CHAPTER FOUR

THE FINANCING OF POLITICAL ORGANIZATIONS

Some jurisdictions, including the federal government, have placed limits not only on contributions to candidates' campaign committees, but also on contributions to other types of political organizations involved in electioneering. This chapter discusses some of the issues that arise when monetary limits are imposed on contributions to political action committees ("PACs"), independent expenditure committees, and political parties.[1]

I. PACs

PACs are committees that collect money and then contribute it to candidates for elective office or spend it in coordination with the candidates. PACs may also spend some of their money on "independent expenditures" — expenditures that are made independently of candidates in an effort to influence elections. Committees that collect money exclusively for independent expenditures are treated separately from PACs in Section II of this chapter.

An organization's principal purpose can play a role in determining whether the group qualifies as a PAC subject to campaign finance restrictions. For example, an organization

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[1]All of these entities are engaged in electioneering activities. Organizations that do not engage in electioneering benefit from greater First Amendment protection. For more about the distinction between electioneering and protected "issue advocacy," see Chapter Seven. As that chapter explains, some courts formerly (and erroneously) believed that only so-called "express advocacy" could be regulated. That view was repudiated by *McConnell v. FEC*, 124 S. Ct. 619 (2003). Before *McConnell*, some courts ruled that the definition of a "political committee" in campaign finance laws could not encompass organizations that did not engage in express advocacy. *See*, *e.g.*, *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999) (invalidating definition of "political committee" that covered groups not engaging in express advocacy); *Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E.2d 135, 142 (Ind. 1999) (holding that Indiana's PAC definition should be narrowly construed to encompass only organizations that "in express terms" advocate an electoral outcome). It is not yet clear whether

financed by membership dues rather than contributions can still be a PAC if its primary purpose is to influence elections and that purpose is known to its members.[2]

TIPS

TIP: Do not starve the PACs. If constitutional limits are in place on individual contributions to candidates, limits on contributions to PACs should be upheld as an anti-evasion measure. Nevertheless, courts in some jurisdictions may separately assess whether limits on contributions to PACs are so low that they make it difficult for PACs to raise money and participate in the political process. It is therefore advisable to set limits high enough to withstand such scrutiny – at least at the level of individual contribution limits, and usually somewhat higher, to reflect the PAC's role as a proxy for contributors who have pooled their funds.

TIP: To enhance the voice of small contributors, consider creating a form of PAC that may accept only small contributions but is allowed to make larger contributions to candidates than ordinary PACs. PACs can be a tool for grassroots organizing.[3]

LEGAL ANALYSIS

The Supreme Court has upheld federal limits on contributions to PACs as a constitutionally permissible means of preventing individuals from circumventing the limits on contributions to candidates. *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 199 (1981) (plurality opinion); *id.* at 203-04 (Blackmun, J., concurring in part and concurring in the judgment).[4] The

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post-*McConnell* courts will similarly limit the definition of "political committee" to entities engaged in conduct that may itself be regulated, such as electioneering communications.

[2] A Washington Court of Appeals found that dues collected by unions do not count as contributions if collected from members that are unaware of their political use. *State ex. rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n*, 49 P.3d 894, 904 (Wash. Ct. App. 2002) (holding labor union not a political committee subject to disclosure laws because its membership dues did not constitute contributions).

Cal. Med. Court noted that, without a limit on contributions to PACs, individuals could evade the $1,000 limit on contributions to federal candidates "by channeling funds" through PACs that could each give $5,000 to each candidate. *Id.* at 198. In addition, individuals could easily circumvent the $25,000 aggregate limit on contributions to candidates, because PACs were not limited in the overall amount they could contribute to candidates. *Id.* The limit on contributions to PACs thus functioned as "'no more than a corollary of the basic individual contribution limitation[s].'" *Landell v. Sorrell*, 118 F. Supp. 2d 459, 488 (D. Vt. 2000) (quoting *Buckley*, 424 U.S. at 38, in upholding Vermont's $2,000 limit on contributions to PACs), *aff'd*, 382 F.3d 91 (2d Cir. 2004); *N.C. Right to Life Comm., Inc. v. Leake*, 108 F. Supp. 2d 498, 515-16 (E.D.N.C. 2000) (recognizing anti-evasion rationale in denying preliminary injunction against $4,000 limit on contributions to PACs); *Fla. Right to Life, Inc. v. Mortham*, 2000 WL 33733256, *6 (M.D. Fla. Mar. 20, 2000) ("[T]his Court's determination that Florida's limit on contributions to candidates is permissible also resolves Plaintiffs' challenge to Florida's [$500] limit on contributions to political committees."); *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 625 (Alaska 1999) (upholding a $500 limit).

If PAC contribution limits are justified only as preventing circumvention of limits on direct contributions to candidates, the absence of valid direct-contribution limits in a particular jurisdiction could undermine the validity of PAC contribution limits. The Eighth Circuit, at least, has voiced skepticism about the possibility that contributions to PACs, by themselves,

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[3]For a discussion of the legal issues raised by the creation of small donor PACs, see Chapter Three, Section II(B) (*LEGAL ANALYSIS*).

[4]*Cf. Buckley v. Valeo*, 424 U.S. 1, 38 (1976) (per curiam) (upholding the aggregate limit on contributions on the grounds that "this quite modest restraint upon protected political activity serves to prevent evasion of the $1,000 contribution limitation by a person who might otherwise

could be corrupting. *Russell v. Burris*, 146 F.3d 563, 571 (8th Cir. 1998) (finding little risk of corruption from contributions to a "PAC that does not itself wield legislative power"); *Day v. Holahan*, 34 F.3d 1356, 1365 (8th Cir. 1994) (same). But *Cal. Med.* noted that the limit on contributions to PACs prevented an individual or group from dominating the PAC's operations and dictating the use of PAC funds. 453 U.S. at 198 n.19. The limits thus addressed not only circumvention of other regulations, but also the risk that PACs would represent only one wealthy supporter and thus "influence the electoral process to an extent disproportionate to their public support and far greater than the individual or group that finances the committee's operations would be able to do acting alone." *Id.* This reasoning is more persuasive, of course, when PACs are entitled to make larger contributions to candidates than individuals are, as is the case under federal law.

The *Cal. Med.* court also considered an equal protection challenge to the federal limit on contributions to PACs. 453 U.S. at 200-01. The plaintiffs alleged that federal law discriminated in favor of corporations and unions, because the statute permitted those entities to spend unlimited amounts for the establishment, administration, and solicitation expenses of the separate segregated funds used for political purposes, whereas unincorporated associations were limited in the contributions they could make to multi-candidate PACs. The Supreme Court rejected the claim, stating:

> The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.

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contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate").

Id. at 201. The Court's hands-off approach is typical of the deference accorded to Congress where contribution limits are at issue.

II. Independent Expenditure Committees

A distinction is sometimes made between (i) PACs that make contributions to, or coordinate expenditures with, candidates (addressed in section I, *supra*) and (ii) "independent expenditure committees," which collect funds to be spent *only* on independent advertising and other activities designed to affect candidate elections (the subject of this part).

TIPS

TIP: Because PACs that contribute to candidates have a constitutional right to make independent expenditures as well, there is no reason for campaign finance laws to create separate entities called "independent expenditure committees." Indeed, we recommend *against* creating a separate regulatory category for independent expenditure committees, because doing so may raise constitutional issues regarding contributions to such committees that would otherwise not arise.[5]

LEGAL ANALYSIS

When a committee is entitled to make both contributions and independent expenditures, a cap on contributions to the committee can be justified as a means of preventing the evasion of other contribution ceilings. *Cal. Med.*, 453 U.S. at 197-98 (plurality opinion) (noting that $5,000 limit on contribution to federal multi-candidate political committee prevented circumvention of $1,000 individual limit on contributions to candidates); *Ark. Right to Life State Political Action Comm. v. Butler*, 983 F. Supp. 1209, 1223 (W.D. Ark. 1997) (noting the possibility of evasion

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[5]As is explained below, some courts have concluded that committees making only independent expenditures are exempt from contribution limits applicable to PACs, but there is no

where a single entity registers as both a PAC and an independent expenditure committee), *aff'd*, 146 F.3d 558 (8th Cir. 1998); *Mott v. FEC*, 494 F. Supp. 131, 137 (D.D.C. 1980) (upholding federal limits on contributions to committees that may make both contributions and independent expenditures, citing the anti-evasion rationale).[6]

Courts have split on whether the government can limit contributions to committees that are entitled to make contributions to candidates (or coordinated expenditures) but as a matter of practice fund only independent expenditures. Since *Buckley* prohibits the government from limiting the amount that an individual can spend directly on independent expenditures, it can be argued that the anti-circumvention rationale simply does not apply to individual's contributions to committees that in turn make only independent expenditures.[7] This argument draws on Justice Blackmun's concurring opinion in *Cal. Med.*, in which he agreed with the plurality that caps could be placed on contributions to PACs that in turn contributed to candidates but added that "a different result would follow if [the cap] were applied to contributions to a political committee established for the purpose of making independent expenditures, rather than contributions to candidates." *Cal. Med.*, 453 U.S. at 203 (Blackmun, J., concurring in part and concurring in the judgment). At least two courts, citing Justice Blackmun, have struck down limits on contributions to independent expenditure committees, though the Supreme Court recently

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reason for campaign finance reformers to create special exceptions for any committee that is legally *entitled* to make contributions as well as independent expenditures.

[6]In *Fla. Right to Life, Inc. v. Mortham*, the court declined to consider a challenge to a $1,000 limit on contributions given for the purpose of making independent expenditures, because the plaintiff was already subject to a $500 limit on contributions to PACs. 2000 WL 33733256, at *6 (M.D. Fla. Mar. 20, 2000) (unpublished decision).

[7]The anti-circumvention rationale would, however, support a ban on corporate or union contributions to committees that make independent expenditures that corporations and unions are barred from making directly, such as BCRA-style "electioneering communications." See Chapter 6 for a discussion of bans on corporate and union independent expenditures.

vacated the judgment in one case and ordered the lower court to reconsider in light of *McConnell*. *N.C. Right to Life, Inc. v. Leake*, 344 F.3d 418, 433-34 (4th Cir. 2003), *vacated and remanded*, 124 S. Ct. 2065 (2004); *San Franciscans for Sensible Gov't v. Renne*, No. C 99-02456 CW, slip op. (N.D. Cal. Sept. 8, 1999), *aff'd*, No. 99-16995, slip op. (9th Cir. Oct. 20, 1999).

Another court, however, has upheld limits on contributions to groups that make only independent expenditures. *Fla. Right to Life, Inc. v. Mortham*, 1998 WL 1735137, *5-*6 (M.D. Fla. Sept. 30, 1998) (accepting anti-circumvention rationale and finding that $1,000 limit did not restrict the committee's ability to engage in independent expenditures) (unpublished decision). Also, in a discussion it later retracted in an amended opinion, a Ninth Circuit panel expressed skepticism about the immunity of candidates to the influence of wealthy independent spenders. *Lincoln Club of Orange County v. City of Irvine, Cal.*, 274 F.3d 1262, 1268-69 (9th Cir. 2001), *superseded and amended by* 292 F.3d 934 (9th Cir. 2002). In its original opinion upholding limits on independent expenditures by PACs, the court reasoned that even under strict scrutiny, the limits were justified by the concern for improper influence, the appearance of or actual evasion of limits on contributions to candidates, and the potential for *quid pro quo* corruption. *Id*. The panel noted the likelihood that candidates would know the identity of their contributors, and the resulting potential for evasion of limits, and actual or perceived corruption. *Id*. On petition for rehearing, the panel issued an amended opinion that retracted its findings on constitutionality, and remanded the case to the lower court to apply strict scrutiny.[8]

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[8]The *Lincoln Club* panel ruled that because the ordinance affected expenditures and not merely contributions, the district court erred in using a lesser level of scrutiny. 292 F.3d at 938. The Ninth Circuit found that the ordinance burdened speech by barring expenditures unless the

Reformers in the states should be aware that the regulation of independent expenditure committees is a very hot topic at the federal level. After a highly publicized and contentious process, the FEC declined in May 2004 to adopt new rules governing independent expenditure committees whose "major purpose" is to influence federal elections. The most controversial among the defeated proposals would have subjected such committees to the same regulations as PACs, including the $5,000 contribution limit. As noted above, there is a serious question under current constitutional jurisprudence whether the government can restrict contributions to committees that do not contribute to candidates. Various reformers have announced plans to pursue litigation in an attempt to force the FEC to adopt regulations in this area, and the *Leake* case will also reach this issue on remand to the Fourth Circuit, so there may soon be important new precedents regarding independent expenditure committees.

III. Political Parties

As a recent Supreme Court decision clarified, the government may regulate all contributions to political parties. For a variety of reasons, however, existing regulations may vary depending on whether the party is raising money to use in support of specific candidates — either for contributions to the candidates or for direct expenditures by the parties — or for party-building and similar efforts. For example, until the recent passage of the Bipartisan Campaign Reform Act ("BCRA," formerly known as the McCain-Feingold bill), Congress limited contributions for campaigning but permitted unregulated contributions for other political party activities. Federal law now regulates all contributions to national parties irrespective of the use to which the party intends to put the money, as well as contributions to state and local parties

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plaintiff would dramatically alter its organizational structure, in which case its associational interests would be heavily burdened. *Id*. at 938-39.

engaged in federal election activities, and the Supreme Court has upheld the new approach. Some states continue to regulate only contributions made to parties for certain purposes, such as for subsequent transfer to candidate's campaign committees; in the wake of BCRA, however, more states may limit all contributions to parties in order to close so-called "soft money" loopholes.

TIPS

TIP: The evidence of corruption and the appearance of corruption that supports limits on contributions to candidates may also support limits on contributions to parties. Without such limits, parties and party committees may be used to evade individual contribution limits or to conceal contribution patterns.

TIP: Evidence may sometimes be found of political party activity that contributes to the appearance of corruption. For example, some political parties have published fundraising materials promising special access to elected officials in exchange for large donations to the party. The Supreme Court's opinion in *McConnell v. FEC*, 124 S. Ct. 619 (2003), upholding BCRA's soft-money ban, discusses at length evidence of parties' selling access in this manner.

TIP: Limits on contributions to political parties should take into account the complex organization of political parties, specifying clearly whether the law limits aggregate contributions to certain party committees or treats each committee separately. Some states treat certain party committees as PACs for the purpose of campaign regulation. It may also be desirable to treat all committees of a particular party (*i.e.*, the state committee and all county committees) as one entity for purposes of contribution limits. Otherwise, contribution limits could be circumvented by giving the maximum amount to the party's committee in each county and having county committees put their contributions at the state party's disposal. Before

BCRA, donors avoided federal contribution limits by giving to state and local party committees, who then used the money (in coordination with the national party) to support federal candidates.

TIP: Do not starve the parties. Parties need money to operate. They use money to recruit candidates and may support candidates with limited financial means of their own, thereby helping to expand and diversify the candidate pool. Parties also use the money to mobilize voters and to convey substantive messages to the electorate distinguishing their agenda from that of other parties. Because some courts reviewing limits on contributions to political parties may consider the following types of evidence relevant to their decision, you may wish to collect data on:

- how much money political parties have raised in the past;
- what percentage of funds raised in previous years would be affected by the new limits;
- what methods political parties have used to raise money in the past;
- what additional fundraising methods are available;
- the percentage of registered voters who contribute to the parties and the average amounts of their contributions;
- income and wealth of registered voters in the jurisdiction; and
- how parties have allocated funds among their various activities in the past.

TIP: Consider public funding for limited purposes, such as party-building activities that encourage citizen participation. A handful of jurisdictions provide limited public funding to parties. See Chapter Three, section V, for discussion of public funding. Party-building activities must be defined carefully to avoid misuse of the funds.

TIP: Consider whether limits or other regulations hinder the development of third parties.

TIP: Consider whether you should include contributions to parties in an aggregate limit on individual political contributions.

TIP: Consider whether you want to limit the amount PACs may contribute to political parties.

LEGAL ANALYSIS

McConnell confirmed what earlier Supreme Court cases had seemed to imply but had never quite said: the federal government can limit all contributions to national political parties and state and local parties engaged in federal electioneering activities, and it can prohibit parties from accepting corporate and union money. 124 S. Ct. 619. After *McConnell*, states can presumably limit all contributions to state and local party committees, just as the federal government can limit all contributions to national committees.

Before BCRA, federal parties could take unlimited money from all sources. In theory, money that was received from corporations and unions, and money received from PACs and individuals in excess of contribution limits – so-called "soft money" – could be used only for limited purposes. Party activities designed to influence federal elections were supposed to be paid for with non-corporate, non-union money raised subject to contribution limits – "hard money." But massive loopholes developed. What about activities that influenced both federal and state or local races, for example? The FEC permitted parties to use a mix of hard and soft money for those activities. National parties could also transfer soft money to state and local parties, which had even looser restrictions on using it for mixed-purpose activities. Soft money could also be used for "issue ads" that were in reality designed to influence federal elections. By the late 1990s, the national parties had become adept at raising and spending massive amounts of soft money, mostly from corporations, and spending it on federal electioneering, making a joke

of federal limits on contributions to candidates and party committees. *See generally McConnell*, 124 S. Ct. at 648-50, 652-54.

Congress responded by "tak[ing] national parties out of the soft-money business." *Id.* at 654. The core of BCRA's soft-money provisions is the new section 323(a) of the Federal Election Campaign Act:

> [N]ational committee[s] of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

2 U.S.C. § 441i(a)(1). In simple terms, what this means is that corporations and unions cannot give any money to national party committees for any purpose, individuals cannot give more than $25,000 to a national party committee for any purpose, and PACs cannot give more than $15,000 to a national party committee for any purpose.[9] Other provisions of BCRA are aimed at preventing circumvention of the soft-money ban; for example, federal elected officials cannot solicit soft-money contributions to state and local parties, and the state and local parties themselves are not permitted to use soft money for most activities affecting federal elections. This is the regime *McConnell* upheld.

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[9]Even before *McConnell*, lower courts had upheld limits on contributions to parties and bans on corporate soft-money contributions. *See Jacobus v. Alaska*, 338 F.3d 1095 (9th Cir. 2003) (upholding $5,000 limit on individual contributions and ban on corporate soft-money contributions on reasoning similar to *McConnell*'s, but striking down limit of $5,000 on value of professional services individual professionals could donate); *Landell*, 382 F.3d at 140-41; ($2,000 limit on contributions to parties appropriate to prevent corruption and evasion of individual contribution limits); *Alaska Civil Liberties Union*, 978 P.2d at 625 (upholding a $5,000 limit under the anti-evasion rationale). After *McConnell*, the contrary decision of *Washington State Republican Party v. Washington State Public Disclosure Commission*, 4 P.3d 808 (Wash. 2000), which held that a corporate soft-money ban was unconstitutional insofar as it applied to funds used for "issue advocacy," cannot be regarded as good law.

The rationales supporting BCRA would likely support state laws placing source and amount restrictions on contributions to state and local party committees. It is accordingly important for advocates at the state level to understand why BCRA was upheld.

First, even though § 323(a) prohibits the parties from spending soft money, the Supreme Court recognized that the provision is really a limit on contributions, not on expenditures. The parties remain free to spend as much as they want, so long as they raise the money lawfully. *McConnell*, 124 S. Ct. at 658. This is analogous to restrictions on contributions to candidates upheld in *Buckley*: even though the government cannot impose mandatory spending limits on candidates, it can limit the sources and amounts of money they can raise. Accordingly, and critically, the soft-money ban was subjected to the more deferential judicial scrutiny given to contribution regulations, not the strict scrutiny reserved for expenditure limits. *Id.* at 655-59; *see also* Chapters Five and Six.

Applying the appropriate standard of review, the Court found that the soft-money ban properly aimed to combat corruption and the appearance of corruption in two ways. The simplest way was in preventing circumvention of limits on contributions to candidates. Given the extensive evidence that parties used soft money in close coordination with the candidate's campaigns, soft-money contributions to the parties were an obvious way to get around contribution limits and curry favor with the candidates. *See McConnell*, 124 S. Ct. at 650, 661. The Court also noted substantial evidence that corporations and wealthy individuals "candidly admitted" making soft-money contributions "for the express purpose of securing influence over federal officials." *Id.* at 662. The corrupting potential was especially obvious when the contributions were solicited by the candidates themselves and subsequently used by the party to support the candidates' campaigns.

> Under this system, corporate, union, and wealthy individual donors have been free to contribute substantial sums of soft money to the national parties, which the parties can spend for the specific purpose of influencing a particular candidate's federal election. It is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.

Id. at 661-62.

But even when soft-money contributions are *not* directed for the direct benefit of a particular candidate, the Court recognized a considerable potential for corruption – a potential that the record showed had been repeatedly realized. "The record in the present case is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations." *Id.* at 664. Corruption does not include only outright bribery, but extends to contributors' exercising "undue influence on an officeholder's judgment, and the appearance of such influence." *Id.* (internal quotation marks omitted). The parties' peddling access to officeholders "certainly gave the appearance of such influence." *Id.* (internal quotation marks omitted). Given the close connection between federal officeholders and national party committees, Congress was entitled to ban all soft-money contributions to national parties, even if the contributions were to be used strictly for state and local election activities. *Id.* at 667-68.

Similar reasoning led the Court to uphold bans on national party committees, and on federal candidates and officeholders, from soliciting or directing soft-money contributions to other organizations. *Id.* at 668-69, 682-83. Regardless of the ultimate use to which the money was put, donating large sums of money at the parties', candidates', or officeholders' request was likely to give the donor special influence over elected officials. Thus, even if contributions were made to an entirely separate organization, they must be made within hard-money limits or they would become vehicles to circumvent limits on contributions to candidates and parties.

> Large soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself. Without some restriction on solicitations, federal candidates and officeholders could easily avoid FECA's contribution limits by soliciting funds from large donors and restricted sources to like-minded organizations engaging in federal election activities. As the record demonstrates, even before the passage of BCRA, federal candidates and officeholders had already begun soliciting donations to state and local parties, as well as tax-exempt organizations, in order to help their own, as well as their party's, electoral cause.

Id. at 683.

In sum, *McConnell*'s main lessons for regulating parties' financing are:

- All contributions to parties can be regulated and limited;
- Corporations and unions can be prohibited from giving any money to parties (stated another way, corporations and unions can be required to set up PACs to make contributions to parties); and
- Loopholes that could enable donors to evade restrictions on giving to parties and candidates can be closed on an anti-circumvention rationale.

But just as with BCRA's electioneering communication regulations, state-level soft-money rules modeled on BCRA could be challenged on the grounds that the state has not compiled an adequate record to prove that soft money has been a corrupting influence in that particular state. *See* Chapter Seven (discussing analogous concern in electioneering context). The *McConnell* Court repeatedly cited the voluminous evidence of soft money's pernicious effects at the *federal* level compiled through Congressional hearings and in the trial court. 124 S. Ct. at 652, 663, 666.

Most courts, however, will probably not require extensive evidence to be gathered in each state that adopts soft-money restrictions. For one thing, the evidence in *McConnell* showed how soft money was channeled through state and local parties to influence federal elections; it is therefore clear that state and local parties know how to exploit soft money loopholes and have

been willing to do so in the past. Also, the Court often pointed out that it was a matter of simple common sense that preventing circumvention of valid hard money limits was necessary to prevent evisceration of those limits' anti-corruption function. *See, e.g.*, *id.* at 661-62; *Jacobus v. Alaska*, 338 F.3d 1095, 1114 (9th Cir. 2003) ("Because a modern election campaign simply cannot be conducted without significant sums of money, candidates become beholden to the sources of any contributions that aid their campaign, whether given directly or indirectly [via a party]."). To the extent that evidence targeted to a particular state is required, *McConnell* suggests that business leaders who feel pressured to give soft money to both major parties can provide especially useful testimony. *See*, *e.g*, 124 S. Ct. at 649 n.13.

Just as BCRA places restrictions on state and local parties so that they cannot be used to circumvent the soft-money ban on contributions to national parties, reformers at the state level should consider how to treat the various party committees at the statewide and county levels to prevent new loopholes from being exploited. The Court of Appeals in *Landell* upheld a Vermont statute treating all national, regional, state, county, and town committees of one party as a single entity for purposes of contribution limits. 382 F.3d at 143-44 (noting District Court's comment that federal law also treats state, county, and town committees as a unit for some purposes).

Finally, in setting contribution limits for parties, advocates must not reduce contributions below a level at which the parties can function effectively. In upholding contribution limits, courts have applied the *Shrink Mo.* test: limits cannot be "so radical in effect as to render political association ineffective, drive the sound of [a political party's] voice below the level of notice, and render contributions pointless." *Id.* at 485 (quoting *Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377, 397 (2000)). *Landell* upheld a $2,000 limit after considering evidence of how the parties' fundraising and spending had changed after the limit was imposed, 382 F.3d at 140-41,

while *Jacobus* upheld a $5,000 limit on the simple grounds that *Buckley* had permitted a $5,000 limit on contributions to PACs, 338 F.3d at 1117.

IV. A Note on Candidate Contributions to Non-Political Organizations

It is not uncommon for candidates to make donations to organizations that are ostensibly established for religious, civic, or other charitable purposes. Some such organizations (or their affiliates) endorse candidates or otherwise promote the election of particular candidates through independent expenditures or sham issue advocacy. In an apparent attempt to forestall efforts by candidates to curry favor with such groups by means of donations from campaign funds, and to prevent evasion of campaign finance laws, Florida enacted a law banning the candidate contributions. In *Fla. Right to Life, Inc. v. Lamar*, the Eleventh Circuit Court of Appeals found the ban unconstitutional. 273 F.3d 1318, 1325-29 (11th Cir. 2001). What is important to note is that the Court struck down the law as written, because it broadly banned many genuinely charitable donations even from personal funds. The Court did not reach the question whether it would be permissible to ban contributions to ostensibly non-political organizations for the purpose of securing electoral support. *Id.* at 1326 n.10. *McConnell* upheld BCRA's limitations on the amounts federal candidates and office holders can solicit on behalf of charitable organizations. 124 S. Ct. at 682-83.