naturally is appreciated more by the Member who raises it. The bigger soft money contributions are more likely to get your call returned or get you into the Member's office than smaller hard money contributions.

14. You are doing a favor for somebody by making a large donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone--that is, write a larger check--and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings: the Member has received a favor and feels a natural obligation to be helpful in return. This is how human relationships work. The legislative arena is the same as other areas of

commerce and life. It is similar to a situation that has been in the news recently: an investment banking firm made shares of hot initial public offerings available to the officers of Worldcom Inc., while Worldcom Inc. executives were giving the firm tens of millions of dollars in investment-banking business. There doesn't have to be a specific tie-in to achieve the result.

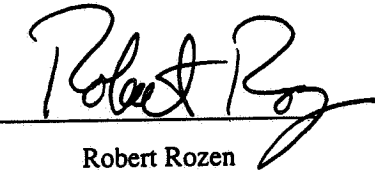
15. Even though soft money contributions often go to political parties, the money is given so that the contributors can be close to, and recognized by, Members, Presidents, and Administration officials who have power. Members, not party staffers or party chairs, raise much of the large soft money contributions. Party chairs do not have that much power because the DNC and the RNC by themselves don't have power to do anything. So people are not giving to be close to the party chairs. The Members of Congress and the President are the heart of the national parties. The elected officials are the ones who are really raising the money, either directly or through their agents.

16. The soft money system has allowed big money from private interests to get into the federal election system. The system works in a very pernicious way that undermines public trust. As I mentioned in my earlier declaration, campaign finance reform was one of the issues that I handled while working for Senator Mitchell. In fact, the DSCC did not raise and spend soft money while Senator Mitchell was Majority Leader because he thought it appeared improper. I have also seen the system at work through my job as a lobbyist over the last seven years. Although there are nominal limits on what individuals and PACs can contribute to federal candidates, that law has now become a fiction because of the soft money contributions that candidates have been able to raise through their political party. The general public does not even begin to understand the degree to which moneyed private interests are able to influence public policy through their campaign contributions. The effect of \$15,000 or \$20,000 contributions on

some Members that I discussed in paragraph 10 of my earlier declaration is even more true with respect to larger \$100,000 or \$500,000 contributions. As I noted there, based on human relationships, you are grateful to people who want to help you and naturally you want to be responsive to them. When people have tried to help you--that is, an elected representative--in the more substantial ways permitted through soft money contributions, you are even more grateful to them and naturally more responsive.

17. If you're a chairman of a committee, you are expected to raise more for the party than more junior Members are. In spite of the seniority rules, you have the chairmanship at the sufferance of the caucus and you are expected to help the party by raising money for a party committee or through a leadership PAC that then distributes money to federal candidates of the party in need. Some of this money is raised in large increments as soft money. Published reports indicate that candidates for chairman have raised money in amounts as high as \$500,000 in their drive to become chairman of a Congressional committee. They are able to in part because they will have so much power if they become chairman. Donors especially want to develop relationships with these Members who will have a lot of power and are therefore in a position to help the contributors achieve their public policy objectives.

18. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.


Robert Rozen

Executed on this 3rd day of October, 2002

EXHIBIT A

1. My name is Robert Rozen.

2. I began working for Sen. Wendell Ford after I graduated from law school in June 1980. I was responsible for all issues before the Senate Finance Committee, and from the spring of 1984 until early 1985 I handled his work with the Rules Committee, on which he was Ranking Minority Member.

3. From January 1985 until January 1995, I worked for Sen. George Mitchell. I handled a variety of legislative issues for Sen. Mitchell, including tax, trade, banking, and other financial issues, including campaign finance reform.

4. Sen. Ford chaired the Democratic Senatorial Campaign Committee (DSCC) in the 1981-1982 election cycle. Sen. Mitchell held this position in the 1985-1986 cycle. My experience was that both Senators kept their DSCC work separate from the office, in the sense that no legislative staff was involved with DSCC campaign activities. I had no direct involvement in DSCC work, although I did gain general knowledge about DSCC operations from my proximity to the Chairmen. Additionally, my extensive work from 1987 through 1994 on campaign finance reform legislative efforts exposed me to DSCC issues. It is my sense that Administrative Assistants know who has contributed both to their Senator's campaign and to the DSCC, although some of them keep closer track of this than others.

5. At least on the Democratic side, the Majority Leader is heavily involved with the Senate campaign committee. The Majority Leader picks the Chair of the DSCC, and is also involved in candidate recruitment, a primary responsibility of the DSCC. Even if other Senators or DSCC staff members make the initial contacts, the Majority Leader wants to size up potential candidates and be helpful in encouraging potentially strong candidates to run for office. Oftentimes, the candidates want to close the deal with the leader of their party in the Senate.

6. Other than recruiting candidates, the DSCC's main responsibility is raising money for Senate campaigns. Especially during the last 15 months of an election cycle, the Committee is very active. Many weekends, four or five Senators will be out on the road, raising money at DSCC events. Certain Senators are bigger draws than others, and the Majority Leader usually is the biggest draw of all. So he probably attends as many of these events as anybody else other than the Chairman.

7. Under the DSCC's tally system, all Senators are expected to help raise money for the party. Some do it more enthusiastically than others, but the expectation is there. Senators can solicit contributions directly, or sponsor fundraising events on behalf of the DSCC. The DSCC also sponsors its own events, using Senators to draw contributors.

8. Sen. Mitchell took an especially active role with the DSCC after he was elected Majority Leader in Nov. 1988. For example, it was his decision that the DSCC did not raise soft money during his six years as Majority Leader.

9. It is only natural that most individuals and PACs want to make sure that they get maximum recognition for whatever money they contribute. Of course, some expect nothing in return, while others are more aggressive in trying to get a lot of mileage out of their contributions. I would expect most of the largest PACs give the maximum allowed, or close to it, to party committees, and then send their members to party events or otherwise attempt to meet personally with Senators. They may buy a table at an event for \$10,000 and invite staff or a Member to sit at the table. Other events are stand-up receptions where this sort of close interaction is more difficult. But the idea for anyone who goes to any of these events is to be seen by Members of Congress.

10. Contributors believe this interaction has an effect on Members, whether it does or not. Certainly, it does have an effect on some Members. If you are raising money for your campaign, or you have a tally and you're raising money for the party, and you have solicited a \$15,000 or \$20,000 contribution, oftentimes this is going to have some effect. This is just based on human relationships, you are grateful to people who want to help you and naturally want to be responsive to them.

11. The bottom line is that there is a symbiotic relationship between contributors and candidates. A contributor gives to have the opportunity to influence a Member, and the Member is willing to provide this opportunity in order to raise more money. While this is usually subtle, it can be extremely direct. For example, I know of a company that was recently involved in a legislative battle critical to its bottom line. One Senator in particular was working on this issue. The company, which was known to be a financial supporter of the other party, was asked by the Senator, "Well, where have you been?" and the Senator's representatives later told the company that they had to "be at the table," to contribute, if they wanted their views to be heard. This was a

shakedown, pure and simple. And it worked -- the company wound up contributing to the national Senatorial Campaign Committee of the Senator's party, as requested.

12. Very little money that does not come through the mail is what I would call "detached" money. Typically, a contributor gives money to establish relationships, to be able to lobby on an issue, to get close to Members, to be able to have influence. While an elected official of course does not have to do something because somebody gave, a contribution helps establish a relationship, and the more you give the better the relationship. It is not that legislation is being written in direct response to somebody giving a lot of money. Rather, it is one step removed: relationships are established because people give a lot of money, relationships are built and are deepened because of more and more money, and that gets you across the threshold to getting the access you want, because you have established a relationship.

FEC Exhibit 32

**United States District Court
District of Columbia**

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| <p>Republican National Committee et al., <i>Plaintiffs,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>Federal Election Commission, <i>Defendant.</i></p> | <p>Case No. 08-1953 (BMK, RJL, RMC)</p> <p style="text-align: center;">THREE-JUDGE COURT</p> |
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Plaintiffs Supplemental Discovery Responses

Pursuant to Federal Rules of Civil Procedure 33 and 34, the Republican National Committee (“RNC”), California Republican Party (“CRP”) and the Republican Party of San Diego (“RPSD”)(*collectively* “Plaintiffs”) make the following discovery responses.

General Objections

1. Plaintiffs object to the FEC’s characterization of discovery “deficiencies.” Plaintiffs took ample measures to prepare the 30(b)(6) witnesses and produce relevant documents in an expedited manner. It is not unusual for the existence of other documents to come to light during a deposition and Plaintiffs are being compliant and cooperative with these supplemental discovery requests. Nothing that has arisen indicates that Plaintiffs’ original production was deficient.

2. Plaintiffs object to discovery on First Amendment privacy and burden grounds because the issues of this cases are legal in nature, not factual. Furthermore, *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007) (“*WRTL II*”), recognized that in cases involving campaign-finance regulation of expressive-association rights “extensive discovery,” including “ha[ving] to turn over many documents related to . . . operations, plans, and finances[,] . . . constitutes a severe

burden on political speech,” *id.* at 2666 n.5, so that there must be “minimal if any discovery” in such cases, *id.* at 2666. Moreover, this is not an enforcement action, but a case asserting First Amendment rights, so citizen groups asserting First Amendment rights of privacy and freedom from burden in their expressive association may not be penalized through discovery for asserting their rights. Finally, what Plaintiffs seek to do in this case is prospective, not retrospective, so that seeking information about what they have done, while what they want to do was illegal, is unjustified by the First Amendment burdens imposed. For these reasons, no discovery is permissible or at most should be far more minimal than what the FEC imposes, so that the parties are within their constitutional rights to produce nothing or to make only minimal responses to those requests coming closest to relevance to the legal issues raised.

3. Plaintiffs object to the requests to the extent that they purport to call for the production of documents\information that: (a) contain privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

4. Plaintiffs object to the requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1). *See* Fed. R. Civ. P. 26(b)(1) advisory committee’s note (2000).

5. Plaintiffs object to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure or

local rules.

6. Plaintiffs object to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case. *See* Fed. R. Civ. P. 26(b)(2)(i) (discovery cannot be “unreasonably cumulative or duplicative, or . . . obtain[able] from some other source” and is limited if “the burden or expense of the proposed discovery outweighs its likely benefit, taking into account . . . [inter alia] the importance of the proposed discovery in resolving the issues.” *Id.* at (iii).

7. By responding to these requests, Plaintiffs do not concede that any of the documents/information requested are relevant to a claim or defense or the subject matter of this action, or are admissible at the trial thereof, or that any person identified in the responses has documents relevant to this action. Plaintiffs reserve any and all objections as to competency, relevance, materiality, privilege, admissibility, or any other grounds on which an objection may be made. Plaintiffs expressly reserve the right to object to further discovery into the subject matter of these requests. Any response to a request that inadvertently discloses privileged documents/information is not intended to and shall not be deemed or construed to constitute a waiver of any privilege or right of Plaintiffs. Insofar as a response to a request may be deemed to be a waiver of any privilege or right, such waiver shall be deemed to be a waiver limited to that particular response only.

8. Plaintiffs object to the FEC’s extremely vague, overbroad and ambiguous definition of “donor,” “grassroots lobbying,” “officeholder,” “redistricting activities,” “donation,” and “support state candidates” as stated in the FEC’s First Set of Discovery Requests. The RNC also objects to the FEC’s extremely vague, overbroad and ambiguous definition of “solicitation,” as

found in the FEC's First Set of Discovery Requests, which encompasses "indirect" requests or suggestions that a person make a donation.

9. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each response given below, Plaintiffs (a) object to the individual requests and (b) make the required good-faith attempt to fulfill its duty to provide all responsive information readily available to it without undue labor and expense as follows:

A. Questions that Plaintiffs Were Unprepared or Otherwise Unable to Answer During Rule 30(b)(6) Depositions

1. How much money has the RNC spent on grassroots lobbying since 2003? (Josefiak Dep. 155:22-157:10.)

Objection: As stated above, the RNC objects to the FEC's definition of "grassroots lobbying," as set forth in the FEC's First Set of Discovery Requests, as vague, overbroad, and ambiguous. Furthermore, as stated in the RNC's original discovery responses, the RNC stores its archived files in an offsite warehouse. To review such documents, especially in response to an overreaching request, is unduly burdensome.

Response: Subject to and without waiving any objections, the RNC responds as follows. Based on a review of the documents in the RNC's possession, custody, and control, the RNC cannot document the amount of resources expended for Grassroots Lobbying activities.

2. When did the CRP's Congressional Target Committee become non-functional, who made the decision to render it non-functional, and why was it rendered non-functional? (Christiansen Dep. 13:17-14.7.)

Response: Subject to and without waiving any objections, CRP responds as follows. The

Congressional Target Committee was non-functional before BCRA was adopted, for a variety of reasons, including: (a) fewer Congressional seats to target since 1991; and (b) a greater role played by the National Republican Congressional Committee in targeting seats along with California Republican Congressmen. These circumstances, rather than an unilateral decision, rendered the Committee non-functional.

3. Has a candidate for U.S. Senate attended a CRP fundraiser since 2003? (Christiansen Dep. 35:7-17.) If so, which candidates, when were the fundraisers they attended, and what was the cost of a ticket to the fundraiser?

Response: Subject to and without waiving any objections, CRP responds as follows. Bill Jones, the Republican Party nominee for Senate in 2004, may have attended CRP fundraisers, but not as a keynote speaker. No CRP fundraiser was held to benefit him and he did not solicit contributions for CRP in the 2003-2004 election cycle.

4. How many federal candidates or officeholders have spoken at CRP fundraisers since 2003? (Christiansen Dep. 36:4-19.)

Response: Subject to and without waiving any objections, CRP responds as follows. No federal candidates or officeholders have spoken at CRP events that were devoted to fundraising. A number of federal candidates and officeholders have spoken at regular CRP convention breakfast, luncheon and dinner events for which CRP typically charges from \$50 to \$100 per ticket. Most of the proceeds of these convention events are federal hard dollars. Federal candidates or officeholders who have spoken at such events include: Former Mayor Rudy Giuliani and former Governor Mitt Romney (2007); Senate candidate Bill Jones (2004); Congressman Ed Royce, Congresswoman Mary Bono Mack, Congressman Dana Rohrabacher,

and Congressman Kevin McCarthy.

5. How many times has the Chair of the RNC attended a CRP fundraiser since 2003?

(Christiansen Dep. 36:20-37:2.)

Response: Subject to and without waiving any objections, CRP responds as follows. The Chair of the RNC has not attended any CRP fundraisers since 2003.

6. What percent of the CRP's funds are raised through fundraising events? (Christiansen

Dep. 37:3-7.)

Response: Subject to and without waiving any objections, CRP responds as follows. The percentage varies from year to year. Since 2003, California has had two off-election years (the 2003 gubernatorial recall and recall replacement election and the 2005 special ballot measure election) which compared with "top of the ticket" activity normally occurring in gubernatorial and Presidential election years. Based on a review of the documents in the CRP's possession, custody, or control, the CRP can find no responsive documents.

7. Did federal candidates or officeholders make fundraising calls for the CRP between 2003 and Christiansen's becoming COO? (Christiansen Dep. 37:21-38:7) If so, which candidates or officeholders, when did they make the calls, and who did they call?

Response: Subject to and without waiving any objections, CRP responds as follows. No federal candidates or officeholders have made fundraising calls for the CRP between 2003 and Christiansen becoming COO.

8. Whether any federal candidate or officeholder solicited donations to the CRP in:

- a. 2006 (other than the event in Colorado)? (Christiansen Dep. 59:20-60:14.) If so, which federal candidates or officeholders, in what format did they solicit (e.g.

telephone, mail, fundraising event, etc), and who did they solicit?

Response: Subject to and without waiving any objections, CRP responds as follows. No federal candidate or officeholder solicited donations to the CRP in 2006.

b. 2005? (Christiansen Dep. 62:3-4.) If so, which federal candidates or officeholders, in what format did they solicit (e.g. telephone, mail, fundraising event, etc), and who did they solicit?

Response: Subject to and without waiving any objections, CRP responds as follows. No federal candidate or officeholder solicited donations to the CRP in 2005. However, the FEC Advisory Opinion 2005-10 (Berman/Doolittle) allowed federal officeholders to raise money for statewide ballot measure elections in 2005. Nevertheless, CRP did not utilize any federal candidates or officeholders to solicit any funds for ballot measures under the authority of that advisory opinion.

c. 2004 (other than events discussed at Christiansen Dep. 62:5-63:5.)?
(Christiansen Dep. 63:11-16.) If so, which federal candidates or officeholders, in what format did they solicit (e.g. telephone, mail, fundraising event, etc), and who did they solicit?

Response: Subject to and without waiving any objections, CRP responds as follows. No federal candidate or officeholder solicited donations to the CRP in 2004.

d. Any other year since 2003? (Christiansen Dep. 64:20-23.) If so, which federal candidates or officeholders, in what format did they solicit (e.g. telephone, mail, fundraising event, etc), and who did they solicit?

Response: Subject to and without waiving any objections, CRP responds as follows. No

federal candidate or officeholder has solicited donations to the CRP since 2003.

9. At the Colorado event with President Bush (Christiansen Dep. 60:2-61:9.):

a. How much did tickets cost, including how much each tier of tickets cost, if applicable? (Christiansen Dep. 61:10-13.)

b. Did the President meet or speak with individual attendees? (Christiansen Dep. 61:17-19.)

Response: Subject to and without waiving any objections, CRP responds as follows.

Based on a review of the documents in the CRP's possession, custody, or control, the CRP cannot identify any such CRP event, or any President Bush fundraising event from which CRP benefitted.

10. Which Congressman solicited donations to the CRP by mail, and when? (Christiansen Dep. 64:20-65:10.)

Response: Subject to and without waiving any objections, CRP responds as follows. No Congressman has solicited donations to the CRP by mail.

11. Other than any solicitations discussed in response to the proceeding questions, on what other occasions have federal candidates or officeholders solicited donations to the CRP since 2003? (Christiansen Dep. 65:21-25.)

Response: Subject to and without waiving any objections, CRP responds as follows. No federal candidate or officeholder has solicited donations to the CRP since 2003.

12. Since 2003, has the Chair of the RNC solicited donations to the CRP (other than Ken Mehlman's attendance at a fundraiser in 2005)? (Christiansen Dep. 66:1-67:10.) If so, which Chairs solicited, when did they solicit, in what format did they solicit (e.g. telephone, mail,

fundraising event, etc), and whom did they solicit?

Response: Subject to and without waiving any objections, CRP responds as follows. No Chair of the RNC has solicited donations to the CRP.

13. Regarding Christiansen Dep., Exhibit G:

a. Was this document publicly distributed? If so, who distributed it, and to whom was it distributed?

b. What entities made disbursements in related to the document? For each such entity, what was the size of those disbursements in (i) federal funds, and (ii) nonfederal funds? (Christiansen Dep. 140:4-141:10.)

Response: Subject to and without waiving any objections, CRP responds as follows. Exhibit G was distributed to Republican voters in Orange County. CRP made disbursements of federal funds only for this mailer. Because the communication did not advocate the federal candidate's election, it was not reported as a non-monetary contribution or independent expenditure.

14. Since 2003, has the CRP made any public communication that supported or opposed a ballot initiative and mentioned a federal candidate? (Christiansen Dep. 141:11-143:13.) For each such communication, when was it made, which federal candidates were identified, and what was the size of the CRP's disbursements in relation to the communication in (i) federal funds, and (ii) nonfederal funds? Also indicate which of these communications promoted, attacked, supported, or opposed any of the federal candidates they identified.

Response: Subject to and without waiving any objections, CRP responds as follows. No such public communications have been made. For the reasons set forth in the Complaint and the

Declaration of Bill Christiansen, CRP has not made any public communication that supported or opposed a ballot initiative that mentioned a federal candidate since BCRA became effective.

Therefore, the response to (i) and (ii) is none.

15. How much of the approximately \$18 million that the CRP has spent on ballot measures has been paid with federal funds, and how much of it with nonfederal funds?

(Christiansen Dep. 158:6-16.)

Response: Subject to and without waiving any objections, CRP responds as follows. No federal funds were used for ballot measures.

16. On what did the RPSD spent \$1,834 regarding the 2008 federal elections? (Buettner Dep. 81:12-82:22.)

Response: Subject to and without waiving any objections, RPSD responds as follows. The amount listed above consists of independent expenditures only. Of that amount, \$519.11 was for GOTV volunteer contact phone calls in support of Duncan D. Hunter. The balance was for doorhangers that included all Republican candidates.

17. Why does the RPSD make independent expenditures on behalf of Congressional candidates in safe seats? (Buettner Dep. 82:24-83:13.)

Response: Subject to and without waiving any objections, RPSD responds as follows. RPSD produces doorhangers that include all Republican candidates whether they are in safe Republican seats or safe Democrat seats. While the federal races have not been RPSD's main focus, RPSD believes that information regarding Republican federal candidates is important to Republican voters in those districts.

B. Responsive, Unproduced Documents Mentioned During Rule 30(b)(6) Depositions

18. The solicitation discussed in #10, above. (Christiansen Dep. 64:20-65:10.)

Response: Subject to and without waiving any objections, the CRP responds as follows. Based on a review of the documents in the CRP's possession, custody, or control, the CRP can find no responsive documents.

19. All communications responsive to #14, above. (Christiansen Dep. 141:11-143:13.)

Response: Subject to and without waiving any objections, the CRP responds as follows. Based on a review of the documents in the CRP's possession, custody, or control, the CRP can find no responsive documents.

20. Any of the following that mention any of the activities or categories of activities at issue in this lawsuit (i.e., the RNC's state candidate support, redistricting, grassroots lobbying, and litigation activities, and the other plaintiffs' ballot-initiative and "federal election activity," 2 U.S.C. § 431(20), including voter registration, voter identification, and GOTV):

- a. The budget documents described at Josefiak Dep. 6:1-8:15 (confidential portion).
- b. The minutes of the RNC, its budget committee, its finance committee, or any other RNC committee. (Josefiak Dep. 33:2-35:2.)
- c. RNC victory plans (Josefiak Dep. 47:18.)
- d. The post-election analyses described at Josefiak Dep. 134:2-135:8.
- e. CRP budgets and "budget versus actuals." (Christiansen Dep. 82:18-21, 110:19-111:13, 113:12-114:20.)
- f. CRP meeting minutes. (Christiansen Dep. 21:2-6.)

g. RPSD meeting minutes. (Buettner Dep. 15:7-23.)

h. Documents describing or relating to the CRP's or RNC's bounty program.

(Buettner Dep. 28:16, 61:25, 101:20-21, 102:7-8.)

Response: The RNC objects to a, b, c, and d on the grounds that these documents were not encompassed by the FEC's First Set of Discovery Requests. The RNC further objects to the extent that a, b, c, and d seek confidential proprietary information.

Subject to and without waiving any objections, the CRP responds as follows. Regarding e, to the extent this request is for RNC documents or CRP budgets and "budget versus actuals" documents that relate to RNC activities or proposed activities, CRP has no such documents in its possession, custody or control. To the extent the request is for CRP budget documents, the CRP documents contain line items for voter registration, voter identification and GOTV but not "ballot initiative" or "federal election activity" line items. CRP documents entitled "budget to actual" were only prepared for the years 2007 and 2008. Subject to the objections noted, these documents are provided. *See* CRP0001-CRP00028 (all designated "*Counsel Only*"). Regarding f, there are no CRP meeting minutes responsive to this request. Regarding h, all responsive CRP documents are attached. *See* CRP00029-CRP00034 (all designated "*Counsel Only*").

Subject to and without waiving any objections, the RPSD responds as follows. Regarding g, based on a review of the documents in the RPSD's possession, custody, or control, the RPSD can find no documents responsive to this request.

21. All seating charts reflecting the seating of any federal candidate or officeholder.
(Josefiak Dep. 68:9-16.)

Response: Subject to and without waiving any objections, the RNC responds as follows.

Based on a review of the documents in the RNC's possession, custody, or control, the RNC can find no documents relating to the seating of any federal candidate or officeholder.

22. All pages from the RNC's donor websites (Josefiak Dep. 124:6-125:19) that refer to (a) any federal candidate or officeholder, or (b) any benefit of being a member of any of the RNC's donor clubs. This includes all responsive pages that were displayed during the relevant time period, even if those pages are no longer on the websites.

Response: Subject to and without waiving the objections above, the RNC produces all documents in its possession, custody and control responsive to this request. *See* RNC000731-RNC000786.

23. All "summary treasurer's report[s]" to the CRP's Board of Directors that name or identify specific donors. (Christiansen Dep. 82:14-83:25.)

Response: Subject to and without waiving any objections, the CRP responds as follows. Based on a review of the documents in the CRP's possession, custody, or control, the CRP can find no documents responsive to this request.

24. All reports described at Christiansen Dep. 117:5-118:3.

Response: Subject to and without waiving any objections, the CRP produces documents in its possession, custody and control responsive to this request. *See* CRP00029-CRP00034 (all designated "*Counsel Only*").

C. Other Discovery Deficiencies

25. The RNC has withheld from its productions pages RNC000048-49 on grounds of privilege, but we have not received a privilege log or equivalent description of the withheld pages pursuant to Fed. R. Civ. P. 26(b)(5)(A). Please provide a privilege log that identifies, at a

minimum, the sender, recipients, date, subject matter, and specific claim of privilege (e.g. attorney-client communication, attorney work-product, etc.) for those pages and any other withheld document.

Response: The RNC provides the following privilege log relating to pages RNC000048-49.

| | Date | From | To | cc: | Privilege | Doc. Type | Description | Bates | Pgs. |
|----|--------|------------------|----|-----|-------------------------------|-----------|--|-------------|------|
| 1. | 2/3/09 | Counsel's Office | | | Attorney-Client Communication | Memo | Internal memo discussing campaign finance issues | RNC00048-49 | 2 |

26. Several of the RNC's produced pages (e.g. RNC000199-206) are cut off; please produce complete copies of all such pages.

Response: In response to the FEC's First Set of Discovery Requests, the RNC produced true and accurate copies of the responsive documents in its possession, custody, and control. The documents produced represent complete copies of the original documents as maintained by the RNC.

27. In the RNC's March 3, 2009 production, some names or email addresses are blacked-out such that we cannot determine to whom the documents were sent (e.g. RNC000607, RNC000622, RNC000719). Such editing of discovery documents is manifestly improper. We were willing to overlook the RNC's redaction of addresses and phone numbers from its earlier production of event invitations because those redactions had relatively little effect on our ability to review documents. Your redaction of addressees' names and email addresses from emails, however, is entirely inappropriate. Please reproduce the entire March 3, 2009 production without

redactions.

Response: Subject to and without waiving the objections above, the RNC reproduces RNC000607, RNC000622, and RNC000719, maintaining the original Bates numbering. In order to comply with the FEC's request but not allow private information to be subject to the Freedom of Information Act, the RNC has redacted the domain name of the email addresses only.

28. The last page of the document produced to us as RNC000575-96 seems to indicate that it was a presentation made to the Commission. Please explain whether plaintiffs have, in fact, shown this document to the Commission in the past and, if so, when and for what purpose. Furthermore, if the document has been shown to the Commission - or the statements therein otherwise made public - please indicate the grounds for any continued assertion of confidentiality.

Response: Documents RNC000575-96 constitute a presentation given internally at the RNC by RNC staff, and includes an excerpt from a complaint proposed to be filed with the FEC by the RNC. The presentation was never released into the public domain, and therefore, the RNC continues to assert confidentiality.

29. One of the confidential portions of the Josefiak deposition (11:4-12:11, confidential portion) discussed budget documents containing data that the deponent later indicated had been made public (Josefiak Dep. 57:4-58:13). Accordingly, please indicate whether you agree to remove the confidentiality designation regarding that section. If you do not so agree, please indicate the grounds for your continued assertion of the confidentiality of that section.

Response: The RNC does not agree to remove any designation of confidentiality. The RNC does not release details of its budget to the public. Subject to and without waiving any

objections, the RNC asserts that the following is an accurate and true summation of the budget report given at the RNC's 2009 Winter Meeting General Session, which was open to the public:

The RNC is in sound financial condition as of December 31, 2008. We raised approximately \$320 million in 2008. We have \$13.8 million cash on hand and no debt as of December 31, 2008. We processed in excess of \$3,942,000 contributions for the year. For 2009, the Budget Committee projects revenues of \$78,365,000 at a cost of \$28,365,000. I now move that we approve the proposed budget for 2009.

30. For each document produced to us by the CRP or RPSD, indicate the document request to which the produced document was responsive.

Response: In order to cooperate with the FEC's wishes, CRP and RPSD produced all responsive documents in less than 2 weeks, rather than the 30 days allowed under the Federal Rules of Civil Procedure. In order to cooperate further, and without waiving any objections, the CRP and RPSD respond as follows.

All responsive documents pertain to Request for Production #1 ("All documents containing the text or script, of their audio/visual equivalent, of any communication responsive to Interrogatory 1.") This includes the following sets of email attachments: SDRP-Group 1, San Diego Door Hangers, Document Production-Group 1-2005, Discovery Group 2-2006, Discovery 2006-Group 2, Discovery-2006.3, Discovery-2006-Last Group, Discovery-2008-Group 1, Discovery-2008-Group 2, and Discovery-2008-3.

Based on a review of the documents in the CRP and RPSD's possession, custody, or control, the CRP and RPSD can find no documents responsive to this request #2, 3, 4, 5, and 7. Request #6 is fulfilled by the parties' protective order granting the FEC access to the full *McConnell* record.

31. For the portion of the RNC's document productions that has been designated counsel-

only but that consists primarily of summaries of publicly available information, please explain who created these documents, who reviewed them, and the basis for their confidentiality designation.

Objection: The RNC objects to this request as impermissibly vague. Please describe in detail which documents pertain to this request. Without knowing which specific documents are at issue, the RNC is unable to respond.

32. We were troubled to learn from plaintiff's witnesses that few, if any, efforts have been undertaken since the filing of this lawsuit to ensure that potentially relevant discovery material is preserved. It is also apparent to us that undeniably responsive documents have not been produced to us. (*See, e.g.*, Josefiak Dep. 124:6-125:19; *see also* Buettner Dep. 108:13-19.) Accordingly, please provide us with assurances as to each of the following:

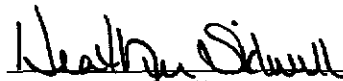
- a. Other than the "offsite warehouse" mentioned in the RNC's objection to the Commission's request for production, indicate whether all plaintiffs have searched *all* materials within their "possession, custody, or control" for responsive materials - including, at a minimum, all paper files, computer hard drives, network drives, servers, laptops, and email accounts - and whether all plaintiffs have produced *all* responsive material "stored in any medium from which information can be obtained either directly or, if necessary, after translation." *See* Fed. R. Civ. P. 34(a)(1).
- b. If plaintiffs have not conducted the searches and made the productions described in the foregoing subparagraph, indicate the date by which such searches and productions will be complete.

c. Indicate whether plaintiffs have taken any steps since the commencement of this action to prevent the destruction or other spoliation of responsive materials. Indicate specifically whether plaintiffs' document destruction procedures have been suspended, whether plaintiffs' email deletion procedures have been suspended, whether plaintiffs' usual practice of overwriting backup tapes has been suspended, and whether plaintiffs' document custodians have been advised to maintain all information potentially relevant to this action.

Response: Subject to and without waiving the objections above, Plaintiffs respond as follows. Plaintiffs assert that they have met all obligations under the Federal Rules of Civil Procedure, including searching all available mediums for responsive documents and retaining all documents reasonably believed to contain information relevant to this matter.

Verification

I declare under penalty of perjury that the foregoing answers to the FEC's interrogatories are true and correct. Executed on March 20, 2009.


Heather Sidwell,
Republican National Committee

Verification


I declare under penalty of perjury that the foregoing answers to the FEC's interrogatories are true and correct. Executed on March 20, 2009.

A handwritten signature in cursive script, appearing to read "Chuck Hahn", written over a horizontal line.

Chuck Hahn
Acting Chief Operating Officer,
California Republican Party

Verification

I declare under penalty of perjury that the foregoing answers to the FEC's interrogatories are true and correct. Executed on March 20, 2009.



Tony Krvaric
Chairman,
Republican Party of San Diego

Respectfully submitted,

/s/ James Bopp, Jr.

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812/234-3685 facsimile
Lead Counsel for all Plaintiffs
*Pro Hac Vice

FEC Exhibit 33

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

| | | |
|--------------------------------|---|------------------------|
| _____ |) | |
| REPUBLICAN NATIONAL COMMITTEE, |) | |
| <i>et al.</i> , |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civ. No. 08-1953 (RJL) |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | DECLARATION |
| |) | |
| Defendant. |) | |
| _____ |) | |

Declaration of Robert W. Biersack

1. My name is Robert W. Biersack. I am Special Assistant to the Staff Director for Data Integration for the Federal Election Commission (“FEC” or “Commission”). I am personally familiar with the Commission’s reporting requirements, and I have personal knowledge regarding the contents of the Commission’s database, including information regarding the receipts of national, state, and local political party committees. The Commission’s database is created and maintained by the Commission pursuant to its statutory duties. The information in the database is drawn from reports filed with the Commission. The Commission’s current database includes, *inter alia*, information supplied by national, state, and local political party committees in their FEC reports

2. I have reviewed the records in the Commission’s database regarding total receipts of the national party committees of the Republican and Democratic parties: the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the National Republican Senatorial Committee (NRSC), the Democratic National Committee

(DNC), the Democratic Congressional Campaign Committee (DCCC), and the Democratic Senatorial Campaign Committee (DSCC). Aggregate totals for the national party committees of the parties have not been adjusted to reflect any transfers among the national committees of each party. I have also reviewed figures in the Commission's database regarding total receipts of the California Republican Party ("CRP"), the California Democratic Party ("CDP"), the Republican Party of San Diego County ("SDRP"), and the San Diego County Democratic Party ("SDDP").

3. The following tables contain figures representing the total hard and soft money receipts of the national committees of the Republican and Democratic parties for the last five full election cycles.

| Receipts | RNC | | DNC | |
|-----------|---------------|---------------|---------------|---------------|
| | Hard Money | Soft Money | Hard Money | Soft Money |
| 2007-2008 | \$427,558,768 | | \$260,111,657 | |
| 2005-2006 | \$243,007,131 | | \$130,821,232 | |
| 2003-2004 | \$392,413,393 | | \$404,352,278 | |
| 2001-2002 | \$170,099,094 | \$113,928,997 | \$67,492,507 | \$94,564,827 |
| 1999-2000 | \$212,798,761 | \$166,207,843 | \$124,034,380 | \$136,563,419 |

| Receipts | NRCC | | DCCC | |
|-----------|---------------|--------------|---------------|--------------|
| | Hard Money | Soft Money | Hard Money | Soft Money |
| 2007-2008 | \$118,324,756 | | \$176,210,540 | |
| 2005-2006 | \$176,300,627 | | \$139,994,367 | |
| 2003-2004 | \$185,719,489 | | \$93,236,164 | |
| 2001-2002 | \$123,615,586 | \$69,677,506 | \$46,436,093 | \$56,446,802 |
| 1999-2000 | \$97,314,513 | \$47,295,736 | \$48,394,476 | \$56,702,023 |

| Receipts | NRSC | | DSCC | |
|-----------|--------------|--------------|---------------|--------------|
| | Hard Money | Soft Money | Hard Money | Soft Money |
| 2007-2008 | \$94,424,743 | | \$162,791,453 | |
| 2005-2006 | \$88,812,386 | | \$121,376,959 | |
| 2003-2004 | \$78,980,487 | | \$88,659,299 | |
| 2001-2002 | \$59,161,387 | \$66,426,117 | \$48,391,653 | \$95,049,520 |
| 1999-2000 | \$51,475,156 | \$44,652,709 | \$40,488,666 | \$63,717,982 |

4. In each of the last two presidential election cycles, 2007-2008 and 2003-2004, the national party committees raised more hard money than they raised in hard and soft money combined in the last pre-BCRA presidential election cycle, 1999-2000. In the 2007-2008 election cycles, the national party committees raised approximately \$1,239,400,000 in hard money. In the 2003-2004 cycle, the national party committees raised approximately \$1,243,300,000 in hard money. In 1999-2000, the national party committees raised approximately \$574,500,000 in hard money and approximately \$515,100,000 in soft money for a combined total of approximately \$1,089,600,000.

5. In the last non-presidential election cycle, 2005-2006, the national political party committees raised almost 90 percent as much in hard money alone as they had raised in hard and soft money combined in the previous non-presidential election cycle, 2001-2002. In the 2005-2006 cycle, the national party committees raised approximately \$900,200,000 in hard money alone. In 2001-2002, the national party committees raised approximately \$515,200,000 in hard money and approximately \$496,100,000 in soft money, for a combined total of approximately \$1,011,300,000 in receipts.

6. In each of the last two presidential election cycles, 2007-2008 and 2003-2004, the Republican National Committee raised more hard money than it raised in hard and soft money combined in the last pre-BCRA presidential election cycle, 1999-2000. In the 2007-2008 election cycle, the RNC raised \$427,558,768 in hard money. In the 2003-2004 cycle, the RNC raised \$392,413,393 in hard money. In 1999-2000, the RNC raised approximately \$212,798,761 in hard money and \$166,207,843 in soft money for a combined total of \$379,006,604.

7. In the last non-presidential election cycle, 2005-2006, the Republican National Committee itself raised approximately 85 percent as much in hard money alone as it had raised in hard and soft money combined in the previous non-presidential election cycle, 2001-2002. In the 2005-2006 cycle, the Republican National Committee raised \$243,007,131 in hard money. In 2001-2002, the Republican National Committee raised \$170,099,094 in hard money and \$113,928,997 in soft money, for a combined total of \$284,028,091.

8. In the 2003-2004 election cycle, both the RNC and DNC raised about \$400 million each. In the 2007-2008 cycle, the RNC raised about 64% more hard money than the DNC; when the RNC raised \$427.5 million, and the DNC raised \$260.1 million. Similarly, in the 2005-2006 election cycle, the RNC raised about 85% more hard money than the DNC. The RNC raised \$243.0 million, compared to the DNC's \$130.8 million.

9. The following table contains figures representing the total hard money receipts of the California Republican and California Democratic parties for the last three full election cycles.

| Receipts | California Republican Party | California Democratic Party |
|-----------|-----------------------------|-----------------------------|
| 2007-2008 | \$14,003,033 | \$3,875,385 |
| 2005-2006 | \$10,777,559 | \$5,564,990 |
| 2003-2004 | \$13,344,526 | \$10,676,768 |
| 2001-2002 | \$9,254,295 | \$4,491,824 |
| 1999-2000 | \$18,479,664 | \$10,742,260 |

10. In the 2007-2008 election cycle, the CRP raised in excess of 3.5 times more hard money than the CDP. While the CRP raised \$14.0 million, the CDP raised only \$3.9 million. In the 2005-2006 election cycle, the CRP raised almost twice the hard money raised by the CDP, \$10.8 million compared to \$5.6 million. And in the 2003-2004 election cycle, the CRP again

raised more hard money than the CDP. In that presidential election cycle, the CRP raised \$13.3 million to the CDP's \$10.7 million.

11. The following table contains figures representing the total hard money receipts of the Republican Party of San Diego County ("RPSD") and San Diego County Democratic ("SDDP") Party for the past three full post-BCRA election cycles.

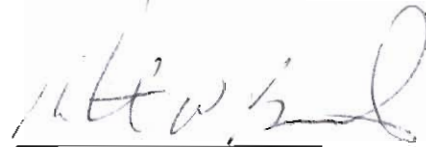
| Receipts | Republican Party of San Diego County | San Diego County Democratic Party |
|-----------|--------------------------------------|-----------------------------------|
| 2007-2008 | \$684,173 | \$773,934 |
| 2005-2006 | \$648,137 | \$297,827 |
| 2003-2004 | \$703,478 | \$121,803 |

12. In the six years since BCRA became effective, the RPSD has raised considerably more hard money than the SDDP Party. The SDDP raised about \$90,000 more hard dollars than the SDRP in the 2007-2008 election cycle. In the 2005-2006 cycle, the RPSD raised twice as much hard money as the SDDP. In that time, the RPSD raised \$648,137 compared to the SDDP's haul of \$297,827. In the 2003-2004 election cycle, the RPSD raised in excess of 5.5 times the amount of hard money raised by the SDDP. In that presidential election cycle, the RPSD raised \$703,478 to the SDDP's \$121,803.

13. The following table contains figures representing the aggregate total hard money receipts for the last three election cycles of the three national committees of the Republican Party; the RNC, the NRCC, and the NSRC; and the three national committees of the Democratic Party; the DNC, the DCCC, and the DSCC.

| Receipts | RNC + NRCC + NRSC | DNC + DCCC + DSCC |
|-----------|-------------------|-------------------|
| 2007-2008 | \$640,308,267 | \$599,113,650 |
| 2005-2006 | \$508,120,144 | \$392,192,558 |
| 2003-2004 | \$657,113,369 | \$586,247,741 |

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Robert W. Biersack

Executed on this 8th day of April, 2009.

FEC Exhibit 34

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

| | | |
|--------------------------------|---|------------------------|
| _____ |) | |
| REPUBLICAN NATIONAL COMMITTEE, |) | |
| <i>et al.</i> , |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civ. No. 08-1953 (RJL) |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | DECLARATION |
| |) | |
| Defendant. |) | |
| _____ |) | |

**DECLARATION OF
STEVE N. HAJJAR**

1. My name is Steve Nicholas Hajjar. I am a resident of Arlington, Virginia and I am over 21 years of age.

2. I am an attorney employed in the Office of General Counsel at the Federal Election Commission (“Commission”). Unless otherwise indicated, I make this declaration based on my personal knowledge. I make this declaration in support of the Commission’s Motion for Summary Judgment in this litigation and if called as a witness, I could and would testify competently to the matters set forth herein.

3. Congressional Quarterly (“CQ”) maintains an online database of campaign finance figures available at www.cqmoneyline.com, including information on receipts by section 527 organizations taken from reports filed with the Internal Revenue Service. On this website, CQ maintains lists of section 527 organizations grouped by receipts for the 2001-2002, 2003-2004, 2005-2006, and 2007-2008 election cycles. For each of those election cycles, CQ lists the total receipts for “Key Democratic Groups” and “Key Republican Groups.” CQ identifies “key” 527s as those that “have a national presence

and impact federal elections.” The following statistics are taken from CQ’s lists, which I reviewed on March 23, 2009, and which require a paid subscription to access.

4. In the 2007-2008 election cycle, “key” Democratic 527 groups raised a combined total of \$153,878,547.

5. In the 2005-2006 election cycle, “key” Democratic 527 groups raised a combined total of \$112,458,154.

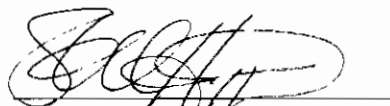
6. In the 2003-2004 election cycle, “key” Democratic 527 groups raised a combined total of \$264,526,778.

7. In the 2007-2008 election cycle, “key” Republican 527 groups raised a combined total of \$137,990,367.

8. In the 2005-2006 election cycle, “key” Republican 527 groups raised a combined total of \$106,226,641.

9. In the 2003-2004 election cycle, “key” Republican 527 groups raised a combined total of \$164,693,210.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Washington, D.C. on the 8th day of April, 2009.


Steve N. Hajjar
Attorney

FEC Exhibit 35



Thu. Apr. 02, 2009

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Tuesday, May 24, 2005

Memo From Chairman Mehlman Regarding GOTV Efforts In Special Elections



TO: Republican National Committee Members
FROM: Ken Mehlman, Republican National Committee Chairman
RE: Special Elections Confirm the Importance of Grassroots Turnout Efforts
DATE: 5/23/05

The 72-Hour Program is the Republican get-out-the-vote (GOTV) plan that has helped the GOP expand our majorities in the U.S. Congress for two consecutive cycles, in addition to re-electing President George W. Bush.

Examples of GOTV Success in 2004:

- President Bush received 12 million more votes than 2000, an increase of 23% nationally.
- 3.4 million new Republicans registered to vote.
- 1.4 million volunteers helped with our turnout efforts.
- More than 31 million volunteer phone calls and door knocks were made during 2004 in battleground states alone.
- More than 17 million of those volunteer contacts were made during the final five days of the election.

The Republican National Committee (RNC) has spearheaded the GOTV effort by internalizing the mechanics of the program, testing new tactics, refining the efficiency and effectiveness, and implementing the plan both nationally and locally.

Local races and in particular, special elections, give the RNC the opportunity to test new and improved targeting and tactics that we have been working to improve since the 2004 election. The national committee is making an unprecedented

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commitment to local and special elections that are helping grow the party and ensure grassroots activists remained energized in the political process.

And as part of the committee's four-year plan to improve our grassroots effort, the RNC has deployed trained staff and resources into 2005 legislative and local special elections. Republicans have won four of the six special elections held since Election Day 2004, with grassroots being decisive in each.

The RNC has deployed staff and resources into special elections with three main objectives:

Help Republican candidates win races, build on past success, and grow the party.

Allow state and local party staff and volunteers to hone their political skills, using grassroots tactics employed by Bush-Cheney '04 and the RNC.

- Provide the committee an opportunity to test new and improved targeting and tactics that have been improved since November.

Below are examples of special elections the RNC has participated in over the last several months.

MISSOURI – STATE SENATE DISTRICT 22

On April 5th, Missouri Republicans won an open Democrat state Senate seat in Dick Gephardt's former Congressional District currently held by Democrat Russ Carnahan (MO-03). In a four-way race in a state district carried by Senator John Kerry this past November, Bill Alter won the tough campaign over a sitting Democrat state Representative.

- A Republican has not held this seat in over 50 years.
- Extensive individual voter ID was conducted well in advance of Election Day.
- ID data was then utilized to turn out identified supporters, outside the Republican base.
- The GOP was able to increase support within non-base precincts by 5%, leading to a win by 72 votes in a recount.
- The *St. Louis Post-Dispatch* reported, "Jefferson County election officials planned today to count by hand a sampling of votes in an attempt to verify who won Tuesday's hottest – and, probably, closest – contest in the state: the 22nd District state Senate race.

"Republican Bill Alter of High Ridge held a 66-vote edge in unofficial results in the four-way fight. 'I am very proud of this victory and honored to serve the people of this district,' said Alter, a former state legislator, in a statement issued late Tuesday." (*St. Louis Post-Dispatch*, 4/6/05)

PENNSYLVANIA – STATE SENATE DISTRICT 16

Pennsylvania Republicans and state Representative Pat Browne won an open Republican state Senate seat in Pennsylvania's Lehigh Valley on April 5th. The race pitted Browne against Jennifer Mann, Democrat state House member. Browne won convincingly in this swing district in large part because the GOP base turned out at a much higher rate than that of the Democrats.

- This seat was vacated due to the election of former state Senator Charlie Dent (PA-15) to

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The GOP Networks



Congress.

- The entire Republican GOTV universe – nearly 12,000 households – was contacted at least once on Election Day via local volunteers going door-to-door.
- Areas that constitute more densely concentrated Republican votes were contacted two to three times.
- The result of these GOTV efforts:
 - Overall turnout in Republican base precincts more than doubled turnout in Democrat base precincts.
 - Turnout in the targeted Republican base precincts, where multiple personal volunteer contacts were made, more than tripled turnout in Democrat precincts.
- The *Allentown Morning Call* reported, “Browne easily won the south and east sides of Allentown, where his 131st House District had been based before redistricting in 2001... ‘The people who had been represented by Pat Browne for a long time thought that he did a good job for them and they stood by him,’ said Jack Pressman, Mann’s campaign manager.” (Dan Sheehan, Daryl Nerl & Dan Hartzell, *Allentown Morning Call*, 4/6/05)

NEBRASKA - LINCOLN CITY COUNCIL

On May 3rd, Nebraska Republicans ousted a popular Democrat incumbent in a Lincoln city council race by delivering the top two vote getters, Ken Svoboda and Robin Eschliman, in the hotly contested municipal election (i.e. top three vote getters were elected).

- Republicans tested the absentee ballot program, which bolstered Republican turnout well before Election Day.
- 13,803 contacts (phone calls and door knocks) were made in the final four days of the campaign.
- Republican turnout increased by more than 22.8% over the city council elections in 2001.
- The *Lincoln Journal Star* reported directly after the primary that, “State Democratic Party Director Barry Rubin said that while his party traditionally has done a better job of contacting, persuading and turning out voters in Lincoln, the Republicans are getting better at it.

“‘We’ve taken notice, and we’re gonna do what we gotta do,’ he said.” (Deena Winter, *Lincoln Journal Star*, 4/6/05)

The *Lincoln Journal Star* reported after the general, “Svoboda ... will be joined on the council by newcomer Robin Eschliman, who got 21,800 votes, or 19 percent. Both Svoboda and Eschliman are Republicans. Democrat Dan Marvin squeezed into the third open seat on the council with 18,819 votes, nearly 17 percent ...

“Svoboda said the Republican Party also worked overtime behind the scenes to get people to vote. ‘This is very unlike Republicans to get involved in a race from a standpoint of making the phone calls and walking the precincts,’ Svoboda said. ‘This was a very good push by Republicans.’” (Deena Winter, *Lincoln Journal Star*, 5/4/05)

NEW YORK – STATE SENATE DISTRICT 57

New York Republicans and Assemblywoman Cathy Young convincingly won a Republican open state Senate seat on May 10th. While the district leans Republican, our candidate’s performance far outpaced those of many other Republicans in the same district.

- The seat was vacant as result of the death of former Republican State Senator Pat McGee.
- Even though the district only maintains a 7% Republican registration advantage, our candidate won by 39% of the vote.
- In the Democrat's base county Chautauqua, Democrats outnumber Republicans by well over 200 registered voters, yet Republican-candidate Cathy Young won the county with 60.5% of the vote (more than 4,000 votes).
- The *Buffalo News* reported, "Catharine M. Young defeated Democrat Nancy Gay Bargar, a real estate executive, in a special election Tuesday to fill the seat left vacant by the April 2 death of Republican Patricia K. McGee.

"With all precincts reporting, Young, a Republican assemblywoman from Olean, had 28,100 votes, or 70 percent, compared with Bargar's 12,161 votes, or 30 percent, to win the 57th Senate District seat." (Kathy Kellogg, *Buffalo News*, 511/05)

TENNESSEE – STATE SENATE DISTRICT 33

On May 10th, while losing a state Senate special election in Tennessee, Republicans continue to learn we can compete anywhere. In a district that voted 4-to-1 Democrat-to-Republican in 2004, Republicans ran a strong candidate in Mary Ann McNeil, and increased performance among Republicans by more than 10%.

- No Republican has ever held this South Memphis-based State Senate seat.
- Turnout in the Republican base precincts was 8.2%, 2.5 times greater than that of turnout in the Democrat base precincts which was 2.9%.

PENNSYLVANIA- STATE SENATE DISTRICT 42

On May 17th, while losing a state Senate special election in Pennsylvania, Republicans continued to improve voter performance. In a district that falls primarily within the city limits of Pittsburgh, where Republicans have not held a Senate seat in 60 years, and boasts a 3-to-1 Democrat-to-Republican registration gap, Republicans ran a strong candidate, state Representative Michael Diven. Diven, a lifelong Democrat, switched parties in January to better represent his constituents and participate in the party that shares his beliefs. The Republican candidate continued to reach out to Pittsburgh voters including African Americans, labor unions, and Catholics. By way of 250 Election Day volunteers, 15,000 voters were contacted in the campaign's door-to-door effort.

- On the same day as a competitive Democrat primary for Mayor of Pittsburgh, our Republican candidate improved GOP performance in city districts by 7% from 2004.
- The Democratic candidate ran an average of 12% points behind traditional Democrat numbers in the city precincts.

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FEC Exhibit 36



Thu. Apr. 02, 2009

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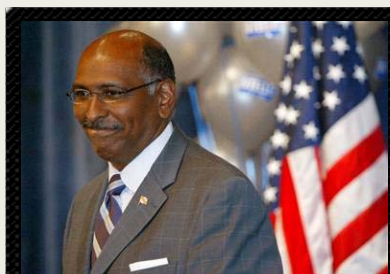
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Tuesday, March 17, 2009

RNC Makes Additional Investment in Northeast Republican Leadership



WASHINGTON - The Republican National Committee (RNC) today announced a second transfer of \$100,000 to the New York Republican State Committee, bringing the total to \$200,000 in the past month.

"The RNC is proud to make another investment in our state parties and the hard workers in our grassroots organizations. I am confident this additional investment will help ensure victory in the special election in New York's 20th Congressional district. These funds will be used to further show our commitment to re-establishing a strong GOP presence in the Northeast," said Chairman Michael Steele.

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FEC Exhibit 37

1 plan that accomplishes of goals that all of our
2 candidates have jointly.

3 Q. Is it fair to characterize the party ticket
4 campaign as a joint venture or joint effort among the
5 party and all of its candidates?

6 A. More informal but working together to maximize
7 resources. It is not so much a buyin from all of them
8 as a party driven activity that allows them to know what
9 exactly the party is doing.

10 Q. So as part of the party ticket campaign the
11 party keeps all of the Republican candidates in that
12 state, state and federal candidates in that state
13 informed about what it is the party is doing so that
14 what the party does is consistent with what the
15 candidates are doing?

16 A. I don't know if consistent, but yes we keep
17 them informed of what we are doing. It is -- I am too
18 far -- the party's objective is to have communicating
19 with the Republicans in the state hike California you
20 need a -- few more votes from Republican. If the
21 candidates know what we are doing in communicating with
22 our Republicans they have a better handle on what they
23 need to do.

24 Q. Does the California Republican party to you
25 are knowledge or any of the other -- strike that. Does

1 the California Republican party to your knowledge or did
2 the Nevada Republican party when you were there
3 undertake any election activities related to a
4 particular candidate without making that candidate aware
5 of those in advance?

6 A. On an independent expenditure?

7 Q. I am just asking whether that happened,
8 whether the?

9 A. I am not sure I understand the.

10 Q. Either of those parties California or Nevada
11 undertook election activities related to particular
12 candidate without making the candidate aware they were
13 it was going to do that in advance?

14 A. Not to the best of my knowledge.

15 Q. You talked, I think, about activities that are
16 undertaken by the party prior to the primary; correct?

17 A. Uh-huh.

18 Q. One of the other things I should have said, I
19 didn't. My fault. The court reporter it is difficult
20 for her to determine whether uh-huh or uhn-uhn?

21 A. I'm sorry.

22 Q. Are yes or no. It is really my fault. If you
23 can say yes or no rather than using that. I take. Let
24 me ask the question again.

25 I talked about activities that are undertaken

1 by the party prior to the primary; correct?

2 A. Yes.

3 Q. Those activities strike that. Are those
4 activities prior to the primary of candidate specific?

5 A. No. At least not to the best of my knowledge.

6 Q. Why is that?

7 A. The California Republican party can only
8 eventsors preprimary if there is no Republican opposition
9 and to the best of my knowledge has not actively
10 assisted done candidate specific activity preprimary.

11 Q. Does the California Republican party provide
12 assistance of some sort or another to all candidates
13 that have been nominated by the party?

14 A. Yes, but not necessarily direct assistance.

15 Q. Why does the party provide assistance to all
16 of the candidates in some form to all of the candidates
17 that have been nominated by the party?

18 A. We do statewide voter registration activities
19 we send absentee ballots, request mailers. Those things
20 we do statewide get out the vote efforts. We do those
21 things statewide which has -- is hcneficial to every
22 candidate in the state.

23 Q. So that the the party may or play not do --
24 provide candidate specific assistance to a particular
25 candidate, but it provides it engages in various

1 activities that necessarily affect every candidate's
2 prospect of election; correct?

3 A. That is accurate.

4 Q. And why does the party do -- get out the vote
5 activities, for example, prior to the primary?

6 A. We actually don't get out the vote activities
7 prior to the primary.

8 Q. Maybe I am miss rcmembering what: What what
9 election related activities does the party engage in
10 prior to the primary?

11 A. Assuming you term voter registration, voter
12 identification as election activities, both of those.
13 As well as other nonelection activities like member
14 communication.

15 Q. Why does the party engage in voter
16 registration and voter identification activity prior to
17 the primary?

18 A. Those are ongoing projects and programs that
19 both build our party base. We generally as we register
20 new voters also try to get them as volunteers for either
21 the state party or local party or volunteer
22 organization.

23 Voter identification gives us the opportunity
24 to identify folks that have a similar ideology to the
25 party again that we can engage in other activities. Get

1 Q. Why was the national party concerned -- strike
2 that.

3 I take it that the -- let me start one more
4 time.

5 In Nevada and in other states who actually
6 makes decisions about redistricting?

7 A. In Nevada it is a legislative process that the
8 state assembly, the state senate and the governor make
9 the decision. That varies from state to state.

10 Q. What is the process in California, for
11 example?

12 A. It is the same process in California.

13 Q. And is it fairly common in the states that it
14 is a legislative decision, state legislative decision
15 redistricting?

16 A. I think it is fairly common, but there are
17 certainly other ways also.

18 Q. Why was the to your knowledge why was the
19 national party concerned about redistricting in Nevada?

20 A. It was a state that had a Republican senate, a
21 democratic assembly and a Republican governor in the
22 state that as legislative process, which means that that
23 an opportunity for -- an opportunity for at least a fair
24 shake, and hopefully that would be the case. We had an
25 opportunity for legislative seats to be picked up.

1 correct?

2 A. Yes.

3 Q. But the prospects for election of a candidate
4 for the house of representatives would depend on
5 redistricting; correct?

6 A. Yes.

7 Q. And to your knowledge do actual members of
8 Congress and candidates for the house of representatives
9 communicate with the state party and with state
10 legislative officials about redistricting?

11 A. Certainly members of Congress did.

12 Q. Okay?

13 A. I don't recall candidates.

14 Q. And in your experience did those
15 communications between members of Congress and state
16 legislative officials sometimes affect the redistricting
17 process?

18 A. I wouldn't know.

19 Q. Do the Republican -- do the national
20 committees of the Republican party and the California
21 Republican party coordinate their election strategies?

22 A. Yes. Not necessarily all of them.

23 Q. Do the -- those national committees and the
24 California Republican party generally coordinate the --
25 their election strategies with respect to federal

1 Q. To your knowledge do -- strike that. Does the
2 Republican national committee or either of the strike
3 that. Does the Republican national committee or is the
4 Republican congressional campaign committee communicate
5 with either state party officials or state legislative
6 officials about the substance of redistricting?

7 A. Certainly.

8 Q. Why do they do that?

9 A. They care dramatically about what is going on
10 in the process.

11 Q. And is that because the fate of Republican
12 candidates for Congress in particular may depend upon
13 redistricting decisions?

14 A. Not in particular. The -- in fact, as -- I
15 can only speak to Nevada where I was involved in the
16 process. The national parties were just as concerned
17 about the state legislative districts as they were about
18 the congressional districts. They were concerned about
19 all of them.

20 Q. Yes.

21 My question was actually intended to -- was
22 intended to distinguish candidates from the house of
23 representatives as opposed to senatorial candidates.

24 You had senate candidates prospects for
25 election would not depend on redistricting of the state

1 candidates?

2 A. Not generally.

3 Q. When does the California Republican party
4 coordinate its yes hex strategies with the national
5 committees?

6 A. Oh, we do in general from the top of the
7 ticket to the bottom of the ticket. Are you ask for a
8 timeline or a how -- I don't.

9 Q. My question was probably vague. Paragraph
10 since you are having trouble figuring out what I was
11 asking.

12 Is it generally the case that with respect to
13 a federal candidate within the state that the California
14 Republican party coordinates its strategy with the
15 Republican -- the national committees of the Republican
16 party?

17 A. Yes.

18 Q. And does the California Republican party
19 coordinate with the national committees of the party
20 with respect to get out the vote activities?

21 A. Can you repeat that, please.

22 Q. Does the California Republican party
23 coordinate with the national committees of the party
24 with respect to get out the vote activities?

25 A. There is coordination. Though limited

FEC Exhibit 38

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Republican National Committee, et al.,)
)
 Plaintiffs,)
)
 v.)
) Civ. No. 02-874
 Federal Election Commission, et al.,) (CKK, KLH, RJL)
)
 Defendants,) consolidated with
) Civ. No. 02-582
) (CKK, KLH, RJL)
 and)
 Senator John McCain, Senator Russell)
 Feingold, Representative Christopher)
 Shays, Representative Martin Meehan,)
 Senator Olympia Snowe, Senator James)
 Jeffords,)
)
 Intervenor-Defendants.)
)

DEPOSITION OF
ALAN PHILP
TAKEN ON
THURSDAY, SEPTEMBER 19, 2002

Reported by:
Elizabeth Brodlieb, RPR

1 Q. Do you agree with the proposition that
2 political parties allocate their support for electoral
3 reasons, in other words, to win seats rather than info
4 its policy decisions?

5 A. If you're asking whether electoral decisions
6 are the one and only that trump all other considerations,
7 I would disagree with that. I would think that electoral
8 considerations have a very significant amount of
9 influence over how they allocate resources.

10 Q. Do you disagree with the statement that
11 parties allocate their support for electoral reasons to
12 win seats, not to influence policy decisions? You
13 disagree with that statement?

14 MR. GINSBERG: Do you understand the
15 question? There was a double-negative in there.

16 A. What I'm confused about, what it sounds like
17 you're asking me is do they allocate their electoral
18 resources to impact elections, the answer is yes.

19 Q. (By Mr. Phillips) Is the answer yes, that they
20 allocate their electoral resources to win seats and not to
21 influence policy decisions?

22 A. The electoral resource portion of their
23 budget is designed to advance candidates.

24 Q. And which portion of the NRCC's budget is
25 not electoral?

1 Q. Does the party do any polling on behalf of
2 federal candidates, even if the polling is on behalf of
3 state candidates as well?

4 A. Yeah.

5 Q. And does the party provide any mail,
6 m-a-i-l, services on behalf of federal candidates?

7 MR. GINSBERG: Let me object on vagueness
8 grounds. It's a term of art. If you could, define "mail
9 services."

10 Q. (By Mr. Phillips) Do you understand what I
11 mean by that?

12 A. Yes.

13 Q. What do you understand it to mean?

14 A. Do we develop mail on behalf of a candidate?

15 Q. Yeah. And do you on behalf of federal
16 candidates?

17 A. We are permitted by law to coordinate a
18 significant amount of mail with our candidates, and we,
19 in conjunction with the candidate, do so, yeah.

20 Q. And does the party provide any assistance
21 with respect to the production of either broadcast or
22 radio or print advertising to federal candidates?

23 A. Yes. From time to time, yes.

24 Q. And does the party provide any campaign
25 organization advice or consulting services to federal

1 MR. GINSBERG: Objection. He's not familiar
2 with the NRCC budget.

3 A. I don't know.

4 Q. (By Mr. Phillips) What election-related
5 services do -- does the Colorado Republican Party provide
6 to candidates, federal candidates?

7 A. To federal candidates?

8 MR. GINSBERG: I think you asked that, but
9 go ahead and answer it.

10 MR. PHILLIPS: I thought we took a break
11 before he answered the question.

12 THE DEPONENT: He's correct.

13 MR. GINSBERG: But you did ask it.

14 A. We provide in some cases direct
15 contributions to federal candidates. We help coordinate
16 and execute a number of Get-out-the-vote activities, and
17 in some cases we do direct voter contact-type activities,
18 whether it's mail, phones, radio, TV.

19 Q. (By Mr. Phillips) Does the party do any issue
20 research on behalf of federal candidates?

21 A. The Colorado Republican Party would
22 typically defer federal candidate research to the
23 National Republican Congressional Committee, although
24 when the National Republican Congressional Committee does
25 its research, they seek our advice very closely.

1 candidates?

2 A. In-house advice?

3 Q. Yes.

4 A. Yes.

5 Q. Do you also arrange outside consulting
6 advice from candidates from time to time?

7 A. I can't recall any specific incidents, no.

8 Q. Any other services that the party provides
9 to federal candidates?

10 A. Well, our Get-out-the-vote program is
11 designed to benefit all candidates. That could include
12 voter registration and so on and so forth.

13 Q. And is the same true of generic party
14 advertising, in other words, Vote Republican, that's
15 designed to benefit all the candidates?

16 A. Yes.

17 Q. Are you aware of any other organization or
18 entity in Colorado that provides that range of services
19 to federal candidates in Colorado?

20 MR. GINSBERG: You're speaking of the
21 present and past?

22 MR. PHILLIPS: Yes.

23 A. No.

24 Q. (By Mr. Phillips) So the party is unique in
25 that regard, correct?

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

| | | | |
|--------------------------------|--|---|----------------------------------|
| <hr/> | |) | |
| REPUBLICAN NATIONAL COMMITTEE, | |) | |
| <i>et al.</i> , | |) | |
| Plaintiffs, | |) | |
| | |) | |
| v. | |) | Civ. No. 08-1953 (BMK, RJL, RMC) |
| | |) | |
| FEDERAL ELECTION COMMISSION, | |) | |
| <i>et al.</i> , | |) | NOTICE |
| | |) | |
| Defendants. | |) | |
| <hr/> | |) | |

NOTICE OF FILING UNDER SEAL

Pursuant to the Court’s Protective Order dated March 10, 2009 (Docket No. 43), Defendant Federal Election Commission (“Commission”) hereby submits the following documents under seal:

- (1) The Commission’s unredacted Statement of Undisputed Material Facts, which includes material that was redacted from paragraphs 6 and 14 of the electronically filed version of that document; and
- (2) FEC Exhibits 39, 40, and 41.

Courtesy copies of the sealed material are being delivered to each Judge’s Chambers, and additional copies are being sent by e-mail to counsel for Plaintiffs and Intervenor-Defendant Van Hollen.

Respectfully submitted,

Thomasenia P. Duncan (D.C. Bar No. 424222)
General Counsel

David Kolker (D.C. Bar No. 394558)
Associate General Counsel

Kevin Deeley
Assistant General Counsel

/s/ Adav Noti

Adav Noti (D.C. Bar No. 490714)
Attorney

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Dated: April 10, 2009